

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 864/Mum/2024
Assessment Year : 2014-15

Asst. Commissioner of Income Tax-6(1)(1), 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai	vs.	M/s. DLK Commercial Pvt. Ltd., 2 nd Floor, Plot No. 152, Ramanuj Road No. 9, Wadala (E), Mumbai PAN : AADCD1820B
(Appellant)		(Respondent)

For Assessee :	Shri Satish Modi
For Revenue :	Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing :	10-02-2025
Date of Pronouncement :	10-02-2025

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dt. 05-01-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi and it relates to the Assessment Year (AY.)2014-15. The Revenue is aggrieved by the decision of the Ld.CIT(A) in deleting the addition of Rs.20.07 crores made by the AO u/s. 56(2)(viia) of the Income Tax Act, 1961 ('the Act').

2. We heard the parties and perused the record. The facts relating the issue under consideration are stated in brief. The assessee-company purchased 18,48,800 number of shares of M/s. Billimoria & Co. Ltd., for an aggregate consideration of Rs.15.23 crores. The AO noticed that the shares were purchased at a price of Rs.82.39 per share. When asked for justification of purchase price of shares, the assessee submitted that it has purchased the shares at the negotiated price of Rs. 82.39 per share. It is pertinent to note that the provisions of sec.56(2)(via) provides for taxing the difference between the fair market value of shares of closely held companies and the purchase price, if the purchase price of shares is less than the fair market value.

2.1. Hence, the AO asked the assessee to justify the price of Rs.82.39 per share. Before the AO, the assessee submitted certain valuation reports in order to show that the above said negotiated price was more than the fair market value of shares. In the first report dated 02-09-2015, issued by the statutory auditors, M/s. Thacker Butala & Desai, the price of shares was determined at Rs. 60/- per share. However, the said report was prepared by combining Net Asset Value (NAV) method and Average income method. In another report dt. 30-06-2016 prepared by M/s. Ambavat Jain & Associate LLP, the value of shares was determined at Rs. 46/- per share. However, this report was also prepared by combining NAV method and DCF method. In the third report, the statutory auditors had given NIL value to the shares as per DCF method.

2.2. The AO rejected all the three reports, since they were not prepared as per the methods prescribed under Rule 11UA of the Income Tax Rules, 1962 ('the Rules'). Accordingly, the AO proceeded to determine the fair market value of shares at Rs.191/- per share under

NAV method. Since the above said fair market price was more than the purchase cost of Rs.82.39 per share, the AO made addition of Rs.20.07 crores u/s. 56(2)(viia) of the Act.

3. The Ld.CIT(A), however, deleted the addition on the reasoning that the transfer of shares was between existing shareholders and hence, there was no fresh infusion of funds in the company and in that case, the provisions of section 56(2)(viia) of the Act will not apply. The revenue is aggrieved.

4. Before the Tribunal, the assessee has furnished another valuation report dated 8th April, 2014. The Ld D.R submitted that there is no reference to the above said valuation report in the assessment order and hence, it is not clear as to whether the assessee has really furnished this valuation report before the AO. The Ld.DR further submitted that the three valuation reports furnished before the AO by the assessee did not follow any of the methods prescribed under Rule 11UA of the Rules.

5. The Ld.AR submitted that the assessee had furnished the valuation report dated 8th April, 2014 before the AO, but the AO did not consider the same. He submitted that the above said report was prepared under DCF method, wherein the valuer has determined the value of shares at Rs.80.77 per share. He submitted that it is well settled proposition that the has got the prerogative to select any of the methods prescribed in Rule 11UA and the AO is not entitled to change the said method. However, the AO can examine the valuation report and modify the same, if he is able to locate any deficiency therein. In support of this proposition, the Ld A.R placed his reliance on the decision dated 03-01-2025 passed by the Co-ordinate Bench in the case of Airpay Payment

Services P Ltd in ITA No.4362/Mum/2024. Accordingly, he prayed that this issue may be restored to the file of the AO for examining it afresh.

6. The Ld.DR also submitted that the matters require fresh examination at the end of the AO.

7. We notice that the Co-ordinate Bench of the Tribunal in the case of ACIT vs. Airpay Payment Services Pvt. Ltd., (supra) has followed the decision rendered by Hon'ble Bombay High Court in the case of Vodafone M-pesa Ltd (2018)(92 taxmann.com 73)(Bom) and the decision rendered by Hon'ble Delhi High Court in the case of Agro portfolio P Ltd vs. PCIT (2024)(161 taxmann.com 303)(Delhi), wherein it has been held that the AO cannot change the method of valuation opted by the assessee, but he can examine the components of valuation and make adjustments.

8. In the instant case, the method of valuation adopted in the first three reports furnished before the AO, we notice that the valuer has determined the value of shares by combining two methods. However, in respect of the valuation report dt. 08-04-2014 furnished before ITAT the valuer has adopted DCF method. However, there is not clarity as to whether that report was filed before AO.

9. Under these set of facts, both the parties agreed that this issue requires fresh examination at the end of the AO. There should not be any dispute that the shares have to be valued under any one of the methods prescribed under Rule 11UA of the Rules. In the case relied upon by the Ld.AR, it has been laid down that the AO is not entitled to change the method of valuation adopted by the assessee. However, he is entitled to examine the valuation report and tinker with the same if

he is not satisfied with the ingredients of the valuation report, after affording adequate opportunity of being heard to the assessee. Accordingly, we set aside the order passed by the Ld.CIT(A) and restore this issue to the file of the AO for examining the same afresh in the light of the discussions made supra.

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

Order pronounced in the open court on 10-02-2025

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date :10-02-2025

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai