

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC” , HYDERABAD**

**BEFORE
SHRI LALIET KUMAR, HON’BLE JUDICIAL MEMBER**

ITA No.800/Hyd/2024		
Assessment Year – 2016-17		
Dhola Infra Projects Limited (Formerly Known as Navayuga Dhola Infra Projects Limited Mumbai PAN : AADCN3696B (Appellant)	Vs.	Asst.Commissioner of Tax Circle-16(1) Hyderabad (Respondent)
Assessee by:	Shri Paras S.Savla, Ld.AR (Through Virtual Hearing)	
Revenue by:	Shri U Mini Chandran, Ld.DR	
Date of hearing:	17.10.2024	
Date of pronouncement:	17.10.2024	

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [Ld.CIT(A)] dated 24.06.2024 for the AY 2016-17 by raising the following grounds :

“1. On facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the Learned Assessing Officer in making an addition of Rs.46,74,979 under section 56(2)(viiB) of the Act.

2. On facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the Assessing Officer in rejecting the valuation of shares determined by an independent account using Discounted Cash Flows Method ("DCF Method") which is in accordance with Section 56(2)(viib) of the Act read with Rule 11UA of the Income Tax Rules, 1962 ("the rules") and instead applying Net Asset Value ("NAV") method.

3. On facts and circumstances of the case and in law, the learned Assessing Officer erred in levying interest under section 234D of the Act.

4. On facts and circumstances of the case and in law, the learned Assessing Officer erred in computing interest payable to the Appellant under section 244A of the Act."

2. This is the case of making addition in the hands of the assessee by the learned Assessing Officer (Ld.AO) for the A.Y.2016-17 on the premise that while making valuation of the shares issued by the assessee to its shareholders in the same pattern, the assessee instead of issuing shares on NAV method, issued shares on the basis of DCF method. The Ld.AR had drawn our attention to valuation report at Page No.52 of the paper book, on the basis of which, NAV valuation per share was calculated at Rs.300.61/- rounded to Rs.300/-. Further, the table shows details of shareholders to whom shares were allotted at Page No.52 of the paper book, which is as under shows that the shares were allotted to the existing shareholders only.

Notes forming part of the financial statements

Note 3 Share capital

Particulars	As at 31st March, 2016	As at 31st March, 2015
(a) Authorised 30,10,000 Equity shares of ₹ 10 each with voting rights (Previous year 30,10,000 Equity shares of ₹ 10 each with voting rights)	3,01,00,000	3,01,00,000
(b) Issued, Subscribed & Fully Paid Up 30,08,324 Equity shares of ₹ 10 each with voting rights (Previous year 11,74,999 Equity shares of ₹ 10 each with voting rights)	3,00,83,240	1,17,49,990
Total	3,00,83,240	1,17,49,990

(ii) Reconciliation of the number of shares and amount outstanding at the beginning and at the end of the reporting period:

Particulars	As at 31st March, 2016 No. of Shares	As at 31st March, 2015 No. of Shares
Equity shares with voting rights at the beginning of the year	11,74,999	11,74,999
Add: Shares issued during the period	18,33,325	
Equity shares with voting rights at the end of the year	30,08,324	11,74,999

(iii) Terms/rights attached to shares:

The Company has only one class of equity shares having a par value of ₹ 10 per share. Each holder of equity share is entitled to one vote per share. In the event of liquidation of the Company, the holders of equity shares will be entitled to receive remaining assets of the Company, after distribution of all preferential amounts. The distribution will be in proportion to the no. of equity shares held by the shareholder.

(iv) Details of shares held by the holding company, the ultimate holding company, their subsidiaries and associates:

Particulars	As at 31st March, 2016 No. of Shares	As at 31st March, 2015 No. of Shares
Equity shares with voting rights held by: Navayuga Engineering Company Limited-Ultimate Holding Company (including nominee holding)	8,00,474	3,12,653
Navayuga Road Projects Private Limited-Holding Company (subsidiary of Navayuga Infra Projects Private Limited, a 100% Subsidiary of Navayuga Engineering Company Limited)	22,07,850	8,62,346
Equity shares with voting rights at the end of the year	30,08,324	11,74,999

(v) Details of equity shares held by the shareholder holding more than 5% shares of total equity shares:

Class of shares / Name of shareholder	As at 31st March, 2016		As at 31st March, 2015	
	Number of shares	% held	Number of shares	% held
Equity shares with voting rights				
Navayuga Engineering Company Limited (including nominee holding)	8,00,474	26.61%	3,12,653	26.61%
Navayuga Road Projects Private Limited (subsidiary of Navayuga Infra Projects Private Limited, a 100% Subsidiary of Navayuga Engineering Company Limited)	22,07,850	73.39%	8,62,346	73.39%



3. Ld.AO in the assessment proceedings had issued show cause notice that the DCF method adopted by the assessee cannot be accepted and asked the assessee to furnish details of valuation of shares as per NAV method. The assessee in compliance to the directions of the Ld.AO filed calculations and as per the said calculations, the value of each share is Rs.297.45ps., the valuation

is available at Page 141 of paper book. The Ld.AO was not satisfied with the submission made by the assessee and had made addition on the basis of NAV method and the finding of the Ld.AO at 4.2 of the assessment order is as under :

“4.2. The assessee was also asked to submit valuation report as per Net Asset Value (NAV) method. As per this report value of each share is Rs.297.45ps. There is variation of Rs.2.55ps per share as per DCF method and NAV method i.e. share price less as per NAV method. In this connection, it is pertinent here to mention that projections as per DCF method are nowhere matching with the actual figures for the A.Y.2016-17 and 2017-18, 2018-19 and 2019-20 as per the Returns of Income filed by the assessee for these A.Ys. It is observed that there is no revenue earning during the previous years relevant to A.Ys 2016-17, 2017-18 and 2018-19 except for the A.Y.2019-20, where it has earned revenue of Rs.92,29,79,16/- and after claiming expenses it has admitted net profit of Rs.24,17,42,391/-. Moreover, the project undertaken by the assessee was under development till A.Y.2018-19 and no revenue was earned. Whatever the funds available with the assessee upto A.Y.2018-19 were only share capital, grant received from NHAI and borrowed funds. This shows that there was no actual cash flow at during the A.Ys.2016-17, 2017-18 and 2018-19 and also since inception of the company. Therefore, the DCF method adopted by the assessee is not acceptable and the same is rejected and accordingly, the value of share including premium as per ‘NAV method’ is adopted at Rs.297.45 ps. As per the valuation report submitted by the assessee. Thus, there is excess share premium received by the assessee on 18,33,325 shares is Rs.46,74,979/-. The same is treated as income of the assessee as per provisions of section 56(2)(viib) of the Act and added to the income returned.

3. Feeling aggrieved by the order of the Ld.AO, assessee preferred appeal before the ld.CIT(A), however, the Ld.CIT(A) also dismissed the appeal of the assessee and the reasons given by the Ld.CIT(A) are given in para 6.1. onwards, which is to the following effect :

6.1 The order of the Ld. AO passed u/s 143(3) of the I.T. Act, 1961 dated 29.12.2019 as well as the grounds of appeal, statement of facts and written submission citing several case laws filed by the appellant has been carefully considered. In essence, all the substantial grounds taken by the appellant relate to the action of the Ld. AO in adding Rs.46,74,979/- on account of excess share premium. In this case, it was noticed by the Ld. AO that there was increase in share capital by Rs.1,83,33,250/- and increase in share premium by Rs.53,16,64,250/-. During the course of assessment proceedings it was observed that the assessee had issued shares to M/s Navayuga Engineering Company Limited (4,87,821 shares) and to M/s Navayuga Road Projects Pvt. Ltd. (13,45,504 shares). The shares were issued with face value of Rs.10/- per share with a premium of Rs.290/- per share and received total sum of Rs.54,99,97,500/- including share premium. As per valuation report filed by the appellant, value of each share adopted had been shown at Rs.300/- valued as per Discounted Cash Flow (DCF) method. Valuation report submitted by the assessee as reflected in the assessment order is illustrated below:

S. No.	Assessment Year	Cash inflow	Cash outflow	Net Cash Balance
1.	2016-17	16,00,00,000	15,82,72,877	17,27,123
2.	2017-18	99,20,00,000	98,22,70,378	97,29,622
3.	2018-19	55,90,00,000	34,52,70,378	21,37,29,622
4.	2019-20	111,80,00,000	129,78,04,254	-17,98,04,254
5.	2020-21	141,80,00,000	132,95,08,629	8,84,91,371
6.	2021-22	118,80,00,000	130,61,88,386	-11,81,88,386
7.	2022-23	132,80,00,000	133,44,30,727	-64,30,727
8.	2023-24	120,80,00,000	121,28,89,801	-48,89,801
9.	2024-25	121,80,00,000	121,55,03,504	24,96,496
10.	2025-26	111,80,00,000	92,41,49,197	19,38,50,803
11.	2026-27	111,80,00,000	39,59,90,689	72,20,09,311
12.	2027-28	111,80,00,000	47,50,00,000	64,30,00,000
13.	2028-29	111,80,00,000	48,00,00,000	63,80,00,000
14.	2029-30	48,13,61,111	49,25,00,000	-1,11,38,889
	Total	1414,23,61,111	1194,97,78,820	219,25,82,291
No. of shares (Pre Allotment)			11,74,999	

Value per share	300.61
Rounding off to nearest rupee	300.00

In this connection, the Ld. AO observed at para 4.2 of the assessment order that *"In this connection it is pertinent here to mention that the projections as per DCF method are no where matching with the actual figures for the A.Y 2016-17 and 2017-18, 2018-19 and 2019-20 as per the Returns of Income filed by the assessee for these A.Ys., it is observed that there is no revenue earning during the previous years relevant to A.Ys.2016-17, 2017-18 and 2018-19 except for the A.Y.2019-20, where it has earned revenue of Rs.92,29,79,16/- and after claiming expenses it has admitted net profit of Rs. 24,17,42,391/-. Moreover, the project undertaken by the assessee was under development till A.Y.2018-19 and no revenue was earned. Whatever the funds available with the assessee up to A.Y.2018-19 were only share capital, grant received from NHAI and borrowed funds. This shows that there was no actual cash flow at during the A.Ys. 2016-17, 2017-18 and 2018-19 and also since inception of the company. Therefore, the DCF method adopted by the assessee is not acceptable."*

The assessee was asked by the Ld. AO to submit valuation report as per Net Asset Value (NAV) method and value of each share as per NAV was determined at Rs.297.45 per share. So, there was difference of Rs.2.55 per share between the two methods. The DCF method applied by the appellant was not acceptable to the Ld. AO the hence the value of each share including share premium was adopted by the Ld. AO as per NAV method and the excess premium received by the appellant amount to Rs.46,74,979/- being Rs.2.55 per share multiplied by 18,33,325 shares was treated as income of the appellant as per provision of section 56(2)(viib) of the I.T. Act, 1961.

4. Feeling aggrieved with the order of the Ld.CIT(A), the assessee is in appeal before me. The primary contention of the assessee is that as per the provisions of the Act, the option to adopt any of the two methods, is only available to the assessee and not to the Ld.AO. It was submitted by the assessee that once the assessee opted for any particular method of valuation i.e. DCF or NAV method, and the Ld.AO is bound by law to implement that method. The only option with Ld.AO as per law is to find out whether the assessee has correctly applied the formula for arriving at the correct valuation or not. In the present case, it was submitted that, the assessee has opted for DCF method and therefore, no option was available to the Ld.AO to change the method of valuation and adopt NAV method. Further, Ld.Counsel for the assessee submitted that the whole basis of finding and rejection of claim of the assessee by the Ld.AO/Ld.CIT(A) was that the actual results of the assessee's financials were not matching with the projections and it was submitted that in the subsequent three assessment years, the assessee company has not earned any revenue and therefore, the valuation method adopted by the Ld.AO was not correct and the addition made by the Ld.AO was not

correct. It was further submitted that the issue is no more *res integra* and for that purpose, the assessee relied on the judgements as placed in paper book. It was submitted that even otherwise, there was difference of Rs.2.55 per share between the valuation adopted by the assessee and the Ld.AO. It was submitted that this is marginal difference and only on account of marginal difference, the valuation of the assessee cannot be rejected.

5. Per contra, Ld.DR submitted that the assessee is in execution of infrastructure projects and therefore, the DCF method should not have been adopted by the assessee as it was not appropriate for various reasons. Ld.DR submitted it was not possible to pen down when the project will start, and when it start generating the revenue. Further, the DCF method cannot take into account initial costs and capital expenditure, this will have a detrimental effect on the valuation by inflating the figures. Whereas, in infrastructure projects like port, construction, NAV method is considered, which will take into account initial costs and will result in more realistic figure. It was the contention of the Ld.DR that the Ld.AO is right in taking NAV method instead of DCF method and therefore, the order passed is to be sustained.

6. I have heard the rival contentions and perused the material available on record. Before I proceed to deal with the facts, it is essential to note down the scheme which is enunciated in section 56(2)(viib) which is as under :

Section 56(2)(viib) in The Income Tax Act, 1961

(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 a specified fund; or

(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf:

Provided further that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (ii) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.

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; 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;

(aa) "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) [or regulated under the International Financial Services Centres Authority Act, 2019 (50 of 2019)];

(ab) "trust" means a trust established under the Indian Trusts Act, 1882 (2 of 1882) or under any other law for the time being in force;(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;

6.1. If we read the above said provision of law, it is mainly, the option is given to the assessee to opt for one of the prescribed method, which is available in Rule 11UA, if we read Rule 11UA along with section 56(2)(viib), it is abundantly clear that the option is available to the assessee and once the assessee opts for a particular method of valuation, then the Ld.AO is prevented to differ with the chosen method of valuation. In the present case, valuation of shares was adopted by the CA of the assessee and on the basis of valuation report. The valuation of the share as per NAV method as taken by Assessing Officer comes to Rs.297.45/-, whereas as per DCF method as taken by assessee, the valuation comes to Rs.300/- per share. If we compare two figures by NAV as

well as DCF method, it is clear that both are in vicinity and there is slight difference between the two methods. The DCF method is based on certain parameters and error had been brought to my notice on the working and application of it. Therefore, in my view, the assessee had taken rightly and opted for DCF method. Having said so, DCF method is required to be upheld based on the financials and as per the balance sheet on the date of valuation. If we read the financials of the balance sheet under Rule 11UA, the date of valuation and the date of balance sheet has not been disputed. What has been conveyed by the Ld.AO is that there is slight difference in the estimation of value of shares and therefore, NAV is required to be adopted. I am of the view that the view of the Ld.AO is not sustainable. In my observation and also on account of the decision of the Coordinate Bench of ITAT Bangalore in the case of Innoviti Payment Solutions (P.) Ltd Vs. Income Tax Officer, Ward-3 (1)(1), reported in 102 taxmann.com 59 (Bangalore – Trib/ (2019), and also of Hon'ble High Court of Delhi in the case of Agro Portfolio Private Limited Vs. PCIT reported in 161 Taxman.com 303 (Delhi) dt.04.04.2024. Coming to the contention of the Ld.DR that the DCF method should not be accepted in the case of

infrastructure projects as it will not take into account various factors which are mentioned above. In my view, the law is clear on this aspect. Option is given to the assessee and there is no sub classification, whether assessee is in infrastructure or software company or other companies. Therefore, the objection of the Ld.DR is not sustainable and devoid of merits. I am of the opinion that the appeal of the assessee is required to be allowed and hence, allowed the same.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17th October, 2024.

Sd/-

(LALIET KUMAR)

JUDICIAL MEMBER

Hyderabad, dated 17.10.2024.

L.Rama, SPS

Copy to:

S.No	Addresses
1	Dhola Infra Projects Limited (Formerly Known as Navayuga Dhola Infra Projects Limited) Mumbai, 505 & 505, 5 th Floor, Windsor, Off CST Road, Vidyanagari S.O. Santacruz (East), Mumbai – 400098.
2	The Assistant Commissioner of Income Tax, Circle 16(1), Hyderabad.
3	Pr.CIT, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order