

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'F': NEW DELHI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
ITA No.9310/DEL/2019  
[Assessment Year: 2016-17]**

DCIT, Circle-20(1), Room No.219, C.R. Building, I.P. Estate, New Delhi-110002	Vs	M/s Process Nine Technologies (P) Ltd., E-13, Model Town, Delhi-110009
		<b>PAN-AAFCP9379M</b>
Revenue		Assessee

Revenue by	Sh. Shankar Gupta, Sr. DR
Assessee by	Sh. Ashwani Kumar, CA

<b>Date of Hearing</b>	<b>27.04.2023</b>
<b>Date of Pronouncement</b>	<b>02.05.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM.**

This appeal by the Revenue is directed against the order of the Ld. Ld. CIT(A)-7, New Delhi, dated 30.09.2019 pertaining to Assessment Year 2016-17.

2. The grounds of appeal reads as under:-

*"1. Whether on the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.1,88,82,824/- made on account of share premium receipt u/s 56(2)(viib) of the I.T. Act, 1961 despite the fact that the valuation report submitted by the assessee company was not substantiated by the assessee company?.*

*2. "Whether on the facts and in the circumstances of the case and the Ld. CIT(A) erred in deleting the addition of*

*Rs.3,40,297/- on account of disallowance of ESOP expenses without appreciating the fact that year of the vesting period in which ESOP was to be allowed was not clear, in the ESOP scheme submitted by the assessee.”*

**Apropos the issue of Share Premium**

3. Brief facts of the case are that the assessee company is a software company developing and promoting Indian Languages technologies with emphasis on language localization of websites, mobile apps and web based enterprise applications. During the year it has issued preference shares and received Rs.2,54,50,003/- as share premium. During the course of assessment proceeding the Assessing Officer asked the assessee company to submit justification as per Section 56(2)(vi) (b) of the Act for the share value along with 11UA valuation report. Further, vide questionnaire dated 15.12.2018 the assessee company was asked to show cause as to why the share premium received in excess of Face value on issue of preference shares be not added to income us 56(2)(viib) of the Act (only in case off shares issued to resident persons) as valuation report is in respect of equity shares and not preference share and to provide comparable data of amounts considered in DCF method and actual figures for As 2016-17, 2017-18 and 2018-19.

3.1. In reply thereto it was submitted on behalf of the assessee company that the fair market value was arrived at by applying the Discounted Cash Flow (DCF) method as per the valuation report furnished by M/s Ashwani & Associates, Chartered Accountants on the basis of the projections furnished by the assessee company. It was further submitted that the projections were made by the assessee company on the basis, expected further scenario and

trends and its plans for the future and considering a host of other factors, relevant in this regard, some or more of which are not only estimates but dependent on a complex interplay of factors, internal as well as external, and over which it may have only nominal or notional control. As such the projections can and do invariably deviate whereby the actual performance in the future may vary, even significantly, from the projections. Accordingly, considering the benefit of hindsight based on the actual subsequent performance cannot be the basis for rejecting the DC valuation. The projections on the basis of which the DC based valuation was arrived at was correct at the time at which it was made, and which factor is relevant for determining the applicability or otherwise of section 56(2)(viib) and whether subsequent performance has measured upto the projections used therein. However, the above arguments were not found acceptable by the Assessing Officer and made an addition of Rs. 1,88,82,824/- representing the amount of share premium received during the year us 56(20(viib) of the Act.

4. Upon assessee's appeal, the Ld. CIT(A) deleted the addition by holding as under:-

*"6.7 I find from the records that the Appellant Company has been promoted by the professionals and is carrying on business in a very specific niche area. It has raised the venture capital during the year through Indian Angel Network Ltd from a range of high net-worth individuals and reputed professionals who are reputed names in their respective field. Moreover, the price at which the shares were issued was duly based on a valuation report based on the DC method prepared by Ashwani & Associates, Chartered Accountants. Further the discounted cash flow (DC method) is the recognized method as per Section 56(2) (viib) of the Act read together with rule 11UA of the Income Tax Rules.*

*6.8 The Assessing Officer has rejected the DC valuation merely on the basis of variation between the projections used for arriving*

*at the DCF valuation and the subsequent performance. While before me the AR has justified the projections on the basis of study carried out by reputed firms, he has also stated that the variations was also due to shifting focus in tune with the perceived business needs and commercial exigencies.”*

5. Against the above order, the Revenue is in appeal before us.
6. The Ld. DR has relied upon the order of the AO.
7. Per contra, the ld. Counsel for the assessee submitted that the ld. CIT(A) has passed a well reasoned order.
8. Upon careful consideration, we note that the assessee has used recognized discounted cash flow method. This is duly recognized method as per section 56(2)(viib) of the Act read with rule 11UA of the Income Tax Rules. The AO has rejected this method by comparing the subsequent performance with the projections by claiming that this was not correct. However as noted by the Ld. CIT(A) that the AO's rejection of the DCA value on the basis of variation between the projections used for arriving at the DCF valuation and the subsequent performance is not correct. The Ld. CIT(A) has passed a well reasoned order and rightly relied upon the order of the ITAT in the case of Cinestaan Entertainment (P) Ltd. vs Income Tax Officer, [(2019) 106 taxmann.com 300 (Del.-Trib.)]. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A), hence we uphold the same.

**Apropos the issue of ESOP Expenses**

9. The Assessing Officer disallowed the claim of Rs.3,40,297/- made by the assessee company on account of ESOP expenses by relying on the

Bangalore Special Bench of ITAT order dated 16.07.2013 in the case of Biocon Ltd. vs DCIT.

10. Upon assessee's appeal, the Id. CIT(A) deleted the addition by holding as under:-

*"7.3. I have gone through the assessment order and the submissions made on behalf of the assessee company by the AR and find that the jurisdictional Delhi High Court in the case of Lemon Tree Hotels and New Delhi Television Ltd. has held that expenditure under ESOP is an allowable expenses and respectfully following the same I hold that the claim of Rs.3,40,297/-."*

11. Against the above order, the Revenue is in appeal before us.

12. We have heard both the parties and perused the records. We find that this issue is squarely covered by the decision of the jurisdictional Delhi High Court in the case of Lemon Tree Hotels and New Delhi Television Ltd. wherein it has been held that expenditure under ESOP is an allowable expense. Hence, we find that the Ld. CIT(A) has passed a correct order and we do not need to interference on our part. Accordingly, this appeal by the Revenue is dismissed.

13. In the result, this appeal of the Revenue stands dismissed.

Order pronounced in the open court on 02<sup>nd</sup> May, 2023.

**Sd/-**  
**[CHALLA NAGENDRA PRASAD]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** 02.05.2023

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Copy forwarded to:

1. Appellant

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

Asst. Registrar,  
ITAT, New Delhi



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