IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI

BEFORE SH. SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 7051/Del/2025
(Assessment Year : 2014-15)

MI Industries (India) Pvt. Ltd. Plot No.6, First Floor, Near Metro Pillar No.39, MG Road, Sultanpur, New Delhi PAN No. AAFCM 9785 J	Vs.	**DCIT – 16(1)** CR Building, New Delhi – 110 002
(ASSESSEE)		(RESPONDENT)

Assessee by	Ms. Somya Jain, C.A.
Revenue by	Shri Dayainder Singh Sidhu, CIT-D.R.

Date of hearing:	09.04.2026
Date of Pronouncement:	09.04.2026

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER :

This captioned appeal has been filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-NFAC-Delhi ['CIT(A)' in short] dated 04.09.2025 arising from the assessment order dated 28.12.2016 passed by the Circle 16(2), Delhi under Section 143(3) of the Income Tax Act, 1961 ('the Act') concerning Assessment Year (A.Y.) 2014-15.

2. The grounds raised by the assessee are as under :

"1. That on the fact and circumstances of the case and in law, the impugned order dated 04.09.2025 passed by the National Faceless Appeal Centre, Delhi ['CIT(A)'] affirming the impugned assessment order dated 28.12.2016, is completely perverse, invalid, illegal and bad in law.

1.1. That the CIT(A) erred in passing the impugned order without properly appreciating the facts of the case and the relevant legal provisions applicable thereto, and in complete ignorance of the provisions of Income Tax Act, 1961 ('the Act') by grossly violating the provisions of natural justice by passing the impugned order without even providing any opportunity of personal hearing.

Re: Addition of share premium under section 56(2)(viib) of the Act

2. That the CIT(A) erred on facts and circumstances of the case and in law in confirming the addition of Rs.15,05,58,000 made by the assessing officer under section 56(2)(viib) of the Act without properly appreciating the facts of the present case and the applicable legal provisions.

2.1 That the CIT(A)/ AO erred in not appreciating that the provisions of section 56(2)(viib) of the Act as well as Rule 11UA of the Income Tax Rules, 1962 ('the Rules') were not even applicable to the facts of the instant case inasmuch the shares were issued/ allotted in financial year 2011-12 and not in the year under consideration, and the aforesaid provisions were not even in existence on the date of issuance/ allotment and were made applicable prospectively from financial year 2012-13.

2.2. That the CIT(A)/ AO erred on facts and in law by failing to appreciate that the final issue price (i.e. face value and security premium) of shares was decided/ crystallized at the time of allotment of shares in financial year 2011-12, and it was only the remaining call money which was received by the assessee during the year under consideration.

2.3. That the CIT(A)/ AO erred on facts and in law by not appreciating that no fresh money/ consideration was actually received by the assessee in the year under consideration since the outstanding unsecured loans from promoters were adjusted towards the call money due by such promoters and accordingly, provisions of section 56(2)(viib) of the Act are not applicable to the instant case.

2.4. That the CIT(A)/ AO grossly erred on facts and in law in not appreciating that the issuance/ allotment of shares by the assessee during financial year 2011-12 was duly examined and accepted by the assessing officer in the assessment proceedings for the relevant year and thus, by applying principle of consistency, the CIT(A)/ AO could not have made the impugned addition.

2.5. That the CIT(A)/ AO erred on facts and in law by ignoring the fact that no adverse inference was drawn during the assessment proceedings of the investor/ promoters for the year under consideration and the source of investment and the fair market value of the shares stood accepted in their respective assessment proceedings.

3. That the CIT(A)/ AO erred on facts and in law in arbitrarily rejecting the valuation method adopted by the assessee to determine the fair market value of the shares in the year of issuance/ allotment, and in not even determining the fair market value of the shares by any other method prescribed in the Act.

3.1. *That the CIT(A)/ AO grossly erred on facts and in law in summarily rejecting the valuation report obtained by the assessee under Rule 11UA of the Rules from a technical expert without attributing any cogent reason and in adding the entire security premium received by the assessee without even determining the fair market value of the shares as per the prescribed method.*

3.2. That the CIT(A)/ AO grossly erred on facts and in law in rejecting the Discounted Cash Flow ('DCF') method adopted by the assessee merely on the basis of variance between the projected revenues and actual revenue without even appreciating the explanations submitted by the assessee.

3.3. That the CIT(A)/ AO grossly erred on facts and in law in alleging that the assessee had not carried out any business during the year under consideration without appreciating that the assessee was in the process of setting-up textile processing unit which has yielded substantial revenue and profits in the subsequent years.

3.4. That the CIT(A)/ AO grossly erred on facts and in law in not appreciating that the assessing officer is not permitted to change the method of valuation adopted by the assessee and can only re-compute the fair market value of shares as per the method adopted by the assessee – which has completely been ignored by the CIT(A)/ AO in the present case.

3.5. That the CIT(A) erred on facts and in law in not appreciating that the fair market value of shares computed by applying Discounted Cash Flow method which is statutorily recognized under Rule 11UA(2) for the purposes of section 56(2)(viib) of the Act and duly supported by valuation report, was much higher than the issue price of shares, ousting the very applicability of section 56(2)(viib) of the Act.

3.6. That the CIT(A)/ AO grossly erred on facts and in law in making the impugned addition based on surmises, presumptions and conjectures that the fair market value of the shares should only be computed as per the net asset method and in ignoring the statutory provisions which provide option to the assessee to compute the fair market value as per DCF method.

3.7. That the CIT(A)/ AO grossly erred on facts and in law in making bald and unsubstantiated allegation that the assessee had deliberately avoided taxes by employing tax avoidance devices, that too, without bringing on record any evidence to support such allegation and by ignoring the undisputed fact that no adverse inference has been drawn by the assessing officer in the hands of the investors/ promoters and the same set of investors/ promoters still continue to hold the shares.

3.8. Without prejudice, that the CIT(A)/ AO erred on facts and in law in not appreciating that the shares were issued by the assessee at a very reasonable price of Rs. 110 per share (which is much below the fair market value of Rs. 400.89 per share) and such price cannot, by any stretch of imagination, be considered as exorbitantly high or unjustified so as to even question the valuation undertaken by the assessee.

3.9. Without prejudice, that the CIT(A)/ AO erred on facts and in law in not appreciating that the fair market value of shares computed by the assessee was accepted by financial institutions to fund the project of the assessee.

3.10. Without prejudice, that the CIT(A)/ AO erred on facts and in law in not determining the fair market value of shares as per the provisions of section 56(2)(viib) r.w. Rule 11UA of the Rules and in adding the entire security premium amount to the total income of the assessee.

3.11. Without prejudice, that the CIT(A) erred on facts and in law in not appreciating that addition could have been made only of the amount received by the assessee in excess of the fair market value of shares, and not of the entire amount of security premium without even determining the fair market value of the shares.

The assessee craves leave to add, alter or amend any or all of aforesaid grounds of appeal before or at the time of hearing."

3. The facts in brief is that the assessee is a private Limited company, engaged in the textile business and is in the process of setting up a Textile Processing Plant at Village Khair in Aligarh-UP. The Assessee, for AY 2014-15, filed return of income on 19.09.2014, declaring income of Rs.43,12,250/-, which was subsequently revised on 02.12.2014, declaring the same income.

4. The facts of the issue involved is that the assessee, as on 26-03-2012, issued and allotted 21,82,000 equity shares of Rs.10/- each at a premium of Rs.100/- per share to its promoters. During financial year 2011-12, the assessee received first call of Rs. 2/- per share at a premium of Rs.8/- per share at the time of allotment of the said shares. Further, the assessee, during the previous year under consideration, made two calls on the aforesaid shares of (i) Rs.25/- per share, comprising of face value of Rs.2/- per share and a premium of

Rs.23/- per share, and (ii) Rs.50 per share, comprising of face value of Rs.4/- per share and premium of Rs.46/- per share. Thus, the assessee, received a sum of Rs.1,30,92,000/- towards share capital and Rs.15,05,58,000/- towards share premium during the relevant assessment year. The AO held that the said the share premium received during the year of Rs 15,05,58,000/-, was income of the assessee under section 56(2)(viib) of the Act and completed the assessment under section 143(3) of the Income Tax Act, 1961('the Act') vide order dated 28.12.2016, determining income of Rs.15,48,7,250/-. On appeal the CIT(A) upheld the addition. Aggrieved assessee is before us.

5. The ld AR submitted that the seven persons, to whom shares were allotted are the promoters of the assessee company and continue to be the shareholders of the assessee company till date. The ld AR submitted that the assessing officer has not doubted the sources of funds received for Share Application Money from the promoters in their assessments made u/s 143(3).

6. The ld AR submitted that the assessing officer that the provisions of section 56(2)(viib) of the Act, inserted by Finance Act, 2013 w.e.f 01.04.2013, would not be applicable in the present case as the entire process of issuance, allotment of the said shares was

complete and terms of payment of call money as also share premium were determined/finalised before insertion of the said provision in the statute. The ld AR reiterated that the contract between the Company and the Shareholder was crystalised on the 26th Day of March'2012 when the company allotted the shares of the face value of Rs.10/- at a premium of Rs.100/-. It was mode of recovery of the said amount of share capital which was left but the contracted price of the shares including the premium was crystallised on 26-03-2012 when the first allotment of shares was made. The provisions of section 56(2)(viib) came into the statute w.e.f 01-04-2013 and the provisions of Rule 11U and 11UA came into existence w.e.f 29-11-2013. Thus when the assessee allotted the shares at the premium of Rs.100/- each, the provisions of Section 56(2)(viib) and Rule 11UA were not applicable as neither the substantive provision was there in the statute books nor even the computation provision was notified. It is also a settled law that in the absence of machinery provisions, the computation fails and consequently, the substantive provision would also fail as has been held by the Hon'ble Supreme Court in the case of ***Commissioner of Income-Tax, vs. B. C. Srinivasa Setty,*** reported in 128 ITR 294 (SC).

7. The ld AR argued that the issue of Share Premium had to be examined in the year of the Allotment of Shares and relied on

i) ***PCIT V Minda Sm Technocast (P) Ltd*** [2023] 155 taxmann.com 548 (Delhi).
ii) ***Cimex Land and Housing (P) Ltd V ITO*** 104 Taxmann.com 240.
iii) ***India Today Online Pvt Ltd V ITO*** 104 taxmann.com 385 (Delhi-Trib
iv)ITO v. Appealing Infrastructure (P.) Ltd. [2023] 152 taxmann.com 385 (Delhi - Trib.)

8. The Ld AR made another argument that assessment of the assessee for the A.Y.2012-13 and for A.Y.2013-14 when the shares of Rs.10/- each were first allotted at a premium of Rs.100/- was made under section 143(3) and the said allotment of shares was duly verified by the said Assessing Officer and no adverse inference was drawn in the said assessment by the then assessing officer.

9. The ld AR made yet another argument that the Sec.56(2)(viib) of I.T.Act mandates about the determination of Fair Market Value (F.M.V) of shares using NAV method or DCF method. Section 56(2)(viib) provide an option to the assessee to opt for a method of choice and the assessee adopted DCF method. On the basis of Techno Economic feasibility made by M/s Dun & Bradstreet of M/s Dun & Bradstreet India, M/s Sharma Goel & Company, Chartered Accountants determined the FMV of shares at Rs.400.89/- per share. The assessee however issued shares at a premium of Rs. 100/-only which is below the FMV.

10. The ld AR made another argument that the provisions of section 56(2)(viib) require that only the share premium which exceeds the fair

value of share premium should be added to the income as income from other sources. However the assessing officer has not undertaken any exercise to determine the actual value of the share premium and just proceeded to add the entire amount of share premium collected in the year under consideration which incidentally is not the entire amount of share premium as part of the share premium was collected in the A.Y.2012-13 and part in the A.Y.2015-16 besides the share premium collected in the year under consideration.

11. The ld AR stated that the contention of the assessing officer that the assessee was not carrying on any business activity is absolutely incorrect. In the year under consideration the assessee was in the process of setting up a Textile Processing Unit in the District of Aligarh for which the land had already been purchased and the building of the Factory Shed was under construction. Advances for various items for building construction, machineries etc were also given by the assessee. In the year under consideration the assessee advanced the Rs 7.74 crore for Capital Works In progress. Thus the assessee may not have had a revenue stream from business activities but was fully engaged in the process of setting up the textile processing plant. Any valuation to be made for the business of the assessee has to be made with reference to the potential incomes to be realized from the business

being set up by the assessee. The bank which ultimately funded the assessee's project worth almost Rs. 100 Crores also valued the business potential on the basis of the potential of the business to generate revenues in future.

12. Per contra, the ld DR vehemently argued that the provisions of section 56(2)(viib) is on receipt basis and is applicable in the instant year. The ld DR relied on the order of the AO and the CIT(A).

13. We have heard the rival submissions and have perused the materials on record. To adjudicate the issues at hand it would be prudent to produce the relevant provision of section 56(2)(viib) of the Act which reads as under:

> ***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 :—***
>
> *********
>
> ***(viib)"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,—***
>
> ***(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) *******",

Keeping the provisions of law as above in mind, we shall deal with the issues at hand.

14. First of all, the provision of law mandates that where a private ltd company, "**receives"**, in any previous year, 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, shall be treated as income from other sources. In view of the unambiguous provision of law, we are inclined to reject the argument of the assessee that as the process of issue and allotment of shares was done in FY 2011-12, the rigours of section 56(2)(viib) does not apply in the impugned year. The law is quite clear and unambiguous that the provisions of section 56(2)(viib) comes into play in the period of time when the assessee **"receives"** the consideration which exceeds the FMV of the shares. In the instant case, though the issue and allotment of shares took place in F.Y. 2011-12, the part of sales consideration was received in the impugned assessment year. We are of the considered view therefore, the

assessee cannot escape the application of the section 56(2)(viib) of the Act on 'receive' basis. Ground 2 is dismissed.

15. The next argument to be dealt is the determination of value of the shares that exceeds the FMV of the shares. We find that the assessee had furnished the valuation of Shares as per Discounted Cash Flow Method projected by M/s Dun & Bradstreet in their Techno Economic Viability Report, on the basis which M/s Sharma Goel & Company has worked out the FMV of the shares of the assessee company under Rule 11UA of the income Tax Rules, 1962 at 400.89 per share.

16. We find that the AO rejected the Valuation report on the following grounds:

- That the actual cash flows of the assessee are far from the cash flows projected by the said consultant

- The assessee has issued the shares in 2011-12 and thus the valuation should have been close to that date of the issue of shares.

-That the assessee itself did not follow the said valuation and issued the shares only at a premium of Rs.100/-

17. We note that the AO nowhere found an error in the methodology of the preparation of the Techno Economic Viability Report. We find that the judicial precedents proscribe the assessing officer to

determine a particular method for determining the value of shares. It is the prerogative of the assessee to opt for particular method; either DCF or NAV. The hon'ble Delhi High Court in ***Principal Chief Commissioner of Income-tax-1 Vs A.H. Multisoft (P.) Ltd***. [2025] 175 taxmann.com 46 (Delhi) held that where assessee adopted DCF method for determining FMV of shares issued by it, which was one of the methods that could be adopted by assessee under rule 11UA(2)(b) for determining FMV of unquoted equity shares, FMV determined by assessee was to be accepted. Similarly, in ***Principal Commissioner of Income-tax, Central V Waterline Hotels (P.) Ltd***.[2025] 172 taxmann.com 820 (Karnataka), the hon'ble Karnataka High Court held that where fair market value of shares was arrived at by assessee-company by adopting DCF method which was one of statutorily designated methods in terms of rule 11UA(2) of Income-tax Rules, 1962, no addition could be made under section 56(2)(viib) for amount of share premium received by assessee on issue of shares. The Mumbai Tribunal in ***DCIT-1(2)(2) Vs Ozoneland Agro Pvt Ltd*** (ITA/4854/Mum/2016 also held that the AO cannot insist upon the usage of any particular method of valuation of shares when the Rules 11UA grants the choice of method to the assessee. We are therefore of

the considered view that rejection of DCF method adopted by the assessee by the AO is unwarranted and against the law.

18. We also note that the AO not only rejected the DCF method employed by the assessee, he has made the addition of the entire amount of share premium collected by assessee during the year. We find that the approach of the AO is exactly contrary to the provisions of law which mandates that the AO is required to determine only the share premium which exceeds the fair value of share premium, for arriving at the income from other sources. From the perusal of the assessment order, we find the AO has not undertaken any exercise to determine the actual value of the share premium. There is no mandate in law to treat entire amount of share premium as income without making an estimate of fair valuation of shares. This act of the assessing officer therefore, to our mind, is arbitrary and deserves to be rejected.

19. The other argument of the assessee has substantial force that when the FMV of shares is determined at Rs 400.89 per shares and since the assessee has issued shares at a premium of Rs. 100/-only, then there is no premium collected which is higher than the FMV. The Assessing officer has completely failed to build a case to show that the consideration received by the assessee is above the FMV of shares.

20. We further agree with the assessee that the assessing officer committed a mistake when he holds that the assessee was not carrying on any business activity. The assessee may not have had a revenue stream from business activities but in the year under consideration the assessee was in the process of setting up a Textile Processing Unit in the District of Aligarh for which the land had already been purchased and the building of the Factory Shed was under construction and had a Capital Works In progress of Rs.7.74 crore.

21. We also negate the contention of the assessing officer that the assessee has itself not relied on the valuation of the shares at Rs.400.89 made by M/s Dun & Bradstreet and has issued shares at a premium of Rs.100. The provisions of section 56(2)(viib) and Rule 11UV only prescribes maximum valuation upto which the assessee can issue the shares at a premium. It does not prohibit the assessee from fixing a premium less than the premium as determined by the two methods prescribed by Rule 11UA.The provisions of the section 56(2)(viib) nowhere require the assessee to issue shares at the valuation derived as per the Rule 11UA of the Income Tax Rules. It only requires the assessee to issue shares at a value which should not be higher than the value derived under Rule 11UA. Thus since the assessee issued shares at a premium of Rs. 100/- only there is no contravention of the Rule 11

UA and thus section 56(2)(viib) has no application. Ground 3 and its subground is allowed.

22. In the result, the appeal of the assessee in ITA 7051/Del/2025 is partly allowed.

Order pronounced in the open court on 09.04.2026

Sd/-	**Sd/-**
(SATBEER SINGH GODARA)	**(NAVEEN CHANDRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 06.07.2026

*Priti Yadav, Sr. Ps**

Copy forwarded to:
1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI