

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 7353/DEL/2019 [A.Y. 2016-17]

Quick Technologies Pvt Ltd
2/12. Sarvapriya Vihar
New Delhi

Vs.

The A.C.I.T.
Circle - 20(2)
New Delhi

PAN - AAACQ 3931 B

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv

Department By : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 12.06.2023

Date of Pronouncement : 15.06.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 7, New Delhi dated 12.06.2019 pertaining to Assessment
Year 2016-17.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in upholding the addition of Rs. 1,64,62,000/- without appreciating the fact that the funds for share premium was received through proper banking channels and the Assessing Officer has made addition without rejecting the valuation report submitted by the assessee during the course of assessment proceedings.

3. Briefly stated, the facts of the case are that the assessee company is engaged in the business of providing riders to the e-commerce operators or other business operators. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has received security premium on allotment of shares to individuals and companies after computing the share value on the basis of Discounted Cash Flow Method at Rs. 6,512/- per share. The list of allottees is as under:

Sl. No	Date	Name of the Share holder	Type of Security	Number	Value per Share	Face Value in Rs	Security Premium in Rs
1	30.09. 15	Sudhanshu Aqqarwal	Equity Shares	750	1,000/-	7,500/-	7, 42.500/
2	30.09. 16	Rohan Diwan	Equity Shares	750	1,000/-	7500/-	7,42.500/
3	30.09. 16	S a n j a y Surana	CCPS	767	6,520.60	7,670/-	49.92.300/
4	30.09.15"	Abhishek Surana	CCPS	383	6,520.60	W3830/-	24,9'2,170/-
5	30.09. 15	S u d h a Surana	CCPS	383	6,520.60	3,830/-	24,92,170/

6	30.09.16	Akash Setia	CCPS'	307	6,520.60	3,070/-	19,96,930/-
7	30.09.15	Vikas Setia	CCPS	230	6,520.60	2,3007	14,97,700/
8	30.09.16	Chelan Todi	CCPS	230	6,520/-	2,300/-	14,97,700/-
9	3.009.15	500 Startup III L.P.	CCPS	997	6,520.67	9.970/	64,90,030/
10	30:09.15	MFO'I III GBR	CCPS	357	6,520.60	35670/-	34,94,630/
				15334		1,63.340/	2.64,46,660/

4. In support, the assessee submitted a copy of Valuation report issued by Sarvam and Associates. On perusal of the valuation report on the basis of DCF method, the AO noticed the following:

	A.Y 2016-17	A.Y 2017-18	A.Y 2018-19
Projected as per valuation report (Rs.)	3.65 Cr	4.74 Cr	6.17 Cr
Actual (Rs.)	0.66 Cr	0.77 Cr	0
Variation (Rs.)	2.99 Cr	3.97 Cr.	6.17 Cr.

5. To find out the basis of projection, projected by the valuer, the Assessing Officer issued summons u/s 131 of the Act. One of the partners appeared before the Assessing Officer and contended that the valuer had submitted the copy of Valuation certificates and all projections/ documents were provided by the management and on the basis of which fair value of share was calculated.

6. The Assessing Officer was of the opinion that the partner of the valuer firm has not provided any logical submission in respect of calculation of fair value of shares and on subsequent dates, none represented the valuer firm. The Assessing Officer issued show cause notice to the assessee, asking it to show cause why not the calculation adopted by the assessee for calculating the fair market value be disallowed as per provisions of section 56(2)(vii)b of the Act.

7. On receiving no plausible reply, the Assessing Officer took the transaction as not genuine and made addition of Rs.1,64,62,000/-.

8. The assessee carried the matter before the Id. CITA but without any success.

9. Before us, the Id. counsel for the assessee vehemently stated that the share premium has been valued by an approved valuer, as per the relevant provisions of the Act, who valued the fair market value on DCF method, which is a recognized method and the Assessing Officer /CITA has not pointed out any defect or error in the said method and has simply rejected the valuation report without any basis.

10. Strong reliance was placed on the decision of the coordinate bench in the case of India Today Online Pvt. Ltd 176 ITD 459 and Cinestaan Entertainment (Pvt) Ltd 177 ITD 809.

11. Per contra, the ld. DR strongly supported the findings of the ld. CITA and read the operative part.

12. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has supported its valuation by a valuer's report as per the relevant provisions of the Act. It is also true that the lower authorities have not pointed out any error or infirmity or defect in the said valuation report. The said valuation report has been rejected only because there were differences between actuals and projection done by the valuer.

13. The coordinate bench in the case of India Today Online Pvt Ltd [supra] on similar issue has held as under:

“31. One of the cardinal principles of interpretation of fiscal statute is that they should be strictly construed and so long as the provision is free from any ambiguity, there should be no need to draw any analogy. A deeming provision on the other hand is intended to enlarge the meaning of a particular word which includes

matters which otherwise may or may not fall within the normal provision, therefore, it should be extended to the consequences and incidents which has been intended by the Legislature for a definite purpose and should not be extended beyond the mandate of the statute. Thus, deeming provisions require to be construed strictly. Here in this case the assessee has followed one of the options provided under such deeming provision and when such an option has been exercised, then same cannot be discarded to impose other option. The assessee's option has been rejected by the Ld. CIT (A) on the ground it does not stand the test of one of option, which he deems fit. Not only that valuation method adopted by the assessee to value its underlying asset, that is, Mail Today shares has been rejected on the ground that DCF method applied is not correct. DCF method is a recognised method where future projections of various factors by applying hindsight view and it cannot be matched with actual performance, and what Ld. CIT (A) is trying to do is to evaluate from the actual to show that the Company was running into losses, therefore, DCF is not correct. Valuation under DCF is not exact science and can never be done with arithmetic precision, hence the valuation by a Valuer has to be accepted unless, specific discrepancy in the figures and factors taken are found. Then AO or CIT(A) may refer to the a Valuer to examine the same.

32. Lastly, in so far as rejecting of Valuation report by the Ld. CIT (A) on the ground that the Chartered Accountant who has given the Valuation report in the case of the assessee was not a competent person in terms of 11U, we are of the opinion the same would only be relevant, when the Valuer has done the valuation in the manner prescribed in 11U and 11UA, because it is in Rule 11 such a condition has been prescribed. If assessee has not opted for 11U & 11UA, then all those guidelines and formulas given therein would not apply and Ld. CIT(A) cannot thrust upon the assessee the option should be exercised only under 11U and 11UA, which admittedly at the time of issuance of shares such method was not even prescribed in

the statute. Prior to Rule 11UA, Net Asset Value method was accepted method in which no discrepancy has been pointed by the Ld. CIT (A). First of all, the valuation of the shares of Mail Today has been done under DCF method and the valuation of assessee share has been done on NAV method. The reason being, the valuation report for the valuation of the shares by the Mail Today as on 20.7.20012 was shown under DCF method, wherein Rs. 40 per share were determined. Such a valuation of the shares has been accepted by the revenue in the case of Mail Today under scrutiny proceedings, which cannot be discarded. Determination of value of shares on the basis of financial statement of a Company or the book value does not have much relevance under DCF method, because it is based upon, fair expected revenue growth and fair expected cash flow for a period of five years; discount rate and terminal growth rate; and terminal value, etc. are the factors which are taken in the consideration. Therefore, to reject the valuation of the Mail Today mainly on the basis of losses shown in the financial statement would not be correct, until and unless some discrepancy has been out either in the DCF method or in the Valuation Report furnished by an independent Valuer of Mail Today.

33. Accordingly, in view of the reasoning given above, we do not find any justification for reducing the value of shares to Rs. 10 and disallowing premium Rs. 20, as assessee was able to substantiate that the shares issued at Rs. 30 per share was less than the FMV and consequently the enhancement made the Ld. CIT(A) for making the addition of Rs. 48,16,66,660/- u/s 56 (2)(viib) is set aside and the addition by him is deleted.”

14. Similarly, the coordinate bench in the case of Cinestaan Entertainment Pvt Ltd [supra] has held as under:

“27. 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 Id. 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 www.taxguru.in I.T.A. No.81113/DEL/2018 33 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 Id. 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."

15. Respectfully following the decision of the coordinate benches [supra], we do not find any merit in the addition made by the Assessing Officer. The findings of the Id. CITA are set aside and Assessing Officer is directed to delete the impugned addition.

16. In the result, the appeal of the assessee in ITA No. 7353/DEL/2019 is allowed.

The order is pronounced in the open court on 15.06.2023.

Sd/-

**[SAKTIJIT DEY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th JUNE, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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