

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.51/DEL/2020
(Assessment Year: 2015-16)**

M/s. ADM Agro Industries Kota &
Akola Pvt. Ltd.,
Third Floor, Vatika Professional Point,
Golf Course Extension Road,
Sector – 66,
Gurgaon – 122 018 (Haryana).

vs.

DCIT, Circle 1 (1),
New Delhi.

(PAN : AABCS9646L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate
Ms. Ananya Kapoor, Advocate
Shri Utkarsh Kr. Gupta, Advocate
REVENUE BY : Ms. Amisha Gupta, CIT DR

Date of Hearing : 08.07.2024
Date of Order : 10.07.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)-I, New Delhi dated 05.11.2019 for the assessment year 2015-16.

2. Grounds of appeal taken by the assessee read as under :-

“1. That, in view of the facts and circumstances of the case and in law, the order passed by the Assessing Officer ('AO') dated 30.12.2017 u/s 143(3) of the Income Tax Act,1961 ('the Act'), as upheld by order of the Commissioner of Income Tax (Appeals) ('CIT(A)') dated 05.11.2019 and also the additions

made therein are illegal, bad in law, without jurisdiction and liable to be quashed.

2. That Assessing Officer/CIT(A) has erred in law and on facts and circumstances of the case in upholding the addition of Rs. 85,00,00,005/- made by the AO to the Appellant's returned income u/s 56(2)(viib) read with Rule 11UA(2)(b) in respect of share premium received on issue of equity shares during the year on wholly erroneous, illegal and untenable grounds. As such the addition is liable to be deleted.

3. That, in view of the facts and circumstances of the case, and in law, the Assessing Officer/CIT(A) has erred in rejecting the 'Valuation Report' dated 09.09.2014. As such the addition is illegal as the allotment of shares at a premium is correct and justified on facts and in law.

4. That, in view of the facts and circumstances of the case, the Assessing Officer/CIT(A) have failed to appreciate that Fair Market Value ('FMV') of shares of the Appellant company has been calculated in accordance with provisions of Rule 11 UA(2)(b) (i.e. DCF Method) and as such is in accordance with law. The same could not have been varied or rejected by the Revenue.

5. That, in view of the facts and circumstances of the case, the Assessing Officer/CIT(A) have failed to appreciate that under Rule 11 UA(2)(b), the option is given to the Appellant to choose the method of valuation and hence the Appellant was justified in law and on facts, in exercising 'the said option.

6. That, in view of the facts and circumstances of the case, the Assessing Officer/CIT(A) have failed to appreciate that Valuation Report dated 09.09.2014 has been prepared by a subject matter expert (Chartered Accountant) based on the projected data provided by the management as per the Management Business Plan ('MBP'). The projections are based on growth prospects/future possibilities and the AO/CIT(A) has no basis for rejecting the same.

7. That the AO/CIT(A) have both failed to appreciate that projections made at the time of making valuation of shares are made on the basis of estimates and may vary with the actual

numbers. In any case, it is made on prudent basis and the projections cannot be rejected by taking into account subsequent events.

8. That the AO/CIT(A) erred in disregarding the projections as anticipated by the Appellant without appreciating the fact that projections are estimates based on future market conditions and policies and there can be difference between the revenue projected and actual revenue if market conditions vary. Moreover, the Appellant had sufficient reasons for not achieving the projected revenue.

9. That AO/CIT(A) has grossly erred in law and on facts and circumstances of the case by upholding the action AO of making the aforesaid addition and challenging the Appellant's commercial wisdom and questioning the investment made by the holding company. The Revenue has disregarded the fact that companies require funds to grow their businesses and to get the funds, they need to issue shares to their shareholders.

10. That the AO/CIT(A) have both failed to appreciate that the true objective of Section 56(2)(viib) is to prevent conversion! circulation of unaccounted money, and hence in view of the facts and circumstances of the case, the transaction of the Appellant is not covered by Section 56(2)(viib) of the Act.

11. That, in view of the facts and circumstances of the case and in law, the CIT(A) has erred in rejecting application for admission of additional evidence u/ Rule 46A moved by the Appellant, which contained MBP on the basis of which Valuation Report dated 09.09.2014 was prepared. The said rejection is without any basis and despite the fact that a remand report was called for by the CIT(A) from the AO.

12. That, in view of the facts and circumstances of the case and in law, in view of justice, the CIT(A) ought to have admitted the additional evidence once the remand report was called for from the AO. The CIT(A) accepts that the said document should have been admitted u/ Rule 46A, however, he blindly follows the observations of the AO.

13. That, in view of the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating the CA Certificate dated 23.10.2018 as filed during the course of the hearing.

14. That, in view of the facts and circumstances of the case and in law, the AO has erred in not granted credit of taxes paid under MAT provisions, of Rs.4,16,58,350/- under Section 115JAA of the Act.

15. That in view of the facts and circumstances of the case, the AO has erred in charging the interest u/s. 234B of the Act.

16. That in view of the facts and circumstances of the case, the AO has erred in initiating penalty proceedings u/s. 271 (1)(c) of the Act.

17. That the above grounds are mutually exclusive and without prejudice to each other.”

3. Brief facts of the case are that in this case, assessee filed return of income declaring nil income. The case was selected for scrutiny through CASS. Assessment was completed on 30.12.2017 under section 143 (3) of the Income-tax Act, 1961 (for short ‘the Act’) and total income was determined at Rs.14,52,65,982/-. In the assessment order, AO made an addition of Rs.85,00,00,005/- under section 56(2)(viib) of the Act.

4. Aggrieved by the said order, assessee appealed before the Id. CIT(A). Ld. CIT (A) confirmed the addition. In doing so, he also inter alia did not admit the additional evidences.

5. Against the above order, assessee has filed this appeal before us. We have heard both the parties and perused the records.

6. At the outset, ld. Counsel for the assessee pressed Ground No.12 raised in the grounds of appeal and pleaded that additional evidences submitted before the ld. CIT (A) are very crucial and ought to have been admitted and duly considered. Ld. Counsel for the assessee further requested that the matter may be remitted to the AO to consider additional evidences and thereafter pass an order.

7. Per contra, ld. DR for the Revenue objected to the submission of the assessee's counsel.

8. We have carefully considered the submissions and issues. In the substantial interest of justice and in our considered opinion, additional evidences need to be admitted. Hence, we direct that these additional evidences are admitted and the matter is remitted to the file of AO. AO is directed to consider the additional evidences and after duly considering the same, he should pass appropriate order. Needless to add, assessee should be given adequate opportunity of being heard.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 10th day of July, 2024.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 10th day of July, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**