

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1957/Bang/2019</b>
<b>Assessment Year : 2016-17</b>

M/s. SLX Logistics Pvt. Ltd., 107, Salarpuria Cambridge Residency, 32/2, 1 <sup>st</sup> Cross, Someshwara Layout, Ulsoor, Bengaluru – 560 068. PAN: AAVCS0482N	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle 6(1)(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Navaneeth N Kini, CA
Revenue by	:	Shri K. Sankarganesh, JCIT (DR)

Date of Hearing	:	13-09-2021
Date of Pronouncement	:	21-10-2021

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal filed by assessee against order dated 26/06/2019 passed by the Ld.CIT(A)-6, Bangalore for assessment year 2016-17 on following grounds of appeal:

*“1. Because the learned Commissioner of Income Tax (Appeals), erred in law whilst correctly appreciating the rationale for introduction of this section to "curb the practice of closely held companies bringing in undisclosed money of promoters / directors by issuing shares at a high premium and levy tax on the same" and not*

*substantiating how this order upholding the addition / dismissal achieves the objective.*

*2. Because the learned Commissioner of Income Tax (Appeals) cites economic decisions of the business (i.e. "keeping share capital low", "breakup value and market value is high", "low cost of servicing", "premium in future", "IPO", etc.), which are not within the scope of Income Tax statute.*

*3. Because the learned Commissioner of Income Tax (Appeals), failed to recognize that the investor is a successful entrepreneur of repute and his credentials are available for verification.*

*4. Because the learned Commissioner of Income Tax (Appeals), has failed to recognize that the founder are technology entrepreneurs and not financial experts in the compilation of projections. It is fair that the founders will do the basic compilation and the Chartered Accountant / Valuer will fine tune the projections to fit into the Generally Accepted Practice of Balance Sheet, Profit & Loss Account, Cash Flow Statement, by making necessary estimation / assumptions. Bare bone compilation of projection has been submitted during the proceedings at the office of the Commissioner of Income Tax (Appeals) 6 and which is forming part of the order too.*

*5. Because the learned Commissioner of Income Tax (Appeals) has failed to appreciate that not accepting the DCF method of valuation and recommending NAV method is tantamount to rejecting the DCF method of valuation, which the assessing officer is not empowered. Reliance is placed on the decision of this Honorable Tribunal in the case of Innoviti Payment Solutions Pvt. Ltd. Vs. ITO [ITA No. 1278/Bang/2018 dated 09-01-2019]. In the event the assessing officer had an expert view on the valuation, he should have restated the financials, assumptions, rate of discounting, etc., and recomputed the valuation using DCF method.*

*6. The Honourable ITAT Delhi Bench "B" in the case of Cinestaan Entertainment (P.) Ltd. v. Income Tax Officer, Ward (6(2), New Delhi [2019] 106 taxmann.com 300 (Delhi - Trib.) has held that "If IT Act provides assessee to get valuation done from a prescribed expert as per prescribed method, then same cannot be rejected because neither Assessing Officer nor assessee have been recognized as expert under law".*

*7. Because the learned Commissioner of Income Tax (Appeals) has not appreciated that the shares have been subsequently sold to foreign investors at a higher price and the valuation done using DCF method stands justified.*

8. *Because the learned Commissioner of Income Tax (Appeals) has relied on the decision of the jurisdictional ITAT, without quoting the citation of the decision.*

9. *Because the learned Commissioner of Income Tax (Appeals), denied principles of natural justice to the assessee by disposing off the appeal, while this addition came to be dubbed as "Angel Tax" and Government of India, as part of its startup policy / ease of doing business is devising policies to mitigate the hardship of this Angel Tax.*

10. *The assessee is a startup and as on the date of filing this appeal, is recognized by Department for promotion of Industry and Internal Trade (DPIIT) and the Government of India has issued notifications substantially altering the scope of interpreting the provisions of section 56(2)(viib), including provision for the assessing officer for prior approval of the special committee set up for the purpose.*

11. *The assessee craves leave to add / alter any of the grounds of appeal before or at the time of hearing”*

**Brief facts of the case are as under:**

**2.** Assessee is a company and filed its return of income on 15/10/2016 declaring loss of Rs.76,65,790/-. The case was selected for scrutiny and notice under section 142 along with 143(2). In response to the statutory notices, representative of assessee appeared before the Ld.AO and filed requisite details as called for.

**3.** From the submissions, the Ld.AO observed that assessee allotted 500 shares of equity of Re. 1/-, face value at a premium of ₹ 1.90/- per share and 33,500 preference shares of Re.1/- face value at a premium of ₹ 190.18 per share. It was observed that assessee raised share premium over 364,66,000/- during the relevant financial year and issued shares based on share valuation report from CA which valued as per discounted cash flow method (DCF).

**4.** The Ld.AO on perusal of the share valuation report, noticed that, shares of the company was overvalued. Ld.AO asked assessee to justify, why the share premium/preference received, cannot be taxed as “income from other sources” by invoking provisions of section 56 (2) (viib) of the Act. The Ld.AO after considering the submissions of assessee, the Ld.AO was of the opinion that, the valuation only provided computation and not mentioned any other details. Ld.AO also opined that the cash flow shown in the valuation report was estimated arbitrarily, based on the projections and estimations adopted by the management and that the report has not been made by independent verification. The Ld.AO was also of the opinion that the prescribed method mentioned under 11UA has to be as per NAV (Net Asset Value). The Ld.AO held that, it was based on management feedback without any basis and ignoring past performance, growth prospects, earning capacity expansion etc., He also held that the statement was unverified and exorbitant and that the valuation had inflated the value of shares.

**5.** He thus rejected the DCF method followed by assessee and re-computed under NAV method and made addition of ₹ 64,66,000/- as “income from other sources” under section 56(2)(viib) of the Act.

Aggrieved by the order of Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

**6.** The Ld.CIT(A) upheld the addition made by the Ld.AO.

Aggrieved by the order of Ld.CIT(A) assessee in appeal before us.

We have produced submissions advanced by both sides in light of records placed for us.

7. An identical issue was considered by coordinate bench of this Tribunal in case of *M/s Town Essential Pvt.Ltd. vs CIT(A)* in ITA No.139/B/2020 assessment year 2016-17 by order dated 30/06/2021 as under:

"8. With regard to the correctness of DCF method adopted by the Assessee for valuing shares and the procedure to be followed when such method of valuation is not accepted by the AO we notice that the ITAT, Bangalore Bench in the case of *VBHC Value Homes Pvt. Ltd., Vs ITO* in ITA No.2541/Bang/2019 order dated 12-06-2020, after relying on the decision of the Hon'ble Bombay High Court in the case of *Vodafone M-Pesa Ltd Vs Pr.CIT 164 DTR 257* and decision of the ITAT, Bangalore Bench in the case of *Innoviti Payment Solutions Pvt. Ltd., Vs ITO(2019) 102 Taxmann.com 59* held as follows:-

"9. We have considered the rival submissions. First of all, we reproduce paras 11 to 14 from the Tribunal order cited by learned AR of the assessee having been rendered in the case of *Innoviti Payment Solutions Pvt. Ltd., Vs. ITO (supra)*. These paras are as follows:

"11. As per various tribunal orders cited by the learned AR of the assessee, it was held that as per Rule 11UA (2), the assessee can opt for DCF method and if the assessee has so opted for DCF method, the AO cannot discard the same and adopt other method i.e. NAV method of valuing shares. In the case of *M/s. Rameshwaram Strong Glass (P) Ltd. vs. The ITO (Supra)*, the tribunal has reproduced relevant portion of another tribunal order rendered in the case of *ITO vs. M/s Universal Polypack (India) Pvt. Ltd. in ITA No. 609/JP/2017 dated 31.01.2018*. In this case, the tribunal held that if the assessee has opted for DCF method, the AO cannot challenge the same but the AO is well within his rights to examine the methodology adopted by the assessee and/or underlying assumptions and if he is not satisfied, he can challenge the same and suggest necessary modifications/alterations provided ITA No. 2541/Bang/2019 ITA No. 37/Bang/2020 S. P. Nos. 29 and 59/Bang/2020 the same are based on sound reasoning and rationale basis. In the same tribunal order, a judgment of Hon'ble Bombay High Court is also taken note of having been rendered in the case of *Vodafone M-Pesa Ltd. vs. PCIT* as reported in 164 DTR 257. The tribunal has reproduced part of Para 9 of this judgment ITA 139 Bang 2020 but we reproduce herein below full Para 9 of this judgment.

"9. We note that, the Commissioner of Income-Tax in the impugned order dated 23rd February, 2018 does not deal with

*the primary grievance of the petitioner. This, even after he concedes with the method of valuation namely, NAV Method or the DCF Method to determine the fair market value of shares has to be done/adopted at the Assessee's option. Nevertheless, he does not deal with the change in the method of valuation by the Assessing Officer which has resulted in the demand. There is certainly no immunity from scrutiny of the valuation report submitted by the Assessee. Therefore, the Assessing Officer is undoubtedly entitled to scrutinise the valuation report and determine a fresh valuation either by himself or by calling for a final determination from an independent valuer to confront the petitioner. However, the basis has to be the DCF Method and it is not open to him to change the method of valuation which has been opted for by the Assessee. If Mr. Mohanty is correct in his submission that a part of demand arising out of the assessment order dated 21st December, 2017 would on adoption of DCF Method will be sustained in part, the same is without working out the figures. This was an exercise which ought to have been done by the Assessing Officer and that has not been done by him. In fact, he has completely disregarded the DCF Method for arriving at the fair market value. Therefore, the demand in the facts need to be stayed."*

*12. As per above Para of this judgment of Hon'ble Bombay High Court, it was held that the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a final determination from an independent valuer to confront the assessee. But the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee. Hence, in our considered opinion, in the present case, when the guidance of Hon'ble Bombay high Court is ITA 139 Bang 2020 available, we should follow this judgment of Hon'ble Bombay High Court in preference to various tribunal orders cited by both sides and therefore, we are not required to examine and consider these tribunal orders. Respectfully following this judgment of Hon'ble Bombay High Court, we set aside the order of CIT (A) and restore the matter to AO for a fresh decision in the light of this judgment of Hon'ble Bombay High Court. The AO should scrutinize the valuation report and he should determine a fresh valuation either by himself or by calling a final determination from an independent valuer and confront the same to the assessee. But the basis has to be DCF method and he cannot ITA No. 2541/Bang/2019 ITA No. 37/Bang/2020 S. P. Nos. 29 and 59/Bang/2020 change the method of valuation which has been opted by the assessee. In our considered opinion and as per report of research committee of (ICAI) as reproduced above, most critical input of DCF model is the Cash Flow Projections. Hence, the assessee should be asked to establish that such projections by the*

*assessee based on which, the valuation report is prepared by the Chartered accountant is estimated with reasonable certainty by showing that this is a reliable estimate achievable with reasonable certainty on the basis of facts available on the date of valuation and actual result of future cannot be a basis of saying that the estimates of the management are not reasonable and reliable.*

*13. Before parting, we want to observe that in the present case, past data are available and hence, the same can be used to make a reliable future estimate but in case of a start up where no past data is available, this view of us that the projection should be on the basis of reliable future estimate should not be insisted upon because in those cases, the projections may be on the basis of expectations and in such cases, it should be shown that such expectations are reasonable after considering various macro and micro economic factors affecting the business.”*

**8.** Respectfully following the above view, we remand this issue back to the Ld.AO. The Ld.AO is directed to carry necessary verification as directed hereinabove. Assessee is directed to file all relevant documents as called for support the claim. Ld.AO is then to consider the claim in accordance with law. Needless to say that proper opportunity of being heard to be granted to assessee.

**Accordingly the ground of appeal by assessee are allowed for statistical purposes.**

**In the result appeal filed by assessee allowed for statistical purposes.**

Order pronounced in the open court on 21<sup>st</sup> October, 2021

Sd/-  
**(CHANDRA POOJARI)**  
**Accountant Member**

Sd/-  
**(BEENA PILLAI)**  
**Judicial Member**

Bangalore,  
Dated, the 21<sup>st</sup> October, 2021.  
/MS/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.