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

\+ ITA 9/2021

PR. COMMISSIONER OF INCOME TAX – 4 .....Appellant
Through: Mr. Sanjay Kumar & Ms. Easha, St. Counsels.

versus

INDIA CONVENTION AND CULTURE CENTRE PVT. LTD .....Respondent
Through: Mr. Ved Jain, Mr. Nischay Kantoor & Ms. Soniya Dodeja, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **26.07.2024**

1. This appeal is directed against the order of the Income Tax Appellate Tribunal [**'Tribunal'**] dated 27 September 2019 and posits the following questions of law for our consideration:

> "a) Whether the ITAT erred in law and on facts in setting aside the CIT(A)'s order and holding that the consideration received for the shares by the assessee did not exceed the fair market value of the shares?
>
> b) Whether the ITAT erred in law in interpreting the meaning and scope of 'fair market value of shares' in terms of section 56(2)(viib) of the IT Act read with Rules 11U and 11UA of the IT Rules?

2. We note that insofar as the question pertaining to Section 56(2)(viib) of the Income Tax Act, 1961 [**'Act'**] is concerned, the Tribunal has rendered the following pertinent observations:

> "**10.** We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee, in the instant case, has allotted 70 lac equity shares of Rs.10 each at a

premium of Rs.5 per share and has received premium of Rs.3.5 crores. We find the Assessing Officer, invoking the provisions of section 56(2)(viib), made addition of Rs.3,50,00,000/- on the ground that the fair market value of shares comes to Rs.6.65 per share as per the book value. We find the ld.CIT(A) computed the fair market value of the shares at Rs.l0.05 per share and gave part relief of Rs.3,50,000/- and sustained the addition of Rs.3,46,50,000/- the reasons for which has been reproduced in the preceding paragraphs. It is the submission of the ld. counsel that the lower authorities have wrongly computed the fair market value of the shares on the basis of the book value ignoring the FMV of the land held by the company. It is the submission of the ld. counsel for the assessee that the value of its shares in terms of clause (ii) of Explanation (a) of section 56(2)(viib) on the basis of the value of its land at market value which is Rs.113 crores comes to Rs.658.83 per share. Therefore, it is the submission of the ld. counsel for the assessee that instead of taking the book value of the property at Rs.47.81 crore as per the balance sheet, the lower authorities should have taken the fair market value of land which was converted from agricultural to institutional at Rs.113,00,72,749/- and other assets of Rs.9,17,608/-. Thus, according to him, the fair market value of the shares comes to Rs.658.83 per share.

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12. From the various details furnished by the assessee, we find the assessee had obtained permission of the competent authority for change of land use from 'agricultural' to 'institutional' for art, culture and convention centre for a total area of 42949 Sq. metrs or 51366.94 sq. yards. A perusal of the circle rate for such institutional area shows that the circle rate has been prescribed at Rs.22,000/- per sq. yard. Thus, as per the circle rate prescribed by the competent authority, the value of total assets i.e., the fair market value of the land which was converted from 'agricultural' into 'institutional' comes to Rs.113,00,72,749/-. If the other assets of Rs.9,17,608/- is added to such asset and the total liability of 46,55,69,537/- is deducted, then, the net asset comes to Rs.665,420,820/-. If the same is divided by the number or equity shares of 10,10,000/-, then, the value per share comes to Rs.658.83 which is more than the premium of Rs. 5/- charged by the assessee on a share of Rs.10/-. We, therefore, find merit in the argument of the ld. counsel for the assessee that the valuation of the shares should be made on the basis of various factors and not merely on the basis of financials and the substantiation of the fair market value on the basis of the valuation done by the assessee simply cannot be rejected where the assessee has demonstrated with evidence that the fair market value of the asset is much more than the value shown in the balance sheet. The order of the CIT(A) is accordingly set aside and the grounds raised by the assessee are allowed."

3. On an overall consideration of the aforesaid, we find that the appeal fails to raise any substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

JULY 26, 2024/kk