INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2019, 2020/Del/2017
(Assessment Year: 2009-10, 2010-11)

Radhika Roy, C/o. RKACA & Associates LLP, CA, E-186, Greater Kailash-I, New Delhi PAN: AAHPR6038G	Vs.	DCIT, Circle-18(1), New Delhi
(Appellant)		(Respondent)

ITA No. 2706/Del/2017
(Assessment Year: 2010-11)

DCIT, Circle-18(1), New Delhi	Vs.	Radhika Roy, C/o. RKACA & Associates LLP, CA, E-186, Greater Kailash-I, New Delhi PAN: AAHPR6038G
(Appellant)		(Respondent)

ITA No. 2021, 2022/Del/2017
(Assessment Year: 2009-10 and 2010-11)

Dr. Prannoy Roy, C/o. RKACA & Associates LLP, CA, E-186, Greater Kailash-I, New Delhi PAN: AAHPR6037K	Vs.	DCIT, Circle-18(1), New Delhi
(Appellant)		(Respondent)

ITA No. 2707/Del/2017
(Assessment Year: 2010-11)

DCIT, Circle-18(1), New Delhi	Vs.	Dr. Prannoy Roy, C/o. RKACA & Associates LLP, CA, E-186, Greater Kailash-I, New Delhi PAN: AAHPR6037K
(Appellant)		(Respondent)

Assessee by :	Shri Sachit Jolly, Adv
Revenue by:	Shri Girish Dave, Adv,

Date of Hearing	26/03/2019
Date of pronouncement	14/06/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the six appeals of two assesses namely, Mr. Dr. Prannoy Roy [Dr. Roy] and Mrs. Radhika Roy, emanating from transactions of purchase and sale of shares of NDTV Limited entered in to by both of them with M/s RRPR Holdings Pvt Ltd [RRPR, Company] and also issues of income from house properties pertaining to two assessment years. Shri Sachit Jolly, Ld Advocate on behalf of assessees and Shri Girish Dave, Ld Advocate, special counsel for revenue put extensive, erudite arguments. Thus, all these appeals were heard together on various dates fixed at the convenience and request of both the parties' i.e. On 29/10/2018, 29/01/2019, 05/03/2019, 06/3/2019, and 19/3/2019 excluding request for adjournments moved. On 19/3/2019, bench asked certain details to be filed which were ultimately filed on 26/3/2019 and finally hearing was concluded on that date. Assessee has filed paper books and both the parties filed written notes. Further, both the parties relied up on several judicial precedents, which would be considered at the relevant point of time. All these appeals are heard together and therefore, disposed of by this common order.

2. First, we take up the appeals filed by assessee Mrs. Radhika Roy for AY 2009-10 in ITA NO. 2019/Del/2017 for AY 2009-10 raising following Grounds of appeals:-

"1. That the learned Commissioner of Income Tax (Appeals), 42, New Delhi has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, completion of

assessment u/s 147/143(3) of the Act which were without jurisdiction and deserved to be quashed as such.

1.1 *That while upholding the assumption of jurisdiction the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded were based on factually incorrect assumptions and had been mechanically prepared without independent application of mind on the basis of diktat issued by Investigation Wing.*

1.2 *That even otherwise the learned Commissioner of Income Tax (Appeals) having not disputed that in the return of income filed, the assessee had duly reflected the capital gain earned by the assessee has erred in upholding the initiation of proceedings on an assumption that, there was an incorrect disclosure of such capital gain as a long term capital gain instead of short capital gain as has been assessed.*

1.3 *That the learned Commissioner of Income Tax (Appeals) has further erred when he overlooked and failed to appreciate that basis recorded for the initiation of proceedings was that assessee had neither declared long term capital gain and nor declared short term capital gain; whereas said gain was duly disclosed and claimed as exempt which itself demonstrated that action was taken mechanically without reference to the return of income filed by the appellant and as such action u/s 148 was wholly misconceived, misplaced and untenable.*

1.4 *That the finding of the learned Commissioner of Income Tax (Appeals) that the learned Assessing Officer has clarified the context of non disclosure of long term capital gain and short term capital gain viz-a-viz para 2 of the reasons which duly captured the position of exempt capital gain overlooks the fact that this figure was not based on the return of income filed by the appellant but bodily lifted and adopted from the information received from the Investigation Wing.*

1.5 *That the learned Commissioner of Income Tax (Appeals) has otherwise too failed to appreciate that there was no tangible, relevant, specific and reliable material on record on the basis of which, it could be held that, there was any reason to believe with the learned Assessing Officer that income of the appellant had escaped assessment and, in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable.*

2. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition of Rs. 1,30,30,394/- representing alleged short term capital gain on sale of Rs. 6,25,000 shares of M/s. NDTV Ltd by the appellant in the year under consideration*

2.1 *That while upholding the addition the learned Commissioner of Income Tax (Appeals) has failed to appreciate the scope and ambit of provisions contained in section 45(2A) read with section 2(42A) of the Act and further incorrectly applied Circular no. 768 dated 24.6.1998 to the facts of the case of the appellant and as such addition made and sustained is untenable.*

2.2 *That the learned Commissioner of Income Tax (Appeals) having not disputed that the assessee held and owned 1,66,60,658 shares on*

19.6.2008 which were held since 28.2.1996, could not have arbitrarily reckoned the period of holding of shares from the date of shifting to the joint account and computed short term capital gain instead of long term capital gain as claimed by the appellant.

2.3 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that all what had happened was that shares held by the assessee and his wife and duly reflected in their individual demat account were shifted for the sake of convenience in a joint demat account and by so doing it did not amount to any transfer made and otherwise too for the purpose of determination of the period of holding such shares, the period of holding of shares is to be reckoned from the date as were "held" by them and were reflected in such demat accounts and not from the date of shifting in the joint demat account from the individual demat account.*

2.4 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that unless there was a transfer made, mere shifting of the shares is insufficient to restrict or reduce the period of holding of such shares so as to adopt the date of holding of shares, when they were shifted to the joint demat account and as such mechanical application of Circular No. 768 issued by Central Board of Direct Taxes to make the addition is wholly illegal, arbitrarily and unwarranted.*

2.5 *That various other adverse findings and conclusions recorded by the learned Commissioner of Income Tax (Appeals) are also factually and legally misconceived and are thus untenable. The addition made and sustained is based on fiction and could not be held as representing any income.*

2.6 *That the learned Commissioner of Income while computing the aforesaid addition made by the learned Assistant Commissioner of Income Tax has failed to comprehend that if on shifting the shares from individual account to the joint account there was a transfer made then obviously shares resulting into accrual of gain could not be held to be income of the assessee and as such the amount of capital gain ought to have been deleted altogether.*

3. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining addition in respect of alleged income under the head house property from following properties:]*

Sr. No.	*Property*	*Amount (Rs.)*
i)	*B-13, Greater Kailash-I, New Delhi*	*34,268*
ii)	*One House at Dehradun*	*35,469*
iii)	*Property at Mussorie*	*2,19,542*
	Total	*2,89,279*

3.1 *That there is no material or valid basis adopted by the learned Commissioner of Income Tax (Appeals) to enhance the annual value declared by the appellant and in absence thereof, addition sustained is illegal, invalid and untenable.*

3.2 *That while upholding the addition the learned Commissioner of Income Tax (Appeals) has failed to appreciate written submissions filed by the*

appellant wherein it was stated that comparable instances adopted are non comparable and inspector's report is without jurisdiction and otherwise too has no evidentiary value.

3.3 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that annual value of property cannot exceed the municipal valuation and as such addition sustained is not in accordance with law, more particularly in respect of Mussorie property.

4. That the learned Commissioner of Income Tax (Appeals) has failed to comprehend that municipal value of property at Hauz Khas was Rs. 1,53,586/- and such a value represents annual value of the property u/s 23(1) of the Act and thus e ought to have followed the judgment of Full Bench of Hon'ble Delhi High Court in the case of CIT v. Moni Kumar Subba reported in 333 ITR 38 logically directed the Assessing officer to adopt the annual value at Rs. 1,53,586/- instead of Rs. 3,60,000/-.

It is therefore, prayed that it be held that assessment made by the learned Assessing Officer, and sustained by the learned Commissioner of Income Tax (Appeals) is without jurisdiction. It be further held that additions made of Rs. 1,33,19,673/- and upheld by the learned Commissioner of Income Tax (Appeals) deserves to be deleted and appeal of the appellant is thus prayed to be allowed."

3. Bothe the parties admitted that facts are identical in case of Dr. Prannoy Roy, he has raised following grounds of appeal in ITA No. 2021/Del/2017 for the Assessment Year 2009-10 which are identically worded as Grounds of appeals in case of Mrs. Radhika Roy for A Y 2009-10 :-

"1. That the learned Commissioner of Income Tax (Appeals), 42, New Delhi has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, completion of assessment u/s 147/143(3) of the Act which were without jurisdiction and deserved to be quashed as such.

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whereas said gain was duly disclosed and claimed as exempt which itself demonstrated that action was taken mechanically without reference to the return of income filed by the appellant and as such action u/s 148 was wholly misconceived, misplaced and untenable.

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shares so as to adopt the date of holding of shares, when they were shifted to the joint demat account and as such mechanical application of Circular No. 768 issued by Central Board of Direct Taxes to make the addition is wholly illegal, arbitrarily and unwarranted.

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It is therefore, prayed that it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) is without jurisdiction. It be

further held that additions made of Rs. 1,33,19,673/- and upheld by the learned Commissioner of Income Tax (Appeals) deserves to be deleted and appeal of the appellant is thus prayed to be allowed."

4. As the facts are identical in case of both these assesses for AY 2009-10, we cull out the facts in case of Mrs. Radhika Roy, record the arguments of the parties in that case, provide our decision and reasons for that appeal and apply it in case of Dr Prannoy Roy.

5. Facts for assessment year 2009 – 10 in case of Mrs. Radhika Roy shows that assessee is an individual who filed her return of income for Rs. 1,66,61,534/– on 31/7/2009 and it was processed on 22/2/2011 under section 143 (1) of the Act at the returned income.

6. Subsequently, notice u/s 148 of The Income Tax Act [the Act] was issued on 25/7/2011. Reasons recorded shows that reopening is on perusal of return of income based on information received per letter dated 6/6/2011 from The Deputy Director of Income Tax (Investigation) Unit –II, New Delhi [DDIT] holding that assessee has not disclosed long-term capital gain[LTCG]/short-term capital gain [STCG] in her return of income. Case was reopened because of this non-disclosure resulting into escapement of income u/s 147 of the act.

7. The assessee submitted a letter dated 3/8/2011 that return of income originally filed on 31/7/2009 might be treated as return in pursuance of notice u/s 148 of The Income Tax Act.

8. The office of the Deputy Director of Income Tax (Investigation), Unit – II (2), New Delhi, vide forwarding letter dated 6/6/2011 reference number F. NO. DCIT (INV)/unit – II(2)/2011 – 12/92 referred the report on Dr Prannoy Roy and Mrs. Radhika Roy on account of certain allegations forwarded by Shri Yashwant Sinha, Member Of Parliament and Chairman, standing

committee on Finance. During the course of investigation into the allegations, the details of capital gains claimed by Dr Prannoy Roy and Mrs. Radhika Roy, promoters of the NDTV limited were also examined. During the investigation proceedings, it was found that Dr Prannoy Roy and Mrs. Radhika Roy were required to submit details of shares purchased, sold/transferred of NDTV limited. It was gathered that they were maintaining three different Securities Dematerialization account [demat] accounts i.e. One joint demat account and two individual demat accounts. These demat accounts were maintained in different depositories over the period. The various transactions undertaken by them in these accounts were also tabulated as under:-

Annexure-A

Prannoy Roy

Date	Particulars	Whether through Stock Exchange or off market	No. of shares	Cost of Acquisition	Cost per share	Total consideration received	LTCG/ (LTCL)	Cumulative Balance
01/04/07	O.B.		1,66,53,300	54,512	0.00			1,66,53,300
22/01/08	Transferred to Joint account	Stock Exchange	4,75,500	00				1,61,77,800
17/03/08	Transferred to Joint account	Stock Exchange	1,50,000	00				1,60,27,800
17/04/08	Transferred to Joint account	Stock Exchange	24,10,417	7,890	434	1,04,51,04,669	1,04,50,96,779	1,36,17,383
05/06/08	Sold	Stock Exchange	150	00	434	65,036	65,036	1,36,17,233
03/07/08	Purchase d in open offer	As per SEBI open offer process	12,77,437	59,52,85,642	466			1,48,94,670
03/08/09	Sold to RRPR	Off market	57,81,842	18,926	4.00	2,31,27,368	2,31,08,442	91,12,828
09/03/10	Purchase d from RRPR	Off market	34,78,925	1,39,15,700	4.00			1,25,91,753
09/03/10	Sold to RRPR	Off market	23,14,762	7,577	140.00	32,40,66,680	32,40,59,103	1,02,76,991

Ms. Radhika Roy

Date	Particulars	Whether through Stock Exchange or off market	No. of shares	Cost of acquisition	Cost per share	Total consideration received	LTCG/ (LTCL)	Cumulative Balance
01/04/07	O.B.		1,66,53,300	0	0.00			1,66,53,300
22/01/08	Transfer	Stock	4,75,000	0				1,61,77,800

		Exchange						
17/03/08	Transfer	Stock Exchange	1,50,000	0				1,60,27,800
17/04/08	Sold	Stock Exchange	25,03,259	8194	434	1,08,53,58,953	1.08,53,50,759	1,35,24,541
03/07/08	Purchased in open offer	As per SEBI open offer process	16,17,386	79,09,01,754	489			1,51,41,927
03/08/09	Sold to RRPR	Off market	57,81,842	18,926	4.00	2,31,27,368	2,31,08,438	93,60,086
09/03/10	Purchased from RRPR	Off Market	34,78,925	1,39,15,700	4.00			1,28,39,011
09/03/10	Sold to RRPR	Off market	23,14,762	7,577	140.00	32,40,66,680	32,40,59,103	1,05,24,249

Jointly held by Dr. Pronnoy Roy & Dr. Radhika Roy

Date	Particulars	Whether through Stock Exchange or off market	No. of shares	Cost of acquisition	Cost per share	Total consideration received	LTCG/ (LTCL)	Cumulative Balance
26/12/07	Purchase d in open offer	Stock Exchange	48,35,850	2,07,95,93,242	430			48,35.850
22/01/08	Transferred from individual account	Stock Exchange	9,51,000	3,113	0			57,86,850
17/03/ 08	Transferred from individual account	Stock Exchange	1,50,000	491	0			59,36,850
17/03/08	Transferred from individual account	Stock Exchange	1,50,000	491	0	.		60,86,850
19/06/ 08	Sold	Stock Exchange	12,50,000	4,092	450	56,28,39,983	56,28,35,892	48,36,850
09/03/10	Sold to RRPR	Off market	48,36,850	2,07,95,93,242	140.00	67,71,59,000	(1.40,24,34,242)	0

9. In that report, it was further noted that Dr Roy & Radhika Roy have opened joint demat account. The first lots of 4835850 shares of NDTV limited were purchased on 26/12/2007 in open offer through/exchange at RS. 430/– per share resulting into cost of acquisition of Rs. 2,07,95,15,500/-. Thereafter, total 1250000 shares of NDTV limited were transferred from their individual demat account to the joint demat account on 22/1/2008 (475000 shares from each individual accounts) and 17/3/2008 (transactions of the same date when 150000 shares were

transferred from both individual accounts). [625000 shares from each individual demat account of Dr. Roy and Mrs. Radhika Roy] cost of acquisition for these 1250000 shares has been taken at Rs. 4092/– only. Thereafter, from this joint account, on 19/6/2008, 1250000 shares were sold through stock exchange at the rate of Rs. 450/- per share with net realization of Rs. 562,800,000. As the assessee has taken the cost of acquisition of these 1250000 shares as nil, therefore, it has recognized Rs. 562,800,000 as a long-term capital gain for financial year 2008 – 09. It was further noted that the board's circular number 768/ 1998 clearly mentions that FIFO method should be applied to individual demat accounts in order to compute the cost of acquisition and capital gain arising thereupon. In other words, shares that first entered into demat account will be sold first. In light of this circular, cost of acquisition for these 1250000 shares would be taken at RS. 430/- per share being the cost of shares acquired through open offer on 26/1/2007 instead of Rs. 4092/- taken by the assessee. Further the date of acquisition of these shares would be recognized from the date on which initial lot of 4835850 shares were credited into this demat account i.e. 26/12/2007. Therefore, in the report it was mentioned that :-

i. assessee has earned short-term capital gain instead of long-term capital gain and
ii. Cost of acquisition of the shares sold would be at the rate of Rs. 430 per share.

Accordingly, the report suggests that the computation of the capital gain would be as under:-

serial number	particulars	amount in Rs.

1	Net realization of 1250000 shares at the rate of Rs 450/- per share	Rs. 56,28,00,000
2	Less cost of acquisition of 1250000 shares at the rate of Rs 430/- per share	Rs. 537,500,000
3	Short-term capital gain	Rs. 253,00,000
4	Short-term capital gain to be allocated to individual's i.e. Dr Prannoy Roy and Mrs Radhika Roy for assessment year 2009 – 10 in equal ratio	RS. 12,700,000

Therefore the report show that the long-term/short-term capital gain accrued to Mrs. Radhika Roy for FY 2008 – 09 would be modified as under:-

serial number	particulars	amount in Rs.
1	long-term capital gain disclosed in the return of income	RS. 1,085,300,000
2	short-term capital gain to be assessed	RS. 12,700,000

It is further stated in the report that the long-term capital gain and short-term capital gain accrued to Dr Prannoy Roy for financial year 2008 – 09 would also be modified accordingly in similar manner. The report further stated that assessing officer is advised that necessary proceeding should be initiated in the case of Dr Prannoy Roy and Mrs. Radhika Roy for AY 2009 – 10 in order to tax short-term capital gain of RS. 12,700,000/- in each case and to take further applicable actions such as levy of interest and penalty.

10. Based on this information received and on perusal of return of income filed by the assessee, the learned AO recorded the reasons for reopening extracted from page no 43 of the paper book as under:-

> "1. The assessee has filed E- return declaring total income of Rs. 1,67,64,284/–. A detailed information regarding wrong disclosure of capital gains have been received from The DDIT (Investigation) Unit –

I, New Delhi, vide letter dated 9/6/2011, intimating that Dr Prannoy Roy and Mrs. Radhika Roy have opened a jointly held demat account. The first lot of 48,35,850 shares of NDTV limited were purchased on 26/12/2007 in an open offer through stock exchange @ Rs. 430/- per share resulting into cost of acquisition of RS. 207.96 Crore. Therefore, total 1250000 shares of NDTV limited were transferred from their individual demat account to this account on 22/1/2008 and 17/3/2008. The costs of acquisition for these 1250000 shares have been taken as Rs. 4,092/– only. Thereafter, on 19/6/2008, 1250000 shares were sold through stock exchange @ Rs. 450 per share with net realization of Rs. 56.28 crores.

2. The assessee has taken cost of acquisition of these 1250000 shares as NIL. Therefore, it has recognized RS. 56.28 crores as LTCG for FY 2008 – 09. On this issue, the board's circular number 768 of 1998 clearly mentioned that FIFO method should be applied to individual demat account in order to compute cost of acquisition and capital gain arising thereupon. In other words, shares first entered into demat account will be sold first. In light of the circular cost of acquisition for these 12,50,000 shares would be taken at @ RS. 430 per share instead of RS. 4,092/– as taken by the assessee. Moreover, date of acquisition of the same should be recognized from the date on which initial lot of 48,35,850 shares were credited into this demat account i.e. 26/12/2007. Therefore, assessee has earned short-term capital gain instead of long-term capital gain and cost of acquisition for the shares sold would be @ Rs. 430 per share. The computation is given below-

serial number	particulars	amount in Crore Rs.
1	Net realization of 1250000 shares @ Rs. 450/- per share	Rs. 56.28
2	Less cost of acquisition of 1250000 shares @ Rs. 430 per share	Rs. 53.75
3	Short-term capital gain	Rs. 2.53
4	Short-term capital gain are located to individuals for Prannoy Roy and Mrs Radhika Roy for assessment year 2009 – 10 in equal ratio to both	RS. 1.27

The long-term capital gain/short-term capital gain accrued to Mrs Radhika Roy for FY 2008 – 09 needs to be modified as under:-

serial number	Particulars	amount in Crore Rs.
1	long-term capital gain disclosed in the return of income	RS. 108.53
2	short-term capital gain to be assessed	RS. 1.27

3. The perusal of the return indicates that neither long-term capital gain nor short-term capital gain has been disclosed. I, therefore, have reason to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for the above assessment year, the short-term capital gain income of RS. 1.27 crores (as discussed above) chargeable to tax, has escaped assessment within the meaning of provision of section 147 of the act. No assessment u/s 143 (3) was completed. Therefore notice u/s 148 is being issued to the assessee."

11. Thereafter, on 8/2/2013, assessee was asked to show cause as to why income from shares sold out of the joint demat account of the assessee with

her husband on 19/6/2008 should not be treated as short-term capital gain. To this, assessee filed her reply dated 27/2/2013 and submitted that to facilitate sale of 1250000 shares jointly on 19/6/2008, equal number of shares i.e. 625000 shares from individual account of assessee and her husband were transferred to the joint demat account wherein total shares 1250000 were transferred. It was further submitted that the assessee is having several demat accounts, which are held by her in her individual capacity. Besides these accounts, she opened demat account jointly with her husband and purchased 4835850 shares of NDTV limited on 26/12/2007 at RS. 430 per equity share in an open offer through Bombay stock exchange in that account. Thereafter, on 22/1/2008 and 17/3/2008 assessee and her husband transferred 951000 and 300000 (total 1251000) equity shares of NDTV limited. Thus, 625500 equity shares (475500+150000) were transferred by each of them to this joint account out of their individual accounts. On 19/6/2008, they sold jointly 1250000 equity shares of NDTV limited in the market and claimed that the 12,50,000 shares were sold out of share transferred from their individual demat account as against FIFO method prescribed under the act. It was further stated that transfer routed to the joint demat account for onward sale should not get hit by the FIFO rule. It was stated that there is no ambiguity about which lot of shares were sold and FIFO is only to be applied in case of any ambiguity. It was further submitted that at the time of transferring, the shares from individual accounts to joint demat account, shares acquired on 26/12/2007 were pledged to India Bulls and so it was deemed necessary that the additional 1251000 shares be transferred to this joint account. It was further submitted that since sale of shares took place in two lots can be

clearly identified with the corresponding number of shares purchased, therefore the fiction of the FIFO method is not required to be applied in the present case. Therefore, the assessee stated that there is no error in the return of income filed.

12. The learned assessing officer considering the reply filed by the assessee rejected the same mainly for the following reasons:-

i. according to board's circular number 768 of 1998, FIFO method should be applied to demat account in order to compute cost of acquisition and capital gain

ii. according to provisions of section 45 (2A) of the act, cost of acquisition and the period of holding of the security shall be determined on the basis of First- in – First- out method (FIFO) when beneficial interest on securities is held by the assessee.

iii. Assessee submitted that at the time of transfer of shares from individual account to joint demat account, shares purchased on 26/12/2007 were pledged, but according to AO , Demat statement showed that 40,00,000 shares were pledged as on 1/1/2008. Further on 30/4/2008 there was unpledged of 37,30,000 shares, thus , on 30/4/2008 only 2,70,000 shares were pledged out of 48,35,850 equity shares. Further actual sale of 1250000 equity shares was transacted on 19/6/2008. Therefore on the date of sale of shares of 12,51,000 shares on 19/6/2008 , there were 45,65,850 (48,35,850 - 2,70,000) free shares were available. Hence, the submission of the assessee was found to be incorrect.

iv. The shares would have been sold from the individual demat accounts. Hence, there was no need to transfer shares from individual demat accounts to Joint account by both the assesses.

v. Assessee has not declared any short-term capital gain in return of income and long-term capital gain of RS. 132,65,14,725/– is claimed as exempt. Therefore AO noted that the assessee has manipulated the 'cost of acquisition' and 'period of holding' of these shares to claim the capital gain as exempt and assessee has adopted dubious means under the garb of tax planning.

vi. The learned AO applied the decision of the honourable Supreme Court in case of McDowell & Co Ltd vs CTO 22 taxmann 11 and held that the transaction shown as long-term capital gain are nothing but Sham transactions which have been manipulated to avoid the tax arising on the transfer of shares of NDTV limited.

vii. That assessee is a director of NDTV limited and holding a substantial stake and is in a position that she can influence the decision of the company. Therefore, the actual matter of transaction has to be examined by lifting the corporate veil, which would reveal that the assessee and NDTV are not distinct entities as far as the camouflage is concerned and that both acted in connivance to evade the tax on capital gains.

13. Accordingly the learned assessing officer computed the short-term capital gain and the long-term capital gain in the hands of the assessee as under:-

		Amount (In Rs)
1	Sale consideration on 19/6/2008 (STT) 12,50,000 shares (excluding STT as per proviso to section 48)	56,35,46,732/-

2	Less cost of acquisition dated 26/12/2007 for 48,35,850 shares amounting to RS. 207,95,93,242/- therefore cost of acquisition for 1250000 shares is	53,75,45,944/–
3	Total short-term capital gain	2,60,00,788
4	Share of the assessee at the rate of 50%	1,30,00,394/-

Further, learned assessing officer considered that 25,03,259 shares sold on 17/4/2008 amounting to RS. 1,08,53,58,953/– and STT thereon of RS. 13,61,460/– resulting into total sale consideration of RS. 1 ,08,67,20,413/– has the cost of acquisition of RS. 8,194/- and therefore the long-term capital gain which is exempt u/s 10(38) of the act is amounting to RS. 1, 08,67,12,219/–.

14. Further the learned assessing officer asked details of the immovable properties owned by the assessee and found that the property at Mussoorie is acquired by the assessee and her husband in the year prior to financial year 2007 – 08 and the cost of property to the assessee as per the statement of affairs is RS. 65,33,315/–. The learned AO assumed that the rent of the above property should be at least 0.8% of the cost of property per month as share of the assessee and accordingly he assumed the monthly rent of RS. 5000/- of that property. So he made an addition of deemed rent of that property of RS. 6,24,000/–. Further it was found that the rent of two properties at Dehradun was also considered by the learned assessing officer and deemed let out value equivalent to the Mussoorie property and therefore the addition of RS. 12,48,000/– was made further with respect to the above two properties at Dehradun. Further the assessee owns a property at B – 213, GK – 1, New Delhi that in the statement of affairs is shown as deemed to be let out and the ratable value of the same is shown to be RS. 43,664

resulting into fair rental value of Rs. 2,16,000/–. Assessee treated 50% of the same and determined annual value of RS. 1,08,000/– in the hands of the assessee. The learned assessing officer noted that since the property is located in one of the posh colonies of Delhi where actual rent is quite high, therefore, he determined the minimum property rent of the property at RS. 2,00,000/- per month, considering 50% share of the assessee determined at RS. 1,200,000 and therefore the net addition of RS. 10,92,000/– was made as assessee has only declared RS. 108000/- as income from that property. The learned AO granted 30% deduction under section 24 of the income tax act and determined additional income under the head income from house property of RS. 2074800/–. Another disallowance of RS. 2750/- u/s 80 (G) was made. Consequently, the total income of the assessee was determined at RS. 3,17,39,478/– against the returned income of RS. 1,66,61,534/– an assessment order u/s 143 (3) read with section 147 of the income tax act was passed on 30/3/2013.

15. Assessee, aggrieved with the order of the learned AO, preferred an appeal before the learned CIT (A) – 42, New Delhi, raising several issues. Assessee challenged the action of the learned assessing officer u/s 148 of the income tax act. The learned CIT – A held that the learned assessing officer did apply his mind before recording the reasons to reopen the case, so he upheld the action of the learned assessing officer. Assessee further challenged the addition made of RS. 1,00,30,395/– on sale of 6,25,000 shares of NDTV limited considered by the learned assessing officer as short-term capital gain, The learned CIT – A , after elaborate discussion in para number 7 of his order, confirmed action of learned assessing officer holding that RS. 1.30 crore is earned by the assessee is short-term capital

gain on sale of the above shares. On the addition of Rs. 20,74,800/– under the head 'Income from House Property," the learned CIT – A granted substantial relief to the assessee with respect to each of the properties. Accordingly, the appeal of the assessee was partly allowed. The assessee is now aggrieved, with the actions of the learned assessing officer in reopening the assessment and additions confirmed by the learned CIT – A.

16. As per ground number 1 of the appeal, action of the learned assessing officer in reopening the assessment is challenged. As per ground number 2 the determination of the short-term capital gains of RS. 1,30,30,394/– on sale of 6,25,000 shares of M/s NDTV limited is contested. As per ground number 3 and 4 the additions sustained by the learned CIT – A under the head income from property is challenged.

17. At time of commencement of the hearing, the learned authorised representative did not press an addition of RS. 34,268/– and RS. 35,469/– sustained by the learned CIT – A under the head Income from House Property with respect to the property at New Delhi and Dehradun. The learned authorised representative also did not press the addition of RS. 1,53,586/– made by the learned assessing officer and sustained by the learned CIT – A with respect to the Hauz Khas property.

18. Coming to the first ground of appeal challenging the action of the learned assessing officer in reopening the assessment u/s 148 of the income tax act, the learned authorised representative, Shri Sachit Jolly, referred to the paper book filed by the assessee. He referred to page number 7 of the paper book wherein in 'schedule EI' of the income tax return form ITR – 2, assessee has disclosed at serial number 3 long-term capital gain from transactions on which security transaction taxes are paid amounting to

RS. 1,36,67,68,705/–. He further referred to page number 2 which is the 1st page of ITR – 2 in part B – TI , the long-term capital gain is shown as Nil for the reason that such long-term capital gain is exempt. He further referred to page number 9 of the paper book, which is the computation of the total income, wherein assessee has disclosed the long-term capital gain on sale of shares of New Delhi television limited of RS. 1,36,67,68,704.42 as exempt under section 10 (38) of the act. He further referred to page number 10 of PB, where the calculation of the capital gain for assessment year 2009 – 10 was given where under the heading 'B' the assessee has disclosed sale consideration of 625000 shares sold on 19/6/2008 holding that same is a long-term capital gain and therefore exempt. He further referred to the notice u/s 148 of the Act dated 15/7/2011 issued for assessment year 2009 – 10. He further referred to the report of the investigation dated 6/6/2011 placed at page number 28 of the paper book written by The Deputy Director Of Income Tax Investigation, New Delhi to the Assessing Officer wherein it is stated that the sale of 1250000 shares was made from joint demat account of the assessee and her husband. He further referred to page number 29 of the paper book where it is mentioned in the report of the investigation wing which advices to the AO that necessary proceeding should be initiated in the case of the assessee and her husband for assessment year 2009 – 10 in order to tax short-term capital gain of RS. 1.27 crore in each of the cases. He further referred to page number 43 of the paper book where reasons recorded are placed. Assessee submitted that Learned-assessing officer stating that para number 1 and 2 are the copy paste of the report of the investigation wing and para number 3 of reasons recorded shows that the assessee has failed to disclose the long-term capital

gain/short-term capital gain in the return of income. The learned authorised representative stating the above facts submitted that the reasons recorded are factually incorrect and are having inherent contradictions and lack of application of mind by the learned assessing officer. He further submitted that the only material on which the learned assessing officer has relied to reopen the case of the assessee is report of the investigation wing. He further submitted that the report of the investigation wing is an advisory, which advised the learned assessing officer to initiate the reopening of the assessment of the assessee for the impugned year, which is not permissible in law. He further submitted that the investigation wing could not give legal inferences to the learned assessing officer to initiate reassessment. He further stated that the investigation wing report does not speak about any factual issues but legal advice for initiating the reassessment proceedings, which is not permitted under the law.

19. He relied upon the decision of the honourable Delhi High Court in case of Meenakshi overseas Ltd (395 ITR 677) and Signature Hotels Pvt. Ltd. v. ITO [2011] 338 ITR 51 (Delhi) to show that there is no application of mind by the learned assessing officer, nothing more than DDIT report is recorded in the reasons. He further referred to the decision of CIT V Atul Jain 299 ITR 383 and submitted that there should be a live link between the reasons recorded. He further submitted that though the assessment is concluded under section 143 (1) of the act but there has to be a cogent reason which must exist and the borrowed reasons cannot be a basis for reopening of the assessment proceedings. He submitted that the facts in the case of the assessee are showing that assessee has disclosed long-term capital gain and particulars are shown in the return of income as well as the computation of

total income furnished by the assessee. He further stated that on looking at the return of income filed by the assessee, learned officer has not applied his mind in saying that the no long-term capital gain was disclosed by the assessee. He stated that in fact the assessee has disclosed the long-term capital gain. He further stated that the reasons are copy paste from para number 1 and 2 from the report of the investigation wing and therefore such reasons are borrowed reasons and cannot be sustained in the eye of the law. He further stated that as the reopening has been made at the instance of the investigation wing and the dictate of the higher authorities, is not sustainable in law. To support his contentions, he further relied upon the decision of Honourable supreme court in CIT v. Greenworld Corporation [2009] 314 ITR 81 (SC) and Munjal Showa Corpo 382 ITR 555. Even otherwise, he submitted that the report of the investigation wing directing the learned assessing officer to initiate the reassessment proceedings is a question of law and not of a fact. The reasons are required to be recorded as per the reason to believe of the assessing officer and not of any other person. In view of this, he submitted that the reopening of the assessment u/s 147 of the income tax act made by the learned assessing officer and sustained by the learned CIT – A is devoid of any merit and the appeal of the assessee should succeed on this count itself.

20. On the merits of the case, he referred to the statement of the facts and submitted that provisions of section 2 (47) does not apply to the facts of the case when an assessee puts her share from individual demat account to joint demat account along with her husband, as it does not result into transfer. He submitted that any way it is exempt transfer. He further referred to the provisions of section 45 (2A) and stated that it applies to the

depositories and a person not to demat account, according to him it works assessee -wise. He further referred to the decision of honourable Supreme Court in CONTROLLER OF ESTATE DUTY *v.* MRS. KAMALA PANDALAI 105 ITR 531. He submitted that the shares have been transferred in the joint account of the assessee and/or husband and law could not failed to take note of the personal relationship of the parties and demanded literal application of the provisions, so as to require the husband to leave away from his wife. Therefore, he submitted that it is a joint account with the spouse of the assessee and therefore the ratio laid down of this decision is squarely applicable to the facts of the present case. He then referred to circular number 704 dated 28/4/1995 which is an instruction regarding dematerialization of the 'date of transfer' and 'holding period' for purposes of capital gains related to transactions in securities. He submitted that the circular applies to a person but cannot be made applicable to each account of the person. According to him, circular is not to be construed account basis but a person basis. He further referred to circular number 768 dated 24 – 6 – 1998 with respect to the 'date of transfer' and the 'period of holding' of securities held in dematerialized form under section 45 (2A) of the Act for transaction in securities and submitted that FIFO method be applied account wise. He otherwise submitted that because of the transfer from the individual account to the joint account of the shares of NDTV limited , period of holding and the cost of shares cannot change. He also referred to para number 9 and 10 of the decision of the coordinate bench wherein the above circular has been considered in ITO vs DeepChan G Shah 128 ITD 488 (Mumbai). He also referred to the decision of the coordinate bench in case of the Jafferali K Rattonsey V DCIT 23 taxmann.com 21 (Mumbai)

wherein the above circular number 704 and 768 has been considered. He further referred to the decision of the honourable Delhi High Court in case of Arvind Sungloo trust vs Commissioner Of Income Tax 249 CTR (del) 294 (2012) and referred to para number 12 of that decision to show that when the securities are held by the assessee, it should be the 1st year in which the assets were held by the assessee. In view of this, he submitted that assessee has correctly treated the cost of acquisition of the shares as well as the period of holding of the shares. He therefore submitted that according to the assessee the computation of long-term capital gain made by the assessee is correct and in accordance with the law. Therefore the order passed by the learned Assessing Officer and sustained by the learned CIT – A holding that the sale of shares has resulted in short term capital gain and tweaking the cost of acquisition on such gains earned by the assessee is devoid of any merit.

21. The learned special Counsel on behalf of revenue vehemently referred to the letter dated 6/6/2011 written by Deputy Director of Investigation to the Deputy Commissioner of Income Tax. He further referred to page number 35 – 36 of the paper book of the assessee, which is the summary of the joint account (demat of the assessee and her spouse). He co-related page no number 20 which is the transaction statement of the joint account to show that on 01/1/2008, there was a pledge on 40,00,000 shares of NDTV limited. Further, on 30/4/2008, 3730000 shares were unpledged. He submitted that on 19/06/2008, the transaction of sale of 1250000 shares has been entered into. After stating these facts, he referred to the arguments raised by the learned authorised representative stating that the that it is an instruction or advice from a higher authority to reopen the

case, is devoid of any merit. He submitted that letter has been written by office of The Deputy Director Of Income Tax, Investigation, New Delhi to The Deputy Commissioner Of Income Tax, New Delhi who both are having the same rank. Therefore, there was no advice from the higher authorities but merely an exchange of information between two similarly placed authorities. With respect to the application of mind, he referred to page number 43 of the paper book. He submitted that it has been specifically mentioned that in reasons recorded that learned assessing officer before recording the reasons, has perused return of the total income filed by the assessee, compared the same with the information, it was noted by him that assessee has not shown any long-term capital gain and short-term capital gain in the return of income, therefore, he after application of the proper mind on the issue having regard to the return of income and information received has reopened the case of the assessee. He therefore submitted that the allegation and the argument of the learned authorised representative that there is no application of mind by the learned assessing officer are devoid of any merit. He further referred to the return filed by the assessee at page number 10 of the paper book, which shows that the computation of total income is made, by the assessee. However, in the return of income, he stated that assessee has shown only the exempt income under section 10 of RS. 1,36,67,68,705/- but has not shown the computation of the total income vis a vis cost of acquisition and basis of the same and period of holding of such shares. He referred to schedule no – 1, which is placed at page number 7 of the paper book being return of income and compared it with schedule BTI at page number 2 and stated that it is 'blank'. He further referred to page number 10 of the computation of the total income. He

submitted that with respect to the sale of shares of NDTV of 25, 03,259 shares on 17/4/2008 , there is no dispute, however, only dispute is with respect to the sale of 6,25,000 shares on 19/6/2008, where there is no evidence about the holding period and the cost of acquisition of those shares. He, therefore, stated that the learned assessing officer has compared the report of the investigation wing submitted by the Deputy Director of investigation of Income Tax, Compared it with the return of Income filed by the assessee . Thereafter he found that there is no such prima facie indication that the correct disclosure has been made in the return of income qua holding period and cost of acquisition of those shares. Therefore, he submitted that ld AO has 'reason to believe' that there is a failure on part of the assessee to fully and truly disclose the material facts relating to the income. He further stated that subsequent to the assessment u/s 143 (1) of the income tax act, if thereafter any information comes to the knowledge of the assessing officer, which prima facie shows that income has not been disclosed correctly therein, then only option available with the assessing officer is to reopen the case of the assessee. He further referred to the decision of the honourable Delhi High Court in case of Sonia Gandhi 407 ITR 594 (Delhi) and in particular para number 70 of that decision to support his claim. He further countered the argument on the issue of advice from the another officer, he submitted that there is no control with the learned assessing officer that how other officers should write an information report and it cannot go against the revenue, if the informing officer, has used particular language / words which does not suit the purpose of the assessee. He referred to the decision of Surendrakumar Jain V DCIT 85 TTJ 285 (Nagpur) on the issue of

reopening of assessment. He submitted that in that particular case there was a clear mandate to the learned assessing officer to reopen the case of assessee, even then the coordinate bench has upheld the reopening proceedings. He further referred to letter dated 6/6/2011 in stating that in the present case the assessing officer was advised to take the necessary proceedings in the case of the assessee , it did not says that reopening is required to be done by the assessing officer. If possible, the assessing officer could have initiated some other proceedings also. Therefore, there is no direction or advice given by the Deputy Director of Income Tax (Investigation), New Delhi to the Assessing Officer to reopen the case of the assessee. Even otherwise, he submitted that the AO was not at all aware and made known about how the assessee has computed the capital gain arising on the sale of the share what is the cost of acquisition. He further stated that according to the dematerialization rules as per the depositories act, the identification of individual sets of lots are lost, moment they are dematrealised. He referred to the relevant provisions of the demat rules and stated that they became fungible and identification of individual share is not permissible as well as not visible. He further referred to the decision of the coordinate bench in ACIT vs Nawal Kishore Kejriwal ITA No.1391/Kol/09 dated 23/4/2010 wherein it has been held that when shares are deposited for Demat, , they loses their identity such as distinctive numbers and share certificates nos. The significant feature of the dematerialized securities is that they are fungible i.e. all the holding of a particular security will be identical and inter- changeable and they will have no unique characteristic such as distinctive number, certificate number, folio number, etc. As the holdings of any securities in dematerialized, form is represented only by the

account with the Depository and all transfers are affected through book entries in the accounts maintained by the Depository, under this system it is not possible to link the purchase of a security with its sale by means of its distinctive number, etc. It is for this reason that sub-section (2A) has been inserted in section 45 of the act to provide for the computation of capital gains in respect of securities held in dematerialized form. This sub-section provides that for the purposes of calculating the date of transfer and period of holding in respect of shares held in dematerialized form, the FIFO method would apply. Clarifications have been sought on the manner of application of the FIFO system for the determination of the date of transfer and the period of holding. He therefore submitted that there is a complete application of mind by the assessing officer and he has not relied merely on the information received from the Deputy Director of Investigation. He further stated that there is no dictate of the superior authority but information received from authority of the similar rank to the learned assessing officer, it was also not for reopening of the assessment but was to take necessary action and the learned assessing officer could have taken any action according to the law, if it is permitted to be taken. Therefore, it cannot be stated that the assessing officer acted on the advice of the higher forum. He further stated that there is a live nexus between the information received and the reasons recorded by the learned assessing officer by verifying the return of the income of the assessee and ld AO found that the cost of acquisition and the holding period taken by the assessee for the purpose of the computation of the capital gain on sale of the assessee is incorrect. He otherwise submitted that the assessee has shown capital gain on sale of these shares as long-term capital gain and exempt from taxation

whereas according to the assessing officer on examination of the information he prima facie found that the transaction of the sale of shares resulted into the short-term capital gain. Hence, he submitted that there is a live nexus between the information received and reasons recorded by the learned assessing officer.

22. On the merits of the addition he stated that the decision relied upon by the learned authorised representative of 105 ITR 531 is pertaining to the Estate Duty Provisions and does not apply to the provisions of Income Tax Act. He further referred to the circular and stated that the learned assessing officer has correctly computed the capital gain arising on sale of 625000 shares as short-term capital gain. He extensively referred to the order of the learned CIT – A and ld AO to support his claim. He further referred to the provisions of section 55 (2) (a) of the income tax act and the provisions of section 45 (2A) of the act to support the order of the learned AO and CIT – A. He also referred to the applicability of circular and submitted that when the shares are transferred from the individual account to the joint account, assets become property of joint owners. He further submitted that on reading of the circular where the reference is made to multiple demat accounts, it is held that same applies to account wise, therefore there is no merit in the argument of the ld AR that, circular applies person wise and not account wise. He further submitted that numbers of shares available with Joint account for sale was much higher than the number of shares sold, therefore, explanation of pledge given by the assessee is incorrect.

23. In rejoinder, the learned authorised representative referred to page number 29 of the paper book showing the letter dated 6/6/2011, which clearly shows that the assessing officer was advised that necessary proceedings

should be initiated in the case of the assessee and therefore there is no option left with the assessing officer except to reopen the assessment proceedings. He therefore submitted that the reopening has been made on the dictate of the other officers. He further referred to the reasons recorded by the learned assessing officer and stated that para number 1 and 2 of the reasons are merely the copy paste of the information received from the investigation wing and further in para number 3 it is indicated that no short-term capital gain or long-term capital is disclosed by the assessee whereas the revenue itself has accepted part A of the calculation of the capital gain placed at page number 10 of the paper book amounting to RS. 1,085,300,000/- as long-term capital gain. Referring to the decision of 85 TTJ 285 referred by the learned departmental representative, he stated that in para number 15 nothing was conveyed to the assessing officer in that particular case, therefore there was no dictate in that decision. However in the case of the assessee there is a direct dictate of The Deputy Director Of Income Tax to initiate the proceedings. Further with respect to the decision of Sonia Gandhi referred to by the learned departmental representative, he referred to para number 47 of the decision and stated that it was an issue of stale information and para number 17 related to the nondisclosure of taxing event. There is no such disclosure failure in the case of the assessee in the impugned appeal. He therefore submitted that both these decisions relied upon by the learned departmental representative does not apply to the facts of the case.

24. Coming to the merits of the case he stated that the decision relied upon by the learned departmental representative of Nawal Kishor Kejriwal was with respect to the broker's contract note and no documents were produced in

that particular case, therefore it does not apply in the impugned appeal. Even otherwise, he submitted that in the dematerialization of the shares, only the distinctive number of the shares are lost, but the period of holding and the cost of acquisition does not change at all. Therefore, he submitted that the orders passed by the authorities below are not sustainable.

25. We have carefully considered rival contentions and perused orders of authorities below. We have also perused the communication received by the Deputy Commissioner of income tax (AO) from the Deputy Director Of Income Tax (Investigation), New Delhi. We have also perused the reasons recorded by the learned AO reproduced in earlier paragraphs. We have also considered the various judicial precedents relied upon by rival parties. On careful consideration we found that as per ground number 1 of the appeal revolves around following dispute:-

i. Whether the ld AO has correctly initiated the reassessment proceedings u/s 147 of the income tax act.
ii. If, the reassessment proceedings are correctly initiated, whether the shares held by the assessee in the joint demat account are short-term capital asset or long-term capital asset and what is the 'cost of acquisition' and 'period of holding' of those shares for computation of capital gain.

26. We address the first issue that whether the learned assessing officer has correctly initiated the reassessment proceedings under section 147 of the income tax act or not. Undoubtedly, the Deputy Commissioner Of Income Tax received a letter dated 6/6/2011 from the Deputy Director Of Income Tax, investigation, New Delhi wherein it is stated that there were certain allegations which were forwarded by Shri Yashwant Sinha , M P and the Member Of Parliament and Chairman Standing Committee Of Finance stating that assessee along with her husband is having 3 different demat accounts. One demat account is in the name of the assessee and her husband individually. The third demat account is the joint demat account of assessee and her husband. The facts clearly shows that assessee transferred 475000 shares on 22/1/2008, 1,50,000 shares on 17/3/2008

to the joint demat account with her husband from her individual demat account. Similarly, her husband also transferred the identical number of shares on those dates in the joint account from his individual demat account. Therefore, both assessee and her husband transferred 625000 shares of NDTV limited to the joint demat account from their individual demat accounts and subsequently on 19/6/2008 these shares were sold by the assessee along with her husband from her joint demat account and claimed that it has resulted into exempt long-term capital gain. The communication received from the Deputy Director Of Investigation, New Delhi claims that assessee has not disclosed that it has earned short-term capital gain but has shown it as a long-term capital gain. It was further stated in the above letter that the cost of acquisition for the shares sold would be RS. 430/- per share being the cost of acquisition of 4835850 share acquired in the joint demat account on 26/12/2007 from stock exchange and not only RS 4092/- as claimed by the assessee. Therefore the allegation was that assessee has shown the sale of 1250000 shares of NDTV limited as 'long-term capital asset' instead of 'short-term capital asset' by claiming wrong holding period of those shares and further has also shown the 'cost of acquisition' of the share wrongly and not showing correct 'cost of acquisition' of the share at RS. 430/- per share. The letter was also accompanied by the 3 annexure titled as annexure A wherein date wise analysis of the shares held in all the 3 demat account including the joint demat account of the assessee was tabulated. As per that letter the detailed working of the capital gain on sale of short-term capital asset was worked out and stated that short short-term capital gain of RS. 12,700,000 have accrued to the assessee and the identical amount to the other joint owner, i.e. husband of the assessee. The letter also advised the assessing officer that necessary proceedings should be initiated in the case of the assessee as well as her husband in order to tax short-term capital gain in each of these cases. Based on this informational AO verified the return of income. Thereafter, learned assessing officer recorded the reasons for reopening of the assessment. While recording the reasons for reopening, the learned AO reproduced the information received from the DDIT in para number 1 – 3. In para number 4 the assessing officer stated that on perusal of the return

it was indicated that neither long-term capital gain nor short-term capital gain has been disclosed in the return of income. Therefore, he stated that he has reason to believe that because of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment in the above assessment year. The return of income was filed by the assessee, which is placed at page number 1 – 9 of the paper book filed by the assessee. Page number 1 is the acknowledgement. Page number 2 of the return of income is form No ITR-2. It has the breakup of total income offered by the assessee. In part B – TI (3) assessee is required to disclose the head wise income and in this column the assessee is required to show the short-term capital gain or long-term capital gain offered for taxation. In the return of income filed by the assessee, it is shown as nil. Further long-term capital gain is required to be disclosed in schedule CG- B5 and short-term capital gain is required to be shown in column number A5 of schedule CG. Therefore, the capital gain computation is required to be shown in schedule CG that is placed at page number 4 and 5 of the paper book. In all the columns of that schedule, assessee has shown nil income. It is further required to be noticed that assessee has filed her return of income on 31/7/2009 vide E- filing acknowledgement number 81679931310709 and was signed digitally on 31/7/2009. However, the assessee has shown in the details of exempt income in schedule BI in column number 3 showing that long-term capital gain from transactions on which security transaction tax is paid is RS. 1,36,67,68,705/–. According to the assessee, it has also shown the working of the capital gain in the computation of the total income placed at page number 10 of the paper book. Under the heading, B of calculation of capital gain on sale of shares of New Delhi television limited assessee has shown sale of 625000 shares @ Rs. 452.25 per share on 19/6/2008. From the above sale consideration, assessee has deducted cost of acquisition of those shares of RS. 2 045.84. Accordingly, long-term capital gain of Rs. 2,8,14,17,945.86 were shown. However, the dates of acquisition of those shares were neither disclosed nor specification whether shares are short-term or long-term capital asset was mentioned. Naturally, no basis of claiming them to be Long-term capital assets was shown. However, assessee has worked out the cost of acquisition of those

share at RS. 0.003273 per share, however, above cost of acquisition was derived showing that cost of shares of RS. 54512 were for 16653300 shares held. This return of income and probably the computation of total income filed by the assessee in the paper book at page number 10 were verified by the learned assessing officer. Thus, on receipt of the information from the Deputy Director of Income Tax (investigation), New Delhi the learned AO verified the above return filed by the assessee and formed a reason to believe that assessee should have disclosed the short-term capital gain of RS. 12,700,000 but it has not been disclosed. Thus it is evident that ld AO held that shares sold by the assessee were not long term capital assets but short term capital assets as their holding period as per demat account is less than one year. Further the cost of acquisition was also worked out on the shares acquired first, thus, short-term capital gain was worked out. Reopening was challenged before the learned CIT – A. As per para number 6.2 and 6.3 of his order he held that the learned assessing officer has independently validated the facts from the income tax return on receipt of the information from DDIT which shows that assessing officer did apply his mind before recording the reasons to reopen the case. As per para number 6.4 of the order, he held that letter from the investigation wing is not in the nature of a direction from a superior authority. However, it is a case of forwarding specific information by the investigation wing to the assessment wing as per the defined set of procedures of the income tax department therefore it cannot be said that AO has reopened the case on the dictating of the higher authorities. As per para number 6.7 of the order, he dealt with the argument of the assessee that AO is factually incorrect that assessee has not disclosed long-term capital gain or short-term capital gain in her return of income. He held that assessing officer has clarified the context in which the remark of nondisclosure of long-term capital gain and short-term capital gain were made and therefore the argument of the assessee was rejected. In paragraph number 6.9 of his order, he extracted the image of the income tax return filed by the assessee to show that the capital gain disclosed by her in her return of income is nil. Accordingly, he justified the reopening of the assessment made by the assessing officer.

27. It is required to be tested based on the information received whether the learned assessing officer has applied his mind before reopening of the assessment order not. The honourable Delhi High Court in 299 ITR 383 (2008) (Delhi) in CIT vs Atul Jain and Smt Vinita Jain , relied by the learned authorised representative, has held that there must be reason to believe warranting the issuance of notice of reassessment by the assessing officer. If there are no reasons, then the entire foundation for initiating the proceedings is bad and the notice initiating the proceedings must be quashed. It was further held that mere satisfaction of the assessing officer for the issuance of notice is not enough; there must be reasons on record, which led him to believe that the notice should be issued. Therefore it was held that after a foundation based on information is set up, there must still be some reasons, which warrant the holding of the belief so as to necessitate the issuance of notice u/s 148 of the income tax act, 1961. In the present case certain information was received by the deputy director of income tax (investigation), New Delhi on the basis of allegations received by Mr. Yashwant Sinha , member of Parliament and chairman of standing committee on Finance. Based on the above allegations DDIT issued a letter to the assessing officer. Along with the letter the detailed transactions in the demat account of the assessee and her husband and also in the joint account with her husband were tabulated showing cost of acquisition, date of transactions and resultant capital gain. The above information in the demat account summary clearly showed that whether the shares were held in the joint demat account by the assessee can be said to be a short-term capital asset or not. The annexure thus computed that long-term capital gain exempt could only be RS. 1,08,53,50,759/–. Even in the exempt long-term capital gain, the assessee has shown in her return of income in schedule BI at serial number 3 of RS. 1,36,67,68,705/–. Therefore, there was a mismatch in the exempt long-term capital gain shown by the assessee and information received from the DDIT , coupled with the fact that in the schedule CG assessee has disclosed nil income, the learned assessing officer clearly applied his mind to this and formed a reason to believe that short-term capital gain income of RS. 1. 27 crores chargeable to tax have escaped assessment. Therefore, clearly on the foundation of the information, the

learned assessing officer independently verified return of income and noted that assessee has not disclosed short-term capital gain of RS. 12,700,000/– and then formed a belief to necessitate the issuance of notice u/s 148 of the income tax act. Therefore, reasons recorded by the learned assessing officer for reopening of the assessment fulfils the criteria as laid down by the honourable Delhi High Court in the above judicial precedent relied upon by the learned authorised representative. The learned authorised representative also relied upon the decision of the honourable Delhi High Court in 319 ITR 221 in Shipra Srivastava V ACIT. In that particular decision the honourable Delhi High Court held that the reasons did not refer to any material which has come to the notice of the assessing officer subsequent to the finalization of the assessment u/s 143 (1). In the present case there is a definite information coming from the investigation wing which is based on the allegation received by a Member of Parliament and chairman of the standing committee on Finance after the process of return u/s 143 (1) of the act. Even otherwise, in the present case the conclusions which has been arrived at by the assessing officer in the reasons recorded seeking reopening of the assessment were based on certain information and on verification of the return filed by the assessee which showed that assessee has not disclosed correctly short-term capital gain on sale of shares from the joint account along with her husband. Therefore, the ratio laid down for valid reopening of the assessment has been fulfilled in the present case. The learned authorised representative further relied upon the decision of the honourable Delhi High Court in 338 ITR 51 (Delhi) (2011) in case of Signature Hotels Private Limited vs ITO. In that particular decision the honourable High Court has held that the reassessment proceedings were initiated on the basis of information received from the Director Of Income Tax (Investigation) without any reference to any document or statement but merely based on annexure, which was not a pointer and did not indicate escapement of income. Further, in that particular case the assessing officer did not apply his own mind to the information and examine the basis and material of the information. Therefore, the honourable Delhi High Court quashed the reassessment proceedings initiated by the assessing officer. In the present, case though the information is received

from the Deputy Director Of Income Tax (Investigation), New Delhi accompanied with 3 different annexure showing the date wise transactions from the various demat accounts of the assessee and her husband and also from the joint account stating that the long-term capital gain earned by the assessee is only RS. 108,00,00,000 and the other sale of shares resulted into the short-term capital gain to the assessee. Such annexure were not merely the pointers but did indicate the escapement of income then it is compared with the return of income where the assessee has shown much higher income as exempt u/s 10 (38) of the income tax act. Over and above, the assessing officer applied his own mind to the information and examined the basis and the material of such information with the return of income and thereafter he reopened the case by issuing notice u/s 148 of the income tax act. Accordingly, the above decision does not come to the rescue of the assessee but in fact fulfils all the ingredients for the proper initiation of reassessment proceedings in the present case laid down by the honourable Delhi High Court in that particular decision.

28. The learned authorised representative has also raised an issue that the reopening of the assessment has been carried out at the instance of the investigation wing wherein it has been dictated by them to the assessing officer to initiate reassessment proceedings. It is further argued that the report of investigation wing is an advisory, which is not permissible in law. The learned authorised representative pressed into service the decision of the honourable Delhi High Court in 382 ITR 555 and 314 ITR 81 where the learned assessing officer initiated the 148 proceedings at the instances of the higher authorities. In the present case, in para number 4.2 at the end of the letter dated 6/6/2011 by the Deputy Director of Income Tax Investigation, New Delhi mentions that the assessing officer is advised that necessary proceedings should be initiated in the case of the assessee and her husband for assessment year 2009 – 10 in order to tax short-term capital gain of RS. 12,700,000 in each case and to take further applicable actions such as levy of interest and penalty. Therefore, it is apparent that there is no direction by the Deputy Director Of Investigation to the Assessing Officer to specifically initiate the reassessment proceedings by issue of notice u/s 148 of the income tax act. In the present case, the AO is

merely advised to take any remedial actions in accordance with the law. Therefore, the discretion was with the assessing officer to whether to issue notice u/s 148 of the income tax act or not. In the cases relied upon by the learned authorised representative there was a clear-cut directive from the CIT to the assessing officer to take corrective action and to submit the compliance report of action taken without fail. There is no such direction in the letter of information issued by Deputy Director Of Investigation in the present case. Further, in the present case the authority, indicating the information was of the equal rank and not a higher authority. Further, the advice was clearly on the facts of the case of the information received. In view of this, we do not find that the reopening has been made at the instance of or at the dictate of higher authorities. In the present case, there is a clear-cut indication and discretion of the assessing officer that he has verified the information received and after that he found that a sum of RS. 12,700,000 that should have been shown as a short-term capital gain by the assessee have not been disclosed in her return of income. Therefore, we do not agree with the argument of the learned authorised representative that reopening is at the instance of or at the dictate of the informing authority.

29. The next argument of the learned authorised representative is that the reasons recorded by the learned assessing officer is mere reproduction of the information received and further there is no live link between the information received (tangible material) and formation of belief. The learned authorised representative for this proposition relied upon the decision of the honourable Delhi High Court in Principal Commissioner of Income Tax vs Meenakshi overseas Ltd 395 ITR 677 (2017). It has been held that he Assessing Officer being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on objective criteria. The recording of reasons to believe and not the reasons to suspect is the pre-condition to the assumption of jurisdiction under section 147 of the act. The reasons to believe must demonstrate the link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment. Honourable Delhi High Court in that decision in para number 19 – 24 has held that when all the assertions made by the learned assessing

officer in reasons recorded for reopening are clearly emanating from the report of the investigation wing and there was nothing to indicate that how the assessing officer has formed a reason to believe without linkage of such information with his formation of belief , it cannot be held to be a valid reason for reopening of the assessment. In the present case the reasons for the reopening were recorded by the learned assessing officer though extracting the information that has been received from the investigation wing in preamble of the letter, and also noting that the assessee has filed return of income declaring income of RS. 16764284/- , he further noted that that the return of income was perused where neither the long-term capital gain nor short-term capital gain have been disclosed. Such belief was formed after looking at the return of income in schedule CG that is shown as nil. Further the long-term capital gain shown in the tangible material is Rs. 108,00,00,000, which is far less than the amount that has been shown by the assessee in annexure EI. Therefore, in the present case it is not the mere reproduction of the report of the investigation wing but clear-cut finding recorded by the learned assessing officer that he has perused the return of income and on verification of that return has given a live link to the learned assessing officer to form a belief that assessee has understated the short-term capital gain of RS. 12,700,000. Therefore, the facts in the present case clearly showed that there is a live link between the tangible material and formation of the belief and it is not merely the reproduction of the report of the investigation wing but the finding of the assessing officer himself also in such reasons.

30. Therefore, we confirm the finding of the learned CIT – A in holding that there is no infirmity in the reassessment proceedings initiated by the learned assessing officer.

31. Now coming to the 2nd issue whether the sale of 1250000 shares of NDTV limited from the joint demat account of the assessee with her husband has resulted into gain on account of transfer of long-term capital asset or not. As facts stated earlier that on 22/1/2008, 475000 shares and on 17/3/2008, 150000 shares of NDTV limited were transferred from the individual demat account of the assessee and identical number of shares were also transferred from the day individual demat account of her husband

to the joint account. This resulted into transfer of 951000 shares in the joint account on 22/1/2008 and 3,00,000 shares on 17/3/2008 totaling to 1251000 shares transferring in to the joint account from the individual account of joint holders. Further on 19/6/2008 1250000 shares were sold from the joint demat account of the assessee and her husband. Assessee claimed it to be a long-term capital asset considering the period of holding as date of acquisition in their individual demats account and also claimed cost of acquisition as incurred by them in their individual demat accounts to compute long-term capital gain. Accordingly, assessee claimed that the shares sold were long-term capital asset and the cost of acquisition was only RS. 4092/–. The learned assessing officer held that shares transferred by the assessee from the joint demat account are short-term capital asset as they were acquired only on 28/12/2007 and are sold on 19/6/2008 on FIFO basis applicable to the dematarialsed securities. Assessing officer also considered the cost incurred by the assessee for crediting the shares into the joint demat account on 28/12/2007 accordingly the computation resulted in short-term capital gain of RS. 13,000,000/-. On appeal, the ld CIT (A) Dealt with this issue as under :-

> "7.2 The issue involved is that whether the capital gain arising on transfer demat shares of NDTV Ltd. on 19/06/2008 out of joint DP account maintained with M/s IndiaBulls Securities Limited (depository participant) at a consideration of Rs 56,28,35,892/- would result in short term capital gain or long term capital gain. The assessee's contention is that the capital gain on transfer of said shares is long term capital gain as the transfer of 12,50,000 shares was out of 12.5 lac shares transferred to Joint Demat account from their individual demat accounts of both i.e. Dr Prannoy Roy & Mrs. Radhika Roy. However, the AO's considered it to be a case of short term capital gain in accordance with the extant provisions of section 45(2A) which provide manner of determination of cost of acquisition and period of holding in case of transfer out of demat account. The holding of the shares in joint demat account with Indiabulls is as under:

	Date	*Number of shares*	*Particulars*
	26.12.2007	*48,35,850*	*Purchase through open offer (24,17,925 in each hand)*
	22.01.2008	*9,51,000*	*Transferred from individual demat account (out of above, 4,75,500 shares were transferred by the assessee from her individual demat account*

	17.03.2008	*3,00,000*	*Transferred from individual demat account (out of above, 1,50,000 shares were transferred by the assessee from her individual demat account.*
	19.06.2008	*12,50,000*	*Shares were sold for an aggregate consideration of Rs. 56,28,35,892/- (6,25,000 shares by the assessee)*

7.3 Deeper analysis of the issue of treatment of capital gain on transfer of shares highlight that the whole controversy is on the manner of calculation of holding period of transferred demat shares. The appellant has made out a case that period of holding of the shares in question should be calculated assessee wise and not account wise. The assessee argued that the provisions of section 2(42A) provide holding of an asset by the assessee and not in a particular demat account. The submission of the assessee is that 12,50,000 shares transferred by the assessee and her husband were the shares which were individually held in their respective demat account and then transferred to joint demat account in AY 2008-09 and since the aggregate period of holding in the individual D-mat account and the joint D-mat account exceeded more than twelve months, the shares sold were long term capital asset and as such, any gain accruing on sale of such shares is long term capital gain. The assessee further, states that on 1.4,2007, 1,66,53,300 shares were held in the individual demat account by the appellant and likewise, her husband held 1,66,53,300 shares on 1.7.2007 in the individual demat account. The assessee contended that if the period of holding in the individual demat account and period of holding in joint demat account is calculated then the shares transferred represented long term capital asset and therefore, the gain accruing on sale of such shares is long term capital gain. The Assessing Officer has not accepted the contention of the assessee regarding claim of long term capital gain on sale of 12,50,000 shares held in joint demat account.

7.4 it may be noted that under the old system, physical share certificates had unique characteristic such as distinctive number, certificate number, folio number, etc. and on sale of the same, the period of holding was computable from the date of purchase of the said share to the date of sale of the share since it was possible to link the purchase of a security with its sale by means of its distinctive number. However, under new system, whenever purchase/sale, i.e., any transfer of such securities held in dematerialised form is effected, delivery is given or taken by making adjustments in the account maintained with the Depository by the two parties. The significant feature of the dematerialized securities is that they are fungible, i.e.,

all the holdings of a particular security will be identical and inter-changeable and they will have no unique characteristic such as distinctive number, certificate number, folio number, etc. As the holdings' of any securities in dematerialized form is represented only by the account with the depository and all transfers are effected through book entries in the accounts maintained with the depository, therefore, under this system, it is not possible to link the purchase of a security with its sale by means of its distinctive number etc. as in the case of physical certificate. Therefore, logically, the next level of identification is the account from where the security has been transferred. As against this, the assessee is claiming to take the identification to the higher level i.e at assessee level across the accounts, which is .not correct. In old physical system, the holding was with reference to specific share certificate & there was no question of identification at 'assessee level', whereas in demat system, since the holding cannot be considered at share level, therefore, the best case scenario is to consider the holding with reference to specific demat account level from where the transfer has taken place as against the claim of the appellant to consider it at 'assessee level'.

7.5 It is for this reason that sub-section (2A) has been inserted in section 45 to provide for the computation of capital gains in respect of securities held in dematerialized form. This sub-section provides that for the purposes of section 48 and proviso to clause (42A) of Section 2 of the act, the cost of acquisition and period of holding of any securities shall be determined on the basis of the FIFO method.

7.6 It may be relevant to reproduce provisions of section 45(2a) which are as under:

"Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as income of the beneficial owner of previous year in which such transfer took place..... "

".....and for the purpose of Section 48 & proviso to clause (42 A) of Section 2, the cost of acquisition & period of holding of any securities shall be determined on the basis of 'first in first out' method."

7.7 On applying the provisions of Section 45 (2A) to the facts of the case of the assessee, it is quite evident that the assessee had beneficial interest in demat shares of 'NDTV' in two separate demat accounts i.e. (individual account and joint account). There is profit or gain on transfer of 12.5 lakh NDTV shares on 19/06/2008 out of joint demat account. This profit is chargeable to income tax as income of

beneficial owner (i.e. the assessee) of the previous year in which transfer takes place. The cost of acquisition and period of holding of NDTV shares is to be determined on the basis of first in first out method. The principle of FIFO is to be applied '**to the account from where the transfer**' i.e. "out" of electronic fungible shares takes place and the period of holding for such fungible "out" shares of a particular scrip is to be taken from the first "in" shares of the same scrip in the relevant demat account. The section nowhere allows to refer the shares held in some other account where no transfer has taken place. Logically, also, when a transfer from a particular demat account, it is wrong to resort to some other denat account. FIFO is not applicable across the accounts of the assessee because only that particular account has to be considered where the transfer has taken place. There is no logic to consider all accounts if the transaction is only from a particular account. The assessee's plea of considering the FIFO across the accounts of the assessee is, therefore, not correct. Therefore, the simplistic interpretation of the provisions of section 45(2A) is to apply FIFO method account wise and not across accounts of the assessee. The circular also confirms the thought process at the time of legislation. The Board's Circular No. 70-1 provides that "In such a case, where on investor has more than one security account, FIFO method will be applied account-wise. This is because in case where a particular account of an investor is debited for sale of securities, the securities lying in her other account cannot be construed to have been sold as they continue to remain in that account."

7.8 As discussed above, the legislation has prescribed the manner of computation of period of holding as per the provisions of section 45(2A), therefore, there is no option at the end of the assessee to compute the period of holding in a different manner. The concept of FIFO cannot be applied across the multiple accounts of the assessee because the shares on transfer from one account to other lose their identity as transferred share. Statute incorporated the principle of FIFO in the provisions of section 45(2A) to compute cost of acquisition of shares and period of holding for the purpose of Section 48 & proviso to clause (42 A) of Section 2.

7.9 The assessee is relying upon the fact that 6,25,000 shares of NDTV were transferred from individual account to joint demat account (4,75,500 shares on 22.01.2008 and 1,50,000 shares on 17.03.2008). However, this argument does not hold good because 6,25,000 shares of NDTV lost its identity on becoming part of demat account due to inherent nature of demat account where identity of a particular share is lost.

7.10 Further, the assessee has drawn an analogy with valuation of stock on FIFO basis lying in four different godowns. The assessee submitted that the stock valuation is done, assessee-wise and not godown-wise. The analogy drawn in this regard with the facts of the case is completely misplaced because the purpose of FIFO in the first case is in the context of valuation of stock of a particular item at gross level at the end of the financial year whereas FIFO method in this case has been applied to ascertain the holding period and purchase value of the specific shares in the demat account.

7.11 The assessee has failed to substantiate the fact of pledging of a particular set of shares. As discussed above, the joint demat account with Indiabulls was opened with purchase of 48,35,850 shares on 26.12,2007. As per the D-mat statement on 1.1.2008, 40,00,000 shares were pledged out of 48,35,850 shares; whereas on 30.04.2008, only 27,00,000 shares were pledged out of 48,35,850 equity shares. However, it remains a fact that over 12,50,000 shares were free from pledge and thus, available in the account out of 48,35,850 equity shares as on 19.6.2008 i.e. the date of sale on which 12,50,000 shares were sold. Thus, the contention of assessee that shares purchased through open offer on 26.12.2007 were not available for sale on 19.6.2008 is not valid.

7.12 The assessee has also contended that the assessing officer has made the addition based on the CBDT circular and the circular cannot be used against the assessee. However, as discussed above, the circular only provides scenario based clarification in pursuance to section 45(2A). It nowhere exceeds the mandate of section 45(2A) but only provides the clear cut scenario based clarification to elaborate on the provisions of section 45(2A).

7.13 In view of the above discussion, I do not find any force in the argument of the assessee and therefore, I uphold the addition on account of short term capital gain of Rs. 1.30 crore made by the Assessing Officer."

32. The 1st argument of the learned authorised representative is that provisions of section 2 (47) does not apply to the facts of the case when assessee puts a share from individual demat account to joint demat account along with her husband as it does not result into on 'transfer'. He submitted that anyway such transfer is otherwise exempt. This issue that when the assessee transfers the shares from her individual account to the joint account there is no transfer as contemplated under section 2 (47) of the income tax act is not before us. Issue is that learned AO has taxed sale of shares from the demat account held jointly by the assessee along with her husband and he

has considered the 'period of holding' of such shares on FIFO basis based on the securities movement in that demat account and also considered the 'cost of acquisition' of those shares which were considered as sold on the basis of FIFO method of that demat account.

33. Further the learned authorised representative has stated that provisions of section 45 (2A) and various circulars relied upon by the learned assessing officer are to be considered 'qua person' and not 'qua demat account'. His argument was this that FIFO method should be applied considering the person and his holding in various demat accounts and cannot be considered and applied to each demat account. To this proposition we referred to circular number 768 dated 24/6/1998 which is as under:-

Circular No. 768, dated June 24, 1998.

To

All Chief Commissioners of Income-tax/

Directors-General of Income-tax.

Subject : **Transactions in securities—Determination of "date of transfer" and the "period of holding of securities" held in dematerialized form under section 45(2A) of the Income-tax Act, 1961.**

Sir,

At present trading in securities is done through the physical movement of the scrips. Transactions are settled through the endorsement and delivery of the certificates which are also the proof of ownership of the security mentioned therein. This system is fraught with many difficulties caused due to bad deliveries and loss of share certificates. In order to remove these difficulties faced by the investors, a system of holding securities in the electronic mode at the option of an investor has now been introduced in India. The object of this system is to eliminate problems which are normally associated with settlement through physical certificates, like tearing/mutilation of share certificates due to careless handling, loss of certificates by postal authorities or registrars or investors, problems of bad delivery, forgery of certificates, etc. The new system is devised to ensure faster and hasslefree settlement of trade with shorter settlement cycles.

2. Under the new system, the movement of the scrips physically from one person to another is totally done away with by introducing certain intermediaries, chief among them being a depository and a participant. In order to implement the system of holding and

transferring securities through the electronic media, firstly the Depositories Act, 1996, has been enacted. The object of this Act is to regulate the working of the depositories in securities and matters incidental thereto. A depository is an organisation where the securities of a shareholder are held in the electronic form on the request of the shareholder, through the medium of a depository participant. The depository is comparable to a bank where an investor who desires to utilise its services can open an account with it through a depository participant. However, a depository is not merely a custodian but is in fact the registered owner of the security and it is the depository whose name is entered as such in the register of the issuer. The person actually entitled to the security becomes the beneficial owner, whose name is recorded as such in the books of the depository.

3. The salient feature of this new system is that it is optional and would operate in conjunction with the existing system of holding securities in physical form. Where an investor opts to hold a security with a depository, i.e., not in physical possession of a certificate, the depository shall be intimated of the details of allotment of securities and accordingly the depository shall enter in its records the name of the allottee as the beneficial owner of that security. Under this system physical share certificates are surrendered to the issuing agency and the account maintained with the depository is the only evidence of the ownership of the securities. This conversion of physical certificates into electronic holdings at the request of an investor is called dematerialisation. Whenever purchase/sale, i.e., any transfer of such securities held in dematerialised form is effected, delivery is given or taken by making adjustments in the accounts main- tained with the depository by the two parties. The significant feature of the dematerialised securities is that they are fungible, i.e., all the holdings of a particular security will be identical and inter-changeable and they will have no unique characteristic such as distinctive number, certificate number, folio number, etc. As the holdings of any securities in dematerialised form is represented only by the account with the depository and all transfers are effected through book entries in the accounts maintained by the depository, under this system it is not possible to link the purchase of a security with its sale by means of its distinctive number, etc. It is for this reason that sub-section (2A) has been inserted in section 45 to provide for the computation of capital gains in respect of securities held in dematerialised form. This sub-section provides that for the purposes of calculating the date of transfer and period of holding in respect of shares held in dematerialised form, the FIFO method would apply. Clarifications have been sought on the manner of application of the FIFO system for the determination of the date of transfer and the period of holding.

4. The primary issue under the Income-tax Act in the case of securities whether held in physical form or in the dematerialized form remains the determination of cost of acquisition and the period of holding. The Board had earlier issued Circular No. 704, dated

28th April, 1995, which explains the manner in which the "date of transfer" and "period of holding" may be determined. This primary position as regards the "date of transfer" and "period of holding" does not change even when the securities are held in the dematerialized form. The only problem when securities are held in dematerialized form is that the distinct trail linking every share to a certificate and its unique distinctive number linking it with its subsequent sale is not available.

5. Section 45(2A) stipulates that in the case of securities held in dematerialized form, for determining "date of transfer" and "period of holding", the FIFO method would be applicable. The FIFO method is generally used to determine the value of any item moving out of a stock account and those remaining in stock at any point of time. When applied to an account holding dematerialized stock, it implies that, out of the existing holdings, the item that first entered into the account is deemed to be the first to be sold out. However, once a sale is linked with an earlier purchase, for determination of their "date of transfer" and "period of holdings". Board's Circular No. 704 would be applicable. That is to say that the relevant contract notes as explained in Circular No. 704 will have to be referred to, for ascertaining the cost of the security sold and the date of transfer.

When actually operating an account of dematerialized stock by applying the FIFO system, certain other issues can arise. For instance, an investor can hold part of his holdings of a security in physical form and the remaining in dematerialized form. Further, he may hold his dematerialized holdings in more than one account with one or more depositories. In such a situation there can be doubts whether the FIFO system is to be applied globally on the entire holdings of physical and dematerialized holdings or not. In this connection, it is clarified that :

(a) The FIFO method will be applied only in respect of the dematerialized holdings because in the case of sale of dematerialized securities, the securities held in physical form cannot be construed to have been sold as they continue to remain in the possession of the investor and are identified separately.

(b**) In the depository system, the investor can open and hold multiple accounts. In such a case, where an investor has more than one- security account, the FIFO method will be applied accountwise. This is because in case where a particular account of an investor is debited for sale of securities, the securities lying in his other account cannot be construed to have been sold as they continue to remain in that account.**

(c) If in an existing account of dematerialized stock, old physical stock is dematerialized and entered at a later date, under the FIFO method, the basis for determining the movement out of the account is the date of entry into the account. This is illustrated by the following examples :

[extracted from ITRonline and underline supplied by us]

On careful reading of para number 5 (b) of the above circular, it is clearly mentioned that in the depository system the investor can open and hold multiple accounts. In such cases where an investor is holding more than one security account, FIFO method would be applied account wise. After that, it has also been clarified reason for the same, holding that where a particular account of investor is debited and sale of securities the securities lying in his other account cannot be construed to have been sold as they continue to remain in that account only. Therefore it is clear that the applicability of the FIFO method when the shares are sold from the demat accounts should be applied each account wise. In the present case, assessee does not have multiple accounts in her own name. Assessee sold shares from a joint account held with her husband. Assessee claims that revenue should treat the shares so sold from her joint account not on FIFO basis but to consider the period of holding as acquired by her in her individual demat account and also grant cost of that shares as acquired by her in the individual account as cost of acquisition. If the contention of the learned authorised representative is accepted that FIFO method should be applied person wise and not account wise , then it would lead to an anomaly for identification of shares. Prior to introduction of section 45(2A), as far as the shares and their offshoots, such as rights and bonus shares, are concerned, their costing for the purposes of capital gains would be cost of original shares , the actual cost paid in acquiring them, while the cost for rights shares and the cost of bonus shares shall be *nil* In the wake of this dispensation, 'bonus stripping' was common. Investors buy and sell original shares but don't sell their bonus shares as far as possible. There can be no objection to this kind of tax planning because the CBDT Circular 704, dated April 20, 1995 did not insist upon the first-in-first-out (FIFO) basis of costing as an inviolable rule but only in those cases where the assessee is unable to establish a physical link with the shares sold and the particular lot. However, after introduction of section 45(2A) of the Income-tax Act, 1961, and Depositories Act, 1996, those participating in the depositories mechanism will have to accept FIFO as a way of maintaining securities. In a depositories mechanism, where individual shares lose their

identity and lose themselves in the wilderness of a homogenous mass, it is mandatory to follow FIFO method. When the profits on sale of shares in different circumstances is taxed at different rates, under different heads, non application of standard FIFO method to each account would lead to tax anarchy. Precisely the same is the case of the assessee. Hence we hold that FIFO method will be applied in case of multiple accounts to each of the demat account.

34. The assessee has further relied up on the decision of the honourable Madras High Court in Controller Of Estate Duty vs Kamala Pandalai [105 ITR 531] . The facts in that case was with respect to the possession and enjoyment of the money despite the same being deposited in the bank account of the husband of the assessee and was with respect to the chargeability of estate duty on the same. There is no dispute that when the assessee transferred the shares from her individual account to the joint account along with the husband of the assessee, assessee does not lose any enjoyment or possession of those shares transferred. However the issue before us is not whether the assessee loses any enjoyment of possession of such shares but how if such shares are transferred in the joint account but the issue is whether the sales sold from the joint account have the period of holding for determination of its character as short-term capital asset are long-term capital asset would be considered from the date when the assessee originally purchased shares in her individual demat account or not. The provisions of section 45 (2A) and the circular is issued by the central board of direct taxes provides otherwise. In view of this the decision relied upon by the learned authorised representative does not help the case of the assessee.

35. Assessee has further relied upon the decision of the honourable Delhi High Court in case of Arun Shungloo Trust 249 CTR (Delhi) 294. We find that the facts of the case was with respect to the computation of capital gain in the hands of a donee trust on sale of a capital asset with respect to the previous owner (Donor) and the period of holding of the said asset. In that particular decision the appellant sold transferred the acquired property from 3rd party, therefore the question related to the computation of the long-term capital gain with respect to the indexed cost of acquisition from

the date of acquisition of such assets by the person who donated the same to the trust or not. In fact the issue was whether the cost of previous owner in case of sale of property of buyer trust can be substituted as the cost of acquisition and for the purpose of holding period , property held by previous owner can be considered or not. The facts before the honourable Delhi High Court are nowhere near the facts before us.

36. The learned authorised representative further relied upon the decision of the Mumbai bench in ITO V Deepchan G Shah [2011] 9 ITR(T) 360 (Mumbai)/[2011] 128 ITD 488 (Mumbai)/[2011] 138 TTJ 180 (Mumbai) . We have carefully perused the facts and the decision rendered therein. The issue involved in that case was related to the determination of the date of transfer and period of holding of shares by the assessee, which was sold by him in the year under consideration giving rise to a capital gain. The period of holding was claimed by the assessee on the basis of the contract notes of more than one year and thus treated the assets as long-term asset. Further the facts in cited case was whether the brokers note dated earlier but those shares were dematerialised immediately before the sale, whether the holding period would be considered from the date of the broker note or the date of transfer in the demat account. Applying the circular number 704 of Central Board Of Direct Taxes, coordinate bench set aside the whole issue back to the file of the learned assessing officer to determine period of holding as in the circular itself it is mentioned that in such cases period of holding shall be reckoned with from the date of note of the broker. The above issue arose in the time when the shares were held originally in physical format and later on for sale converted into dematerialized form. In the case before us, the shares were already dematerialized and were transferred from individual account to joint account. Therefore, the facts stated before us are distinguishable with the facts decided by the coordinate bench.

37. In view of our above discussion we confirm the finding of the learned CIT – A with respect to ground number 1 and 2 of the appeal of the assessee and accordingly both this grounds are dismissed.

38. With respect to the ground number 3 of the appeal the only dispute remains is property at Mussoorie wherein the authorities below have sustained the addition of Rs 219542/- under the head income from house property. With

respect to the above property the learned assessing officer has assumed that the assessee's share of rent of the above property would be 0.8% of the cost of property being RS. 6 535315/–. Therefore, he assumed that the assessee would be earning rent of RS. 5 2000/– per month and therefore the entire years rental income was assessed at RS. 6 24000/–. Further from the above property the learned assessing officer granted deduction under section 24 of 30% and determined the income from of property at RS. 4 36800/–. On appeal before the learned CIT – A, assessee submitted that the annual letting value taken by the cantonment board at Mussoorie was Rs. RS. 30,000 per annum for the whole house. Further it was supported by the House tax bill also. It was further stated that the learned assessing officer has enhanced the income from house property purely on surmises, conjectures and suspicious without having any material or valid basis. The learned CIT – A directed the learned assessing officer to make the enquiry to determine the fair rental value of the above property. However the learned assessing officer did not submit any such report before the learned CIT – A. Therefore the learned CIT – A determine the rental rates as per the website 99 Acre and Quikkr and adopted RS. 16 per square feet as the fair rental value assuming appreciation of 10% over the 3 year. Such data was confronted to the assessee however; the assessee maintained that the annual value of the property for the assessment cannot exceed RS. 30,000 per annum. The learned CIT – A rejected the explanation of the assessee and stated that annual value of the rent can be determined only on the basis of the enquiry and publicly available information. He therefore held that there could not be any other yardstick. He further held that the standard rent rate is generally in the range of 7.5% to 10% of the cost of construction of the property. Therefore he held that the property with the covered area of 435 6 ft^2 should have a fair rental value of RS. 52272/- per month considering the rent of RS. 12/- per square feet. Accordingly, the annual value of the property was determined by him at RS. 6 27264/–. After granting 30% reduction thereon he determined the income chargeable under the head income from house property with respect to the above property at Rs. 219542/–.

39. The learned authorised representative submitted that the valuation of the property has been carried out by the learned assessing officer as well as the learned CIT – A without any material. He further submitted that the annual value determined by the learned CIT – A also does not have the mandate of the provisions of the income tax act.

40. The learned departmental representative supported the orders of the authorities below.

41. We have carefully considered the rival contentions and perused the orders of the authorities below. With respect to the Mussoorie property the learned assessing officer in the remand report has submitted that the basis of the fair rental value has not yet been received by AO and therefore could not be submitted before the learned CIT – A. Thus, there is no information available with AO of fair rent of the property. Contrary to that assessee has submitted annual let out value of such property that is claimed to not to exceed Rs. 30,000 as mentioned by cantonment board. Therefore, the learned CIT – A should not have substituted the same on hypothetical basis. Accordingly, we direct the ld AO to take the let out value of the property as per the determination of same by cantonment board for this year to determine the annual fair rent of the property and then decide the issue afresh. Accordingly, this part of ground number 3 of the appeal of the assessee is allowed.

42. Accordingly, appeal of the assessee is partly allowed.

43. Coming to ITA number 2021/Del/2017 preferred by Dr. Prannoy Roy, which is on identical facts and circumstances as in the appeal of Mrs. Radhika Roy, therefore, for the reasons given by us while deciding that appeal, we dismiss ground number 1 and ground number 2 of the appeal. Ground number 3 is partly allowed and ground number 4 is dismissed as it is withdrawn. Accordingly, the appeal of the assessee is partly allowed.

AY 2010-11

ITA No	**2020/Del/2017**	**Mrs. Radhika Roy (Assessee)**
ITA No	**2706/Del/2017**	**Mrs. Radhika Roy (Revenue)**
ITA No	**2022/Del/2017**	**Dr. Prannoy Roy (Assessee)**
ITA No	**2707/Del/2011**	**Dr. Prannoy Roy (Revenue)**

44. ITA No 2020/del/2017 filed by Mrs. Radhika Roy, assessee and ITA No 2706/del/2017 is filed by the ld AO for AY 2010-11 against the order of The Ld CIT (A) -42, New Delhi dated 23/02/2017.

45. The assessee has raised the following grounds of appeal in ITA NO. 2020/Del/2017 for the Assessment Year 2010-11:-

"1. That the learned Commissioner of Income Tax (Appeals)-42, New Delhi has erred both in law and on facts in making an addition of Rs. 47,31,33,800/- by invoking the provisions contained in section 56(2)(vii) of the Act

1.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate discovering new source of income not considered by the learned Assessing Officer in the impugned order of assessment and therefore such enhancement was in excess of jurisdiction u/s 25 l(l)(a) of the Act.

1.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that what was retransferred were such shares which were conditionally transferred by the assessee and were on escrow account and therefore section 56(2)(vii)(c) of the Act has no application.

1.3 That the learned Commissioner of Income Tax (Appeals) while making the addition has overlooked documentary evidence placed on record by the appellant to show that section 56(2)(vii) had no application to the facts of the case of the appellant and therefore, addition made is not in accordance with law.

1.4 That the finding recorded by the learned Commissioner of Income Tax (Appeals) that "the assessee cannot escape the taxation under the deeming provisions of section 56 of I.T. Act by making such claim of "conditional transfer" driven by mutual business interests. IT considers each transaction in the natural course of action. Therefore, the stand of the assessee regarding conditional transfer on mutual convenience of the parties cannot help the assessee to avoid taxation under the provision of Income Tax Act" is highly vague and is based on assumption which otherwise too are contrary to record, legally misconceived and untenable.

1.5 That in recording the aforesaid findings the learned Commissioner of Income Tax (Appeals) has failed to comprehend the powers vested in him u/s 251 (1)a) of the Act; and has failed to appreciate that he had

no powers u/s 263 of the Act, in as much as this issue could alone be examined by the learned Commissioner of Income Tax and not by him.

1.6 That the learned Commissioner of Income Tax (Appeals) having deleted the addition made by the learned Assessing Officer of Rs. 47,31,33,800/- which represented the alleged unexplained investment has erred both on facts and in law in making an addition by invoking the provisions of section 56(2)(vii) of the Act.

1.7 That in sustaining the addition, has deliberately overlooked the judgment of Full Bench of the Delhi High Court in the case of CIT Vs Sardari Lal & Co. reported in 251 ITR 864, therefore, the order is vitiated.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining addition in respect of alleged income under the head house property from following properties:

Sr. No.	*Property*	*Amount (Rs.)*
i	*B-13, Greater Kailash-I, New*	*34,268*
ii)	*One House at Dehradun*	*35,469*
iii)	*Property at Mussorie*	*2,19,542*
	Total	*2,89,279*

2.1 That there is no material or valid basis adopted by the learned Commissioner of Income Tax (Appeals) to enhance the annual value declared by the appellant and in absence thereof, addition sustained is illegal, invalid and untenable.

2.2 That while upholding the addition the learned Commissioner of Income Tax (Appeals) has failed to appreciate written submissions filed by the appellant wherein it was stated that comparable instances adopted are non comparable and inspector's report is without jurisdiction and otherwise too has no evidentiary value.

2.3 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that annual value of property cannot exceed the municipal valuation and as such addition sustained is not in accordance with law.

3. That the learned Commissioner of Income Tax (Appeals) has failed to comprehend that municipal value of property at Hauz Khas was Rs. 1,53,586/- and such a value represents annual value of the property u/s 23(1) of the Act and thus he ought to have followed the judgment of Full Bench of Hon'ble Delhi High Court in the case of CIT v. Moni Kumar Subba reported in 333 ITR 38 logically directed the Assessing officer to adopt the annual value at Rs. 1,53,586/- instead of Rs. 3,60,000/-.

It is therefore, prayed that it be held that additions made of Rs. 47,34,23,079/- and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.

46. In case of Mrs. Radhika Roy The Ld Deputy Commissioner has raised the following grounds of appeal in ITA No. 2706/Del/2017 for the Assessment Year 2010-11:-

1. *Whether on facts and circumstances of the case, the CIT(A) is legally justified in deleting addition of Rs. 55,88,73,564/- on account of capital gain on sale of shares quoted @ Rs. 135/- to Rs. 140/- at BSE for sale consideration @ Rs. 4/- per shares to the related party by ignoring finding of facts recorded by the Assessing Officer (the AO)?*
2. *Whether on facts and in circumstances of the case, the CIT(A) is legally justified in deleting addition of Rs. 55,88,73,564/- on account of capital gain on sale of shares quoted @ Rs.135/- to Rs. 140/- at BSE for sale consideration @ Rs.4/- per shares to the related party by ignoring meaning of the phrase "...full value of consideration...accruing..." u/s 48 of the Income Tax Act 1961 (the Act)?*
3. *Whether on facts and in circumstances of the case, the C1T(A) is legally justified in holding that full value of consideration accruing to the assessee of a quoted shares could be valued other than quoted price?*
4. *Whether on facts and in circumstances of the case, the CIT(A) is legally justified in holding that full value of consideration accruing on sale of shares in case of quoted shares at the Stock Exchange could be 2.96% of the quoted price of the shares if assessee chose to decide so?*
5. *Whether on facts and in circumstances of the case, the CIT (A) is legally justified in reducing addition of Rs. 23,59,700/- to Rs. 2,89,279/- on account of income from house property on the basis of new information without affording an opportunity of being heard to the AO?"*

47. Now we 1st state the facts in case of Mrs. Radhika Roy in ITA number 2020/Del/2017 for assessment year 2010 – 11. The assessee filed return of income on 31/7/2010 declaring total income of RS. 90,80,683/–. The return was revised on 16/3/2011 stating the same taxable income but claimed carry forward of long-term capital loss of RS. 3,54,000,000, which was not claimed in the original return of income. As a detailed information regarding incorrect disclosure of capital gain received from the Deputy Director of Income Tax (Investigation) vide letter dated 6-9/6/2011, case of the assessee was selected for scrutiny and necessary notices u/s 143 (2) dated 27/7/2011 was issued. During the course of assessment proceedings, learned assessing officer found that assessee has sold 5781841 equity shares of NDTV limited on 3/8/2009 at the rate of Rs. 4/- per share to RRPR Holdings private limited (RRPR) at such a discounted

rate when the assessee has sold further shares on 9/3/2010 at the rate of RS. 140/– per share. So query was raised.

48. Assessee submitted that promoter group of NDTV consist of Dr Prannoy Roy, Mrs. Radhika Roy and RRPR Holdings private limited. RRPR Holdings Pvt Ltd has only two shareholders holding equal shares (50 % each) being Dr Prannoy Roy and Mrs. Radhika Roy. It was stated that in above transactions, No laws, whether taxation or corporate has been violated or intended to be violated. This was a transaction solely within the promoter group and the promoters could not have benefited from transaction strictly between themselves. With respect to the price of Rs. 140/- per share of NDTV , it was explained that sale of shares to RRPR holding Pvt Ltd on 9/3/2010 is at Market rate and prices have been taken from stock market.

49. The learned assessing officer noted that each person is assessed to tax separately be it husband, wife or that promoted company and therefore even the transactions between the promoter group inter se would be covered. Therefore, he rejected the argument of the assessee and proceeded to analyze the transactions made by the assessee of sale of shares. He noted that on 3/8/2009, assessee sold 5781842 equity shares of NDTV limited at Rs. 4/- per share to RRPR Holdings private limited, whereas on the same day at Bombay stock exchange NDTV shares were traded within the range of RS. 134.95 to Rs. 141.50 Per share. Therefore, he took lowest price of RS. 135/- as the sale price of the above share as consideration received and accrued to compute long-term capital gain. Therefore according to him the full value of consideration received and accrued to the assessee on sales of this shares should be determined not at the rate of Rs 4/- per share but @ Rs 135/- per shares. Accordingly for computation of capital gain, ld AO took

the sale consideration at Rs. 780548535/- (Shares 5781841 @ Rs 135/- per share). Thereafter computation of capital gain the ld AO made the net addition of Rs. 67,22,31,387/- to the income of the assessee on account of capital gain.

50. Further it was noted that assessee has purchased 34,78,925 shares of NDTV Limited from RRPR holdings Limited on 9/3/2010 @ RS 4/- per share when the market rate of such shares were Rs. 140/- per share. Therefore, assessee was asked to explain the difference between the rate of purchase and prevailing price on the same day when the fair value of the shares can be easily determined from National stock exchange and Bombay stock exchange. Assessee submitted that the promoter group of NDTV consists of Dr Roy and Mrs. Radhika Roy and RRPR Holdings private limited, which has only to shareholders being Dr Roy and Mrs. Roy. It was further stated that in the about transaction no law – whether taxation or corporate has been violated or intended to be violated. This was a transaction solely within the promoter group and the promoters could not have benefited from transaction strictly between themselves. The learned AO noted that on 9/3/2010 the market value of the share of NDTV limited on the stock exchange was in the range of Rs. 129.95 to Rs. 134.70 per share and assessee has sold shares to RRPR holding private limited on the same day @ Rs 140/- per shares . Therefore, learned AO noted that these transactions have been carried out to manipulate the gain or loss of long-term capital gain by the assessee. Ld AO applied the observation of the honourable Supreme Court in case of McDowell and Co Ltd vs Commercial Tax Officer 22 taxmann 11 (1985) (SC). Accordingly he noted that the transaction shown by the assessee has long-term capital gain are nothing

but sham transactions which have been manipulated to evade tax arising on the transfer of shares of NDTV limited. He further noted that assessee is a director of NDTV and holding a substantial stake and is in a position that can influence the decision of that company. Therefore, the actual nature of the transaction has to be examined by lifting the corporate veil, which would reveal that the assessee and NDTV are not distinct entities as far as this camouflages concerned and that both acted in connivance to evade the tax on capital gains. Accordingly, he made an addition of RS. 47,31,33,800/- at the rate of RS. 136/- per share being difference between the quoted prices of RS. 140/- per share and the cost shown of Rs. 4/- per share on 3478925 shares of the above company.

51. Further while determining the income of the house property of the assessee the learned assessing officer further made addition on account of house property at Mussoorie of RS. 6,24,000/–, two properties at Dehradun of RS. 12,48,000/–, the property at GK 1 New Delhi of RS. 10,92,000/– and the property at Cape Town South Africa of RS. 4,07,000/–. Accordingly, he determined the total income from house property of Rs. 33,71,000/– and granted 30% standard deduction under section 24 of Rs. 10,11,300/– and made an addition of Rs. 23,59,700/– to the total income of the assessee. Accordingly the assessment u/s 143 (3) of The Income Tax Act was passed on 30/3/2013 determining the total income at Rs. 1,15,68,05,570/– against the returned income of the assessee of Rs. 90,80,683/–.

52. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT (A) – 42, New Delhi who passed an order on 23/2/2017 dealing with the issues.

53. On the issue of considering the 'full value of consideration accrued or received' by the assessee for 5781841 shares transferred on 3/8/2009 by the assessee to RRPR Holdings Ltd at Rs. 4/- per share, though the shares were traded on stock exchange at Rs. 140/- per share, Therefore, learned assessing officer has treated average of the High and low of prices on the date of sale of shares as on that date as full value of consideration received and accrued to the assessee for the purpose of working out the capital gain on these shares, the learned CIT – A held as under:-

> *"6.2 I find that the assessee transferred 57,81,842 shares of NDTV to M/s RRPR Holdings Pvt. Ltd. on 3.8.2009 at Rs. 4/- per share whereas on the same day at BSE (Bombay Stock Exchange), NDTV share was traded within the range of Rs. 134.95 (lowest of the day) to Rs. 141.50 (highest of the day). Assessing Officer has computed the long term capital gain by taking arm's length price of Rs. 135 (lowest value of the share on the given date) as sale price of the NDTV shares in place of actual sale price of Rs. 4 per share. AO held the nature of "gain" on aforesaid transfer of shares to be long term capital gain. In arriving at the above conclusion, he has held as under:*
>
> *"2.3 Whereas under the Income Tax Act, each person is assessed to tax separately be it wife, husband or their promoted company. If the submissions of the assessee are believed to be correct then Dr. Prannoy Roy, Mrs. Radhika Roy, M/s RRPR Holding Pvt. Ltd. and also NDTV should be assessed as one unit. By following assessee's versions there is no need to verify the genuineness of transaction between the related group and there is no concept of arm's length transaction. If one of the*

person within a group is liable to pay capital gain tax then he is permitted to create non genuine losses by dealing with other group persons at prices which are not at arm's length "

6.3 The issue involved in this case is that whether the phrase "full value of consideration" used in section 48 represents market value of the capital asset or the actual value of consideration?

6.4 The assessing officer has argued that the full value of consideration represents "market value". His standpoint is that the jurisprudence available on the clarification of "full value of consideration" is in the context of section 12B of I.T.Act 1922. The assessing officer distinguished the provisions of section 12B of I.T.Act 1922 and the provisions of section 48 of I.T.Act 1962 by highlighting that section 48 of I.T.Act 1962 contained additional phrase of "accruing" . For ready reference, the extracts of section 48 of I.T.Act are reproduced as under:

"The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto "

6.5 Further, according to AO, the market value of the share is exactly-known as it is a listed company and such "market value" of the share has accrued in this case.

Hence, the accrued value of consideration in this case is the market value but not the actual value of the consideration as claimed by the appellant.

6.6 I find that the statute has specifically provided in certain provisions that "full value of consideration" shall be deemed to be "fair market value of the asset" which are tabulated below:

Sl. NO.	Section	Mode of Transfer	Deemed value of full consideration
1	45(1A)	Money/ Asset received from an insurer on account of damage/ destruction of capital asset.	Value of money received &/or Full market value of asset on the receipt date.
2	45(2)	Conversion of or treatment of Capital Asset into Stock in Trade	Full market value of asset on the date of its conversion or treatment.
3	45(3)	Introduction of Capital in kind into Firm or AOP/, BOI by a partner/ member.	Amount recorded in the books of accounts of Firm or AOP/ BOI as the value of Capital Asset.
4	45(4)	Distribution of Capital Asset in kind on dissolution of Firm or AOP/ BOI.	Full market value of assets on the date of distribution.
5	45(2)	Shareholders receiving assets from liquidator on the liquidation of a company	Market Value of the assets on the date of distribution less amount assessed as deemed dividend U/s
6	49(4)	Gift etc. of shares/ debentures.	Market value on the date of gift.
7	50C	Transfer of Land &/ or Building.	Value declared by the assessee or Value as assessed by Stamp valuation authority whichever is

6.7 Since in this case, the transfer of shares do not fall under any of the above mentioned provisions, therefore, market value cannot be deemed to be the full value of consideration of the asset in this case. I do not find force in the argument of the assessing officer that "accrual" phrase introduced in the provisions refers to the market value of the capital asset. If this interpretation is taken to be true, there would not have been any need for deeming provisions for treating market value as the full value of consideration. The phrase "accrual" has relevance in the situation where the full value of consideration is received in

installments over the years and therefore, the full value of consideration "accrued" but not "received" during a particular year will be taken for the purpose of calculation of computing capital gains.

6.8 Therefore, the argument of the assessing officer does not hold good keeping in view the scheme of the Act. Adequacy or inadequacy of the consideration is not a relevant factor for the purpose of determining the full value of consideration except for specific provisions as tabulated above. Accordingly, the ground of appeal is allowed in this case."

Accordingly, he decided this issue with respect to the sale of 5781841 shares in favour of the assessee. Therefore, the learned AO aggrieved with the order of the learned CIT – A, has challenged the above deletion as per ground number 1 – 4 of the appeal.

54. With respect to the sale of 3478925 shares by RRPR Holding Pvt Ltd to the assessee at Rs. 4/- per share, for which the learned assessing officer has made the addition stating that when the fair market value of the above share is Rs. 140/– per share , assessee has purchased the shares at the rate of Rs. 4/- per share, therefore, difference between the fair market value of the share being the quoted price as on that date and the transaction price of Rs. 4/- per share was considered as unexplained investment of the assessee, the learned CIT – A held as under:-

"8.2 It is found that the assessee purchased 34,78,925 shares of NDTV from RRPR Holding (P) Ltd. @ Rs. 4 per share on 09/03/2010 while these shares were being traded on BSE in the range of Rs. 129.95 to Rs. 134.70 per share on the same day. It is also important to note that on the same day, the assessee sold 4733187 shares to the same company i.e. RRPR at the rate of Rs. 140/- per share based on the prevailing market rate of the shares on BSE/NSE on the given day. AO held that the assessee carried out these transactions to manipulate the gain or loss.

8.3 The assessing officer made an addition of Rs. 47,31,33,800/- under section 69B of I.T. Act by holding that undisclosed investment has been made in purchase of shares at the rate of Rs 4 per share particularly at the time when the share in the market was available at Rs. 140/- per share. The AO held that amount of investment made to acquire the shares cannot be less than the market worth of shares and hence, made an addition on account of unexplained investment.

8.4 It is a fact that the assessee has purchased 34,78,925 shares of NDTV from RRPR Holding (P) Ltd. at a rate of Rs. 4 per share on 09/03/2010 which is quite lower than the actual market rate quoted on the stock exchange. The moot point in this case is that whether an asset having a particular market value based on rate quoted on stock exchange can be transacted at a value less than the market rate? There can be two situations in this scenario. One, if the answer is yes, this shows that the buyer has been favoured in this transaction to the extent of difference amount. Second, if the answer is no, the buyer has paid difference amount (difference between market value and the transacted value) without disclosing it in books of accounts. The assessing officer took it to be a case of "second situation" and therefore, held it to be unexplained investment in the shares.

8.5 On examination of the facts of the case, it is noticed that provisions of Section 56(2) (vii) of the act enable the taxation of such a scenario on deemed basis. The deeming provision is based on the first situation as discussed above where the buyer has been favoured in this transaction to the extent of difference amount.

8.6 Relevant extracts of the section 56(2)(vii) are reproduced as under;

"Section 56(2)(vii): where on individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(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 where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far

as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :

Provided further that this clause shall not apply to any sum of money or any property received—

(a) from any relative; or (b) on the occasion of the marriage of the individual; or (c) under a will or by way of inheritance; or (d) in contemplation of death of the payer or donor, as the case may be; or (e) from any local authority as defined in the Explanation to clause (20) of section 10; or (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or (g) from any trust or institution registered under section 12AA. Explanation. —For the purposes of this clause,— (a) "assessable" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 50C; (b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed86; (c) "jewellery" shall have the meaning assigned to it in the explanation to sub-clause (ii) of clause (14) of section 2, (d) "property" 87[means the following capital asset of the assessee, namely:—] (i) immovable property being land or building or both; (ii) shares and securities; (Hi) jewellery; (iv) archaeological collections; (v) drawings; (vi) paintings; (vii) sculptures; (viii) any work of art; (ix) bullion;] [(e) "relative" means, — (i) in case of an individual— (A) spouse of the individual; (B) brother or sister of the individual; (C) brother or sister of the spouse of the individual; (D) brother or sister of either of the parents of the individual; (E) any lineal ascendant or descendant of the individual; (F) any lineal ascendant or descendant of the spouse of the individual; (G) spouse of the person referred to in items (B) to (F); and (ii) in case of a Hindu undivided family, any member thereof;] (f) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;]"

8.7 The extracts reproduced above clearly provide that in case an individual receives from any person on or after 1st oct, 2009, any property (including "shares") for a consideration which is less than the aggregate fair market value of the shares by an amount exceeding fifty thousand rupees, then the aggregate fair market value of such property as exceeds such consideration would be deemed as income from other sources in the hands of such Individual. Now, if the facts of the present case are examined in view of the above discussed provisions as tabulated below, it is a clear case which fits into the provisions of section 56(2)(vii).*

Section 56(2)(vii)	*Facts of the case*
Individual receives any property (including shares)	*Appellant purchased 34,78,925 shares of NDTV*
| From any person or persons	*from RRPR Holding (P) Ltd. (person includes a company- section 2(31))*
1 On or after 1/10/2009	*On 09/03/2010*
for a consideration which is less	*For a consideration Rs. 13915700 (@*

than the aggregate fair market value of the property	*Rs. 4 per share for 34,78,925 shares) which is less than the aggregate fair market value of Rs. 45,20,86,304/- based on lowest listed price of Rs. 129.95 on BSE/NSE which was in the range of Rs. 129.95 to Rs. 134.75 per share on 09/03/2010*
by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration	*By an amount of Rs. 43,81,70,604/- for 34,78,925 shares of NDTV {Rs. 129.95-Rs. 4-Rs. 125.95) per share amounting to which exceeds fifty thousand rupees*

8.8 The assessee submitted that the section 56(2)(vii)(c) of the Act provides that the clause shall not apply to any sum of money or any property received from any relative. It is also submitted that expression "relative" has also been defined in the Act. The assessee contended that such a definition is not exhaustive and would include a "company" where the shareholders are also the donees, as is the instant case. The appellant further contended that provision of section 56(2)(vii)(c) of the Act would otherwise too have no application, so far as facts of instant case are concerned, as so called gift is made by a company comprising of two shareholders to the same two shareholders.

8.9 It is pertinent to mention here that M/s RRPR Holding (P) Ltd is a separate and distinct legal entity and is not covered in the definition of the 'relative'. The meaning of relative is clearly defined in the explanation to Section 56(2)(vii)(c). The term 'relative' refers to seven different type of relations which have been defined in the explanation. The company M/s RRPR Holding (P) Ltd is a holding company. Generally, a holding company is used to facilitate transfer of ownership of parent company without sale of shares of the parent company. Therefore, shareholders of holding company can change at any moment of time. By no stretch of imagination, the aforesaid company is covered under the definition of 'relative' of the assessee, and therefore, the plea of the assessee in this regard is not acceptable.

8.10 The assessee further contended that the it is not within the power of CIT(A) to confirm an addition under section 56(2)(vii)© as the assessing officer has made addition under different section.

8.11 It is important to highlight that the subject matter of the appeal in the case is that the appellant has challenged the action of the assessing officer where the AO held that unexplained investment has been made in a particular transaction of purchase of 34,78,925 shares of NDTV from RRPR Holding (P) Ltd. @ Rs. 4 per share on 09/03/2010 on the basis of finding of quoted market rate of Rs. 129.95 to Rs. 134.70 per share on the same day on BSE market. The addition proposed by the undersigned under the provisions of Section 56(2)(vii)(c) is also in respect of the same transaction of purchase of 34,78,925 shares of NDTV from RRPR Holding (P) Ltd. @ Rs. 4 per share on 09/03/2010. No new issue has been flagged in this case. The only difference is in treatment of the same

transaction as income .under different provision of income tax act. It is very much in the power of the CIT(A) to revise the order of the assessing officer to protect the interest of appellant as well as the revenue, as the case may be. The revision of order in this case is in respect of income arising out of transfer of shares, which has been the subject matter of appeal before the undersigned. No new source of income has been identified in this case.

8.12 It may be important to mention the relevant extracts of the decision of Supreme Court of India in the case of CIT vs. Kanpur Coal Syndicate (1965 AIR 325)-

"The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is coterminous with that of the Income- tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do. If the Income-tax Officer has the option to assess one or other of the entities in the alternative, the Appellate Assistant Commissioner can direct him to do what he should have done in the circumstances of a case."

8.13 Further, it may be relevant to highlight the decision of Mumbai High Court in the case of Narrondas Manordass v. Commissioner of Income-tax. The relevant extracts of the same are reproduced as under:

"It is clear that the Appellate Assistant Commissioner has been constituted a revising authority against the decisions of the Income- tax Officer; a revising authority not in the narrow sense of revising what is the subject matter of the appeal, not in the sense of revising those 'matters about which the assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the Income-tax Officer but he can revise every process which led to the ultimate computation or assessment. In other words, what he can revise is not merely the ultimate amount which is liable to tax, but he is entitled to revise the various decisions given by the Income-tax Officer in the course of the assessment and also the various incomes or deductions which came in for consideration of the Income-tax Officer."

8.14 It flows from the above decision that the power of enhancement under Section 251 of the Income-Tax (l-T) Act, 1961 conferred on the CIT (Appeals) are plenary. If the AO has failed to exercise a power given to him under the law or if he has failed to apply his mind to tfre provisions or if he has come to a wrong determination in the computation of tax, CIT(A) can correct the error during the course of the appeal proceedings. This was also the law laid down by the Supreme Court in 1958 in CIT vs Macmillan & Co (33 ITR 182). Supreme Court ruled in the Kapoor Chand Shrimaal case (131 ITR 451) that the Appellate Commissioner is duty bound to correct errors, if any, during the course of appeal proceedings and should issue proper directions to the AO. The plea of the assessee that the decision of Hon'ble Supreme Court in the case of CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 does not allow CIT(A) to enhance the assessment by discovering new sources of income, not considered by the ITO in the order appealed against.

8.15 In this case, there is no discovery of new stream of income or new subject matter. It may be important to note that Hon'ble Supreme Court in the case of CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 nowhere questioned the power of CIT(A) to align the treatment of a particular subject matter already flagged by the assessing officer in accordance with the provisions of income tax. It is worthwhile to mention that the subject matter of any addition made by the AO is based on the underlying transaction in question. Going by the true inference of SC in the case of Shapoorji Pallonji Mistry, CIT(A) is not empowered to decide on a new set of transaction (subject matter) which has not been dealt with by the AO. However, where a particular transaction is already the subject matter of the addition, then CIT(A) is duty bound to ensure the proper chargeability of the income flowing from the underlying transaction.

8.16 The assessee has also taken a stand that the transactions of transfer of NDTV shares between the assessee and the RRPR Holding (P) Ltd. were conditional one. The assessee submitted that on 21.7.2009 an agreement was entered between M/s Vishvapradhan Commercial Pvt. Ltd. and M/s RRPR where M/s Vishvapradhan agreed to finance Rs. 350 crores subject to the condition that the promoters i.e. Dr. Prannoy Roy and Radhika Roy, would transfer additional 1,15,63,683 shares to RRPR to secure the finance which M/s Vishvapradhan had committed to advance to RRPR. The assessee stated that 57,81,842 shares of NDTV were conditionally transferred to RRPR @ Rs. 4/- each i.e. with the condition that RRPR will return back the said shares at the rate Rs. 4/- itself, however no time was fixed for the return of shares, since Radhika Roy and her husband were the only shareholders.

8.17 It may be relevant to mention that the assessee can not escape the taxation under the deeming provisions of section 56 of I.T. Act by making such claim of conditional transfer driven by mutual business interests. IT Act considers each transaction in the natural course of action. Therefore, the stand of the assessee regarding conditional transfer on mutual convenience of the parties cannot help the assessee to avoid taxation under the provisions of Income Tax Act. Accordingly, the Ground of appeal is dismissed."

Therefore, issue of the addition of RS. 47,31,33,800/- made by the learned assessing officer as alleged unexplained investment was upheld by the learned CIT – A as chargeable to tax under section 56 (2) (vii) (c) of The Income Tax Act. Assessee is aggrieved and therefore, she has challenged it before us as per ground number 1 of the appeal. The assessee has challenged that the learned CIT – A has discovered the new source of income not considered by the learned assessing officer and therefore it is not in accordance with the provisions of section 251 (1) (a) of The Income Tax Act.

The assessee has also challenged that the above shares were conditionally transferred by the assessee and on 'escrow account' therefore, provisions of section 56 (2) (vii) (c) of the act has no application to the facts of the case.

55. With respect to the income from house property, the learned CIT – A held as under:-

"9.2 At the outset, it may be relevant to refer to the principle of determining the annual value of the property which has been highlighted in the judgment of Hon'ble Delhi High Court in the case of Vinay Bharat Ram & Sons (HUF) 179 CTR 31 which is as under:

" the annual value of the property in accordance with my findings, he will limit the same to the higher of the following (a) the municipal valuation, (b) the fair rent determinable under the Rent Control Act, and (c) the actual rent paid (sic) by the assessed. This direction I feel fairly and reasonably gives effect to the pronouncements of the Supreme Court on the subject from time to time."

9.3 Accordingly, the determination of annual value of property needs to factor in its Municipal Value, Fair Rental Value, Standard Rent and Actual Rent Received or Receivable. At the outset, it may be important to define these terms:

Municipal Value: Normally municipal authorities use to charge house tax on property based on various factors like nature of the property: residential/commercial, locality, floor, facilities available in the premises, etc. This value of property considered by municipal authority is relevant for levying tax in the Municipal Act.

Fair Rental Value: The rent which a similar property in the same or similar locality would have fetched is the fair rental value of the property. This is nothing but notional rent a property can get if it has been let out for a year. e.g. In case of apartment, one can assume approx rent of other similar flat which is already let out with some addition or reduction in rent with reference to facilities of both flats.

Standard Rent: Where a rent is fixed under prevailing Rent Control Act, it would be considered as standard rent and owner cannot legally expect to get higher rent than fixed as per the Rent Control Act.

"Standard rent", in relation to any premises, means the rent calculated On the basis of ten per cent, per annum of the aggregate amount of the cost, of construction and the market price of the land comprised in the premises on the date of commencement of the construction: Provided that the standard rent calculated as aforesaid shall, be enhanced in the manner provided in Schedule I.

Actual Rent Received or Receivable: For any let out property, Actual rent received or receivable is important for annual value. Actual rent paid or payable is always subject to agreement entered by owner and tenant or matter of negotiation between them whereby if tenant agree to pay for

municipal taxes on behalf of owner then these taxes should be added in actual rent receive/receivable to derive annual value. There could be vice versa case, where owner has agreed to pay some obligation of tenant, in that case rent will be reduced by that amount.

9.4 The relevant provisions in Income Tax Act governing the determination of AV are contained in Section 23(1). The relevant extracts are as below for ready reference:

"23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be -

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable;"

9.5 The above mentioned properties of the appellant, in view of above submission fall under limb (a) of section 23 (1) of I.T.Act as the said properties were not let out & thus, no rent was received/receivable. Property wise discussion is as under:

Property at new delhi:

Q-5,Hauz Khas property :

9.5.1 The assessee has shown his share of the annual value of the Q-5,Hauz Khas property at Rs. 3,53,270/- after deduction of municipal taxes of Rs. 6,730/- by taking the higher of two values of Rs. 3,60,000/- as fair rental value and Rs. 1,58,355/- as municipal value. The assessing officer has accepted the value taken by the assessee. It is important to note that for the said property at Hauz Khas, the assessee on suo-moto basis took annual value of property at higher of the two values (i.e. municipal value and fair rental value) which is in line with the principle laid down by Delhi High Court in the case of Vinay Bharat Ram & Sons (HUF) 179 CTR 31. The same principle has been followed for other properties.

B-213,G.K.-I, New Delhi :

9.5.2 As regards the property (3 Bed Room Flat Of Covered Area 1175 Sq Ft.) at B- 213,G.K.-I, New Delhi, the assessee has shown his share of the annual value of the property at Rs. 1,06,145/- after deduction of municipal taxes of Rs. 1,855/- by taking the higher of two values of Rs. 1,08,000/- as fair rental value and Rs. 43,664/- as municipal value. The method of determination as adopted by the assessee is to take the higher of the fair rental value and municipal annual value. The assessing officer has not accepted the annual value as determined by the assessee by commenting that "Since the property is located in one of the posh colonies of Delhi, where

actual rent is quite high therefore in my opinion minimum rent of this property should be Rs. 200,000/-per month..."and estimated Rs. 12,00,000/- as its fair rental value of his share of the property. The assessee has submitted that the estimation of annual value is without any basis and purely on surmises, conjectures and suspicion. My predecessor had sent the matter back vide letter dated 11/09/2015 to the assessing officer with a direction to carry out field enquiry to ascertain the prevailing rental value in the nearby locality in the given period. Accordingly, the assessing officer reported vide letter dated 20/09/2016 that the prevailing fair rental value was Rs. 1,00,000/- to Rs. 1,25,000/- during the relevant period based on the inspector report. The extracts of the inspector report are reproduced as under:

"Some of the local property dealers could not ascertained the rental market value as the matter is 7-8 years old. However, some of the property dealers say that during the mentioned period, the rental value was Rs. 1,00,000/- to 1,25,000/- per month approximately. The rental value of properties varies from property to property depending on locations, parking and quality of construction. The above mentioned property was constructed in many years back. The report is prepared on the basis of information gathered from the property dealers."

9.5.3 In view of the above discussed report, the assessing officer has suggested to reduce the annual value of the assessee's share of property from Rs. 12,00,000/- to Rs. 6,00,000/- (as the assessee has half share of the property). The assessee has objected to the fresh valuation as there is no substance to accept the deemed rent at Rs. llac to Rs. 1.25 lac per month.

9.5.4 The inspector report ought to have contained the description of property say nature of property-commercial/residential, covered area of property, location factor, approach to the property etc. However, the inspector report is silent on this part and only contains the rental value per month without any further detail. In order to validate the rental value as reported in inspector report through independent sources information has been culled out from various property portals such as magicbricks.com, 99acres.com etc. which is tabulated below:

Property description	*Website*	*Covered area*	*Rent in Rs. (Per month)*	*Rent per Sq. ft*
2 BHK in Greater Kailash ll,South Delhi	*99acres*	*1200 Sq. Ft*	*45,000/*	*26*
2 BHK in Greater Kailash 1,South Delhi	*99acres*	*850 Sq.*	*38,000/-*	*44*
2 BHK in Greater Kailash II,South Delhi	*99acres*	*1300 Sq. Ft.*	*35,000/-*	*26*
2 BHK in Greater Kailash 1,South Delhi	*99acres*	*310 Sq. yards = 2790 Sq. Ft.*	*1,25,000*	*44*
2 BHK in Greater Kailash 1,South Delhi	*99acres*	*1400 Sq. Ft.*	*65,000/-*	*46*
2 BHK in Greater Kailash II,South Delhi	*99acres*	*1100 Sq. Ft.*	*29,000/-*	*26*
2 BHK in Greater Kailash 1,South Delhi	*99acres*	*1800 Sq. Ft.*	*39,000/-*	*21*
4 BHK in Greater Kailash	*magicbricks*	*300 Sq.*	*61,0*	*22*

1,South Delhi		*yards = 2700 Sq. Ft.*	*00/-*	
2 BHK in Greater Kailash 1,South Delhi	*magicbricks*	*1800 Sq. Ft.*	*40,00 00/-*	
2 BHK in Greater Kailash 1,South Delhi	*magicbricks*	*1200 Sq. Ft.*	*36,00 00/-*	*30*
3 BHK in Greater Kailash 1,South Delhi	*magicbricks*	*2200 Sq. Ft.*	*60,00 00/-*	*27*
Average rent per Sq. Ft.				*345/11= 31*

9.5.5 As per the table above, the current rental value of the area (G.K.-l) is taken at Rs. 30 per sq ft. It may be added that the usage of different property related portals have increased over the years for both landlords and tenants. Therefore, the information available on such portals is relatively reliable as well as reasonable as it is based on actual offers by landlords/brokers in the market.

9.5.5 The increase in rental value has been considered at 10% every three years as provided for under Section 6A of the Delhi Rent Act. It is held in the case of Union of India Vs. Deoki Nandan Aggarwal 1992 Supp (1) 5CC 323, that "Even though the 10% increase in rent every three years provided for under the Delhi Rent Act may be perceived by some as inadequate but that is no reason for this Court to provide for a higher or more frequent increase. The same falls in legislative domain. This Court cannot step into the shoes of legislature (see Union of India v. Deoki Nandan Aggarwal 1992 Supp(l) SCC 323)"

*9.5.7 The rental value of such property would be around Rs. 22 per sq ft in FY 2009-10 based on increase of 10% every three years. Accordingly, the fair rental value of the flat of 1175 Sq. Ft. area should be taken at Rs. 25,850/- per month (22*1175) and thus, the annual value of the property comes to Rs. 3,10,200/- out of which the share of the assessee comes to Rs. 1,55,100/-. The share of the assessee in the annual value of the property is worked out at Rs. 1,55,100/- by taking the higher of two values of Rs. 1,55,100/- as fair rental value and Rs. 43,664/- as municipal value. The income from house property is computed at Rs. 1,08,570/- after, providing standard deduction of 30%. There is a difference in income of Rs. 34,268/- between the value as computed by the assessee at Rs. 74,302/- and the value computed as above at Rs. 1,08,570/-. The difference of Rs. 34,268/- is to be added as income from house property(B-213,G.K.-l, New Delhi).*

9.5.8 It may be worthwhile to mention that the fair & reasonable value of rent can be determined only based on enquiry & public information available in this regard. There cannot be any other yardstick. The standard rent based on Delhi Rent Act amounts to 10% of the aggregated amount of cost of construction which sets the higher threshold for determining the annual value of the property. One cannot brush aside the information available on neutral platform like public portals.

Property at SINOLA, Dehradun:

9.5.9 The house property at Dehradun is situated at village Sinola, Pargana Parva Doon, Distt. Dehradun. The covered area of the property is 104.65 Sq. mts. which comes to 1126 Sq. ft. out of the total plot area of the property of 459 Sq. mts.. Further the assessee has another vacant plot of

area of 855 Sq. mt. in joint name. The vacant land has not been considered for valuation under section 22 of the Act. The said property is situated outside the municipal limits in a village area.

9.5.10 The assessee submitted that, "The few quotes of the prevailing rent in proper Dehradun as on today are enclosed which shows that the average rent is between Rs. 3-15 per Sq. Ft. as on today, which would be still lower in village area and in FY 2008-09 and FY 2009-10. Flence, you are requested to consider the above in the remand report for AY 2009-10 and AY 2010-11. (Letter dated 13.10.2015 addressed to the DCIT Cir-18(lj".

9.5.11 As regards the property at Dehradun, the assessee has shown his share of the annual value of the property at Rs. 'NIL'. The assessing officer has taken the annual the property at Rs. 12,48,000/- by pointing out as under " asseesse in his reply has submitted that rent of properties at Dehradun may be taken as equal to that of Mussoorie. Since there are two properties in Dehradun, therefore, deemed let out value of the two properties at Dehradun is taken at Rs. 12,48,000 (6,24,000 for each of the property)".

9.5.12 The assessee has objected to the valuation arrived at by the assessing officer. Accordingly, AO was given specific instructions vide letter dated 14.09.2015 to get the enquiry made to determine the fair rental value of the property. No such report has been received from the assessing officer till now.

9.5.13 Accordingly, this office requested Deputy Commissioner Income tax (TDS) at Dehradun to depute an inspector to check and report the fair rental value. The report submitted by the inspector, Dehradun, heads as under:

" As per your direction, I visited to village Sinola, Dehradun, the rental rate for residential property are in the range of Rs. 7-10 per sq. ft and for commercial properties, the range of rental rates is Rs. 22-25 per sq.ft." as per the report, the village Sinola is situated on the way from Dehradun to Mussorie. It is located in the pristine Dehradun valley at the foothills of the famous hill station Mussorie. The village is lush green. The property rates are very high due to its location, greenery and serenity of the place. Good number of farmhouses are there in and around this village. As regards the property of the assessee, the plot has total open area of 564.3 SQ YARDS +855 sq: meter and covered area of 104.65 sq. meter."

9.5.14 In order to validate the rental value as reported in remand report through independent sources, information has been culled out from various property portals such as magicbricks.com, 99acres.com etc. which indicate the current rental value of the area at Rs. 12 per sq ft as tabulated below:-

Property description	*Website*	*Covered area*	*Rent in Rs. (Per 1 Month)*	*Rent per Sq.I Ft.*
Vasant vihar, Doon	*Olx*	*1800 Sq. Ft.*	*25,000/-*	*14*
Race course road, dehradun	*Quikr*	*1300 Sq. Ft.*	*16,000/-*	*12*
Gandhi park,rajpur road,dehradun	*Quikr*	*800 Sq. Ft.*	*14,000/-*	*17.5*
Near KFC,Rajpur road,dehradun	*Quikr*	*700 sq. ft.*	*18,000/-*	*25*
Independent house in rajpur road	*99acres*	*320 sq yards=2880sq ft*	*32,000/-*	*11*

Dun Palm City, Pathribagh, Dehradun	*Quikr*	*1800 Sq. Ft.*	*17,000/-*	*9*
Rajpur Road Dehradun	*Quikr*	*2140 Sq. Ft.*	*24,000/-*	*11*
Residential apartment in Sewak Ashram	*99acres*	*1800 Sq. Ft.*	*16,000/-*	*8*
Independent house in rajpur road	*99acres*	*3600 Sq. Ft.*	*40,000/-*	*11*
Dharampur Nehru Colony, Dehradun	*Quikr*	*1430 Sq. Ft.*	*8,500/-*	*5*
Pacific Golf Estate, Sahastradhara Road, Dehradun	*Quikr*	*936 Sq. Ft.*	*14,000/-*	*14 1*
Pearis Paradise, Dehradun	*Quikr*	*1398 Sq. Ft.*	*12,000/-*	*8 |*
Vijay Park, Dehradun	*Quikr*	*500 Sq. Ft.*	*1 8,000/-*	*16*
Dalanwala, Dehradun	*Quikr*	*800 Sq. Ft.*	*10,000/-*	*12*
Average rent per Sq. Ft.				*173/14 = 12*

9.5.15 It may be added that the usage of different property related portals have increased over the years for both landlords and tenants. Therefore, the information available on such portals is relatively reliable & reasonable as it is based on actual offers of landlords/brokers in the market. Assuming appreciation of 10% over 3 years period in the rental rates, the rental value of such property would be around Rs. 7.5 per sq ft in FY 2009-10. The rationale for 10% appreciation is based on Section 6A of Delhi Rent Act. The assessee has also admitted the average rent in the range of Rs. 3 to Rs. 15 per Sq. Ft. in the submission as discussed above.

9.5.16 The above method of computation of fair value of rent was confronted to the assessee vide email dated 19.01.2017. The asessee responded vide letter dated 31.01.2017 as under:

" The appellants seriously objects to your aforesaid proposal and submits that there is no justification to adopt the rateable value at Rs. 7.5 per sq. ft. as the same is based on no valid material or justification "

"...Here too, it is not known whether any value in respect of those farm houses has been assessed to tax and what is the annual value of such farm houses. It is thus submitted that the report is entirely vague and does not serve any purpose other than where it has been accepted by the learned Inspector that the building in dispute is not situated at Dehradun but situated in a village. It is also submitted that, it is not known on what basis the learned DCIT has assumed jurisdiction to obtain a report in respect of matter pending in appeal before your goodself. It is emphasized that the inspector has given no basis for his observation that rental rates for residential property are in the range of Rs. 7-10 per sq.ft. and for commercial properties, the range of rental rates his Rs. 22-25 per sq.ft. and therefore such an unsubstantiated report has no evidentiary value and cannot be relied upon "

9.5.17 The contention of the assessee is not acceptable as the assessee has failed to appreciate that fair & reasonable value of rent can be determined only based on enquiry & public information available in this regard. There cannot be any other yardstick. The standard rent is generally in the range of 7.5% to 10% of cost of construction of the property which sets the higher

threshold for determining the annual value of the property. One cannot brush aside the information available on neutral platform like public portals. It may be pertinent to note that the assessee on suo-moto basis adopted fair rental value of Hauz Khas property at Rs. 3,60,000/- and the same is also based on local enquiry and information basis. There is no other scientific method in this regard.

*9.5.18 Accordingly, the fair rental value of the property with covered area of 1126 sq ft. (104.65 sq mt) should be taken at Rs. 1126*7.5= Rs.8445 per month. In accordance with the method of determination as adopted by the assessee, the fair rental value of Rs. 8445 per month as worked out above may be taken to compute annual value. It is important to note that the annual value of property has been taken at higher of the two values (i.e. municipal value and fair rental value) which is in line with the principle laid down by Delhi High Court in the case of Vinay Bharat Ram & Sons (HUF) 179 CTR 31. Accordingly, the annual value of the property comes to Rs. 1,01,340/- and the share of the assessee comes to Rs. 50,670/-. The income from house property is worked out at Rs. 35,469/- after allowing 30% deduction under Section 24 of the Act.*

9.5.19 The assessee has taken the income at zero and therefore, the difference of Rs. 35,469/- is to be added as income from house property.

Mussorie property:

9.5.20 The property at Mussorie is situated at Bellevue, Sister's bazaar, Landour Cantonment having an area of 0.677 acres with covered area of 0.100 acres (4356 Sq. Feet). It may be noted that the property is situated in residential area in Landour, Mussorie. Assessee has shown his share of the annual value of the property at Nil. The assessing officer has taken the annual value of the property at Rs.6,24,000/- by applying rent of Rs. 52,000/- per month on the finding that the assessee's share of the rent per month of the said property should be at least 0.8% of the cost of property (Rs. 65,35,315/-) which comes to Rs. 52,267/-. The assessee has objected to the valuation arrived at by the assessing officer. The assessee submitted that the Annual letting value taken by the cantonment board at Mussorie was Rs. 30,000/- per annum for the whole house.

9.5.21 AO was given specific instructions vide letter dated 14.09.2015 to get the enquiry made to determine the fair rental value of the property. No such report has been received from the assessing officer till now. The rental rates as per website (99 acre, Quikr) are tabulated below and the average rental rate per sq. feet is Rs. 18/- based on the information available on the website. Screenshots of the quotes available on the said websites are placed on file.

Property description	*Website*	*Covered area*	*Rent in Rs. (Per Month)*	*Rent per Sq. Ft.*
Residential apartment for rent in LBSNAA	*99 acre*	*500 Sq. Ft.*	*11,000/-*	*22*
Independent floor for rent in Landour	*99 acre*	*1100 Sq. Ft.*	*20,000/-*	*18*

House for Rent Mussorie	*Quikr*	*1700 Sq. Ft.*	*25,000/-*	*14*
Average rent per Sq. Ft. '				*54/3 = 18*

9.5.22 It may be added that the usage of different property related portals have increased over the years for both landlords and tenants. Therefore, the information available on such portals is relatively reliable & reasonable as it is based on actual offers of landlords/brokers in the market. The average monthly rent rate of Rs. 18/- per Sq. Ft. for the Mussorie property has been further discounted keeping in account that the final rent rate may be negotiated at say 10 % discount. The main reason for giving discount for Mussorie property is the small size of sample of only three properties as against sample of over 10 properties for GK and Dehradun property. Therefore, the rent rate of Rs. 16/- per Sq. Ft. has been assumed for calculation of fair rental value. Assuming appreciation of 10% over 3 years period in the rental rates, the rental value of such property would be around Rs. 12/- per sq ft in FY 2009-10.

9.5.23 The above method of computation of fair value of rent was confronted to the assessee vide email dated 19.01.2017. The assessee responded vide letter dated 31.01.2017 as under:

"...It is thus submitted the annual value of the property for the purpose of assessment under Act cannot exceed Rs.30,000/- annually and after deducting municipal tax and water tax and, statutory deduction @ 30% the income under the head "house property" cannot exceed Rs. 14,112/- (Rs. 30,000/- - Rs. 9,840/- - Rs. 6,048/-) It is submitted that in such circumstances purported comparable instances cited cannot be relied upon "

9.5.24 The contention of the assessee is not acceptable as the assessee has failed to appreciate that fair & reasonable value of rent can be determined only based on enquiry & public information available in this regard. There cannot be any other yardstick. The standard rent is generally in the range of 7.5% to 10% of cost of construction of the property which sets the higher threshold for determining the annual value of the property. One cannot brush aside the information available on neutral platform like public portals.

*9.5.25 Accordingly, the fair rental value of the property with covered area of 4356 Sq. Feet (0.1 acre) should be taken at Rs. 4356*12= Rs. 52,272/- per month. This rental value calculated based on public portals confirms the rate adopted by the AO. Accordingly, the annual value of the property is taken at Rs. 6,27,264/- @Rs. 52,272/- per month.*

9.5.26 In accordance with the method of determination as adopted by the assessee for other properties, the annual value of the property is taken at Rs. 6,27,264/- as it is higher than the municipal value of valuation of Rs. 30,000/-. It is important to note that the annual value of property has been taken at higher of the two values (i.e. municipal value and fair rental value) which is in line with the principle laid down by Delhi High Court in the case of Vinay Bharat Ram & Sons (HUF) 179 CTR 31. The share of the assessee in the annual value of property comes to Rs. 3,13,632/- (Half of Rs. 6,27,264/-).

Accordingly, the income for house property comes to Rs. 2,19,542/- after allowing standard deduction of 30%.

South Africa Property:

9.5.27 I find that the assessee and her husband had acquired a house property at Cape Town, South Africa under a deed of transfer executed at 15.11.2009 but registered on 15.01.2010. The appellant claimed that since the assessee did not co-own the property for the entire period of 12 months in the Assessment Year 2010-11, and therefore, there could have been no annual value of the said property u/s 22 of the Income Tax Act. The appellant relied upon the judgement of Special Bench of the Hon'ble Tribunal in the case of M. Raghunandan vs. ITO reported in 11 ITD 298,303,305 that basic concept in which section 22 differs from all other sections is in

bringing in a taxable period by reference to 'annual value'. The court held as under:

- *A basic concept in which Section 22 differs from all other sections is in bringing in a taxable period by reference to 'annual value1. In other words, what is taxed under the Act is only the annual value of the property. The expression 'annual1 is the adjective of the word 'year'. What is taxed under Section 22 is, therefore, only the yearly income of the person derived from property. In other words, Section 22 and the sections following, viz. Sections 23, 24, 25, 25 and 27 of the Act, all are based on the concept of taxation of property income through 'the annual value of property'.*

- *Legally and etymologically, annual value cannot mean monthly value, weekly value, daily or momentary value. Where property income is brought to tax, therefore, if there is no 'annual value1, there is no authority for taxing the property income in the Act at all.*

- *If the Legislature wanted a taxing of property income for a shorter period, there was no purpose in utilizing the expression 'annual value of property'. As pointed out earlier the concept of 'annual' period for computation of income is completely absent with reference to all other sources and heads of income.*

- *The computation of property income under the Act is not only fictional but also contradicts the very normal conceptional idea of income. It would perhaps be absurd to say that a person who does not receive any rent or so from a property, by the mere holding of it, earns an income.*

- *This special method involved consideration of the property income as an 'annual income'-, that is, only when the property income enured to the benefit of the owner for the full year.*

- *That property income has been dealt with in a manner different from other heads of income is also clear from the fact that only in the case of property income, the liability to tax is based on the ownership of the property. In the case of business or other sources of income, it is not necessary that the source should be owned by the assessee; mere accrual of income or receipt of income to him would make it taxable.*

- *Where a property does not give a rise to an annual income or gives income for a lesser period, notional or otherwise, the income from that property cannot be included in the total income.*

9.5.28 The above findings of Special Bench of Madras Tribunal have been accepted by ITAT Cochin in the case of P.J. Eapen. However, ITAT Cochin observed that

- *no income which actually accrues to an assessee during an year and which is not specifically exempt from taxation by some particular provisions of the Act, should go untaxed.*
- *Section 4 and 5 of IT Act provide the basis of charge of income-tax and these provisions envisage that all income of an assessee (especially in case of a resident) from whatever source derived, is required to be charged to tax unless the same is exempt by a specific provision.*

9.5.29 In the present case, the property in South Africa is a self occupied property and there is no rental receipt in actual from the said property. However, the assessee in 'P.J. Eapen' case received rental income. Therefore, the decision of P.J. Eapen to charge the rental income as income from other sources is not applicable. It is pertinent to mention here that the provisions of section 22 & 23 of I.T.Act nowhere specify the condition of ownership of the property for the complete year for invoking the aforesaid provisions. However, respectfully following the judgement of Special Bench of the Hon'ble Tribunal in the case of M. Raghunandan vs. ITO, the addition in this case does not hold good.

9.5.30 Further, the assessee pointed out that the notional income on the aforesaid property could only accrue or arise in South Africa. Article 6 of DTAA provides that "income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State". Further paragraph 3 of Article 6 provides that, "the provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property".

9.5.31 It is a fact that the South Africa has a right to tax the property income from a property situated in India. However, the residence country also has a right to tax the global income in pursuance to the provisions of section 5 of I.T.Act and the assessee has a right to claim the tax credit under section 90 of I.T.Act. against the tax charged, if any, in South Africa against this property. The assessee is bound to first report the income deemed to accrue or arise under section 22 of I.T.Act and thereafter, the assessee can claim tax credit against the tax paid in South Africa on the income from house property to avoid double taxation on income from house property.

9.5.32 However, in view of the discussion at para no. 9.5.27 to 9.5.29, the addition made by AO on account of income from house property in respect of South Africa property does not hold good. Accordingly, the ground of appeal related to South Africa property is allowed

Therefore assessee aggrieved with the order of the learned CIT – A has challenged it per ground number 2 and 3 of the appeal and the learned AO has challenged it vide ground number 5 of the appeal.

56. Therefore aggrieved with the order of the learned CIT – A both the parties are in appeal before us.

57. Now we first proceed to decide the appeal of the ld AO. When these appeals were fixed for hearing earlier, the learned AO, submitted a letter dated 22/11/2017, wherein it submitted that the assessee may be directed to provide all supporting agreements as mentioned in the loan agreement dated 21/7/2009 between Vishwapradhan commercial private limited and RRPR Holdings private limited filed at pages 153 – 169 of the paper book being the 'call option agreement' between Subhgami trading private limited and RRPR Holdings private limited referred to at page number 156 of the paper book. It was further stated that this agreement being supplementary and complementary to the agreement dated 21/7/2009 and would be very relevant to decide the pricing of the shares of NDTV limited at the relevant point of time, which is the subject matter of challenge by the appellants.

58. On 06/08/2018, the learned AO submitted prayer for admission of additional evidence in ITA number 02706/Del/2017 in case of the assessee. The learned AO referred the decision of the honourable Delhi High Court dated 4/5/2018 and submitted that additional evidence in the form of 'call option agreement' dated 21/07/2009 between Subhgami trading private limited and RRPR Holdings private limited, Dr Roy and Mrs. Radhika Roy may be admitted as an additional evidence .

59. As per the letter dated 27th November, 2018 the assessee also filed a detailed preliminary objections to the application dated 6/8/2018 filed by the learned assessing officer seeking admission of additional evidence under rule 29 of Income Tax Appellate Tribunal Rules, 1963. the assessee has submitted that the alleged additional evidences placed on record by the

revenue wide submission dated 6/8/2018 does not warrant admission under rule 29 of the income tax appellate tribunal rules and in-state the same must be rejected altogether. The assessee further stated that if the above additional evidences are admitted then the assessee may kindly be allowed four weeks time to prepare detailed submission on the contents of the call option agreement and the effect, if any, of the said agreement on the merits of the present matter.

60. Adverting to the appeal of the ld AO, the learned departmental representative, referred to the application of additional evidence filed by the learned assessing officer on 6/2/2018. By way of this, document titled as 'call option agreement' dated 21/7/2009 between Subhgami Trading private limited and RRPR Holdings private limited and Dr Prannoy Roy and Mrs. Radhika Roy containing 16 pages was requested to be admitted. Ld AO claimed that during the course of hearing on 22/11/2017, revenue had requested for adjournment and further it was asked that the assessee may kindly be directed to provide all supporting agreements as mentioned in the loan agreement dated 21/7/2009 between Vishwapradhan commercial private limited and RRPR Holdings private limited filed at pages number 153 – 169 of the paper book. This agreement being supplementary and complimentary to the agreement dated 21/7/2009 would be relevant to decide the pricing of the shares of NDTV limited at the relevant point of time and which is the subject matter of challenge by the appellant. He further noted that coordinate bench instructed the Counsel of the assessee to provide the stated document to the revenue. However the document was not provided and therefore on the last date of the hearing on 24/1/2018, when assessee had sought adjournment, the bench again instructed the

assessee's counsel to provide the document to the revenue on the same day. Under these instructions, copy of the document being 'call option agreement' dated 21/7/2009 between Subhagami Trading private limited and RRPR Holdings private limited and Dr Prannoy Roy and Mrs. Radhika Roy was received from the assessee through email on 24/1/2018. Therefore, it is being filed.

61. Adverting to the above document, the learned DR vehemently referred to the three transactions of the purchase and sale of shares by the assessee with RRPR Holdings private limited. He submitted that there is a loss, which has been overstated, and the profit that has been understated by manipulation of the prices of shares of NDTV limited for purchase and sales of shares with RRPR Holding Pvt Ltd. He submitted that the transaction dated 3/8/2009 is pursuant to an agreement dated 21/7/2009 between Vishwapradhan commercial private limited. On 21/7/2009, one of the agreements was entered which supplementary agreement with Subhagami is trading private limited. He further submitted that Subhgami trading Pvt Ltd and Vsihwapradhan Commercial company private limited are having their offices in the same premises and signatory of the both the companies are also the same person. He further stated that the agreement with Vishwapradahn Commercial Co Pvt Ltd dated 21/7/2009 between that company and RRPR holding Pvt Ltd stated as 'borrower' therein whereas Dr Prannoy Roy and Mrs. Radhika Roy are co signatories. This agreement is with respect to the disbursal of loan of RS. 350 crore to repay loan taken by RRPR Ltd from ICICI Bank Ltd. He further referred to page number 155 - 157 of the paper book. He showed that purpose of the loan stated in the agreement and as stated in clause 9 of that agreement are strange and not

to repay the loan of ICICI bank. He further referred to various clauses of that agreement. Then he submitted that

i. transactions of the loan by RRPR Holdings Ltd,
ii. sale of shares by the assessee to RRPR Holdings Ltd,
iii. loan against pledge of those shares from Vishwapradhan Commercial Pvt Ltd,
iv. call option agreement entered into on the same date Simultaneously with Subhgami trading private limited

are required to be looked into not in isolation but as a complex structured transaction of transfer of controlling interest of the shares held by the assessee in favour of other parties. Therefore, he submitted that the 'call option agreement' needs to be admitted as additional evidence to decide the issue involved in this appeal. He further stated that it is not fresh evidence. He further stated that all complimentary and supplementary agreements which forms part of the main agreement should have been necessarily be looked into to decide the whole issue and to reach at the true facts. To support his contentions, he referred to the decision of the honourable Supreme Court reported in (2012) 8 SCC 148 Union of India v Ibrahim Uddin, therefore he submitted that the above evidences required to be admitted at this stage.

62. The learned authorised representative vehemently objected to the admission of the above additional evidence and stated that those additional evidences shall be given at the first instances only.

i. He further submitted that there is no argument of the collusive arrangement between the parties by the revenue. This is the only new

argument that has been raised before the coordinate bench and not before the authorities below. He extensively referred to the order of the learned assessing officer and stated that it is not shown that there is any collusion between the parties. He therefore stated that same additional evidence now could not be admitted.

ii. The learned authorised representative further referred to the provisions of Rule 29 of The Income Tax Appellate Tribunal Rules, 1963 and stated that revenue does not have any right to produce additional evidences according to that. He submitted that rule 29 has two limbs. According to the first claim it is the tribunal and alone that has the discretion to call for additional documents or evidences during the course of hearing. None of the parties to an appeal are permitted to adduce any additional evidence before the tribunal. In the second limb where the principles of natural justice have been violated, only the assessee would be permitted to adduce additional evidences subject to certain conditions. He therefore submitted that it is amply clear that revenue is not entitled to adduce any additional evidence before the coordinate bench.

iii. He further stated that revenue at this stage could not change the complexion of the case. He further stated that the revenue cannot go beyond the order of the learned assessing officer as held by the special bench of the tribunal in Mahindra and Mahindra Ltd in 122 TTJ 577.

iv. He further stated that the learned assessing officer has not pointed out or even indicated as to which ground of appeal the alleged additional evidence relates to. Further no ever meant to the effect

that which part of the assessment order does the call option agreement help in sustaining has been made by him. He therefore submitted that the application filed by the revenue is vague, improper and unclear and thus needs to be rejected on this ground alone.

v. Even otherwise, he submitted that the call option agreement only grants are right to the purchaser to purchase from RRPR holding certain quantity of shares of NDTV at a call option price in future. Even otherwise, he submitted that the call option price stated in the above agreement is a price derived at by dividing the number of shares held by RRPR Holdings Ltd in NDTV limited by the amount of loan of INR 350 crores. Hence even the call option price is not the fair market value of the shares of NDTV He further stated that cross-reference to the above agreement was made as it was in the original agreement.

vi. He further stated that if the agreement was so relevant and integral to the whole issue then why the same was not referred to by the learned assessing officer or the learned CIT – A. Even otherwise, he submitted that the provisions of section 56 in case of listed shares are not applicable.

Thus, the learned authorised representative vehemently objected to the application of the AO for admission of additional evidence in the form of call option agreement entered into by the assessee.

63. The learned departmental representative vehemently objected to the arguments of the learned authorised representative and submitted that both the agreements are part of the same agreement. In addition, the assessee must have disclosed all the interrelated agreements at the first instance.

Therefore there is no option with the parties to not to disclose some of the documents to the assessing officer. He further stated that when the 2nd agreement was not at all available before the authorities below, unless they have been 'read and interpreted' it cannot be said that those are not collusive agreements. Such a conclusion can only be reached if the same is admitted and read and properly interpreted. He therefore submitted that this agreement deserves to be admitted at this stage only. He further stated that the learned assessing officer is trying to prove the understatement of profit in one and over statement of loss in transactions of the sale of shares by the assessee with RPRR Holdings Pvt Ltd. This document shows the reason for doing so. In addition, the learned assessing officer and the revenue are only wishes to demonstrate the correctness of the order of the learned assessing officer. It is just merely supporting the order of the learned assessing officer. He therefore submitted that the revenue is not making out altogether a new case but supporting only the order of the learned assessing officer. On the issue of whether the call option price is a fair market value or not, he submitted that the assessing officer has also not substituted the fair market value but the actual consideration received and accrued to the assessee only which is benchmarked with the fair market value as the complexion of the whole transaction will unfold. He therefore submitted that application of the learned AO deserves to be admitted at this stage.

64. We have carefully considered the rival contentions and perused the orders of the authorities below as well as the application of the LD AO for admission of additional evidence. The learned AO submitted that as per letter 6/8/2018, the revenue had filed certain documents that were received from

the respondent on the direction of the bench. In support of the right of the revenue to move the application for additional evidence under rule 29 the AO referred to the decision of the honourable Delhi High Court dated 4/5/2018 in WP (C) no. 4743/2018 wherein it has been held that revenue has to move a formal application under rule 29 of the ITAT rules to justify the bringing on record additional documents in its possession. Thereafter the honourable High Court left it open to the revenue to move appropriate application to bring on record the documents which the assessee furnished. Therefore in respect of the compliance of the order of the honourable High Court these are additional documents to be placed before the coordinate bench which is a call option agreement dated 21/7/2009 between Shubhagami trading private limited and RRPR Holdings Pvt ltd and Dr Roy and Mrs. Roy. The application further states that this agreement is a supporting agreement to the loan agreement dated 21/7/2009 between Vishwapradahan Commercial P Ltd (VCPL) and RRPR Holdings P Ltd which is a loan agreement filed by the respondent assessee. It was further stated that the definition clause of the loan agreement defines call option agreement as the same agreement that the short to be placed in the records through this application. It is further mentioned that the call option agreement as supplementary and complementary to the lowly agreement and is relevant to decide the pricing of shares of NDTV limited at the time of impugned transaction which is the subject matter of challenge by the respondent. The learned AO further stated that since the call option agreement is a part of the loan agreement it would be relevant to find out the nexus of this complementary agreement to ascertain the real

consideration received or receivable by the respondent toward sale of shares.

65. Rule 29 of The Income Tax Appellate Tribunal Rules, 1963 deals with the production of additional evidences before the tribunal. On careful reading of the above rule it lays down the rule of fair play in producing evidence by respective parties before the tribunal if they are found to be vigilant about their right and diligent in seeking justice. If the coordinate bench finds it relevant and if the rules of natural justice permit, then the tribunal is bound to admit such additional evidences. The rule 29 does not restrict the right of any party to produce the evidence before the tribunal if same were not produced earlier, a reason justifying the failure to produce it earlier, there is no reason that such additional evidence should not be admitted. Rule 29 neither restricts the right of the assessee nor of the revenue to produce the additional evidences. . Further rule 18 (4) of the income tax appellate tribunal rules provides that if any party desires to file additional evidence then the same shall be filed by way of a separate paper book containing such particulars as referred to in sub rule (3) accompanied by an application stating the reasons for filing such additional evidences. If rule 18 (4) is read with rule 29, there cannot be any difficulty in holding that in terms of rule 29, an additional evidence can also be produced by the revenue on an application. Further, under the words "or for any other substantial cause" an appellate court has the discretion to admit further evidences upon the application of a party. Therefore, according to us, there is no bar to file additional evidence by the learned assessing officer. More so in the present case the honourable High Court in W.P.(C) 4742/2018 &

CM APPL.18248-18249/2018 dated 4/5/2018 in case of assessee has also held s as under :-

> "5. As far as the placing on record of the additional documents is concerned, there is considerable controversy as to whether in fact a statement was made on 22.11.2017, as is urged by the Revenue and contested on behalf of the assessee. The assessee also relies upon an affidavit filed by its counsel in this regard. This Court is of the opinion that irrespective of what is apparent even if the documents were produced and in the possession of the ITAT, the question of their being part of the record of the lower appellate authority or the AO did not arise. That is the reason why in the first instance, a complete copy of the said agreement was sought from the assessee. Now there is no dispute that a complete copy is with the Revenue. Nevertheless, the proper procedure prescribed by law in this case has to be followed. In the given circumstances, this naturally means that the Revenue has to move a formal application under Rule 29 of the ITAT Procedure Rules to justify the bringing on record of these additional documents in its possession."

66. As the above agreement has also been received by the learned AO from the assessee herself, and as soon as it is received, at the first instance the learned AO made request for admission of the same. Therefore, there is no reason to say that it has not been pressed for admission at the first instance.

67. Further, at the time of the arguments on the admission of the additional evidence the learned authorised representative submitted that the revenue does not have any authority to improve upon the order of the learned

assessing officer. The learned departmental representative has stated that it is just supporting the order passed by the learned assessing officer and and is not trying to improve the order of the learned assessing officer. He submitted that, as there are series of agreements wherein 1 of the agreements that is referred is required to be placed before the coordinate bench to decide the issue after considering those agreement and therefore unless this agreement is read and interpreted it would not be proper to decide the issue in proper perspective. Special bench of ITAT in Mahindra & Mahindra Limited [2010] 122 ITD 216 (Mumbai) (SB)/[2009] 30 SOT 374 (Mumbai) (SB)/[2009] 122 TTJ 577 (Mumbai) (SB) has held in para no 19.26 that

> "In our considered opinion the learned Departmental Representative has no jurisdiction to go beyond the order passed by the Assessing Officer. He cannot raise any point different from that considered by the Assessing Officer or CIT(A). His scope of arguments is confined to supporting or defending the impugned order. He cannot set up an altogether different case. If the learned D.R. is allowed to take up a new contention *de hors* the view taken by the Assessing Officer that would mean the learned A.R. stepping into the shoes of the CIT exercising jurisdiction under section 263. We, therefore, do not permit the learned D.R. to transgress the boundaries of his arguments."

In that particular case the learned departmental representative tried to argue that double taxation avoidance between India and United Kingdom is not applicable at all which was relied on by the learned assessing officer thereby making altogether a new point of argument. Such is not the case before us here the learned departmental representative has categorically

stated that he is just supporting the order of the learned assessing officer and there are certain agreements which are mentioned and submitted by the assessee are required to be relied upon. In view of this, according to us, the learned departmental representative is not making an altogether new argument but is supporting the argument of the learned AO only.

68. Identical issue arose before us in 83 taxmann.com 282(Del) wherein the issue whether the revenue has a right to apply for admission of additional evidence are not has been discussed, and after giving a detailed reason, it has been held that revenue has a right to adduce additional evidences before the ITAT.

69. Further, it is relevant to note that in the present case , assessee has sold shares to a closely linked and controlled company shares of listed company at a substantially low price then quoted prices in the stock exchanges and further those shares are pledged to another company to raise a huge loan free of interest for a fairly long time clearly shows that unless all those agreements and documents referred into these transactions are looked into and real effect and substance of the transactions, if not found, one would not be able to reach at what the transactions are structured for and what is the real intention and effect of these transactions are. The impugned agreement required to be admitted as additional evidence by the AO is clearly linked to the agreement of the loan, therefore, the document being call option agreement is also required to be admitted as an additional evidence.

70. Therefore, in view of the decision of the honourable Delhi High Court, coordinate bench in 83 taxmann.com 282 and in the interest of justice and fair play, we admit the additional evidence raised by the revenue.

71. Coming to the merits of the case, learned departmental representative referred to ground number 1 and 2 of appeal against order of LD CIT- A deleting addition of Rs. 55,88,73,564/–. He further submitted that original addition was of INR 67,22,31,522/– which was rectified by learned assessing officer by passing an order u/s 154 on 29/8/2013 in pursuance of an application dated 8/5/2013 filed by assessee before him, it was modified to Rs. 55,88,73,564/-. Therefore the first ground of the appeal of the revenue speaks about the addition deleted by the learned CIT – A of Rs. 55,88,73,564/– instead of Rs. 67,22,31,522/–. He further submitted that the facts in the case of Mrs. Radhika Roy and Mr. Dr. Prannoy Roy are identical. He submitted that case of the learned assessing officer is that that the loss is overstated in transaction of sale of shares on 08/03/2010 and profit is understated in transfer of shares in transaction dated 3/8/2009 of the shares of NDTV limited sold/ purchased with RRPR Holdings Pvt Ltd. At the outset, he submitted that that the case of the learned assessing officer has been grossly misunderstood by the learned CIT – A that it is a case of substitution of fair market value with the consideration received by the assessee. He submitted that case of the assessing officer is that through the complex structure of various agreements the actual consideration received or accruing to the assessee is linked to the listed price of the shares of NDTV limited. He therefore submitted that the learned CIT – A has not at all looked into the real nature and substance of the transaction but has simply accepted the written submission and arguments of the assessee and deleted the addition. He therefore submitted that learned assessing officer has aggrieved with that order and is in appeal.

i. He submitted that two individuals i.e. Mr. Prannoy Roy and Mrs. Radhika Roy has substituted their quantities of share in the name of RRPR Holding P Ltd , a controlled and managed company, at Rs 4/- when the quoted prices of those shares on stock exchange was Rs 140/- per share. Further, against those substituted shares, huge borrowings were made by that company, substituted shares were pledged, call option agreements were entered into, loan was used without payment of any interest, thus, resulting into transfer of shares by assessee, through an intermediary RRPR Holdings private limited, receiving the loan consideration in a controlled company and using the same money clearly shows that that the shares of NDTV limited were transferred by the assessee in favour of a third-party lender group , in the guise of loan, pledge and call option agreements.

ii. He referred to page number 29 – 30 of the paper book filed by the assessee wherein the show cause notice dated 8/2/2013 refers to the various transactions of the sale of shares of NDTV limited which are in dispute. He further referred that in para number 4 of the notice clearly shows the view of the assessing officer. He further referred to the reply submitted by assessee on 27/2/2013 placed at page number 32 – 34 of the paper book. Therefore, he submitted that the only controversy that survives in this ground is what is the full value of consideration of shares received or accrued to the assessee in terms of section 48 of the Income Tax Act and consequent computation of capital gain thereon.

iii. To substantiate his argument, he referred to the reply dated 20/3/2013 placed at page number 35 of the paper book to show that there is a reference to the 'lender' in para number 3 and para number 4 of that letter. He further referred to page number 155 – 173 of the paper book which is an agreement dated 21/07/2009 between Vishwapradhan commercial private limited, RRPR Holdings private limited, Dr Prannoy Roy and Mrs. Radhika Roy. He further referred to the order of The Securities and Exchange Control Board of India dated 26/6/2018 where the facts are also mentioned. He further referred to para number 15 of that order and submitted that that it is held that the clauses in the loan agreement and the contention of the assessee is that the transaction was in the nature of a secured loan advanced by VC appeal to RR appeal Holdings Ltd appear only to be affected for a loan transactions. It is further stated that the loan agreement and did not have a clause of termination upon the payment. He further referred to para number 20 – 23 of the above order. He further referred to para number 24 of the order wherein it has been held that the transaction is not to secure the loan but to acquire control over all the facets of the target company (NDTV) leaving only the right to control the editorial policies of NDTV to the promoters and borrowers, right from the day of execution of the loan agreement. Thus, it was held that a takeover exercise has been conveniently couched as a loan agreement with the predominant intention to bring/ acquire control over NDTV by the lender company without contemplating any repayment of the

loan from the promoters of the borrowers. He therefore submitted that on reading of the order of the securities and Board of India (SEBI) , it is clearly a transaction of sale of shares by the promoters, where the borrower (RRPR Holdings P Ltd) is merely an intermediate entity to create façade of 'borrowing' to hide the real transaction of the 'sale of shares' by the promoters to third-party, who is titled as ' the lender' .

iv. He further stated that the complete documents have not been filed. He further stressed upon the fact that there are 2 agreement dated 21/7/2009 which gives of 14.99% call option given to M/s Subhgami trading private limited and 11.01% given to Shyam equities private limited, which in turn controls 26% equity of NDTV limited. He further stated that 26% of the equity is also held by RRPR Holdings Ltd and therefore in pursuance of these 2 agreements and as well as the holding of the RRPR Ltd in NDTV it indirectly holds 52% holding in the NDTV limited. He further referred to the order of the SEBI at page number 12 and para number 10 of the order, which shows that the 'call option agreement' between the Vishwapradhan Commercial private limited and Shyam equities private limited. He therefore submitted that according to that agreement the value of the share is taken at Rs. 214.65 per share, whereas the market rate of such share was Rs. 140/- per share and therefore the learned assessing officer has taken RS. 135 per share for making the above addition.

v. He further referred to page number 174 of the paper book which is a letter dated 11/9/2015 written by the learned CIT – A to the learned assessing officer for his comment. He referred to para number 4 of that letter which is with reference to the fact that assessee has challenged the substitution of the full value of consideration with fair market value in respect of sale on 3/8/2009 for sale of 3478925 shares of NDTV limited to M/s RRPR Holdings Ltd in which both Dr . Roy and Mrs. Radhika Roy are 50% shareholders.

vi. He also referred to page number 179 of paper book which is the explanation given by the learned A O before the CIT – A with respect to the substitution of value of consideration regarding sale of the shares, wherein the learned AO stated that the decisions relied upon by the learned AR before the learned CIT – A were related to the provisions of section 12 B of The Income Tax Act as it stood at the relevant time and therefore they are not applicable. He further stated that as distinct from section 12 B of the income tax Act 1922, section 48 of the income tax 1961 refers to the 'full value of the consideration received or accrued' as a result of the transfer of the capital asset.

vii. He therefore submitted that to accept the argument that in respect of the sale of shares to RRPR holding Pvt Ltd is only Rs. 4/- per share accrued to the appellant would mean that at the same time, on the same day, share prices is Rs 4/- per share accrued and sometimes it is Rs 140/- per share accrued, which would be an obviously illogical.

viii. He further referred the submission made by Assessee before the learned CIT – A on 17/2/2017 and stated that appellant has contended that the addition made is untenable since the learned assessing officers overlooked the factual position that shares were transferred were conditional and were on ' escrow' account. The Ld. Departmental representative stated that there were no conditions attached to the transfer of shares at Rs 4/- for a share where prevalent market value of the shares was in the range of ₹ 130/- to Rs. 140/- per share.

ix. He further referred the submission made by Assessee before the learned CIT – A on 17/2/2017 and stated that appellant has contended that the addition made is untenable since the learned assessing officers overlooked the factual position that shares were transferred were conditional and were on ' escrow' account. The Ld. Departmental representative stated that there were no conditions attached to the transfer of shares at Rs 4/- for a share where prevalent market value of the shares was in the range of ₹ 130/- to Rs. 140/- per share.

x. He further referred to the order of the learned CIT – A at page number 5-11 and also referred to the findings at para number 6.2 – 6.7 of his order where it is held that the market value cannot be adopted as ' full value of consideration received and accrued" as there is no provision in the act. He submitted that the various provisions referred to by the learned CIT – A in the table of the income tax to reject the adoption of the market rate of the shares was not at all applicable to section 48 of the act. He stated that

each of the above section has different relevance. He further referred to the provisions of section 48 of the income tax and stated that it speaks about the 'full value of the consideration received or accrued' to assessee and therefore the seller has accrued price at least of the listed price at the stock exchange, where the shares are transferred to the company, where the sellers are the only shareholders of equal share in buyer company.

xi. He further referred to the letter dated 4 September 2015 of the assessee before CT (A) placed at page number 249 of the paper book wherein several judicial precedents have been cited and stated that none of this judicial precedent applies to the facts of the case. He referred to the decision of the honourable Supreme Court in 66 ITR 622 (Supreme Court) and stated that the above case cited by the assessee before the learned CIT – A is in fact is in favour of the revenue. He referred that decision and submitted that It is manifest that the consideration for the transfer of capital asset is what the transferor receives in lieu of the asset he parts with, namely, money or money's worth and, therefore, the very asset transferred or parted with cannot be the consideration for the transfer. It follows that the expression "full consideration" in the main part of section 12B(2) cannot be construed as having a reference to the market value of the asset transferred but the expression only means the full value of the thing received by the transferor in exchange for the capital asset transferred by him. In the present case the assessee has received the higher value of

the shares in RRPR holding Ltd by Transferring the shares of NDTV limited below the market rate. Therefore there is a clear-cut benefit accruing to the assessee in the present transaction, which CIT A has failed to notice. He submitted that the various agreements shows that there was no compulsion on the part of assessee to sale such shares @ Rs 4/- per share to RRPR holdings Pvt Ltd, which is itself an altogether a different entity but fully owned by assessee. He therefore submitted that the full value of the consideration that has accrued to assessee is ₹ 140/- per share and not RS 4/- per share as stated by the assessee.

xii. He further submitted that true consideration from the terms of the agreement, as a whole is required to be determined. He submitted that in the present case there was no intention on the part of the parties to obtain the loan but to transfer the controlling interest take by sale of the shares by the promoters. He submitted that RRPR Holdings private limited is merely used as an intermediary to give the colour of loan agreements. He also relied upon the decision of the honourable madras High Court in 139 ITR 736 (Madras) (1983).

72. Therefore he stated that full value of the consideration accruing to the assessee would be ₹ 140/- (mean taken by ld AO of RS 136/- per share) although RRPR Holdings P Ltd may t Have paid Rs. 4/- per share only. He therefore submitted that the actual consideration received by the assessee and accrued to the assessee through RRPR Holdings private limited is INR 136/– per share. He submitted that it need not be confused with the substitution of fair market value with the actual consideration

issue. He submitted that issue is that assessee has received a consideration of INR 136/- per share as demonstrated above.

73. The learned authorised representative rebutting the arguments of the learned departmental representative stated the various dates on which the transactions have occurred.

i. He firstly stated that the support of the law for making such addition is available under section 50D of the income tax at which has been inserted with effect from 1/4/2018. Therefore, to the impugned assessment year, such provisions do not apply and AO had no power to substitute the 'transaction value' with the 'market value' of those shares.

ii. With respect to the argument of the learned departmental representative, that the price should be Rs. 246/- per-share is beyond the scope of the assessment proceedings. He referred to the decision of Mahindra & Mahindra Limited (SB) and stated that department cannot go contrary to the order of the learned assessing officer.

iii. He further stated that justification of transacting the purchase and sale of shares at Rs 4/- per share was with respect to the loan, which was taken for purchase of shares from India Bulls Ltd, and it was to be repaid. He further referred to the agreement of Vishwapradhan Commercial private limited and RRPR Holdings Private Limited with Dr Roy and Mrs Roy. He referred to clause 9.2 (e) of that agreement at page number 163 of the paper book wherein the borrowers and the promoters have undertaken for sale of 11563683 equity shares of NDTV from 'promoters' (Dr.

Roy and Mrs. Roy) to the 'borrower' (RRPR Holdings Pvt Ltd . He therefore submitted that the transfer of shares was necessary to trade by that clause and that is the justification for transferring the shares from the promoters' i.e Dr. Roy and Mrs. Radhika Roy to RRPR holding pvt Ltd.

iv. He further submitted that, as there was no other reason to do so the price was only Rs. 4/- per share decided amongst the parties. He further referred to the letter before The Commissioner Of Income Tax Appeals placed at page number 191 of the paper book and referred clause 7.1 (x) which specifically said that the RRPR holding P Ltd further raised the loan of about ₹ 53.85 crores, for which the Borrower further needed additional security of 2508524 shares to lenders. He therefore submitted that transaction of sale, purchases of shares were only for these purposes, and therefore they were transacted at face value of the share.

v. The learned authorised representative further stressed upon the fact that the learned assessing officer did not prove that by entering into transaction of purchase and sale of shares at s. 4/- per share which is less than the market rate, assessee did gain anything and therefore nothing has accrued to assessee more than Rs 4/- per share.

vi. He further submitted that the rational of second and third transaction was just to repay the loan.

vii. He further referred to the significance of 'Call option agreement' and stated that 'call option price of Rs 214.65 per share, but it is not the price of the 'Share' But the price of option to buy the

share, which is an altogether a different assets/ right then share. Therefore, that cannot be taken as a benchmark to determine the full value of the consideration accrued and received to the assessee.

viii. With respect to the shareholding of 14.99% of option given to Subhgami Trading Co Pvt Ltd vide agreement dated 21/7/2009 and Shyam Equity private limited of 11.01% , (26 % in all) , he stated that these are two different assesses and cannot be said that they hold 26% which is owned by the assessee. He further stated that in the decision of Honorable Bombay High court in Vodafone International (Bom) at page number 88 and 237 of that decision it has been stated that call option is not a capital asset at all.

ix. He submitted that call option is in respect of RRPR holding Pvt Ltd in shares of NDTV Ltd and not by the assessee.

x. With respect to the argument of the learned departmental representative on provisions of section 48 of the act with respect to the full value of the consideration accruing to assessee, he submitted that such consideration could not be substituted with the market value. For the purpose of accrual of income, he stated that there has to be a right to receive such income.

xi. With respect to the loan and call option agreement it was submitted that the contention has been raised by the revenue 1st time before the coordinate bench without being raised before the lower authorities and the grounds of appeal raised in the appeal and as such the same cannot be raised here. He further

submitted that the revenue has already initiated 147 proceedings in the case of the company on the same basis. He submitted that the above reassessment initiation has already been challenged before the honourable Delhi High Court and which has been stayed as per order dated 26/2/2016. He therefore submitted that on this issue the honourable Delhi High Court has already seized of the matter and therefore it is not open for the Department to argue the case before the coordinate bench in this appeal.

xii. With respect to the order of the securities and Board of India dated 26/6/2018, he submitted that securities appellate Tribunal Mumbai has stayed the operation of the above order as per order dated 13/8/2018. He further referred to the newspaper cutting of the economic times also with this respect the Supreme Court seized of the matter to decide if had less SAT can stay SEBI decisions or not dated 24/09/2018. He further referred the consequent order of the honourable Supreme Court dated 25/1/2019 disposing of the issue before the honourable Supreme Court. He therefore submitted that the stay order passed by the assessee has not been vacated and therefore the reliance by the learned departmental representative on the order of the securities and Board of India is devoid of any merit.

xiii. Even otherwise he stated that the provisions of section 69/69B does not apply to the facts of the case.

xiv. He supported the order of the ld CIT A where in addition is deleted.

74. Learned departmental representative in rejoinder submitted that

i. It is not the case of assessee that ICICI wanted to exit and then Vishwapradhan Commercial private limited came into picture. He further referred to para number 6.3 of agreement placed at page number 162 of the paper book. He submitted that it says that 'lender and its affiliates' shall not purchase shares of entity which will increase their holding in the aggregate to more than 26% of the paid-up equity share capital of NDTV Limited without the consent of the other parties. He further stated that this agreement stops assessee and prohibits any change in the shareholding of the promoters of NDTV limited and RRPR Holdings Ltd. To support his argument, he further referred to clause 20 of the agreement dated 21 July 2009 having a heading of 'further assurances' and stated that such assurances are to give full effect to the provisions contained in schedule three of the agreement wherein the matters in respect of the borrower which requires prior consent of the lender is mentioned. With respect to the 'call option agreement' argument, he stated that it contains the right of first refusal (ROFR) conditions therein. He therefore submitted that in fact the share price of Rs. 4/- per share transacted between the parties is a Sham price and the whole affairs of the transaction were so arranged that the full consideration accrued to assessee cannot be less than the listed price as taken by the learned assessing officer.

ii. Further case laws are relied upon the issue that call options are not capital assets & for that purpose reliance is placed on findings given in the cases of:

i. Vodafone International Holdings B.V. v Union of India & another [2010] 329 ITR 126 (Bom);
ii. Vodafone International Holdings B.V. v Union of India & another [2012] 341 ITR 1 (SC); and
iii. Vodafone India Services P. Ltd v CIT & another [2016] 385 ITR 169 (Bom).

As far as decisions in the cases of Vodafone & its other affiliate are concerned, the reference to these cases is irrelevant in the present case & hence no comments are made.

75. On the last date of the hearing, we directed both the parties to furnish

i. annual reports of RRPR Holdings private limited for the year ended on 31/03/2009 and 31st of March 2010,
ii. bank statement of RRPR Ltd reflecting the receipt of additional loan of INR 538,500,000 from Vishwapradhan commercial private limited, in terms of which the additional loan amount was advanced by the VCP limited to RRPR limited and the
iii. Copy of the memorandum and articles of Association of RRPR limited.

It was submitted by the assessee on 26th of March 2019 as per letter dated 20/03/2019. In the same letter the learned authorised representative also referred to the written submission made by the learned departmental representative wherein it has been mentioned that call option agreement dated 21/7/2009 entered into between sham equity slim private limited, the assessee and RRPR Holdings private limited has been withheld and therefore same was also submitted. Thus, hearing got concluded in all these appeals on that date.

76. We have carefully considered rival contentions and perused orders of authorities below. The learned assessing officer has questioned the transfer

on 3/8/2009 of 5781842 shares of NDTV limited by the assessee to RRPR Holdings Pvt Ltd @ Rs 4/- Per share. Shares of NDTV Limited were traded on stock exchange on that day within the range of INR 134.95 – INR 141.50 per share. He therefore took average of those prices at INR 135 per share. According to the learned assessing officer determined consideration accruing to the assessee on transfer of 5781842 shares at the rate of INR 135 amounting to INR 78,05,48,670/– for the purpose of calculation of capital gain thereon. The learned CIT – A deleted the above addition stating that the market value cannot be deemed to be the full value of the consideration of assets in this case and therefore he did not find any force in the argument of the AO that 'accrual' phrase introduced in the provision refers to the 'market value' of the capital asset. He further held that adequacy or inadequacy of the consideration is not a relevant factor for the purpose of determining the 'full value of the consideration' except for the specific provisions under the income tax act such as provisions under section 45 (1A), 45 (2), 45 (3), 45 (4), 46 (2), 49 (4) and section 50C of the act. Therefore, the revenue is in appeal.

77. According to the provisions of section 48 of the act, capital gain shall be computed by deducting from the full value of the consideration received or accruing as a result of transfer of the capital asset, the cost of acquisition of that asset, cost of improvement and any expenditure incurred wholly and exclusively in connection with such transfer. Therefore, now it is required to be seen that what is the full value of the consideration received or accrued to the assessee.

78. Buyer in the impugned transaction is one company namely RRPR Holdings private limited which was incorporated in August 2005. Dr Roy and Mrs.

Roy are the only shareholders of the above company holding 50% share each. Until 31st of March 2008, balance-sheet size of this company was merely INR 100,000/- which represented the shares allotted to the above two shareholders of the face value of INR 50,000/- each. The company on 03/07/2008, acquired 9795434 equity shares of New Delhi television limited under the open offer for INR 4,299,900,000 financed through a loan. This represented 15.44 percentage of the voting right of NDTV limited. Out of the above shares, RRPR Holdings P Ltd (company) sold 3803728 equity shares on 14/07/2008 and 1249985 equity shares on 06/08/2008 in the secondary market. Therefore, at the end of the year, the above company borrowed long-term loan from bank of INR 3492514485/– and It held 4741721 shares of face value of Rs 4/- each at the cost of INR 208,15,20,685/–. The unsecured loan obtained by the company from the bank was subject to 'non-disposal' undertaking in respect of the shareholding of New Delhi television limited by the company and its promoters. Further, loan was also covered by the personal guarantee by one of the directors. Company also gave interest free loan of INR 28.02 crores to both the promoters of the company (note number 12 of schedule 8 – notes to accounts) which remained outstanding of INR 73,91,68,448/– at the end of the year. The company paid interest cost of RS 66.28 crores and incurred loss of INR 67.00 crores.

79. In the year ended March 2010, company obtained further unsecured loan of INR 4038500000/–. At the end of the year, company had 18813928 equity shares of NDTV Ltd of face value of Rs. 4/- each amounting to INR 342,52,36,377/–. Therefore, it was apparent that from the opening stock of 4741721 equity shares, company added further 14072207 equity shares of

NDTV limited. The cost of acquisition at the end of the year of 18813928 equity shares was INR 342,52,36,377/– , thereby the average value of the share acquired during the year was INR 95.48 per share. Further, earlier loan given to the director was also received back. There was no interest outgo during the year. The amount of outstanding loan as well as the number of shares held by the above company after this year remained almost same. The above company did not have any other business, assets, or liabilities except the amount of loan it has taken which is used in acquisition of shares of NDTV limited. Thus, unsecured loan as on 31/03/2010 was of INR 409,98,10,960/- against that the investment in shares of NDTV limited was INR 342,52,36,377/–. The balance resulted into loss of INR 67,05,91,963/- . Therefore, it is apparent that the above company was formed just to acquire the shares of NDTV limited from an open offer earlier and later on from the promoters. The above company did not have any other business. It did not have any revenue stream except minuscule interest income. The company acquired the shares originally in open offer by borrowing the money and subsequently also borrowed the money by obtaining shares from its promoters. The security given is always the shares of the company and the personal guarantee of one of the director. It is apparent that the company obtained loan by purchasing/transferring shares from the promoters. The company obtained the original loan of Rs. 429.99 crores from M/s India Bulls financial services Ltd on 14/05/2008. Company along with its shareholders entered into a pledge agreement. On 14 – 10 – 2008 the company further borrowed a sum of INR 375 crores from ICICI Bank Ltd for repayment of earlier loan taken from India Bulls Limited. On 21/7/2009, Vishwapradhan

Commercial Private Limited advanced interest free loan of INR 350 crore with the condition that the company will utilize the loan in repayment of the existing loan availed. The new loan obtained was interest free loan and the maturity date was at the end of 10 years tenure. The company also entered into a call option agreement with Subhgami trading private limited on 21/7/2009 i.e. on the same date on which the assessee entered into agreement for loan of INR 350 crore with Vishwapradhan Commercial Private Limited. On 21/07/2009, agreement assessee entered into with Subhgami trading private limited, gave an option to that company a right to purchase 14.99 percent equity share capital of NDTV limited at any time at a call option price of Rs. 214.654 equity share i.e. Amount derived by the amount of loan and 16305404 equity shares of NDTV held by the above company on the date of the disbursement of the loan. Further, according to the order of the securities and exchange Board of India dated 26/6/2018, which has been placed on record by the learned departmental representative before us, speaks that the assessee entered into another 'call option agreement' with one more company Shyam equities private limited wherein 11.01% shares was also given through 'call option agreement' to be purchased on same terms and conditions as entered into with Subhagami Trading company private limited. Therefore, to make available the company 26% holding of NDTV limited, Dr Roy and Mrs Roy transferred 5781849 shares of NDTV limited by each of them to the above company at the rate of Rs. 4/- per share. Thus, company received 11563698 shares of NDTV limited, which made the holding of the company at a 26% in NDTV limited. Therefore, it is apparent that the numbers of shares were transferred by the assessee and her husband to comply with the loan agreement dated

21/7/2009 to make the holding of the company at 26% in NDTV limited. Subsequently on 05/03/2010 the company received further loan of INR 53.85 crores from Vishwapradhan Commercial Pvt Limited. On looking at the bank account of the company which is placed at annexure number 4 of letter dated 20/03/2019 submitted by the assessee, that immediately after receipt of the above loan on 09/03/2010 , the company transferred INR 53,84,60,960 to the account of Dr Roy. As the additional loan was given by that company, it needed an additional security of 2508524 shares of NDTV limited. The further loan of INR 53.85 crores was also interest free. According to clause 3 of the agreement giving this loan mentioned that the borrower i.e. RRPR Holdings Ltd shall utilize the above loan in full only for investment purposes. According to that agreement, clause 6 clearly gives an option to the lender to purchase from the promoters all the equity shares of the borrower at par value. According to clause number 9.2 (C) of the agreements, borrower and the promoters undertook to sale 2508524 equity shares of NDTV from the promoters to the borrower so that borrower holds 18813928 equity shares of NDTV aggregating to 30% of the equity share capital of NDTV. According to clause number 19 of that agreement, it was further stated that over the next 3 to 5 years the borrower and the lender will look for a stable and reliable buyer of the borrower company who will maintain the brand and credibility of NDTV. Further clause number 20 referred to 'further assurances' which speaks about exercise of voting right by the 'promoters and its affiliates' to give full and complete effect to the loan agreements. According to clause 6 of schedule -2, it was further stated that that RRPR holding Pvt Ltd does not own or hold any assets other than 16305404 equity shares of NDTV limited. Therefore, it is apparent

that that RRPR Holdings private limited is merely a company to borrow loan, which was not to be repaid but to be used by the promoters till the loans get converted into transfer of the shares of NDTV limited by RRPR Holdings Ltd in favour of lender. The company has obtained loan of INR 4,000,000,000 approximately without payment of any interest solely based on pledge of shares of NDTV limited. The borrowed amount is also transferred to the account of the promoters as is evident with respect to the amount of INR 538,500,000 received in the last trench as per agreement dated 25th day of January 2010 with Vishwapradhan Commercial Pvt Ltd. Further it is apparent that the interest free loan obtained by RRPR Holdings Ltd is only on the basis of 'market value" of the shares of NDTV limited along with its controlling interest. Thus looking at all the agreements entered into by the company i.e. RRPR Holdings private limited and assessee along with her husband, clearly shows that shares were transferred to RRPR holding Ltd with the sole purpose of obtaining loan without payment of interest equivalent to the market value of the shares of NDTV limited. Thus, it is apparent that on transfer of the shares to the RRPR Holdings Limited and further pledge of the shares, benefit accrues to the assessee in terms of interest free funds based on market value of the shares of the NDTV limited. No doubt, there is no stipulation of prices at the time of transfer of shares from assessee to RRPR Holdings Pvt Ltd but the equivalent amount of loan based on Market value of the shares is available to the assessee. Here the issue is not the reinstatement of actual consideration by fair market value of the shares of NDTV limited but actual consideration received by the assessee through RRPR Holdings Limited. The ld CIT (A)

has failed to read any of the agreements based on which the whole transaction has been structured.

80. Further, there are instances where the shares have been transacted by the company and its Promoters at Market rate and there are transactions, which have been entered in to by the assessee and Dr Roy at Rs. 4/- per share. Assessee has tried to support the above transaction stating that such shares were transferred by them 'conditionally' and were on 'escrow account'. However, the above contention has not been supported by any evidence. No conditions in those documents were shown to us, which even remotely suggests that assessee was to sale shares of NDTV at Rs. 4/- per share to RRPR Holdings private limited. We also did not find any such price conditions in the various agreements produced before us and referred to by both the counsels. No such escrow account was also shown to us. Even otherwise on reading of all the agreements, which were produced before us, the common fact emerged that shares were transferred to RRPR Holdings private limited which were later on pledged to obtain unsecured loan from Vishwapradhan Limited by loan agreement coupled with "call option agreement" and on reading of all these agreement the apparent transaction is of transferring shares of NDTV limited to the lender in guise of loan agreements.

81. Further it was contended that appellant did not gain anything by purchasing and sale of shares of NDTV limited with RRPR Holdings private limited at Rs. 4/- per share is also devoid of any merit because the assessee is also controlling and managing RRPR Holdings private limited, RRPR Holdings private limited did not have any assets except the assets in the form of shares of NDTV limited. Further only purpose of transfer of the

shares to that company was to obtain loan by pledging those shares considering the fair market value of the shares of NDTV, which is obviously the listed price of that company. Therefore, it is apparent that if the shares are transferred at Rs. 4/- per share, the assessee will pay capital gain tax only considering the sale value of those shares at Rs. 4/- per share, (if the whole transaction is not looked in to by complex agreement of loans) whereas the RRPR Holdings private limited will obtain loan on those shares at the listed price of the shares of NDTV limited, free of interest. In a way, it was a methodology devised to pledge the shares of promoters to obtain interest-free loan for an indefinite tenure coupled with call option agreements to transfer the shares of NDTV limited. This shows a clear-cut benefit resulting into the hands of the assessee and Dr Roy.

82. The order of the securities and Board of India dated 26/06/2018 has also analyzed all the agreements on facts and has reached at the conclusion that:-

> "24. In effect, the transaction is not to secure the loan but to acquire control over all the affairs of the target company (NDTV) leaving only the right to control the 'editorial policies of NDTV' to the promoters and borrowers, right from the day of execution of the loan agreement. Thus in my view, the takeover exercise has been conveniently couched as a loan agreement with the predominant intention of the notice (Vishwapradhan Commercial Pvt Ltd) to acquire control over NDTV without contemplating any repayment of the loan, whatsoever, from the promoters of borrowers. The transaction documents admittedly confer 'conversion option',

'purchase option' and the 'call option' and if the voting rights act is to give full effect to the transaction documents, it would straightway mean that the 52% of the voting rights of NDTV has to be exercised by the promoters as per the dictates of the lender and the same may traverse as specified Veto rights under schedule 3. What is certain is the idea of the notice to start exercising control through the promoters by keeping a tight hold on 52% of the shares of NDTV, through the threefold options conveyed by the promoters, by helping them to meet the loan repayment that was pending to ICICI bank.

25. The related issue is as to whether the veto rights confer any rights of control in favour of the notice is not relevant for consideration in the instant case, in view of clause 20 of the loan agreement with specifically provides that the promoters/Moreover shall exercise their voting rights attached to NDTV to give full and complete effect to the obligations under the agreements executed and not limited to the veto rights specified in schedule 3 of the loan agreement. In other words, the veto rights in schedule 3 are eclipsed by the operative provision in clause 20 of the loan agreement and are not significant enough for an independent consideration from the controlling angle."

In para number 27 it was further held that the close look at the structure of the transaction involving around the conversion option and the purchase option on the one hand and a call option on the other, clearly reveals that

the transaction structure is unusual and peculiar to say the least. The conversion option, which entitles the notice (VCPL) to 99.99% of RRPR shares, has a perpetual existence not circumscribed by the tenure of the loan. It was further held that VCPL has a right to exercises conversion option even after the loan is settled. In essence, it means that the entitlement of the VCPL 99.99% of RRPR of shares is absolute, not contingent upon any event or mounted by limitations of time. The absence of an explicit clause in the loan agreement rendering the conversion option wide on repayment of loan is strikingly abnormal and it clearly lays out an unfettered path for the VCPL to stake it access to NDTV albeit through the medium of RRPR. The call option construct is also strangely devoid of any time limitations and it endows the notices and its affiliates the right to acquire 26% of NDTV shares from RRPR, at any time with no linkage to the loan. The strike price of the call option has been set so high at a premium of 51% of that then average market price that it renders the whole exercise of collateralization of the loan a nonstarter.

83. However, the above order of the SEBI has been stayed by SAT and now it is pending before SAT for decision, however, on reading of those agreements our finding is also same that the transaction is for the sale of shares by promoters through RRPR Holdings private limited to VCPL or its affiliates. Thus consideration accrued to the assessee on sale of the shares is not Rs 4/- per share but the prevailing market price which has been received by the assessee through RRPR Holdings private limited.

84. To support his contention is the learned counsel for assessee relied upon the decision of the honourable Supreme Court in 66 ITR 622 (Supreme

Court). The honourable Supreme Court was concerned with the provisions of section 12B of The Income Tax Act 1922. Further the court has held that it is manifest that the consideration for the transfer of capital asset is what the Transferor receives in lieu of the asset he parts with, namely, money or moneys worth, and therefore the very assets transferred or parted with cannot be the consideration for the transfer. It follows that the expression full consideration in the main part of that section cannot be construed as having reference to the market value of the assets transferred but the expression only means the full value of thing received by the transfer in exchange for the capital asset transferred by him. The consideration for transfer is the thing received by the transferor in exchange for the asset transferred and it is not right to say that the assessee transferred and parted with is itself the consideration for the transfer. Therefore, the apparent consideration is always a question of fact, which has to be determined on the facts of each case. Thus, the facts of the present case before us does not show that apparent consideration shown by the assessee of Rs. 4/- per share of NDTV limited when the price of such company listed on stock exchange shows it to be INR 140/- per share is the full consideration. In fact, the assessee has got the benefit by pledging the assets worth INR 140/- per share by obtaining interest free loan to be coupled with call option agreement speaks louder that full value of the consideration is INR 135/– per share. Further the decision relied upon by the learned authorised representative is pertaining to provisions of section 12B of the income tax act 1922 where there were no words "as mentioned under section 48 of the income tax act 1961 being " received or accruing". In the present case, the amount of loan that is borrowed by RRPR Holdings

private limited is based on the market value of the shares of NDTV limited. All the agreements produced before us clearly showed that assessee made available adequate shares to RRPR Holdings private limited . Those shares were pledged and RRPR Holdings private limited obtained interest free loan for a long period coupled with call option agreements and loan agreements. The conditions were such that it clearly showed that the transaction is of sales of those shares by the assessee and her husband directly to the VCPL through RRPR Holdings P Ltd. The whole sum of loan received has in fact accrued to the assessee pertaining to shares transferred by these two assessee , which is also apparent from the fact that assessee along with her husband are the only to shareholders holding 50% each share in the RRPR Holdings private limited. Further Dr Roy and Mrs Roy also transferred equal number of shares in RRPR Holdings Ltd. Even otherwise, there was no justification given by assessee for transacting sale of shares at phenomenally low price then at what those shares are traded in the stock exchange. The learned authorised representative also relied upon the decision of honourable Supreme Court in 87 ITR 407, 131 ITR 597, 159 ITR 71 which are based on interpretation of provisions of section 12B of The Income Tax Act 1922. Facts in those cases also did not show that the transactions entered into by the assessee has in fact given dominion and enjoyment of higher sum then what has been the alleged transaction value. In the present case, fact shows that by transferring shares to RRPR Holdings private limited at Rs. 4/- per share, the assessee has transferred everything which can be said to vested in those shares at price which is equivalent to market price to lender, through RRPR Holdings Pvt Ltd. In fact, the value is also realized by considering the loan and sum,

which is free of interest and coupled with call option agreement, at INR 140 per share only.

85. The learned counsel for the assessee further referred the decision of the honourable Delhi High Court in 309 ITR 233 wherein it has been held that the full value of the consideration cannot be construed as having reference to the market value of the asset transferred but only means the full value of the consideration received by the transferor in exchange of the capital asset transferred by him. As stated, in present case before us , the assessee has got the consideration in transfer of shares of NDTV limited through RRPR Holdings private limited by obtaining interest free loans for a long tenure coupled with call option agreements which is based on the traded price of the shares of the NDTV limited, the actual consideration received by the assessee is not Rs. 4/- per share but the sums realized by RRPR Holdings Ltd , over which the assessee has complete control. Even otherwise, as stated herein above, the full consideration has not been replaced by the market value of the shares transferred but through series of agreements entered into by the assessee along with RRPR Holdings private limited with the lenders clearly showed that the assessee realized the consideration for transferring the shares and further pledge in favour of the lenders. In the decision relied upon by the learned authorised representative as stated at page number 239, that case involves sales simpliciter whereas the facts before us shows that assessee entered into complex agreements with the lenders by creating the layer of RRPR Holdings private limited to pledge the shares and realize the sale consideration in guise of loans from lenders. Further, in the decision relied upon by the learned authorised representative there was nothing except the report of the district valuation

officer and naturally the assessee in that particular case did not receive anything more than the sale value, whereas in the case before us, it clearly shows that there was no reasonable explanation to transact the property, being share of NDTV limited at such a low price. Similar are the facts in the case of decision of the honourable Delhi High Court in 309 ITR 240. Therefore, the decision relied upon by the learned authorised representative are on distinguishable facts.

86. In view of our above finding, we reverse the finding of the learned CIT – A and hold that full value of the consideration of accrued to the assessee on sale of the shares of NDTV limited to RRPR Holdings private limited has resulted into understatement of capital gain to the extent of Rs. 55,88,73,564/–. Accordingly, ground number 1 – 4 of the appeal of the learned Deputy Commissioner Of Income Tax, New Delhi are allowed.

87. Ground number 5 of the appeal of the AO is with respect to the reduction in addition of rupees to 3,59,700/– to Rs 2,89,279/– on account of income from house property on the basis of information without affording an opportunity of being heard to the assessing officer.

88. The learned departmental representative relied upon the order of the learned assessing officer and submitted that the learned CIT – A has deleted the addition without granting any opportunity of hearing to the AO.

89. The learned authorised representative submitted that the AO had to give the various reports about fair rent of the various properties which AO failed to give and therefore there is no reason to disturb the order of the learned CIT – A.

90. We have carefully considered the rival contention and find that the learned CIT – capital has not admitted any additional evidences but has considered

the explanation of the assessee against the assessment order passed by the learned assessing officer. Further with respect to the certain properties the assessing officer could not produce the relevant information available with respect to the annual rent of those properties. Therefore, now revenue cannot argue that learned assessing officer was not given proper opportunity of hearing before deleting the above addition. In view of this ground number 5 of the appeal of the learned assessing officer is dismissed.

91. Accordingly ITA number 2706/Del/2017 for assessment year 2010 – 11 filed by the learned Deputy Commissioner of Income Tax in case of Mrs. Radhika Roy is partly allowed.

92. Now we come to the appeal of the assessee in ITA No 2020/del/2017 where in assessee has challenged the addition of Rs 47,31,33,800/- made by the ld AO u/s 69 of the act and CIT (A) confirmed the same u/s 56 (2) (vii) (C) of the Act.

93. Arguing the appeal of the assessee, ld AR submitted the facts that the learned CIT – A has deleted the addition made by the learned AO under section 69/69B of the Act. However, he confirmed the action by enhancing assessment by invoking provision of section 56(2) of the Act. He further referred to Para number 8.17 of the order of the learned CIT – A wherein it has been held that assessee cannot escape addition under the provisions of section 56 of the income tax act. Contesting the above enhancement made by the learned CIT – A, he stated that the transaction entered into by assessee does not give any benefit to the assessee by entering in to these transaction and there was no purpose to transfer the shares which are made in view of the clause 9(e) of the loan agreement. He further stated that assessee has sold shares at Rs. 4/- per share whereas the share purchased

by assessee is at ₹ 140/- per share also. He submitted that assessee cannot purchase those share at Rs 4/- back, as it would create a fictional loss in the RRPR Holdings P Ltd. He further stated that there is no gain, there is no loss, in the whole transaction and assessee along with her husband are solitary shareholders of RRPR Holdings Private Limited. In short his argument was that that it is not a device to evade any taxes and therefore the provisions of section 56 does not apply to the same.

94. The second argument raised by the learned authorised representative with respect to the power of the learned CIT – A under section 251 of the income tax Act of enhancement of the income. He stated that the learned assessing officer has made addition under section 69 – 69B of the income tax act , whereas the learned CIT – A has found a 'new source' of the income by taxing the same under section 56 of The Income Tax Act. He relied upon the decision of the honourable Supreme Court of India in case of CIT versus Harduttray Moti Lal Chamaria 66 ITR 443 and referred extensively the facts of that case. He therefore stated that as held in that particular case the first appellate authority has no jurisdiction to assess a source of income which has not been processed by the income tax officer and which is not disclosed in the return of income filed either by assessee or in the assessment order. He therefore submitted that the appellate authority could not travel beyond the subject matter of the assessment. He therefore submitted that in the present case the receipt of shares have not been considered but the view of the taxability has been considered and has been charged to tax under section 69 – 69B of the Act. He therefore submitted that it is beyond the power of the learned CIT – A to find a new source of the income by applying the provisions of section 56 of the income tax at. He

further referred the decision of the Honourable Delhi High Court in CIT versus Union Tyres 240 ITR 556 and reiterated that there is a solitary but significant limitation to the power of revision and that is not open to the appellate authority to introduce in the assessment a new source of income and the assessment has to be confined to those items of income which were the subject matter of original assessment. He similarly referred to the decision of CIT versus Sardarilal & co 251 ITR 864, Shapoorji Pallonji Mistry versus CIT 34 ITR 342 (bom) and CIT versus M/s Nirbhayaram Deluram 224 ITR 610. He also referred to the decision in case of Mr Madan Mohan Sharma ITA number 2953/Del/2016 specifically para number 5 and 19 of that decision. In short, he stated that section 56 was not at all considered and adjudicated by the learned assessing officer and therefore the learned CIT (A) does not have any power to make the addition under that section.

95. He further submitted that the provisions of section 56 and 69 are different sources of income and for this he relied upon the decision of the coordinate bench on Dulari Digital photo services P Ltd 984/CHD/2010. He submitted that section 69 and section 56 are inherently contradictory and diametrically opposite sections. He further stated that the power of modification of section is not with the learned CIT – A under section 251 of the income tax. He further stated that the learned CIT – could not change a head, which requires further enquiry.

96. On the merits of the issue he submitted that the provisions of section 56 (2) (vi) (c) does not apply as assessee has received the shares from a company which is akin to ' relative' as it is wholly controlled, owned and managed by assessee. It also does not apply as the transaction is pertaining to period before 1/10/2009. He otherwise stated that the transaction is a square off

transaction. He stated that assessee has transferred shares to RRPR holdings Ltd at Rs 4/- per share on 3/8/2009 and return of those shares in March 2010 is part of the same transaction and therefore had to be at Rs 4/- only. He further submitted that the transaction is between two closely linked parties. It stated that assessee and her husband are the shareholders of the above company and therefore the seller and buyer is one only and therefore the provisions of section 56 does not have any implication. He further submitted that there is no benefit accruing to any of the parties and there is no prejudice to the revenue. He further stated that in enactment of the provisions of section 56 of the income tax there was a specific object of tax avoidance. In the present case of the transaction there no object of tax avoidance. He further stated that section 56 is a specific Anti avoidance rule (SAAR) and does not apply as the transactions, which are based on an agreement at the face value of the shares.

97. On the next date of hearing in reply to the arguments of the learned authorised representative, the learned departmental representative submitted a detailed note along with the several judicial precedents. With respect to powers of CIT (A) u/s 251 of the Act he submitted as under :-

> "The action on the part of learned CIT (Appeals) to invoke section 56 (2) (vii) (c) of the Act is challenged by and on behalf of the appellants on the grounds that:
>
> (1) the CIT (Appeals) Cannot find a new source of income;
>
> (2) If learned A.O makes an addition under a particular 'Head' then learned CIT (Appeals) cannot change the 'Head';
>
> (3) Source of income is altogether different than the concept of 'Head';

(4) If learned A.O failed to invoke provision of section 56 of the Act then there is no question of making assessment under section 56 of the Act; and

(5) Lastly, power under section 251 of the Act cannot be equated with similar powers provided to other authorities under sections 263, 264.144C of the Act.

In support of various contentions listed above, reliance was placed on case laws as under:

1. CIT v Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC);
2. CIT v Union Tyres [1999] 240 ITR 556 (Del.);
3. CIT v Sardari Lai And Co. [2001] 251 ITR 864 (Del.) (FB);
4. Shapoorji Pallonji Mistry v CIT [1958] 34 ITR 342 (Bom.);
5. CIT v Kanpur Coal Syndicate [1964] 53 ITR 225 (SC).
6. CIT v Narbheram Daluram [1997] 224 ITR 610 (SC); and
7. Hari Mohan Sharma & Other v ACIT- ITA No 2953 & 2954/ Del /2018, ITAT 'E' Bench Delhi- Date of order 31/01/2019.

In the last decision referred to in the list of cases above, Hon'ble Bench in Para (19) at Page 29 held as under:

"The principle culled out from the above judicial precedents clearly shows that words "enhance the assessment" are confined to the assessment reached through a particular process. It cannot be extended to the amount, which ought to have been computed. There being other provisions, which allow escaped income from new sources to be taxed after following a certain prescribed procedure. So long as a certain item of income had

been considered and examined by the assessing officer from the point of view of its assessibility and so long as the CIT(A) does not travel beyond the record of the year, there has never been any doubt as to his powers of redoing the categorization and bringing the assessment within the true description of the law." [Emphasis supplied].

In all humility & with due regards & utmost respect, it is humbly submitted that Hon'ble Bench failed to read subsequent findings recorded in Para (14) of their order by the Hon'ble Court wherein it is held as under:

> "14. We have considered the submissions of both the parties. There is no doubt about the fact that while framing the assessment even under Section 143(3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admissible under the provisions of the Act thereby leading to escapement of income. The Income-Tax Act provides for remedial measures, which can be taken under these circumstances. While framing an assessment under Section 143(3) of the Act, any of the following situation may occur:-
>
> (a) The Assessing Officer may accept the return of income without making any addition or disallowance; or
>
> (b) The assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances. he deals with such item or items of income in the body of order of assessment but he under-assessed such sums; or
>
> (c) He makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income

(d) Yet, there can be another situation where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry.

(e) Further another situation may arise, where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the revenue, or

(f) Where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income.

To ensure for each of such situations, an income, which ought to have been taxed and remained untaxed, the legislature has provided different remedial measures as are contained in sections 251(1)(a), 263, 154 and 147 of the Act.

In the category stated in (a), obviously if an income escapes an assessment, the provisions of Section 147 of the Act can be invoked, subject to the condition stated in the proviso of the said section. In the category of cases falling in category (b). section 251(1)(a) provides the CIT(A) could enhance such an assessment qua the under-assessed sum i.e. where the AO had dealt the issue in the assessment and was the subject matter of appeal. In category falling In (c) & (e), the CIT has been empowered to take an appropriate action under section 263 of the Act In category of cases falling under clause (d) and (f), appropriate action under section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be

taxed. There can be situations where an item has been dealt with in the body of the order of assessment and the assessee being aggrieved from the addition or disallowances so made, had preferred an appeal before the CIT(A) against the said addition and disallowance, the said disallowance and addition being the subject matter of appeal before the CIT(A) in such cases, the CIT(A) has been empowered u/s 251(1)(a) of the Act, to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment by under assessing the same as the same was the subject matter of the appeal as per the grounds of the appeal raised before him. In other words, the CIT(A) has a power of enhancement in respect of such item or items of income which has been dealt with in the body of the order of the assessment, and arose for his consideration as per the grounds of appeal raised before him, being the subject matter of appeal." [Emphasis supplied]

Therefore, it is submitted that reliance on the said decision by the appellants is misplaced in the context of judgment in the case of Padmasundara Rao (Dead) vs. State of Tamil Nadu 255 ITR 163 (SC) for the reason that;

(1) facts in the case of Hari Mohan Sharma cited supra are altogether different, and (2) decision of Hon'ble Court provides clear answer to the fact situation in the present case as given with regard to item (b) referred to above,

Another set of decisions are filed in the case of Dulari Digital Photo Services Pvt. Ltd to contend in the context of sections 56 vs. 69 of the Act. The issue involved in this case was limited to a situation that where the source of unexplained cash credit in books of account is not known the same cannot be linked to any known source of income in order to constitute income from 'other sources.

On the powers of the CIT (Appeals) under section 251 (1)(a) of the Act, reliance is placed on following decisions in support of submission that the CIT (Appeals) was empowered under law to hold what he has held in the present case:

1. Smt. Sneh Lata v CIT [1966] 61 ITR 139 (All);
2. V. Subramonia Iyer v CIT [1978] 113 ITR 685 (Ker);
3. CIT v Ahmedabad Crucible Co. [1994] 206 ITR 574 (Guj);
4. Panchaman Traders v CIT [2010] 323 ITR 334 (Ker
5. CIT (Central) v K.S. Dattatreya [2012] 344 ITR 127 (Kar); and
6. Indian Steel & Wire Products Ltd v CIT [1968] 69 ITR 379 (Cal).

98. On the merits of the addition u/s 56 (2) (vii) (c) of the act the ld DR submitted that

i. Learned Assessing Officer has discussed this issue in Para (3) at Page (4) to (6) of the assessment order by making addition of Rs 47, 31, 33,800/- under section 69/69B of the Act adopting the value of 34, 78,925 shares of NDTV at Rs. 136/- per share. These shares were purchased by each of the appellants from RRPR on 08.03.2010 & explaining that these shares were part of 57, 81,842 shares transferred to RRPR by each one of them pursuant to loan agreement dated 21.07.2009 with VCPL.

ii. Explanation of the appellants can be seen in Para (8.2) at Page (205) of letter dated17.02.2017 addressed to learned CIT (Appeals). It is explained that learned A.O overlooked the factual position that what was retransferred were such shares, which were transferred by the appellants conditionally and were on escrow account.

iii. It is pertinent to mention here that there is no evidence till date in support of the explanation that certain conditions existed at the time of transfer among the parties to the transaction as well no evidence has till date been led that an escrow account existed/.

iv. Legal position on the applicability has very well explained analytically and elaborately by learned CIT (Appeals) in Para (8.7) at Pages (19) & (20) in his order dated 24.02.2017 in a tabular form.

v. It is settled position in law that in the interpretation of fiscal statutes, where the language of a provision is unambiguous, clear & unequivocal, literal construction would follow. In this regard, reliance is placed on the decision Hon'ble Apex Court in the case of Calcutta Knitwears reported in [2014] 362 ITR 673 (SC).

99. The learned authorised representative in rejoinder submitted that the issue before the learned assessing officer was with respect to the addition under section 69/69B of the income tax Act. The ld AO has not at all considered the issue about chargeability u/s 56 (2) of the act that whether the above sum is chargeable to tax under section 56 of the income tax act or not. He submitted that ld AO did not issue notices no order sheet entries were made, no references were made, no queries were raised in spite of having the complete facts available with the assessing officer. In view of this, he submitted that the learned assessing officer has not considered these aspect of the matter and therefore it is beyond the powers of the learned CIT – A under section 251 (1) (a) of the act.

100. He further submitted that if the transaction is only one and it sources also one then it can only be done under section 263 of the income tax act and not under section 251 (1) of the income tax Act . He further referred to the decision of the coordinate bench in ITA number 2257/Del/2018 in CIT , Central Circle-15, Delhi vs Versatile Polytech P.Ltd, for assessment year 2009 – 10 and specifically referred to para number 23 -35 to say that it is beyond the powers of the learned CIT – A to tax income under section 56 of

the income tax, when the learned assessing officer has made addition under section 69 – 69B of the act.

101. We have carefully considered the rival contentions and perused the orders of the authorities below. The impugned transaction is that assessee has purchased 3478925 shares of NDTV limited at the rate of Rs 4/- per share from M/S RRPR Holdings private limited on 9/3/2010. On that date the market price of the share was INR 140/- per share at National stock exchange and Bombay stock exchange. Therefore the learned AO made an addition of INR 136/– per share to the number of shares sold being 3478925 and made an addition of INR 47,31,33,800/–. AO was also of the view for the reason that on the same date assessee sold 4733187 shares to RRPR Holdings Pvt Ltd at INR 140/- per share based upon the market rate. Therefore, for sales of shares, assessee traded at the market rate and for buying the shares the rate was substantially lower than market rate. The AO at the end of the order at the time of making stated that the above sum is added to the income of the assessee under section 69/69B of the act. The learned CIT – A analyzed the addition made by the learned assessing officer in para number 8.4 of his order and stated that the learned assessing officer has presumed that the buyer has paid the difference in amount between market value and transacted value without recording the same in the books of accounts and therefore the addition has been made under section 69 of the income tax act. However, he examined the fact and noted that the provisions of section 56 (2)(vii) of the act enables the taxation of such a scenario on deemed basis. He then extracted the provisions of the law and noted that that assessee being an individual has received a property being 3478925 shares of NDTV limited from RRPR Holdings Pvt Ltd on 9/3/2010 after the introduction of provisions of section 56 (2) (vii) (1/9/2010) for a consideration of INR 13915700/– (3478925 *4) which is less than the aggregate fair market value of Rs. 45,20,86,304/– (3478925 * 129.95 per shares) thus confirmed the addition 43,81,70,604/- .

102. Now we come to the first issue whether the learned CIT – A has a right to confirm the addition under altogether a different section under the provisions of section 251 (1) (a) of the act. In plain reading of the provisions of section 251 of the income tax act the Commissioner of income tax has a

wider power however such part by the power cannot serve the powers vested u/s 147, 154 and, 263 of the income tax act. Now the issue would be seen from the angle that whether the provisions of section 147 would have been applied to the above fact or not. According to us it would not have fallen into the case of the reopening of the assessment therefore in the impugned situation the provisions of section 147 of the income tax act would not have been made applicable to the same. Further provisions of section 154 of the income tax act relates to the apparent mistake on the face of the record, which can be rectified. Admittedly, under the provisions of section 154 of the income tax act the debatable issues cannot be rectified. Therefore as mentioned in the order of the learned CIT – A at para number 8.4 of his order that there would have been 2 scenarios for making the addition. In view of that the impugned issue is also out of the provisions of section 154 of the income tax act. The next section that needs to be tested is the provisions of section 263 of the income tax act, which would say that the order passed by the learned assessing officer is erroneous and prejudicial to the interest of the revenue and therefore it needs a revision. However, revision cannot be of an issue, which is considered and decided by the 1st appellate authority. Any aspect of the particular addition would have been out of the provisions of section 263 of the income tax act, with respect to the amount, provisions of the law, the year of taxation et cetera. Once any of the 'aspects' of an 'issue' is the subject-matter of appeal before the Commissioner (Appeals) then; it is the 'issue' as a whole which is said to be the subject-matter of appeal and not only the 'aspect' alone. Therefore such an issue with all its aspects has been merged with the order of the ld CIT A) and precludes the applicability of the provisions of section 263 of the act. Thus, that provision is also ruled out in the present case.

103. Admittedly, there is no new source of income, which has not been considered by the ld AO. In present case, ld AO has already considered the taxability of sum being difference between the market value of shares and purchase price of the shares. Therefore, it cannot be said that, CIT (A) has discovered a new sources of Income.

104. Reliance by ld AO on the decision of Madan Mohan Sharma is misplaced as in that case the issue before CIT (A) was with respect to eligibility of

deduction u/s 54 / 54 F of the act, where the ld CIT)A found that sales consideration itself is chargeable to tax u/s 68 of the act as there was no sales of any property. Under that circumstances it was held that , CIT ()A has discovered already a new sources of Income and as such in that case, only option with revenue was to proceed u/s 263 of the act. The facts in the present case are distinguishable.

105. In view of the above facts we do not find any infirmity in invoking the provision of section 56 (2) (vii) (C) of the act by ld CIT (A).

106. Now we come to the issue whether such provision are applicable or not. The learned CIT – A has reproduced the above provisions at paragraph number 8.6 of his order. According to that , where an individual or after 1st day of October 2009, receives any property other than immovable property for a consideration, which is less than the aggregate fair market value of the property by an amount exceeding INR 50,000/- , the aggregate of fair market value of such property as exceeds such consideration is chargeable to tax under the head income from other sources. The impugned asset that has been transferred in this transaction in shares, which is covered under the definition of property as per clause (d) of the second proviso to the above section. Further fair market value of such transaction is also required to be determined under section 11 UA of the income tax rules according to which the fair market value in respect of a court in shares are the quoted price on the recognized stock exchange. Therefore the impugned transaction satisfied all the ingredients of the provisions of section 56 (2) (Vii) of the act. Therefore we do not find any infirmity in the order of the learned CIT – A in invoking that provision with respect to the about transaction.

107. The learned authorised representative has stated that as it is a transaction between the closely related parties and there is no motive of the tax evasion is the provisions of section 56 (2) does not apply. Here the argument deserves to be rejected at the threshold itself as the assessee has failed to explain by credible evidence any reason of buying the shares of the above company at Rs. 4/- per share when the quoted price of the share on the recognized stock exchange is INR 140/– per share. As the motive itself of the assessee was not demonstrated at all with credible evidences the assessee now cannot say that there was no motive of tax evasion. Even

otherwise the provisions of section 56 (2) deems certain differences/receipts of the transaction as income.

108. Further the learned authorised representative has relied upon the decision of the coordinate bench in ITO vs. Dulari digital photo services private limited (984/CHD/2010) which has been affirmed by the honourable Punjab and Haryana High Court (189/2012) and the special leave petition dismissed by honourable Supreme Court where the issue was whether the amount of profit earned by the assessee on commodity profit is income chargeable to tax under section 68 or under section 56 of the income tax act. The honourable Punjab and Haryana High Court at page number 10 of the decision has held that the expression income from other sources would come into play only where income is relatable to the known source. Where the income is not relatable to any known or any bona fide source it would necessarily be brought to tax has considered as income of the assessee u/s 68 of the income tax act. The facts of the above case are clearly distinguishable and not applicable because at that particular time such sum has in dispute before us was not covered under the head of income from other sources.

109. In view of the above facts we do not find any infirmity in the order of the learned CIT – A in enhancing the income of the assessee by invoking the provisions of section 56 (2)(vii) of the act by making an addition of INR 4 38170604/– on account of difference between the purchase price of the shares of NDTV limited and the market price of those shares quoted on recognized stock exchange. Accordingly ground number 1 of the appeal of the assessee is dismissed.

110. The ground number 2 of the appeal is with respect to the addition made by the learned assessing officer and confirmed by the learned CIT – A with respect to the property at Mussoorie. As the identical issue was also involved in appeal of assessee for assessment year 2009 – 10 as per ground number 2 of that appeal and while deciding ground number 2 of that appeal , we have deleted the addition confirmed by the learned CIT – A. Therefore, for the similar reason and to that extent, we allow ground number 2 of the appeal of the assessee.

111. At the time of the hearing, the assessee has not pressed the addition with respect to the property at New Delhi and Dehradun and therefore no interference is called for on those issues.

112. Accordingly, ground number 2 of the appeal of the assessee is partly allowed.

113. Assessee did not press ground number 3 of the appeal and therefore same is treated as dismissed.

114. Accordingly, appeal of the assessee is partly allowed.

115. Coming to the case of Dr Prannoy Roy wherein he has raised the following grounds of appeal in ITA NO. 2022/Del/2017 for the Assessment Year 2010-11 against the order of the ld CIT (A) -42, New Delhi dated 24/2/2017

"1. That the learned Commissioner of Income Tax (Appeals)-42, New Delhi has erred both in law and on facts in making an addition of Rs. 47,31,33,800/- by invoking the provisions contained in section 56(2)(vii) of the Act

1.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate discovering new source of income not considered by the learned Assessing Officer in the impugned order of assessment and therefore such enhancement was in excess of jurisdiction u/s 25 l(l)(a) of the Act.

1.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that what was retransferred were such shares which were conditionally transferred by the assessee and were on escrow account and therefore section 56(2)(vii)(c) of the Act has no application.

1.3 That the learned Commissioner of Income Tax (Appeals) while making the addition has overlooked documentary evidence placed on record by the appellant to show that section 56(2)(vii) had no application to the facts of the case of the appellant and therefore, addition made is not in accordance with law.

1.4 That the finding recorded by the learned Commissioner of Income Tax (Appeals) that "the assessee cannot escape the taxation under the deeming provisions of section 56 of I.T. Act by making such claim of "conditional transfer" driven by mutual business interests. IT considers each transaction in the natural course of action. Therefore, the stand of the assessee regarding conditional transfer on mutual convenience of the parties cannot help the assessee to avoid taxation under the provision of Income Tax Act" is highly vague and is based on assumption which otherwise too are contrary to record, legally misconceived and untenable.

1.5 That in recording the aforesaid findings the learned Commissioner of Income Tax (Appeals) has failed to comprehend the powers vested in him u/s 251 (1)a) of the Act; and has failed to appreciate that he had no powers u/s 263 of the Act, in as much as this issue could alone be examined by the learned Commissioner of Income Tax and not by him.

1.6 That the learned Commissioner of Income Tax (Appeals) having deleted the addition made by the learned Assessing Officer of Rs. 47,31,33,800/- which represented the alleged unexplained investment has erred both on facts and in law in making an addition by invoking the provisions of section 56(2)(vii) of the Act.

1.7 That in sustaining the addition, has deliberately overlooked the judgment of Full Bench of the Delhi High Court in the case of CIT Vs Sardari Lal & Co. reported in 251 ITR 864, therefore, the order is vitiated.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining addition in respect of alleged income under the head house property from following properties:

Sr. No.	*Property*	*Amount (Rs.)*
i	*B-13, Greater Kailash-I, New*	*34,268*
ii)	*One House at Dehradun*	*35,469*
iii)	*Property at Mussorie*	*2,19,542*
	Total	*2,89,279*

2.1 That there is no material or valid basis adopted by the learned Commissioner of Income Tax (Appeals) to enhance the annual value declared by the appellant and in absence thereof, addition sustained is illegal, invalid and untenable.

2.2 That while upholding the addition the learned Commissioner of Income Tax (Appeals) has failed to appreciate written submissions filed by the appellant wherein it was stated that comparable instances adopted are non comparable and inspector's report is without jurisdiction and otherwise too has no evidentiary value.

2.3 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that annual value of property cannot exceed the municipal valuation and as such addition sustained is not in accordance with law.

3. That the learned Commissioner of Income Tax (Appeals) has failed to comprehend that municipal value of property at Hauz Khas was Rs. 1,53,586/- and such a value represents annual value of the property u/s 23(1) of the Act and thus he ought to have followed the judgment of Full Bench of Hon'ble Delhi High Court in the case of CIT v. Moni Kumar Subba reported in 333 ITR 38 logically directed the Assessing officer to adopt the annual value at Rs. 1,53,586/- instead of Rs. 3,60,000/-.

It is therefore, prayed that it be held that additions made of Rs. 47,34,23,079/- and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.

116. The Ld Deputy Commissioner has raised the following grounds of appeal in ITA No. 2707/Del/2017 for the Assessment Year 2010-11:-

1. *Whether on facts and circumstances of the case, the CIT(A) is legally justified in deleting addition of Rs. 55,88,73,564/- on account of capital gain on sale of shares quoted @ Rs. 135/- to Rs. 140/- at BSE for sale consideration @ Rs. 4/- per shares to the related party by ignoring finding of facts recorded by the Assessing Officer (the AO)?*
2. *Whether on facts and in circumstances of the case, the CIT(A) is legally justified in deleting addition of Rs. 55,88,73,564/- on account of capital gain on sale of shares quoted @ Rs.135/- to Rs. 140/- at BSE for sale consideration @ Rs.4/- per shares to the related party by ignoring meaning of the phrase "...full value of consideration...accruing..." u/s 48 of the Income Tax Act 1961 (the Act)?*
3. *Whether on facts and in circumstances of the case, the C1T(A) is legally justified in holding that full value of consideration accruing to the assessee of a quoted shares could be valued other than quoted price?*
4. *Whether on facts and in circumstances of the case, the CIT(A) is legally justified in holding that full value of consideration accruing on sale of shares in case of quoted shares at the Stock Exchange could be 2.96% of the quoted price of the shares if assessee chose to decide so?*
5. *Whether on facts and in circumstances of the case, the CIT (A) is legally justified in reducing addition of Rs. 23,59,700/- to Rs. 2,89,279/- on account of income from house property on the basis of new information without affording an opportunity of being heard to the AO?"*

117. The Parties before us submitted that the facts and transactions are identical in case of Dr Prannoy Roy for this year too. Therefore for the reason stated by us in appeal of Dr Radhika Roy and ld AO in case of Dr Radhika Roy for AY 2010-11 in this order , we also :-

(a) Allow ground No 1-4 of the appeal of The ld AO

(b) Dismiss ground no 5 of the appeal of AO

(c) Dismiss Ground no 1 of the appeal of the assessee

(d) Partly allow ground no 2 of the appeal of the assessee

(e) Dismiss ground no 3 of the appeal of the assessee

Consequently partly allow the appeal of the AO and assessee.

118. Before parting we would be failing in our duty if we do not express our kind gratitude to the excellent exposition on complex corporate agreements painstakingly by Ld Counsels Shri Sachit Jolly and Shri Girish Dave, advocates on behalf of parties on several days of hearing to understand arrangements in those agreements.

119. Accordingly, all six appeals are disposed off as above.

Order pronounced in the open court on 14/06/2019.

Sd/-	Sd/-
(BEENA A PILLAI)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 14 /06/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	17.06.2019
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	