

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL  
MEMBER AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1881/Bang/2019
AssessmentYear:2016-17

M/s. Saahas Waste Management (P) Ltd. No.21, 5 <sup>th</sup> 'C' Cross, 16 <sup>th</sup> Main BTM 2 <sup>nd</sup> Stage Bangalore-560 076 <b>PAN NO : AATCS5284J</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-6(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri H.V. Goutham, A.R.
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	03.11.2020
Date of Pronouncement	:	01.12.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order passed by the Ld. CIT(A) confirming the addition made by the A.O. u/s 56(2)(viib) of the Income-tax Act,1961 [the Act' for short] amounting to Rs.85,20,036/- for assessment year 2016-17.

2. We heard the parties and perused the record. During the year under consideration, the assessee had issued 2643 nos. of preference shares having a face value of Rs.2,225/- each at a premium of Rs.3,874.42 per preference share. Accordingly, the

Page 2 of 5

assessee had collected share premium of Rs.1,02,40,092/-. The A.O. noticed that the assessee has followed Discounted Cash Flow method (DCF) for valuing shares and accordingly, substantiated the share premium collected by it. The A.O. however, rejected the same and computed the value of share by adopting net asset value method. The A.O. noticed that the net asset value was negative at (-)Rs.15,520/-. Accordingly, the A.O. took the view that the entire share premium of Rs.3,874.42 collected by the assessee is liable for tax u/s 56(2)(viib) of the Act. The A.O. noticed that the assessee has issued shares to both residents and non-residents. The number of shares issued to residents was 2199 preference shares. Accordingly, the share premium collected from resident share holders was Rs.85,20,036/-, which was liable for taxation u/s 56(2)(viib) of the Act. Accordingly, the A.O. assessed the above said amount as income of the assessee u/s 56(2)(viib) of the Act. The Ld. CIT(A) also confirmed the same and hence, the assessee has filed this appeal before us.

3. The Ld. A.R. submitted that DCF method is one of the recognized methods of share valuation and the A.O. was not justified in rejecting the same without finding fault with the workings furnished by the assessee. He submitted that an identical issue was examined by the coordinate bench of the Tribunal in the following cases:

- a) Innoviti Payment Solutions (P) Ltd. Vs. ITO, Bangalore (2019) 102 taxmann.com 59 (Bangalore – Trib.)
- b) Valencia Nutrition Ltd. Vs. Deputy Commissioner of Income-tax (2020) 120 taxmann.com 238 (Bangalore – Trib.)

4. The Ld. A.R. submitted that in both the above said cases, the decision rendered by Hon'ble Bombay High Court in the case of Vodafone M.Paisa 92 taxmann.com 73 was followed and the issue was restored to the file of A.O. with the direction to examine the issue afresh under DCF method only.

5. The Ld. A.R. also submitted that the assessee is a "Startup company". The CBDT, vide notification No.13/2019 dated 5.3.2019 and consolidated circular No.22/2019 dated 30.8.2019, has exempted startup companies from application of provisions of section 56(2)(viib) of the Act. Accordingly, he submitted that the impugned addition made by the A.O. is against the circular issued by CBDT and hence liable to be deleted.

6. On the contrary, the Ld. D.R. submitted that the matter may be restored to the file of the A.O. for examining the same afresh in view of the decision rendered by coordinate bench in the case of Innoviti Payment Solutions Pvt. Ltd. (supra). With regard to the claim of status of the company being "startup company", the Ld. D.R. submitted that the assessee has not furnished any document in support of the said claim.

7. In the rejoinder, the Ld. A.R. agreed that he will furnish relevant documents before the bench within a week.

8. We heard the rival contentions and perused the record. As per the decision rendered by the coordinate bench in the case of Innoviti Payment Solutions (P) Ltd. Vs. ITO, Bangalore (supra), this matter needs to be restored to the file of the A.O. for examining it

Page 4 of 5

afresh in accordance with the directions given in the above said order.

9. However, the Ld. A.R. has submitted that the assessee is a startup company and hence it is exempted from the application of provisions of section 56(2)(viib) of the Act. However, till date, the assessee has not furnished any document in support of the said submissions. However, since the matter requires to be set aside to the file of the A.O., the assessee may furnish the required documents before the A.O. if it seeks to claim exemption from application of provisions of section 56(2)(viib) of the Act.

10. In view of the forgoing discussions, we set aside the order passed by Ld.CIT(A) and restore the issue to the file of the A.O. for examining it afresh.

11. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 1<sup>st</sup> Dec, 2020

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 1<sup>st</sup> Dec, 2020.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.