

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2014/DEL/2021 [A.Y. 2014-15]

&

CO No. 125/DEL/2022

[A/o ITA No. 1722/DEL/2018 [A.Y. 2015-16]]

Caddie Hotels Pvt. Ltd.,
Third Floor, Dr. Gopal Das Bhawan
Barakhamba Road, New Delhi

Vs.

The P.C.I.T/DCIT
Central Circle - 17
New Delhi

PAN : AADCC 6520 H

ITA No. 1721/DEL/2022 [A.Y. 2014-15]

ITA No. 1722/DEL/2022 [A.Y. 2015-16]

ITA No. 1723/DEL/2022 [A.Y. 2016-17]

ITA No. 1724/DEL/2022 [A.Y. 2017-18]

The P.C.I.T/DCIT
Central Circle - 17
New Delhi

Vs.

Caddie Hotels Pvt. Ltd.,
Third Floor Dr. Gopal Das Bhawan
Barakhamba Road, New Delhi

PAN : AADCC 6520 H

(Applicant)

(Respondent)

Assessee By : Shri Ajay Vohra, Adv
Shri Neeraj Jain, Adv
Shri Anshu Sachar, Adv
Shri Tavish Verma, Adv

Department By : Shri T. James Singson, CIT- DR

Date of Hearing : 19.07.2023

Date of Pronouncement : 21.07.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned four appeals by the Revenue are preferred against the order of the Id. CIT(A) - 27, New Delhi dated 19.05.2022 pertaining to Assessment Year 2014-15 to 2017-18. Appeal by the assessee is preferred against the order of the PCIT, Gurgaon dated 29.03.2019 for A.Y 2014 -15. Cross Objection by the assessee is preferred for A.Y 2015-16. All these appeals and cross objection were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. At the very outset, the Id. counsel for the assessee withdrew Cross Objections filed by the assessee. Therefore, the same are dismissed as withdrawn.

3. The peculiar facts for A.Y 2014-15 are that the impugned appeal by the Revenue in ITA No. 1721/DEL/2022 is for the assessment order framed pursuant to the direction of the PCIT u/s 263 of the Income-tax Act, 1961 [the Act, for short] and that order of the PCIT u/s 263 of the

Act is under challenge in appeal before us by the assessee in ITA No. 2014/DEL/2021.

4. For the sake of our convenience, we would first address the appeals by the Revenue on the merits of the case.

5. Briefly stated, the facts of the case are that the assessee is a company incorporated under the Companies Act, 1956 and is engaged in the business of running, owning, establishing, taking over, run on lease all kinds of hotels, resorts, restaurants, holiday camps and other hospitality services in this regard. The assessee company was constructing hotels under the brand name of Novotel and Pullman in Aerocity, New Delhi and for the said purpose, it had entered into an agreement with Delhi International Airport Limited [DIAL] for leasehold land and further to operate and manage hotels smoothly.

6. The assessee has also entered into Management Agreements for Novotel and Pullman Hotels respectively with an Indian operator who has the necessary skill and expertise to manage and operate such brand hotels in India.

7. Keeping in view the funds requirement, the assessee company received the following amounts from share holders and consequently, on 05.09.2013 had issued and allotted shares to the share holders as under:

Name of shareholders	No. of shares	Residential Status	PAN	Received on	Amount received	Towards share premium
InterGlobe Enterprises Ltd. Office Space No. 106,1 st Floor, Jaipur Towers, M.I. Road, Jaipur -302001	19,54,271	Resident	AAACI1393M	20-May-2013	19,48,80,000 (Share capital: 1,95,42,710 plus share premium: 17,53,37,194)	17,53,37,194
AAPC Singapore Pte. Ltd. 1 Wallich Street, #17-01, Guoco Tower, Singapore-078881	19,54,271	Non-Resident	AAICA4319D	23-May-2013	19,48,80,000 (Share capital: 1,95,42,710 plus share premium: 17,53,37,194)	17,53,37,194
APHV India Investco Pte. Ltd. 50 Raffles Place, #06-00 Singapore Land Tower, Singapore 048623	21,98,555	Non-Resident	AAJCA7905Q	23-May-2013	21,92,40,000 (Share capital: 2,19,85,550 plus share premium: 19,72,54,355)	19,72,54,355
Total	61,07,097				60,90,00,000	54,79,28,743

8. The above allotment of shares was made at the issue price of Rs. 99.72 i.e. face value of Rs. 10/- and share premium of Rs. 89.72. The Fair Market Value of the shares for the purpose of section 56(2)(viib) of the Act r.w.r. 11UA of the Income Tax Rules, 1962 was carried out by an independent Chartered Accountant who valued the shares as per Discounted Cash Flow Method as on 24.11.2012.

9. The issue of shares was duly approved by the Board of Directors. The allotment of shares to the promoters of the company was to raise funds for construction of hotel project.

10. During the course of scrutiny assessment proceedings for A.Y 2014-15, the assessee company submitted details of share premium received, bank statements substantiating the receipt of funding from investors, details of investors alongwith with their PAN, bank statement substantiating the genuineness of receipt of money for issue of shares apart from the valuation report of the Chartered Accountant.

11. While completing assessment u/s 143(3) of the Act, the Assessing Officer discarded valuation of shares as submitted by the assessee. The Assessing Officer was of the firm belief that as the shares are issued at premium and value at which shares were issued was higher than the value determined u/s 56(2)(viib) of the Act r.w.r 11UA of the Rules, excess of the issue price over the value determined has to be assessed to tax u/s 56(2)(viib) of the Act. Consequently, the Assessing Officer made addition of Rs. 17,53,37,194/- qua investment towards equity received from the resident investor.

12. Similarly, for A.Y 2015-16, addition was made to the tune of Rs. 39,34,10,900/-. In 2016-17, addition amounted to Rs. 58,20,07,914/- and in A.Y 2017-18 addition of Rs. 13,41,47,939/- was made.

13. Since the underlying facts in all the additions were identical, the ld. CIT(A) decided to dispose the appeals of the four A.Ys by a common order.

14. After considering the facts and submissions and finding that the valuation of shares is duly supported by a valuation report as per Rule 11UA of the IT Rules, the ld. CIT(A) observed as under:

"(i) Section 56(2) (viib) is a deeming provision and one cannot expand the meaning of scope of any word while interpreting such deeming provision.

ii. Option is with the assessee to choose either NAV method or DCF method.

iii. Revenue cannot decide which method should be chosen by the assessee.

iv. Once one of the prescribed method has been adopted by the assessee, then Assessing Officer has to accept the same.

V. Even if he is not satisfied, there is no enabling provision in the Act or rules. where Assessing Officer can adopt his own valuation method or get it valued by some different Valuer or replace the DCF method by NAV method.

vi. DCF method is based on projections which are based on various factors 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.

vi. In view of the above, DCF method can not be challenged on the ground that the performance did not match the projections

vii. The test laid down by the Courts for interfering with the findings of a valuer is, when he has adopted a demonstrably wrong approach, or that the method of valuation was made on a wholly erroneous basis, or that it committed a mistake which goes to the root of the valuation process."

15. After observing as above, the ld. CIT(A) concluded that though the Assessing Officer has tried to find error in the valuation method but none of the errors qualifies the test laid down by the Hon'ble High Court of Delhi. Reference was made to the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of PCIT Vs. Cinestaan Entertainment 433 ITR 82.

16 Before us, the ld. DR strongly supported the findings of the Assessing Officer. Referring to the decision of the Hon'ble High Court of Delhi in the case of Cinestaan Entertainment [supra] the ld. DR pointed out that in that case since no alternative method of valuation was provided, the Hon'ble High Court accepted the discounted cash flow method.

17. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that the NAV applied by the Assessing Officer for determining the Fair Market Value is full of mathematical errors and if those mathematical errors are corrected, there would be no difference between the value adopted by the assessee and the valuation adopted by the Assessing Officer.

18. We have given thoughtful consideration to the orders of the authorities below. The entire quarrel revolves around the determination of fair market value of the shares. At the very outset, it has to be understood that the assessee has not issued and allotted shares to strangers but the shares have been issued to the existing promoters and existing shareholders. Therefore, the question of identity goes into oblivion.

19. Provisions of section 56(2)(viib) and Rules 11UA read as under:

Relevant provision of 56(2)(viib) of the Act are reproduced below:

"56(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:-

(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-

(1) 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

(b) venture capital company. venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a) clause (b) and clause (c) of Explanation to clause (23FB) of section 10:"

The corresponding rule prescribed under clause (a) of Explanation above is Rule 11UA of the Rules. The relevant extracts of the said Rule are reproduced hereunder

"11UA. Determination of fair market value

(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, -

(c) valuation of shares and securities-

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be the price it would fetch if sold in the open market on the valuation date and the appellant may obtain a report from a merchant banker or an accountant in respect of such valuation.

(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of subrule (1), the fair market value of unquoted equity shares for the purposes of sub clause (1) of clause (a) of Explanation to clause (vub) 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 appellant, namely:-

(a) The fair market value of unquoted equity shares = (A-L)

XPV

PE

Where,

A = book value of the assets in the balance sheet as reduced by any amount of tax paid as deduction or collection at source of as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance sheet as asset including unamortized amount of deferred expenditure which does not represent the value of any asset

L= book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:-

(1) the paid up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as

advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities,

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE= total amount of paid-up equity share capital as shown in the balance-sheet;

PV= the paid-up value of such equity shares; or

(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"

Thus, on the perusal of the above, it is very much evident that FMV for the purpose of section 56(2)(viib) of the Act, shall be the value as on valuation date, which has been defined in Rule 11UG) of the Rules to mean "the date on which the property or consideration, as the case may be, is received by the appellant". Thus, it is the FMV on the date of allotment which has to be determined. Further, the FMV of unquoted shares is determined by reducing the book value of liabilities from the assets as shown in the balance-sheet

As per Rule 110(b) of the Rules balance sheet means the (1) balance sheet of such company as drawn up on the valuation date or (ii) where the balance sheet on the valuation date is not drawn up, the balance-sheet drawn up as on a date immediately preceding the valuation date which has been approved in the annual general meeting of the shareholders of the company

Clause (b) and (i) of Rule 110 read as under 110. For the purposes of this rule and rule 11UA-

(b) balance-sheet", in relation to any company, means-

(1) for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;

*"valuation date" means the date on which the property or consideration, as the case may be, is received by the appellant."
(emphasis supplied)"*

20. From the above, we understand that the valuation of an unquoted equity shares in terms of Rule 11UA of the Rules can, at the option of the assessee, be determined as per either NAV Method or as per Discounted Free Cash Flow Method, which means that the option is given to the assessee and once the assessee has exercised an option, the Assessing Officer is bound to follow the same unless by bringing cogent material on record, the Assessing Officer established perversity in the method adopted by the assessee.

21. A perusal of the record shows that the basis of valuation report is free cash flow projections weighted average cost of material, terminal value total company value, fair market value of the company. Method adopted by the assessee is in line with the relevant provisions and relevant rules.

22. In our considered opinion, once the value of shares has been determined by adopting any of the two methods, i.e. NAV or DCF, then such value shall be deemed to be FMV of the assessee company and the Assessing Officer cannot question the valuation per se.

23. At this stage, it would be pertinent to refer to the valuation adopted by the Assessing Officer which is full of mathematical error:

Particulars	As per the appellant		As per Assessing Officer		Remarks
	As on 31.03.2013	As on 31.03.2014	As on 31.03.2013	As on 31.03.2014	
Share Capital (as per Note 3 of balance sheet)					
Equity Share Capital	66,892,220	127,963,190	Not considered	Not considered	Equity and preference Share Capital not considered by AO i.e. only Reserve & Surplus considered as net assets
Preference Share Capital	2,983,344,000	2,983,344,000	Not considered	Not considered	
Total Share Capital (INR) - (A)	3,050,236,220	3,111,307,190	-	-	
Reserve & Surplus (as per Note 4 of balance sheet)					
Securities Premium	599,207,148	1,147,135,891	599,207,148	1,147,135,891	
Accumulated Profit & Loss	(82,959,988)	(307,892,717)	(82,959,988)	(307,892,717)	
Total Reserve & Surplus (INR) -(B)	516,247,160	839,243,174	516,247,160	839,243,174	
Total Net Assets - (C = A+B)	3,566,483,380	3,950,550,364	516,247,160	839,243,174	
Number of shares (as per Note 3 of balance sheet)					
Equity Share (Number) @ 10 each	6,689,222	12,796,319	6,689,222	12,796,319	
Pref Share (Number) @ 100 each	29,833,440	29,833,440	298,334,400	298,334,400	Number of Convertible preference shares computed @ INR 10 by AO whereas actual Face Value of Preference share is INR 100.

24. From the above chart, it can be seen that the Assessing Officer has not even considered equity and preference share capital. Further, number of convertible preference shares have been computed by the Assessing Officer @ Rs. 10/- whereas the actual face value is of Rs. 100/- per share. Because of these gross mathematical errors, the Assessing Officer computed the NAV as per the share as on 31.03.2014 at Rs. 2.70 as against Rs. 92.67 by the assessee.

25. The corrected FMV as per NAV Method is as under:

Caddie Hotels Pvt. Ltd.
Determination of FMV as per NAV Method (AY 2014-15 to 2017-18)

	As on 31.03.2013	As on 31.03.2014	As on 31.03.2015	As on 31.03.2016	As on 31.03.2017
as per Note 3 of balance					
Capital	6,68,92,2220	12,79,63,190	26,55,52,640	46,97,94,640	71,99,82,540
Share Capital	2,98,33,44,000	2,98,33,44,000	2,98,33,44,000	2,98,33,44,000	95,46,70,100
Capital (INR) -(A)	3,05,02,36,220	3,11,13,07,190	3,24,88,96,640	3,45,31,38,640	1,67,46,52,640
Plus (as per Note 4 of					
Minimum	59,92,07,148	1,14,71,35,891	2,37,65,45,753	4,19,53,03,320	6,40,86,96,218
Profit & Loss	-8,29,59,988	-30,78,92,717	-23,65,74,571	-75,67,26,442	-1,63,81,17,558
& Surplus (INR) -(B)	51,62,47,160	83,92,43,174	2,13,99,71,182	3,43,85,76,878	4,77,05,78,660
Less - (C = A+B)	3,56,64,83,380	3,95,05,50,364	5,38,88,67,822	6,89,17,15,518	6,44,52,31,300
Res (as per Note 3 of					
Number) @ 10 each	66,89,222	1,27,96,319	2,65,55,264	4,69,79,464	7,19,98,254
Number) @ 100 each	2,98,33,440	2,98,33,440	2,98,33,440	2,98,33,440	95,46,701
Numbers) (D)	3,65,22,662	4,26,29,759	5,63,88,704	7,68,12,904	8,15,44,955
(C/D) (INR)	97.65	92.67	95.57	89.72	79.04
are (as per valuation	99.72, as valuation	99.72, as valuation report	99.51, as per valuation	99.04, as per valuation	99.13, as per valuation
ports)(INR)	report dated 24.11.2012	dated 24.11.2012	report dated 25.04.2014	report dated 15.02.2015	report dated 08.02.2016
	-	-	99.26, as per valuation	99.03, as per valuation	84.32, as per valuation
			report dated 08.09.2014	report dated 11.08.2015	report dated 07.09.2016
	-	-		99.13, as per valuation	-
				report dated 08.02.2016	

If the mathematical corrections are considered, it can be seen from the above chart that there is hardly any variation between the FMV adopted by the assessee and that of the AO, be it DCF or NAV.

26. The Hon'ble High Court of Delhi in the case of Cinestaan Entertainment [supra] has held a under:

"13. From the aforesaid extract of the impugned order, it becomes clear that the learned ITAT has followed the dicta of the Hon'ble Supreme Court in matters relating to the commercial prudence of an assessee relating to valuation of an asset. The law requires determination of fair market values as per prescribed methodology. The Appellant-Revenue had the option to conduct its own valuation and determine FMV on the basis of either the DCF or NAV Method. The Respondent-Assessee being a start-up company adopted DCF method to value its shares. This was carried out on the basis of information and material available on the date of valuation and projection of future revenue. There is no dispute that methodology adopted by the Respondent-Assessee has been done applying a recognized and accepted method. Since the performance did not match the projections, Revenue sought to challenge the valuation, on that footing. This approach lacks material foundation and is irrational since the valuation is intrinsically based on projections which can be affected by various factors. We cannot lose sight of the fact that the valuer makes forecast or approximation, based on potential value of business. However, the underline facts and assumptions can undergo change over a period of time. The Courts have repeatedly held that valuation is not an exact science, and therefore cannot be done with arithmetic precision. It is a technical and complex problem which can be appropriately left to the consideration and wisdom of experts in the field of accountancy, having regard to the imponderables which enter the process of valuation of shares. The Appellant-Revenue is unable to demonstrate that the methodology adopted by the Respondent-Assessee is not correct. The AO has simply rejected the valuation of the Respondent-Assessee and failed to provide any alternate fair value of shares. Furthermore, as noted in the impugned order and as also pointed out by Mr. Vohra, the shares in the present scenario have not been subscribed to by any sister concern or closely related person, but by outside investors. Indeed, if they have seen certain potential and accepted this valuation, then Appellant-Revenue cannot question their wisdom. The valuation is a question of fact which would depend upon appreciation of material or evidence. The methodology adopted by the Respondent-Assessee, accepted by the learned ITAT, is a conclusion of fact drawn on the

basis of material and facts available. The test laid down by the Courts for interfering with the findings of a valuer is not satisfied in the present case, as the Respondent-Assessee adopted a recognized method of valuation and Appellant-Revenue is unable to show that the assessee adopted a demonstrably wrong approach, or that the method of valuation was made on a wholly erroneous basis, or that it committed a mistake which goes to the root of the valuation process.

14. In view of the foregoing, we find that the question of law urged by the Appellant-Revenue is purely based on facts and does not call for our consideration as a question of law.

15. For the foregoing reasons, the appeal is dismissed along with pending application."

27. Considering the facts of the case in totality, in light of the decision of the Hon'ble Delhi High Court [supra] we do not find any error or infirmity in the findings of the ld. CIT(A). Therefore, the order of the ld. CIT(A) does not call for any interference. The impugned appeals by the Revenue are dismissed.

28. Since we have dismissed the appeals of the Revenue on merits of the case, challenge to the order of the PCIT u/s 263 of the Act appears to be a valid challenge. Since the quantum addition has been deleted on merits of the case, it can be safely concluded that the original assessment order for A.Y 2014-15 was neither erroneous nor prejudicial

to the interest of the Revenue. However, this become only for academic interest.

29. To sum up, in the result the appeal of the assessee in ITA No. 2014/DEL/2021 becomes academic. The appeals of the Revenue in ITA Nos. 1721 to 1724/DEL/2022 are dismissed. The Cross Objection in CO No. 125/DEL/2022 stands dismissed as withdrawn.

The order is pronounced in the open court on 21.07.2023.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 21st JULY, 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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	