

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" B " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.169/AHD/2018  
निर्धारण वर्ष/Asstt. Year: 2014-2015

K.P. Woven Pvt. Ltd., 13-B, Navbharat Society, Usmanpura, Ahmedabad-380013.  <b>PAN: AAECK6307M</b>	Vs.	I.T.O., Ward-2(1)(2) Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Ms Asthamaniar, A.R
Revenue by :	Shri R.R.Makwana, Sr..D.R

सुनवाई की तारीख / **Date of Hearing** : **29/09/2021**  
घोषणा की तारीख / **Date of Pronouncement**: **25/10/2021**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad, dated 01/01/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The assessee has raised the following grounds of appeal:

1. *The Ld.CIT(A)-2, Ahmedabad erred in law and on facts in confirming the addition made by the AO u/s.56(2) (viib) of the Act to the extent of Rs.45,52,130/-*
2. *The Ld.CIT(A)-2, Ahmedabad further erred in law and on facts in mis-interpreting the provisions of section 56(2) (viib) r.w.r. 11UA of Act.*

3. *The Ld.CIT(A)-2, Ahmedabad further erred in law and on facts in not appreciating the legislative intent behind insertion of clause (viib) to section 56(2) of the Act.*

3. The only issue raised by the assessee is that the learned CIT-A erred in partly confirming the order of the AO by treating the amount of share premium as income under the provisions of section 56(2)(viib) of the Act instead of giving full relief.

4. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of trading of flexible intermediate bulk container, woven sacks, woven fabric, multilayer films and bags, webbings, master batches, multifilament yarn etc. The assessee in the year under consideration has issued 1,56,970 equity shares @ 128 per share comprising face value of Rs. 10 and premium of Rs. 118 to groups concerns i.e. Champalal Group of Companies owned by Parekh Family and individual within the group. Accordingly the assessee has recorded the amount of share premium for Rs. 1,85,22,460/- in its books of accounts. The price of share was determined based on valuation certificate from chartered accountant namely JAGDISH HIRANI & ASSOCIATES dated 15<sup>th</sup> March 2014, who valued the share at Rs. 127.28 per share by using discounted cash flow method (DCF).

4.1 The AO during the proceedings observed that the valuer has taken projected figure of change in working capital as on 31<sup>st</sup> March 2017 at Rs. 2,36,15,000/- as against the audited figure of (-) 31,29,627/- for year ending March 2013 and projected amount of Rs. (-) 90 lakh, Rs. 24.5 lakh and Rs. 4.1 lakh respectively for year ending March 2014, 2015 and 2016. Accordingly the AO vide notice dated 05<sup>th</sup> December 2016 show cause the assessee to explain the sources of change in working capital at the end of March 2017 for Rs. 2,36,15,000/-.

4.2 The assessee in response vide letter dated 15<sup>th</sup> December 2016 submitted that it valued the share as per clause (b) of sub rule (2) of rule 11UA of the Income Tax Rule which recognize the valuation method based on DCF and submitted certificate from chartered account also to this effect. The assessee contended that

they are not in a position to comment on any of the items of certificate issued by a professional as the same was made after considering several factors. Accordingly, it was prayed if any question with respect to valuation, may be asked from CA himself.

4.3 The assessee alternatively also contended that the provision of section 56(2)(viib) was brought in the Act with the specific objective as a measure to prevent generation and circulation of unaccounted money. However in its case all the shares were issued to the family members of group i.e. 'Parekh family' and all of them are regularly assessed under the provision of the Act. Thus the question of generation and circulation of unaccounted money does not arise. Further the value of share was determined based on the recognized method prescribed under rule 11UA and such method cannot be rejected as there is no provision in the Act to reject such method.

4.4 However the AO, disregarded the contention of the assessee by observing as under:

*The reply given by the assessee is vague in nature because when the assessor itself determine the fair market value under Discounted free cash flow method, through a merchant banker or an accountant the complete responsibility cannot be shifted to the professional person who has prepared the certificate on the basis of Audited and Projected accounts of the company and the information available from the company, it is also very much pertinent to mention here that in the Annexure to the certificate given by the professional person, there is a disclaimer and confidentiality clause which says that "we have also not physically valued the assets and the liabilities of the company. Consequently, the management of the company will be solely responsible from the reasonableness and reliability of the information and explanation furnished to us." In view of the above, the assessee cannot exonerate itself from the correctness and completeness of the certificate issued by the professional person on the basis of data provided by the assessee company.*

*4.7 In view of the above discussion, the certificate produced by the assessee company is not in commensurate with the financial background, growth and profitability of the company. To bring the amount of premium of Rs. 127.28, the Chartered Accountant brought a magical hypothetical figure of Rs. 2,36,15,000/- as projections as at 31.03.2017 by way of change in working capital without any base and contrary to the facts and circumstances of the case of the assessee. Accordingly, the certificate produced by the assessee is not reliable, genuine and not based on the facts and figure of the assessee company, hence, it is not acceptable.*

*4.8 Even without being a chartered accountant also one can easily ascertain that, any increase in Asset side of the balance sheet is the result of either the profit earned during*

*the- period, gain made on sale- of assets or addition of capital only. There cannot be any isolated increase in working capital without the- corresponding, increase in liability either long term or short term, in fact, in the case under consideration, the assessee company presented a fabricated and a masked picture under the permitted valuation rule but providing a hypothetical figure, which was erroneously certified by the Chartered Accountant. Accordingly, in view of the provisions of sec. 56(2)(viib) of the income-tax act, 1961 and the entire amount of share premium received by the assessee company during the year of Rs.1,85,22,460/- is hereby added to the total income of the assessee company as income from other sources*

5. Aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the learned CIT (A) submitted that its book value of share in beginning of the year as per the method prescribed under rule 11UA (2)(a) stood at Rs. 99/- per share. Subsequently it issued new shares during the year at Rs. 128 based on valuation certificate from the accountant as prescribed under Rule 11UA(2)(b). The chartered accountant based on audited balance sheet and in consultation with management with regard to future perspective and plan valued the share as per prescribed method by using his special expertise. Hence, assessee being layman cannot be asked to explain the correctness of the certificate. Further the report prepared by the expert cannot be rejected in hasty manner, the way the AO has done. The assessee further claimed that the AO has not called any clarification in support of valuation report. As such he rejected the entire certificate only for the reason increase in working capital at the end of 31<sup>st</sup> March 2017. It was submitted that as per audited balance sheet, shareholder fund of the assessee as on 31<sup>st</sup> March 2015 was of Rs. 2,26,50,290/- which increased at Rs. 9,26,51,819/- as on 31<sup>st</sup> March 2016. Thus from the fact it proved that at the time of valuation the management was having specific plan to increase capital which can be used to finance working capital.

6.1 The assessee accordingly contended that the AO without applying his mind and giving opportunity to explain just picked one figure of valuation report prepared by an expert within the framework of law, rejected the entire report and made addition of entire premium. Even assuming valuation report was not accepted then he should have to reach at his own valuation in accordance with provision of rule

11UA(2)(a) which would have come at Rs. 95 per share. Hence he was unjustified in disallowing entire share premium. The assessee further reiterated its legal submission that the objective of the statute should also be looked.

6.2 The learned CIT (A) after considering the submission of the assessee as well assessment order was pleased to provide partial relief i.e. allowed share premium upto Rs. 89/- by observing as under:

*The "appellant company has issued 3,75,970 shares of face value of Rs.10/- at a premium of Rs.118/-. The appellant company in support of share premium has submitted CA certificate under Rule 11UA certifying the share premium of Rs.117.28 per share by discount cash flow method. The AO after considering the projection made by the CA for Financial Years 2014-15, 2015-16 & 2016-17 has concluded that projection made are far from the actual result, and therefore, rejected the CA certificate and made the addition of share premium under section 56(2)(vii)(b) of the Act. The appellant has submitted that provision of section 56(2)(vii)(b) is not applicable as share capital has been received from the group concern, and therefore, there is no intention of circulation of unaccounted money which is envisaged in the memorandum explaining the Financial Bill, 2012 at the time of insertion of new section i.e. 56(2)(vii)(b). Appellant has further submitted that it has obtained CA certificate as provided in Rule 11UA(2)(b), according to which share premium comes to Rs.117.28 per share. Appellant has also submitted that, even as per book value, the value of each share is Rs.99/-. The appellant's argument that provision of section 56(2)(vii)(b) is not applicable as subscriber of shares were members of promoter family is not tenable as section 56(2)(vii)(b) clearly states that where a company not being a company in which the public are substantially interested receives in any previous year **from any person** being a resident, any consideration for issue of shares that exceeds the face value of such share, the aggregate consideration received for such share as exceeds the fair market value of the share, is chargeable under the head 'income from other sources'. The above provision does not distinguish whether person subscribing share is a family member or outsider. As regard rejection of CA certificate issued under Rule 11UA(2)(b), the AO has given reason that estimate of projection taken by CA is far from the actual result. I agree with the AO's reasoning, and therefore, uphold the rejection. However, the value of share even as per book is Rs.99/- per share as under:-*

Particulars	Amount (Rs.)	Amount (Rs.)
Total Assels	105,208,691	
Less : Preliminary Expenses	268,592	
Less: Mat Credit Entitlement	<b>268,592</b>	
Less: Advance Tax	105,208,691	
<b>A = Book value of Assets</b>		104,940,099
Total Liabilities		
Less: Paid up capital	240,000	
Less: Reserve & Surplus	2,044,336	102,573,617
Less: Provision for taxation	350,738	240,000
Less: Provision for unascertained liabilities	2,635,074	<b>1099</b>

<i>Less: Deferred</i> <i>L = Book value of Liabilities</i> <i>PE = Total amount of paid up capital</i> <i>PV = Paid up value of such share capital</i> <i>Book value as on 31.3.13</i> $\frac{L(A-L)}{PE * PV}$		
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2.4. In view of the above, the share premium to the extent of Rs.89/- is justified. The AO has made disallowance of entire share premium which is against the rules and provisions of section 56(2) (viib). AO is therefore directed to allow share premium @ 89/- per share on total share of 1,56,970/- which comes to Rs.1,39,70,330/-. Balance amount of Rs.45,52,130/- is **confirmed** u/s. 56 (2) (viib).

7. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

8. The learned AR before us filed paper book running from pages 1 to 94 and submitted that the shares have been issued on the amount of premium which was determined by a qualified chartered accountant as required under the provisions of rule 11 UA(2)(b) of Income Tax Rule. The same cannot be disturbed by the AO. In this connection the AR relied on the judgment of Hon'ble Bombay High Court in the case of Vodafone M-Pesa Ltd. reported in 256 Taxman 240 and order of Hon'ble Jaipur tribunal in case of Rameshwaram Strong Glass (P.) Ltd reported in 172 ITD 571.

8.1 The learned AR further submitted that the project report which was used by the chartered accountant in the valuation of shares was not furnished before the authorities below. Accordingly, the learned AR before us filed such project report and requested to restore the issue to the file of the AO for fresh adjudication in accordance with the provisions of law after considering such project report.

8.2 The learned AR, without prejudice to the above, also made one alternate contention by submitting that the fair market value of shares can be also be decided by any other method subject to the satisfaction of the AO as provided under clause (a)(ii) of explanation to section 56(2)(viib) of the Act. Accordingly, the learned AR

before us pleaded that the matter can be set aside to the AO with the liberty to the assessee to satisfy the AO under clause (a)(ii) of explanation to section 56(2)(viib) of the Act by filing the necessary documents.

9. On the contrary, the learned DR raised no objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

10. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case the assessee has issued shares at a premium of Rs. 118/- per-share which was reduced to Rs. 89/- per-share by the learned CIT (A). Accordingly, the relief was given by the AO in part to the assessee.

10.1 Now the 1<sup>st</sup> controversy arises for our adjudication whether the AO can disturb the valuation of shares determined by the qualified chartered accountant. In this regard we find that there are series of judgments which says that the valuation of shares is being a technical subject, the AO cannot reject the same. In holding so we draw support and guidance from the judgment of Hon'ble Bombay High Court in case of Vodafone M-Pesa Ltd. (supra) where it was held as under:

*The Commissioner in the impugned order does not deal with the primary grievance of the assessee. 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.*

10.2 However, we find that it was the duty of the assessee to furnish the necessary details based on which the fair market value of the shares was prepared. But in the case before us we find that the assessee has not filed the project report based on which the valuation of shares was determined by the qualified chartered accountant. However, the same has been filed before us with the prayer to restore the issue to

the file of the AO for fresh adjudication. To our mind, it is necessary for the authorities below to consider the impugned project report for determining the market value of the shares so that the amount of premium could be justified.

10.3 Besides the above, we also note that the alternate contention raised by the assessee for determining the fair value of shares on the basis of the method as provided under clause (a)(ii) of explanation (a) to section 56(2)(viib) of the Act subject to the satisfaction of the AO, is a legal contention. Therefore we admit the same and restore the issue to the file of the AO for making the denovo assessment as per the provisions of law and in the light of the above stated discussion. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

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

**Order pronounced in the Court on 25/10/2021 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)  
25/10/2021**