

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI****BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER****ITA No. 86/DEL/2023
Assessment Year : 2017-18****Autope Payment Solutions Pvt. Ltd.,
Ch. No. 206-207, ansal Satyam RDC,
Rajnagar, Ghaziabad-201002.****Vs. ACIT, Circle-2(2),
Delhi.****(PAN: AAFCA 9719 C)****(APPELLANT)****(RESPONDENT)****ASSESSEE BY : Shri Akhilesh Kumar, Adv.; &
Shri Govind Agarwal, Adv.****REVENUE BY : Shri Yogesh Kumar Nayyar, Sr. DR****Date of Hearing : 11.12.2024****Date of Order : 20.12.2024****ORDER****PER S. RIFAUR RAHMAN, AM :**

1. The captioned appeal preferred by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 17.11.2022 in proceedings u/s 143(3) of the Income-tax Act, 1961 (for short 'the Act') for Assessment Year 2017-18.

2. Brief facts of the case are, the assessee filed its return of income for assessment year 2017-18 declaring loss of Rs. 1,04,05,660/- on 24.10.2017. Subsequently, the case was selected for limited scrutiny on the basis of CASS and notices u/s 143(2) and 142(1) of the Act were issued through ITBA portal. In response, assessee filed detailed information electronically.

3. The assessee is a privately held Noida based “start-up” incubated under Amity Innovation Incubator and is engaged in the business of doorstep delivery of railway ticket on ‘Cash on Delivery’ basis. During the assessment proceedings the Assessing Officer observed from audited balance-sheet of the year under consideration that assessee had issued 182360 shares at the face value of Rs. 1 and share premium of Rs. 64/- per share. In order to verify the above said transaction notices u/s 142(1) along with questionnaire dated 14.06.2019 and 12.09.2019 were issued to the assessee and asked to furnish details of transactions in respect of requisite form along with supporting documentary evidence, bank statement, valuation report etc. In response to notice dated 25.11.2019 the assessee has submitted vide letter dated 27.11.2019 in which assessee has made submissions with regard to share application money and share premium along with justification for adopting the valuation method of DCM under rule 11UA of Income Tax Rules, 1962. In the above said letter the assessee had submitted that assessee is a ‘start-up’ company and has developed software to do e-commerce

business of the booking of railway tickets on online platform and delivery of the booked tickets on 'Cash on Delivery' basis. The assessee also submitted agreement entered with IRCTC and valuation report on the basis of DCF method before the Assessing Officer and also submitted the justification for applying the DCF method, also submitted certified Valuation Report by a chartered accountant along with relevant case law. After considering the submissions of the assessee, the Assessing Officer found the same to be not satisfactory and observed that valuation report is prepared on 02.06.2014 which is based on projected financials of the company for the next five financial years and does not factor in the actual performance of the assessee company in subsequent period. Further, he observed that the issuance of shares at a value higher than the fair market value, the provision of section 56(2)(vii-b) of the Act is applicable. He also observed that the fair market value of unquoted shares may be determined either as per Net Assessed Value (NAV) or DCF method as determined by a merchant banker or an accountant.

4. He observed that the above valuation was certified by a chartered accountant, after perusal of the valuation report. He observed disclaimers recorded by the chartered accountant while issuing the certificate that he has prepared the valuation report on the basis of projected financials of the company for next five years as provided by the management of the company and further he

observed that any appraisal or independent valuation of any assets or liabilities of the company and the business assets of the company was not conducted by the valuer nor he conducted any audit or diligence or validated the financial data provided by the management. Further, he observed other disclaimer made by the valuer and proceeded to compare the projection made in the valuation report with actual results in financial years 2014-15 to 2017-18 and observed that the projection of cash flow computed by the Valuer was exaggerated. Accordingly he rejected the valuation report by referring to the notification of the DOPT. He was of the view that assessee is covered under the 'start-up' category. The Assessing Officer further observed that assessee has adopted discounting factor of 7%. According to him, it is on higher side. After rejecting the method of DCF adopted by the assessee he proceeded to calculate NAV method i.e. other method provided in rule 11UA of the Rules and he determined the fair market value of unquoted shares of the assessee at Rs. 15.31 per share. Accordingly, he disallowed Rs. 90,22,347/- as differential amount as per provisions of Section 56(2)(viib) and further he proceeded to make addition of share application money of Rs. 1,82,360/- u/s 68 of the Act.

