IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'E' NEW DELHI]

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 101/DEL/2021 (A.Y. 2016-17)

Movefast Automobiles Pvt. Ltd. FF-9, Vishnu Place Near Neelam flyover, Sector-20B, Haryana 20-B, Haryana **PAN No. AAICM2607C** **(APPELLANT)**	Vs.	ITO Ward-1(5) C. R. Building, Faridabad Haryana **(RESPONDENT)**

Assessee by :	**Sh. Rajiv Saxena, Adv, Ms. Sumangla Saxena, Adv & Sh. Dishant Sethi, Adv**
Department by:	**Sd. Arvind Kumar Bansal, Sr. DR**

Date of Hearing	**05.06.2023**
Date of Pronouncement	**20.06.2023**

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 19/03/2020 passed by the CIT (A)-Faridabad, (hereinafter referred to 'CIT(A)' for assessment year 2016-17. There is a delay of 23 days for filing the present Appeal, the assessee filed an application for condoning the delay filed an affidavit for

condoning the delay since the Counsel of the Assessee was occupied with tax audit work therefore, the appeal could not be filed on time. Considering the days of delay involved in filing the appeal and for the reason assigned in the affidavit delay of 23 days of filing the present appeal is condoned.

2. The assessee has raised the following concise grounds of appeal:-

""1. That the Id. CIT (A) has erred in law as well as on facts in confirming addition of Rs. 85,00,000 us 68 of the IT Act, 1961 on account of alleged unexplained share premium and share capital despite furnishing all the documentary evidence for establishing identity, creditworthiness of the investors and the genuineness of the transaction.

2. That the Ld. CIT (A) has erred in law as well as on facts in enhancing the income of appellant as 251(1) of the Act by Rs. 70,83,500/-/- under the head income from other sources by applying section 56(2)(viib) of the Act on protective basis and rejecting the valuation report furnished under Rule 11UA(2)(b) of Income Tax Rules, 1962 i.e., Discounted Cash Flow Method.

3. That the Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant by not issuing valid show cause notice as mandated w/s 250(2) of the Act.

4. That the Ld. CIT(A) has grossly erred in enhancing the income of appellant on protective basis u/s 56(2)(viib) r.w.r 11UA of IT rules without appreciating the fact that the case was selected for limited scrutiny to verify "whether the funds received in the form of share premium are from disclosed sources and have been correctly offered

to tax which restrict the scope of assessing authorities to scrutinize only the source of share premium.

5. That the Ld. CIT(A) has erred in law as well as on facts in initiating the penalty proceedings u/s 271(1)(c) of the Act.

The above grounds of appeals are independent of and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds".

3. Brief facts of the case are that, the return for A.Y. 2016-17 was filed by the assessee declaring an income of Rs.1,86,590/-. Later on the case of the assessee was selected under limited scrutiny and statutory notices were issued. The assessment u/s 143(3) of the Income Tax Act, ('Act' for short) was completed on 26.12.2018 at an income of Rs.86,86,790/- after making addition of Rs.85,00,200/- u/s 68 of the Income Tax Act treating the same as bogus transaction. Aggrieved by the assessment order dated 26/12/2018, the assessee preferred an appeal before the CIT(A), the ld. CIT(A) dismissed the Appeal filed by the assessee on 19/03/2020 and also enhanced the income of the assessee u/s 251(1) of the Act by Rs. 70,83,500/- under the head of other sources by applying Section 56(2) (viib) of the Act on protective basis and rejected the valuation report submitted as per Rule 11UA(2)(b) of the Income

Tax Rules, 1962. Aggrieved by the order of the CIT(A) dated 19/03/2020, the assessee preferred the present Appeal on the grounds mentioned above.

4. Ground No. 1 is regarding addition of Rs. 70,83,500/- 68 of the Act on account of unexplained share premium and share capital. The Ld. Counsel for the assessee vehemently submitted that the assessee had furnished all documentary evidence for establishing identity, creditworthiness of the investors and the genuineness of the transaction but the Revenue Authorities have failed to appreciate the material available on record. The Ld. Assessee's Representative has taken us through the paper book and various judicial pronouncements in support of his contention. Further submitted that the nature and source of credit in the books of the form of receipt of share capital and share premium from the applicants. The nature of receipt towards share capital is well established from the entries passed in the respective balance sheet of the investor companies as share capital and investments. Hence, the nature of receipt is proved by the appellant beyond doubt. The investors have furnished the bank statements through which money towards subscription of the share capital in the Assessee Company and Ld.AO is wrong to hold that these are not having any creditworthiness. All the companies are registered companies filing their ITR regularly, with running income and business activities, thus the order of the CIT(A) is erroneous.

5. Per contra, the Ld. Departmental Representative argued that the assessee had failed established identity, creditworthiness of the investors and also failed to prove the genuineness of the transaction, further by relying on the orders of the Lower Authorities prayed for dismissal of the Ground No. 1 of the assessee.

6. We have heard the parties and perused the material available on record. It is also found from the record that during the assessment proceedings, it is found from the record that after filing the return, the case was selected for scrutiny to verify whether the funds received in the form of share premium are from more disclosed sources and have been correctly offered for tax, accordingly notice has been issued to the assessee. On the basis of details filed by the assessee, it is found that the assessee company allotted 1,41,670equity shares of Rs. 10/- per share at a premium of 50% share to two entities. The details are as under:-

Name of the Person	No. of shares	Nominal Value per share (in Rs)	Premium per share (in Rs.)	Share Capital (in Rs)	Share Premium (in Rs)	Total amount paid including premium (in Rs)
Goodluck Industries Pvt. Ltd	75,000	10	50	7,50,000/-	37,50,000/-	25,00,000/- and 20,00,000/- on 19.8.2015
Rishi Credit & Industries Ltd.	66, 670	10	50	6,66,700/-	33,33,500/-	40,00,000/- on 27.10.2015 and 200 on 30.11.2015
Total	1,41,670			14,16,700/-	70,83,500/-	85,00,200/-

7. During the assessment proceedings, the A.O. issued notice u/s 136(6) of the Act to all the investors companies for providing requisite details. However, no investor company responded to the notice issued u/s 133(6) of the Act. In response to the show cause notice issued to the assessee, the assessee filed reply wherein the assessee furnished copy of ITR, balance sheet of investors including PAN, address, amount invested, number of shares issued, confirmation of accounts, bank statement, valuation report under Rule 11UA(2)(b) of the Rules. The assessee has also placed the copy of the reply along with the documents produced before the Lower Authorities in the paper book. The details produced by the assessee for all two investor Companies in the paper book are as under:-

3.		**M/s Goodluck Industries Ltd.**		
	13.04.1993	i.	Form I Certificate of Incorporation alongwith Memorandum and Article of association.	101-107
	31.08.2016	ii.	Auditors report alongwith balance sheet and profit and loss account for year ending 31.03.2016 relevant to A.Y. 16-17	108-120
	24.09.2016	iii.	Acknowledgment of return of income alongwith computation of income for A.Y. 2016-17.	121-122
		iv.	Share Application form	123
	01.04.2016	v.	Confirmation of accounts.	124
				125-126

		vi. Bank statement of AXIS Bank for period from 01.04.2015 to 31.03.2016	
		M/s Rishi Credit & Industries Pvt. Ltd.	
	14.11.2012	i. Form I Certificate of Incorporation alongwith Memorandum and Article of association.	127-133
		ii. Auditors report including balance sheet and profit and loss account for year ending 31.03.2016 relevant to A.Y.16-17	134-146
	28.9.2016	iii. Acknowledgment of return of income alongwith computation of income for A.Y. 2016-17	147-148
		iv. Share application from	149
	01.04.2016	v. Confirmation of accounts	150
		vi. Bank statement of AXIS Bank from 01.04.2015 to 31.03.2016	151-152

8. It is the specific case of the assessee that before the A.O. that the assessee had discharged its onus cast upon it under the Act by establishing the identity, creditworthiness and genuineness of the transaction, therefore, the onus shifted on the Department. Further, the share premium has been calculated on the basis of Section 56 (2) (viib) read with Rule 11UA (2)(b) of the Income Tax Rules, 1962. The A.O. did not agree with the assessee and added entire capital including share premium of Rs. 85,00,000/- under Section 68 of the Act, the Ld. A.O. while making the addition has observed as under:-

> *"In view of the facts discussed above, the identity and creditworthiness of the investors and the genuineness of the transaction remains highly suspicious. It is also a settled legal position that the onus of the assessee, of explaining nature and*

source of credit, does not get discharged merely by filing the copy of ITRs, financial statements or demonstrating that the transactions are done through the banking channels. It is the most vital fact in this issue that the investors have deliberately held back their , relevant bank account statements through which the share application moneys were paid, and as to how these accounts were shown in the final financial statements. An in-depth analysis of the bank account statements of these investors would have gone to establish or demolish the creditworthiness of these investors as well as the genuineness of the transactions. As brought out above, in the absence of the relevant bank account statements, neither the creditworthiness factor is established nor the genuineness of transaction been fully proved. Also, the fourth limb [over and above the identity, creditworthiness and genuineness factors] of reasonableness/ business prudence in such transactions is glaringly conspicuous by its absence, on the face of the surrounding attendant facts of the case."

9. Considering the above facts that the assessee had provided all the details to discharge the onus to prove the identity, creditworthiness and genuineness of the investors, the onus will shift to Income Tax Authorities to disprove the documents furnished by the assessee. It is found from the record that the Ld. A.O. or the CIT(A) has not made any further investigation on the claim made by

the assessee or the document produced by the assessee. Thus, the addition cannot be sustained merely based on the inferences without gathering tangible evidence. It is well settled law that once the assessee discharges its onus to prove the creditworthiness of the investor companies and the genuineness of the transaction, the onus will shift on the Department to refute the assertion made by the Assessee.

10. Further, the assessee had fulfilled the ingredients of Section 68 of the Act by proving the initial burden cast upon the Assessee, once the assessee proves/fulfils the ingredients of Section 68 of the Act, the burden shifts on the revenue. In the present case, the Lower Authorities have not brought anything on record to prove otherwise or to disprove the claim of the assessee and in such circumstances; the authorities are precluded from making any other addition on this count in the absence of contrary materials.

11. Further, we place reliance on the judgment of the Supreme Court in the case of Principal Commissioner of Income Tax Vs. Rohtak Chain Co. (P) Ltd. reported in 59 (SC)/[2019] 110 taxmann.com, wherein the Apex Court held that once the genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on the ground that the shares are issued at excess price. The relevant portions are as under:-

> *"51. The learned ITAT after due examination of the order of CIT (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of M/s. Aadhaar*

ventures (I) Ltd, M/s. Dhanush Technologies Ltd, M/s. Emporis Projects Ltd and M/s. L.N. Industries Ltd (formerly known as L.N. Polyster Ltd) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of subscriber company also appeared with books of accounts before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Hon'ble Supreme Court and were of the opinion that the onus cast upon the assessee as provided under Section 68 of the Act has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The learned ITAT considered the case of the each company in great detail in para 85 to 110 of the impugned order and recorded its finding. The aforesaid finding of fact recorded by the ITAT are based on the material available on record which is a finding based on appreciation of evidence on record.

52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

53. Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of

Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case."

12. further, in the case of CIT Vs. Kamdhenu Steel and Alloys Ltd. reported in 361 ITR 220 the Jurisdictional High Court held that no addition can be made in respect of share capital received from shareholders when the evidence has been placed on record, and the Ld. AO has not led any material to the contrary in following manners:-

"14. The important question which arises at this stage is as to whether on the basis of these facts, it could be said that it is the assessee which has not been able to explain the source and receipt of money. According to the assessee, he had given the required information to explain the source and was not obligated to prove the source of the money. It is the submission of the assessee that even in case there is some doubt about the source of money in giving into coffers of the share applicants which they invested with the assessee, it would not automatically follow that the said money belongs to the assessee and becomes unaccounted money. According to us, the assessee appears to be correct on this aspect. We feel that something more which was necessary and required to be done by the AO was not done. The AO failed to carry his suspicions to a logical conclusion by further investigation. After the registered letters sent to the investing company had been received back undelivered, the AO presumed that these companies did not exist at the given address. No doubt, if the companies are not existing, i.e., they have only paper existence, one can draw the conclusion that he assessee had not been able to disclose the source of amount received and presumption under s. 68 of the Act for the purpose of addition of amount at the hands of the assessee. But is has to be conclusively established that the company is non-existence."

13. The similar view has been expressed and the similar ratio has also been laid down in following judicial pronouncements:-

- *(Principal Commissioner of Income Tax v Agson Global (P.) Ltd. (Delhi HC) [2022] 441ITR 550 134 taxmann.com 256 (Delhi)/[2022] 441 ITR 550 (Delhi)[19-0L2022]*

- *Principal of Income Tax v Manoj Kumar Vipin Kumar (Rajasthan HC)/[2022] 441 ITR 632* ***138 taxmann.com 103 (Rajasthan)/[2022] 441 ITR 632 (Rajasthan)[15-ll-2021]***

- *[2022] 137 Deputy Commissioner of Income Tax v Gandhi Capital (P.) Ltd. 75 (Surat-Trib.)/[2022] 194 ITD 396.*

- ***10 Principal Commissioner of Income Tax v Rohtak Chain Co. 59 (SC)*** *[2019] 110 taxmann.com 59 (SC)/[2019]266 Taxman 459 /(SC)[05-08-2019]*

14. Applying the above judicial principles to the cases at hand, since the Assessee herein filed detailed documentary evidences in the form of duly signed confirmation of investors/lenders (parties), details of PAN, copies of ITR, duly establishing the identity of the parties and genuineness of the transactions and the bank statements of the parties duly establishing the creditworthiness of the parties to invest in the share capital of or advance loans to the Assessee Companies. Thus, the Assessee effectively discharged the burden cast upon them u/s 68 of proving identity of the investors, the genuineness of the transactions and the creditworthiness of the parties with respect to the transactions that took place between the Assessee and the investors. Since the Assesses filed the bank statements of the parties conclusively proving that the impugned sums were received through normal banking channels from the bank accounts of the parties, the burden of proving the genuineness of the transactions between the Assessee and the

parties and the creditworthiness of the parties to invest in the share capital of the Assessee Companies stood discharged. Once the Assessee established the identity of the parties, the genuineness of the transactions and the creditworthiness of the parties to invest in the share capital of or advance loans to the Assessee Companies, the burden shifted to the Revenue to prove the contrary. The Ld. A.O has failed to discharge the secondary onus of demolishing/disproving the genuineness of the documentary evidences filed by the Assessee. As held in the cases cited above, before fastening any liability upon the Assessee, the A.O is required to show by bringing on record tangible material that the amounts received as share capital/loans from the investors/lenders actually emanated from the coffers of the Assessee or represented the undisclosed income of the Assessee. Therefore we find merit in the Ground No. 1 is of the Assessee. Accordingly, the Ground No. 1 of the Assessee is allowed and addition made u/s 68 of the Act which was sustained by the CIT(A) his hereby deleted.

15. The Ground No. 2 of the Assessee are regarding enhancement of income of Rs.70,83,500/- under the head from other sources by applying Section 56(2)(viib) of the Act on protective basis by rejecting the valuation report furnished under Rule 11UA (2) (b) of the Income Tax Rules i.e. Discounted Cash Flow Method (DCF Method). The Ld. Counsel for the assessee submitted that the CIT(A) has committed an error in not accepting the valuation report of Chartered Accountant who valued the shares as per Clause B of Rule 11UA (2)

of the IT Rules. Further submitted that, when legislature provided an option to be exercised by the assessee to reach the value of the each share under DCF Method, the Lower Authorities ought to have accepted the same. The Ld. Assessee's Representative also relied on the judgment of the Gujrat High Court in the case of IMC Limited and ors Vs. Union of India and ors reported in MANU/GJ/0860 2019 and submitted that the Lower Authorities have committed error in not accepting the valuation report and enhancing the addition. On the other hand, the Ld. Departmental Representative relying the orders of Ld. CIT(A) justified the rejection of the valuation report and also the enhancement of the income and submitted that no interference is called for by the Tribunal.

16. On hearing the parties and verifying the material on record, we find that the assessee has provided the valuation report of the Chartered Accountant as per Rule 11UA (2) (b) of the IT Rules and arrived the value of each share calculating the same as per Discount Cash Flow Method. As per the valuation report the value per share had been computed at Rs. 60/- per share i.e. premium of Rs. 50/- per share for a share of Rs. 10/-. Accordingly, new shares were issued and allotted to the investors during the year under consideration.

17. The Section 56(2)(viib) of the Act provides that where a company receives 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 shall be taxable as income from the sources. Further, clause (a)(i) of Explanation provides that fair market value of the shares shall be the value as may be determined in accordance with such method as may be prescribed. For the purpose of section 56(2)(viib) of the Act, the valuation of shares has to be done in accordance with the Rule 11UA of the Income Tax Rules. For the sake of convenience, relevant provisions of Rule 11UA are extracted hereunder:

> ***(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (I), 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***
>
> ***(a)***
>
> ***(b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant (omitted by the IT (sixth amendment) Rules, 2018 w.ef24.5.2018) as per Discounted Free Cash Flow Method.***

18. Further, we placed reliance on the Judgment of Gujarat High Court in the case of IMC Limited and ors Vs. Union of India and ors (10/05/2019 Guj High Court) MANU/GJ/0860 2019 wherein it is held as under:-

"Karnataka and Ors., reported in MANU/SC/0994/2013: (2014) 2 SCC 401, reiterated the proposition of law that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The said settled legal proposition is based on a legal maxim ***expressio unis est exclusio alterius,*** *meaning thereby, if a statute provided a thing to be done in a particular way, then it is to be done in that manner and in no other manner."*

19. The Coordinate bench of this Tribunal in the case of Cinestan Entertainment (P). Ltd. Vs. ITO for AY 2015-16 dated 27/05/2019, wherein it is held that the Assessing Officer cannot examined or substituted its own value in place of valuation arrived by the assessee either DCF Method or NAV Method, the commercial expediency has to be seen from the point view of businessman. Further held that 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. The relevant portions are hereunder:-

"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 ld. 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 by 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."

20. The Coordinate Bench of the Tribunal while reiterating the above ratio has also considered the decision of the Coordinate bench in Agro Portfolio Pvt. Ltd. Vs. ITO which has been relied by the CIT(A). Thus, there is no dispute that legally the assessee had option to choose the valuation of the shares as per Rule 11UA of the IT Rules. When the statute provides for particular procedure, authorities have to follow the same and cannot interpret or permitted to act in contravention of the statute. The said legal principal is based on the legal maxim '***Expression Unis Est Exclusion Alterius'***. Thus, we hold that the CIT(A) have committed an error in rejected the valuation done by the assessee from prescribed expert as per the prescribed method, which ultimately resulted in enhancement of income of the Assessee u/s 251(1) of the Act. Accordingly, we allow Ground Nos. 2 of the Assessee and delete the enhancement made by the CIT(A).

21. In view of deleting the addition/enhancement made by CIT(A) by allowing Ground No. 1 & 2, the other grounds remained only as academic in nature, thus the other Grounds requires no adjudications.

22. In the result, the Appeal of the Assessee is partly allowed.

Order pronounced in the open court on : **20/06/2023.**

Sd/-	**Sd/-**
(Dr. B. R. R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 20/06/2023

R.N, Sr. PS

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI