Excess share premium not taxable u/s 56(2)(viib) without determining FMV of shares

Summary – The High Court of Madras in a recent case of Vaani Estates (P.) Ltd., (the Assessee) held that Excess share premium is not taxable u/s 56(2)(viib) without determining FMV of shares

Facts

- One of shareholders of assessee company introduced a sum of Rs. 23.32 crores and was allotted 10100 shares at a premium of Rs. 23,086/- per share.
- Assessing Authority observed the shares were issued at a premium far in excess of Fair Market Value of share and taxed the same as an 'Income from other sources' in hands of closely held company under clause (viib) of section 56(ii).
- On appeal, the Tribunal held that provisions of section 56(2)(viib) could not be invoked in the case of the assessee-company.

Held

- It was submitted by the assessee that the Assessing Authority did not carry out a determination of 'Fair Market Value' of the shares to analyse why the share premium had gone up just before the allotment of the shares and the AO was bound to compute the Fair Market Value taking into account the relevant factors as per *Explanation* (a)(ii) of clause (viib) of section 56(2).
- The HC held that since the AO was bound to undertake the exercise of determining the Fair Market Value of the shares in question as required in the *Explanation* to section 56(2)(viib), the matter should be remanded back to the AO for undertaking the said FMV exercise.
- Therefore the matter was remitted back to the Assessing Authority by the HC.