Method of determining FMV of shares consistently accepted in prior years cannot be changed by the Assessing Officer

Summary – The Amritsar ITAT in a recent case of Enterprises Business Solutions (P.) Ltd., (the Assessee) held that method of determining FMV of shares consistently accepted in prior years cannot be changed by the Assessing Officer

Facts

- The assessee issued shares of face value Rs 10 at a premium of Rs. 140 per share and received share premium of Rs. 2.80 crores.
- The assessee adopted DCF method for valuation of these shares.
- The Assessing Officer being not satisfied with the FMV of shares calculated the FMV as per the book value method and worked out the value of shares as on 1-4-2012 and 31-3-2013 at Rs. 2.36 and *Nil,* respectively, which was even less than the face value of the shares. On this basis, the Assessing Officer concluded that the share premium of Rs. 2.80 crores received by the assessee was taxable.
- On appeal, the Commissioner (Appeals) observed that the assessee had an option to issue shares at premium which could be worked out on the basis of either (*i*) the book value method; or (*ii*) discounted cash flow method. He observed that when this method adopted by the assessee was accepted by the Assessing Officer in the immediately succeeding year, *i.e.,* assessment year 2014-15, there was no justification in adopting a different method and treating the share premium as the income of the assessee. The Commissioner (Appeals) deleted the addition of Rs. 2.80 crores made by the Assessing Officer. On the revenue's appeal before the Tribunal:

Held

- The Tribunal observed that the value of the shares was determined by the assessee as per the 'discounted cash flow method'. The DCF method for valuation has been accepted by the Assessing Officer while framing the assessment for the immediately succeeding year, i.e., assessment year 2014-15, wherein also the shares had been issued at a premium of Rs. 140 per share.
- Thus no infirmity emerges from the determining of the FMV of the shares by the assessee-company as per the recognized method of valuation, *i.e.*, 'discounted cash flow method'. Further the Tribunal observed that it is unable to comprehend now when the revenue itself has accepted the DCF method of valuation of shares in the assessment of the assessee for the immediately succeeding year *viz.*, assessment year 2014-15, how in the absence of any distinguishing facts it could not accept the DCF method in the current year.
- Thus the Tribunal concluded that there was no infirmity from the Commissioner (Appeals) order who had rightly deleted the addition of Rs. 2,80,00,000 made by Assessing officer.