

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 2151/DEL/2019 [A.Y. 2015-16]

M/s Breezefresh Dairy &  
Agro Farms Pvt. Ltd  
921 -A, 9<sup>th</sup> Floor, Devika Tower  
Nehru Place, New Delhi

Vs.

The I.T.O  
Ward 5(2)  
New Delhi

PAN: AAECB 7960 R

(Applicant)

(Respondent)

Assessee By : Shri Gaurav Jain, Adv

Department By : Shri Zafarul Haque Tanweer, CIT-DR

**Date of Hearing : 25.10.2023**

**Date of Pronouncement : 27.10.2023**

**ORDER**

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

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 2, New Delhi dated 29.01.2019 pertaining to Assessment  
Year 2015-16.

2. The sum and substance of the grievance of the assessee is that the Id. CIT(A) erred in confirming the addition of Rs. 12,42,5,700/- made u/s 56(2)(viib) of the Income-tax Act, 1961 [the Act, for short] by the Assessing Officer by rejecting the valuation report.

3. Briefly stated, the facts of the case are that return of income was filed electronically on 29.09.2015 declaring NIL income. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

4. The main objective of the company is to carry on the business of rearing animals including cows, buffalos, goats, sheep, pigs, including male and female calves and bulls etc. for the purpose of producing milk and/or meat and the business of producers/ dealers in and purchase of dairy, poultry, fishing, floriculture, horticulture farm, garden and produce of all kinds and in particular milk cream, butter, ghee, cheese, poultry, eggs, fruits, vegetable oil, vegetable ghee, artificial ghee, porkpies, sausages, prawn, pelted meat, table delicacies, and to purchase, acquire, keep, maintain, sell, or otherwise dispose all kinds of cattle, cows, buffaloes, pigs, poultry, and live or dead stock of all description.

5. The assessee has submitted the proposed project to establish Hi-Tech Integrated Cow Farm with facilities of Milk Processing and Production of biogas and organic manure.

6. During the year under consideration, the assessee has raised share capital and share premium of Rs. 6,24,300/- and Rs. 12,42,35,700/- respectively. The shares were valued at Rs. 2,004/- per share, as per the Discounted Cash Flow Method. However, shares were allotted @ Rs. 2/- per share.

7. Invoking the provisions of section 56(2)(viib) r.w.s 2(24)(xvi) of the Act and Rule 11UA(2) of the Rules, the Assessing Officer asked the assessee to justify the share premium and to show cause why premium received should not be treated as income within the provisions of the Act.

8. The assessee filed detailed reply justifying the non-applicability of section 56(2)(viib) of the Act. Point-wise reply of the assessee is as under:

**Sl. No. Information required to be furnished** **Remarks**

i.	Provide basis of revenue projection e.g. copies of work orders in hand, tenders participated by the assessee company or purchase order from customers. Also produce originals for verification.	1. Basis of projection is as per the detailed projection report produced for your reference. However for the sake of convenience we are producing the same once again and submitting appraisal report from Canara Bank is attached.
	Explain the basis of expenses with respect to nature of existing/proposed business activity and produce two comparables from the same Industry.	1. Basis of projection is as per the detailed projection report produced for your reference and submitting appraisal report from Canara Bank attached. 2. It is important to note that the Canara bank has already been considered the comparable of dairy industry in India before sanctioning the loan to the company. (Sanction report is attached for your reference).
	Justify the quantum of premium of Rs.1,990/- raised per share in the context of the above.	1. The valuation report of the equity shares has been issued by the chartered accountant based on the projected value. 2. As also mentioned in the point No.1 the equity shares have been issued at Fair Market Value.
	Justify with necessary supporting documentary evidences as to how the delay in start of project were beyond control of the assessee.	1. The company had initially decided for commissioning of project in between September-2015 to December-2015. 2. To finance the project the company approached various lenders and finally achieved success in closure with Canara Bank. Copy of the sanction letter is attached herewith. 3. However, the lender has put up some terms and conditions. The major condition was to finance the project is put in promoter's equity for a certain amount. 4. The assessee co. has initially infused some funds for purchasing the land and advance for purchase of fodder. The MOA of the same were already filed with you vide letter dated 28.11.2017. 5. It is important to note that the company has managed to arrange 23.74 cr. through promoter's equity, by end of March-2017, out of the total requisite promoter's equity of Rs.26.62 cr. 6. Due to shortage of fund the assessee could not infuse balance amount of its equity. 7. The company managed to get extension of loan till April, 2016 (extension letter is enclosed) but could not succeeded in arranging the funds. 8. The company is still in process of searching the option to put in the requisite promoter's equity for starting project and optimistic to start the business by March 2018. 9. Financials of the company for the year 2016-17 has already been submitted vide letter dated 28 <sup>th</sup> November, 2017 from where the structural changes may be identified. (attached again for your reference)

9. Detailed submissions of the assessee were dismissed by the Assessing Officer who was of the opinion that the reasons cited by the assessee for not starting the project is not acceptable as the promoters are people of means and have sufficient resources to induct the required funds for setting up of the project.

10. The Assessing Officer further pointed out the defects in the valuation report submitted by the assessee by observing that the assessee had no business activity during the assessee year and, therefore, imaginary projections were given to the valuer and the valuer, without application of his mind, and without verifying the projections with the ground realities or the results of similar projects in industry, submitted the valuation of shares ignoring the fact that no business activity was carried out in the earlier years by the company.

11. The Assessing Officer further observed that the entire valuation report was based on setting up of dairy project which has not seen daylight. Therefore, the valuation report cannot be relied upon. Recalculating the value of shares by applying net asset value method, the Assessing Officer computed the fair

market value at minus Rs. 21.30 per share and completed assessment by making an addition of Rs. 12,42,35,700/-.

12. The assessee carried the matter before the Id. CIT(A) but without any success.

13. 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.

14. A perusal of the balance sheet shows that the authorized capital of the assessee is 170000 shares of Rs. 10/- each of which issued, subscribed and fully paid up shares were 72,430 which were 10000 equity shares as on 31.03.2014, which means shares issued during the year were 62,430 equity shares.

15. The share holders are Ratul Puri and Indian Hydro Electric Power Pvt Ltd. Securities premium account have been shown at Rs. 1,24,25,700/- with a note mentioning share application of Rs. 12,48,60,000/- received by the assessee company from Indian Hydro Electric Power Pvt Ltd and Shri Ratul Puri has been

appropriated for allotment of 62,430 equity shares of Rs. 10/- each at a premium of Rs. 1990/- per share.

16. The entire edifice of rejecting the assessee's valuation by the Assessing Officer revolves around the observation that the valuer, without application of his mind and without verifying the projections with ground realities, submitted the valuation of shares which is based on zero activity of the assessee.

17. These observations of the Assessing Officer are not accepted on finding the fact that on the very basis of said valuation report, Canara Bank has vetted the report for sanctioning the loan. Certificate from the bank is exhibited at pages 23 of the Paper book and after vetting the report, the bank sanctioned the loan of Rs. 26.20 crores on a total project cost of Rs. 43.85 crores.

18. The sanction letter is at page 64 of the Paper Book with security details at page 66. This clearly shows that the loan was sanctioned by the bank on the basis of valuation report submitted by an expert valuer, which cannot be discarded as done by the Assessing Officer.

19. The Assessing Officer disregarded the valuation report mainly on the ground that the valuation of equity shares was based on the projections of the revenue which was not there. The assessee has applied DCF Method for the purpose of valuation of shares and has relied on the valuation report of an expert valuer.

20. There is a settled law on the issue that as per section 56(2)(viib) of the Act r.w.r 11UA of the ITAT Rules, that as per Sec. 56(2)(viib) of the Act read with Rule-11 UA of the Income tax Rules, 1962, every assessee has an option to do valuation of shares and determine its Fair Market Value either by DCF method or NAV method, and that the Assessing Officer cannot examine or substitute his own value in place of the value so determined. The ITAT Delhi Bench in the case Cinestaan Entertainment (P) Ltd 106 taxmann.com 300 has held as under:

"32. [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 [Rockland Diagnostics Services Pvt. Ltd. vs. ITO](#) 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. ...

33. 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."

5.1 Similarly, it has been held that where a valuation report is to be rejected, the authority should pinpoint any specific inaccuracies or short comings in the DCF valuation report. [In the Rockland Diagnostics Services Pvt. Ltd. vs. ITO](#) case of [Intelligrape Software Pvt. Ltd., vs. ITO](#) in ITA No.3925-Del- 2018 (Delhi Trib.), it has been held as under:

"23. The AO was not able to pinpoint any specific inaccuracies or short comings in the DCF valuation report of the Chartered Accountant/Valuer other than stating that year-wise results as projected are not matching with the actual results declared in the final accounts. Before the Id. CIT (A), reasons for variation between projected and actuals were duly explained. The Ld. CIT (A) has accepted such explanation but rejected the DCF valuation report as submitted by the assessee. Accordingly, in the absence of any defect in the valuation of shares arrived by the

assessee on the basis of DCF method, impugned addition as made on the basis of net asset value method is liable to be deleted. The rejection is unjustified as the valuation report is required under Rule 11UA of The Income Tax rules is based on the future aspects of the company at the time of issuing the shares, it may vary from the actual figures depending on the market condition at the present point of the time.

24. Thus, keeping in view the entire facts of the case, the reports of the valuer, the comparison of the actual and projected revenues, provisions of [Section 56\(2\)\(viib\)](#) and keeping in view the order of Co-ordinate Bench of ITAT in the case of Cinestaan Entertainment Pvt. Ltd. 177 ITD 809 [Rockland Diagnostics Services Pvt. Ltd. Vs. ITO](#) wherein it has been held that the Assessing Officer cannot substitute his own value in place of the value determined either on DC" method or NAV method, the appeal of the assessee is hereby allowed."

5.2 Thus, it has been held by the Co-ordinate Bench of the Tribunal that in absence of any specific inaccuracies or short comings in the DCF valuation report other than stating that year- wise results as projected are not matching with the actual results declared in the final accounts, the Assessing Officer cannot substitute his own value in place of the value determined either on DCF method or NAV method. Therefore, we are of the considered opinion that the Lower Authorities were not justified in rejecting the valuation report as submitted by the assessee in this regard."

21. Considering the facts of the case in totality, in light of the decision of the coordinate benches [supra], we set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the addition of Rs. 12,42,35,700/-.

22. In the result, the appeal of the assessee in ITA No. 2151/DEL/2019 is allowed.

The order is pronounced in the open court on 27.10.2023.

**Sd/-**

**[KUL BHARAT]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 27<sup>th</sup> October, 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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Date on which the file goes to the Head Clerk	
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