IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.1538/DEL/2022
Assessment Year 2017-18

DCIT Circle-4(2) New Delhi	Vs.	**Continental Corrugators Pvt. Ltd.** 188-189, Gali No.2, Krishna Colony Sector-25 Faridabad
TAN/PAN: AABCC1509J		
(Appellant)		(Respondent)

Appellant by:	Ms. Rano Jain, Adv. Ms. Mansi Jain, CA		
Respondent by:	Shri Vivek Kumar Upadhyay, Sr.DR		
Date of hearing:	11	01	2024
Date of pronouncement:	08	02	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 29.04.2022 arising from the assessment order dated 05.11.2019 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

2. In the captioned appeal, the assessee seeks to challenge the reversal of additions of Rs.2,60,00,000/- on account of share premium received by the assessee-company in excess of Fair Market Value (FMV) under Section 56(2)(viib) of the Act.

3. Briefly stated, the assessee-company is engaged in the business of corrugated boxes. In the course of scrutiny assessment for Assessment Year 2017-18 in question, the Assessing Officer observed that the assessee has issued Rs.10 lakh equity shares of face value Rs.10/- per

share at Rs.36 per share, i.e, at a premium of Rs.26 per share. The shares were subscribed by the directors of the company, namely, Shri Vinod Sachdeva and Shri Nalin Sachdeva in equal portion of 5 lakh shares each. In view of the absence of valuation report of Chartered Accountant in terms of Rule 11UA, the AO invoked the provisions of Section 56(2)(viib) and considered the premium amount of Rs.26 per share to be in excess of Fair Market Value (FMV) of equity shares of the company and consequently the excess consideration received on account of share premium on issue of equity shares were held to be assessable to tax under Section 56(2)(viib) of the Act.

4. Aggrieved, the assessee preferred appeal before the CIT(A). It was submitted before the CIT(A) that the FMV of equity shares are required to be determined in accordance with such method as may be prescribed under Rule 11UA. As per Explanation appended to Section 56(2)(viib) of the Act, the assessee has adopted one of the method prescribed for valuation of unquoted equity share under Rule 11UA(2) of the Rules at the option of the assessee being Net Asset Value Method wherein the FMV is determined by reducing book value of liabilities shown in the balance-sheet from book value of assets shown therein in terms of statutory formula. The assessee has quantified the 'book value' as per the statutory formula prescribed under Rule 11UA(2) of the Rules which stands at Rs.36 per share including premium of Rs.26 per share. The identity, capacity of the allottee and the genuineness of the transaction has not been doubted by the Assessing Officer. On consideration of facts and circumstances, the CIT(A) found force in the plea of the assessee and accepted that deeming provisions of Section 56(2)(viib) is wholly inapplicable in the facts of the present case. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

> *"4.2.1 I have carefully gone through the submission of the Appellant. I have also gone through the records and facts of the case. Assessee has received share capital alongwith premium from its directors Sh Vinod Sachdeva and Sh Nalin Sachdeva. Share capital has been subscribed by two directors @ Rs 36 per share including premium of Rs 26 per share. 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:-

(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 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 or an accountant as per the Discounted Free Cash Flow method.]

Appellant has option of adopting different methods of valuation of share price as prescribed in section 56(2)(viib) as reproduced above. The assessee has determined the valuation of shares as method (a) and rightly exercised it. The certificate under rule 11UA is required only when valuation is done as per Discounted Free Cash flow method. Ao has not rejected the valuation done based on figures of balance sheet which is audited and certified by CA. The method adopted by assessee has been prescribed under the IT Act and upheld by various tribunals as well as

> *high courts as cited by appellant in its submissions. AO cannot reject the valuation done by assessee as per prescribed method arbitrarily. In case AO is not satisfied with the balance sheet figures or method then it has to be rejected scientifically with specific reasons. AO has not doubted the figures anywhere in assessment order. Accordingly the rejection of valuation by AO is not sustainable and addition of Rs 2,60,00,000/- u/s 56(2)(vii)(c) is deleted."*

4.1 The CIT(A) thus reversed the additions made by AO.

5. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

6. The ld. DR relied upon the assessment order and submitted that it was incumbent upon the assessee to corroborate the intrinsic value of equity share issued at premium. In the absence of valuation report which is the basic document for such corroboration, the AO has rightly invoked the deeming provisions of Section 56(2)(viib) of the Act to treat the share premium to be excessive consideration over FMV for the purposes of Section 56(2)(viib) of the Act.

7. The ld. counsel for the assessee, on the other hand, supported the first appellate order and submitted that for the purposes of determining the FMV of unquoted equity shares under Rule 11UA(2)(a) of the Rules, there is no legal requirement of obtaining any valuation report. The valuation report is required only for the purposes of determination of FMV as per Discounted Free Cash Flow (DCF) Method as provided in Rule 11UA(2)(b) of the Rules. The ld. counsel submits that since FMV has been determined on the basis of book value of assets and liabilities, the assessee was not required in law to obtain separate valuation report. The fair market value as per Rule 11UA(2)(a) can be easily vouched from the financial data available in the audited balance-sheet of the assessee-company as placed in the paper book. The ld. counsel thus submitted that CIT(A) has rightly taken cognizance of the factual and legal position and reversed the arbitrary and unjustified additions made by the AO. The ld. counsel thus submitted that no interference with the order of the CIT(A) is called for.

8. We have heard the parties in length and perused the assessment order as well as first appellate order. The document referred to and relied upon has been taken cognizance in terms of Rule 18(6) of the Income Tax [Appellate Tribunal] Rules, 1963. The case laws referred to and relied upon have been taken into account.

8.1 In the case in hand, the solitary question presented for determination is whether the consideration received by the assessee towards premium on issue of equity shares represents the FMV or exceeds the FMV and whether deeming provisions of Section 56(2)(viib) of the Act are attracted in the facts of the case.

8.2 As pointed out on behalf of the assessee, the FMV in the instant case has been determined on the basis of book value of assets and liabilities in tune with Rule 11UA(2)(a) of the Income Tax Rules r.w. Section 56(2)(viib) of the Act.

8.3 As further pointed out, the figures adopted for the purposes of valuation as per book value or NAV method, are corroborated by the audited financial statement filed by the assessee. Besides, there is no requirement in law to furnish valuation report from independent valuer for the purposes of determination of valuation under Rule 11UA(a) of the Rules.

9. We observe that the book value of assets and liabilities adopted for the purposes of NAV method of valuation is in consonance with last audited balance-sheet items as on 31.03.2016 whereas the allotment has been stated to be made in November, 2016 during the Financial Year 2016-17 relevant to Assessment Year 2017-18. The AO misdirected himself in law on seeking valuation report which requirement do not emanate from the law codified in this regard. The phraseology of clause (a) to sub-rule (2) of Rule 11UA read with Explanation (a) to Section 56(2)(viib) do not thrust the requirement of Valuation Report for substantiation of valuation under NAV method.

10. We thus see that the conclusion of facts arrived at by the CIT(A) and the primary facts on which such conclusion is based bears a direct nexus. The CIT(A), in our view, has applied its mind to the relevant consideration while determining the issue. The audited balance-sheet testifies the FMV. We thus see no perceptible reason to deviate from the findings of the CIT(A).

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

Order pronounced in the open Court on 08/02/2024

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: **/02/2024**

Prabhat