

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 4361/Del/2018
Assessment Year: 2014-15**

DCIT, Circle 11(1),
New Delhi.

(Appellant)

Versus HolisolLogistics P. Ltd.
A-1, CarippaAMarg, Sainik
Farms, New Delhi
PAN: AACCH2364P
(Respondent)

Appellant by : Sh. Ravi Kant Choudhary, Ld. Sr. DR
Respondent by : Sh. R.K. Mehra, Ld. CA.

Date of hearing : 30.08.2022
Date of order : 30.08.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Revenue against the order dated 28.03.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-4, New Delhi (in short "Ld. Commissioner") u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2014-15.

2. The Revenue Department has raised the following grounds of appeal:

"1. Whether on the facts and the circumstances of the case, Ld. CIT(A) was correct in deleting the addition made of Rs. 6,25,44,292/- u/s 56(2)(vii)(b) of the Act?"

2. Whether on the facts and the circumstances of the case, Ld. CIT(A) is correct in holding the DCF method in place which was rejected being not backed by scientific method or by any data?

3. Whether on the facts and the circumstances of the case, Ld. CIT(A) was correct in admitting additional evidence u/s 46A without affording the proper opportunity to AO?

4. Whether the CIT(A) has not correct on facts and circumstances on deleting the addition made by the AO on account late deposit of employees' contribution towards PF under Section 36(l)(va) of the Income Tax Act, 1961?

5. Whether the CIT(A) has not erred in deleting the addition made by the AO on account of interest on delay payments of indirect tax liabilities without appreciating the fact that the same is penal in nature?

6. The appellant craves leave, to add, alter or amend any ground of appeal raised / above at the time of the hearing.”

3. For the sake of brevity, we are deciding this appeal ground-wise.

4. Ground No. 1& 2 relates to deletion of the addition of Rs. 6,25,44,292/- made u/s 56(2)(vii)(b) of the Act by the Ld. Commissioner by holding the DCF method is in place, which was rejected by the AO being not backed by scientific method or by any data.

4.1 The Assessee in the instant case adopted DCF method on the basis of report determining the fair market value by Accountant as per the discounted free cash flow method. While perusing the said report, the Assessing Officer observed that in the said report, the figures adopted for the F.Y. 2014-15 and 2015-16 do not match with the actual performance of the company and therefore, the said report cannot be relied upon. As such the entire premium in excess to the book value has been brought to tax by the Assessing Officer, as income of the Assessee on the ground that during the F.Y. 2014-15, profits after tax was Rs.45,15,921/- whereas as per the report, the said profits was adopted at Rs.3,52,86,156/-. Likewise, the

profits after tax for financial year 2015-16 was adopted at Rs.1,84,45,627/- whereas as per the actual, there was a loss of Rs.63,23,036/-. The Assessing Officer further held that there is huge mismatch between the PAT adopted as per the report and the actual. Even the non-cash cost adopted by the Accountant for determining the fair market value is also not acceptable. Total share premium received during the year on account of equity shares was Rs.3,50,19,744/- and the total preference share premium was Rs.3,47,88,600/-. Thus, the total of Rs.6,98,08,344/- was received by the assessee. The book value was Rs.345.48, implies a premium of Rs.335.48 on the face value of Rs.10 per share and the premium charged was Rs.3224/- Therefore, the premium to the extent of $\text{Rs.}335.48/\text{Rs.}3224=0.10405 \times 69808344=7264051$ is allowed as per the book value and the balance being Rs.6,25,44,292/- is considered as the income of the Assessee u/s. 56(2)(viib) as per the explanation to the section which gives the power to the Assessing Officer to adopt the value after taking due substantiation from the company and accordingly, the Assessing Officer while holding the method adopted by the Assessee is incorrect, considered the sum of Rs.6,25,44,292/- as income u/s. 56(2)(viib) of the Act and added the said amount in the income of the Assessee.

4.2 The Id. Commissioner on appeal, while taking into consideration the claim of the Assessee and analysing the issue under consideration allowed the contention raised by the Assessee and deleted the addition in hand by concluding as under:

“6.3. Having regard to the aforesaid valuation, it is apparent that one of the methods prescribed for valuation for determining the fair market value of unquoted shares is the fair market value determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method. The assessee in accordance

with the aforesaid provision has placed on record the report of an accountant determining the fair market value of unquoted equity shares as per the discounted free cash flow method. The Assessing Officer to that extent has not disputed the compliance of condition of furnishing a report determining the fair market value by Accountant as per the discounted free cash flow method.

6.4 The whole case made out is based on the analysis of the said report in as much as that as per the said report, the figures adopted in the financial year 2014-15, 2015-16 do not match with the actual performance of the company and therefore, the Assessing Officer was of the opinion that the said report cannot be relied upon and as such, the entire premium in excess to the book value has been brought to tax as income of the assessee. According to the Assessing Officer, during the financial year 2014-15, profits after tax was Rs. 45,15,921/- whereas as per the report, the said profits was adopted at Rs. 3,52,86,156/-. Likewise, the profits after tax for financial year 2015-16 was adopted at Rs. 1,84,45,627/- whereas as per the actual, there was a loss of Rs. 63,23,036/-. It was thus held that there is huge mismatch between the PAT adopted as per the report and actual. It was held that even the non-cash cost adopted by the Accountant for determining the fair market value is also not acceptable.

6.5 The appellant on the other hand has contended that valuation report certified by the Chartered Accountant is based on scientific valuation and are based on financial position for next seven years under the normal market/business scenario. It was contended that the actual results may vary upwards or downwards depending on various marketing/economic/social conditions and therefore, such valuation cannot be reviewed or compared with actual figures at a later date. It was thus submitted that the share valuation report has to be accepted as it was supported by an independent valuer which cannot be tinkered at a later point of time by substituting it with actual results if such report has been prepared in accordance with the prescribed Rules. Reliance was placed on the Hyderabad Bench in the case of DQ (international) Limited v ACIT reported in 72 taxmann.com 142 and also in the case of Social Media India Ltd vs. ACIT reported in ITA No. 1711/Hyd./2012. Similar view has been taken in the case of Tally Solutions (p) Ltd v DCIT (2011) 14 Taxmann.com 19 (Bang).

6.6 Further, before me the appellant has submitted the same report of accountant. The basis of the report was further called for. From the perusal of the detailed backup, it is discernable that the projections on the basis of which the valuation is determined is not arbitrary and have been computed keeping in consideration the historical performance of the company, the performance of the industry and on another scientific basis. Further, the appellant company has submitted detailed industry analysis and the basis of determination of growth factor of revenue studying the trend of revenue in the past and future projections made by the industry. Thus, in such a scenario, wherein the basis of projections was scientific and the appellant has the basis of justifying each and every number with proper reasoning and basis of figure appearing in the projected income statement and balance sheet, rejecting the valuation ground on the basis that the actual does not match with the projection would not be justified.

6.7 DCF method takes into account future business prospect of the company. It uses the concept of the time value of money. All cash flows expected at a particular point of time are estimated and discounted by using cost of capital to determine the present value.

6.8 To an investing company, investing in shares of a company at a particular cost must be a good business idea and for it, DCF analysis can be done by it.

6.9 The actual performance may be varied because of many extraneous factors which may not be present at the time of the valuation date. Thus, an onus cannot be cast upon the appellant to justify the difference which has resulted post the valuation date. What is important is the basis of projection and the macro and micro factors as appearing on the date of valuation.

6.10 The DCW relies on the market, which may change, sometimes, dramatically and small changes in inputs can result into large changes in the value of a company but the important thing here is that inspite of its inbuilt shortcomings, it is used as an important tool or method widely used to value a project or a company and the very fact that IT Act gives an option to assessee to determine the value of its shares u/s 56(2)(viib), the same cannot be rejected merely on the ground that actual result or profit does not tally with the projected result and without identifying specific serious defect in the report of the accountant.

6.11 Thus, since, in the instant matter, the report of the valuer is placed on record as on the date of valuation which is based on projections properly computed keeping in mind past performance, ratio analysis, and other scientific basis, rejecting the same only on the basis that actual performance was not matched is not justified.

6.12 Further, it is also important to note that turnover of the assessee for the financial year 2014-15 had doubled to 44.18 crores from 22.70 crores in financial year 2013-14 and was at Rs. 44.28 crores in financial year 2015-16. Thus despite the PAT not matching with the actual, there is an increase in the turnover also. Subsequently, turnover of the assessee in the financial years 2016-17 and 2017- 18 has also been provided in the course of appellate proceedings which also show that there is a growth of the company as would be evident from chart hereunder:

Financial Year	Turnover	PAT	PAT as per return
2016-17			3,29,14,035/-
2017-18 (upto February)			4,34,12,120/-

6.13 Thus, on the basis of my above finding, it is held that where there is no infirmity in the valuation report and the same is properly detailed and provide the necessary basis of computation of projections, growth factor etc., the valuation arrived at by an expert under the scheme allowed under I T. Act needs to be accepted.

6.14 Having regard to the above, addition made of Rs.6,25,44,292/- is deleted. The ground of appeal is allowed.”

4.3 The Revenue department challenged the deletion of the said addition. The Id. DR submitted that the decision of the Id. Commissioner is not only contrary to law, but also perverse and suffers from impropriety and liable to be reversed with the decision of the Assessing Officer.

4.4 On the contrary, the Id. AR while relying upon the judgments passed in the following cases: (i) PCIT v. Cinestaan Entertainment Pvt. Ltd. (2021) 433 ITR 82 (Delhi) (ii) TSY Yatra (P) Ltd. vs. ACIT (2021) 209 TTJ 596 (Delhi) (iii) DCIT vs. Avingna Housing (P) Ltd. (2021) 209 TTJ 8 (Chennai)(UO), submitted that the Hon'ble Courts in the said cases approved the adopting of the DCF method for valuation of shares u/s. 56(2)(viib) of the Act, therefore, the Id. Commissioner has rightly taken the decision on the issue in hand and thus, does not require any interference by this court.

4.5 We have heard the parties and perused the material available on record and given thoughtful consideration to the facts and circumstances of the case and determination made by the authorities below on the issue in hand. We observe that the Assessee has adopted one of the method available for valuing its shares u/s. 56(2)(viib) of the Act, on the basis of the valuation report certified by the Ld. Chartered Accountant, which is not only based upon scientific valuation and financial position for the next seven years in the normal market/business scenario but also prepared in accordance with the prescribed Rules as applicable thereto.

The Assessing Officer rejected the method adopted by the Assessee mainly on the ground that figures adopted in the F.Y. 2014-15 and 15-16 did not match with the actual performance of the company, whereas varying of actual results depends upon various marketing/economic/social conditions and even otherwise, projections in the instant case, on the basis of which the valuation was determined has been made while taking into consideration the

historical performance of the company and not held contrary to the provisions of the Act, as applicable to the instant case, by the AO.

4.5.1 It is also a fact that DCF analysis is an important tool or method to value a project and the statute itself gives an option to choose either of the two method, i.e., 'book value method' or 'discounted cash flow method' to the Assessee for determining the value of its shares. From the figures as mentioned by the Id. Commissioner and not denied by the Id. DR that there is a growth in the turnover of the Assessee for F.Y. 2016-17 and 2017-18 and doubled to 44.18 Crs.inF.Y. 2014-15, from 22.70 Crs. in F.Y. 2013-14 despite not matching the PAT with the actual. Therefore, we are in agreement with the findings of the Id. Commissioner that there is no infirmity in the valuation report, as the same is appropriate, detailed and provide the necessary basis of computation of projection and growth factors etc. The valuation arrived at by the expert under the scheme allowed under the IT Act needs to be accepted. We observe that Hyderabad Bench of Tribunal in the case of Social Media India Ltd. (supra) has held that the Assessee's valuation has to be accepted as it was supported by an independent valuer. In the cumulative effect, we are inclined not to interfere in the conclusion drawn by the Id. Commissioner on the instant issue. Consequently, ground No. 1 & 2 stand dismissed.

5. Ground No.3 :Ld. DR did not raise this ground specifically. Even we also failed to co-relate the ground No. 3 with the impugned order, hence, the same do not require any independent adjudication.

6. Ground No.4 relates to deletion of addition made by the Assessing Officer on account of late deposit of employees'

contribution towards PF u/s. 36(1)(va) of the Act. It is an admitted fact that in the instant case, the Assessee has paid the contribution towards PF amounting to Rs.2,04,120/- after the due date prescribed under the relevant statute but before the due date of filing the return u/s. 139(1) of the Act. However, the Assessing Officer while relying upon the CBDT Circular No. 22/2015 dated 17.12.2015 *wherein, it was specifically clarified that this circular does not apply to claim of deduction relating to employees' contribution towards welfare funds, which are covered by section 36(1)(va) of the Act* and the judgment passed the Hon'ble Kerala High Court in the case of Commissioner of Income Tax, Cochin Vs. Antony Dynamic & Shaji (Citation not mentioned by AO) wherein it is held that *"so far as employee's contribution is concerned, Assessee is entitled to get the deduction amounts as provided under section 36(1)(va) only if amounts so received from employee is credited in specified account within due date as provided under relevant statute"*, disallowed the sum of Rs.2,04,120/- and added the same to the total income of the Assessee.

6.1 The Assessee being aggrieved also challenged the said disallowance/addition before the Id. Commissioner.

6.2 The Id. Commissioner with regard to CBDT Circular No. 22/15 which was relied upon by the Assessing Officer, held that the circular cannot be conclusive and cannot override the judicial decisions as held in Geep Industrial Syndicate Ltd. vs. CBDT (1987) 166 ITR 88(Del) and CIT vs. Hero Cycles (P) Ltd. (1997) 228 ITR 463(SC).

6.3 The Id. Commissioner while relying upon the judgments passed by the Hon'ble Punjab & Haryana High Court in the case of

CIT vs. Hemla Embroidery Mills (P) Ltd. (2014) 366 ITR 167 (P&H) and by the Hon'ble Delhi High Court in the case of CIT vs. AIMIL Limited, 321 ITR 508(Del), wherein both the employer's and employees' contributions have been treated as covered under the provisions of section 43B of the Act, deleted the penalty under consideration

6.4 We have given thoughtful consideration the decision made by the Ld. Commissioner on the issue in hand. Recently, the jurisdictional High Court in the case of PCIT vs Pro Interactive Service (India) Pvt. Ltd. {ITA No.983/2018 [Del.] order dated 10.09.2018} held as under:-

“In view of the judgement of the Division Bench of Delhi High Court in Commissioner of Income Tax versus AIMIL Limited, (2010) 321 ITR 508 (Del.) the issue is covered against the Revenue and, therefore, no substantial question of law arises for consideration in this appeal.

The legislative intent was/is to ensure that the amount paid is allowed as expenditure only when payment is actually made. We do not think that the legislative intent and objective is to treat belated payment of Employee's Provident Fund (EPF) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under section 2(23)(x) of the Act.”

6.5 Hence considering the facts in totality and the dictum of the jurisdiction High Court on the issue in hand in the cases referred above, we are inclined to uphold the decision of the Id. Commissioner in deleting the addition made by the Assessing Officer on account of delay in depositing the employees' contribution towards PF but deposited prior to the due date of filing of return of income u/s 139(1) of the Act. Consequently, **ground No. 4 stands dismissed.**

7. By ground No. 5, the Revenue challenged the deletion of the addition made by the Assessing Officer on account of interest on

delayed payment of indirect tax liabilities. The Id. DR submitted that the delayed payment of indirect tax liability is penal in nature and therefore, the order of the Id. Commissioner to the extent of deleting the addition of Rs.10,901/- on account of delay in deposit of interest on tax liabilities (service tax, Sales Tax and TDS) is not justified. We observe that the Assessing Officer made the disallowance of Rs.25,009/- on account of interest on delay in deposit of Service tax, Sales Tax and TDS, which was claimed by the Assessee as allowable expense u/s. 37(1) of the Act.

7.1 The Assessee challenged the said addition also before the Id. Commissioner and contended that the interest so paid are allowable deductions since they are paid in the ordinary course of business and are not opposed to the public policy, since they are compensatory in nature being civil liability.

7.2 The Id. Commissioner by considering the issue in hand observed that there is nothing on record to suggest that these payments of interest on sales tax and Service tax were penal in nature. The Id. Commissioner also quoted the judgments of the Tribunal in the case of DCIT vs. Messe Dusseldorf of India Pvt. Ltd. (2010) 129 TTJ 81(Del) and in the case of Remfry & Sugar Consultants Pvt. Ltd. vs. ACIT (ITA No. 5887/Del/2011), wherein it was held that interest on service tax is compensatory in nature and has the same characters as service tax and therefore, it is an allowable deduction. Further, the Hon'ble Apex Court in the case of Prakash Cotton Mills P. Ltd. vs. CIT (1993) 201 ITR 684, held that where the payment of interest is automatic for the delayed payment, the imposition is compensatory in nature. The Hon'ble High Court of Himachal Pradesh in the case of CIT vs. H.P. State Forest Corporation (2010) 320 ITR (HP) while relying upon the

judgments passed by the Hon'ble Apex Court in the cases of Mahalakshmi Sugar Mills Co. Vs. CIT(1980) 123 ITR 429 and Prakash Cotton Mills Pvt. Ltd. (supra) also held "*where the payment of interest is automatic for delayed payment, the imposition is compensatory in nature and there can be no manner of doubt that in view of the decision of Apex Court, the interest payment for delayed payment of tax is deductible under section 37.*"

Consequently, the Id. Commissioner deleted the addition that qua payment of interest for delay in payment of Service Tax or Sales Tax amounting to Rs.10901/- (Rs.1627/- = Rs.9274/-). However, while relying upon various judgments affirmed the disallowance to the tune of Rs.14,108/- on account of interest paid under the provisions of the Income Tax Act for late payment or short payment of regular taxes, advance tax or TDS etc. as not deductible.

7.3 We are concerned with the deletion of addition of Rs.10,901/- (Rs.1627 + 9274) on account of interest paid for delay in payment of Service Tax and Sales Tax only. We have given thoughtful consideration to the peculiar facts and circumstances of the case and the conclusion drawn and the judgments referred to *which deals with the issue under consideration specifically*, by the Id. Commissioner for coming to the conclusion, and do not find any reason and/or material to contradict the decision of the Id. Commissioner on the issue in hand. Hence the decision of the Id. Commissioner on the issue in hand is liable to be affirmed as the same does not suffer from any perversity, impropriety and/or illegality. **Consequently, ground No. 5 also stands dismissed.**

8. Ground No. 6 is formal in nature and do not require any independent adjudication.

9. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on 30/08/2022.

Sd/-

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

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-