

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

Before Sh. Satbeer Singh Godara, Judicial Member

ITA No. 8306/Del/2025 : Asstt. Year: 2015-16

Refiral Solutions Pvt. Ltd., House No. 1789, Third Floor, Sector- 46, Gurgaon-122002	Vs	Income Tax Officer, Ward-3(5), Gurgaon-1220088
(APPELLANT)		(RESPONDENT)
PAN No. AAHCR0604D		

**Assessee by: Sh. Parikshit Aggarwal, CA
Revenue by : Sh. Manoj Kumar, Sr. DR**

Date of Hearing: 20.01.2026	Date of Pronouncement: 20.01.2026
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ORDER

This assessee's appeal for Assessment Year 2015-16 arises against the Addl./JCIT(A), Kolkata's DIN & order No. ITBA/APL/S/250/2025-26/1081746005(1) dated 14.10.2025, in proceedings u/s 144 of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case file perused.
3. Coming to the assessee's sole substantive issue challenging both the learned lower authorities respective findings making section 56(2)(viib) addition of alleged unjustifiable share premium amounting to Rs.30,98,800/-; made in assessment order dated 04.12.2017 and upheld to the extent of Rs.29,65,480/-, in the lower appellate discussion to this effect, reads as under:

5.4 Grounds of appeal no. 4 and 5 are against the addition on account of share premium received. Facts involved in the issue is that the appellant is a company in which public are not substantially interested and had raised share capital during the year. The appellant had issued 3,332 shares to another resident company named – M/s. Cogent E-Services Pvt. Ltd. The face value of each share was Rs.10/- but premium was determined at Rs.5,990/- per share. However, during the relevant year, the appellant received an amount of Rs.29,98,800/- being 3,332 shares issued at a cost of Rs.900/- per share which included Rs.10/- towards face value and Rs.890/- as premium. Since the appellant failed to file any details or explanation for issuing shares at such a high premium value, the assessing officer added an amount of Rs.30,98,800/- to total income as unexplained investment. The amount added included initial subscription of Rs.1,00,000/- being 10,000 shares subscribed by promoters at face value of Rs.10/-.

5.5 On the other hand, the appellant claimed that the shares were issued on the basis of Board resolution passed in the meeting of the company and that the shares were valued by a qualified chartered accountant as per Rule 11UA(2)(b) of the I.T. Rules, 1962. The high premium of Rs.5,990/- was determined on the basis of such valuation of shares. In view of the same, the assessing officer was not justified in making addition on this issue. In this regard, as already discussed above, the provisions of section 56(2)(viib) of the I.T. Act (prevalent during that year) is reproduced:

"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;”

The company- M/s. Cogent E-Services Pvt. Ltd., to whom appellant issued shares at premium in this case is a resident company and does not fall within the categories as mentioned in (i) and (ii) of the said section. Hence the provisions of the said section are applicable in this case. The appellant issued the shares at high premium of Rs.5,990/- over and above the face value of Rs.10/-. In order to justify the high premium, the appellant got the shares valued as per Explanation (i) to the said section as above as per Rule 11UA(2)(b) of the I.T. Rules i.e. value determined by a chartered accountant as per Discounted Free cash Flow (DCF) method. The same has been done basically on future profitability and future free cash flow estimates. It has been done primarily on the basis of future EBITDA of the company as under:

FY	REVENUE FROM OPERATIONS (Rs.)	EBITDA (Rs.)	FREE CASH FLOW (Rs.)
2015-16	4222500	(-)2377500	(-)3146493
2016-17	8245000	(-)2855000	(-)3304298
2017-18	12367500	(-)1282500	(-)2466178
2018-19	18551250	573750	(-)9519596
2019-20	27826875	2149875	1578264
2020-21	37566281	2963081	2140189

2021-22	50714480	4615760	3282190
2022-23	68464548	6722848	4738188
2023-24	85580684	7922602	5567218

On the other hand, the actual revenue, EBITDA and free cash flow of the company (as per the audited accounts of the respective years) is as under:-

FY	REVENUE FROM OPERATIONS (Rs.)	EBITDA (Rs.)	FREE CASH FLOW (Rs.) (Approximate)
2015-16	3120206	(-)9931998	(-)9992819
2016-17	7333553	(-)7228832	(-)7215504
2017-18	212500	2027	43268
2018-19	52500	1878	1878
2019-20	0	(-)23794	(-)23794
2020-21	0	(-)15890	(-)15890
2021-22	0	(-)12500	(-)12500
2022-23	0	(-)12500	(-)12500
2023-24	0	(-)12500	(-)12500

The figures in the above two charts speak for themselves and no elaboration is required at all. It is clear that the valuation of equity shares was done on an unrealistic projection.

5.6 *Here I would like to discuss about two fallacies:*

1. 1. *"Vision without execution is hallucination" - Henry Ford - Just having a goal to achieve in mind or imagining to be some influential personality but not doing anything at all to meet the target or to realize your dream is equivalent to having hallucinations. One would imagine what was in Henry Ford's mind when he uttered those words. Seemingly, other personalities, including renowned inventors like Thomas Edison were of the same mind. According to Edison, "ideas alone are not good enough to bear fruit if there is nothing being done about them". Larry Page, co-founder of Google says "You need to invent things, and you need to get them to people". Larry Page's story illustrates that just having an idea in mind alone is not good enough. Page went ahead to experiment with his idea and as we can all see; Google- it is one of the greatest inventions in recent times. Having ideas and not investing in them is a waste of time because it will not yield any fruits.*
2. *"Unrealistic projection is to hoodwink" - Setting false or overly optimistic expectations is a purposeful deception to trick or mislead people. The phrase suggests that the intent behind the unrealistic forecast is not merely a mistake but a conscious effort to manipulate the audience by fabricating a misleading or exaggerated future. This tactic can appear in fields like business, finance, and politics. In a business or financial context*

Companies, especially startups, may present an unrealistic projection to deceive investors or the public.

Overly optimistic revenue: Startups may promise "hockey-stick" style growth to attract funding, even when market research and historical data do not support such an aggressive forecast.

Underestimated expenses: A company might deliberately leave out or understate costs like marketing, salaries, and operational expenses to create a false picture of higher profitability.

Inflated valuations: A business may base its valuation on speculative future gains rather than solid evidence, creating a misleading sense of value for potential investors.

Psychology behind the deception

The tactic relies on human psychology to manipulate an audience.

Confirmation bias: People, especially investors, can fall victim to confirmation bias, where they seek out and interpret information in a way that confirms their pre-existing beliefs or hopes.

The power of a positive narrative: A convincing, positive, and simple story about rapid growth or success is often more compelling and easier to sell than a complex, realistic forecast.

5.7 The appellant in this case presented a lofty picture of financial projection of the company before its potential investor - M/s. Cogent E-Services Pvt. Ltd. It is clear that the company was never in a serious business mode. Within 3-4 years of the issue of shares, the company fell flat and stopped all sort of activity from 2019-20 onwards. One of the very significant point to note is that salary payment for the 1st two years i.e. FY-2015-16 and 2016-17 itself was about Rs.1.90 crore and since 2017-18 it was nil indicating that the share capital raised was taken off by employees (though names of such employees not available in the audited accounts for those 2 years) who after only two years left the company.

5.8 The relevant portion of the share valuation report is reproduced here:

"4. Date of the Valuation Report

The date of the calculation report for this assignment is 01st January 2015

5. Company Description

REFIRAL SOLUTIONS PRIVATE LIMITED is in the business of MARKETING AND PROVIDING REFERENCES THROUGH NETWORKING, ELECTRONIC MEANS, SOCIAL NETWORKING, INTERNET, VIRAL MARKETING THROUGH SOCIAL NETWORKING WEBSITES AND OTHER CHANNELS.

6. Valuation standards and best practices

The fair value has been estimated In accordance with the business valuation practice standards issues by the ICAI (Institute of Chartered Accountants of India) referred to as CAS-1 (Corporate Affairs Standards)

CAS 1 issues by ICAI defines the term 'standard of value' as under:

"the identification of the type of value being utilized in a specific engagement; for example, fair market value (FMV), fair value, investment value". Considering the purpose of valuation, the 'standard of value' for the estimation of the FMV of a 100% equity stake on a standalone controlling marketable interest basis on the valuation date is 'Fair Market Value'

The term fair Market Value is defined as under:

"the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts".

7. Valuation Approaches and Methods

The valuation process has been applied to develop a well-supported estimate of a defined value based on consideration of available and relevant information. For estimating fair market value of unquoted equity shares, three generally accepted valuation approaches are considered namely asset or cost, market and income. The selection and application of one or more of these generally accepted approaches depends upon the purpose of valuation, subject transaction and the quality and quantity of information available for analysis.

Considering the purpose of valuation and based on the available information, we have used DCF (Discounted Cash Flow) method of Income approach for estimating the value of equity stake.

The factors considered in our analysis Inter-alia included:

The nature and historical background of the company.

Financial and economic conditions affecting the business and its industry.

Historical financial results.

Trends and outlook of the industry

8. Valuation Analysis

A valuation of a business, a business interest is performed 'as of a specific date. This date generally, serves as a critical cut-off point, as the valuer considers what was known or foreseeable at this date. It is a settled principle in valuation that market conditions and evidence of values must reflect those available as on the valuation date. Accordingly, we reviewed the historical performance of the company and information available in public domain about the industry.

9. Computation of Fair Market Value

Income Approach - Discounted Cash Flow Method

DCF is a method within the income approach whereby the present value of future expected net cash flows is calculated using a discount rate. The two key components in DCF model are future expected cash flows and discount rate. The change in value is positively related to the cash flows and negatively related to the discount rate. The value of operating assets under DCF method is determined as under

STEP I

Estimating of FCFF (Free Cash Flow to the Firm)

STEP II

Development of a discount rate or required rate of return consistent with FCFF

STEP III

Discounting of the explicit projection period FCFF

STEP IV

Estimation of the terminal value

STEP V

Summing up the present value of the explicit projection period FCFF and the terminal value

In order to determine value of the firm (i.e. value of operating assets and non-operating assets) value of non-operating asset, if any, as of the valuation date is added to the value of operating assets determined in STEP V above. Further, Interest bearing liabilities are

subtracted from the value of the firm in order to derive the value of equity."

The description as above has been picked up from valuation report already available in public domain. The activity of the appellant company has been stated in a raw and abstract manner in Para-5. There is no discussion as to the exact nature of activity or services provided by them. There is no discussion as to who are the customers or clients. The entire report contains some definitions, approaches and methods as described in ICAI guidelines towards Corporate Affairs Standard (CAS). There is no discussion as to how the functioning of the appellant company are linked or relates to such definitions, methods and approaches. Estimation of anything should be realistic and have some basis. There is no discussion in the entire report as to what is the basis of arriving at future revenue and profits. There is no discussion about the financial condition of any other company in the same line of business and the comparison of such financial position with that of the appellant company.

5.9 Parliament has enacted the legislation in the form of section 56(2)(viib) with some intent and purpose. A law is meant to be a serious, structured, and deliberate effort to serve a specific purpose, such as protecting rights or regulating behaviour. All legislation is enacted with specific aims, whether to regulate, authorize, sanction, or provide a public good. If the appellant is not held guilty of overvaluing its shares on some false projections which in no way have even a penny of reality, then the entire intent and purpose of this legislation will be badly defeated and reduce the law just as in paper. The share valuation is therefore rejected as being false, fabricated and based on unrealistic facts and figures.

5.10 Hence valuation of shares as on the date of issue of the shares are determined as prescribed in Rule 11UA(2)(a) of I.T. Rules (prevalent during the relevant year):

Fair market value of unquoted equity share is $(A - L) \times PV/PE$

Where A represents book value of assets as per balance sheet and reduced by certain amounts mentioned therein

L represents book value of liabilities as per balance sheet but not including certain amounts mentioned therein

PV represents paid up value of each share

PE represents paid up value of share capital

The audited financial statements from FY-2015-16 were obtained from appellant by issue of notice. The company came into existence on 17.09.2014 and 3332 equity shares were decided to be allotted to only one prospective investor i.e. M/s. Cogent E-Services Pvt. Ltd. by board meeting resolution dated 09.02.2015. Although the position of assets and liabilities as on the date of allotment of shares i.e. 15.02.2014 is not available, but the same can be roughly estimated on the basis of audited balance sheet as on 31.03.2015. The said balance sheet indicates acceptance of Rs.29,98,800/- from the above investor and a loss of Rs.21,61,883/- transferred from profit & loss account to reserves and surplus. The net increase after bringing in the share capital attributable to the shares issued to the new investor and loss in business is therefore (+) 8,36,917/-. While determining the FMV of shares as on the date of issue to new investor, this amount is therefore reduced from the value of assets as on 31.03.2014. On this basis, the calculation for FMV is as under:

$$A = 21,17,018 - 8,36,917 = 12,80,101$$

$$L = 11,80,101$$

$$PV = 10$$

$$PE = 1,00,000$$

$$\text{Hence, FMV of each equity share as on 15.02.2015} = (12,80,101 - 11,80,101) \times 10/1,00,000 = 10$$

Hence any value above Rs.10 will be taxable as per section 56(2)(viib) of the Act. The appellant issued 3332 shares @ 900/- per share. So 3332 × 890 = 29,65,480/- is to be considered as income from other sources u/s 56(2)(viib) of the Act. The AO had added an amount of Rs.30,98,800/- in the assessment order. Addition to the extent of Rs.29,65,480/- is confirmed and balance Rs.1,33,320/- is directed to be deleted. These grounds of appeal are therefore partly allowed.

In result, the appeal is partly allowed."

4. Learned departmental representative vehemently argues in support of the above extracted discussion that the assessee's alleged projections in the relevant previous year have been rightly held as to be not justifiable as per the corresponding development(s) in assessment year 2019-20 onwards. He strongly supports the impugned addition made in both the lower proceedings in very terms therefore.

5. I have given my thoughtful consideration to the assessee's and the Revenue's foregoing vehement rival stands. Suffice to say, it is made clear that there is dispute *per se* regarding the assessee's valuation report submitted as per provisions of the Companies Act as prescribed in Rule 11UA of the Income Tax Rules which could not have been summarily rejected in the learned lower appellate discussion going by PCIT Vs. Cinestaan Entertainment (P.) Ltd. (2021) 433 ITR 82 (Delhi). I accordingly see no reason to sustain the impugned addition which is hereby deleted in very terms.

6. This assessee's appeal is allowed.

Order Pronounced in the Open Court on 20/01/2026.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Dated: 20/01/2026

Subodh Kumar, Sr. PS