

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

**BEFORE: DR. S. SEETHALAKSHMI, JJUDICIAL MEMBER & SHRI
RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER**

**I.T.A. No. 22/Jodh/2024
Assessment Year: 2015-16**

Patel Minerals Pvt. Ltd. A-208, Road No. 11 Mewar Industrial Area Udaipur. [PAN: AAGCP9829H] (Appellant)	Vs.	The ACIT, Circle-1, Udaipur. (Respondent)
Appellant by	Shri Yogesh Pakharna, C.A.	
Respondent by	Shri Arvind Kumar Gehlot, JCIT	
Date of Hearing	24.10.2024	
Date of Pronouncement	02.01.2025	

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals), Jaipur-5 dated 04.01.2024 [for short "CIT(A)"] for the assessment year 2015-16, which in turn arise from the order dated 08.12.2017 passed under section 143(3) of the Income Tax Act,1961 [for short "Act"] by the ACIT, Circle-1, Udaipur [for short AO].

2. In this appeal, the assessee has raised following grounds: -

"1. That Learned CIT(A) has wrongly confirmed addition of Rs. 51,00,000/- of share premium and share capital treating the value of share value at Rs. Nil under section 56. The confirmation of addition is made without following provisions of law. Hence the addition of Rs. 51,00,000/- is bad in law and be deleted.

2. That appellant reserves his right to add or amend grounds of appeal."

3. Brief facts of the case are that the assessee is a Company and had filed its original Return of Income on 03.09.2015 declaring therein total income as NIL by claiming loss of Rs (-)758076/-. The case of the assessee was selected for limited scrutiny and accordingly notice u/s 143(2) dated 13.04.2016 was issued and duly served upon the assessee, fixing the case for hearing on 29.04.2016. A detailed questionnaire u/s 142 been issued to the assessee requesting the assessee to produce certain information / clarifications.

3.1 During the pendency of the assessment proceeding the case was converted into complete scrutiny after approval of Id. Pr.CIT, Udaipur on 05.12.2017. In response to the notices so issued assessee submitted the requisite details, information, documents and clarifications sought for vide notices u/s 143(2) &142(1) as recorded in the order sheet entries made by the Id. AO.

3.2 During the course of assessment it was noticed that assessee was not doing any business activity. Even AR of the assessee in his reply dated 12.07.2017 accepted that the assessee looking for business proposition and area in which it might enter and has no active business was carried out. Thus,

the claim of expenses of Rs 7,58,076/- was without any income / receipt it should have been capitalized. Assessee was asked to furnish explanation in this regard. AR of the assessee submitted that the same explanation that company was actively looking for various business opportunity and incurred routing expenditure i.e. day to day expenses and same was treated the as revenue expenditure.

3.3 Ld. AO did not find reply of the assessee as satisfactory. Thus, again a final show cause was issued on 05.12.2017 to assessee. In compliance AR of the assessee attended on 07.12.17 and vide order sheet entry dated 07.12.17 stated that he has nothing further to say and case may be decided based on reply already submitted. Ld. AO noted that when business was not even started, then all the expenses should have been capitalized. Therefore, expenses claimed for Rs 7,58,076/- claimed during the year was disallowed and added back to the income of assessee.

3.4 Further Id. AO noted that assessee (a company, not being a company in which public are substantially interested) had issued share on premium during the year. Total 1,70,000/- shares were issued at face value of Rs 10 and @ premium of Rs

20 per share at total consideration of Rs 51,00,000/- including premium received for Rs 34,00,000/- during the year. As noted earlier there was no business activity during the year as per submission filed, assessee was asked to justify the premium as per section 56(2)(viib) of the Act and rule 11UA of I.T. Rules. Ld. AR submitted share valuation report which was not as per rule 11UA but valuation of shares was done as per 'Adjusted Net Asset Method and as per 'future earning analysis.

Ld. AO noted that future earning analysis method not allowed in rule 11UA but that rule allow two methods discounted free cash flow method and 'Book value of net asset method. Difference between the Adjusted Net Asset Method' taken by assessee and 'Book value of net asset method' is that as per rule 11UA assessee should have taken book value of asset but assessee has adopted present market value of asset. Ld. AO also noted that no evidence was submitted by assessee to justify PMV (present market value) taken. Therefore, the same was re-calculated as per book value of asset according to rule 11UA, and was considered as Nil. Vide order sheet entry dated 22.11.17 and notice u/s 142(1) dated 05.12.17 assessee was asked to show cause why the a sum of Rs. 51,00,000/- should

not be added back to the total income of the assessee as per sec 56(2)(viib) rw rule 11UA. AR replied vide order sheet entry dated 28.11.17 and again on 07.12.17 that he has nothing further to say in this regard and case may be decided based on reply already submitted. Ld. AO based on that observation added Rs 51,00,000/ as Income of assessee company.

4. Aggrieved, from the said order of assessment, assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee partly allowed the appeal of the assessee by giving following findings on the issue:-

“5.4 Decision

5.4.1 It is seen from the assessment order that the A.O. has made addition by invoking provision u/s. 56(2)(viib) of the I. T. Act r.w.r. 11UA of the I. T. Rules. The facts of the case in brief is that the appellant is a private limited company who during the relevant previous year issued 170000 shares at the face value of Rs.10/- is at a premium of Rs.20/- per share. Accordingly, the appellant received Rs.17,00,000/- as share capital and Rs.34,00,000/- was received as share premium. During the course of assessment proceedings, the A.O. noted that as per the valuation report for valuation of shares submitted by the appellant, the same is as per 'adjusted net asset method' and as per 'future earning analysis' which methods of valuation of shares is not as per rule 11UA of I. T. Rules. The A.O. therefore computed the fair market value of shares at nil and accordingly made addition of Rs.51,00,000/- by invoking provision u/s. 56(2)(viib) of the I. T. Act.

5.4.2 During the course of appellate proceedings, the appellant made written submission reproduced above and also filed copy of share valuation report. It is seen from the share valuation report

dated 05.01.2015 that the fair market value of the shares has been determined under various methods of valuation including discounted cash flow method. However as per explanation given under provision of section 56(2)(viib) of the I. T. Act, the fair market value of the shares shall be the value as may be determined in accordance with rule 11U and 11UA of I. T. Rules. Therefore it is mandatory that the fair market value of the shares for the purpose of section 56(2)(viib) of the I. T. Act is determined as per the method prescribed under rule 110 and 11UA of the I. T. Act only and thus the fair market value of shares determined by any other method is not to be considered.

5.4.3 As per rule 11UA of I. T. Rules the fair market value of unquoted equity shares is equal to $(A-L) \times (PV) / (P \times E)$ Where A Book value of asset in balance sheet...

L= Book value of liabilities.

PE = Total amount of paid up equity shares capital as per balance sheet

PV =Paid up value of such equity shares.

5.4.4 In the instant case, as calculated by the A.O. in the assessment order under para 4, the book value of assets of the company is at Rs.80.54 lakhs (A) and book value of liability as per balance sheet at Rs.85.86 lakhs (B). Therefore the fair market value of unquoted equity shares of appellant company works out to-
 $(Rs.80.54 \text{ lakhs} - Rs.85.86 \text{ lakhs}) \times Rs. 1,00,000 / Rs. 10,000 = Rs. (-) 53.20$ per share

5.4.5 Thus the fair market value of share of the appellant company as per rule 11UA is a negative figure/not worth a penny. However the appellant had issued shares with face value of Rs.10 each with premium @Rs.20 per share aggregating the value of per share @ Rs.30. Therefore the provisions of section 56(2)(viib) of the I. T. Act is clearly applicable to the appellant's case. In the written submission, it is submitted by the appellant that the consideration received of Rs. 17,00,000/- being the face value of equity shares cannot be added u/s. 56(2)(viib) of the I. T. Act. This contention raised by the appellant is not found acceptable. It is clear from provision u/s, 56(2)(viib) of the I. T. Act that where a company receives any consideration for issue of shares that exceeds the face value of the shares, the aggregate consideration received for such shares as exceeds the fair market value of shares is taxable. Thus

in view of provision u/s. 56(2)(viib) of the I. T. Act the aggregate consideration received (face value plus premium received) is to be considered. In the instant case, the face value of shares is at Rs.10 per share and premium charged is @Rs. 20 per share. However as per the method prescribed in rule 11UA for determination of fair market value of the shares, the fair market value of the shares of the appellant company is at a negative figure of Rs. (-) 53.20 per share/nil. Therefore the aggregate consideration received by the appellant i.e. Rs. 51 lakhs (Rs. 17 lakhs plus Rs.34 lakhs) for share issued since exceeds the fair market value of such shares, is required to be brought to tax as income from other source u/s. 56(2)(viib) of the I. T. Act. I am therefore of the considered view that the addition of Rs.51,00,000/- made by the A.O. in the assessment order is justified. The same is therefore confirmed. This ground of appeal raised by the appellant is thus dismissed.

6.1 The third ground of appeal raised by the appellant read as under:

"That learned AO has wrongly levied interest of Rs 5,20,047/- u/s 234B of the Income Tax Act, without following provisions of law, hence interest levied be deleted."

6.2 Decision

6.2.1 This ground of appeal raised by the appellant is consequential in nature, hence need no adjudication.

7. In the result, the appeal filed by the appellant is partly allowed."

5. Feeling dissatisfied from the above order of the Id. CIT(A), the assessee preferred the present appeal on the ground as stated hereinabove. Apropos to the grounds so raised the Id. AR of the assessee relied on the written submission and submitting that the matter may be decided based on the written submission so filed. The contentions raised by the assessee reads as under:-

"Brief Facts

1. Appellant Patel Minerals Pvt Ltd is an company assessee engaged in Ready Mix Concrete (RMC) manufacturing business.
2. Appellant company filed its return of income declaring a loss of Rs 7,58,076/- on 03.09.2015.
3. Aforesaid return was picked up for limited scrutiny to verify share premium, however same was converted into full scrutiny later on.
4. Learned AO completed assessment u/s 143(3) on 08.12.2017 with following addition :

S. No	Particulars	Detail	Amount (in Rs)
1	Total Income as per Return filed		-7,58,076/-
2	Disallowance on account non commencement of business activity treating the same as capital expenditure	7,58,076/-	
3	Addition u/s 56(2)(viib) entire share capital and Share Premium Amount	51,00,000/-	
Total Addition			58,58,076/-
Total Income			51,00,000/-

5. Being aggrieved, appellant filed first appeal before CIT A-1, Udaipur (Raj) which was later on migrated to National Faceless Appeal Centre, and the appeal was decided by confirming following addition :

- a) Addition u/s Sec 56(2)(viib) entire Share Capital and Share Premium amounting to Rs 51,00,000/-.
Total Addition Confirmed - Rs 51,00,000/-

Being aggrieved by these additions, present appeal is filed before honourable ITAT, which has following grounds:

1. That Learned CIT A has wrongly confirmed addition of Rs 51,00,000/- of Share Premium and Share Capital treating the value of Share Value at Rs nil under section 56. The confirmation of addition is made without following provisions of law. Hence the addition of Rs 51,00,000/- is bad in law and be deleted.
2. The appellant reserves his right to add or amend any grounds of appeal.

A. First Ground of Appeal

First Ground of appeal reads as under:

1. "That Learned CIT A has wrongly confirmed addition of Rs 51,00,000/- of Share Premium and Share Capital treating the value of Share Value at Rs nil under section 56. The confirmation of addition is made without following provisions of law. Hence the addition of Rs 51,00,000/- is bad in law and be deleted."

Brief Facts

1. Patel Minerals Private Limited Company is an Private Limited Company incorporated on 07.02.2011 with an object to carry on manufacturing business of various products.

2. Appellant Company put up its Ready Mix Concrete Plant in F Y 2016-17, after exploring various business option.
3. In F Y 2015-16 Appellant Company raised its Equity share capital from Rs 1,00,000/- to Rs 18,00,000/- by issuing 1,70,000 Equity Shares of Rs 10/- each at a premium of Rs 20/-.
4. During Assessment Proceedings Appellant company filed Valuation Report obtained from an Accountants as per requirement of Rule 11UA of the Income Tax Rule. In the said report valuation of Equity Share is carried out on various methods i.e. Fair Market Value, Net Asset Value, Future Earning Method and Discounted Cash Flow method. (*The aforesaid fact has been accepted even by Ld CIT Appeal – Para 5.4.2 Page No 15 of CIT A Order*).
5. Ld AO has made addition on the basis that Fair Market Value Method and Future Earning Method is not prescribed method under Rule 11UA and in view of negative net worth, entire consideration received by the company i.e. Rs 51,00,000/- including face value and share premium is liable to be addition u/s 56(2)(viib) of the Income Tax Act 1961.
6. Ld CIT A confirmed addition with following observation (Page 15 to 17 of CIT A Order) :
 - 5.4.1 It is seen from the assessment order that the A.O. has made addition by invoking provision u/s. 56(2)(viib) of the I.T. Act r.w.r.11UA of the I.T.Rules. The facts of the case in brief is that the appellant is a private limited company who during the relevant previous year issued 170000 shares at the face value of Rs.10/- is at a premium of Rs.20/- per share. Accordingly, the appellant received Rs.17,00,000/- as share capital and Rs.34,00,000/- was received as share premium. During the course of assessment proceedings, the A.O. noted that as per the valuation report for valuation of shares submitted by the appellant, the same is as per 'adjusted net asset method' and as per 'future earning analysis' which methods of valuation of shares is not as per rule 11UA of I.T. Rules. The A.O. therefore computed the fair market value of shares at nil and accordingly made addition of Rs.51,00,000/- by invoking provision u/s.56(2)(viib) of the I.T. Act.
- 5.4.2 During the course of appellate proceedings, the appellant made written submission reproduced above and also filed copy of share valuation report. It is seen from the share valuation report dated 05.01.2015 that the fair market value of the shares has been determined under various methods of valuation including discounted cash flow method. However as per explanation given under provision of section 56(2)(viib) of the I.T. Act, the fair market value of the shares shall be the value as may be determined in accordance with rule 11U and 11UA of I. T. Rules. Therefore it is mandatory that the fair market value of the shares for the purpose of section 56(2)(viib) of the I.T. Act is dete

determined as per the method prescribed under rule 11U and 11UA of the I. T. Act only and thus the fair market value of shares determined by any other method is not to be considered.

5.4.3 As per rule 11UA of I.T. Act, the fair market value of unquoted equity shares is equal to $(A-L) \times (PV/P \times E)$

$P \times E$)

Where A=Book value of asset in the Balance Sheet

L = Book value of Liabilities

PE= Total Value of Paid Up Equity Share Capital

PV = Paid up value of such equity shares.

5.4.4 In the instant case, as calculated by the A.O. in the assessment order under para 4, the book value of assets of the company is at Rs.80.54 lakhs (A) and book value of liability as per balance sheet at Rs.85.86 lakhs (B). Therefore the fair market value of unquoted equity shares of appellant company works out to—

$(Rs.80.54 \text{ lakhs} - Rs.85.86 \text{ lakhs}) \times Rs.1,00,000 / Rs.10,000 = Rs.(-) 53.20 \text{ per share}$

5.4.5 Thus the fair market value of share of the appellant company as per rule 11UA is a negative figure/not worth a penny. However the appellant had issued shares with face value of Rs.10 each with [premium@Rs.20](#) per share aggregating the value of per share @ Rs.30. Therefore the provisions of section 56(2) (viib) of the I.T. Act is clearly applicable to the appellant's case. In the written submission, it is submitted by the appellant that the consideration received of Rs. 17,00,000/- being the face value of equity shares cannot be added u/s.56(2) (viib) of the I. T. Act. This contention raised by the appellant is not found acceptable. It is clear from provision u/s.56(2) (viib) of the I.T. Act that where a company receives any consideration for issue of shares that exceeds the face value of the shares, the aggregate consideration received for such shares as exceeds the fair market value of shares is taxable. Thus in view of provision u/s. 56(2) (viib) of the I.T. Act the aggregate consideration received (face value plus premium received) is to be considered. In the instant case, the face value of shares is at Rs.10 per share and premium charged is @Rs. 20 per share. However as per the method prescribed in rule 11UA for determination of fair market value of the shares, the fair market value of the shares of the appellant company is at a negative figure of Rs. (-) 53.20 per share/nil. Therefore the aggregate consideration received by the appellant i.e. Rs.51 lakhs (Rs.17 lakhs plus Rs.34 lakhs) for share issued since exceeds the fair market value of such shares, is required to be brought to tax as income from other source

u/s.56(2)(viib) of the I.T. Act. I am the refore of the considered view that the addition of Rs.51,00,000/- made by the A.O. in the assessment order is justified. The same is therefore confirmed. This ground of appeal raised by the appelliant is thus dismissed.

7. It is respectfully submitted that provision of Sec 56(2)(viib) read with Rule 11UA are dealing with the case when any private limited company choose to issue its share capital more than face value of equity shares. The company has a liberty to determine value of shares after obtaining report for an accountant or merchant banker and the accepted method of valuation is Discounted Cash Flow Method.
8. It is respectfully submitted that in this case it is undisputed facts that :
 - a) Company has issued Equity share at a price of Rs 30/- per share while face value per share is Rs 10/- only.
 - b) Company has obtained fair market value report as per requirement of Rule 11UA and submitted the copy of it before Ld AO and Ld CIT A (A copy of which is also enclosed Paper Book Page No from to).
 - c) Ld AO made addition considering the fact the Net Asset Value of company is in Negative , ignoring Valuation on the Future Earning Method and Discounted Cash Flow Method.
 - d) Ld CIT A also confirmed the same adopting the logic adopted by the AO.
 - e) Ld CIT A as well as AO has not rejected or pointed out any specific defects in valuation made on the basis of Discounted Cash Flow Method
9. It is respectfully that in order to comply and satisfy requirements of Section 56(2)(viib) and Rule 11UA company is required to obtain valuation report from Accountant and valuation adopted by it should be as per Discounted cash flow method. Company has obtained valuation report from Accountant Saruparia Somani & Co - Chartered Accountants and as per them valuation of Shares as DCF method came to Rs 30/- per share, which the company has accepted.
10. It is respectfully submitted that honourable ITAT Jodhpur Bench in case of Idana Pet Industries Pvt Ltd vs ACIT reported at 227 TTJ 0887 (Jd held as under :

“Brief fact of the case is that the assessee-company incorporated under the Companies Act, 1956. In impugned assessment year, the assessee allotted share@ 100 per share (Rs. 10/- + Rs.90/-) to the director and the son of director. The assessee was assessed u/s 143(3) and addition was confirmed for contravening section 56(2)(viib) r.w. Rule 11 UA of Income Tax Rule 1962 (here in after Rule). The difference of amount of share premium with the NAV, calculated by the Id. AO was added back with the total

income of the assessee. During hearing, the assessee submitted the valuation of shares under “Discounted Free Cash Flow Method” (DCF Method), and the valuation of equity share was amount to Rs.158.93 per share which is far above the NAV of the allotted share. For Assessment Year 2015-16, the addition was confirmed for 15 lacs for undisclosed sundry creditors and Rs.4,72,088/- for payment of expenses made to relative u/s 40A(2)(b) of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A).

We heard the rival submission and considered the documents available in the record. The assessee has taken the DCF method for valuation of share which is followed by the Rule 11UA the Rule. However, there is no dispute between the parties that Rule 11UA(1) is not applicable on the facts and circumstances of the present case which is a provision of general nature whereas Rule 11UA(2) is a specific provision providing for the valuation of the unquoted equity shares. After going through the relevant Section and the Rules, in our opinion, the matter of valuation of unquoted equity shares, has been completely left to the discretion of the assessee. It is his option whether to choose NAV Method (Book Value) under clause (a) or to choose DCF Method under clause (b) and the Id. AO cannot adopt a method of his own choice.

The Id. DR has relied on Agro Portfolio (P.) Ltd(supra). But the order is not coming under factual matrix, Here the data supplied was incorrect and correctness of DCF method was in question. In assessee’s case there is no question about the correctness of data.

8.1 We relied on the order of the ITAT Mumbai Bench in the case of Crown Chemicals, (supra), ITAT, Delhi Bench in the case of Hometrail Buildtech (P.) Ltd and ITAT Jaipur Bench in the case of NabhMultitrade Pvt. Ltd., (supra). We find that the assessee valued the share amount to Rs.158/- per share and allotted share is Rs.100 which is much less than the NAV which is not contravening of section 56(2) of the Act.

11. It is respectfully submitted ITAT Jaipur Bench in case of *VINAYAKA MICRONS (INDIA) PRIVATE LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX reported at (2021) 63 CCH 0294 Jaipur Trib deal with similar issue as under :*

Brief Facts

The assessee has filed its return of income for the assessment year 2016-17 declaring total income of Rs. 49.98 Lakhs. It was submitted that during the year under consideration, the assessee

company had issued 59,500 equity shares of face value of Rs. 100/- at a premium of Rs. 100/-. The Fair Market Value of the shares was Rs. 250/- as per Discounted Free Cash Flow method, which was opted by the assessee as provided in Rule 11UA(2)(b) of the Income Tax Rules, 1962. The Valuation Report was obtained by the assessee from a Chartered Accountant in practice as prescribed in the Rules existing at that time. However the assessee company issued shares @ Rs. 200/- only i.e. less than the Fair Market Value thus determined. The case of the assessee was selected for scrutiny for verification of issue of share premium. The assessee filed valuation report and relevant documents alongwith detailed submission regarding selection of option of Discounted Free Cash Flow method for valuation of shares at the time of scrutiny assessment which is available on the record of the A.O. After detailed verification, returned income of the assessee was accepted without making any addition / disallowances.

Thereafter, a notice u/s 263 notice was received by the assessee from the Id PCIT, Udaipur stating that the report required for this purpose should be from the FCA i.e. the fellow member of the ICAI whereas the report in question was obtained from an associate member of the ICAI. As this point was ignored by the A.O. at the time of assessment, it was proposed to modify / enhance / cancel the assessment.

4. In response, the assessee submitted another report obtained from a certified Merchant Banker as prescribed in Rule 11UA(2)(b) of the Income Tax Rules, 1962 to the Ld. PCIT during the course of revisionary proceedings and as per the valuation report, fair market value of shares of the company as at 31.03.2016 was Rs. 215/- The Id PCIT however set- aside/ cancelled the assessment and restored the matter back to the file of AO with the director to pass fresh assessment order.

We have heard the rival contentions and perused the material available on record. The issue under consideration relates to fair market value of the shares and receipts of consideration on issue of shares over and above the fair market value invoking applicability of section 56(2)(viib) of the Act. During the course of assessment proceedings, the assessee submitted report from an accountant who has determined the fair market value of shares at Rs 250.17 per share where as the assessee has issued shares of face value of Rs 100 at a premium of Rs 100, thus at a value lower than the fair market value. During the course of revisionary proceedings, the Id PCIT pointed out that the valuation report has been obtained from an associate member of ICAI as against fellow member of ICAI as prescribed under Rule 11UA(2). The

assessee thereafter obtained and submitted a report from a merchant banker who is equally qualified to issue such valuation report under Rule 11UA(2) and who has determined the fair market value of the shares at Rs 219.50 per shares which is still higher the value at which the shares were issued by the assessee company. Thus, even where the report of the merchant banker is considered, the provisions of section 56(2)(viib) continues to remain inapplicable. Further, there is no adverse finding recorded by the Id PCIT and no dispute which has been raised regarding the discounted cash flow method of valuation and the methodology adopted in both the valuation reports. Though there is a variation in valuation so determined in two reports on account of certain underlying assumption regarding illiquidity ratio, as highlighted by the Id A/R, there can always be a different of opinion among the technical experts, but the necessary corollary thereof doesn't necessarily mean that the valuation so determined doesn't stand on sound foundation in terms of data and methodology and the fair market value and issue of shares is not supported by the valuation report. Therefore, we agree with the contention advanced by the Id A/R that even where there is a technical breach in terms of obtaining and submitting the valuation report from an associate member of ICAI as against fellow member of ICAI; and even taking into consideration report of the merchant banker, the position will remain the same and the provisions of section 56(2)(viib) continues to remain inapplicable

12. It is respectfully submitted that Honouable ITAT Jaipur Bench also dealt with similar issue in following cases and held that Ld AO is bound to accept the fair market valuation done by accountant or merchant banker by and large :
 - a) *ANNU AGROTECH PRIVATE LIMITED vs. PRINCIPAL COMMISSIONER OF INCOME TAX reported at (2021) 63 CCH 0387 Jaipur Trib*
 - b) *NABH MULTITRADE PVT. LTD. vs. INCOME TAX OFFCIER reported at (2020) 60 CCH 0191 Jaipur Trib*
 - c) *RAMESHWARAM STRONG GLASS (P) LTD. vs. INCOME TAX OFFICER Reported at (2018) 53 CCH 0407 Jaipur Trib*

13. It is respectfully submitted that besides these decision of this Bench we are also relying on following decisions of various judicial authorities :
 - a) *PRINCIPAL COMMISSIONER OF INCOME TAX vs. SURANA METACAST (INDIA) (P) LTD. Reported at (2023) 7 NYPCTR 869 (Guj)*

- b) BALGOPAL COLD STORAGEES (P) LTD. vs. INCOME TAX OFFICER reported at 2023) 37 NYPTTJ 1395 (Del)
- c) DEEP JYOTI WAX TRADERS (P) LTD. vs. INCOME TAX OFFICER reported at (2023) 37 NYPTTJ 1462 (Kol)
- d) PRL DEVELOPERS (P) LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX reported at (2024) 38 NYPTTJ 932 (Mumbai)
- e) PRINCIPAL COMMISSIONER OF INCOME TAX vs. I.A. HYDRO ENERGY (P) LTD reported at (2024) 339 CTR (HP) 375

In view of aforesaid factual position and judicial precedents , we request honourable bench to delete the entire addition of Rs 51,00,000/- and oblige.”

6. To support the contentions raised in the written submission the Id. AR of the assessee has relied upon the following evidences/ records / judicial decisions :-

S. No.	Particulars	From	To
1.	Written submission	1	15
2.	Valuation report	16	44
3.	Idana Pet Industries P. Ltd. vs. ITO ITAT Jodhpur	45	52
4.	Vinayaka Microns (India) Pvt. Ltd. vs. Pr. CIT ITAT Jaipur	53	58
5.	Annu Agrotech Private Limited vs. Principal Commissioner of Income Tax ITAT Jaipur	59	86

7. Per contra, Id. DR relied upon the orders of the lower authorities and raised the similar contention as recorded in the orders of the lower authorities and submitted that the orders made are reasoned order made in accordance with the provision of law.

8. We have heard both the parties and perused the materials available on record. The apple of discord in this case is that whether the addition of Rs. 51,00,000/- made by the Id. AO and sustained by the Id. CIT(A) made as per the provision of section 56 of the Act is correct or not.

8.1 The brief facts related to the solitary issue raised in this appeal are that the assessee (a company, not being a company in which public are substantially interested) had issued share on premium during the year. Total 1,70,000/- shares were issued at face value of Rs 10 and @ premium of Rs 20 per share at total consideration of Rs 51,00,000/- including premium received for Rs 34,00,000/- during the year.

As there was no business activity during the year as per submission filed, assessee was asked to justify the premium as per section 56(2)(viib) of the Act and rule 11UA of I.T. Rules. Ld. AR submitted share valuation report which was not as per rule 11UA but valuation of shares was done as per 'Adjusted Net Asset Method and as per 'future earning analysis.

Ld. AO noted that future earning analysis method not allowed in rule 11UA but that rule allow two methods discounted free cash flow method and 'Book value of net asset method.

Difference between the Adjusted Net Asset Method' taken by assessee and 'Book value of net asset method' is that as per rule 11UA assessee should have taken book value of asset but assessee has adopted present market value of asset. Ld. AO also noted that no evidence was submitted by assessee to justify PMV(present market value) taken. Therefore, the same was re-calculated as per book value of asset according to rule 11UA, and was considered as Nil. Vide order sheet entry dated 22.11.17 and notice u/s 142(1) dated 05.12.17 assessee was asked to show cause why the a sum of Rs. 51,00,000/- should not be added back to the total income of the assessee as per sec 56(2)(viib) rw rule 11UA. AR replied vide order sheet entry dated 28.11.17 and again on 07.12.17 that he has nothing further to say in this regard and case may be decided based on reply already submitted. Ld. AO based on that observation added Rs 51,00,000/ as Income of assessee company.

8.2 Aggrieved from that observation of the Id. AO, assessee preferred the appeal before the Id. CIT(A) who also held that the aggregate consideration received by the appellant-assessee i.e. Rs. 51 lakhs (Rs. 17 lakhs plus Rs.34 lakhs) for share issued since exceeds the fair market value of such shares, is required

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

XX XX XX
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Determination of fair market value.[Relevant Rules]

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,—

(a)	valuation of jewellery,—
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XX XX XX
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(b)	valuation of archaeological collections, drawings, paintings, sculptures or any work of art,—
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XX XX XX

(c)	valuation of shares and securities,—
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(a)	the fair market value of quoted shares and securities shall be determined in the following manner, namely,—
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X

¹[(b)

the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

XX XX XX XX

(c)

the fair market value of unquoted shares

and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.]

8.4 We have gone through the provision of the Act and relevant rules which prescribed that fair market value can be determined for the unquoted shares which are not listed shall be estimated to be price it would fetch if sold in the open market on valuation date and for that assessee may obtained a report of the Merchant Banker or an accountant in respect of such valuation. Having gone through the provision of and relevant rule we note that during Assessment Proceedings Appellant- assessee company filed Valuation Report obtained from an Accountants as per requirement of Rule 11UA of the Income Tax Rule. In the said report valuation of Equity Share is carried out on various methods i.e. Fair Market Value, Net Asset Value, Future Earning Method and Discounted Cash Flow method. (*The aforesaid fact has been accepted even by Ld CIT Appeal – Para 5.4.2 Page No 15 of CIT A Order*). Ld AO has made addition on the basis that Fair Market Value Method and Future Earning Method is not prescribed method

under Rule 11UA and in view of negative net worth, entire consideration received by the company i.e. Rs 51,00,000/- including face value and share premium is liable to be addition u/s 56(2)(viib) of the Income Tax Act 1961. Ld. CIT(A) did not discuss as to why the report of an accountant placed on record which is based on the relevant rule for valuation of shares is not considered and he has simply confirmed the view of the assessing officer. Before us Id. AR supported that valuation done was as prescribed by the rule and that report of the independent accountant submitted by the assessee was not doubted or challenged on any of the aspect. The assessee has discharged his onus by submitting the relevant report in support of the fair market value adopted by the assessee. The bench noted that assessee-appellant having placed on record the report of the accountant dated 05.01.2015 that the fair market value of the share shall be determined under various methods of valuation including discounted cash flow method. However as per explanation given under provision of section 56(2)(viib) of the Act, the fair market value of the shares shall be the value as may be determined in accordance with rule 11Uand 11UA of I. T. Rules. Therefore it is mandatory that the fair market value of the shares for the purpose of section 56(2)(viib) of the Act is determined as per the method

prescribed under rule 11U and 11UA of the I. T. Act only and thus the fair market value of shares determined by any other method is not to be considered. We get strength of our view by the decision of the co-ordinate bench in ITA no. 320/Jodh/2023 Idana Pet Industries P. Ltd. Vs. ITO/ACIT where in the co-ordinate bench held as under:

8. We heard the rival submission and considered the documents available in the record. The assessee has taken the DCF method for valuation of share which is followed by the Rule 11UA the Rule. However, there is no dispute between the parties that Rule 11UA(1) is not applicable on the facts and circumstances of the present case which is a provision of general nature whereas Rule 11UA(2) is a specific provision providing for the valuation of the unquoted equity shares. After going through the relevant Section and the Rules, in our opinion, the matter of valuation of unquoted equity shares, has been completely left to the discretion of the assessee. It is his option whether to choose NAV Method (Book Value) under clause (a) or to choose DCF Method under clause (b) and the Id. AO cannot adopt a method of his own choice. The Id. DR has relied on Agro Portfolio (P.) Ltd(supra). But the order is not coming under factual matrix, Here the data supplied was incorrect and correctness of DCF method was in question. In assessee's case there is no question about the correctness of data.

8.1 We relied on the order of the ITAT Mumbai Bench in the case of Crown Chemicals, (supra), ITAT, Delhi Bench in the case of Hometrail Buildtech (P.) Ltd and ITAT Jaipur Bench in the case of Nabh Multitrade Pvt. Ltd., (supra). We find that the assessee valued the share amount to Rs.158/- per share and allotted share is Rs.100 which is much less than the NAV which is not contravening of section 56(2) of the Act. Further, all the investment in equity shares are accumulated from the directors and son of director. So, the addition in related to contravening of section 56(2) is not justified. Accordingly, we set aside the appeal order. Accordingly, the ground no. 2 of the assessee is allowed.

On being consistent to the finding so recorded in the case law relied and considering the facts of the case on hand being

similar we do not find any reason to sustain the addition of Rs. 51,00,000/- made by the Id. AO and sustained by the Id. CIT(A) and therefore, we direct the Id. AO to delete the addition so made in the hands of the assessee.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Dated 02/01/2025

*Ganesh Kumar, Sr. P.S

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order