

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B",  
CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री ललित कुमार, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य  
BEFORE: SHRI. LALIET KUMAR, JM & SHRI. MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 246 /Chd/ 2024  
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Triveni Knits P. Ltd. 2761/II Gurdev Nagar, Ludhiana, Punjab-141001	बनाम	The ITO Ward 1(3), Ludhiana
स्थायी लेखा सं./PAN NO: AAECT5125C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rajesh Mehru, CA and  
Shri Dev Mehru, CA  
राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 03/06/2025  
उदघोषणा की तारीख/Date of Pronouncement : 09/06/2025

**आदेश/Order**

**PER LALIET KUMAR, J.M:**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 18/02/2024 pertaining to Assessment Year 2013-14.

2. In the present appeal Assessee has raised the following grounds:

*The Learned CIT (A) has erred in passing an ex parte order without giving reasonable opportunity to the appellant*

*2. That the Learned CIT (A) has erred in making an addition in the Case of the Assessee on account of unexplained investment under Section 69 of the Income Tax Act, 1961.*

*3. That no reasonable opportunity has been afforded to the Assessee to represent his Case.*

*4. Learned Ld. AO has erred in making addition of INR. 77,25,000/- as per para 4.6 of the order on account of share issued at premium more than fair market value of share.*

*5. Ld. AO has erred in calculating the fair market value of unquoted equity shares of the appellant company. Valuation of shares for the purpose of Section 56(2)(viib) of the Income Tax Act, 1961 has been incorrectly calculated by the Ld. AO and the addition has been made to the total income under this section.*

*6. Learned Ld. AO in its original order has erred in making addition of Rs. 77,25,000/- u/s 56(2)(vib) of the Income Tax Act, 1961. The Assessee Company made the first allotment of shares on 15/02/2013 of 25000 shares to the promoter at par value of INR. 10/- in consideration of takeover of share capital in the Firm of the same partners/promoters.*

3. Briefly the facts of the case are that the assessee company was incorporated on 19.12.2012 with the object of taking over the business of an existing partnership firm, M/s Triveni Knits. During the year, the company allotted 1,00,000 equity shares, of which 75,000 were issued at a premium of Rs.240/- per share to the promoters—Mr. Rohit Sahi and Mrs. Anshul Sahi—in consideration of the capital and loan balances standing in their names in the erstwhile firm. The Ld. AO, invoking the provisions of section 56(2)(viib) of the Income Tax Act, 1961, made an addition of Rs.77,25,000/- on the grounds that the share premium received exceeded the fair market value (FMV) of the shares.

4. Against the order of the Ld. Assessing Officer, the assessee went in appeal before the Ld. CIT(A) who has since sustained the addition made by the AO.

5. Against the order of the Ld. CIT(A) the assessee preferred an appeal before the Tribunal.

6. During the course of hearing the Ld. AR contended that the share allotment was not for the infusion of new funds, but rather in consideration for the takeover of the business assets and liabilities of the partnership firm. It was argued that the transaction did not involve unaccounted money and, therefore, Section 56(2)(viib) had no application. The shares were issued to the same persons who were partners in the firm, and in the same ratio.

7. During the appellate proceedings before the CIT(A), the assessee filed additional evidence under Rule 46A of the Income Tax Rules, including a valuation report prepared under the Discounted Cash Flow (DCF) method by

a Chartered Accountant. It was contended that the valuation using the DCF method is permitted under Rule 11UA and is more appropriate in case of a newly incorporated company where asset-based NAV method may not reflect the true value. Ld. CIT(A) called for the remand report from Assessing Officer.

8. In accordance with Rule 46A(3), the additional evidence was forwarded to the AO for examination. The AO submitted a remand report objecting to both the admissibility and the merits of the new evidence. The AO stated that sufficient opportunity was already provided to the assessee during the assessment proceedings to furnish justification and valuation methodology for the share premium, but no such evidence was submitted at that stage. Hence, the assessee failed to fulfil the conditions of Rule 46A(1).

9. On the merits, the AO pointed out critical deficiencies in the DCF valuation report submitted by the assessee: The valuation projections were unrealistic, particularly the jump in share price from Rs.10/- to Rs.250/- within a short period of one month (February to March 2013), which the AO found "unrealistic and abnormal". The projections in the DCF did not align with the company's actual profits in subsequent years. For example, the projected post-tax operating profit for A.Y. 2014-15 was Rs.38.08 lakhs, while the actual was significantly lower. The valuation was based on estimations and lacked detailed rationale for assumptions such as growth rates, discounting factor, and future earnings. The AO referred to judicial precedent, including *Agro Portfolio Pvt. Ltd. v. DCIT, ITAT Delhi*, which allows rejection of DCF valuations when not based on verifiable and reliable data.

10. Ld. CIT(A) allowed the assessee to file an objection to the report; however, despite being allowed to file a rejoinder to the remand report, the assessee did not file any written response to counter the AO's objections or substantiate the reliability of the projections.

11. We have considered the rival contentions of the parties and reviewed the material available on the record. In the matter under consideration, an

addition under Section 56(2)(viib) of the Income Tax Act, 1961, was made by the Assessing Officer (AO), on account of excess share premium received by a closely held company. The central issue was the determination of the fair market value (FMV) of unquoted equity shares, which had been issued by a newly incorporated company at a substantial premium of Rs.240/- per share (total Rs.250/- including Rs.10/- face value), within one month of the initial allotment of shares at par. To justify this premium, reliance was placed by the assessee on the Discounted Cash Flow (DCF) method of valuation. However, the valuation was rejected by the AO, and the Net Asset Value (NAV) method under Rule 11UA(2)(a) was applied instead. The said rejection and consequent addition were upheld by the Tribunal.

12. We found that no valuation report had been furnished by the assessee during the assessment stage. Instead, the DCF-based valuation report had been filed for the first time before the Commissioner of Income Tax (Appeals) [CIT(A)]. Although the report was admitted as additional evidence under Rule 46A, citing judicial precedents such as PCIT v. Daljit Singh Sra, it was emphasised that the mere admission of additional evidence did not dispense with the necessity of scrutiny on its substantive merits. The Assessing Officer, through the remand report, had raised several serious and technically sound objections concerning the methodology, assumptions, and competency of the valuation report. Furthermore, we found that the assessee had filed no rebuttal or counter-submission in response to the remand report prepared by the Assessing Officer (AO). This omission was treated as a tacit admission of the deficiencies identified in the report. Given the cumulative findings—namely, (i) the procedural lapse in not submitting the valuation during the assessment proceedings; (ii) the legal disqualification of the Chartered Accountant acting as both auditor and valuer; (iii) the substantive flaws in the projections; and (iv) the absence of rebuttal or corroborative evidence—the Tribunal found no merit in the assessee's appeal.

13. We found that in the present case, the valuation report was prepared by M/s Rajesh Mehru & Co., a Chartered Accountant firm. However, it was

found that the same firm had also acted as the statutory auditor of the assessee company. As per Rule 11U read with the second proviso to Section 288(2) of the Income Tax Act, any Chartered Accountant acting as the auditor of the assessee is disqualified from acting as an "Accountant" to issue a valuation report under Rule 11UA. Consequently, the valuation report was held to violate the independence requirement and was considered non est in the eyes of the law.

14. Apart from the valuer's legal ineligibility, the DCF report was also found to be lacking in credibility and reliability. It was pointed out by the AO, and later concurred with by the Ld. CIT(A), that the assumptions and projections made in the report were neither supported by audited financial statements nor by credible documentary evidence. The figures relied upon were provisional, and no basis was provided for key valuation metrics such as discount rate, terminal growth rate, or future cash flow assumptions. A mismatch was also observed between the projected financial performance and the actual results, further eroding the reliability of the valuation.

15. Furthermore, if we compare the financial given by the assessee before the Ld. CIT(A) in the valuation report based on the Discounted Cash Flow (DCF) method, including projected cash flows and profits for upcoming years to justify the premium of Rs.240/- per share. Key financials and projections cited were as under:-:

Financial Year	Profit After Tax (Rs.)	Remarks
2012-13	Rs.1,38,099/-	Audited figures (short year after incorporation)
2013-14	Rs.38,08,723/-	Provisional
2014-15	Rs.43,42,340/-	Provisional

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16. These were presented as operating profits in the valuation report, forming the basis for projected cash flows to calculate the present value of future earnings using the DCF method and based on these projections, and supported its share premium of Rs. 240/- accordingly. Quite contrary to this

the Assessing Officer in the remand report reproduced in the order at page 18 of the CIT(A) order noted that the assessee arrived at the value of shares by taking into consideration the three years operating profit/cash accruals of the firm as follows:-

Sr. No.	A.Y.	
1	2010-11	Rs. 20,40,185.67/-
2	2011-12	Rs. 70,84,212.69/-
3	2012-13	Rs. 57,27,006.65/-

17. We are of the opinion that as per law for purposes of implementing the DCF method it is necessary that the operating profit for the company as on the balance sheet date should be taken into account and based on that the projection are required to be made. However quite contrary to the above the assessee has taken into account the profit / cash accruals **of the Firm and not of the company** . There is yet another reason given by the Assessing Officer in the remand report that the projected / provisional cash accruals of the company were decreasing in the assessment years 2014-15 and 2015-16 . It is evident from the record that the profits of the erstwhile partnership firm, prior to its conversion into a company, were significantly higher than the projected profits shown in the valuation report dated 28.03.2013. The financial performance of the firm in the preceding years was as follows:

AY 2011-12:	Rs.20,40,186/-
AY 2012-13:	<b>Rs.70,84,213/-</b>
AY 2013-14:	<b>Rs.57,27,007/-</b>

Despite this, the valuation report projected provisional profits for the company at **Rs . 38,08,723** for the year ending 31.03.2014 and Rs . **43,42,340/-** for 31.03.2015, which are clearly lower than the firm's actual past profitability. In our considered opinion, it is highly improbable—indeed, beyond any reasonable estimation—that when 15,000 equity shares were allotted to the erstwhile partners/directors at par value of Rs.10/- on 23.02.2013, the same assessee company would issue 75,000 equity shares just over a month later,

on 31.03.2013, at a premium of Rs.240/- per share (i.e., at Rs.250/- per share) based on such modest and unsubstantiated profit projections.

18. Thus, the financial data of the erstwhile partnership firm was wrongly utilized to project the financial performance of the newly formed company. The profits declared by the firm in earlier assessment years (AYs 2011–12 to 2013–14) were substantially higher than those projected in the DCF valuation report. Nonetheless, a steep share premium had been attributed to the company based on lower projected profits, which was considered commercially untenable.

19. To reinforce our findings, attention is drawn to the sequence and timing of events, which severely undermine the credibility of the valuation report relied upon by the assessee. The company had been incorporated on 19th December 2012, and an initial allotment of 15,000 equity shares at par value of Rs.10/- per share had been made on 23rd February 2013. Thereafter, the Chartered Accountant firm, M/s Rajesh Mehru & Co., was appointed on 26th March 2013, and a valuation report based on the Discounted Cash Flow (DCF) method was prepared and certified within two days, on 28th March 2013. Relying solely on this report, a further allotment of 75,000 equity shares was made on 31st March 2013 at a premium of Rs.240/- per share, resulting in a total issue price of Rs.250/- per share. This highly compressed timeline raises significant doubt as to whether any independent or diligent valuation exercise was, in fact, undertaken, and strongly suggests that the report may have been prepared merely to validate a pre-determined outcome.

20. On examining the chronology, it becomes apparent that no balance sheet could have existed prior to the company's incorporation in December 2012. In the absence of any foundational financial statements, a fundamental question arises as to how the valuation of the company and its shares could have been credibly arrived at using the DCF method. It is well-established that under the DCF methodology, the fair market value of shares is determined on the basis of projected future cash flows, which must be

anchored in a verifiable opening financial position—normally captured through an audited balance sheet or certified financials at the beginning of the relevant financial year. Only after establishing such a base can a terminal value be accurately calculated using accepted valuation practices. However, in the present case, no such balance sheet or financial base was available at the time the report was prepared, rendering the entire projection exercise speculative and lacking in evidentiary credibility.

21. The valuation becomes even more questionable in view of the fact that shares had been issued at face value merely weeks earlier on 23rd February 2013, and were subsequently issued at a steep premium of Rs.240/- per share on 31st March 2013, without any discernible or material change in the company's operations, assets, or financial prospects. Such an abrupt and substantial escalation in share price within a span of less than one month, unsupported by any tangible commercial developments, defies rational and commercial logic. No credible justification was offered to explain how the value of the same shares could have increased twenty-fivefold within this short window.

22. In light of the above circumstances and the inherent flaws in the valuation process, it must be concluded that the report prepared by the Chartered Accountant—while outwardly presented as a DCF-based analysis—suffers from fundamental deficiencies. The absence of any reliable opening financial data, the failure to establish a credible valuation base, and the extraordinary and unexplained increase in share value collectively render the valuation report unreliable and devoid of probative value. Accordingly, the rejection of the said report by the lower authorities is found to be fully justified and does not warrant any interference. The findings of the authorities below are, therefore, upheld..

23. Accordingly, it was held that the valuation based on the DCF method had rightly been rejected, and the AO was correct in adopting the NAV method under Rule 11UA(2)(a), which relies on actual balance sheet figures

and is free from speculative elements. The addition of Rs.77,25,000/- under Section 56(2)(viib), representing the excess share premium over the fair market value (FMV) so determined, was upheld, and the assessee's appeal was dismissed. We have not discussed the decisions cited by the Ld. AR as the facts involved in those case are clearly distinguishable and are not applicable to the facts of the present case.

24. In view of the above, the appeal filed by the Assesee is dismissed.

Order pronounced on 09/06/2025.

Sd/-  
**मनोज कुमार अग्रवाल**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

Sd/-  
**ललित कुमार**  
**(LALIET KUMAR)**  
**न्यायिक सदस्य /JUDICIAL MEMBER**

**AG**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
 सहायक पंजीकार/ Assistant Registrar