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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.39/Hyd/2024 & SA 9/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Pathfinder Publishing Pvt. Ltd., Hyderabad. PAN : AAACP6764F	Vs.	Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri S.K. Gupta, Advocate	
राजस्व द्वारा / Revenue by:	Ms. TH Vijaya Lakshmi, CIT-DR	
सुनवाई की तारीख / Date of hearing:	11/07/2024	
घोषणा की तारीख / Pronouncement:	31/07/2024	

आदेश/ORDER

PER SHRI MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by M/s. Pathfinder Publishing Pvt. Ltd. ("the assessee"), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 23.11.2023 for the AY 2017-18.

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

“1. The order passed by CIT(A) is not acceptable as it is against the facts of the case and provisions of Income Tax Act, 1961.

2. The Learned CIT(A) has erred in law and in fact in concluding that as per valuation of shares there is no justification of premium w.r.t the shares allotted, while the fact being that the company has duly followed the provisions of law and rules prescribed for valuation of shares.

3. The Learned CIT(A) has erred in rejecting the Discounted Cash Flow method adopted by the company and justification filed to arrive at the fair market value of the shares.

4. The Learned CIT(A) has erred in applying the benefit of hindsight, wherein the future projections cannot be matched with actual performance.

5. The Learned CIT(A) has erred in disregarding an expert's report stating that the same has been erroneously certified.

6. The learned CIT(A) failed to appreciate the case laws filed by the appellant during the course of appeal proceedings.

7. The Ld. CIT(A) failed to appreciate that the investor was independent reputed company.

8. The Appellant prays before the Hon'ble Income Tax Appellate Tribunal that they may be permitted to add, to alter or to amend any grounds at the time of hearing.”

3. Facts of the case in brief as culled out from the assessment order of revenue authorities are that, the assessee is an edutech

company, engaged in helping students for making informed career choices by publishing information through Careers 360 magazine & Web Portals, career counselling, data analytics tools, helping educational institutions in finding students for their career path, plan and collaborate with partners for branding and marketing, digital marketing for registrations and leads generation, rating of educational institutions based on its proprietary methodology etc., filed its return of income for A.Y. 2017-18 on 31/10/2017 declaring a loss of Rs.4,63,45,536/-. The return of income was selected for scrutiny under CASS. During the assessment proceedings, the learned Assessing Officer ("Ld. AO") noticed that during the F.Y.2016-17, the assessee had issued 3,72,333 equity shares of face value Rs.10/- per share at a premium of Rs.460/- per share. As regards the valuation of shares the assessee opted for discounted free cash flow ("DCF") method mentioned under rule 11UA(2)(b) of the income tax Rules,1962 ("the Rules"). However, the Ld. AO changed the method of valuation to Net Assets value ("NAV") method as prescribed under rule 11UA(2)(a) of the Rule and made an addition of Rs. 15,67,11,236/- u/s 56(2)(viib) of the income tax Act("the Act") and assessed the total income at Rs.

11,03,65,700/- u/s 143(3) of the Act by his order dated 24/12/2019. The observation of the Ld. AO are contained in para no. 2.4 to 2.9 of his order which is reproduced as under :

“ 2.4 The reply of the assessee is examined with reference to the provisions of Section 56(2)(viib) of the Act. In the instant case, the assessee has opted for the DCF method and produced the certificate of a CA i.e. GN & Associates wherein the value of the share is determined at Rs.463.10/- per share. The contention of the assessee cannot be taken into account as the assessee itself has determined the FMV under DCF method through a CA and the complete responsibility cannot be shifted to the professional person who has prepared the certificate on the basis of Audited and Projected accounts of the company furnished by the management of the company. It is also very pertinent to mention here that the Valuation Certificate given by the professional person has estimated the cash flows for life of the project and not on the growth as it has been categorically stated that no growth was assumed. Consequently, the management of the company will be solely responsible for the reasonableness and reliability of the information and explanation furnished to us. In view of the above, the assessee cannot extricate itself from the correctness and completeness of the Valuation Certificate issued by the professional person on the basis of data provided by the assessee. Further, the following aspects should be kept in mind that:

- DCF valuation is carried out by a CA or CA Firm, which clearly leads to the inference that the CA or CA firm has merely carried out arithmetical computation based on widely available formula for computation of DCF value and has not applied its mind in verifying the sanctity, reasonableness and sustainability of the projections.

- The Board of Directors too has not explained as to how the projections are made, what were the parameters and how they were selected? Whether peer companies performances were considered in setting parameters? In absence of such information volunteered by the assessee, it is safe to infer that the DCF valuation is designed to justify the premium accounted by the company.

■ *Further, the DCF has following limitations:*

Analysts may have a good idea of what operating cash flow will be for the current year and the following years, but beyond that, the ability to protect earnings and cash flow diminishes rapidly. To make matters worse, cash flow projections in any given year will most likely be based largely on results for the preceding years. Small, erroneous assumptions in the first couple years of a model can amplify variances in operating cash flow projections in the later years of the model.

- Free cash flow projection involves projecting capital expenditures for each model year. Again, the degree of uncertainty increases with each additional year in the model. Capital expenditures can be largely discretionary; in a down year, a company's management may rein in capital expenditure plans.

- The most contentious assumptions in a DCF model are the discount rate and growth rate assumptions. The biggest problem with growth rate assumptions is when they are used as perpetual growth rate assumption. Assuming that anything will hold in perpetuity is highly theoretical. Many analysts contend that all going concern companies mature in such a way that their sustainable growth rates will gravitate toward the long term rate of economic growth in the long run. In addition, a company's growth rate will change, sometimes dramatically, from year to year or even decade to decade. Seldom does a growth rate gravitate to a mature company growth rate and then sit there forever.

2.5 In view of the above discussion, it has held that the Valuation Certificate produced by the assessee is not commensurate with the financial background, growth and profitability of the company. To bring the amount of premium of Rs.463.10/-, the CA brought a magical hypothetical figure as by way of change in working capital without any base and contrary to the facts and circumstances of the case. Thus, since the assessee has valued the shares at much higher value than the FMV, the provision of Section 56(2)(viib) read with Rule 11UA(2)(a) is invoked in this case and the valuation Report furnished by the assessee is hereby rejected. Any increase in the Asset side of the Balance Sheet is the result of either the profit earned during the period, gain made on sale of assets or addition of capital only. There cannot be any isolated increase in working capital without the corresponding increase in liability either long term or short term. In fact, in the instant case, the assessee

presented a masked picture under the permitted valuation rule but providing a hypothetical figure, which is erroneously certified by the CA. Moreover, the projected Turnover/Revenue for the Asst. Years 2016-17 to 2019-20 determined under the DCF method do not commensurate with return on income filed by the assessee for the said assessment years. The fluctuating projected financials exhibit dis-uniformity in each subsequent years, which is against the assumption of taking into consideration by the assessee that a business is expected to generate in future. This reveals the unrealistic and unreliable nature of valuation under DCF method adopted by the assessee. Accordingly DCF method is discarded and the Value of the shares is calculated as per the Provisions of Section 56(2)(viib) of the Act read with Rule 11UA(2)(a).

2.6 Reliance is also placed upon the Hon'ble ITAT, A-Bench in ITA No.-2189/Del/2018, dated 16-05-2018 in the case of M/s. Agro Portfolio Private Ltd. vs. ITO wherein the Hon'ble ITAT upheld the Order of the ITO, Ward-1(4), New Delhi, the same is reproduced hereunder: " For all these reasons, we are of the considered opinion that there has not been any possibility of verifying the correctness or otherwise of the data supplied by the assessee to the merchant banker, in the absence of which the correctness of the result of DCF method cannot be verified. This left no option to the AO but to reject the DCF method and to go by NAV method to determine the FMV of the shares. Without such evidence, it serves no purpose even if the matter is referred to the Department's Valuation Officer. We, therefore, do not find any illegality or irregularity in the approach of conclusions are by the authorities ITA No. 2189/Del/2018 below. While confirming the same, we dismissed the appeal as devoid of merits. In the result, the appeal of the assessee is dismissed."

2.7 Section 56(2) of the Income Tax Act, 1961 reads as under: In particular, and without prejudice to the generality of provisions of sub-section (1), the following incomes, shall be charged to income-tax under the head "Income from other sources, namely:-

*(i). ******

*(ii). ******

(vii**b**) where a company, not being a company in which the public are substantially interested, receive, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of the such shares as exceeds the fair market value of the shares.

Explanation.- For the purpose of this clause,-

1. 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 (See Rule 11U and 11UA)

(ii). as may be substantiated by the company to the satisfactory of the Assessing Officer, based on the value, on the date of issue of shares, of its asset, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature.

Whichever is higher.

Determination of fair market value.

Rule 11UA(2) reads “ Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule(1), the fair market value of unquoted equity shares for the purpose of sub-clause(i) of clause (a) of Explanation to clause (vii**b**) 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 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:-

*the fair market value of unquoted equity shares= (A-L)*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 assets including the un-amortized amount of deferred expenditure which does not represent the value of any asset;

L = book value of the 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 general body meeting of the company;*
- (iii) reserve 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 books 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 provisions made for meeting liabilities, other than ascertained liabilities.*
- (vii) 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 in 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.

2.8 Accordingly, the fair market value of the share is determined as per the method prescribed by Rule 11UA(2)(a) as under.

Fair Market Value of unquoted equity shares= (A-L)(PV)/ (PE)*

*= 215704412*10 / 43921110*

= Rs.49.11 per share.

2.9 As per the above formula, the value of the one equity share is Rs.49.11 whereas the assessee has sold one equity share for Rs.470/-. Thus the assessee has sold equity share at an excess value of Rs.420.89/- Per share. The excess consideration received by the assessee i.e. Rs.15,67,11,236/- (Rs.420.89 * 372333 shares) is brought to tax under section 56(2)(viib) of the Act. Addition : Rs.15,67,11,236/-”

4. Feeling aggrieved by the order passed by Ld. AO, the assessee filed appeal before the Ld. CIT(A), who dismissed the claim of the assessee as per his observation under para Nos.6 & 7 of his order, which is reproduced as under:

“ 6. The written submission so the assessee have been reproduced above and considered by me. I find that the main contention of the assessee is that the assessee has the option to adopt the method of valuation of shares and therefore, it has correctly calculated the FMV as per the DCF method. I also find that the appellant, M/s Pathfinder Publishing Private Limited, an edutech company, engaged in helping students for making informed career choices by publishing information through Careers 360 magazine & Web Portals, career counselling data analytics tools; helping educational institutions in finding students for their career path, plan and collaborate with partners for branding and marketing; digital marketing for registrations and leads generation; rating of educational institutions based on its proprietary methodology etc., filed its return of income in ITR-6 for the Assessment Year (A.Y.) 2017-18 u/s. 139(1) of the Act on 31/10/2017 declaring a loss of Rs.4,63,45,536/-. The return of income was selected for scrutiny under CASS. After the issue of

statutory notices, the AO began the scrutiny process and examined details. During the assessment proceedings, the AO noticed that during the F.Y 2016-17, the assessee had issued 3,72,333 equity shares of face value Rs.10/- per share at a premium of Rs.460/- per share. In this regard, the assessee was asked by the AO to furnish the details of the investors, their Address, PAN, confirmation and valuation report of equity Shares. In response the assessee submitted details of the investors and copy of the Valuation Report dated 2nd December 2015 prepared by the Chartered Accountant. As per the Valuation Report, the value of the equity share had been determined at Rs.463.10/- per share by adopting the Discounted Cash Flow (DCF) method. For arriving at the share value of Rs.463.10/-, the CA had relied on future business projections provided by the management of the company for the period from F.Y.2015-16 to F.Y.2019-20. The return of income filed by the assessee for the A.Ys 2016-17 to A.Y.2019-20 was verified by the AO and it was noticed by him that the Total turnover/Revenue admitted in the return of income filed by the assessee for AYs.2016-17 to A.Y. 2019-20 was not in line with the projected Revenue as shown in the Valuation Report prepared by the CA. The AO issued a show cause to the assessee proposing to reject the DCF method and computation of fair market value of the shares in accordance with section 56(2)(viib) of the Act read with Rules 11UA(2)(a). The reply of the assessee did not find favour with the AO who was of the view that as the assessee itself has determined the FMV under DCF method through a CA and the complete responsibility cannot be shifted to the professional person who has prepared the certificate on the basis of Audited and Projected accounts of the company furnished by the management of the company. The AO relying on the Hon'ble ITAT, A-Bench decision in ITA No. 2189/Del/2018, dated 16-05-2018 in the case of M/s.

*Agro Portfolio Private Ltd. Vs ITO calculated the FMV of shares as per the method prescribed by Rule 11UA(2)(a) at Rs.49.11 per share and considering the fact that the assessee had sold one equity share for Rs.470/- arrived at an addition of Rs.15,67,11,236/- (Rs.420.89 * 372333 shares) which was brought to tax u/s. 56(2)(viib) of the Act.*

6.1 It is thus seen that the projections made by the CA in his report are based on figures which have no basis and based only on guess work. They are based on no material. No independent inquiry has been caused by the CA before preparing the report. Moreover, the figures mentioned in the report are clearly at variance with the figures shown in the I.T>Returns filed by the assessee. I also find that the case laws relied upon by the assessee do not help its case as they are factually distinguishable as in the assessee's case, assessee allotted shares to a company and fair market value of shares was done by a CA only on the basis of Direct Cash Flow (DCF) method, only depending on data supplied by assessee and no evidence was produced for verifying correctness of data supplied by assessee. Under similar set of facts in the case of Agro Portfolio (P.) Ltd. v. Income Tax Officer, Ward 1 (4), New Delhi [2018] 94 taxmann.com 112 (Delhi - Trib.) dated: 16.05.2018 upheld the assessment order of the AO wherein the AO had rejected the DCF method adopted by the assessee while holding as under:

“15. In these circumstances, we are unable to accept the contentions of the assessee that in view of the provisions under section 56(2)(viib) of the Act read with Rule 11UA(2) of the Rules the Ld. AO had no jurisdiction to adopt a different method than the one adopted by the assessee, and if for any reason the AO has any doubt recording such valuation report and does not agree with the same is bound to make a reference to the Income tax

Department Valuation Officer to determine the fair market value of such capital asset. This is so because unless and until the assessee produces the evidences to substantiate the basis of projections in cash flow and provides reasonable connectivity between those projections in cash flow with the reality evidences by the material, it is not possible even for the Departmental Valuation Officer to conduct any exercise of verification of the acceptability of the value determine by the merchant banker. This is more particularly in view of the long disclaimer appended by the merchant banker at page no. 16 & 17 of the paper book which clearly establishes that no independent enquiry is caused by merchant banker to verify the truth or otherwise the figures furnished by the assessee at least on test basis. The merchant bankers solely relied upon an assumed without independent verification, the truthfulness accuracy and completeness of the information and the financial data provided by the company. A perusal of this long disclaimer clearly shows that the merchant banker did not do anything reflecting their expertise, except mere applying the formula to the data provided by the assessee. We, therefore, are unable to brush aside the contention of the Revenue that the possibility of tailoring the data by applying the reverse engineering to the pre determined conclusions.

16. *For all these reasons, we are of the considered opinion that there has not been any possibility of verifying the correctness or otherwise of the data supplied by the assessee to the merchant banker, in the absence of which the correctness of the result of DCF method cannot be verified. This left no option to the AO but to reject the DCF method and to go by NAV method to determine the FMV of the shares. Without such evidence, it serves no purpose even if the matter is referred to the Department's Valuation Officer. We, therefore, do not find any illegality or irregularity in the approach of conclusions are by the*

authorities below. While confirming the same, we dismissed the appeal as devoid of merits.”

*7. In view of the foregoing discussion and respectfully following the decision of the Hon’ble Delhi ITAT in the case of Agro Portfolio (P.) Ltd., supra, I am of the considered view that the AO was justified in rejecting DCF method and adopting Net Asset Value method. Therefore, the addition made by the AO by rejecting the DCF method adopted by the assessee and calculating the FMV of shares as per the method prescribed by Rule 11UA(2)(a) at Rs.49.11 per share and considering the fact that the assessee had sold one equity share for Rs.470/- arriving at an addition of Rs.15,67,11,236/- (Rs.420.89 * 372333 shares) u/s. 56(2)(viib) of the Act is sustained.*

Hence, the grounds of appeal are Dismissed.”

5. Feeling aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld.AR submitted that, the selection of method of valuation for the purpose of section 56(2)(viib) of the Act as per the provisions contained under rule 11UA(2)(a) and rule 11UA(2)(b) of the Rules is at the option of the assessee . If the Ld. AO was not satisfied with the valuation report obtained by the assessee , the Ld. AO was at liberty to go for a fresh valuation report. He further submitted that the Ld. AO can not change the method of valuation adopted by the assessee. He also submitted that the order of the co-ordinate bench Delhi ITAT in the case of Agro Portfolio Private Ltd., relied upon by both Ld. AO

and Ld. CIT(A), has been reversed by the Hon'ble High Court of Delhi (161 Taxman.com 303(Delhi) dated 04-04-2024). Hence he prayed before the Bench to sustain the valuation done by the assessee on DCF method and delete the addition made by the Ld. AO.

6. Per contra, the Ld. DR placed heavy reliance on the order of authorities below and also submitted that there are some patent defects in the valuation report, i.e. there is no verification of the facts or financial projection by the auditor before giving the valuation report. Further, the valuation report was conspicuously silent about the financial projection and industrial norms. In the absence of this, it is difficult to understand on what basis the auditor assumed the terminal value and future cash flow. Hence the Ld. DR requested to uphold the order of the revenue authorities.

7. We have heard the rival contentions and gone through the record in the light of submissions made by the either side. Before we deal with the facts of the present case, it will be apposite to reproduce the finding of the Tribunal in the case of *Innoviti Payment Solutions (P.) Ltd. v. Income-tax Officer, Ward- 3 (1) (1)*,

102 taxmann.com 59 (Bangalore - Trib.)/[2019], wherein it was held as under :

“7. In view of this factual position, we first examine the law on this issue and also take note of the guidelines issued by research committee of The Institute of Chartered Accountants of India (ICAI) as reproduced by CIT (A) in Para 4.6 of his order. We first reproduce the provisions of section 56 (2) (viib) and Rule 11U & 11UA as under:—

"Income from other sources.

56(2) (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:

Provided that this clause shall not apply where the consideration for issue of shares is received—

(i)	by a venture capital undertaking from a venture capital company or a venture capital fund; or
(ii)	by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Explanation.—For the purposes of this clause,—

(a)	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 ⁹ ; 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 assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;
(b)	"venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation to clause (23FB) of section 10;" "Meaning of expressions used in determination of fair market value. 11U. For the purposes of this rule and rule 11UA,—

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	(b) "balance-sheet", in relation to any company, means,—
(i)	for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance-sheet on the valuation date is not

	drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and
^{14aa} [(ii)]	in any other case,—
	(A) in relation to an Indian company, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and
	(B) in relation to a company, not being an Indian company, the balance-sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;]
(c)	"merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
(d)	"quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;
(e)	"recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
(f)	"registered dealer" means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws;
(g)	"registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth-tax Act, 1957 (27 of 1957) read with rule 8A of Wealth-tax Rules, 1957;
(h)	"securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
(i)	"unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;
[(j)]	"valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.]"

"Determination of fair market value.

11UA. [(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

(a)	valuation of jewellery,—
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	(i)	the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;
	(ii)	in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;
	(iii)	in case the jewellery is received by any other mode and the value of the jewellery exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;
(b)	valuation of archaeological collections, drawings, paintings, sculptures or any work of art,—	
	(i)	the fair market value of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;
	(ii)	in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;
	(iii)	in case the artistic work is received by any other mode and the value of the artistic work exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;
(c)	valuation of shares and securities,—	
	(a)	the fair market value of quoted shares and securities shall be determined in the following manner, namely,—
	(i)	if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;
	(ii)	if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,—
	(a)	the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and
	(b)	the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

1[(b)	<p>the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—</p> <p>the fair market value of unquoted equity shares $= (A+B+C+D - L) \times (PV)/(PE)$, where,</p> <p>A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—</p>
	<p>(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and</p>
	<p>(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;</p>
	<p>B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;</p>
	<p>C = fair market value of shares and securities as determined in the manner provided in this rule;</p> <p>D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;</p>
	<p>L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—</p>
	<p>(i) the paid-up capital in respect of equity shares;</p>
	<p>(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;</p>
	<p>(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;</p>
	<p>(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;</p>
	<p>(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;</p>
	<p>(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;</p>
	<p>PV= the paid up value of such equity shares;</p>
	<p>PE = total amount of paid up equity share capital as shown in the balance-</p>

	sheet;]
(c)	the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.

[(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:—

$$(a) \text{ the fair market value of unquoted equity shares} = \frac{(A-L)}{(PE)} \times (PV),$$

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 in the balance-sheet;

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

(b) the fair market value of the unquoted equity shares determined by a merchant banker ²[***] as per the Discounted Free Cash Flow **method.**]

8. Now we reproduce Para 4.6 from the order of CIT (A) because in this Para, learned CIT (A) has reproduced the relevant portion of 'Technical guide on Share valuation (issued in 2009) by research committee of The Institute of Chartered Accountants of India (ICAI). The same is as under:—

"4.6 In order to examine this issue of valuation, it is important to know as to what is Discounted Cash Flow **method**. Relevant part of the information available on this issue in 'Technical Guide on share valuation' (Issued in 2009) by research committee of the institute of chartered accountants of India is reproduced as follows:

"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 of 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 recognised that the **method** of valuation of shares would vary, depending on the purpose for which it is to be used.

1.2 A clear understanding of the purpose of valuation is undoubtedly important, but 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 final assessment in a sound arid reasonable manner.

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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:

(a)	Valuation models are quantitative and focus on earnings, assets, etc. However, it does not necessarily imply that valuation is free from the subjectivity and bias of a valuer. The fact is that valuation models are driven by the inputs that are prone to subjective judgments and the bias of a valuer. For instance, a target company may typically tend to overvalue itself while valuing.
(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 arid 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.

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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 income/cash flow 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 non-economic 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.

2.9 In this technique valuation of shares is based on three things: Cash Flow Projections, Discount Rate and Terminal Value.

2.10 The first and most critical input of the Discounted Cash Flow model is the cash flow projections. As stated earlier, the Discounted Cash Flow value is as good as the assumptions used in developing the projections. These projections should reflect the best estimates of the management and take into account various macro and micro- economic factors affecting the

business. Some of the important points to be kept in mind with regard to cash flow projections based on the projection of the profitability are stated below:

(a)	Cash flow projections should reasonably capture the growth prospects and earnings capability of a company. The earning margins of a company should be determined based on its past performance, any envisaged savings, pressure on margins due to competition, etc.
(b)	Discontinuation of a part of the business, expansion programmes and any major change in the policies of the company may provide occasions for making a break with the past.
(c)	The discontinuation of a part of the business can be easily dealt with by a valuer. A part of the profits earned by such business in the past will have to be excluded from the projections.
(d)	The effect of expansion schemes can present more complex problems. For these, the valuer will have to use his judgment about their profitability. The state of execution at the time of valuation should be given due consideration. Mere paper plans for expansion should not be taken into account. If reasonable indications of expected future profit are available, then such profits taken on a reasonable basis — to take care of the risk and uncertainty involved - may be included in the projections of the company. If, however, the profits are expected to be realised after a lapse of some years or if material amounts have yet to be incurred before profits are realised, due consideration will have to be given to these circumstances. In such circumstances, separate value may be given to such new investments and the same is added to the value of the existing stream of business.
(e)	In turnaround cases, the uncertainty of higher profits is much greater. Careful evaluation of the steps actually taken to implement a turnaround strategy must be undertaken before a valuer accepts management's claims that in future the company will earn profits. If necessary, reports of technical or other consultants should be called for.
(f)	In case of companies witnessing cyclical fluctuations, care should be taken to select the forecast period, which should necessarily cover the entire business cycle of a company.
(g)	Effects of change in the policy of the company may be taken into account if such changes are known in advance and the effects are capable of being quantified. Changes in the utilisation of the productive capacity, changes in the organisational set-up, changes in the product-mix, changes in the financing policy are some examples of the situation that may have to be faced by a valuer. Their treatment in the projection of future profits will depend entirely upon the effect which in the opinion of the valuer, such changes will have on such future profits.
(h)	An appropriate allowance must be made for capital expenditure in projections. They should not include capital expenditure only for capacity expansion or growth but also for maintenance of the existing capacity.
(i)	Working capital requirement forms another important component. Projections should appropriately account for working capital needs of the business in its different phases.

(j)	Income tax outflow also impacts the value of a business and should incorporate any tax benefits like tax holiday, accumulated losses, etc. In making projections, notional tax calculated at the rates expected to be applicable to the company in future should normally be deducted. For instance, the rate may change if the company is planning to undertake activities on which tax incidence is lower. Where such rates are not available, the current rates of taxes may be considered a good indicator. Tax benefits due to accumulated losses, accumulated development rebates or allowance, investment allowance, unabsorbed depreciation etc. should not generally be adjusted to the tax rate; instead, these should be considered separately. The past unabsorbed tax shelter is valued by using discounted cash flow method , for the actual years in which the tax shelter would be availed of a reduction in the effective tax rate due to exemptions for new industrial unit relief export profits etc., should be very carefully considered, depending on the period for which they would be available. A cautious valuer would perhaps compute an effective tax rate each year for the forecast period, based on the current year's tax rate and statutory deductions available and a reasonable view of profits.
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Discount Rate

2.11 The next step in the Discounted Cash Flow model is the determination of an appropriate rate to discount future cash flows. Discount rate is the aggregate of risk-free rate and risk premium to account for riskiness of the business. Key inputs or adjustments for calculating the discount rate are discussed below:

(a)	Theoretically, risk-free rate is the rate of return on an asset with no default risk. In practice, long-term interest rates on government securities are used as a benchmark.
(b)	It is quite natural to assume that the riskier investments should have a higher return. This necessitates the incorporation of an appropriate risk premium in the discount rate. There exist a number of models for determination of risk premiums, such as the capital asset pricing model, arbitrage pricing model, multi-factor model, etc. Risk premium is also adjusted to incorporate risks associated with the stage and size of business and other company or project-specific risks.
(c)	The rate estimated by using the above will provide the discount rate, assuming only equity financing or the cost of equity. For a leveraged company, discount rate should be adjusted for leveraging. Practically speaking, discount rate for a leveraged company is the weighted average cost of capital with appropriate weightages to cost of equity and post-tax cost of debt, considering existing or targeted debt-equity ratio, industry standards and other parameters.
(d)	In the case of a company carrying on two or more different businesses, their cash flow projections should be estimated separately, and apply the discount rates appropriate to the individual businesses.

Terminal Value

2.12 Since a business is valued as a going concern, its value should account for the cash flows over the entire life of a company, which can be assumed to be infinite. Because the cash flows are estimated only for the forecast period, a terminal value is estimated to reflect the value of the cash flows arising after the forecast period. Terminal value can be computed in a number of ways; some prominent ones are discussed below:

(d)	Competition
	A business may prosper when nurtured under sheltered circumstances (e.g. import restrictions), but may flounder under 'open market' conditions.
(e)	Government policy
	Government policy in general and in relation to particular industry (as with restriction or banning of manufacture of alcohol in the case of alcohol based chemical industries).
(f)	Prevailing political climate
	Political climate in an area can affect the prosperity of a business, e.g. tourism trade is directly affected due to breakdown in the law and order situation in a state.
(g)	Risk of obsolescence of items manufactured
	In case the products manufactured by an enterprise face a higher risk of obsolescence, it may influence the value of its shares adversely.
(h)	Existence of convertible rights
	Existence of convertible rights would also affect the value of a share.
(i)	The effect of other external factors
	The value of shares is also affected by factors such as war, embargo or other restrictions on international trade or disruptions in international trade.

9.2 While preparing a Report, it is important that one states its purpose explicitly and ensures that the facts are presented with clarity so that the reader of the Report appreciates it in that context.

9.3 The factors that have been considered for arriving at the ultimate valuation should be clearly spelt out.

9.4 While it is difficult to specify the exact form of the Report, the following illustrative outline may be useful.

(a)	Introduction/purpose of valuation
	This may contain background information about the report and its purpose, say, merger, share buy back, etc.
(b)	Valuation date
	The valuer may state the valuation date clearly at the outset. As the valuation is time-specific, this information is critical for the reader of the report.
(c)	History
	This section may deal with the history of a company (or companies, in case of merger). The matter may be divided into sub-sections that deal with the date of incorporation, whether listed or not, authorised, and paid up capital, turnover, profits, dividend and asset base.
(d)	Business of the company

	<p>This part would explain the business of a company, i.e., whether trading or manufacturing, the items dealt in or manufactured, the location of the factory, factors peculiar to the business, and such other matters.</p>
(e)	<p>Sources of information</p> <p>This section may state the sources of information obtained for the purpose of valuation, such as Articles of Association, audited accounts, profit projections, realisable value of assets, other secondary sources of information, period for which or date on which data is obtained, and other relevant sources.</p>
(f)	<p>Methodology</p> <p>This part may contain the methodology adopted for valuation. It should also include the rationale for appropriateness or otherwise of a particular approach(s) used.</p>
(g)	<p>Key valuation considerations</p>
	<p>This part may deal with the valuation considerations critical to the valuation process. Some of the factors considered in valuing the shares which may be included in the report are:</p>
	<p>(i) Discussion on the financial projections of a company, highlighting main assumptions and management representations.</p>
	<p>(ii) Discussion on discount rate, growth rate used for computing terminal value considered in the valuation, including the methodology for arriving at the discount rate, sources of information, etc.</p>
	<p>(iii) Any adjustment on account of accumulated losses/unabsorbed depreciation.</p>
	<p>(iv) Any adjustment for valuing a controlling or minority stake, discount for illiquidity, etc.</p>
	<p>(v) Brief analysis of the peer set companies used in relative valuation.</p>
	<p>(vi) Adjustments to the multiples based on the peer set company, including rationale for the same.</p>
	<p>(vii) Details of the surplus assets and treatment thereof in the valuation.</p>
	<p>(viii) Any other special factors, such as government subsidy, tax breaks, etc.</p>
(h)	<p>Fair Value</p>
	<p>This paragraph should deal with the valuation of shares on the basis of discussion in the preceding part of the Report (and in case of amalgamation, also the exchange ratio). This paragraph should also offer justification for the approaches actually adopted. It could also deal with the justification of adjustments considered necessary for arriving at the value, for example, of the discounting due to restriction on transfer of shares; reduction made in the net maintainable profit due to changed circumstances; or weightage given to certain recent years in arriving at the fair value, etc.</p>
(i)	<p>Computation</p>

	Usually, the report should also contain annexures giving information regarding the working of the approaches employed for valuation.
(j)	<p>Limiting conditions</p> <p>This paragraph should contain the appropriate caveats which limit the scope of valuation. Few indicative caveats are; (i) The valuer should state any scope limitations and also the non-availability of any pertinent information and its possible effect on valuation. (ii) It is important to draw reader's attention to the fact that the valuation is specific to the time and purpose of valuation. It should also be mentioned that the valuation is not an exact science and the conclusions arrived at in many cases will be subjective and dependent on the exercise of individual judgment.</p>

(iii) It is also important to mention the extent of reliance placed by the valuer on the information provided by the management and information available in the public domain.

(iv) Under appropriate circumstances, a valuer should also limit his liability by restricting distribution of report to the management/company.

(v) A valuer should highlight the fact that valuation does not include the auditing of financial data provided by the management and, therefore, does not take any responsibility for its accuracy and completeness. Further, valuation should not be considered as an opinion on the achievability of any financial projections mentioned in the report."

9. As per Para 2.10 of this report of research committee of (ICAI) as reproduced above, the first and most critical input of DCF model is the Cash Flow Projections. It is also noted in the same Para of this report that the DCF value is as good as the assumptions used in developing the projections. It is also noted that these projections should reflect the best estimates of the management and take into account various macro and micro economic factors affecting the business. In the same Para of this report, some important points to be kept in mind with regard to cash flow projections are also noted. At this point, we feel it proper to take note of two judgments of Hon'ble apex court rendered in the case of *Bharat earth Movers v. CIT* [2000] 112 Taxman 61/245 ITR 428 and in the case of *Rotork Controls India (P.) Ltd. v. CIT* [2009] 180 Taxman 422/314 ITR 62. In the first case, the issue in dispute was regarding estimation of future liability of leave encashment and it was held by Hon'ble apex court in this case that the liability should be capable of being estimated with reasonable certainty though the actual quantification may not be possible. It was held that if this is satisfied than the liability is not a contingent liability. In the second case, the issue in dispute was about provision of warranty expenses to be incurred in future. Para 10 of this judgment is very relevant and therefore, it is reproduced herein below:—

"10. What is a provision ? This is the question which needs to be answered. A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when : (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized."

10. From this Para of this judgment, it is seen that it was held that if a reliable estimate cannot be made than the provision cannot be recognized. In the present case in connection with DCF, we have seen that estimate/projection of future cash flow has to be made and as per Para 2.10 of this report of research committee of (ICAI) as reproduced above, the first and most critical input of DCF model is the Cash Flow Projections. Hence, in our considered

opinion, by the same analogy, it has to be seen and ensured that such projection is estimated with reasonable certainty and if it is not established by the assessee that this is a reliable estimate achievable with reasonable certainty, the same cannot be recognized and if the future cash flow cannot be recognized than the **DCF method** is not workable.

12. As per above Para of this judgment of Hon'ble Bombay High Court, it was held that the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a final determination from an independent valuer to confront 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. Hence, in our considered opinion, in the present case, when the guidance of Hon'ble Bombay high Court is available, we should follow this judgment of Hon'ble Bombay High Court in preference to various tribunal orders cited by both sides and therefore, we are not required to examine and consider these tribunal orders. Respectfully following this judgment of Hon'ble Bombay High Court, we set aside the order of CIT (A) and restore the matter to AO for a fresh decision in the light of this judgment of Hon'ble Bombay High Court. The AO should scrutinize the valuation report and he should determine a fresh valuation either by himself or by calling a final determination 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. In our considered opinion and as per report of research committee of (ICAI) as reproduced above, most critical input of **DCF** model is the Cash Flow Projections. Hence, the assessee should be asked to establish that such projections by the assessee based on which, the valuation report is prepared by the Chartered accountant is estimated with reasonable certainty by showing that this is a reliable estimate 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 the estimates of the management are not reasonable and reliable.

13. Before parting, we want to observe that in the present case, past data are available and hence, the same can be used to make a reliable future estimate but in case of a start up where no past data is available, this view of us that the projection should be on the basis of reliable future estimate should not be insisted upon because in those cases, the projections may be on the basis of expectations and in such cases, it should be shown that such expectations are reasonable after considering various macro and micro economic factors affecting the business.

14. In nutshell, our conclusions are as under:—

(1)	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 DCFmethod and he cannot change the method of valuation which has been opted by the assessee.
(2)	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.
(3)	The primary onus to prove the correctness of the valuation Report is on the assessee as he has special knowledge and he is privy to the facts of the company and only he has opted for this method . Hence, he has to satisfy about the correctness of the projections, Discounting factor and Terminal value etc. with the help of Empirical data or industry norm if any and/or Scientific Data, Scientific Method , scientific study and applicable Guidelines regarding DCFMethod of Valuation

“

8. From the perusal of the above noted judgements of the Tribunal in the case of Innoviti Payment Solutions (P.) Ltd. (supra) and also Section 56(2)(viib) of the Act and rule 11UA(2)(a) & 11UA(2)(b) of the Rules, we are of the opinion that the option is for the assessee to adopt one of the methods prescribed under the Rules i.e., NAV Method or DCF Method and this option is not given to the Ld. AO . Therefore, once the assessee adopted for DCF Method, then the limited scope of scrutiny by the Ld. AO is to find out whether the assessee has provided the correct input for working of DCF method as mentioned in the decision of the Bangalore Tribunal in the case of Innoviti Payment Solutions (P.) Ltd. (supra).

9. From the perusal of the valuation report of the shares, balance-sheet, profit and loss account and other available financials as existing as on the date of valuation of share, it is abundantly clear that the assessee had taken the incorrect initial figures of the Revenue earned by it upto 31.03.2016 and based on that the wrong terminal value was arrived by the valuer. The report of the valuation on account of incorrect figures cannot be accepted and is liable to be rejected. There is another reason for rejecting the valuation report, as the balance sheet date and the

effective date, as reproduced hereinabove in the case of Innoviti Payment Solutions (P.) Ltd. (supra), as per 11U of the Rules has been wrongly taken by the valuer. In our view, the lower authorities are right in rejecting the valuation report prepared by the valuer as it is not in accordance with the DCF method, Rules for that purposes and the guidance note issued by the Institute of Chartered Accountant of India, as mentioned hereinabove.

10. As we have uphold the method of valuation adopted by the assessee i.e., DCF Method, however, the working of the method and the inputs provided by the assessee for preparing the valuation report are not correct, therefore, we deem it appropriate to remand back the matter to the file of Ld. AO with a direction to obtain the valuation report from the independent valuer, preferably from the Merchant Banker and confront the same to the assessee, on the basis of DCF Method opted by the assessee. Further, we direct that while preparing valuation report by the independent valuer / Merchant Banker, 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. Further, we direct that, the assessee has to provide all the information about the working of the valuation as

the assessee alone has the special knowledge and privy to the facts of the company and only he has opted for this method. Hence, assessee is to provide the information about the correctness of the projections, Discounting factor and Terminal value etc. with the help of Empirical data or industry norm if any and/or Scientific Data, Scientific Method, scientific study and applicable Guidelines regarding DCF Method of Valuation. Accordingly, the ground of the assessee is allowed for statistical purposes.

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

S.A. Nos.9/Hyd/2024 for A.Y. 2017-18:

10. Since the appeal involved in this stay application ("S.A.") is decided, the S.A. filed by the assessee is dismissed as infructuous.

11. In the result, the S.A. filed by the assessee is dismissed.

Order pronounced in the open Court on 31st July, 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 31.07.2024.

* Reddy gp

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1. M/s. Pathfinder Publishing Pvt.Ltd., Level-3, 10-1-17/1/1, Akasam, Masab Tank, Hyderabad-500004
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3. Pr. CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,

//True Copy//