

# Lalit Vanjani & Co.

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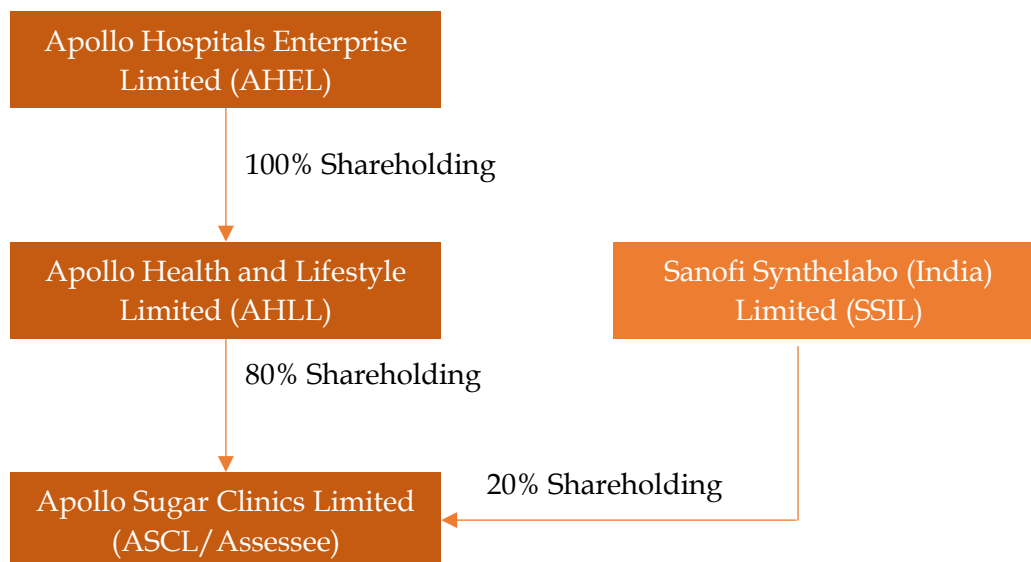
**Angel tax under section 56(2)(viib) not to apply if taxpayer company is a step-down subsidiary of a company listed in stock exchange**

Hyderabad Tribunal rules on the applicability of Section 56(2)(viib) of the Income-tax Act, 1961 on subsidiary company of a listed entity.

- *Apollo Sugar Clinics Ltd. v. DCIT [ITA No. 2045/Hyd/2018]*

## A. Background

Apollo Sugar Clinics Limited (ASCL or Assessee) had two shareholders – (i) Apollo Health and Lifestyle Limited (AHLL), holding 80% shares, and (ii) Sanofi Synthelabo (India) Limited (SSIL), holding 20% shares of ASCL. AHLL was a 100% subsidiary of Apollo Hospitals Enterprise Limited (AHEL), a company listed on recognized stock exchange in India.



ASCL issued shares to its shareholders at a share premium of INR 990 and at INR 1,220 in the first year of its operations, i.e. financial year 2014-15. The valuation report obtained by ASCL from Chartered Accountant valued the shares at INR 741/share.

The Assessing Officer (AO) acknowledged that ASCL is a company in which public is substantially interested and thus, instead of invoking provisions of section 56(2)(viib) of the Income-tax Act, 1961 (the Act) made the addition under section 56(1) of the Act read with Rule 11UA of Income-tax Rules, 1962. On appeal, the Commissioner of Income Tax also upheld the assessment order.

## B. Assessee's contentions

- (a) Section 56(2)(viib) of the Act specifically deals with the taxation of excess premium received by a company from resident shareholders. The AO has accepted the fact that the specific provisions do not apply in the present case, because ASCL is a company in which public is substantially interested due to its being a step-down subsidiary of AHLL, a listed company.
- (b) The valuation report was obtained for complying with foreign exchange regulations and assessee was free to negotiate a higher price with its shareholders.
- (c) If specific provision is not applicable on a transaction, the general provisions cannot be invoked by tax authorities. Section 56(1) does not have any applicability.
- (d) For invoking section 56(1), the receipt must be revenue in nature, whereas in present case the receipt is a capital receipt which is not an income within the meaning of section 14.

## C. Revenue's contentions

- a) The valuation report issued by Chartered Accountant itself puts the share value at 741, which is much lower than the share premium received by the assessee.
- b) The assessee might be free to negotiate any price for the shares, however, for income tax purposes, the provisions of law will apply and if any excess share premium is received, the same would be liable to tax.
- c) Section 56(1) deals with other income and the provisions of Rule 11UA are applicable for section 56 of the Act.

## D. Tribunal's ruling

The Tribunal held that AHEL is a company listed on recognized stock exchange in India. Therefore, AHEL falls under the category of the company in which public are substantially interested. The subsidiary companies viz. AHLL and assessee-company (ASCL) come under the definition of Section 2(18)(b)(B) of the Act, as per which public would be considered to be substantially interested in such companies. This fact was also acknowledged by the AO and thus, assessee's case does not fall under section 56(2)(viib) of the Act.

The Tribunal also held that the first pre-requisite for application of section 56 is that the receipt must be in the nature of income as per section 14 of the Act. Receipt of share capital is not in the nature of income unless specifically provided for. In the present case, only the provisions of section 56(2)(viib) can be applied and no other section. Thus, when the provisions of section 56(2)(viib) are not applicable, the addition made by AO is required to be deleted.

## E. Key takeaways

The key takeaway of this ruling is that the specific provision of law prevails over the general provisions. If specific provisions fail to apply, general provisions of law cannot be invoked to tax the same transaction.

Also, the ruling makes it clear that if public is substantially interested in a company, even if indirectly through its holding company(s), it is free to decide the share premium on the issue of shares. The rigours of section 56(2)(viib) are not be applied to subsidiaries of a company in which public are substantially interested.

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