Income Tax Appellate Tribunal
Delhi Bench "A": New Delhi
Before Shri M. BALAGANESH, Accountant Member
and
Shri Anubhav Sharma, Judicial Member

ITA No. 387/Del/2021
(Assessment Year: 2015-16)

DCIT, Circle-16(1), New Delhi (Appellant)	Vs.	Smt Aruna Chandhok, H-30, Sainik Farms, Delhi-110062 (Respondent)

PAN: AAEPC7861R

Assessee by :	Sh. Pradeep Dinodia, CA Shri R. K. Kapoor, CA
Revenue by:	Shri P. Praveen Sidharth, CIT DR
Date of Hearing	26/06/2023
Date of pronouncement	05/09/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.387/Del/2021 for AY 2015-16, arise out of the order of the Commissioner of Income Tax (Appeals)-37, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 37/10221/2018-19, A.Y. 2015-16 dated 22.09.2020 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.12.2017 by the Assessing Officer, DCIT, Circle-16 (2), New Delhi (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds of appeal :-

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the addition of Rs. 37,56,83,191/- made u/s 56(2)(vii)(c) of the Income Tax Act, 1961 for bonus shares received?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in holding that the provisions of section 56(2)(vii) of the Act would not apply to bonus shares."

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is an individual and had filed her return of income for the Asst Year 2015-16 on 16.10.2015 declaring total income of Rs 8,56,57,000/-. The assessee had shown income from salary, income from house property, income from capital gains and from other sources. The assessee received bonus shares and bonus units from M/s Tech Mahindra Ltd and JM Arbitrage Advantage Fund-Bonus Options The assessee was show caused as to why the addition u/s 56(2)(vii)(c) of the Act should not be made in respect of these bonus shares and bonus units. The assessee vide her submissions dated 04/01/2019 submitted that provisions of section 56(2)(vii)(c) of the Act would not apply to bonus shares at all as it is merely done by capitalization of profits. The value of the shares would remain the same and there would be no increase in the wealth of the shareholders on account of bonus issue and his percentage of holding the shares in the company remains constant. It was explained that pursuant to bonus shares and bonus units, the share / unit gets divided in the same proportion for all the shareholders. There would be no receipt of any property by the shareholder and what is received is only split shares out of her own holding. The assessee also placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs General Insurance Corporation Ltd reported in 286 ITR 232 (SC) which held that issuance of bonus shares by a company does not result in any inflow of fresh funds and nothing came to the shareholders. It was also submitted that the market price of any share after the bonus issue gets reduced almost in proportion to the bonus issue and hence there would be no increase in the market value of shares held by the assessee pursuant to bonus issue. The overall wealth of a shareholder post bonus or pre bonus remains the same. Hence the assessee received no additional benefit or income on allotment of bonus shares because it is only a split of his total rights in the wealth of a company which remains the same even after bonus issue. The ld. AO however did not heed to the contentions of the assessee and proceeded to treat the

bonus shares/bonus units issued to be taxed u/s 56(2)(vii)(c) of the Act and added a sum of Rs 36,10,63,656/-.

4. The assessee submitted before the ld. CIT(A) that at what stage some shares are to be sold is the absolute discretion of the person holding such share. There is no compulsion by the law that an assessee should sell his total holding immediately on allotment of bonus shares. Therefore, the ld. AO's assumption that the assessee would get double benefit is completely devoid of any merits and has no basis. The assessee made various legal submissions before the ld. CIT(A) to drive home the point that no benefit is derived by a shareholder immediately on allotment of bonus shares and further submitted that allotment of bonus shares would not be income at all. It was also submitted that cost of bonus shares would be Rs Nil in terms of section 55(2)(aa)(i) of the Act.

5. The ld. CIT(A) duly distinguished the various case laws relied upon by the ld. AO. We find that the ld. CIT(A) after distinguishing various case laws relied upon by the ld. AO and after relying on various case laws in favour of the assessee had granted relief to the assessee by observing as under:-

> *"The recent decisions dated 10.07.2019 and 29.11.2019 of the Hon'ble ITAT Delhi in the case of Mamta Bhandari (supra) and other decisions are squarely applicable in the case of the Appellant.*
>
> *9.11 Hence, the addition made by the AO is not sustainable in view of the judicial opinion as discussed above. This decision has covered and refuted all the arguments taken by AO in its assessment order. The Hon'ble ITAT Delhi has also followed its own decision in the case of Meenu Satija vs. Pr.CIT, Gurgaon dated 27.01.2017. The Hon'ble ITAT has also discussed those decisions referred to by AO. There is no scope of not following the Hon'ble jurisdictional ITAT's decision.*
>
> *9.12 Further, the argument of the appellant has considerable merit and is an accepted fact that the market price of any share after the bonus issue gets reduced almost in proportion to the bonus issue. In fact, bonus shares are in the nature of Capitalization Shares. In case where 1:1 bonus is declared by a company; the market price would also become almost half. Therefore, on the sale of original shares held by an assessee, the assessee would undisputedly incur a loss. However, such loss is likely to be compensated on sale of bonus shares as and when it happens because cost of acquisition of bonus shares is nil as per the provisions of section 55(2)(aa)(i) of the Income Tax Act.*

9.13 The AO also erred in concluding that the provisions of section 55(2)(aa)(i) are not applicable in case of ascertaining the cost of acquisition of bonus shares. The AO failed to recognize the fact that had the legislature intended so, the exclusion would have been provided for non applicability of the provisions of section 55(2)(aa)(i) with respect to issuance of bonus shares to the transactions referred in section 56(2) of the Act. The AO himself accepted on page 35 of the Assessment Order that the overall wealth of a person post bonus or pre-bonus remains the same. The AO incorrectly ignored the fact that an assessee "receives" no additional benefit or income on allotment of bonus shares because it is only a case of split of his total rights in the wealth of a company which remains the same even after bonus issue. In fact, such bonus shares are capitalization of profits or reserves of the company which ever prior to such issue vested with him through his original holding. The Assessing Officer misread the judgment of Hon'ble ITAT, Bangalore in the case of Dr. Rajanpai in this regard as discussed supra.

9.14 It is also settled law that arranging one's own affairs in a particular manner is the absolute discretion of the taxpayer. It cannot be dictated or suggested by the tax department that an assessee should sell his total holding immediately on allotment of bonus shares. Therefore, the assumption of the Assessing Officer that the appellant will get double benefit as per page 37 of his Assessment Order is not acceptable and is hereby rejected.

9.15 Further, the observation of the AO that the appellant has incurred loss on sale of shares on which the appellant got bonus shares and set off against the gain does not have any legal basis. The appellant can take advantage of legal provisions and arrange its affairs within the four corners of law. I am in agreement with the submissions made by appellant on this aspect.

9.16 In view of the above Grounds of Appeal No.1 and 2 are accordingly allowed. The action of the AO in taxing the bonus shares/bonus units issued to the appellant u/s 56(2)(vii)(c) of the Act and making an addition of Rs.37,56,83,191/- is hereby deleted."

6. We hold that the bonus shares are issued only out of capitalization of existing reserves in the company. In the instant case, the ld. AO had not disputed the fact that the overall wealth of a shareholder post bonus or pre bonus remains the same. Having held so, it is wrong on his part to invoke the provisions of section 56(2)(vii)(c) of the Act on the ground that there is an double benefit derived by the assessee due to bonus shares. We find that the issue in question is also covered by the decision of Hon'ble Karnataka High Court in the case of Principal Commissioner of Income Tax vs Dr Ranjan Pai in ITA No. 501 of 2016 dated 15.12.2020. The question raised before the Hon'ble Karnataka High Court is as under:-

> *"Whether under the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessing authority is not correct in determining the fair market value as per Rule 11UA of the IT Rules at Rs 12,49,00,000/-on 1,00,00,000 bonus shares received by assessee and bring the same to tax under the head income from other sources by holding that section 56(2)(v) and (vii) cannot be invoked by assessing authority even when the assessing authority has rightly invoked the said provision as all the ingredients are satisfied to invoke said provision?*

6.1. This question was answered by the Hon'ble Court in favour of the assessee by observing as under:-

> *"6. We have considered the submissions made by learned counsel for the parties and have perused the record. The issue which arises for consideration in this appeal is 'as to whether the fair market value of bonus shares computed as per Rule 11U and Rule 11UA of the Income Tax Rules can be considered as income from other sources as per Section 56(2)(vii) of the Act. A careful scrutiny of Section 56(2)(vii) of the Act contemplates two contingencies firstly, where the property is received without consideration and secondly, where it is received for consideration less than the fair market value. The issue of bonus shares by capitalization of reserves is merely a reallocation of the companies funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. The total funds available with the company remains the same and issue of bonus shares does not result in any change in respect of capital structure of the company. [See: 'GENERAL INSURANCE CORPORATION supra]. Thus, there is no addition or alteration to the profit making apparatus and the total funds available with the company remain the same. In substance, when a shareholder gets a bonus shares, the value of the original share held by him goes down and the market value as well as intrinsic value of two shares put together will be the same or nearly the same as per the value of original share before the issue of bonus shares. Thus, any profit derived by the assessee on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares held by him. In the instant case, there is no material on record to infer that bonus shares have been transferred with an intention to evade tax, which is the object of the provision in question. Therefore, the Commissioner of Income Tax (Appeals) as well as the tribunal have rightly held that when there is an issue of bonus shares, the money remains with the company and nothing comes to the shareholders as there is no transfer of the property and the provisions of Section under Section 56(2)(vii)(c) of the Act are not attracted to the fact situation of the case.*
>
> *In view of preceding analysis, the substantial question of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."*

7. We find that the ld. CIT(A) had rightly appreciated the contentions of the assessee and its related legal position in the instant case as is evident from above. Hence we do not find any infirmity in the order of the ld. CIT(A)

granting relief to the assessee. Accordingly, the revised grounds raised by the revenue are dismissed.

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

Order pronounced in the open court on 05/09/2023.

-Sd/-	-Sd/-
(Anubhav Sharma)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 05/ 09 /2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi