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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 470/2024  
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

.....Appellant

Through: Mr. Vipul Agrawal, SSC with  
Mr. Gibran Naushad, Ms.  
Sakshi Shairwal, Adv.

versus

CADDIE HOTELS PVT. LTD. ....Respondent

Through: Mr. Neeraj Jain, Adv.

**53**

+ ITA 471/2024  
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

.....Appellant

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**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**ORDER**

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**02.09.2024**

**CM APPL. 50262/2024 in ITA 470/2024, CM APPL. 50271/2024 in ITA 471/2024, CM APPL. 50275/2024 in ITA 472/2024, CM APPL. 50278/2024 in ITA 473/2024**

Bearing in mind the disclosures made, the delay in refiling the appeal is condoned.

The applications shall stand disposed of.

**ITA 470/2024, ITA 471/2024, ITA 472/2024 & ITA 473/2024**

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**<sup>1</sup> dated 21 July 2023 and posits the following questions of law: -

“A. Whether in facts & circumstances of the case and applicable law, the Ld. ITAT and Ld. CIT(A) has erred by ignoring that the valuation done by the assessee/valuer had adopted a demonstrably wrong approach, the method of valuation was made on a wholly erroneous basis and the valuer committed a mistake which goes to the root of the valuation process?

B. Whether in facts & circumstances of the case and applicable law, the Ld. ITAT and Ld. CIT(A) have erred in law by holding that the Assessing Officer cannot scrutinise the valuation report and determine the valuation afresh even by himself?

C. Whether in facts & circumstances of the case and applicable law, the Ld. ITAT and Ld. CIT(A) have erred in law in accepting the valuation report submitted by the assessee even though the assessee has failed to comply with the requirements/provisions of Section 56(2)(viib) of the Income-tax Act and Rule 11U and Rule 11 UA of the Income-tax Rules?

D. Whether in facts & circumstances of the case and applicable law, the Ld. ITAT and Ld. CIT(A) have erred in law by solely

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<sup>1</sup> Tribunal



relying upon the decision of this Hon'ble Court in **Pr. Commissioner of Income Tax -2 Vs M/s Cinestaan Entertainment Pvt. Ltd. (2021) 433 ITR 82**, without appreciating the facts and circumstances in which the said decision was rendered?

E. Whether in facts & circumstances of the case, findings of Ld. ITAT and Ld. CIT( A) are perverse and are liable to be set aside?"

2. The solitary issue which has been pressed on the appeal is with respect to the view expressed by the Tribunal and which had held that it would not be open for the Assessing Officer to substitute the method of valuation as chosen by the assessee while computing Fair Market Value in terms of Section 56(2)(viib) of the **Income Tax Act, 1961**<sup>2</sup>.

3. In our considered opinion, the aforesaid issue stands settled in light of the judgment rendered by us in **Agra Portfolio Pvt. Ltd. vs. Principal Commissioner of Income Tax & Anr.**<sup>3</sup> and where we had dealt with this aspect in some detail and observed as follows:-

"16. In our considered opinion, the language of rule 11UA(2) indubitably places a choice upon the assessee to either follow the route as prescribed in clause (a) or in the alternative to place for the consideration of the Assessing Officer a valuation report drawn by a merchant banker as per the discounted cash flow method. However, and as is manifest from a conjoint reading of section 56(2) (viib) read along with rule 11UA(2), the option and the choice stands vested solely in the hands of the assessee.

17. While it would be open for the Assessing Officer, for reasons so recorded, to doubt or reject a valuation that may be submitted for its consideration, the statute clearly does not appear to empower it to independently evaluate the face value of the unquoted equity shares by adopting a valuation method other than the one chosen by the assessee. It is this aspect which was duly acknowledged by the Bombay High Court in *Vodafone M-Pesa*.

**18.** We note that the view as taken by the Bombay High Court in the aforesaid judgment appears to have been consistently followed by Tribunals of different regions as would be evident

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<sup>2</sup> Act

<sup>3</sup> 2024 SCC OnLine Del 2391



from the discussion which ensues. We, in this regard, firstly take into consideration the judgment rendered by the Mumbai Bench of the Income-tax Appellate Tribunal in *Dy. CIT v. Sodexo Facilities Management Services* where it was held as under:

"18. On the other hand, learned counsel for the assessee submitted that the Assessing Officer has not accepted the method of valuation which was furnished by the assessee. The valuer computed the fair market value by averaging the valuation as per profit earning capacity value (PECV) method as well as net asset value method. He submitted that when the legislation has conferred an option on the assessee to choose a particular method of valuation, the Assessing Officer cannot find fault in the said recognized method and adopting the method of his own choice. In support of this, he relied on the decision of the hon'ble jurisdictional High Court in the case of *Vodafone M-Pesa Ltd. v. Pr. CIT*. As far as the worth of food division is concerned, the learned counsel for the assessee submitted that the assessee has followed the method prescribed under section 50B (3) of the Act along with Explanation 2. He submitted that in the net worth computed by the assessee and in the Assessing Officer, there is only one difference. It was submitted that the assessee following Explanation 2 below section 50B(3) of the Act has adopted written down value of the block asset in case of the depreciable asset as per the proviso to section 43 of the Act, which the Assessing Officer has omitted.

19. We have heard rival submissions on the issue in dispute and perused the material on record. We find that computation of long- term capital gains on the transfer of undertaking as the slump sale consists of two components. First component is sale consideration. and the second component is the net worth or cost of acquisition. When the net worth of division is subtracted from the sale consideration, which results into long-term capital gains on the slump sale. In the case of the assessee, the Assessing Officer has taken fair market value at Rs. 7,20,32,509 which was worked out by the valuer following the profit earning capacity value method, whereas the assessee has followed average value of profit earning capacity value method as well as net asset value method to justify the sale consideration actually received. We are of the opinion that the learned Assessing Officer has not carried out valuation by an independent valuer and merely chosen a part of the valuation report submitted by the assessee. Therefore, we restore back the issue to the



Assessing Officer for referring the matter to a valuation expert by way of the issue of commission and thereafter, determining the fair market value of the undertaking of the food division of the assessee."

**19.** Proceeding along similar lines, the Hyderabad Bench of the Income-tax Appellate Tribunal in Joint CIT v. MLR Auto Ltd. had held as follows:

"17.1. The conjoint reading of section 56(2) (viib) and rule 11U and 11UA makes it abundantly clear that in case the assessee exercised his option for determination of the fair market value of the shares then such decision of the assessee shall be final and binding on the Assessing Officer. The option was given by the Act to the assessee either to apply the discounted cash flow method or net asset valuation method, this option is not available to the Assessing Officer. Rule 11UA provides the method of determining the fair market value of a property other than the immovable property. Rule 11UA(2) reproduced hereinabove provides the method of providing the fair market value of unquoted shares to be determined at the option of the assessee.

17.2. Once the assessee applied particular method of valuation, (in the present case discounted cash flow method), then it is the duty of the Assessing Officer/learned Commissioner of Income-tax (Appeals) to scrutinize the valuation report within the four corners or parameters laid down while making the valuation report under discounted cash flow method only. It is not permissible for the Assessing Officer to reject the method opted by the assessee and apply a different method of valuation and the Assessing Officer can definitely reject the valuation report but not the method. In case, the Assessing Officer rejected the valuation report, then the Assessing Officer has to carry out a fresh valuation report by applying the same valuation method and determine the fair market value of the unquoted shares..

18. Therefore, in our view, the Assessing Officer was incorrect in concluding that the discounted cash flow method is 'quite unrealistic and inapplicable' to the terms of the Income-tax Act. On the contrary, the discounted cash flow method is quite applicable and was required to be applied by the Assessing Officer to determine the fair market value of the unquoted shares."



20. A more detailed discussion on the issue which confronts us in this appeal is found in the judgment rendered by the Mumbai Bench of the Income-tax Appellate Tribunal in Dy. CIT v. Credtalpha Alternative Investment Advisors Pvt. Ltd. 15 and the relevant parts whereof are reproduced hereunder (page 607 of 94 ITR (Trib)):

