

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

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

आयकर अपील सं./ **ITA No.1909/Chny/2019**  
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

<b>S.A. Metro Plots Pvt. Ltd.</b> 432/609, 3A 17D, Silva Road, Ramaniyam Nataraj Apartment, Mylapore, Chennai-600 004.	<b>बनाम/ Vs.</b>	<b>ITO,</b> Corporate Ward-6(1), Chennai.
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AALCS-8601-B</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri G. Sivasubramanian (CA) – Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri P. Sajit Kumar (JCIT) –Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	29-08-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	19-10-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 28-03-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 13-12-2017. The grounds taken by the assessee are as under:

1. The learned Commissioner of Income-Tax (Appeals) 15, erred in upholding that share premium as income under section 56(2)(viib) for the Asst. Year 2015-16. The Appellant submits that the amount of share subscription money of Rs.70,00,000 was received in the appellant bank account during the year 2011-2 vide share subscription agreement dated 23.02.2012 and the share valuation

was also fixed in the said share subscription agreement. The learned Commissioner of Income-Tax (Appeals) failed to appreciate that the conversion of Compulsorily Convertible Preference Shares (CCPS) in to equity shares during the Asst. Year 2015-16 was a mere process completed as per the agreement already entered into. The learned CIT (Appeals) has failed to appreciate the equity shares issued by virtue of conversion of CCPS into equity shares is not covered by Section 56 (2) (viib).

2. The learned Commissioner of Income-Tax (Appeals) 15 further erred in not appreciating that the Section 56(2)(viib) was brought into force effective Asst. year 01-04-2013 and the amount was received in the asst. year 2012-13. Thus should have appreciated that the provisions of the 56(2)(viib) was not in force when the amount was actually received and hence cannot be brought to tax under section 56 (2) (viib) during the Asst. Year 2015-16.

3. The learned Commissioner of Income-Tax (Appeals) 15 has erred in concluding that the share premium received is exorbitantly high and unreasonable based on the comparison of projected figures as per the valuation report and actual financial figures as per income tax returns. The learned Commissioner of Income-Tax (Appeals) 15 has failed to appreciate that the projections during 2011-12 can only be based on the information available to the best of the appellant as on that date and has failed to take into account the changes in industrial scenario in real estate sector post 2013-14 due to various factors not in the control of the appellant. Further the CIT (appeals) has failed to appreciate that the valuation of an enterprise is made based on its potential to earn money and profit and investments are not made unless the investors feel that the projections are achievable.

4. The Learned CIT (Appeals) has erred in not appreciating the fact that at the time of making the investment and investment agreement in 2011-12, the real estate market and the economic activities were booming. Subsequently due to change in political and economic climate the performance have taken a big beating and accordingly the actual.

5. The Learned CIT Appeals has erred in not appreciating that the assessing officer has no power to change the method of valuation adopted by the Appellate but at the maximum could have referred the matter to a valuation officer u/s 142A for determining the Fair Market Value of the shares. The statute having given the discretion to the assessee to adopt a particular method of valuation, the assessing officer has no power to change the method of valuation. Accordingly the Assessee has adopted DCF method of valuation while valuing the shares. The learned CIT (Appeal) has failed to appreciate that the Assessing officer has no jurisdiction to change the method of valuation.

6. The Learned CIT Appeals has failed to appreciate that out of five shares holders who have been issued equity shares by conversion of CCPS, four are the existing equity share holders and as **held by H'ble ITAT, CHENNAI "A" Bench in Vaani Estates Private Limited (2018) 98 Taxmaan 92** that the provisions of section 56(2)(viib) cannot be invoked in the case of allotment to existing shareholders.

For the reasons stated above and that may be adduced at the time of hearing, the Appellant prays that the addition to income of Rs.65,50,381/- should be deleted and justice rendered.

As is evident, the assessee is aggrieved by confirmation of certain addition of Rs.65.50 Lacs u/s 56(2)(viib).

2. The Registry has noted delay of 23 days in the appeal, the condonation of which has been sought by Ld. AR. Considering the period of delay, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. AR advanced arguments and filed written submissions which have been controverted by Ld. Sr. DR. Having heard rival submissions, the appeal is disposed-off as under.

### **Assessment Proceedings**

4.1 The assessee being resident corporate assessee earned commission in real estate business in domestic market through e-platform. It transpired that during the year, the assessee converted compulsory convertible preference shares (CCPS) into equity shares of Rs.100/- each along with hefty premium of Rs.1500/- per share. Accordingly, Ld. AO invoked the provisions of Sec.56(2)(viib) and directed assessee to justify the valuation of shares.

4.2 The assessee submitted that the premium was fixed before-hand in investor agreement dated 23.02.2012. The assessee also filed valuation report of a Chartered Accountant valuing the shares at Rs.1540/- per share adopting Discounted Cash Flow (DCF) method. In support, the assessee filed net cash flow statement and discounted cash flow. However, the details of net cash flow and basis for arriving at the same was not available in the valuation report. Contrary to projections, the assessee suffered losses in Financial Years 2013-14 as well as in FY 2014-15 and therefore, the projection were held to be purely based on surmises and guesswork only. Accordingly, Ld. AO

held that the projections made on the basis of DCF Valuation were far from reality.

4.3 In the above background, applying net book value method as prescribed under Rule 11UA(2), Ld. AO worked out book value per share at Rs.102.77 and accordingly, held that the differential amount (Rs.1600/- per share – Rs.102.77 per share) would be the income of the assessee in terms of Sec. 56(2)(viib). The same resulted into an addition of Rs.65.50 Lacs in the hands of the assessee.

### **Appellate Proceedings**

5.1 During appellate proceedings, the assessee, inter-alia, submitted that the shares were converted as per agreement dated 23.02.2012. The provisions of Sec.56(2)(viib) were not in force when the amount was actually received since these provisions were applicable only from AY 2012-13.

5.2 However, Ld. CIT(A) noted that there was substantial difference between the projections as per valuation report and actual valuations and therefore the premium was exorbitantly high. The valuation report was not supported by technical report, revenue and cost projection, cash flow justification, historical data, management plan, details of orders from potential customers etc. The projections were not justified and it did not contain empirical data which should be the basis for projected future financials. The relevant economic factors and basis for making assumptions were not discussed in the valuation report. Therefore, the valuation report was not reliable. Finally, the additions were confirmed as under: -

4.3.10 In view of the above remarks and the decisions relied on, I am of the considered opinion that the receipt of share premium of Rs.65,62,500/- by allotting shares with face value of Rs.100 at Rs.1,600 with the share

premium of Rs.1,500 is not based on actual valuation and therefore, the genuineness of the same is suspicious. It is inferred from the projection of financials as per the valuation report submitted by the appellant and the actual financial figures declared in the income tax return enclosed as annexure to this appeal order reveals that there is substantial difference between projection and the actual which leads to the conclusion that the shares were over valued at the time of allotment of share premium without considering the actual potential of the company. Therefore, the inadequate by the appellant company in the form of share premium over and above the Fair Market Value and the face value of Rs.100 per share is to be assessed u/s 56(2)(viib).

Aggrieved as aforesaid, the assessee is in further appeal before us.

### **Our findings and Adjudication**

6. After careful consideration of factual matrix, it could be gathered that during this year, the assessee has converted compulsory convertible preference shares (CCPS) into equity shares of Rs.100/- each along with hefty premium of Rs.1500/- per share. The book value of the shares, as computed by Ld. AO work out to around Rs.103/- per share and hence, the differential has been added to the income of the assessee u/s 56(2)(viib). In support of valuation, the assessee has furnished valuation report wherein valuation has been done on the basis of DCF valuation. The valuation has been found to be flawed since the projections grossly vary with actual financial results. The Ld. AO observed that the projection was purely based on surmises and guesswork only and the valuation was far from reality. The Ld. CIT(A) also noted that the premium was exorbitantly high. The valuation report was not supported by technical report, revenue and cost projection, cash flow justification, historical data, management plan, details of orders from potential customers etc. The projections were not justified and it did not contain empirical data which should be the basis for projected future financials. The relevant economic factors and basis for

making assumptions were not discussed in the valuation report. It could thus be seen that both the authorities have questioned the valuation made by valuer. In our considered opinion, it was the onus of the assessee to justify the valuation by furnishing an acceptable valuation report which is duly corroborated by relevant material. This onus, in our opinion, has remained undischarged by the assessee.

7. The Ld. AR has submitted that the shares have been converted pursuant to investor agreement dated 23.02.2012 and at that point of time, the provisions of Sec.56(2)(viib) were not in force and therefore, no such addition could have been made. Another submission is that actual money has been received in earlier years and in this year, there is mere conversion of shares. However, both the arguments are not acceptable. The CCPF issued earlier has been discharged in this year and new equity shares have been issued in this year. Therefore, there is constructive payment and the money is constructively received by the assessee in this year and the provisions of Sec.56(2)(viib) are very much applicable and the assessee would be obligated to justify the valuation of the shares.

8. The Ld. AR has also submitted that the right to choose a particular method of valuation has been vested with the assessee and DCF method of valuation is one of the prescribed methods. The said argument could be accepted only if the assessee discharges the onus of furnishing an acceptable valuation report. The valuation report is not mere empty formality rather the same should be based on valid assumptions and supported by empirical data which would justify adoption of projections. In the present case, the valuation lacks all these features. The actual financials of the assessee are nowhere near

to the projections made in the valuation report. Accordingly, the case laws being relied upon by assessee and placed on record would have no application.

9. In the above background, we deem it fit to provide another opportunity to the assessee to justify the valuation of shares in terms of Sec.56(2)(viib). Accordingly, the matter stand restored back to the file of Ld. AO to provide another opportunity to the assessee to justify valuation of the share and re-adjudicate the issue after affording reasonable opportunity of hearing to the assessee.

10. The appeal stands partly allowed for statistical purposes.

Order pronounced on 19<sup>th</sup> October, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 19-10-2022  
EDN/-

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF