

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO.1693/MUM/2023 (A.Y. 2017-18)

Keep Learning Resources Private Limited D-Wing, Chanakya CHS Link Road, Mahavir Nagar Kandivali (W), Mumbai - 400067 PAN: AADCC6594R	v.	Income Tax Officer – 12(3)(2) Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Kapil Sanghvi
Department Represented by	:	Shri P.D. Chougule
Date of Conclusion of Hearing	:	23.01.2024
Date of Pronouncement	:	09.02.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 14.03.2023 for the A.Y.2017-18.

2. Brief facts of the case are, assessee filed its return of income on 31.10.2017 declaring loss of ₹.5,73,140/-. The return was processed under section 143(1) of Income-tax Act, 1961 (in short "Act") accepting the return. Subsequently, the case was selected for scrutiny under CASS for one of the reason "large share premium received during the year (verify applicability of section 56(2)(viib) of the Act)". Accordingly, notices under section 143(2) and 142(1) of the Act were issued and served on the assessee, in response assessee filed the details through e-proceedings.

3. The assessee is engaged in providing technology enhancement in respect of legal courses for training and skilling. During the course of assessment proceedings, Assessing Officer observed that assessee is issued shares with huge premium during the year under consideration. It was observed that the shares were issued to three (3) shareholders with the face value of ₹.10/- and premium of ₹.495.58/- per share. During the course of assessment proceedings, the assessee was asked to justify the issue of shares at premium.

4. In response, assessee vide letter dated 04.12.2019 filed the submissions on 18.12.2019 along with the valuation report dated

02.09.2016. The Assessing Officer has reproduced the part of valuation report at Page No. 4 and 5 of the assessment order. After considering the valuation report the Assessing Officer observed that the valuer has adopted the Net Asset Value Method and revalued the investments shown in the books of the assessee company which is in the form of equity investments in M/s. Mylaw Learning Resources Private Limited (in short "MLRPL") applied Discounted cash flow Method. Further, he observed that the assessee company held 49,999 equity shares of ₹.10/- each fully paid up in MLRPL valued at ₹.3,48,25,690/-. He Further, observed that for the purpose getting fair market value of the equity shares of the assessee company on which the assessee has charged premium, the assessee has taken value of assets as per its books except the value of investments made in the equity shares of MLRPL.

5. The Assessing Officer after perusing the submissions of the assessee in respect of valuation of shares of the assessee company based on which premium has been charged, he observed that the assessee has adopted Net Asset Value Method for arriving the fair market value of the equity shares of the assessee company as per section 56(2)(viib) r.w. Rule 11UA I.T.Rules, the assessee has a choice

to adopt either Net Asset Value Method or Discounted cash flow Method. He observed that while arriving fair market value of equity shares of the assessee company, the assessee has adopted Net Asset Value Method. Based on the formula given in Rule 11UA of I.T. Rules. He observed that assessee has adopted book value of the assets for the purpose valuation of the shares except investments shown in the books of the company which has been revalued and its fair value was taken as per Discounted cash flow Method for arriving the valuation of the equity shares of the assessee company.

6. The Assessing Officer is of the view that, the Rule clearly states that fair market value of unquoted equity shares for the purpose of section 56(2)(viib) of the Act shall be the value on the valuation date as determined by prescribed rule at the option of the assessee i.e., either Net Asset Value Method or Discounted cash flow Method. He is of the view that the method taken for value of unquoted equity shares is not in accordance with the prescribed under Rule 11UA of I.T.Rules.

7. In view of the above observation a separate show cause notice dated 13.12.2019 was issued to the assessee by which assessee was asked to explain the approach of adopting revaluation of investments

while applying Net Asset Value Method in light of section 56(2)(viib) of the Act. In response assessee has submitted as under: -

"1. The company Cloudseed Education Private Limited (also known as 'Keep Learning Resources Private Limited) is a holding company and owns 100% Shares of its step-down subsidiary i.e. Mylaw Learning Resources Private Limited (also known as 'rainmaker Learning Resources Private Limited").

2. As per the Share subscription agreement dated 19th September 2016 entered between the investor and the Company. In the First Paragraph itself it refers to the business in the subsidiary as under-

A The Company is a private company limited by shares engaged in inter alia developing learning resources for law students and legal professionals and is the holding company of Rainmaker Learning Resources Private Limited ("Mylaw), which operates and manages www.mylaw.net....

3. Further the Point No. 5.2 of the said agreement read as under:-

5.2 The Company also confirms that it is putting place an advisory board for the myLaw business and sould look to invite various investors. including the Investor, to the advisory board so as to benefit from their experience and suggestions for the myLaw business moving forward.

Thus it is quite evident that it is not a simple case of sale and purchase of shares but is a case of Sale of Business which is emanating from subscription agreement dated 19.09.2016.

04. It is well settled principal that the Transfer of Shares is actually transfer of stake in the Business and the value of Shares derived from the value of the Business. In this case as the Business operation is in the subsidiary Company, the value of the shares is also derived from the cash flow projections of the subsidiary Company.

05. The only income of the investment company Cloudseed Education Pvt. Ltd. is Rs. 7.95 Lacs of Professional Fees in F.Y. 2015-16. The main business operation is in the Step-Down subsidiary i.e. Mylaw Learning Resources Private Limited. Valuation of subsidiary Company has been done using DCF method and the value so arrived has been factored in the Value of the Holding

Company. Considering that the investment company, without having any business operations, and no business projections/forecast were available for the company, the same were valued on the basis of net asset value (NAV). Which were added (in case of positive net assets) or reduced (in case of negative net assets), as the case may be, from the fair value of Mylaw Learning Resources Private Limited arrived on the basis of DCF method as pointed above.

We invite your attention on the land mark case of Vodafone India Limited, wherein Income Tax Department has taken a view that when the value of the shares of a Holding company was linked to the Fair Market Value of its Subsidiary. This point of view has been dealt with by Hon'ble ITAT Delhi in its recent Judgment of 2018192 taxmann.com 310 (Delhi - Trib.) Analjit Singh V. Deputy Commissioner of Income Tax, Circle-16(2), Delhi, Where in Hon'ble ITAT has calculated value of Shares of Holding Company including the Fair market Value of Subsidiary. Para 59 & 60 (Relevant pages of case law is enclosed herewith)

On the same line, the Valuation of shares of Cloudseed education Private Limited is linked with the FMV of its Subsidiary Company Rainmaker Learning Resources Private Limited.

06 You may please refer to the Valuation Report Page No. 3, Procedures, on second point it has referred to the Projected Financials of Mylaw Resources Private Limited for arriving at fair Market Value of investment made by CEPL

07. The Valuer has considered that as The Cloudseed Education Private Limited does not have any business as such however as the actual business operation is with the Subsidiary Company and the Cash Flow Projection of the Subsidiary Company has been considered and the Valuer has clearly mentioned that he has followed Cash Flow procedure for the purpose of arriving at the FMV of Investment. Hence to arrive at the conclusion that the value of equity shares is not in accordance with prescribed Income Tax rule 11UA is not correct.

08. The Cash Flow Projections, which incidentally, a consolidated Cash Flow with regard to Business, as the Holding Company does not have any Business was part of the report and is duly certified by the Chartered Accountant.

09. The Company has raised investments previously as well and the valuation of the shares of the Company was scrutinized in the earlier years as well. Copy of the assessment order for A.Y. 15-16 & 14-15 are enclosed herewith for your reference.

10. Even in earlier years the same methodology has been followed by the Company and has been accepted by the Department. Hence as a matter "principle of consistency should be followed by the department. We relied on the following case laws in support of the Principal of Consistency:-

1. *Radhasoami Satsang V. CIT [1992] 60 Taxman 248/193 itr 321 (SC)*
2. *CIT V. Excel Industries Ltd. [2013] 358 ITR 295/219 Taxman 379/38 taxmann.com 100 (SC)."*

8. After considering the submissions of the assessee, Assessing Officer rejected the same by observing as under: -

"4.6 Assessee's submission has been carefully perused and duly considered but found not acceptable. The above submission of the assessee company talks about the method adopted for getting fair market value of shares of M/s Mylaw Learning Resources Private Limited in which the assessee has shown investment of 49,999 equity shares valuing at Rs. 3,48,25,690/-. As regards to the contention of the assessee company that it is not a simple case of sale & purchase of shares but is a case of business, the contention of the assessee company is factually incorrect for the fact that during the relevant assessment year the assessee company has issued 29,610 fresh equity share of the company to three persons. In this case, no shares were transferred by any existing shareholders and hence It is not the case of sale of business. Further, as regard to the valuation of shares of M/s Mylaw Learning Resources Private Limited, the said company is independent to adopt any method of valuation for arriving the Fair Market Value of its equity shares. As it is already discussed above that the assessee company has adopted the NAV method for arriving Fair Market Value of its equity shares. However, in this case, the assessee company has adopted two methods simultaneously i.e. Net Asset Value method for the all the assets and liabilities as per books of accounts of the assessee company except the value of investments made in M/s Mylaw Learning Resources Private Limited which was arrived after the revaluation of investments by adopting the DCF method. As per the provision of the Act, the assessee is having discretion of adopting any method i.e. either Net Asset Value or DCF method. If the assessee is adopting NAV method which is apparent in the case of the assessee company, the assessee can take the value of assets and liabilities as appearing in its books. The assessee is not having any discretion to take out any one of

the assets or liabilities as per its convenience for arriving any premediated value thereon and incorporate the said value of assets while adopting the NAV of the equity share of the company."

9. The Assessing Officer proceeded to revalue the shares of the assessee company by adopting the Net Asset Value Method and arrived at the fair market value per share at ₹.284.36/-. Accordingly, he came to the conclusion assessee has charged excessive premium of ₹.222.22/- per share. Accordingly, he disallowed ₹.65,79,934/- and added to the income of the assessee.

10. Aggrieved assessee preferred appeal before the Ld. CIT(A) and filed detailed submissions before him. After considering the detailed submissions, Ld. CIT(A) dismissed the appeal filed by the assessee by observing as under: -

"7. While it is accepted that it is appellant's discretion to adopt a method for valuation of shares best suited to it but the fact of this case are different. Here, there is no business, as also acknowledged by the appellant in the holding company. More importantly, the appellant cannot adopt hybrid method by pick and choose, as per its suitability, selecting NAV for its asset and liabilities and DCF method for subsidiary company. Further, here the applicant has issued 29,610 fresh equity shares of the company to 3 persons and no shares were transferred by any existing shareholders but directly by the appellant company. The premium on unquoted equity shares is to be determined as per rule 11UAE."

11. Accordingly, assessee is in appeal before us raising following grounds in its appeal: -

"1. Learned CIT(A) as erred in law as well as in facts in confirming addition made by Ld. AO u/s 56(2) (viib) in case of the appellant."

12. At the time of hearing, Ld.AR of the assessee submitted that during the year assessee has issued equity shares to the new investors at a premium of ₹.496.58/-. He submitted that new shares were issued to new investors who are not the existing shareholders and in order to determine the valuation of shares assessee has revalued the shares from the valuer Ritesh Prakash Adatiya, Chartered Accountant. He submitted that the company MLRPL is a wholly owned step down subsidiary company in which assessee was holding 49,999 equity shares. Further, he submitted that the assessee has not earned any income except providing legal courses for training and skilling through its step down subsidiary company. The assessee has carried out valuation of wholly owned subsidiary company by adopting Discounted cash flow Method based on the valuation of step down subsidiary company. The assessee calculated fair market value of its own shares by adopting Net Asset Value Method. He brought to our notice Page No. 9 to 11 of the Paper Book and he submitted that the method adopted by the assessee

to determine its fair market value of the shares within the rules of I.T.Rules. Further, he brought to our notice the Assessing Officer alleged that assessee has adopted hybrid method, he also observed that this is not proper method. Further, he brought to our notice Page No. 7 of the Paper Book which is the valuation summary submitted by the valuer and the reasons for adopting the method. Further, he submitted that Assessing Officer has not challenged the method of valuation and he also brought to our notice Page No. 26 of the Ld. CIT(A) order. Ld. CIT(A) has merely sustained the additions made by the Assessing Officer. He prayed that the method adopted by the assessee is within the I.T. Rules.

13. On the other hand, Ld. DR relied on the findings of the lower authorities. Further, Ld. DR relied on the decision in the case of Narang Access Pvt., Ltd., v. DCIT in ITA No. 3521/Mum/2018 dated 22.08.2019.

14. Considered the rival submissions and material placed on record, we observe from the record that assessee is a holding company of wholly owned step down subsidiary (MLRPL) and we observe from the record that all the education and training activities are carried through

wholly owned subsidiary company and assessee is merely a holding company not carrying on any activities. The assessee decided to issue shares to the new investors for that purpose assessee has revalued the business and it has taken a valuation report from a qualified valuer and the valuer has adopted Discounted cash flow Method for the purpose of valuing the wholly owned subsidiary company and adopted the value determined by him for the subsidiary company for which assessee was holding shares of 49999 shares in its balance sheet. While valuing the shares of the assessee company the valuer has adopted Net Asset Value and replaced the value of investments which was ₹.348.26 lakhs and replaced with ₹.1752.73 lakhs. While valuing the shares of the assessee company he has adopted Net Asset Value Method to value the shares at ₹.506.72 per share. Accordingly, the shares were issued to the new investors.

15. Now, the Assessing Officer is of the view that assessee cannot adopt two methods for valuation of its shares. The method adopted by the assessee for valuing the shares of subsidiary company by adopting Discounted cash flow Method and while valuing its own shares assessee has adopted Net Asset Value Method. He is of the view that assessee has option to choose either of the methods prescribed under Rule 11UA

of I.T.Rules in order to value the unquoted shares for the purpose of section 56(2)(viib) of the Act.

16. After careful consideration, we are of the view that to value the business of the holding company, the valuation of subsidiary company is relevant and important for determination of the valuation of the holding company. The whole basis of existence of the holding company depends upon the performance of the subsidiary company. It is brought to our notice that the holding company does not have any activities of its own and all the education and training activities are carried in the subsidiary company.

17. For the purpose of argument if we agree the valuation method suggested by the Assessing Officer to value the shares of the assessee company, the valuation of investments made by the holding company in its subsidiary will remain at the historical cost. It will not change even after ten years and the valuation of the holding company will remain same even after ten years. Therefore, the proper method of valuation of shares of any holding company depends upon valuation of the subsidiary company. Therefore, in order to determine the valuation of shares of the holding company the valuation of subsidiary company has

to be determined on the basis of proper method as per Rule 11UA of I.T.Rules. The method to be selected based on the purpose for which the valuation is necessity. If it is running business, the valuation has to be on the basis of futuristic.

18. Therefore, in order to determine the valuation of the subsidiary company one has to adopt the Discounted cash flow Method considering the fact that the futuristic value of shares has to be determined based on Discounted cash flow Method only. Net Asset Value of the subsidiary company will give present value, but will not give futuristic value. Since the assessee is bringing new investors the valuation has to be done on the basis of futuristic based valuation. Therefore, the valuation of wholly owned subsidiary company was carried out on the basis of Discounted cash flow Method which is one of the approved method under Rule 11UA of I.T. Rules.

19. Coming to the valuation of assessee's company since the assessee does not carrying out any activity except investments in subsidiary company most of the assets and liabilities are at historical cost except there may be changes in the investments made by the assessee in its subsidiary companies. The value of investments will not remain same

and as per the new Accounting Standards the valuation of subsidiary has to be made every year. The value of shares of subsidiary company will change every year based on its performance. Therefore, the assessee has valued its shares adopting one of the methods mentioned under Rule 11UA of I.T. Rules i.e., Net Asset Value Method for its own shares and the variables in its balance sheet i.e, investments made in subsidiary company which was revalued based on Discounted cash flow Method which is also one of the approved method under Rule 11UA of I.T.Rules. Therefore, the method adopted by the assessee to value its own shares are within the method prescribed under Rule 11UA of I.T. Rules.

20. The Tax Authorities has to appreciate the purpose for which the valuation of shares were carried and it should also appreciate the evolution of various valuation methods to suit the purpose. In the given case, the assessee has brought in new investors and when the new investors are introduced the existing shareholders cannot be at par with the new shareholders by issuing shares at existing Net Asset Value valuation. The new shareholders have to bring in premium to match the goodwill carried on by the existing shareholders.

21. As stated above, the valuation of any holding company depends upon the performance of the subsidiary company. In this case the MLRPL are wholly owned subsidiary company and the valuation of the wholly owned subsidiary company has to be valued based on futuristic value by adopting Discounted cash flow Method. The above valuation of subsidiary company had a direct impact on the valuation of the assessee company. Therefore, we do not see any reason to reject the method adopted by the assessee. We are inclined to allow the ground raised by the assessee.

22. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 09th February, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 09.02.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER
(Asstt. Registrar)
ITAT, Mum