

Section 56(2)(viib) applies in the year in which shares are allotted and not when application money is received

Summary – The Delhi ITAT in a recent case of Cimex Land and Housing (P.) Ltd., (the Assessee) held that where assessee received share application money in earlier years, but shares were allotted only in current year, valuation of shares could be done as per Report mentioned under rules 11U and 11UA; income arising from share premium was to be computed accordingly

Facts

- The assessee received share application in earlier assessment years 2012-13 and 2013-14 from company VL but in those assessment years shares were not allotted. Also in current assessment year 2015-16, share application money was received. Shares for entire share application money were allotted during the current year.
- During the course of the scrutiny assessment proceedings, the Assessing Officer found that shares of face value of Rs. 10 were allotted on huge premium of Rs. 790 each share. He asked the assessee to justify the increase in share application money from VL. The assessee strongly contended that provisions of section 56(2)(viib) are not applicable since the said provisions were inserted w.e.f. 1-4-2013. The assessee justified its share premium by furnishing valuation report of a Registered Valuer.
- The Assessing Officer held that in the current year under consideration i.e., assessment year 2015-16, it was mandatory to follow the methods prescribed for determining the value of share premium as per rule 11UA. After rule 11UA came into existence in 2011/2012, there could not be any other method for determining the valuation of shares. The Assessing Officer further held that since the assessee allotted share capital on premium in Financial year 2014-15 and provisions of section 56(2)(viib) would be attracted; therefore, to justify premium, the assessee company was duty bound to submit basis of calculation of share premium as per rule 11UA Report. The Assessing Officer further held that the assessee-company had failed to justify the allotment of share at premium during financial year 2014-15, as there was no effort to justify the premium with the working of assessee-company in the succeeding years.
- On appeal, the Commissioner (Appeals) confirmed addition of Rs. 6.32 crores made under section 56(2)(viib).
- On the assessee's appeal to the Tribunal:

Held

- It is true that section 56(1)(viib) refers to consideration for issue of shares received in any previous year and it is equally true that Rs. 4.03 crores was received in assessment year 2012-13 and Rs. 40 lacs was received in assessment year 2013-14 but the fact of the matter is that the entire share allotment was done during the year under consideration; therefore, it cannot be said that the

assessee was not liable to justify its share premium supported by the valuation report as mentioned under rules 11U and 11UA. The valuation report which the assessee sought to file before the Tribunal should have been filed before the Assessing Officer so that the same can be examined within the purview of rules 11U and 11UA.

- In the interest of justice, this issue is to be restored to the files of the Assessing Officer. The assessee is to be directed to justify the share premium as per provisions of law and as per rules 11U and 11UA of the IT Rules.
- A part of the share application money was received in earlier assessment years; since in those assessment years shares were not allotted, the share premium could not have been examined by the Assessing Officer under section 56(2)(viib). Since the entire transaction has crystallized during the year under consideration which also includes the share premium of Rs. 790 per share needs to be examined during the year under consideration only.
- The Assessing Officer is to be directed to examine the justification of share premium as per the procedure prescribed under rules 11U and 11UA of the IT Rules and decide the issue afresh.