

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. 6095/DEL/2019 [A.Y. 2015-16]

The Dy. C.I.T  
Circle - 11(1)  
New Delhi

Vs.

Hometrail Buildtech Pvt Ltd  
Dr. Jha Marg, Max House, Okhla  
Phase - III, New Delhi

PAN: AACCH 1518 B

(Applicant)

(Respondent)

Assessee By : Shri Ajay Vohra, Sr. Adv  
Shri Neeraj Jain, Adv  
Shri Deepesh Jain, Adv

Department By : Shri Vivek Kumar Upadhyay, Sr DR

Date of Hearing : 13.09.2023  
Date of Pronouncement : 15.09.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order of the ld. CIT(A) - 22, New Delhi dated 30.04.2019 pertaining to Assessment Year 2015-16.

2. The solitary grievance of the revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 8 crores made by the Assessing Officer u/s 56(2)(viib) of the Income-tax Act, 1961 [the Act, for short] holding that the DCF Method is the correct method for valuation of shares.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee company is a part of Max Group of hospitals. The assessee is a subsidiary company of Max Healthcare Institute Ltd [MHIL], which is a subsidiary of Max India Ltd.

5. Return for the year under consideration was filed on 29.09.2005 declaring current year's loss of Rs. 21,81,94,961/-. Return was selected for scrutiny assessment and, accordingly, statutory notices were issued and served upon the assessee.

6. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has issued 20 lakhs equity shares at a premium of Rs. 40/- per share to M/s Max Healthcare Institute Limited and received share premium of Rs. 8 crores.

7. The assessee was asked to furnish valuation of shares as on date of allotment. The assessee submitted Business Valuation Report dated 09.03.2015. The value of shares as per Discounted Cash Flow [DCF] Method is Rs. 15,988/-.

8. The Assessing Officer noticed that there was a huge difference between the financial projections and actual projections submitted by the assessee. The assessee was asked to furnish share valuation certificate as per book valuation and was show caused to explain why share premium received should not be added u/s 56(2)(viib) of the Act.

9. The assessee filed detailed reply which did not find any favour with the Assessing Officer, who completed the assessment by making addition of Rs. 8 crores by holding that the valuation as per DCF Method is rejected and Book Value Method is adopted for the purpose

of calculating value for attracting provisions of section 56(2)(viib) of the Act.

10. The assessee challenged the assessment before the ld. CIT(A) and after considering the facts and submissions, the ld. CIT(A) deleted the impugned addition.

11. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the valuation of the assessee is supported by valuation report from a technical expert who has adopted DCF method, which is one of the recognized methods u/r 11UA of the Rules. Therefore, the Assessing Officer erred in rejecting the method.

12. On a perusal of the relevant sections read with the Rules, we are of the view that the action of the Assessing Officer in substituting the method of valuation is beyond jurisdiction. We are of the view that DCF Method is based on projections which are based on factors like growth of the company, economic/market conditions, business

conditions, expected demand and supply, cost of capital and host of other factors.

13. 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 a certain period of time.

14. Moreover, valuation of an unquoted equity share, 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 DCF 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 establishes perversity in the method adopted by the assessee.

15. The Hon'ble High Court of Delhi in the case of PCIT Vs. Cinestaan Entertainment 433 ITR 82 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."

16. 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).

17. In the result the appeal of the Revenue in ITA No. 6905/DEL/2019 is dismissed.

The order is pronounced in the open court on 15.09.2023.

**Sd/-**

**[ANUBHAV SHARMA]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 15<sup>th</sup> SEPTEMBER, 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	