

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.165/Bang/2024
Assessment Year : 2015-16

JCIT (OSD) Circle 3(1)(1) Bengaluru	<b>Vs.</b>	M/s. GTR Aluminium Pvt. Ltd. 33/E, Veerasandra Industrial Area Anekal Taluk Bengaluru 560 100  <b>PAN NO : AACTS7624Q</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Monish Sowkhar, A.R.
<b>Respondent by</b>	:	Sri Balusamy N., D.R.

<b>Date of Hearing</b>	:	08.10.2025
<b>Date of Pronouncement</b>	:	21.11.2025

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the Revenue is directed against the order of the ld. CIT(A)/NFAC dated 12.10.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057016304(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2015-16.

**2.** The Revenue has raised the following grounds of appeal:

- a) *Whether in the facts and circumstances of the case, the CIT(A) is right in law to hold the view that the method of share valuation (DCF method in this instance) adopted by the assessee cannot be changed even if the correctness of the result of the said method is doubted?*

*b) Whether in the facts and circumstances of the case, the CIT(A) is right in law to hold the view that there cannot be a change in the method of valuation despite the fact that Pr. CIT making the observation of shares of assessee company being highly inflated, in the order u/s 263 of the I.T. Act, 1961?*

**3.** At the outset as noted by the Registry, there is a delay of 50 days in filing the appeal by the Revenue before this Tribunal. The ld. DR drew our attention to the application vide F. No. DCIT/Cir-3(1)(1)/Condonation of Delay/2023-24 dated 29/01/2024 requesting condonation of delay in filing the appeal before this Tribunal by 51 days. The main reason as cited by the Revenue is that due to pressing time barring matters and other miscellaneous works, the filing of the appeal is delayed. Further, it is submitted that the delay being unintentional and due to unavoidable reasons & accordingly prayed that the delay may be condoned & the appeal may be admitted for adjudication on merits.

**3.1** The ld. AR of the assessee did not seriously opposed to the condonation of delay.

**3.2** Perused the record and having heard learned DR & ld. Counsel for the assessee, it is perceived that the explanation offered in the condonation application is plausible and sufficient cause being shown by the Revenue, which prevented them from filing the appeal within the specified period u/s 253 of the Act and accordingly we inclined to condone the delay and admit the appeal for adjudication on merits.

**4.** Now the brief facts of the case are that the assessee, being a registered Private Limited Company, engaged in the manufacturing and supply of superior quality of Aluminium Extrusion and

Aluminium Alloy Ingots. The assessee filed its return of income for the Assessment year 2015-16 on 24.09.2015 by declaring total income of Rs.89,21,090/-. The said return was selected for scrutiny under CASS and accordingly the AO completed the assessment proceedings by passing the Order u/s. 143(3) of the Act dated 18.09.2017 by accepting the income returned by the assessee.

**4.1** Thereafter, the order of assessment passed u/s. 143(3) of the Act, dated 24.09.2015 was subjected to revision proceedings u/s. 263 of the Act by the Id. Pr.CIT-3, Bangalore and the Id. PCIT, concluded the revision proceedings u/s. 263 of the Act, dated 11.06.2020, thereby holding that the said order of assessment passed by the AO u/s. 143(3) of the Act, dated 24.09.2015 as erroneous and prejudicial to the interest of revenue and directed the AO to pass a fresh assessment order after affording sufficient opportunity of hearing to the assessee. The AO following the directions of the Id. Pr.CIT afforded the assessee an opportunity of hearing and concluded the assessment by passing an order of assessment u/s. 143(3) r.w.s. 263 of the Act dated 31.03.2022, thereby making an addition to the extent of Rs. 5,22,24,080/- as income from other sources as per the provisions of section 56(2)(viib) of the Act, wherein the AO held that the value at which the shares were issued by the assessee was highly inflated and the Fair Market Value as per 11UA worked out as per Net Asset Value (NAV) method amounted to Rs. 20.88/- as opposed to value at which the shares were issued i.e. at Rs. 500/- per share and thus, the AO brought the difference of Rs. 479.12/- per share [i.e. Rs. 500/- minus Rs. 20.88/-] under section 56(2)(viib) of the Act on the 1,09,000 shares that were issued by the assessee.

**5.** The assessee being aggrieved by the said order of assessment passed by the AO u/s. 143(3) r.w.s. 263 of the Act, dated

31.03.2022 preferred an appeal wherein the addition made of 5,22,24,080/- as income from other sources as per the provisions of section 56(2)(viib) of the Act, was contested before the Id. CIT(A)/NFAC.

**6.** The Id. CIT(A)NFAC, after considering the submissions of the assessee, allowed the appeal of the assessee vide order dated 12.10.2023. The relevant observations and findings of the Id.CIT(A) is reproduced below for ease of reference & convenience:

*“5.2 I have considered the facts and circumstances of the case and material available on record on the above matter. It is seen that AO has applied Fair market value (FMV) of share premium value as per section 56(2)(viib) r.w. rule 11UA of Income Tax Rules as per NAV. The appellant has calculated as per DCF method and submitted the chartered accountant report for the same.*

*Hon'ble Bombay High Court in the case of Vodafone M-Pesa Ltd. v. PCIT as reported in 164 DTR 257 dealt on the issue of NAV or DCF method and relevant para of this judgment is reproduced herein below*

*"9. We note that, the Commissioner of Income-Tax in the impugned order dated 23<sup>rd</sup>February, 2018 does not deal with the primary grievance of the petitioner. This, even after he concedes with the method of valuation namely, NAV Method or the DCF Method to determine the fair market value of shares has to be done/adopted at the Assessee's option. Nevertheless, he does*

*not deal with the change in the method of valuation by the Assessing Officer which has resulted in the demand. There is certainly no immunity from scrutiny of the valuation report submitted by the Assessee. Therefore, the Assessing Officer is undoubtedly entitled to scrutinise the valuation report and determine a fresh valuation either by himself or by calling for a final determination from an independent valuer to confront the petitioner. However, the basis has to be the DCF Method and it is not open to him to change the method of valuation which has been opted for by the Assessee. If Mr. Mohanty is correct in his submission that a part of demand arising out of the assessment order dated 21st December, 2017 would on adoption of DCF Method will be sustained in part, the same is without working out the figures. This was an exercise which ought to have been done by the Assessing Officer and that has not been done by him. In fact, he has completely disregarded the DCF Method for arriving at the fair market value. Therefore, the demand in the facts need to be stayed."*

*As per above Para of this judgment of Hon'ble Bombay High Court, it was held that the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a final determination from an independent valuer to confront the assessee. But the basis has to be DCF method and*

*he cannot change the method of valuation which has been opted by the assessee.*

*Further jurisdictional ITAT Bangalore in the case of UKN Hospitality (P.) Ltd. v. Income-tax Officer, Ward - 7(1)(2), Bengaluru [2021] 131 taxmann.com 121 (Bangalore - Trib.) held “Adoption of DCF method for valuation of shares is recognized under section 56(2)(viib) which was introduced by Finance Act, 2012 and, hence, applicable in assessment year 2013-14.”*

*In the present case the appellant has followed the DCF method for share premium valuation whereas the AO has valued as per NAV. AO has changed the method of valuation other than adopted by the appellant which is not open to him.*

*Considering the various judgements on the issue, AO has no jurisdiction to change the method of valuation as adopted by the appellant. Therefore, the addition made by the AO on the basis of NAV is directed to be deleted.*

*Hence the ground numbers 2 & 3 of appeal is allowed.”*

**7.** Aggrieved by the order of the Id. CIT(A)/NFAC, wherein the addition made by the Id. AO has been deleted, has filed this present appeal before this Tribunal.

**8.** Before us, the Id. D.R. for the revenue has vehemently submitted and argued that the Id. CIT(A)/NFAC was not justified in

deleting the addition made by the AO and further submitted that the valuation report submitted by the assessee is not justifiable as the projection of revenue given in the report does not match with the actual revenue of the subsequent years and further argued that the DCF (Discounted Cash Flow) method adopted by the assessee is not acceptable as the correct method, as the valuation of the shares of the company should be as per the Fair Market Value of Shares. Thus, the ld. DR contended that the total Share premium amounting to Rs. 5,34,10,000/- is in excess of the Fair Market Value of the shares which is computed as per the Rule 11UA(2)(b) of the Income-tax Rules r.w.s. 56(2)(viib) of the Act and the Fair Market Value as per NAV method adopted by the AO of Rs. 20.88/- per share is correct and the balance amount received by the assessee amounting to Rs. 479.12/- per share is very excessive and had rightly been brought to tax by the AO as income from other sources as per section 56(2)(viib) of the Act. And the ld. DR relied on the order of assessment passed by the AO. Without prejudice, the ld. DR further contended that the issue of valuation as per DCF method may be restored back to the file of the AO for proper determination of value per share as per the DCF method considering the actuals as per the financial statements of subsequent years.

**9.** The ld. A.R. of the assessee, on the other hand, vehemently submitted that as per the Rule 11UA (2) of the Income-tax Rules, 1962, the fair market value of unquoted equity shares for the purpose of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the manner under clause (a) or clause (b), at the option of the assessee. The ld. AR contended that where there are two or more methods prescribed, the assessee is at the liberty to adopt one of the

methods prescribed, which in the instant case, the assessee has chosen and adopted the discount cash flow method, which is permitted under the provisions of the Act and has obtained a valuation report. Thus, the assessee had correctly exercised the option of valuation as per the DCF method.

**9.1** The ld. AR further contended that the purpose of introducing provisions of sec. 56(2)(viib) of the Act was to curb the unethical practice carried out by the assessee for bringing unaccounted money in the accounted form in the company. In the instant case, the entire transactions are through proper banking channels and further the transactions are with the third party which is not disputed by the ld. AO and the genuineness of the transaction cannot be doubted. He further submitted that for scrutinizing the valuation report, the facts and data available on the date of valuation only has to be considered and actual result of subsequent years cannot be a basis to decide about reliability of the projections.

**9.2** With regard to the argument of the ld. DR that the report does not match with the actual revenue of the subsequent years, the ld. AR of the assessee submitted that there would be lot of development with regard to the estimation made as on the date of valuation with that of the actuals due to various market forces and expediencies of the business of the assessee, which fact has to be considered. The assessee had adopted the DCF method considering the vast experience and in-depth knowledge and nature of the industry has projected its revenues, which in its perception was a fairly achievable keeping in view the general trends of the industry, the scale of operations achievable in future etc. The projections are based on various factors and projections made by the management and the Valuer, 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 or the date of assessment may not be relevant after certain period of time.

**9.3** Lastly the Id. AR of the assessee relied upon the decision of the Co-Ordinate Bangalore Bench decision in the matter M/s. Waterline Hotels Private Limited Vs. DCIT, in ITA No. 388/Bang/2020, order dated 13.09.2022 and further submitted that the Hon'ble Jurisdictional High Court of Karnataka in ITA No. 425 of 2023, judgement dated 05.03.2025, has confirmed the order of the Tribunal (supra) wherein the Hon'ble Jurisdictional High Court (supra) has dismissed the department appeal and the decision is squarely applicable in the assessee case and further submitted that the said issue cannot be restored back for a fresh valuation as argued by the Id. DR since the issue is squarely covered by the order of the Co-ordinate Bench of the Tribunal and Hon'ble Jurisdictional Karnataka High Court decision.

**10.** We have heard the rival submissions and perused the materials available on record and the orders of the authorities below. The assessee during the year under consideration, issued 1,09,000 equity shares at face value of Rs.10/- for a premium of Rs.500/- per share amounting to Rs.5,34,10,000/-. The assessee adopted the DCF method by which share premium of the shares was determined at Rs.490/- per share in addition to the face value

of Rs.10/-. However, the AO discarded the method adopted by the assessee and adopted the net asset value method and determined the fair market value of shares at Rs.20.88/- per share. Thus, the Assessing Officer treated the share premium issued by the assessee of Rs.5,22,24,080/- as income from other sources under section 56(2)(viib) of the Act. The contention of the assessee is that the method adopted by the assessee, namely, DCF method is one of the recognized methods and it cannot be discarded altogether. It is also the contention of the assessee that once a particular method is adopted by the assessee at its option, which is a recognized method, the Assessing Officer cannot adopt a different method. The main contention of the Id. Counsel is that in this case the assessee had opted only prescribed method of fair market value as per DCF valuation of an accountant under clause (b) of Rule 11UA and, therefore, there is no justification in adopting alternate method as provided in clause (a) of Rule 11UA read with section 56(2)(viib) of the Act. The Id. Counsel also contended that the shares subscribed by the parties are not related to the assessee and the genuineness of the investment is also not doubted.

**10.1** We are of the considered opinion that the Rule 11UA has been prescribed for determination of the value of unquoted equity shares. Further Rule 11UA(2) of the Rule is for determining the fair market value of the unquoted equity shares following the DCF method as one of the manners. As per the Rule 11UA(2) of the Rules, the assessee has the option to adopt any method for evaluation of the value of unquoted equity shares. Thus the Assessee can either adopt NAV or DCF method. The Rule 11UA (2) is reproduced below for ease of reference: -

*“(2) Notwithstanding anything contained in sub-clause (b) of sub-clause (c) of sub-rule (1), the fair market value of unquoted*

*equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner clause (a) or sub-clause (b), at the option of the assessee, namely:-*

*(a) the fair market value of unquoted equity shares =  $\frac{(A-L)}{PV/PE}$  X*

*Where,*

*.  
. .  
. .*

*(b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.”*

**10.2** After going through the above Rule we take note of the fact that the assessee had opted DCF method and got valuation report from an accountant as per the Rule. It is also clear that the method to be adopted for determining the FMV is at the option of the assessee. Therefore, **we are of the considered opinion that the DCF method adopted by the assessee cannot be suspected on the basis of the outcome of the method employed more particularly when the legislature has given option to the assessee.** There are plethora of judgments in support of our findings. Further, we of the view that, the AO had erred in considering the actuals of revenue and profits declared in the future years as a basis to dispute the projections. At the time of valuing the shares, the actual results of the later years would never be available. In our view what is required for arriving at the fair market value by following the DCF method are the expected and projected

revenues. Accordingly, the valuation is on the basis of estimates of future income contemplated at the point of time when the valuation was made.

**10.3** We further observe that the Coordinate bench of this Tribunal in the case of M/s. Waterline Hotels Private Limited Vs. DCIT, in ITA No. 388/Bang/2020, vide order dated 13.09.2022, which is also relied by the Id. AR, has held as under:

*“18. In the present case, we notice that the assessee has submitted the valuation report issued by a Chartered Accountant using DCF method of valuation. The assessee has projected its income, which according to the Id. AR, is substantiated by the JDA entered into by the assessee. We notice that the lower authorities have rejected the DCF method of valuation on the ground that the same is not based on any scientific method and that since the assessee is making a loss, there is no possibility of valuing the shares of the assessee at a premium. Further, the lower authorities have not gone into the details used by the assessee under DCF method to arrive at the valuation and rejected the entire methodology as adopted by the assessee. It is also noticed that one of the reasons as quoted by the AO for not considering the valuation report is that the Director during the survey proceedings has stated that there is no valuation report. We are unable appreciate this reason for rejection as the satisfaction to be recorded by the AO should not be objective satisfaction exercised at his discretion, but a subjective satisfaction based on the facts of the case. The lower authorities have not*

*examined the basis on which the valuation is done and from the perusal of facts, no details in this regard have been called for by the lower authorities. The valuation report is rejected based on the objective satisfaction and not based on detailed examination.*

*19. In view of the above discussion and respectfully following the decision of the Tribunal in the case of Town Essential Private Limited Ltd. (supra), we hold that the valuation done by the assessee cannot be rejected without recording any finding to the contrary by the lower authorities and therefore we delete the addition made in this regard.”*

**10.4** Further, the Hon’ble Jurisdictional Karnataka High Court on an appeal by the revenue against the said order of the Tribunal in M/s. Waterline Hotels Private Limited in ITA No. 425 of 2023, judgement dated 05.03.2025, has dismissed the substantial question of laws raised by the revenue in favour of the assessee thereby confirming the order of the Tribunal (supra). The relevant part of the judgment of the Hon’ble Jurisdictional Karnataka High Court is as under:

*“Revenue is in appeal before this Court for laying a challenge to the Tribunal’s order dated 13.09.2022 with the following substantial questions of law:*

*“1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting addition made under section 56(2)(viib) of the Act amounting to Rs.33,71,77,500 towards share premium collected from closely held company which is*

*contrary to the intention lying behind the introduction of the said provision to bring to tax the unaccounted income brought into books of account through unwarranted or unjustified share premium by Corporate entities”?*

*2. Whether on the facts and in the circumstances of the case, the Tribunal’s order is perverse in nature in deleting the addition made under section 56(2)(viib) amounting to Rs.33,71,77,500 pertaining to share premium collected when assessee had been incurring huge loss and there was no justification provided for fixing such high share value and ignoring findings recorded in assessment order that common director of the assess-company and investor-company namely, M/s UKN Properties Ltd had given a statement during the course of Survey conducted in case of investor company on 18/11/2015 that there was no valuation report obtained for determining the value of the share allotted on which premium was collected”?*

*3. “Whether on the facts and in the circumstances of the case, the Tribunal’s order is perverse in nature in setting aside disallowance made in share premium by erroneously holding that the valuation report on DCF Method produced during assessment*

*proceedings was a valid report justifying valuation of shares without appreciating that there was no basis for projections made under DCF method and also ignoring the reasons assigned by assessing authority and CIT(A) on the issue”?*

*2. Learned Panel Counsel appearing for the Assessee vehemently submits that the Tribunal has wrongly construed Sec.56(2)(viib) of the Income Tax Act, 1961 and thereby committed error of deleting addition made in an amount of Rs.33,71,77,500/-in respect of securities premia credited on share issue in question.*

*3. ....*

*4. Having heard learned panel Counsel appearing for the revenue and the learned Senior Advocate representing the Assessee we decline indulgence in the matter inasmuch as the Tribunal has construed the subject provision of the Act keeping in view the fair market value of the shares in question and not the premium amount. Learned Senior Advocate Mr. Shankar is right in telling us that the fair market value of the Shares in question has been arrived at by the Assessee by adopting one of the statutorily designated methods in terms of Rule 11UA(2) of the extant Rules.*

*5. It is relevant to reproduce Tribunal’s observation at paras 18 & 19:*

*.....*

*In the above circumstances, the Substantial Questions of Law raised in the appeal are answered against the*

*Revenue and eventually in favour of Assessee.  
Accordingly, appeal is dismissed, costs having been  
made easy.”*

**10.5** We are also of the view that the ratio of the decision of the Co-ordinate Bench of Bangalore Tribunal confirmed by the Hon'ble Jurisdictional Karnataka High Court is binding in nature, & squarely applies to the facts of the present case of the assessee. Thus, respectfully following the said decision, we held that the Assessing Officer grossly erred in discarding the DCF method of valuation of shares adopted by the assessee and accordingly we sustain the order of the Id. CIT (Appeals)/NFAC & direct the Assessing Officer to delete the addition as made under section 56(2)(viib) of the Act. The grounds raised by the revenue are accordingly dismissed.

**11.** In the result the appeal filed by the revenue is dismissed.  
Order pronounced in the open court on 21<sup>st</sup> Nov, 2025

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 21<sup>st</sup> Nov,2025.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**