

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No. 1579/Mum/2024
(Assessment Year: 2016-17)

Intermesh Shopping Network Pvt. Ltd, Lower Ground Unit No. 1-06, Boomerang, Chandivali Farmroad, Chandivali, Mumbai-400072	Vs.	ITO, Ward-12(3), Delhi
(Appellant)		(Respondent)
PAN: AAACI7990L		

Assessee by :	Ms. Simran Dhawan, Adv (VC)
Revenue by:	Shri Om Prakash, Sr. DR
Date of Hearing	02/09/2025
Date of pronouncement	01/12/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 1587/Mum/2024 for AY 2016-17, arises out of the order of the Id. Commissioner of Income Tax (Appeals), Delhi [hereinafter referred to as 'Id. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1060575010(1) dated 06.02.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.12.2018 by the Assessing Officer, ITO, Ward-12(3), Delhi (hereinafter referred to as 'Id. AO').

2. Though the assessee had raised several grounds of appeal before us, the effective issue to be decided in this appeal is as to whether the Learned CITA was justified in upholding the addition u/s 56(2)(viib) of the Act in the sum of Rs 8,39,55,840/- in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee had filed its return of income on 13-9-2016 declaring total income of Rs 15,68,350/-. During the year under consideration, the assessee company issued equity shares as under:-

<u>Name of the Shareholder</u>	<u>No. of Shares</u>	<u>Premium (Rs/Share)</u>	<u>Share premium (Rs)</u>
Manjula Joshi	47	460	21,620
Manan Sharma	70	460	32,200
Anuja Joshi	21058	460	96,86,680
Naveen Arya	7394	10810	7,99,29,140
Total	28569		8,96,69,640

4. The Learned AO vide notice under Section 142(1) of the Act dated 24-10-2018 directed the Assessee to explain the difference in share premium charged from different persons and also to file the basis of share premium charged for all the persons. The Assessee replied by stating that the valuation was done during March 2016 and on the basis of that valuation report, value of shares was Rs.10,820 per share comprising of face value of Rs.10 and share premium of Rs.10,810 per share, at which price shares were allotted to Sri Naveen Arya. The Assessee placed the valuation report of Himanshu Bansal and Co, before the Learned AO. The Assessee was further asked to produce the said valuer Himanshu Bansal. The Assessee Company replied before the Learned AO with a request to issue notice to Himanshu Bansal and Co directly. The Learned AO noticed that the primary onus was on the Assessee company to produce the valuer, which stood not discharged. However, Summons under Section 131 of the Act was issued to Himanshu Bansal, CA, who attended the proceedings. The statement of Himanshu Bansal, CA, was recorded on oath on 15-12-2018, wherein he had duly confirmed the fact of furnishing of valuation report to the Assessee company. He also

confirmed that the data for the preparation of the valuation report was provided by the management, together with the projected details of sales and profitability thereon. The valuer had adopted Discounted Cash Flow (DCF) method for valuing the shares of the Assessee company by using the discounted rate of 18%. The valuer, in response to question number 5, also justified the adoption of discounting rate of 18 % before the Learned AO in the statement given on oath recorded on 15-12-2018. When queried about the difference between the projections and the actual figures, the valuer responded that it depends on industry to industry and company to company and facts and circumstances of each case and he justified the valuation report given by him to the Assessee company. The Learned AO proceeded to ignore the valuation report given by Himanshu Bansal and co., since it contained a disclaimer in the valuation report. The disclaimer given by the valuer in the valuation report are as under:-

"Our report is subject to the scope limitations details hereinafter. Our work does not constitute an audit or certification of the historical financial statements. Accordingly, we are unable to and do not express an opinion on the accuracy of any financial information referred to in this report. A valuation of this nature involved consideration of various factors including those impacting industry trends. During the course of our work, we have relied upon assumptions made by the management of Intermesh Shopping Network Pvt. Ltd. These assumptions require the exercise of judgment and are subject to uncertainties. While we have reviewed the assumptions, there can be no assurance that the assumptions are accurate. We make no representation or warranty, express or implied, in respect of the completeness, authenticity or accuracy of such statements".

5. The Learned AO based on the aforesaid disclosure observed that the valuation report is purely based on the data provided by the management and purely on the estimate basis with no real backup data. Hence, the assessee was show-caused as to why the valuation report prepared by the

valuer be rejected and the valuation of shares may be calculated as per Rule 11UA of the Income Tax Rules and difference of valuation of shares may be added under Section 56(2)(viib) of the Act. The assessee in response, vide letter dated 16-11-2018 replied that Himanshu Bansal is a qualified chartered accountant and had conducted the valuation exercise using DCF method. DCF is a globally accepted standard valuation methodology used for companies with high growth rates and used by all Venture Capital and Private Equity Firms investing in Indian Companies. Further, the responsibility of providing future projections to both the valuer and the investor is responsibility of the management and the same is captured under the terms and conditions of the Investment Agreement. DCF methodology is also prescribed as per Rule 11UA(2)(b) of the Income Tax Rules. The assessee also enclosed the Investment Agreement dated 21-03-2016 highlighting the agreed valuation and all the terms and conditions associated with the investment. Specific attention of certain clauses of the Investment Agreement was drawn thereon:-

- a) Clause 7 of the Investment Agreement - wherein it was mentioned that the company and promoters have given specific representations, warranties and undertaking on any information provided to arrive at the valuation.
- b) Clause 16 of the Investment Agreement - the investor is also given down round protection if the valuation of the company goes down from the agreed price per share.
- c) The Investor had conducted a detailed due diligence of the future annual business plan which forms a key part of the valuation report. The same business plan is used by the appointed valuer for arriving at the valuation.

6. The Learned AO concluded that the projected data for the valuation is provided by the management which is not backed by any scientific projection. The Learned AO started comparing the projections of turnover with the actual turnover for various financial years and found that assessee had not achieved the requisite projected turnover for financial years 2016 and 2017. Accordingly, the Learned AO rejected the valuation report submitted by the assessee and proceeded to adopt the valuation in accordance with Net Asset Value (NAV) method which is also one of the recognized method under Rule 11UA of the Income Tax Rules and arrived at the fair market value of Rs 200 per share. Accordingly, by using NAV method, the Learned AO proceeded to add the differential sum of Rs 8,39,55,840/- (8,96,69,640 minus 57,13,800) as consideration received over and above the fair market value under section 56(2)(viib) of the Act and completed the assessment. This action of the Learned AO was upheld by the Learned NFAC.

7. It is not in dispute that the assessee had valued the shares from an approved valuer using DCF method, which is also one of the recognized methods prescribed under Rule 11UA of the Income Tax Rules. We hold that the Learned AO was not justified in rejecting the DCF method merely because the projected turnover in the DCF valuation had not been achieved by the using DCF method in reality. It is also pertinent to note that in response to the summons issued under Section 131 of the Act, the valuer Mr. Himanshu Bansal had appeared before the Learned AO and given his statement on oath by duly confirming the fact of furnishing of valuation report to the assessee based on the projections and estimates provided by the management and that the fair market value has been arrived by him using DCF method which is one of the

recognized method prescribed under Rule 11UA of the Income Tax Rules. Further the Learned AO ought not to have rejected the valuation report submitted by the assessee merely because the valuer had provided a disclaimer in the valuation report stating that he is not giving any opinion with regard to the authenticity and accuracy of the figures provided therein. This disclaimer is normally provided in every valuation report given by every consultant or merchant banker as the concerned expert does not do in-depth verification of financial statements or conduct any audit thereon. Hence rejecting the valuation report merely based on the disclaimer clause provided in the valuation report is not sustainable in the eyes of law. Had the learned AO had any doubt in the valuation report provided by the assessee, then he ought to have referred the matter to the Valuation Officer for determination of fair market value which in the instant case has not been done. Further we find that the assessee had filed a valuation report issued by a merchant banker before the Learned CITA who had also endorsed the valuation report submitted by the chartered accountant. We find that the Learned AO had relied on the coordinate bench decision of Delhi Tribunal in the case of Agra Portfolio Private Limited vs ITO in ITA No. 2189 /Del/ 2018 dated 16-05-2018 in support of the contentions of the learned AO. But it is pertinent to note that the said decision has been reversed by the Hon'ble Jurisdictional High Court which is reported in 464 ITR 348 (Del) dated 4-04-2024. We further find that the issue in dispute is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Cinestaan Entertainment Private Limited reported in 433 ITR 82 (Del) dated 1-03-2021.

8. Respectfully following the aforesaid judicial precedent, we direct the Learned AO to delete the addition made in the sum of Rs 8,39,55,840/-

under section 56(2)(viib) of the Act in the facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 01/12/2025.

-Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:01/12/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi