

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 1526/Del/2022
Assessment Year: 2016-17

M/s.Planet Gogo Pvt. Ltd., Unit No. 1402, Tower-9, Orechid Petal, Sohna Road, Gurgaon -1220 18	Vs.	ITO, Ward-3(2), Gurgaon
PAN :AAICP2112M		
(Appellant)		(Respondent)

Appellant by	S/Shri Somil Agarwal & Dr. Rakesh Gupta, Adv.
Respondent by	Shri Anil Kumar Sharma, Sr. DR

Date of hearing	09.02.2023
Date of pronouncement	24.02.2023

ORDER

This is an appeal by the assessee against order dated 01.06.2022 passed by National Faceless Appeal Centre (National Faceless Appeal Centre (NFAC)), Delhi pertaining to assessment year 2016-17.

2. The dispute in the present appeal is confined to addition of Rs.48,63,880 under Section 56(2) (viib) of the Income-Tax Act,1961.

3. Briefly, the facts are, the assessee is a corporate entity carrying on business of software and mobile application and like nature of business. For the assessment year under dispute, the assessee filed its return of income on 16.09.2016 declaring loss of Rs.33,71,003. The return of income filed by the assessee was selected for scrutiny to examine large share premium received during the year. On examining the details in course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee had sold shares to two entities, viz, NBM Investment Fund ALP., a non resident company and M/s. HT Digital Media Holdings Ltd. with very high premium and received an amount of Rs.24,37,500 from each of the investors. He, therefore, called upon the assessee to substantiate the fair market value of the shares. In response to the query raised, the assessee furnished a valuation report from an independent valuer in terms of Rule 11UA, wherein, the valuer determined the fair market value of the shares adopting Discounted Cash Flow (DCF) method. Assessing Officer, however, did not accept the valuation. He observed that, in the valuation report the future projection of cash flow estimated for subsequent years is not commensurate with the sales

disclosed by the assessee. Further, he observed, the assessee is a new company and there was no basis for earning such large share premium. Accordingly, treating the share premium received does not represent the fair market value of shares, the Assessing Officer added back the amount of Rs.48,63,880 to the income of the assessee. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals), however, it was unsuccessful.

4. Before me, learned counsel appearing for the assessee submitted that M/s. NBM Investment Fund ALP is a non resident entity, hence, the provisions of section 56(2)(viib) would not be applicable. In support of such contention, he relied upon a decision of the Tribunal in case of M/s. Ruchi J Oil Pvt. Ltd. vs. PCIT(A) Ujjain – ITA No.176/Ind/2020 dated 25.03.2021. As regards, investment in share premium by M/s. H.T. Digital Media Holding Ltd., the learned counsel for the assessee submitted, in course of assessment proceedings, the Assessing Officer has verified the genuineness of the transaction and has not found anything adverse. He submitted, the assessee wanted to develop a new application for sale in the open market and for funding this project was searching for investors. He

submitted, in this process, the promoters approached the aforesaid two entities who agreed for infusing fund by acquiring shares of the company. He submitted, M/s. H.T. Digital Media Holding Ltd. is a wholly owned subsidiary of M/s. H.T. Media Ltd., which is a listed company. He submitted, when the transaction is genuine and in terms with the statutory provisions the assessee has furnished a valuation report of an independent valuer in respect of fair market value of the shares, the Assessing Officer could not have rejected the valuation report. He submitted, DCF is an accepted method under Rule 11 UA. He submitted, the Assessing Officer is totally wrong in rejecting the valuation report merely on the fact that the estimates and projection used in the report are different from the actual sales. In support of such contention, learned counsel relied upon the following decisions:

- i) Cinestaan Entertainment (P) Ltd. vs. ITO – ITA No.8113/Del/2018 dated 27.05.2019;
- ii) M/s. Clear View Healthcare Pvt. Ltd. vs. ITO – ITA No.2222/Del/2019 dated 03.01.2020;
- iii) Rameshwaram Strong Glass Pvt. Ltd. vs. ITO, (2018) – 172 ITD 571, (ITAT Jaipur Bench);
- iv) Intelligrape Software Pvt. Ltd. vs. ITO, in ITA No.3925/Del/2018 dated 30.09.2020, (ITAT Delhi Bench);

- v) Rockland Dignostic Service Cente Pvt. Ltd. vs. ITO, in ITA No.316/Del/2019 dated 25.02.2021, ITAT Delhi Bench;
- vi) M/s. Flutura Business Solutions Pvt. Ltd., Vs. ITO, in ITA No.3404(Beng)/2018 dated 30.06.2020, (ITAT Bangalore Bench); &
- vii) India Today Online Pvt. Ltd. Vs. ITO, 178 DTR 0017, ITAT Delhi Bench.

5. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. I have considered rival submissions in the light of decisions relied upon and perused the material available on record.

7. Undisputedly, in the year under consideration, the assessee has received an amount of Rs.24,31,940 each from two investors who have invested in the equity shares of the assessee sold at a premium of Rs.4,374 per share. As could be seen from the facts on record, the assessee, which is in the business of software and mobile application, wanted to develop a new application for sale in the open market. To fund his project, the assessee approached M/s. NBM Investment ALP Ltd. who invested in the shares, it is observed, NBM Investment Fund ALP is a non-resident Venture Capital fund. On a reading of section

56(2)(viib), it becomes very much clear that it is applicable to resident investors and not to non-residents. That being the statutory provision, the addition made in respect of investment made by M/s. NBM Investment Fund ALP by invoking the provisions of section 56(2)(viib) is unsustainable.

7. As regards, the investment made by M/s. H.T. Digital Media Holding Ltd., it is observed, in course of assessment proceedings, the Assessing Officer had made inquiries to ascertain the genuineness of the transaction. However, in response to notice issued by the Assessing Officer, the concerned investor had furnished all evidences in relation to the investment made in equity shares. Nothing adverse has been found by the Assessing Officer in respect of such investment. Therefore, prima facie, the transaction with M/s. H.T. Digital Media Holding Ltd. is genuine. It is further observed, to justify the premium on these equity shares, the assessee has furnished a valuation report from an independent valuer and as per said valuation report, the sale price of the shares is as per the market value of the shares applying the DCF method. On a reading of section 56(2)(viib), it is observed that any consideration received for issue of shares which exceeds the fair

market value of the shares can be added. As per explanation to section 56(2)(viib), fair market value of the shares shall be the value as may be determined applying such method as may be prescribed or may be substantiated by the company to the satisfaction of the Assessing Officer based on the value on the date of issue of shares or its assets including intangible assets, whichever is higher. Rule 11UA, prescribes the method for determination of fair market value. It is nobody's case that the valuation of shares by the independent valuer is not in accordance with the statutory provisions. In fact, the departmental authorities have accepted the position that the DCF method is an accepted method under the statutory provisions. Therefore, merely because the actual sales are not matching with the estimated projected figures considered for DCF method, the fair market value determined by the independent valuer cannot be rejected.

8. I am further of the view, the issue is squarely covered by the decision of the Tribunal in case of Cineestan Entertainment Ltd. vs ITO (supra) wherein the Tribunal while dealing with an identical issue has held as under:

“25. We have heard the rival contentions, perused the relevant findings given in the impugned orders as well as material referred to before us at the time of hearing. In various grounds of appeal, the sole issue raised by the appellant assessee relates to the addition of Rs.90,95,46,200/- made by the AO, by invoking the deeming provisions of Section 56(2)(viib) by adopting fair market value of the share premium received by the Assessee Company from the investors at Nil. What has been sought to be taxed is mainly the share premium issued on equity shares which according to the AO far exceeded the FMV of the shares. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The assessee company was incorporated on 19th September, 2013, i.e., in the Assessment Year 2014-15, with the objective of carrying of business of production and distribution of feature film, tele films, video films, documentary films etc. During the year under consideration assessee company was in the initial phase of the setting up of the business, therefore, there was no business of film production as such. The assessee company to start its venture of its film production approached accredited ace investors of India to join in as equity partners, namely, Shri Rakesh Jhunjunwala, Shri Anand Gopal Mahindra & Shri Radhakishan Damani. The funds were raised by way of issue of equity shares to the aforesaid equity partners and by raising premium on such shares over and above the face value of Rs.10/- per share. The details and quantum of premium received from each of the equity partners are as under:

S.No.	Name of equity partner	Date of Issue	No. Of shares	Premium (Rs.) per share	Amount of premium (Rs.)
1.	Shri Anand Mahindra	06.01.2015;	2302	2015 4,15,385	1949 80,95,85,365/-
2.	Shri Rakesh Jhunjunwala	24.03.2015	19,207	2602	4,99,80,793/-
3.	Shri Radhakishan Damani	24.03.2015	19,207	2602	4,99,80,793/-
	Total		4,53,799		90,95,46,200/-

26. *The assessee before issuing the shares had got the share valued by Chartered Accountant, i.e., 'Accountant' as provided under Rule 11UA(2) by using the 'DCF Method' which is one of the prescribed method in Rule 11UA(2)(b) r.w.s. 56(2)(viib). Based on the said valuation report dated 15.12.2014, the assessee company had issued the shares to the aforesaid equity partners on premium. The ld. Assessing Officer has discarded the valuation report of the CA mainly on the ground that valuation of the equity shares carried out by the assessee was based on projection of revenue which did not match with the actual revenues of the subsequent years. He further held that no efforts have been made by the assessee to substantiate the figures of projected revenue in the valuation report and has also failed to submit any basis for projection. Instead, AO held that assessee should have invested the share premium amount to earn some income, whereas assessee has made investment in debentures of its associate company and hence the basic substance of receiving the high premium was not justified. After invoking the provision of Section 56(2)(viib), AO took fair market value of premium at Nil and face value of Rs. 10/- per share.*

27. *From the perusal of the records and the impugned orders, it transpires that Assessing Officer had also issued notices u/s.133(6) to all the 3 investors to seek confirmation, information and documents pertaining to transaction of issuance of shares. In response to the said notices, Assessing Officer has received all the details and replies directly from these investors confirming the transaction. The venture agreement between the assessee and the investors were also filed before the Assessing Officer and in this regard, our attention was also drawn by the ld. counsel that the investment was to be made by these investors in various phases and transactions and it was only after they have gone by the projection and satisfied with the potentials and credentials of future growth, they were willing to make such huge investment in the 'start-up company' like assessee. Thus, neither the identity nor the creditworthiness of the investors nor*

the genuineness of the transaction can be doubted and in fact the same stands fully established to which Assessing Officer has also not raised any doubt or disputed this fact. Thus, under the deeming provisions of section 68, the test of proving the nature and source of the credit received stood accepted.

28. Now what we are required to examine whether under these facts and circumstances Assessing Officer after invoking the deeming provision of Section 56(2)(vii) could have determined the fair market value of the premium on shares issued at Nil after rejecting the valuation report given by the Chartered Accountant on one of the prescribed methods under the rules adopted by the Valuer. Before us, learned counsel, Mr. Dinodia, first of all had harped upon the spirit and intention of the Legislature in introducing such a deeming provision and submitted that such a provision cannot be invoked on a normal business transaction of issuance of shares unless it has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money. His main contention was that, being a deeming fiction, it has to be strictly interpreted and there is no mandate to the Assessing Officer to arbitrarily reject the valuation done by the assessee on his own surmises and whims. We are in tandem with such a reasoning of the ld. Counsel, because the deeming fiction not only has to be applied strictly but also have to be seen in the context in which such deeming provisions are triggered. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of Dilip Kumar & Sons (supra) that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most beneficial to the assessee should be adopted. Viewed from such principle, here is a case where the shares have been subscribed by unrelated independent parties, who are one of the leading industrialists and businessman of the country, after considering the valuation report and future

prospect of the company, have chosen to make investment as an equity partners in a 'start-up company' like assessee, then can it be said that there is any kind of tax abuse tactics or laundering of any unaccounted money. It cannot be the unaccounted or black money of investors as it is their tax paid money invested, duly disclosed and confirmed by them; and nothing has been brought on record that it is unaccounted money of assessee company routed through circuitous channel or any other dubious manner through these accredited investors. If such a strict view is adopted on such investment as have been done by the Assessing Officer and by ld. CIT(A), then no investor in the country will invest in a 'start-up company', because investment can only be lured with the future prospects and projection of these companies.

29. Now, whether under the deeming provision such an investment received by the assessee company be brought to tax. The relevant provision of Section 56 for the sake of ready reference is reproduced hereunder:

“Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i).....

(viib) “where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for

issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or*
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf*

Explanation—For the purposes of this clause, —

(a) 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: 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;”

Further, as per clause (i) of the Explanation as reproduced above, the FMV is to be determined in accordance with such method as may be prescribed. Clause (ii) admittedly is not applicable on the facts of the assessee’s case.

The method to determine the FMV is further provided in Rule 11UA(2). The relevant extract of the applicable rules is reproduced below:

“11UA. [(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:—

(b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.”

30. Ergo, the assessee has an option to do the valuation and determine the fair market value either on DCF Method or NAV Method. The assessee being a ‘start-up company’ having lot of projects in hand had adopted DCF method to value its shares. Under the DCF Method, the fair market value of the share is required to be determined either by the Merchant Banker or by the Chartered Accountant. The valuation of shares based on DCF is basically to see the future year’s revenue and profits projected and then discount the same to arrive at the present value of the business. Before us, the ld. counsel from the facts and material placed on record had pointed out that the basis of projection adopted by the valuer was based on very scientific analysis and method, like number of movies to be released in the upcoming years and such movies were further segregated into

big, medium, small and micro films with reasonable number of movies in hand, like one big film, two medium films and one or two small or micro film a year. Further, the estimate of projected revenue was also kept on a conservative side keeping in mind of the following: -

Engagement of successful directors like Rakesh Om Prakash → Mehra who has given block buster films like Bhaag Milkha Bhaag which made a box office collection of INR 164 Crores, and Rang De Basanti which made a box office collection of INR 97 Crores etc. In support Ld. Counsel had referred to Annexure-III, giving details of Track records v. Projections for movies signed with Rakesh Mehra. Engagement of veteran writers and music directors-Like → Gulzar and Shankar Ehsaan Roy. Interesting start cast, including the launch of Anil Kapoor's → son- Harshvardhan Kapoor and Shabana Azmi's niece Saiyami Kher; along with veteran actors like Om Puri, Anu Malik etc. Keeping in view of engagement of renowned star cast and → previous success of directors, the appellant has projected revenue for only Rs. 55 Crores for 1 Big Film in first year which went till Rs. 93.10 Crores in 5th Year. While for other movies, the projections ranged between 22 lacs to 50 Crores. Further the projected revenues were discounted in later years to account for fluctuations in economic cycles. The number of movies and total revenue and average revenue for such movies are as projected under:

<i>Particulars</i>	<i>Year 1 (2016)</i>	<i>Year 2 (2017)</i>	<i>Year 3 (2018)</i>	<i>Year 4 (2019)</i>	<i>Year 5 (2020)</i>
<i>Number of movies</i>	<i>1 Big, 2 Medium, 1 small, 1 Micro</i>	<i>1 Big, 2 Medium, 1 small, 1 Micro</i>	<i>1 big, 2 Medium, 2 small, 1 Micro</i>	<i>1 Big, 2 Medium, 3 small, 1 Micro</i>	<i>1 Big, 2 Medium, 3 small, 2 Micro</i>
<i>Total revenue projected (Rs. Crores)</i>	<i>121.62</i>	<i>142.50</i>	<i>197.68</i>	<i>238.16</i>	<i>274.76</i>
<i>Average revenue per movie (Rs. crores)</i>	<i>24.32</i>	<i>28.5</i>	<i>32.95</i>	<i>34.02</i>	<i>34.35</i>

31. It has been submitted that the assessee had made all the efforts to achieve these projects and in fact had received 100 films scripts out of which it had short listed its initial stage of movies. The ld. counsel has also drawn our attention on various agreements for production of these films. He also pointed out that the assessee was projected to make five movies which it had actually commenced and released and has also pointed out that assessee has worked upon with 25 movies inception. Not only that, assessee had also taken into account the cost incurred in production of various movies and also the comparison of projected revenue and cost of three movies which were actually released by the assessee with actual revenue and cost, for which separate annexure were filed before us. Nowhere the Assessing Officer and ld. CIT (A) has either disputed the details of projects, revenues, cost incurred and the manner in which it was substantiated by the actual revenue. In fact, the projected revenue really commensurate with the actual state of affairs based on subsequent year financials. It has been pointed out that assessee had incurred huge cost which were precisely as per the estimates as projected. However, the revenue could not be generated as much expected, because the film did not do well in the box office. Ld. Counsel has also highlighted various reasons as to why assessee could not achieve the projected revenue from various documentary evidences. None of these averments and the and the manner in which the valuation of the shares has been adopted in the valuation report has been disputed by the Assessing Officer or by the ld. CIT(A) or any material facts have been brought on record to show that either the methodology or the contents of the report are not correct.

32. What is seen here is that, both the authorities have questioned the assessee's commercial wisdom for making the investment of funds raised in 0% compulsorily convertible debentures of group companies. They are trying to suggest that assessee should have made investment in some instrument which could have yielded return/ profit in the revenue projection made at the time of issuance of shares, without understanding that

strategic investments and risks are undertaken for appreciation of capital and larger returns and not simply dividend and interest. Any businessman or entrepreneur, visualise the business based on certain future projection and undertakes all kind of risks. It is the risk factor alone which gives a higher return to a businessman and the income tax department or revenue official cannot guide a businessman in which manner risk has to be undertaken. Such an approach of the revenue has been judicially frowned by the Hon'ble Apex Court on several occasions, for instance in the case of SA Builders, 288 ITR 1 (SC) and CIT vs. Panipat Woollen and General Mills Company Ltd., 103 ITR 66 (SC). The Courts have held that Income Tax Department cannot sit in the armchair of businessman to decide what is profitable and how the business should be carried out. Commercial expediency has to be seen from the point of view of businessman. Here in this case if the investment has made keeping assessee's own business objective of projection of films and media entertainment, then such commercial wisdom cannot be questioned. Even the prescribed Rule 11UA (2) does not give any power to the Assessing Officer to examine or substitute his own value in place of the value determined or requires any satisfaction on the part of the Assessing Officer to tinker with such valuation. Here, in this case, Assessing Officer has not substituted any of his own method or valuation albeit has simply rejected the valuation of the assessee.

33. Section 56(2) (viib) is a deeming provision and one cannot expand the meaning of scope of any word while interpreting such deeming provision. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not we find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different Valuer. There has to be some enabling provision under the Rule or the Act where Assessing Officer has been given a power to

tinker with the valuation report obtained by an independent valuer as per the qualification given in the Rule 11U. Here, in this case, Assessing Officer has tinkered with DCF methodology and rejected by comparing the projections with actual figures. The Rules provide for two valuation methodologies, one is assets based NAV method which is based on actual numbers as per latest audited financials of the assessee company. Whereas in a DCF method, the value is based on estimated future projection. These projections are based on various factors and projections made by the management and the Valuer, like growth of the company, economic/market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time. Precisely, these factors have been judicially appreciated in various judgments some of which have been relied upon by the Id. Counsel, for instance: -

i) Securities & Exchange Board of India &Ors [2015 ABR 291 - (Bombay HC)]

“48.6 Thirdly, it is a well settled position of law with regard to the valuation. that valuation is not an exact science and can never be done with arithmetic precision. The attempt on the part of SEBI to challenge the valuation which is bu its very nature based on projections by applying what is essentially a hindsight view that the performance did not match the projection is unknown to the law on valuations. Valuation being an exercise required to be conducted at a particular point of time has

of necessity to be carried out on the basis of whatever information is available on the date of the valuation and a projection of future revenue that valuer may fairly make on the basis of such information.”

ii) Rameshwaram Strong Glass Pvt. Ltd. v. ITO [2018-TIOL1358-ITAT- Jaipur]

"4.5.2. Before examining the fairness or reasonableness of valuation report submitted by the assessee we have to bear in mind the DCF Method and is essentially based on the projections (estimates) only and hence these projections cannot be compared with the actuals to expect the same figures as were projected. The valuer has to make forecast on the basis of some material but to estimate the exact figure is beyond its control. At the time of making a valuation for the purpose of determination of the fair market value, the past history may or may not be available in a given case and therefore, the other relevant factors may be considered. The projections are affected by various factors hence in the case of company where there is no commencement of production or of the business, does not mean that its share cannot command any premium. For such cases, the concept of start-up is a good example and as submitted the income-tax Act also recognized and encouraging the start-ups.”

iii) DQ (International) Ltd. vs. ACIT (ITA 151/Hyd/2015)

“10..... In our considered view, for valuation of an intangible asset, only the future projections along can be adopted and such valuation cannot be reviewed with actuals after 3 or 4 years down the line. Accordingly, the grounds raised by the assessee are allowed”. The aforesaid ratios clearly endorsed our view as above.

34. In any case, if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law.

35. There is another very important angle to view such cases, is that, here the shares have not been subscribed by any sister concern or closely related person, but by an outside investors like, Anand Mahindra, Rakesh Jhunjhunwala, and Radhakishan Damania, who are one of the top investors and businessman of the country and if they have seen certain potential and accepted this valuation, then how AO or Ld. CIT(A) can question their wisdom. It is only when they have seen future potentials that they have invested around Rs.91 crore in the current year and also huge sums in the subsequent years as informed by the ld. counsel. The investors like these persons will not make any investment merely to give dole or carry out any charity to a startup company, albeit their decision is guided by business and commercial prudence to evaluate a start-up company like assessee, what they can achieve in future. It has been informed that these investors are now the major shareholder of the assessee company and they cannot become such a huge equity stock holder if they do not foresee any future in the assessee company. In a way Revenue is trying to question even the commercial prudence of such big investors like. According to the Assessing Officer either these investors should not have made investments because the fair market value of the share is Nil or assessee should have further invested in securities earning interest or dividend. Thus, under these facts and circumstances of the case, we do not approve the approach and the finding of the ld. Assessing Officer or ld. CIT(A) so to take the fair market value of the share at 'Nil' under the provision of Section 56(2)(viib) and thereby making the addition of Rs.90.95 crores. The other points and various other arguments raised by the ld. counsel which kept open as same has been rendered purely academic in view of finding given above."

9. The other decisions cited by learned counsel for the assessee also support this view. Thus, applying the ratio laid down in the decisions, referred above, I hold that the addition made is unsustainable. Accordingly, I delete the addition. Grounds are allowed.

10. In the result, the appeal is allowed.

Order pronounced in the open court on 24th February, 2023.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 24th February, 2023.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi