

**आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.221/SRT/2019**

**निर्धारण वर्ष/Assessment Year: 2014-15**

M/s.N.J.ECO-BUILD PVT LTD., S-42, Belgium Square, Opp.Laxmi Vilas Bank. Delhi Gate, Ring Road, Surat. <b>[PAN: AAECN 1584 H]</b>	V s .	The Principal Commissioner of Income Tax, Surat-1.
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by	Shri Suresh K.Kabra – CA
राजस्वकीओरसे /Revenue by	Shri Sreenivas T.Bidari – CIT-DR

सुनवाईकीतारीख/ Date of hearing:	09.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	13.12.2019

**आदेश /O R D E R**

**PER SANDEEP GOSAIN, JM:**

1. This appeal by the Assessee is directed against the order of Ld.Principal Commissioner of Income Tax, Surat-1, dated 25.03.2019 for the assessment year 2014-15.
2. The appeal has been filed by the assessee against the order of ld.Pr.CIT u/s.263 of the Act.
3. The brief facts of the case are that the assessee company was engaged in the business of manufacturing of AAC blocks during the year

under consideration and had filed Return of Income declaring the total income of Rs.NIL/-. The scrutiny assessment u/s.143(3) of the Act was finalized on 16.12.2016 thereby accepting the returned income shown by the assessee. Later on, the ld.Pr.CIT issued show cause notice dated 07.03.2019 on the ground that 30 shareholders had deposited cash of Rs.2,94,89,700/- in their bank account before making payment to the assessee company for purchasing shares and in this respect, it was felt by the ld.Pr.CIT that this issue was not examined by the ld.Assessing Officer(AO) concern during the course of assessment proceedings which shows lack of enquiry on his part. Apart from this, it was also observed by the ld.Pr.CIT that the shareholders of the company were issued at Rs.50 per share. In this respect, a valuation report obtained by the assessee from the Chartered Accountant(CA) in which valuation of the shares of the company was valued at Rs.52 per share as on 31.03.2013. The ld.Pr.CIT also observed that the valuation report carry various data which were taken as projected financial results of the assessee company and the same were not as per the real trend of business, but it was taken without any basis as per the need of the management of the assessee company and also no supporting details in the projected data used in the valuation certificate was filed during the course of assessment proceedings.

4. On the other hand, the Id.Authorised Representative(AR) submitted before this Tribunal that all supporting details in respect of source of cash deposits by the investors were submitted by the assessee during the course of assessment proceedings, which were duly verified by the AO concern. It was also submitted that the premium of Rs.4,60,76,000/- was accepted as per the valuation of share as per DCF Method which is widely followed method for valuation of unquoted equity shares. As per the Id.AR this method involves projection of future cash flows. Techno and economic viability stating report were obtained from SBI who after thorough verification of projections issued report. It was further submitted that the finance of Rs.26.72 crore from SBI was obtained based on the said projection and considering the profitability of the project. Therefore, the projection was drawn after studying various aspects of the whole nature and other factors related to the project. However, the actual figures may differ from the projections issue to various factors and circumstances of the market in real time. As per the Id.AR, since the company is in strong position currently and is earning profit after settling of losses made earlier. Therefore, the premium was rightly accepted as per the valuation of the shares as per DCF Method. The Id.AR also drawn our attention to the paper book which contains the list of shareholders with details of alleged shares and share premium and also contains the details of source of cash deposits by all the 30 shareholders and the said documents starts from page

no.29 to page no.229. We have also perused the reply filed by the assessee to the show cause notice issued by Id.Pr.CIT, Surat dated 07.03.2019 which is at page no.6 and 9 and the details of which are reproduced below:

*“1. With reference to the above mentioned show cause notice, it has been stated in the notice that no explanation for the source of cash deposited by the investors were filed by the assessee during the course of assessment proceedings. However all the details for verification of source of cash deposits such as return of income, computation, unsecured loan taken during the relevant year, details of source of Cash Deposits, Balance sheet of F.Y 2012-13, cash book of F.Y 2013-14 and Balance sheet of F.Y 2013-14 etc. of all the investors were asked by the A.O vide notices dated 03/03/2016 & 07/11/2016 and also during the course of hearing. In this respect all the required details have been already submitted during scrutiny assessment proceedings vide various submissions and were duly verified by the A.O. Copy of relevant notices and their respective submissions are enclosed herewith. **(Annexure- 1)** We therefore request your honor not to treat the amount of Rs. 2,94,89,700 as unexplained cash credit in the hands of assessee as assessment order was passed by the A.O. after detailed verification of the source of said cash deposited by the investors.*

*So far as details of shares issued are asked for, initially shares were issued at face value of Rs.10. However to fulfill further requirement of huge fund for the ACC Blocks project, valuation of shares was obtained and subsequently shares were issued at premium of Rs.40.*

**2.** *So far as proposal for addition of premium of Rs.4,60,76,000 accepted by the assessee during the year under consideration to the total income, we have to state that the said premium has been accepted as per the valuation of shares as per DCF method. Valuation report for the same has been taken from the respected CA. Rule 11UA of The Income Tax Rules, accepts the fair market value of the unquoted equity shares determined by a CA. as per Discounted Free Cash Flow Method. DCF method is widely followed method for valuation of unquoted equity shares. This method involves projection of future cash flows. The assessee has obtained Techno-Economic Viability Study Report from Sate Bank of India. The banks after thorough verification of projections drawn on the basis of analysis of industry and other related aspects issued the said report and accordingly projections were drawn. The assessee also obtained finance of Rs.26.72 Crores from SBI based on the said projections and considering the profitability of the project which were carefully studied by the bank. Copy of sanction letter and viability report is enclosed for your kind reference. **(Annexure-2)**. Projections are drawn after studying various aspects of the whole industry and other factors related to the project. However actual figures may differ from the projections due to various factors and circumstances of the market in real time. The company is however in strong position currently and is earning profit after setting of losses made earlier as per books. The company has paid advance tax of Rs.16 lacs in A.Y.2019-20 after considering profit as per books. The copy of the said challan is enclosed herewith. **(Annexure-3)** The shares were issued as per valuation of FMV of shares as per DCF method and premium was accordingly collected by the assessee. Hence we request your honor to drop the proposal for addition of premium of Rs.4,60,76,000 accepted by the assessee during the year under consideration to the total income.*

5. Apart from above, assessee had also furnished the certificate of CA for valuation of shares as per DCF Method which is at page no.13 to 23 of the paper book. It was submitted by ld.AR that Explanation 2 was inserted w.e.f. 01.06.2015 by Finance Act 2015 to section 263 which mentions that ld.Pr.CIT should come out with a proposition as to what were the enquiries or verifications which should have been made and was not made. Thus, there has to be specific findings that so and so enquiry is required to be made and was not made. In this respect, our attention pointed out to the specific deficiency in the enquiry that was not made and which was mentioned in the show cause notice as well as order u/s.263 of the Act, the same is contained in para no.2 and 2.1 of the order of ld.Pr.CIT, Surat-1.

6. The ld.AR also relied upon the bunch of judgments which are reproduced as below:

<b>Sr No</b>	<b>Particulars</b>
1	REGENCY PARK PROPERTY MANAGEMENT SERVICES PVT LTD VS CIT ..... 130 TTJ 669 (DELHI-T)
2	SHREE SALASAR OVERSEAS P LTD VS CIT 144 TTJ 41 (JAIPUR-T)
3	KAMAL KUMAR GUPTA VS CIT ....142 TTJ 9 (JAIPUR-T)
4	CIT VS SUNBEAM AUTO LTD .227 CTR 133 (DELHI-HC)
5	HITENDRA A NANAVATI VS CIT ..135 TTJ 17 (AHD-T)
6	NARAIN SINGLA VS PCIT ..... 156 ITD 275 (CHD-T)

7	<i>SMT PRAGNABEN VINODBHAI PAREKH VS PCIT ITA/12 76/AHD/2 017 &amp; OTHER 3 CASES DECIDED BY COMMON ORDER</i>
8	<i>CIT VS GREEN FIELD COMMERCIALS P LTD 3272 ITR 740 (J&amp;K-HC)</i>
9	<i>AMERICAN SPRING &amp; PRESSING WORKS P LTD VS PCIT 166 ITD 92 (MUM-T)</i>
10	<i>CINESTAAN ENTERTAINMENT P LTD VS Income Tax Officer 177 ITD 809 (DELHI-T)</i>
11	<i>RAMESHWARAM STRONG GLASS P LTD VS Income Tax Officer 172 ITD 571 (JAIPUR-T)</i>
12	<i>India TODAY ONLINE P LTD VS Income Tax Officer 176 ITD 459 (DELHI-T)</i>

**7.** On the other hand, the ld.Departmental Representative(DR) relied upon the written submissions submitted by him and the judicial pronouncements and supporting order passed by the ld.Pr.CIT. It was also submitted that both the twin conditions contain in section 263 of the Act are co-jointly present as per the facts of the present case. Thus, it was requested that order of ld.Pr.CIT may kindly be upheld.

**8.** We have heard Counsels for both the parties and we have also perused the material placed on record and orders passed by the Revenue Authorities as well as the judgments cited by respective parties. As per facts of the present case, the assessee had filed its Return of Income, subsequently the case of the assessee was selected for limited scrutiny as per notice u/s.143(2) of the I.T.Act which is at page no.8 of the paper book and the assessment u/s.143(3) was finalized on 16.12.2016. The ld.Pr.CIT observed that 30 shareholders had deposited cash of Rs.2,94,89,700/- in that bank accounts before making payments to the

assessee company for purchasing shares. But the AO not examined during the course of assessment proceedings regarding the source of the said cash deposits. In this respect, we have perused the that assessee had filed a detailed reply containing all the supporting details in respect of source of cash deposits by the investors during the course of assessment proceedings before the AO. Our attention was also drawn towards the list of shareholders with details of alleged shares and share premium which is contained in page 29 to 32 of the paper book and also details of source of cash deposits by shareholders which are contained in page no.33 to 229 of the paper book. All this voluminous documents contains the details of source of cash deposits by each shareholder numbering 330 in number.

**9.** We have also noticed that all the details were submitted for verification of source of cash deposits such as Return of Income, Computation of Income, Unsecured Loan taken during the relevant year, details of source of cash deposits, Balance Sheet for F.Y. 2012-13, cash book of F.Y. 2013-14 and balance sheet of 2013-14 etc., of all the investors who were asked by the AO by notice dated 03.03.2016 and 07.11.2016 and also during the course of hearing. All the required details have already been submitted during the scrutiny assessment proceedings vide various submissions and same were also acknowledged by the AO.

**10.** As far as second reason for invoking the provision section 263 by Id.Pr.CIT is concern, it was noticed by Id.Pr.CIT that shares of the company were issued at Rs.50 per share. On the basis of valuation report obtained from the CA. However, in the valuation report the various data taken as projected financial result of the assessee company were not as per the real trend of business, but it was taken without any basis as per the need of management of the assessee company and also no supporting details for the projected data used in the valuation certificate was filed during the course of assessment proceedings. In this respect, we notice that the premium was accepted by the assessee as per the valuation of shares as per DCF Method it is widely followed method for valuation of unquoted equity shares. This method involves projection of future cash flows. Techno, economic viability stata report was also obtained based on the said projection and conserving the profitability of the project. Thus, the projection was drawn as per the assessee after stating various aspects of the whole nature and other factors related to project. The actual figures may differ from the projections due to various factors and circumstances of the market in real time. On the entirety of the aspects, we rely upon the decision of the Co-ordinate Bench of ITAT in the case of Shree Salasar Overseas Pvt. Ltd., Vs. CIT [2012] 27 taxmann.com 129 (Jaipur Trib.) it was held as *“that details were filed before the Assessing Officer vide a letter in*

*which, it was mentioned that such expenses were being allowed in earlier year. Hence, this was not a case where there was no enquiry. Action under section 263 cannot be taken on account of inadequate enquiry. Hence, the Commissioner was not justified in setting aside the order under section 263. In the case of Kamal Kumar Gupta Vs. CIT [2012] 23 taxmann.com 280 (Jaipur – Trib.) it was held “that the assessee asked by the Assessing Officer to file the details of trade creditors which were shown in the names of agriculturists. The assessee was also asked to give the complete names and addresses of these persons. Accordingly, the assessee had enclosed the list of sundry creditors – agriculturists. After receipt of those details, the Assessing Officer had not made any further enquiry. Thus, the Assessing officer made the enquiry and it was not a case of lack of enquiry but could be a case of insufficient enquiry. On facts, the Commissioner was not justified in passing the order under section 263.*

**11.** The cumulative reading of all the above judgments reflects that while making assessment, if the AO had made inadequate enquiry, that would not by itself give occasion to the Commissioner amount to categorical to pass order u/s.263 of the Act, merely because he has different opinion in matter. It is only in cases of lack of enquiry that such a course of action would be open. Moreover, in the instant case the AO had called for explanation on both the ground by issuance of

notice and subsequently, the assessee had also submitted all the details in order to satisfy the queries raised during the investigations done by the AO which clearly shows that the AO had undertaken the exercise of examining of both the above issues. It appears that since the AO was satisfied with the assessee's explanation, he accepted the same. Even the commissioner conceded the position that AO made the enquiries, but the grievances of the commissioner was that the AO should have made further enquiries rather accepting the assessee's explanation, therefore it could not be said that it was a case of lack of enquiry.

**12.** Moreover, in the present case, the Id.Pr.CIT has not pointed out any specific deficiency in the enquiry that was not made, in the show cause notice as well as in the order u/s.263 of the Act. The Co-ordinate Bench of ITAT in the case of Narayan Tatu Rane Vs. ITO [2016] 70 taxmann.com 227 (Mumbai Trib.) had held that *since Commissioner had not brought any material on record to substantiate his inference, Commissioner had passed impugned revision orders only to carry out fishing and roving enquiries with objective of substituting his view with that of Assessing Officer.* Further, in the case of Sangeeta Jain Vs. Pr.CIT-II of Hon'ble ITAT Delhi Bench in ITA No.3888/Del/2017 it was concluded at para no.8 that *"Explanation 2 to section 263 inserted by Finance Act 2015 cannot be interpreted in a manner which would make the enquiries unending. If Explanation 2 to section 263 is invoked by the*

*Commissioner in such manner as applied in the present case, in our considered opinion, the process of enquiry would be unending and no assessment order can be said to be final as all the assessment order can be found fault on the ground that enquiries should have been made more elaborate. We have also considered the decision in the case of Cinestaan Entertainment Pvt. Ltd., Vs. ITO [2019] 106 taxmann.com 300 (Del) wherein it was held as “as per section 56(2)(viib) read with rule IIIA assessee has an option to do valuation of shares and determine fair market value either on DCF Method or NAV method, and Assessing Officer cannot examine or substitute his own value in place of value so determined. In the case of India Today Online (P.) Ltd. s. ITO [2019] 104 taxmann.com 385 (Delhi Tribunal) wherein it was held as “where assessee allotted shares of a company held by it on premium and substantiate valuation of shares to satisfaction of Assessing Officer that same was on basis of valuation report provided by valuer of said company whose share were held by it wherein valuer had applied Direct Cash Flow (DCF) method and said report was certified by an independent Chartered Accountant and Assessing Officer accepted such valuation, Commissioner (Appeals) was unjustified in rejecting impugned valuation or valuation method. We have also gone through the notices issued by ITO dated 07.11.2016 wherein all the details were sought for by the AO and the replies submitted by the assessee which are reproduced as under:*

Letter from the AO to Assessee seeking information”

“No.SRT/ITO/Wd-1(1)(4)/ 142(1)/NJEBPL/2016-17

Date: 07/11/2016

To,  
The Principal Officer/Director,  
M/s.N.J.Eco-Build Pvt. Ltd.  
S-42, Belgium Square,  
Opp. Laxmi Vilas Bank,  
Delhi Gate, Ring Road,  
Surat – 394221.

Sir/Madam,

Sub: Assessment proceedings in your case for the A.Y. 2014-15 –REG.

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For the A.Y. 2014-15, you are requested to produce, or cause to be produced, the following items at my office at above address on 21.11.2016 at 11.30 a.m. in the required manner.

1. copy of bank book of all accounts maintained by you explaining of each credit and debit entry alongwith supporting evidences.

2. Further, in respect of Share Capital/Premium received by your during the year, please submit following details:

i. Ho prices of shares were determined, how and where negotiation have been done.

ii. Please state, is there any business/relation with investing party directly or indirectly.

iii. Minutes of board meeting for issue/share application.

iv. Last 3 years details of your company in following format:

A.Y.	Profit of your Company	Equity Shares	Share Premium	Net worth	Book Value

v. Basis of fixing share premium alongwith all documents of meeting / advice / consultant advice.

vi. Copy of all minutes of meeting held in F.Y. 2013-14 and copy of board resolution thereof.

vii. Resolution authorizing issuance of share under section 81(1A) of companies Act.

viii. Date of issue of share application form.

ix. Attendance register of AGM.

x. Share certificate.

xi. Proof of communications to shareholders.

xii. Proof of dispatch of share certificates.

xiii. Date on which issue was approved by passing of special resolution of AGM.

xiv. Date of execution of share application forms.

xv. Copies of share application forms/letters received and share allotment letters.

3. Please comment as to how the money raised has been utilized. Give complete details.
4. Please note that the above information is being called u/s 142(1) of the Act and the same should be furnished duly signed and verified by you in the prescribed manner. You may submit the information before the scheduled date also, if you wish so.

Yours faithfully,  
Sd/-  
(MAHESH KUMAR SAINI)  
Income Tax Officer  
Ward-1(1)(4), Surat”

Reply/ Submission of details from the Assessee to AO:

“N.J.ECO-BUILD PVT.LTD.  
S-42, BELGIUMSQUARE  
OPP.LINEAR BUS STOP  
RING ROAD, SURAT.

DATE: 12/12/2016

To,  
Income Tax Officer,  
Ward-1(1)(4), Room No.110,  
Aaykar Bhavan, Majura Gate,  
Surat.

Respected Sir,

Sub: Submission of details in case of N.J.ECO-BUILD PVT. LTD. for A.Y. 2014-15.

(PAN: AAECN1584H)

Ref: Your notice under section 142(1) dated 07/11/2016 received on 09/12/2016.

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With reference to above, we humbly submit the details as under.

1. Bank book of all bank accounts maintained by us are enclosed. (Annexure-1)
2. Details in respect of Share Capital/Premium received during the year under assessment are as follows:
  - i. Shares prices were determined at discount free cash flows method and on the basis of projection, Calculation sheet of valuation of shares prices have already been submitted vide annexure 4 to submission dated 25/04/2016.

- ii. All investing parties are relatives of company and their director as per sec. 2(41) of Income Tax Act.
- iii. Minutes of all board meetings for the year is enclosed.(Annexure-2)
- iv. Last 3years details of company are as follows:

A.Y.	Profit	Equity Shares (Nos.)	Share Premium (Rs.)	Net Worth (Rs.)	Book Value (Rs.)
2012-13	-	-	-	-	-
2013-14	-	10000	-	1,00,000	1,00,000
2014-15	(1,30,948)	39234000	Rs.4,60,76,000	8,51,79,052	8,51,79,052

- v. The shares prices and premium were determined at discount free cash flows method and on the basis of projection by valuer and same was accepted. Copy of the valuation certificate have already been submitted.
- vi. Copy of all minutes of meeting held in F.Y. 2013-14is already annexed as annexure – 2 and copy of board resolutions for the year alongwith from no. 2 filed with ROC are enclosed. (Annexure-3)
- vii. Resolution authorizing issuance of share under sec. 81(1A) of companies Act, when sent to ROC is not applicable as the assessee company is private limited company.
- viii. Share application forms were issued on 31/03/2013, 26/08/2013, 29/10/2013, 09/12/2013, 16/01/2014 and 12/02/2014.
- ix. Copy of Attendance register of AGM is enclosed.(Annesure-4).
- x. Copy share certificates is enclosed. (Annexure-5)
- xi. The shareholders are relatives of company and directors and hence informal communication was made. However, on allotment, communication was made through allotment liters to all shareholders.
- xii. Share certificates were delivered hand to hand.
- xiii. The assessee company being private limited company, there is no requirement of special resolution to be passed.
- xiv. The date on which share applications were issued have been mentioned in point (viii) above. The allotment further were made and resolutions giving effect to the same were passed.

- xv. Copy of share allotment letters are enclosed. (Annexure-6)
3. The money raised through issue of shares have been utilized for purchase of machineries for business and for construction of factory building.

The details submitted hereinabove may fulfill the purpose of the department in the interest of justice. Kindly expedite the assessment proceedings and oblige

Thanking you,

Yours faithfully,  
For N.J.ECO-BUILD PVT.LTD.  
Sd/-  
Director

Encl: as above.”

**13.** Thus, considering all the facts and circumstances, we do not agree with the contention of the ld.Pr.CIT in order u/s.263 of the Act on the basis of our detailed reasons mentioned above. We hold that the order passed by ld.Pr.CIT u/s.263 of the Act for the above stated reasons is hereby set-aside and quashed. Since we have quashed the order u/s.263 of the Act, we do not deal with the merits of the claim of the assessee.

**14.** In the result, appeal of the assessee is allowed.

**15.** Order pronounced in the open court on 13-12-2019.

Sd/-  
(O.P.MEENA)

(लेखा सदस्यतथा/ACCOUNTANT MEMBER)

Sd/-  
(SANDEEP GOSAIN)

(न्यायिक सदस्यकेसमक्ष/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 13<sup>th</sup> December, 2019/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat

