

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 172/Ahd/2024  
(निर्धारण वर्ष / Assessment Year : 2015-16)

<b>Assistant Commissioner of Income Tax</b> Room No.224, 2 <sup>nd</sup> Floor, B-Block, Income Tax Towers, AC Gaurds, Masab Tank, Telangana Hyderabad 500004	<b>बनाम/ Vs.</b>	<b>Mytrah Vayu (Gujarat) Private Limited</b> 8 <sup>th</sup> Floor, Q-City, Gachibowli, Nanakramguda, K. V. Ranga Reddy, Telangana 500032
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAICM1268P		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Ravi Bharadwaj, A.R.
प्रत्यर्थी की ओर से/Respondentby:	Shri P S Choudhary, CIT. DR

<b>Date of Hearing</b>	26/11/2024
<b>Date of Pronouncement</b>	18/12/2024

**ORDER**

**PER SHRINARENDRA PRASAD SINHA, AM:**

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 22.11.2023 for the Assessment Year 2015-16.

2. The brief facts of the case are that the return of income for A.Y. 2015-16 was filed by the assessee on 16.11.2015 declaring loss of Rs.79,68,765/-. The case was selected for limited scrutiny under CASS to verify the substantial increase in share

capital, large share premium received during the year and low income in comparison to high loans and advances/investment in shares. In the course of assessment, the AO found that the assessee company was incorporated on 24.12.2011 and the company had not started any activity till 31.03.2017. The entire share capital of the company was held by its immediate holding company M/s. Mytrah Vayu (Bhima) Private Ltd. ('MVBPL'). The assessee had brought funds by way of share capital of Rs.62.5 Crores during F.Y. 2013-14. Against the share application money of Rs.62.50crores, the assessee had allotted 1,25,00,000 compulsorily convertible debentures ('CCD') of Rs.50/- each to MVBPL on 26.06.2014. Subsequently, the CCDs were converted into 1,25,00,000 equity shares of Rs.10/- each at a premium of Rs.40/- on 31.03.2015. In the course of assessment, the AO examined the applicability of provision of Section 56(2)(viib) of the Income Tax Act, 1961 (in short 'the Act') in respect of share premium collected by the assessee. The assessee had furnished a valuation report of the Chartered Accountant in support of fair market value (FMV) of the shares on the basis of discounted cash flow ('DCF') method of valuation. However, the AO rejected the valuation report furnished by the assessee for the reason that there was mismatch between the projected financials and the actuals as available for F.Y. 2015-16 & 2016-17. The AO worked out the book value and intrinsic value of shares, which was found to be Rs.5.23 per share only as on 31.03.2014. He, therefore, held that the valuation certificate produced by the assessee was not reliable & genuine and also not based on actual facts and figures and, therefore, rejected the valuation report. Accordingly, an

addition of Rs.50 Crore was made in respect of share premium receipt u/s. 56(2)(viib) of the Act.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was allowed.

4. Now, the Revenue is in appeal before us. The following grounds have been taken in this appeal:

“1. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition made u/s 56(2)(viib) of the Act without appreciating that the method adopted for determination of FMV of the equity share by the assessee is not as per the method prescribed under Rule 11UA of the IT Rules.

2. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition made u/s. 56(2)(viib) of the Act without appreciating the fact that as per CBDT Circular No. 22/2019 dated 30-08-2019 the cases where appeal against assessment is pending before CIT(A), the appellate order should be passed by CIT(A) on or before 31<sup>st</sup> December 2019.”

5. Shri P S Choudhary, Ld. CIT.DR appearing for the Revenue submitted that the AO had rightly rejected the DCF method of valuation as submitted by the assessee considering the huge mis-match between the projected figures and the actual figures. He submitted that the basis of projection adopted by the Chartered Accountant was neither produced nor explained before the AO. The Ld. CIT.DR relied upon the decision of the ITAT, Delhi in the case of *Agro Portfolio (P.) Ltd. v. ITO* [2018] 94 taxmann.com 112 and submitted that since the

correctness of the data supplied by the assessee to the merchant banker was not verified, the AO had rightly rejected the DCF method and adopted net asset value (NAV) method to determine the FMV of shares.

6. Per contra, Shri Ravi Bharadwaj, Ld. AR appearing for the assessee submitted that as per provision of Rule 11UA of the IT Rules, an option was available with the assessee to adopt either DCF method or NAV method for valuation of its shares. Therefore, it was not open for the AO to reject the DCF method of valuation as adopted by the assessee. He further submitted that most of the parameters required for conducting valuation in DCF method was based on the industry parameters prevailing at that time, which was independently vetted and confirmed by L&T- Sargent & Lundy Limited, appointed by the lender Bank of Maharashtra. Therefore, the rejection of the valuation report based on comparison with one-year actual figure was not correct. He further submitted that the entire share premium was received from the holding company and that the Co-ordinate Bench of this Tribunal in the case of *DCIT vs. Ozone India Ltd.*, [2021] 126 taxmann.com 192 (Ahmedabad-ITAT) had analyzed the deeming provision of Section 56(2)(viib) of the Act and observed that deeming clause requires to be given a schematic interpretation. According to the Ld. Counsel, the provision of Section 56(2)(viib) of the Act was introduced to prevent unlawful gain by issuing company in the garb of capital receipts. He explained that in the present case, since the entire shares were allotted to holding company, there was no change in the interest or control over the money by issuance of the shares

at a premium. He also relied upon the decision of Co-ordinate Bench of Delhi Tribunal in the case of *BLP Vayu (Project-1) Pvt. Ltd. vs. PCIT*, [2023] 151 taxmann.com 47 (Delhi-Trib.) and submitted that in the transactions between holding and its subsidiary company, the provision of Section 56(2)(viib) of the Act was wholly inapplicable.

7. We have carefully considered the rival submissions. There is no dispute to the fact that the assessee company had issued the entire shares to its holding company at a premium of Rs.40 per share on the face value of Rs.10/- per share. As per the provision of Rule 11UA of the IT Rules, an option is given to the assessee to determine the FMV of shares either as per DCF method or as per NAV method. The provisions of Rule 11UA(2)(b) of the Rules provides that the assessee can adopt the fair market value as per either DCF method or NAV method. The choice of method is that of the assessee. In the present case, the valuation was done by the assessee as per DCF method, which was backed by a report of the Chartered Accountant. If the AO was not satisfied with the correctness of the valuation report of the Chartered Accountant, he should have referred the matter to another Registered Valuer/Merchant Banker to work out the valuation on the basis of DCF method. The AO on his own was not correct in rejecting the valuation of the assessee as per DCF method, nor he was correct in adopting NAV method to determine the FMV of shares. The AO can certainly scrutinize the valuation report submitted by the assessee but for determination of a fresh valuation he has to obtain a report from an independent Registered Valuer / Merchant Banker. Further, the basis had to be DCF method and he cannot

change the method of valuation which was opted by the assessee. The Ld. CIT(A) had, therefore, rightly held that the AO cannot adopt his own valuation unless there was an enabling provision in the Act giving powers to the AO to tinker the valuation report obtained from an independent valuer as per the prescribed method under Rule 11UA(2)(b) of the IT Rules. Hon'ble Delhi High Court in the case of *PCIT-2 Vs. Cinestaan Entertainment Private Limited vide order dated 01 March, 2021*, has categorically held that “if law provides the assessee to get the valuation done from a prescribed expert as per prescribed method, then the same cannot be rejected because neither AO nor the assessee have been recognized as expert under the law”. Therefore, the suo-moto rejection of the valuation report of the assessee by the AO was not correct and can't be upheld.

8. The other contention of the assessee is that the provision of Section 56(2)(viib) of the Act was not applicable in the case of issue of shares to the holding company. It was submitted that in the present case the entire shares were allotted to the holding company and there was no change in the interest or control over the money by issuance of the shares at a premium. In the case of *BLP Vayu (Project-1) Pvt. Ltd. (supra)*, the Co-ordinate bench of Delhi Tribunal has held that the provision of Section 56(2)(viib) of the Act is wholly inapplicable for transactions between the holding and its subsidiary company where no income can be said to accrue to ultimate beneficiary i.e. holding company.

9. In view of the above facts and the judicial precedents, we are of the considered opinion that the AO was not correct in rejecting the DCF method of valuation adopted by the assessee to determine the FMV of its shares on its own without obtaining report from any other Registered Valuer/Merchant Banker. Therefore, the order of the Ld. CIT(A) deleting the addition of Rs.50 Crores in respect of addition u/s. 56(2)(viib) of the Act is upheld.

10. In the result, the appeal of the Revenue is dismissed.

**This Order pronounced on 18/12/2024**

Sd/-  
(T.R. SENTHIL KUMAR)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 18/12/2024

S. K. SINHA

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad