

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2457/Mum/2024

Assessment Year: 2016-17

Income Tax Officer, Ward- 26(2)(1), Mumbai	Vs	S D N COMPANY R. No. 234, Kautilya Bhavan BKC, Bandra (E) Mumbai - 400051 [PAN: AAASF7385N]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Firoze Andhiyarujina, Sr. Advocate & Maneck F. Andjiyarujina - Advocate	
Revenue by :	Shri Dr. Kishor Dhule, CIT D/R	

सुनवाई की तारीख/**Date of Hearing** : **12/03/2025**

घोषणा की तारीख /**Date of Pronouncement**: **20/03/2025**

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order dated 08/03/2024 by NFAC, Delhi, [hereinafter 'the Id. CIT(A)'] pertaining to AY 2016-17.

2. The grievance of the assessee reads as under:-

"1. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 126,98,69,717/- made u/s Section 56 (2)(vija) of the Act"

2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of 126,98,69,717/- made by the AO, without appreciating the fact that the entire scheme of transactions embarked by the partners and the assessee firm is merely a colourable device to evade tax by misusing the provisions of the Act"

3. The appellant craves leave to amend or alter or add a new ground which may be necessary."

3. Representatives were heard at length, case records carefully perused and the relevant documentary evidence brought on record duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.
4. The entire quarrel revolves around the following profit sharing ratio of the assessee firm:-

<i>Sr.no.</i>	<i>Name of the Partners</i>	<i>01.04.2015 to 18.01.2016</i>	<i>19.01.2016 to 18.03.2016</i>	<i>18.03.2016 to 31.03.2016</i>
1	FerozeDhunjishawNeterwala	33.34	25	3.34
2	ShemazFerozeVakil	33.33	25	3.33
3	PervinRussy Mehta	33.33	25	3.33
4	Universal Ferro and Allied Chemicals P Ltd		25	90
TOTAL		100	100	100

5. The bone of contention is the shares of M/s. Unitel Finance and Investments P. Ltd. (UFIPL). The three partners, namely, Feroze Dhunjishaw Neterwala, Shemaz Feroze Vakil and Pervin Russy Mehta have introduced shares of UFIPL in the assessee firm as capital contribution. The same can be understood from the following chart:-

<i>Sr.no.</i>	<i>Name of the Partners</i>	<i>No. of shares of M/s. Unitel Finance and Investments P Ltd</i>	<i><u>Amount(Rs.) (@92.88/share)</u></i>
1	FerozeDhunjishawNeterwala	91,666	85,13,938
2	ShemazFerozeVakil	91,667	85,14,031
3	PervinRussy Mehta	86,666	80,49,538
TOTAL		2,69,999	2,50,77,507

6. As can be seen from the above chart, the shares of UFIPL have been introduced as capital contribution @ 92.88/- per share totaling to Rs.2,50,77,507/-. The fair value of Rs.92.88/- per share was computed

on 17/12/2015 as per the valuation report prepared by the Chartered Accountant as per Rule 11UA of the Income-tax Rules, 1962. Thereafter, on 18/01/2016, all the assets of the assessee firm including shares of UFIPL were valued based on valuation report of M/s. V B Desai Financial Services Limited (VBDFSL), a SEBI registered merchant banker.

7. A perusal of the report of VBDFSL, shows that the AO found that the value per share of UFIPL was computed by a merchant banker on intrinsic value of Rs.4786.53/- per share. The AO accordingly took the differential price of Rs.4693.65 (4786.53 – 92.88) per share aggregating to Rs.126,72,80,806/- as the fair value of shares of UFIPL and invoking the provisions of Section 56(2)(viia) of the Act, the AO made the addition of Rs.126,72,80,806/-.

7.1. At this stage, it would be pertinent to refer to the provisions of Section 56(2)(viia) of the Act:-

“Income from other sources.

15 56. (1) *Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.*

(2) *In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely : –*

.....

(viia) *where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010 [but before the 1st day of April, 2017], any property, being shares of a company not being a company in which the public are substantially interested, –*

(i) *without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*

(ii) *for a consideration which is less than the aggregate fair market value of*

the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vich) or clause (vid) or clause (vii) of section 47.

Explanation. – For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);]"

8. It would be pertinent to refer to the family settlement pursuant to the will of Mr. D.M. Neterwala. The relevant clause of the deed of family settlement dated 10/11/2015, reads as under:-

“
DEED OF FAMILY SETTLEMENT
This deed of family settlement ("Deed") is executed on the 10th day of November, 2015 by and

BETWEEN

*Ms. PcrvinRustom Mehta, Daughter of (Late) Mr. D.M. Neterwala aged 68ycars and resident of
193, Venus Apartments, 87 Cuffe Parade, Colaba, Mumbai-400005
(referred to in this deed as PRM)*

AND

*Ms. ShernazFirozeVakil, Daughter of (Late) Mr. D.M. Neterwala aged 65years and resident of
301, Shamiana, 67 Walkeshwar Road, Mumbai-400006
(referred to in this deed as SFV)*

AND

*Mr. FerozeDhunjishawNeterwala, Son of (Late) Mr. D.M. Neterwala aged 63 years and resident
of Fla* No. 16 IL Palazzo, Little Gibbs Road, Malabar Hill, Mumbai- 400006 (referred to in this
deed as FDN)*

C. The Testator is survived by his three children namely, PRM, SFV and FDN ("Family Members" or "Partners") who are also the main beneficiaries as mentioned under the sole will and testament of the Testator dated 3rd November, 2011 ("Will"). The Will explains the manner of distribution of his personal assets as well as shares and interest held by him in various companies, to his legal heirs.

E. During the lifetime of the Testator, it was his pious wish that the management and administration of various companies (together with all their fixed assets and liabilities) as started by him which were entrusted to his two children SFV and FDN for day to day operations, should upon his death, vest with SFV and / or FDN as the case may be, with full power and authority to deal with the same in the manner as they desire.

J. The Parties have agreed that in order to ensure smooth functioning of the family's businesses, companies set up by the Testator but managed separately by respective

beneficiaries namely FDN and SFV, shall be solely entrusted to the respective beneficiaries. This would inter alia involve reciprocal gifts of shares of companies between the Parties. One of the beneficiaries namely, PRM, though holding shares in various family companies was not managing the affairs of any company and even during the family settlement proceedings she expressed her desire not to be involved with the management of any companies."

8.1. A perusal of the provisions of Section 56(2)(viia) shows that it is not applicable in respect of capital contribution by partner in a firm.

9. If the entire transaction is considered with the family settlement mentioned hereinabove, we find that the transfer of shares between family members was part and parcel of family settlement entered into between brothers and sisters to give effect to the will and desire of the father, who were the promoters of the companies.

9.1. The Hon'ble Supreme Court in the case of *Ram Charan Das vs Girjanandini Devi And Ors* reported in AIR 1966 SC 323, has held that transfer of property between family members would not amount to transfer and that it was done to ensure amity and goodwill. When the Gift-tax Act was in vogue, it was held in the case of *Ziauddin Ahmed vs Commissioner Of Gift-Tax* [1976] 102 ITR 253(Gauhati) that, if the transaction is *bonafide* and to bring harmony, the provision of Gift-tax are not attracted at all. Similarly, the Hon'ble Madras High Court in the case of *Commissioner Of Income-Tax vs R. Ponnammal* [1987] 164 ITR 707 (Mad), has held that transfers between sons and daughters would not attract provision of Section 4(1)(a) or 4(2) of the Gift-tax Act and the transactions are not taxable at all. Similar view was taken by the Hon'ble Madras High Court in the case of *Cgt vs D. Nagrirathinam* [2003]129 TAXMAN 822 (Mad), stating that there is no question of deemed gift when transfer is in pursuance of a family arrangement.

10. In light of the aforementioned judgments, one thing is clear that

where there is a family settlement to bring harmony and settlement of disputes, there is no transfer of assets and the provisions of Section 56(2)(viia) of the Act would not apply.

11. We further find that while introducing the shares as capital contribution of UFIPL, partners have undertaken determination of the FMV of the shares as laid down under Rule 11UA of the Income-tax Rules, 1962 ('Rules') r.w.s. 56(2)(viia) of the Act. The relevant part of Rule 11UA, reads as under:-

"Determination of fair market value.

11UA. ³⁰[(1)] *For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely, –*

.....

"(b) *the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely: –*

$$\text{the fair market value of unquoted equity shares} = \frac{(A-L)}{(PE)} \times (PV),$$

where,

A = *book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;*

L = *book value of liabilities shown in the balance-sheet, but not including the following amounts, namely: –*

- (i) *the paid-up capital in respect of equity shares;*
- (ii) *the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) *reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (iv) *any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable*

thereto;

- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
 - (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;
- PE = total amount of paid-up equity share capital as shown in the balance-sheet;
- PV = the paid-up value of such equity shares;"

12. The AO was carried away with the valuation report of VBDFSL, completely ignoring the fact that the merchant banker has valued the shares at an intrinsic value. When the merchant banker itself has made clear that the term "intrinsic value" is not intended to reflect the fair market value. The merchant banker under the heading "Purpose of Valuation" laid down the purpose as follows:-

"The valuation of the firm is being done for ascertaining the intrinsic value of the firm for above transaction. The valuation is purely indicative and it is the prerogative of parties to the Transaction to decide about the Transaction price. The actual Transaction price may be higher or lower than our indicative analysis of value depending upon the circumstances of the Transaction. The final Transaction value is something that the partners will have to decide upon."

13. In our understanding of the facts emanating from the assessment order, we find that the shares were by way of capital contribution and the valuation was done as per Rule 11UA of the Rules, honouring the will of Mr. D.M. Neterwala, followed by the family settlements.

14. These facts have not been disputed by the AO except that the subsequent valuation done by the firm based upon the intrinsic value of the shares have been considered for making the impugned additions. It is mandatory to value the shares as per Rule 11UA and the assessee has computed the fair value as per Rule 11UA and applied the same at the time of introduction of capital to the firm and, therefore, in our understanding of the law, the AO cannot substitute the same with the FMV/intrinsic value as done by the valuation report of VBDFSL.

15. As mentioned elsewhere, the shares were contributed as capital of the firm to give effect to the intention of Mr. D.M. Neterwala. Therefore, in our understanding of the law, for capital contribution, the provisions of Section 56(2)(viia) of the Act would not apply at all. The AO has treated the entire transactions as a colourable device to avoid tax completely ignoring the will and the family settlement. Therefore, we are of the considered view that the Id. CIT(A) did not err in deleting the impugned addition. Therefore, we decline to interfere with the findings of the Id. CIT(A).

16. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 20th March, 2025 at Mumbai.

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 20/03/2025

SCS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai