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**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM and Shri B.R.Baskaran, AM

IT(TP)A No.2310/Bang/2019 : Asst.Year 2015-2016

M/s.GMR Enterprises Pvt. Ltd. (Successor to GMR Holdings P.Ltd) No.25/1 Skip House, Museum Rd. Bangalore – 560 025. **PAN : AACCR1554R.**	v.	The Dy.Commissioner of Income-tax, Central Circle 2(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Yogesh Thar, CA
Respondent by : Sri.Sumer Singh Meena, CIT-DR

Date of Hearing : 25.10.2021		**Date of Pronouncement : 28.10.2021**

O R D E R

Per Bench:-

This appeal at the instance of the assessee is directed against final assessment order dated 14.10.20199 passed u/s 143(3) r.w.s. 144C of the I.T.Act. The relevant assessment year is 2015-2016.

2. The assessee has raised five grounds and various sub grounds. The assessee by its application dated 13.07.2020 has also raised an additional ground. The learned AR during the course of hearing submitted that grounds No.II and III may be adjudicated and the other grounds may be left open. Therefore, grounds No.II and III are reproduced below:-

"***Ground No.II : Disallowance u/s 14A of the Act amounting to Rs.145,02,09,668/-:***

1. On the facts and in the circumstances of the case and in law, the Ld.AO pursuant to the directions of the Hon'ble DRP

erred in sustaining the suo-moto disallowance made by the Appellant in its Return of Income u/s 14A, which, in the course of assessment proceedings, was inter alia sought to be restricted to the extent of dividend income.

2. He failed to appreciate and ought to have held that

i. The assessing officer is duty bound to assess correct income irrespective of the income returned by the assessee; and

ii. The Appellant had made a specific claim during the course of assessment that the suo moto disallowance u/s 14A be restricted to exempt income earned or be computed by considering only investments which have actually yielded exempt income.

3. The Appellant prays that the disallowance u/s 14A of the Act of Rs.145,02,09,668/- be deleted or be appropriately reduced.

<u>Ground No.III : Addition on account of share premium received u/s 56(2)(viib) of Rs.257,87,32,783/-</u>

1. On the facts and in the circumstances of the case and in law, the Ld.AO pursuant to the directions of the Hon'ble DRP, erred in making an addition of Rs.257.87 crores as excess share premium allegedly collected in violation of the provisions of section 56(2)(viib) of the Act on the basis of several factual inconsistencies and infirmities including errors in calculation.

2. He failed to appreciate and ought to have held:

a) The assessee is entitled to value the shares having regard to Explanation (a)(ii) to section 56(2)(viib) which prescribes that the fair market value (FMV) of shares shall be the value as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares;

b) When the legislature provides option for valuation of shares u/s 56(2)(viib) under three different methods, the AO cannot impose a particular method on the assessee;

c) If the AO was not satisfied with the valuation reports furnished by the assessee, he ought to have referred the same to the Valuation Officer as per the provisions of section 142A of the Act; and

d) Section 56(2)(viib) of the Act being an anti-avoidance provision introduced with the intention of deterring generation and use of unaccounted money, would not apply to cases where the issue of shares is to the existing shareholders on proportionate basis or genuine cases.

4. The Appellant prays that the addition made on account of share premium received u/s 56(2)(viib) of the Act be deleted or be appropriately reduced."

We shall adjudicate the above grounds as under:

Ground No.II : Disallowance u/s 14A of the Act amounting to Rs.145,02,09,668/-:

3. The assessee is a private limited company. For the assessment year, the return of income was filed on 28.11.2015 declaring loss of Rs.50,95,80,349 and book profit loss of Rs.45,82,24,981. In the return of income the assessee had made voluntary disallowance u/s 14A of the I.T.Act of Rs.145,02,09,668. The assessee during the relevant assessment year had received exempted income of Rs.27,37,47,187. The assessee filed revised computation of income during the course of assessment proceedings. In the revised computation, the assessee had restricted the disallowance u/s 14A of the I.T.Act to the exempted income earned of Rs.27,37,47,187 for the relevant assessment year. The assessee during the course of assessment proceedings, by placing reliance on various judicial pronouncements (refer para 5.5 of the draft assessment order) submitted that the disallowance u/s 14A of the I.T.Act is to be restricted to the exempted income earned for the relevant assessment year. The Assessing Officer by placing reliance on the CBDT

Circular No.5/2014 dated 11.02.2014, held that even if there is no exempt income earned by the assessee during the year, disallowance u/s 14A can be made. Pursuant to the draft assessment order dated 28.12.2018, the assessee filed objections before the Dispute Resolution Panel (DRP).

3.1 The DRP vide its directions dated 30.09.2019, upheld the disallowance u/s 14A of the I.T.Act amounting to Rs.145,02,09,668. The DRP by placing reliance on the judgment of the Hon'ble Orissa High Court in the case of *Orissa Rural Housing Development Corporation Ltd. v. ACIT* in Writ Petition (C) No.4554 of 2011, held that an error or omission can be rectified only filing a revised return within the prescribed time limit u/s 139(5) of the I.T.Act. Therefore, it was concluded by the DRP that the assessee is not entitled to raise such a claim before the Assessing Officer nor the Assessing Officer is empowered to entertain such claim. Pursuant to the DRP's direction, final assessment order was passed on 14.10.2019.

3.2. Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities and also placed reliance on the order of the Tribunal in assessee's own case for assessment years 2010-2011, 2011-2012 and 2013-2014 in ITA Nos.2145, 2146 & 2148/Bang/2016 (order dated 08.02.2019).

3.3 The learned Departmental Representative, on the other hand, submitted that the assessee had voluntarily made the disallowance u/s 14A of the I.T.Act amounting to Rs.145,02,09,668 and hence, was precluded from changing its stand and seeking the reduced of disallowance u/s 14A of the I.T.Act to Rs.27,37,47,187.

3.4 We have heard rival submissions and perused the material on record. It is settled position of law that disallowance cannot exceed the amount of dividend income earned during the relevant assessment year. In this context, the following judicial pronouncements support the stand of the assessee:-

(i) Joint Investments Pvt. Ltd. v. CIT (59 Taxmann.com 295) – it was held that disallowance u/s 14A of the Act is to be restricted to the tax exempt income.

(ii) Daga Global Chemicals Pvt. Ltd. v. ACIT [2015-ITRV-ITAT-MUM-123) – has held that disallowance u/s 14A r.w.Rule 8D cannot exceed the exempt income.

(iii) M/s.Pinnacle Brocom Pvt. Ltd. v.ACIT (ITA No.6247/M/2012) – has held that disallowance u/s 14A cannot exceed the exempt income.

(iv) DCM Ltd. v. DCIT (ITA No.4567/Del/2012) – held that the disallowance u/s 14A of the Act cannot exceed the exempt income.

3.5 In view of the above settled position, the amount of disallowance u/s 14A of the I.T.Act needs to be restricted to the extent of exempted income earned during the relevant assessment year. As would be evident that in the facts and

circumstances of the present case the amount of exempted income of Rs.27,37,47,187 was earned on investment and consequently the amount of disallowance, if at all, to be made is to be restricted to Rs.27,37,47,187.

3.6 However, in this case, the assessee had made disallowance of Rs.145,02,09,668 voluntarily while filing the return of income. In this context, it is important to refer to the judgment of the Hon'ble Madras High Court in the case of *M/s.Marg Limited v. CIT in Tax Case Appeal Nos.41 to 43 & 220 of 2017 (judgment dated 30.09.2020).* The Hon'ble Madras High Court followed the judgment of the Hon'ble Karnataka High Court in the case of *Pargathi Krishna Gramin Bank v. JCIT[(2018) 95 taxman.com 41 (Kar.)]. I*n the case considered by the Hon'ble Madras High Court, the assessee therein had made voluntarily disallowance u/s 14A of the I.T.Act more than the dividend income earned and the Tribunal confirmed the disallowance made u/s 14A of the I.T.Act. However, the Hon'ble Madras High Court held that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment year. The relevant finding of the Hon'ble Madras High Court reads as follow:-

> *"20. Before parting, we may also note with reference to the Table of disallowance voluntarily made by the Assessee, which is part of the Paper Book before us for the four assessment years in question. In the Table quoted in the beginning of the order, shows that the Assessee himself computed and offered the disallowance beyond the exempted income in the particular year, namely AY 2009-10, as against the dividend income of Rs.41,042/- and the Assessee himself computed disallowance under Rule 8D of the Rules to the extent of Rs.2,38,575/-, which was increased to Rs.98,16,104/- by the Assessing Authority. Similarly, for AY 2012-13, against Nil dividend*

income, the Assessee himself computed disallowance at Rs.8,50,000/-, which was increased to Rs.2,61,96,790/-.

*21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of **Pragati Krishna Gramin Bank**(2018) 95 Taxman.com 41 (Kar.) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under Section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.*

22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under Rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assesee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule 8D of the Income Tax Rules, 1962."

(underlining supplied)

3.7 In view of the above judgment of the Hon'ble Madras High Court in the case of *M/s.Marg Limited v. CIT (supra)*, it is clear that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant

assessment year irrespective whether larger amount was disallowed by the assessee u/s 14A of the I.T.Act while filing the return of income. Therefore, the AO is directed to restrict the disallowance u/s 14A of the I.T.Act to Rs.27,37,47,187.

3.8 In the result, ground No.II raised by the assessee is allowed.

Ground No.III : Addition on account of share premium received u/s 56(2)(viib) of Rs.257,87,32,783/-

4. During the relevant assessment year, the assessee-company had allotted 1,51,740 shares and 46,245 non CCD. The assessee had collected share premium of Rs.258,24,26,100. The face value of each share is Rs.10/-. The assessee stated that these shares have been issued based on the share valuation report obtained from a Chartered Accountant, who has valued the share by adopting "Discount Cash Flow" (DCF) method and also under "Net Asset Value" (NAV) method. During the course of assessment proceedings, the A.O. noticed that the value of shares adopted for the subsidiary company did not match with the Balance Sheet. Therefore, the AR was asked to submit the details of valuation of the shares issued and justify why the share premium received should not be taxed under income from other sources, in view of section 56(2)(viib) of the I.T. Act. The assessee filed written submissions on 13.12.2018 submitting the details and stated that shares issued during the year have been valued under DCF method and Net Asset Value method. The A.O. was of the view that the assessee cannot pick and

chose with regard to valuation of certain assets. It was stated by the A.O. that for certain assets the assessee was valuing at market value and certain others at book value. It is further held by the AO that the assessee could take an asset which has diminished at book value and still seek a premium while it could also avail of the appreciation in other assets. The A.O. rejected the contentions of the assessee. The A.O. valued the share adopting Net Asset Value (NAV). The A.O. made an addition of Rs.257,87,32,783 u/s 56(2)(viib) of the I.T.Act. The relevant findings of the A.O. in this regard reads as follow:-

> *"7.14 As discussed in para 3.4 above the assessee company has to substantiate the share valuation value even under the Prescribed method mentioned under rule 11U and 11UA "to establish bv proof or competent evidence which is "reasonably satisfied by the assessing officer with material or evidence produced objectively substantiates the value. In the present case the assessee company has failed to substantiate the valuation withproper materialistic evidences of cash flow projected by the company in the share valuation report. In the case of M/s Medplus Health Services Pvt Ltd Vs ITO the ITAT Hyderabad (2016 TaxPub(DT) 1326 (Hyd-Trib) :(2016) 158 ITD 0105 :(2016) 048 ITR (Trib) 0396} stated that if*
>
> > *"The assessing officer however, was not convinced with the assessee's contentions and held that the 'market value' mentioned in the rule means "price which it would have fetched if sold in the open market. He observed that the valuation of any property is based on the fact as to what value the property would fetch if sold in the open market. Further if AO is not satisfied with working of the assessee, he ought to have computed the FMV himself in the method prescribed under the rule". Also the Hon'ble ITAT, Delhi Bench "A" in the case of Agro Portfolio (p.) Ltd vs. Income Tax Officer, Ward -1(4}, New Delhi has held that,*
> >
> > *"........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 thecontention of the Revenue that the possibility of tailoring the data by applying the reverse engineering to the pre-determined conclusions ."*

As in the present case also the assessing officer not satisfied with the valuation of the share and further assessing officer calculated as below the share value based on the Net Asset Method second method mention in Income tax rules. The detail calculation/working under Net Asset Value method is as under:

The Fair Market Value as per Rule 11 UA would be: [(A-L) /(PE)] x (PV)

Where, --

A= book value of the assets in the balance-sheet as reduced by any amount of tax paid asdeduction 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 unamortized 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 deductionor 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 inrespect 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;

	Particulars		Amount in Rs.
1.	Value of Asset		14959063000
Less	Tax paid TDS, Adv. Tax	24005000	
Less	Differed expenses		
Add	Refund		
		24005000	
Total (A)			14935058000
	Book value of liabilities		14959063000
Less	Paid up capital in respect of equity shares	430202470	
Less	Reserve and surplus	387906000	
Less	Payment of dividend on preference share and / equity share	0	
Less	Provision and tax	9546000	
Less	Other provisions	83000	
Less	Contingent liabilities	0	
		827737470	
Total (L)			14131325530
	Paid up equity share capital (PE)		430202470
	Paid up value of share		10

	equity shares (PV)		
	Paid up equity share capital as per balance sheet (PE)	*A-L*	*803732470*
		(A-L)/PE	*1.868*
	Fare value per each equity share as per Rule	*(A-L)/PE*PV*	*18.68*
Calculation of excess security premium collected during the year			
	Total consideration received on issue of share premium.		*2584403250*
	No. of shares issued on premium		*197715*
Less	*1.Face value of 1,97,715 shares issued during the year*	*197715*10*	*1977150*
Less	*2. Fare market value of 197,715 shares issued at premium*	*197715*18.68*	*3693316*
	Excess amount received during the issue of premium shares.		*257,87,32,783*

Calculation of excess security premium collected during the year:

Total consideration received in respect of shares issued during the year *Rs.2,58,4403,250*

Less : 1 face value of 197715 shares issued during the year *R.19,77,150*

2. Fair market value of 197715 shares issued to resident at premium. *Rs.36,93,316*

Excess share premium collected during the year *Rs.257,87,32,783*

7.15 As evident from the valuation method NAV method calculated as above, here is a huge gap between the value adopted by the assessee company and real value of the assessee company. It is true that, DCF method is largely based on presumptions or estimations; there will be difference between value as per DCF method and value as per NAV.

7.16 But, the huge difference between two values does not justify the adoption of DCF method which is not backed by any scientific working done independently by the Chartered Accountant. Thus, the DCF method fails.

7.17 The working of the Chartered Accountant is also considered by adopting the book value of the subsidiary which is as under:-

Computation of fair value of equity shares as per Rule 11UA as on 30.9.14.

Assets		*Market value*	*Book value*
Value of shares			
Quoted shares of GMR infrastructure Ltd.		*4,802.07*	*74,809.00*
Unquoted	*747.81*		
Imparment of unquoted shares			
All other assets			
Less: advance tax etc.			
Advance tax	*-2.40*		
Prepaid exp	*-2.08*		
Loans to others (doubtful of recovery)	*-32.28*		
Advances to others (doubtful of recovery)	*-12.35*		
Doubtful receivables	*-20.00*		
	-69.11	*678.70*	
Total of Assets (A)		*5,480.77*	
Liabilities:			
Total of liabilities(L)		*1,491.68*	
(A)-(L)		*3,989.09*	
Paid up equity share capital		*3.02*	
Paid up value of such equity shares		*10*	
Paid up equity share capital		*30,20,247*	
Fair value per equity share		*12,466*	*2,26,996*

7.18 It will be seen from the above that when the consistent valuation method of book value is substituted then the share value stands at Rs.2,26,996/-. However, there is nothing brought on record to evidence the fact that this value was the book value as on date of issue of shares. Further, it will be seen that the NAV arrived at as at 30.09.2014 stands at Rs.18.68 which in any case could not have reached astronomical figure of Rs.2,26,996 in any case within a span of months. This also evidence the fact that when the book value is consistently adopted the other figures have been incorporated in a manner to inflate the value of the premium while the market value of the share of the subsidiary is adopted as red herring to bring the premium to the level of management desires. Thus, the valuation report has virtually no legs to stand on as it stands proven that what is stated to be book value also in fact is not the book value. The entire accountant's report thus stands discredited and hence, the Net asset value method is adopted to arrive at the excess premium as worked out at para 7.14 hereinabove.

Calculation of excess security premium collected during the year.

Total consideration received in respect of shares issued during the year	*Rs.2,58,44,03,250*
Less: 1 Face value of 197715 shares issued during the year	*Rs.19,77,150*
2. Fair market value of 197715 shares issued to resident at premium	*Rs.36,93,316*
Excess share premium collected during the year	*Rs.257,87,32,783*

Therefore I am satisfied that, value worked out as per DCF method and calculation of NAV method by the assessee is exaggerated value of the assessee company. The value as per NAV is computed above very close to real value of share. Therefore, DCF and NAV method adopted by the assessee company is rejected and value as determined above is accepted. As share premium received is higher than actual value of the share Rs.257,87,32,783 is added back as income from other sources as per the provisions of the section 56(2)(viib) of the Income-tax Act, 1961 to total income of the assessee company.

(Addition : Rs.257,87,32,783/-)"

4.1 Aggrieved by the draft assessment order, the assessee filed objections before the DRP. The DRP rejected the objections of the assessee and confirmed the view taken by the Assessing Officer. The objections of the assessee before the DRP and the directions of the DRP reads as follow:-

"2.3 Ground of objection No.3: Proposed addition on account of share premium received u/s. 56(2)(viib) of Rs.257,87,32,783/-

<u>Objection No. 3.1</u>: On the facts and in the circumstances of the case and in law, the AO erred in proposing to make an addition of Rs.257.87crores as excess share premium allegedly collected in violation of the provisions of Section 56(2)(viib) of the Act.

The Assessee objects to the proposed action of the AO mainly for the following amongst various reasons:

Objection No. 3.2: The Ld. AO, has rejected the value of shares having regard only to the first limb of the clause (a) of the Explanation to section 56(2)(viib); completely ignoring the express provisions of the second limb which clearly provides that the assessee is entitled to value the shares having regard to the fair value of the assets on the date of issue of shares.

Objection No. 3.3: Explanation (a)(ii) to section 56(2)(viib) prescribes that the fair market value ("FMV") of shares shall be the value as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. The assessee has substantiated the said value by a Valuation Report, which was done on the 'basis of the Fair market value of net etc held by the Company and also substantiated by DCF working.

Objection No.3.4: The aforesaid reports have been rejected by the AO arbitrarily and under apparent factual errors and presumptions.

Objection No. 3.5: If the AO was not satisfied with the valuation report, he ought to have referred the same to the Valuation Officer as per the provisions of section 142A of the Act.

Objection No. 3.6: Section 56(2)(viib) of the Act being an anti-avoidance provision introduced with the intention of deterring generation and use of unaccounted money, would not apply to cases where the issue of shares is to the existing shareholders on proportionate basis or genuine cases.

Objection No. 3.7: On the facts and in this circumstances of the case and in law, the AO erred in proposing to make an addition of Rs.257.87crores as excess share premium collected in violation of the provisions of Section 56(2)(viib) of the Act.

2.3.1 We note that the assessee's plea is that it is entitled to value its assets as per Explanation l(a)(ii) to section 56(viib) of the IT Act. It was submitted that it had valued the listed shares as per the quoted value as on the date of issue of shares, and that the unlisted shares were valued as per book value. However, the AO was not satisfied as it had adopted

> *differential method. Therefore, the assessee adopted DCF method for valuation of unlisted shares, in respect of which the AO pointed out certain discrepancies, and as a result proposed the impugned addition. During the DRP proceedings the assessee filed certain additional evidence vide letter dated 10.06.2019, and on which the AO submitted its remand report. The assessee also filed its comments on the remand report. Upon consideration of all facts and submissions, we are of the view that a differential method of valuation would not be reflective of the correct value of the assets, and as result, we consider that the AO is justified in resorting to Explanation 1(a)(i) to section 56(viib). Hence, the proposed disallowance is upheld."*

4.2 Aggrieved, the assessee has raised this issue before the Tribunal. We heard the parties on this issue and perused the record. The facts, as culled out from the assessment order and the paper books filed by the assessee are as under:-

(a) The assessee has obtained a Valuation report on 15th November, 2014. The same is placed at pages 447 to 455 of the paper book. This valuation report was obtained when the assessee has issued 151740 shares on rights basis to the existing shareholders. The shares were issued on rights basis on 27.11.2014 & 29-11-2014 at a premium of Rs.13,190/- per share. Paragraph 4 of the valuation report discusses about the valuation methodology followed. The CA has determined the value under "Discounted Free Cash Flow Method (DCF) at Rs.13,246/- per share.

(b) Following observation made by the valuer is relevant here:-

> "As the Discounted Free Cash Flows are based on projections, we strongly believe that the same **should be corroborated** with another method of valuation, accordingly the fair value arrived under DFCF method is corroborated with valuation as per Net Asset Value Method."

Thus, the valuer has primarily valued the shares under DCF method and corroborated the same under Net Asset Value (NAV) method. As per NAV method, the value of share was determined at Rs.13,208/- per share.

(c) It is pertinent to note that the NAV was arrived on the basis of value of assets as on 30-09-2014. Since the valuation report is dated 15th November, 2014, the valuer has considered the Balance sheet prepared for the immediately preceding quarter ended 30-09-2014. The assessee is holding shares in its subsidiary GMR infrastructure Ltd and the said shares are listed in the market. The quoted market price as on 30-09-2014 was Rs.17.55 per share and hence the realizable value of shares of GMR infrastructure Ltd was arrived on the basis of above said market price, which worked out to Rs.4802.07 crores.

(d) The assessee has made further issue of Non-Cumulative Convertible Preference Shares of Rs.10/- each at a premium of Rs.12,650/- each on 23-03-2015.

(e) At that time, the assessee again obtained a valuation report dated 12th March, 2015. It is placed at pages 456-464 of the paper book. The valuer primarily valued the shares under DCF method at Rs.12,631/- per share and corroborated the same under NAV method under which the share value was determined at Rs.12,650/- per share.

(f) While computing value under NAV method, the valuer considered the market value of shares of GMR Infrastructure at Rs.17.15 per share, being the closing price

of shares of above said company in NSE as on 31.12.2014, being the immediately preceding quarter.

4.3 We notice that the AO has not examined the valuation made by the assessee under DCF method on the reasoning that the DCF method is largely based on presumptions or estimates. The AO proceeded to determine NAV value of the shares and accordingly determined the same at Rs.18.68 per share, while the value determined under DCF method was Rs.13,246/- and Rs.12,631/- in the two valuation reports. Since there was huge difference between the value determined by the assessee under DCF method and the value determined by him under NAV method, the AO ignored the DCF method of valuation made by the assessee. **Thus we notice that the AO has not actually examined the DCF method of valuation furnished by the assessee.**

4.4 We have noticed that the assessee has furnished two valuation reports. One valuation report was based on the Balance Sheet as on 30-09-2014 and another valuation report was based on the Balance Sheet as on 31-12-2014. We have noticed earlier that the assessee has issued rights shares and also non-cumulative convertible preference shares on two different dates. Hence there was necessity to prepare two valuation reports.

4.5 We notice that the AO has expressed the view that the assessee has adopted market value for one asset and book

value for remaining assets. According to AO, this kind of differential method is not permissible. We notice that the AO has also extracted Rule 11UA in the assessment order. However we notice that the AO has referred to the rules applicable to "unquoted shares", i.e., Rule 11UA(2). The determination of fair market value of "quoted shares" is governed by the provisions of Rule 11UA(1)(c)(a), which reads as under:-

> "*c*) valuation of shares and securities,—
>
> (*a*) the fair market value of quoted shares and securities shall be determined in the following manner, namely,—
>
> (*i*) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;
>
> (*ii*) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,—
>
> (*a*) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and
>
> (*b*) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;"

We notice that the AO has omitted to consider the above provisions applicable for quoted shares. Further, we notice that the AO has not referred to the date of Balance Sheet considered by him for determining the NAV, i.e., the date of

Balance sheet is not discernible from the AO. We noticed that the valuer has considered the nearest available quarterly Balance Sheet for determining NAV. In effect, the AO has ignored the methodology prescribed in Rule 11UA for valuing quoted shares, which accounts for major difference in the valuation. **Thus, the AO has misguided himself in determining the value under NAV method.** Further, it is not discernible as to which Balance Sheet, the AO has referred for determining NAV. This is also lacunae in the computation made by the AO. We notice that the Ld DRP has also confirmed the draft assessment order passed by AO on this point without appreciating the above stated factual aspects.

4.6 In conclusion, we notice that the AO has not examined the DCF method of valuation submitted by the assessee and the value of shares determined by the AO under NAV also suffers from major defects. The reasoning given by the AO for rejecting DCF method of valuation would fall on the ground, since the NAV method adopted by the AO suffers from major defects. We notice that the AO has not appreciated the necessity of preparing two valuation reports and the AO has also omitted to consider the correct provisions of Rule 11UA. Hence, various faults found by the AO with regard to the valuation reports are liable to be rejected.

4.7 Under these set of facts, we are of the view that this issue requires fresh examination at the end of AO.

Accordingly, we restore this issue to the file of the AO for examining it afresh with the direction to examine the valuation reports furnished by the assessee in order to find out whether they have been prepared in accordance with Rule 11UA. If the AO could find fault in the methodology, he may put it across to the assessee and seek explanation. After considering the explanations and information that may be furnished by the assessee, the AO may take appropriate decision in accordance with law.

5. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 28th day of October, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 28th October, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The DRP-1, Bengaluru.
4. The Pr.CIT-Central Circle, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore