

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" DELHI**

**BEFORE SHRI SAKTIJIT DEY-VICE PRESIDENT  
&  
SHRI PRADIP KUMAR KEDIA-ACCOUNTANT MEMBER**

I.T.A. No.1105/DEL/2020  
Assessment Year 2016-17

<b>ITO</b> Ward-23(1), New Delhi.	Vs.	<b>Sharp Eye Broadcasting Pvt. Ltd.</b> 38, Jhansi Road Jhandewalan New Delhi-110055
TAN/PAN: AAOCS8090D		
(Appellant)		(Respondent)

Appellant by:	Shri Arun Kumar, Adv.		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	24	08	2023
Date of pronouncement:	20	11	2023

**ORDER**

**PER PRADIP KUMAR KEDIA-A.M. :**

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-VIII, New Delhi ('CIT(A)' in short) dated 28.01.2020 arising from the assessment order dated 28.12.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2016-17.

2. The grounds of appeal raised by the Revenue read as under:

*"1. Whether on the facts and circumstances of the case, the ld. CIT(A) was not justified in deleting the addition of Rs.4,15,61,800/- on account of share premium received by the assessee-company in excess of fair market value u/s.56(2)(viib) of the Income Tax Act,*

1961.”

3. Briefly stated, the assessee-company is engaged in the business of broadcasting and telecast of Television channel. The assessee filed return of income declaring total income at Rs.2,32,560/- for the Assessment Year 2016-17 in question. The return filed by the assessee was subjected to scrutiny assessment under Section 143(3) of the Act.

3.1 In the course of the assessment proceedings, the Assessing Officer *inter alia* observed that the assessee has issued 4,90,000 no. fresh equity shares of Rs.10/- each totaling to Rs.49 lakh at a premium of Rs.4,50,80,000/- thereon @ Rs.92 per share. The equity share of the company was thus issued and subscribed at Rs.102/- per share. The Assessing Officer further observed that ‘Fair Market Value’ (FMV) of the equity shares of the company stands at Rs.17.18 per share and consequently the excess consideration received on issue of equity shares is susceptible to tax under Section 56(2)(viib) of the Act.

3.2 On being confronted, the assessee furnished a valuation report with effective date of valuation being 01.03.2016 wherein the FMV per share was assigned at Rs.102 per share by following Discounted Cash Flow (DCF) Method. The Assessing Officer however cast shadow on the propriety of FMV determined as per the valuation arrived in the valuation report and held such valuation to be unsustainable. The Assessing Officer observed that valuation report did not assume correct parameters and the FMV determined are based on projected cash flow which are highly exaggerated and divorced of ground realities. The Assessing Officer observed that as per parameters taken in the valuation

report, the business of the assessee was expected to achieve certain level of growth in revenue and potential profits in the ensuing years but however on actual facts, the assessee-company has not even achieved 1% of the projections assumed in the valuation report. The projections relied upon the valuation report were thus illusory only to make it suitable enough to plough back own money of assessee in the coffers of the assessee-company through the medium of subscription at grossly unreasonable and excessive high premium.

3.3 The Assessing Officer thus questioned the authenticity of the projected figures and the genuineness of the valuation arrived. Having regard to intent and purpose of Section 56(2)(viib), the Assessing Officer held that the assessee has failed in the justification of the FMV so determined for the purposes of subscription. In the absence of any rational basis for adopting the projected figures, the Assessing Officer discarded the FMV reported by the assessee and determined the FMV per share at Rs.17.18 per share on the basis of NAV recognized in Rule 11UA of the Income Tax Rules, 1962. The excess premium charged over fair valuation of Rs.17.18 per share was thus determined at Rs.4,15,61,800/- on the contours of deeming fiction of Section 56(2)(viib) of the Act. The taxable income was thus enhanced by the aforesaid amount.

3.4 The income was thus assessed at Rs.4,17,94,360/-.

4. Aggrieved, the assessee contested the additions made before the CIT(A). The assessee filed written submissions to justify the Fair Market Value adopted by the assessee and contended that the Assessing Officer was not justified in disregarding the report of

the valuer supporting FMV. The assessee contended that the valuation report is based on well established guidelines and permissible methods and hence the Assessing Officer is not entitled to dispute and disregard such valuation and contemplate some arbitrary and incorrect valuations. It was submitted that the projections were based on reasonable expectations after considering macro and micro economic factors affecting the business. The assessee-company was planning to expand its footprint in broadcasting and telecast of News and current affairs, TV channels which was visualized to carry massive potential to generate return for its stakeholders. The company had applied for the license in Ministry of Information and Broadcasting for expanding its business. The license was however denied vide communication dated 19.08.2020. The assessee thus contended that the genuineness of the premium charged at the time of subscription could not be disputed.

5. The CIT(A) found justification in the assertions made by the assessee in justification of the FMV. The CIT(A) thus reversed the action of the Assessing Officer and reversed the addition made under Section 56(2)(viib) of the Act. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

*"4. DECISION: The contention of the Appellant has been considered and the order of AO has also been perused.*

*4.1 Section 56(2)(viib) of the Act, reads as follows:*

*"(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:"*

*Similarly Rule 11UA (2), reads as follows: -*

"(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), 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) the fair market value of unquoted equity shares

= (A-L) X (PV),

(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 or 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 the unamortised 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:-

(i) 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 the balance-sheet;

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

*(b) the fair market value of the unquoted equity share determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.]*

*4.2 Reference is also drawn to the relevant extract of Technical guide on share valuation (issued in 2009) by research committee of the Institute of Chartered Accountants of India (ICAI) which further clarifies the concept relating to valuations, which has been reproduced as under:*

*"1.1 The valuation of the shares of a company involves use of judgement, experience and knowledge. The accountant undertaking this work should possess knowledge the analysis and interpretation of financial statements backed by a practical appreciation of business affairs and investments. A valuation based on quantitative information alone will not be adequate for a real valuation. It should also be recognized that the method of valuation of shares would vary, depending on purpose for which it is to be used.*

*1.2 A clear understanding of the purpose of valuation is undoubtedly important, an equally important imperative is to have a full appreciation of the 'value' emanating from common principles. This 'general purpose value' may be suitably modified for the special purpose for which the valuation is done. The factors affecting that value with reference to the special purpose must be judged and brought into assessment in a sound and reasonable manner.*

*1.4 Valuation, being a complex subject, is limited to experts and is surrounded by a number of myths. Some of the very common generalities about valuation are discussed below:*

*(b) Valuation is riddled with a commonplace notion that a detailed valuation exercise will provide a precise estimate of value. The truth is that any valuation is as good as its underlying assumptions, which, in turn, are the function of a number of present and forward-looking factors. A careful valuation exercise, at best, can give an indicative range of value subject to the reasonableness of the assumptions.*

*(c) Valuation is pertinent to a particular point of time and varies with changes in business, industry and macroeconomic environment. E.g., the movement of US Dollar against Indian Rupee has led to a substantial change in the valuation of IT and other export-driven companies.*

*2.1 The potential earning power of a company is generally a paramount factor for valuation of share but there may be occasions, especially in valuations for compensation, where other considerations become relatively more important. In the absence of any other special motive, an investor is principally interested in a company's ability to continue earning profits*

*2.4 The Income Approach indicates the value of a business based on the value of the cash flows that a business is expected to generate in future. This approach is appropriate in most going concern situations as the worth of a business is generally a function of its ability to earn and to provide an appropriate return on investment.*

2.5 *The Income approach includes a number of models/techniques, such as Discounted Cash Flow, Maintainable Profits Basis, Dividend Discount Model, and others, which are discussed in detail in the following paragraphs.*

2.6 *Discounted Cash Flow model indicates the fair market value of a business based on the value of cash flows that the business is expected to generate in future. This method involves the estimation of post-tax cash flows for the projected period, after taking into account the business's requirement of reinvestment in terms of capital expenditure and incremental working capital. These cash flows are then discounted at a cost of capital that reflects the risks of the business and the capital structure of the entity.*

2.7 *Discounted Cash Flow is the most commonly used valuation technique, and is widely accepted by valuers because of its intrinsic merits, some of which are given below:*

*(a) Theoretically, it is a very sound model because it is based upon expected future cash flows of a company that will determine an investor's actual return.*

*(b) It is based on expectations of performance specific to the business, and is not influenced by short-term market conditions or noneconomic indicators.*

*(c) It is not as vulnerable to accounting conventions like depreciation, inventory valuation in comparison with the other techniques/approaches since it is based on cash flows rather than accounting profits.*

*(d) It is appropriate for valuing green-field or start-up projects, as these projects have little or no asset base or earnings which render the net asset or multiple approaches inappropriate. However, it is important that valuation must recognise the additional risks in such a case (e.g. project execution risk, lack of past track record, etc.) by using an appropriate discount rate.*

2.8 *Though the Discounted Cash Flow model is one of the widely used models for valuation because of its inherent benefits, it still has its share of drawbacks Major shortcomings of this model are as follows:*

*(a) It is only as good as its input assumptions. Following the "garbage in, garbage out" principle, if the inputs-Cash Flow Projections, Discount Rate, and Terminal Value-are wide off the mark, then the value generated by using this model does not reflect the fair value.*

*(b) It does not take into account several other factors, such as investment risk associated with opportunity cost, i.e. investments that could return greater cash flow yields would add an unrealised element of risk, unforeseen variations in future cash flow, and other non-financial factors.*

4.3 Thus, from reading of the said provision, rules and the technical guide, it is clear that the AO has worked out the value based on NAV method and wanted to impose upon the method of valuation of their own choice, completely disregarding the legislative intent which has given an option to the assessee to any one of the two methods of valuation of his Choice. When the law has specifically provided a method of valuation and the assessee exercised an option by choosing a particular method (DCF here), changing the method or adopting a different method was not justified. That would make the clause (b) of Rule 11UA(2) as nugatory and purposeless, which is not the intent of the legislatures. Further, though the AO can scrutinize the valuation report, he may make necessary adjustments. But when an option has been exercised, then same cannot be discarded to impose other option. The AO may also suggest some modifications and alterations provided the same are based on sound reasoning and rational basis.

4.4 Before examining the fairness or reasonableness of valuation report submitted by the assessee, it has to be kept in mind that the DCF Method is essentially based on the projections (estimations) only and hence these projections cannot be compared with the actual to expect the same figures as were projected. The valuer has to make forecasts on the basis of sound reasons and prevailing micro and macro factors affecting the business. In present case, the Management had applied for permission to uplink "Popcorn TV" Channel (Non-News & Current Affairs Category) on 20th January 2016. The business sector in which the Company was planning to expand is a growing sector even in the present date and have a massive potential to generate returns for its stakeholders. As cited above, that the Company had applied for the license and based on the view that the license will be allotted, projections were estimated and valuation of shares were undertaken in the valuation report.

4.5 In course of appellate proceedings, various arguments were made by the learned AR of the appellant. She was asked to explain that as per the details available on page 2 of the paper book, during F.Y. 2016-17 & F.Y. 2017-18, the projected revenue was Rs 350 Lakhs and Rs 650 Lakhs respectively whereas the actual revenue was observed as at Rs 1.9 Lakhs. and Rs 184 Lakhs and under this factual position, how the projections of 85% & 30% increase in turnover can be accepted. In reply, learned AR of the assessee made various arguments that the projections assumed in the valuation report were based on the assumption that the "Popcorn TV" channel will be allotted. Unfortunately, the license was rejected and therefore the actuals are not in line with the projections. The AR of the assessee highlighted Note no 6 of the audited financials of F.Y. 2015-16 that the assessee had invested Rs 200 Lakhs in recording studio out of the proceeds of the issue of shares. The AR also represented that the assessee at the present date has again applied for a fresh license before the authorities. The AR of the assessee represented that had it been the case of a mala fide transaction, the assessee would not have applied again or have used the proceeds towards other business activities.

4.6 The Ld. AR of the appellant referred to the ITAT Delhi decision in

*the case of India Today Online Pvt. Ltd vs. Income Tax Officer in ITA Nos. 6453 & 6454 Del 2018 dated 15-03-2019 reported in [2019] 104 taxmann.com 385 (Delhi Trib.)/[2019] 176 ITD 459 (Delhi Trib.) wherein it was held - that -*

*"3.1 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 Valuer to examine the same."*

*4.7 The Ld. AR of the appellant also represented that the most critical input DCF model is the Cash Flow Projections and if the valuation report is prepared with reasonable certainty by showing that the reliable estimates are achievable with reasonable certainty on the basis of facts available on the date of valuation and actual result of future cannot be a basis of saying that estimates of the management are not reasonable and reliable. The learned AR of the assessee also represented that the estimates are clearly within the industry norms and are practically achievable and therefore, the projection of growth of 85% and 30% is justified. The cash flow projections certified by the management were mere projections/estimations depending on various factors which nobody could have anticipated or foreseen on the when such valuations were made. Therefore, there was no justification to make a comparison of the estimations with the actuals. Such a comparison is otherwise principally against the contemplation of Rule 11UA (b).*

*4.8 As per various tribunal orders cited by AR of assessee, it was held that per Rule 11UA(2), assessee could opt for DCF method and if*

*assessee had opted for DCF method, AO could not discard the same and adopt other method i.e. NAV method of valuing shares. In case of M/s. Rameshwaram Strong Glass (P) Ltd. vs. The ITO [2018] 172 ITD 571 (Jaipur – Trib.), the tribunal had reproduced relevant portion of another tribunal order ordered in case of ITO vs. M/s Universal Polypack (India) Pvt. Ltd. In such case, tribunal held that if assessee had opted for DCF method, AO could not challenge the same but AO was well within his rights to examine methodology adopted by assessee and underlying assumptions and if he was not satisfied, he could challenge the same and suggest necessary modifications/alterations provided same were based on sound reasoning and rationale basis. In same tribunal order, a judgment of Bombay High Court was also taken note of having been rendered in case of Vodafone M-Pesa Ltd vs. PCIT. The projections should be based on reasonable expectations after considering macro and micro economic factors affecting the business and the same principle was followed by the management of the Company Reliance was also placed in case of M/s. INNOVITI PAYMENT SOLUTIONS PVT. LTD vs. The ITO,[2019] 102 taxmann.com 59 (Bangalore Trib.), the tribunal in para 12 has held that*

*"the AO can scrutinize the valuation report and the if the AO is not satisfied with the explanation of the assessee, he has to record the reasons and basis for not accepting the valuation report submitted by the assessee and only thereafter, he can go for own valuation or to obtain the fresh valuation report from an independent valuer and confront the same to the assessee. But the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee. For scrutinizing the valuation report, the facts and data available on the date of valuation only has to be considered and actual result of future cannot be a basis to decide about reliability of the projections."*

*4.9 The AO though observed that the valuation report is submitted with a disclaimer but it is not a valid reason which will affect the correctness of the valuation so considered. Therefore, such observations are not relevant and a mere suspicion. It appears that the AO has ignored the Explanation (a) below S. 56(2)(viib). The said explanation provides that 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 i.e. u/r 11UA; 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 asset being goodwill, know-how, patents, copyrights, trademarks, licenses franchises or any other business or commercial rights of similar nature whichever is higher. Moreover, it is only the Explanation (a)(ii) speaks of the satisfaction of the AO but there appears no such condition in the Explanation (a)(i) which therefore AO shouldn't interfere in the valuation once done in accordance with the method prescribed in the Rule 11UA(2).*

*4.10 For these reasons, I find no justifications behind the objection of the Assessing Officer that the valuation submitted by the assessee was absolutely baseless and exaggerated or without any basis. The valuer at*

*the time of valuation in all aspects considered the economic benefit arising out of the application and allotment of TV channel and incorporated the same in his report.”*

6. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR for the Revenue relied upon the observations made in assessment order and submitted in furtherance that mere production of a valuation report by itself is not sufficient to justify the FMV and seek immunity from the deeming fiction. It was submitted that the FMV has been determined by the valuer based on the projected data made available to him by the assessee. The basis for arriving at such staggering projections and meteoric rise in revenue projections is not available on record. The Assessing Officer has observed a very poor state of current financial affairs at the time of subscription. The valuation report has been arrived at a very exaggerated revenue projections without any foundation. The CIT(A) has ignored the factual analysis carried by the Assessing Officer that such as the projected figures are a fry cry and the assessee has failed to achieve even 1% of the projections in the ensuing years. Such huge premium is claimed to have been collected based on some application for obtaining TV channel license alone. A mere application for obtaining license is unlikely to fetch such large premium. The application has been summarily rejected by the Ministry due to non co-operation by the assessee showing their lack of seriousness and interest. The Id. DR thus contended that the projected figures are imaginary and carried no rationale basis. The Id. DR contended that the valuation report has been rightly discarded which was stated to have been prepared merely on the basis of information supplied by the assessee as a mathematical exercise. The Id. DR thus contended that the onus placed upon the assessee to justify such large

premium has not been discharged at all and consequently the Assessing Officer was correct in adopting NAV method being a rational method under the circumstances. The Id. DR thus asserted that CIT(A) was wholly unjustified in merely accepting a theoretical and abstract explanation offered on behalf of the assessee. The Id. DR thus urged for reversal of the action of the CIT(A) and restoration of the addition made in the assessment order.

7. The Id. counsel for the assessee, on the other hand, supported the first appellate order and submitted that the valuation report corroborates the share premium and thus Assessing Officer was not justified in dislodging such valuations. The Id. counsel referred to the judgment delivered by the Hon'ble Delhi High Court in the case of *Pr.CIT vs. Cinestaan Entertainment Pvt. Ltd., (2021) 433 ITR 82 (Del)* to contend that projections of revenue cash flow do involve estimations and cannot be compared with subsequent actual results unknown at the time of valuations. The actual results may often vary due to occurrence or non occurrence of events and expectations. The Id. counsel further contended that the onus is on revenue to demonstrate that the motive for issuance of share at high premium for any tax abuse. The Assessing Officer has failed in doing so. The Id. counsel also pointed out that the Assessing Officer cannot be permitted to arbitrarily change the valuation method from DCF method to NAV method as observed in the case of *Vodafone M-Pesa Ltd. vs. Pr.CIT, (2018) 92 taxmann.com 73 (Bom)*. The Id. counsel thus submitted that no interference with the order of the CIT(A) is called for.

8. We have heard the parties in length and perused the

assessment order as well as the first appellate order. The documents referred and relied upon have been taken cognizance in terms of Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963.

8.1 In the case in hand, the solitary question presented for determination is whether the consideration received by the assessee co. towards premium on issue of equity share represents the fair market value or exceeds the fair market value, and whether deeming provisions of Section 56(2)(viib) of the Act are attracted in the facts of the case.

8.2 The legal fiction inserted by Section 56(2)(viib), at the relevant time, seeks to deem premium received by private cos. from subscribers in excess of Fair Market Value as the chargeable income in the hands such closely held company issuing such share at premium in excess of its Fair Market Value. Rule 11UA(2) of the Income Tax Rules, 1962 provides methodology for determination of fair market value. The aforesaid Rule essentially recognizes net asset value (NAV) method and also discounted cash flow (DCF) method for ascertaining FMV. The assessee herein opted DCF method of valuation. The AO discarded the correctness of FMV by DCF valuation and substituted the FMV by NAV method owing to infirmities in valuation yielded by DCF method. The Assessee seeks to assail the action of the AO.

8.3 As noted, the assessing officer, on analysis of facts & statistics giving rise to projected cash flow, found fallacy in the quantification of FMV so determined under DCF method and observed that the FMV determined as per DCF method is without any sound factual basis. For holding so, it was inter alia observed

that the projected cash flow of the ensuing years are imaginary and do not even remotely match with the actual figures coming to surface and available at the time of assessment.

8.4 The assessee contends that the Revenue is not entitled to question the projections determined on a reasonable basis as such projections are in the nature of estimations which may naturally vary with the actual figures reported in the subsequent years. The assessee has adopted DCF method of valuation which in turn derives its valuation based on projected cash flows. The assessee has arrived at optimistic projections based on plausibility of issuance of license under consideration of Ministry of broadcasting for set up of studio / channel in the line of its business and such license had the potential to improve the revenue manifold. The Revenue on the other contends that the projections made are imaginary and wholly unrealistic. The potential revenue and cash flow have been assumed without showing any realistic basis for arriving on such exaggerated projections which in turn has lead to lofty valuations.

9. At this juncture, it may be pertinent to note that the Hon'ble Bombay High Court in the case of *Vodafone M-Pesa (supra)* has observed that the Assessing Officer is entitled to scrutinize a fresh valuation either by himself or by calling for a final determination from independent valuer and there is no immunity from scrutiny of valuation report *per se*.

10. The co-ordinate bench of Tribunal in *Cinestaan Entertainment (P) Ltd. Vs. ITO 106 taxmann.com 300* observed that the assessing officer had not disputed details of projects, revenue, cost incurred and the manner in which it was

substantiated by actual revenue. The assessee, from the facts and material placed on record, had pointed out that the basis of projection adopted by the valuer was based on very scientific analysis and method for arriving at projections. On these facts, in appeal by revenue, the Hon'ble Delhi High Court in the case of Cinestaan (supra) approved the findings of ITAT and observed that the revenue authorities were unable to show that the assessee adopted a demonstrably wrong approach or that the method of valuation was made on a wholly erroneous basis.

11. The issue is thus essentially factual in nature and its determination depends on the factual matrix of a given case. On perusal of the first appellate order, it is noticed that CIT(A) has adjudicated the issue in favour of the assessee based on the valuation report and on the basis of certain judicial pronouncements in an abstract manner. The CIT(A) has not dealt with the factual objections of the Assessing Officer that the projections/cash flow assumed in the valuation report are without any demonstrable basis of reasonable nature. The CIT(A) has simply proceeded to return its findings on an abstract law. No doubt, the valuation is not an exact science and therefore cannot be done with arithmetic precision. However, in the same vain, the AO is entitled to scrutinise the basis of projections which resulted in such hefty valuations, more so, in the absence any significant earning capabilities in the past.

12. Needless to say, the statute has not only vested the CIT(A) with appellate power but also co-terminus power of Assessing Officer of disposable nature. The CIT(A) is not expected to come to a conclusion based on abstract position of law. No inquiry has

been shown to be made towards the basis for determination of projected figures assumed while applying DCF Method. The report of the valuer is also based on disclaimer. The valuer has determined the projected cash flow solely on the basis of estimations provided by the assessee. The basis for arriving at such estimations anticipated have not been vouched by the expert valuer. The CIT(A) has not examined such important factual ingredient and has also not examined as to why an investor will pay such a high premium merely on the basis of some application made by the assessee for obtaining license. The cash flow at the disposal of the assessee in the financial year when application for license has been made do not appear to support the ensuing business module of the company.

13. In such a situation, the CIT(A), in our view, was expected to satisfy all such pertinent factual questions. While it is true that the projected figures are in the realm of estimations and thus a comparison of such estimations with actual figures would not be just and proper but however in the same token, the Assessing Officer is entitled to seek reasons for such wide variance to see the quality of the estimations used for determining FMV of shares under DCF Method else the whole process will be reduced to a farce exercise. The CIT(A) was expected to enquire into the factual aspects before adjudicating the issue.

14. We, thus, without expressing our opinion on the propriety of the FMV determined by the assessee or by the AO, are of the opinion that the CIT(A) has not acted in the manner ordained in law. We thus set aside the order of the CIT(A) and restore the matter back to his file for re-determination of the issue afresh in

accordance with law after giving proper opportunity to the assessee.

15. In the result, the appeal of the Revenue is allowed for statistical purposes.

**Order pronounced in the open Court on 20/11/2023**

**Sd/-**

**[SAKTIJIT DEY]  
VICE PRESIDENT**

DATED: /11/2023

*Prabhat*

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**