

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.6182/Del/2019
Assessment Year: 2015-16

Rivet Health Club Pvt. Ltd. FF-9 Vishnu Place Near Neelam Flyover Sec-20B Faridabad Haryana-121002 PAN No. AAGCR1343H	Vs	ITO Ward-2(2) Faridabad
(APPELLANT)		(RESPONDENT)

Appellants by	Shri Rajiv Saxena Adv. Ms. Sumangla Saxena Adv. Shri Shyam Sunder, Adv.
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR.

Date of hearing:	08/01/2026
Date of Pronouncement:	21/01/2026

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) Faridabad, [hereinafter referred to as "(Ld.CIT(A))"], vide order dated 30.03.2019 pertaining to A.Y. 2015-16 and arises out of the assessment order dated 29-12-2017 passed by the Assessing Officer under

Section 143(3) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].

2. The appeal is time barred by 49 days. In the application the assessee stated that the matter was looked after by Shri K.C. Garg, Chartered Accountant, who did not prepare the appeal due to High Diabetic Condition. Therefore, the assessee has engaged the service of another counsel who has prepared the appeal and filed the same on 22-07-2019 before the Tribunal which caused delay of 49 days in filing the appeal. The assessee has shown the sufficient cause not to file the appeal within time. For the reasons stated in the application for condonation of delay, the delay of 49 days in filing the appeal is hereby condoned.

3. The assessee has raised the following grounds in the appeal:

1. The Ld.CIT(A) has erred in law as well as on facts in confirming the assessment framed by Ld. AO u/s 143(3) of the Income Tax Act 1961.

2. The Ld.CIT(A) has erred in law as well as on facts in confirming the addition of Rs.49,00,000/- u/s 68 of the Act on account of alleged unexplained share premium and share capital.

3. The Ld.CIT(A) has erred in law as well as on facts in confirming the income of appellant assessee of Rs.26,39,050/- by invoking section (2) (viii b) of the Act wherein rejecting the valuation method taken by appellant assessee.

4. *The Ld.CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by not issuing valid show cause notice as mandated.*

5. *The Ld.CIT(A) has erred in law as well as on facts in confirming and enhancing the addition without giving cogent reasons and by recording incorrect facts and by disregarding the all the documentary evidences furnished by assessee.*

6. *The Ld.CIT(A) has erred in law as well as on facts in confirming the addition of Rs.5,76,679/- on account of disallowance of business expenses.*

7. *The Ld.CIT(A) has erred in law as well as on facts in confirming the addition of Rs.1,15,842/- on account of difference in the receipts shown in the ITR as compared to Form 26AS.*

8. *That, the appellant craves leave to add alter amend or withdraw all or any ground either before or during the hearing of these grounds.*

4. The brief facts of the case are that the assessee filed its original return of income declaring at Rs.2,15,870/- on 13-09-2015. The case was selected for scrutiny through CASS under limited scrutiny. A notice under section 143(2) of the Act was issued to the assessee on 08-04-2016. The Authorized representative filed the power of Attorney. Again notice u/s 142(1) of the Act was issued on 10-01-2017 but no body attended the proceedings. During the course of assessment proceedings, it found that the assessee company has issued

2,35,000/- equity shares to five entities for Rs.94,00,000/- including share premium of Rs.70.50.000/-. The assessee company has allotted equity shares at Rs10/- at a premium of Rs.30/- per share totaling to a value of Rs.40/- per share. The details of the share allotted are reproduced here under:

S. No.	Name & address of the Investor	No. of shares	Amount invested Face value of Shares	Premium Value of shares
1.	M/s Amarshree Industries Private Limited H-10715 Gali 11 Andha Mugal Pratap Nagar Delhi	5000	5,00,000/-	15,00,000/-
2.	M/s CEE AAR Decors Private Limited H-54 3 rd Floor DDA Flats Phase -1 Ashok Vihar Delhi	62,500	6,25,000/-	18,75,000/-
3.	M.s Good Luck Industries Ltd. H-10715 GF Gali No.11 Andha Mugal Partap Nagar Delhi	62,500	6,25,000/-	18,75,000/-
4.	M/s Texcity Constructions Private Limited VRB Agencies House *91-C First Floor Vardhman Complex Raja Street Coimbatore TamilNadu	25,000	2,50,000/-	7,50,000/-
5	M/s Ganga Shiv Contractors Pvt. Ltd. H-54 3 rd Floor DDA Flats Phase -1 Ashok Vihar, Delhi	35,000	3,50.000/-	10,50,000/-

5. The ld. Assessing officer observed that the assessee the identity and creditworthiness of the investors are suspicious and need detailed enquiries. The Ld. assessing Officer was of the opinion that the submission made by assessee are not acceptable in regard with the identity, creditworthiness and genuineness. Accordingly share capital and share premium amount collected/received by the assessee from the five parties amounting to Rs.94,00,000/- are not genuine and the same has been treated as unexplained sources of Income of the assessee and brought to tax under section 68 of the Act. Further fair market value as per Rule 11UA on the basis of Net Worth made the addition of Rs.26,39,050/- on the protective basis. Lastly the Assessing Officer made the addition of difference the interest amounting to Rs.1,15,842/- on the basis of 26AS.

5.1 Aggrieved by the order of the AO the assessee filed the appeal before the Ld. CIT(A), who vide his order dated 30-03-2021 partly allowed the appeal filed by the assessee, by confirming the addition of Rs.49,00,000/- made under 68 of the Act. The Ld.CIT(A) also confirmed the income of the assessee of Rs.5,76,679/- by invoking the section 56(2)(viib) of the Act. The Ld.CIT(A) also confirmed the protective addition of Rs. 26,39,050/- and the difference of the interest shown in the form 26AS. Being aggrieved the order of the Ld. Ld.CIT(A) the assessee is in appeal before the Tribunal.

6. We have heard the parties and gone through the material available on record. . Ld. AR of the assessee submitted that the identity of the investors, creditworthiness of the transaction and genuineness and the transaction has been established by the assessee.

7. Ld. Authorized Representative of the Revenue relied upon the order of the lower authorities. She submitted that their all the companies the auditor is same. The investing unit Coimbatore has provided the report to AO that the M/s Texcity Constructions Pvt. Ltd. is not existent on the present address. She further submitted that the companies who issued the shares to the assessee are not engaged in any genuine business activity and the paper companies. It was also argued that creditworthiness of the parties were not established.

8. Ground no.1 is general in nature which requires no adjudication.

9. Ground No.2 is regarding the addition of Rs.49,00,000/- made under section 68 of the Act on account of unexplained share premium and share capital. As seen from the CIT(A) has sustained addition u/s 68 in respect of following parties:

Name of shareholder	Number of shares	Value of shares @ Rs.10 per share	Share premium @Rs.30 per share
M/s Goodluck Industries Ltd.	62500	6,25,000/-	18,75,000/-

M/s Texcity Constructions Kovai Pvt. Ltd.	25,000	2,50,000/-	7,50,000/-
M/s Ganga Shiv Construction Pvt.Ltd.	35,000	3,50,000/-	14,00,000/-

8. Ld. AR submitted that the identity of the investors, creditworthiness of the transaction and genuineness was proved by furnishing the PAN, and entries in ROC and the audit report and the parties confirmed the investment which was kept on record. In respect of the M/s Goodluck Industries Ltd. the genuineness of the parties accepted by the Hon'ble ITAT in appeal No. 6172/Del/2019 Zhilmil Electronic Pvt. Ltd. v. ITO Ward -2(50 Faridabad and addition made by the AO was deleted.

9. The assessee has also furnished books of accounts details of the parties to prove the identities of the parties and the creditworthiness of the parties along with genuineness of the transaction as required u/68 of the Act. The assessee has filed before us in the paper book which as under:

(i) M/s Goodluck Industries Ltd.(1)

It is submitted that aforesaid company is a corporate entity, incorporated on 13.04.1993 with an objective of carrying on the business of carrying on the business of weaving, spinning, manufacturing or dealing in cotton or other fibrous substances and the preparation, dyeing or colouring of and of

any of the said substance and the sale of cloth or other manufactured fibrous products etc. This company has applied for 62,500 shares. Subsequently, the assessee company has allotted 62,500 shares @ Rs.40/- during the year in concern. A list of documents have been annexed to the Paper Book in order to prove the identity and creditworthiness of the investors and the genuineness of the transaction.

S.No.	Particulars	Page No. of the Paper Book.
1.	Copy of Certificate of Incorporation, alongwith MOA & AOA	Attached with this synopsis
2.	Copy Auditor's report, balance sheet and trading and profit and loss account as on 31.3.2015 alongwith notes to financial statement	88-98
3.	Copy of acknowledgement of return of income for AY 2015-16 alongwith computation of income tax.	99-100
4.	Copy of share application form	101
5.	Copy of confirmation of accounts dated 1.4.2015 from the period of 1.4.2014 to 31.3.2015 from the assessee company showing the net amount of Rs. 25,00,000/- received on 8.1.2015 from the investor company by the assessee company.	102
6.	Copy of investor company's bank account statement showing the debit entry of Rs. 25,00,000/- on 8.1.2015	103
7	Copy of share certificate	104

(ii) M/s Texcity Constructions Kovai Pvt.Ltd.

It is submitted that aforesaid company is a corporate entity, incorporated on 22.2.2005 with an objective of carrying on the business of contractors, colonisers, builders, town planners, estate developers etc. to purchase or take on lease under concession or otherwise lands, building, civil works, construct houses, flats, apartments, etc. This company has applied for Rs. 25,000 shares. Subsequently, the assessee company has allotted 25,000 shares @ Rs. 40/- during the year in concern. A list of documents have been annexed to the Paper Book in order to prove the identity and creditworthiness of the investors and the genuineness of the transaction.

S.No.	Particulars	Page No. of the Paper Book.
1.	Copy of Certificate of Incorporation, alongwith MOA & AOA	Attached with this synopsis
2.	Copy Auditor's report, balance sheet and trading and profit and loss account as on 31.3.2015 alongwith notes to financial statement	105-115
3.	Copy of acknowledgement of return of income for AY 2015-16 alongwith computation of income tax.	116-117
4.	Copy of share application form	118
5.	Copy of confirmation of accounts dated 1.4.2015 from the period of 1.4.2014 to 31.3.2015 from the assessee company	119

	showing the net amount of Rs. 40,00,000/- (Rs.25,00,000/- as opening balance as on 1.4.2014 and Rs. 15,00,000/- received on 14.01.2015) from the investor company by the assessee company.	
6.	Copy of investor company's bank account statement showing the debit entry of Rs. 15,00,000/- on 14.1.2015	120-121
7	Copy of share certificate	122

(iii)M/s Ganga Shiv Construction Pvt. Ltd.

It is submitted that aforesaid company is a corporate entity, incorporated on 31.10.2005 with an objective of carrying on the business of contractors, colonisers, builders, town planners, estate developers etc. to purchase or take on lease under concession or otherwise lands, building, civil works, construct houses, flats, apartments, etc. This company has applied for 35,000 shares. Subsequently, the assessee company has allotted 35,000 shares @ Rs. 40/- during the year in concern. A list of documents have been annexed to the Paper Book in order to prove the identity and creditworthiness of the investors and the genuineness of the transaction.

S.No.	Particulars	Page No. of the Paper Book.
1.	Copy of Certificate of Incorporation, alongwith MOA & AOA	Attached with this synopsis

2.	Copy Auditor's report, balance sheet and trading and profit and loss account as on 31.3.2015 alongwith notes to financial statement	123-133
3.	Copy of acknowledgement of return of income for AY 2015-16 alongwith computation of income tax.	134-135
4.	Copy of share application form	136
5.	Copy of confirmation of accounts dated 1.4.2015 from the period of 1.4.2014 to 31.3.2015 from the assessee company showing the net credit amount of Rs. 30,00,000/- received on 22.8.2014 and debit entry of Rs. 16,00,000/- and Rs. 14,00,000 to bank and share capital account respectively.	137
6.	Copy of investor company's bank account statement showing the debit entry of Rs. 30,00,000/- on 22.8.2014 (Rs. 14,00,000 for share capital)	138
7	Copy of share certificate	139

10. The details clearly establishes that the assessee has fulfilled the ingredients of the section 68 of the Act by proving the initial burden cast upon him. Once the assessee proves the ingredients of section 68 of the Act, the burden shifts on the revenue. In the present case lower authorities have not brought anything on record to prove otherwise and in a such circumstances, the authorities are precluded from making any other addition on this count in the absence of contrary materials.

11. Further, we placed reliance on the judgment of the Supreme Court in the case of PCIT vs. Rohtak Chain Co. (P) Ltd. 59 (SC) 110 taxmann. Com wherein the Apex court held that once the genuineness creditworthiness and identity of investors are established, no addition could be made as cash credit on the ground that the shares are issued at excess price. The relevant portion is as under :

“51. The learned ITAT after due examination of the order of CIT (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of M/s. Aadhaar ventures (I) Ltd, M/s. Dhanush Technologies Ltd, M/s. Emporis Projects Ltd and M/s. L.N. Industries Ltd (formerly known as L.N. Polyester Ltd) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of subscriber company also appeared with books of accounts before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Hon’ble Supreme Court and were of the opinion that the onus cast upon the assessee as provided under Section 68 of the Act has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The learned ITAT considered the case of the each company in great detail in para 85 to 110 of the impugned order and recorded its finding. The aforesaid finding of fact recorded by the ITAT are based on the material available on record which is a finding based on appreciation of evidence on record.

52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the

premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

53. Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case.”

12. In the case of CIT v. Lovely Exports (P) Ltd. reported in 319ITR 5 (ST) the Hon'ble Supreme Court observed that even if the share capital money is received by the assessee from alleged bogus shareholders, whose names are given to the AO the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company. In the present case the assessee has provide the sufficient materials to prove the genuineness of the shareholders apart from giving the PAN Card bank account, name and ROC details. By respectfully following the ratio laid down in the case of PCIT v. Rohtak (Supra) and considering the facts of the case we delete the addition of Rs.49,00,000/- made u/s 68 of the Act. Accordingly, the ground no.2 raised by assessee is allowed.

13. Ground No.3 is regarding the confirming the income of the assessee of Rs. 26,39,650/- by invoking section 56(2) 2(viib) of the Act on protective basis. Ld. AR submitted that both the authorities erred in not accepting the valuation report of the Chartered Accountant who valued shares as per clause(b) of Rule 11UA(2) of the Income Tax rules 1962, when the legislature provided the option to be exercised by the assessee to reach the value of each share and the same has been provided by the assessee calculating as per clause (b) through discounted cash flow method (DCF). The valuation report furnished by the assessee should be accepted by the authorities. In our considered opinion, the Valuation Method adopted by the assessee is one of the Methods accepted under law which cannot be disturbed by the Revenue authorities without bringing any contrary material on record to prove that the method adopted by the assessee is not correct. The Ld. CIT(A) has rejected the valuation report of the assessee by relying on decision of the coordinate bench of this Tribunal in the case of Agro Portfolio Pvt. Ltd. v. ITO (2018)171 ITD 74. The decision made in Agro Portfolio Pvt. Ltd. had been considered by the Coordinate bench of this tribunal in the case of Cinestan Entertainment (P) ltd. V. ITO dated 27-05-2029 wherein it is held that the assessing officer cannot examined or substitute its own value in place of the valuation arrived by the assessee either DCF Method or NAV Method, the commercial expediency

has to be seen from the point view of businessman. Further held that if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law.

The relevant portion are as under : -

“28. Now what we are required to examine whether under these facts and circumstances Assessing Officer after invoking the deeming provision of Section 56(2)(vii) could have determined the fair market value of the premium on shares issued at Nil after rejecting the valuation report given by the Chartered Accountant on one of the prescribed methods under the rules adopted by the Valuer. Before us, learned counsel, Mr. Dinodia, first of all had harped upon the spirit and intention of the Legislature in introducing such a deeming provision and submitted that such a provision cannot be invoked on a normal business transaction of issuance of shares unless it has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money. His main contention was that, being a deeming fiction, it has to be strictly interpreted and there is no mandate to the Assessing Officer to arbitrarily reject the valuation done by the assessee on his own surmises and whims. We are in tandem with such a reasoning of the Id. Counsel, because the deeming fiction not only has to be applied strictly but also have to be seen in the context in which such deeming provisions are triggered. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of Dilip Kumar & Sons (supra) that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most

beneficial to the assessee should be adopted. Viewed from such principle, here is a case where the shares have been subscribed by unrelated independent parties, who are one of the leading industrialists and businessman of the country, after considering the valuation report and future prospect of the company, have chosen to make investment as an equity partners in a 'start-up company' like assessee, then can it be said that there is any kind of tax abuse tactics or laundering of any unaccounted money. It cannot be the unaccounted or black money of investors as it is their tax paid money invested, duly disclosed and confirmed by them; and nothing has been brought on record that it is unaccounted money of assessee company routed through circuitous channel or any other dubious manner through these accredited investors. If such a strict view is adopted on such investment as have been done by the Assessing Officer and by ld. CIT(A), then no investor in the country will invest in a 'start-up company', because investment can only be lured with the future prospects and projection of these companies.

29. Now, whether under the deeming provision such an investment received by the assessee company be brought to tax. The relevant provision of Section 56 for the sake of ready reference is reproduced hereunder:

"Income from other sources. 56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E. (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 :— (i)..... (vii) "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: Provided that this clause shall not apply where the consideration for issue of shares is received— (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 Explanation—For the purposes of this clause, — (a) the fair market value of the shares shall be the value - (i) as may be determined in accordance with such method as may be prescribed: or ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, whichever is higher;” Further, as per clause (i) of the Explanation as reproduced above, the FMV is to be determined in accordance with such method as may be prescribed. Clause (ii) admittedly is not applicable on the facts of the Assessee’s case. The method to determine the FMV is further provided in Rule 11UA(2). The relevant extract of the applicable rules is reproduced below: “11UA. [(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,— (2) Notwithstanding anything contained in sub-clause (b) of 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 under clause (a) or clause (b), at the option of the assessee, namely:— (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.”

30. Ergo, the assessee has an option to do the valuation and determine the fair market value either on DCF Method or NAV Method. The assessee being a ‘start-up company’ having lot of projects in hand had adopted DCF method to value its shares. Under the DCF Method, the fair market value of the share is required to be determined either by the Merchant Banker or by the Chartered Accountant. The valuation of shares based on DCF is basically to see the future year’s revenue and profits projected and then discount the same to arrive at the present value of the business.....

.....

31.

32. What is seen here is that, both the authorities have questioned the assessee’s commercial wisdom for making the investment of funds raised in 0% compulsorily convertible debentures of group companies. They are trying to suggest that assessee should have made investment in some instrument which could have yielded return/ profit in the revenue projection made at the time of issuance of shares, without understanding that strategic investments and risks are undertaken for appreciation of capital and larger returns and not simply dividend and interest. Any businessman or entrepreneur, visualise the business based on certain future projection and undertakes all kind of risks. It is the risk factor alone which gives a higher return to a businessman and the income tax department or revenue official cannot guide a businessman in which manner risk has to be undertaken. Such an approach of the revenue has been judicially frowned by the Hon’ble Apex Court on several occasions, for instance in the case of SA Builders, 288 ITR 1 (SC) and CIT vs. Panipat Woollen and General Mills Company Ltd., 103 ITR 66

(SC). The Courts have held that Income Tax Department cannot sit in the armchair of businessman to decide what is profitable and how the business should be carried out. Commercial expediency has to be seen from the point of view of businessman. Here in this case if the investment has made keeping assessee's own business objective of projection of films and media entertainment, then such commercial wisdom cannot be questioned. Even the prescribed Rule 11UA (2) does not give any power to the Assessing Officer to examine or substitute his own value in place of the value determined or requires any satisfaction on the part of the Assessing Officer to tinker with such valuation. Here, in this case, Assessing Officer has not substituted any of his own method or valuation albeit has simply rejected the valuation of the assessee.

33. Section 56(2) (viib) is a deeming provision and one cannot expand the meaning of scope of any word while interpreting such deeming provision. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not we find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different Valuer. There has to be some enabling provision under the Rule or the Act where Assessing Officer has been given a power to tinker with the valuation report obtained by an independent valuer as per the qualification given in the Rule 11U. Here, in this case, Assessing Officer has tinkered with DCF methodology and rejected by comparing the projections with actual figures. The Rules provide for two valuation methodologies, one is assets based NAV method which is based on actual numbers as per latest audited financials of the assessee company. Whereas in a DCF method, the value is based

on estimated future projection. These 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 may not be relevant after certain period of time. Precisely, these factors have been judicially appreciated in various judgments some of which have been relied upon by the Id. Counsel, for instance: - i) Securities & Exchange Board of India &Ors [2015 ABR 291 - (Bombay HC)] "48.6 Thirdly, it is a well settled position of law with regard to the valuation. that valuation is not an exact science and can never be done with arithmetic precision. The attempt on the part of SEBI to challenge the valuation which is but its very nature based on projections by applying what is essentially a hindsight view that the performance did not match the projection is unknown to the law on valuations. Valuation being an exercise required to be conducted at a particular point of time has of necessity to be carried out on the basis of whatever information is available on the date of the valuation and a projection of future revenue that valuer may fairly make on the basis of such information." ii) Rameshwaram Strong Glass Pvt. Ltd. v. ITO [2018-TIOL1358-ITAT- Jaipur] "4.5.2. Before examining the fairness or reasonableness of valuation report submitted by the assessee we have to bear in mind the DCF Method and is essentially based on the projections (estimates) only and hence these projections

cannot be compared with the actual to expect the same figures as were projected. The valuer has to make forecast on the basis of some material but to estimate the exact figure is beyond its control. At the time of making a valuation for the purpose of determination of the fair market value, the past history may or may not be available in a given case and therefore, the other relevant factors may be considered. The projections are affected by various factors hence in the case of company where there is no commencement of production or of the business, does not mean that its share cannot command any premium. For such cases, the concept of start-up is a good example and as submitted the income-tax Act also recognized and encouraging the start-ups.” iii) DQ (International) Ltd. vs. ACIT (ITA 151/Hyd/2015) “10..... In our considered view, for valuation of an intangible asset, only the future projections along can be adopted and such valuation www.taxguru.in I.T.A. No.8113/DEL/2018 42 cannot be reviewed with actual after 3 or 4 years down the line. Accordingly, the grounds raised by the assessee are allowed”. The aforesaid ratios clearly endorsed our view as above.

34. In any case, if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law.”

14. Following, the decision of the Coordinate Bench in the case of Cinestan Entertainment P.Ltd., we hold that the Ld.AO and CIT(A) has committed an error in rejected the valuation done by the assessee from prescribed expert as per the prescribed method. We delete the protective addition made by the AO and confirmed by the Ld. CIT(A).The ground raised by the assessee is allowed.

15. Ground no 4&5 are regarding enhancement of income. The Ld. AR submitted that the Ld. CIT(A) enhanced the income without giving a mandatory notice required u/s 250(1) of the Act. The Ld. CIT(A) has the power to enhance income in the appeal. In the present case no such notice was issued to the assessee. Therefore, the action of the Ld. CIT(A) in enhancing the income of the is found erroneous. The grounds raised by the assessee are allowed.

15.Ground no.6 is regarding disallowance of business expenditure of Rs.5,76,679/- . The Ld. AR of the assessee submitted that has running its business since the date it came existence. During the year, due to fall in business activities, the assessee could not carry on its business activities. However there are some fixed expenses which has to incur irrespective of business transactions. The assessee has as shown interest income of Rs.7,29,546/- from “income from other sources”. The Ld. Assessing officer disallowed the expenses of Rs.5,76,679/- on the reasons that assessee has not carried on business in the year under consideration. The Ld.AR submits that assessee has already set up his business and same was in operation, the expenditure claimed u/s 37 of the Act. Further submitted that assessee company, despite not having carried out any business activities during the year has claimed a business expenses of Rs.5,76,679/- on account of salary to staff and other necessary expenditure which is inevitable in nature. In the case of CIT

Gujarat v. M/s Saurashtra Cement and Chemical Industries Ltd. (1973) 91 ITR 170 (Guj) held that business is said to have commenced as an essential activity of that business is started. In our opinion once the business of the assessee is set up and the expenditure incurred thereafter deserves to be allowed as business expenditure. The business activity is a continuous process and it cannot be said that as soon as setting up of the business, the income will be generated and should yield income in all years. The assessee is entitled to get the disallowances of the business expenses. The ground raised by the assessee is allowed.

16. Ground no 7 is regarding the difference in receipts shown in the ITR as compared to Form 26AS. The Ld. AR of the assessee has submitted that ld. Assessing Officer has made the addition to the tune of Rs.1,15,842/- on account of difference in the interest income as per the Form 26AS available with the department and the ITR filed by the assessee. He further submitted that Ld. CIT(A) has not disposed of the ground raised by the assessee and the Ld. Assessing Officer has passed the assessment order in a hurried manner by taking the wrong amount of receipts shown in the original return of income furnished by the assessee. It is evident from the ITR that the assessee has shown receipts of Rs.7,92,546/- on account of interest instead of Rs.7,29,546/- , which was taken by the Ld. assessing Officer. This issue was not dealt with separately by

the Ld. CIT(A). The Assessing Officer made the addition on the wrong amount, therefore addition is deleted. The ground raised by the assessee is allowed.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.01.2026.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

SR Bhatanaggar

Date:- 21.01.2026

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI