

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 2605/KOL/2025
(Assessment Year: 2015-16)**

**Brajbhumi Nirmaan Private
Limited**
Block BN-5, Office 607, Sector V,
Salt Lake, Kolkata-700091,
Sech Bhawan, S.O. Salt Lake,
North 24 Paraganas,
West Bengal

Vs.

ITO Ward, 2(1)
Aaykar Bhawan, P-7,
Chowringhee Square,
Kolkata-700069, West Bengal

(Appellant)

(Respondent)

PAN No. AACCH3906K

Assessee by : Shri Akkal Dudhwewala, AR
Revenue by : Shri Madanappa Raghuvver, DR

Date of hearing: 19.01.2026
Date of pronouncement: 10.02.2026

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 15.10.2025 for the AY 2015-16.

2. The only issue raised in the various grounds of appeal is against the confirmation of addition of Rs.10,21,00,000/- by the Id. CIT (A) as made by the Id. AO u/s 56(2)(viib) of the Act in respect of excess share premium received over the fair market value of shares issued during the year.

3. The facts in brief are that, the assessee filed the return of income on 09.09.2015 at a loss of Rs.27,52,219/-. Thereafter, the case of the assessee was selected for scrutiny on the issue of large share premium and notice u/s 143(2) and 142(1) of the Income-tax Act, 1961 (the Act) along with questionnaire were issued and duly served upon the assessee. The Id. AO noted from the balance sheet that, the assessee had issued 10,00,000 shares having face value of Rs. 10/- each at a premium of Rs. 179.40/per share, thereby raising share capital of Rs.18,94,00,000. The assessee had furnished the details of the share subscriber, M/s Zuari Infraworld India Ltd along with the report obtained in terms of Rule 11UA in respect of valuation of the shares. It is seen that the Id. AO had issued notice u/s 133(6) to the subscriber company, M/s Zuari Infraworld India Ltd and their reply was found to be in order. The Id. AO however was not agreeable to the DCF valuation analysis prepared by the Chartered Accountant and hence issued a show cause letter dated 03.11.2017 to the assessee. The Id. AO, in the show cause, inter alia observed that the projections and assumptions made in the DCF analysis was not supported by any valid documentary evidences and that the valuer had set out several caveats and limitations in his valuation report. The Id. AO therefore proposed to reject the DCF valuation and instead adopted the NAV of Rs.87.30/per share as the FMV of shares, thereby proposing to add to the income of the assessee the excess premium u/s 56(2)(viib) of the Act. After considering the submissions and evidences furnished by the assessee, the Id. AO was of the view that, the projections and figures quoted by the valuer in his valuation report was based on assumptions and surmises. The Id. AO inter alia observed that, though according to the report, the assessee had begun the construction in December 2013 and but there was no construction activity or sales discernible from the

financials. The Id. AO was of the view that, nothing had happened and therefore rejected the DCF projections holding it to be fanciful and imaginative. The Id. AO further observed that, the valuation report was prepared on the basis of the inputs provided by the assessee and not on any market research and therefore, such report was not reliable. The Id. AO further asserted that, the assessee was unable to adduce any evidence of ownership or construction or sale of property. Before the Id. AO, the assessee had inter alia contended that, if the NAV method is to be applied, then the immovable property owned by the company along with its subsidiaries ought to be valued at their prevailing fair market value, i.e. stamp duty value. Referring to the details of circle rates of the land parcels owned by it, the assessee showed that the fair market value worked out at Rs. 126.87 crores as against the book value of Rs.33.66 crores. The assessee thus contended that, as per the NAV method, the FMV worked out to Rs.310/share which was higher than the issue price of Rs. 189.40/share. The Id. AO is noted to have rejected this explanation on the premise that the circle rates were not recorded in the books of accounts. For such reasons, the AO rejected the DCF valuation report furnished by the assessee in terms of Rule 11UA and instead adopted the book value of Rs.87.30/share as the FMV for the purposes of Section 56(2)(viib) of the Act. The Id. AO accordingly held that, the assessee had received excess share premium of Rs. 102.10/share [Rs.189.40 (-) Rs.87.30] and accordingly added the excess amount of Rs. 10,21,00,000/- [Rs. 102.10 x 10,00,000 shares] by way of income from other sources u/s 56(2)(viib) of the Act.

4. The Id. CIT (A) confirmed the addition in the appellate proceedings. The Id. CIT(A) is noted to have inter alia called for the details of the relevant information provided by the assessee to the valuer along with

the financials for AYs 2016-17 to 2020-21. He held that, the financial results of the subsequent years did not support the projections made by the valuer and therefore the assessee was unable to substantiate the basis of the valuation report with requisite details and particulars. The Id. CIT(A) accordingly held that, the assessee failed to discharge its onus of furnishing evidences as requisitioned to test the DCF valuation and thus upheld the AO's action of rejecting the same.

5. After hearing the rival submissions and perusing the material placed on record, it is seen that the assessee company was formed to conduct the business of real estate. The assessee company was jointly promoted by three groups, viz. Infinity group, Adventz group and Urban Infra group to undertake the business of development of real estate at Vrindavan, Mathura. From the financials of the assessee, it is revealed that the assessee through its wholly owned subsidiaries had acquired large parcels of land and thereafter the assessee had entered into development agreements with the subsidiaries, pursuant to which, it had obtained development rights over the said land parcels. The details placed in the paper book shows that, the assessee through its subsidiaries had acquired 104.79 acres of land and subsequently the assessee had sought amalgamation of the land parcels and prepared a term sheet plan titled 'Mayavan'. It is observed that, the project plan was sanctioned by the local authorities on 25.04.2014 and thereafter the assessee had obtained construction loan from Axis Bank on 26.03.2015. It is seen from the sanction letter that the Phase 1 of the project was expected to have total outlay of Rs.175.77 crores and the expected completion of the project was 31.03.2019. The construction loan is found to have been secured by creating a charge on land parcels to the extent of 7.87 acres. In order to meet the working capital requirements, the existing promoter viz. Adventz group through its

company M/s ZuariInfraworld India Ltd had infused fresh capital to the tune of Rs. 18.94 crores. It is observed that 10,00,000 shares having face value of Rs. 10/-each were issued at premium of Rs. 179.40 per share. The assessee supported the premium received on issuance of shares with the DCF Valuation Report obtained in terms of Rule 11UA of the Income-tax Act, 1962, copy of which is found at Pages 46 to 71 of the Paper Book. The issue in dispute before us is whether the premium charged at the time of issuance of shares was excessive or not. It is the Revenue's case that the DCF valuation report obtained by the assessee was unreliable, and thus substituted the same with the NAV method working out the FMV at Rs. 87.30 / share, and thereby adding the excess premium of Rs.102.10/share u/s 56(2)(viib) of the Act.

5.1. Before examining the veracity of the valuation report, it is relevant to first take note of the provisions contained in Section 56(2)(viib) and the relevant Rule 11UA which reads as under:

Section 56(2)(viib):

"56 (2) In particular, and without prejudice to the generality of the provisions of subsection (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

....

(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person, 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:

....

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;"

Rule 11UA(2):

"Rule 11UA(2) :Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1): –

(A) the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the 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 shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (e), at the option of the assessee , where the consideration received by the assessee is from a resident ; and under sub-clauses (a) to (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, in the following manner:—

(a)the fair market value of unquoted equity shares = (A-L) × [PV/PE], where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

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

5.2. A perusal of the above reveals that the section stipulates that, where any company, in which public is not substantially interested, receives any consideration, upon issuance of shares, which exceeds the face value, then the difference between the fair market value and the consideration received upon issuance, is to be brought to tax by way of 'Income from Other Sources' u/s 56(2)(viib) of the Act. It is observed that, Section 56(2)(viib) is an anti-abuse provision brought in by the Finance Act, 2012 to deter the generation of unaccounted monies and tax the excessive premium received by closely held companies on issuance of shares to dubious entities. The legislative intent behind introduction of Section 56(2)(viib) was to check the menace of routing of unaccounted monies in garb of excess premium and not to hinder genuine and bonafide transactions undertaken for commercial considerations. In the present case, the assessee is found to have been promoted by three reputed real estate groups and one of existing promoter through their well-reputed company had infused fresh capital into the assessee company out of its accounted resources. Neither of the lower authorities has doubted the source of the investment and as such they cannot hinder the genuine and bonafide business transactions. The case of the assessee is supported by the following decisions wherein it has been held that Section 56(2)(viib) cannot be applied to shares issued to the existing promoter group for genuine commercial considerations.

(i) Rugby Regency (P.) Ltd. [2024] 160 taxmann.com 1056 (Delhi - Trib.)

(ii) ITO vs. Solitaire BTN Solar (P.) Ltd. [2024] 164 taxmann.com 170 (Delhi - Trib.)

(iii) *FIS Payment Solutions and Services India (P.) Ltd. v. UOI* [2024] 166 taxmann.com 354 (Delhi- HC)

(iv) *IPSAA Holdings (P.) Ltd. v. ACIT*[2025] 176 taxmann.com 823 (Delhi - Trib.)

5.3. Therefore, in the absence of any allegation of involvement of unaccounted monies, we find that, in the given facts, the invocation of section 56(2)(viib) of the Act in relation to issuance of shares to existing promoters was against the legislative intent of the provision.

5.4. We also note that the provisions of Section 56(2)(viib) would come into play where the issue price is higher than the FMV and therefore, where the issue price is equal to or lower, the said provision will have no implication. The valuation method is set out in sub-clauses (i) and (ii) of Explanation to Section 56(2)(viib) read along with Rule 11UA(2)(A)(a) & (b) of IT Rules, 1962. It is well settled law that the assessee enjoys the discretion to adopt any of the valuation methodology as prescribed, for which, it has to obtain any valuation report from an independent Chartered Accountant. Though the Revenue is at liberty to scrutinize the valuation report and determine the valuation by himself or from an independent valuer, but he cannot change the method of valuation which has been obtained by the assessee. In this regard, we refer to the decision of the Hon'ble Bombay High Court in the case of *Vodafone M Pessa vs. PCIT* (256 taxman 240), wherein it was held as under:

"9. We note that, the Commissioner of Income-Tax in the impugned order dated 23rd 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."

5.5. In the present case, it is observed that, the assessee had adopted the DCF valuation method as set out in Rule 11UA(2)(A)(b) as prescribed in the context of Section 56(2)(viib) of the Act. In view of the above judgment therefore, we agree with the lower authorities to the extent that they were empowered to examine the veracity of the FMV determined in accordance with the method adopted by the assessee, viz. DCF method and point out any defect or correction therein so as to arrive at the correct FMV u/s 56(2)(viib) of the Act, but at the same time, we are of the view that they could not substitute the DCF Method with any alternate methodology. We have also considered the arguments raised by the assessee rebutting the objections made by the lower authorities to the correctness of the DCF valuation report. We find that the lower authorities had observed that the DCF valuation exercise was based on fanciful assumptions and not backed by any evidences nor supported by actual results. To this, the Id. AR has rightly pointed out that, the DCF method inherently requires the working to be based on assumptions and the valuation exercise is not an exact science but is required to be carried out in an informed and reasonable manner. The DCF method is a reflection of the potential value of business which assists the investor to ascertain the viability of his investment. What could be relevant at that point of time may not be relevant later on or in hindsight and therefore, only because the projections done at that time did not materialize and the actual results were different, cannot be the sole reason to reject the DCF valuation. The coordinate Bench of Jaipur in the case of *Rameshwaram Strong*

Glass (P.) Ltd. v. ITO [2018] 172 ITD 571(Jaipur – Trib.) has observed as under:

"4.5.2 Before examining the fairness or reasonableness of valuation report submitted by the assessee, we have to bear in mind that the DCF Method, and is essentially based on the projections (estimations) only and hence these projection cannot be compared with the actuals 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 figures 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."

5.6. The coordinate Bench of Bangalore in the case of *Innoviti Payment Solutions Pvt. Ltd. Vs ITO[2019] 102taxmann.com59 (Bangalore – Trib.)* has observed as follows:

"14. In nutshell , our conclusions are as under:-

(1)

(2) For scrutinizing the valuation report, the facts and data available on the date of valuation only has to be considered and actual result of future cannot be a basis to decide about reliability of the projections."

5.7. The coordinate Bench of Delhi in the case of *India Today Online (P.) Ltd. v. ITO [2019] 104 taxmann.com 385 (Delhi - Trib.)* held the following:

"31.DCF method is a recognised method where future projections of various factors by applying hindsight view and it cannot be matched with actual performance, and what Ld. CIT (A) is trying to do is to evaluate from the actual to show that the Company was running into losses, therefore, DCF is not correct. Valuation under DCF is not exact science and can never be done with arithmetic precision, hence the valuation by a Valuer has to be accepted unless, specific discrepancy in the figures and factors taken are found. Then AO or CIT(A) may refer to the a Valuer to examine the same."

5.8. In view of the above decisions, we are of the view that the projected figures considered at the time of valuation cannot be compared with the actual results to question the reliability of the projections and therefore, this particular line of reasoning set out by

the lower authorities is held to be unjustified. According to us, what is required to be examined is whether the projections indicated in the report was reasonable or not, at that material time. From the contemporaneous documents available on record, it is not in dispute that, the assessee had undertaken a real estate project titled 'Mayavan' at Vrindavan, Mathura. The sanction letter from the bank along with the approval obtained from the local authorities shows that the project was required to be implemented in phases and that, out of the land area of 104.79 crores, the assessee had commenced construction in relation to Phase 1 which was spread over 37.84 acres. Having regard to these facts, it is not unreasonable for the valuer to have estimated and forecasted the project life at 6 to 7 years. It is further observed that, the valuer had taken note of the FAR sanctioned by the local authorities, basis which the valuer had estimated the total saleable area. It was also brought to our notice that, the expected revenues estimated over the years was on the basis of the circle rates as prevailing then, obtained from the website of the State Government. The Id. AR also showed us that, the estimated cost was based on the construction cost already incurred and having regard to the average per square feet cost generally incurred in this industry. Our attention was thereafter invited to the estimation of weighted average cost of capital at 20.94%. It is observed that, the cost of debt of 9 to 10% estimated by the valuer was commensurate with the interest rate charged by Axis bank and the cost of equity of 26% was shown to be in line with the business dynamics of the real estate industry. The Id. AR has rightly submitted that a higher WACC resulted in lower enterprise value and therefore the WACC of 20.94% was anything but excessive. Having taken note of these details brought to our notice by the Id. AR, we are of the view that, the DCF projections

made by the valuer was based on valid assumptions and contemporaneous details available on record and the same cannot be said to be fanciful or arbitrary.

5.9. We observe that lower authorities have laid much emphasis on the actual results reported by the assessee in the subsequent years. It was observed by them that, no revenues or costs were recognized in the financials and therefore according to them, no actual construction activity had taken place, which contradicted the assumptions made in the DCF valuation report. The Id. AR, on the other hand, brought to our notice that, the assessee was following the completed contract method and therefore, the recognition of revenues and costs were postponed until the project was actually completed. He invited our attention to Note Nos. 16, 21 and 26 of the Financial Statements and showed that, the assessee had reported Construction WIP of Rs. 51.06 crores and Advance from customers towards villas / plots stood at Rs. 11.58 crores in the year ended 31st March, 2015. The Id. AR further explained that, due to external unavoidable circumstances, including delay in obtaining approval /clearances, COVID scenario, market dynamics etc., the project got delayed and therefore, no revenues / costs were recognized during the period reviewed by the lower authorities. He further showed us that, post COVID, the project has since been halted due to commercial reasons. Having considered these facts and circumstances, we find that the assessee had demonstrated that construction had commenced, advances were received from customers at the time when valuation was undertaken and therefore only because later on the project got delayed / postponed cannot be the reason to disbelieve the DCF projections. Secondly, we find that the lower authorities had erred in observing that, the assessee was unable to adduce any evidence

regarding construction or sale of property and were also unjustified in rejecting the DCF valuation on the mistaken premise that no construction activity had actually taken place.

5.10. The Id. DR before us had relied upon the observations of the Id. AO doubting the veracity of the report sans any external market research. We are unable to countenance this proposition on the given facts before us, because the assessee was a private limited company whose data is not available in public domain and having regard to its nature of business, the valuer had rightly relied on the details provided by the assessee, viz. land area, sanction plan, prevailing circle rate, cost of debt, project life, etc. We also note that, the assessee had also shown to the lower authorities that, even if the net asset value is to be considered, then also, the premium charged upon issuance of shares could not be alleged to be excessive. The Id. AR took us through the details of land parcels held by the assessee along with its subsidiaries and the corresponding circle rates as prevailing FY 2014-15. It is seen that the prevailing circle value of land parcels alone in FY 2014-15 was Rs.126.87 crores, which is higher than the enterprise value of Rs. 105.74 crores estimated under the DCF method. We thus find that, if the NAV method is applied in the true sense, by adopting the market value of the land parcels as prevailing during FY 2014-15, then the NAV per share would work out to Rs. 310/-, which is higher than the issue price of Rs. 189.40/share. It is observed that, though this contemporaneous fact was brought on record by the assessee before both the lower authorities, none of them dealt with the same, and rather ignored it by arbitrarily taking the book value of land of Rs.33.66 crores as the fair market value for estimating the FMV of the shares. Such action of the lower authorities is held to be unjustified.

5.11. Considering the above facts and circumstances and ratio laid down in the above decisions, we are of the view that, (a) the AO could not have substituted the DCF method adopted by the assessee, (b) the DCF valuation is found to be based on valid assumptions and the FMV of Rs.189.40/share computed therein was based on fair and reasonable parameters, (c) even otherwise as per the NAV method, the FMV works out to Rs.310/share as opposed to Rs.87.30/share worked out by the AO. We thus hold that, the share premium charged by the assessee was not excessive and hence, by setting aside the appellate order, direct the AO to delete the addition of Rs.10,21,00,000/- made u/s 56(2)(viib) of the Act.

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

Order pronounced in the open court on 10.02.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 10.02.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata