IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.460/RJT/2024
Assessment Year: (2014-15)

(Hybrid Hearing)

DCIT Central Circle-1, Rajkot	**Vs.**	M/s. Rajoo Engineers Ltd. Junagadh Road, Vill. Manavadar, Junagadh, Gujarat 362630
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AABCR3204M**		
(Assessee)		**(Respondent)**

Assessee by	Shri R. B. Shah, AR
Respondent by	Shri Sanjay Punglia, CIT-DR
Date of Hearing	16/12/2024
Date of Pronouncement	31/12/2024

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [in short 'Ld. CIT(A)'], dated 30.04.2024, which in turn arises out of an assessment order passed by the Assessing Officer, (in short 'assessing officer') u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 30.12.2016.

2. Grounds of appeal raised the Revenue are as under:

> *"1. In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the protective addition made on account of excess value transferred to beneficiary within the meaning of provision of Section 56(2)(vii)(c)(ii) of the I.T.Act, amounting to Rs.18,74,73,500/-*
> .

2) The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal."

3. Succinctly, the factual panorama of the case is that assessee before us is a Public Limited Company and has filed its Revised Return of income on 07.05.2015, declaring a returned total income of Rs. 4,74,48,046/-, under normal provisions of Income Tax Act, 1961, after claiming a deduction of Rs. 35,500/- under Chapter VI-A and a book profit of Rs. 5,20,68,396/-.The assessee- company, is a public limited company, engaged in the business of manufacturing of plastic extrusion machinery and other engineering goods. During the year under consideration, the company has derived income from business & profession and income from other sources. The return of income was processed u/s 143(1) by CPC Bangalore. Later on, the assessee`s case was selected for Limited Scrutiny under CASS, and accordingly notice u/s 143(2) of Act, was issued on 08.04.2016, and duly served upon the assessee, on 13.04.2016, informing the assessee that its case has been selected for scrutiny. A letter was issued on 25.07.2016 calling for a paper book containing the audit report in Form No.3CD, 3CB, etc., financial statements, such as, balance sheet, profit and loss account, computation of total income etc. In response to which, the assessee filed the paper book along with audit report in prescribed format on 14.09.2016. Also, notice u/s 142(1) of the Act, along with detailed questionnaire calling for details and explanations was issued on 31.10.2016. A show -cause notice was also issued on 26.12.2016, which was duly served upon the assessee on 28.12.2016, and to which the assessee submitted it reply by way of e-mail on 30.12.2016.

4.In response to notices issued u/s. 143(2) and 142(1) of the 1.T. Act, 1961, the Authorized Representative of the asscance- company attended from time to time and furnished submissions and details called for. The various details filed during the course of scrutiny proceedings have been placed on record of the assessing officer. After perusal of the details filed, assessing officer noticed that assessee- company has amalgamated with the following three private limited companies, which were essentially owned by the relatives of the promoters of the assessee- company, in the following manner:

(a). M/s Hitesh Engineers Private Limited: issued 1,21,60,000 equity shares in lieu of the said amalgamation.

(b). M/s Shruti Engineers Private Limited: issued 61,65,000 equity shares in lieu of the said amalgamation.

(c). M/s Vishwakarma Fabricators Pvt Ltd: issued 29,85,000 equity shares in lieu of the said amalgamation.

It was a observed by the assessing officer that the assessee, public limited -company has employed highly skewed swap ratio based on the following values, in order to benefit the erstwhile share- holders of the afore-stated private limited companies:

Particular	Rajoo Engineers Ltd.	Hitesh Engineers Pvt. Ltd.	Shruti Engineers Pvt. Ltd.	Vishwakarma Engineers Pvt. Ltd.
Value as per Equity Shares based on present value of Future Cash Flow	0.94	39.89	66.25	45.18
Value per Equity based on Adjusted Book value of Fixed Assets	2.71	71.73	89.84	44.05

The afore-stated valuations are a product of a curious mix of two methods viz. the Discounted Cash Flow Method and the Book Value Method, that is, the average value of share, as per present value of future cash flow method and adjusted book value of fixed assets method to determine the fair market value of equity shares of the Amalgamated company (Rajoo Engineers Ltd.) and Amalgamating companies (Hitesh Engineers Pvt. Ltd., Shruti Engineers Pvt. Ltd., and Vishwakarma Fabricators Pvt. Ltd.) and to decide swap ratio for exchange of equity shares. It is pertinent to state that Rajoo Engineers is a public limited company traded widely on Bombay Stock Exchange (BSE Scrip ID: 522257).A look at data clearly shows that it is a fairly liquid stock and wherein minority share- holders either hold or trade on a regular basis, as noted by the assessing officer.

5. Therefore, assessing officer observed that there was a true, market based, unbiased parameter available to value the shares of the assessee, public limited company, which was ignored in order to create a swap ratio which was unfavorable to the assessee- company and was favorable to the related parties of persons having controlling share in the assessee public limited company. The assessee, vide show cause dated 26.12.2016 was asked to show cause as to why the swap ratio should not be evaluated on the basis of market value (as on the day of allotment) of the public limited company and the book value of the amalgamating private limited companies and why the value differential should be added back in hands of the assessee- company on protective basis.

6. In response, to the said show cause notice, the assessee has submitted a reply dated 31.12.2016, which has been perused, considered and placed on record. In the said reply, the assessee has taken recourse to a 'Fairness Report' by M/s Market Creaters Ltd, Merchant Bankers (SEBI

Registration Number: INM000011575), which was prepared in compliance to clause 24(f) & 24(h) of the listing agreement with Bombay Stock Exchange Ltd. The said report at the outset refuses to be 'a valuation exercise'. The said report, vide its 'notice to user' refuses to be a certificate of due diligence and 'requires to use his/her own Judgment.' The said report presents itself as merely an opinion based on brief facts presented before the said merchant bankers and restricts itself to be a fair assumption. Therefore, the said Fairness Report cannot be relied upon to understand & evaluate the Swap Ratio used to issue shares to the stated related beneficiary parties. The assessee, in his reply, dated 31.12.2016, has put forth the argument that the 'appointment date' i.e. 01.04.2010, should be considered, as the deemed date of transfer instead of the 'effective date'. This contention of the assessee, is accepted and the Share Market Value of the assessee company on the Appointment Date, is considered to estimate the unjustified discount given on shares allotted to related beneficiary parties.

BSE Share Market Prices as on 01.04.2010	Open	High	Low	Close
	11.20	11.20	10.1	10.55

The three amalgamating entities, viz. private limited company are essentially owned by relatives of the promoters of the assessee public limited company. By creating a skewed swap ratio in the process of amalgamation, the assessee -company transferred its shares to such related beneficiaries at a discount, thereby trampling the interests of its minority share -holders and also effecting a transfer of capital to such beneficiaries bypassing the provisions of section 56(2) (viic)(ii) of the Income Tax Act, 1961. Therefore, assessing officer held that the excess value Rs. 18,74,73,500/-, transferred to beneficiary, related parties

should be added to the returned income of the assessee- public limited company on a protective basis. Since the substantive additions were already made in the returned incomes of relevant year of the beneficiary-related parties, in view of provisions of 56(2)(vic)(ii) of the Income Tax Act, 1961. Therefore, on protective basis, the assessing officer made addition in the hands of the assessee- company, to the tune of Rs. 18,74,73,500/-.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has deleted the addition made by the assessing officer. The ld CIT(A) observed that assessee has furnished the copy of appellate order in the case of one of the beneficiaries who had been allotted the shares, passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), New Delhi vide order appeal no. CIT(A), Rajkot-2/10291/2019-20 dated 21.03.2024. In the said appellate order, the Id. CIT(A), National Faceless Appeal Centre (NFAC), New Delhi has deleted the addition made by the assessing officer. The relevant para of the decision is as under:

6.2 The addition made by the Assessing Officer and the submissions of the appellant have been perused. The submitted that there is no inadequate consideration which is less than fair market value of property (shares), sec. 56(2)(vii) does not come into play at all. It is seen that the shares were allotted under a statutorily approved scheme of amalgamation under the governing regulatory statute, namely the Companies Act, 1956, after hearing all stakeholders including the government and the contents of the scheme having become final, the appellant filed the same with authorities including SEBI and Bombay Stock Exchange. It is to note that the allotment of shares by a company does not give rise to a transfer of shares and provisions of Section 56(2) has no applicability there being no transfer of a property in law. Further the Hon'ble High Court of Gujarat in the case of CIT vs. Leena Sarabhai has held that in the scheme of amalgamation, shares are issued in lieu of shareholding in the amalgamating company and therefore, there is no tax implication. The Hon'ble High Court of Gujarat in the case of PCIT vs. Jigar Jashwantlal Shah [2023] 154 taxmann.com 568 (Gujarat) held as follows: -

> *"18. In view of the above, the provisions of sec.56(2) would not be applicable to the issue of new shares which is also submitted by the explanatory notice to the Finance Bill, 2010, wherein, it is clarified that sec.56(2)(vii)(c) of the Act ought to be applied only in the case of transfer of shares. It is trite law that allotment of new shares cannot be regarded as transfer of shares. Therefore, in order to apply the provisions of sec.56(2)(vii)(c), there must be an existence of property before receiving it. As per advanced Law Lexicon Dictionary, the tern "receive" has been defined as " To receive means to get by a transfer, as to receive a gift, to receive a letter or to receive money and involves an actual receipt." Issue of new shares by company as a right shares is creation of property and merely receiving such shares cannot be considered as a transfer under sec.56(2)(vii)(c) and accordingly, such provision would not be applicable on the issuance of shared by the Company in the hands of the allottee."*

6.2.1 The decision of Hon'ble ITAT, A Bench, Ahmedabad in the case of DCIT Circle3(1)(2), Ahmedabad vs. M/s. Ozone India Ltd in ITA No.2081/Ahd/2018 dated 13.04.2021 held as under:-

"11.4 We may also look at the scheme of the Act in totality for contextual understanding of the issue. The Legislature has contemplated that there arises 'transfer' of shares by the shareholders of amalgamating company in consideration of the allotment of shares by the amalgamated company and consequently with a view to neutralize tax effect, the Act provides for suitable exclusion/exemption, from the ambit of expression 'transfer', under section 47(vii) which is also of deeming nature. In other words, as per the provisions of the Act, the consideration for issue of shares by the amalgamated company, in so far as the shareholder is concerned, is the shares held in the amalgamated company by way of transfer (except for the saving clause in s.47(vii) of the Act). A bare issue of shares contemplated in S. 56(viib) thus cannot be equated with a situation of transfer gathered from an intent implicit in S. 47(vii). Thus, the consideration and the issue of shares envisaged by section 56(2)(viib) is not found compatible with scheme enacted, when seen from the perspective of revenue.

12. To summarise, in our view, the issue of shares at 'face value' by the amalgamated company (assessee) to the shareholders of amalgamating company in pursuance of scheme of amalgamation legally recognized in the Court of Law neither falls with scope & ambit of clause (viib) to S. 56(2), when tested on the touchstone of objects and purpose of such insertion i.e. to deem unjustified premiums charged on issue of shares as taxable income; nor does it fall in its sweep when such deeming clause is subjected to interpretative process having regard to the scheme of the Act.

13. In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. The CIT(A) in our view, has rightly found inapplicability of S. 56(viib) in the facts of the present case. We thus decline to interfere with the conclusion so drawn by the CIT(A) whose order is under challenge by the revenue. Similarly, the cross objection filed by the Assessee which merely seeks to support the action of CIT(A) also does not call for separate adjudication and is infructuous."

6.2.2 The above decisions of Hon'ble High Court of Gujarat and Tribunal squarely applies to the facts of the appellant's case. Considering the facts and circumstances of the case and following the above decision, the addition made by the AO is deleted and ground raised in this regard is allowed.

7. In the result, the appeal is allowed.

Page 24 of 25

Commissioner of Income-tax (Appeals)
Income Tax Department

INCOME TAX DEPARTMENT

8.Further, Ld CIT(A) also relied on the decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of PCIT Vs. Jigar Jashwantlal Shah (Tax Appeal No. 80 & 96 of 2023), wherein the Hon'ble High Court has held as under:

> *"The provisions of Section 56(2) would not be applicable to the issue of new shares which is also submitted by the explanatory notice to the Finance Bill, 2010, wherein, it is clarified that Section 56(2)(vi)(c) of the Act ought to be applied only in the case of transfer of shares, it is trite law that allotment of new shares cannot be regarded as transfer of shares."*

9. The ld CIT(A) also relied on the decision of the Hon'ble Ahmedabad ITAT in the case of DCIT Vs. M/s Ozone India Ltd. (ITA No. 2081/Ahd/2018), where Hon'ble ITAT has held as under.

> *"It may be possibly argued that section 56(2)(vib) does not oust its applicability in the event of shares issued pursuant to amalgamation. The amalgamation isa compromise or arrangement between the parties, which inter alia includes the amalgamated company issuing the shares and the shareholders of the amalgamating company, which is supervised by the Court, in terms of the Companies Act. In other words, there is an agreement or arrangement between the amalgamated company. The clause contemplates the issue of shares and the receipt of consideration from am resident person and it is fulfilled on amalgamation. This perspective seeks to cover the issue of shares arising from amalgamation with equal measure."*

Therefore, the ld. CIT (A) held that since, the substantive addition made in the hand of one of the beneficiaries, named Kruti Rajeshbhai Doshi for A.Y.2014-15 has been deleted by the Id. CIT(A), NFAC, New Delhi, on merits of the case by holding that provisions of Section 56(2)(vii) of the Act, is not applicable considering nature of transactions therefore, protective addition made in the hand of the assessee, applying same logic and provisions of the Act, does not survive. Considering the above facts, the ld CIT(A) deleted the protective addition in the hands of the assessee.

10.Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

11. Learned DR for the Revenue argued that there was benefit passed over on individual share-holder in the scheme of amalgamation. The value of share of the assessee- company was Rs.1.82 per share, however, fair market value of the share of Rajoo Engineers Ltd was Rs.10.65 per

share. Therefore, the different of Rs.8.83 (Rs.10.65 -Rs.1.82 per share) has been passed over or given to the individual shareholder, indirectly, by the Rajoo Engineers Ltd. i.e. by adopting the colorable devices and by defeating the purpose of the provisions of Section 56(2)(vii)(c)(ii) of the Act. Taking the plea that it is not a transfer under Clause (vii) of Section 47 of the Act, such type of dubious methods and colorable devices used by the assessee, to defeat the very purpose of the statute, not to pay tax on his income, is not acceptable. The shares were issued by M/s Rajoo Engineers Ltd, at a much higher value, without paying the tax by the individual shareholders. The fair market value of shares of M/s. Rajoo Engineers Ltd, is Rs.10.65 per share, whereas, each shareholder has been issued the shares at Rs.1.82 pe share, very lower rate to provide benefit to each shareholder by M/s. Rajoo Engineers Ltd. The ld DR fairly agreed that although it is not a "transfer" under the income tax Act, and, if there is no 'transfer' of any asset, then capital gain tax would not attract in the hands of the assessee. However, the provisions of Clause (vii) of Section 47 of the Act, which are merely stating that when shares are allotted in the case of amalgamation scheme, there would not be any 'transfer', therefore, capital gain should not be charged, is acceptable. However, the real income should be taxable in the hands of the assessee -company.

12. On the other hand, the Ld. Counsel submitted that Section 56(2)(vii)(c)(ii) of the Act, applies to only to individual and HUF and that is also for a particular period, 01.10.2009 to 01.04.2017. During the appellate proceedings, the Ld. CIT(A) has called the remand report and adjudicated the issue after taking the remand report. The Ld. Counsel also submitted that as per Clause (vii) of Section 47 of the Act, when shares are allotted in case of amalgamation scheme, then there is no "transfer" at all, therefore, no tax should be imposed in the hands of the assessee.

Therefore, provision of section 56(2)(vii)(c)(ii) does not apply in the case of Public limited- company, it is only applicable to individual and HUF assessees. The new shares allotment by amalgamated company does not give rise to a transfer of shares and hence also section 56(2)(vii) (c) has no application. The Proviso exclude the transfer from rigor of deeming provision, which reads as under:

"(h) by way of transaction, not regarded as transfer under clause (vicb) or clause (vid) or claue (vii) of section 47"

Thus, Ld. Counsel submitted that in case of shares issued under amalgamation, there are no two parties to a 'transfer' of a property. There are tripartite arrangements between amalgamated company, amalgamating company and shareholder of the amalgamating company, hence, the ld. CIT(A) has rightly deleted the addition, therefore order of the ld CIT(A) may be upheld.

13. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The assessee is a Public Limited Company and had filed its revised return of income on 07.05.2015 declaring total income of Rs.4,74,48,046/- and book profit of Rs.5,20,68,396/-. The case was selected for limited scrutiny under CASS. During the course of assessment proceedings, on perusal of balance sheet and notes thereto, the assessing officer had noticed that the assessee- company had amalgamated the following three private limited companies with itself which were essentially owned by the relatives of the promoters of the assessee company. The assessing officer had stated in the assessment

order that the Fair Issuance of shares in view of the Fair Market Value and in view of the provision of section 56(2) (viic) (ii) of the Act were as under:

Name of the Company	F.M.V. as computed by assessee	FMV of share of assessee company	No. of shares of the amalgamated company	No. of Shares issued by the assessee company	No. of Shares ought to have been issued as per FMV of Shares of assessee Company
Hitesh Engineers Pvt. Ltd.	55.39	10.65	400000	12160000	2080376
Shruti Engineers Pvt. Ltd.	74.86	10.65	50000	6105000	1054366
Vishwakarma Engineers Pvt. Ltd.	36.36	10.65	150000	2985000	512113

Name of the Company	No. of Shares issued by the assessee	No. of Shares required to have been issued as per FMV of Shares of assessee Company	Excess Shares issued by the assessee Company	Value of Shares issued in excess to FMV
Hitesh Engineers Pvt. Ltd.	12160000	2080376	10079624	107348000
Shruti Engineers Pvt. Ltd.	6105000	1054366	5050634	53789250
Vishwakarma Engineers Pvt. Ltd.	2985000	512113	2472887	26336250
			Total	**18,74,73,500/-**

In view of the provisions of section 56(2)(viic)(ii) of the Act, the said excess value transferred to beneficiary related parties was added to the returned income of the assessee- public limited company, on a protective addition by the assessing officer while passing the assessment order.

14. The ld CIT(A) noticed that it is an undisputed fact that the assessee - company had issued shares to shareholders of all three amalgamating companies under the sanctioned scheme of amalgamation. It means that the assessee- company had not received any shares or any amount from any person. It was submitted by the assessee, before ld CIT (A) that the provision of Section 56(2)(vii)(c)(ii) does not apply in the case of the present applicant Public Ltd Company. The said provision is only applicable to the Individual and HUF-assessee. Hence, the assessing officer, should not have made the Protective Assessment. Before ld. CIT(A), it was argued by the assessee that the new shares were allotted as per the Amalgamation Scheme approved by the Hon'ble Gujarat High Court, and assessee submitted copy of the Hon'ble Gujarat High Court

order dated. 30.11.2012 and 25.02.2013 before lower authorities, and it was argued that the provision of section 56(2)(vii) of the Act is not attracted, in the assessee`s case under consideration. Section 56(2)(vii) does not attract in case of shares received on amalgamation. The Appellant company have received shares of the amalgamated company upon a statutorily valid and approved procedure of amalgamation under the company Act, 1956.Under section 2(1B) of the I.T.Act-1961 allowed one or more companies to merge. It is not considered as transferred. Once the share is issued at the approved price by the Court, then no one has right to raise questions regarding one received more or less in value of shares. In case of amalgamation, there are no two parties to a transfer of property; one receives shares in lieu of shares already held; Section 56(2)(vii) does not apply. Even a fresh allotment of shares is nowhere covered in section 56(2) of the Act. The above concept gets affirmed by some of the specific provisions in this regard in the Income-tax Act, which are reproduced below:

(i).As per clause (vii) of Section 47, transfer of shares in scheme of amalgamation is not considered as a transfer, once there is no transfer of property, section 56(2)(vii) goes out of reckoning altogether.

(ii)Actual cost of Shares received on amalgamation continues to be the actual cost of the shares of the erstwhile company shares [Exp.7 to sec. 43(6)), which means there is no consideration.

(iii)Even the WDV of assets continues to be that of the WDV of the erstwhile company (exp. 2(b) of Sec. 43(6)

15. During the appellate proceedings, the ld. CIT(A) relied on the recent decision of the Ahmedabad Tribunal in case of DCIT Vs. OZONE INDIA LTD, (ITA No. 2081/Ahd/2018),wherein it was held as follows:

> *"Scheme of amalgamation under which exchange ratio of shares is approved by High Court is conclusive."*

16. The Ld CIT(A) also observed that Substantive Addition in the case of one of the shareholders of the Appellant- company, Ms. Kruti Rajeshbhai Doshi has been deleted by the Id. CIT(A), NFAC, New Delhi. While allowing the appeal of Ms. Kruti Rajeshbhai Doshi, the Id. CIT(A) has taken following view:

> *Para 6.2.....*
> *"The addition made by the Assessing Officer and the submissions of the assessee have been perused. The submitted that there is no inadequate consideration which is less than fair market value of property (shares), sec. 56(2)(vii) does not come into play at all. It is seen that the shares were allotted under a statutorily approved scheme of amalgamation under the governing regulatory statute, namely the Companies Act, 1956, after hearing all stakeholders including the government and the contents of the scheme having become final, the assessee filed the same with authorities including SEBI and Bombay Stock Exchange. It is to note that the allotment of shares by a company does not give rise to a transfer of shares and provisions of Section 56(2) has no applicability there being no transfer of a property in law."*

16. The ld CIT(A) noticed that during the course of appellate proceedings, the assessing officer has submitted that assessment order u/s 143(3) of the Act was passed on 30.12.2016, in the case of assessee, namely, M/s. Rajoo Engineers Limited, by making protective addition of Rs. 18,74,73,500/- (on the excess value of share transferred). Further, the list of following beneficiaries who had been allotted the shares, are as under:

Sr. No.	*Name of the beneficiary*	*PAN*
1.	*Kruti Rajeshbhai Doshi*	*AKLPD9653K*
2.	*Akhilesh Rameshbhai Jain*	*ABMPJ5750B*
3.	*Manishbhai Manubhai amin*	*ADMPA1321M*
4.	*Dilip Devajibhai Khambhatia*	*ACYPK4663K*
5.	*Pallav Kishorbhai Doshi*	*AJXOD7122N*
6.	*Khushbu Chandrakant Doshi*	*AEUPD9687L*
7.	*Devyaniben Chandrakant Doshi*	*ABVPD9687L*
8.	*Utsav Kishorbhai Doshi*	*AGTPD2281R*
9.	*Karishma Rajendrabhai Doshi*	*AUPPD9230Q*
10.	*Ritaben Rajeshbhai Doshi*	*ABVPD9686M*
11.	*Nitaben Kishorbhai Doshi*	*ABVPD9688F*

During the appellate proceedings, the assessee has furnished the copy of appellate order in the case of one of the beneficiaries, who had been allotted the shares, passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), New Delhi vide order appeal no. CIT(A), Rajkot-2/10291/2019-20 dated 21.03.2024. In the said appellate order, the Id. CIT(A), National Faceless Appeal Centre (NFAC), New Delhi has deleted the addition made by the assessing officer. The relevant para of the decision is as under:

6.2 The addition made by the Assessing Officer and the submissions of the appellant have been perused. The submitted that there is no inadequate consideration which is less than fair market value of property (shares), sec. 56(2)(vii) does not come into play at all. It is seen that the shares were allotted under a statutorily approved scheme of amalgamation under the governing regulatory statute, namely the Companies Act, 1956, after hearing all stakeholders including the government and the contents of the scheme having become final, the appellant filed the same with authorities including SEBI and Bombay Stock Exchange. It is to note that the allotment of shares by a company does not give rise to a transfer of shares and provisions of Section 56(2) has no applicability there being no transfer of a property in law. Further the Hon'ble High Court of Gujarat in the case of CIT vs. Leena Sarabhai has held that in the scheme of amalgamation, shares are issued in lieu of shareholding in the amalgamating company and therefore, there is no tax implication. The Hon'ble High Court of Gujarat in the case of PCIT vs. Jigar Jashwantlal Shah [2023] 154 taxmann.com 568 (Gujarat) held as follows: -

"18. In view of the above, the provisions of sec.56(2) would not be applicable to the issue of new shares which is also submitted by the explanatory notice to the Finance Bill, 2010, wherein, it is clarified that sec.56(2)(vii)(c) of the Act ought to be applied only in the case of transfer of shares. It is trite law that allotment of new shares cannot be regarded as transfer of shares. Therefore, in order to apply the provisions of sec.56(2)(vii)(c), there must be an existence of property before receiving it. As per advanced Law Lexicon Dictionary, the tern "receive" has been defined as " To receive means to get by a transfer, as to receive a gift, to receive a letter or to receive money and involves an actual receipt." Issue of new shares by company as a right shares is creation of property and merely receiving such shares cannot be considered as a transfer under sec.56(2)(vii)(c) and accordingly, such provision would not be applicable on the issuance of shared by the Company in the hands of the allottee."

6.2.1 The decision of Hon'ble ITAT, A Bench, Ahmedabad in the case of DCIT Circle3(1)(2), Ahmedabad vs. M/s. Ozone India Ltd in ITA No.2081/Ahd/2018 dated 13.04.2021 held as under:-

"11.4 We may also look at the scheme of the Act in totality for contextual understanding of the issue. The Legislature has contemplated that there arises 'transfer' of shares by the shareholders of amalgamating company in consideration of the allotment of shares by the amalgamated company and consequently with a view to neutralize tax effect, the Act provides for suitable exclusion/exemption, from the ambit of expression 'transfer', under section 47(vii) which is also of deeming nature. In other words, as per the provisions of the Act, the consideration for issue of shares by the amalgamated company, in so far as the shareholder is concerned, is the shares held in the amalgamated company by way of transfer (except for the saving clause in s.47(vii) of the Act). A bare issue of shares contemplated in S. 56(viib) thus cannot be equated with a situation of transfer gathered from an intent implicit in S. 47(vii). Thus, the consideration and the issue of shares envisaged by section 56(2)(viib) is not found compatible with scheme enacted, when seen from the perspective of revenue.

12. To summarise, in our view, the issue of shares at 'face value' by the amalgamated company (assessee) to the shareholders of amalgamating company in pursuance of scheme of amalgamation legally recognized in the Court of Law neither falls with scope & ambit of clause (viib) to S. 56(2), when tested on the touchstone of objects and purpose of such insertion i.e. to deem unjustified premiums charged on issue of shares as taxable income; nor does it fall in its sweep when such deeming clause is subjected to interpretative process having regard to the scheme of the Act.

13. In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. The CIT(A) in our view, has rightly found inapplicability of S. 56(viib) in the facts of the present case. We thus decline to interfere with the conclusion so drawn by the CIT(A) whose order is under challenge by the revenue. Similarly, the cross objection filed by the Assessee which merely seeks to support the action of CIT(A) also does not call for separate adjudication and is infructuous."

6.2.2 The above decisions of Hon'ble High Court of Gujarat and Tribunal squarely applies to the facts of the appellant's case. Considering the facts and circumstances of the case and following the above decision, the addition made by the AO is deleted and ground raised in this regard is allowed.

7. In the result, the appeal is allowed.

Page 24 of 25

Commissioner of Income-tax (Appeals)
Income Tax Department

17.Further, ld CIT(A) relied on the decision of the Hon'ble Jurisdictional High Court of Gujarat in the case of PCIT Vs Jigar Jashwantlal Shah (Tax Appeal No. 80 & 96 of 2023), wherein the Hon'ble High Court has held as under:

> *"The provisions of Section 56(2) would not be applicable to the issue of new shares which is also submitted by the explanatory notice to the Fasance Bill, 2010, wherein, it is clarified that Sec. 56(2)(vi)(c) of the act ought to be applied only in the case of transfer of shares it is trite low that allotment of new shares cannot be regarded as transfer of shares."*

18. The ld CIT(A) held that since, the substantive addition made in the hands of one of the beneficiaries, named, Kruti Rajeshbhai Doshi for A.Y.2014-15, has been deleted by the Id. CIT(A), NFAC, New Delhi, on merits of the case by holding that provisions of Section 56(2)(vii) of the Act, is not applicable considering nature of transactions therefore, protective addition made in the hand of the assessee, applying same logic and provisions of the Act, does not survive.

19. We note that issue is also covered by the judgement of the Co-ordinate Bench of ITAT, Rajkot, in the case of Kruti Rajesh Doshi, in ITA No.302/Rjt/2024, for assessment year,2014-15, vide order dated 18.10.2024, the findings of the Tribunal is reproduced below:

> *"12. We have heard both the parties and perused the materials available on record. We find that Para No. 8.1 of the scheme of amalgamation, duly approved by the Hon`ble High Court of Gujarat, the consideration/Exchange of Shares is stated as follows:*
>
> > *"(i) The Transferee Company will issue in the proportion of 304 equity shares of face value of Re.1/- each of the Transferee Company, credited as fully paid-up for every 10 fully paid equity shares of the face value of Rs. 10/- each held by the Equity Shareholders of the Transferor Company No. 1, on such date, as the Board of Directors of the Transferee Company may decide.*
> >
> > *(ii) The Transferee Company will issue in the proportion of 411 equity shares of face value of Re.1/- each of the Transferee Company, credited as fully paid-up for every 10 fully paid equity shares of the face value of Rs. 10/- each held by the Equity Shareholders of the Transferor Company No. 2 on such date as the Board of Directors of the Transferee Company may decide."*
>
> *The ld Counsel stated that assessee received shares on amalgamation of Hitesh Engineers Pvt Ltd and Shruti Engineers Pvt. Ltd. (Amalgamating Companies) into Rajoo Engineers Ltd. (Amalgamated Company) on the basis of swap ratio as per scheme of amalgamation approved by the High Court of Gujarat. The copy of scheme of Amalgamation as approved by High Court of Gujarat is submitted by the assessee before the Bench. Therefore, 10 Equity Shares each having paid-up value Rs. 10 per share of Transferor Company No. 1 (Hitesh Engineers Pvt. Ltd.) is exchanged for 304 Equity Shares each having paid-up value Re.1 per share of Transferee Company (Rajoo Engineers Ltd.) on amalgamation. Similarly, 10 Equity Shares each having paid-up value Rs. 10 per share of Transferor Company No.*

2 (Shruti Engineers Pvt. Ltd.) is exchanged for 411 Equity Shares each having paid-up value Re.1 per share of Transferee Company (Rajoo Engineers Ltd.) on amalgamation. However, the Assessing Officer has valued the share of Transferor Company No.1 (Hitesh Engineers Pvt. Ltd.) at Rs. 55.39 and Transferor Company No.2 (Shruti Engineers Pvt. Ltd) at Rs. 74.86 and the value of the share of Transferee Company (Rajoo Engineers Ltd.) at Rs. 10.65 having paid-up value Rs.1/- per share.

13. As per ld Counsel, the shares of Transferee Company are not issued at discount as explained in the following tabular presentation, before the assessing officer:

Sr. No.	Particulars	Rajoo engineers Ltd.	Hitesh Engineers Pvt. Ltd.	Shruti Engineers Pvt. Ltd.
1	Paid-up value per share	1	10	10
2	FMV per share (As per Scheme of Amalgamation)	1.82	55.39	74.86
3	FMV of share at Rs.10 Paid-up value	18.20	55.39	74.86
4	No. of shares issued having paid-up value of Re.1 per share 1) Hitesh Engineers Pvt. Ltd. 2) Shruti Engineers Pvt. Ltd.	 304 411		
5	Total Consideration (4) * (3) 1) Hitesh Engineers Pvt. Ltd. 2) Shruti Engineers Pvt. Ltd.	 5532.80 7480.20	 55.39*10 Shares = Rs. 553.90	 74.86 * 10 Shares = Rs. 748.60
6	FMV per share (As per Assessing Officer)	10.65	55.39	74.86
7	Total Consideration as per Assessing Officer (4) * (6) 1) Hitesh Engineers Pvt. Ltd. 2) Shruti Engineers Pvt. Ltd.	 3237.60 4377.15	 55.39 * 10 Shares = Rs. 553.90	 74.86 * 10 Shares = Rs. 748.60

The ld Counsel stated that the Assessing Officer while finalizing the Assessment order of Transferee Company (Rajoo Engineers Ltd.) has wrongly compared the share having paid-up value Rs. 1 per share with the paid-up value of Rs. 10 per share of Transferor Companies (Hitesh Engineers Pvt. Ltd. and Shruti Engineers Pvt. Ltd.) and accordingly, wrongly worked out excess number of shares. We find that as provisions of section 47(vii) of the I.T. Act, 1961- the above such transactions not regarded as transfer, the provisions of section 47(vii) of the I.T. Act, 1961 is reproduced below:

"any transfer by shareholder, in the scheme of amalgamation, of a capital asset being share or shares held by him in the amalgamating company if-

(a) the transfer is made in consideration of the allotment to him of any share or shares in the (amalgamated company except where the shareholder itself is the amalgamated company, and)

(b) the amalgamated company is an Indian company

Therefore, we find that the transaction of allotment of shares by amalgamated company (Rajoo Engineers Limited, being an Indian Company) to the shareholders of Amalgamating Companies (Hitesh Engineers Pvt. Ltd. and Shruti Engineers Pvt. Ltd) is not a transfer within the meaning of Section 47(vii) of the Act and therefore, provisions of Section 45 of the Act shall not apply for computing capital gain.

14. As regards applicability of provisions of Section 56(2) (vii)(c) (ii) of the Income-tax Act. 1961, first of all, we shall examine the provisions of the said section, (to the extent applicable to our analysis), which is reproduced below:

"Where an individual or a Hindu Undivided Family receives, in any previous year, from any person or persons on or after the 1" day of October, 2009:

Clause-C-Any property, other than immovable property,

(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 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"

We find that the shareholders of Hitesh Engineers Pvt. Ltd. and Shruti Engineers Pvt. Ltd. have not received consideration, (as per the scheme approved by the hon`ble High Court,) which is less than aggregate fair market value of their shares and therefore, provisions of Sec. 56(2)(vii)(c) are not attracted. Similarly for rationalization of section 56 the Income Tax Act, 1961 and with a view to bring uniformity in tax treatment, the Finance Act, 2016, proposed to amend the Act, so as to provide that any shares received by Individual or HUF, as a consequence of demerger or amalgamation of a company, shall not attract the provisions of clause (vii) of sub -section (2) of section 56. This amendment is made effective from 1st April, 2017 and shall accordingly apply in relation to A.Y.2017-18 and subsequent years. Accordingly clause (h) is introduced after clause (g), under second proviso under sub- clause(c) of clause (vii), under subsection (2) of section 56 of the I.T.Act, 1961, which is reproduced below:

"(h) by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47."

As the object of the above stated amendment is to rationalize the provisions of section 56 of the Income Tax Act, 1961, with a view to bring uniformity in tax treatment, the said amendment is clarificatory in nature and hence, equally applicable to the transactions in financial year 2013-14, relevant to A.Y.2014-15. The copy of Circular No. 3/2017,

dated 20/01/2017, F.No.370142/20/2016-TPL issued by CBDT for explanatory notes to the Finance Act, 2016 is submitted by the assessee, before the Bench.

15. Therefore, the transactions of allotment of shares of amalgamated company to the shareholders of amalgamating companies, at a consideration higher than the consideration worked out by the assessing officer of M/s Rajoo Engineers Ltd is outside the purview of Section 45 of the Act, for computing capital gain, in view of the provisions of Section 47(vii) of the Act. And the provisions of Section 56(2)(vii)(c)(ii) are applicable, if an individual or an HUF transfer any property, other than immovable property without consideration, the aggregate fair market value of which exceeds fifty thousand rupees or for a consideration which is less than aggregate fair market value of the property. However, the consideration in the form of shares received by shareholders of amalgamating companies from amalgamated company is higher than aggregate fair market value of the share as worked out by the assessing officer of M/s Rajoo Engineers Ltd. and therefore, provisions of Section 56(2)(vii)(c) (ii) of the Act, is not applicable, to the assessee under consideration. We also find that provisions of Section 56(2)(vii)(c) (ii) of the Act, do not override the provisions of Section 47(vii) of the Act. In order to compute capital gain, there should be "transfer", since, the said transaction, under consideration is not a "transfer", therefore, capital gain does not attract. The Finance Act, 2016, also for rationalization of tax treatment introduced clause "h" under 2nd Proviso under sub-clause (c) of clause (vii) under sub-section 2 of section 56 of the Income Tax Act, to exclude the transactions covered under clause(vii) of section 47 of the Act, and being an object to rationalize provisions of section 56 of the Act, with a view to bring uniformity in tax treatments, the said amendment is clarificatory in nature and hence, have retrospective effect and therefore, applicable for A.Y. 2014-15, also.

16.Conclusion

We note that provision of Section 56(2)(vii)(c)(ii) of the Act, does not get attracted in the case of shares received on amalgamation. Under the amalgamation, a shareholder of amalgamating company in effect receives the same value of shares of the amalgamated company as he/she original held in the erstwhile company. In case of shares received upon amalgamation, there are no two parties to a transfer of a property. One receives shares in lieu of shares already held. New shares allotment by amalgamated company does not give rise to a ***"transfer"*** *of shares and hence also, section 56(2)(vii)(c)(ii) has no application. Transfer of shares in a scheme of amalgamation is not considered as a transfer, under sec. 47(vii). If it is not transfer, then the application of Section 56(2)(vii)(c)(ii) is not applicable. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.*

17. In the result, the appeal of the Revenue is dismissed

20.To conclude, we state that provision of section 56(2)(vii)(c)(ii) does not apply in the case of Public limited company, it is only applicable to individual and HUF- assessees. New shares allotment by amalgamated

company does not give rise to a transfer of shares and hence also section 56(2)(vii) (c) has no application and proviso (h) excludes the transfer from rigor of deeming provision. In case of shares issued under amalgamation, there are no two parties to a transfer of a property. There are tripartite arrangements between amalgamated company, amalgamating company and shareholder of the amalgamating company. Transfer of shares in a scheme of amalgamation is not considered as 'transfer' u/s 47 (vii) of the Act. If it is not transferred, then the application of section 56(2) is not applicable. There is no anti- abuse of provision and the new share is allotted as per the Amalgamation scheme under the supervision of the High Court after hearing of all stake holders including the Government. The Scheme of amalgamation under which an exchange ratio of shares is approved by the high court, and it is conclusive. So, question of skewed swap ratio or issuing shares at discounted rate does not arise. Based on the above factual position and position in Law, the conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A).

21. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the Open Court on 31/12/2024 at Rajkot.

Sd/-	**Sd/-**
(DINESH MOHAN SINHA)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Rajkot
दिनांक/ Date: 31/12/2024
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT

5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot

1.	Draft dictated on (dictation sheet is enclosed with main file.)	16.12.2024
2.	Draft placed before author	17.12.2024
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	
11.	Draft dictation sheets are attached	