

**THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

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

**ITA No. 9880/Del/2019
(Assessment Year 2015-16)**

M/s Apple Infra Build Pvt. Ltd., Plot No. 24/32, Block-D, Sector- 63, Noida- 201301	Vs.	Income Tax Officer, Ward-3(1) New Delhi - 110075
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAGCA1372E		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sh. Kanv Bali, Sr. D.R

Date of Hearing	08.07.2024
Date of Pronouncement	06.09.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 11.10.2019 passed by the Ld. CIT(A)-1, New Delhi, arising out of the Assessment order dated 15.12.2017 passed by the ITO, Ward-3(1), New Delhi, under Section 143(3) of the Income Tax Act, for Assessment Year 2015-16 whereby and whereunder addition to the tune of Rs.2,46,45,000/- under Section 56(2)(viib) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been uphold.

2. At time of hearing of the instant appeal non appeared on behalf of the assessee, In fact upon perusal of the order sheets it appears that on very many occasions the assessee was not represented. It appears that the assessee is not interested in the matter and, thus, having no other alternative we have decide to proceed with the matter ex-parte.

3. Brief facts leading to the case are that the assessee, a private limited company, engaged in the business of imparting education to the students through distance learning mode and also having rental income filed its return of income on 17.09.2015 declaring loss of Rs.24,54,646/- under normal provisions of the Act and Rs.19,99,755/- under Section 115J of the Act. The said assessment was selected for scrutiny under CASS and finalized upon making addition of Rs. 2,46,45,000/- which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. The assessee raised its authorized share capital from Rs.1 lac in the immediately preceding year to Rs.10 lac in the year under consideration. Out of the increased authorized capital, the assessee had allotted 46,500 equity shares having face value of Rs. 10 each and at a premium of Rs.530 per share to two persons namely, Shri Chandrakant Shukla and Mrs.Reena Shukla, details whereof is as follows:

Sr. No.	Name of the persons to whom shares allotted	Date of receipt of share application money	Share money received (Rs.)	No. of shares allotted	Date of allotment of shares	Face value of share @ Rs.10 per share	Share premium @ Rs.530 per share (Rs.)
1.	Sh. Chandrakant	24.03.2015	32,40,000	6,000	26.03.2015	60,000	31,80,000

	Shukla						
2.	Mrs. Reena Shukla	15.11.2014	2,18,70,000	40,500	26.03.2015	4,05,000	2,14,65,000
Total			2,51,10,000	46,500		4,65,000	2,46,45,000

5. The case of the assessee is this that the assessee as issued 46500 equity shares at a rate of 540 per shares included a share premium of Rs.530 per shares at a fair market value as on the date of issuing of shares on 25.03.2015. In support of such submissions that the issue of shares is at a fair market value as per the provision of Section 56(2)(viib) it was contented that the fair market value of unquoted equity shares of assessee was determined as per discounted free cash flow method and duly certified by an Accountant as per the method prescribed under Rule 11UA(2)(b) of the Act. Valuation report dated 15.03.2015 prepared by the Chartered Accountant along with documents were duly filed. However, the Ld. AO was of the opinion, that as per the valuation report filed by the assessee in support of its claim of share premium is defective and not acceptable for the following reasons.

“The assessee had not obtained the alleged valuation report dated 15.03.2015 before the allotment of shares on 26.03.2015 and this is an antedated report and has been obtained at a latter date to cover up its case. The Valuer has adopted the amounts/figures in the aforesaid report taken accurately from the Balance Sheets which are after that date i.e after 15.3.2015 of the valuation date, when she (Valuer) was required to adopt the figures as on 31.03.2014 it is important to note that the last drawn Balance Sheet for the purposes of valuation was as on 31.03.2014 and in the aforesaid Balance Sheet the total borrowings of the assessee as on 31.03.2014 are Rs 10,37,19,735/- (Long Term Rs 3,06,06,007/-) and short term Rs. 7,31,15,828/- as per the assessee's own Balance Sheets as on own report as on 15.03.2015 it is pertinent to note that all the figures, Balance Sheet as on 31.03.2016(projected) and has dated its own report as on 15.03.2015. it is pertinent to note that all the figures adopted in the Balance Sheet as on 31.03.2015 and as on 31.03.2016 are actual figures of the Balance Sheet filed with the Department after the Date of report from year to year it is a clear indication that as on the date on allotment of shares, the report did not exist.

(ii) in annexure-A to the Valuation Report of Shares, the Valuer has stated as under:-

NPV of Explicit period/Value of business Less Borrowings	301	
Less: Borrowings		Nil
Add: Cash & bank balances on valuation date(i.e 15.03.2015)		4
Overall Valuation/Total value(in Rs.)		5
No. of equity shares face value of Rs. 10 each issued till date		56,500
value of each equity share of Rs 10 each under DCF Method		

(iii) The Valuer has adopted amount of borrowings as nil on valuation date i.e 15.03.2015, whereas actually this amount as on this date is Rs 10 37 crores.

(iv) The valuer has adopted amount of cash & bank balances as on 31 03.2014 at TRs. 4 lakhs, whereas the actual figure as on 31.03.2014 is Rs 1.44 lakhs, as per the Balance Sheet of the assessee.

(v) The Valuer has stated No of equity shares face value of RS. 10 each issued till date of Valuation at 56.500 whereas actually on the date of valuation of shares shown as on 15:03 2015 the shares already issued are only 10 000 shares in number issued at face value @ Rs.10 per share.

(vi) The valuer has stated under "Debt Equity Ratio" as under

Debt	20%
Equity	80%

Whereas actually this ratio is current ratio and as on the valuation date on 15.03 2015 when figures as on 31.03 2014 were to be adopted the debt-equity ratio was

Debt	99.914%
Equity	00.086%

(vi) The Valuer in Annexure-A to the report has calculated WACC at 18.77% since neither of the above figures are consistent with its projections the figures of WACC is automatically wrongly calculated without any proper basis.

(viii) The valuer for the purpose of NAV has taken 8.77% and has taken NAV in the year 2024 at 250 50. it is infinite period When the average NPV from year 2015 to 2023 works out to only 5.03 per year, which includes negative NPV also in two years for the projection of 8 years and has projected 250.50 in the last year. On being asked to explain the last year figure the SR of the assessee confirmed that the NPV is taken for unlimited period.

(ix) Hence from the above calculation it can be clearly ascertained that it is a manipulated state of affairs for a report obtained after the allotment to cover up the allotment of shares at a premium, whereas the actual value of shares was not more than the face value of shares.

(x) No professional fee paid/payable in the Chartered Accountant valuer has been charged to the P&L a/c on this account during the relevant year i.e. year under allotment and under consideration. It all the more proves that if the report was obtained before the allotment the fees would have been paid to the CA Valuer, since the assessee is following mercantile system of accounting

(xi) The Balance Sheet of the assessee clearly indicates that net worth of the assessee as on 31.03.2014 was negative and the shareholder funds was (-) Rs.17,73,403 for 10,000 shares. It is evident from the assessee's own record that share of face value of Rs 10 was allotted at Rs 540/- inspite of the fact that the net worth of the assessee company was negative.

(xii) On valuation date i.e on 15 03.2015 the valuer has adopted amounts in the projections made as on 31.03.2015. 31.03.2016 and as on 31.03.2017 real figures as on these dates to the two decimal points. It is strange how these figures were available with the Valuer/provided by the assessee to the extent of two decimal points, clearly shows that the actual figures have been adopted from the real Balance Sheets which were available with the assessee after close of the accounts on these dates, when required to furnish a Valuation Certificate from a Chartered Accountant.”

6. It was further pointed out by the AO that the assessee failed to bring on record the proper basis of valuation for the purpose of allotment of shares of face value Rs.10 at a premium of Rs.530 per share and on the basis of its own record which shows negative net worth of the assessee in the previous year ending 31.03.2014, the assessee has wrongly shown the value of the shares of face value of Rs.10 per share at Rs.540 per share and, therefore, the provision of Section 56(2)(viib) of the Act are attracted in this case. With this aforesaid observation the premium amount of Rs.246,45,000/- received by the assessee during the year of allotment of 46500 equity shares made taxable under Section 56(2)(viib) of the Act.

6.1 During the course of appellate proceedings the Ld. CIT(A) further considered the observation made by the Ld. AO to this effect that by and under the letters dated 20.11.2017 and

04.12.2017 the appellant submitted before the AO that the fair market value of unquoted equity shares of the appellant has been determined and certified by an Accountant as per the method prescribed under Section 11UA(2b) of the Act. On that basis the report has been given by the auditor by and under her letter dated 25.09.2017. Further, that the shares were allotted on 26.03.2015 and the valuation report dated 15.03.2015 from Chartered Accountant was submitted before the AO. Such valuation report has been found to be defective and not acceptable for various reasons as already we have narrated hereinabove. In fact the observation made by the Ld. AO that the appellant had not obtained alleged valuation report dated 15.03.2015 before the allotment of shares on 26.03.2015 and thus an antedated report has been obtained at a letter date to cover up its case, has also considered by the CIT(A). Value adopted has figured in the report taken accurately from the balance sheet which was prepared after the date of valuation report on 15.03.2015 whereon the valuer was required to adopt the figure as on 31.03.2014. The last drawn balance sheet for the purpose of valuation was as on 31.03.2014 and in the aforesaid balance sheet the total borrowings of the appellant as on 31.03.2014 are Rs.10,37,19,735/- (long term Rs.306,66,007/-) and (Short term Rs.731,15,828/-). Similarly, the value has adopted and taken the figure of balance sheet as on 31.03.2015 (Estimated) as on 31.01.2016 (projected) and dated her own report as on 15.03.2015. Relevant to mention that all the figures adopted in the balance sheet as on 31.03.2015 and as on 31.03.2016 are actual figures of the balance sheet filed with the

department after date of report from year to year. In that view of the matter, the AO has held that as on the date of allotment of shares the report did not exist. Apart from that the valuer has adopted amount of borrowings at nil on the date of valuation report on 15.03.2015 whereas this amount as on that date was of Rs.10.37 crores. Similarly, the amount of cash and bank balance as on 31.03.2014 was of Rs.4 lacs though the actual figure as on the said date was of Rs.1.44 lacs as per the balance sheet made by the appellant. The following further observation was also made by the Ld. CIT(A) while examining the order passed by the Ld. AO.

“The Valuer has stated that number of equity shares of face value of Rs. 10 each issued till date of Valuation at 56.500 whereas actually on the date of valuation of shares shown as on 15.03.2015 the shares already issued are only 10,000 shares in number issued at face value @ Rs 10 per share The valuer has stated under "Debt Equity Ratio" as under-

Debt	20%
Equity	80%

Whereas actually this ratio is current ratio and as on the valuation date on 15.03.2015. when figures as on 31.03.2014 were to be adopted the debt-equity ratio was

Debt	99.914%
Equity	00.086%

The Valuer in Annexure A to the report has calculated WACC at 18.77% since neither of the above figures are consistent with its projections the figures of WACC is automatically wrongly calculated without any proper basis. The valuer for the purpose of NAV has taken 8.77% and has taken NAV in the year 2024 at 250.50. It is infinite period. The AO has also noted that when the average NPV from year 2015 to 2023 works out to only 5.03 per year, which includes negative NPV also in two years for the projection of 8 years and has projected 250.50 in the last year. The appellant confirmed before the AO that the NPV is taken for unlimited period. Accordingly, the AO has held that it is a manipulated state of affairs for a report obtained after the allotment to cover up the allotment of shares a premium, whereas the actual value of shares was not more than the face value of shares. The AO has further noted that no professional fee paid/payable in the Chartered Accountant valuer has been charged to the P & L a/c during the relevant year i.e year under allotment under consideration. The Balance Sheet of the

appellant clearly indicates that net worth of the appellant as on 31.03.2014 was negative. The appellant's own record reveals that share of face value of Rs.10 was allotted at Rs. 540/- in spite of the fact that the net worth of the appellant company was negative. In the assessment order the AO has further noted that on the valuation date i.e on 15.03.2015 the valuer has adopted amounts in the projections made as on 31.03.2015, 31.03.2016 and as on 31.03.2017 real figures as on these dates to the two decimal points. It is strange how these figures were available with the Valuer provided by the appellant to the extent of two decimal points It clearly shows that the actual figures have been adopted from the Balance Sheets which were available with the appellant after closing of the accounts on these dates, when the appellant was asked by the AO to furnish a Valuation Certificate from a Chartered Accountant. During the course of assessment proceedings, the appellant has produced a letter dated 25.09.2017 from Valuer/ Chartered Accountant. Ms. Shruti Gupta which is addressed to Board of Directors On examination of the said letter, the AO observed that on page 2 in respect of the "Key information" relied upon false statement has been made while preparing the report when the provisional figures as on 31.03.2015 is accurately taken in the report which is report dated prior to that date Similarly the valuer has herself denied that she has neither designed nor verified the accuracy of the information and the projections are based on management information, explanation and assumptions. The Valuer further states in this report that his document has been prepared solely for the purpose stated therein and should not be relied upon for any other purpose Similar the auditor mentions in the report that her view is not in the nature of audit/a due diligence and she does not express an opinion as to how closely the actual revenue expenses, cash flow and position of assets and liabilities would correspond to these financial projections She did not carry out any other validation procedures on the financial projections. The AO has further noted that the appellant has failed to bring on record the proper basis of valuation for the purpose of allotment of shares of face value of Rs 10 at a premium of Rs.530/- per share and on the basis of its own record which shows negative net worth of the appellant in the previous year ending on 31.03.2014 the appellant has wrongly shown the value of the shares of the value of Rs. 10 per share at Rs 540 per share, hence provisions of Section 56(2)(viib) of the Income Tax Act, 1961 are attracted in this case. The AO has further noted that the back ground of the company reflects that the Reserves & surplus of the appellant as on 31.03.2014 are negative, the Net worth of the appellant is negative, the fair market value of the share does not exceed Rs. 10/- per share i.e the face value of its share if sold in the open market on the valuation date In view of it the AO has held the premium amount of Rs 2,46,45,000/- received by the appellant during the year on allotment of 46,500 equity shares as income of the appellant taxable u/s 56(2)(viib) of the Income Tax Act, 1961 and is brought to tax as such."

7. Finally with the following observations the Ld. CIT(A) affirm the order passed by the ld. AO and rejected the appeal preferred by the assessee.

“6.4.3 Considering the facts of the case, I am of the view that the AO has rightly rejected the valuation of shares under DCF method. In the case of Agro Portfolio (P) Ltd [2018] 94 taxmann.com 112 (Delhi Trib) Hon'ble ITAT Delhi has held that "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 arrived by the authorities below. While confirming the same, we dismissed the appeal as devoid of merits. The decision of hon'ble ITAT Delhi on the case of Agro Portfolio (P) Ltd (supra) is squarely applicable to the facts of the case. Considering the facts of the case, we agree with the findings of the AO that the valuation report submitted by the appellant is antedated. Moreover, the valuer has prepared the report without any application of mind. The AO has observed that the Reserves & surplus of the appellant as on 31.03.2014 are negative, the Net worth of the appellant is negative, the fair market value of the share does not exceed Rs 10/- per share i.e. the face value of its share if sold in the open market on the valuation date. Accordingly, the AO has held that the premium amount of Rs 2,46,45,000/- received by the appellant during the year on allotment of 46,500 equity shares is taxable u/s 56(2)(viib) in case of the appellant company. Considering the facts of the case, I am of the view that the AO has correctly made the addition of Rs. 2,46,45,000/- u/s 56(2)(viib) in the present case. Accordingly, the addition of Rs. 2,46,45,000/- u/s 56(2)(viib) is upheld in the instant case. Ground No 2, 3 & 4 are decided against the appellant.”

8. It appears that the Ld. CIT(A) relying upon the orders passed by the Coordinate Bench in the case of Agro Portfolio Pvt. Ltd. found that in the absence of the data supplied by the assessee to the merchant banker, the correctness of the result of the DCF method was not able to be verified by the Ld. AO and therefore, having no other option the AO rejected the DCF method and stressed on NAV method to determine the fair market value of the shares. Moreover, the valuation report submitted by the appellant is admittedly found to be antedated. In addition to that when the reserves and surplus of the appellant as on 31.03.2014 are found negative, the net worth of the appellant is negative, the fair market value of the share could not exceed Rs.10 per share i.e. the face value of its share if sold

in the open market on the valuation date. Such observations made by the CIT(A) and order passed holding the premium amount of Rs.246,45,000/- received by the appellant during the year of allotment of 46500 equity shares taxable under Section 56(2)(viib) of the Act in the present facts and circumstances of the matter is therefore, found to be just and proper so as not to warrant interference. The assessee's appeal is, therefore, found to be devoid of any merit particularly in the absence of any assistance rendered by the assessee and, thus, dismissed.

9. In the result, the appeal preferred by the assessee is dismissed.

Order pronounced in the open court on 06.09.2024

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 06.09.2024

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI