IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2024

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**THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.12884 of 2024
and
W.M.P.Nos.14049, 14051, 14052, 14053 & 14054 of 2024

M/s. Shield Healthcare Pvt. Ltd.,
Rep. by its Managing Director,
M 49-50. 2nd Floor, L.B.Road,
Indira Nagar, Adayar,
Chennai – 600 020.
PAN: AABCE3194M ... Petitioner

Versus

1.The Assessment Unit,
Income Tax Department,
National e-Assessment Centre, Delhi,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Deputy Commissioner of Income Tax
Corporate Circle 3(1), Chennai,
Income Tax Department,
No.121, Nungambakkam High Road,
Chennai – 600 034.

3.The Principal Commissioner of Income Tax-3,
Chennai,
Income Tax Department,
No.121, Nungambakkam High Road,
Chennai – 600 034. ... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records on the file of the first respondent to quash the impugned order u/s 143(3) r/w Section 144B of the Income Tax Act,1961 dated 27.03.2024 in DIN ITBA/AST/S/143(3)/2023-24/1063441226(1) for the Assessment Year 2022-23 and pass such other/further order or orders as this Court may deem fit and proper on the facts and in the circumstances of the case.

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|---|---|---|
| For Petitioner | : | Mr. A.S.Sriraman |
| For Respondents | : | Mr. V. Mahalingam, Senior Standing Counsel |

**ORDER**

The petitioner had issued Compulsorily Convertible Preference Shares (CCPS) during the assessment period. Such shares were valued through a merchant banker by adopting the Discounted Cash Flow (DCF) method. Upon examining the return of income of the petitioner for assessment year 2022-23, notices were issued to the petitioner both under Sections 142(1) and 143(2) of the Income Tax Act, 1961 (the I-T Act). Such notices were responded to by the petitioner. Being dissatisfied with such responses, a show cause notice dated 09.01.2024 was issued. A subsequent show cause notice dated 15.03.2024 was also issued. The petitioner responded to the show cause notices. The impugned order dated 27.03.2024 was issued in the above facts and circumstances.

2. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the impugned order sets out the response of the petitioner to the proposed addition under Section 56(2)(viib) of the I-T Act and thereafter records that the addition was confirmed merely by relying upon an order of the Income Tax Appellate Tribunal (*ITAT*), Delhi in *Agro Portfolio Private Limited v. ITO (Agro Portfolio)*. Therefore, he contends that the order is unsustainable on two grounds. First, that the assessing officer did not independently apply his mind to the reply of the petitioner and the valuation report provided by the petitioner. Secondly, he submits that the order of the ITAT in *Agro Portfolio* was set aside by the Division Bench of the Delhi High Court in *Agro Portfolio (P). Ltd. v. Principal Commissioner of Income Tax (2024) 161 taxman.com 303 (Delhi)*. By placing reliance on paragraph 15 thereof, learned counsel contends that the Division Bench of the Delhi High Court concluded that the option of the valuation method is vested in the assessee under Rule 11UA(2) of the Income Tax Rules. In these circumstances, learned counsel

submits that the impugned order is unsustainable.

3. Mr.V.Mahalingam, learned senior standing counsel, accepts notice on behalf of the respondent. At the outset, he submits that principles of natural justice were not breached. The petitioner's replies were considered and a reasoned order was issued. Therefore, he submits that no case is made out for interference under Article 226 of the Constitution of India. In addition, by referring to the observations at internal pages 24 & 25 of the impugned assessment order, learned senior standing counsel submits that the valuation report of the merchant banker was examined in detail and the assessing officer recorded reasons for rejecting such report. Hence, he submits that the petitioner should be directed to avail of the statutory remedy.

4. On the merits, the case turns on Rule 11UA(2) of the Income Tax Rules, 1962, which, in relevant part, is 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:-*

.. ..

.. ..

*(b) the fair market value of the unquoted equity shares determined by a merchant banker [***] [Words ] as per the Discounted Free Cash Flow method."*

The above rule uses the expression "at the option of the assessee". The method prescribed in Clause (b) is the DCF method and the petitioner/assessee opted for this method. The implication of Rule 11UA(2) is that the assessing officer cannot reject the adoption of the DCF method by the assessee and insist that the NAV method be adopted. It is however, open to the assessing officer to examine the DCF valuation report and record reasons for refusing to accept such report.

5. In the case at hand, while the assessing officer has set out observations recorded upon perusal of the valuation report at internal pages 24 & 25 of the report, in the operative portion of the order at internal pages 33 & 34, after referring to and extracting the decision of the ITAT, no reasons were recorded for concluding that the proposed addition is confirmed. Especially when viewed in light of the judgment of the Division

Bench overruling the order of the ITAT, these facts and circumstances warrant reconsideration of the impugned order.

6. For reasons set out above, the impugned order dated 27.03.2024 is set aside and the matter is remanded for reconsideration. After providing a reasonable opportunity to the petitioner including a personal hearing, the 1st respondent is directed to issue a fresh order within three months from the date of receipt of a copy of this order. While deciding the matter, the observations set out in this order may be taken into consideration.

7. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

**07.06.2024**

Index : Yes/No
Internet: Yes/No
Neutral Citation : Yes/No

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**SENTHILKUMAR RAMAMOORTHY,J**

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