

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**I.T.A No.:861/CHNY/2019
Assessment Year: 2015 - 2016**

M/s. SB Industrial Engineering
Private Limited,
RVI Towers, 2nd Floor,
No.149, Velachery Tambaram High
Road, Pallikaranai,
Chennai – 600 100

The Assistant Commissioner of
Income Tax,
Vs. Corporate Circle – 6(1),
Wanaparathy Block,
No.121, M.G. Road,
Nungambakkam,
Chennai – 600 034.

PAN : AANCS 9476Q

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Mr. T. Shanmugam, Advocate
: Mr. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.09.2022

घोषणा की तारीख/Date of Pronouncement

: 19.10.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-15, Chennai in appeal No.ITA No.243/2017-18/CIT(A)-15; dated 31.12.2018. The assessment was framed by the Assistant Commissioner of Income Tax, Corporate Circle-6(1), Chennai for the Assessment Year 2015 – 2016, u/s.143(3) of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 22.12.2017.

2. The Assessee has raised the following grounds, as under:

"1. The learned Assessing Officer and the learned Commissioner of Income Tax (Appeals) has erred in including an amount of Rs.1,92,15,676/- u/s.56(2)(vii)(b) of the Act as undisclosed income and thereby arriving at a total income / loss of Rs.59,53,430/- for the Assessment Year 2015-2016.

2. The learned Assessing Officer and the learned Commissioner of Income Tax (Appeals) has erred in rejecting the valuation of the shares adopted by the Appellant, viz. cash flow method for issuance of shares for the Assessment Year 2015-2016.

3. The learned Assessing Officer and the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the Appellant had rightly valued the shares as per the provisions of the Income Tax Act, 1961 and that no violation has been committed by non-disclosing any income amount in their returns for the Assessment Year 2015-2016.

4. The learned Assessing Officer and the learned Commissioner of Income Tax (Appeals) have failed to appreciate that the projections and the actual would certainly vary and that the variation are due to various factors, viz. availability of finance, competition, Government policies, Industry Scenario, etc.

5. The learned Assessing Officer and the learned Commissioner of Income Tax (Appeals) have erred in not accepting the valuation done by the qualified Chartered Accountants under discounted cash flow method.

6. The learned Assessing Officer and the learned Commissioner of Income Tax (Appeals) should have appreciated that the companies cannot issue shares below the face value of shares under the provisions of the Companies Act, 2013 which is Rs.100/-, as against the issued price of Rs.107.95/-. However, the learned Assessing Officer proceeds to value the share at Rs.18.97/-.

7. It is settled in law that it is the right of the company issuing shares to choose the valuation methodology under the provisions of the Income Tax Act, 1961 read with the rules frames thereunder for the purposes of determining the 'fair market value [FMV] of such shares at premium.

8. It is submitted that the learned Assessing Officer has erred in holding that the projections of the management are unrealistic by comparing it with the actuals."

3. The brief facts of the case are that the Assessee/Appellant is engaged in the business of servicing pipes and tanks for petrochemical industries, filed its return of income for the Assessment Year 2015 - 2016 on 30.09.2015 admitting the current year loss amounting to Rs.2,51,69,106/-. During the financial year relevant to the Assessment

Year 2015 - 2016, the Assessee company had issued 2,15,955 equity shares of Rs.100/- each as face-value and with a premium of Rs.8/- per share to the existing shareholder of the company viz. M/s. Arjun Chemicals Private Limited. The Assessee has justified issue of shares with a premium of Rs.8/- on the basis of the valuation report issued by a Chartered Accountant, wherein the value of the equity shares have been arrived at Rs.107.95/- on the basis of the Discounted Cash-Flow Method. The Assessing Officer however was not convinced with the explanation furnished by the Assessee, as according to the Assessing Officer, the Discounted Cash-Flow [DCF] Method adopted by the Assessee for valuation of shares is not correct and thus rejected the DCF Method and had adopted the Net Asset Value [NAV] Method, as prescribed under the Rule 11UA of the Income Tax Rules and had determined the share price at Rs.18.97 per share as against the issued price of Rs.107.95 [Rs.108] per share. Thus, the excess amount received by the Assessee company as share premium of Rs.1,92,15,676/- has been treated as income u/s.56(2)(vii)(b) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the Assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals). Before the learned Commissioner of Income Tax (Appeals), the Assessee justified the allotment of the equity shares at Rs.108/- per share with a premium of Rs.8/- per share on the basis of the valuation report and as per which the Assessee has determined the share price at Rs.107.95 per share under the Discounted Cash-Flow [DCF] Method.

5. The Id.CIT(A) after considering the relevant submissions and also after going through the case-laws relied upon and also certain judicial proceedings, opined that there is no commercial expediency in the investment of the parent company at a premium of Rs.8/- per share. Further, the Assessee has determined the share price on the basis of DCF Method. However, the projected cash flow considered by the Assessee when compared with the actuals at subsequent years, there is a huge difference between the projected financials and the actual financials. Therefore, the Assessee has not justified in determination of the share price of Rs.108/- per share and thus, rejected the arguments of the Assessee and sustained the additions made by the Assessing Officer towards the share premium u/s. 56(2)(vii)(b) of the Income Tax Act, 1961.

Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Assessee is in appeal before the Tribunal.

6. The learned Counsel for the Assessee submitted that the learned Commissioner of Income Tax (Appeals) erred in sustaining the additions made on the share premium u/s.56(2)(vii)(b) of the Income Tax Act, 1961 without appreciating the fact that the Assessee has issued equity shares with a face-value of Rs.100/- per share and with a premium of Rs.8/- per share. He further submitted that Section 53 of the Companies Act, 2013 prohibits any company to issue shares set at a discount, except as provided in Section 54 of the Companies Act, 2013. In this case, the face-value of the equity shares is Rs.100/- per share and thus, the Assessee

cannot issue any shares below the face-value. As regards to the premium on the issuance of shares at Rs.8/- per share, and the discount issued, the Assessee has earned considerable surplus from the operations and if you consider the said surplus, the projection valued by the Assessee for determining the share price of Rs.108/- per share is more or less equivalent to the actual share prices of the company as per the book-value. Therefore, the Assessing Officer as well as the learned Commissioner of Income Tax (Appeals) have erred in making the additions on the share premium u/s.56(2)(vii)(b) of the Income Tax Act, 1961.

7. The learned Departmental Representative, on the other hand supporting the order of the learned Commissioner of Income Tax (Appeals) submitted that the Assessee could not justify the issuance of shares at Rs.108/- per share. The Assessing Officer has determined the share price at Rs.18.97 per share as per the Net Asset Value [NAV] method. However, the Assessee has determined the share price at Rs.107.95 per share on the Discounted Cash-Flow [DCF] Method. The Assessing Officer had rejected the DCF Method because of the inconsistency in the projected cash-flow and the actual cash-flow for the relevant assessment year. Therefore, the Commissioner of Income Tax (Appeals) rightly has upheld the additions made by the Assessing Officer and the order should be upheld.

8. We have heard both the parties, perused the materials available on record and had gone through the orders of the authorities below. The facts borne out from the records clearly indicates that the Assessee has

issued 2,15,955 equity shares of Rs.100/- each with a premium of Rs.8/- per share to an existing shareholders. Admittedly, the face-value of the equity shares issued by the Assessee is at Rs.100/- per share and thus, as per Section 53 of the Companies Act, 2013, there is a prohibition on issuance of shares at a discount, except as provided in Section 54 of the Companies Act, 2013. Since, the face-value of the equity shares issued by the Assessee was at Rs.100/- per share, in our considered view, the Assessee cannot issue shares to the existing shareholder below the face-value, i.e. Rs.100/- per share.

9. Coming back to the premium charged on the issuance of shares. The Assessee has charged a sum of Rs.8/- per equity share as premium. The Assessee has justified the premium charged on the issuance of shares with the help of the valuation report, where determined share price at Rs.107.95 per equity share was adopted by following the DCF Method. The Assessee had considered the projected financials for the DCF Method for valuation. The Assessing Officer has not pointed out any discrepancy in following the DCF Method. However, he had changed the method of valuation from DCF Method to Net Asset Value Method and determined the share price at Rs.18.97 per equity share. In our considered view, the Assessing Officer has exceeded his powers and determined the share price of Rs.18.97 by changing the valuation method from DCF Method to NAV Method, even though as per law, the Assessing Officer cannot change the method followed by the Assessee for valuation of the shares as it is optional for the Assessee to choose a particular method for determining the share price.

10. In this case, the Assessing Officer has changed the method of valuation from DCF Method to NAV Method without their being any observation with regard to the DCF Method followed by the Assessee. Therefore, we are of the considered view that the Assessing Officer has erred in changing the method of valuation of the shares from DCF Method to NAV Method.

11. Having said so, let us examine the issuance of the price charged by the Assessee for the allotment of shares. The Assessee has issued shares at Rs.108/- per share which includes a sum of Rs.8/- per share as premium. The Assessee has justified the premium charged towards the issuance of shares with the help of a registered valued certificate as per which the share price was fixed at Rs.107.95. The sole basis for the Assessing Officer to reject the DCF Method is that there is a huge difference between the projected financials and the actual financials for the relevant period considered by the Assessee for the DCF Method and thus, he was of the opinion that the DCF Method cannot give a true or a correct share price. We do not find any substance in the findings of the learned Assessing Officer for the simple reason that the Assessee has explained the difference between the projected operating profits and the actual financials for the financial years 2014 – 2015 to financial year 2018 – 2019. We find that although there is a difference in the projected financials when compared with the actual financials, but projected financial figures is always a projection based on certain degree of estimation and which may not be equivalent to the actual. But, as long as there is a

minor difference in the projected financials and the actual financials, there is no reason for the Assessing Officer to reject the DCF Method adopted by the Assessee by stating that there is a difference in the projected financials considered by the Assessee.

12. In our considered view, the Assessee has justified the premium charged on the issuance of shares and thus, we direct the Assessing Officer to delete the additions made towards the difference between the issue price and the actual share price determined by the Assessing Officer as income of the Assessee u/s.56(2)(vii)(b) of the Income Tax Act, 1961.

13. In the result, the appeal of the Assessee in I.T.A. No.861/Chny/2019 is allowed.

Order pronounced in the court on 19th October, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /**VICE PRESIDENT**

Sd/-

(जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 19th October, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF