

Circular No. 16/2019 [F.No. 173/149/2019-ITA-I], dated 7-8-2019

Instances have come to the notice of the Board that notices u/s 143(2)/147 have been issued by the Assessing Officers in respect of Startup Companies, before the issue of notification of the Department for Promotion of Industry and Internal Trade (henceforth referred to as 'DPIIT') dated 19.2.2019 or even afterwards which are presently pending for disposal. These companies have been recognized by the DPIIT after the issue of their notification dated 19.2.2019.

2. The DPIIT vide Notification No. G.S.R. 127 (E), dated 19.2.2019, has laid down that the provisions of section 56(2)(viib) of the IT Act, 1961 shall not apply to any consideration received by a Startup Company, if the Startup Company fulfils the conditions mentioned in para 4(i) and 4(ii) of the said notification and is recognized by the DPIIT.

3. In pursuance to the above, the Central Board of Direct Taxes (CBDT) had issued Notification No.13/2019/F.No. 370142/5/2018-TPL(Pt.), dated 5th March, 2019 reiterating that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the notification dated 19.2.2019 issued by DPIIT.

4. In the light of the above, the following procedure is laid down with regard to the assessment of such startup entities involving the issue of section 56(2)(viib).

- (i) Where the Startup Company has been recognised by the DPIIT but the case is selected under "limited scrutiny" on the single issue of applicability of section 56 (2)(viib), no verification on such issues will be done by the AOs during the proceedings u/s 143 (3)/147 of the I.T. Act, 1961 and the contention of such recognized Startup Companies on the issue will be summarily accepted.
- (ii) Where the Startup Company has been recognized by the DPIIT but the case is selected under "limited scrutiny" with multiple issues or under "complete scrutiny" including the issue u/s 56(2)(viib), the issue of applicability of section 56(2)(viib) will not be pursued during the assessment proceedings and inquiry or verification with regard to other issues in such cases shall be carried out by the Assessing Officer, only after obtaining approval of his/her supervisory officer. Due procedure as per I.T. Act shall be followed with regard to other issues for which the case has been selected.
- (iii) Where the Startup Company has not got DPIIT approval and the case is selected for scrutiny, *inter alio* on the grounds of applicability of section 56(2)(viib) or any other issue/s, then also inquiry or verification in such cases shall be carried out by the Assessing Officer, as per due procedure, only after obtaining approval of his/her supervisory officer.