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

\+ ITA 249/2024

PR. COMMISSIONER OF INCOME TAX -7 ..... Appellant

Through: Mr.Puneet Rai, Sr.SC with Mr.Ashivini Kumar and Mr.Rishabh Nangia, Advs.

versus

SHRI SANJAY CHANDRA ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **01.05.2024**

CM APPL. 25301/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

CM APPL. 25302/2024 (Delay in re-filling)

1. This is an application filed by the appellant seeking condonation of 625 days' delay in re-filing the present appeal.

2. For the reasons stated in the application, the delay of 625 days in re-filing the appeal is condoned.

3. Application is disposed of.

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4. The Principal Commissioner of Income Tax ["**PCIT**"] impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 08 November 2019 and has proposed the following questions of law for our consideration:-

> "**A.** Whether on the facts and circumstances of the case and in

law the Hon'ble ITAT has erred in law in deleting the additions of Rs. 646,80,72,998/- u/s 56(2)(vii)(c) of the act which provides that when an assessee or HUF receive in any previous year from any person or persons on or after 01.10.2009, any moveable property for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration shall be chargeable to income tax under the head "Income from Other Sources".

B. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT has erred in deleting the addition of Rs. 646,80,72,998/- without making a speaking order since actual ground of appeal raised by the department in its appeal has not been decided by the Hon'ble ITAT.

C. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT has erred in deleting the addition of Rs. 646,80,72,998/- made u/s 56(2)(Vii)(c)(ii), being the difference between F.M.V of the shares of AUWPL & SUWPL and the price shown for the acquisition of these shares by assessee without appreciating that the basis for valuing the said FMV was a real & concrete price of Rs. 179,73 per share of Unitech Wireless Companies paid by Telenor which was the underlying asset held by AUWPL & SUWPL and the Hon'ble ITAT also failed to appreciate that Section 56(2)(vii)(c)(ii) does not envisage actual receipt of money/income for taxing the difference between price paid & its FMV."

D. Whether, on the facts and circumstances of the case and in law the Hon'ble ITAT has erred innot appreciating that FMV of the shares of the said 2 affiliate companies viz AUWPL, & SUWPL have to be calculated by considering the correct intrinsic value of the main under lying asset of these companies which is the shares of Unitech Wireless Companies shown as Investment in its Balance Sheet whereas the assessee while computing the FMV of the said share of the 2 affiliate companies have adopted the face value of the shares in Unitech Wireless Companies held by the said affiliate companies and have ignored the premium portion of Rs. 169.73, whereas in the instant case, the premium of Rs. 169.73 per share in respect of shares of 8 Unitech Wireless Companies is not an imaginary figure, instead it is a concrete & real figure which is arrived atafter negation between Unitech Ltd, 8 Unitech Wireless Companies and Telenor Communications As, Norway."

E. Whether, on the facts and circumstances of the case and in law while deciding this appeal the Hon'ble ITAT has erred in not applying the Landmark judgements of Hon Apex

> Court in Sumati Dayal vs CIT 214 ITR 801 and CIT vs Durga Prasad More 82 ITR 540 wherein it washeld that any explanation submitted in income tax proceedings has to beAppreciated in the light of human probabilities than on mechanical aspects and the landmark decision of the Hon'ble Supreme Court in the case of McDowell and Company Limited, 154 ITR 148 wherein it has beenheld that tax planning may be legitimate provided it is within theframework of the law and any colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it ishonourable to avoid the payment of tax by dubious methods."

5. We note that the following significant findings have come to be returned by the ITAT in the order impugned before us:

> "**5.** After hearing both the parties and on perusal of the impugned order, we find that it is an undisputed fact that the shares purchased by the assessee of Simpson Unitech Wireless Pvt. Ltd. and Acorus Unitech Wireless Pvt. Ltd. from Unitech Holdings Pvt. Ltd. at Rs.10/- was not only below the book value but also below the fair market value, because these companies were having negative value due to huge losses made in the earlier years. The Assessing Officer had tried to make the addition solely on the ground that premium of Rs. 179.73 per share in respect of eight Unitech Wireless Company paid by the Telenor Company is the basis to value the shares. Such a reasoning, first of all could not be upheld because the valuation if at all of the share has to be done either in terms of Rule 11UA or in terms of Section 56(2)(vii)(c) which provides that it has to be as per the market value and the market value of the share has been found to be negative and far below the value of the shares paid by the assessee. Ld. CIT DR also could not rebut the factual finding arrived by the Ld. CIT (A) which is based on material on record. Thus, we do not find any infirmity in the findings of the Ld. CIT (A), and therefore, the same is confirmed. Consequently, the appeal filed by the Revenue is dismissed."

6. The ITAT has taken into consideration what appears to be the undisputed position of the Assessing Officer ["**AO**"] having essentially been guided by the transactional value of INR 179.73/- per share which constituted the substratum of a contract with Telenor.

7. It has thus and in our considered opinion correctly come to

conclude that the issue of valuation, if liable to be undertaken, had to follow the route as prescribed by Section 56(2)(vii)(c) of the Act read along with Rule 11UA of the Income Tax Rules, 1962.

8. It was additionally found that the market value of the shares was in in any case found to be negative and far below the value which was paid by the respondent-assessee.

9. The aforesaid findings are neither questioned before us and nor are they asserted to be perverse or contrary to the record.

10. In view of the aforesaid, we find no merit in the instant appeal.It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 01, 2024/MJ