**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 9721/DEL/2019 (A.Y 2016-17)

Eduwizards Info solutions P. Ltd. 4- Scindia House, Connaught Place, New Delhi **PAN: AABCE7367C** **(APPELLANT)**	Vs.	ACIT Circle-8(1) C.R. Building, New Delhi **(RESPONDENT)**

Assessee by :	**Shri R. M. Mehta, CA**
Department by:	**Shri S. L. Anuragi, Sr. D. R.**

Date of Hearing	**26.09.2022**
Date of Pronouncement	**13 .10.2022**

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is filed by the assessee against the order dated 23/10/2019 of the ld. Commissioner of Income Tax (Appeals)-3 Delhi [hereinafter referred to CIT (Appeals)] for Assessment Year 2016-17.

2. The grounds of appeal are as under:-

1. That the Ld. CIT(A) erred both on facts and in law in upholding the action of the AO in making an addition of Rs,5,56,24,843/- under section 56(2)(vii b) of the Income Tax Act 1961 ("the Act").

2. That the Ld. CIT(A) in confirming the addition made by the AO failed to take into consideration the detailed written submissions filed during the course of the hearing to supplement the oral submissions.

3. That the Ld. CIT (A) failed to appreciate that having given by statute the option to an assessee to choose the method of valuation, the revenue could not reject on a flimsy ground the report given by a Chartered Accountant who was an "expert" on the question of valuation.

4. That the Ld. CIT (A) erred in relying on judgment's which were clearly distinguishable, opting in turn not to advert to those relied upon by the assessee."

3. Brief facts of the case are that, the assessee company was engaged in the business of providing foreign education, online testing solutions for students, schools and institutions. The assessee has filed the return of income declaring loss of Rs. (-) 3,46,09,119/-. The case of the assessee was selected for scrutiny, an assessment order came to be passed on 25/12/2018 by making an addition of Rs. 5,56,24,843/- on the ground that the credits of Rs. 6,00,00,942/- are directly hit by Section 56(2) (viib) of the Act, the assessee has failed to discharge its onus on genuineness of transaction. Therefore, an amount of Rs. 5, 56,24,843/- was added to the income of the assessee.

4. As against the assessment order dated 25/12/2018, the assessee has preferred an appeal before the Ld.CIT (A). The Ld.CIT(A) vide order dated 23/10/2019 dismissed the appeal filed by the assessee.

5. Aggrieved by the order dated 23/10/2019 passed by the CIT(A), the assessee has preferred the present appeal on the grounds mentioned above.

6. As per the grounds of appeal, the assessee is aggrieved by the addition made u/s 56 (2) (viib) of the Act of Rs. 5,56,24,843/- without taking into the consideration of written submission filed by the assessee, further the Ld.CIT(A) has erroneously rejected the valuation report of the Charted Accountent.

7. We have heard the parties, perused the material on record and gave our thoughtful consideration.

8. During the relevant assessment year, the assessee had issued 5307/- equity shares of face value of Rs. 10/- each as a share premium of Rs. 11,296/- per equity share. The share premium was determined on the basis of discounted free cash flow Method (DCF) as per report of the chartered accountant which was prepared as per Section 56 (2) (viib) read with Rule 11UA (2) of the Rules. The Ld. A.O was of the opinion that the assessee cannot be considered as start up, the share valuation report relied upon by the assessee is not acceptable since the projections and actual are not in conformity and the valuation report does not meant requirements of Indian Evidence Act, does not pertain to the date of issue of the shares. The Ld. A.O found that DCF Method was not appropriate Method to be applied to the assessee and made addition. The said addition made by the assessee Assessing Officer has been ultimately upheld by the Ld.CIT (A).

9. The Ld.CIT (A) while dealing with the issue was of the opinion that the A.O is empowered to look into the facts as to whether the valuation report is fair and reasonable, if the valuation report is made mandatory on the A.O., the

provisions of Section 56(ii) (viib) would become redundant, further of the opinion that there is no justification for various assumptions made to value the equity shares using DCF Method.

10. The valuation report of Chartered Accountant submitted by the assessee is claimed to be inconformity with the Rules 11U(b) of the Rules. It is the specific case of the assessee that the A.O. and the Ld.CIT (A) did not examined the valuation report or carried out any objective valuation thereof and erroneously rejected the valuation report of the Chartered Accountant submitted by the assessee and applied provisions of Rule 11UA (1) (c)(b) of the Rules and computed the fair market value on the basis of value of assets.

11. It is not in dispute that an assessment order has been framed u/s 143(3) of the Act for the assessment years 2015-16, wherein the Ld. A.O., after detailed examination of the Valuation report, accepted the same, but for the year under consideration i.e. A.Y. 2016-17, the Ld. A.O. has not even gone through the valuation report and opined that the report falls foul of Section 45 of the Indian evidence Act. In our considered view the Ld. AO and the CIT (A) have committed an error in not following the principal of consistency.

12. The Coordinate Bench of the Tribunal in ITA No. 5982/Del/2018, held that the evaluation report which is prepared by the professional such as chartered accounts or mercantile banks for which their respective professional bodies have laid down specific disclosure requirements those disclosure requirements are binding on them. Merely because the valuation report contains certain caveats and disclosures those factors are not sway the mind of the A.O or commissioner of Appeal and therefore remitted the matter to the file of the Assessing Officer for objectively evaluation of the valuation report submitted by the assessee. The relevant portion of the order is reproduced as under:-

"20. We have carefully considered the rival contention and the

orders of the lower authorities. The assessee has issued shares of ? 20 crores having face value of Rs. 10 lakhs and share premium of Rs 19.90 crores. Though learned assessing officer has made the addition of the about some under section 68 of the income tax at holding that appellant company has failed to prove the identity, creditworthiness of the companies and genuineness of the transaction. Therefore the substantive addition is made under section 68 of the income tax Act. However out of abundant caution the learned AO further invoked the provisions of section 56 (2) (viib) of the act which applies to a company in which public are not substantially interested, when it receives share premium which exceeds the fair market value as determined in accordance with the prescribed rules is an income of the recipient company. Therefore apparently assessee is a private limited company hence it is hit by the provisions of section 56 (2)(viib) of the act. Therefore appellant is required to justify its what is the fair market value of the share premium received by it of Rs. 19.90 crores. Assessee company submitted a valuation report according to which the valuation per share was determined at Rs. 2035.53 per share whereas it has received the share premium of Rs. 1 990 per share. In the valuation report submitted by the assessee the valuation of Rs. 2 035.53 per share was received by adopting discounted cash flow method in accordance with rule 11 UA of the income tax rules 1962. The rational disclosed by the assessee for such a valuation was that assessee company got an opportunity to invest in a coal mine in the USA. For this it entered into an agreement with the promoters of the coal mine and a new company was formed by the name and style of M/s Stryton Minerals & Resources LLC in USA as a special purpose vehicle. Therefore according to the assessee huge profit was expected to be received in that CD company and therefore on the *projected cash flow method the valuation of share was made. The assessee also stated that that investment of the assessee itself is 3050000 US dollars in the special purpose vehicle company or undertaking the business of coal mines. The assessee also substantiated the same with the copy of memorandum of understanding with the promoters of the coal mine. The assessee further submitted the permission obtained by it from reserve Bank of India for making an overseas direct investment in a foreign LLC. Therefore it is claimed by the assessee that the premium has been justified based on the profitability of the coal mine as well as based on the overseas direct investment made by the assessee which has been approved by the reserve Bank of India. Therefore the claim of the assessee is that the valuation is justified firstly based on the report of the chartered accountant and secondly on the basis of the permission of the reserve Bank of India. The learned assessing officer as well as the learned commissioner appeals rejected the valuation report submitted by the assessee for the sole reason that projections shown by the assessee in the project report of the cash flow did not materialize in subsequent years. It was also the reason for rejection of these reports as the chartered accountant who valued the shares of the company has given a proper disclaimer while certifying the valuation. On careful consideration of the reasons given by the learned assessing officer the assessee has clearly stated that the valuation report is properly dated and further it may happen that the projected cash flow shown by the assessee at the time of the valuation did not materialize in subsequent year due to different business reasons such as delay in the project. The assessee has shown that there is a delay in the project and subsequently the LLC company has started earning the sum. If that be the case that if there is a variation in the discounted cash flow* *shown by the assessee with actual result in subsequent years, then the basic fallacy will arise that discounted future cash flow should be equal to the actual cash flow of the assessee. According to us it will result in absurdity. However it can also not be subscribed to the view that if there are wide variations in subsequent years with actual results compared with the projected cash flow submitted by the assessee, then in such situation if the projected cash floor is acce76pted then provisions of section 56(2)(viib) will become redundant." Therefore an objective evaluation of the valuation report submitted by the assessee deserves to be carried out. Further, the valuation report is_ prepared by the professionals such as chartered accountant, or merchant bankers for which their respective professional bodies have laid down specific disclosure requirements. Those disclosure requirements are binding on them. Therefore merely because they have given certain caveats and disclaimers, - Those factors should not sway the mind of the learned assessing officers or commissioner appeals. Further in the present case before us the assessee has claimed that its investment in coal mines in USA is based on certain proposals, due diligence report, coal lease agreement , agreement for transfer of lease rights, engineering service agreement, consulting agreement, approval from environment Ministry and approval of reserve Bank of India for making an overseas investment. Therefore the valuation report submitted by the assessee is required to be objectively evaluated based on these evidences. It is apparent that lower authorities have not given any credence to these details. It is further not possible to ascertain what happened in subsequent years to the business of the coal mine. It is neither found from the assessment orders or appellate orders or submission of the assessee about the cash flow generated by the coal mine business of the LLC. In any case unless the ground no 1 of* *the appeal of the assessee is decided, ground no 2 cannot be adjudicated as outcome of ground no 1 will decide whether the ground no 2 of the appeal is required to be adjudicated or not. In view of this, we set aside the whole issue of tax ability under section 56 (2) (viib) of the act back to the file of the assessee for the reason that that original addition made by the learned assessing officer under section 68 of the act is also set aside to the file of the learned assessing officer and further the lower authorities have failed to objectively evaluate the valuation report submitted by the assessee of a chartered accountant based on discounted cash flow method. The assessee is directed to show the details of the valuation made by the assessee on the basis of discounted cash flow methods along with the supporting evidences to substantiate the estimate of the cash flow for respective years. Based on the submission of the assessee, the learned assessing officer is directed to examine the same and decide the issue of tax ability under section 56 (2) (viib) of the act after affording proper opportunity of hearing to the assessee. According to this, ground number two of the appeal of the assessee is allowed accordingly."*

13. In the present case, the Ld. A.O. and the CIT(A) have rejected the valuation report in threshold without verifying the same. As per the Assessee, the Valuation report is be inconformity with the provisions of Section 56(2)(viib) read with Rule 11UA (2) of the Income Tax Rules. In our opinion, in view of the facts and the circumstances of the case, the Lower Authorities ought to have considered the valuation report of the Chartered Accountant submitted by the assessee and should have verified as to whether the said valuation report is inconformity with Section 56(2) (viib) of the Act read with Rule 11UA (2) of the Income Tax Rules or not and accordingly shoud have decided the matter by following the principal of consistency.

14. Therefore, in view of the above discussions, to render substantial justice, we remand the matter to the file of Ld. A.O. for the purpose of verifying as to whether the valuation report of the Chartered Accountant submitted by the Assessee is inconformity with the Section 56(2) (viib) of the Act read with Rule 11UA(2) of the IT Rules or not and decide the matter in accordance with law by keeping the principal of consistency in mind. Needless to say that the Assessee shall be provided with opportunity of being heard.

15. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on : **13 /10/2022.**

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 13/09/2022

**R.N* Sr PS*

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated	
Draft placed before author	
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File came to P.S.	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	