

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No.2339/Ahd/2018
Assessment Year 2013-14**

The ITO, Ward-4(1)(2), Ahmedabad (Appellant)	Vs	Surana Metacasst (India) Pvt. Ltd., 33, Maa Suswami Villa, Shahi Kutir Bungalow, Dafnala, Ahmedabad PAN:AANCS9110R (Respondent)
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**Appellant by : Shri V.K. Singh, Sr. D.R.
Respondent by : Shri Tushar Hemani, Sr. Adv.
& Shri Parimalsinh B. Parmar, A.R.**

Date of hearing : 20-07-2022
Date of pronouncement : 14-10-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue against the order dated 20.09.2018 passed by the Commissioner of Income Tax (Appeals)-8, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The brief facts of the case is that the assessee is a company engaged in the business of trading of SS Scrap, Rod, Plates etc; which is used for manufacturing SS Pipe, tubes, vessels, industrial equipment and machinery utensils. The assessee imports raw materials from various dealers from Gulf countries and also locally by Tender option from various suppliers. The promoters and directors of the company are having vast experience and knowledge in this line of business since 1986. For further extension of the business, the assessee company installed a new plant for the production of MS Alloys and SS Alloys with a production capacity of 100 MT per annum. Thus during the assessment year, the assessee issued 19,01,000 shares of face value of Rs. 10/- at a premium of Rs. 25/- per share.

2.1. For the Assessment Year 2013-14, the assessee company filed its Return of Income on 30/09/2013 declaring total loss of Rs. (-) 83,72,012/- and a Book Profit u/s. 115JB of the Act at Rs. (-) 34,60,819/-. The return was taken up for scrutiny assessment. During the assessment proceedings, it is noticed that as per Rule 11UA of the I.T. Rules for valuation of unquoted equity shares, the Fair Market Value of the assessee company comes to Rs. 10/- per share. However the assessee's valued the shares based on Discounted Cash Flow (DCF) method, the ld. A.R. placed on record working of valuation done by him based on actual valuation report prepared by Shri Kanhaiyalal Salawat . The Assessing Officer held that such working of premium was not in accordance with Section 56(2)(viib) of the Act. Consequently, the A.O. has not accepted the

valuation made under DCF method by the assessee and adopted the formula as per Rule 11UA and valued the Fair Market Value of shares at Rs. 10/- per share and treated the premium as excess consideration on issue of share premium received of Rs. 4,70,25,000/- which is covered u/s. 56(2)(viib) of the Act and added the same as “income from other sources” of the assessee company and also initiated penalty proceeding u/s. 271(1)(c) of the Act.

3. Aggrieved against the same, the assessee filed an appeal before the Id. CIT(A). Before the Ld. CIT(A), the assessee filed additional evidence of Valuation Report prepared by Shri Kanhaiyalal Salawat. During the assessment proceedings, the Authorized Representative has submitted is more Valuation Report to the Assessing Officer but not the Valuation Report prepared by Shri Kanhaiyalal Salawat. The Ld. CIT(A) called for a remand report from the Assessing Officer. Though A.O. stoutly objected admission of additional documents, the Ld. CIT(A) held that the assessee was prevented by reasonable cause to furnish the Valuation Report to the A.O. However the Valuation Report is a basic document required to decide the issue. Therefore the same was entertained as additional document. Further the Assessing Officer earlier rejected the Valuation Report submitted by the Chartered Accountant on the ground the same was not prepared by a Merchant Banker or Chartered Accountant, when no defect as regards to the projection submitted by the assessee. Furthermore, this additional document namely the report has been prepared as far the method prescribed

by "Technical Guide for valuation" by the Institute of Chartered Accountant (ICAI). After considering the Valuation Report, the Ld. CIT(A) deleted the addition of Rs. 4,70,25,000/- made u/s. 56(2)(viib) of the Act as follows:

5.8 As regards the choice of method i.e. DCF method of valuation appellant relied upon various judgments including the judgment of Hon'ble ITAT Mumbai in the case of DCIT v. Ozone Land Agro P. Ltd. ITA No.4854/Mumbai/2016 dated 02.05.2018. In this case Hon'ble ITAT while comprehensively dealing with the issue of valuation held that/ section 56 of the Act allows the assessee to adopt one of the method of their choice. Hon'ble ITAT Jaipur in the case of Rameshwaram Strong Glass P. Ltd. V. ITO ITA No.884/JP/2016 judgment dated 12.07.2018 have held that it is for the assessee to choose one of the two methods prescribed under Rule 11UA in case of unlisted shares. Relevant part of the judgment is reproduced as below:

4.5.6 We also find that in the case of Vodafone M-Pesa Ltd. vs. PCIT (2018) 92 Taxmann 73 (Bombay) (DPB 79-83), the Hon'ble Mumbai High Court in para 9 has observed that "9.Therefore, the Assessing Officer is undoubtedly entitled to scrutinize 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.——"

The AO though observed that the assessee raised loans from the above associate concerns and has converted them into shares application/premium money. However, it has not shown how it will affect the correctness of the valuation claimed. It is not the case of the AO that the shares were allotted to the outsiders non-related persons but the existing amount of the loans from the related persons were converted into shares. Hence there cannot be any scope of introduction of assessee's unaccounted income through allotment of shares at unreasonably high priced shares. Therefore, such observations is not relevant and a mere suspicion. It appears that the authorities below have ignored Explanation ITA No.884/JP/2016 M/s. Rameshwaram Strong Glass (P) Ltd. vs ITO, Ward- 2(1), Ajmer 36 (a) below S. 56(2)(viib). The said Explanation provides that 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 i.e. u/r 11UA: 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. Accordingly, the value computed under the Rule at Rs.95.90 per share is higher than Rs. 65.31 or Rs.32.76 per share and therefore, the higher valuation has to be adopted. Moreover, It is only the Explanation (a)(ii) speaks of 'the satisfaction of the AO but there appears no such condition in the Explanation (a)(i) which therefore AO is not permitted to interfere in the valuation, once done in accordance with the method prescribed in the Rule 1UA(2). For the reasons stated above, we find no justification behind rejecting the declared valuation of the shares and in the impugned addition made by the AO but partly sustained by the CIT(A), which is hereby deleted.

5.9 In view of the aforesaid facts it has to be held that appellant has issued the shares at the Fair Market Value determined by Chartered Accountant following the DCF method as prescribed in Rule 11UA of the Rules. No infirmity on the merits of the report has been found by the AO as well as by the undersigned. Therefore, it has to be held that the shares have been issued at the premium according to the fair market value. Hence, the additions made u/s.56(2)(viib) of the Act amounting to Rs.4,70,25,000/- made by the AO are not sustainable and accordingly deleted. Ground No.1 of the appeal is allowed.

4. Aggrieved against the appellate order, the Revenue is in appeal before us raising the following Grounds of Appeal:

1. *"that the Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 4,70,25,000/- made in respect of share premium u/s. 56(2)(viib) of the I.T. Act, 1961. "*

2. *"Whether Ld. CIT(A) is correct in upholding the method of valuation of shares being DCF and in derogation of Rule 11UA of the I.T. Rules applied by A.O."*

4.1. The ld. D.R. Mr. V.K. Singh appearing for the Revenue supported the order passed by the Assessing Officer and also in support the grounds raised before us and prayed that the addition made is to be sustained.

5. Per contra, the Ld. Senior Counsel Mr. Tushar Hemani appearing for the Assessee submitted before us a Paper Book

containing various documents namely the Copy of the Share Valuation Report, Submissions made before Ld. CIT(A) and Copy of Comparative Profit and Loss Account and the Balance Sheet and copy of Acknowledgement of Income Tax Returns, Balance Sheet and Profit and Loss Account for various years. The Ld. Counsel submitted that Section 56(2)(viib) can be invoked in the following scenario namely:

- (i) Consideration is received from resident for issue of shares; &
- (ii) Such consideration is in excess of face value of shares.

That is the aggregate consideration received from issuance of shares, if it exceeds the fair market value (FMV) of the shares, the same can be taxed u/s. 56(2)(viib).

5.1. Ld. Senior Counsel also submitted that as per sub-clause (i) of clause (a) of Explanation to Section 56(2)(viib) of the Act, "Fair Market Value" mean

(a) as may be determined in accordance with the prescribed method; or

(b) as may be substantiated by company to the satisfaction of A.O.;

whichever is higher.

5.2. Rule 11UA provides for "Determination of Fair Market Value". As per Rule 11UA(2), FMV of unquoted equity shares for the purposes of Section 56(2)(viib) shall be the value of unquoted shares as determined under Clause (a) namely as per prescribed formula or Clause (b) as per Discounted Free Cash Flow method, at

the option of the assessee. Thus DFCF method is a prescribed method for determining the FMV of shares as per Rule 11UA(2).

5.3. The Ld. CIT(A) considering the provisions and Rules admitted the additional evidences filed before him and deleted the share premium of Rs. 4,70,25,000/- made by the Assessing Officer as not sustainable in law & rules framed there under. In support of its claim the ld. Senior Counsel also placed on record the Bombay High Court judgment in the case of Vodafone M-Pesa Ltd. vs. PCIT reported in [2018] 92 taxmann.com 73 wherein it is held as follows:

9. We note that, the Commissioner of Income-Tax in the impugned order dated 23rd February, 2018 does not deal with the primary grievance of the petitioner. 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. If Mr. Mohanty is correct in his submission that a part of demand arising out of the assessment order dated 21st December, 2017 would on adoption of DCF Method will be sustained in part, the same is without working out the figures. This was an exercise which ought to have been done by the Assessing Officer and that has not been done by him. Infact, he has completely disregarded the DCF Method for arriving at the fair market value. Therefore, the demand in the facts need to be stayed.

6. Heard rival contentions and perused the materials available on record including the Paper Book filed by the assessee. The Promoters and Directors of the Company having their rich experience for long time in steel business and also to install a new plant for production of MS Alloys and SS Alloys with a production

capacity of 100 MT per annum, proposed the extension of the business of the company. As per the Valuation Report given by the Chartered Accountant, Fair Market Value of the shares is arrived at Rs. 36.50 per share which has been rounded off to Rs. 35 per share which includes the Face value of Rs. 10 and premium of Rs. 25. The Chartered Accountant has given the details of history of the company, promoter's background and nature of business as well as the present status at the time of valuation. The valuer followed the income approach and applied the DCF method which is the method prescribed by "Technical Guide for valuation" by ICAI. We find that the Assessing Officer do not find any infirmity in the said Valuation Report submitted by the Chartered Accountant. In fact it is seen from the Assessment Order and the Remand Report, the A.O. has disregarded the Valuation Report on the ground it was not made by a merchant banker only and he do not find any defect as regard the projection as made in the Valuation Report.

6.1. As per Rule 11UA(2) Fair Market Value of unquoted equity shares for the purpose of Section 56(2)(viib) shall be the value determined under prescribed formula or as per DCF method which is at the option of the assessee. Thus the DCF method adopted by the assessee for determining the Fair Market Value of shares as per Rule 11UA does not requires any interference. Therefore the additions made u/s. 56(2)(viib) amounting to Rs. 4,70,25,000/- are not sustainable in law and the Ld. CIT(A) correctly deleted the same. Thus the Grounds of Appeal raised by the Revenue are devoid of merits and the same are hereby rejected.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 14 -10-2022

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 14/10/2022

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद