

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

**ITA No.3404(Bang)/2018
(Assessment Year : 2013-14)**

M/s Flutura Business Solutions Pvt.Ltd.,
G-1, Gurupriya Seventh Hill,
BG 12/2/13, 4th Cross, ITI HBCS Layout,
BSK 3rd Stage,
Bengaluru-560 004
PAN No.AABCF9125B

Appellant

Vs

The Income Tax Officer,
Ward-3(1)(1),
Room No.209, 2nd Floor,
BMTc Building, Koramanagala,
Bangalore

Respondent

**Appellant by : Shri C.Ramesh, CA
Revenue by : Shri Priyadharshini Misra, Addl.CIT**

**Date of hearing : 24-06-2020
Date of pronouncement : -06-2020**

ORDER

PER N.V.VASUDEVAN, VICE PRESIDENT:

This appeal by the Assessee is against the order of the Commissioner of Income Tax (Appeals)-3, Bangalore in ITA No.23/CIT(A)-3/Bng/2016-17, dated 13.11.2018 for the A.Y.2013-14. The only issue involved in the appeal is the action of the Assessing Officer in invoking provisions of section 56(2)(viib) of the Income Tax Act, 1961 (Act) and taxing the share premium received during the previous year as income of the Assessee. The Id. CIT(A) partly confirmed the additions and hence this appeal.

2. The Assessee is in the business of providing specialist solutions in the areas of Decisions Science & Analytics. The Assessee filed return of income for the A.Y.2013-14

on 18.09.2013 declaring loss of Rs.14,38,104/-. During the previous year the Assessee had issued equity shares of face value of Rs.10/- each at a premium of Rs.146.17 per share and the premium collected during the previous year is Rs.2,29,31,200/-. The Assessing Officer concluded the assessment taxing the amount of Rs.2,29,31,200/- as income of the company invoking the provisions of section 56(2)(viib) of the Act. The computation of the Assessing Officer is as under: -

	Rs.
Income as per return before setoff	13,55,467
Add: Income from other sources (U/s.56(2)(viib))	2,29,31,200

	2,42,86,667
Less: Unabsorbed depreciation	14,49,282

Revised total income	2,28,37,385

3. The Assessing Officer has brought to tax the share premium of Rs.2,29,31,200/- as income invoking the provisions of section 56(2)(viib) of the Act. As per the provisions of sec.56(2)(viib) of the Act, if a company in which public are not substantially interested, receives in any previous year, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares, if exceeds the fair Market Value of the shares shall be taxed as income from other sources.

4. Aggrieved by the order of the AO the Assessee preferred appeal before the CIT(A). Out of the above share premium received, premium to the extent of Rs.46,79,840/- related to shares issued to non-residents. Considering the position of law that the provisions of section 56(2)(viib) of the act has no application to premium received from non-residents, the Id.CIT(A) deleted additions to this extent. The balance addition of Rs.1,82,51,360/- (Rs.2,29,31,200 – Rs.46,79,840) was confirmed by the CIT(A).

5. The only issue contested in the appeal is the addition to the extent of Rs.1,82,51,360/- confirmed by the Id. CIT(A). The details of the share holders who have been allotted shares and the face value of shares and also premium are as under: -

Allotted to Residents

Name of the share holder	No. of shares	Date of allotment of shares	Face value of shares @ Rs.10/-	Premium received at 146.17 per share
Mr.Krishnan Raman	20,277	28.01.2013	2,02,770	29,63,897
Mr.Thaiparambil Jude Derick Jose	20,277	28.01.2013	2,02,770	29,63,896
Mr.Srikanth Muralidhar	20,277	28.01.2013	2,02,770	29,63,897
M/s.Krishnan Muthukumar & Group	64,033	09.05.2012	6,40,330	93,59,670
Total	1,24,864		12,48,640	1,82,51,360

Allotted to Non-residents

Name of the share holder	No. of shares	Date of allotment of shares	Face value of shares @ Rs.10/-	Premium received at 146.17 per share
Mr.Krishna Hegde – NRI	16,008	09.05.2012	1,60,080	23,39,920
Ms.Priya Karnik – NRI	16,008	09.05.2012	1,60,080	23,39,920
Total	32,016		3,20,160	46,79,840

6. The Assessee had issued shares at Rs.156.17 per share of which the face value is Rs.10/- per share and the premium is Rs.146.17 per share. The question for consideration is as to what is the Fair Market Value of the shares that was issued. The shares issued by the Assessee in respect of which addition is not challenged in this appeal can be classified into two categories. The first category is shares of 64,033 issued to M/s.Muthu Krishnan Muthukumar & Group

Name of the share holder	No. of shares	Face value of shares @ Rs.10/-	Premium collected at 146.17 per share
M /s.Krishnan Muthukumar & Group	64,033	6,40,330	93,59,670

7. As far as valuation 64,033 shares have been allotted to M/s.Krishnan Muthukumar & Group. The plea of the Assessee was that since the valuation is supported by a valuation report as provided under Rule 11UA(2) of the Income Tax

Rules, 1962 (Rules) there was no case for the Assessing Officer to invoke the provisions of section 56(2)(viib) of the Act in regard to this allotment also.

8. The second category of shares issued at a premium relates to issue of 60831 equity shares of the total value of Rs.95 lacs issued to the following persons:

Name of the share holder	No. of shares	Date of allotment of shares	Face value of shares @ Rs.10/-	Premium received at 146.17 per share
Mr.Krishnan Raman	20,277	28.01.2013	2,02,770	29,63,897
Mr.Thaiparambil Jude Derick Jose	20,277	28.01.2013	2,02,770	29,63,896
Mr.Srikanth Muralidhar	20,277	28.01.2013	2,02,770	29,63,897

9. It was the plea of the Assessee that in respect of 60831 equity shares of the value of Rs.95 lacs issued on 28.01.2013 to the aforesaid persons, that the Assessee purchased Intellectual Property Rights (IPR) from the aforesaid three promoters for a consideration of Rs.95 lakhs. In lieu of this purchase, 60,831 equity shares were allotted to the promoters at the value of Rs.156.17 per share (Rs.10/- towards the face value and Rs.146.17 per share towards the premium), the same value at which the shares were allotted to two non-residents and also to M/s.Krishnan Muttukumar & Group.

10. The case of the Assessee was that the valuation of shares at a premium was based on a valuation report issued by M/s.Sharma Goel & Co., Chartered Accountants who valued the shares adopting Discounted Cash Flow (DCF) method. This valuation is as mandated in the provisions of Rule 11UA(2)(b) of the prescribed for the purpose of determining fair market value of shares in the context of allotting shares at a premium and also the treatment of such receipt of premium under the provisions of section 56(2)(viib) of the Act.

11. The Assessing Officer did not accept the explanations of the Assessee and he invoked the provisions of section 56(2)(viib) of the Act for the following finding.

“5. Projection made in the working as per the DCF method is irrational and does not have any relevance to the factual financial results of the assessee company. It construed to be irrational without any basis due to the following reasons:

- a. Growth rate has been taken at 12% year after year without any basis.
- b. WACC has been again taken at 30%. No scientific reason behind such projection.
- c. The projection of sale for the F.Y.2012-13, 2013-14 and 2014-15 are Rs.2,36,54,400/-, 7,88,74,080/- & Rs.14,00,00,000/- respectively. Perusal of the return of income filed by the assessee for the said years reveal to be at Rs.17,67,146/-, Rs.4,50,06,477/- & Rs.4,26,45,399/- respectively. The assessee's contention of projecting the growth rate of 12% is not acceptable.
- d. Similarly the assessee has projected the net profit for F.Y.2012-13, 2013-14 & 2014-15 at Rs.30,94,769/-, Rs.1,29,86,330/- & Rs.2,16,06,523/- respectively. Perusal of the return of income filed by the assessee reveal that the same are (-) 5,40,078/-, (-) 1,25,58,421/- and (-) 2,70,00,184/-. The projected and the actual figure are not matching and but there is a huge difference.
- e. The discrepancy between the projected figures and the actual as per return of income can no way be near the projected figures.

In view of the above, the fundamental basis of arriving at a free cash flow itself is prima facie erroneous. This value has not been compared with the NAV method or any other method leading to a face of creditability. Since the projection made by the assessee is not acceptable effort has been made to value the share as per section 56 r.w.r. 11UA. The same is worked out as under: -

FMV under rule 11UA calculated as on 30.04.2012:

Particulars		Amount in Rs.	
Assets	A		
Fixed Assets		42,46,140	
Bank account		1,69,726	44,15,866
Liabilities	L		
Current liabilities			20,056
Share capital in Rs.	PE		46,16,670
Face value per share	PV		10
Book value per share	(A-L)/PE x PV		9.52

12. It can be seen from the above that the Assessing Officer has disputed the values adopted in the DCF method and with a finding that, the book value per share is Rs.9.52 only as on 30.04.2012.

13. On appeal by the Assessee, the first appellate authority viz., the Id.CIT(A) has held that the Assessing Officer is well within his powers to disturb the valuation of the chartered accountant furnished by the Assessee substantiating the fair market value. The Id. CIT(A) relied on the decision of ITAT, Delhi in the case of Agro Portfolio (P) Ltd Vs Income Tax Officer, Ward-1(4), New Delhi (2018) 94 Taxmann.com 112 (Delhi-Trib), wherein it was held as follows:

“15. In these circumstances, we are unable to accept the contentions of the assessee that in view of the provisions under section 56(2)(viib) of the Act read with Rule 11UA(2) of the Rules the Ld. AO had no jurisdiction to adopt a different method than the one adopted by the assessee, and if for any reason the AO has any doubt recording such valuation report and does not agree with the same is bound to make a reference to the Income tax Department Valuation Officer to determine the fair market value of such capital asset. This is so because unless and until the assessee produces the evidences to substantiate the basis of projections in cash flow and provides reasonable connectivity between those projections in cash flow with the reality evidences by the material, it is not possible even for the Departmental Valuation Officer to conduct any exercise of verification of the acceptability of the value determine by the merchant banker. This is more particularly in view of the long disclaimer appended by the merchant banker at page no. 16 & 17 of the paper book which clearly establishes that no independent enquiry is caused by merchant banker to verify the truth or otherwise the figures furnished by the assessee at least on test basis. The merchant bankers solely relied upon an assumed without independent verification, the truthfulness accuracy and completeness of the information and the financial data provided by the company. A perusal of this long disclaimer clearly shows that the merchant banker did not do anything reflecting their expertise, except mere applying the formula to the data provided by the assessee. We, therefore, are unable to brush aside the contention of the Revenue that the possibility of tailoring the data by applying the reverse engineering to the pre determined conclusions.

16. For all these reasons, we are of the considered opinion that there has not been any possibility of verifying the correctness or otherwise of the data supplied by the assessee to the merchant banker, in the absence of which the correctness of the result of DCF method cannot be verified. This left no option to the AO but to reject the DCF method and to go by NAV method to determine the FMV of the shares. Without such evidence, it serves no purpose even if the matter is referred to the Department's Valuation Officer. We, therefore, do not find any illegality

or irregularity in the approach of conclusions are by the authorities below. While confirming the same, we dismissed the appeal as devoid of merits.”

14. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. Before the Tribunal the Id.counsel for the Assessee submitted that shares totaling 60831 issued to Mr Krishnana Raman, Mr Thaiparambil Jude Derick Jose, and Mr. Srikanth Mudaliar of the total value Rs.95 lakhs has been allotted to promoters of the company on 28.01.2013 in lieu of price/consideration for IPR owned by them which they sold to the Assessee under an agreement dated 28.01.2013. It was therefore, argued that the provisions of section 56(2)(viib) of the Act could not have been invoked, because the premium received was not in cash and such premium and allotment of shares were not against the existing assets of the company but acquiring a new asset.

15. On the above submission, we find that the Id.CIT(A) has held as follows: (in para 4.3 of his order)

“..... As regards the claim of the appellant that the promoters had not paid anything in cash and as such the provisions of section 56(2)(viib) of the act are not applicable, the same is also without any merit as the provisions of this section it is the ‘consideration’ received for issue of shares that exceeds the face value of such shares, which is to be considered and not the payment received only in cash or by cheque etc. So this argument of the appellant is also rejected.....”

16. We are in agreement with the view of the Id.CIT(A), but the value of the IPR should be reckoned for the purpose of valuation of shares which was not done by the AO while adopting NAV method of valuation of shares. We are of the view that share allotment in lieu of purchase consideration payable for an asset acquired is not outside the ambit of the provisions of sec.56(2)(viib) of the Act.

17. With regard to the correctness of DCF method adopted by the Assessee for valuing shares and the procedure to be followed when such method of valuation is not accepted by the AO the Id. counsel for the Assessee has drawn our attention of the ITAT, Bangalore Bench in the case of VBHC Value Homes

Pvt.Ltd., Vs ITO in ITA No.2541/Bang/2019 order dated 12-06-2020, the Tribunal after relying on the decision of the Hon'ble Bombay High Court in the case of Vodafone M-Pesa Ltd Vs Pr.CIT 164 DTR 257 and decision of the ITAT, Bangalore Bench in the case of Innovit Payment Solutions Pvt.Ltd., Vs ITO(2019) 102 Taxmann.com 59 held as follows:

"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 ITA No. 2541/Bang/2019 ITA No. 37/Bang/2020 S. P. Nos. 29 and 59/Bang/2020 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 ITA No. 2541/Bang/2019 ITA No. 37/Bang/2020 S. P. Nos. 29 and 59/Bang/2020 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.

18. The gist of the conclusion is that the law contemplates invoking provisions of section 56(2)(viib) of the Act only in situations where the shares are issued at a premium and at a value higher than the fair market value. The fair market value contemplated in the provisions above is as under: -

(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) Any other value to the satisfaction of the Assessing Officer.....*

The law provides that, the fair market value may be determined with such method as may be prescribed or the fair market value can be determined to the satisfaction of the Assessing Officer. The provision provides an Assessee two choices of adopting either NAV method or DCF method. If the Assessee determines the fair market value in a method as prescribed the Assessing Officer does not have a choice to dispute the justification. The methods of valuation are prescribed in Rule 11UA(2) of the Rules. The provisions of Rule 11UA(2) reads as under:-

*“(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), 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:—***

*the fair market value of unquoted equity shares = $\frac{(A-L)}{(PE)} \times (PV)$,
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;*
- P = total amount of paid up equity share capital as shown in the balance-sheet;*
- P = the paid up value of such equity shares; or
V*
- (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.*

19. The provisions of Rule 11UA(2)(b) of the Rules provides that, the Assessee can adopt the fair market value as per the above two methods and the choice of method is that of the Assessee. 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) and has taken the view that the 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 decision of ITAT, Delhi in the case of Agro Portfolio Ltd. 171 ITD 74 has also been considered by the ITAT, Bangalore in the case of VBHC Value Homes Pvt.Ltd.(supra).

20. The gist of the findings of the Assessing Officer and the Id. CIT(A) on the alleged discrepancies in the valuation report is as under:

1. Growth rate is taken at 12% year after year
2. WACC has been forecasted at 30%
3. The sales have been projected at Rs.2,36,54,400/- for the F.Y.2012-13, Rs.7,88,74,080/- for the F.Y.2013-14 and Rs.14,00,00,000/- for the F.Y.2014-15, whereas the actuals as per the returns filed are Rs.17,67,146/-, Rs.4,50,06,477/- and Rs.4,26,45,399/- only. In view of this, the growth rate of 12% is stated to be not acceptable.
4. The net profit has been projected at Rs.30,94,769/- for the F.Y.2012-13, Rs.1,29,86,330/- for the F.Y.2013-14 and Rs.2,16,06,523/- for the F.Y.2014-15, whereas the actuals as per the returns filed are (-) Rs.5,40,078/-, (-) Rs.1,25,58,421/- and (-) Rs.2,70,00,184/- only.

21. We are of the view that, the Assessing Officer has erred in considering the actuals of revenue and profits declared in the future years as a basis to dispute the projections. At the time of valuing the shares as on 16.04.2012, the actual results of the later years would not be available. What is required for arriving at the fair market value by following the DCF method are the expected and projected revenues. Accordingly the valuation is on the basis of estimates of future income contemplated at the point of time when the valuation was made. It has

been clarified by the Assessee that the product which was being developed by the Assessee has substantial value and the Assessee was able to raise funds to the tune of Rs.50.13 crores from international market

22. In view of the above legal position, we are of view that the issue with regard to valuation has to be decided afresh by the AO on the lines indicated in the decision of ITAT, Bangalore in the case of VBHC Value Homes Pvt.Ltd., Vs ITO (supra) i.e., (i) the 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. (ii) 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. 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. The order of Id.CIT(A) is accordingly set aside for deciding the issue afresh after due opportunity of hearing to the Assessee.

23. In the result, the appeal is allowed for statistical purpose.

Order pronounced on

(B.R.BASKARAN)
ACCOUNTANT MEMBER

(N.V.VASUDEVAN)
VICE PRESIDENT

Place: Bangalore

Dated:

*am

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR
- 6.Guard File

By Order
Asst.Registrar