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

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Decision delivered on: 04.08.2023

+ **ITA 942/2018**

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant
Through: Mr Sunil Agarwal, Sr Standing Counsel
with Mr Shivansh B. Pandya, Standing
Counsel and Mr Utkash Tiwari, Adv.

versus

MINDA SM TECHNOCAST PVT. LTD. Respondent
Through: Dr Rakesh Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2014-15.
2. *Via* this appeal, the appellant/revenue seeks to assail the order dated 07.03.2018, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The Tribunal, *via* the impugned order, set aside the order passed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 16.10.2017, whereby he had refused to delete the addition amounting to Rs.11,84,46,336/-, made by the Assessing Officer (AO).
4. The record shows that the AO made the addition on account of the difference in value of the shares purchased by the respondent/assessee.



5. The record also reveals that the respondent/assessee had purchased 48% of the equity of a company going by the name Tuff Engineering Pvt. Ltd. (TEPL), from three entities, the details of which are given hereunder:

Sl.No.	Particulars	Number of Shares
(i)	Dhansafal Vyapar Ltd.	8076650
(ii)	Saket International Pvt. Ltd.	8,00,000/-
(iii)	Minda Capital Ltd.	1301150

6. It is not in dispute that the respondent/assessee had purchased the aforementioned shares of TEPL from the aforementioned entities at a price of Rs.5/- per share.

6.1 It is also not in dispute that the respondent/assessee had submitted the valuation report of a Chartered Accountant (CA), which had pegged the value of the subject shares at Rs.4.96 per share.

7. Concededly, the CA, in arriving at the value of the subject shares, which, as indicated above was pegged at Rs.5/- per share by the respondent/assessee, had taken recourse to Rule 11UA of the Income Tax Rules, 1962 [in short, “1962 Rules”] as applicable in the period in issue, i.e., AY 2014-15.

8. The AO had valued the subject shares at Rs.45.72 per share, *albeit*, by taking into account Rule 11UA of 1962 Rules, which was operable on the date when the order was passed.

9. The difference in the value arrived at by the AO and that which the respondent/assessee had fixed *qua* the said shares, was the amount which was added to the income of the respondent/assessee. The difference per share was Rs.40.72 [i.e., Rs.45.72 per share – Rs.5/- per share].



10. It is this difference that led to the addition of Rs.11,84,46,336/- to the income of the respondent/assessee.

11. The record shows, and something which is not in dispute, that in the AY in issue, i.e., AY 2014-15, the formula which obtained under Rule 11UA of 1962 Rules required calculation of the fair market value, *inter alia*, by taking into account the book value of the assets shown in the balance sheet. The relevant part of Rule 11UA is extracted hereafter:

“Determination of fair market value.

11UA.[(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

(a) X X X
(b) X X X

(c) valuation of shares and securities,—

(a) X X X

[(b) ***the fair*** market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

the fair market value of unquoted equity shares = $\frac{(A-L)}{(PE)} \times (PV)$,

Where,

A = ***book value of the assets in the balance-sheet*** as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = *book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—*

(i) *the paid-up capital in respect of equity shares;*

(ii) *the amount set apart for payment of dividends on*



preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;”

[Emphasis is ours]

12. It is not in dispute that the formula prescribed in Rule 11UA of the 1962 Rules underwent a change, which resulted in the fair market value of unquoted shares being calculated by, *inter alia*, taking into account, *inter alia*, the value of assets such as immovable property, which was adopted by “any authority of the government” for the purposes of payment of stamp duty. After the said change became effective, i.e., from 01.04.2018, Rule 11UA read as follows:

“Determination of fair market value.

11UA.[(1)] *For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—*

- | | | | |
|-----|--------------------------------------|---|---|
| (a) | X | X | X |
| (b) | X | X | X |
| (c) | valuation of shares and securities,— | | |



(a) X X X

[(b) **the fair** market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

the fair market value of **unquoted equity shares** $= (A+B+C+D - L) \times (PV)/(PE)$, where,

A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(v) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;



- (v) *any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- (vi) *any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;”*

[Emphasis is ours]

13. In other words, if immovable property, such as land, had to be taken into account in arriving at the Fair Market Value of unquoted shares by adopting the formula prescribed in Rule 11UA of 1962 Rules w.e.f. 01.04.2018, i.e., AY 2018-19, the AO would have to factor in the value of such land, by taking into account the circle rate prevailing in the area.

14. It is this error which the AO committed, i.e., applying the formula contained in Rule 11UA of 1962 Rules, which was not applicable to the AY in issue, i.e., 2014-15.

15. This error continued upto the stage of CIT(A). The error was corrected by the Tribunal *via* the impugned order.

15.1 Accordingly, we find no reason to interfere with the decision of the Tribunal.

16. According to us, no substantial question of law arises for our consideration.

17. The appeal is, accordingly, closed.

18. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J



AUGUST 4, 2023/aj

GIRISH KATHPALIA, J

Signature Not Verified

Digitally Signed By: PREM
MOHAN CHOUPHARY

Signing Date: 22.08.2023
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