

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.649/Chny/2024  
निर्धारणवर्ष/Assessment Year: 2014-15

M/s.S10 Healthcare Solutions- Pvt. Ltd., 102, Mahalingapuram Main Road, Nungambakkam, Chennai-600 034.	v.	The ITO, Corporate Ward-6(3), Chennai.
[PAN: AAGCP 7986 H]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Vijaya Sriram, CA & Shri Y. Sridhar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	09.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.08.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 15.01.2024 for the Assessment Year (hereinafter in short "AY") 2014-15.

2. The concise grounds of appeal preferred by the assessee are as under:



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1. The order of the Id. CIT (A) is contrary to law, facts and opposed to the principles of natural justice and fair procedure.

2. The Id. CIT (A) has failed to appreciate that Section 56(2)(viib) was enacted as an anti-abuse provision as explained in the Budget Memorandum to Finance Bill 2012, and not applicable to bona fide transactions.

3. The Id. CIT (A) has erred in confirming AO's order in rejecting the Valuation Report obtained by the appellant from independent valuer under Rule 11UA of the Act without recording any adverse observations and further affirmed the action of the AO of substituting with his own valuation method.

4. The Id. CIT(A) has erred in confirming the AO's Order rejecting the Valuation report citing:

- (a) certain routine disclaimers made therein by Valuer.
- (b) discrepancies between projected figures and actuals.

5. For the above reasons and the reasons that may be adduced at the time of hearing, the addition of Rs.3,74,05,196 u/s 56(2)(viib) may kindly be deleted and justice be rendered.

6. The appellant craves to amend, alter or delete any of the above grounds of appeal.

**3.** The main grievance of the assessee as noted supra is against action of the Ld.CIT(A) confirming the addition made of Rs.3,71,05,196/- u/s.56(2)(viib) of the Income Tax Act, 1961 (hereinafter in short "the Act") in respect of issue of 14,832 shares of face value of Rs.10/- each at a premium of Rs.2552.13 per share to M/s.S10 Technologies Pvt. Ltd., (hereinafter in short "M/s.STPL").

**4.** The brief facts are that the assessee company is engaged in maintaining electronic health records by providing off-site medical-scribing services to its subsidiary in USA and has filed its return of income for AY 2014-15 declaring loss of Rs.3,01,108/-. The case was selected for scrutiny, and the assessment was completed u/s.143(3) of the Act



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originally on 26.12.2016 by making addition of Rs.3,74,06,304/- u/s.56(2)(viib) of the Act, which was challenged un-successfully before the Ld.CIT(A); and the assessee preferred an appeal before this Tribunal and the Tribunal vide order dated 13.07.2018 remitted the issue back to the file of the AO for *de novo* examination.

**5.** Pursuant to the aforementioned remand by the Tribunal, the AO directed the assessee to file relevant documents regarding shares of 14,832 issued to M/s.STPL having face value of Rs.10/- at a premium of Rs.2552.13/- per share and which facilitated the assessee receiving share premium amounting to Rs.3,78,53,192/- in the relevant year. The AO noted that six months before issuance of shares to M/s.STPL (on 28.08.2013) at premium of Rs.2552.13/- per share, the assessee on 16.03.2013 (AY 2013-14) had issued 5000 shares to another person by name Dr. Afser Sherif at Rs.10/- only without any premium. Therefore, the AO finding no change in the business plan of the assessee wondered '*as to how*' the assessee had valued the shares at a premium of Rs.2552/- per share and didn't accept the Discounted Cash Flow method (hereinafter in short "DCF") adopted by the valuer (CA); and instead, he adopted Net Asset Value method [NAV method] and worked out the Fair market value (hereinafter in short "FMV") of the shares of the assessee at Rs.40.13 per share. The reasons given by the AO to do so are as under:



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11.5.6 Assessee is engaged in the business of maintaining electronic health record. The whole business is in nascent stage and is not an established one. Being a new attempt, marketing and sales costs would be high i.e. prospective clients need to be convinced to shift to this product through trials and pilot tests and it will naturally take long time to convince a new doctor to sign up for this new service. Non-availability of trained manpower is also a major problem in this area. Gross margin in this trade also will be low since doctors may not be willing to pay beyond certain sum for this service. This is very much reflected in the P & L a/c for F.Y. 2013-14 which is the first year of operation. In this FY, total turnover is Rs. 2.92 crores which resulted in meager profit of Rs.2.81 lakhs. In FY 2014-15, actual turnover is Rs.6.53 crores and net loss of Rs.2.72 lakhs. For FY 2015-16, actual turnover is Rs.7.48 crores and earned Rs.6.23 lakhs profit before taxes. Thus the actual figures are much less than the projected turnover and profit.

A comparison of actual revenue of the company and projected revenue of the company is tabulated below.

(A) Actuals as per the appellant's Return of Income:

AY	Turnover (Rs.)	Net Profit (Rs.)
2014-15	2.92Cr.	-3.01L
2015-16	6.53Cr.	-17.56L
2016-17	7.48Cr.	10.84L
2017-18	10.20Cr.	7.29L
2018-19	14.74Cr.	38.91L

(B) Projection in CA's valuation report:

AY	Revenue	Net change in cash	Average Forex rate adopted
2014-15	USD 8,49,816 INR 5.18 Cr.	USD (1,29,236) INR (78.83) L	1 USD=INR61
2015-16	USD 13,77,816 INR 8.81 Cr.	USD (3,61,306) INR(2.31) Cr.	1 USD=INR64
2016-17	USD 21,54,816 INR 14 Cr.	USD (2,46,067) INR 1 (1.54) Cr.	1 USD=INR65
2017-18	USD 30,96,816 INR 20.44 Cr.	USD (3,86,980) INR (2.55) Cr.	1 USD=INR66
2018-19	USD 42,60,816 INR 27.69 Cr.	USD	1 USD=INR65

It can be seen from the above table that the actual revenue of the company during the A.Y.2018-19 is Rs. 14.74 Cr as against the projected revenue of Rs. 27.69 Cr, during the A.Y. 2017-18 is Rs. 10.20 Cr as against the projected revenue of Rs. 20.44 Cr. The same situation can also be seen in other years.

Thus, it can be concluded that there is no scientific basis for the figures estimated in the share valuation report and is purely on surmises of the C.A. Since there is no proper base and is sketchy, it is not reliable. There is no basis for the projected rate of growth also.

11.5.7 Further, assessee has included 60% value of the foreign entity PA Inc. in the valuation report dated 22.03.2013. However, even in the balance sheet as on 31.03.2013, there is no such investment. As per this balance sheet, only



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assets are computers worth Rs. 2,450 and cash and bank balance of Rs. 20,59,474. Under both method of valuation adopted by the Chartered Accountant, value of PA Inc. constitute 82% of value of share of assessee. Hence if the value of PA Inc. is excluded, the intrinsic value of share of assessee company is very minimal.

11.5.8 In the valuation report assessee adopted 18% as discounting factor. There is no basis for this assumption also. In this case the net present value of future asset is being ascertained and in such cases either the inflation rate or a the most bank prime lending rates are used as discounting factors as against 18% adopted by the C.A.

And as noted, the AO worked out the FMV of the shares at Rs.40.13/- per share by using NAV method as against the issue of shares by the assessee @ Rs.2552.13/- per share. Thus, the AO computed the difference in value of shares as income u/s.56(2)(viib) of the Act at Rs.3,74,06,304/- and made such an addition.

**6.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to confirm the same.

**7.** Aggrieved, the assessee is in appeal before this Tribunal.

**8.** We have heard both the parties and perused the material available on record. We note that the assessee is engaged in providing off-site scribing services (*i.e. service of capturing data relating to medical treatment protocol to comply with U.S. Government Rules*) to Medical Practitioners in United States of America (USA), and mainly to one client in USA; which was a company incorporated in US by name M/s Physician Angel Inc. (in short, M/s P.A.Inc.). Since there was growth of this business in USA, the Indian entity (assessee) had to improve service



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delivery infrastructure at the back office in India, which required huge investment in acquiring advanced hardware and software, office space, setting up a training centre, improving the staff bench strength, etc.; and as the assessee/company didn't have enough funds, they decided to seek investment from private source which led them to investor M/s.STPL. One of the conditions laid down by M/s.STPL was that regular work should be provided from USA; and for ensuring regular work being outsourced to assessee, the assessee entered in to a business understanding with Dr. Afser Sherif who held 74% shares of the client in USA i.e. US Company (M/s P.A. Inc.) which as noted elsewhere were outsourcing the entire work to the assessee company. In order to ensure continued support and work from them viz US Company (M/s P.A. Inc.) to Indian entity/assessee, Dr. Afser Sherif was allotted 5000 shares of assessee-company in February, 2013 at Rs.10/- per share [without any premium] and thus, he became substantial shareholder in assessee company, which induced confidence in the financial-investor (M/s.STPL) which in turn agreed for investment in the assessee company [for high premium] on two conditions:-

- (i) They will get 51% controlling interest in the Appellant company.
- (ii) And out of his total holding of 74% in the Foreign Company (P.A. Inc), Afser Sherif will sell 60% of his shares (i.e. 654 shares) to the Appellant at a price of \$ 10 per share (Aggregate INR 3,56,430), because, U.S entity had 70 clients, and orders were in pipe line of 15 clients.



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9. The aforesaid conditions were agreed upon by parties and M/s STPL invested in shares of Assessee company i.e, 14,832 shares were allotted to M/s.STPL having face value of Rs.10/- at a premium of Rs.2552.13/-.In the aforesaid background, the Ld AR submitted that investment made by M/s.STPL at a premium of Rs.2562.13/- per share (Rs.3.78 Crs.), can't be compared with the investment of Dr. Afser Sherif. According to Ld AR, by the aforesaid transaction, M/s.STPL not only got 51% i.e. controlling interest in the assessee company, but also indirectly got 30% of the value of the US Company (M/s P.A.Inc.). It was pointed out by the Ld.AR that investment made by Dr. Afser Sherif being a Non-Resident Indian can't attract sec.56(2)(viib) of the Act. The Ld.AR also brought to our notice that the AO erred in comparing the projections of M/s P.A. Inc. (foreign-US entity) and actuals of the assessee, thereby, has distorted the facts to arrive at a wrong conclusion and brought to our notice by way of a chart which shows the valuation report and actual Revenue earned in the AYs 2013-14 to 2017-18, which are noted as under:

S10 HEALTHCARE SOLUTIONS PVT LTD	Rupees given in Crores / Dollar given in Actuals				
	2013-14	2014-15	2015-16	2016-17	2017-18
ACTUAL Revenue in Rupees	3.16	6.67	7.70	10.36	14.86
PROJECTED Revenue - As Per Valuation Report In Dollars	7,08,220	11,39,836	16,48,226	18,79,037	24,24,035
PROJECTED Revenue - As	3.86	6.21	8.98	10.24	13.21



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Per Valuation Report - In Rupees					
Variance In % (Considering Rupees)	-18%	7%	-14%	1.17%	12.50%

**10.** Drawing our attention to the aforesaid chart, the Ld.AR pointed out that the actual Revenue earned by the assessee is in tune with the projections made for the years 2014-15, 2016-17 & 2017-18 and thus, contradicts the observations of the AO; and pointed out that the shortfall between projections and Revenue in the years 2013-14 & 2015-16 are not huge as erroneously understood by the AO. According to the Ld.AR, the aforesaid factual mistake made by the AO by comparing projections of foreign entity (M/s P.A. Inc.) with actuals of M/s.STPL Healthcare Solutions Pvt. Ltd., (assessee) has distorted the facts to arrive at a wrong conclusion. Further, the Ld.AR submitted that the AO had no power to change the DCF method chosen by the assessee and cited the following judicial decisions:

- (i) Vodafone M-Pesa Ltd Vs DCIT, Bombay High Court
- (ii) Karmic Labs P Ltd Vs ITO, ITAT Mumbai.
- (iii) ACIT Vs Gamma Pizzacraft, ITAT Delhi
- (iv) CIT VS VVA Hotels, Madras High Court
- (v) SB Industrial Engineering Vs ACIT, ITAT Chennai.
- (vi) Lalitha Jewellery Vs ACIT, ITAT, Chennai.

**11.** We note that the assessee has adopted DCF method for valuation of its shares as per Rule 11UA of the Income Tax Rules, 1962 (hereinafter in



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short "the Rules") for arriving at the value of the shares allotted to M/s.STPL; and accordingly, the share premium was received by it. We note that the AO has rejected DCF method adopted by the assessee on the ground that the valuation is based on unrealistic and farfetched projection and in that process has erroneously noted that the actual Revenue varied from the projected Revenue for four years (for AYs 2014-15 to 2018-19). We don't countenance such an action of the AO, because, there was no material to hold that assessee's projected Revenue are fabricated or manipulated. Instead, it has been demonstrated before us from the table (supra) that other than for AYs 2013-14 & 2015-16, the actual Revenue was above the projections viz. for years 2015-16, 2016-17 & 2017-18, which is thus found to contrary to the figures adopted by the AO, because, he erred in comparing the projections of the M/s P.A. Inc. [foreign company] and actuals of the assessee. Therefore, we find that action of the AO was on wrong assumption of facts and so is erroneous; and the assessee had adopted the DCF method as per u/r.11U of the Rules for arriving at the value of the shares allotted at a premium from M/s.STPL. We note that the AO had no power under law to change the DCF method chosen by the assessee as held by the Hon'ble jurisdictional High Court in the case of CIT v. VVA Hotels Pvt. Ltd. reported in [2020] 429 ITR 69 (Mad.)(HC). We also note that shares allotted to Dr Afser and M/s STPL can't be compared because by giving



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huge premium per share of assessee company, M/s.STPL not only got 51% i.e. controlling interest in the assessee company, but also indirectly got 30% of the value of the US Company (M/s P.A.Inc.). Therefore, in our considered view, in the facts and circumstances noted (supra), the assessee has justified the premium charged on the issuance of shares to M/s.STPL and thus, we direct the AO to delete the addition made towards difference between the issue price and actual share price determined by the AO as income of the assessee u/s.56(2)(viib) of the Act.

**12.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 21<sup>st</sup> day of August, 2024, in Chennai.

**Sd/-**  
(जगदीश)  
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 21<sup>st</sup> August, 2024.

**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF