

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 8387/Del/2019
Asstt. Yr: 2015-16**

M/s Archer Hospitality Pvt. Ltd.,
401, Fourth Floor,
Square One Mall,
C-2, District Centre,
Saket, New Delhi-110017
PAN-AAGCA0331B

Vs Asstt. Commissioner of
Incomes-tax, Circle-3(1),
New Delhi.

APPELLANT

Assessee represented by

Department represented by
Date of hearing
Date of pronouncement

RESPONDENT

Shri Manish Jain, CA

Sh. Kanav Bali, Sr. DR
12.10.2022
28.11.2022

ORDER

PER N.K. CHOUDHRY, JM:

This appeal has been preferred by the Assessee against the order dated 30.08.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-I, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. Brief facts, relevant for adjudication of the instant appeal are that the Assessee company being engaged in the business of running hotel had filed its return of income for the assessment year under consideration on 26.09.2015, declaring a loss of Rs. 10,30,43,334/-. The return of income of the assessee company was selected for scrutiny assessment under CASS.

During the course of assessment proceedings, the Assessing Officer observed that the Assessee had allotted 11,58,137 Equity Shares having face value of Rs. 10 at a premium of Rs. 185/- per share to M/s Viren Investment Pvt. Ltd. and Vireet Investment Pvt. Ltd. which are companies under the same management. The valuation of Rs.195/-(Rs. 10 + RS. 185) was derived on the basis of the valuation report prepared by the Chartered Accountant as per rule 11UA and the copy of the same was duly filed during the course of assessment proceedings.

The Assessing Officer considered the claim of the Assessee, however rejected the FMV of shares worked out on the basis of Discounting cash flow method as prescribed under Rule 11UA and calculated the FMV of shares on the basis of Net Asset value method and erroneously made an addition of Rs. 6,54,34,740/- u/s 56(2)(viib) of the Act.

3. Aggrieved with the order of Ld. AO, an appeal was preferred to CIT (Appeals), who affirmed the order of the Assessing Officer. Aggrieved, the assessee is in appeal before this Tribunal.

4. Heard the parties and perused the material available on record. Though the parties argued at length, however, the Assessee mainly raised that issue that all the relevant documents filed with Ld. Assessing Officer were also filed with Hon'ble CIT (Appeals) along with various relevant rulings of various Tribunals including Hon'ble Delhi ITAT which were in favour of the appellant. But still the Ld. Commissioner affirmed the order of Ld. Assessing Officer by relying upon the earlier order of the Tribunal in the case of Agro Portfolio (P.) Ltd. [2018] 94 taxmann.com 112 (Delhi-Trib.) without appreciating and considering the replies/submissions and many judicial pronouncements, in favour of the appellant, filed by the appellant during the course of the hearing. The appellant also submitted before the Id. CIT(Appeals) that the decision of Hon'ble ITAT, New Delhi in Cinestaan Entertainment P. Ltd. Squarely covers the issue, wherein the Hon'ble Delhi Tribunal specifically held that "The 'DCF Method' is based on projections therefore the AO cannot fault with the valuation on the basis that the real figures don't support the projections". The Hon'ble CIT(Appeals) did not even considered/discuss the said ruling while pronouncing the impugned order.

4.1 On the contrary the Id. DR supported the orders passed by the

authorities below.

4.2 We have given thoughtful consideration to the rival submissions of the parties and observe that the assessee before us also filed the paper book which also contains the judgment referred to by the Id. Commissioner, i.e., Agro Portfolio Pvt. Ltd. (supra) and the judgments in the case of Cinestaan Entertainment Pvt. Ltd. (supra) by the Hon'ble Tribunal and CIT vs. Vegetable Products Ltd. by the Hon'ble Apex Court. The assessee though placed various documents including judgments referred to above in the paper book, however, has not certified the same as to whether said documents and judgments referred to by the assessee were available before the Id. Commissioner or not. The assessee simply certified "the above information and documents are true and correct to the best of my knowledge and belief". Hence, considering the peculiar facts and circumstances, as the case referred to by the Id. Commissioner and by the assessee pertains to the issue involved in the instant case, therefore, in order to resolve the controversy we are of the considered view that the justice would be met by remanding the case to the file of the Id. Commissioner to decide afresh the issue involved in this case by analyzing both the judgments concerning the issue. The assessee would also be at liberty to place any other judgment(s) involving the issue in the instant case before the Id. Commissioner. Suffice to say, the Id. Commissioner shall grant reasonable opportunity to the assessee.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 28/11/2022.

Sd/-

(SHAMIM YAHAYA)
ACCOUNTANT MEMBER
MP

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER