

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.5230/DEL/2014
Assessment Year: 2011-12

DCIT, Circle-18(1), New Delhi.	vs.	Shri Sanjay Chandra, C-41, Mayfair Garden, New Delhi.
TAN/PAN: AACPC5804C		
(Appellant)		(Respondent)

Appellant by:	Shri S.S. Rana, CIT-DR		
Respondent by:	S/Shri Salil Agarwal & Shailesh Gupta, Adv.		
Date of hearing:	29	08	2019
Date of pronouncement:	08	11	2019

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the Revenue and against the impugned order dated 31.07.2014 passed by Commissioner of Income Tax (Appeals)-XXI, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2011-12.

2. The facts in brief are that the assessee is a Managing Director in the real estate company Unitech Ltd. and Unitech Holdings Pvt. Ltd. Unitech Ltd. had floated 8 subsidiary companies, which were changed as Unitech Wireless Companies as under:

- i. Unitech Wireless (North) Pvt. Ltd.
- ii. Unitech Wireless (South) Pvt. Ltd.
- iii. Unitech Wireless (Kolkata) Pvt. Ltd.
- iv. Unitech Wireless (Delhi) Pvt. Ltd.
- v. Unitech Wireless (East) Pvt. Ltd.
- vi. Unitech Wireless (Tamilnadu) Pvt. Ltd.
- vii. Unitech Wireless (Mumbai) Pvt. Ltd.
- viii. Unitech Wireless (West) Pvt. Ltd.

3. The eight wireless companies had applied for grant of Unified Access Services Licenses (UASL), 2G Licenses to the DOT. The Unitech companies had floated three affiliated companies, namely, Cestos Unitech Wireless Pvt. Ltd., Simpson Unitech Wireless Pvt. Ltd. and Acorus Unitech Wireless Pvt. Ltd. The facts and background as narrated in the impugned assessment order are exactly the same which have been discussed in detail by us in ITA No.1953/De1/2014 in our order of even date. Further, additional facts are that the 8 Unitech Wireless Companies were later on merged in one company in the name of Unitech Wireless (Tamilnadu) Pvt. Ltd. Simpson Unitech Wireless Pvt. Ltd. and Acorus Unitech Wireless Pvt. Ltd., were holding the shares of Unitech Wireless (Tamilnadu) Pvt. Ltd. The assessee had acquired / purchased the 37,750 shares of Simpson Unitech Wireless Pvt. Ltd. and Acorus Unitech Wireless Pvt. Ltd. from Unitech Holdings Pvt. Ltd. at par i.e. @ Rs 10/- of 25,000 shares for Rs. 2,50,000/- and 12,750 shares for Rs. 1,27,500/-, respectively for a total consideration of Rs. 3,77,500/- (Rs.

2,50,000/- (+) Rs. 127,500/-). The AO had raised the issue during the course of assessment proceedings as to why the assessee had acquired the shares of Simpson Unitech Wireless Pvt. Ltd. and Acorus Unitech Wireless Pvt. Ltd. from Unitech Holdings Pvt. Ltd. at par i.e. @ Rs 10/-, whereas the actual valuation of the 8 Wireless Companies and its shares were much higher at Rs.179.73 per share at which rate the Telenor made fresh subscription of shares in the 8 Wireless companies. The Assessing Officer was of the view that the assessee had acquired the shares at the face value of Rs. 10/- only which was basically an under valuation of the shares, when the market value or actual value of the shares were @ Rs. 179.73/- at which rate the Telenor had acquired the shares and as such the AO invoked the provisions of section 56 (2)(vii)(c) read with Rule 11UA and valued the FMV of the shares at Rs. 646,84,50,498/- which the assessee had acquired at Rs. 3,77,500/- only and accordingly, the AO made the addition of Rs. 646,80,72,998/- (Rs. 646,84,50,498/- (-) Rs. 3,77,500/-).

4. Before the Ld. CIT(A), the assessee submitted that he did not receive anything more than face value of the shares which was Rs.10/- and the total consideration paid was Rs.3,77,500/-. The Telenor had made a fresh subscription of shares of eight shareholders companies after the 75% of stake was uploaded by the Unitech Ltd. in the said company so that Telenor had a control stake in that eight companies. It was submitted that assessee did not receive anything more than

the normal face value of the shares @ Rs.10/- and entire addition is made on presumptive basis. It was further submitted as per 11UA the book value of the share was Rs.8.99 paisa in the case of Acorus Unitech Pvt. Ltd. and negative value of (-) Rs. 9178/- in the case of Simpson Unitech Wireless Pvt. Ltd., and therefore, Assessing Officer was not justified to invoke the provision of Section 56(2)(vii)(c). Even the market valuation of the main company, i.e., Unitech Wireless (Tamilnadu) Pvt. Ltd. was negative valuation as the company had made huge losses from Assessment Years 2009-10 to 2012-13. The Assessing Officer has valued 25000 shares of Acorus Unitech Wireless Pvt. Ltd. at the notional value of Rs.1,54,599/- for Rs.386,49,83,500/- and 12,750 shares of Simpson Unitech Wireless Pvt. Ltd. @ Rs.2,04,193/- for Rs.260,34,66,998/- and thus, making the total valuation of the share at Rs.646,84,50,498/-. Ld. CIT (A) had deleted the said additions on the ground that these two companies were heavy loss making companies and even Unitech Wireless (Tamilnadu) Pvt. Ltd. was also a loss making company, and therefore, a negative fair market value share of these companies. The Assessing Officer has not followed even the provision of Section 56(2)(vii)(c) read with Rule 11UA because the book value of the share is below the face value of Rs.10/-. Since no real income has accrued to the assessee or has been received by the assessee as the fair market value of the shares and even the book value of the shares is below the face value of Rs.10/-.

5. After hearing both the parties and on perusal of the impugned order, we find that it is an undisputed fact that the shares purchased by the assessee of Simpson Unitech Wireless Pvt. Ltd. and Acorus Unitech Wireless Pvt. Ltd. from Unitech Holdings Pvt. Ltd. at Rs.10/- was not only below the book value but also below the fair market value, because these companies were having negative value due to huge losses made in the earlier years. The Assessing Officer had tried to make the addition solely on the ground that premium of Rs. 179.73 per share in respect of eight Unitech Wireless Company paid by the Telenor Company is the basis to value the shares. Such a reasoning, first of all could not be upheld because the valuation if at all of the share has to be done either in terms of Rule 11UA or in terms of Section 56(2)(vii)(c) which provides that it has to be as per the market value and the market value of the share has been found to be negative and far below the value of the shares paid by the assessee. Ld. CIT DR also could not rebut the factual finding arrived by the Ld. CIT (A) which is based on material on record. Thus, we do not find any infirmity in the findings of the Ld. CIT (A), and therefore, the same is confirmed. Consequently, the appeal filed by the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 8th November, 2019.

Sd/-

[B.R.R. KUMAR]
[ACCOUNTANT MEMBER]

DATED: 8th November, 2019

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER