

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.6183/Del/2019
Assessment Year: 2015-16

Movefast Automobiles Pvt. Ltd.,
FF-9, Vishnu Place,
Near Neelam Flyover,
Sector-20,
Faridabad.

Vs ITO,
Ward-1(5),
Faridabad.

PAN: AAICM2607C

(Appellant)

(Respondent)

Assessee by	:	Shri Rajiv Saxena, Shri Dishant Sethi & Ms Sumangla Saxena, Advocates
Revenue by	:	Ms Raja Rajeshwari R., Sr. DR
Date of Hearing	:	24.05.2023
Date of Pronouncement	:	18.08.2023

ORDER

PER M. BALAGANESH, AM:

The appeal in ITA No.6183/Del/2019 for AY 2015-16, arises out of the order of the Commissioner of Income Tax (Appeals), Faridabad [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.10373/2017-18 dated

29.03.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2017 by the Assessing Officer, Ward-1(5), Faridabad (hereinafter referred to as 'Id. AO').

2. There is a delay of 49 days in filing the appeal by the assessee before us. The assessee has filed an affidavit from its Director explaining the reasons for the delay stating that the counsel handling the income-tax affairs of the assessee company had fallen sick which had attributed for the delay in filing the appeal. Considering the same, we are inclined to condone the delay and admit the appeal of the assessee for adjudication.

3. At the outset, the Id. AR sought indulgence to consider the revised grounds of appeal filed by the assessee. No objections were raised by the Id. DR in this regard. Accordingly, the revised grounds filed by the assessee are hereby taken up for adjudication.

4. The ground No.1 raised by the assessee is challenging the action of the Id. AO in converting the limited scrutiny into complete scrutiny. No arguments were advanced by the Id. AR in this regard. Hence, the ground No.1 is hereby treated as 'not pressed' and, accordingly, is dismissed.

5. The ground No.2 raised by the assessee is challenging the addition made in the sum of Rs.43,25,000/- in respect of share capital and share premium received u/s 68 of the Act.

6. We have heard the rival submissions and perused the material available on record. At the outset, the Id. AO had noted in the first page of the assessment

order that no business activity was carried out during the year. The Id. AO observed that the assessee company received share capital and share premium from the following persons:-

Name of Person	No. of Shares	Nominal value per share(Rs.)	Premium per share(Rs.)	Amount of Premium(Rs.)	Total amt. paid including premium(Rs.)
Hercules Builders(Coimbatore) Pvt. Ltd.	65000	10	50	3250000	3900000
Amar wshree Industries Pvt. Ltd.	41250	10	50	2062500	2475000
Radha Ballabh Construction Pvt. Ltd.	25000	10	50	1250000	1500000
RSM Constructions Pvt. Ltd.	32500	10	50	1625000	1950000
Total	163750			8187500	9825000

7. The assessee furnished the complete details of these share subscribers by furnishing the name, address, PAN, etc. Notice u/s 133(6) of the Act was sent by the Id. AO to the aforesaid investors. In response, the investors submitted the details called for by the Id. AO. This fact is also acknowledged by the Id. AO in page 2, para 2 of his order. However, the Id. AO suspected the details furnished by the investors on the ground that the covering letter of all the companies are in the same font and none of the companies have any telephone numbers mentioned against them. Further, the Id. AO observed that the financial statements of these companies indicate that these are shell companies and have no real business. Accordingly, the Id. AO observed that credit worthiness of investors and genuineness of transactions remained highly suspicious. The Id. AO also observed that the assessee company had not carried out any business activity during the year and, accordingly, was not worth enough to fetch share premium from the investors. The Id. AO also observed that the share premium received by the assessee has been utilized for giving loans to

others and were not indeed utilized for any proposed business activities of the assessee company. Accordingly, he concluded based on the profile of the investors as well as the assessee company, the whole transaction appear to be bogus. Accordingly, he proceeded to treat the receipt of the entire share capital and share premium of Rs.98,25,000/- received from the aforesaid four parties as unexplained cash credit u/s 68 of the Act and completed the assessment.

8. Alternatively, the Id. AO also, on without prejudice basis, observed that since the assessee company is not worth of receiving any share premium, the calculation made by the assessee in terms of Rule 11UA of the Income Tax Rules by furnishing valuation report is rejected and, accordingly, whole of share premium of Rs.81,87,500/- was to be added u/s 56(2)(viib) of the Act. Further, the Id. AO noted that since the addition on account of share capital and share premium has already been made u/s 68 of the Act, no separate addition is made u/s 56(2)(viib) of the Act.

9. Before the Id.CIT(A), the assessee pleaded that the share capital/share premium received from the investors have been duly explained by furnishing various documents before the Id. AO such as confirmation from the share applicants, their ITR acknowledgements, copy of bank statements, copy of audited financial statements, share application form and the evidence to prove that the transactions has been routed through regular banking channel apart from valuation report obtained in terms of Rule 11UA(2) of the Income-tax Rules. All the replies were, in fact, directly sent by the share applicants to the Id. AO in response to notice u/s 133(6) of the Act. Accordingly, the assessee had duly discharged its onus of proving the three ingredients of section 68 of the Act. The assessee also submitted that out of the total receipt of Rs.98,25,000/-, a

sum of Rs.45 lakhs has been received in AY 2013-14 and Rs.10 lakh in AY 2014-15 and, accordingly, these sums of Rs.55 lakhs, in any case, cannot be the subject matter of addition u/s 68 of the Act. It was also pointed out that the assessee had obtained a valuation report from a valuer who had arrived at the fair market value of the share using Discounted Cash-flow Method (DCF Method) in terms of Rule 11UA of the Rules. Hence, the alternative addition proposed by the Id. AO u/s 56(2)(viib) of the Act for share premium is not sustainable in the eyes of law.

10. The Id.CIT(A) acknowledged the fact that bank statements of the investors are already on record. On perusal of the audited financial statements of the investors and their bank statements, the Id.CIT(A) concluded that throughout the year, the same pattern of flow of monies into the bank account of the investors and outflow of monies from the bank account of the investors were noticed and, accordingly, the Id.CIT(A) concurred with the findings of the Id. AO that these investor companies are mere paper/shell companies not having any worth. Similarly, the Id.CIT(A) observed that the assessee company's bank statements also does not show any real business activity inasmuch as the funds received in the form of share capital and share premium had been utilized for advancing loans to outsiders and had accumulated profits of Rs.5,56,956/- only with earning per share at Rs.1.53 per share. There were no fixed assets at its disposal. Accordingly, the Id.CIT(A) concurred that the findings of the Id. AO that the assessee company's financial results do not support receipt of large premium of Rs.50/- on the face value of Rs.10 per share. The Id.CIT(A) granted relief in the sum of Rs.55 lakhs in view of the fact that these sums were not received during the year. However, with regard to receipt of Rs.43,25,000/- from Hercules Builders Pvt. Ltd. of Rs.9 lakhs, Amar Shree Industries Pvt. Ltd. of

Rs.24,75,000/- and RSM Constructions Pvt. Ltd. of Rs.9,50,000/-, totaling to Rs.43,25,000/-, the Id.CIT(A) concluded that these companies are mere paper companies and the transactions carried out by them with the assessee company are not genuine and the credit worthiness of those parties are also not proved in the instant case. Accordingly, the Id.CIT(A) sustained the addition made in the sum of Rs.43,25,000/- u/s 68 of the Act.

11. The Id.CIT(A) also observed that since the assessee company had not carried out any business activity during the year and also in prior years and especially in view of the fact that it had not even bought any fixed assets or had made any advance for purchase of fixed assets proving its intention to carry on any business in the near future, rejected the valuation report submitted by the assessee using DCF Method in terms of Rule 11UA of the Rules as suffering from defects. Accordingly, the Id.CIT(A) confirmed the addition made by the Id. AO u/s 56(2)(viib) for the share premium component in the sum of Rs.81,87,500/-.

12. The Id.CIT(A) further noted that the assessee received a sum of Rs.24 lakhs from Hercules Builders Pvt. Ltd. during the year on 10.09.2014 and paid back Rs.15 lakhs on 14.10.2014 thereby resulting in net receipt of Rs.9 lakhs. Similarly, the assessee has received a sum of Rs.1,50,000/- and Rs.50,000/- from Amar Shree Industries Pvt. Ltd. and RSM Constructions Pvt. Ltd. during the year in addition to share capital/share premium of Rs.24,75,000/- and Rs.19,50,000/- respectively. Thus, the Id.CIT(A) noted that the assessee has received new credits of Rs.17 lakhs from the above companies during the year under consideration in addition to share capital/share premium already considered by the Id. AO. In the opinion of the Id.CIT(A), the said sum of Rs.17 lakhs also should be subject matter of addition u/s 68 of the Act which was not made by the Id. AO and, accordingly, a notice of enhancement in terms of

section 251(1)(a) of the Act was issued to the assessee and an addition to that extent was directed to be made u/s 68 of the Act. Aggrieved, the assessee is in appeal before us against the aforesaid action of the Id.CIT(A).

13. At the outset, it is not in dispute that the assessee, in respect of the three investors i.e., Hercules Builders Pvt. Ltd., Amar Shree Industries Pvt. Ltd. and RSM Constructions Pvt. Ltd. had furnished the following documents before the lower authorities:-

- a) Copy of certificate of incorporation along with Memorandum of Association and Articles of Association;
- b) Copy of audited financial statements as on 31.03.2015 of the investor companies;
- c) ITR Acknowledgements of the investors together with computation of total income;
- d) Copy of share application forms;
- e) Copy of confirmation of accounts dated 01.04.2015 from the investors;
- f) Copy of bank statements of investor companies proving both the receipt of funds from them and refund of funds to them.

14. Though a sum of Rs.98,25,000/- has been received by the assessee towards share capital/share premium from four investors, it is not in dispute that a sum of Rs.55 lakhs was received prior to 01.04.2014 and, hence, the same would be obviously outside the purview of addition u/s 68 of the Act. The Id. CIT(A) had rightly granted relief in this regard u/s 68 of the Act. The break-up of the remaining sums received in the sum of Rs.43,25,000/- which are subject matter of dispute before us are as under:-

- i) Hercules Builders Pvt. Ltd. - Rs. 9,00,000/-

ii)	Amar Shree Industries Pvt. Ltd.	-	Rs.24,75,000/-
iii)	RSM Constructions Pvt. Ltd.	-	Rs. 9,50,000/-
	Total	-	Rs.43,25,000/-

15. Apart from this, the Id.CIT(A) had observed that the assessee had additionally received Rs.17 lakhs from the aforesaid parties during the year which was also subject matter of enhancement in the addition made u/s 68 of the Act.

16. It is not in dispute that the assessee had furnished the preliminary documents pertaining to these investors before the Id. AO. The Id. AO had sought to examine the veracity of the documents furnished by the assessee by issuing notices u/s 133(6) of the Act to the investors. All the details called for by the Id. AO had been duly furnished by the investors directly to the Id. AO in response to notice u/s 133(6) of the Act. The bank statements of the investors were also furnished before the Id. AO. That alone had enabled both the Id. AO as well as the Id.CIT(A) to examine the various credits and debits appearing in the bank statements of the investors to come to the conclusion that there were same pattern of transactions in the bank account of the investors which had raised suspicion in the minds of the lower authorities. These facts go to prove that the assessee had duly discharged its onus to prove the three ingredients of section 68 of the Act, namely, the identity of the investors, credit worthiness of the investors and the genuineness of the transaction. Merely because in the bank statements of the investors there were certain credits and the monies had been immediately given to so many parties including the assessee, it cannot be directly concluded that those transactions in the books of investor companies are bogus. As far as the assessee is concerned, it is duty-bound to prove the nature

and source of credit within the meaning of section 68 of the Act. The credit is in the form of share capital and share premium from the investors which fact is established beyond doubt. The nature of receipt as share capital is also established from the fact that the investor companies had duly reflected the fact of making investments in the assessee company in their respective balance sheets and had also given a separate confirmation to this effect before the lower authorities directly in response to the notice u/s 133(6) of the Act. One of the main source of raising funds for a limited company including the assessee company would be receipt of share capital either from the promoters/relatives/friends or from the entities known to them. From the audited financial statements of these investor companies, we find that they are having sufficient net worth in their kitty which proves the credit worthiness for making investment in the assessee company. The details of net worth available with the investor companies are as under:-

<i>Name of the company</i>	<i>Net Worth as on 31.03.2015 (in Rs.)</i>	<i>Investment made in the assessee company (in Rs.)</i>
<i>Hercules Builders Pvt. Ltd.</i>	<i>9,63,64,973</i>	<i>39,00,000</i>
<i>Amar Shree Industries Pvt. Ltd.</i>	<i>6,54,77,976</i>	<i>24,75,000</i>
<i>Radha Ballabh Constructions Pvt. Ltd.</i>	<i>3,43,30,590</i>	<i>15,00,000</i>
<i>RSM Constructions Pvt. Ltd</i>	<i>3,89,73,827</i>	<i>19,50,000</i>

17. All the transactions are routed through regular banking channels and the fact of the investors making investments in assessee company is reflected in their balance sheet and also confirmed by them separately directly before the Id. AO. Hence, the genuineness of the transactions cannot be doubted in the instant case. The notice u/s 133(6) of the Act had been served on these investors and these investors have also responded directly before the Id. AO.

Apart from this, these investors are regularly assessed to income-tax. Hence, the identity of the investors cannot be doubted. Hence, the assessee in the instant case has proved all the three ingredients of section 68 of the Act.

18. Source of Source is proved by the balance available in the bank account of the investors. Hence assessee had duly discharged its onus from all fronts in the instant case to get out of the rigours of section 68 of the Act. Accordingly, we direct the Id. AO to delete the addition made u/s 68 of the Act in the sum of Rs 43,25,000/- as well as the enhancement made by the Id. CIT(A) in the sum of Rs 17,00,000/- u/s 68 of the Act. The Ground Nos. 2 & 3 raised by the assessee are hereby allowed.

19. With regard to addition made u/s 56(2)(viib) of the Act, it is true that the assessee company had not commenced its business at all during the year under consideration. It is true that assessee had not invested in any fixed assets nor had given any advance for purchase of fixed assets or purchase of goods showing its intent to start the business in the near future. Hence the business projections carried out by the valuer in the DCF method would rightly suffer from infirmities. However, it cannot be brushed aside that DCF method and NAV method are two recognised methods under Rule 11UA of the Income Tax Rules. The Id. AO and the Id. CIT (A) in the instant case had rejected the DCF method adopted by the assessee for determination of fair market value of shares. Having done so, the lower authorities ought to have reworked the fair market value on their own using DCF method itself by keeping the business projections as Zero and ultimately arrived at the fair market value per share at Zero. This was admittedly not done by the lower authorities. When a particular method adopted by the assessee for determination of fair market value per share is

rejected by the lower authorities, then it is bounden duty on their part to either rework the fair market value based on their conclusions or adopt the other method available which is NAV. The Id. AR also rightly drew our attention to the valuation of share as per NAV method which worked out to Rs 1880 per share as on 31.03.2014. This NAV when compared to the issue price of the assessee at Rs 60 per share, duly justifies the share premium of Rs 50 per share. Hence no addition could be legally made in the instant case u/s 56(2)(viib) of the Act as the share premium charged by the assessee cannot be construed as excessive.. We find that the Id. AR had distinguished the case law relied upon by the lower authorities of Delhi Tribunal in the case of Agro Portfolio P Ltd reported in 94 taxmann.com 112 as under:-

Particulars	Agro Portfolio	M/s Movefast Automobile (P) Ltd.	Remark
Profit after tax (PAT)	Negative AY 2014-15: Loss of Rs. 53,083/- (Para 3 & 12(ii) of ITAT order) AY 2015-16: Loss of Rs. 1,00,384/- (Para 12(ii) of ITAT Order)	Profit as P&L Account AY 2014-15: Rs. 2,79,399.74/- (PB 76) AY 2015-16: Rs. 2,66,514.40/- (PB 76) In ITR, Rs. 3,85,693/- (PB 35).	Assessee has sufficient capital base and earned interest on Rs. 1.76 crores in AY 2014-15 and on Rs. 1.64 crores in AY 2015-16 thereon duly declared in ITRs, since inception. (PB 75).
Cash Flow to Equity	Negative (Para 10 & 11 of ITAT Order) showing (-) 0.98.	Highly positive having a capital base of about a crore. Cash flow from equity shown Rs. 1.65 crores and even after spending Rs. 11 lacs on operating cost, it comes to Rs. 1.54 crores as on 31.3.2016. Figures depicted at PB 34B-34C) in Valuation Report are	PB 75 shows a reserves of about Rs. 87.45 lacs and Capital of Rs. 17.37 lacs invested in short term loans of about Rs. 1.65 crores, apart from cash of Rs. 0.28 lacs.

		obtained from Balance Sheet (PB 75). Explained in Para 4.10 of the Synopsis.	
Risk Free Returns (RF)	Declared @ 9.04% which was illogical because of unprofitable for the last 2 years.	The 'A' already earning 5-7% interest on capital, has taken a conservative profit at 12-14%.	It is quite normal in the business of automobiles. (PB 34B) where profit from FY 2015-16 to FY 2019-20 has been calculated. The assessee has assumed RF only at 6% as per Govt.Securities. (PB 34D).
Expected return from the Market (RM)	It was taken @ 15.80%.	The 'A' has taken 12-14% which is below the market rate of return which is 14%, but reduced its capital by 14% to arrive at the Present Value. (PB 34B & 34C).	Since, the company has no debt, hence Ke i.e Cost of Equity has been taken at 14% as Weighted Average Cost of Capital (WACC). (PB 34D)
Beta Movement of Share Price as per the Market.	Due to higher debt to value ratio, it has a larger Beta.	The 'A' has taken 1 (PB 34D)	Since, the assessee has no debt, Beta has been correctly assumed at 1 as there is no risk of debt.
Disclaimer	The valuer clearly states that the valuation of shares is not realistic and figures in the valuation report have been cooked up without providing any reliable basis as to how assumptions took place.	The valuer clearly states that it has used the financial information which is believed to be reliable and conclusions are dependent on such information being reliable and accurate with all material aspects.	The valuer based its report not on assumption or future projections exorbitantly, but the report was given on the financial information and made conservatively by taking the lowest profits as the company is already earning interest @ of 6-8% on its capital and no debts and profit @ 12-14 % is quite reasonable.

20. In view of the aforesaid observations, we have no hesitation to hold that the addition u/s 56(2)(viib) of the Act is not justified in the facts and circumstances of the instant case. Accordingly, the Ground No. 4 is hereby allowed.

21. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 18.08.2023

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 18th August, 2023.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi