

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.2655/Del/2023  
Assessment Year: 2020-21

Accel India Ventures Fund II L.P. Cayman Islands, Walkers, 190 Elgin Avenue, George Town, Grand Cayman KY1 -9001, George Town, Not Listed 999999	<b>Vs.</b>	ACIT (International Taxation), Circle-1(1)(1), New Delhi
<b>PAN :ABPFA4451K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. T. Suryanarayana, Sr. Advocate
Department by	Sh. Vijay B. Vasanta, CIT(DR)

Date of hearing	06.05.2024
Date of pronouncement	15.05.2024

**ORDER**

**PER SAKTIJIT DEY, VICE-PRESIDENT**

Captioned appeal by the assessee arises out of the final assessment order dated 27.07.2023 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (in short 'the Act') pertaining to assessment year 2020-21, in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. The assessee has raised various grounds, including a ground, being ground no. 4, challenging the validity of the assessment order in absence of Document Identification Number (DIN).

3. At the outset, learned Senior Counsel appearing for the assessee submitted that he will be arguing the appeal on merits and other grounds would not be pressed. A letter dated 6<sup>th</sup> May, 2024, to this effect, was also furnished before the Tribunal.

4. In view of the aforesaid, all other grounds, except the grounds on merits, are treated as not pressed. However, issues raised therein are kept open.

5. As far as grounds on merits are concerned, they relate to addition made on account of capital gain on sale of shares. Briefly the facts are, the assessee is a non-resident and is a tax resident of Cayman Islands. Primarily, the assessee is an investor company investing in companies in the internet and software industries. In course of such activity, the assessee had acquired shares of WIBMO, a foreign company incorporated outside India deriving substantial value from assets situated in India. In the year under consideration, the assessee sold shares of WIBMO to

PayU Global BV, another non-resident company. The assessee sold 67,87,772 shares and derived total capital gain of Rs.86,86,83,576.52. However, the assessee offered an amount of Rs.45,14,74,834.43, being capital gain chargeable to tax in India, while attributing 51.97% of the value of assets of WIBMO in India, in terms of Rule 11UC of the Income Tax Rules, 1962 (in short 'the Rules'). The Assessing Officer, however, did not accept the Fair Market Value (FMV) of the assets located in India as on the specified date. He observed that the FMV of the assets pertaining to the Indian companies, viz., Enstage Software Pvt. Ltd. and Infinnypool Online Payment Solution India Pvt. Ltd. as on the specified date have to be computed in accordance with Rule 11UB. He observed that the draft valuation report furnished by the assessee has applied Discounted Cash Flow (DCF) method purely on assumptions. He observed that no final valuation report was furnished. He further observed that financials of WIBMO for calculation of all assets as per Rule 11UB was not furnished by the assessee. Thus, he, ultimately, did not accept the attribution of capital gain to Indian assets based on the preliminary draft

valuation report and rejected assessee's computation of capital gain.

6. Having done so, he added the balance capital gain of Rs.41,72,08,742.09 to the income of the assessee. In other words, the entire capital gain on sale of shares of WIBMO was added to the income of the assessee while framing the draft assessment order. Against the draft assessment order so passed, the assessee raised objections before learned DRP. Learned DRP disposed of the objections issuing certain directions to the Assessing Officer. However, in the final assessment order, the Assessing Officer repeated the additions made in the draft assessment order.

7. Before us, learned counsel appearing for the assessee submitted that, though, at the draft assessment stage, the assessee had furnished a preliminary draft valuation report, however, before the DRP, the assessee did furnish the final valuation report as additional evidence. He submitted, though, all the evidences were available before learned DRP, however, without considering them and deciding the issue on merits, the DRP has virtually remanded the matter back to the Assessing Officer, which is against the statutory mandate. He submitted,

while making the addition of entire capital gain, the Assessing Officer has rejected the valuation of shares made by the assessee on the ground that the financials of the company, whose shares were sold, were not furnished. He submitted, as per the settled legal principles, the Assessing Officer cannot call for financials of the company, whose shares were sold. He submitted, once the assessee furnishes the valuation report, in terms of Rule 11UC and 11UB, the obligation cast on the assessee stands discharged and the Assessing Officer cannot insist upon furnishing audited financials. However, ultimately, he submitted, since the issue has not been examined in proper perspective either by the Assessing Officer or by learned DRP, it may be restored back to the Assessing Officer for fresh adjudication.

8. Learned Departmental Representative agreed for restoration of the issue to the Assessing Officer.

9. We have considered rival submissions and perused the materials on record. Undoubtedly, the dispute in the present appeal is confined to addition made on account of capital gain. It is a fact on record that during the year under consideration, the assessee had sold shares of a non-resident company, having

substantial underlying assets in India. It is also a fact that the assessee has accepted that the capital gain arising from sale of such shares is taxable in India. However, the assessee has apportioned the capital gain in proportion to the value of assets in India. Insofar as the valuation of assets in India is concerned, in course of draft assessment proceeding, the assessee has furnished a preliminary draft valuation report, wherein, the value of assets in India was determined applying DCF method. Apparently, the Assessing Officer has not given credence to such valuation report on the ground that it is not the final valuation report but a preliminary draft report. He has further observed that the DCF method of valuation has to be verified by examining the financial statement of the company, whose shares were sold. Since, the assessee could not furnish the financial statements, the Assessing Officer rejected the capital gain computed by the assessee and added the entire capital gain. While disposing of the objections of the assessee, learned DRP has observed as under:

*“4.1.3 Remand Report Proceedings: The Panel, after considering the assessee’s request for admitting the summary of contention filed vide letter dated 03.03.2023; remanded the same vide letter dated 03.03.2023 to the office of the AO for a report. Even after issuing repeated reminders, the AO has*

*not sent the remand report till the date. However, the Panel take a note of the assessee's mails dated 09.02.2023 and 03.03.2023 that it has filed the valuation report obtained by WIBMO by enclosing Annexure-5 along with it. The same was discussed with the authorized representative of the assessee during the hearing conducted on 16.05.2023 before the Panel. However, the Panel has, at juncture no option but to issue the direction based on the rival averments available on the records.*

*4.1.3.1 However, the Panel further takes a note of the AO's remarks made at para 8 that the assessee has merely provided a preliminary draft of valuation of the asset in India which cannot be relied upon and it has failed to provide the audited financials. The Panel takes a note of the assessee's submission regarding the valuation report of assets. The assessee has filed a copy of report dated 13.05.2019 regarding valuation the analysis of 100% of the equity of Enstage Software Pvt. Ltd. And InfinnyPool Online Payment Solution India Pvt. Ltd. containing 54 pages. On the covering page of the report, it is written as under:*

*"We had provided the draft of this report to the management of the client (the Management). The report has been reviewed by the Management and they have confirmed that the information contained in this report is factually correct."*

*4.1.4 The AO has not submitted the remand report before the Panel so far. The Panel is of the view that the AO to admit the assessee's additional evidence as cited above by making a thorough factual verification considering the factual and legal arguments extended by the assessee before the Panel. The Panel takes note of the AO's observation made at para no. 8 that the assessee has not filed the audited financials.*

*Hence, the AO is directed to consider the assessee's factual and legal contention by examining the facts of the case as submitted by the assessee including the additional evidence and the summary of contention by passing a speaking and reasoned order under the ambit of law and the precedents. The Panel hastens to clarify that the AO shall not conduct any fresh inquiry in this regard; the verification shall be made based on*

*documents/submissions available on the assessment records. All the grounds of objection in this regard are laid out accordingly.”*

10. On going through the observations of learned DRP, as reproduced above, it is very much clear that in course of DRP proceedings, the assessee had furnished the final valuation report of the shares sold. It is further evident, though, a remand report on the valuation report was called for from the Assessing Officer, however, no such remand report was furnished by him. Thus, ultimately, the DRP has directed the Assessing Officer to re-examine the relevant facts and assessee's submissions in the light of the additional evidences furnished and decide the issue afresh. Learned DRP has further directed that in course of such re-examination, the Assessing Officer cannot conduct any fresh inquiry and verification shall be confined to the documents/submissions available on the assessment records.

11. From the aforesaid observations of learned DRP, it is quite clear that learned DRP has not decided the issue on merits, though, all material facts relating to the disputed issue was available before it. On the contrary, learned DRP, in sum and substance, has restored the issue to the Assessing Officer for

fresh adjudication. Thus, the aforesaid action of learned DRP is directly in conflict with the mandate given under sub-section (8) of section 144C, which prohibits setting aside any issue to the Assessing Officer.

12. Be that as it may, fact remains that learned DRP has not decided the issue on merits. As discussed earlier, at the draft assessment stage, the assessee had only furnished a preliminary draft valuation report, which was not given due credence by the Assessing Officer, as, it was not a final valuation report. Though, learned DRP had directed the Assessing Officer to examine the final valuation report and furnish remand report, no such report was furnished by the Assessing Officer till assessee's objections were disposed of. Thus, it is a fact on record that various factual aspects relating to the issue in dispute, including the authenticity of the valuation of FMV of shares/assets as per the final valuation report have not been factually verified either by the Assessing Officer or by learned DRP. It is well known that DCF method of valuation is based on projected figures. Therefore, it is required to be seen, whether the projected figures are in close proximity with the actual figures or are grossly inconsistent with them.

13. In case, the Assessing Officer raises any query regarding the projected figures based on which the valuation has been made employing DCF method, duty is cast upon the assessee to satisfactorily explain the queries raised by the Assessing Officer with proper evidence. Of course, the sanctity of provisions contained under Rule 11UB and 11UC cannot be questioned. Since, the aforesaid aspects have not, at all, been considered by the departmental authorities, we are inclined to restore this issue to the Assessing Officer for *de novo* adjudication. The Assessing Officer must provide due and reasonable opportunity to the assessee to establish its case that the valuation of assets, as determined in the final valuation report is in accordance with Rule 11UB and Rule 11UC. To establish such facts, if the assessee wants to furnish any further evidence, the Assessing Officer must permit the assessee to do so. After providing due and reasonable opportunity of being heard to the assessee, the Assessing Officer must decide the issue through a speaking and reasoned order, keeping in view the ratio laid down in judicial precedents that may be cited by the assessee.

14. In the result, the appeal is partly allowed for statistical purposes.

***Order pronounced in the open court on 15<sup>th</sup> May, 2024***

***Sd/-***  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 15<sup>th</sup> May, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi