

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.9/Bang/2020
Assessment Year: 2016-17

ITO Ward-1(1)(3) Bangalore	Vs.	M/s. Bangalore Paints Ltd. No.20, 3 rd Floor, 6 th Cross, 8 th Main Vasanthnagar Bengaluru-560052 PAN NO : AAACB6085B
APPELLANT		RESPONDENT

C.O. No.11/Bang/2020 (Arising out of ITA No.9/Bang/2020)
Assessment Year : 2016-17

M/s. Bangalore Paints Ltd. No.20, 3 rd Floor, 6 th Cross, 8 th Main Vasanthnagar Bengaluru-560052	Vs.	ITO Ward-1(1)(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Priyadarshini Besaganni, D.R.
Respondent by	:	Shri Narendra Kumar Jain, A.R.

Date of Hearing	:	10.11.2021
Date of Pronouncement	:	11.11.2021

ORDER

PER BENCH:

The appeal of the revenue and the cross objection filed by the assessee are directed against the order dated 18.10.2019 passed by

Ld. CIT(A)-1, Bengaluru and they relate to the assessment year 2016-17.

2. The revenue is challenging the decision of Ld. CIT(A) in deleting the addition of Rs.3.75 crores made by the A.O. u/s 56(2)(viib) of the Income-tax Act,1961 [‘the Act’ for short]. In the cross objection, the revenue is contesting the validity of addition made by the A.O. u/s 56(2)(viib) of the Act. However, at the time of hearing, the Ld. A.R. did not press the cross objection and accordingly the same is dismissed as not pressed.

3. The facts relating to the issue contested by the revenue, viz., addition made u/s 56(2)(viib) of the Act are stated in brief. The assessee is engaged in the business of manufacture of paints. During the year under consideration, the assessee issued 75,000 equity shares of Rs.100/- each at a premium of Rs.567/- per share. Accordingly, the assessee received share premium of Rs.4,25,25,000/-. The assessee submitted a valuation report obtained from a Chartered Accountant, who had computed fair market value of shares under discounted free cash flow (DCF) method. The valuer has computed the fair market value of shares at Rs.665/- per share. We have earlier noticed that the assessee has issued shares at Rs.667/- (Face value of Rs.100/- + premium of Rs.567/-).

4. The A.O. did not accept valuation report submitted by the assessee on the reasoning that the cash flow projected by the company in share valuation report was not supported by evidences. Accordingly, he proceeded to determine the fair market value under “Net Asset Value” (NAV) method and determined the value of share at Rs.165/- per share. Accordingly, he held that the excess share premium of Rs.3,75,00,000/- collected by the assessee is

assessable u/s 56(2)(viib) of the Act. Accordingly, he assessed the above said amount in the hands of the assessee.

5. Before Ld. CIT(A), the assessee furnished details showing that the projected sales shown the valuation report matches with the actual sales achieved by the assessee. It was further submitted that the A.O. is not entitled to change the method of valuation of the shares adopted by the assessee. In this regard, the assessee placed reliance on the decision rendered by Tribunal in the following cases:-

- *Innoviti Payment Solutions (P) Ltd. v Income-tax Officer, Ward-3(1)(1), Bengaluru (2019) 102 taxmann.com 59 (Bangalore – Trib).*
- *Rameshwaram Strong Glass (P) Ltd. Vs. ITO (2018) 96 taxmann.com 542 (Jaipur-Trib).*
- *Deputy Commissioner of Income Tax v OzonelandAgro Pvt. Ltd. [TS-6963-ITAT-2018(Mumbai)-O], (2018) 64 ITR 6 (Mumbai).*
- *India Today Online Pvt. Ltd. v ITO, Ward 12(2), New Delhi (TS-130-ITAT-2019 (DEL)).*

The Ld. CIT(A) was convinced with the contentions of the assessee and accordingly deleted the disallowance with the following observations:-

“4.3.3 In view of the above submissions, particularly considering the fact that the appellant's actual turn-over is more than the projected sales considered for the purposes of valuation of the shares under DCF method, I am of the view that the valuer has done the valuation reasonably based on the various prime factors of business and the market in which the appellant is trading. From the above submissions, it is seen that the AO has not brought on record any solid ground to reject the DCF method. Whereas the appellant has rebutted the findings of the AO in the impugned order, particularly in respect of the following:

- *Appellant being a 40 yearold company (engaged in rendering of services of applying the paints along with manufacturing of paints which is called as 'Supply and Apply' model) is a profitmaking company with a steady flow of orders from embassy group of real estate company. Therefore, the investment has resulted in a forward integration, with its customer becoming an investor. Considering the growth and profitability of the Appellant, the investor infused funds amounting to Rs.500.25 lakhs to get good returns there from.*
- *The actual sales are more than the projected sales (adopted for DCF)*

- *Appellant is not a start-up*
- *Sales and profit numbers adopted and other growth factors of Cash Flow Projections, (Under this step, the Valuer has taken the actual figures of AY 2014-15 as base and considered fair estimates taking revenue growth rate of around 30% for five years starting from FY 2015-16 to FY 2019-20.), Discount Rate, Terminal Value, are supported by the financial data of the company.*
- *The Appellant has exercised their right conferred on it by law while adopting the FMV of Rs 665 per share as per DCF method for valuation of unquoted equity shares. The AO without pointing any valid defects in the DCF method and the basis thereof, changing the same or adopting a different method is beyond the powers conferred on him.*
- *The Appellant has submitted Bank Statements and income tax return of investor to demonstrate that the funds received were from disclosed sources and genuine in nature. The learned AO also had not disputed the genuineness of the investment and accepted the same.*

4.3.4 Considering all the above, I am of the view that the findings of the AO in rejecting the DCF method on wrong findings of fact, discussed supra, is improper. Accordingly, the action of the AO in treating the share premium received as income by invoking the provisions of Section 56(2)(viib) of the Act, is not justified, hence the same is deleted.”

Aggrieved by the order passed by the Ld. CIT(A), the revenue has filed this appeal before us. The revenue is also contending that there is violation of Rule 46A, since the Ld CIT(A) has accepted additional evidences and did not give opportunity to the assessing officer to examine those evidences.

6. We heard the parties and perused the record. We notice that the A.O. has changed the method of valuation of shares to “NAV method” as against DCF method adopted by the assessee. In the case of Innoviti Payment Solutions Pvt. Ltd. (supra) the coordinate bench has held that the A.O. is not entitled to change the method of valuation adopted by the assessee and A.O. can scrutinize the valuation report and he can determine afresh valuation offered by

himself or by offering a determination from an independent valuer to confront the assessee, but the basis has to be the method that was adopted by the assessee.

7. We notice that the Ld. CIT(A) has examined the valuation report furnished by the assessee under DCF method. However, we notice that the Ld CIT(A) has granted relief to the assessee by considering only actual sales and projected sales. He has not examined the reasonableness of discounting factor; the terminal value adopted by the assessee and other items mentioned in the projected financial statements. In our view, the entire aspects of the valuation report should have been examined by the Ld. CIT(A) before coming to the conclusion that the valuation adopted by the assessee was correct. Hence we are unable to approve the order of Ld CIT(A) passed on this issue.

8. We have noticed earlier that the AO has not examined the valuation report furnished by the assessee. We have also held that the AO cannot change the method of valuation adopted by the assessee. We have also noticed that the Ld CIT(A) has also not fully examined all aspects of the valuation report. Under these set of facts, we are of the view that this issue requires fresh examination at the end of the assessing officer with regard to the aspects other than the projected turnover. Accordingly, we set aside the order passed by Ld. CIT(A) and restore this issue to the file of the A.O. with the direction to examine the valuation report furnished by the assessee with regard to the discount factor and terminal value and any other items mentioned in the valuation report and take appropriate decision in accordance with law. The assessee should be provided with adequate opportunity of being heard. Since the issue is restored to the file of AO, the contention of violation of Rule 46A does not require adjudication.

9. In the result, the appeal filed by the revenue is treated as allowed and the cross objection filed by the assessee is dismissed.

Order pronounced in the open court on 11th Nov, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 11th Nov, 2021.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.