"15. Thus, the fair market value of the share shall be higher of the value as determined in accordance with the provisions of rule 11UA or any other method, which can be substantiated by the assessee before the Assessing Officer. For the purpose of determining the 'fair market value of unquoted shares provisions of rule 11UA(2) applies which gives an option to the assessee to either value the shares as per prescribed formula given in clause (a) or clause (b) which provides for the determination of the fair market value based on discounted cash flow method as valued by a merchant banker or a chartered accountant (till May 24, 2018). In the present case the assessee has valued the shares according to one of the 'options' available to the assessee by adopting discounted cash flow method. Therefore, such an option given to the assessee cannot be withdrawn or taken away by the learned Assessing Officer by adopting different method of valuation, i.e., net asset value method. The method of valuation is always the option of the assessee. The learned Assessing Officer is authorised to examine whether the assessee has adopted one of the available options properly or not. In the present case, the learned Assessing Officer has thrust upon the assessee, net asset value method rejecting discounted cash flow method for the only reason that there is a deviation in the actual figures from the projected figures. It is an established fact that discounted cash flow method is always based on future projections adopting certain parameters such as expected generation of cash flow, the discounted rate of return and cost of capital. In hindsight, on availability of the actual figures, if the future projections are not met, it cannot be said that the projections were wrong. To prove that the projections were unreliable, the learned Assessing Officer must examine how the valuation has been done. In a case future cash flow projections do not meet the actual figures, rejection of discounted cash flow method is not proper. If projected future cash flow and actual result matches, such situation would always be rare. For projecting the future cash flow certain assumptions are required to be made, there needs to be tested and then such exemptions becomes the base of estimation of such projected future



cash flows. If there are no assumptions, there cannot be an estimate of future projected cash flows and then discounted cash flow method becomes redundant. For exercise of valuation, assumption made by the valuer and information available at the time of the valuation date are relevant. As the exercise of valuation must be viewed as on the date of the valuation looking forward and cannot be reviewed in retrospect. Further, the valuation is always made based on review of historical data and projected financial information provided by the management. Further report of expert will always include limitation and responsibilities but that does not make his report incorrect. Of course, if there are errors in the working of projected cash flow, estimating the projected revenue and projected expenditure as well as in adoption of cost of equity and discount factor, the learned Assessing Officer is within his right to correct it after questioning the same to the assessee. The learned Assessing Officer can also question the basic assumptions made by the valuer. If they are unreasonable or not based on historical data coupled with the management expectation, the learned Assessing Officer has every right to question it and adjust the valuation so derived at. However, if he does not find any error in those workings, he could not have rejected the same. Further the reason given by the learned Assessing Officer that the net asset value method and the discounted cash flow method for valuation of the shares of the company gives a wide variation between them, we do not find any reason to find fault with the assessee in such cases. Both these methods have different approaches and methodologies therefore there are bound to be differences, but it does not give any authority to the learned Assessing Officer to pick and choose one of the method and make the addition. It is the assessee who has to exercise one of the options available under the provisions of the law for valuing the shares. The learned Assessing Officer needs to examine that method. Naturally, if the discounted cash flow method and net asset value method gives the same result, where would have been the need to prescribe the two methods in the law. In view of the above facts, we do not find any infirmity in the order of the learned Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 69,000,000 made by the learned Assessing Officer under section 56(2)(viib) of the Act. Accordingly, ground Nos. 3 and 4 of the appeal of the learned Assessing Officer are dismissed."

4. Accordingly, we find no justification to interfere with the view



as expressed by the Tribunal.

5. We, however, note that while disposing of the appeal in *Agra Portfolio*, we had observed as follows:-

“22. Accordingly, and for all the aforesaid reasons, we allow the instant appeal and set aside the order of the Income-tax Appellate Tribunal dated May 16, 2018. The questions of law as framed, namely, questions A and C are answered in the negative and in favour of the appellant-assessee. In the light of the answers rendered in respect of the aforementioned two questions, the additional questions which are framed would not merit an independent examination. The matter shall in consequence stand remitted to the Assessing Officer which shall undertake an exercise of valuation afresh in accordance with the discounted cash flow method.

23. We also accord liberty to the Assessing Officer to determine the fair market value of the shares bearing in mind the discounted cash flow method by having the same independently determined by a valuer appointed for the aforesaid purpose.”

6. All that need be observed, therefore, is that it would be open for the AO, even in this case, to proceed in accordance with the liberty which was spoken of in the aforementioned paragraphs.

7. Subject to the aforesaid observations, the appeals shall stand disposed of.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**SEPTEMBER 02, 2024/neha**