

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI****BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 6173/DEL/2019 (A.Y 2015-16)**

Dayalu Iron & Steel Pvt. Ltd. Plot No. 1002, Shiv Colony Near Talab, Old Faridabad, Haryana, <b>PAN No. AAECD4434C (APPELLANT)</b>	Vs	ITO Ward-1(2) Faridabad, Haryana  <b>(RESPONDENT)</b>
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**I.T.A. No. 6174/DEL/2019 (A.Y 2015-16)**

Dayalu Fashions Pvt. Ltd. 1066, Baba Nagar, Near Janta Barat Ghar, Old Faridabad,  <b>PAN No. AAECD4434C (APPELLANT)</b>	Vs	ITO Ward-1(2) Faridabad, Haryana  <b>(RESPONDENT)</b>
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**I.T.A. No. 6184/DEL/2019 (A.Y 2015-16)**

Devesh Cinemas FF-9, Vishnu Place, Near Neelam Flyover, Sector-20B, Faridabad, Haryana <b>PAN No. AAECD4433 (APPELLANT)</b>	Vs	ITO Ward-2(1) Faridabad, Haryana  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Rajiv Saxena, Adv and Ms. Sumangla Saxena, Adv,</b>
<b>Respondent by</b>	<b>Sh. Sanjay Kumar, Sr. DR</b>

<b>Date of Hearing</b>	<b>18.05.2022</b>
<b>Date of Pronouncement</b>	<b>12.07.2022</b>

**ORDER****PER YOGESH KUMAR U.S., JM**

These three appeals have been filed by the assessee against the order dated 29/03/2019 passed by CIT(A)- Faridabad, for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

**I.T.A. No. 6173/DEL/2019 (A.Y 2015-16)**

*“1. The Ld. CIT(A) has erred in law as well as on facts in confirming the assessment framed by Ld. AO u/s 143(3) of the Income Tax Act’ 1961.*

*2. The Ld. CIT (A) has erred in law as well as on facts in confirming the addition of Rs. 12,00,000/- u/s 68 of the Act on account of alleged unexplained share premium and share capital.*

*3. The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by sum of Rs. 76,00,000/- u/s 251(1) of the Act by invoking section 56(2)(viib) of the Act wherein rejecting the valuation method taken by appellant assessee.*

*4. The Ld. CIT (A) has erred in law as well as on facts in enhancing the income of appellant assessee by not issuing valid show cause notice as mandated.*

*5. The Ld. CIT(A) has erred in law as well as on facts in confirming and enhancing the addition without giving cogent reasons and by recording incorrect facts and by disregarding the all the documentary evidences furnished by assessee.*

6. That, the appellant craves leave to add, alter, amend or withdraw all or any ground either before or during the hearing of these grounds.

It is prayed that it be held that additions/disallowance are not in accordance with law and therefore, the addition so made may kindly be deleted and appeal of the appellant may kindly be allowed.

**I.T.A. No. 6174/DEL/2019 (A.Y 2015-16)**

“1. The Ld. CIT(A) has erred in law as well as on facts in confirming the assessment framed by Ld. AO u/s 143(3) of the Income Tax Act 1961.

2. The Ld. CIT(A) has erred in law as well as on facts in confirming the addition of Rs. 12,00,000/- u/s 68 of the Act on account of alleged unexplained share premium and share capital.

3. The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of the appellant assessee by sum of Rs. 5 Lacs u/s 251(1) of the Act by invoking the provision of section 68 of the Act.

4. The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by sum of Rs. 73,12,500/- acting ultra virus to statutory limitation of enhancement powers u/s 251 of the Act is ab initio void and fundamentally flawed action.

5. The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by sum of Rs. 73,12,500/- by invoking section 56(2)(viib) of the Act wherein

*rejecting the valuation method taken by appellant assessee.*

6. *The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by not issuing valid show cause notice as mandated.*

7. *The Ld. CIT(A) has erred in law as well as on facts in confirming and enhancing the addition without giving cogent reasons and by recording incorrect facts and by disregarding the all the documentary evidences furnished by assessee.*

8. *That, the appellant craves leave to add, alter, amend or withdraw all or any ground either before or during the hearing of these grounds.*

*It is prayed that it be held that addition of Rs. 85,12,500/- is not in accordance with law and therefore, the addition so made may kindly be deleted and appeal of the appellant may kindly be allowed.*

**I.T.A. No. 6184/DEL/2019 (A.Y 2015-16)**

*"1. The Ld. CIT(A) has erred in law as well as on facts in confirming the assessment framed by Ld. AO u/s 143(3) of the Income Tax Act' 1961.*

*2. The Ld. CIT (A) has erred in law as well as on facts in confirming the addition of Rs. 38,00,000/- u/s 68 of the Act on account of alleged unexplained share premium and share capital.*

*3. The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by sum of Rs. 66,00,000/- u/s 251(1) of the Act by invoking section 56(2)(viib) of the Act wherein rejecting the valuation method taken by appellant*

*assessee.*

*4. The Ld. CIT (A) has erred in law as well as on facts in enhancing the income of appellant assessee by not issuing valid show cause notice as mandated.*

*5. The Ld. CIT(A) has erred in law as well as on facts in confirming and enhancing the addition without giving cogent reasons and by recording incorrect facts and by disregarding the all the documentary evidences furnished by assessee.*

*6. That, the appellant craves leave to add, alter, amend or withdraw all or any ground either before or during the hearing of these grounds.*

*It is prayed that it be held that additions/disallowance are not in accordance with law and therefore, the addition so made may kindly be deleted and appeal of the appellant may kindly be allowed.*

3. In all the above three appeals, the assessee is aggrieved by the order passed by CIT(A) in confirming the addition on account of share capital receipt from share holders to the tune of Rs. 12,00,000/-, 12,00,000/- and Rs. 38,00,000/- respectively. Further, the Ld.CIT(A) has enhanced the income of the assessee by sum of Rs. 73,12,500/-, 73,12,500/- and 66,00,000/- u/s 251(1) of the Act by invoking Section 56(2) (viib) of the Act vide order dated 29/03/2019.

4. Aggrieved by the same, the assessee has preferred the above three appeals. Since similar questions raises for consideration, the above appeals are heard together.

5. There is a delay in filing the appeal, the assessee has filed an application for condonation of delay, we have heard on the said applications. Considering the days of delay involved in the matter, the Ld. DR submitted that, he has no objection for condoning the delay. For the reason stated in the application, the delay of 49 days in filing the appeal is condoned.

**I.T.A. No. 6173/DEL/2019 (A.Y 2015-16)**

6. Brief facts of the case are that, return declaring income of Rs. 5,95,220/- was e-filed by the assessee on 13/09/2015 and the same was processed u/s 143(1) of the Act. The case was selected for limited scrutiny under CASS to verify large share premium received during the year. The representative of the assessee participated in the proceedings and produced the financial statement of the assessee company like audit report, balance sheet, profit and loss account, computation of income and other annexures to balance sheet.

7. The assessment order came to be passed on 31/1/2/2017 by making an addition of Rs. 95,00,000/- u/s 68 of the Act for share allotted to the share holders on premium, by computing the total assessed income of the assessee at Rs.1,00,95,220/- as against the return income of Rs.5,95,220/-. As against the assessment order dated 31/12/2017, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) partly allowed the appeal on 29/03/2019, by sustaining an addition of Rs. 12,00,000/- u/s 68 of the Act on account of unexplained share premium and share capital and also enhanced the income of the assessee by Rs. 76,00,000/- u/s 251(1) of the Act by invoking Section 56(2) (viib) of the Act by rejecting the valuation method adopted by the assessee.

8. Aggrieved by the order dated 29/03/2019, the assessee has preferred the present appeal in ITA No. 6173/Del/2019 on the grounds mentioned above.

9. The Ld. Counsel for the assessee submitted that, the assessee company to revive the business activities arranged funds/capital to be invested in the business, during the Financial Year 2014-15 relevant to Assessment Year 2015-16 allotted 1,90,000/- equity shares Rs. 10 per shares at premium of Rs. 40 per share to 7 entities. During the assessment proceedings in order to prove, the genuineness of the transaction and source of the funds, the assessee has provided details of the investors in responses to notice u/s 142(1) of the act. The assessee has provided certificate of incorporation and Memorandum of Association and Article of Association independent auditors report, balance-sheet, profit and loss account along with notes to financial statements. The assessee has also provided details of ITR and computation of income, bank book and statement, ledger account of the bank book in the books of the assessee company and also provided valuation report under Rule 11UA (2)(b) of Income Tax Rules from the chartered accountant as per discount cash flow method. Further submitted that, the Ld. A.O and the CIT(A) have failed to consider the documents produced by the assessee, once the initial burden of the assessee of providing the documents to prove identity, creditworthiness and genuineness of the transaction same cannot be denied in the absence of any material contrary brought by the authorities. Further submitted that, the Ld.CIT(A) committed grave error in applying Section 56 (2)(viib) of the Act by enhancing the income without providing an opportunity u/s 251(1) of the Act. The authorities below ought not to have rejected the valuation report of the shares as per statutory rule 11 UA(2)(b) of the IT Rules. Ld. Counsel for the assessee has relied on various decisions rendered by the Tribunal to Hon'ble Supreme Court of India.

10. Per contra, the Ld. DR submitted that, the assessee has failed to prove the creditworthiness of the share holders and the assessee has not explained the share premium and share capital. Further submitted that, the order of the Lower Authorities requires no interference and relied on the same.

11. We have heard the parties perused the material available on record and gave our thoughtful consideration. Ground No. 1 & 6 are general in nature which requires no adjudication.

**Ground No. 2 to 5**

12. The Ld. A.O while making an addition u/s 68 of the Act raised question over the nature of the transaction source of funds invested. Further held that, the investor companies do not have produced creditworthiness to fund the assessee company which has been confirmed by the CIT(A) and the CIT(A) has also rejected the valuation report. The assessee in response to notice u/s 142 has produced following documents which have been also in the paper book before us:-

<b>Particulars</b>	<b>Page No of paper book</b>
Certificate of Incorporation and MOA & AOA	<b>1-34</b>
independent Auditor's Report, Balance Sheet as at 31.3.2015, Profit & Loss Account for the year ended March 31, 2015 along with notes to financial statement for the year ended March 31, 2015.	<b>35-47</b>
Copy of acknowledgement of Income Tax Return along with ITR 6 and ! Computation of Income	<b>48-82</b>
Bank book and Bank statement for the period from 1.4.2014 to 31.3.2015	<b>83-84</b>
Ledger account of the bank book in the books of the appellant company	<b>85</b>
Valuation Report under Rule 11UA(2)(b) of the Income Tax Rules, 1962 from ! the Chartered Accountant as per Discounted Cash Flow Method.	<b>86-89</b>

13. On going through the order of A.O and Ld.CIT(A) it is found that the authorities have just brush aside the documents produced by the assessee and

without making any enquiry about authenticity of the documents furnished and without bringing any material or making enquiry came to conclusion that the assessee company is not worth enough to fetch the share premium of Rs. 76,00,000/-. The authorities below without verifying the veracity of the documents from the publically available data on the web site of MCA IT Department. Once the assessee provided the names, addresses and Pan, particulars and ROC details of the investors. The Ld. A.O ought to have made further enquiry. Once the assessee furnishes the documents to prove the identity, creditworthiness and genuineness of the transaction. The same cannot be denied in the absence of material contrary brought by the Assessing Officer.

14. The Hon'ble Supreme Court in the case of CIT Vs. Lovely Export Pvt. Ltd. reported in 319 ITR 5 (ST) observed that even if the share capital money is received by the assessee from alleged bogus share holders, whose names are given to the A.O. The Department is free to proceed to reopen their individual assessment in accordance with law. But cannot regarded undisclosed income of the assessee Company. The present case, the assessee has substantially provided materials to prove the genuineness of the share holders apart from giving the Pan Card, name and ROC details. In our considered opinion, the Ld.CIT(A) has erred in confirming the addition of Rs. 12,00,000/- u/s 68 of the Act on account of unexplained share premium and share capital.

15. Further, the Ld. CIT (A) has rejected the valuation report of the assessee, wherein premium charge of Rs. 40 on each share under Rule 11UA has been found to be without basis and while doing so the CIT(A) has relied on decision of the Coordinate Bench of this Tribunal in the case of Agro Portfolio Pvt. Ltd. vs. ITO 2018, 171/ITD/74 DEL. The decision made in Agro Portfolio Pvt. Ltd. (supra) has been considered by the Coordinate bench of this Tribunal in the case of Cinestan Entertainment (P). Ltd. Vs. ITO for AY 2015-16 dated

27/05/2019, wherein it is held that the Assessing Officer cannot examined or substituted its own value in place of valuation arrived by the assessee either DCF Method or NAV Method, the commercial expediency has to be seen from the point view of businessman. Further held that if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law. The relevant portion are hereunder:-

*“28. Now what we are required to examine whether under these facts and circumstances Assessing Officer after invoking the deeming provision of Section 56(2)(vii) could have determined the fair market value of the premium on shares issued at Nil after rejecting the valuation report given by the Chartered Accountant on one of the prescribed methods under the rules adopted by the Valuer. Before us, learned counsel, Mr. Dinodia, first of all had harped upon the spirit and intention of the Legislature in introducing such a deeming provision and submitted that such a provision cannot be invoked on a normal business transaction of issuance of shares unless it has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money. His main contention was that, being a deeming fiction, it has to be strictly interpreted and there is no mandate to the Assessing Officer to arbitrarily reject the valuation done by the assessee on his own surmises and whims. We are in tandem with such a reasoning of the Id. Counsel, because the deeming fiction not only has to be applied strictly but also have to be seen in the context in which such deeming provisions are triggered. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of*

*Dilip Kumar & Sons (supra) that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most beneficial to the assessee should be adopted. Viewed from such principle, here is a case where the shares have been subscribed by unrelated independent parties, who are one of the leading industrialists and businessman of the country, after considering the valuation report and future prospect of the company, have chosen to make investment as an equity partners in a 'start-up company' like assessee, then can it be said that there is any kind of tax abuse tactics or laundering of any unaccounted money. It cannot be the unaccounted or black money of investors as it is their tax paid money invested, duly disclosed and confirmed by them; and nothing has been brought on record that it is unaccounted money of assessee company routed through circuitous channel or any other dubious manner through these accredited investors. If such a strict view is adopted on such investment as have been done by the Assessing Officer and by ld. CIT(A), then no investor in the country will invest in a 'start-up company', because investment can only be lured with the future prospects and projection of these companies.*

29. Now, whether under the deeming provision such an investment received by the assessee company be brought to tax. The relevant provision of Section 56 for the sake of ready reference is reproduced hereunder: [www.taxguru.in](http://www.taxguru.in) I.T.A. No.8113/DEL/2018 "Income from other sources. 56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E. (2) In particular, and without prejudice to the

*generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :— (i)..... (viiib) “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 shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares: Provided that this clause shall not apply where the consideration for issue of shares is received— (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf Explanation—For the purposes of this clause, — (a) the fair market value of the shares shall be the value - (i) as may be determined in accordance with such method as may be prescribed: or ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;” Further, as per clause (i) of the Explanation as reproduced above, the FMV is to be determined in accordance with such method as may be prescribed. Clause (ii) admittedly is not applicable on the facts of the assessee’s case. The method to determine the FMV is further provided in Rule 11UA(2). The relevant extract of the applicable rules is reproduced below: “11UA. [(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,— (2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of*

*unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date. of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:— (b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.”*

*30. Ergo, the assessee has an option to do the valuation and determine the fair market value either on DCF Method or NAV Method. The assessee being a ‘start-up company’ having lot of projects in hand had adopted DCF method to value its shares. Under the DCF Method, the fair market value of the share is required to be determined either by the Merchant Banker or by the Chartered Accountant. The valuation of shares based on DCF is basically to see the future year’s revenue and profits projected and then discount the same to arrive at the present value of the business.....*

*.....*

*31. ....*

*32. What is seen here is that, both the authorities have questioned the assessee’s commercial wisdom for making the investment of funds raised in 0% compulsorily convertible debentures of group companies. They are trying to suggest that assessee should have made investment in some instrument which could have yielded return/ profit in the revenue projection made at the time of issuance of shares, without understanding that strategic investments and risks are undertaken for appreciation of capital and larger returns and not simply dividend and interest. Any businessman or entrepreneur, visualise the business based on certain future*

*projection and undertakes all kind of risks. It is the risk factor alone which gives a higher return to a businessman and the income tax department or revenue official cannot guide a businessman in which manner risk has to be undertaken. Such an approach of the revenue has been judicially frowned by the Hon'ble Apex Court on several occasions, for instance in the case of SA Builders, 288 ITR 1 (SC) and CIT vs. Panipat Woollen and General Mills Company Ltd., 103 ITR 66 (SC). The Courts have held that Income Tax Department cannot sit in the armchair of businessman to decide what is profitable and how the business should be carried out. Commercial expediency has to be seen from the point of view of businessman. Here in this case if the investment has made keeping assessee's own business objective of projection of films and media entertainment, then such commercial wisdom cannot be questioned. Even the prescribed Rule 11UA (2) does not give any power to the Assessing Officer to examine or substitute his own value in place of the value determined or requires any satisfaction on the part of the Assessing Officer to tinker with such valuation. Here, in this case, Assessing Officer has not substituted any of his own method or valuation albeit has simply rejected the valuation of the assessee.*

*33. Section 56(2) (viib) is a deeming provision and one cannot expand the meaning of scope of any word while interpreting such deeming provision. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get*

*it valued by some different Valuer. There has to be some enabling provision under the Rule or the Act where Assessing Officer has been given a power to tinker with the [www.taxguru.in](http://www.taxguru.in) I.T.A. No.8113/DEL/2018 40 valuation report obtained by an independent valuer as per the qualification given in the Rule 11U. Here, in this case, Assessing Officer has tinkered with DCF methodology and rejected by comparing the projections with actual figures. The Rules provide for two valuation methodologies, one is assets based NAV method which is based on actual numbers as per latest audited financials of the assessee company. Whereas in a DCF method, the value is based on estimated future projection. These projections are based on various factors and projections made by the management and the Valuer, like growth of the company, economic/market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time. Precisely, these factors have been judicially appreciated in various judgments some of which have been relied upon by the ld. Counsel, for instance: - i) Securities & Exchange Board of India &Ors [2015 ABR 291 - (Bombay HC)] “48.6 Thirdly, it is a well settled position of law with regard to the valuation. that valuation is not an exact science and can never be done with arithmetic precision. The attempt on the part of SEBI to challenge the valuation which is but its very nature*

*based on projections by applying what is essentially a hindsight view that the performance did not match the projection is unknown to the law on valuations. Valuation being an exercise required to be conducted at a particular point of time has of necessity to be carried out on the basis of whatever information is available on the date of the valuation and a projection of future revenue that valuer may fairly make on the basis of such information.”* ii) *Rameshwaram Strong Glass Pvt. Ltd. v. ITO [2018-TIOL1358-ITAT- Jaipur]* "4.5.2. *Before examining the fairness or reasonableness of valuation report submitted by the assessee we have to bear in mind the DCF Method and is essentially based on the projections (estimates) only and hence these projections cannot be compared with the actual to expect the same figures as were projected. The valuer has to make forecast on the basis of some material but to estimate the exact figure is beyond its control. At the time of making a valuation for the purpose of determination of the fair market value, the past history may or may not be available in a given case and therefore, the other relevant factors may be considered. The projections are affected by various factors hence in the case of company where there is no commencement of production or of the business, does not mean that its share cannot command any premium. For such cases, the concept of start-up is a good example and as submitted the income-tax Act also recognized and encouraging the start-ups.”* iii) *DQ (International) Ltd. vs. ACIT (ITA 151/Hyd/2015)* “10..... *In our considered view, for valuation of an intangible asset, only the future projections along can be adopted and such valuation www.taxguru.in I.T.A. No.8113/DEL/2018 42 cannot be reviewed with actual after 3 or 4 years down the line. Accordingly, the grounds raised by the assessee are allowed”. The aforesaid ratios clearly endorsed our view as above.*

*34. In any case, if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law.*

16. The Coordinate Bench of the Tribunal while laying down the above ratio has also considered the decision of the Coordinate bench in Agro Portfolio Pvt. Ltd. Vs. ITO which has been relied by the CIT(A). Therefore, we are inclined to follow the ratio laid down in the case of Cinestan Entertainment P. Ltd. Supra and hold that the Ld. A.O and CIT(A) have committed an error in rejected the valuation done by the assessee from prescribed expert as per the prescribed method.

17. Further, the Ld.CIT(A) while enhancing the income of the assessee u/s 56 (2)(viib) had observed that, such share premium received by the appellant for Rs. 76,00,000/- during the Financial Year 2014-15 relevant to Assessment Year 2015-16 is considered income of the appellant. The Ld. CIT(A) has not provided mandatory opportunity of hearing to the assessee u/s 251 (1) of the Act which ultimately resulted in enhancement of assessed income. The assessee has produced the valuation report before the CIT (A) but the same has not been considered by the CIT(A). The assessee has prepared valuation of the shares in accordance with Rule 11US of the Act for the purpose of Section 56(2) (viib) of the Act, adopting discounted cash flow method. The Ld. CIT(A) failed to understand the valuation of the shares made as per DCF Method and not considered the valuation provided by the assessee. In our opinion, the CIT(A) has committed an error on this count. Further, similar issue has been considered by the Mumbai Bench in the case of Vodafone M Star Ltd. Vs. DCIT (2020) 114 Taxman.com 323 (Mumbai Trib.) wherein it is held as under:-

19. *“Since Ld. CIT(A) has already addressed the issue of method of valuation which has to be adopted therefore we do not intend to go into which method has to be adopted and accordingly, we notice that the department is in appeal against Ld. CIT(A) and in our considered view, Ld. CIT(A) has properly rejectee the method adopted by the AO and proceeded to accept the DCF method adopted by the assessee Therefore, we are inclined to dismiss the ground raised by the department.*

20. *Coming to the findings of Ld. CIT(A), we notice that Ld. CIT(A) has accepted the DCF methoc adopted by the assessee and he analyzed the factual performance of the assessee subsequent to issue o: shares. The valuation of shares are for that matter any valuation is itself is a projection of future events oi activities and no doubt it has to be done with some accuracy, however no person in the world at the time o: projecting events or result to project with 100% of accuracy and actual events are highly volatile ant highly dependent on so many factors. Assessee has projected based on the fact that software of wallet and association of ICICI bank will increase the market share and accordingly, they have projected the figure; and further the valuer has adopted the projection figures provided by the assessee and it is left to the wisdom of valuer to accept or reject or to carry out independent investigation raised with the valuer am legislature in more than one place depends on the skills of the professionals like merchant banker only t< value the valuation of shares or other volatile securities. Since, Ld. CIT(A) has compared the factual witi projections and assessee has achieved 40% of the actual results is too harsh to the assessee and thi valuation is done in order to carry out certain activities by the management. In this case, the valuation wa used to issue of rights shares. The AO or Ld. CIT(A) is trying to evaluate the accuracy of the*

*valuation at the time of assessment, this is not proper and also the facts are based on so many factors subsequent to adoption of projection and valuation. Accordingly, we are not in a position to accept the method adopted by Ld. CIT(A). In the similar facts, the Coordinate Bench of ITAT has held as under:*

*"25. We have heard the rival contentions, perused the relevant findings given in the impugned order as well as material referred to before us at the time of hearing. In various grounds of appeal, the sole issue raised by the appellant assessee relates to the addition of Rs.90,95,46,200/- made by the AO, by invoking the deeming provisions of sections 6 (2)(viib) by adopting fair market value of the share premium received by the Assessee Company from the investors at NIL. What has been sought to be taxed is mainly the share premium issued on equity shares which according to the AO far exceeds the FMV of the shares. Though facts have been discussed in detail in the foregoing paragraphs however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The assessee company was incorporated on 19th September, 2013, i.e., in the Assessment Year 2014-15, with the objective of carrying on business of production and distribution of feature film, tele films, video films, documentary films etc. During the year under consideration assessee company was in the initial phase of the setting up of the business therefore, there was no business of film production as such. The assessee company to start its venture of its film production approached accredited ace investors of India to join in as equity partner; namely, Shri Rakesh Jhunjhunwala, Shri Anand Gopal Mahindra & Shri Radhakishan Damani. The funds were raised by way of issue of equity shares to the aforesaid*

*equity partners and by raising premium on such shares over and above the face value of Rs.10/-per share. The details and quantum of premium received from each of the equity partners are as under:*

<i>S l N o .</i>	<i>Name of equity partner</i>	<i>Date of Issue</i>	<i>No. of shares</i>	<i>Premi um (Rs.) per share</i>	<i>Amount of premiu m (Rs.)</i>
1	Sh. Anand Mahind ra	06.01 .2015 ; 23.02 .2015	4,15,385	1949	80,95,8 5,365/-
2	Sh. Rakesh Jhunjh unwala		19,207	2602	4,99,80 ,793/-
3	Sh. Radhak ishan Damini		19,207	2602	90,95,4 6,200/-
	<i>Total</i>		4,53,799		

26. *The assessee before issuing the shares had got the share valued by Chartered Accountant, i.e., 'Accountant' as provided under Rule 11UA(2) by using the 'DCF Method' which is one of the prescribed method in Rule HUA(2)(b) r.w.s. 56(2)(viib). Based on the said valuation report dated 15.12.2014, the assessee company had issued the shares to the aforesaid equity partners on premium. The Ld. Assessing Officer has discarded the valuation report of the CA mainly on the ground that valuation of the equity shares carried out by the assessee was based on projection of revenue which did not match with the actual revenues of the subsequent years. He further held that no efforts have been made by the assessee to substantiate the figures of projected revenue in the valuation report and has also failed to submit any basis for projection. Instead, AO held that*

*assessee should have invested the share premium amount to earn some income, whereas assessee has made investment in debentures of its associate company and hence the basic substance of receiving the high premium was not justified. After invoking the provision of section 56(2)(viib), AO took fair market value of premium at Nil and face value of Rs. 10/- per share.*

27. *From the perusal of the records and the impugned orders, it transpires that Assessing Officer had also issued notices u/s. 133(6) to all the 3 investors to seek confirmation, information and documents pertaining to transaction of issuance of shares. In response to the said notices, Assessing Officer has received all the details and replies directly from these investors confirming the transaction. The venture agreement between the assessee and the investors were also filed before the Assessing Officer and in this regard, our attention was also drawn by the Id. counsel that the investment was to be made by these investors in various phases and transactions and it was only after they have gone by the projection and satisfied with the potentials and credentials of future growth, they were willing to make such huge investment in the 'start-up company' like assessee. Thus, neither the identity nor the creditworthiness of the investors nor the genuineness of the transaction can be doubted and in fact the same stands fully established to which Assessing Officer has also not raised any doubt or disputed this fact. Thus, under the deeming provisions of section 68, the test of proving the nature and source of the credit received stood accepted.*

28. *Now what we are required to examine whether under these facts and circumstances Assessing Officer after invoking the deeming provision of section 56(2)(vii) could have determined the fair*

*market value of the premium on shares issued at Nil after rejecting the valuation report given by the Chartered Accountant on one of the prescribed methods under the rules adopted by the Valuer. Before us, learned counsel, Mr. Dinodia, first of all had harped upon the spirit and intention of the Legislature in introducing such a deeming provision and submitted that such a provision cannot be invoked on a normal business transaction of issuance of shares unless it has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money. His main contention was that, being a deeming fiction, it has to be strictly interpreted and there is no mandate to the Assessing Officer to arbitrarily reject the valuation done by the assessee on his own surmises and whims. We are in tandem with such a reasoning of the Id. Counsel, because the deeming fiction not only has to be applied strictly but also have to be seen in the context in which such deeming provisions are triggered. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of Dilip Kumar & Sons {supra} that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most beneficial to the assessee should be adopted. Viewed from such principle, here is a case where the shares have been subscribed by unrelated independent parties, who are one of the leading industrialists and businessman of the country, after considering the valuation report and future prospect of the company, have chosen to make investment as an equity partners in a 'start-up company' like assessee, then can it be said that there is any kind of tax abuse tactics or laundering of any unaccounted money. It cannot be the unaccounted or black money of investors as it is their tax paid*

*money invested, duly disclosed and confirmed by them; and nothing has been brought on record that it is unaccounted money of assessee company routed through circuitous channel or any other dubious manner through these accredited investors. If such a strict view is adopted on such investment as have been done by the Assessing Officer and by Id. CIT(A), then no investor in the country will invest in a 'start-up company', because investment can only be lured with the future prospects and projection of these companies.*

*33. Section 56(2)(viib) is a deeming provision and one cannot "expand the meaning of scope of any word while interpreting such deeming provision. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different Valuer. There has to be some enabling provision under the Rule or the Act where Assessing Officer has been given a power to tinker with the valuation report obtained by an independent valuer as per the qualification given in the Rule 11U. Here, in this case, Assessing Officer has tinkered with DCF methodology and rejected by comparing the projections with actual figures. The Rules provide for two valuation methodologies, one is assets based NAV method which is based on actual numbers as per latest audited financials of the assessee company. Whereas in a DCF method, the value is based on estimated future projection. These projections are based on various factors and projections made by the management and the Valuer, like growth of the company, economic/market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors*

*are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time. Precisely, these factors have been judicially appreciated in various judgments some of which have been relied upon by the Ld. Counsel, for instance: -*

*(I) Securities & Exchange Board of India &Ors [2015 ABR 291 - (Bombay HC)]*

*48.6 Thirdly, it is a well settled position of law with regard to the valuation, that valuation is not an exact science and can never be done with arithmetic precision. The attempt on the part of SEBI to challenge the valuation which is by its very nature based on projections by applying what is essentially a hindsight view that the performance did not match the projection is unknown to the law on valuations. Valuation being an exercise required to be conducted at a particular point of time has of necessity to be carried out on the basis of whatever information is available on the date of the valuation and a projection of future revenue that valuer may fairly make on the basis of such information."*

*(ii) Rameshwaram Strong Glass (P.) Ltd. v. ITO [2018-TIOL-1358-ITAT- Jaipur]*

*"4.5.2 Before examining the fairness or reasonableness of valuation report submitted by the assessee we have to bear in mind the DCF*

*Method and is essentially based on the projections (estimates) only and hence these projections cannot be compared with the actuals to expect the same figures as were projected. The valuer has to make forecast on the basis of some material but to estimate the exact figure is beyond its control. At the time of making a valuation for the purpose of determination of the fair market value, the past history may or may not be available in a given case and therefore, the other relevant factors may be considered. The projections are affected by various factors hence in the case of company where there is no commencement of production or of the business, does not mean that its share cannot command any premium. For such cases, the concept of start-up is a good example and as submitted the income-tax Act also recognized and encouraging the start-ups."*

*(iii) DQ (International) Ltd. v. ACIT (ITA 15 l/Hyd/2015)*

*"10... In our considered view, for valuation of an intangible asset, only the future projections along can be adopted and such valuation cannot be reviewed with actual after 3 or 4 years down the line. Accordingly, the grounds raised by the assessee are allowed".*

*The aforesaid ratios clearly endorsed our view as above."*

*Therefore, respectfully following the decision of Coordinate Bench of ITAT, we allow the grounds raised by the assessee;*

**21.** *In the net result, the appeal filed by the assessee is allowed and appeal filed by the revenue stands dismissed."*

18. In view of the above judicial pronouncements and for the reasons discussed above we are inclined to delete the addition made u/s 68 of the Act and also set aside the order of the CIT(A) in enhancing the income of the

appellant u/s 251(1) of the Act by invoking Section 56(2) (viib) of the Act. Accordingly, we allow the Assessee's Grounds of Appeal No. 2 to 5.

**19. In the result, I.T.A. No. 6173/DEL/2019 is allowed.**

20. Further, in ITA No. 6174/Del/2019 and ITA No. 6184/Del/2019, the respective Assesseees have raised the similar grounds and the Appeals are heard together. Accordingly, we allow Grounds of Appeal No. 2 to 5 of the Assessee and dispose off the above appeals as decided in ITA No. 6173/Del/2019 herein above.

**21. In the result, Appeal in. ITA No 6174/Del/2019 and ITA No. 6184/Del/2019 are allowed.**

**Order pronounced in the Open Court on this 12<sup>th</sup> Day of July, 2022**

**Sd/-**

**(DR. B. R. R. KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated: 12/07/2022  
*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

