

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E': NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 6964/Del/2017
Assessment Year: 2014-15

M/s. Minda S M Technocast Pvt. Ltd., C/o- RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi (PAN:AABCE4362K)	Vs.	Addl. CIT, Range-16, New Delhi
(Appellant)		(Respondent)

And

S.A. No. 722/Del/2017
[ITA No. 6964/Del/2017]
Assessment Year: 2014-15

M/s. Minda S M Technocast Pvt. Ltd., C/o- RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi (PAN:AABCE4362K)	Vs.	Addl. CIT, Range-16, New Delhi
(Appellant)		(Respondent)

Assessee by	S/sh. Ashwani Taneja & Shantanu Jain, Advocates
Department by	Ms. Shefali Swaroop, CIT(DR)

Date of hearing	05.03.2018
Date of pronouncement	07.03.2018

ORDER

PER WASEEM AHMED, A.M.:

The present appeal by the assessee is directed against the order of CIT(A)-6, Delhi, dated 16.10.2017. The assessee has raised the following grounds of appeal:

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.11,84,46,336/- fully as made by Ld. AO on account of alleged difference between value at which shares were purchased and value of shares as computed by Ld. AO purportedly under rule 11 UA and that too by recording incorrect facts and findings and without appreciating/considering the submissions and evidences filed during the course of appellate proceedings.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in rejecting the submission of assessee that AO has wrongly taken the book value of land at Rs.16,78,65,600/- instead of Rs.6,32,75,332/- as claimed and has erred in sustaining the addition partly.*
3. *That in any case and in any view of the matter, order passed by AO & confirmed by CIT(A) thought partly are bad in law and against the facts and circumstances of the case.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

2. The interconnected issue raised by the assessee in all the grounds of appeal is that the ld. CIT(A) erred in confirming the order of the AO by sustaining the disallowances of Rs.11,84,46,336/- on account of undervaluation of shares.

3. Briefly states facts of the case are that the assessee in the present case is a limited company and deriving its income under

the head 'rental and interest income'. The assessee during the year under consideration has acquired shares to the tune of 48% of M/s. Tuff Engineering Pvt. Ltd. (in short 'TEPL') from certain companies as detailed under:

Sl. No.	Particulars	Number of shares
1.	Dhansafal Vyapar Ltd.	8076650
2.	Saket International Pvt. Ltd.	8,00,000
3.	Minda Capital Ltd.	1301150

3.1 All the aforesaid shares were acquired by the assessee at Rs. 5 per shares. The assessee claimed to have valued the shares as per Rule 11UA of the Income-tax Rules, 1962 (in short 'the Rules'). The assessee in support of its claim also produced the Valuation Report from the Chartered Accountant firm namely M/s. Aggrawal Nikhil & Co. which valued the shares at Rs.4.96 per shares.

3.2 However, the AO observed that the assessee while valuing the shares of TEPL has taken the book value of the land shown by the TEPL in its balance sheet. The AO was of the view that the fair market value of the land as per the circle rate pertaining to the assessment year 2014-15 should have been taken into consideration while determining the value of the shares of TEPL. Accordingly, the AO substituted the book value of the land with

the fair market value of the land as per the circle rate and determined the value of shares at Rs.45.72 per shares of TEPL. The AO in doing so, also referred the section 56(2)(viiia) of the Act read with Rule 11UA of the Rules. Thus, as per the AO with difference of Rs.40.72 per shares (Rs. 45.72 per shares – Rs.5 per shares) was income as per the provisions of Section 56(2)(viiia) read with Rule 11UA of the Rules, amounting to Rs.11,84,46,336/- and accordingly added to the total income of the assessee.

Aggrieved, assessee preferred an appeal before the Ld. CIT(A). The assessee before the learned CIT(A) submitted that the fair market value of a closely held company should be computed on the basis of the book value of the assets as per rule 11UA of Rules.

3.3 As per the book value of the assets held by the TEPL, the value per share is coming out @ Rs. 4.96 per shares whereas these shares were required by the assessee at Rs. 5 per shares which is more than the fair market value of the shares.

3.4 However, the learned CIT(A) disregarded the contention of the assessee and confirmed the order of the AO by observing that the fair market value of the land while valuing the shares should be adopted as per the provisions of Rule 11UA read with Section 56(2)(viiib) of the Act.

Being aggrieved by the order of the learned CIT(A), the assessee is in second appeal before us.

4. The learned AR before us submitted that the case of the assessee falls under Section 56(2)(viia) of the Act, 1961. As per the provisions of section 56(2)(viia) of the Act read with Rule 11UA of the Rules, value of the shares needs to be determined on the basis of book value declared by the TEPL in its balance sheet. The learned AR in support of his claim relied on the judgment of Hon'ble Bombay High Court in the case of Sharukh Khan Vs. DCIT reported in 90 taxmann.com 284 wherein it was held as under :

“6. Prima facie, the order disposing of the objections, while dealing with the objection of no reason to believe that income has escaped assessment on application of Section 56(2)(vii) of the Act, has completely ignored the Explanation thereto. The Explanation to Section 56(2) (vii) of the Act states that the fair market value is to be determined in accordance with the Income Tax Rules. The office note annexed to the Assessment Order dated 28th February, 2013 passed under Section 143(3) of the Act holds that on application of Rule 11 UA of the Income Tax Rules, the value per share came to less than Rs.5/- per share.ö

5. On the other hand, learned CIT(DR) vehemently supported the order of authorities below.

6. We have heard the rival submissions of the parties and perused the material available on record. In the present case, the assessee has acquired shares of TEPL at Rs.5 per shares. The shares were acquired by the assessee from three companies as discussed in the preceding paragraphs. The assessee claimed to have valued the shares of TEPL as per the provisions of Rule

11UA of the Rules and filed a copy of the report prepared by the Chartered Accountants in support his claim to justify the price of shares at which these were acquired. However, the Assessing Officer was of the view that the assets declared by the TEPL in its balance sheet should have been valued as per the circle rate while determining the value of the shares acquired by the assessee. Accordingly, the Assessing Officer determined the value of the shares at Rs. 45.72 per shares of TEPL. Thus, the difference of Rs. 40.72 was treated as income from other sources of the assessee under the provisions of Section 56(2)(viia) of the Act. The view taken by the Assessing Officer was subsequently confirmed by the learned CIT(A).

6.1 Now, the issue before us arises for our adjudication so as to whether the land shown by the TEPL should be taken as per the book value or as per the market value while valuing its shares. At this juncture, we find important to refer the provisions of Section 56(2)(viia) of the Act, which reads as under:

“56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of subsection (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i)XXXXXXXXXXXXXXXXX

(vii) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—

(i) XXXXXXXXXXX

(ii) 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 :

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vib) or clause (vid) or clause (vii) of section 47.

Explanation.—For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);]"

6.2 The fair market value as per the Explanation of Section 56(2)(vii) of the Act, reads as under:

(b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed"

6.3 Similarly, the provisions of 11UA of the Rules are summarized as under:

"(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:—

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

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;*

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares;"

6.4 On the plain reading of above Rule, it is revealed that while valuing the shares the book value of the assets and liabilities declared by the TEPL should be taken into consideration. There is no whisper under the provision of 11UA of the Rules to refer the fair market value of the land as taken by the Assessing Officer as applicable to the year under consideration. Therefore, we are of the view that the share price calculated by the assessee of TEPL for Rs. 5 per shares has been determined in accordance with the provision of Rule 11UA. In holding so, we find support and guidance from the judgment relied by the learned Authorized Representative which has been discussed in the preceding paragraphs. Therefore, we have no hesitation in reversing the order of the lower authorities. Hence, the grounds of appeal of the assessee are allowed.

***Now coming to the Stay Petition filed by the assessee
722/Del/2017.***

At the outset, we observe that the main appeal of the assessee has already been adjudicated in favour of the assessee vide Para No. 6 of this order. Therefore, we do not find any reason to adjudicate the Stay Petition separately. Hence, the stay petition filed by the assessee is dismissed as infructuous.

7. In the result, appeal of the assessee is allowed whereas the Stay Petition is dismissed as infructuous.

The decision is pronounced in the open court on 07th March, 2018.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Dated: 07th March, 2018.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (hand written)	05.03.2018
2.	Date on which the draft is placed before the Dictating Member	05.03.2018
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	