

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2417/Del/2022**

**[Assessment Year : 2016-17]**

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| DCIT,<br>Central Circle-20,<br>New Delhi | vs  | Nutan Growth Fund Pvt.Ltd.,<br>L-4, Green Park Extension,<br>New Delhi-110016<br><b>PAN-AAACN0023H</b> |
| <b>APPELLANT</b>                         |   | <b>RESPONDENT</b>  |
| <b>Revenue by</b>                        | Shri Pravin Rawal, CIT DR   |  |
| <b>Assessee by</b>                       | Shri Mahesh Kumar, CA &<br>Ms. Meenal Goyal, Adv. &<br>Ms. Vidhi Mangla, Adv. |  |
| <b>Date of Hearing</b>                   | 25.06.2025  |  |
| <b>Date of Pronouncement</b>             | 14.08.2025  |  |

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by the revenue against the order of Ld. Commissioner of Income Tax (A)-27, New Delhi [“Ld.CIT(A)”] dated 21.07.2022 in Appeal No. CIT(A), Delhi-27/10594/2018-19 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 28.12.2018 passed u/s 143(3) of the Act pertaining to assessment year 2016-17.

2. Brief facts of the case are that assessee is a Private Limited company and filed its return of income on 01.10.2016, declaring income of INR 5,490/-. The assessee is engaged in the business of

making investments in shares, properties, security and other various assets and buy and sell of such investments. During the year under appeal, the assessee company has issued 6,38,901 equity shares having face value of Rs. 10/- each at a premium of Rs. 1350/- per share which were subscribed by two applicants namely, Smt. Surbhi Gehlot and Smt. Shahista Gehlot. The value of per equity share was valued at Rs. 1359/- by following DCF method in terms of the report of the accountant. While valuing the share, the explanation (a)(i) of section 56(2)(viib) was applied according to which the value has to be determined as per Rule 11UA of the Income Tax Rules, 1962 which provide the choosing of method at the option of the assessee. Further said explanation provides that value should be determined as per Rule 11UA or the value as determined by the assessee based on the date of issue of shares, whichever is more. However, the value at DCF method was adopted by the Assessee. The AO has discarded the valuation done by the assessee by following DCF method and worked out the market value of each share at Rs. 382.5/- as per NAV method and the difference of Rs. 957.50 was treated as excess premium charged which is taxable u/s 56(2)(viib). Thus, the total excess premium charged by the assessee was worked out at Rs. 61,17,53,200/- for 6,38,901 equity shares and additions were made for the same.

3. Against this order, an appeal was filed before the Ld. CIT(A) who vide impugned order dated 21.07.2022 has allowed the appeal of the assessee and deleted the additions made by the AO.

4. Aggrieved by the said order, revenue is in appeal before the Tribunal wherein following grounds of appeal are taken by the revenue:-

1. *"The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee and deleting the addition of Rs.60,10,37,200/- made by the AO u/s 56(2)(viib) of the Act, 1961.*
2. *Whether the Ld. CIT(A) is correct on facts and in law of the case in deleting the addition made by the AO and accepting the DCF method of valuation of shares instead of NAV method adopted by the AO.*
3. *The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee ignoring the fact that the valuation report of the valuer cannot be relied upon where the valuer herself failed to justify the rationale behind the variables taken by her for valuation of shares.*
4. *The Ld. CIT(A) has erred on facts and in law in ignoring the fact that any slight deviation of company specific beta, risk premia can yield substantially disparate valuation resulting into artificially inflated figures of value of shares in this case.*
5. *The Ld. CIT(A) has erred on facts and in law in ignoring the fact that the valuation of the assessee company was done on 31.03.2016 and not before the issuance of the share capital, wherein amount of outstanding loan before the issuance of share capital was not considered for the purpose of valuation.*
6. *The Ld. CIT(A) has erred on facts and in law in ignoring the fact, that, the valuer herself placed major limitations on her valuation report by acknowledging that the variables were incorporated based on the data provided by the assessee company.*
7. *Whether the Ld. CIT(A) is correct on facts and in law of the case, in relying on the report of valuer wherein valuer has merely accepted the information given by the assessee and did not examine the basic principles behind the financial projections submitted to him by the assessee company.*
8. *Whether the Ld. CIT(A) is correct on facts and in law of the case, in accepting the valuation report submitted by the assessee, when the basis of documents for such financial projections were not submitted by the assessee company before the assessing officer.*
9. *The Ld. CIT(A) has erred on facts and in law by placing reliance on the judgment of Hon'ble Bombay High Court in the case of CIT vs M/s VVA Hotels Private Limited ignoring that the facts and circumstances of the instant case is materially different to the case in question, wherein, the AO has not summarily rejected the DCF valuation adopted by the assessee but has done detailed enquiry, bringing on record major flaws in the valuation report of the valuer submitted by the assessee...*

10. *The Ld. CIT(A) has erred on facts and in law by placing reliance on the judgment of Hon'ble Delhi High Court in the case of CIT-2 vs M/s Cinestaan Entertainment Private Limited as the said case dealt specifically with start-ups where major diversions between projected numbers and actual numbers are common-place whereas in the instant case, the assessee is an investment company which invested in equities through its sister concerns which are mature firms and its projections ought to be stable.*
11. *The Ld. CIT(A) has erred on facts and in law in ignoring the fact that the valuer acknowledged that the actual performance of the company did not match up with these projections and if the valuation is done again, the company valuation will be entirely different to the earlier projections.*
12. (a) *The Order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*
- (b) *The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

5. Since all the grounds of appeal of the revenue are in relation to the single issue of deletion of addition of Rs. 61,17,53,198/- (wrongly stated at Rs. 60,10,37,200/- in ground of appeal No. 1), thus all the grounds of appeal are taken together for consideration.

6. Before us, the ld. CIT-DR vehemently supported the order of the AO and submits that the AO in para 4 of the assessment order has pointed out specific defects in the valuation reports submitted by the assessee wherein it is specifically observed that valuer taken discounting rate of 15.88% without any basis. He further submits that the AO had examined and analysed valuation report of the valuer and further recorded the statements of the valuer wherein the valuer had failed to give satisfactory answers with respect to various issues raised by the AO in the valuation report. According to the ld. CIT DR when the valuer failed to satisfy about the correctness and completeness of the valuation report, the AO has

rejected the valuation report more particularly when there was major difference between the valuation on under DCF method and value arrived at under NAV method. The ld. CIT DR submits that the AO by taking NAV method as the most appropriate method and worked out per share price at Rs. 382.50 which is based on the actual value of investments and therefore is the realistic valuation. The AO thus, calculated the excess premium charged at Rs. 957.50 per share. Ld. DR thus prayed that the action of the AO is based on the correct appreciation of the financials of the assessee company and thus the additions made by the AO towards excess share premium deserves to be restored.

7. Per contra, the ld. AR submits that the assessee has followed due procedure as prescribed in section 56(2)(viib) of the Act according to which the fair market of the shares was determined by following the method prescribed i.e. the DCF method. Ld.AR further submits that section 56(2)(viib) of the Act provides that addition could only be made where the consideration was received in excess of fair market value of such shares. The fair market value of the shares is to be determined in terms of the rule 11UA(2) where the fair market value of unquoted equity shares is to be determined in the manner provided however, the choice of method of valuation is at the option of the assessee. As per rule 11UA(2)(a), the valuation can be done on the basis of book value or as per 11UA(2)(b), the fair market value of unquoted equity shares could only be determined by a merchant banker or by an Accountant as per the discounted

free cash flow method (DCF method). The assessee had opted the DCF method for determination of fair market value of shares and submitted the report of the accountant before the Assessing Officer. Ld. AR further submits that the choice of method for valuation of unquoted equity shares is at the option of the assessee therefore, the AO cannot tinkered with the same. She further submits that the AO has not referred the matter for valuation from the person specified under the Rule 11UA in this regard and at his own had worked out the value per share at Rs. 382.50 as per NAV method.

8. The ld. AR submits that AO has no power to change the method of valuation adopted by the assessee. For this, she placed reliance on the judgement of Hon'ble Jurisdictional High Court in the case of **PCIT Vs. Cinestaan Entertainment Pvt. Ltd. in ITA No. 1007/2019** reported in **433 ITR 82**. Further reliance is placed on the following case laws of the coordinate Delhi benches of Tribunal where by following the judgement of Cinestaan Entertainment Pvt.Ltd. (supra) additions made were deleted.

- Caddie Hotels Pvt. Ltd. Vs. PCIT 202 ITD 351(Delhi ITAT)
- DCIT Vs. Hometrail Buildtech Pvt. Ltd. 204 ITD 154 (Delhi ITAT)
- Thinkstations Learning P. Ltd. Vs. ITO 203 ITD 384 (ITAT Delhi)
- Intelligrape Software Pvt. Ltd. Vs. ITO in ITA NO. 3925/Del/2018

9. Ld. AR thus prayed for the confirmation of the order of the ld. CIT(A) who deleted the addition after appreciating the above stated facts and further by following the judgement of jurisdictional high court in the case of Cinestaan Entertainment Pvt.Ltd.(supra). He prayed accordingly.

10. We have heard the rival submission and perused the material available on record. In the instant case, the assessee company had issued 6,38,901 equity shares at a premium of Rs. 1350/- each which were valued at Rs. 1359/- per share under DCF method by the valuer. For the purpose of determination of the fair market value, the assessee has followed the DCF method and obtained the report of an accountant as provided in rule 11UA(2) of the Income Tax Rules, 1962 who had valued the shares as at 31.3.2016. As per Rule 11UA(2) as existed in that year, the determination of the fair market value of unquoted equity shares could be made by following any of the two method i.e. NAV Method or DCF method. As it is at the option of the assessee to get the valuation done of unquoted shares for the purpose of section 56(2)(viib) of the Act by using any of the method as specified in clause (a) or clause (b) of Rule 11UA(2) of Income Tax Rules, the AO has no power to change the method once adopted by the assessee. In other words, once the assessee has opted one of the prescribed methods for valuation of unquoted equity shares, AO has no right to change the same. In this regard, the Hon'ble Jurisdictional High Court in the case of Cinestaan Entertainment Pvt. Ltd. (supra) has held as under:

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.*

14. *In view of the foregoing, we find that the question of law urged by the Appellant-Revenue is purely based on facts and does not call for our consideration as a question of law.”*

11. In the instant case while rejecting the valuation report submitted by the assessee, the AO has not brought on record any alternate report of fair market value of shares from the person authorized under rule 11UA(2) and simply proceeded to determine the fair market value as per NAV method which is not permissible as has been held by the Hon’ble Jurisdictional High Court in the case of Cinestaan Entertainment Pvt.Ltd. (Supra).

12. The Hon’ble Himachal Pradesh High court in the case of ***I.A. Hydro-energy Pvt. Ltd. reported in 163 taxmann.com 408*** has held as under:

*“Section 56 of the Income-tax Act, 1961, read with rule 11UA of Income Tax Rules, 1962 – Income from other sources – Chargeable as (share premium, valuation of shares) – Assessment Year 2018-19 – Whether Assessing Officer has no jurisdiction to substitute NAV method of assessing valuation of shares, once assessee has exercised option of a DCF valuation method as per rule 11UA(2) – Held, yes [para 19] [in favour of assessee].”*

13. Similar view is expressed by the Hon’ble Madras High Court in the case ***VVA Hotels Pvt. Ltd.*** reported in ***122 taxmann.com 106 (Madras)*** and by coordinate bench of ITAT, Delhi in the case of ***DCIT Vs. Hometrail Buildtech Pvt. Ltd.*** reported in ***155 taxmann.com 178*** and in the case of ***Intelligrape Software Pvt. Ltd. Vs. ITO in ITA No. 3925/Del./2018.***

14. The Id. CIT(A) while allowing the appeal of the assessee, after considering the errors pointed out by the AO in the valuation report and further after considering the statements of the valuer has deleted the addition made by observing as under:

- 5.8 *“From the above various judgements including the judgement of the jurisdictional High court and also reading the provisions of 56(2)(vüib) along with rule 11UA, following inferences can be made:*
- i. Section 56(2) (vüib) is a deeming provision and one cannot expand the meaning of scope of any word while interpreting such deeming provision.*
  - ii. Option is with the assessee to choose either NAV method or DCF method.*
  - iii. Revenue can not decide which method should be chosen by the assessee.*
  - iv. Once one of the prescribed method has been adopted by the assessee, then Assessing Officer has to accept the same.*
  - v. Even if he is not satisfied, there is no enabling provision in the Act or rules, where Assessing Officer can adopt his own valuation method or get it valued by some different Valuer or replace the DCF method by NAV method.*
  - vi. DC method is based on projections which are based on various factors like growth of the company, economic/ market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time.*
  - vi. In view of the above, DCF method can not be challenged on the ground that the performance did not match the projections.*
  - vii. The test laid down by the Courts for interfering with the findings of a valuer is, when he has 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.

### **5.9 Analysis:**

- 5.9.1 From the statement of the valuer, it can be observed that she has explained the basis behind taking various presumptions. All these presumptions have supporting data behind such presumption.
- 5.9.2 It is strange that AO has used only part of the above statement in his assessment order and arrived at the conclusion that basis behind presumptions is not satisfactory. Using only part statement, which is favourable, has not been upheld as correct strategy in various judicial pronouncements.
- 5.9.3 One of the allegation of the AO is that valuer has taken all the presumptions on the basis of best possible business scenario is also not correct. **Any company which is issuing the shares would like to value its share at maximum possible valuation taking best of the business scenario. It is up to the investor whether he/she would like to purchase these shares at this valuation based on his/her perception/market wisdom on future growth of the company. Therefore, this objection of the AO is not sustainable.**
- 5.9.4 Another objection of the AO is that the report of the valuer is not independent and it relies on the data provided by the Management. In my opinion there is nothing wrong in this approach. The main job of the valuer is to arrive at the possible Fair Market Value of the share on a particular date on the basis of the data provided by the client and available in the public/various websites. However, this data should be supported by the authentic documents like Audit reports, Balance sheets, etc.. Valuer can not take the role of the Investigator. It is also a general practice that whether it is a valuer/auditor/deed writer/etc., they write a Disclaimer Clause. This does not mean they have not done their job properly.
- 5.9.5 AO has also not doubted the genuineness of the source of investment. He has accepted that source of investment of both the investors is through explained sources.
- 5.9.6 This is also a fact that both the investors are the family members of the promoter family. There appears to be no motive behind artificially inflating the share premium as this money could have been brought into the system in many other ways like loan, debentures, issuing more number of shares so that premium is reduced, etc..
- 5.9.7 Now the moot question is why the Act has provided two methods of valuation i.e. DCF and NAV and option to choose one of the method is given to the assessee and not to the Department. The

main reason behind it is that only the businessmen knows which method suits his business. The NAV method does not take into account the intangible aspects of the market like

- i. competition whether market is competitive or monopolistic.
- ii. technology which company is using.
- iii. quality of management
- iv. Government policies
- v. locational advantages
- vi. capital intensiveness
- vii demand and supply
- viii kind of investments made by the company i.e. FDs, equities, etc.

and therefore it may not give the correct value of the shares. In that case, the businessmen may consider DCF method which takes all these aspects into account.

- 5.9.8 **Practically, the businessmen get valuation done by both the methods and adopt the higher value which is quite logical. On the other hand, AO tries to adopt that method which gives lower valuation. To address this conflict of interest, the IT Act has clearly provided that it is the option of the assessee to adopt one of the method. Normally AO is not expected to reject that method of valuation until and unless there is something patently wrong with that method.**
- 5.10 In the present case though AO has tried to find the errors in valuation method but none of the error qualifies the test laid down by the Hon'ble High Court of Delhi.
- 5.11 In view of the above discussion and on the basis of various judgements, I find that rejection of DCF method and replacing it by NAV method by the Ld. AO is not sustainable. **Therefore, addition of Rs. 61,17,47,708/- under section 56(2)(viib) of the Act is hereby deleted."**

15. Before us, revenue has failed to controvert the above findings of Id. CIT(A) by bringing on record any contrary material. Under these circumstances, keeping in mind the report of the valuer submitted by the assessee wherein the valuation was done as per DCF method prescribed under the Income Tax Rules and also considering the fact that as per rule 11UA(2) option for selection of method for valuation is of the assessee who had exercised the same by selecting one of the prescribed methods, therefore, we find that

AO cannot change the method of valuation. Thus, ld. CIT(A) has rightly deleted the addition made by AO by discarding the method adopted by assessee and applied NAV method to determine the value of per equity share at Rs. 383.50 to work out the amount of excess premium charged. In view of these facts we uphold the order of ld. CIT(A) wherein the ld. CIT(A) has followed the judgement of jurisdictional high court in the case of CInestaan Entertainment Pvt.Ltd. (supra) and the orders of the coordinate Delhi benches of Tribunal on the issue in hand. Accordingly, all the grounds of appeal of the revenue are dismissed.

16. In the result, appeal of the revenue is dismissed.

Order pronounced in open Court on 14.08.2025.

**Sd/-**

**(SUDHIR KUMAR)  
JUDICIAL MEMBER**

*\*Amit Kumar, Sr.P.S\**

Copy forwarded to:

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**Sd/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI