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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 04th August, 2026

\# **CNR No. DLHC011100112025**

\+ ITA 160/2026

PR. COMMISSIONER OF INCOME TAX – 1 .....Appellant

Through: Mr. Vipul Agarwal SSC with Mr. G. Ranjan & Ms. Harshita Kotru, Advocates.

versus

M/S ETAWAH CHAKERI (KANPUR) HIGHWAY PRIVATE LIMITED .....Respondent

Through: Mr. Rajat Navet, Mr. Rajat Rana & Mr. Kushagra Pandit, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

DINESH MEHTA, J. ***(ORAL)***

CM APPL. 13319/2026 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CM APPL. 13317/2026 (delay in filing)

3. This is an application filed by the appellant/Department under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 seeking condonation of 600 days delay in filing the appeal.

4. Mr. Vipul Agarwal, learned Senior Standing Counsel for the appellant-applicant submitted that the delay of 600 days occurred due to procedural lapse and also because of the fact that the previous Standing

Counsel for the Department had resigned and the case files remained in his office for a considerable time before the same were handed over to the present counsel. And since a lot of appeals were to be filed through his chambers, a substantial time was consumed, resulting in the present delay in filing the appeal.

5. Learned counsel for the respondent/assessee opposed the present application.

6. Having heard learned counsel for the parties, we find that though delay of 600 days is substantial but considering that most of the time was elapsed in the chambers of the previous Standing Counsel for the Department whereafter, and the files were transferred in bulk to the present Standing Counsel, which took some more time. The delay in filing the appeal thus, stands sufficiently explained.

7. We are, therefore, persuaded to allow the present application. The delay of 600 days in filing the appeal is, therefore, condoned.

8. Application is allowed.

ITA 160/2026

9. By way of instant appeal filed under Section 260A of the Income Tax Act, 1961*(hereinafter referred to as 'the Act of 1961'),* the appellant-Department has challenged the order dated 12.09.2023 passed by the Income Tax Appellate Tribunal, Delhi 'B' Bench, New Delhi *(hereinafter referred to as 'Tribunal')*in ITA No. 5906/DEL/2019 for Assessment Year 2013-14.

10. The assessee company was incorporated on 15.12.2011. A contract was awarded by NHAI (the owner of the project) to the assessee company for construction of Six-Lane Etawah-Chakeri (Kanpur) section of NH-2 from Km

323.475 to Km 483.687 in the state of Uttar Pradesh under NHDP Phase-V on Design, Build, Finance Operate and Transfer (DBFOT) Basis Company has entered into a Concession Agreement with NHAI for the said project on 05.03.2012. During the year under consideration on 29.08.2012, the company allotted to its parent company Oriental Structural Engineers Projects Ltd. and Oriental Tollways Ltd., 1,00,00,000 shares of Rs. 10/- each at a premium of Rs. 90/- per share. On the allegations of consideration received by the assessee on shares being more than fair market value in terms of section 56(2)(viib) read with section 2(24)(xvi) of the Income Tax Act, 1961, the Additional Commissioner of Income Tax, Range-8, New Delhi issued directions under Section 144A of the Act of 1961 on 28.03.2016.

11. According to the assessee, it had issued the shares to its parent companies at a premium of Rs 90/- per share, which value, according to it, was derived on the basis of valuation report of M/s Mehta & Co. Chartered Accountants dated 31.05.2012, who valued the shares by applying the Discounted Cash Flow Method *(hereinafter referred to as 'DCF method')*.

12. During the course of assessment proceedings, the Assessing Officer*(hereinafter referred to as 'AO')* was not satisfied with the valuation of the shares so made by the assessee and observed that the assessee ought to have made the valuation by applying the Net Asset Value Method *(hereinafter referred to as 'NAV method')*as mandated by Rule 11UA of the Income Tax Rules, 1962 *(hereinafter referred to as 'the Rules of 1962')* read with Section 56(2)(viib) of the Act of 1961.

13. While passing the assessment order dated 30.03.2016 in paragraph 4, the AO discussed the issue in detail and came to a conclusion that as per the valuation made under the DCF method, the valuation of the company would

be Rs (-)525.16 Crores. He thus, made an addition of Rs. 90 Crores under Section 56(2)(viib) read with Section 2(24) of the Act of 1961. The relevant part of the assessment order is reproduced hereinfra:-

> *"4. However, without prejudice to determination of FMV under NAV method as per pre-amended Rule 11UA, determination of FMV under DOF method as per valuation report of M.Mehta & Co. has also been considered. It has been observed that Cost of Capital of 9.4% has been worked out by taking ridiculously low Risk Premium of 0.49%and Expected Return on Equity of 9.05%, No satisfactory explanation is forthcoming either from the Valuer or the assessee, Therefore, Cost of Capital has been worked out at 14.68% by taking Risk Premium of 3.58% and Expected Return on Equity of 12.14%.As a result Present Value of the DCF at the end of the Concession Period in May, 2028 comes to (-) Rs.625.17 crore. After adding Cash Equivalents ofRs.100.01 crore, the resultant DCF comes to (-) 525.16 crore. As a result of apportionment of DCF of(-) 525.16 crore amongst 10016074 shares, the FMV would be a negative figure and thus the same is treated as Zero under Rule 11UA(2)(b), However, in view of provisions of Expl. (a)(ii) to section 56(2)(viib) FMV of Rs.10/- as per NAV method being higher of the two valuations has been adopted as FMV in assessee's case. Far removal of doubts it is clarified that consideration of FMV as per DCF method and as per Expl. (a)(ii) to section56(2)(viib) is without prejudice to FMV of Rs.10/- as per NAV method as per pre-amended Rule 11UA as discussed in pare 4.2 of the directions u/s144A of Addl. CIT, Range-8, New Delhi. The issue of working of Cost of Capital has been discussed in great details in pares5.1 to 5.4 of the directions u/s 144A of Addl.CIT, Range-8, New Delhi. The computation of DCF in assessee's case has been captured in Annexure-I to this assessment order."*

14. The Commissioner of Income Tax (Appeals)*(hereinafter referred to as 'CIT(A)')* vide its order dated 30.04.2019 allowed the appeal filed by the assessee against the aforesaid assessment order dated 30.03.2016 and held that the valuation adopted by the assessee on the basis of DCF method was

correct and the AO has erred in arriving at a negative DCF value.

15. The Appellate Authority clearly held that Explanation (a) of Section 56(2)(viib) of the Act of 1961 gives an option to the assessee either to follow such method as may be prescribed or any other method to the satisfaction of the AO. He, therefore, recorded a finding that the market value of the shares on the date of issuance, namely Rs 100/- per share, as adopted or taken by the assessee, was justified.

16. Against the above referred order of the CIT(A), the Department went in appeal before the Tribunal, which, vide its order dated 12.09.2023, affirmed the order of the CIT(A) holding that it is the discretion of the assessee to adopt a particular method of valuation. It further observed that the method of valuation, which has been subsequently recognised by the Government vide notification dated 29.11.2012, namely the DCF method has rightly been applied by the assessee and since the same was a recognised method during the previous year relating to Assessment Year 2013-14, the AO ought not to have rejected the same on a technical reason.

17. Mr. Vipul Agarwal, learned Senior Standing Counsel, assailing the order of the Tribunal dated 12.09.2023, vehemently argued that the Tribunal has seriously erred in accepting the assessee's stand *qua* the DCF method of valuation of shares.

18. He invited the Court's attention towards Rule 11UA of the Rules of 1962 and argued that when introduced, Rule 11UA contained only Clause (a), and Clause (b) was inserted w.e.f. 29.11.2012 and accordingly, DCF method was introduced/recognised by the Central Government on 29.11.2012, whereas the assessee had issued its shares on 29.08.2012, based on the valuation as per DCF method. His argument in essence was that since DCF

method was not a recognised method of valuation on the date of issuance of shares, the valuation based on such method could not be accepted. And was therefore, rightly rejected by the AO.

19. He argued that the expression 'shall', used both in Rule 11UA of the Rules of 1962 and in Clause (b) thereof, is mandatory in nature and whenever the shares are to be valued, the same are to be valued as per the method provided in Rule 11UA of the Rules of 1962.

20. Mr. Rajat Navet, learned Counsel for the respondent, on the other hand submitted that the argument advanced by Mr. Vipul Agarwal is untenable in law. Taking the Court through the legislative history, he submitted that though Section 56(2) of the Act of 1961 already existed in the statute book, while Clause (viib) was introduced in Section 56(2) w.e.f. 01.04.2013. And when Rule 11UA of the Rules of 1962 was framed, the Government in its wisdom conceded of only one method of valuation *viz.* the NAV method, not realising the fact that it was not the sole method of valuation of shares prevailing in the financial world, and there were other methods also, including the DCF method.

21. He submitted that in the case of new industries or a new entrepreneur, the NAV method cannot be a method of valuation of shares, particularly, when a new company issues share capital at premium, there are many factors such as propensity of the product, its market, its business potential and the promoters' reputation which affect the valuation of the shares.

22. He, therefore, submitted that the valuation of the shares made by the respondent-assessee on the basis of DCF method duly supported by a certificate of Chartered Accountant was correct. And since the AO has not recorded any cogent reason to discard it, his order has rightly been set aside

by the Appellate Authorities.

23. He argued that the finding recorded by the AO is perverse to say the least, inasmuch as he has even held that the valuation of the respondent-company is Rs.(-)525.16 Crores.

24. He argued that as per the Explanation given under clause (viib) of Section 56(2) of the Act of 1961, the AO is supposed to record his dissatisfaction about the valuation adopted by the assessee and then only, he can make any other valuation.

25. He further submitted that mere recording of the dissatisfaction, *per se*, cannot be a reason to discard a scientific valuation given by an assessee and that the dissatisfaction recorded by the AO must be based on cogent reasons and valid logic.

26. Heard learned counsel for the parties.

27. On first blush, what has been argued by Mr. Vipul Agarwal, learned Senior Standing Counsel, appears attractive, since the DCF method was introduced in Rule 11UA of the Rules of 1962 w.e.f. 29.11.2012, and the shares were issued by the respondent-assessee on 29.08.2012.

28. On a first look, one may have this impression that the valuation adopted by the respondent-assessee on such method has rightly been rejected by the AO and the assessee could not have adopted such a method of valuation. However, on deeper scrutiny, in light of what has been submitted by learned counsel for the respondent, and going through the scheme of the Act of 1961 and Rules of 1962, we find that the aforesaid argument cannot be accepted as advanced. The Court cannot be oblivious of the fact that Rule 11UA of the Rules of 1962 was amended on 29.11.2012 providing the DCF method of valuation of shares and Clause (viib) was inserted under Section 56(2) of the

Act of 1961 w.e.f. 01.04.2013.

29. Maybe for ignorance or otherwise, the Government provided only one method of valuation under the Rules, while the other recognised method of valuation including the DCF method was not included, which, as a matter of fact, was introduced by way of subsequent amendment in the Rules of 1962 on 29.11.2012.

30. The Assessing Officer cannot ignore the financial and corporate world and the fact that in the case of a newly incorporated company, the method of valuation of shares cannot be based on the NAV method.

31. The assessee in the instant case had adopted a recognised mode of valuation of shares (Discounted Cash Flow Method) and issued shares at a premium of Rs. 90/- which did not find favour with the AO.

32. According to this Court, the fact that such method is a known method of valuation can be discerned from the fact that the Government, in the very same year has brought an amendment in the Rules of 1962 and adopted such method to be a valid method of valuation.

33. The use of expression ‘shall’ in Rule 11UA of the Rules of 1962 though, gives an indication that the provision is mandatory, but given the facts of the present case, when the respondent-assessee company was a newly incorporated company, its explanation that its shares could not have been valued on the basis of NAV method was a valid explanation. If the AO was of the view that the valuation as provided by the assessee was incorrect, he ought to have identified flaws or faults either in the valuation report or in the method of valuation adopted by the respondent-assessee.

34. By doing so, what the AO has observed is that the expected rate of return of the assessee should have been 14.68 %, instead of 9.4 % as claimed

by the assessee, According to us, the AO cannot sit in the arm chair of an assessee and cannot become an economist to ascertain the probable or expected rate of return, which an economist can determine based on the comparables of other industrial players. The AO can find faults/flaws in the methodology, but he cannot question the expected rate of return, as adopted by an assessee or the valuer. The premise on which the AO rejected the valuation is clearly erroneous.

35. So far as the valuation made by the assessee is concerned, we find that the same was based on a Chartered Accountant's (M/s M. Mehta & Co.) report dated 31.05.2012, and the method is a recognised method of valuation, though such method was only subsequently notified by the Government.

36. In our considered opinion, there is a difference between a method being recognised and a method being notified. A method is 'recognised', when it is accepted by persons engaged in the trade and by experts in the field, whereas it is 'notified' when the legislature notifies it. It is true that the Government had notified the scheme on 29.11.2012, merely three months after the respondent/assessee had issued the shares.

37. We fail to understand how, if an assessee who valued its shares on the DCF method after 29.11.2012 is said to have adopted a justified method of valuation, *vis-a-vis* an assessee, who valued its shares on the very same method before 29.11.2012 can be said to have committed a wrong, simply because of fortuitous circumstance of the rule being notified subsequently.

38. In any case, the methods of valuation prescribed in the Rules are procedural in nature, and therefore, should not come in the way of substantive laws. Unless there is a substantial breach or violation of law, procedural law should not deprive an assessee of its rights.

39. We, therefore, do not find any reason to interfere in the concurrent findings recorded by the CIT(A), as affirmed by the Tribunal vide impugned judgment dated 12.09.2023.

40. The appeal, therefore, fails.

(DINESH MEHTA)
JUDGE

(RAJNEESH KUMAR GUPTA)
JUDGE

AUGUST 4, 2026
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