

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.400/Nag./2024**  
(Assessment Year : 2014-15)

Tajshree Autowheels Pvt. Ltd.  
P. no.9, Tajshree Varsha  
Khamla Road, Deo Nagar  
Vivekanand Nagar, Nagpur 440 015  
PAN – AACT5025D

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-4, Nagpur

..... Respondent

Assessee by : Shri Madhav Vichore  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 10/02/2025

Date of Order – 04/03/2025

**ORDER**

**PER K.M. ROY, A.M.**

This appeal by the assessee is emanating from the impugned order dated 15/02/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2014-15.

2. The assessee has raised following grounds:-

*"1. On the facts and circumstances in the law, the Learned CIT(A) erred in dismissing the appeal of assessee thereby confirming the order of AO whereby AO has added Rs.32,26,000 under provisions of Section 56(2)(viib) of the Act.*

*2. On the facts and circumstances in the law, the Learned CIT(A) erred to hold that receipt of share premium of Rs.1,00,00,000 by allotting 2,00,000 shares each of face value of Rs.10/ at a premium of Rs.40 is not based on actual valuation and therefore genuineness of the same is not established.*

3. *On the facts and circumstances in the law, the Learned CIT(A) erred to hold that projection of financials as per the valuation report furnished by the assessee is not backed by any cogent evidence and the said report suffers from serious deficiencies and thus not reliable.*

4. *On the facts and circumstances in the law, the Learned CIT(A) further erred to hold that shares were overvalued at the time of allotment considering actual potential of company.*

5. *On the facts and circumstances in the law, the Learned CIT(A) erred to give aforesaid observation without considering the judicial pronouncements which inter-alia held that AO or the authorities are not the experts of the such matters and hence they cannot reject any expert certificate without cogent reasons and cogent evidences.*

6. *On the facts and circumstances in the law, the Learned CIT(A) erred to confirm the action of AO of addition to income on said grounds without realizing the purpose of such antiabuse provisions and Circular of CBDT without considering that shares were allotted to existing directors only and all are assessed to tax since past.*

7. *On the facts and circumstances in the law, the Learned CIT(A) erred to disregard the provisions of section 56(2) (viib), about occurrence of deeming income under said section, which is only at the time of receipt in any previous year (being consideration for issue of shares that exceeds the face value of such shares) and disregarding the facts and circumstances of instant case where share application money was received by banking channel in the month of March 13 and was also reflected in balance sheet of said for financial year 2012-13 as the pending share application money and allotment of shares has only occurred in F.Y.2013-14 relevant to current AY 14-15.*

8. *On the facts and circumstances in the law, the Learned CIT(A) erred to confirm the action of AO to tax the money in the current AY 2014-15 at*

*the time of allotment whereas taxability requires to be scrutinized in the AY 2013-14 that at time of receipt of money.*

9. *On the facts and circumstances in the law, the Learned CIT(A) erred to not consider the decision of Apex court in Bengal Immunity Co Ltd. v/s State of Bihar that "legal fictions are created only for some definite purposes and legal fiction is to be limited to the purpose for which it was created and cannot extended beyond legitimate field". And decision of the M.P High Court in CIT v/s Choteau Kanhaiyalal (80 ITR 56) which held that statutory fiction could be carried to its logical conclusion but the fiction cannot be extended beyond the language of the section by which it is created or by importing another fiction. Same is the view of Apex court in Mother India Refrigeration Industries (SC) (155 ITR 711) (para 10 & 11). 10/ *On the facts and circumstances in the law, the Learned CIT(A) erred in not consider that the said scrutiny assessment was limited scrutiny assessment and hence issue of addition to income is beyond scope of such limited assessment proceedings in light of binding circulars of CBDT and judicial pronouncements."**

3. During the course of hearing, the Registry has pointed out that there is a delay of 446 day in filing the present appeal. In this regard, the assessee furnished an application seeking condonation of delay which in the form of Affidavit. The contents of the said Affidavit is enumerated below for ready reference:-

"1) The accompanying appeal is preferred against the order dated 15/02/2023, passed by the Learned Commissioner of Income Tax(Appeals) in Order on Original No. ITBA/NFAC/S/250/2022-23/1049799557(1) interalia ordering addition to Income of Rs.32,26,000/- under provisions of section 56(2)(viib) of Income Tax Act, 1961.

2) The impugned order dated 15/02/2023 was served upon the appellant on 15/02/2023. The limitation for filling appeal is 60days, which expired on 16/04/2023. The appeal is filed on 05/07/2024 and as such a delay of 446days has occurred in filling of the appeal.

Reason for late filing of Appeal-

a) Assessee has submitted online Appeal to Income Tax Appellate Tribunal on 10th April, 2023. Form of Appeal to the Appellate Tribunal having Acknowledgement no.1681223269 is attached herewith.

b) Appeal Fees of Rs.10,000/- was also paid by Assessee on 10/04/2023 which is before 60 days from the due date of filing Appeal which was 16/04/2023.

c) But due to some technical reason the Appeal submitted online is not reflecting on the e-filing portal of Income Tax Appellate Tribunal.

As during April 2023 period e-filing Portal of Income Tax Appellate Tribunal was new, hence there was some technical problem while online submission of Appeal.

3) In such circumstances, a delay of 446 days has occurred in filling of the appeal. The appellant submits that the delay is unintentional and bonafide. The delay may kindly be condoned in the interest of justice, failing which serious hardships would be caused to the appellant. The appellant further submits that the delay should also be condoned taking a pragmatic view of the matter since the impugned order is absolutely bad in law.

**PRAYER:**

It is, therefore, most humble prayed that this Honourable Court may kindly be pleased to -

i) Condone the delay of 446 days occurred in filling the accompanying appeal, in the interest of justice;

*ii) Grant any other appropriate relief, which this Honourable Authority deems fit and proper, in the facts and circumstances of the case."*

4. After considering the submissions of the learned Authorised Representative and averments made in the affidavit, we are of the opinion that the assessee is prevented in filing the appeal belatedly and we are satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, we condone the delay of 446 days in filing the present appeal and admit the same for adjudication on merit.

5. Facts in Brief:- The assessee is a Private Limited Company engaged in the business of Automobiles and Auto Parts. During the year under consideration, the assessee-company allotted addition 2,00,000 shares for a premium of ₹ 40, per share to existing shareholders who were also Directors of the assessee-company. For the year under consideration, on 28/11/2014, the assessee-company filed its return of income declaring total income of ₹ 1,54,63,480. The case of the assessee-company was selected for limited scrutiny thorough CASS and accordingly notice under section 143(2) of the Income Tax Act, 1961 ("*the Act*") was issued on 29/08/2015. Statutory notices dated 23/05/2016 were also issued by the Assessing Officer along with questionnaire. During the assessment proceedings, the Assessing Officer required the assessee to furnish details of shares allotted during the year. In response, the assessee furnished necessary details containing information that the assessee has allotted additional 2,00,000 shares of face value of ₹ 10, per share at a premium of ₹ 40 per share to the existing shareholders who were also Directors of the assessee-company. On further enquiries

conducted by the Assessing Officer, the assessee provided the valuation of shares as per books of account taking into consideration the year of allotment. The Assessing Officer, taking cognizance of the information/ details furnished by the assessee-company, completed the assessment under section 143(3) of the Act after making addition of ₹ 32,26,100, on account of share premium under section 56(2)(viib) of the Act and demand of ₹ 15,85,100, was issued by the Assessing Officer accordingly. The Assessing Officer, while making this addition, held as under:-

*"In its submissions the assessee submitted Fair Market Value of shares as on 31.03.2013 as ₹ 33.87 per share. Assessee calculated value as follows:-*

<i>Paid-up share capital as on 31.03.2013</i>	<i>₹ 1,17,55,400</i>
<i>Free Reserves &amp; Surplus as on 31.03.2013</i>	<i>₹ 2,80,61,889</i>
<i>Net worth of the company</i>	<i>₹ 3,98,17,289</i>
<i>Total number of shares as at 31.03.2013</i>	<i>11,75,540</i>
<i>Fair Market Value of shares</i>	<i>₹ 3,98,17,289 / 1175540 shares = ₹ 33.87 per share</i>

*It is clear that from the above facts that the assessee has received consideration of Rs. 16.13 per share exceeding the fair market value of shares. Total amounts to 16.13 x 2,00,000 32,26,000/- in excess consideration exceeding Fair Market Value.*

*Section 56(2)(viib) of the Income Tax Act, 1961 states that:*

*56(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income tax under the head "Income from other sources, namely:*

*(viiib) 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."*

*Thus, in view of above facts of the case, material placed on record and according to section 56(2)(viib) of the Income Tax Act, 1961, Rs. 32,26,000/- is disallowed and added back to the total income of the assessee under the head 'Income from Other Sources'. Penalty proceedings u/s 271(1)(c) of Income Tax Act, 1961 initiated separately for furnishing inaccurate particulars of income."*

6. Consequent upon the assessment order so passed by the Assessing Officer, the assessee being aggrieved carried the matter before the first appellate authority.

7. Before the learned CIT(A), the assessee furnished following written submissions:-

*"1. The assessee company was incorporated on 9th May 2006 with main object to carry on business as producers, importers, exporters, traders, buyers, sellers, suppliers, indenters, agents, sub-agents, Authorised Dealers, jobbers, brokers, repairers, cleaners, or otherwise deal in automobiles, motor cars, lorries, vans, motor-cycles, cycle-cars, motors, scooters and other vehicles suitable for propulsion on land, sea or in the air or in any combination thereof and vehicles of all description whether propelled or assisted by means of petrol, spirit, steam, gas, electrical, or other power, engines, chassis, bodies, other parts and components, accessories and since then is carrying on the business as Authorised dealer of Honda Motorcycle & Scooter India for their two wheeler motor bikes and scooters.*

*2. The Company is a profit-making company since the start of business i.e. FY 2008-09 and is in profit since then and is a regular in filing its tax returns and paying taxes. And company also has substantial assets in the balance sheet and Goodwill earned since 2008-09 which is not valued and recorded in the books. Mere book value is not the absolute measure to value the company's market value, it depends on lot of factors such as standing of the company, profit earning capacity, business line of the company, and assets of the company. Valuation of the of shares are solely depend on the market value of the assets of the company and not book value of the company as the balance sheets are prepared only on historical cost methods and do not reflect the current market value of the company.*

*3. For assessment year 2014-15, the assessee company filed return of income on 28.11.2014 declaring total income of Rs. 1,54,63,480/-. The case was selected for Limited scrutiny and order of assessment was passed u/s 143(3) of the Income-tax Act, 1961 ('the Act') vide order dated 21.12.2016 determining the income of the assessee at Rs. 32,26,000/- The only addition /disallowance made by the assessing officer is the addition of entire share premium amounting to Rs. 32,26,000/- received during the year by the assessee u/s 56(2)(viib) of the Act r.w.r. 11UA of the Income-tax Rules, 1962('the Rules').*

*4. That the Company is a closely held company and more than 90% shares are held by the family members of one person, promoter director of the company. During the P.Y.2013-14 the assessee company has issued shares of Face Value of Rs. 10/- at a premium of Rs. 40/- per share to its existing shareholders ie. Directors and family members of the directors to infuse funds*

into the business to cater the growing needs of the existing business. The details of shares issued and premium received are as follows:

The Company has issued 2,00,000 Shares to its existing share holders on premium @Rs 50/- per share (i.e. FV of Rs 10/- plus Rs 40/- as share premium). List of the Same is as give below:

S. no.	Name & Occupation of Allottee	Address of Allottee	Number of shares allotted	Premium Per Share (Rs)	Total amount of premium (Rs)
1.	Avinash Ramesh Bhute, Occ-Business	236 Nandanwan, Nagpur	1,00,000	40.00	40,00,000
2.	Sunita Avinash Bhute, Occ-Business	236 Nandanwan, Nagpur	10,000	40.00	4,00,000
3.	Nitin Ramesh Bhute Occu-Business	236 Nandanwan, Nagpur	50,000	40.00	20,00,000
4.	Prashant R. Bhute, Occu-Business	236 Nandanwan, Nagpur	20,000	40.00	8,00,000
5.	Rahul R. Bhute Occu-Business	236 Nandanwan, Nagpur	20,000	40.00	8,00,000
			200000		80,00,000

5. The above fund was required for the growing needs of business of the company and as the company is a closely held company and run by only one family and its members. Hence the company raised the amount by issuing shares to existing share holders on premium and utilized the said amount into the ongoing business. The company had decided to issue the shares on premium based on its standing into the business and having track record of profit making company.

6. That Shri Avinash R Bhute and Nitin R Bhute both are the promoter director of the company and all other 3 are existing share holders of the company and are regular income tax payer having substantial income earnings during past years. The shares are issued only to the existing share holders and not to any other person outside the family who controls the company.

7. During the course of assessment, in reply to the query raised by the assessing officer, the company has submitted the book value of the shares is Rs. 33.87 and submitted the calculation to arrive at the Book value of the company as given below:

"That the Book value of the share was considered of as at 31.03.2013 and calculated as follows:

Paid up Share Capital as on 31.03.2013

Rs. 1,17,55,400.00

Free Reserves & Surplus as on 31.03.2013	Rs. 2,80,61,889.00
	-----
Net worth of the company	Rs. 3,98, 17,289.00
	=====
Total Number of shares as at 31.03.2013	11,75,540
Book Value of the Shares	Rs. 3,98,17,289 / 11,75,540
	= Rs. 33.87 per share"

*That the shares are issued @ 50/- per share which is more than the Book value of the shares as on the date of issue of the shares."*

*But the assessing officer has treated the Book value as Fair Market value of the shares and added Rs. 32,26,000/-, difference of Rs. 16.13/share (Issue price Rs. 50/-(-) Book Value Rs. 33.87) on 2 lakh shares under sec. 56(2)(viib) of the Income Tax Act, 1961 as Income from other sources without providing any opportunity to the assessee to choose the options given for valuation of shares under Rule 11UA during the course of assessment.*

*8. That the Assessing officer has placed his reliance only on the literal meaning of the sec. 56(2)(viib) and has not considered the past record of the company and also overlooked the fair market valuation of the company which makes the significant difference while arriving at the FMV of the shares of a profit making company having immovable assets and goodwill of the company over the years hence the additions made are extraneous, arbitrary and unjustifiable.*

*9. That the issue of share capital is the prerogative of assessee as to how much capital is to be raised based on its long term and short term funding requirements for the purpose of running its business. The capital has been raised by issuing certain number of shares at certain price, which is again within the domain of assessee to decide. The assessee in captioned case issued shares at premium based on the value decided by the board of Directors of the company taking into consideration the book value of the shares and the standing of the company into the business. And it is a well settled legal position that I.T. authorities cannot dictate the terms as to how a businessman/assessee should have conducted its business. I.T. authorities cannot decide whether assessee should have collected premium on its shares or not. It is completely the businessman's discretion, business requirement and investor's willingness which determines the premium that should be collected on issue of shares.*

*10. That the provisions of section 56(2)(viib) aimed to check the menace of unaccounted money and are anti abuse provisions. These provisions have no applicability to genuine business transactions. The genuineness and creditworthiness of the strategic investors is not even doubted by AO The provisions of section 56(2)(viib) require that in case of closely held company, the shares should be issued at its fair market value to resident investors based on notified valuation formula by a notified expert.*

*11. That the provisions of section 56(2) and section 68 are in the nature of anti-abuse measures aimed at preventing the malafide transactions intended to avoid tax liability and to tackle the problem of black money and were never intended to be made applicable on genuine, bonafide and purely commercial transactions. In the case of the assessee also the shares are issued to raise*

*funds required for the ongoing business from the existing shareholders and promoters only.*

*12. 1. CBDT also in its various circulars made it clear that the provisions of sec 56(2) should be interpreted in very strict manner. Para 13.2 and 13.4 of CBDT Circular no. 1/2011 dated 6th April, 2011: stating that the provisions of 56(2)(vii) are anti abuse provisions which were applicable only if an individual or an HUF is the recipient. These provisions were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income.*

*2. Paragraph no. 155 of Finance Minister's Budget 2012-13 Speech clarifying scope of provisions of section 56(2)(viib). The finance minister clarified in his speech above provisions were introduced as a series of measures to deter the generation and use of unaccounted money by increasing the onus of proof on closely held companies for funds received from shareholders as well as taxing share premium in excess of fair market value.*

*From the above circular & Finance Ministers budget speech it can be clearly found out the legislative intent or purpose behind the introduction of the section. From the above it is clear that the intent of the section is not to charge genuine transactions which are happened for the necessity of the business.*

*The Hon'ble Finance Minister made it very clear in his statement made on 12.02.2019 wherein it was said that "no action of any kind was taken against honest companies that had brought genuine money at premium; we will protect honest people". Thus, emphasizing that said provisions were never meant to be applied on genuine transactions.*

*13. We also like to further draw your attention to the CBDT circular no. 10/2018 dated 31.12.2018 and CBDT Circular no.03/2019 dated 21.01.2019 wherein the position of department on interpretation of provisions of section 56(2)(viiia) dealing with the transfer of shares was clarified. The CBDT while explaining the legislative intent behind introduction of provisions of section 56(2)(viiia), inter-alia, stated that said provisions are anti-abuse provisions to prevent the practices of transferring shares of specified company for no or inadequate consideration. The CBDT while interpreting the aforesaid provision followed the settled law that tax statute should be interpreted strictly. The relevant extract of the latter circular were also reproduced as "Keeping in view the plain reading as well the legislative intent of the section 56(2)(viiia) and similar provisions contained in section 56(2) of the Act, being anti-abuse in nature.....although the said circular dated 31.12.2018 was withdrawn due to perhaps certain political reasons yet the board had affirmed its view which always stood since introduction of these provisions.*

*14. We again reiterate that the bonafide business transactions cannot be taxed under 56(2) (vii) and that the provisions of section 56(2) were to strike at the generation and use of unaccounted money and was never intended the honest and bonafide transactions where consideration for transfer was*

correctly disclosed by the assessee. The said principle was followed in various court rulings which are reproduced herein below for your honors referral:

i) *ITO v.K.P. Varghese (131 ITR 597)*;

*"The object and purpose of sub-section (2), as explicated from the speech of the Finance Minister, was not to strike at honest and bona fide transactions where the consideration for the transfer was correctly disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by understatement of the consideration. This was real object and purpose of the enactment of sub-section (2) and the interpretation of this sub-section must fall in line with the advancement of that object and purpose. We must, therefore, accept as the underlying assumption of subsection (2) that there is understatement of consideration in respect of the transfer and sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received*

*15. Assessee hereby further submits that there is no doubt that share premium receipt is always a capital receipt (CIT v Stellar 251 ITR 263 (SC); Lowry v. Consolidated African Selection Trust 8 ITR Suppl 88). However, it is only because of the deeming fiction provided in such sections i.e. section 68 or 56(2)(viib) that in certain circumstances the amount received as capital can be deemed to be income. However, section 68 and 56(2)(viib) being the deeming provisions were created to achieve a particular objective as per the legislature intent of introducing such provisions, which was only to be applied to check and tackle the circulation of unaccounted money. And hence the provisions of section 56(2)(viib) of I.T. Act and Rule 11UA of I. T. rules are important to refer in order grasp the real intention of such provisions and scope and power of assessing authorities and not to tax the genuine business transactions.*

*16. It is further submitted that the Learned AO has considered the Book value of the shares as FMV of the shares and taxed the difference under sec. 56(2)(viib) without providing the opportunity to the assessee to submit the valuation of shares as per the method of his choice as provided in rule 11UA of the Income Tax Rules. The provisions require the assessee to get the valuation of shares done by an expert(Chartered Accountant) using the prescribed methodology. In the present case, the assessee has not submitted any valuation report as it was not asked at the time of assessment.*

*Now the assessee company has obtained the valuation report in respect of shares as per Rule 11UA and hereby requests your honor to allow us to submit the same for their consideration. The very purpose of getting the valuation done by a Chartered Accountant is to ensure that the valuation is fair and reasonable.*

*17. That the assessee has obtained the report on valuation of shares from Chartered Accountant dated 31.12.2016 as per second method of valuation as prescribed in Rule 11UA(2)(b) and as per the valuation report the valuation of Shares comes to Rs.48.31. Which is the FMV of the shares. On the basis of*

*which there is no price difference between the shares issued on premium and the FMV and hence there is no addition can be made u/s 56(2)(viib).*

*18. That the penalty proceedings initiated u/s 271(1)(c) of Income Tax Act may be dropped as there is no concealment or inaccurate particulars stated."*

8. The learned CIT(A), considering the entire details submissions filed by the assessee, however, dismissed the appeal of the assessee by following observations:-

**"DECISIONS & REASONS:**

*7. I have considered the facts of the case and submissions of the appellant. I have also perused the assessment order passed by the AO. There has been short delay of 6 days in presentment of the instant appeal. The appellant has explained the cause for the delay. After considering the submissions of the appellant, the said delay is condoned and the appeal is admitted for adjudication on merits.*

*8. It is observed that the appellant has issued 2,00,000 shares each of face value Rs. 10/- to its existing shareholders on a premium of Rs.40/- per share. Thus, the issue price per share stands at Rs.50/-. As the appellant did not furnish any report on the valuation of the fresh issue of shares at the issue price of Rs.50/- per share, the A.O. had directed the appellant to furnish the working of the "book value" per share. In response, the appellant furnished the details before the A.O. disclosing the "book value of each share at Rs.33.87, vide the detailed working given in para 3 of the assessment order. Since the issue price per share at Rs.50/- far exceeded the "book value per share being Rs.33.87, the A.O. has invoked the provisions of section 56(2)(viib) of the Act. In other words, the A.O. has given his findings to the effect that the "book value" represents the "fair market value" in the instant case and by issuing shares at Rs.50/- per share, the appellant has exceeded the "fair market value per share by a sum of Rs.16.13. The A.O. has held that the excess of price realized for 2,00,000 shares which works out to Rs.32,26,000/- [that is, Rs.16.13 x 2,00,000) is liable to be assessed as "income from other sources]" u/s 56(2)(viib) of the Act. The A.O. has passed the order accordingly.*

*9. Feeling aggrieved and dissatisfied with the aforesaid order passed by the A.O., the appellant has preferred the instant appeal. The written submissions furnished by the appellant are reproduced in para 6 earlier. It is, inter alia, submitted by the appellant that post the assessment order, the appellant has obtained a report from the Chartered Accountant as per rule 11UA(2)(b) and as per said valuation, the fair market value has been claimed to be Rs.48.31 per share. The relevant portion of the appellant's submission is extracted below:*

*17 That the assessee has obtained the report on valuation of shares from Chartered Accountant dated 31.12.2016 as per second method of valuation as*

prescribed in Rule 11UA(2)(b) and as per the valuation report the valuation of Shares comes to Rs. 48.31. Which is the FMV of the shares. On the basis of which there is no price difference between the shares issued on premium and the FMV and hence there is no addition can be made u/s 56(2)(viib)."

10. I have perused the report furnished by the appellant (obtained from S. O. Agrawal & Associates, Chartered Accountants, Nagpur dated 31.12.2016). It is observed that the said valuation report is very cryptic and difficult to justify the working adopted for arriving at the value per share. The said Chartered Account has made three Tables - Table I showing value at Rs.55.77 per share by following "Price Earning Capitalization Method", Table II showing value at Rs.33.87 per share by following "Book Value Method" and Table III showing value at Rs.55.30 per share by following "Projected Discounted Cash Flow Method". Then, the average of the three has been taken to be Rs.48.31 as the fair market value per share. It is observed that the Chartered Account has not given any detailed justification for the working of share price and merely taken the figures as per convenience for making the Table I and Table III. As per rule 11UA(2)(b), the appellant is entitled to obtain a report on the fair market value of unquoted shares determined by a merchant banker or a chartered account as per the "Discounted Free Cash Flow method and not as per any other method. The prescribed method is, therefore, either the "book value method" which was accepted by the A.O. during the assessment being the only working furnished by the appellant or the Discounted Free Cash Flow method which is now being sought by the appellant for admission in appeal. Upon careful perusal of the Table III, it is observed that the appellant has furnished the valuation as "Projected Discounted Cash Flow method" and there is no proper explanation in the said report about the "Free Cash" available or projected in this regard. The valuation report is not at all supported by any technical report, revenue and cost projection, cash flow justification, historical data, management plan, details of orders from potential customers etc. The projections are, evidently on their face, not justified and they do not contain empirical data which should be the basis for projected future financials. The relevant economic factors and basis for making assumptions are not at all discussed in the valuation report. Therefore, in my considered view, the valuation report as per Table III referred to above is not reliable. On the other hand, the "book value method" furnished by the appellant before the AO and accepted by the AO is without any demerits as per books of account of the appellant and this method is also statutorily permitted as per rule 11UA(2)(a).

11. In view of the above and for the reasons stated above, I am of the considered opinion that the receipt of share premium of Rs.1,00,00,000/- by allotting 2,00,000 shares each with face value of Rs. 10 at a premium of Rs.40/- is not based on actual valuation and therefore, the genuineness of the same is not established in the case on hand. It is, thus, held that the projection of financials as per the aforesaid valuation report furnished by the appellant during the present appellate proceedings are not backed by any cogent evidence, and the said report suffers from serious deficiencies as pointed out earlier. There is substantial difference between projections and the actuals and thus, the appellant's contentions deserve outright rejection. Thus, it can be safely held that the shares were over valued at the time of allotment without considering the actual potential of the company. Therefore, the excess price realised at Rs.32,26,000/- over and above the Fair Market Value as per the "book value method as per rule 11UA(2)(a) is to be assessed u/s

*56(2)(viib). In this view of the matter, I find no infirmity in the action of the AO. Resultantly, the Ground Nos. 1, 2 and 3 are hereby dismissed."*

The aforesaid impugned order was not acceptable to the assessee-company, hence filed further appeal before the Tribunal.

9. Before us, the learned Counsel, Shri Madhav Vichore, appearing for the assessee, submitted that the Assessing Officer, without giving any further opportunity to explain, allowed the premium worked at the book value in the year of allotment and made addition to income under section 56(2)(viib) of the Act. Before the learned CIT(A), the report of prescribed authority was submitted about the working of premium on shares. The learned CIT(A) also, without giving any opportunity to explain further, more specifically the manner and method adopted by the competent authority in the projected discounted cash flow method, held it to be unreliable and confirmed the action of the Assessing Officer to make addition under book value method. Thus, there is violation of principles of natural justice, as no opportunity was given to the assessee to defend the report of the competent authority and also the action of the learned CIT(A) is invalid as he is not the experts of the said field nor he is ascribed authority under the relevant Rule. During the course of hearing, detailed written submissions were furnished by the learned Counsel for the assessee, a copy of which is placed on record. The contents of the written submissions are enumerated below:–

*"In the last hearing which was held on 10/02/2025, there were some points which were not communicated hence we are submitting below the detailed facts of the case in addition to our earlier submission. It is therefore, requested to kindly consider the below points before passing the Order.*

- Assessee is a Private limited company. Total Income declared by Assessee during above mentioned Assessment Year is Rs.1,54,63,480.
- Assessee received notice under section 143(3) of Income Tax Act, 1961 for above mentioned Assessment Year for limited scrutiny. Assessment Order was passed under section 143(3) on 21/12/2016. As per Assessment Order Learned Assessing Officer made an addition to income of Rs.32,26,000 under section 56(2)(viib).

Section 56(2)(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:

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or
  - (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.
- Section 56(2)(viib) was introduced in Finance Act,2012.
  - The section applies to the issuance of shares by the companies in which public are not substantially interested at a value higher than the fair market value of the shares.
  - The section applies only when the issuance of shares and receipt of consideration occur in the same assessment year.
  - Fair valuation of shares: Rule 11UA(2) of the Income Tax Rules outlines the methodologies for fair valuation. For unlisted equity shares, there are two options:
    - (i) NAV method: This method involves valuing equity based on the net asset value, considering the company's book value of assets and liabilities as per its last audited financial statements. The valuation can be performed by a practicing Chartered Accountant or a Merchant Banker.
    - (ii) Discounted cash flow method: This method permits companies to value equity shares using discounted cash flow techniques, but the valuation must be conducted by Merchant Bankers exclusively. Regarding the valuation of preference shares, the Rule does not prescribe any specific method; instead, internationally accepted valuation techniques can be utilized.
  - The section 56(2)(viib) of Income Tax Act, 1961 is abolished by the Finance Act,2024. That is from Assessment Year 2025-26 companies will no longer be taxed on premiums received above fair market value for issuance of shares.

Facts for the same are as follows-

1. During the above mentioned Assessment Year, Assessee issued 2,00,000 shares to its existing shareholders for Rs.50. Face value of the shares issued is Rs.10 and premium per share is Rs.40 per share.

Total amount received by Assessee from Shareholders is Rs.1,00,00,000. Out of which amount transferred to Share Capital was Rs.20,00,000 and to Share Premium was Rs.80,00,000.

2. Percentage of shareholding of the shareholders holding more than 5% of shares are as follows-

Sr.No.	Name of Shareholder	No. of shares held as on 31/03/2013	% held
1.	Avinash Bhute	1,05,000	8.93
2.	Nitin Bhute	2,62,000	22.29
3.	Prashant Bhute	2,14,400	18.24
4.	Rahul Bhute	1,68,690	14.35
	Total	7,50,090	63.81

3. Details of shareholders from whom amount of Rs.1,00,00,000 was raised is as follows-

Sr.No.	Name	No. of shares allotted	Total amount received
1.	Avinash Bhute	1,00,000	50,00,000
2.	Nitin Bhute	50,000	25,00,000
3.	Prashant Bhute	20,000	10,00,000
4.	Rahul Bhute	20,000	10,00,000
5.	Sunita Bhute	10,000	5,00,000
	Total	2,00,000	1,00,00,000

Total Number of Equity shares issued as on 31/03/2013 = 11,75,540

Out of total shares issued by the Assessee major shareholding of 63.81% is of the shareholders from whom additional Share Capital was raised by the Assessee in above mentioned Assessment Year.

Change in shareholding and percentage of shares held after raising additional share capital of Rs.1,00,00,000 as on 31/03/2014 is as follows-

Sr.No.	Name of Shareholder	No. of shares held as on 31/03/2014	% held
1.	Avinash Bhute	2,05,000	14.90
2.	Nitin Bhute	3,12,000	22.68
3.	Prashant Bhute	2,34,400	17.04
4.	Rahul Bhute	1,88,690	13.72
	Total	9,40,090	68.34

4. Amount of Rs.1,00,00,000 was received from shareholders through banking channel in March 2013 and same was reflected in Financial Statement of Financial Year 2012-13 as "Share Application Money pending Allotment". Only allotment of shares to shareholders was done in abovementioned Assessment Year. As mentioned above addition under section 56(2)(viib) of Income Tax Act,1961 can only be made if receipt of consideration and allotment of shares occurs in same Assessment Year.
5. Assessee has also obtained Share Valuation Report from Chartered Accountant and as per the Report Valuation has been done by following methods-

Sr.No.	Particulars	Price per share
1.	Price Earning Capitalisation Value Method	55.77
2.	Price to Book Value Method	33.87
3.	Projected Discounted Cash Flow Method	55.30

- As per Assessment Order, Fair Market Value of Shares as on 31.03.2013 was Rs.33.87. But while calculating the above FMV Learned Assessing Officer did not consider the Goodwill and growth potential of the company.
- In Discounted Cash Flow Method as per valuation report the projections from Financial Year 2017 upto Financial Year 2019 are based on incremental revenue increase of around 10% from previous year.

Effects of raising additional Share Capital of Rs.1,00,00,000

a. Networth

- Calculation of Networth of the company-

Particulars	F.Y. 2012-13	F.Y. 2013-14	F.Y.2014-15	F.Y.2015-16
A. Share Capital	1,17,55,400	1,37,55,400	1,37,55,400	1,37,55,400
B. Reserves & Surplus	2,80,61,889	4,67,07,194	5,86,40,997	6,93,37,797
C. Total(A+B)	3,98,17,289	6,04,62,594	7,23,96,397	8,30,93,197

- From above table it is clear that after raising the Share Capital, there is consistent increase in the Networth of the company.
- For enhancing the CC limit, the Financial Institution always insists to increase own funds.

b. CC Limit

- CC limit utilised by the company during following year is as follows-

Particulars	F.Y. 2012-13	F.Y. 2013-14	F.Y.2014-15	F.Y.2015-16
CC Limit utilised	5,71,02,927.12	15,94,09,894.42	9,36,58,067.33	7,42,09,051.1

- As Networth of the company increased in above mentioned Financial Years, hence CC limit has also been increased.
- Due to inflow of funds either from major shareholders or by Financial Institution, the financial health of the company is improved.

c. Turnover

- Comparison of Turnover and Profit after Tax of the Assessee for following year is as follows-

Particulars	F.Y. 2012-13	F.Y. 2013-14	F.Y.2014-15	F.Y.2015-16
Turnover	43,99,47,241	80,99,29,436	87,07,05,669	81,61,76,442
Profit After Tax	47,22,355	1,06,85,266	1,21,60,670	88,59,046
Income Tax Provision	21,11,733	47,78,216	54,37,984	39,61,571

- From above table it can be clearly seen that Turnover of the company in Financial Year 2013-14 has increased by Rs.36,99,82,195 as compared to Financial Year 2012-13. Due to which the Profit of the company is also increased by Rs.59,62,911.
- As profit of the company increased accordingly the Income Tax paid by Assessee also increased by Rs.26,66,483.
- That is by issuing shares at premium of Rs.40, total premium received by Assessee from shareholders was Rs.80,00,000 and by receiving this amount there is increase in provision of Income Tax paid by the Assessee.

Summary

- Company raised additional Share Capital in Assessment Year 2014-15 and from that year the Networth of the company has increased consistently.
- As the Networth of the company increased, CC limit of the company was enhanced and due to which Assessee has utilised this amount to increase the operations of the company. Increase in CC limit has ultimately resulted positive for the Financials of the company.
- From above comparative tables we can see that Turnover and Profit after tax has increased which has resulted in the company paying more Income Tax in comparison to Financial Year 2012-13 that is before raising additional Share Capital.
- Also the company has raised additional Share Capital from its existing shareholders and no shares were allotted to any new individual. Section 56(2)(viib) was introduced to curb the

*practise of raising excess money by issuing shares to new shareholders.*

- *The section was introduced in Finance Act,2012 and abolished in Finance Act,2024(No.2) that is it was in effect only for 12 years. We can say that reason behind abolishment is to stimulate and encourage the investments in the company.*
- *The company has also not paid any Dividend to the shareholders, that means no benefit has been given to the shareholders directly or indirectly by raising additional Share Capital. Also while passing the Assessment Order no doubt was raised on genuineness of creditworthiness of the shareholders hence Section 68 of Income Tax Act, 1961 was not invoked.”*

10. The learned Departmental Representative, Shri Abhay Y. Marathe, relied on the concurrent findings of the authorities below and prayed that the same need not be tinkered.

11. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that the contents of valuation report were never before the Assessing Officer, because he simply relied on the book value method. Be that as it may, the findings of the learned CIT(A) are unilateral and the assessee was not given opportunity to controvert the same. Consequently, we deem it fit and convenient to remand back the matter to the file of the Assessing Officer for verification of valuation report as per DCF method and to record his objective satisfaction as to the acceptability thereof. Needless to say that the Assessing Officer must provide adequate opportunity to the assessee to substantiate its case and then adjudicate the issues raised by the assessee on merits and in accordance with law. At the same time, the assessee is also directed to be vigilant to respond to all the queries in this connection. Consequently, all the grounds raised by the assessee are allowed for statistical purposes. The Assessing

Officer is also directed to conduct denov adjudication leaving all issues wide open.

12. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 04/03/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 04/03/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur