

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, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1558/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

M/s. Arjun Pulp and Paper India Pvt. Ltd. RVI Towers, 2 nd floor, 149 Velachery, Tambaram High Road, Pallikaranai, Chennai- 600 100.	बनाम/ Vs.	DCIT Corporate Circle-1(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AACCV-5130-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No.3445/Chny/2018**
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

DCIT Corporate Circle-1(1), Chennai.	बनाम / Vs.	M/s. Arjun Pulp and Paper India Pvt. Ltd. RVI Towers, 2 nd floor, 149 Velachery, Tambaram High Road, Pallikaranai, Chennai 600 100.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AACCV-5130-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Shri T.Shanmugam (Advocate)- Ld. AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Shri P.Sajit Kumar (JCIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	06-12-2022
घोषणाकीतारीख / Date of Pronouncement	:	06-12-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member):

1.1 Aforesaid cross appeals for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 25-09-2018 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2017.

1.2 The grounds raised by the assessee read as under: -

That the Ld. AO and the Ld. CIT (A) has erred in including an amount of Rs.3,55,25,108/- under Section 56(2)(viib) as undisclosed income and thereby arriving at a total income/loss of Rs.7,77,61,860/- for the AY 2015-16.

That the Ld. AO and the Ld. CIT (A) has erred in rejecting the valuation of shares adopted by the Appellant viz., Cash flow method for issuance of shares for the AY 2015-16.

The Ld. AO and the Ld. CIT (A) has failed to appreciate that the Appellant had rightly valued the shares as per the provisions of the Income tax Act and that no violation has been committed by non-disclosing any income amount in their returns for the AY 2015

That the Ld. AO and the Ld.CIT (A) have failed to appreciate that the projections and the actuals would certainly vary and that the variation are due to various factors viz., availability of finance, competition, Government policies, Industry Scenario etc. The Ld. AO and the Ld. CIT (A) have erred in not accepting the valuation done by the qualified Chartered Accountants under discounted cash flow method.

That 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 IT Act read with the rules framed thereunder for the purposes of determining the 'fair market value' (FMV) of such shares at premium.

It is submitted that the Ld. AO has erred in holding that the projections of the management are unrealistic by comparing it with the actuals.

1.3 The grounds taken by the Revenue are as under: -

The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.

The Ld. CIT(A) erred in allowing relief to the assessee by determining the face value of equity shares at Rs.100/- per share without elaborating the methodology on which such value has been arrived at, after rejecting the valuation of the AO under Rule 11UA of the Income tax Rules.

The Ld. CIT(A) has erred in providing relief to the assessee when she has rejected the basis of valuation of shares under the Discounted Cash Flow

method but adopted valuation of equity share @Rs.100/- without following any method prescribed under the Act.

1.4 The Registry has noted delay of 03 days in assessee's appeal, the condonation of which has been sought by the assessee. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits. Having heard rival submissions, the appeals are disposed-off as under.

Assessment Proceedings

2.1 The sole issue that arises for our consideration is addition of Rs.355.25 Lacs as made by the Ld. AO u/s. 56(2)(viib). The assessee being resident corporate assessee is stated to be engaged in manufacturing, import, export of paper, paper pulp etc. The impugned addition stem from the fact that the assessee issued 563461 equity shares having face value of Rs.100/- each to M/s Arjun Chemicals Pvt. Ltd. @Rs.117/- per share during August, 2014 and 185185 equity shares to M/s Arjun Technologies Pvt. Ltd. @Rs.135/- per share during February, 2015. The valuation of the premium was justified on the basis of valuation reports dated 28.01.2014 and 04.03.2015. However, the net book value / intrinsic value per share was computed by Ld. AO u/r 11UA(2)(a) @Rs.74/- per share and accordingly, the provisions of Sec.56 (2)(viib) were invoked to bring to tax excess share premium received by the assessee.

2.2 The assessee relied on discounted cash flow (DCF) method to arrive at valuation of shares which was held to be not accurate since forecasting future performance was difficult. The Ld. AO also found inconsistencies in the valuation report furnished by the assessee since the valuation primarily relied upon the cash flow projections made by the

management for the next five years. The valuations arrived at in the valuation report was at huge variance with the book value. Therefore, rejecting the valuation made by the assessee, Ld. AO adopted intrinsic value of Rs.74/- per share and added the differential of Rs.355.25 Lacs to the income of the assessee.

2.3 During appellate proceedings, the assessee assailed the additions on the ground that it had an option to choose any of the methods to value the shares. The DCF method was one of the prescribed methods. The valuation of Rs.74/- per share as done by Ld. AO was even less than the face value of the shares.

2.4 The Ld. CIT(A) concurred with the stand of Ld. AO that DCF valuation was not reliable since future cash flows were exaggerated and not supported by any corroborating documentation. Upon perusal of both valuation reports, it was found that there was substantial difference in the projections considered in both valuation reports. The cash flows were not independently evaluated by the valuer. No justification was given to adopt different cash projections having substantial difference. Therefore, the valuation remained unsubstantiated. At the same time, the argument that the shares could not be issued below the face value was also to be accepted. Accordingly, the premium exceeding face value of the shares was to be brought to tax. In other words, the appeal was partly allowed which has led to cross-appeals before us.

3. We are of the considered opinion that though DCF valuation is one of the prescribed methods, however, the valuation should be based on reasonable estimations and assumptions which is missing in the present case. As noted by lower authorities, the valuer has merely adopted the projections made by the management and there was substantial

difference in cash flow projections in both the valuation reports itself. The valuation could not be substantiated by the assessee. We also concur that only excess premium exceeding face value of shares could be brought to tax u/s 56(2)(viib). Therefore, the adjudication as done by Ld. CIT(A) in the impugned order could not be faulted with. We order so.

4. Both the appeals stand dismissed.

Order pronounced on 06th December, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated : 06-12-2022
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