

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकरअपील सं./ I.T.A. No.5074/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2016-17)

<b>ACIT – 2(1)(1),</b> R. No. 561, 5 <sup>th</sup> floor Aaykar Bhavan, M. K. Road Mumbai-400 020	<b>बनाम/</b> <b>Vs.</b>	<b>M/s Airpay Payment Services Pvt. Ltd.</b> 104, Vithaldas Chambers Mumbai Samachar Marg Fort, Mumbai-400 023
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAKCA-4619-A</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Shri Mehul Jain- Ld. Sr. DR
<b>Assessee by</b>	:	Shri S.C.Tiwari – Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	16/11/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	23/11/2021

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income-Tax (Appeals)-4, Mumbai [in short CIT(A)] dated 15/05/2019 in the matter of assessment framed by Ld. AO u/s 143(3) on 24/12/2018. The sole ground raised by the revenue read as under:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT erred in holding that the valuation of shares submitted by the assessee is quite realistic and allowed the appeal of the assessee without appreciating the facts in relation to flaws pointed out by the Assessing Officer in the valuation report submitted by the assessee for issue of shares at an exorbitant and unjustified premium."

2. Having heard rival submissions and after going through the orders of lower authorities, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

### **Assessment Proceedings**

3. The material facts are that the assessee being resident corporate assessee is stated to be engaged in the development of software which enables transaction processing using debit /credit cards and net banking. During the year, the assessee issued 2,15,908 Equity shares of Rs.10/- each at a premium of Rs.210/- per share to Mr. Rakesh Jhunjunwala. The premium thus aggregated to Rs.453.40 Lacs. The Ld. AO, invoking the provisions of section 56(2)(viib), opined that the shares were issued for a consideration that exceeds the fair market value of such shares and therefore, the excess premium charged by the assessee would be taxed as income from other sources. In support of quantum of share premium, the assessee furnished valuation report from Chartered Accountant which is placed on page nos.31 to 33 of the paper-book. While valuing the shares, the valuer adopted discounted cash flow method (DCF) by adopting discounting rate of 15% and terminal growth rate of 5% perpetually after the projected year. The valuation was arrived at Rs.220/- per share. However, upon perusal of the valuation report, Ld. AO opined that the future cash flow as certified by the management was adopted by the valuer and no verification of the projections and assumptions was made by the Chartered Accountant. Therefore, the cash flows were determined arbitrarily and there was no proper and scientific valuation of shares. While valuing the shares, various factors were to be considered as per the recommendation of the technical guide

on share valuation as issued by the institute of Chartered Accountants of India (ICAI). The DCF method employed by the valuer was as per whims & fancies of the management to arrive at higher value to issue shares at huge premium. The assessee defended the valuation, inter-alia, by submitting that the valuation report was prepared as per prescribed DCF method after due deliberations with the management. However, rejecting assessee's submissions, Ld. AO added the premium amount of Rs.453.40 Lacs to the income of the assessee as per the provisions of Section 56(2)(viib) of the Act. Aggrieved, the assessee preferred further appeal before learned first appellate authority.

### **Appellate Proceedings**

4.1 During appellate proceedings, the assessee assailed the action of Ld. AO by way of elaborate written submissions which has already been extracted in the impugned order. The assessee submitted that the observations made by Ld. AO were unsupported by facts whereas the cash flows taken by valuer were after considering all relevant facts. The estimates were made after considering all the relevant information and available data at the time of valuation. The Rule 11UA(2) of Income Tax Rules provide an option to assessee to value the shares either by the method prescribed in rule 11UA(2)(a) i.e. NAV method or in terms of rule 11UA(2)(b) i.e. DCF method as determined by merchant banker or Chartered Accountant. Therefore, Ld. AO was not justified in rejecting the valid option exercised by the assessee. Reliance was placed on various judicial pronouncements to assail the additions as made by Ld. AO.

4.2 The Ld. CIT(A), at the outset noted that similar type of addition with similar facts was made by Ld. AO during financial year 2015-16 which

was deleted by first appellate authority. The bench has been informed that the issue has attained finality in that year since the revenue's appeal was dismissed by the Tribunal due to low tax effect. It was observed in the first appellate order for financial year 2015-16 that Ld. AO rejected the valuation report without any concrete or specific findings. The valuation of shares was in accordance with Rule 11UA(2)(b) and the projections were based on data available at the time of valuation and therefore, the additions were not sustainable.

4.3 It was further observed by Ld. CIT(A) that the ratio of decision of Tribunal in **M/s Vaani Estates Private Ltd. V/s ITO (ITA No.1352/Chny/2018)** was also applicable wherein it was held that the provision of Sec.56(2)(viib) were introduced to deter the generation and use of unaccounted money. Further, the Tribunal in **M/s Enterprises Business Solutions Pvt. Ltd. V/s ACIT (ITA No.666/Asr/2017)** held that the fair market value of the shares was to be determined in accordance with Rule 11UA which provide an option to the assessee to value the shares as per DCF method.

4.4 In the above background, the impugned additions were deleted against which the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. Upon careful consideration of material facts, we find that the assessee has commanded a premium of Rs.210/- per share during the year. The valuation of the shares has been justified on the basis of valuation report of Chartered Accountant. While valuing the shares, the valuer has adopted DCF method of valuation which would involve estimation of future cash flows, discount rate and terminal value. Naturally this exercise would have certain element of estimation or

subjectivity and it would not be fair to assume that the actual data would match with the estimated data. Under DCF method, further cash flows generated out of the business would be discounted to arrive at net present value of these cash flows. The methodology would certainly require estimation of revenues, expenditure and cash projections and would involve estimations and assumptions. Therefore, the actual result may not be in line with the valuation made on the basis of assumptions / estimation. Hence, there is clear fallacy in the observation of Ld. AO that the valuation was to be rejected merely because the estimated cash flows were accepted without any verification. Nevertheless, quite clearly Rule 11UA(2)(b) provide an option to the assessee to determine the fair market value of shares as per valuation of Merchant Banker or Chartered Accountant by adopting DCF method and this method is one of recognized method under law. Such an exercise has been done by the valuer and the same is not shown to be perverse in any manner. The valuation has been done by a qualified Chartered Accountant and Ld. AO has rejected the same on mere assumptions or without any concrete material on record. No efforts have been made to arrive at realistic valuation of shares. Merely because the cash flows were estimated by the management and the same were accepted by the valuer would not vitiate the valuation unless some material or exercised was carried out by Ld. AO to show that the premium charged by the assessee was excessive in nature. It is trite law that no addition could be made merely on the basis of assumptions, surmises or mere conjectures. Therefore, disturbing the valuation, without any cogent reasons, could not be held to be justified. We further find that the primary object of insertion of Sec. 56(2)(viib) was to tax excessive share premium received unjustifiably by

private companies on issue of shares without carrying underlying value. The intent of the provision was to deter the generation and use of unaccounted money. However, there are no such allegations against the assessee since the provisions of Section 68 has not been invoked by Ld. AO.

6. Our aforesaid findings are duly supported by the binding judicial pronouncement of Hon'ble Bombay High Court in the case of **Vodafone M-Pesa Ltd. V/s PCIT (2018) 92 taxmann.com 73 (Bombay)**, wherein it was held that there was no immunity from scrutiny of the valuation report and AO was 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. Similarly is the ratio of decision of Hon'ble Madras High Court in **CIT V/s VVA Hotels (P) Ltd. (2020) 122 taxmann.com 106**.

The Hyderabad Tribunal in **DQ (International) Ltd. V/s ACIT (2016) 72 taxmann.com 142** held that projections could not be replaced with actuals down the line. The valuation will go either way. When it goes to north, the revenue may adopt the same and when it goes to south, the assessee may adopt and therefore, there won't be any consistency. What is important is the value available at the time of making business decision. It should be left to the wisdom of the businessman. The method adopted should be consistent and should be documented to review in the future. The review does not mean replacing the projection with actuals. It is the rational of adopting the values for making decision at the point of time of making decision. When the values are replaced

subsequently, it is not valuation but evaluation i.e. moving the post of result determined out of projections.

7. Drawing strength from the above cited judicial precedents, we confirm the appellate order and dismiss the appeal of the revenue.

8. Finally, the appeal stand dismissed.

*Order pronounced on 23<sup>rd</sup> November, 2021.*

**Sd/-**

**(Mahavir Singh)**

**उपाध्यक्ष / Vice President**

**Sd/-**

**(Manoj Kumar Aggarwal)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated :23/11/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**