INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

MA No. 742/Del/2017
(In ITA No. 4737/Del/2017)
(Assessment Year: 2014-15)

Analjit Singh, 15, Aurangzeb Road, New Delhi (Appellant) **PAN:ABLPS7514D**	Vs.	DCIT, Circle-16(2), Delhi (Respondent)

Assessee by :	Shri Deepak Chopra, Adv Shri Rohan Khare, Adv Shri Priyam Bhatnagar, Adv
Revenue by:	Shri G. C. Srivastava, standing counsel for the department Shri Kalrav Mehrotra, Adv
Date of Hearing	23/07/2024
Date of pronouncement	23/08/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. By virtue of this miscellaneous application, the assessee seeks to recall the order passed by this Tribunal in ITA NO. 4737/Del/2017 dated 1.12.2017.

2. The assessee has preferred the miscellaneous application as under:-

> ***"Re: Miscellaneous Application under Section 254(2) of the Income Tax Act, 1961 ('the Act') for rectification of mistakes apparent from the record in order dated 01.12.2017 passed in ITA No.4737/D/2017.***
>
> *In connection with the captioned matter, it is respectfully submitted as under:*

The impugned order dated 01.12.2017 was passed by the Hon'ble Tribunal partly allowing the captioned appeal filed by the applicant against order passed by CIT(A) vide order dated 07.07.2017 for the assessment year 2014-15.

Certain errors apparent from record have inadvertently crept in the aforesaid order which have vitiated the final conclusion arrived by the Tribunal with respect to ground of appeal no 2 and 2.1. Accordingly, rectification of such mistakes apparent from record are prayed for through this application.

Brief facts of the case with respect to Ground of Appeal no. 2 and 2.1 are as under:

Brief Facts

During the relevant previous year ending March 31, 2014, the applicant had sold 15,67,68,789 shares of Scorpio Beverage Private Limited (hereinafter referred as "Scorpio") to a foreign company, i.e., CGP Investment Ltd. ('CGP) [an affiliate of Vodafone International Holdings B.V.] for total lump sum consideration of Rs.997,92,44,200 and resultant long term capital gains of Rs. 782,92,66,249 was offered to tax in accordance with the provisions of section 45 read with section 48 of the Act.

Scorpio was incorporated under Companies Act, 1956 on 02.02.2006 with entire share capital being divided into 10,000 equity shares of Rs. 10 cach, which was wholly held by the Applicant along with his wife, Mrs. Neelu Analjit Singh (hereinafter jointly referred as "AS"). Scorpio, through its step down as diary companies te. MV Healthcare Services Private Limited (hereinafter referred to as "MVH") and ND Callus Info Services Private Limited (hereinafter referred to as "NDC") and other down-stream entities held equity shares in Hutchison Essar Limited ("HEL"), a company engaged in the business of providing telecom services across different circles in India, which was subsequently renamed as Vodafone India Limited ("VIL").

In the assessment order passed under section 143(3) of the Act, the assessing officer enhanced the amount of capital gains returned by the appellant by substituting the aforesaid actual consideration received from sale of shares of Scorpio with alleged fair market value ('FMV') thereof amounting to Rs.2233,42,85,070, taking indirect interest of Scorpio in VIL at 9.65% (the correct figure being 8.9055%, duly accepted by the ITAT in the impugned order) and applying the same to enterprise value of VIL determined at Rs.56,448 crores by the independent valuer i.e. Kotak

Mahindra Capital Company Limited (hereinafter referred to as "Kotak") as per Discounted Cash Flow Method ("DCF Method"), thereby arriving at price per share of Scorpio at Rs.142.70

The aforesaid action of the assessing officer in substituting the actual sale consideration received by the alleged FMV was upheld by the CIT (A) invoking section 50D of the Act, which was challenged through various grounds of appeal before the Hon'ble Tribunal.

Order of ITAT

In the impugned order, the Hon'ble Tribunal has upheld the aforesaid action of the assessing officer and the CIT(A), albeit on different grounds, and held that long term capital gains should have been computed on the basis of the fair market value of the shares of Scorpio, which was adopted at Rs.131.86 per share on the basis of the calculation filed by the Respondent Revenue for the first time during the course of hearing of the said appeal, allegedly computed as per Rule IIUA of the Rules.

Attention is invited to Para 62 of the appellate order which reads as under:

> *"Section 11UA(2) also envisages that the fair market value of the unquoted shares can be determined as per discounted cash free flow method, i.e., DCF but here the valuer seems to have adopted NAV method and he has reduced even those liabilities which are not permissible under 11UA. Accordingly, we hold that the valuation done by the Kotak Mahindra Capital and the value of SBPL's shares is not in accordance with Rules as given in Rule 11UA which is specific for valuing the unquoted shares, The reason for not following the value of Kotak for SBPL shares is that, the Valuer has adopted NAV for valuing the intermediary companies; and if NAV method is to be adopted, then he can reduced liabilities as envisaged under Rule 11UA and not any other liabilities suggested by the companies without being authenticated by the companies or independently examined by the Valuer. Only liability which can be excluded while examining the book value is the liability shown in the balance sheet."*

In the aforesaid Para, it has been held that for the purposes determining fair market value of unquoted shares as per NAV method, resort has to be made to the provisions of Rule 11UA of the Rules and only the liabilities prescribed therein can be reduced to arrive at the NAV/FMV of the unquoted shares.

While the applicant being aggrieved with the aforesaid principal finding of the Hon'ble Tribunal qua enhancement of long term capital gains by substituting the actual consideration with notional consideration, is in the process of filing'an appeal under section 260A of the Act before the Hon'ble Court, the applicant is seeking rectification of the apparent mistakes in the appellate order in adopting fair market value of the shares

of Scorpio at Rs. 131.86 per share, furnished by the Revenue as computed as per Rule 11UA of the Rules, since such computation suffers from apparent mistakes, elaborated hereinafter in this application.

It is respectfully submitted that the prayer for rectification of apparent mistakes in the impugned order is without prejudice to the submission(s) that - (i) the valuation given by Kotak was not the basis for fixation of the sale consideration for sale of Scorpio between the contracting parties; and (ii) rule 11UA of the Rules cannot be invoked to substitute the current sale consideration "accrued" between the parties.

The grounds for rectification are as under:

A. Liabilities excluded by Revenue, not in accordance with Rule 11UA
Attention is invited to the relevant portion of Rule 11UA of the Rules (also reproduced at pages 113-114/para 61 of the impugned order), which reads as under:

"[2](a) the fair market value of unquoted equity shares (A-L) (PV). (PE)
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 un-amortised 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:-
(1) 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; any amount representing contingent liabilities other than arrears of

(vi) dividends payable in respect of cumulative preference shares; PE= total amount of pald up equity share capital as shown in the balance-sheet;

PV the paid up value of such equity shares."

On perusal of the aforesaid Rule, it would be appreciated that the same provides for computation of the value of net assets of the company by reducing book value of liabilities from the book value of assets. Clauses (i) to (vi) of the aforesaid Rule prescribe certain liabilitics that need to be excluded from the amount of book value of liabilities, which is to be further reduced from the book value of assets. Clause (i) provides for reduction of only paid up capital in respect of equity shares and not preference shares. Further, none of the other clauses provide for exclusion of preference share capital.

Clause (vi) of the above Rule provides for exclusion of contingent liability other than "arrears of dividends payable in respect of cumulative preference shares"; meaning thereby that the latter amount would be included as part of liabilities to be reduced from the book value of assets.

From the above it follows that - (i) outstanding amount of preference share capital, and (ii) arrears of dividend in respect of cumulative preference shares, are liable to be reduced from the book value of assets for computing net asset value (NAV) as per the aforesaid Rule 11UA of the Rules.

Having regard to the aforesaid, the conclusion arrived at in Para 62 of the appellate order (reproduced above) to the effect that the Kotak had wrongly reduced aforesaid liabilities while computing NAV of intermediate companies is contrary to the clear, express and unambiguous provisions of clauses (i) and (vi) of Rule 11UA of the Rules.

B. Incorrect amount of assets and liabilities adopted by Revenue

Further, the amount of assets and liabilities adopted in said computation allegedly as per the balarice sheet of intermediate companies (between Scorpio and HEL/VIL) as on 31.03.2013 are incorrect inasmuch as the same are not reconcilable with the actual reported figures in the aforesaid audited balance sheet(s).

In view of the above, the calculation of FMV furnished by the Respondent Revenue and adopted by the Hon'ble Tribunal is flawed in as much as (i) incorrect figures as per the audited balance sheet(s) of intermediate companies as on 31.03.2013 have been adopted; (ii) the outstanding amount of liability towards preference shares capital, and (iii) arrears of dividend in respect of cumulative preference shares have not been reduced, in terms of clause (vi) of Rule 11UA of the Rules.

A sheet having comparative working of NAV/FMV of Scorpio as per the working furnished by Respondent Revenue and as per the correct amounts of assets and liabilities and reducing the outstanding liabilities towards preference share capital (without reducing arrears of dividend) on sample basis to show the variation/inaccuracy in the calculation furnished by the Respondent Revenue as per Rule 11UA, is attached herewith.

In view of the above, it would be appreciated that the computation of FMV of Scorpio at Rs.131.86 per share suffers with mistakes apparent from record. Accordingly, the Hon'ble Tribunal erred in directing the assessing officer vide paras 63 to 65 of the impugned order to compute long term capital gains adopting that value.

C. Wrong finding that working furnished by Respondent Revenue was not disputed by the applicant

The finding recorded by the Hon'ble Tribunal in para 64 of the impugned order that the aforesaid figure was not disputed by the Applicant is also not correct for the following reasons:

The applicant had principally disputed the substitution of the actual declared consideration by the alleged FMV, Without prejudice to the aforesaid principal submission, the applicant had submitted that the FMV of shares of Scorpio, as per the valuation report of Kotak, calculated to Rs. 5.40 per share only; on the basis of which the sale consideration receivable would calculate to an amount lower than the amount actually received.

Responding to the aforesaid alternate submission of the applicant, the Respondent Revenue disputed Kotak's calculation of FMV at Rs. 5.40 per share. To support its contention, the Respondent Revenue had for the first time submitted before the Hon'ble Tribunal on 05.10.2017 its objection to exclusion of liabilities in respect of preference share capital and arrears of dividend on cumulative preference shares and submitted its working of FMV as per Rule 11UA vide Annexure 4 to its written

submissions, though the same was not the basis of addition made by the assessing officer and upheld by the CIT(A).

As per the working furnished by the Revenue, liabilities on account of preference share capital as per contractual terms were not to be reduced as is evident from the following extract at page 22/Para 34 and 35 of the Written Synopsis filed by the Revenue, which is reproduced hereunder for ready reference:

> *"34. Annexure 4 to this note provides a working of the liabilities. It was submitted by the appellant at the time of oral hearing that difference arises primarily on account of the amount set apart for payment of dividends to preference shareholders. It is submitted that such a claim is clearly inadmissible in view of sub-rule 2(ii) of the Rule 11UA of the IT Rules. Even otherwise, such liabilities cannot be taken into account in arriving at the value of shares of a company under NAV method.*
>
> *35. The valuation done as per the rule works out to Rs. 136 per share and the AO has taken the value of Rs.132 per share only (initially it was Rs.142.70, which was arrived at after taking the appellant's stake in VIL at 3.9% instead of the correct stake at 3.65%. Thus, the valuation adopted by the AO is in conformity with the Framework Agreements, value of HEL shares as determined by Kotak and rules of valuation provided for under Rule 11UA."*
>
> *In rebuttal, the applicant defended the Kotak valuation. In particular, attention was drawn to the valuation methodology adopted by Kotak, as evident from the following extracts at pages 30-31 of the Written Synopsis furnished by the Applicant which have even been duly noted by the Hon'ble Tribunal at Page 53 to 56 of the impugned order, reproduced hereunder for ready reference:*

"Valuation methodology followed by Kotak

Attention, in this regard, is invited to the following relevant extracts of the valuation report issued by Kotak regarding the valuation methodology followed for valuing different downstream companies.

> *"Background*
> *CGP, as a shareholder of SBP, has requested Kotak Mahindra Capital Company lad. ('KMCC") to carry out an equity valuation of SBP as of February 28, 2014 ("Valuation Date") and provide the price per share of SBP, in relation to the proposed acquisition of shares of SBP that CGP does not already own from the Sellers. SBP, through a series of companies in the HoldCo Chain, is an indirect shareholder of VIL.. We have carried out the equity valuation of VII. using a Sum of the Parts Approach, which involves valuation of VIL Group (which is involved in providing telecom services across all telecom circles in India) and the value of VIL's 42% equity stake in Indus. The valuation of both VII.*

> *Group and Indus has been done using the Discounted Cash Flow methodology ("DCF") primarily based on the information and representations received from CGP and VIL. The valuation of VIL. so arrived at has been factored in while valuing each of the companies in the HoldCo Chain and SBP, considering the net value of other assets and liabilities in the respective companies, to arrive at the value of SBP, This Report is to be used only for the purpose of which it is intended, and is not o be used or referenced for any other purpose.*
> *Valuation Methodology and Assumptions*
> *We have computed the equity valuation of SBP, and the value of each company in the HoldCo Chain, based on the value of the downstream investments of SBP, or the respective company in the HoldCo Chain, as the case may be (which, in each such case, is linked to the value of VIL), and adjusting the same for the net value of other assets and liabilities of such company based on the books of accounts of such company as on 31 December, 2013, except that in case of any outstanding preference shares, the same has been valued as on 28 February, 2014 as per its contractual terms."*

As per the aforesaid method,, Kotak had arrived at a fair market value of shares of Scorpio by taking the value/valuation of underlying companies including VIL. The fair market value of the main underlying operating company, i.c., VIL was computed by Kotak on the basis of DCF method at Rs.56,448 crores which has been accepted by the assessing officer. Considering that the other intermediary companies between Scorpio and VIL were only investment companies, without having any business operations, and no business projections/forecast were available for such companies, the same were valued on the basis of net asset value (NAV) of each such company, which were added (in case of positive net assets) or reduced (in case of negative net assets), as the case may be, from the fair value of VIL arrived on the basis of DCF method as pointed above.

It would further be pertinent to point out that the NAV of the intermediaries/step down subsidiary companies was computed on the basis of books of account of such companies as on 31.12.2013 or 28.02.2014. Further, while adopting the book value of assets as on 31.12.2013 or 28.02.2014, Kotak reduced the accrued liability towards outstanding preference shares, such as, premium payable on redemption or cumulative amount of dividend payable on such shares etc., as per the contractual terms of issue thereof, on a rational and scientific basis, which were not reflect in the financial statements.

On the basis of the aforesaid method, Kotak arrived at the fair value of Scorpio at Rs.2065 crores, which resulted in price per share of Rs.5.40.

B. Valuation methodology adopted by Kotak justified

Attention of the Hon'ble Bench is invited to the structure chart on page 6 of Kotak's Valuation Report, which was also separately annexed to the Chart of Dates, submitted by the appellant. On perusal of the same, it would be noted

that Scorpio was not directly holding shares in VIL, but held economic interest therein through several intermediate companies, which had independent assets and liabilities. Although, the said companies were mainly investment companies, having shareholding in subsidiary companies, such investments were financed through third party borrowings, which in our respectful submission ought to be considered while computing the value of holding companies including Scorpio.

Accordingly, since Scorpio had no direct shareholding in VIL, which was held through several intermediate companies, the valuation of Scorpio was to necessarily factor the net assets (i.e. assets less debts) position of all such intermediate companies, as rightly carried out by the Valuation Expert, viz., Kotak in its Valuation Report.

It is respectfully submitted that the aforesaid method followed by Kotak in considering the value of intermediaries companies is a universally acceptable method and was also factored in by the parties at the time of negotiating the consideration for transfer of shares under the Framework Agreements, in the following manner:

I. The erstwhile Rule 12 relating to valuation of unquoted equity shares of an investment companies contained under the Wealth Tax Act, 1957 provided that the value of shares of an investment company shall be computed by applying the net assets value method and the value of shares held by such investment company shall also be valued in accordance with the said method..... In other words, the aforesaid valuation rule provided for computing fair value of the shares/investments held by the holding company, while computing the value of shares of such later company;

II. Similarly, the amended Rule 11UA of the Income Tax Rule, 1962 also provides that the fair market value of the shares held by such company will also need to be considered, while computing the fair market value of the shares of such holding company;

iii. Schedule 2 of the Framework Agreement dated 05.07.2007, which prescribed for the method to be followed for computing the fair market value /enterprise value of the shares of HEL/VIL for the purposes of Clause (a)(ii) of Schedule 1 to check whether the said value exceeds USD 25 billion also provided that NAV of intermediary companies will need to be added and / or reduced from the enterprise value of HEL, for arriving at the fair market value of the shares of Scorpio.

In that view of the matter, the methodology adopted by Kotak in valuing the shares of Scorpio was correct and the assessing officer erred in disregarding the said method and arriving at the alleged FMV of Scorpio by directly applying its indirect economic interest to the enterprise value of VIL by ignoring the value of intermediary companies."

In particular it was emphasized that the exclusion of the accrued liability towards outstanding preference shares including premium payable on redemption or cumulative amount of dividend payable on such shares etc., as per the contractual terms of issue thereof was sanctioned by law and accounting

practice. In that view of the matter, the basis of aforesaid calculation was disputed by the applicant.

Further, the aforesaid calculation was not furnished by the Respondent Revenue as the alternate FMV of the shares that could form the basis for sale consideration alleged to have "accrued" to the applicant, which can be corroborated from the following extracts at page 34-35 of the Written Synopsis filed by the applicant after the conclusion of the hearing, wherein it is clearly stated that the Revenue had not at any stage pointed out the precise consideration which "accrued" to the applicant under the various agreements:

"The submission made by the respondent Revenue, namely accrual of some unquantified higher consideration (in place of the declared/ actual consideration) is based purely on conjectures and surmises and not backed by any relevant material / evidence on record. The Revenue could not point out the precise consideration, which according to the Revenue had "accrued" to the appellant so as to be taken as "full value of consideration" in terms of section 48 of the Act. The entire attempt of the Revenue seems to be to embark on a fishing/roving expedition to somehow discard the actual / declared consideration, which actually changed hands between the parties, which was disclosed and approved by FIPB, and substitute the same with 'some' unquantified notional / hypothetical consideration, which according to the Revenue could have "accrued" to the appellant."

In view of the above, it would be appreciated that it was never the stand of the Revenue before the Hon'ble Tribunal that FMV of Rs.136.76 per share be taken as the basis for calculating capital gains; otherwise there would have been no occasion for the applicant to make the aforesaid submission.

An affidavit of Mr. Arvind Agarwal, AR of the applicant, who was present at the time of hearing is filed alongwith the present application in support of the averment that the applicant had contested the stand of the Revenue in seeking exclusion of the liabilities towards preference capital, etc., reduced by Kotak while calculating the FMV of shares of Scorpio.

Prayer

For the aforesaid cumulative reasons, it is respectfully submitted that the direction given by the Hon'ble Tribunal vide para 64-65 of the appellate order to adopt Rs 131.86 per share as the fair market value of shares of Scorpio, which "accrued" to the applicant from sale of said shares is erroneous and suffers from mistakes apparent from record, requiring rectification

The direction contained in para 64 reproduced hereunder;

"Accordingly, we hold that the value of shares for which the sale consideration said to have been accrued to the assessee has to be worked out at Rs. 131.86 per share. Thus, the AO is directed to compute the capital gain by taking the sale consideration by adopting the per share value of SBPL at Rs. 131.86."

needs to be replaced by the following:

"Accordingly, we hold that the value of shares for which the sale consideration said to have been accrued to the assessee has to be worked out strictly as per Rule 11UA of the Rules taking into account correct figures as per Balance Sheet of the intermediate companies as at 31.03.2013. Thus, the AO is directed to compute the capital gain by taking the sale consideration by adopting the per share value of SBPL as per Rule 11UA."

Consequently, the conclusion in para 65 reproduced hereunder:

"Lastly, the value of the SBPL shares as per FMV of VIL would be Rs. 131.86 per share as determined above; and accordingly, AO is directed to compute the capital gain taking the sale value of SBPL at Rs. 131.86 per share,"

needs to be replaced by

"Lastly, the value of the SBPL shares as per FMV of VIL would be calculated as Rule 11UA as directed above, and accordingly, AO is directed to compute the capital gain taking the sale value of SBPL so arrived at."

The applicant trusts that its prayer will merit sympathetic consideration.
An opportunity of being heard is prayed for.

3. The assessee's miscellaneous application was disposed of by this Tribunal in MA No. 742/Del/2017 dated 19.03.2018 rejecting the miscellaneous application. Aggrieved, the assessee preferred a writ petition before the Hon'ble Jurisdictional High court. The Hon'ble Jurisdictional High Court disposed of the Writ Petition vide WP (C) 3121/2018 dated 18.09.2023 by observing as under:-

4. The record shows that the petitioner/assessee approached this court to assail the order dated 19.03.2018 passed vis-a-vis its Miscellaneous Application i.e., M.A. No.742/Del/2017 by the Income Tax Appellate Tribunal [in short, "the Tribunal"].

5. The central issue around which the dispute veers is the price at which the shares of Scorpio Beverages Pvt. Ltd. were sold by the petitioner/assessee, i.e., Mr Analjit Singh and his wife, Ms Neelu Analjit Singh.

6. The petitioner had valued the shares at Rs.63.65 per share, while the Tribunal arrived at the valuation of Rs. 131.86 per share.

7. Via the miscellaneous application, the petitioner had attempted to point out the defects in the valuation.

8. The Tribunal, however, via the impugned order dated 19.03.2018, took the view that entertaining the aforementioned miscellaneous application would amount to review and therefore, rejected the application.

9. In the early hearing application, the petitioner has, inter alia, alluded to the fact that insofar as his wife is concerned, the valuation offered by her with respect to the subject shares, which was pegged at Rs.70.59 per share, has been accepted by the Tribunal.

10. In Ms Neelu Analjit Singh's appeal, this order was rendered by the Tribunal on 19.12.2019.

11. Based on the aforesaid order of the Tribunal, an appeal effect order was passed by the Deputy Commissioner of Income Tax on 12.02.2020 [See Annexure P-1 and P-2 appended to CM Appl.48034/2023].

12. Given this position, learned counsel for the petitioner says that this writ petition can be disposed of with a direction to the Tribunal to re-examine the merits of the miscellaneous application, which was dismissed via the order dated 19.03.2018.

13. Mr Puneett Singh, who appears on behalf of the respondent/revenue, says that he can have no objection if this court were to direct the Tribunal to re-examine the merits of the miscellaneous application. 13.1 It is ordered accordingly.

14. The impugned order dated 19.03.2018 is set aside. The miscellaneous application is restored to its original number and position.

15. The Tribunal is directed to pass a fresh order, after hearing the counsel for the parties.

16. List the aforementioned miscellaneous application (M.A. 742/Del/2017) before the concerned Bench of the Tribunal on 20.10.2023 for directions.

17. The writ petition is disposed of, in the aforesaid terms.

18. The date already given in the writ petition i.e., 06.02.2024, shall stand cancelled."

4. Pursuant to the aforesaid order of the Hon'ble Jurisdictional High Court, the present miscellaneous application proceedings attains its life. The revenue has filed the following written submissions dated 19.7.2024:-

1. The primary issue in the above-mentioned appeal namely the value of consideration received or accruing on transfer of shares of Scorpio Beverages Pvt. Ltd. ("SBPL"), was decided in favour of the Revenue,

except to the extent of a minor variation arising largely due to the fact that the extent of shareholding of the Assessee in the company was found to be 3.6512% and not 3.95% as taken by the A.O.

2. Though the discussion in the order of the Hon'ble Income Tax Appellate Tribunal, New Delhi ("Hon'ble ITAT") spread over a range of issues, but the final findings regarding the full value of consideration were recorded at the end of Para 63 in a 'blocked space' which reads as under. -

> *"AO had taken the value at Rs. 142.7 per share in the assessment order. But after taking the correct share of the assessee on SBPL as directed by us, the value will come to Rs. 131.86 per share by taking the 3.6512% share of assessee in VIL."*

3. This finding was based on the fact that the value of consideration of transferred shares had to be taken with reference to the value of Vodafone India Ltd. ("VIL"). Both the A.O. and the Hon'ble ITAT took the proportionate value of VIL shares. The only relief given to the Assessee was with regard to the indirect holding of the Assessee in VIL. No rules of valuation formed the basis of this relief. This relief was totally based on the Framework Agreements of 2006 and 2007 and on the working of the value which the Hon'ble Bench got prepared by the AO / Addl. Commissioner (only for the purposes of assistance) by following the specific guidelines issued by the Hon'ble Bench. The entire discussion with regard to Rule 11UA of the Income Tax Rules, 1961 ("Rule 11UA") in Para 61 to 63 was made as an obiter to dispel the valuation of shares done by Kotak Mahindra and also the way Kotak Mahindra allowed the deduction for liabilities. However, the Hon'ble ITAT never made Rule 11UA as the basis of their final finding.

4. The Assessee is now seeking to introduce Rule 11UA by way of an M.A. and it has, therefore, become necessary, to bring to Your Honours' notice the broad implications of such a proposition keeping in view the final findings of the Hon'ble ITAT [which make no reference directly or indirectly to Rule 11UA].

5. The Respondent-Revenue seeks the indulgence of the Hon'ble ITAT and prays that the Hon'ble ITAT may exercise its inherent power vested upon it under law and correct certain the fundamental flaws [as would be elucidated infra), found present in the order of the Hon'ble ITAT, particularly in the light of what is being canvassed by the Assessee in their present M.A

A. Maintainability of the present petition seeking to bring to notice of the Hon'ble ITAT, certain apparent mistakes in the Impugned Order.

6. Briefly stated, on 01.12.2017, the Hon'ble ITAT was pleased to pass the Impugned Order disposing off the appeal filed by the Assessee.

7. Consequently, the Assessee preferred an M.A. bearing number- M.A. No. 742/Del/2017 before the Hon'ble ITAT, seeking rectification of certain errors contained in the Impugned Order., which came to be dismissed vide order dated 19.03.2018,

8. Aggrieved by the same, the Assessee preferred a Writ Petition before the Hon'ble High Court of Delhi- W.P.(C) 3121/2018. On 18.09.2023 the Hon'ble High Court set aside the order dated 19.03.2018 passed in the said M.A, and restored the same to the original position and number observing as under: -

> *"14. The impugned order dated 19.03.2018 is set aside. The miscellaneous application is restored to its original number and position."*

It is submitted that the effect of such a direction is that the proceedings before the Hon'ble ITAT vis-à-vis the M.A., go back to 27.12.2017, when the said M.A. was filed- (its original number and position).

9. Section 254(2) of the Act prescribes a time limit of six-months from the end of the month in which an order under Section 254(1) of the Act is passed to rectify any mistake apparent from record. Section 254(2) of the Act reads as under -

> *"(2) The Appellate Tribunal at any time within six months from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer,"*

A bare reading of the said provision makes it apparent that there is no limitation of time either on the Assessee or Revenue in bringing to the notice of the Hon'ble ITAT any mistake apparent from record and seeking rectification of the same. The limitation of time of "six months" is on the

Hon'ble ITAT. The time available to the contesting parties to bring to notice of the Hon'ble ITAT any apparent mistake is co-terminus with the period of time available with the Hon'ble ITAT to rectify the mistake.

10. Accordingly, the effect of the order of the Hon'ble High Court dated 18.09.2023 is that since the M.A. is restored to its original position and number, the Hon'ble ITAT gets further time to exercise its power under Section 254(2) of the Act.

11. It is well-settled that the Hon'ble ITAT is mandated to rectify apparent mistakes of fact or law as pointed out by the Assessee or the Revenue. This power stems from the settled principle of jurisprudence that every authority exercising quasi-judicial powers has inherent/incidental power in discharging of its functions to ensure that justice is done between parties which includes rectifying errors which may be pointed out by either of the parties. In this case, even the statutory provisions contained in Section 245(2) of the Act grant this power to the Hon'ble ITAT.

12. Since the proceedings for rectification are open before the Hon'ble ITAT as a consequence of the order of the Hon'ble High Court dated 18.09.2023, the Revenue is entitled and would be failing in its duty if it does not point out the apparent mistake, more so when such apparent mistake is of law.

13. It is submitted that the Revenue is not pointing out any new mistake or bringing to light any new mistake of law or fact. The mistake being pointed out relates directly to the issue which is raised by the Assessee and is pending consideration before the Hon'ble ITAT in these proceedings.

14. It is no longer res integra that the law needs to be interpreted in a way so as to render substantial justice and not to deny the same on mere technicalities. Profitable reference may be made to the decision of the Hon'ble Supreme Court in the case of Grindlays Bank Ltd. vs. Central Government Industrial Tribunal', 1980 SCC 420 wherein it was held that: -

> *"..It is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition."*

Reliance is also placed on the decision of the Hon'ble High Court of Bombay in the case of Supreme Industries Ltd. v. ACIT, [2015] 54 taxmann.com 82 (Bombay) wherein it was held that: -

> *"12. It is a settled position in law that every authority exercising quasi judicial powers has inherent/incidental power in discharging of its functions to ensure that justice is done between parties ie. no prejudice is caused to any of the parties. This power has not to be traced to any provision of the Act but inheres in every quasi judicial authority. This has been so held by the Supreme Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal AIR 1981 SC 606. Therefore, the aforesaid principle of law should have been adopted by the Tribunal. It is expected from the Tribunal to adopt a justice oriented approach and not defeat the legitimate rights on the altar of procedures and technicalities. This is particularly so when there is no specific bar in the Act to correct an order passed on rectification.*
>
> *13. It is fundamental principle of law that no party should be prejudiced on account of any mistake in the order of the Tribunal. Though not necessary for the disposal of this Petition, the stand taken in the impugned order cannot be accepted that section 254(2) are meant only for rectifying the mistakes of the Tribunal and not of the parties. The Tribunal and the parties are not adversarial to each other. In fact, the Tribunal and the parties normally represented by Advocates/Chartered Accountants are comrades in arms to achieve justice. Therefore, a mistake from any source be it the parties or the Tribunal so long as it becomes a part of the record, would require examination by the Tribunal under section 254(2). It cannot be dismissed at the threshold on the above ground."*

15. The mistakes pointed out in the later paragraphs go to the very root of the matter [being an apparent mistake of law] and it may not be fair to examine any of the contentions of the Assessee raised in the M.A. without crossing this fundamental threshold.

16. It is submitted that the Hon'ble ITAT has inherent power to rectify any mistake of law or fact, even if not pointed out by either of the parties. Reliance in this regard is placed on CIT v. ITAT, [2007] 289 ITR 191 (Ker) wherein it was held that:

> *"5. Section 254(2) does not provide that an application is a must from the side of the assessee or the Assessing Officer to exercise the power under it. It appears to be a power which inhers in all Courts and Tribunals to*

correct any apparent mistake in its order. Here, the said power has been expressly conferred by a statutory provision. So, if a mistake is noticed by the Tribunal, either suo motu or on application of either of the parties, it may rectify it under section 254(2). If a genuine mistake is pointed out in a defective application by one of the parties, still the Appellate Tribunal cannot shirk its responsibility in rectifying the apparent mistake in the records. The said section does not provide that there should be an application in the prescribed manner. Therefore, the prescription contained in rule 34A made apparently in exercise of the power conferred on the Appellate Tribunal under section 255(5) cannot curtail the sweep of the powers of the Tribunal under section 254(2). Therefore, the exercise of power under section 254(2) is not dependent upon the validity of the application submitted by the party concerned. If the jurisdictional pre-conditions contemplated under section 254(2) are present, the Tribunal is bound to exercise the said power which is conferred as an enabling power. It is a power coupled with a duty to act when circumstances warranting the exercise of that power are shown to exist. So, even assuming that the application filed by the authorised representative is defective, still if the same discloses the matters relevant under section 254(2), the Tribunal is bound to exercise the power under the said sub- section. It is declared so. In the result, the order of the Tribunal was to be quashed and the matter was to be remitted to the Tribunal for a fresh decision in the matter as to whether it should exercise its power under section 254(2) or not, in accordance with law without any further delay."

17. The Revenue would urge the Hon'ble ITAT to invoke its inherent power to modify the Impugned Order which raise apparent mistakes of law as pointed out in the petition.

B. Mistakes apparent in the Impugned Order.

18. It is submitted that the Impugned Order of the Hon'ble ITAT makes reference to Rule 11UA of the Rules in the following manner: -

a. Para 61/Page 112 of the Impugned Order-

61. This value of VIL has not been disturbed by the AO even though in the year 2007, the value of HEL was indicated at US$ 25 billion which was then more than Rs. 1 lakh crores. Since, the AO has accepted this valuation; therefore, we are not opining anything on this point. In the valuation report while determining the share value of SBPL, the valuer has adopted hybrid method Le., DCF method for VIL and net asset value method (NAV) for intermediary companies which does not finds any support under Rule 11UA of the Act.

The said disclaimer of Kotak Mahindra itself diminishes the various figures of liabilities which have been taken into consideration while valuing the shares of SBPL. In any case, the liability of the intermediary companies which can be reduced for the purpose of valuation has to be seen with reference to Rule 11UA(2)(a), wherein the following liabilities have not been included."

b. Para 62/Page 114 of the Impugned Order-

"62. Section 11UA(2) also envisages that the fair market value of the unquoted shares can be determined as per discounted cash free flow method, i.e., DCF but here the valuer seems to have adopted NAV method and he has reduced even those liabilities which are not permissible under 11UA Accordingly, we hold that the valuation done by the Kotak Mahindra Capital and the value of SBPL's shares is not in accordance with Rules as given in Rule 11UA which is specific for valuing the unquoted shares. The reason for not following the value of Kotak for SBPL shares is that, the Valuer has adopted NAV for valuing the intermediary companies; and if NAV method is to be adopted, then he can reduce liabilities as envisaged under Rule 11UA and not any other liabilities suggested by the companies without being authenticated by the companies or independently examined by the Valuer. Only liability which can be excluded while examining the book value is the liability shown in the balance sheet."

C. How the above observations constitute mistake apparent from record?

19. It is submitted that Rule 11UA has a very limited applicability. While sub-Rule (1) of Rule 11UA is applicable 'for the purposes of Section 56 of the Act' and for determining 'the fair market value of a property, the issue before the Hon'ble Bench was the determination of 'Full Value of Consideration received or accruing as a consequence of transfer of unquoted equity shares of SBPL',

20. The determination of Fair Market Value of the transferred share was not the subject matter for adjudication before the Hon'ble Bench. Issue was limited to the determination of full value of consideration received or accrued in terms of the contractual agreement entered into by the Assessee with the buying entities. The Hon'ble ITAT had discussed this legal issue in great detail from Para 50 onwards and comes to observe in Para 56 that 'Thus, so far as this proposition as canvassed by Mr. Ajay Vohra is concerned, we are in complete agreement

with him that firstly, the term "Full Value of Consideration" cannot be reckoned as a fair market value and secondly, such deeming fiction of taxing the difference on the basis of fair market value on transfer of the capital asset in the hands of the transferee / transferor have been brought by specific provisions as discussed above'. Ostensibly, for A.Y. 2014-15 neither the provisions of Section 50CA nor Section 56(2)(x) are applicable in this case, therefore, by invoking these provisions, additions cannot be made in the hands of transferors i.e., the Assessee'.

21. Having reached this finding in Para 56 and having held that Fair Market Value was not relevant for purpose of Section 48, it was an apparent mistake for the Hon'ble Bench to refer to Rule 11UA for accepting or rejecting the contentions of either parties in this regard.

22. The Hon'ble ITAT did not, in fact, apply Rule 11UA to arrive at the value of shares of SBPL at Rs. 131.86 per share. The assertions made by the Assessee to the contrary in their MA are not correct for the reason that: -

> *c. It was nobody's case [Assessee or Revenue's] that Rule 11UA can apply in determining the Fair Market Value ("FMV") of shares for the purposes of Section 48.*
>
> *d. No arguments were raised from either side on the applicability of Rule 11UA.*
>
> *e. The working chart was prepared by the Revenue on being directed by the Hon'ble Bench and that too wholly in terms of the guidelines issued by the Hon'ble Bench itself in this regard.*
>
> *f. The Hon'ble Bench, during the course of proceedings, nowhere came to conclude that Rule 11UA was applicable for valuing the impugned shares.*
>
> *g. When the Hon'ble Bench directed the officers of the Revenue present in the court to give a working of the value of the shares, it only directed them to give the value by taking "correct" amount of liabilities. The officials were not directed to apply Rule 11UA. The working given by Revenue was not based on Rule 11UA but only on the "correct" amount of liability of intermediaries as appearing in their financials.*
>
> *h. The difference in the value proposed by the A.O. and that upheld by the Hon'ble ITAT was on account of difference in the percentage of shareholding and not as a consequence of*

application of Rule 11UA. The final finding of the Hon'bie ITAT holds so.

i. Certain observations relating to Rule 11UA as appearing in Para 61 to 63 of the order came as a surprise to both the Assessee as also the Revenue.

j. In fact, even the Assessee in its appeal to the Hon'ble High Court of Delhi [filed prior and after the original dismissal of Miscellaneous Application] in ITA Nos. 284/2018 & 380/2018 in Analjit Singh v. PCIT-6, New Delhi has challenged the applicability of Rule 11UA for computing FMV of the shares of SBPL and determining capital gains in its hands.

This is evident from the following contentions raised by the Assessee in its appeal in ITA No. 284/2018 at Page 75 filed prior to the dismissal of the MA: -

"m) That the Tribunal erred on facts and in law in computing the fair market value of the shares of Scorpio as per the valuation method prescribed in Rule 11UA of the Rules, without appreciating that the same was not applicable for computing capital gains under Section 45 read with Section 48 of the Act."

As well as ITA No. 380/2018 at Page 49 filed after the dismissal of MA:

"53. Without prejudice to the above, the Tribunal even otherwise erred in applying the provision of Rule 11UA of the Rules for computing FMV of the shares of Scorpio and capital gains in the hands of Appellant. The Tribunal completely failed to appreciate that Rule 11UA at the relevant time had limited application to compute 'income from other sources' arising in the hands of transferee on receipt of shares by way of gift or at value lower than the FMV under Section 56(2) of the Act. The said Rule has no application for computing capital gains arising in the hands of transferor under section 45 read with section 48 of the Act."

However, this question was not admitted by the Hon'ble High Court as this question did not arise from the order of the Hon'ble ITAT.

23. It may be noted that the jurisdictional High Court has admitted the following question of law in the case of PCIT-7 v. Neelu Analjit Singh, ITA 5/2021 Revenue's appeal in Neelu Analjit Singh's case].

> *"With consent of parties, the following questions of law are framed: -*
>
> *"A. Whether on the facts and circumstances of the case and also on the prevailing law, did the ITAT fall into error in characterising the receipts of consideration on sale of shares of Scorpio Beverages Pvt. Ltd. ('SBPL') as Long-Term Capital Gains ('LTCG'), despite the unambiguous provision contained in Section 2(42A) of the Act?*
>
> *B. Whether on the facts and circumstances of the case and also on the prevailing law, did the ITAT fall into error in making recourse to the provisions of Rule 11UA of the Income Tax Rules, 1961 considering that Section 56 has no application in the present case?"*

24. That, when the applicability of Rule 11UA forms a substantial question of law fit for adjudication by the Hon'ble High Court, it is not open to urge that the applicability of Rule 11UA had attained finality in the order of the Hon'ble ITAT.

25. However, without prejudice, it is submitted that if the Assessee places reliance on references to Rule 11UA in Paras 61, 62 and 63 to canvass that the final findings are based on Rule 11UA, Revenue would urge that such observations do constitute apparent mistake of law (application of Rule 11UA to Section 48) and ought to be rectified by dropping such references to the Rule as they seek to create untenable proposition.

26. Revenue would like to urge that the final findings in the order of the ITAT determining the value of shares at Rs 131.86 per share was not based on Rule 11UA but on the proportionate value of shares of VIL as determined by the valuer and adopted by the AO. The Assessee is seeking rectification of the value determined by the Hon'ble ITAT by invoking certain provisions of Rule 11UA which is based on two assumptions: -

> *k. That, the ITAT has determined the value under Rule 11UA; and*
>
> *l. That, the ITAT has committed the error of not applying applicable provisions of Rule 11UA.*

It is submitted that the second assumption cannot survive without the first being true. However, the first assumption, if taken as correct, immediately gives rise to an apparent mistake of law that Rule 11UA has limited application for section 56 and has, in fact, been applied to Section 48. The acceptance of the submissions of the assessee would lead to acceptance of the existence of the apparent mistake of law in the order of the Hon'ble ITAT to the effect that the value of

transferred shares was determined by the Hon'ble ITAT under Rule 11UA of the Act. The Revenue would urge that any suggestion to correct any hypothetical or assumed mistake should not further compound the matter by giving rise to another vital mistake and that too an apparent mistake of law.

xiv. The mistakes apparent from record include mistakes of law. With the law being so categorical and emphatic that Rule 11UA apply only to Section 56, its application to any other provision is simply an apparent mistake of law, liable to be rectified.

Hence the need for this request

PRAYER

In view of the points urged and submissions made, it is respectfully prayed that this Hon'ble ITAT may be pleased to hold in clear terms that : -

a) Rule 11UA was not applied by the Hon'ble ITAT in reaching a final conclusion with regard to the value of consideration received or accruing to the Assessee, and

b) The legally erroneous observations made in Paras 61, 62 and 63 as pointed out above with reference to Rule 11UA need to be dropped/removed as the final finding of the Hon'ble ITAT is not based on Rule 11UA but on the Assessee's proportionate share in the value of VIL as determined by the valuer and as adopted by the A.O.

5. The revenue filed another written submissions dated 23.7.2024 before us which is reproduced hereunder:-

"GIST OF SUBMISSIONS ON BEHALF OF THE REVENUE

1. The MA under consideration was dismissed by the Hon'ble ITAT vide order dated 19.03.2018.

2. However, the Applicant filed a Writ Petition bearing W.P.(C) 3121/2018 against the dismissal of the MA before the Hon'ble High Court of Delhi.

3. Interestingly, after about five years of filing the WP and after about four years from the date of appellate order from the Hon'ble ITAT in the case of his wife

Neelu Analjit Singh, the Applicant moved an early hearing application before the Hon'ble High Court on 14.09.2023. In the early hearing application, the Applicant alluded to the fact before the Hon'ble High Court that insofar as his wife is concerned, the valuation offered by her with respect to the shares at Rs. 70.59 per share has been accepted by the Hon'ble Tribunal and the DCIT has also given effect to that order. The Applicant therefore requested the Hon'ble Court "that this writ petition can be disposed off with a direction to the Hon'ble Tribunal to re-examine the merits of the Miscellaneous Application dismissed early.

4. The most significant aspect of the Applicant's averments before the Hon'ble High Court was that he did not disclose the fact that in the case of Neelu Analjit Singh, his wife, the Hon'ble ITAT preferred not to follow the decision of the Coordinate Bench in the case of the Assessee and applied Rule 11UA to grant relief. It is also not disclosed to the Hon'ble High Court that a substantial question of law had already been admitted on the illegality of the Hon'ble ITAT applying Rule 11UA. The question of law was admitted with the consent of the Parties in the following words:-

> *"With consent of parties, the following questions of law are framed:-*
>
> *A. Whether on the facts and circumstances of the case and also on the prevailing law, did the ITAT fall into error in characterising the receipt of consideration on sale of shares of Scorpio Beverages Pvt. Ltd. ('SBPL') as Long-Term Capital Gains ('LTCG'), despite the unambiguous provision contained in Section 2(42A) of the Act?*
>
> *B. Whether on the facts and circumstances of the case and also on the prevailing law, did the ITAT fall into error in making recourse to the provisions of Rule 11UA of the Income Tax Rules, 1961 considering that Section 56 of the Act has no application in the present case?"*

5. Instead, an impression was sought to be created as if the findings in the case of his wife had been accepted by the Tribunal and the Revenue. The fact of the matter is that the Coordinate Bench gave the specific directions to the A.O. of Mrs. Neelu Analjit Singh which were followed by him. After giving effect to the direction of the Hon'ble ITAT, the A.O. filed appeal against such erroneous directions and the subsequent question as extracted above is pending before the Hon'ble High Court.

6. This vital omission led to a situation before the Hon'ble High Court where one could believe that the dispute on this aspect of the matter was no longer extant. This further led the Proxy Counsel for the Revenue to agree to the proposal of the Applicant for the re-examination of the merits of the MA. The Hon'ble High Court under these circumstances set aside the order of dismissal of MA dated 19.03.2018. The MA was restored to its "original number and position", with a

direction to the Hon'ble Tribunal to pass a fresh order after hearing counsels for the parties.

PRAYER OF THE ASSESSEE APPLICANT IN THE MISCELLANEOUS APPLICATION

7. The Applicant makes the following prayer in his MA: -

a. The direction given vide Para 64-65 to adopt Rs. 131.86 per share as the fair market value of shares of SBPL which accrued to the Applicant from sale of share is erroneous;

b. The directions contained in Para 64 and 65 need to be replaced by the content and the language suggested by him, as elucidated hereinunder: -

Extracts from the order of the Hon'ble ITAT	*Suggested rectification*
Para 64- Accordingly we hold that the value of shares for which the sale consideration said to have been accrued has to be worked out at Rs. 131.86 per share. Thus, the A.O. is directed to compute the capital gain by taking the sale consideration by adopting the per share value of SBPL at Rs. 131.86	*Para 64- Accordingly we hold that the value of shares for which the sale consideration said to have been accrued has to be worked out strictly as per Rule 11UA of the Rules taking into account the correct figures as per Balance Sheet of intermediate companies as on 31.03.2013. Thus, the A.O. is directed to compute the capital gain by taking the sale consideration by adopting the per share value of SBPL as per Rule 11UA.*
Para 65- Lastly the value of SBPL shares as per FMV of VIL would be Rs. 131.86 per share as determined c above and accordingly, the A.O. be directed to compute the capital gain taking the sale value of SBPL at Rs. 131.86 per share.	*Para 65- Lastly the value of SBPL shares as per FMV of VIL would be calculated as per Rule 11UA as directed above and accordingly, the A.O. be directed to compute the capital gain taking the sale value of SBPL so arrived at.*
The underlined portion represents changes suggested by way of rectification under Section 254(2) of the Act.	

8. From the above, it transpires that the Applicant seeks the insertion of the provisions of Rule 11UA in the final findings of the Hon'ble Tribunal. In other words, while the finding of the Hon'ble Tribunal has not been rendered in the context of Rule 11UA [the passing reference in earlier paragraphs being merely an obiter). In other words, the Applicant is seeking rectification to the effect that such findings determining the full value of consideration of Impugned Shares at Rs. 131.86 be changed to only a direction for the application of Rule 11UA.

9. Reliance has been placed on certain observations of Hon'ble ITAT in Para 62 of the order of the Hon'ble ITAT to draw the inference that the value of consideration has been arrived at by the Hon'ble ITAT under Rule 11UA of the Rules. This inference is fundamentally flawed as neither Rule 11UA could be applied for determination of "full value of consideration received or accruing" for the purposes of Section 48, nor the said Rule was, in fact, applied by the Hon'ble ITAT in the facts of the case of the Applicant.

WHETHER THE HON'BLE TRIBUNAL AT ALL INVOKED RULE 11UA OF THE RULES?

10. As stated above, the assertion of the Applicant that the Hon'ble Tribunal has premised its findings on Rule 11UA and consequently determined the per share value of transferred shares at Rs. 131.86 per share, is based on illogical hypothesis, half-truth and incorrect reading of the order.

11. While making such a fallacious assertion viz. application of Rule 11UA by the Hon'ble Tribunal to determine the per share price, the Applicant has disregarded the fact that the case of Revenue was neither based on such application of Rule 11UA nor the Revenue at any stage sought to urge that the value as given in the working sheet is the correct value of consideration accruing to the Applicant. The working by the Revenue [at Para 63] was only given on the instructions of the Hon'ble Bench and strictly in accordance with the guidelines given by Hon'ble Members- incorporated in Para 63 of the order. Therefore, to say that the Revenue submitted any working on the value of share by applying Rule 11UA is a complete misstatement aimed at misleading the concerned Court/Tribunal.

12. The contention that the Hon'ble Tribunal determined the consideration at Rs. 131.86 under Rule 11UA is again an incorrect statement. The Hon'ble Tribunal in the first instance accepted the propositions of the Revenue that value of share has to be determined as contractually agreed between the parties under the Framework Agreements of 2006 and 2007. It may be noted that these Framework Agreements of 2006 and 2007 do not make any reference to Rule 11UA much less draw any inference therefrom. A finding in this regard has already been reached in Para 50 which reads as under: -

> *"50, In view of the facts as narrated above, following points can be deduced:*
>
> - *The 'Framework Agreement dated 01.03.2006' envisaged fair market value of issued share capital of HEL for determining the value of SBPL shares.*
>
> - *Even if we agree with the contention of the Ld. Sr. Counsel, Mr. Ajay Vohra that the agreement of 05.07.2007 alone is to be reckoned, then we find that in 'Framework Agreement of 2007" also, not only the similar clause of call/put option has been enshrined but also the determination of transfer price is by and large based on fair market value of equity share of HEL.*

- *In the agreement of 2007, the SBPL value of US $ 266.25 million was based on fair market value of HEL. In terms of INR, the value of SBPL shares in the year 2007 aggregated to Rs.1088 crores. (when the indirect holding in HEL/VIL was only 0.23 as against 3.6512% at the time of transfer)*

- *So far as the option fee is concerned, there is no dispute and the assessee has been offering the same as return of income and same has been taxed as revenue receipt year after year."*

13. It is quite apparent that the Hon'ble Tribunal was very conscious to omit any reference to Rule 11UA in Paras 64 and 65 while drawing the final conclusions / findings which read as under: -

> *"64. Based on this calculation, the SBPL value has been arrived at Rs.131.86. So far calculation for arriving at this price in terms of our guidelines, Ld. Sr. Counsel has not disputed this figure, albeit he has challenged the entire valuation set out herein on the ground that the actual consideration received has to be accepted, which we have discussed in detail that is not tenable. Accordingly, we hold that the value of shares for which the sale consideration said to have been accrued to the assessee has to be worked out at Rs. 131.86 per share. Thus, the AO is directed to compute the capital gain by taking the sale consideration by adopting the per share value of SBPL at Rs.131.86.*
>
> *65. In view of the finding given above, following conclusions are drawn on the issues/questions we have framed for the purpose of our adjudication:-*
>
> - *Firstly, the sale value of SBPL as shown by the assessee is not in consonance with the contractual obligations entered by the parties under various Framework Agreements wherein it has been repeatedly envisaged that the value of SBPL was linked with the FMV of HEL/VIL and therefore, the share value as determined accordingly would get enhanced accordingly.*
>
> - *Secondly, the sale consideration received by the assessee as per the Sale Purchase agreement of 12.03.2014 cannot be reckoned as "accrued" to the assessee in terms of section 48 of the Act, because herein this case it is not a case of simple sale and purchase transaction, albeit rights and obligation of the parties as per the agreements for transfer of shares was in exercise of call/put option, for which transfer price of the shares was determinable on FMV of the share value of VIL. What has been accrued to the assessee is the price of the shares which was to be determined as per the mechanism provided in the Framework Agreements, which stipulated FMV of VIL.*
>
> - *Thirdly, section 50D as invoked by Ld. CIT (A) would not be applicable on the facts and circumstances of the case; and if at all it could have been brought to tax in the hands of the transferor under*

the deeming fiction of Section 50CA or Section 56(2) (x), then same are not applicable for the year under consideration as these provisions are applicable from the A.Y. 2017-18.

- *Lastly, the value of the SBPL shares as per FMV of VIL would be Rs. 131.86 per share as determined above; and accordingly, AO is directed to compute the capital gain taking the sale value of SBPL at Rs. 131.86 per share"*

14. It needs to be pointed out at this stage that 50C, 50CA and 50D are the only provisions where AO is empowered to adopt Fair Market Value of shares which could at all give rise to application of Rule 11UA. Once these provisions were held to be not applicable there was no way the Hon'ble ITAT could have applied Rule 11UA. The entire hypothesis in MA falls to the ground.

15. Unlike in the case of Neelu Analjit Singh, the Wife, the Hon'ble Tribunal never gave any direction to compute the value in accordance with Rule 11UA, but categorically recorded a finding that the value of consideration be taken at Rs. 131.86 per share. The Hon'ble ITAT took upon itself the task of determining the "value of consideration accruing" to the Applicant on the transfer of shares of SBPL. Neither the guidelines issued by the Hon'ble Tribunal at Para 63 under which the working sheet determining the value of Rs. 131.86 was prepared nor the actual working of the Revenue was based on Rule 11UA

16. In fact, even the A.O. determined the value by taking proportionate value of VIL shares as determined by Kotak Mahindra as is evident from the assessment order. No rules of valuation, much less Rule 11UA came into consideration. While filing appeal before the CIT(A), no ground regarding the application / non-application of Rule 11UA was raised by the Applicant. That, while the CIT(A) affirmed the finding of the A.O. by making reference to Section 50D, it is quite clear that Rule 11UA was never adverted to.

17. Upon appeal to the Hon'ble Tribunal, the Applicant raised no ground on Rule 11UA. In fact, no grievance was expressed by either the Applicant or the Revenue on application/non-application/misapplication of Rule 11UA. In the hearing before the Hon'ble Tribunal, the counsel for Applicant raised no contention regarding the applicability of Rule 11UA. No suggestion of this kind was made by the counsel for the Revenue, as well.

18. The Hon'ble Tribunal while making certain observations with regard to valuation report of Kotak Mahindra and while rejecting methodology contained therein, took support from the provisions contained in Rule 11UA, however, it never reached a finding that full value of consideration needs to be worked out by resorting to the provisions contained in Rule 11UA. There is no sentence in the order of the Hon'ble ITAT which even remotely makes that suggestion. An obiter dicta or certain observations to support or repel certain arguments cannot be said to be the findings to hold that provision or rule was applied to reach the final finding. More so, when final findings are unambiguous and give a categorical finding with respect to value of consideration without any reference to Rule 11UA, there is no reason to presume that the value so arrived at was based on Rule 11UA. In fact, in the final conclusion, the Hon'ble ITAT

categorically records, "the value of SBPL shares as per FMV of VIL would be Rs. 131.86 per share."

19. No reliance can be placed on the decision in the case of Neelu Analjit Singh for the reason that there the Hon'ble Tribunal for good or bad reasons, in that case came to record a clear finding that the value of consideration has to be worked out under Rule 11UA and gave directions to that effect to the DCIT. In the case at hand, the Hon'ble Tribunal accepted the proposition of the Revenue that in terms of the contractual obligation, consideration has to be the proportionate share of Applicant in the value of HEL/VIL based on the Framework Agreements of 2006 and 2007.

20. In fact, the Framework Agreement of 2007 also provided some guidance for arriving at the per share price of SBPL and the allowance of liabilities, particularly, liabilities with respect to preference shares. It was in this context [upon examination of the terms of this Agreement), that the A.O. was directed to take the 'correct' amount of liabilities. The expression correct amount of liabilities does not amount to prescription of allowance of liabilities under any of rules but it only refers to prescription of allowance of liabilities under contractual agreements.

21. It needs to be kept in mind that the Hon'ble ITAT was not called upon to determine the Fair Market Value of SBPL but to determine the "full value of consideration" accruing to the Applicant on transfer of SBPL shares which can be arrived at only by reference to either: -

> *a. The deeming fiction appearing in the statute; [like Section 50C, 50CA or 50D] or*
>
> *b. The contractual agreements between the parties that determine their rights (consideration).*

22. Therefore, the averment that the value of SBPL. at Rs. 131.86 was worked out under Rule 11UA is a misleading statement. The working sheet prepared by the Revenue under the guidelines of the Hon'ble Bench clearly records as to what kind of liabilities, assets etc. are being taken or not taken into account. By no stretch of imagination can it be inferred that there was any kind of error in working out the liabilities. It is submitted that the working sheet prepared by the Revenue was in harmony with the guidelines laid down by the Hon'ble Bench.

23. Accordingly, there is nothing to suggest that Rule 11UA was taken into account to arrive at the figure of Rs. 131.86 per share.

WHETHER RULE 11UA COULD AT ALL BE APPLIED?

24. It is humbly submitted that Rule 11UA is designed to determine the Fair Market Value of unquoted shares and that too for limited purposes of Section 56(2)(x). Pertinently there was no occasion to determine the Fair Market Value of any of the intermediary companies. A perusal of terms of contractual arrangements is necessary to demonstrate as to how Rule 11UA or any other rule of valuation for determining Fair Market Value of an unquoted share was

totally irrelevant in the facts of this case. The capital gains are worked out by making certain deductions from full value of consideration received or accruing to assessee.

25. The case of the Applicant is thar it received certain consideration as declared in the Return of Income. The case of the Revenue is that this was not a simple case of purchase and sale of shares but it was a case where right arising under a call/put option was exercised leading to transfer of shares from one entity to the other for a consideration which was pre-determined under contractual arrangements. Those arrangements having not been rescinded gave the Applicant the right to receive the predetermined amount and thus Full Value of Consideration accruing to Applicant was required to be determined under terms of contractual arrangements.

26. Under these circumstances, there was no role to be played by any rule of valuation, unless the terms of agreement itself had recorded that consideration should get determined under a certain rule which it did not.

27. The Rules governing the determination of Fair Market Value were thus wholly irrelevant to the issues raised in this appeal. The assumption drawn by the Applicant that merely because Rule 11UA was referred to with a view to dispel valuation done by a merchant banker should form the basis to hold the Hon'ble ITAT had determined the value of per share price of SBPL under Rule 11UA is fallacious.

28. It has been contended by both the Applicant as also the Revenue that Rule 11UA cannot traverse beyond Section 56 and be applied in the context of Section 48. In the statutory appeal filed by the Applicant before the Hon'ble High Court against the order of the Hon'ble Tribunal, the following question of law was raised by the Applicant himself.

> *"3) Without prejudice, whether the Tribunal erred in law in relying in the provisions of Rule 11UA of the Rules when such Rule exclusively operates in the realm of Section 56 of the Act (Income from Other Sources) and which provision firstly does not apply to a transferor, and secondly does not apply to "Incomes" referred in Part A to E in Chapter IV of the Act?"*

29. However, when the questions came to be admitted, the said question was not admitted by the Hon'ble High Court as it did not arise from the order of the Hon'ble Tribunal against which the appeal was filed. This shows that even the Hon'ble High Court was aware that Rule 11UA has not at all been applied by the Hon'ble Tribunal. It is imperative to note that even in the present MA, it has been contended that Rule 11UA has no applicability to the case at hand.

30. On the other hand, an identical question was raised by Revenue before the Hon'ble High Court in the case of Ms. Neelu Analjit Singh, since the Hon'ble ITAT gave directions to the A.O. to compute the value in terms of Rule 11UA. In that case, the Hon'ble Hugh Court admitted the Question of Law and that too with the consent of the Parties since the question arose directly from the order of the Hon'ble ITAT. The question so admitted has already been extracted in Para 4 of these submissions.

31. While filing the appeal before the Hon'ble High Court under Section 260A, even after getting the necessary relief, Ms. Neelu Analjit Singh has categorically taken the position that in the given facts, the provisions of Rule 11UA are not applicable. Again, in the application filed for admission of additional evidence, a definite stand is taken that though in law Rule 11UA is not applicable, yet the claim was being advanced on "without prejudice" basis.

32. This raises a peculiar situation where the Assessees (both husband and wife) and the Revenue contend that Rule 11UA cannot be applied in law in these situations yet, a prayer is being made in the MA that the value which has been determined by the Hon'ble ITAT should be regarded as having been done with the application of Rule 11UA and based on such assumption, the findings may be rectified to incorporate the application of the said Rule.

WHETHER INFERENCE REGARDING FINAL FINDINGS CAN BE DRAWN FROM SELECTIVE REFERENCE TO CERTAIN SENTENCES/PARAGRAPHS

33. The Appellant is seeking to draw selective reference to certain observations | Para 61 or 62 of the order. It is submitted that the application or non-application of certain provisions of law or rules in the order is not something that can be left to assumptions or presumptions. This has to flow from the findings in the order. It is again not open to draw the presumption by reference to a sentence or a paragraph there. The order has to be read as a whole.

34. While making a wholesome reading of the order, it is not possible to ignore the observations in following paras: -

a. Para 45- Rule 11UA did not figure in the list of issued framed for adjudication.

b. Para 47- Reference to Framework Agreement of 2006 where it was agreed that the liability of intermediary companies was not to be recognised for working out the transfer price.

c. Paras 48, 49- Where Framework Agreement of 2007 is discussed in detail.

d. Para 50- Certain conclusions drawn referred to hereinabove.

e. Para 56- Where Hon'ble ITAT holds that full value of consideration is not the fair market value of shares.

f. Para 59- Where the Hon'ble ITAT holds that what accrued to the Appellant under Section 48 is the value determinable on the basis of the fair market value of VIL.

g. Para 61- The Hon'ble ITAT rejects the valuation of Kotak Mahindra and in doing so, refers to Rule 11UA as well.

h. Para 62- Hon'ble ITAT further rejects the methodology of Kotak Mahindra and in that process makes certain observations about what liabilities can be allowed under Rule 11UA.

i. Para 63- Hon'ble ITAT issues guidelines to the A.O. to prepare a chart determining the value. No reference to Rule 11UA is made in the guidelines nor does the chart prepared by the A.O. follow Rule 11UA,

j. Para 64- The Hon'ble ITAT determines the value at Rs. 131.86 per share and gives a direction to the A.O. to follow the same.

k. Para 65- The Hon'ble ITAT summarized the conclusions which again have reference to Rule 11UA.

35. A wholesome reading of the judgement in its entirety clearly shows that Hon'ble ITAT did not apply Rule 11UA on facts of the case before them, realising fully, the inapplicability of such a Rule in the context of Section 48. Certain stray observations and references to the said Rule in certain paras were made to raise arguments against Kotak Mahindra's valuation. These cannot form the basis to hold that Rule 11UA was applicable by Hon'ble ITAT

IS THE DECISION IN THE CASE OF MS. NEELU ANALJIT SINGH A BINDING PRECEDENT?

36. It is true that the Coordinate Bench in the case of Ms. Neelu Analjit Singh has made a conscious departure from the case of the Appellant. After extracting the entire judgement in the case of the Appellant in Para 40, the Coordinate Bench records its disagreement with the last finding. The Hon'ble Bench doesn't follow the value of consideration of Rs. 131.86 per share determined in the case of the Appellant, but foes on to analyse its correctness under Rule 11UA (showing as if the value of Rs. 131.86 per share was determined by the AO- who had only assisted the Hon'ble Bench based on their guidelines). The determination of Rs. 131.86 per share was finding not of the A.O. but of the Hon'ble Bench.

37. The Hon'ble Bench issued directions to allow certain liabilities based on such directions.

38. In the first place, the Coordinate Bench committed the mistake of not following the value of consideration determined by the Hon'ble Bench in the case of the Appellant [who held 90% shares in the total shares transferred]. Secondly, the Hon'ble Bench in the case of the Wife wrongly invoked Rule 11UA, which has been admitted as a question of law by the Hon'ble High Court.

39. The Coordinate Bench proceeds on a wrong assumption that value determined in the case of the Appellant was under Rule 11UA.

40. The Coordinate Bench has committed grave error of law in applying Rule 11UA in the context of Section 48 (particularly three exceptions carved out in 50C, 50CA and 50D were not applicable in this case).

41. It is submitted that the decision of the Coordinate Bench suffers from law and is not a binding precedent. Besides, there are decisions of other Coordinate Bench which clearly hold that Rule 11UA will not apply in the context of Section 48 of the Act. In the case of Swiss Reinsurance Co. Ltd. v. DCIT-(IT)-Range4 (2) (2). Mumbai, ITA 6531/Mum/2017 dated 20.07.2021 the Hon'ble ITAT, Mumbai Bench held in Para 21 as under: -

> *"21. In the facts of the present case, undisputedly, after applying the computational provisions of sections 48 and 49 of the Act to the sale transaction of shares of TTK, long term capital loss arises. Therefore, the assessee is entitled to claim such long term capital loss. As regards the allegation of the assessing officer that assessee had not valued the shares under rule 11UA, we fully agree with the submissions of learned counsel for the assessee that rule 11UA is application for valuation of assets specified under section 56(2) (vii). 56(2)(viia) and 56(2) (viid). Therefore, rule 11UA cannot be applied for determining the value of unlisted equity shares for any purpose other than section 56(2) of the Act...."*

42. It is prayed that the decision in the case of Neelu Analjit Singh be not followed as it is not a right decision in law. However, if the Hon'ble Bench feels otherwise, it is specifically prayed that the Hon'ble Bench may kindly refer the matter to the Hon'ble President for constitution of a Special Bench on the primary ground that there are conflicting decisions as pointed out hereinabove on the applicability of Rule 11UA for determining value of consideration under Section 48. The issue has large ramifications and is likely to affect a large number of cases in future as well.

WHETHER A MISTAKE INFERRED BY A PROCESS OF REASONING AND WHERE TWO VIEWS ARE POSSIBLE, CAN BE CONSIDERED TO BE A MISTAKE APPARENT FROM RECORD?

43. It is settled law that scope of Section 254(2) of the Act does not extent to debatable issues or where the conclusions are sought to be drawn after a long-drawn process of reasoning.

44. The admission of the Hon'ble High Court of a substantial question of law itself suggests that the applicability of Rule 11UA is a debatable issue.

45. The question of whether or not the Hon'ble Bench applied Rule 11UA in reaching the value of consideration at Rs. 131.86 is not arising from the findings of the Hon'ble Bench but the Appellant is seeking to draw this inference from a process of reasoning based on a hypothetical assumption. Such assumption cannot be regarded as mistake apparent from record within the scope of Section 254(2) of the Act. Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of CIT v. Ramesh Electric & Trading Co. (203 ITR 497), wherein it was held that: -

> *"It is an accepted position that the Appellate Tribunal does not have any power to review its own orders under the provisions of the Act. The only power which the Tribunal possesses is to rectify any mistake in its own*

order which is apparent from the record..... The power of rectification under section 254(2) can be exercised only when the mistake which is sought to be rectified is an obvious and patent mistake which is apparent from the record and not a mistake which required to be established by arguments and a long-drawn process of reasoning on points on which there may conceivably be two opinions.

46. In light of the above, MA deserves to be dismissed.

Dated: 23.07.2024 *(G.C. Srivastava, Adv.)*
Place: New Delhi *Special Counsel for Revenue"*

6. The assessee had filed his rebuttal to the aforesaid two written submissions of the revenue as under:-

SUB: REBUTTAL OF THE SUBMISSIONS OF THE DEPARTMENT PUT FORTH DURING THE COURSE OF THE HEARING CONDUCTED ON 23.07.2024

1. The captioned Miscellaneous Application was heard and reserved for orders on 23.07.2024. That during the course of the hearing, written submissions were filed by the Ld. Special Counsel before the Hon'ble Bench to oppose the Miscellaneous Application. By way of the present submissions, the Assessee seeks leave to counter those submissions. The same may please be taken on record.

2. At the very outset, it would relevant to bring to the attention of the Hon'ble Bench that the Applicant has already filed a brief submission on 15.02.2024 explaining the facts and circumstances leading to the present Miscellaneous Application. Succinctly, it would suffice to state that the matter revolves around the errors contained in the sheet provided by the Department at the behest and instructions of the Bench at the time of the hearing of the appeal, to compute the fair market value of Scorpio Beverages Pvt. Ltd. ("SBPL"). Although, the computation sheet was submitted while following the instructions of the Bench, the same contained factual errors which have a direct bearing on the valuation of SBPL shares and it is these errors which are sought to be corrected by way of the present application.

3. At the time of hearing, it was pointed out on behalf of the Assessee that if Annexure appended with the present Miscellaneous Application (on page 12 of the application) is perused, the same would reveal that the correct valuation of shares of SBPL would be INR 70.59 per share. This valuation was arrived at by plotting the correct figures for assets and liabilities of SBPL and all the intermediary companies through which the shares of HEL/VIL were held. It would be appropriate to re-iterate that the fair market value of VIL was not a subject matter of dispute as the same already stood accepted by the

Department. At this juncture, it would also be relevant to bring to the attention of the Hon'ble Bench that while adjudicating on the issue, as regards the valuation aspect, the Bench had directed the Revenue to conduct such valuation in terms of the methodology provided under Rule 11UA of the Income Tax Rules, 1962 ("Rules"), as that was the only basis provided in the statute for valuation of unquoted equity shares. This exercise was directed to be done since the Hon'ble Bench did not find the valuation done by Kotak Mahindra Bank of SBPL to be in line with the methodology as provided under Rule 11UA. Be that as it may, it was not the case of the Assessee and could not have been, since the Assessee was pleading that actual sale consideration could not be substituted by any fair market/notional value of such shares, that Section 56 of the Income Tax Act, 1961 ("Act") and consequently Rule 11UA of the Rules were applicable. However, at the behest of the then Bench, resort was had to the methodology prescribed under Rule 11UA of the Rules to arrive at the valuation while considering all the intervening companies balance sheets.

4. From the Written Submissions filed by the Revenue, the following theme can be detected:-
a. Whether the Hon'ble Tribunal at all invoked Rule 11UA of the Rules?
b. Whether Rule 11UA of the Rules could at all be applied?
c. Whether inferences regarding final finding can be drawn from selective reference to certain sentences and paragraphs?
d. Is the decision rendered in the case of Mrs. Singh in respect of the balance shares be a binding precedent?
e. Whether the mistake inferred by a process of reasoning and where two views are possible, can be considered as a mistake apparent from record?

5. Each of the above issues would now be addressed in seriatim.
6. That the overwhelming theme of the Revenue's contentions is that the Tribunal while adjudicating the appeal on merits in the Assessee's case did not invoke Rule 11UA and a mis-statement has been made on behalf of the Assessee aimed at misleading the Hon'ble High Court and the Tribunal. However, the conduct of the Revenue as well as the documents on record reveal that it is the Revenue which has misled the Tribunal repeatedly, by making false averments/oral arguments during the course of the hearing as well as in their written submissions. Since the relevant portions of the orders of the Hon'ble Tribunal in the appeal were elaborately read by both sides, the same are not being averred to at this juncture. However, suffice to say, that after deciding the issue against the Assessee on merits, on the question of valuation, the Tribunal did instruct the Revenue to furnish the valuation sheet as per the methodology prescribed under Rule 11UA of the Rules.

7. During the course of the hearing of the Miscellaneous Application, the Hon'ble Bench had enquired whether the Bench hearing the appeal on merits had made any order sheet entry while directing the Revenue to submit such valuation and whether the Department had given any covering letter to the Hon'ble Bench whilst submitting the same. As had been admitted by both sides during the hearing that none of the above process was followed, as there was no order sheet entry nor was there a covering letter filed by the Revenue.

8. Be that as it may, whether the Hon'ble Bench had directed the Revenue to prepare and submit the valuation sheet as per Rule 11UA or not, in the absence of any other contemporaneous material on record, is evident from a perusal of the order dated 01.12.2017 passed by this Hon'ble Tribunal in the main appeal. A bare perusal of the following paragraph would evidence that there arose no element of any doubt in the mind of the Revenue as regards the direction of the Hon'ble Bench to compute the valuation as per Rule 11UA. The Hon'ble Tribunal while recording the "submissions of the Ld. Special Counsel" noted as under:-

> *"43. Coming to the alternate plea of Mr. Ajay Vohra on valuation of shares that the transfer price declared by the assessee is much above the price determined by the valuer, Mr. Srivastava submitted that Kotak Mahindra is not an independent valuer.*
>
> *Even going by the contention of the appellant, revenue has filed a chart showing the actual liabilities appearing in the accounts of these intermediary companies and this table shows the value of consideration adopted by the AO is in tune with the value as may be finally determined after accounting for such liabilities. This contention is without prejudice to the primary contention that the liabilities of intermediary companies have not to be taken into account. Mr. Srivastava has filed separately a chart providing a working of the liabilities of the intermediary companies. As regard the submission on behalf of the Assessee that difference arises primarily on account of the amount set apart for payment of dividends to preference shareholders, he submitted that such claim is clearly inadmissible in view of sub-rule 2(ii) of Rule 11UA of the IT Rules. Even otherwise, such liabilities cannot be taken into account in arriving at the value of shares of a company under NAV method. The valuation done as per the rule works out to Rs. 136 per share and the AO has taken the value at Rs. 132 per share only (initially it was 142.70, which was arrived at after taking the appellant's stake in VIL at 3.9% instead of the correct stake at 3.65%. Thus, the valuation adopted by the AO in is conformity with the Framework Agreements, value of HEL shares as determined by Kotak and rules of valuation provided for UNDER RULE 11UA."*
>
> ***Please refer Para 63, pages 87 to 89 of Paper Book Volume 2.***

9. To further evidence the fact that this calculation under Rule 11UA (of 136.76 rectified to 131.86) was also submitted by the Ld. Special Counsel, the Applicant is attaching herewith a submission dated 06.11.2017 of the Department filed post the conclusion of the main merits appeal. The Hon'ble Tribunal may kindly refer to Para 34 and 35 of the said submission (Please refer page no. 31 of the present submission). Additionally, the Ld. Special Counsel also attached a working of the Rule 11UA calculation of the per share price of SBPL as Annexure 4 with the said submission. Copy of the submission dated 06.11.2017 filed by the Revenue Department before this Hon'ble Tribunal is being annexed herewith as Annexure- 1. Thus, to state during the hearing of the present Miscellaneous Application that it was never the direction of the Hon'ble Bench to compute the valuation as per the methodology contained in Rule 11UA is patently false, irresponsible and incorrect.

10. Your Honours attention is also drawn to the table attached as Annexure 4 to the submission dated 06.11.2017 (Please refer page no. 53 of the present submission) and the table as reproduced in the main appeal order dated 01.12.2017 passed in ITA No. 4737/Del/2017 (Please refer page 116 to 118 of Paper Book Volume 2). What would be apparent is that the table including the figures therein are identical in both the Annexure 4 as well as the table relied upon by the Tribunal to determine the per share price and hence, this would prove bevond any doubt that the valuation of INR 131.86 as submitted by the Department was done in terms of the methodology prescribed under Rule 11UA of the Rules ONLY.

11. In view of the above, it is clear that it was the Ld. Special Counsel's own understanding that the valuation done at the behest of the Tribunal in the original order was based on Rule 11UA of the Rules, which valuation was supported and endorsed by the Department.

12. To further evidence the stark falsity in the averment being made by the Special Counsel, attention of the Hon'ble Bench is also drawn to the findings given in the Order dated 19.03.2018 passed by this Hon'ble Tribunal while rejecting the Miscellaneous Application of the Assessee in the first round.

13. This Hon'ble Tribunal in its order dated 19.03.2018 (Please refer page no. 66 and 67 of the present submission) has specifically recorded as under:-

> *"12. We have carefully considered the rival submissions and also points and issues which have been brought to our notice in the impugned miscellaneous application. The Tribunal in the impugned order after detailed discussion has held as under:-*
>
> …….
>
> *Thirdly, the Tribunal further held that the liability of intermediary companies which can be reduced for the purpose of valuation of unquoted shares of SBPL has to be strictly worked out in accordance with Rule 11UA(2); and*

14. Hence, the Tribunal itself acknowledged that the directions given to the Department in Para 62/63 of the Tribunal order dated 01.12.2017 to calculate the "correct value" of the shares of SBPL was to be done in accordance with Rule 11UA(2) of the Rules. Further in the subsequent paras (Please refer to page no. 67 to 70 of the present submission), the Tribunal endorses its direction on the applicability of Rule 11UA of the Rules whilst observing as under:-

> *"13. After holding in the aforesaid manner, the Tribunal had directed the Department to file the calculation in accordance with Rule 11UA so that the correct share value/ price of unquoted shares could be worked out. As per the working given, the value of SBPL was worked out at 136.76 and since the assessee's hold in SBPL on pass through basis was*

3.6512%, therefore, the figure was corrected to 131.86 per share and the same value has been held to be accrued to the assessee for the purpose of computing the capital gain.

14. Thus, the Tribunal has category held that the share value of SBPL should be taken at 131.86 per share which as directed by the Tribunal to the Department was to be worked out in accordance with Rule 11UA."

Copy of the order dated 19.03.2018 is being attached herewith as Annexure-2

15. Further Para 13 of the order dated 19.03.2017, as reproduced in para 14 above, (please refer page no. 67 to 69 of the present written submission) also alludes to the fact that the Rule 11UA valuation was determined at INR 136.76, which value was corrected to INR 131.86 and it is this precise computation/valuation which was submitted by the Ld. Special Counsel as Annexure 4 to his submission dated 06.11.2017 (please refer page no. 53 of the present submission).

16. Thus, it would be appreciated by the Hon'ble Bench that the submissions being made on behalf of the Revenue while ascribing to the intention of the Hon'ble Bench at the time of the hearing of the appeal on merits, is wholly without merit, false to the core and completely irresponsible and can be seen as taking undue advantage by relying on the fact that the Special Counsel in the appeal and this Miscellaneous Application were common and his recollection would serve as best to determine the intention of the Hon'ble Bench. Having perused the observations of the Hon'ble Bench in the order dated 19.03.2018, the entire case of the Revenue is false and is based on whims and fancies. It is also disconcerting to note that all, this while before the Hon'ble High Court as well as this Hon'ble Bench, it has been repeatedly alleged that the Assessee has made false averments regarding this issue. However, nothing could be further from the truth.

17. A feeble attempt was also made to draw the attention of the Hon'ble Tribunal away from the order dated 19.03.2018 on the grounds that this order cannot be placed reliance upon, since it was set aside by the Hon'ble High Court in WP(c) No. 3121/2018. Desperate as this argument is to prevent the truth from unfolding, it also lacks merit because nowhere has the High Court in its order dated 18.09.2023 directed the Tribunal to pass a fresh order uninfluenced by the observations contained in the order dated 19.03.2018, All that the High Court did was to note that the Tribunal had rejected the Miscellaneous Application on the ground that the same would tantamount to a "review" and whilst appreciating the arguments and subsequent events as transpired in Mrs. Singh's case, had set aside such finding of the Tribunal and directed this Hon'ble Tribunal to reconsider the merits of the application.

18. Therefore, in the absence of any order sheet or any covering letter by the Department, it is this order and the submissions made by the Ld. Special Counsel at the time of the original hearing, which clearly brings out the fact that the

direction of the Hon'ble Tribunal was specific that the valuation must comply with the methodology as prescribed under Rule 11UA. Hence, now at this juncture to state, from a recollection of the events, that the Tribunal never gave such a direction, is only to mislead and delay the process of justice.

19. For the sake of completeness, admittedly, the Applicant Assessee has himself been challenging the applicability of Rule 11UA since the case of the Applicant from day one has been that the Revenue in NOT EMPOWERED to substitute the actual consideration with any fair market value/notional value, as has been done in the present case

20. However, rightly or wrongly, the methodology as envisaged under Rule 11UA of the Rules has been applied by the Tribunal in the case of the Applicant for determining the per share price at INR 131.86, which calculation suffered from patent mistakes, as is now evidenced by the order dated 12.02.2020 of the Assessing Officer in Mrs. Singh's case (Please refer page 300 to 324 of Paper Book Volume 2) where after independently applying his mind and by plotting the correct numbers from the audited balance sheets, the correct valuation has been determined at INR 70.59 per share (which was the case of the Assessee from dav 1 as is evidenced in the present Miscellaneous Application, please refer page 12). It is this error which is sought to be corrected in the present Miscellaneous Application.

21. As regards the contention of the Revenue that whether the order of the co-ordinate bench of the Tribunal in Mrs. Singh's case can be a binding precedent, not only is the argument immature, but also does not merit any consideration. While taking this objection, the Revenue has completely missed the point that: a) their averments have been proven to be completely false as is evidenced from the record; b) the Tribunal in the main appeal had specifically directed the determination of valuation of shares adopting the methodology as prescribed under Rule 11UA (being the only methodology prescribed under the statute for valuation of unquoted shares) and c) it was never the case of the Tribunal that Rule 11UA was to be applied since Section 56 of the Act was applicable on the facts of the case. However, in the absence of any other prescribed methodology, the obvious resort, was to the provisions of Rule 11UA which specifically covers valuation of unquoted shares.

22. Be that as it may, a perusal of the order of the Tribunal in Mrs. Singh's case would reveal that the Tribunal has not departed from Mr Singh's case and has followed the decision on all fours, except for noting the contention qua the errors in the valuation and directing the Assessing Officer to independently apply his mind and determine the value per share of the SBPL shares. To state that this determination has no evidentiary value is again a misnomer as the Assessing Officer has independently applied his mind and while following the same methodology, as directed by the Tribunal in the Applicant Assessee's case and followed in Mrs. Singh's case, has arrived at the valuation of INR 70.59 per share.

23. Lastly, in para 43 to 45 in the written submission filed by Revenue, it has alleged that whether the mistake inferred by a process of reasoning and where two views are possible, can be considered as a mistake apparent from record. To this effect, the revenue's submission is twofold i.e. a) that the question regarding the applicability of Rule 11UA being admitted by the Hon'ble High Court renders its applicability a debatable issue, beyond the scope of Section 254(2) of the Act and b) the question whether the Tribunal indeed applied Rule 11UA is not borne out of the findings of the Tribunal.

24. In this regard, it is submitted that the falsity of the entire case of the Revenue has been established beyond any doubt and the Revenue has miserably failed to counter the main issue, which is the errors which had crept into the working submitted by the Revenue at the time of the hearing of the main appeal. It has also been amply demonstrated in the finding of the co-ordinate bench in its order dated 19.03.2018, that the Tribunal had indeed relied upon the methodology prescribed under Rule 11UA and accordingly directed the Revenue to submit the valuation sheet.

25. The picture that is being tried to be projected by the Revenue now that the applicability of Rule11UA is a debatable issue, is nothing but a puff of smoke and an apparent endeavour to mislead. Whether the methodology contained in Rule 11UA could have been applied or not, is not a subject matter of the present Miscellaneous Application and beyond the powers vested in the Tribunal under Section 254(2) of the Act. The Miscellaneous Application is confined only to the rectification of the errors in the computation sheet and no more.

26. At this juncture, what would also be relevant to highlight is that the present miscellaneous application was filed back in December, 2017 i.e. prior to the order passed by this Hon'ble Tribunal in Mrs. Neelu Analjit Singh's case and the order dated 12.02.2020 passed by the Assessing Officer giving effect to such order of the Tribunal. Since the Hon'ble High Court whilst remanding the matter back to this Hon'ble Tribunal has restored the Miscellaneous Application to its original number and position, filing a fresh application or amending the averments made therein, was not possible and if such an effort was made by the Applicant, then the Revenue would object that the same tantamounts to a fresh application, being barred by limitation. Be that as it may, nothing impeaches on the powers of the Tribunal under Section 254(2) of the Act to grant the correct relief even if the same has not been properly articulated in the application. One need not espouse the cause of justice as laid down by the Apex Court in the case of ITO v MK Mohd. Kunji, [1969] 71 ITR 815 (SC), where wide latitude has been given to the Hon'ble Tribunal while exercising powers under Section 254 of the Act. Reliance is also placed on the full bench decision of the Hon'ble Delhi High Court in the case of Lachman Dass Bhatia Hingwala Pvt. Ltd. v ACIT, [2011] 330 ITR 243 (DHC)(FB) where the Hon'ble High Court has held that to correct the error, the Tribunal is empowered to even recall its order in its entirety, if need be.

27. In view of the above, the limited prayer of the applicant is that the Tribunal may rectify the error to the extent of determining the per share price of SBPL as

determined in paragraphs 64 and 65 of the order dated 01.12.2017 and consequently direct the AO to adopt the price per share at INR 70.59.

7. We have heard the rival submissions and perused the materials available on record. As stated supra, this miscellaneous application proceedings attained its life pursuant to the direction of the Hon'ble Jurisdictional High Court while disposing of the writ petition of the assessee in WP(C) No. 3121/18 dated 18.09.2023. As it could be seen that this Tribunal in assessee's case, had determined the fair market value per share at Rs. 131.86 based on the workings provided by the department at the time of hearing of the main appeal. Undisputedly these workings were furnished by the Income Tax Department (in short 'Department') as per the directions of the Bench. Now the dispute arose to the fact whether these workings given by the Department for determination of fair market value of shares could be construed as workings given in terms of Rule 11UA of the Income Tax Rules, 1962 (in short " the Rules). The main contention of the revenue is that these workings were not in accordance with Rule 11UA of the Rules and the Bench had also not directed the Department to furnish the workings in terms of Rule 11UA of the Rules. The main contention of the assessee is that the actual consideration received by it should be adopted on sale of shares as against Rs. 131.86 per share determined as fair market value. In the course of original MA proceedings, the assessee had placed on record before this Tribunal, the workings of fair market value of shares as per Rule 11UA of the Rules, wherein, FMV was arrived at Rs. 70.59 by the assessee. Even in the prayer of the assessee in his miscellaneous application which is reproduced supra, we find that the assessee is only seeking to include the fact that the workings were sought to be asked by the Tribunal in accordance with Rule 11UA of the Rules for determination of fair market value while computing capital gains on sale of SBPL shares to understand the intention of this Tribunal as to whether the workings of fair market value of share were called for as per Rule 11UA of the Rules or not. For this purpose, the observations made by this Tribunal in the original MA order in MA No. 742/Del/2017 dated 19.03.2018 becomes relevant which are as under:-

"12. We have carefully considered the rival submissions and also the points and issues which have been brought to our notice in the impugned miscellaneous application. The Tribunal in the impugned order after detailed discussion has held that:-

> ➢ *Firstly, the accrued price consideration of the transfer of Scorpio shares has to be determined on the basis of Fair Market Value of VIL which has been pegged at Rs. 56,448.30 Crores as determined by Kotak by adopting DCF method, which has been accepted by the Assessing therefore, in terms of Section 48 what is accrued to the assessee on the transfer of unquoted shares of SBPL is determinable on the basis of Fair Market Value of VIL;*
>
> ➢ *Secondly, the Tribunal thereafter proceeded to determine the valuation of the SBPL shares; and while examining the assessee's alternative contention that the value adopted by the independent valuer Kotak Mahindra, who has valued shares of SBPL at Rs.5.40 per shares has been categorically rejected as per the finding given in paragraph 61 of the said order;*
>
> ➢ *Thirdly, the Tribunal further held that the liability of the intermediary companies which can be reduced for the purpose of valuation of the unquoted shares of SBPL has to be strictly worked out in accordance with Rule 11UA(2); and*
>
> ➢ *Lastly, the indirect stake of SBPL in VIL through various intermediary companies on pass through basis will come to 3.6512% being 41% of 8.905% and not 3.95% as considered by AO by taking the indirect stake of SBPL in VIL at 9.65%.*

13. After holding in the aforesaid manner, the Tribunal had directed the Department to file the calculation in accordance with Rule 11UA so that the correct share value/price of the unquoted shares could be worked out. As per the working given, the value of the SBPL was worked out at Rs.136.76 per share and since the percentage of assessee's hold in SBPL on pass basis was 3.6512%, therefore, the figure was corrected to Rs.131.86 per share and the same value has been held to be accrued to the assessee for the purpose of computing the capital gain."

.....

14. Thus, the Tribunal has category held that the share value of SBPL should be taken at Rs.131.86 per share which as directed by the Tribunal to the Department was to be worked out in 11UA. As highlighted accordance with Rute above, this working was confronted to the assessee also so as to verify the figures and the working, but at that time no defect or error was pointed out, albeit, assessee continued to harp upon that it's actual sale consideration should be accepted. In absence of any rebuttal by the assessee, the working given by the department was accepted as such, as prima facie there was no apparent error. Now in the impugned miscellaneous application, assessee is trying to canvass before us a new proposition that the working submitted by the

Department suffers from certain infirmities to the extent that; firstly, incorrect or rather incomplete figures as per the audited balance sheet(s) of intermediate companies as on 31.03.2013 have been adopted; secondly, the outstanding amount of liability towards preference share capital has not been reduced; and lastly, arrears of dividend in respect of cumulative preference shares have not been reduced, in terms of clausė (vi) of Rule 11UA of the Rules. In support, the assessee has filed audited annual reports of various intermediaries and chain of companies for the financial year 2012-13 and based on that the figures of total assets and liabilities including preference capital dividend and DDT liability, etc. has been given in a separate sheet. From the aforesaid figures, various working of the valuation of the shares has been given in separate annexure, whereby now it has been tried to be demonstrated before us that, if the entire figures of liabilities is taken into consideration, then NAV/FMV of SBPL shares would range between Rs. 106.25 to Rs. 70.59 per share. This working has been vehemently objected by the Revenue that it is beyond the scope of rectification application u/s 254(2).

15. Now firstly, whether such an alleged aforesaid mistake in the adoption of share value of SBPL at Rs. 131.86 per share falls within scope of rectification application u/s 254(2) or not; or whether it amounts to review of the decision which is beyond the power of the Tribunal. As held above, at the time of hearing the working submitted by the department was confronted to the assessee and opportunity to rebut was specifically given. But at that time no defect was pointed out. The working now given has neither been examined by the department nor can it be verified at this stage, therefore we find it difficult to accept or rectify the figures. Not only is that, the liabilities which has been sought to be reduced from the book value of the assets, itself can be a debatable issue. For instance whether preference share is a liability which should be reduced from the asset or not, is neither borne out from the Rule 11UA; nor has any provision or judicial precedent has been cited or referred to before us that the preference share payable will be reckoned as an allowable liability while working the share value. Thus, at the stage of rectification application it would be very difficult to rake up a new point which was not raised at the time of hearing. Secondly, assessee itself has given three sets of working of valuation of shares ranging between Rs. 106. 25; Rs. 101.25; and Rs. 70.59 per share after deduction of preference share liability and which one is to be adopted or is correct. The working of Kotak Mahindra relied by the assessee has been specifically not accepted by the Tribunal as there various presumptions sans any availability of correct figures made available to them. The whole exercise of the working of liability given by the assessee will open a new line of as to debat h liability is to be included and which are to excluded and that will require lot of deliberation from both the sides and verification of figures, which at the this stage is beyond and scope of section 254(2) as it will amount to review not rectification of mistake simplicitor. We do not wish to enter into the semantics of which liabilities are to be reduced and veracity of the working given by the assessee as it needs fresh verification and examination. Thus, we do not find any merit in the contention raised in the miscellaneous application and hence same is rejected."

8. From the above observations made by this Tribunal in the miscellaneous application proceedings dated 19.03.2018, it is crystal clear that this Tribunal had sought the workings for FMV of shares from the Department in accordance with Rule 11UA of the Rules only. We are conscious of the fact that the miscellaneous application proceedings in MA No. 742/Del/2017 dated 19.03.2018 had been set aside by the Hon'ble High Court back to this Tribunal and hence the finding recorded in the said MA order may not be construed as an order in the eyes of law. But we are placing reliance on the said MA order dated 19.03.2018 only for the limited purpose of understanding the intention of the Tribunal at the time of original appellate proceedings as to whether the workings of FMV of shares sought to be given by the Department were in accordance with Rule 11UA of the Rules or not. This aspect of the issue is also discussed at later part of this order hereinbelow. We have perused the original appellate order dated 01.12.2017 and we find that the Tribunal had made observations for rejecting the valuation report given by Kotak Mahindra Bank by stating that the valuation report had adopted hybrid method i.e. DCF method for VIL shares and NAV method for intermediary company and that the same does not find any support from Rule 11UA of the Rules. This is mentioned in para 61 of the original Tribunal Order dated 01.12.2017. Again in para 62 of the order dated 01.12.2017, the Tribunal does make a mention that Kotak Mahindra valuation of shares was not in accordance with Rule 11UA of the Rules. At the same time, the Tribunal had also observed in very same para 62 that Rule 11UA of the Rules, is the specific rule for valuing the unquoted shares. Hence, the observations made by this Tribunal in original appellate order dated 01.12.2017 in paras 61 and 62 does indicate its mind that fair market value should be determined in accordance with Rule 11UA of the Rules. Hence the reliance placed by us on the observations of the Tribunal in MA Order dated 19.03.2018 is further strengthened as it only provides more clarity that the Tribunal indeed had sought workings for determination of FMV only as per Rule 11UA of the Rules. Hence, the elaborate arguments advanced by the ld Special Counsel for the revenue

which are reproduced herein supra are devoid of merit and deserves to be dismissed.

9. From the above observations, it becomes crystal clear that Tribunal always intended adoption of Rule 11UA of the Rules for determination of FMV of shares and directed the Department to furnish the workings accordingly. But the workings given by the Department to the Tribunal were not in accordance with Rule 11UA of the Rules as it had not considered the figures pertaining to certain intermediary companies. Whereas, in assessee's wife case i.e. Mrs. Neelu Analjit Singh, who had also sold certain shares along with assessee herein of SBPL, the Tribunal in ITA No. 2172/Del/2018 for AY 2014-15 dated 19.03.2019 had observed in para 42 of its order that the valuation of Rs. 131.86 per share adopted by the AO suffered from certain fallacy and the same was not according to Rule 11UA of the Rules. Accordingly, the Tribunal in the case of Mrs. Neelu Analjit Singh had in para 42 directed the AO to verify all the figures from the audited balance sheet of the intermediary companies and compute the fair market value of shares accordingly. The ld AO had passed the giving effect order u/s 254/ 143(3) of the Act dated 12.02.2020 in the case of Mrs. Neelu Analjit Singh, wherein, for the very same shares, the AO by adopting Rule 11UA of the Rules had determined fair market value of SBPL share at Rs. 70.59 per share.

10. The assessee in its miscellaneous application is only trying to substitute the value of FMV which was arrived at Rs. 131.86 per share by the Tribunal, which contain certain basic fallacies ad admitted by the Tribunal in the case of Mrs. Neelu Analjit Singh vide order dated 19.12.2019 if Rule 11UA of the Rules is adopted. Hence, it purely becomes arithmetical exercise. Accordingly, we have no hesitation to conclude that miscellaneous application of the assessee is only to rectify the arithmetical mistake that had crept in the original Tribunal order dated 01.12.2017. In other words, the Tribunal had adopted Rs. 131.86 per share as the fair market value in accordance with Rule 11UA of the Rules, whereas the correct value as per Rule 11UA of the Rules would be Rs. 70.59 per share. The adoption of Rs. 70.59 per share to be a ultimate value as per Rule

11UA of the Rules is not disputed by both the parties before us i.e. to say, there is no dispute on the manner in which FMV of Rs 70.59 per share was arrived. The only crucial dispute between the parties before us is whether Rule 11UA of the Rules could per se be made applicable to the facts of the instant case or not. Even though the assessee had always pleaded both in original appellate proceedings as well as in the First MA proceedings and also in the present MA proceedings, that only the actual consideration received on sale of shares should be adopted for computing the capital gains; and that on without prejudice basis, the fair market value of shares is to be determined in accordance with Rule 11UA of the Rules. We find that this Tribunal vide its original order dated 01.12.2017 had already dismissed the plea of the assessee to consider the actual consideration received by the assessee for computing the capital gains and had directed the Department to furnish the fair market value workings as per Rule 11UA of the Rules. As stated above, certain fallacies had crept in the said workings given by the Department which alone is sought to be rectified in the present MA proceedings. Hence, this miscellaneous application proceedings is effectively meant only to modify the order passed by this Tribunal on 01.12.2017 and not to recall the same. On careful reading of the original appellate order dated 01.12.2017 of the Tribunal, we find that the Tribunal had ultimately sought to determine the fair market value of shares by using NAV method, which is admittedly one of the prescribed methods in Rule 11UA of the Rules. This aspect also goes to prove the intention of the Tribunal beyond reasonable doubt (de hors the observation made in first MA order dated 19.03.2018) that it was always intending to adopting only Rule 11UA of the Rules for determination of fair market value. In fact even in the workings given by the Department at Rs. 131.86 per share, provisions and Income Tax provisions had been added back which itself indicates that even the AO had sought to determine the FMV using Rule 11UA of the Rules only. In our considered opinion, the workings given by the Department before the Tribunal determining the FMV at Rs. 131.86 per share contained certain fallacies as it was not in accordance with Rule 11UA of the Rules, which alone is sought to be modified and rectified in the present

miscellaneous application proceedings. Hence, the fallacies contained in the workings of the Department do constitute mistake apparent from record warranting rectification u/s 254(2) of the Act.

11. Against the original Tribunal order passed on 01.12.2017 in the case of the assessee, the assessee had preferred an appeal before the Hon'ble High Court and the same is admitted. Against the order passed by this Tribunal in the case of Neelu Analjit Singh dated 19.12.2019, the revenue as well as assessee had preferred respective appeals before Hon'ble High Court and the same are already admitted. It was always the case of all the parties before us i.e. Mr. Analjit Singh, Mrs. Neelu Analjit Singh and the Income Tax Department, that Rule 11UA of the Rules cannot be applied for the purpose of section 48 of the Act while computing the capital gains. But Tribunal directed the Department to adopt FMV as per Rule 11UA of the Rules after dismissing the preliminary plea of the assessee that actual consideration received should be considered for computing the capital gains. This preliminary plea is already subject matter of challenge before the Hon'ble High Court. As far as the Tribunal is concerned, since it had adopted two different values as fair market value, the same is sought to be rectified by this present MA proceedings.

12. In view of aforesaid detailed observations, we direct the AO to adopt FMV of Rs. 70.59 per share and recomputed the capital gains accordingly in the case of assessee herein. The order dated 01.12.2017 stands modified accordingly.

13. In the result, the Miscellaneous Application of the assessee is allowed.

Order pronounced in the open court on 23/08/2024.

-Sd/-	-Sd/-
(C. N. PRASAD)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 23/08/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi