

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.630/Bang/2019
Assessment Year : 2015 – 16

M/s. 3FIVE8 Technologies Pvt. Ltd., 518, VV Arcade, 1 st Main Road, AECS Layout, B Block Kundalahalli, Bengaluru – 560 037. PAN : AAACZ 3829 K	Vs.	DCIT, Circle – 7[1][1], Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Shri. Suresh Muthukrishnan, CA
Revenue by	:	Smt. R. Premi, JCIT DR
Date of hearing	:	03.11.2020
Date of Pronouncement	:	03 .11.2020

ORDER

PER B.R.Baskaran, Accountant Member:-

The assessee has filed this appeal challenging the order dated 17-12-2018 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2015-16.

2. The appeal is barred by limitation by 37 days. The assessee has filed a petition requesting the bench to condone the delay. It is stated that the assessee did not file appeal immediately upon receipt of order of Ld CIT(A) under the impression that the “Start up” companies are exempted from the provisions of sec.56(2)(viib) of the Act in view of the letter dated 06-02-2018 issued by CBDT. However, when the assessee consulted his tax counsel, it came to know that

the above said letter of CBDT only stays collection of demand and not cancellation of demand. Immediately thereafter, the present appeal came to be filed, which resulted in a delay of 37 days. Accordingly it is submitted that the delay has occurred on account of mistaken belief and accordingly, it is prayed that the delay may kindly be condoned.

3. We heard Ld D.R on this preliminary issue and perused the record. Having regard to the submissions made in the petition, we are of the view that there was reasonable cause for the delay in filing the appeal. Accordingly, we condone the delay and admit the appeal for hearing.

4. In this appeal, the assessee is contesting the addition of Rs.74,68,746/- made by the AO u/s 56(2)(viib) of the Act, being excess share premium collected by the assessee, which was also confirmed by Ld CIT(A).

5. The Ld A.R submitted that the assessee is engaged in the business of providing services on Software technology. It has developed a software named "Apartment ADDA" which caters to the technological requirements of apartment complexes, intra-residential complex communications, facility management, accounting, visitor, staff & security management. During the year under consideration, the assessee issued 3915 equity shares having face value of Rs.10/- each at a premium of Rs.6,376/- per share. Out of the 3915 shares, 2740 shares were issued to non-residents and remaining were issued to the residents. The assessee furnished a valuation report to support the share premium of Rs.6376/- per share.

6. The AO noticed that the valuation has been done under Discounted Cash Flow (DCF) method. He took the view that valuation should have been done under "Net Asset Value" (NAV)

method. Accordingly, the AO determined the value of shares at Rs.9.62 per share under NAV method. Since the shares have been issued to resident share holders at a higher value, the AO assessed the excess amount collected by the assessee from resident shareholders aggregating to Rs.74,68,746/- as income of the assessee u/s 56(2)(viib) of the Act. The Ld CIT(A) also confirmed the same.

7. The Ld A.R submitted that the assessee company falls under the category of "Start-up company". He submitted that the Government has issued notification no.13/2019 F.No.370142/5/2018-TPL (Pt.) dated 05th March, 2019, exempting the start up companies from the application of provisions of sec.56(2)(viib) of the Act. It has also been clarified by CBDT in its Circular No.173/354/2019-ITA-1 dated 09-08-2019 that the relaxation so provided is applicable to the assessments completed before 19-02-2019 also, if a recognised start-up had filed declaration in Form No.2. Accordingly, the Ld A.R submitted that the assessee is eligible to avail the benefit given under the above said notification/circulars. He submitted that the assessee has furnished all the relevant documents in the form of additional evidences to show that the assessee is categorised as a "Start up company" and hence it is eligible to avail exemption from sec.56(2)(viib) of the Act. Accordingly, he prayed that the impugned matter may be restored to the file of the AO for examining the same afresh in the light of notifications/circulars, referred above.

8. We heard Ld D.R and perused the record. It is submitted by the assessee that the start-up companies have been exempted from the provisions of sec.56(2)(viib) of the Act by the Government, as per the notifications/circulars referred above. It was submitted that the same would apply to assessments completed prior to 19-02-2019

also. In our view, in the interest of natural justice, this claim of the assessee that it is eligible to claim benefit of the notifications/circulars issued by the CBDT needs to be examined by the tax authorities. Accordingly, we admit the additional evidences furnished by the assessee. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of the AO for examining the above said claim of the assessee on merits. After affording adequate opportunity of the assessee, the assessing officer may take appropriate decision in accordance with law.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open Court on 03-11-2020

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(B. R. BASKARAN)
Accountant Member

Bangalore,

Dated: 03.11.2020.

/NS/*

Copy to:

- | | | |
|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.