

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 884/JP/2016
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Rameshwaram Strong Glass (P) Ltd. Anasagar Circular Road, Opp. Anand Nagar Rajmandir, 556, A-1, Ajmer	बनाम Vs.	The ITO Ward 2(1) Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCR 6561 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya, Advocate
राजस्व की ओर से / Revenue by: Smt. Seema Meena, JCIT- DR

सुनवाई की तारीख / Date of Hearing : 27/06/2018
घोषणा की तारीख / Date of Pronouncement : 12/07/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from order of the Id.
CIT(A), Ajmer dated 29.08.2016 for the Assessment Year 2013-14
raising therein following grounds of appeal

“1. That the learned CIT (Appeals) Ajmer erred in maintaining the value of share premium at Rs. 22.76 per share as decided by AO as per valuation method provided in Rule 11UA(2)(a) without appreciating the full facts and circumstances of the case. Thus he has not at all considered the second method as provided in Rule 11UA(2)(b) as ascertained

and provided by us duly determined by Fellow Chartered Accountant of ICAI as per discounted free cash flow method which was higher and justify the full premium of Rs. 60/- per share as charged by us from each shareholder. As such the addition maintained for Rs 52,13,600/- against share premium income was without considering our CA certificates based on projection as per project report submitted with bank to take loans and advances.

2. That the CIT (Appeals) has not even considered our written submissions submitted before him at length. He has not at all considered the jurisdiction point even. There was no notice u/s 143(2) in time by competent authority having correct jurisdiction and as such the notice issued u/s 143(2) by correct authority having jurisdiction over the assessee was time barred.

3. That as the project delayed by more than one year due to non-receipt of electricity connection the factory started in FY 15-16 instead of 14-15 as per project report. However as desired by CIT (Appeals), Ajmer we have submitted the share valuation on the basis of actual figure Of FY 15-16 even and according to that also the value ascertained Rs. 65 as admitted by him even in his order but due to non-production in FY 13-14 and 14-15, he was not satisfied with valuation report given by CA as per Rules 11UA(2)(b). That the copy of submissions in report of share valuation on the basis of clause (b) of Rule 11UA(2) i.e., Discounted cash flow as per technical guide on share valuation issued by Research Committee of the Institute of Chartered Accountants of India, New Delhi. The discounted cash flow model indicates the fair market value of a business based on the value of cash flow that the business is expected to generate in future. Accordingly the Appellate Authority should have considered the value as per discounted Cash Flow provided &/or determined by Chartered Accountants as per law.

4. That the order of both the lower authorities are bad-in-law.”

2.1 During the course of the hearing, the ld. AR of the assessee has not pressed the ground no. 2, Hence the same is dismissed being not pressed.

3.1 The Ground No. 4 of the assessee is general in nature which does not require any adjudication.

4.1 Apropos Ground No. 1 and 3 of the assessee , the facts as observed by the AO are that the assessee is a private limited company incorporated on 31.1.2011 which is registered under the Companies Act, 1956. There was no business activity during the starting A.Y.'s, from A.Y. 2011 to 12 to 2013-14, except purchase of a land worth Rs. 3,27,690/-. During the year under consideration, the assessee-company had issued 1,40,000 shares having the face value of Rs. 10 each, at the premium of Rs. 60 per share, receiving a total premium of Rs. 84,00,000/-, over and above the share application money of Rs. 14,00,000/-, as per the following chart:-

Name of the parties to whom share were allotted	No. of shares	Share Application money @ Rs. 10/- per share	Share premium @ Rs. 60/- per share	Total amount received
Rameshwaram Buildmat Pvt. Ltd	50,000	5,00,000/-	30,00,000/-	35,00,000/-
Rameshwaram Architecture Pvt. Ltd	40,000	4,00,000/-	24,00,000/-	28,00,000/-
Shri Oswal Granites Pvt. Ltd	50000	5,00,000	30,00,000/-	35,00,000/-
Total	1,40,000	14,00,000/-	84,00,000/-	98,00,000/-

The assessee was asked to furnish the basis and justification behind the issuance of the shares on premium in spite of the fact that the company did not have any worth except a land of Rs. 3,27,690/-. As per AO, the prerequisite for issue of share at premium is the substantial increase in the net worth of the income which is mainly due to the profitability, credibility, goodwill etc, of the concern. However, such requirements were not available in the present case. Therefore, these shares do not have intrinsic value to give price to premium in the business. In his view, the premium of Rs. 60 per share did not appear to be justifiable. He also referred to the Section of 56(2)(viib) of the Income Tax Act, 1961 (hereinafter referred as the "Act"). The assessee filed a detailed reply in response on 30.11.2015, wherein he mainly contended that receipt of share premium was a capital receipt and was a commercial decision which does not require justification under the law. It was prerogative of the Board of Directors of the company to decide the premium amount and it is the wisdom of the shareholder whether they want to subscribe to share at a premium amount or not. Such receipts are not having the character of an income being capital assets. The AO observed that the assessee raised loans from the above associate concerns and has converted them to shares application/premium money. The appellant vide

letter dated 15.12.2015 provided the calculation of the book value of each share, which comes to Rs. 108/-. However, the assessee issued the shares at Rs. 70 per share i.e Rs. Face value of Rs. 10 per share + Share premium of Rs. 60 per share. The AO found such calculation not in accordance with Rule 11UA and after referring to rule 11UA(2)(b), the AO computed the fair market value ('FMV' in short) of the share based on Book Value and finally held as under :

“Accordingly to the above formula , the fair market value of unquoted equity shares of the assessee comes to Rs 32.76 only and the assessee is entitle to charge premium to Rs 2,27,600/-(32.76(-) Rs 10/-=22.76 x 10000 shares) against which the assessee charged premium of Rs 84,00,000/-. Thus the excess premium of Rs 81,72,400/- received by the assessee is not justified and not in accordance with the amended provisions of section 56(2)(viib) of the I.T. Act.”

Consequently, the excess premium of Rs. 81,72,400 received by the assessee was held unjustified and considered as income from other sources and was added to the total income of the assessee by the AO.

4.2 In first appeal, the Id. CIT(A) partly confirmed the addition by rejecting the valuation done as per Discounted Cash Flow Method by observing as under:

“4.3 I have gone through the assessment order, statement of facts grounds of appeal and written submission carefully. It is seen that w.e.f 01.04.2013 the provisions of section

56(2)(vii) are applicable to the any consideration received for issue of shares which exceeds the fair market value of the shares issued by the appellant company. During the course of appellate proceedings, the appellant has furnished the statement showing fair market value of the shares, claimed to have been computed as per the Discounted Free cash Flow Method, as provided under Clause b of Sub-rule 2 of Rule 11UA. The valuation of the share as per this statement was Rs.119.93 par share. When the appellant was requested to explain the basis of the figures adopted by the appellant for computing the fair market value at Rs 119.93, the appellant attended on 25.08.2016 along with Smt. Dhanwanti Gupta, CA who had signed the valuation report in which the valuation of shares was shown at Rs119.93 per share. She filed a revised valuation report, wherein the valuation per share was shown at Rs. 95.90 per share when the AR and Smt. Dhanwanti Gupta was asked to furnish the actual figure in respect of F.Y.2013-14, 2014-15 and 2015-2016, they attended on 29.08.2016 and filed another valuation statement wherein the valuation of shares was shown at Rs 65.31 per share. I have discussed the issue with the AR and Smt. Dhanwanti Gupta, CA. It has been explained by them that the figures adopted for computing the fair market value of share at Rs119.93 and Rs95.90 are purely on estimate basis. Therefore, they were asked to provide the actual figures for the FY 2013-14, 2014-15 and 2015-16 which are available with the appellant. When on 29.08.2016, the valuation statement prepared on the basis of actual figures for the F.Y 2013-14, 2014-15 and 2015-16 was furnished, it was noticed that the Discounted Cash Flow during the F.Y 2013-14, 2014-15 and 2015-16 was Nil, Rs-46.4 lac and Rs.-2.25 lac for the F.Y 2013-14, 2014-15 and 2015-16, whereas in the original valuation statement, the Discounted cash flow these financial years was shown at Rs.27.13 lac, Rs. 30.41 lac and Rs.37.61lacs. In the revised valuation statement filed on 25.08.2016, the discounted cash flow for these financial year was shown at Rs.27.13lacs, Rs10.65 lac and Rs. 21.42 lac. Thus, it is clear that the valuation statement furnished by the appellant showing

Discounted Cash flow is based absolutely on imaginary and incorrect figures, because when the actual figures for the F.Y 2013-14 , 2014-15 and 2015-16 are compared with the imaginary figures adopted in the valuation statement furnished by the appellant, it is clear that the actual discounted cash flow in these three financial years was negative i.e Rs. 48.72lacs (Nil, Rs.-46.49, Rs.2.225). Whereas in the valuation statement furnished by the appellant, the discounted cash flow for these three financial years was shown at Rs. 95.15 lac (Rs. 27.13+Rs.30.40 + Rs 37.61). Even the figures of sales adopted in the valuation statement furnished by the appellant for these three years is absurd and are not even approximately close to the actual figures. The sales for the F.Y. 2013-14, 2014-15 and 2015-16 shown in the valuation statement furnished by the appellant is Rs. 1152.71 lacs, Rs.1297.25lacs and Rs.1405.65lacs whereas the actual figure of sale of these three financial years were Nil , Rs. 328.74 lac and Rs 790.81 lac. In view of these facts ,I am of the considered view that the valuation of shares made in the valuation statement claimed to have been prepared on the basis of discounted free Cash Flow Method as provided under Clause 'b' of Sub-rule 2 of Rule 11UA is absolutely unreliable and without any basis .Therefore, the valuation of shares made in any of the three valuation report submitted by the appellant can be held to be in accordance with the method provided under Clause 'b' of Sub-rule 2 of Rule 11UA. Hence, the valuation submitted by the appellant is hereby rejected. However, the contention of the appellant that there is arithmetical mistake in computation of the fair market value by the AO by applying the fair market value by applying @32.76% is found to be correct. The AO is directed to compute the fair market value by applying the rate of 32.76 per share of the share allotted by the appellant in premium and revise the computation of income u/s 56(2) (viib) accordingly.'

4.3 During the course of the hearing, the ld.AR of the assessee submitted following written submission which has been taken into consideration:-

“submissions

1. *Firstly, we strongly rely upon the submissions made by us before the CIT(A).*
2. *At the outset it is submitted that the Explanation to S. 56(2)(viib) of the Act provides that the fair market value (FMV) of unquoted equity shares for the purpose of S. 56(2)(viib) of the Act shall be the value as determined in accordance with such method as may be prescribed. The prescribed methods of valuations are given under Rule 11 UA of Income Tax Rules, 1962 (herein after referred as “Rules”). The relevant extract are as under:*

*(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), **the fair market value of unquoted equity shares** for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner **under clause (a) or clause (b), at the option of the assessee, namely:—***

(a)

or

*(b) **The fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method***

Hence the law has specifically conferred an option upon the assessee that for the purpose of S. 56(2)(viib) of the Act an assessee can adopt any of the methods mentioned u/r 11UA(2) of the Rules. From Rule 11UA, it is clear that either the Break Up Value Method (Clause ‘a’) or DCF Method

(Clause 'b') can be applied for the purpose of S. 56(2)(viib) Expl. a(i) of the Act, at the option of the assessee.

3. In the present case, it is not denied that the assessee adopted clause (b) of Rule 11UA(2) of the Rules and accordingly obtained a Valuation Report from a Chartered Accountant. Since the law has prescribed the specific method for valuation i.e Discounted Cash Flow Method (hereinafter also referred as "DCF"), so he was free (and rather entitled) to choose this method. The method of valuation could be challenged by the AO only if it was not a recognized method of valuation (as per Rule 11UA (2) of the Rules). The very purpose of certification of DCF valuation by a merchant banker or chartered accountant is to ensure that the valuation is fair and reasonable. Such valuation is to be done by an expert of the subject only, which an assessing officer is not expected to be. The said rule provides that such valuation shall be the fair market value for the purpose of this section based on DCF Method. The Rule nowhere permits the AO to make any adjustment therein.

*3.1 The Discounted Cash Flow Method derives the value from the present value of future cash flows therefore, this method entails the assessee to make the projections (i.e. Estimations) about revenue, expenses, investments, repayments etc. The projection is made on certain reasonable assumptions w.r.t reasonableness of future cash flows, industry and economic scenario, discount rate etc. The value is derived from the future profitability or cash flows of the company. The investors expect a certain minimum return on his investment. (ROI) Such returns can be generated only by future profits. Thus valuation of shares is primarily based on future expectations which necessarily involves estimations. **Such projections are mere estimations and the valuer cannot expect to put the actual figures here.** Needless to say that there will always be some difference between the estimation and the actual and to accurately foresee what is going to be the actual in the future is, certainly beyond the control of the management at the point of time while making the*

*estimation. If the management was able to foresee losses, then why they should have set up the industry. It is precisely for this reason, now a days, there is a huge investment made in the startup and at the very introduction of the project. The concept of startup has been recognize even by the Income tax act where under, **certain deductions u/s 80-IAC of the Act have been provided which provides for the period 7 years as gestation period.***

3.2*Further, there are several factors which effect the profitability of a project/industries which, broadly may be of 2 types i.e. general factors and the specific factors. Where the general factors are like economic and political environment of the country, however, demand supply of the product and the government policies regarding that particular industry, are such specific factor.*

3.3*Therefore, the very requirement made by the ld. CIT(A) during the course of the appellate proceedings directing the assessee to give the valuation report based on the actual figures and then to compare such valuation report with these earlier reports based on the DCF Method (As approved by Rule 11UA(2)(b) of the Rules), is absolutely contrary to the provisions of the law and misconception of law. Otherwise also, the fact is not denied that the assessee couldn't commence its production for want of power availability in the next two years i.e up to AY 2016-17 and there was no justification for making a comparison. Pertinently, in AY 2017-18 when the company became operational the valuation can be seen almost in accordance with the actuals (as submitted in para 9 herein below).*

3.4*The earning of assessee is volatile and depends upon economic cycles. The earning may be high when the economy is booming, while the earning may be depressed in the recession. The projection so made, are always subject to change due to subsequent events. The Valuer calculates the value after considering all the relevant factors affecting the*

*value of share at the time of valuation. Since the future is always uncertain, so there may be some post reporting events, which may affect the valuation done by the Valuer at the time of valuation, but the Valuer is not required to update the report for these subsequent events. It is further submitted that the determination of the fair market value of the unquoted equity share, **can't be done with a mathematical precision** in as much as it all depends upon the projections being made which may or may not accurately match with the facts and circumstances which are in the womb of the future. One cannot foresee the future. It is for this reason only, the Rules itself has provided for such the fair market value to be determined based on a certificate of a Chartered accountant (as per discounted free cash flow method). It is not denied that in this case such fair market value has been determined based on a certificate of a Chartered Accountant Smt. Dhanvanti Gupta (**PB 18-21**) @ of Rs. 119.93 per equity share. However, because of some calculation mistake, it was correctly revised showing value of Rs. 95.90/- Per equity share. The focus of the ld. CIT (A) is only on the issue that what the actual figures were in the immediately later year.*

3.5*The DCF Method is based on the income approach of business valuation. This approach indicates the value of the business based on the value of cash flows that a business is expected to generate in future. This method is most appropriate in going concern situations where the worth of the business is generally a function of its ability to earn income/cash flows.*

4. Conditions Fulfilled: *Under the law i.e. u/s 56(2)(viib) Expl. a(i) r/w Rule 11UA(1)(b), **the only responsibility casted upon the assessee**, is to get a valuation report from the merchant banker or **an accountant** by using DCF Method, who have expertise in the valuation of shares and securities. The Fair Market Value has to be determined by an Accountant and that too as per DCF Method alone. Once the facts are admitted that there was a report by an accountant,*

which was as per the Discounted Cash Flow Method, the FMV determined in such a manner is binding upon the revenue as if directed by the law. There is no denial by the lower authorities from these facts and the fulfillment of the conditions as prescribed.

5. Comparison with Actual Unwarranted: *The only objection of the ld. CIT(A), keeping in mind the actual figures, was that the valuation report (though undisputedly based upon DCF Method), “is based absolutely on the imaginary or on incorrect figures” and “is absolutely unreliable and without any basis” . Such allegations are completely without any basis and merely on surmises and conjecture, in the light of the following submissions:*

5.1 Firstly, *its comparison of the projections/ estimated figures used in report (derived) with the actual figures, was contrary to the very concept of valuation under the DCF.*

5.2 Secondly, *the ld. CIT(A) completely failed to point out which particular figure was found to be incorrect or imaginary. On the contrary it was the AO who considered the incorrect figure of Rs. 32.76 per share as against the correct amount of Rs. 95.90*

5.3 Thirdly, *he has not demonstrated how the valuation report was unreliable and whether the AO or the CIT (A) has got the valuation report examined from some other independent expert of the subject (i.e. a Chartered Accountant or a financial analyst) In view of the facts, legal position and the above submission his last allegation that such report was without any basis, is self-contradictory.*

5.4 Fourthly, *the working of the DCF was done by the valuer in accordance with the Technical Guidance Note of the ICAI on DCF which is of recommendatory in nature yet however, the lower authorities completely failed to point out any defect/deficiency.*

5.5 A newly started company or a start-up can be valued only by this method, as these type of organizations have very little or no capital base. In this case, the assessee was a newly incorporated company with a very little assets base. The Board of Directors of the company decided to issue the shares at the premium because of the great prospects of earning and growth in the future. It is the wisdom of the shareholders whether they want to subscribe to share at such premium or not.

5.6 This way, the ld. CIT(A), in fact, has indirectly applied the provisions of Rule 11UA(1)(a) which speaks of the such valuation to be based on the actual i.e. as per NAV Method. That is the reason he started making a comparison between the estimation made by the CA u/r 11UA(2)(b) @ 119/95.90 with the actuals which was not warranted had the ld. CIT(A) correctly appreciated and applied clause (b) only of Rule 11UA. Hence the CIT(A) clearly proceeded on a misconception. Interestingly **the same CIT(A) earlier decided a similar controversy in the case of M/s Universal Polusack (infra) in favor of the assessee.** Under the guide of finding deficiencies in the DCF method adopted by the assessee u/r 11UA(2)(b), the CIT(A) could not have imposed/thrust upon the assessee to apply rule 11UA(2)(a).

6. Provisions of Rule 11UA (2) shall prevail over rule 11UA(1): A bare reading of the relevant rules make it clear that the rule 11UA (2) of the Rules talks about the method of valuation of the unquoted equity shares specifically for the purpose of S. 56(2)(viib) r/w Explanation (a)(i) with which, the present appeal relates to, is a special law and therefore, shall prevail over the general law contained u/r 11UA(1) of the Rules. It is a trite law that special law will always prevail over the general law.

Kindly refer Reliance – (1) AIR 1978 (SC) 851 – Mohindersingh Gill vs. Chief Election Comm. (2) (1981) 131 ITR 429 (Ker) Ramraj (M.S. vs. Comm of Agr. IT)); (3)

(1980) 126 ITR 270 (Mad) – Asa John Devinathan vs. Addl. CIT and (4) (1988) 174 ITR 714 (Cal) – Equitable Investment Co. (P) Ltd.vs. ITO.

7. Supporting Case Laws:

7.1 *On this aspect kindly refer a direct decision of Hon'ble ITAT Jaipur in the case of ITO vs. Universal Polysack (India) Pvt. Ltd. ITA No. 609/JP/2017 (DPB 38-55). wherein, in para 16 page 14 it is held that:*

“Therefore, we are unable to accede to the contention so raised by the ld. DT that Sub-Rule 1 of Rule 11UA which provides for determination of fair market value of unquoted equity shares as per book value as per formula so specified is applicable in the instant case. Rather, sub-Rule 2 of Rule 11UA is more specific for the purposes of determination of fair market value of unquoted equity shares under section 56(viib) and shall be applicable in the instant case”.

Such option cannot be taken back merely because the AO is of the different opinion. Further, apart from the requirement of obtaining a certificate from the CA, the assessee was not required to fulfill any other condition and it has been left to the sole discretion of the assessee to choose the methods prescribed under clause (a) or (b). This aspect is also directly covered by the aforesaid order wherein, it was held that:

“The exercise of such an option by the assessee is not subject to fulfillment of any specified conditions and it is left to the sole discretion of the assessee as it deems fit to apply. In the instant case, the assessee company has exercised its option to value its shares as per DCF method and we find that the objection of the AO is primarily directed at not adopting the book value of determination of value of shares as against DCF adopted

by the assessee company. The exercise of such an option cannot therefore be challenged by the Revenue once the same has been exercised at first place by the assessee.”

17. “Further, where the Assessing officer is of the opinion that the methodology so adopted by the assessee and/or the underlying assumption while determining the share valuation as per DCF is not acceptable to him, there is no discretion with the assessing officer to discard the DCF method of valuation and adopt book value method.”

7.2 *On this aspect kindly refer DCIT vs. M/s. Ozoneland Agro Pvt.Ltd. in ITA No. 4854/Mum/2016 vide order dated 02.05.2018 Para 5 (DPB 66-78) and Green Infra Ltd. v/s ITO in ITA No. 7762/Mum/2012 vide order dated 23.08.2013 Para 10.*

7.3 *Also refer Medplus Health Services P. Ltd. Vs. ITO (2016) 158 ITD 0105 (Trib. Hyd) (DPB 56-65)*

7.4 *Also refer Vodafone M-Pesa Ltd. vs. PCIT (2018) 92 Taxmann 73 (Bombay) (DPB 79-83)*

7.5 *Also refer a very recent decision in the case of DCIT vs Ozoneland Agro (P.) Ltd. in ITA No. 4854/Mum/2016 vide order dated 02.05.2018 (DPB 66-78).*

7.6 *One common factual aspect which is available in the case of the assessee with the other two i.e. universal Polysack (supra) and Green Infra Ltd are that in all these cases, either the assessee company was incorporated in the subjected year itself or in the present case and the universal Polysack (supra), no production was commenced and that is the reason the AO considered the valuation based on the projections as imaginary so also did the ld. CIT (A) and i.e. perhaps the reason the lower authorities proceeded on a*

misconception, while ignoring the very purpose of introduction of Rule 11UA(2)(b) of the Rules.

- 8. Projections now Reconciled with the Actuals:** *As submitted earlier, the valuer had merely made projections which may or may not reconcile with the actuals. But the projections have to be made on some basis. In this case, the ld. CA did her best to estimate the FMV at Rs.95.90 per Share based on DCF Method which fact, now is evident if the actual figures for the year ending on 31.03.2017 (AY 2017-18) are seen and compared with the projections. The assessee prepared Valuation report as per DCF Method and considered projected figures up to 31.03.2019. The Audited Balance Sheet of the assessee as on 31.03.2017 depicts the following picture.*

Particulars	Amount (Rs.)
<i>Fixed Assets</i>	<i>2,21,20,988</i>
<i>Current Assets</i>	<i>85,10,652</i>
<i>Loans and Advances(Assets)</i>	<i>17,05,531</i>
<i>Long Term Borrowings</i>	<i>(47,11,887)</i>
<i>Current Liabilities and Provisions</i>	<i>(1,49,24,429)</i>
Net Assets	1,27,00,855
No. of Shares	1,50,000
Value Per Share	84.67

(Note: However, these figures were not before the lower authorities as have come into the existence later on)

Thus evidently the actual value of the share @ Rs. 84.67 is quite near to the projected FMV of Rs. 95.90 per share by the ld. CA-Valuer. Such variation is within the tolerance limit of 15% only and considering Rs.70, the claimed FMV is fully justified.

- 9. The Projections are not without any basis:** *It is submitted that while making the projection, the ld. CA while giving her*

report u/r 11UA(2)(b), duly considered the plant capacity, the expected demand to be generated in the future, the expected production to be done accordingly vis-à-vis the capital and revenue expenditure likely to be incurred. There apart, notably the Dena bank, Bangalore have also sanctioned Term Loan and CC Limit of Rs. 4 crore also taking into consideration these projections made by the assessee (although such loan were granted mainly taking into account the personal properties of the director hypothecated with the Bank).

One important aspect and a later development is that there has been a change in the management and ownership in as much as the earlier Goyal Group, Beawar sold the 100% Shares to the present Jain Group, Bangalore, who purchased the 1,50,000 Shares @ Rs.98.67 Per Equity Share in the month of January, 2015. Moreover, the buyers are completely unrelated parties and as on day are managing the entire show and the assessee company is in full swing of production. These facts strongly support the case that looking to the purchase price of Rs.98.67/- and purchase being in the January, 2015, the estimated Fair Market Value (FMV) by Id. CA around Rs. 95.90 was fully justified. Needless to say that why a stranger should have purchased the shares at such a high price i.e. as against 32.76 estimated by the authorities below based on the actuals.

Startup is the best example:

10. It is further submitted that even sec 80-IAC has recognized the gestation period up to 7 years. As stated already the DCF Method is based on projection of future profits. The changes in the future are inevitable so there will be gapes between the projected figures and actual figures. The DCF Method or the projections made cannot be rejected straight away just because there were some difference between actual and projected. The reconciliation or equilibrium

between the actual and projected takes some time i.e around 5 to 8 Years depending upon economic conditions.

11.CBDT's Letter strongly supports Assessee's case: *Very pertinently, the CBDT has recently come up with a letter (Instruction) (File No. 173/14/2018-ITA.I) dated 06.02.2018 (DPB-84) wherein, the CBDT has taken note that in the cases of the startup where the assessee has applied for DCF Method by opting u/r 11UA(2)(b) r/w sec 56(2)(viib), “...in the assessment, such reports are not being accepted and rejected/modified by the Assessing Officer by treating them as based upon abnormal valuation resulting in additions being made u/s 56(2)(viib) of the Act in cases of “Start Up” companies”*

It appears that as per CBDT this is not in accordance with the correct interpretation of the law, therefore, the CBDT has indirectly hinted the field officers of its contrary view, by observing as under:

“3. In view of the above, it has been decided that in case of ‘start up’ companies which fall within the definition given in notification of DIPP, Min. of commerce & industry, in G.S.R. 501(E) dated 23.05.2017, if additions have been made by the Assessing Officer under section 56(2)(viib) of the Act after modifying/rejecting the valuation so furnished under Rule 11UA(2), no coercive measure to recover the outstanding demand would be taken. Further, in all such case which are pending with the commissioner (Appeals), necessary administrative steps should be taken for expeditious disposal of appeals, preferably by 31st march 2018. ”

12.*In the first valuation report, there was an inadvertent mistake committed of not considering the working capital requirement and hence the ld. valuer has rightly modified her report accordingly so as to bring the correct fact on record. The assessee issued the shares @ Rs.70 per share*

including premium of Rs.60 per share in respect of 1,40,000 share out of total 1,50,000 shares. The value per share derived as per DCF Method was Rs.95.90 Per Share.

13.*The confusion of the AO is also evident from Page 7 Para 3(b) top wherein, he continued with the share premium amount as per the Companies Act, i.e. based on NAV method and ignoring DCF and he speaks of substantial increase in the net worth, profitability, credibility and goodwill etc. which are not available in the assessee's case and alleged that the shares were not having intrinsic value to give price to premium in the business. In fact, all these are not possible in the case of newly startup/set up company being in existence of 8-10 years.*

14.*AY 2013-14 is not the rightful year: Alternatively and without prejudice to the above contention, even assuming it is held that the revenue is justified in their action, a careful reading of sec 56(2)(viib) shows that the happening of the two events (viz. the receipt of the consideration and the allotment of the shares) both must happen in the same year or at least, it can be later year where the shares have already been allotted (and that too on the date of allotment only) when the amount of the consideration can be compared with the FMV of the shares (on the date of the allotment) for the simple reason that unless there are shares in the existence there cannot be any valuation thereof. Moreover the FMV can also be different if the year of the receipt and the year of the allotment are different. In this case, there was only a receipt of the consideration but there was no allotment in this year (which was allotted in AY 2014-15 only). There may be situation where the consideration is received in one year and the allotment is made in fifth year then how the AO can apply the provisions in the year of receipt. For these reasons the said provision is evidently not found workable on the peculiar facts of the case. In the case of **CIT vs. B.C. Srinivasa Setty** (1981) 128 ITR 294 (SC), it was held that unless the machinery section is found*

workable, the substantive provision of the law even can't be applied. (Please see AO Pg. to top).

Hence the impugned additions deserves to be deleted in full''.

4.4 On the other hand the ld. DR relied upon the orders of the authorities below.

4.5 We have heard the rival contentions and perused the materials available on record including the written submissions and case laws relied upon during the course of hearing. From the order of the ld. CIT(A) it emerges that the ld.AR and Smt. Dhanwanti Gupta, CA appeared and the matter was discussed with them and they were asked to furnish the actual figures in respect of F.Y. 2013-14, 2014-15 & 2015-16. In compliance of such direction, the ld. AR and the ld. CA attended before the CIT(A) on 29.08.2016 and filed another valuation report wherein the value of the share was worked out @ 65.31 per share. A copy of the said report is placed on Pages 47-50 of the assessee's paper book. It is clear from the order of the ld. CIT(A) that he made a comparison of the last report submitted to him on 29.08.2016 based on the actual figures with the earlier reports submitted and prepared by the CA as per Rule 11UA(2)(b) on DCF method, and the ld. CIT(A) finding difference between the figure

of the two, rejected the report submitted by the assessee as absolutely unreliable and without any basis. Thus, the basic dispute between the parties is whether the authorities below could have applied the Net Asset Value as prescribed u/r 11UA(2)(a) or whether the assessee has got a right to opt for the method of valuation given u/r 11UA(2)(b) and secondly, if the assessee is entitled to the adopt the DCF method to estimate the fair market value, the valuation submitted by the assessee was fair and reasonable in accordance with Rule 11UA(2). Before proceeding further, we would like to reproduce the relevant Provisions contained u/s 56(2)(vii)(b) of the Act and the relevant Rules, which reads as under: -

“S. 56(2) (vii) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—

- (i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*
- (ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :*

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

Explanation.—For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the

public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);

(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or*
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.*

Explanation.—For the purposes of this clause,—

(a) the fair market value of the shares shall be the value—

- (i) as may be determined in accordance with such method as may be prescribed⁹; or*
- (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,*

whichever is higher;

(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation to clause (23FB) of section 10;

[Rule 11UA(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:—

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

where,

A = *book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;*

L = *book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—*

- (i) *the paid-up capital in respect of equity shares;*
- (ii) *the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) *reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (iv) *any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*
- (v) *any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- (vi) *any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

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

PV = *the paid up value of such equity shares; or*

(b) *the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.]”*

However, there is no dispute between the parties that Rule 11UA(1) is not applicable on the facts and circumstances of the present case which is a

provision of general nature whereas Rule 11UA(2) is a specific provision providing for the valuation of the unquoted equity shares. After going through the relevant Section and the Rules, in our opinion, the matter of valuation of unquoted equity shares, has been completely left to the discretion of the assessee. It is his option whether to choose NAV Method (Book Value) under clause (a) or to choose DCF Method under clause (b) and the AO cannot adopt a method of his own choice. The authorities below cannot compel the assessee to choose NAV Method only as against DCF Method. When the legislation has conferred an option upon the assessee to choose a particular method, the valuation of the shares has to be in accordance with such method only i.e. DCF method in the present case u/r 11UA(2)(b) r/w S. 56(2)(viib). In the case of Medplus Health Services (P) Ltd vs ITO (supra), the ITAT, Hyderabad Coordinate Bench, after taking into consideration various decisions, has observed as under:

“11. On a careful reading of the judgments discussed above, it is seen that the Courts have held that where a method has been prescribed by the legislature, that method alone shall be followed for computation of the fair market value. The A.O. and the Ld. CIT(A) have not followed the relevant provisions for adopting or computing the fair market value of the shares, but have adopted the market value at which some of the shares have been purchased by the assessee as FMV. This, in our opinion, is not correct. As held by the Courts in the above judgments, the A.O. has to compute the fair market value in accordance with the prescribed method but cannot adopt the market value as fair market value under Section

56(2)(viii) of the Act. The legislature in its wisdom has also given a formulae for computation of the fair market value which cannot be ignored by the authorities below.”

It is observed that in the instant case, the assessee company had exercised an option to value the share by DCF Method however, we find that the AO has worked out the value based on NAV Method though in the body of assessment order he has referred to Rule 11UA(2)(b) but in substance, he has valued the share based on the book value figures only by considering the value of the assets shown in the Balance Sheet as on 31.03.2013 being the land valuing Rs. 3,27,690/- and the liabilities. The Id. CIT(A) also, though considered the case in context of Rule 11UA(2)(b) yet however, his act of asking the assessee & his CA to prepare and submit a valuation report only on actual figures, is nothing but a valuation done on the basis of NAV Method u/r 11UA(2)(a) only. From the facts thus, it is clear that the authorities below wanted to impose upon the method of valuation of their own choice, completely disregarding the legislative intent which has given an option to the assessee to choose any one of the two methods of valuation of his choice. When the law has specifically provided a method of valuation and the assessee exercised an option by choosing a particular method (DCF here),

changing the method or adopting a different method would be beyond the powers of the revenue authorities. Permitting the revenue to do so will render the clause (b) of Rule. 11UA(2) as nugatory and purposeless. Thus, to this extent the action of the authorities below is not justified and it is held that the assessee has got all the right to choose a method which, cannot be changed by the AO. Further, though the AO can scrutinize the valuation report only if some arithmetical mistakes are found, he may make necessary adjustments. But if he finds the working of the C.A. or the assumptions made as erroneous or contradictory, he may suggest the necessary modification and alterations therein provided the same are based on sound reasoning and rational basis and for this purpose the AO may call for independent expert valuer's report or may also invite comment on the report furnished by the assessee's valuer as the AO is not an expert. It is not open for the AO to challenge or change the method of valuation, once opted by the assessee and to modify the figures as per his own whims and fancies. In any case, the revenue could not ask to prepare the valuation report based on actuals which is not contemplated in Rule 11UA(2)(b).

4.5.1 Now coming to the aspect where the assessee has complied with the conditions laid down under Rule 11UA(2)(b), it is clear that to comply

with this rule the assessee is required to obtain a certificate of a Merchant Banker or Chartered Accountant and such a valuation must be based on *Discounted Free Cash Flow (DCF) Method* only. To exercise the option under this clause, the assessee is not subjected to the fulfillment of any other condition except these two. It is not denied that the assessee did file the valuation report first one dated 31.03.2013 and the revised report dated 23.08.2016 valuing the FMV of the unquoted shares at Rs. 119.93 & 95.90 per equity share respectively prepared by a C.A. only. The reason for the difference was explained that in the earlier report, the figure of change in networking capital was left out by oversight, which has now been taken care and corrected in the revised report. This contention was supported by Paper Book Page No.21 of the earlier valuation report and the revised valuation report Paper Book Page No.46. We find nothing wrong if a bonafide mistake was corrected.

4.5.2 Before examining the fairness or reasonableness of valuation report submitted by the assessee, we have to bear in mind that the DCF Method, and is essentially based on the projections (estimations) only and hence these projection cannot be compared with the actuals to expect the same figures as were projected. The valuer has to make forecast on the basis of some material but to estimate the exact figures is beyond its

control. At the time of making a valuation for the purpose of determination of the fair market value, the past history may or may not be available in a given case and therefore, the other relevant factors may be considered. The projections are affected by various factors hence in the case of company where, there is no commencement of production or of the business, does not mean that its share cannot command any premium. For such cases, the concept of startup is a good example and as submitted, the Income Tax Act has also recognized and is encouraging the startups for which, a separate deduction u/s 80IAC has been provided. In this context, we find a CBDT Instruction (File No. 173/14/2018-ITA.I) on dated 06.02.2018 (copy placed at paper book-84) given in the case of startup companies useful in the context of determination of fair market value of the unquoted equity shares u/s 56(2)(viib) of the Act r/w Rule 11UA(2), which states that though startup companies invariably submits valuation report in accordance with Rule 11UA(2)(b) but in the assessments such reports are not being accepted and rejected/modified by the AOs considering the same as based on abnormal valuations which results in additions. The CBDT has accordingly directed not to take coercive measures in such cases for recovery of demand resulting in

additions and the CIT(A) have been directed to dispose such appeals expeditiously.

4.5.3 Coming to the basis of the projections, it is submitted that the plant capacity was taken as a basis to make projections of the production. It is further submitted that at the assessee is dealing in toughened glass which is related to real estate (construction) industry and at the relevant point of time, the real estate sector was in boom and there existed favorable conditions in the industry. The Directors of the assessee company were having experience and knowledge of the field. The other three companies to whom shares were allotted were also in the real estate sector, as their name suggest. The Board of Directors were expecting good results in the future. Except the initial years where the production could not be commenced because of the circumstances beyond the control but as per the actual figures available now for the previous year ended on 31.03.2017, the value per share comes to Rs. 84.67 based on the audited accounts which is almost in accordance with the value of Rs. 95.90 estimated by the C.A. Moreover, such report was also submitted to the bank as per a notes at Page 46 of the assessee's paperbook, for obtaining hypothecation limit of Rs. 4 crores which was sanctioned based on such valuation report along with the hypothecation of the properties of the

directors. Hence, it cannot be said that the projections made by the C.A. in the valuation report were imaginary figures, completely without any basis. We find substance in the contentions. It is not the case of the Id. CIT(A) that the projection made in the C.A.'s report are in contradiction of the figures of the installed production capacity which being lesser yet the production was shown disproportionately higher. Also there is no whisper in the orders of the CIT(A) as to which figure was found incorrect and what should be the correct figures. Except making comparison with the actuals there is nothing on record to doubt the veracity of the C.A.'s report or to support the observations of the Id. CIT(A). He further doubts that the figures of the sale shown in the valuation report and those shown in the Balance Sheet of F.Y.2014-15 and F.Y.2015-16. However such an objection cannot be given weightage for the reason that firstly no explanation was called for by the Id. CIT(A) on this aspect but he assumed on his own and there apart the assessee has already stated that due to the non-availability of the power connection, it could not commence the production in the initial years therefore, there was no production, which fact is admitted by the AO also and hence, comparison of the projected sales figure with the actuals was not justified. As already stated that the figures given by the C.A. were mere

projection/estimations depending upon various factors which nobody could have anticipated or foreseen on the day when such valuation were made. Therefore, there was no justification yet to make a comparison of the estimations with the actuals. Such a comparison is otherwise principally against the contemplation of Rule 11 UA(2)(b) which required the C.A. to prepare a report on DCF Method only i.e. based on mere projections and not actuals as against the NAV Method prescribed u/r 11UA(2)(a). For these reason we find no justifications behind the objection of the Id. CIT(A) that the valuation done by the C.A. was based absolutely imaginary and incorrect figures or without any basis. The C.A. has considered the plant capacity, industry and market conditions as prevailed in the state, the sanctioning of the loan by the bank are the factors which formed a reasonable basis of projections. Moreover it is not denied that the valuation reports were prepared by the C.A. as per the guidelines given by the Institute of Chartered Accountants of India and the AO has not found any fault. We thus, find no rational or sound basis in the order of the authorities below to reject the valuation report submitted by the assessee based on DCF Method.

4.5.4 In any case, it is also noticed that even as per the valuation got done by the CIT(A) based on the actuals, the FMV came to Rs. 65.31 per share

as against which, the assessee had charged a premium of Rs. 60 only per share. Therefore even assuming that the valuation reports submitted by the assessee are not reliable for any reason than too there was no justification to rely upon the valuation of the shares done by the AO based on book value at Rs. 32.76 per share or premium at Rs. 27.76 per share. Reducing the face value of Rs. 10 from the FMV of Rs. 65.31, the amount of premium comes to Rs. 55.31 per share as against the premium claimed by the assessee at Rs. 60. Thus there is a small difference of around Rs. 5 which was less even than 10% of the premium claimed by the assessee @ Rs. 60 per share. The variation to this extent is possible in the matters of estimations.

4.5.5 We find that a similar controversy came up before a coordinate bench of ITAI in the case **ITO vs. M/s Universal Polysack (India) Pvt. Ltd.** ITA No. 609/JP/2017 dated 31.01.2018 (Assessee's PB Pages 38-55). The facts noted by the Hon'ble Coordinate Bench in that case are identical with the facts of the present case wherein the Hon'ble Bench held as under:

“14 We have heard the rival contentions and pursued the material available on record. In the instant case, it is not in dispute that the assessee company is a company in which the public are not substantially interested and the shares of the assessee company are not listed or traded on any recognized stock

exchange. It is also not in dispute that during the previous year. the assessee company has issued 11,500 shares of face value of Rs 100 at a premium of Rs 900 per share to M/s Terry Towel Industries Ltd and has thus received total consideration of Rs 1,03,50,000. The limited issue under consideration is whether the consideration so received for such shares exceeds the fair market value of the shares. Where the answer to the same is in affirmative, the excess so determined over the fair market will be brought to tax as income from other sources as per the provisions of section 56(2)(viib) of the act which reads as under:

“Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the segregate consideration received for such shares exceeds the fair market value of the shares.”

15. The explanation to section 56(2)(viib) provides that the fair market value of such shares means the value determined in accordance with the method as may be prescribed. The method of valuation has been prescribed in rule 11UA which reads as under:

xxx.....

16 As it is clear from the above, sub-rule 2 of rule 11UA talks about method of valuation of unquoted equity shares of the assessee company specifically for the purposes of section 56(2)(viib) of the act and the same overrides the general provisions of sub-rule 1 of rule 11UA. In the instant case, the context in which the valuation of the shares have to be determined is in the context of the section 56(2)(viib) of the Act as invoked by the AO and therefore, both the assessee and the revenue are equally guided by the said provisions and there is no discretion with either of the parties in terms of non-applicability of Sub-rule 2 of Rule 11UA. Therefore, we are unable to accede to the contention so raised by the Id DR4 that sub-rule 1 of rule 11UA which provides for determination of fair market value⁴ of unquoted equity shares as per book value as per formula so specified is applicable in the instant case. Rather, Sub-Rule 2 of Rule 11UA is more specific for

the purposes of determination of fair market value of unquoted equity shares under section 56(viib) and shall be applicable in the instant case. The latter provides an option to the assessee to determine the fair market value of the shares either as per the book Value or Discounted Free Cash Flow Method. The exercise of such an option by the assessee is not subject to fulfillment of any specified conditions and it is left to the sole discretion of the assessee as it deems fit to apply. In the instant case, the assessee company has exercised its option to value its shares as per DCF method and we find that the objection of the AO is primarily directed at not adopting the book value of determination of value of shares as against DCF adopted by the assessee company. The exercise of such an option cannot therefore be challenged by the revenue once the same has been exercised at first place by the assessee.

17. Further, where the assessing officer is of the opinion that the methodology so adopted by the assessee and/or the underlying assumption while determining the share valuation as per DCF is not acceptable to him, there is no discretion with the AO to discard the DCF method of valuation and adopt book value method. At the same time, in our view the AO is well within his rights to examine the methodology so adopted by the assessee and/or the underlying assumption and where he is not satisfied with the same, he can challenge the same and suggest necessary modification/alterations provided the same are based on sound reasoning and rational basis. In the instant case, we find that certain basis objections have been raised by the Assessing Officer in terms of applying the estimated turnover numbers instead of actual numbers and discounting factor, etc which, in our view, has been satisfactorily explained by the assessee company during the appellate proceedings and nothing has been brought on record which can substantially challenge the methodology or the underlying assumption while determining the value of the shares. Further, the fact that the said valuation and the projected financials have been found acceptable by the Bank while sanctioning the term loan and working capital limits, it cannot be said that the same are purely hypothetical and not based on sound financial understanding and market dynamics of the industry in which the assessee operates.

18.....

19. In light of above discussions and in the entirety of facts and circumstances of the case, the order of the Id CIT(A) is confirmed and the ground taken by the Revenue is dismissed.”

4.5.6 We also find that in the case of Vodafone M-Pesa Ltd. vs. PCIT (2018) 92 Taxmann 73 (Bombay) (DPB 79-83), the Hon’ble Mumbai High Court in para 9 has observed that

“9.Therefore, the Assessing Officer is undoubtedly entitled to scrutinise the valuation report and determine a fresh valuation either by himself or by calling for a final determination from an independent valuer to confront the petitioner. However, the basis has to be the DCF Method and it is not open to him to change the method of valuation which has been opted for by the Assessee.----- ”

The AO though observed that the assessee raised loans from the above associate concerns and has converted them into shares application/premium money. However, it has not shown how it will affect the correctness of the valuation claimed. It is not the case of the AO that the shares were allotted to the outsiders non-related persons but the existing amount of the loans from the related persons were converted into shares. Hence there cannot be any scope of introduction of assessee’s unaccounted income through allotment of shares at unreasonably high priced shares. Therefore, such observations is not relevant and a mere suspicion. It appears that the authorities below have ignored Explanation

(a) below S. 56(2)(viib).The said Explanation provides that the fair market value of the shares shall be the value— (i) as may be determined in accordance with such method as may be prescribed i.e. u/r 11UA; or (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, **whichever is higher**. Accordingly, the value computed under the Rule at Rs.95.90 per share is higher than Rs. 65.31 or Rs.32.76 per share and therefore, the higher valuation has to be adopted. Moreover, it is only the Explanation (a)(ii) speaks of the satisfaction of the AO but there appears no such condition in the Explanation (a)(i) which therefore AO is not permitted to interfere in the valuation, once done in accordance with the method prescribed in the Rule 11UA(2). For the reasons stated above, we find no justification behind rejecting the declared valuation of the shares and in the impugned addition made by the AO but partly sustained by the CIT(A), which is hereby deleted.

5.0 In the result, the appeal of the assessee is partly allowed as indicated above

Order pronounced in the open Court on 12 -07-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर /Jaipur
दिनांक /Dated:- 12 /07/ 2018

*Mishra

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:

1. अपीलार्थी /The Appellant- M/s. Rameshwaram Strong Glass (P) Ltd. Ajmer
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2(1), Ajmer
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.884 /JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar