

Principal Chief Commissioner Of Income vs A.H. Multisoft Pvt. Ltd

ID: F2J-C-2334 Court: Delhi High Court

Case: ITA 9/2025 Date: 2025-05-30

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[Cites 6, Cited by 0]

Delhi High Court Principal Chief Commissioner Of Income ... vs A.H. Multisoft Pvt. Ltd on 30 May, 2025 Author: Vibhu Bakhru Bench: Vibhu Bakhru IN THE HIGH COURTOF DELHIAT NEW DELHI

% Judgment delivered on: 30.05.2025

+ ITA 9/2025

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX-1Appellant

Versus

A.H. MULTISOFT PVT. LTD. Respondent

Advocates who appeared in this case: For the Appellant :Mr Debesh Panda, SSC with Ms Nivedita and Ms Zehra Khan, Advocates. For the Respondent :Mr Gaurav Jain with Mr Rahul Prabhakar, Mr Shubham Gupta and Ms Shalini, Advocates. CORAM HON'BLE MR. JUSTICE VIBHU BAKHRU HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [the Act], inter alia, impugning an order dated 05.07.2024 [impugned order] passed by the learned Income Tax Appellate Tribunal [ITAT] in ITA No.2400/Del/2023 in respect of Assessment Year 2016-17 captioned A.H. Multisoft Pvt. Ltd. v. ITO. The respondent [Assessee] had preferred the said appeal before the Signature Not Verified Digitally Signed By:TARUN RANA ITA No.9/2025 Page 1 of 12 Signing Date:02.06.2025 17:56:20 learned ITAT impugning an order dated 27.07.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)], whereby the Assessee's appeal against an assessment order dated 18.12.2018 passed under Section 143(3) of the Act was rejected.

2. The learned ITAT had faulted the AO and the CIT(A) in calculating the Fair Market Value [FMV] of the shares allotted by the Assessee to its existing shareholders by replacing the valuation of equity shares held by the Assessee in a downstream company - South Asia FM Ltd. [SAFL]. The Assessee had for the purpose of computing the FMV of its shares had valued its holding in SAFL by discounted cash flow [DCF] method; the AO had ignored the said valuation and replaced the same by book value of the said investments. Resultantly, the FMV of the shares issued by the Assessee to its shareholders significantly reduced.

3. The learned ITAT found that the valuation report furnished by the Assessee was required to be accepted, as there was no error either in the methodology or the accuracy of the data on which the report was premised. The onus to find fault in the data or the method for calculating the value of the shares as computed in terms of the expert's report furnished by the Assessee rested on the AO and he had not discharged its onus to do so. The ground on which the AO had discredited the expert's report, that is, disclaimers in the report, was rejected and therefore the learned ITAT had allowed the Assessee's appeal.Signature Not Verified Digitally Signed By:TARUN RANA ITA No.9/2025 Page 2 of 12 Signing Date:02.06.2025 17:56:20

4. In the aforesaid facts, the Revenue has projected the following questions of law for consideration of this court:

A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in deleting the addition of Rs.30,37,53,712/- as per the provisions of Section 56(2)(viib)?

B. Whether, on the facts and circumstances of the case and in law, the Ld. ITAT has erred in ignoring the facts that the Assessing Officer has clearly outlined the defects in the calculation as well as methodology adopted by the assessee for the valuation of shares. Further, the Explanation under clause vii(b) states the purposes of the said clause that the fair market value of the shares shall be the value (i) as maybe determined in accordance with such method as may be prescribed or (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer?

C. Whether, on the facts and circumstances of the case and in law, the Ld. ITAT has erred in ignoring the fact that the Assessee Company has over valued its share and did not follow the correct method for the valuation of shares while adopting the method invented by itself by relying on the asset of investee company which cannot be the basis/ criteria for valuation of shares of the assessee Respondent under DCF?

D. Whether on the facts and circumstances of the case and law, the Hon'ble ITAT erred in ignoring the fact that the Assessee company adopted the figures/valuation for its convenience and for the purpose to defy the provisions of Section 56(2)(viib) of the Act?

E. Whether on facts and circumstances of the case and law, the Hon'ble ITAT erred in ignoring the fact and merely relying on a typographical/clerical mistake which is covered under the provisions of section 292B of the Act?

F. Whether on facts and circumstances of the case and law, the Hon'ble ITAT erred in ignoring the fact that the Signature Not Verified Digitally Signed By:TARUN RANA ITA No.9/2025 Page 3 of 12 Signing Date:02.06.2025 17:56:20 Assessing Officer has discussed the issue of overvaluation of shares and applicability of provisions of Section 56(2)(viib) of the Act and Rule 11UA of Income tax Rules, 1962 in detail while framing the assessment order?

G. Whether on facts and circumstances of the case and law, the order of the ITAT is perverse and non-speaking in nature?"

5. It is necessary to briefly note the relevant facts in the present case. The Assessee is in the business of providing software support / maintenance services and prior to financial year [FY] 2015-16 held strategic equity stake of 20% in SAFL. Undisputedly, SAFL is a valuable company having 39

FM broadcasting licenses and FM radio business across various cities in India. SAFL at the material time also held 49% shares in digital broadcasting companies (three in numbers) owning FM radio licenses in metro cities of Delhi, Mumbai and Calcutta. All FM stations were operated under a common and a well known brand named 'Red FM'. The entire share capital of SAFL was held by three entities: the Assessee held 20%; Sun TV Ltd. (a listed company) held 60% of the shareholding and South Asia Multimedia Technology Ltd., a Mauritian company held 20% of the equity capital.

6. SAFL required to raise funds for investing in its business and had accordingly offered rights issue at a price of ₹20/- per share including share premium of ₹10/-. The rights issue were fully subscribed and each of the three shareholders subscribed to the rights issue in the ratio of their holding. Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 4 of 12 Signing Date: 02.06.2025 17:56:20

7. The Assessee subscribed to 2,63,00,000/- shares of SAFL at an aggregate value of ₹20/- (face value of ₹10/- plus premium value of ₹10/-) aggregating to ₹52,60,00,000/-. It is relevant to note that a Chartered Accountant (Mr. K.V. Sriram) had determined the FMV of the shares issued by SAFL. In terms of the valuation report dated 17.08.2015, SAFL's net equity value was determined at ₹51,905.83 lacs as per DCF method. The said valuation has not been disputed. It is also not disputed that the Reserve Bank of India [RBI] has also not objected to the subscription of shares by South Asia Multimedia Technologies Ltd. at the price at which the rights shares of SAFL were allotted.

8. The Assessee required to raise funds for subscribing to the rights issue offered by SAFL and thus in turn it offered rights issue to its shareholders: Mr. Arjun Rao who held 51% of the Assessee's subscribed capital and Max Flexi Services Pvt. Ltd. which held 49% of the Assessee's issued and subscribed share capital.

9. For the purpose of determining the FMV, the Assessee engaged an expert, J.N. Sharma & Co. (Chartered Accountant). The said expert furnished the valuation report dated 21.09.2015 determining the FMV of the shares of the Assessee at ₹2771.65 per share and on the basis of the said valuation the Assessee issued a total number of 1,08,976 equity shares to its shareholders at a value of ₹2,772/- per share including a share premium of ₹2,762/- per share, to its shareholders. The subscription proceeds aggregated ₹30,48,53,463/-.

10. The AO did not accept the said valuation as he, inter alia, found that there were certain disclaimers in the valuation report furnished by Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 5 of 12 Signing Date: 02.06.2025 17:56:20 the Chartered Accountant. The AO found that these disclaimers contained in the report rendered the determination of FMV unreliable. The AO proceeded to determine the FMV of the shares issued by the Assessee at its book value and concluded that the same was in negative. Therefore added a sum of ₹30,37,53,712/- as the Assessee's income from other sources under Section 56(2)(viib) of the Act. The learned CIT(A) upheld the said decision.

11. As noted above, the learned ITAT faulted the AO and the CIT(A) in not accepting the valuation as submitted by the Assessee.

12. The relevant extract of Section 56(2)(viib) of the Act reads as under:

"Income from other sources.

56. (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :--

*** ** (vii-b) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received--

(i) by a venture capital undertaking from a venture capital company or a venture capital fund; or

(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Explanation.--For the purposes of this clause,--Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 6 of 12 Signing Date: 02.06.2025 17:56:20

(a) the fair market value of the shares shall be the value--

(i) as may be determined in accordance with such method as may be prescribed; or

(ii) 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, whichever is higher;

(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause

(c) of Explanation 1 to clause (23-FB) of Section 10;"

13. It is clear from the above that in a case where the company in which the public is not substantially interested, receives any consideration for a share that exceeds its face value, the aggregate consideration to the extent it exceeds the FMV of the said shares is chargeable to tax under the head "income from other sources".

14. Explanation to Section 56(2)(viib) sets out that the FMV of shares would be the value as may be determined in accordance with the method that may be prescribed or as may be substantiated by the company to the satisfaction of the AO based on the value on the date of the issue of shares of its assets, whichever is higher. In the present case, the learned ITAT has found that the Assessee had substantiated the FMV of its shares by furnishing an expert report and had faulted the AO for not accepting the same on account of disclaimers set out in the report.

15. According to the AO, the value as determined under the Income Tax Rules, 1962 [Rules] was negative. Plainly, if the expert report Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 7 of 12 Signing Date: 02.06.2025 17:56:20 furnished by the Assessee regarding the valuation of its share is substantiated - which had valued the shares at ₹2771.65 per share - the same is required to be accepted.

16. Thus, the questions of law, which essentially relate to the method of determining FMV under Rule 11UA of the Rules does not arise in the facts of this case.

17. Mr. Panda, the learned counsel appearing for the Revenue contended that it was, nonetheless, necessary to examine the FMV of the shares as determined in accordance with Rule 11UA of the Rules because in terms the Explanation to Section 56(2)(viib) of the Act, the FMV is required to be determined in accordance with the method as prescribed, which would be in terms of Rule 11UA of the Rules or as substantiated by the company, whichever is higher. He further states that there could be no exercise of determining which value would be higher in absence of a comparable FMV as determined under the Rule 11UA of the Rules as required in terms of Explanation (a)(i) to Section 56(2)(viib) of the Act.

18. In our view the said contention is not persuasive as the AO had already determined that FMV of the equity shares is negative and according to it, the said negative value was arrived in accordance with Rule 11UA of the Rules. Thus, even if the AO's calculation of FMV under Rule 11UA of the Rules is accepted and it is found that the higher value as determined by the Assessee was substantiated, the Assessee's valuation of the FMV was required to be accepted. Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 8 of 12 Signing Date: 02.06.2025 17:56:20

19. It is relevant to note in the present case that the shares issued by the Assessee to its shareholders were to fund the purchase of shares of SAFL. The share issue was on rights basis and were subscribed to the shareholders in the ratio of the shares held by them. The funds raised had been deployed by purchasing the shares of SAFL. The value at which SAFL's shares were subscribed by the Assessee has not been objected to by the Revenue in the assessment of SAFL. In any event the same is substantiated by an expert report (report submitted by Chartered Accountant Valuer Mr. K.V. Sriram) who had valued the shares of SAFL by DCF method. Admittedly, the said method is one of the methods that can be adopted by the Assessee under Rule 11UA(2)(b) of the Rules for determining the FMV of unquoted equity shares in a company in which public are not substantially interested. It is also material to note that there is no allegation of any mala fide or that the shares have been issued to route any unaccounted funds. What essentially, the AO and CIT(A) had done is to value the FMV of the Assessee's share at a lower value as would be determined on the basis of the valuation of its assets. Thus, whilst the Assessee holds a valuable 20% stake in SAFL, according to the AO, the Assessee's net worth is negative. This is patently erroneous and thus rightly rejected by the learned ITAT.

20. Having stated the above, we may also briefly examine the principal issue, which was sought to be raised by the learned counsel even though it may not be relevant in view of aforesaid conclusion. Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 9 of 12 Signing Date: 02.06.2025 17:56:20

21. In the present case, the Assessee determined its enterprise value of the Assessee by DCF method, as noted by the AO. The tabular statement setting out the said valuation as set out in the assessment order dated 18.12.2018 is reproduced below: "Particulars Amount in INR Valuation of SAFL, Investee 519,05,83,000 company, as per DCF Value of AHM Holding in SAFL 103,81,16,600 (20% in SAFL) Add: Assets as per the projected 2,72,54,980 balance sheet as at 31.03.2015 (Excluding Investments considered separately)

Less:- Total liabilities of AHM as per 103,76,55,033 projected balance sheet as at 31.03.2015 Current Fair Value of AHM 2,77,16,547

22. On the basis of the said valuation, the price per share was determined at ₹2771.65 (rounded off to ₹2,772/- per equity shares). However, the AO had taken the asset value as per the balance sheet at ₹99,51,03,970/- and after reducing the liabilities of ₹1,03,73,59,373/- determined the net enterprise value of the Assessee as negative (-) ₹42,55,403/-. The value of Assessee's assets other than its 20% equity stake in SAFL is not material as its value is only ₹2,72,54,980/-. Thus, the issue is distilled to whether it was permissible for the Assessee to value its equity holding in SAFL as per DCF method. The tabular statement indicates the said value was determined at ₹5,19,05,83,000/-.

23. Mr. Panda earnestly contended that the expert valuation report furnished by the Assessee had not determined the FMV of the Assessee's equity by any acceptable method but by amalgamation of Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 10 of 12 Signing Date: 02.06.2025 17:56:20 DCF method as well as net asset value (NAV) method. According to him, the purity of the method was required to be maintained and the Assessee has to use either the NAV method or the DCF method.

24. We find no merit in the said contention. The Assessee had valued the unquoted equity shares held by the Assessee in SAFL by DCF method. The same is permissible under Rule 11UA(2) of the Rules.

25. The learned counsel for the Assessee had also drawn our attention to the ICAI Valuation Standard 301 Business Valuation, which also indicates that investment in a subsidiary could also be valued using the DCF method as was done in the present case. Paragraph 6 of Chapter-4 of the ICAI Valuation Standard 301 Business Valuation is set out below:

"6. Investment in a Subsidiary - part of the business Sometimes investment could be in subsidiaries which are actually part of the business structure. For instance, subsidiary in a foreign country to sell the products manufactured by the parent in such geography. In such cases, it is ideal to consider the business projections (cash flows) on a consolidated basis and not treat the subsidiary as a surplus asset.

Alternatively, each subsidiary could be valued separately using DCF and considered. Under such circumstance, dividend etc., from subsidiary should not be treated as cash inflow."

26. The learned ITAT had found that the disclaimers set out by the expert in the valuation report were general disclaimers and are common in all such reports furnished by experts as they are founded on the data as provided by the entity. The expert report could not be rejected on the Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 11 of 12 Signing Date: 02.06.2025 17:56:20 ground of such disclaimers without the AO pointing out any material error in the data as used by the expert.

27. In view of the above, no substantial questions of law arise for consideration of this court in the facts of the present case.

28. The appeal is accordingly dismissed. VIBHU BAKHRU, J TEJAS KARIA, J MAY 30, 2025 'gsr' Signature Not Verified Digitally Signed By: TARUN RANA ITA No.9/2025 Page 12 of 12 Signing Date: 02.06.2025 17:56:20