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

Decided on: 10.09.2018

+   **W.P.(C) 8482/2018, C.M. APPL.32580-32582/2018**

SONIA GANDHI ……Petitioner

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 52(1) AND ORS. …..Respondents

+   **W.P.(C) 8483/2018, C.M. APPL.32583-32585/2018**

OSCAR FERNANDES ……Petitioner

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 52(1) AND ORS. …..Respondents

+   **W.P.(C) 8293/2018, C.M. APPL.31812-31814/2018**

RAHUL GANDHI ……Petitioner

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX-18 AND ORS. …..Respondents

Through: Sh. Arvind Datar, Sr. Advocate with Ms. Kavita Jha and Sh. Vaibhav Kulkarni, Advocates, for petitioner in W.P.(C) 8293/2018.

Sh. P. Chidambaram, Sr. Advocate with Ms. Kavita Jha and Sh. Vaibhav Kulkarni, Advocates, for petitioner in W.P.(C) 8482/2018 and W.P.(C) 8483/2018.

Sh.Tushar Mehta, ASG with Sh. Zoheb Hossain, Sr. Standing Counsel, for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. These writ petitions involve common questions which urge closely similar facts and involve decision on identical questions of law. Consequently, they are disposed of by this common judgment.

2. The brief facts necessary to decide these three petitions are that the Indian National Congress ("INC" hereafter, also referred to as "AICC") had over a period of time advanced ₹90 crores to Associated Journals Ltd (hereafter "AJL"), publishers of the newspaper "National Herald", with the condition that the amounts be utilized by the latter to write off its accumulated debts and re-commence its newspaper. The books of account of AJL showed that for the period 01.04.2010 to 31.03.2011, the total outstanding debt as on 01.04.2010 was ₹88,86, 68,976/- and as on 15.12.2010 it was ₹90,21,68,980/-. In the meanwhile, an application was made for the incorporation of the charitable non-profit company "Young Indian" ("YI" hereafter) on 13.08.2010, and Form 1A with Registrar was filed for availability of the Young Indian name. On 18.11.2010, a license was issued by the appropriate authority to YI which was then incorporated on 23.11.2010; M/s. Suman Dubey and Sam Pitroda were its founder members and founder directors. On 13.12.2010, the first Managing Committee meeting took place; Mr. Rahul Gandhi was appointed as Director (non-shareholder); Mr. Motilal Vora and Mr. Oscar Fernandes were nominated as Ordinary Members; M/s. Suman Dubey and Sam Pitroda subscribed to 550 shares each. On 18.12.2010 by a Deed of Assignment, the ₹90 crore loan standing in INC's books as payable to it, from AJL from 2002 to 2011 was transferred to YI.

3. On 21.12.2010, a Board meeting of AJL calling an EGM of that company was held. Subsequently, on 24.12.2010, a loan to the tune of ₹ 1 crore was received through a cheque, from M/s Dotex, another company, drawn on ICICI Bank by YI. The formal stamped deed of assignment of ₹ 90 crore in favour of YI was executed by AICC on 28.12.2010. This event was followed, on 21.01.2011, by an EGM (of AJL) approving fresh issue of 9.021 crore shares to YI**.** On

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22.01.2011, the second managing Committee Meeting of YI was held; Ms. Sonia Gandhi, Mr. ML Vora and Mr. Oscar Fernandes were appointed Directors. The transfer of YI Shares from its existing shareholders, was approved as follows:

No. of Shares	From	To
550	Suman Dubey	Sonia Gandhi
550	Sam Pitroda	Oscar Fernandes

A fresh allotment of YI shares was made, in the following manner:

No. of Shares	Allotted to	Remark	Amount paid for (`Rs.)
1,900	Rahul Gandhi	Citibank cheque dated 20/1/2011 deposited on 14/7/2011 cleared on 15/7/ 2011	1,90,000/-
1,350	Sonia Gandhi	UCO cheque dated 20/1/2011 deposited on 14/7/2011 cleared on 16/7/ 2011	1,35,000/-
600	Motilal Vora	SBI cheque dated 20/1/2011 deposited on 14/7/2011 cleared on 16/7/ 2011	60,000/-
50	Oscar Fernandes	SBI cheque of 20/1/2011 deposited on 25/7/2011 cleared on 28/7/ 2011	5,000/-

4. On 14.02.2011, PAN No. (AAACY4625Q) was allotted to YI by letter issued by the Income tax authorities (hereafter "revenue"). A bank account was opened by YI with Citibank the same day, since account opening is possible with a PAN No. The cheque issued by Dotex for ₹ 1 crore was deposited in YI's bank account. YI issued a cheque for ₹ 50 lakhs subsequently, on 26.02.2011 to AICC (as part consideration for the assignment of the ₹90 crore debt to it) on 26.02.2011. On the same day, AJL allotted 9,02,16,898 equity shares to YI pursuant to its

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EGM dated 21.01.2011 and AJL's Board meeting (dated 26.02.2011). YI applied for Section 12AA exemption to the revenue on 29.03.2011. The exemption was granted by the Income Tax authorities on 09.05.2011 by a certificate, with effect from FY 2010-11. The income tax returns of the three petitioners before this Court, were dealt with and assessment orders made, on various dates. With these common basic facts, the individual circumstances and facts of the three petitioners are discussed below.

5. W.P.(C) 8293/2018 pertains to Mr. Rahul Gandhi for AY 2011-12. This assessee [hereafter referred to as "Mr. Rahul Gandhi"] filed a return of income declaring ₹68,12,018/- which included income from house property and from other sources. After some examination and consideration of details, the income returned was accepted by a scrutiny order dated 30.09.2013 by the Assessing Officer (AO) under Section 143(3). In these circumstances, on 31.03.2018, Mr. Rahul Gandhi received an e-mail from the ACIT, i.e. the AO [hereafter "the ACIT"] at 11.25 PM, intimating that notice under Section 148 for the relevant period, i.e. AY 2011-12 was issued. A copy of the notice was not, however, attached; the assessee received it on 02.04.2018, through speed post. On 11.04.2018, yet another notice – dated 31.03.2018, but this time containing the digital signatures of ACIT were received through e-mail by Mr. Rahul Gandhi. Acting through his Chartered Accountant, Mr. Rahul Gandhi filed a return of income on 01.05.2018 and subsequently e-filed it on 11.05.2018. A request was made to supply "Reasons to Believe" supporting each assessment. On 15.05.2018, the ACIT furnished "Reasons to Believe" alleging that the difference between the "Fair Market Value" of the shares of the Young Indian (YI) and the cost of acquisition of those shares by Mr. Rahul Gandhi was his income. In support of this position, the Revenue relied upon a letter written by its Department of Investigation dated 11.05.2015 and letter dated 08.06.2015 and a tax evasion petition (TEP) addressed to the Finance Minister by Mr. Subramanian Swamy. Mr. Rahul Gandhi requested the

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ACIT for copies of the documents to enable him to articulate appropriate objections. The request dated 26.05.2018 was declined on 04.06.2018. Consequently, a request for inspection of the complete records of assessment for AY 2011-12 was made on 11.06.2018 which was granted on 13.06.2018 only to the limited extent that inspection of "Reasons to Believe" recorded and the approval therefor granted under Section 151 was permitted. The request for inspection of other documents was rejected. Yet, another consequent request for permission to inspect the complete records was made on 14.06.2018 which met with similar fate on 15.06.2018. The further request made on 20.06.2018 and 26.06.2018 for permitting inspection of the entire record was rejected. In these circumstances, the petitioner, Mr. Rahul Gandhi availed of his right to represent against reassessment by a letter/representation dated 26.06.2018. The ACIT by letter dated 26.07.2018 rejected these objections.

6. The main ground on which Mr. Rahul Gandhi has approached this Court seeking intervention for quashing of reassessment notice is that no income in fact escaped assessment and that all queries which could have been raised given the returns and documents were in fact addressed adequately in the scrutiny assessment and moreover there was no tangible evidence to reassessment. It was urged besides that the alleged depression of the value of YI's shares, in the returns filed by Mr. Rahul Gandhi could never be the subject matter of reassessment. The assessee contests that the allegations with respect to transaction value, being contrary to Section 56(2)(vii)(c) (ii) and in terms of Rule 11UA of the Income Tax Rules is plainly erroneous and cannot be the basis of a reassessment. It is also urged that since Mr. Rahul Gandhi was a shareholder of YI - a non-profit and charitable company, he was under no obligation to disclose the value of his shares in the manner that the Revenue alleges. In this regard, it is argued that the said provision, i.e. Section 56(2)(vii) is inapplicable in the issue of fresh shares. The specific ground articulated on behalf of the petitioner Mr. Rahul Gandhi is that

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second proviso to Section 56(2)(vii) (c) (ii) enacts certain exceptions to the provision one of which is that if any property is received by an individual from any Trust or institution, including an institution registered under Section 12(AA), Section 56(2)(vii) could not apply.

7. It is also alleged that an order subsequently cancelling the registration granted to YI, on 26.10.2017, with retrospective effect is of no avail in view of decisions of this Court and the Allahabad High Court. The reliance placed upon the TEP is attacked as vitiated because the revenue has acted on stale grounds. It is also alleged that the AO should have made independent investigations as to whether in fact any obligation to value of underlying assets of YI in the light of the fact that it is a charitable institution is necessary before issuing the reassessment notice. The reassessment notice is thus vitiated on account of non-application of mind.

8. The ACIT, by an intimation dated 26.07.2018 rejected Mr. Rahul Gandhi's objections. In this letter, it was stated that a question with respect to non-furnishing of particulars does not arise. It was stated that Section 148(2) required only reasons to be recorded. Regarding the next issue, i.e. delay, it was stated that there was no delay in the issuance of the notice and that the material relied upon was not stale. Explaining that as far as the legal position on the question of issue of date of service, the revenue contends that Mr. Rahul Gandhi was served; the notice/intimation dated 31.03.2018, through e-mail which was admittedly received at 11.25 PM and also through registered post, both of which satisfied the requirements of Section 282 of the Act. The revenue further stated that the approval given by the third respondent for the reopening of assessment was after due application of mind. It is pointed out that at the stage of reopening and recording of reasons, there was is no question of granting any hearing or opportunity to the assessee in terms of Section 151. As to the issue of valuation of shares, the revenue alleges that the contention is factually incorrect because the

assessee is claimed to have acquired assets (i.e. shares of AJL) which were to be valued on the basis of the ₹90.21 crores asset it had. It was stated that the debt owned by the Associated Journals Ltd. (AJL) to the tune of over ₹90 crores was assigned to YI for only ₹50 lakhs. Therefore, according to the ACIT/revenue, the audited accounts of YI disclosed investment in shares in the fourth Schedule of audited balance sheet stating that the assessee was allotted 90216898 shares bearing a face value of ₹10/-. The Book Value of YI investment in shares was to the tune of ₹902168980. However, to conceal the quantum of Book Value in the shares of M/s. AJL with the corresponding FV of ₹90.21 crores was deliberately reduced to NIL in Note 1 of accounts. Since the assessee had urged that the value of investment was reduced to NIL in the balance sheet and book value was disclosed in Note 1 to Seventh Schedule of balance sheet for purposes of computing the Book Value of shares of YI which was held by him, the values of shares of AJL should be taken at NIL, though the book value of ₹ 902168980 of the company's shares were ignored. It is contended that besides the fact that this is factually and legally wrong, this Court ought not examine the issue as that would entail scrutiny on merits which is impermissible since the limited scope of these proceedings is to see whether reopening of assessment was valid.

9. Mrs. Sonia Gandhi is the petitioner in W.P. (C) 8482/2018. She too, like Mr. Rahul Gandhi impugns the reassessment notice; the grounds urged are similar. She acquired shares in Young Indian (YI), in 2011. Her return disclosed ₹17,92,092/-, consisting of income from other sources; the return of income was accepted under Section 143(1) of the Act by the AO/ACIT. Alleging that income had escaped assessment, the ACIT issued reassessment notice under Section 148-again on 31.03.2018 at 11:28 PM through email. A notice was received on 02.04.2018, through speed post; a third intimation, with scanned copy of the notice, was received electronically, with digital signature of the ACIT, on 11.04.2018. Return of income was filed on behalf of Ms. Sonia Gandhi on

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11.05.2015 by e-return procedure. The copy of “reasons to believe” was furnished to the Petitioner, at her request, on 11.05.2015. The ACIT alleged that, the difference between the ‘fair market value’ of the shares of YI and the cost of acquisition of the Young Indian’s shares by Ms. Gandhi was her income in terms of Section 56(2)(vii)(c)(ii) of the Act. The “Reasons to Believe” relied on the TEP as in Mr. Rahul Gandhi’s case, the report of DIT (Investigation) dated 11.05.2015, as well as letter dated 08.06.2015. Upon repeated requests, the revenue refused to give copies or allow inspection into the materials which resulted in the reassessment notice, impugned; however, it granted inspection of the note recording reasons. Ms. Sonia Gandhi represented against the reassessment notice; that was rejected by the ACIT on 31.07.2018.

10. In support of the petition, Ms. Sonia Gandhi states that the re-assessment notice is vitiated because the notice issued under Section 148 of the Act was barred by limitation prescribed under section 149 of the Act; likewise, sanction under section 151 of the Act accorded was a mechanical one treated as an empty formality. It is alleged, like in Rahul Gandhi’s writ petition, the impugned notice issued is vitiated on account of violation of principles of natural justice; that notice issued under section 148 of the Act is barred by limitation prescribed under section 149 of the Act; Sanction under section 151 of the Act accorded as an empty formality; provisions of section 56(2)(vii) are not applicable to the present case; that as a matter of fact, no income which has escaped assessment; that the revenue has taken contradictory stands in the case of the Petitioner as against their stands in the case of ‘Young Indian’; that there was no independent application of mind by and further, that there is no tangible material; that reassessment has been initiated on factually incorrect premise; there was no failure on her part in disclosing all material facts; the reassessment proceedings have been initiated with a premeditated mindset and a *mala fide* intention.

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11. Mr. Oscar Fernandes, the petitioner in W.P.(C) 8483/2018 too, had filed his return for AY 2011-12, for ₹ 8,33,730/-, consisting of income from house property and income from other sources; the return of income was accepted under section 143(1) of the Act. On 31.03.2018, like in the case of the other petitioners, he received intimation stating that he would be reassessed under Section 147/148 of the Act by an email at 11:22 PM. He received a notice by speed post, which contained a scanned copy of the earlier notice on 02.04.2018; Mr. Fernandes filed his return on 17.04.2018 and requested for a copy of the "reasons to believe", which was provided to him. Thereafter, like Mr. Rahul Gandhi and Ms. Sonia Gandhi, he sought inspection of the record which was partly granted. He preferred objections to reassessment notice which was rejected on 03.08.. The grounds urged by Mr. Fernandes are similar to that in Ms. Sonia Gandhi's petition; i.e. that the re-assessment notice is illegal as it was barred by limitation prescribed under section 149 of the Act; the sanction under section 151 of the Act was mechanical; that the impugned notice is in of violation of principles of natural justice; provisions of section 56(2)(vii) are not applicable to the present case; that as a matter of fact, no income which has escaped assessment; that the revenue has taken contradictory stands in the case of the Petitioner as against their stands in the case of 'Young Indian'; that there was no independent application of mind by the and further, that there is no tangible material; that reassessment has been initiated on factually incorrect premise; there was no failure on Mr. Fernandes' part in disclosing all material facts; the reassessment proceedings were initiated with a premeditated mind set and a *mala fide* intention.

Contention of parties

12. Mr. P. Chidambaram, learned senior counsel argued Mrs. Sonia Gandhi's and Mr. Oscar Fernandes' writ petitions; Mr. Arvind Datar, Senior Advocate argued Mr. Rahul Gandhi's writ petition. Mr. Tushar Mehta, the learned Additional Solicitor General appeared and opposed the writ petitions, on behalf of

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the revenue; the Union of India was represented on advance notice on 08.08.2018; the counsel were heard that day; the court had requested for production of the original file relating to the three petitioners on the next date. On 14.08.2018 notice was issued to the Union of India; the writ petitions were further heard and reserved for judgment, that day.

13. Mr. Arvind Datar, Senior Advocate appeared for Mr. Rahul Gandhi and Mr. P. Chidambaram, Sr. Advocate, appeared for Mrs. Sonia Gandhi and Mr. Oscar Fernandes, made substantially common submissions. The added arguments in the case of Mr. Rahul Gandhi were that the scrutiny assessment under Section 143(3) completed for the relevant AY 2010-11, had enquired into all facets of the income declared; the AO had even issued a questionnaire and brought to tax amounts subsequent to the enquiry. In the absence of any further or tangible material disclosing a live link between the material that ought to have been disclosed in the returns in the first instance and the escapement of income, Mr. Rahul Gandhi could not be reassessed under Sections 147/148. One of the main arguments in this regard was that YI is a charitable institution, i.e. a not-for-profit company incorporated under Section 25 of the pre-existing Companies Act (which now correspondents to Section 43 of the new Companies' Act, 2013) and which became beneficiary of Section 12AA for the relevant assessment/financial year. Mr. Datar's submission here was that by virtue of notification no. 1578 dated 08.07.1961 which was followed by other notification, the requirement of disclosure of interest under Section 299 of the Companies Act otherwise necessary for Directors was exempted in respect of not-for-profit companies. As a consequence, Directors such as Mr. Rahul Gandhi was exempted from disclosure of interest; in fact, there could not have been any interest that needed disclosure under the Income Tax Act. Such being the position in law, stressed Mr. Datar, Mr. Rahul Gandhi could not be faulted for not stating any detail with respect to the acquisition of shares in YI in the period covered by 2010-11. Mr. Datar relied upon

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the judgment of the Supreme Court reported as *Commissioner of Wealth Tax v. Arvind Narottam (Individual)* AIR 1988 SC 1824, especially the following observations:

> *"a mere right to be considered for distribution of the income or of the corpus of the Trust Fund cannot be regarded as an 'interest' since it was not capable of valuation."*

14. It is, therefore, urged that as the beneficiary under Trust is merely entitled to income or benefits and has no interest in a trust, likewise, the director in a Section 25 company is at least similar, if not on a higher pedestal and does not have any interest which needed disclosure in his or her income tax returns. The second aspect which related to the non-disclosure allegation *vis-à-vis* Mr. Rahul Gandhi's subscription to shares and their value on account of directorship in YI is that Section 147 permits reopening of assessment, if there is a reason to believe that income chargeable to tax has escaped assessment. Thus, the non-disclosure that Mr. Rahul Gandhi was a Director of second company is not circumstances or material fact necessary to complete assessment. Mr. Datar argued that when Mr. Rahul Gandhi did not earn any income or acquire any interest in the asset on account of becoming Director in YI, non-disclosure of such Directorship could not be the basis for reopening the assessment during the extended period. Reliance is placed upon *CIT v. Kelvinator India Ltd.* 320 ITR 561 (SC); *Commissioner of Income Tax, Central-I v. Indo Arab Air Services* 2015 (64) Taxmann.com 257 and *United Electrical Company (P) Ltd. v. CIT* 258 ITR 357 (Del). Since the alleged non-disclosure was relied upon to reopen assessment literally at the eleventh hour, there is no other basis for impugned notice, the same is invalid.

15. It is argued that the impugned re-assessment proceedings have been done in haste and with a pre-meditated mind, are not *bona fide*, and the AO's "reason to believe" as well as the "satisfaction" of the PCIT are a sham. The revenue states that it received a TEP on17.06.2014 and the investigation reports were received on

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11.05.2015 and 08.06.2015. It is, therefore, inexplicable why the AO waited until the last day of limitation i.e. 31.03.2018 to record her "reason to believe" and obtain the "satisfaction" of the PCIT. The conclusion that the TEP and the investigation reports did not make out a case for re-assessment and the AO was pressured to initiate the proceedings on the very last day/hour is reasonable. The *malafides* is writ large on the face of the record. It is also urged, besides that there are four shareholders of YI, but re-assessment proceedings have been launched only against three shareholders. It was not an act of kindness to the fourth shareholder, because it was simply not possible to complete the *malafide* exercise in a place outside Delhi (where the fourth shareholder was assessed). The *malafide* exercise could be organised only in Delhi in one circle (to which the third shareholder's file was transferred from another circle in Delhi). The actions of the AO and PCIT are *malafide* and liable to be set aside.

16. Mr. Chidambaram argued that a proper and valid notice under Section 148, with the AO's digital signatures (as obligated by Centralized Communication Scheme, 2018 dated 22.02.2018 issued by the CBDT in Notification No. 8/2017 and dated 29.09.2017 Notification No. 1/2018 dated 12.02.2018), was not issued before limitation set in at midnight on 31.03.2018. Hence the proceedings are barred by limitation. It is contended that the impugned order by the AO rejecting the objections to the reasons is violative of the principles of natural justice. Upon receiving the reasons recorded (on 15.05.2018) the assessees demanded copies of the documents relied upon in the said reasons; the AO, however, rejected these requests resulting in denial of principles of natural justice. Reliance is placed in this regard, on *Sabh Infrastructure Ltd. v. Assistant Commissioner of Income Tax* (judgment dated 25.09.2017 of this court in W.P.(C) 1357/ 2016).

17. Learned senior counsel submitted that the revenue's position indicates contradictory and inconsistent stands. The basis for making valuation in the present writ petition is to treat the debt assigned of ₹90 crores (approximately) as

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an ‘asset” in the hands of Young Indian. However, the same debt is treated as “bogus” or a “paper entry” in the assessment of YI in which an appeal is pending. (There is a connected writ petition WP (C) No. 2399/ 2018 regarding pre-deposit of duty in that case). If the revenue urges that the sum of ₹90 crores is a paper entry and non-existent in the assessment of the company, YI, it cannot be an “asset” in the assessment of its shareholders. It is argued by counsel that the revenue cannot treat the debt of ₹90 crores as a paper entry so as to enhance YI’s tax liability and simultaneously treat it as an asset in the hands of its shareholders and reopen their assessments.

18. Learned counsel submitted that the reassessment cannot lead to absurd consequences. Here, it is submitted that the debt or assets of YI is alleged to be ₹90 crores (approximately) i.e. effectively the total value or net worth of that company. It is a matter of elementary common sense that the value of the shares of the individual shareholders of a company cannot exceed the total value of the shares of that company. If the company has a total value/net worth of ₹100 crores, the total value of shareholders of that company cannot exceed ₹100 crores.

19. Learned counsel also submitted that the AO’s impugned orders rejecting the petitioners’ objections to the reasons is violative of the principles of natural justice. Upon receiving the reasons recorded (on 15.05.2018) the petitioner- assessees had demanded copies of the documents relied upon in the said reasons. However, it was rejected by the AO. There was, as a result, denial of principles of natural justice. *Sabh Infrastructure Ltd. vs. ACIT:* [judgment dated 25.09.2017of this Court in W.P. (C) 1357/ 2016) is relied upon].

20. Mr. Chidambaram, appearing for Mrs. Sonia Gandhi and Mr. Oscar Fernandes, reiterated the submissions of Mr. Rahul Gandhi and further urged that if a company holding a debt (as an asset) converts it into equity (another asset), no income accrues to the company that is taxable. It is emphasized that there has been no case where such conversion has been held to result in income that is

taxable. It is submitted, that in other words shareholder has *no interest in the property* (assets) of the company in which he holds shares. Learned senior counsel relies on *Bacha F. Guzdar v. Commissioner of Income Tax* 27 ITR 1 (SC); *R.C. Cooper vs. Union of India* 1970 (1) SCC 248 and *Bharat Hari Singhania & Ors. v Commissioner of Wealth Tax* 207 ITR 1 (SC)in support of this argument.

21. It is argued that *arguendo*, there were income when YI converted the debt (owed by AJL) into equity, the income *may* be taxable in the hands of YI; it cannot be the income of AJL and the income of the petitioners, in the same assessment year. It is submitted that in the present case, the same income (allegedly arising out of the conversion) is sought to be taxed in *the same assessment year (AY 2011-12)*in the hands of YI and its shareholder(s).

22. Both counsel (for the petitioners) stated that the only section invoked to allege there was income that had escaped assessment is Section 56(2)(vii)(c)(ii). The condition is that the assessee *receives from any person* any property, other than immovable property for a consideration which is less than the aggregate fair market value of the property. In the present case, on 22.01.2011, the assessees received-in case of Ms. Sonia Gandhi- 1900 shares (550 from an existing shareholder and 1350 by way of fresh allotment on paying a consideration of ₹ 100 per share); in the case of Mr. Rahul Gandhi, 1900 shares on allotment, by paying ₹ 100 per share; and in the case of Mr. Oscar Fernandes, 50 shares by allotment, by paying ₹ 100 per share. After 22.01.2011, the assessees received nothing from any person including the company, YI. There was, resultantly no receipt in FY 2010-11 that was taxable as income in AY 2011-12.

23. It is submitted that YI did not declare a dividend to its shareholders in FY 2010-11. It did not buy back the shares from its share-holders. That company did not issue any bonus shares. In sum, there was no transaction between 22.01.2011 and 31.03.2011. Hence, the assessees received nothing from Young Indian in FY 2010-11 that could be taxable as income in AY 2011-12.

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24. Mr. Chidambaram and Mr. Datar argued that in any event, the Section 56(2)(vii)(c)(ii) does not apply in view of the fifth proviso, clause *(g)* thereto, which reads:

> "*Provided further that this clause shall not apply to any sum of money or any property received—*
> ....
> *(g) from any trust or institution registered under section 12AA;*"

It is argued that YI is a Section 25 company. On 29.03.2011, it applied for exemption under Section 12AA of the Income-tax Act, which was granted to it on 09.05.2011 with effect from the year 2010-11. Resultantly, on 22.01.2011 (and even on 31.03.2011), YI was a Section 25 company entitled to exemption under Section 12AA of the Income-tax Act. By virtue of the proviso referred to above, Section 56(2)(vii)(c)(ii) cannot be invoked against the petitioner-assessees. Counsel stated that the Section 12AA exemption was purported to be cancelled by the competent authority by order dated 26.10.2017 w.e.f. AY 2010-11. It was urged that the cancellation order is illegal because an exemption cannot be cancelled by an administrative authority with retrospective effect [*Assistant Commissioner of Income Tax vs. Agra Development Authority:* (2018) 302 CTR 308 (All)*; Delhi & District Cricket Association vs. DIT (Exemption):* [2015] 38 ITR(T) 326]. It is argued further that the cancellation order has been challenged before ITAT by YI.

25. Mr. Datar argued that both in law and on the facts, the petitioners could not, and did not, receive anything from YI. Therefore, they were under no obligation to declare this "non-receipt" event in the returns filed by them. Reliance is placed on Circular SRO 432 dated 18.02.1956 under section 25of the Companies Act.

26. Without prejudice to the above submission, learned counsel state that the application of Section 56(2)(vii)(c)(ii) read with Rule 11UA to the present case is deeply flawed for multifarious reasons. It is stated that *firstly,* the AO has applied

the wrong version of Rule 11UA. The correct rule in force on 22.01.2011 uses the phrase "book value". *Secondly* Rule 11, in its essentials, takes note of the Assets - Liabilities of the company, YI, i.e. net worth. A-L must be divided by the ***total*** number of shares (PE). The divider is, therefore, 5000, not 1100 as incorrectly employed. The multiplier (PV) is correctly taken as 1900, the number of shares held by the petitioners. Since the divider is wrong, the calculation and the result are wrong, and hence the amount of tax that has allegedly escaped tax is wrong. No re-assessment can be made on the basis of such a fundamental error and "reason to believe" based on the said fundamental error. *Thirdly* the debt was for ₹ 90.21 crore. At its worst, the value of the equity converted could be ₹ 90.21 crore. But the said figure was "magically" transformed to ₹ 407 crore and the Petitioners' share is valued at astronomical levels (₹ 154 crore in the case of Mr. Rahul Gandhi, ₹ 90.21 crore in the case of Ms. Sonia Gandhi and ₹ 90.21 crore in the case of Mr. Oscar Fernandes). This calculation is plainly wrong and bizarre. No reassessment can be made on the basis of a wrong and bizarre calculation and "reason to believe" based on the said wrong and bizarre calculation.

27. Both counsel argued that the "reason to believe" of the AO is perverse. On the facts of the present case and the applicable law, no reasonable person could have come to the conclusion that there is "reason to believe" that income has escaped assessment. It is obvious that the AO had not applied her mind to either the facts or the applicable law. Therefore, she did not have, and could not have had, the requisite "reason to believe". Here, reliance is placed on *Income Tax Officer v. Lakshmani Mewal:* 103 ITR 437(SC); *Commissioner of Income Tax v. Orient Craft Ltd.*354 ITR 536 (Del); *G.S. Engineering & Construction Corporation v. DDIT*-357 ITR 335(Del) and *Shipra Srivastava v. ACIT:* 184 Taxman 210 (Del).

28. Counsel attack the satisfaction recorded by the PCIT as perverse. It is urged that the case was apparently submitted to him only late on 31.03-2018. According

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to the Order of the AO dated 31.07.2018 (rejecting the objections to the "reasons"), the PCIT did not take more than 20-30 minutes to record his satisfaction. There is nothing in the PCIT's handwritten note to show that he had applied his mind to the facts of the applicable law. In particular, there is nothing to show that he considered any of the issues inherent in this case, which were argued on behalf of the assessees; particularly there is nothing to show that the PCIT had applied his mind to a) the effect of conversion of debt into equity b) that a shareholder has no interest in the property of the company; c) that the same income cannot be taxed in the hands of two persons in the same assessment year; that the assessees received only some shares and nothing more; d) that YI is a Section 25 company that enjoyed exemption under Section 12AA on 22-1-2011 as well as on 31.03.2011 and lastly that that the invocation of Section 56(2)(vii)(c)(ii) was patently erroneous; and that there is a fifth proviso, clause (g) to the said Section, besides that the AO had applied the wrong Rule 11UA.

29. Counsel challenged the ACIT's order rejecting the petitioners' representation, stating that the AO justified the PCIT's satisfaction on the ground that he had been *"monitoring the case after receipt of the information from the investigation wing"* They urge that this clearly shows that the PCIT had involved himself in the case even before the AO formed her "reason to believe". The natural and inescapable inference is that the AO acted under the instructions and guidance of the PCIT and did not independently form her "reason to believe". Hence, the initiation of the re-assessment proceedings is vitiated and illegal. Reliance is placed on *Commissioner of Income Tax v. Greenworld Corporation:* 314 ITR 81(SC) and *Commissioner of Income Tax v. S. Goyanka Lime & Chemicals Ltd.* 56 taxmann.com 390 (MP).

30. Learned senior counsel submitted that re-assessment proceedings have been launched also against YI, in which an order of re-assessment dated 27.12.2017 has been passed. In that order, in para 8.2 it was concluded

> *"In absence of any evidence that the AICC had actually advanced loan of ₹ 90.21 crore to the AJL and keeping in view the fact that quantum of the loan was tailor made to allot 99% shares of the AJL to the assessee, I am of considered view that alleged loan of ₹ 90.21 crore was not actually a loan but was only a paper entry and an artificially inserted step as part of a scheme of takeover of the AJL by the assessee for a song i.e. without making any payment."*

It is submitted that contrary to the above, in the present proceedings, the case of the AO is that there was a genuine loan owed by AJL and it was this loan that was acquired by Young Indian for a consideration of ₹ 50 lakhs. The revenue, therefore, cannot be allowed to take contradictory positions in respect of the same transaction (namely, the loan) in respect of two proceedings (one against YI and the other against the shareholder/assessees). If the order of re-assessment dated 27.12.2017 in the YI's case is correct, the entire basis of the notice of re-assessment and the reasons in the present proceedings will fall to the ground.

31. Mr. Tushar Mehta, learned ASG for the Union emphasized the limited scope of this court's jurisdiction in exercise of judicial review over reassessment notices. He stated that the judicial pronouncement defining the scope of judicial review have consistently shown that *firstly* the High Court would not substitute its own "reasons to believe" in place of "reasons to believe" recorded by the AO; *secondly* the recording of "reasons to believe" by the AO is necessarily tentative and *prima facie* and not expected, rather desirable that the AO does not record any conclusive opinion; and *thirdly* that the court, in exercise of its writ jurisdiction would not go into either "sufficiency of reasons" or "correctness of reasons" and "adequacy of reasons". So long as there are reasons recorded based upon tangible material, the High Court would not interdict the proceedings at the stage of section 147. It was *lastly* submitted that if on an examination of the AO's "reasons to believe" the court finds that a second view is also possible, it would refrain from interfering at the stage of issuance of notice under Section 147 merely because a

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second view – other than the view recorded by the AO – is possible. The ASG relied on *Acorus Unitech Wireless Pvt. Ltd. v. ACIT*(2014) 362 ITR 417 which held that:

> *"it is important to restate an accepted, but often neglected principle, that in its writ jurisdiction, the scope of proceedings before the Court while considering a notice under Section 147/148 is limited. The Court cannot enter into the merits of the subjective satisfaction of the AO, or judge the sufficiency of the reasons recorded, but rather, determine whether such opinion is based on tangible, concrete and new information that is capable of supporting such a conclusion".*

Counsel also relied on *Commissioner of Income Tax v Rajesh Jhaveri Stock Brokers (P) Ltd.*, (2008) 14 SCC to state that "reason to believe" cannot be read to mean that the AO has to finally ascertain the facts by legal evidence or conclusions. It is submitted that what is required is "reason to believe", but not the established fact of escapement of income. In other words, at this stage, whether the materials available can prove decisively that there was escapement of income, is not a relevant circumstance at the stage of reassessment, because the AO's opinion is based on his subjective satisfaction and appraisal of the facts and materials available with him. Reliance is placed on *Income Tax Officer v. Selected Dalurband Coal Co. (P) Ltd.* (1997) 10 SCC 68 and *Raymond Woollen Mills Ltd. v. ITO* [(2008) 14 SCC 218 (Ref to the latter, which states that "*the sufficiency or correctness of the material is not a thing to be considered at this stage*."). The ASG points out that the assesses cannot complain that there was a change of opinion since this issue was never examined in the original assessment proceedings. In fact, this issue does not arise since Mr. Rahul Gandhi had failed to disclose truly and fully that he was shareholder or had any interest in YI at the relevant time. As regards others, it is submitted that since there was no scrutiny assessments and their returns were processed under S. 143(1). *Deputy Commissioner of Income Tax v Zuari Estate Development & Investment Co Ltd*

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2015 (15) SCC 248 has reiterated that "*there being no assessment under Section 143(1), the question of change of opinion, as contended, does not arise.*"

32. In the case of the assessees/shareholders of YI, this is the taxable event i.e. 22.1.2011 [date of allotment of shares] as, it is on this date that they were allotted shares of Young Indian at ₹ 100/- per share. As on 28.12.2010, the "assigned debt" of ₹ 90.21 crore is an "asset" / "receivable" of Young Indian and the value of shares allotted to each of them needed to be calculated / determined keeping the value of this asset in mind in order to compute the fair market value of the shares received by the Petitioner in terms of Section 56(2)(vii)(c)(ii).In this case, Assessing Officer (AO) is not seeking to reopen the assessment on the basis of treating assets of Young Indian as the income of the Petitioners – shareholders. The quantified asset of ₹ 90.21 crore is taken only to ascertain / calculate the fair market value (FMV) of the share received by the shareholders in terms of Rules 11UA.

33. It is submitted that the *prima facie*" reasons to believe" of the AO that the income escaped assessment in the present case are not based upon the allotment of shares by AJL to YI. The re-assessment was resorted because it was *prima facie* found that *"income from other sources"* stipulated under Section 56 escaped assessment with respect to the fair market value of shares allotted to the assessees by YI on 22.01.2011. It is submitted that in this case 22.01.2011 was the taxable event, *when shares were allotted to the assessees*, at a face value of only ₹ 100 per share since, in terms of provisions of Section 56 read with Rule 11UA, the fair market value ought to have been determined- which worked to ₹ 8,15,708/16 per share while calculating the value, in terms of Rule 11UA.

34. The learned ASG also argued that when the debt of ₹ 90.21 crore was assigned by INC to YI on 28.12.2010 there were two shareholders, viz. M/s. Suman Dubey and Shri. Sam Pitroda- both holding 550 shares of the face value of ₹ 100 each. As these individuals were existing shareholders, though YI received

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the assets (in the form of "debt receivable"), the ratio in *Bachha F. Guzdar* (*supra*) protected them, as existing shareholders. Explaining that when the asset of the company increases (in the form of "debt receivable"), the ASG submitted that the fair market value of its shares also increases correspondingly and, therefore, any new allotment of shares thereafter can only be at the fair market value as determined under section 56(2)(vii)(c)(ii) read with Rule 11UA. The Petitioner/assessees became shareholders on 22.1.2011 "receiving" the shares @ ₹ 100 per share which *was not the fair market value (as on 22.01.2011).* Accordingly the fair market value was computed under section 56(2)(vii)(c)(ii) read with Rule 11UA. The said calculation of "*fair market value of shares*" is also made only taking into account ₹ 90.21 crores as the asset of YI and not computing the immovable property worth approximately ₹ 413.40 crores in which YI acquired beneficial interests on 26.02.2011 by virtue of conversion of debt into equity by AJL giving 99 per cent of its shares to YI. It is submitted by the ASG that the said sum of ` 90.21 Crores was considered only for computing the fair market value of the shares allotted to the assessees. They are not sought to assessed for ₹ 90.21 crores.

35. It is argued that reassessment is based on tangible material and is legal. The ASG urged that the reasons recorded for issue of notice under Section 48 reveals that the AO's belief this case was based on credible information and documents received from investigation wing [much after completion of original assessment], documents and information/material/evidence collected by the AO during the follow up enquiry as a sequel to receipt of information from investigation wing and analysis of facts emerging therefrom and the relevant provision of the Act as well as the judicial pronouncements. Elaborating on this, it was submitted that the TEP and report of the investigation wing in which significant observations were recorded showing that the only purpose of incorporation of YI appeared to be to acquire properties of AJL having value of several hundred crores for the benefit of

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the assessees/shareholders through takeover of AJL. It was also pointed out that this process was completed within a short period of 3 months (on 26.02.2011) from date of incorporation of YI on 23.11.2010. The ASG submitted that findings of the assessment order of YI dated 27.12.2017 and order of cancellation of registration grated to YI under Section 12A dated 26.10.2017 (copies of which were obtained by the AO) as recorded in Para 5.1 of reason recorded that tax exemption granted to YI on 9.5.2011 was cancelled w.e.f. AY 2011-12 and income of YI was brought to tax for A.Y 2011-12 for the reason that YI had not carried out its activity as per its objects and income of YI was taxable under the Income Tax Act. In fact the order granting registration under Section 12A dated 09.05.2011, had imposed a condition that if any fraud or misrepresentation was discovered, the exemption would stand withdrawn.

36. It was submitted that a scrutiny of assessment records of Mr. Rahul Gandhi revealed that in response to a query under Section 142(1) he furnished a false information that he was not a director of any other company (including YI). Counsel stated that an analysis and applicability of Section56(2)(vii)(c)(ii) and Rule 11UJ read with Rule 11UA(1)(c) (b) was made by the AO along with computation of income which escaped assessment.

37. The ASG contended that it is evident from these facts that the AO not only carefully examined TEP and report of investigation wing but has also made her own enquiryand collected credible and reliable evidence in form of assessment order of YI for A.Y.2011-12 and the order of competent authority cancelling tax exemption to YI w.e.f. AY 2011-12. The AO has also brought on record the instance of concealment of information by the assessee relevant to assessment of his income. The AO too analysed the relevant provisions carefully before prima facie computing income, which had escaped assessment. The reasons recorded by the AO were approved by the competent authority under Section 151 of the Act after recording his reasons. The reassessment notice was issued on 31.3.2018

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within time limit as stipulated under Section149 of the Act and served on the assessees on 31.03.2018 through three modes viz. speed post/registered post, digital transmission and email communication. These facts establish that the requirements of provisions of section 147, First Proviso to section 147, Sections 148, 149 and 151 were all complied with in this case.

38. Refuting the petitioners' submissions as incorrect the ASG urged that for the revenue, the conversion of debt (owed by AJL to INC (later assigned to YI)) into 99% equity of AJL's shares in favour of YI is not the taxable event for the assessees. Therefore, this subsequent event, which took place on 26.02.2011, was wholly irrelevant for the purposes of the assessees. The taxable event in these cases is the allotment of YI's shares to the assessees @ ₹ 100 per share on 22.01.2011 *"for a consideration, which is less than the aggregate fair market value of the property"* and it is the difference between the fair market value and the actual consideration paid for the shares which is sought to be assessed as "income from other sources" in accordance with Section 56(2)(vii)(c)(ii) read with the Rules. It is argued that when the right to recover the loan from AJL was assigned by INC to YI as is alleged by them on 28.12.2010 through an assignment deed [prior to which a Journal Entry was also made by AJL substituting YI in place of AICC as the lender], the value of YI's shares stood increased. It is well settled in law that "loan receivable" in the lender's balance sheet is an asset and, therefore, once YI received the right to recover the loan of ₹ 90.21 Cr from AJL as on 16.12.2010/28/12/2010, there was an increase in YI's assets as well as the value of its equity shares, which was hitherto low. Later, on 22.1.2011 when YI's shares were received by the assessees, on allotment and/or transfer at a face value of ₹ 100 per share, it was well below the fair market value of the share as stipulated under Section 56(2)(vii)(c)(ii) read with Rule 11U(j) read with Rule 11UA(1)(c)(b) as it stood then. This being the taxable event/income in the hands of

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the Petitioners cannot be said to lead to any double taxation since this event has not been taxed in the hands of YI or any other entity whatsoever.

39. The learned ASG argued that the assesses' claim that the same income was taxed in their hands and YI is contrary to facts since the assesses' income sought to be assessed relate to events prior to take over of AJL by YI on 26.02.2011 i.e. on allotment of share to the assessees, on 22.01.2011 whereas YI's income taxed under Section 28(iv), accrued to it as sequel to takeover of AJL by it on 26.02.2011. The argument that even if there was taxable income it cannot be taxed in hand of shareholder of YI has been raised due to an erroneous understanding of the revenue's case by the assessees and by applying a wrong taxable event.

40. Dealing next with the assessees' submission that there was no obligation to disclose any interest in a Section 25 company, as it cannot declare a dividend or part with property it was argued that the Income Tax Act does not distinguish between Section 25 company and other companies. So far as the Companies Act is concerned, Section 25 company can undertake even *"commercial activities"* and except the prohibition against the paying dividends to its shareholders and deploying its profits for its objects only, there are no other restrictions imposed upon Section 25 company and it is similar to any other company in all other respects. As a matter of fact, Section 25(2) makes it abundantly clear that except the limitations prescribed under section 25(1), all obligations of other companies are imposed on section 25 company also. Section 25 (1) (b) and (2) are relied upon to say that though such companies may not declare dividend to members, they can certainly earn profit in any of its permissible activities and is, therefore, a taxable entity. That these companies need an exemption from payment of tax under section 12A clearly reflects that the Income Tax Act treats a company under Section 25 to be a taxable entity. It is submitted that, therefore, when Mr. Rahul Gandhi was asked on 06.08.2013 by the AO to *"furnish details of all sister concerns and legal entities where you have interest as a partner or director "*he

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replied stating that *"During the relevant previous year the assesse was not a partner or Director of any other legal entity."*The learned ASG submitted that by giving such information, he failed to make a true and full disclosure of a material fact i.e. his acquiring shares of YI on 22.01.2011 at the face value viz. ₹ 100/- per share and thereby attempted to pre-empt any further question on the issue and subsequent investigation.

41. It is submitted that in law were this court were to hold that an individual assessee who is a shareholder of a company under Section 25 need not disclose his "interest" in such Section 25 company, inevitably such companies can be used as conduits for parking undisclosed income and may even be used for money laundering. It is submitted that further, that its nature, a Section 25 company may derive income for its activities and increase its corpus manifold. Individual directors or shareholders [say four in number in the present case], may not disclose their interest in such section 25 company during their individual assessments. After the limitation period for reopening ends, they can convert Section 25 company to a normal company since there is no prohibition in that regard. Such few shareholders, thereafter would become virtually owners of such a huge corpus without paying any tax on their investments during relevant period which can never be the intention of the legislature.

42. It is urged that the argument that since YI is a Section 25 company (therefore releasing the directors from obligation to disclose their interest) is based upon an unfounded presumption that shares of a company formed under section 25 continues to value the same, i.e. ₹ 100 per share in this case and that there cannot be any increase in the value of such share when a shareholder wants to transfer it. Such assumption is attacked as unsustainable in law as well as on fact. The face value of share of any Section 25 company can be ₹ 100 -or any other amount such share would not only increase in its monetary value but is also transferable at *"fair market value"* and this contingency is stipulated in YI's Memorandum of

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Association. The portion of Memorandum of Association relevant for this purpose, relied on is reproduced below:

> *"4.11 Upon a shareholder (other than a Founder member) ceasing to be a Member whether pursuant to Article 4.11, or by reason of the death of the Shareholder or otherwise ("Outgoing Member) he shall automatically cease to enjoy the benefits and privileges including voting rights, of a Member, and the shares if any held by the Outgoing Member ("Transfer Shares") shall be held in abeyance and the Outgoing Member or his nominee or legal heirs, as the case may be, shall be deemed to have authorised the Managing Committee in its sole and absolute discretion, to determine the person to whom the Transfer Shares shall be transferred ("Transferee") as described hereunder:*
>
> a. *Every outgoing Member, including the deceased outgoing member's nominee or legal heirs, shall be bound to offer the shares held by such outgoing member to the Managing Committee for sale and immediately upon a Shareholder ceasing to be Member pursuant to Article 4.10 or by reason of the death of the Shareholder or otherwise the Managing Committee shall automatically be constituted as the agent for sale of the said shares held by the outgoing member, at the discretion of the Managing Committee, at a value certified as mentioned in sub clause (b) hereunder. The appointment of the Managing Committee as agent of the outgoing member for sale and transfer of the shares of the outgoing member shall not be revocable except with the sanction of the Managing Committee.*
>
> b. *The Managing Committee shall sell the shares of the outgoing member at the price which the Auditor of the Company for the time being shall certify by writing under his hand to be in his opinion the fair selling value thereof as between a willing vendor and a willing purchaser.*
>
> c. ***Upon the price being ascertained as aforesaid**, the Managing Committee shall forthwith give notice to all the Founder Members of the Company of the numbers and price of shares to be sold and invite each of them to state in writing within twenty-one days from the date of the said notice whether he is*

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willing to purchase the offered Shares / and if so, what maximum number of the said Shares. For the avoidance of doubt, the Founder Member may purchase the shares in his own name or nominate any other person or person to purchase the whole or any part of the shares which the Founder Member is entitled to purchase pursuant to this Article 4.11.

d. At the expiration of the said twenty one days, the Managing Committee may allocate the said shares to or amongst the Founder Member who shall have expressed his or their willingness to purchase as aforesaid [if more than once] so far as maybe prorated according to the number of shares already held by them respectively, provided that no Founder Members shall be obliged to take more than the said maximum number of shares so notified by him as aforesaid. Upon such allocation being made the vendor / Outgoing Member shall be bound on payment of the said price to transfer the shares to the purchaser or purchasers thereof and if he defaults in so doing, the managing Committee may receive and give a good discharge for the purchase money on behalf of the vendor / Outgoing Member and enter the name of the purchaser in the register as holder by transfer of the shares so purchased by him.

e. Proceeds received from the transferred / purchaser shall be distributed to the outgoing member / transferor of shares or his legal heirs.

f. However, if no such offer is made within the expiration of the said twenty one days, the Managing Committee shall buyback or cancel as per the applicable laws the shares so put up for sale as per clause (a) hereinabove mentioned."

43. The learned ASG relies on the above condition to state that every share in YI, despite its status as a not-for-profit company has its value other than face value. If any shareholder wishes to sell her or his shares the procedure contemplated is to be followed and the shares would be sold at "fair selling value". Also, points out the ASG, the assessees' contentions that YI is a Section 25

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company and its shareholders have no" pecuniary interest", is fallacious and unsustainable as not only shares are sold at "fair market value"[and not at the face value] but the sale proceeds goes to the shareholders who sell the shares. It is submitted that the A.O., *prima facie,* had a justified reason to believe that at the time when fresh shares were allotted to the assessees, on 22.01.2011, the value of their shares was not ₹ 100/-each but was ₹ 8,15,708.16 per share as calculated in terms of Rule 11 UA. Such shares can be transferred at the rate of ₹ 8.15,708.16 per share which is "fair selling value" as per Memorandum of Association of YI and "fair market value" is stipulated under section 56(2)(vii)(c)(ii) read with Rule 11 UA.

44. It is argued that Section 56 creates a legal fiction that if an assessee "receives" any property (shares in the present case) *for a consideration which is less than the aggregate fair market value of the property,* such property (i.e. shares in this case) would be "income from other sources". Further, the ASG dealt with the petitioners' argument that Rule 11UA was not followed correctly (i.e. that the pre-existing rule – at the time of allotment- was not taken into consideration and that the paid-up equity capital [PE] of YI, treated to be only ₹ 1,10,000 [based upon the paid-up capital equity of 1100 shares], is incorrect and the "PE" in the below mentioned formula as stipulated in Section 11UA should be treated as ₹ 5,00,000 on the basis of paid up equity share capital of 5000 shares). Counsel stated that this ground has to be considered on merits during the re-assessment proceedings and it may not be necessary for this court, in exercise of its jurisdiction under Article 226, to go into this question. Even otherwise, submitted the ASG Rule 11 UA, as applicable for AY 2011-12 before substitution w.e.f. 29.11.2012] was taken into consideration. It is urged that nevertheless, calculating PE at ₹ 1,10,000 is correct as per Rule 11UA [as it existed then]. Even, *arguendo*, if the element of "PE" in the below mentioned formula is treated to be 5,00,000 (as the assessees urge), the "fair market value" would come to ₹1,79,455.79 *per share*.

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Considering the total number of shares received by Mr. Rahul Gandhi is 1900, the amount of income escaping assessment will still be ₹ 34,09,66,020. In other cases also, even if the calculation is made as argued by the Petitioners, the amount would exceed ₹ 1,00,000/- as stipulated in Section 147 read with Section 149(1)(b)as the jurisdictional requirement to reopen the proceedings. In other words, the said argument would not make any difference to the reopening at this stage. The formula stipulated under Rule 11 UA is as follows:

45. Lastly, the ASG denied that the Principal Commissioner had not applied the mind to the facts of the case, while approving the reassessment proposal. He relied on the handwritten note, recording approval, in this regard, (as the original records were produced for consideration of the court). The ASG relied on the Division Bench judgment of this court in *Principal Commissioner of Income Tax v. Meenakshi Overseas Pvt. Ltd.,* ITA 651/ 2015 (judgment dated 11.1.2016) particularly the following extract:

> "*16. ..For the purpose of Section 151(1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151(1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled."*

Analysis and Conclusions

46. The first issue which was urged, attacking the reassessment notice and proceedings emanating from it, relates to the satisfaction recorded by the AO (that she had "reasons to believe") that income had escaped assessment. The first limb of this issue, so to say, pertains to the attack on the materials (in the form of two reports of the investigation wing and the TEP), which it is said, were with the

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revenue authorities for some substantial time, before the reassessment notice was issued, literally, at the eleventh hour.

47. The assessees did not argue that the material which was relied upon was stale; their submission, rather was that reliance on material which was lying with them for over 2 years, ought not to have been in the form of reassessment notice at the eleventh hour; this move, they state, constitutes *mala fide* exercise of power; it also reeks of non-application of mind. Now, none of the authorities cited – or available, on a search of the case law, to the extent possible, show that the courts in exercise of judicial review have intervened to quash a reassessment notice, on the basis of material that is not acted upon promptly or that the material is *stale.* The emphasis is, rather, whether the material relied on is relevant, and whether material facts were disclosed. *Income Tax Officer, Jodhpur vs. Purushottam Das Bangur and Ors*. [1997] 224 ITR362 (SC) states that as long as there is some material germane to the issue, it is not incumbent upon the AO to conduct a further investigation and that she can issue the reassessment notice on the basis of existence of *relevant* material:

> *"On the basis of the said facts and information contained in the said letter, the Income-tax Officer, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment."*

48. In *Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd*. [2007] 291 ITR 500(SC) the Supreme Court spelt out the twin requirements which had to be satisfied as a *sine qua non* for a valid reassessment notice:

> *"firstly the AO must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were*

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conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under Section 148 read with Section 147(a). But under the substituted Section 147 existence of only the first condition suffices. In other words, if the assessing officer for whatever reason has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment."

Phool Chand Bajrang Lal v. Income Tax Officer [1993] 203 ITR 456(SC) emphasised on the veracity of information supplied previously be the assessee during the course of the regular assessment, while considering the validity of a reassessment notice; it stated as follows:

> *"From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming this belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."*

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In Income Tax Officer, Calcutta v. Selected Dalurband Coal Company Pvt. Ltd 1997 (10) SCC 68, the Supreme Court held as follows:

> *"At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was a invalid. Inasmuch as, as a result of our order, the reassessment proceedings have now to go on, we do not and we ought not to express any opinion on merits."*

49. As far as the question of satisfaction recorded by the Principal Commissioner, under Section 151 (1) is concerned, the legal requirements were spelt out by the Division bench ruling in *Meenakshi Overseas* (*supra*), in the following terms:

> *"For the purpose of Section 151(1) of the Act, what the Court should be satisfied about is that the Additional CIT has recorded his satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice". In the present case, the Court is satisfied that by recording in his own writing the words: "Yes, I am satisfied", the mandate of Section 151(1) of the Act as far as the approval of the Additional CIT was concerned, stood fulfilled."*

In the present case, the PCIT recorded, on reassessment proposal on the file of each assessee, that *inter alia,* the "lifting of veil" over the tripartite *"arrangement"* between AICC (i.e. INC), AJL and YI to tax the assessee under Section 56(2)(vii)(c)(ii) of the Act, the sum of ₹ 48,93, 64,896/-. The PCIT, after stating this also recorded that *"I am satisfied that the AO i.e. ACIT…has sufficient information in her possession which leads to reasons to believe that the assessee would have income which had escaped assessment which exceeds Rs. 1 lakh".* In view of the ruling in *Meenakshi Overseas (supra),* therefore, the satisfaction recorded by the PCIT was adequate and in accordance with legal requirements.

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50. Were the notices (of reassessment to the assessees) not served in accordance with law or prescribed procedure, within the time prescribed? The argument of the assessees on this issue are broadly that the hasty intimation through email process, of the reassessment for the relevant period, shows facial *mala fides.* The further submission is that the speed post communication with notice, later, was of a copy; the proper email communication with a scanned copy of the intimation, in the relevant form was received later.

51. Reliance was placed on the Centralized Communication Scheme, 2018 dated 22.02.2018 the relevant part of which reads as follows:

> *"(2) The notice shall be issued under digital signature of the designated authority.*
> *(3) The notice shall be served by delivering a copy by electronic mail, or by placing a copy in the registered account on the portal followed by an intimation by Short Message Service…"*

The assessees further state that the relevant instruction, i.e. Notification No. 8, was not adhered to; the extract of that notification reads as follows:

> *"5.2 Use of digital signature by Assessing Officer: All departmental orders/communications/notices being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer."*

The extract of notification No. 1/2018, which also deals with the same subject, relied on, is as follows:

> *"4.2 Use of digital signature by Assessing Officer: All departmental orders/communications/notices being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer."*

52. The assessees' objection in their argument with respect to alleged improper mode of communication appears to be to challenge the notice (of reassessment) as of no consequence and that since it was not compliant with the instructions, it was

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"no notice" and that the subsequent modes of communication, were of no avail, since they were despatched or received after 01.04.2018. This court is of the considered view that the argument is insubstantial. The object of imposing time limits is to ensure that both the assessees and the tax administrators have the same standard on which the extended period available under the law are to be judged. Therefore, if it is shown, that the AO issued and the assessee received notice, which was within the period of limitation, the form of the notice or the fact that it was through a channel not deemed "regular" is not relevant. The violation of the circulars relied on at best can bespeak of irregularity, but the fact remains that all the three assessee petitioners received email intimations about the reassessment and reopening of their AY 2010-11 assessments before the end of 31.03.2018. In these circumstances, the question regarding alleged improper mode or manner of issuance of email notices does not go to the root of the matter; the notices were issued in time, and served within the time prescribed.

53. As regards *mala fides* (regarding hasty issuance of notices) this court has previously noticed – in the context of allegations that the PCIT had not applied the mind, that such was not the case. There was some material – in the form of investigation reports (though of 2015 vintage) and a TEP (of 2014). The revenue did not show alacrity or swiftness in proceeding to process these documents and materials; however, they cannot be termed as "stale" or irrelevant materials. Apart from a general allegation of *mala fides* (which is more of the kind that is frequently made under the submission of abuse of power or use of statutory discretion for purposes not authorized by law) there is no allegation of personal *mala fides* against any official, or that anyone of them was hostile to the petitioners. Consequently, the mere circumstance that reassessment notice was issued on 31.03.2018 does not vitiate the notice or the proceedings.

54. The next main submission of all the assessees is that the value of a share is something which entitles the shareholder to participate in the profits of the

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company but that she or he does not acquire any interest in the assets of the company. No doubt, *Bacha F. Guzdar* (*supra*) is an authority for that principle of law; subsequent judgments have reiterated the same position. But the court notices that the enunciation of law was in the context of an assertion by a shareholder in a tea company (whose income was treated as agricultural to the extent of 60% and, therefore, exempt) that a *proportionate portion of the dividend* received by her was exempt. The Supreme Court clarified that a shareholder, upon acquiring shares in a company *"becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to Articles of Association, that the profits or the portion thereof should be distributed by way of dividends among the shareholders".* The court was there, not concerned with income from other sources. In the present case, the relevant provision reads as follows:

> *"56. Income from other sources*
> *(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.*
>
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*
> *x x x*
> *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:*
> *x x x"*

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55. Here, by virtue of Section 56 (1) income from any source that is not exempted, “shall be chargeable to income tax.. if it is not chargeable to income tax under any of the heads specified in section 14, items A to E”. This is clearly a deeming provision, which specifically creates a fiction that “the following income” (Section 56 (2)) is chargeable to tax. The section then enumerates what is deemed to be income; the relevant part is that “any property”, *other than immovable property*(is acquired)*“(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”.* Therefore, the differential between the fair market value and the cost of acquisition, constitutes income. The assessees had relied on *Shahrukh Khan v. Deputy Commissioner of Income Tax* 2018 (90 Taxmann.com 284) (Bom) in the compilation of judgments, given at the end of the submissions (not alluded to during hearing) where the revenue sought to re-open the assessment, under Section 147, alleging that there was suppression of the value of shares, which should have been at ₹ 33 per share, and not ₹ 10/- per share. That judgment, in this court’s opinion, has no relevance, because the shareholder *had, in the original returns, declared the value of the shares acquired.* The High Court, quite correctly held that the reassessment was based on a second opinion or a review, which was proscribed in law. The effect of this provision was explained in *Commissioner of Income Tax v. Neelkamal Realtors and Erectors India Pvt. Ltd* 2017 SCConLine Bom 5632 in the following manner:

> *“So far application of section 56 (2) (vii) (b) (ii) of the Act is concerned, it is self-evident that it only applies to individuals and Hindu Undivided Family. Moreover, it seeks to tax the transferee of the property for having given consideration for which is less than the stamp value by Rs. 50,000/- or more for purchase of the property.”*

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56. This court notices that the provision was introduced through an amendment to the Income Tax Act with effect from 01.10.2009. No provision of the like kind existed when *Bacha F. Guzdar (supra),* (dealing with "fair market value" being the basis of determination of a deemed income, in the event of acquisition of unquoted shares,) was decided. As a result, it is held that the assessee's arguments on this aspect are unpersuasive, *prima facie* it cannot be said that in the light of these provisions, there was no merit in its allusion or reference in the reassessment notice.

57. The next main argument is that when asked, Mr. Rahul Gandhi was not under any legal obligation to disclose details regarding his acquiring shares in YI; the submission is that such shareholding is not "interest" in a company; going further it is stated that shareholding YI, being a not-for-profit and charitable company, cannot result in any interest that needs disclosure. It is urged that neither a director nor shareholder has any right to receive dividends in, or interest in the property of such a company. The assessees had argued that the obligations of directors, shareholders or members (of companies) to disclose the interests in a not-for-profit company or in a trust stand on a different footing as in relation to other companies. A two-pronged submission was made in this regard. The one was that by virtue of a general exemption given under Section 25(6) of the Companies Act the Central Government waived the requirements of such disclosure to directors of not-for-profit company is incorporated under section 25; and the other was with respect to exemption [from Section 56(2)(vii)(c) in respect of payments made by trusts, etc. covered by Section 12AA].

58. The exemption granted some time in 1961 reads *inter alia,* as follows:

> ***SO 1578, Published in the Gazette of India, Part II, Sec 3 (ii) on 8th July, 1961***
> **(Modified by *SO 2767 dated 5-8-1964; GSR 73, dated 30-12-1965 &SO 35(E) dated January 9, 1976***

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"In exercise of the powers conferred by sub-section (6) of Section 25 of the Companies Act, 1956 (1 of 1956), the Central Government has directed that a body to which a license is granted under Section 25 aforesaid shall be exempt from the provisions of the said Act specified in column (1) of the Table below to the extent specified in the corresponding entries in Column (2) of the said Table:

TABLE

Provisions of Act	*Extent of exemption*
Section 2(45)	*In so far as it required the appointment of an individual to perform the duties which may be performed by a secretary under the said Act and any other ministerial or administrative duties only if he possesses the prescribed qualifications*
Section 147	*The whole.*
Section 160(1)(aa)	*The whole.*
Section 166(2)	*The whole, provided that the time, date and place of each annual general meeting are decided upon beforehand by the Board of Directors having regard to the directions, if any, given in this regard by the company in general meeting.*
XXXX	*XXXX*
Section 292	*Matters referred to in clauses (c), (d) and (e) of sub-section (1) may be decided by Board by circulation instead of at a meeting.*
Section 299	*Shall apply only to cases to which sub-sections (1) and (3) of section 297 apply.*
XXXX	*XXXX*

Note that any exemption granted by the Central Government cannot be taken advantage of, where the body concerned has, by its articles, made its own provision in respect of the subject matter of such exemption."

59. The specific contentions of counsel for the petitioner-assessees is that the normal disclosure requirements enacted by virtue of Section 299, which talks of disclosure of interest of directors of every company who is in any way directly or indirectly connected or has interest in a contract or arrangement – or proposed contract arrangement entered into between or on behalf of the company is obliged to state his interest in the meeting of the Board of Directors. *Prima facie*, it appears to this court that the exemption from disclosure (which Section 25(6) deals with)

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do not in any way deal with *the individual obligations of the shareholders or directors of the company* in their individual capacity, to make disclosure to other statutory authorities such as under the Income Tax Act.

60. A plain look at the exemptions granted relied upon would reveal that the nature of the exemptions are with respect to the duties of directors to disclose one or the other issue pertaining to their duties and in regard to affairs of the company. For instance, Section 209 which talks of books of accounts of the company and renders liable directors by virtue of Section 29(6), is exempted. This means that a non-profit company which defaults in regard to the maintenance of its books of account (an obligation enacted by the main provisions of that section) cannot lead to any liability of its directors. Likewise in the event of default of Section 219, which empowers members to seek copies of balance sheets of auditor's reports, etc the director can be held liable; this is exempted by the notification relied on. Section 257 empowers individuals other than retiring directors to stand for directorships. This is exempted – the reason is not far to seek because this would be provided for, having regard to the underlying charitable objectives of the not-for-profit company. Therefore, the application of this provision is exempted. Likewise, any increase in directorships or membership of the board of directors requires government sanction by virtue of section 259. This too stands exempted. Section 299 is of a similar nature

61. The tenor of provisions exempted, highlight the peculiar nature of a not-for-profit company whose affairs cannot be looked into in the same manner as in the case of a commercial entity or a company that carries on business in the normal course. In the case of a not-for-profit company like a trust the business activities are aimed solely at feeding the trust and furthering their objectives. The rigid insistence on the disclosure obligations and duties and responsibilities of directors, therefore, would detract the effort of feeding charity and furthering charitable objectives.

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62. This, however, does not automatically mean that the exemption in regard to provisions of the Companies Act and the disclosure which individual directors have to make to the Board, would in any manner suspend obligations under other laws. In this case, Section 52(2) (v)(c) (ii) clearly deems that the acquisition of certain shares or property can lead to income and the mechanism for dealing with it. Unless that income or information related to it is exempted from the provisions of the other laws -such as taxation laws which enact *individual taxation events,* the returns that an individual member (or directors) have to disclose regarding the relevant event of share acquisition, it cannot *prima facie* be held that the individual is exempted altogether from disclosing her or his interest in the acquisition of shares in the not-for-profit company. Here a company acquired an asset on 13.12.2010 (i.e. assignment of a debt from AJL, to the tune of ₹90.21 crores, for consideration).When the assessees acquired the shares through allotment, the taxing event, as it were, occurred on account of the differential between what is said to be market value and what was value paid by them. As a result, it is held that the primary obligation to disclose about the acquisition of shares, was not relieved by virtue of the notification under Section 25 (6) of the (now repealed) Companies Act, 1956. It is, therefore, held that *prima facie,* there is no merit in this argument; it cannot be said that the effect of the exemption notification was to relieve the assessees from their obligation to disclose about the acquisition of the shares, which appears to be the taxing event (on account of the differential between the acquisition cost and the fair market value).

63. Reliance was placed on *Arvind Narottam* (*supra*) to say that in the case of a trust (or a not-for-profit company) the benefits – or dividends do not flow to the shareholder (or beneficiary of the trust) and consequently the increase in the share or asset value of a not-for-profit company cannot be taxed in the hands of the shareholder or beneficiary. In that decision, the value of all assets held by three trusts, which provisioned for monetary benefits by way of monthly payments to

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the settlor's son, were assessed to tax under Section 21 (2) of the Wealth Tax Act. The Supreme Court upheld the reasoning of the High Court, which had ruled against this move, and held that:

> *"It is apparent that the assessee was entitled only to the minimum prescribed in each of the deeds of settlement. Whether or not be received any further amount out of the net income of the Trust Fund was left entirely in the discretion of the Trustees. There was no right in the assessee to any portion of the net income in excess of the minimum guaranteed to him. It is the minimum alone which he could claim as his property. So also, on the distribution of the accumulated balance as capital at the end of the stipulated period there was no right in him to receive any part thereof. It was open to the Trustees to ignore him altogether and they could pay it to such other members of the family as they chose.*
>
> *7. In support of the proposition that the expression 'property' is a term of the widest amplitude and that every possible interest is includible therein we are referred to Ahmed G.H. Ariffand Others v. Commissioner of Wealth-Tax, Calcutta, [1970] 76 I.T.R. 471. I have no doubt that the expression 'property' must bear a comprehensive import. The question remains whether what is conveyed under the three deeds of settlement to the assessee is a right to anything more than the prescribed minimum under each deed. I may reiterate that the interest extends to no more than that minimum."*

In this case, given the wording and terminology of Section 56 (2) (vii) (c) (ii), the precedent has no application. It is not the beneficial interest which is in issue here; rather it is the value of the shares acquired on allotment.

64. The next submission made was that disclosure of interest in a not-for-profit company, was not necessary in case of receipt of money or property, from a charitable trust (including a not-for-profit company), in view of the fact that Section 56(2)(vii)(c)(ii) does not apply in view of the fifth proviso, which reads as follows:

"*Provided further that this clause shall not apply to any sum of money or any property received—*
....
(g) from any trust or institution registered under section 12AA;"

65. In this case, the proviso carves out specific exemptions from applicability of the main provision [Section 56(2)(vii)(c)(ii)]. The class of individuals or recipients (of the money or property) is significant; it extends to (a) relative; *(b)* on the occasion of the marriage of the individual; (c) under a will or by way of inheritance (d) in contemplation of death of the payer or donor; (e) from any local authority as defined in the *Explanation* to clause (20) of section 10; (*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.These are generally *beneficiaries for whom the charitable trust (or not-for-profit) is created.* The "deemed income" otherwise accruing by reason of Section 56 (2) (vii) (c) (ii) would be inapplicable to the benefits or amounts received by such beneficiaries. Viewed from this perspective, the assessees' submission that the exemption applies to all benefits on acquiring shares in relation to not-for-profit companies, which may or may not be engaged in commercial activities, i.e.*"from any trust or institution registered under section 12AA"* is unpersuasive. In this case, the revenue had placed reliance on clause 4.11 (b) of the Memorandum of YI, which states that in the event of cessation of membership or death of a member/shareholder, the shares of the outgoing member shall be sold at the fair market value:

"The Managing Committee shall sell the shares of the outgoing member at the price which the Auditor of the Company for the time being shall certify by writing under his hand to be in his opinion the fair selling value thereof as between a willing vendor and a willing purchaser."

The reference to the monetary nature of the transaction – i.e. fair market value, certified by the auditor, means that the promoters and shareholders of the company visualize that the shares of YI – a not-for-profit company- can increase, depending on its activities and income derived by it. As a result of the above analysis, this court is of opinion that the assessees's argument about non-disclosure of their interest upon acquiring the shares (on account of their non taxability at that stage) is unpersuasive; however, it is open to them to urge this on the merits.

66. The next issue which this court would discuss, is the formula applied. The petitioners had urged that the amended rule and not the rule which applied when the shares were acquired, was applied to re-open their assessments. The relevant rule, applicable with effect from 18.02.2010 reads, *inter alia,* as follows:

> *"In exercise of the powers conferred by section 295 of the Income tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-*
>
> *1. **Short title and commencement.** - (1) These rules may be called Income-tax (Second Amendment) Rules, 2010.*
>
> *(2) They shall come into force from the 1st day of October, 2009.*
>
> *XXXXXX XXXXXX XXXXXX*
>
> *11U. **Meaning of expressions used in determination of fair market value**. - For the proposes of this rule and rule 11UA,-*
>
> *XXXXXX XXXXXX XXXXXX*
>
> *11UA. **Determination of Fair Market Value**. - For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,-*
>
> *XXXXXX XXXXXX XXXXXX*
>
> *(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner namely;-*
>
> *The fair market value of unquoted equity shares = (A-L) * (PV) (PE)*
>
> *Where, A= Book value of the assets in Balance Sheet as reduced by any amount paid as advance tax under the Income-tax Act and any amount shown in the balance sheet including the debit balance of the*

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profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.
L= Book value of liabilities shown in the Balance Sheet but not including the following amounts:-
(i) the paid-up capital in respect of equity shares;
(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
(iii) reserves, by whatever name called, other than those set apart towards depreciation;
(iv) credit balance of the profit and loss account;
(v) any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
(vi) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
(vii) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.
PE = Total amount of paid up equity share capital as shown in Balance Sheet. PV = the paid up value of such equity shares.
(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation."

The fair market value of unquoted equity shares, in terms of the above rule is calculable by deducting from the book value of *assets in the balance sheet of the company* (with the permissible deductions, called "A") the book value of *liabilities* (without including paid up capital of equity shares, provision for dividends, reserves, credit balance of P/L account, provision for taxation, etc called "L"), *multiplied by* the paid up value of such equity shares (PV) and divided by the total

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amount of paid up equity share capital as shown in Balance Sheet (PE) (Expressed in the rule as Fair value= (A-L) * (PV) (PE)).

67. The share allotment to Mr. Rahul Gandhi (1900 shares) and Mr. Oscar Fernandes (600 shares) on 22.12.2011, and the allotment of 1350 shares to Mrs. Sonia Gandhi (which increased her holding to 1900) on the same day is said to be the taxing event. The book value of the assets in the balance sheet of the company, YI (which was A) <u>on that day *included* ₹ 90.21 crores</u> and, therefore, *increased*; from this the *liabilities,* (which included the ₹ 1 crore borrowed to acquire the asset) had to be deducted. This reduced the asset value by ₹ 1 crore. The ₹88 crore odd had to be divided by the *paid up value of the equity shares,* i.e. ₹ 5,00,000/- and multiplied by the paid up value of the equity shares of the shareholder. If this formula were applied, the *fair market* value at which Mr. Rahul Gandhi, Ms. Sonia Gandhi and Mr. Oscar Fernandes were allotted the shares (@ ₹ 100/- each) exceeded that amount.

68. The petitioner assessees had argued that the allotment of shares *per se* did not and could not have led to a taxing event, because, in the same financial year, AJL had allotted shares *in lieu* of its debt. This book adjustment, it was submitted did not result in tax liability in the hands of the individual shareholders. This argument, in the opinion of the court, is one that touches intrinsically on the merits of the issue. Besides, the undervaluation event, so to say or the occasion for determining whether the shares allotted were in terms of the Act and rules, arose on 22.01.2011. At least disclosure of this was warranted, whatever the explanations with respect to liability or otherwise of the assessees might have been.

69. This court recollects the seminal authority on the relative obligations of the revenue authorities and the assessee wherever the question of validity of a reassessment notice is involved. In *Calcutta Discount Company Ltd. v. Income*

Tax Officer, Companies District I & Anr. [1961] 41 ITR 191 (SC), where the Court noted:

> *" Before we proceed to consider the materials on record to see whether the appellant has succeeded ,in showing that the Income-tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose material facts, as mentioned in the section, it is necessary to examine the precise scope of disclosure which the section demands. The words used are " omission or failure to disclose fully and truly all material facts necessary for his assessment for that year ". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material, and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his Possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise-the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and taking all these together, to decide what the legal inference should be.*
>
> *There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above., In view of the Explanation, it will not be open to the assessee to say, for example-" I have produced the account books and the documents: You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing*

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> *these account-books and the documents". His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to " omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them-including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.*

70. The entire premise of the reassessment notices in this case is that the non-disclosure of the taxing event, i.e. allotment of shares (and the absence of any declaration as to value) deprived the AO of the opportunity to look into the records. In the case of Mr. Rahul Gandhi, no doubt, the assessment originally completed, was under Section 143 (3). Had he disclosed in his returns or any related documents about the event (share acquisition) the *primary fact* would have been on the record; the AO's subsequent action in pursuing that aspect or letting go of it, after inquiry might well have justified the charge of a second and impermissible opinion on the same subject. However, that is not the case. The TEP and investigation reports – of subsequent vintage (after completion of Mr. Gandhi's assessment), therefore, constituted *tangible material* which in terms of the ruling in *Commissioner of Income Tax vs. Kelvinator of India Ltd* 320 ITR 561 (SC) justified reassessment. In the case of the other two assessees (Ms. Sonia Gandhi and Mr. Oscar Fernandes) the returns filed by them were processed under Section 143 (1). Such instances are not treated as "assessments". *Zuari Estate Development & Investment Co Ltd* (*supra*) is an authority on the subject.

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71. In view of the foregoing discussion and conclusions, the writ petitions have to fail. It is, however, clarified that the observations with regard to the parties' contentions is not conclusive and were recorded for the purpose of disposing of these petitions; the assessees' rights to urge them are reserved in the income tax proceedings. W.P.(C) 8293/2018; W.P.(C) 8482/2018 and W.P.(C) 8483/2018 are accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

SEPTEMBER 10, 2018

HIGH COURT OF DELHI
सत्यमेव जयते