5. Aggrieved with the above order assessee preferred appeal before the NFAC, Delhi and filed detailed submissions before him. Though learned NFAC issued 4 notices for hearing, assessee did not comply the same except to the notice issued

on 10.08.2022 and filed a reply dated 18.08.2022. After considering the submissions of the assessee he has sustained the addition made by the Assessing Officer and also accepted the findings of the Assessing Officer. Aggrieved, assessee is in appeal before us raising following grounds of appeal:

“1. That, the order of Ld. Authority is bad in law and is against the facts and circumstances of the case, hence is unsustainable.

“2. Because, Id. Commissioner of Income Tax 2 (Appeals) erred in dismissing the appeal without providing proper opportunity of being heard in the circumstances of the case merely on the basis of part reply of assessee.

3. That, Id. lower authority erred in sustaining the 3 addition of Rs. 90,22,347/- made u/s 56(2)(vii)(b) by AO by arbitrarily rejecting the valuation determined by DCF method in terms of rule 11UA and further erred in appreciating that AO had determined valuation unilaterally without any show cause/opportunity to assessee.

4. That, Id. lower authority further erred in ignoring 4 the facts on record and sustained the addition merely on the basis of surmises and conjectures unilaterally.

5. That, Id. lower authority grossly erred in not even considering the ground against addition of Rs. 1,82,360/- made u/s 68 of the Act, being share application money though addition is illegal in as much as Id. AO himself has accepted receipt of share premium from same parties and assessee had discharged onus by filing relevant documents.

6. That, Ld. lower authority grossly erred in not even considering the ground against the disallowance of Rs. 39,285/- made by Id. AO by arbitrarily and against the facts on record holding said expenses as capital expenditure.”

6. At the time of hearing learned AR submitted that ground no. 1 is general.

Ground no. 2 is raised on the issue of not giving proper opportunity, he submitted that assessee does not want to press this ground. The same are dismissed as not pressed.

7. With regard to ground no. 3 learned AR submitted that assessee has applied one of the approved method of DCF as per Rule 11UA of the Income-tax Rules and certified by a chartered accountant. He brought to our notice pages 3 to 8 of the assessment order in which Assessing Officer has rejected the above said valuation report based on the disclaimer normally used in the valuation reports and further he has reviewed performance with the projections applied by the valuer which was provided by the assessee during assessment proceedings. He submitted that the Assessing Officer has rejected the method of valuation adopted by the assessee on the basis of surmises and conjectures unilaterally and he submitted that the DCF is one of the approved method of valuation as per rule 11 UA of the Rules. Assessing Officer cannot reject the method of valuation on the basis of disclaimer. Further submitted that he cannot review the valuation report with actuals and also he rejected the valuation report with the observation that only merchant banker alone can certify the Valuation Report. He also brought to our notice page 8 of the appellate order, in which learned CIT(A) has sustained the addition made on the basis of observation of the Assessing Officer. He submitted that the method adopted by the assessee is the proper method as per rule 11UA.

8. With regard to ground no. 5 he brought to our notice observation of the Assessing Officer at page 2 and he further brought to our notice page 4 of the appellate order wherein the learned CIT(A) has not given any finding and merely sustained the addition made by the Assessing Officer u/s 68 of the Act.

9. On the other hand, learned DR relied on the observations of the Assessing Officer and supported the finding of the Assessing Officer for rejecting the DCF method adopted by the assessee and also brought to our notice para 5.4 of the assessment order. He supported the verification of the actuals with projection adopted in the valuation report. He submitted that the projection provided by the assessee is without any basis and adopting the DCF @ 7% as the discounting factor is also not justified. Accordingly, he relied on the orders of lower authorities.

10. Considered the rival submissions and material placed on record. We observe that the Assessing Officer has reviewed the valuation report submitted by the assessee and in the valuation report the valuer has adopted the DCF method. The Assessing Officer after perusing the valuation report has rejected the DCF method based on the disclaimers depicted in the valuation report and he has proceeded to evaluate the actual performance vis a vis projection.

11. After considering the submissions of both the parties we observe that assessee is a 'start-up' company, has no past financials and we also observe that the assessee has adopted one of the approved method under Rule 11UA. It is also

relevant to note that as per Rule 11UA, option is given to the assessee to adopt one of the approved method for the purpose of valuation of unquoted shares either under Net Assets value or DCF method. As per the above choice of option, assessee has adopted one of the approved method for valuing its shares. The Hon'ble High Court of Delhi held exact similar view in the case of Pr. CIT vs. Cinestaan Entertainment (P) Ltd. [2021] 433 ITR 82 (Delhi). The relevant ratio is as below:

“13. From the aforesaid extract of the impugned order, it becomes clear that the learned ITAT has followed the dicta of the Hon'ble Supreme Court in matters relating to the commercial prudence of an assessee relating to valuation of an asset. The law requires determination of fair market values as per prescribed methodology. The Appellant-Revenue had the option to conduct its own valuation and determine FMV on the basis of either the DCF or NAV Method. The Respondent-Assessee being a start-up company adopted DCF method to value its shares. This was carried out on the basis of information and material available on the date of valuation and projection of future revenue. There is no dispute that methodology adopted by the Respondent-Assessee has been done applying a recognized and accepted method. Since the performance did not match the projections, Revenue sought to challenge the valuation, on that footing. This approach lacks material foundation and is irrational since the valuation is intrinsically based on projections which can be affected by various factors. We cannot lose sight of the fact that the valuer makes forecast or approximation, based on potential value of business. However, the underline facts and assumptions can undergo change over a period of time. The Courts have repeatedly held that valuation is not an exact science, and therefore cannot be done with arithmetic precision. It is a technical and complex problem which can be appropriately left to the consideration and wisdom of experts in the field of accountancy, having regard to the imponderables which enter the process of valuation of shares. The Appellant-Revenue is unable to demonstrate that the methodology adopted by the Respondent-Assessee is not correct. The AO has simply rejected the

valuation of the Respondent-Assessee and failed to provide any alternate fair value of shares. Furthermore, as noted in the impugned order and as also pointed out by Mr. Vohra, the shares in the present scenario have not been subscribed to by any sister concern or closely related person, but by outside investors. Indeed, if they have seen certain potential and accepted this valuation, then Appellant-Revenue cannot question their wisdom. The valuation is a question of fact which would depend upon appreciation of material or evidence. The methodology adopted by the Respondent-Assessee, accepted by the learned ITAT, is a conclusion of fact drawn on the basis of material and facts available. The test laid down by the Courts for interfering with the findings of a valuer is not satisfied in the present case, as the Respondent-Assessee adopted a recognized method of valuation and Appellant-Revenue is unable to show that the assessee adopted a demonstrably wrong approach, or that the method of valuation was made on a wholly erroneous basis, or that it committed a mistake which goes to the root of the valuation process.”

12. Further, the Assessing Officer also proceeded to review the various disclaimers made by the Valuer to reject the method. It is normal that the valuer give various disclaimer such as the values are provided by the management and they have not carried out any verification. This cannot be the basis to reject the method adopted by the assessee.

13. Coming to the issue of review of the actual performance with the projection it is settled law that the Assessing Officer cannot review the projected figures adopted by the assessee at the time of projections. Therefore, this method of evaluating actual performance with projected figure after 4 or 5 years is not proper.

14. In our considered view the assessee has adopted one of the approved method of valuation under rule 11UA. Therefore, the rejection of such method is not

proper and unjustified. Accordingly, we direct the Assessing Officer to accept the valuation provided by the assessee and delete the additions proposed by him. In the result, ground nos. 3 & 4 are allowed.

15. With regard to ground no. 5 the issue relating to issue of shares at Rs. 1 is the same share which are issued by the assessee with share premium. We have already held in ground no. 3 that valuations of shares are proper based on the DCF method. Further, we observe that the shares were issued to the existing shareholders, therefore, the Assessing Officer cannot invoke the provisions of section 68. In the result, ground no. 5 raised by the assessee is allowed.

16. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on this 20th day of December, 2024.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Dated : 20.12.2024

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-26, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

