

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.4993/Del/2019
[Assessment Year : 2015-16]**

ITO Ward-8(1) New Delhi	vs	M/s Ecosphere Agrofarms Pvt. Ltd., 921A, 9 th Floor, Devika Tower, Nehru Place, New Delhi-110019. PAN-AACCE9290R
APPELLANT		RESPONDENT
Revenue by		Ms. Indu Bala Saini, Sr.DR
Assessee by		Shri V.K.Aggarwal, AR
Date of Hearing		21.01.2026
Date of Pronouncement		10.04.2026

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by Revenue against the order dated 26.03.2019 by Ld. Commissioner of Income Tax (A)-3, New Delhi [“Ld. CIT(A)”] in Appeal No.3/10187/2017-18 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 18.12.2017 passed u/s 143(3) of the Act pertaining to Assessment Year 2015-16.

2. Brief facts of the case are that assessee has filed return of income on 26.09.2015, declaring NIL income. The case was selected for limited scrutiny for the reason large share premium receipt.

Notice u/s 142(1) of the Act alongwith questionnaires were issued from time to time. The assessee has issued shares at a premium of INR 990/- per share having face value of INR 10/- per share. The assessee filed certificate from Chartered Accountant who had valued the share at INR 1007/- per share followed DCF method. The AO observed that assessee has failed to file documentary evidences in support of the basis of projected data supply to the valuer for valuation of shares and thus, invoked the provisions of section 56(2)(viib) of the Act. Thereafter, AO has treated the entire share premium as income of the assessee u/s 56(2)(viib) of the Act and made the addition thereof.

3. Against the said order, the assessee preferred an appeal before Ld. CIT(A) who vide order dated 26.03.2019 deleted the addition made by AO.

4. Aggrieved by the order of Ld. CIT(A), Revenue is in appeal before the Tribunal by taking Grounds of appeal as per appeal Memo.

5. The solitary Ground of appeal of the Revenue is regarding deletion of addition of INR 4,36,59,000/- made u/s 56(2)(viib) of the Act.

6. Ld. Sr. DR for the Revenue vehemently supported the order of the AO and submits that assessee has failed to provide details based

on which the projections were made by the valuer under DCF method for computing the value of the shares issued by the assessee. Ld. Sr. DR further submits that since the AO has doubted the methodology adopted for computing the prices of the shares as per DCF method therefore, Ld. CIT(A) is not correct in deleting the additions by holding that the AO cannot tinkered into the method adopted by the assessee. Ld. Sr. DR submits that the AO has not doubted the method whether DCF method should be applied or NAV method should be applied. Rather the AO has asked the assessee to provide the basis and details for projection of the data under DCF method therefore, she prayed for restoration of the additions made by AO.

7. On the other hand, Ld. AR for the assessee submits that assessee has followed DCF method for valuation of preferential shares issued during the year. It is further submitted that the assessee has issued preferential shares therefore, provision of section 56(2)(viib) of the Act are not applicable which are applicable for the issue of equity shares. Ld. AR submits that assessee has filed valuation report obtained from Chartered Accountant before the lower authorities which is available in the Paper Book. He further drew our attention to the feasibility report which is filed before the AO available at pages 52 to 326 of PB, based on which valuer has made the valuation of the shares issued by the assessee. Ld.AR submits that merely for the reason that the valuer in the Valuation Report observed that this Report is based on the information provided by the assessee, it was rejected by the AO. Ld.AR submits that it is

upon the assessee to choose any of the methods provided under Rule 11UA of the Income Tax Rules, 1962 (“the Rules”) for computing the fair market value of the shares which cannot be discarded by AO. Once the assessee has exercised its option of choosing one of the method, AO cannot change such method. He, therefore, submits that Ld. CIT(A) has rightly deleted the additions made which order deserves to be uphold. He prayed accordingly.

8. Heard the contentions of both the parties and perused the material available on record. In the instant case, assessee has issued 44,000 Compulsory Convertible Preferential Shares (“CCPS”) at a face value of INR 10/- each at a premium of INR 990/- per share. The assessee has obtained the report from Chartered Accountant which was authorized in terms of Rule 11UA(2) of the Rules who had valued the shares by adopting DCF method. Once the assessee has taken DCF method as most appropriate method for valuation of shares, the AO has no power to change the said method. The main allegation of the AO is that assessee has not provided the details based on which the valuation was done. It is observed that the assessee vide letter dated 11.12.2017 placed at page 39 to 51 of PB, has provided all the details to the AO which were necessary for the purpose of the valuation of shares. Therefore, it cannot be said that assessee has failed to provide the requisite details. It is further observed that the AO has not pointed out any error in the Valuation Report submitted by the assessee. Ld. CIT(A) after considering these facts, has deleted the additions by making following observations:-

4.3. *“I have considered the facts of the case and the submission made by the AR. It has been contended that the Compulsorily Convertible Preference Shares (CCPS) were issued to the holding company of the appellant ie. M/s Breezfresh Dairy and Agrofarms Pvt. Ltd. Each CCPS had a face value of Rs. 10 and premium of Rs. 990/- per CCPS and each CCPS was convertible into 100 equity shares of Rs. 10 each. In view of this, the AR has submitted that the shares after conversion would be issued at face value of Rs. 10 each and therefore, effectively no premium was being charged in respect of the shares. The AR has contended that there is no doubt about the genuineness of the transactions. It is further submitted that the statute provides option to the appellant to value the shares by using DCF method or based on the net worth as per Rule 11UA(2) and the appellant has duly got the shares valued from the valuer by using DCF method. It is contended that it is beyond the jurisdiction of the AO to insist upon following one particular method. The AR has submitted that there is no rationale in comparing the projected and actual figures. The AR has relied upon various judgments in support of his claim. The AR was asked to justify the reasonableness of the projections based on which the shares/ CCPS have been valued by following DCF method. The AR submitted that the complete valuation report was filed before the AO along with the feasibility report prepared by professionals and the same has not been considered by the AO, The AR has submitted all these details along with the details of the project planned by the appellant. The main arguments of the appellant to defend the valuation of CCPS as per the valuation report are as under:*

- i. The valuer has considered various factors including the feasibility report while doing the valuation;*
- ii. The valuer has considered conservative selling price of milk which is taken at Rs. 25 per ltr. at the farm gate and Rs. 35 per ltr. in the local market as against the current prevailing price of cow milk at Rs. 45 per ltr;*
- iii. The valuer has considered conservative yield of the cows as against the optimum average yield;*
- iv. In fact, there is no premium charged because each equity share will be issued at face value of Rs. 10 only.*

4.3.1. *On perusal of the arguments of the appellant, it is observed that the appellant had an option of two methods to value the fair market value of the shares and it has chosen to value the shares as per the DCF method for which valuation report was submitted. After considering the various factors adopted by the valuer to value each CCPS as discussed above, I am of the view that it cannot be said that there was no reasonable basis for the projections made in the*

valuation report. In this regard, reference is also made to the decision of Hon'ble ITAT, Jaipur Bench in case of M/s. Rameshwaram Strong Glass (P) Ltd. V/s ITO, in which it has been held that when the law has specifically provided a method of valuation and the assessee exercised an option by choosing a particular method, changing the method or adopting a different method would be beyond the powers of the revenue authorities. It is further held that the DCF Method is essentially based on the projections (estimations) and hence these projections cannot be compared with the actuals to expect the same figures as were projected.

4.3.2. Further, reference is made to the decision of Hon'ble Delhi ITAT in the case of Stryton Exim India P.Ltd, vs ITO, in ITA No. 5982/Del/2018 in which vide order dated 23 October, 2018, it has been held that-

"The learned assessing officer as well as the learned commissioner appeals rejected the valuation report submitted by the assessee for the sole reason that projections shown by the assessee in the project report of the cash flow did not materialize in subsequent years. It was also the reason for rejection of these reports as the chartered accountant who valued the shares of the company has given a proper disclaimer while certifying the valuation. On careful consideration of the reasons given by the learned assessing officer the assessee has clearly stated that the valuation report is properly dated and further it may happen that the projected cash flow shown by the assessee at the time of the valuation did not materialize in subsequent year due to different business reasons such as delay in the project. The assessee has shown that there is a delay in the project and subsequently the LLC company has started earning the sum. If that be the case that if there is a variation in the discounted cash flow shown by the assessee with actual result in subsequent years, then the basic fallacy will arise that discounted future cash flow should be equal to the actual cash flow of the assessee. According to us it will result in absurdity. However it can also not be subscribed to the view that if there are wide variations in subsequent years with actual results compared with the projected cash flow submitted by the assessee, then in such situation if the projected cash floor is accepted then provisions of section 56(2)(vib) will become redundant. Therefore an objective evaluation of the valuation report submitted by the assessee deserves to be carried out. Further, the valuation report is prepared by the professionals such as chartered accountant, or merchant bankers for which their respective professional bodies have laid down specific

disclosure requirements. Those disclosure requirements are binding on them. Therefore merely because they have given certain caveats and disclaimers, those factors should not sway the mind of the learned assessing officers or commissioner appeals."

- 4.4. *In view of the above facts and the legal position, I am of the view that the AO cannot change the method of valuation of shares adopted by the assessee and the projected figures cannot be compared blindly with the actuals to state that the valuation report is not correct. However, the AO is competent and within his powers to look into the fact whether the valuation report is fair and reasonable. In the present case, the AO has not found any specific error in the valuation report. The valuer is bound to give disclaimers as the valuer cannot be expected to determine the exact value as the same is not feasible. As already discussed above, the valuer has adopted reasonable projections than the optimum figures for generation of revenue and the valuation of shares done by the valuer has got reasonable basis. Moreover, as argued by the AR, there is no premium charged because each equity share will be issued at face value of Rs. 10 only on conversion of each CCPS into 100 equity shares. In view of these facts, the addition made by the AO is deleted and the grounds of appeal are allowed."*

9. The Co-ordinate Bench of the Tribunal in the case of **M/s. Breezefresh Dairy & Agro Farms Pvt. Ltd. vs ITO in ITA No.2151/Del/2019 [Assessment Year 2015-16]** dated **27.10.2023** has deleted the additions made u/s 56(2)(viib) of the Act by making following observations:-

19. *"The Assessing Officer disregarded the valuation report mainly on the ground that the valuation of equity shares was based on the projections of the revenue which was not there. The assessee has applied DCF Method for the purpose of valuation of shares and has relied on the valuation report of an expert valuer.*
20. *There is a settled law on the issue that as per section 56(2)(viib) of the Act r.w.r 11UA of the ITAT Rules, that as per Sec. 56(2)(viib) of the Act read with Rule-11 UA of the Income tax Rules, 1962, every assessee has an option to do valuation of shares and determine its Fair Market Value either by DCF method or NAV method, and that the Assessing Officer cannot examine or*

substitute his own value in place of the value so determined. The ITAT Delhi Bench in the case Cinestaan Entertainment (P) Ltd 106 taxmann.com 300 has held as under:

"32. 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 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 Rockland Diagnostics Services Pvt. Ltd. vs. ITO 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 10 and thus, the value which is relevant today may not be relevant after certain period of time. ...

33. 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."

5.1 Similarly, it has been held that where a valuation report is to be rejected, the authority should pinpoint any specific inaccuracies or short comings in the DCF valuation report. In

the Rockland Diagnostics Services Pvt. Ltd. vs. ITO case of Intelligrape Software Pvt. Ltd., vs. ITO in ITA No.3925-Del-2018 (Delhi Trib.), it has been held as under:

"23. The AO was not able to pinpoint any specific inaccuracies or short comings in the DCF valuation report of the Chartered Accountant/Valuer other than stating that year-wise results as projected are not matching with the actual results declared in the final accounts. Before the Id. CIT (A), reasons for variation between projected and actuals were duly explained. The Ld. CIT (A) has accepted such explanation but rejected the DCF valuation report as submitted by the assessee. Accordingly, in the absence of any defect in the valuation of shares arrived by the 11 assessee on the basis of DCF method, impugned addition as made on the basis of net asset value method is liable to be deleted. The rejection is unjustified as the valuation report is required under Rule 11UA of The Income Tax rules is based on the future aspects of the company at the time of issuing the shares, it may vary from the actual figures depending on the market condition at the present point of the time.

24. Thus, keeping in view the entire facts of the case, the reports of the valuer, the comparison of the actual and projected revenues, provisions of Section 56(2)(viib) and keeping in view the order of Coordinate Bench of ITAT in the case of Cinestaan Entertainment Pvt. Ltd. 177 ITD 809 Rockland Diagnostics Services Pvt. Ltd. Vs. ITO wherein it has been held that the Assessing Officer cannot substitute his own value in place of the value determined either on DC" method or NAV method, the appeal of the assessee is hereby allowed."

5.2 Thus, it has been held by the Co-ordinate Bench of the Tribunal that in absence of any specific inaccuracies or short comings in the DCF valuation report other than stating that year- wise results as projected are not matching with the actual results declared in the final accounts, the Assessing Officer cannot substitute his own value in place of the value determined either on DCF method or NAV method. Therefore, we are of the considered opinion that the Lower Authorities were not justified in rejecting the valuation report as submitted by the assessee in this regard."

21. Considering the facts of the case in totality, in light of the decision of the coordinate benches [supra], we set aside the findings of

the ld. CIT(A) and direct the Assessing Officer to delete the addition of Rs. 12,42,35,700/-.”

10. Considering the overall facts and circumstances of the case and all the discussions made herein above and further looking to the facts that Revenue has failed to controvert the findings of Ld. CIT(A). Therefore, we find no error in the order of Ld. CIT(A) which is hereby, upheld. Accordingly, Grounds of appeal raised by the Revenue are hereby, rejected.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 10.04.2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:- 10.04.2026

Amit Kumar, Sr.P.S

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