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

\+ W.P.(C) 13744/2018

RAMESH CHANDRA .....Petitioner

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Himanshu Aggarwal, Mr. Anuroop Chakravarti, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Abhishek Maratha, SSC along with Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskaan Goel and Mr. Kamakshraj Singh, Advs.

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\+ W.P.(C) 13745/2018

AJAY CHANDRA .....Petitioner

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Himanshu Aggarwal, Mr. Anuroop Chakravarti, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Abhishek Maratha, SSC along with Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskaan Goel and Mr. Kamakshraj Singh, Advs.

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

O R D E R

% **17.09.2024**

1. We take note of the following facts that had fallen for our consideration in terms of the submissions addressed on behalf of the petitioners in our order of 03 May 2024. The said order is reproduced hereinbelow:-

> "1. Ms. Jha, learned counsel appearing in support of the present writ petitions, draws our attention to the order dated 01 May 2024 passed in ITA 249/2024 and in terms of which we had upheld the
>
> decision of the Income Tax Appellate Tribunal which had rejected the transactional value of INR 179.73/- per share which was sought to be relied upon. The said share transactional value pertained to a contract with Telenor Asia Pte. Ltd. ["**Telenor**"]
>
> 2. Presently and as we peruse the notices under Section 148 of the Income Tax Act, 1961 we find that the respondents essentially rely upon a letter dated 20 March 2013 and a subsequent report drawn pursuant thereto to arrive at a conclusion of under valuation.
>
> 3. Mr.Maratha, learned counsel representing the respondent in the absence of instructions is presently unable to state whether the aforesaid material also refers to the transactional value referable to Telenor or is based on any other independent material.
>
> 4. In order to enable Mr. Maratha to complete instructions, let these matters be called again on 12.08.2024.
>
> 5. Interim order, if any, granted earlier to continue till the next date of hearing."

2. When the matters were taken up today, it was conceded on behalf of the respondents that the solitary transaction on the basis of which Section 148 of the Income Tax Act, 1961 is sought to be pursued was the one which formed subject matter of **Pr. Commissioner of Income Tax-7 vs. Shri Sanjay Chandra** [ITA 249/2024 decided on 01 May 2024]. That appeal came to be disposed

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of in the following terms:-

> "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:-
>
> **xxxx** **xxxx** **xxxx**
>
> 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."

3. In view of the aforesaid, we allow the instant writ petitions and quash the impugned order dated 22 March 2018.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 17, 2024/neha

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