

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1670/Bang/2019
Assessment year : 2015-16

M/s. Signure Technologies Pvt. Ltd., No.18, 2 nd Floor, 80 Feet Road, Koramangala 4 th Block, Bengaluru – 560 034. PAN : AALCS 4781 L	Vs.	The Assistant Commissioner of Income-tax, Circle – 6(1)(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Smt. R. Premi, JCIT (DR)(ITAT), Bengaluru
Date of hearing	:	02.07.2020
Date of Pronouncement	:	03.07.2020

ORDER

Per A. K. GARODIA, AM:

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-1, Bhubaneswar, dated 10.05.2019 for Assessment Year 2015-16. The grounds raised by the assessee are as under:

- The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence probabilities, facts and circumstances of the appellant's case.*
- The learned CIT[A] is not justified in upholding the addition made u/s. 56[2] [viib] of the Act to the extent of Rs. 30,99,600/- in respect of the equity and preference shares allotted to residents at a premium of Rs. 800 per share on the ground that the consideration received by the appellant for allotment of these shares exceeded the fair market value of the shares under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] ought to have appreciated that the appellant had allotted equity as well as preference shares having a face value of Rs. 100 per share at a premium of Rs. 800 per share which was fixed on the basis of the valuation report of a Chartered Accountant who had adopted the Discounted Cash Flow [DCF] method for valuation of the shares that was recognized under the Rules notified under section 62 of the Companies Act, 2013 as well as the RBI Notification under FEMA for allotments made to non-residents as well as under Rule 11UA[2][c] (before amendment wef 25/04/2018) under the facts and in the circumstances of the appellant's case.*
4. *The learned CIT[A] erred in holding that the valuation report of the Chartered Accountant submitted by the appellant in support of the share value allotted to residents as well as non-residents was an afterthought and allegedly based on the principles of reverse engineering to justify the abnormally high value of shares under the facts and in the circumstances of the appellant's case.*
5. *The learned CIT[A] ought to have appreciated that the aforesaid views taken for rejection of the valuation report of the Chartered Accountant submitted in terms of Rule 11UA[2][c] was purely on conjectures, suspicion and surmise, assumptions and presumptions and hence, there was no justification to reject the valuation report submitted by the appellant under the facts and in the circumstances of the appellant's case.*
6. *The learned CIT[A] is not justified in holding that the fair market value of the shares allotted by the appellant was required to be adopted at NIL as computed by the learned A.O., who had adopted the net asset method prescribed under Rule 11UA(1)(c)(b) (before the substitution wef 01/04/2018) in the assessment order while rejecting the share value determined by the appellant as per the DCF method under the facts and in the circumstances of the appellant's case.*
7. *The learned CIT[A] failed to appreciate that the choice for adoption of the method for valuation of the shares was with*

the appellant as per Rule 11UA[2], which provisions of the Rules were applicable for valuation of shares in cases of fresh allotment of shares by a company as per the provisions of section 56[2][viib] of the Act and hence, the value of shares determined by the learned A.O. at NIL on this erroneous basis ought to be vacated.

8. *Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies itself liable to be charged to interest u/s. 234A, 234-B and 234-D of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.*

2. In the course of hearing, it was submitted by learned AR of the assessee that although various grounds are raised by the assessee but the only issue involved in this appeal is regarding the addition made by the AO of Rs.30,99,600/- under sections 56(2)(viib) of the Income Tax Act, 1961 in respect of equity and preference shares allotted by assessee to various residents at a premium of Rs.800 per share and this is the allegation of the AO that the consideration received by the assessee for allotment of these shares exceeded the fair market value of the shares. He placed reliance on the Tribunal order rendered in the case of M/s. VBHC Value Homes Pvt. Ltd., Vs. ACIT in ITA No. 2541/Bang/2019 dated 12.06.2020 and he submitted a copy of this Tribunal order and pointed out that in para 9 of this Tribunal order, the Tribunal has reproduced the relevant portion of another Tribunal order rendered in the case of Innoviti Payment Solutions Pvt. Ltd. Vs. ITO as reported in 175 ITD 10 (Bang.). He further pointed out that in that earlier order rendered in the case of Innoviti Payment Solutions Pvt. Ltd., Vs. ITO (supra), the Tribunal has followed the judgment of Hon'ble Bombay High Court rendered in the case of Vodafone M-Pesa Ltd. vs. PCIT as reported in 164 DTR 257 and it was held that as per the judgment of Hon'ble Bombay High Court, the AO can 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 but the basis has to be the DCF Method and he cannot change the valuation method. He further pointed out that in the present case, as per page 3 of the Assessment Order, the AO for making the addition in dispute has adopted fair market value of the unquoted shares issued by the assessee at premium whereas the assessee had opted for DCF method and this is noted by the AO on page 4 of the Assessment Order where the AO has discussed about the valuation report submitted by learned AR of the assessee in which the share market value has been determined at Rs.899.62/- per share and it is also noted that in the valuation report, the valuer has adopted discounted cash flow statement which is governed by a formula noted on the same page of the Assessment Order but the AO refused to accept the valuation report. He submitted that as per these two orders of the Tribunal rendered in the case of Innoviti Payment Solutions Pvt. Ltd., Vs. ITO (supra) and VBHC Value Homes Pvt. Ltd., Vs. ACIT (supra) and in turn as per the judgment of Hon'ble Bombay High Court rendered in the case of Vodafone M-Pesa Ltd. vs. PCIT (supra), the AO cannot change the method and therefore, in the present case also, the matter may be restored back to the file of AO for a fresh decision with similar directions as were given by the Tribunal in these two cases. Learned DR of the Revenue supported the orders of authorities below.

3. We have considered the rival submissions. First of all, we reproduce paras 9 and 10 of the Tribunal order cited by learned AR of the assessee having been rendered in the case of VBHC Value Homes Pvt. Ltd., Vs. ACIT (supra). These paras read as under:

“9. We have considered the rival submissions. First of all, we reproduce paras 11 to 14 from the Tribunal order cited by learned AR

of the assessee having been rendered in the case of Innoviti Payment Solutions Pvt. Ltd., Vs. ITO (supra). These paras are as follows:

“11. As per various tribunal orders cited by the learned AR of the assessee, it was held that as per Rule 11UA (2), the assessee can opt for DCF method and if the assessee has so opted for DCF method, the AO cannot discard the same and adopt other method i.e. NAV method of valuing shares. In the case of M/s. Rameshwaram Strong Glass (P) Ltd. vs. The ITO (Supra), the tribunal has reproduced relevant portion of another tribunal order rendered in the case of ITO vs. M/s Universal Polypack (India) Pvt. Ltd. in ITA No. 609/JP/2017 dated 31.01.2018. In this case, the tribunal held that if the assessee has opted for DCF method, the AO cannot challenge the same but the AO is well within his rights to examine the methodology adopted by the assessee and/or underlying assumptions and if he is not satisfied, he can challenge the same and suggest necessary modifications/alterations provided the same are based on sound reasoning and rationale basis. In the same tribunal order, a judgment of Hon'ble Bombay High Court is also taken note of having been rendered in the case of Vodafone M-Pesa Ltd. vs. PCIT as reported in 164 DTR 257. The tribunal has reproduced part of Para 9 of this judgment but we reproduce herein below full Para 9 of this judgment.

"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."

12. As per above Para of this judgment of Hon'ble Bombay High Court, it was held that the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a final determination from an independent valuer to confront the assessee. But the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee. Hence, in our considered opinion, in the present case, when the guidance of Hon'ble Bombay high Court is available, we should follow this judgment of Hon'ble Bombay High Court in preference to various tribunal orders cited by both sides and therefore, we are not required to examine and consider these tribunal orders. Respectfully following this judgment of Hon'ble Bombay High Court, we set aside the order of CIT (A) and restore the matter to AO for a fresh decision in the light of this judgment of Hon'ble Bombay High Court. The AO should scrutinize the valuation report and he should determine a fresh valuation either by himself or by calling a final determination from an independent valuer and confront the same to the assessee. But the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee. In our considered opinion and as per report of research committee of (ICAI) as reproduced above, most critical input of DCF model is the Cash Flow Projections. Hence, the assessee should be asked to establish that such projections by the assessee based on which, the valuation report is prepared by the Chartered accountant is estimated with reasonable certainty by showing that this is a reliable estimate achievable with reasonable certainty on the basis of facts available on the date of valuation and actual result of future cannot be a basis of saying that the estimates of the management are not reasonable and reliable.

13. Before parting, we want to observe that in the present case, past data are available and hence, the same can be used to make a reliable future estimate but in case of a start up where no past data is available, this view of us that the projection should be on the

basis of reliable future estimate should not be insisted upon because in those cases, the projections may be on the basis of expectations and in such cases, it should be shown that such expectations are reasonable after considering various macro and micro economic factors affecting the business.

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

(1) The AO can scrutinize the valuation report and the if the AO is not satisfied with the explanation of the assessee, he has to record the reasons and basis for not accepting the valuation report submitted by the assessee and only thereafter, he can go for own valuation or to obtain the fresh valuation report from an independent valuer and confront the same to the assessee. But the basis has to be DCF method and he cannot change the method of valuation which has been opted by the assessee.

(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.

(3) The primary onus to prove the correctness of the valuation Report is on the assessee as he has special knowledge and he is privy to the facts of the company and only he has opted for this method. Hence, he has to satisfy about the correctness of the projections, Discounting factor and Terminal value etc. with the help of Empirical data or industry norm if any and/or Scientific Data, Scientific Method, scientific study and applicable Guidelines regarding DCF Method of Valuation.”

10. From the paras reproduced above, it is seen that in this case, the Tribunal has followed the judgment of Hon’ble Bombay High Court rendered in the case of Vodafone M-Pesa Ltd., Vs. Pr. CIT (supra). The Tribunal has noted that as per the judgment of Hon’ble Bombay High Court, it was held that AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the assessee but the basis has to be DCF method and he cannot change the method of

valuation which has been opted by the assessee. The Tribunal has followed the judgment of Hon'ble Bombay High Court and disregarded various other Tribunal orders against the assessee which were available at that point of time. In the present case also, we prefer to follow the judgment of Hon'ble Bombay High Court rendered in the case of Vodafone M-Pesa Ltd., Vs. Pr. CIT (supra) in preference to the judgment of the Hon'ble Kerala High Court cited by DR of the Revenue rendered in the case of Sunrise Academy of Medical Specialities (India) (P.) Ltd. Vs. ITO (supra) because this is settled position of law by now that if two views are possible then the view favourable to the assessee should be adopted and with regard to various Tribunal orders cited by learned DR of the Revenue which are against the assessee we hold that because we are following a judgment of Hon'ble Bombay High Court rendered in the case of Vodafone M-Pesa Ltd., Vs. Pr. CIT (supra), these tribunal orders are not relevant. In the case of Innoviti Payment Solutions Pvt. Ltd., Vs. ITO (supra), this judgment of Hon'ble Bombay High Court was followed and the matter was restored back to the file of AO for a fresh decision with a direction that AO should follow DCF method only and he cannot change the method opted by the assessee as has been held by the Hon'ble Bombay High Court. The relevant paras of this Tribunal order are already reproduced above which contain the directions given by the Tribunal to the AO in that case. In the present case also, we decide this issue on similar line and restore the matter back to the file of AO for a fresh decision with similar directions. Accordingly, ground No.3 of the assessee's appeal is allowed for statistical purposes."

4. From the above paras reproduced from the Tribunal order, it is seen that the Tribunal has followed the judgment of Hon'ble Bombay High Court

rendered in the case of Vodafone M-Pesa Ltd. vs. PCIT (supra) and restored the matter back to the file of the AO for a fresh decision with some directions. Respectfully following these two Tribunal orders and in turn the judgment of Hon'ble Bombay High Court rendered in the case of Vodafone M-Pesa Ltd. vs. PCIT (supra), we set aside the order of CIT(A) in the present case also and restore the matter back to the file of AO for a fresh decision with the same directions as were given by the Tribunal in para 10 as reproduced above. Accordingly, these grounds raised by the assessee are allowed for statistical purposes.

5. In the result, assessee's appeal stands allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 03rd July, 2020.

/NS/*

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.