

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.31/Chd/2018
Assessment Year: 2014-15

M/s. Udehra Fasteners Ltd.
Chandigarh Road, Budhewal
Sugar Mill Road, Budhewal
Ludhiana

Vs.

The ITO
Ward-III(1)
Ludhiana

PAN No. AAACU8362Q

(Appellant)

(Respondent)

Appellant By : Shri. Pankaj Bhalla
Respondent By : Shri. Yoginder Mittal

Date of hearing : 12/07/2018
Date of Pronouncement : 25/07/2018

ORDER

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Assessee against the order of the CIT(A)-1, Ludhiana dt. 22/11/2017.

2. In the present appeal Assessee has raised the following grounds:

1. That the order passed under section 250(6) of the Income Tax Act, 1961 is erroneous, against law and facts of the case.
2. That The Ld. CIT(A), erred in law & facts in confirming the addition of Rs. 36.75 lac u/s 56(2)(viib) of the Income Tax Act, 1961 without any base and reasons thereof.
 - 2.1 That the Ld. C.I.T(A) erred in law & facts in failing to adjudicate that the assessment framed is in contradiction to expressed provisions of section 56(2)(viib) of the Act.
 - 2.2 That the Ld. C.I.T(A) erred in law & facts in failing to adjudicate that the assessment framed is in contradiction to expressed provisions of Rule 11UA of the Income Tax Rules.
 - 2.3 That the Ld. C.I.T(A) failed to appreciate that the fair value of equity shares allotted during the year was Rs. 100/- as certified by an accountant as per discounted cash flow method.
 - 2.4 That the Ld. CIT(A) rejected the fair value of equity shares as determined by 'an Accountant as per discounted cash flow method" without any base & reasons thereof.
 - 2.5 That the Ld. CIT(A) erred in law & facts by failing to adjudicate that actual cash accruals were more than the projected cash accruals.

3. Brief facts of the case are that the assessee is a Company engaged in business of Manufacturing and Trading of Fastners. During the course of assessment proceedings, The Assessing Officer noted that the assessee issued 1,25,500/- shares of face value of Rs. 10/- at a premium of Rs. 90/-. During the course of assessment it was submitted that the shares were issued on the basis of DCF method as prescribed under Rule 11UA whereas the Assessing Officer treated the FMV as per historic cost or book value as on 31/03/2013. Accordingly the value opted by the assessee was Rs. 100/- share whereas the FMV or shares issued was taken at Rs. 70/- per share by the Assessing Officer and addition of Rs. 30/- per share was made under section 56(2)(viib) of the Act rejecting the valuation report of Accountant.

4. The Ld. CIT(A) confirmed the order of Assessing Officer on the grounds Profit shown by the assessee company were actually much lower than projections given at time of valuation of shares. It was held that the assessee has projected net profits for the next five years at Rs. 6.46 lacs for A.Y. 2015-16 Rs. 9.96 Lacs for the A.Y. 2016-17, Rs. 12.16 for A.Y. 2017-18 & Rs. 15.85 for 2018-19. But as per the returns of income filed by the assessee company for A.Y. 2015-16 and Rs. 7.35 lacs for A.Y. 2016-17 which are very low as compared to the net profits projected by the assessee for the valuation of the share by discounted cash flow free method. Hence, the figures adopted by the assessee company are inflated and are not realistic. These figures of projected net profits have been inflated to show high fair market value of the share and to decrease the tax liability. It was further held that the assessee has not furnished any information or justification of the projected net profit for the next five years on the basis of which FMV of the share has been calculated @101.31/- per share by DCF method.

5. Before us the Ld. AR argued that what is relevant for DCF is not the book profit but the cash profit the actual cash profits are infact much higher than the projected cash profits which is apparent from the working of the DCF method. He further argued that the difference between actual and projected profits is because of bonafide reasons such as depreciation. The assessee company has made a substantial investments in fixed assets which was not taken into consideration during the violation under DCF method. He argued that the reliance placed by the Revenue on the case of M/s Medplus Health Services

Pvt. Ltd. Vs. the ITO, Ward 16(1), Hyderabad (ITA No. 871/HYD/2015) is misplaced and infact supports the case of assessee which states that valuation under the Act can only be made as per method prescribed in law. Whereas DCF is one of the methods prescribed under rule 11UA r.w.s 56(2)(viib) of the Act.

5.1 The addition made is contrary to expressed legal position. As per the provision of Section 56(2)(vii)(b) the fair market value share shall be the value as may be determined in accordance with method prescribed and for this purpose Rule 11UA has prescribed the method for determination of fair market value of the shares or the value as may be substantiated based on the value of its assets to the satisfaction of the Assessing Officer, whichever is higher. Accordingly value of Rs. 100 computed as per DCF/Rule 11UA cannot be rejected without any base and reason thereof.

5.2 Against the argument of Ld. AR the Ld. DR Shri. Yogendra Mittal argued that the assessee has not taken the projections in terms of investments in fixed assets which is one of the main requirements of the DCF method. In actual, the assessee has made substantial expenditure on the fixed assets during the years of revenue projection which is required to be considered for calculating value under DCF. Assuming that the Valuer has correctly applied the DCF method, if we only replace the projected figures of investment in fixed assets with the actual figures (other variables being constant), the valuation of the company will decrease substantially as demonstrated in the excel sheet . The excel sheet demonstrates that the assessee has inflated the figure of value of shares of the company by withholding projected figures of investment in fixed assets in order to bypass the provisions of Section 56 (2)(viib).

5.3 It was argued that the assessee has not provided the details of investment of fixed assets for the financial year ending March 18. If we assume that 'nil' investment is made in the fixed assets during FY 2107-18, it can be seen from the table , the discounted cash flow (A) comes to a negative figure of -33.90 as against a positive cash flow of 117.82 calculated by the CA as per DCF method without taking the projections of investments in fixed assets.

5.4 It was further argued that considering Profit after Tax , Depreciation, Changes in Working Capital, Changes in Fixed Assets actual but not taken while projecting, Free Cash Flow to Equity, Discounting Factor, Discounted Cash Flow, Aggregate DCF Value, Terminal Value, and all other calculations of the Valuer

to be constant, the value of DCF will come to 83 lakhs only as against 235 lakhs calculated by the assessee. Accordingly the value per share will come to Rs 36 per share as against value of Rs 101.31 per share as per the Valuation report. The AO has calculated the book value of the company at Rs 69.75 which is much higher than the value of the company if DCF method is applied correctly.

6. We have heard the rival contention of both the parties and perused the material available on record before us.

7. We have gone through the facts and records of the present case and we find that there is a considerable difference in computation of FMV of the shares done by the assessee under Rule 11UA and also as done by the Assessing Officer by following Historic Cost method. The assessee also could not furnish information of the projected net profit for the next five years on the basis of which FMV of the share has been calculated @101.31/- per share by DCF method. Keeping in view we deem it appropriate on consideration of the facts of this case to refer the matter back to the file of Assessing Officer to determine the correct FMV of the shares. The assessee would also furnish all the documentary evidences which he may rely upon before the Assessing Officer so as to arrive at accurate FMV of the shares.

8. As a result the Appeal of the Assessee is hereby set aside to the file of the AO.

Order pronounced in the open Court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 25/07/2018

AG

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR