

If assessee is step-down subsidiary of a Public Co. listed on the stock Exchange there will be no angel tax

Summary – The Hyderabad ITAT in a recent case of Apollo Sugar Clinics Ltd., (the Assessee) held that If assessee is step-down subsidiary of a Public Co. listed on the stock Exchange there will be no angel tax

Facts

- The assessee-company issued shares of face value of Rs. 10 each at a premium of Rs. 990 each share. During scrutiny assessment, the assessee was asked to justify and substantiate how the share premium of Rs. 990 per share was computed. The assessee submitted the valuation report which stated that the valuation applies only to comply with the RBI regulations and not to the commercial transaction. Thus, the company was free to determine its own price with the intending purchaser after due negotiations and deliberations. Further it was stated that the assessee was a public limited company and its shares were not listed on a recognized stock exchange and the value of its shares could be determined under rule 11UA for the purposes of section 56(1) by applying fair market value.
- The Assessing Officer concluded that from the rule 11UA it was clear that the fair market value of the shares had to be determined in the prescribed manner and the assessee should have some basis to charge a premium. The Assessing Officer concluded that the valuation report submitted by the assessee for determination of share premium had very huge gap between the projections and actuals. Hence, the Assessing Officer determined the share premium under rule 11UA(1)(b) and disallowed the excess share premium collected under section 56 and added to the total income.
- On appeal, the Commissioner (Appeals) also upheld the addition made by the Assessing Officer.
- In the appeal to the ITAT, the assessee contended that the year under consideration was the first year of operation and assessee-company was the second level subsidiary of its holding company (AHEL). Since AHEL was a public limited company and by virtue of section 2(18), the assessee-company also a company in which public were substantially interested. Hence, the provisions of section 56(2)(viib) would not attract. This fact was also acknowledged by the Assessing Officer in his order. However, the Assessing Officer invoked provisions of section 56(1) to brought this transaction as income from other sources. He had not considered the fact that this transaction was capital investment and not an income within the meaning of section 14.

Held

- The assessee-company is step-down subsidiary of AHEL which is a listed company in Stock Exchange in India and is thus a company in which public are substantially interested. This fact was also acknowledged by the Assessing Officer in his order as it was agreed that the assessee's case does not fall under section 56(2)(viib). In order to invoke the provisions of section 56(2)(viib), the assessee-company should be a company in which public are not substantially interested.

- The Assessing Officer has invoked the provisions of section 56(1). In order to invoke section 56(1), the income earned by the assessee should be classified as revenue income as per section 14 but should not fall within any of the other heads of income. When there is specific provision introduced by the Legislature to bring the specific transaction as income in section 56(2)(viib) because the transaction of issue of shares is capital in nature the said section should apply and no other section should have been referred by the Assessing officer.
- Therefore, the Assessing Officer was not correct in bringing this capital investment as income of the assessee after satisfying himself that assessee's case does not fall under section 56(2)(viib). Therefore, the addition made by the Assessing Officer is deleted.