IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

INCOME TAX APPEAL NO. 425 OF 2023

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX
CENTRAL,
3RD FLOOR, C R BUILDING, QUEENS ROAD,
BENGALURU - 560 001.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 7(1)(2), PRESENT ADDRESS
DCIT, CENTRAL CIRCLE, SURESH COMPLEX,
SANJAYAGANDHI NAGAR, INFANTRY ROAD,
BELLARY - 583 104.

...APPELLANTS

(BY SRI. Y V RAVIRAJ., ADVOCATE FOR
SRI. M DILIP.,ADVOCATE)

AND:

WATERLINE HOTELS PVT LTD.,
10TH FLOOR, GAMMA BLOCK,
SIGMA SOFT TECH PARK NO 07,
AIRPORT VARTHUR ROAD, WHITEFIELD,
BENGALURU - 560 066.
PAN AAACW 8059N

...RESPONDENT

(BY SRI. S SHANKAR., SENIOR COUNSEL A/W
SRI. MADHUSUDHAN U A.,ADVOCATE)

THIS ITA / INCOME TAX APPEAL UNDER SEC.260-A OF THE INCOME TAX ACT, 1961, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY

THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.388/BANG/2020 DATED 13.09.2022 FOR ASSESSMENT YEAR 2013-2014 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE,BELLARY AND III. TO PASS SUCH OTHER SUITABLE ORDERS AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Revenue is in appeal before this Court for laying a challenge to the Tribunal's order dated 13.09.2022 with the following substantial questions of law:

> *"1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting addition made under section 56(2)(viib) of the Act amounting to Rs.33,71,77,500 towards share premium collected from closely held company which is contrary to the intention lying behind the introduction of the said provision to bring to tax the unaccounted income brought into books of account through unwarranted or unjustified share premium by Corporate entities"?*

2. Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in deleting the addition made under section 56(2)(viib) amounting to Rs.33,71,77,500 pertaining to share premium collected when assessee had been incurring huge loss and there was no justification provided for fixing such high share value and ignoring findings recorded in assessment order that common director of the assess-company and investor-company namely, M/s UKN Properties Ltd had given a statement during the course of Survey conducted in case of investor company on 18/11/2015 that there was no valuation report obtained for determining the value of the share allotted on which premium was collected"?

3. "Whether on the facts and in the circumstances of the case, the Tribunal's order is perverse in nature in setting aside disallowance made in share premium by erroneously holding that the valuation report on DCF Method produced during assessment proceedings was a valid report justifying valuation of shares without appreciating that there was no basis for projections made under DCF method and also ignoring the reasons assigned by assessing authority and CIT(A) on the issue"?

2. Learned Panel Counsel appearing for the Assessee vehemently submits that the Tribunal has wrongly construed Sec.56(2)(viib) of the Income Tax Act, 1961 and thereby committed error of deleting addition made in

an amount of Rs.33,71,77,500/- in respect of securities *premia* credited on share issue in question.

3. Brief fact matrix of the case as succinctly stated by the Assessing Authority is reflected in para 4 of Assessment Order dated 13.03.2016 which reads as under:

> *"4. It is seen from the Balance Sheet of the assess that there is Rs.33,71,77,500 received as securities premium credited on share issue. AR was asked vide order sheet noting dated 19.01.2016 to furnish the details of share issued along with share premium. AR of the assessee vide submission dated 25.02.2016 furnished the details of shares issued along with share premium details. During the A.Y. 2013-14 company has allotted 2,04,35,000 equity shares of Rs.10 each at premium of Rs.165 per share. Company has allotted shares as under.*

Parties to whom share allotted	No. of shares	Face Value of Share	Value of Premium/share
M/s UKN Properties Pvt Ltd	13,00,000	Rs.10	Rs.165
M/s Kshema Geo Holdings Pvt Ltd	6,33,000	Rs.10	Rs.165
Mr. Gautam Nambisan	65,000	Rs.10	Rs.165

M/s Glow Crane Project	45,500	Rs.10	Rs.165

4. Having heard learned panel Counsel appearing for the revenue and the learned Senior Advocate representing the Assessee we decline indulgence in the matter inasmuch as the Tribunal has construed the subject provision of the Act keeping in view the fair market value of the shares in question and not the premium amount. Learned Senior Advocate Mr. Shankar is right in telling us that the fair market value of the Shares in question has been arrived at by the Assessee by adopting one of the statutorily designated methods in terms of Rule 11UA(2) of the extant Rules.

5. It is relevant to reproduce Tribunal's observation at paras 18 & 19:

> *"18. In the present case, we notice that the assessee had submitted the valuation report issued by a Chartered Accountant using DCF method of valuation. The assessee has projected its income, which according to the ld. AR, is substantiated by the JDA entered into by the assessee. We notice that the lower*

authorities have rejected the DCF method of valuation on the ground that the same is not based on any scientific method and that since the assessee is making a loss, there is no possibility of valuing the shares of the assessee at a premium. Further, the lower authorities have not gone into the details used by the assessee under DCF method to arrive at the valuation and rejected the entire methodology as adopted by the assessee. It is also noticed that one of the reasons as quoted by the AO for not considering the valuation report is that the Director during the survey proceedings has stated that there is no valuation report. We are unable appreciate this reason for rejection as the satisfaction to be recorded by the AO should not be objective satisfaction exercised at his discretion, but a subjective satisfaction based on the facts of the case. The lower authorities have not examined the basis on which the valuation is done and from the perusal of facts, no details in this regard have been called for by the lower authorities. The valuation report is rejected based on the objective satisfaction and not based on detailed examination.

19.In view of the above discussion and respectfully following the decision of the Tribunal in the case of Town Essential Private Limited Ltd(supra), we hold that the valuation done by the assessee cannot be rejected without recording any finding to the contrary by the lower authorities and therefore we delete the addition made in this regard."

In the above circumstances, the Substantial Questions of Law raised in the appeal are answered against the Revenue and eventually in favour of Assessee. Accordingly, appeal is dismissed, costs having been made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

Snb/
List No.: 1 Sl No.: 19