

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “A” BENCH: NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3351/Del/2024

[Assessment Year : 2020-21]

Bigstar Hotels Resorts Pvt.Ltd., U-2, 3 rd Floor, Green park Main, Delhi-110016. PAN-AADCB7076K	vs	Income Tax Department Faceless Assessment, Delhi-110001.
APPELLANT		RESPONDENT
Appellant by	Shri Mahesh Kumar, CA, Ms. Meenal Goyal, CA & Ms. Vidhi Mahajan, Adv.	
Respondent by	Shri Ajay Kumar Arora, Sr.DR	
Date of Hearing	07.07.2025	
Date of Pronouncement	25.07.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the assessee against the order dated 09.07.2024 passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”] in Appeal No.NFAC/2019-20/10183384 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 29.09.2022 passed u/s 143(3) r.w.s 144B of the Act pertaining to assessment year 2020-21.

2. Brief facts of the case are that the assessee is a company, engaged in the business of repair and maintenance services and filed its return of income on 02.02.2021, declaring total income at INR 27,830/-. The case of the assessee was selected for limited scrutiny assessment wherein one of the issues is of large capital gain set off against large capital loss. During the course of

assessment proceedings, AO observed that assessee has shown lower sale price of the shares of one company i.e. M/s. Apex Homes Pvt. Ltd. whose shares were sold by the assessee during the year on which short term capital loss of INR 5,47,28,550/- and long term loss of INR 10,64,222/- was claimed. As per AO, assessee has purchased shares of this company on 28.03.2019 at a price of INR 181/- per share however, at the time of sales, the price charged was INR 10/- only and the assessee claimed that the value per share at the time of sales was valued at INR (-) 546.68 thus the assessee has sold these shares at the book value of INR 10/- per share. In support, assessee filed report of the merchant banker namely M/s. Finshore Management Services Ltd., Kolkata who valued the shares of M/s. Apex Homes Pvt. Ltd. at the time of sale of shares. After considering the submissions and the facts, the AO re-valued the shares of the company at INR 180/- per share and accordingly, the amount of capital gains was re-computed. According to which the long-term capital gain was computed at INR 6,85,24,931/- and short term capital gain was computed at INR 16,00,250/-.

3. Against the said order, an appeal was filed before Ld. CIT(A) who vide impugned order dated 09.07.2024, upheld the action of the AO and confirmed the additions made.

4. Aggrieved by the said order of Ld. CIT(A), the assessee preferred the present appeal before the Tribunal where the following grounds of appeal are taken:-

1. *“Under the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (A) (“Ld. CIT(A)”) vide a non-speaking and un-reasoned order dated 09.07.2024 u/s. 250 of the Income-tax*

Act, 1961 ("Act") (hereinafter referred to as "1st impugned order") has erred in sustaining the addition made by the Ld. Assessing officer ("AO") vide assessment order dated 29.09.2022 passed u/s. 143(3) r.w.s. 144B of the Act (hereinafter referred to as "2nd impugned order") as the same is bad and untenable in law.

2. That on facts and law, the 1st impugned order passed by the Ld. CIT(A) dated 09.07.2024 is completely devoid of any reasons and is a non-speaking order, passed after non consideration of the Appellant's detailed submissions on law and on merits in the matter whereby it has held vide Para 4.3 of its order that the documents submitted by the Appellant are mere "colorful devices" sans giving any reasoning for the same.
3. That on facts and in law, the Ld. CIT(A) vide order dated 09.07.2024 failed to appreciate that the additions made by the Ld. AO vide order dated 29.09.2022 amounting to Rs. 7,01,25,181/- (without even mentioning the section of addition) are ex-facie erroneous, unsustainable, and non-est in law.
4. That on the facts and in law, the 1st impugned order dated 09.07.2024 passed by the Ld. CIT(A) is unsustainable in law as the same is based on the perverse and arbitrary findings vide 2nd impugned order dated 29.09.2022 passed by the Ld. AO without proper appreciation of the fact that converting the declared STCL of Rs.5,47,28,550/- into STCG at Rs.16,00,250/- on sale of shares of Apex Homes Pvt. Ltd. thereby refusing the set off of said loss against Capital Gains during the relevant AY 2020-21 is absolutely illegal and unjustified in law as well as on facts and merits.
5. That on the facts and in law, the 1st impugned order dated 09.07.2024 passed by the Ld. CIT(A) is unsustainable in law as the same is based on the perverse and arbitrary findings vide 2nd impugned order dated 29.09.2022 passed by the Ld. AO without proper appreciation of the fact that converting the declared LTCL of Rs.10,64,222/- into LTCL of Rs.1,58,17,698/- on sale of shares of same company i.e. Apex Homes Pvt. Ltd., is absolutely illegal and unjustified in law as well as on facts and merits.
6. That the Ld. AO has grossly erred in making and subsequently the Ld. CIT(A) has erred in sustaining addition by converting the declared STCL of Rs.5,47,28,550/- into STCG at Rs.16,00,250/- on sale of shares of Apex Homes Pvt. Ltd by wrongly calculating deemed sale price U/s. 50CA of the Act at Rs.186 against correctly calculated U/s. 50CA of the Act and so declared by Appellant at Rs.(-)546.68 per share as on 27.09.2019 as also substantiated by the Merchant Banker's report. That even otherwise, the Appellant sold the shares at a much higher price of Rs. 10 per share.

7. *That the Ld. AO has grossly erred in making and subsequently the Ld. CIT(A) has erred in sustaining addition while not accepting the declared LTCL of Rs.10,64,222 on sale of shares of Apex Homes Pvt. Ltd. and by converting the said declared LTCL into LTCG of Rs.1,58,17,698/- by wrongly calculating deemed sale price U/s.50CA of the Act at Rs.186 against correctly calculated U/s.50CA of the Act and so declared by Appellant at Rs.(-)546.68 per share as also substantiated by the Merchant Banker's report. That in this case also, even otherwise, the Appellant sold the shares at a much higher price of Rs. 10 per share.*
8. *That the Ld. CIT(A) as well as the Ld. AO have erred while ignoring the submissions of the Appellant regarding the documentary evidences substantiating the valuation of properties of Apex Homes to be as per the circle rate/government valuer's report and not as per book value of the said properties in line with provisions of Rule 11UA and the settled law vide Pr. Commissioner of Income Tax-6 v. Minda SM Technocast Pvt. Ltd. ITA 942/2018, Delhi High Court dated 04.08.2023.*
9. *That the Ld. CIT(A) as well as the Ld. AO have failed to appreciate that it is the discretion of the Assessee and not the Revenue to decide which method of valuation is to be adopted while calculating Fair Market Value ("FMV") of share as per Rule 11UA(1)(c)(b) of the Income Tax Rules, 1962 ("the Rules") and not as per Section 50CA, vide Pr. Commissioner of Income Tax Vs. M/s Cinestaan Entertainment Pvt. Ltd. in ITA 1007/2019 and ITO vs Appealing Infrastructure Pvt. Ltd. [ITA No. 1958 (Delhi) 2019].*
10. *That under the facts and circumstances, the Ld. CIT(A) vide the 1st impugned order has failed to appreciate that the Ld. A.O. exceeded his jurisdiction in examining the issues of addition/disallowance in limited scrutiny without seeking mandatory approvals for extending the scope of examination during assessment U/s.143(3) of the Act, in complete disregard of the binding CBDT instruction no. 20/2015 dated 29.12.2015 and 5/2016 read with DGIT (vigilance) letter dated 30.11.2017.*
11. *That both the Ld. CIT(A), as well as the Ld. AO, have failed to note that vide their respective orders that under the facts and circumstances, no interest U/s. 234A and 234B should have been charged as for levy of interest there should be specific order passed by the Assessing Officer vide CIT v. Udayan Mishan Bhandar/Ranchi Club Limited [2001] 247 ITR 209 (SC).*
12. *That the Appellant craves leave to add, delete or modify the aforementioned Grounds of Appeal at any time during the pendency of the Appeal.*

13. *All the aforesaid grounds of appeal are independent and without prejudice to one another.”*

5. **Ground of appeal No.1** is general in nature hence, dismissed.

6. **Ground No.10** related to the action of the AO in extending the scope of limited scrutiny without following the due procedure.

7. Heard the rival contentions and perused the material available on records. From the perusal of the reasons for limited scrutiny as appearing in the assessment order, it is seen that one of the reasons is large capital gain set off large capital loss. The AO while examining the issue of capital gain vis-à-vis capital loss had examined each and every transactions on which capital gain was declared and during this process, the AO come across the issue of valuation of shares sold. Thus, it is well within the reasons of limited scrutiny and AO has not exceeded his jurisdiction. According, Ground No.10 raised by the assessee is dismissed.

8. **Ground Nos. 2 to 9** raised by the assessee are in relation to the action of AO in computing the amount of long term capital gain and short term capital gain at a figure higher than the amount declared by the assessee. Thus, all the grounds are taken together for consideration.

9. Before us, Ld.AR for the assessee submits that during the year under consideration, the assessee has claimed short term capital loss of INR 5,47,28,550/- on the sale of unquoted shares of M/s. Apex Homes Pvt. Ltd. Besides this, Long Term Capital Gain of INR 5,27,07,233/- was declared on the sale of unquoted share of different companies which is tabulated as under:-

Name of Co.	Sale date	salo qty.	salo value	pur. date	pur. cost	Indexed cost	Capital Gain
Apex Home	27.9.2019	95920	9,59,200	14.4.2008	959200	2023422	-1064222
Ambiance Condo.	31.03.2020	59768	3,94,46,880	14.4.2008	597680	1260799	38186081
Ambience Ville	31.03.2020	8800	53,68,000	14.4.2008	88000	185635	5182365
Rishi Intl.	31.03.2020	17665	1,07,75,650	14.4.2008	176650	372641	10403009
Net long term capital gain							52707233

10. Ld.AR has filed a written submissions which reads as under:-

2. *"The Appellant purchased 95,920 unquoted equity shares of M/s. Apex Homes Pvt. Ltd. ("Apex Homes") on 14.04.2008 @ Rs. 10 per share and subsequently 3,20,050 unquoted equity shares of Apex Homes on 28.03.2019 @ Rs. 181 per share. In totality, the Appellant purchased 4,15,970 unquoted equity shares (hereinafter referred to as 'subject shares) of Apex Homes (refer pages 175-178 of paper-book). That the purchase cost of subject shares worked out on book value of assets (as per Rule 11UA(2)(a) r.w.s 56(2)(viib) of the Income Tax Act, 1961) has been accepted by the Assessing Officer/ Ld. CIT(A) [refer findings at Para 12 of AO order & Para 4.3 of CIT(A) order respectively].*
3. *The aforementioned subject shares were then sold off in the subject AY (refer pages 177-178 of paper-book) in the following manner:*

Date of Sale	Quantity (A)	Per Share value (B)	Sale Value (A x B)
27.09.2019	95,920	Rs.10/-	Rs.9,59,200/-
05.10.2019	3,20,050	Rs.10/-	Rs.32,00,500/-
	4,15,970		Rs.41,59,700/-

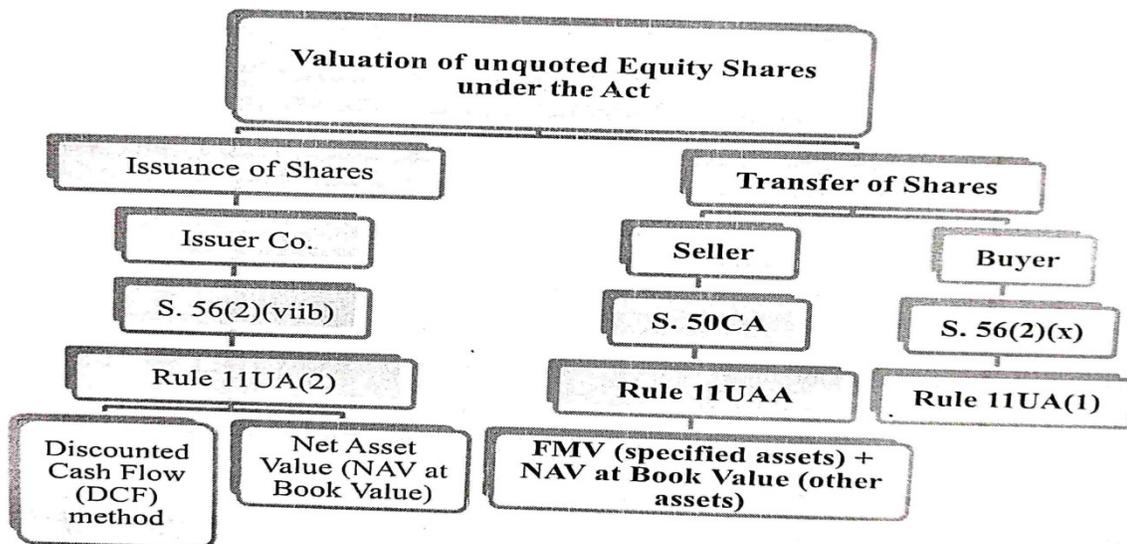
4. *That on account of the aforementioned sale transaction in the subject AY the Appellant incurred (Long Term/Short Term) capital loss in the following manner (refer pg 271 of the paper book):*

Purchase Date	14.04.2008	28.03.2019
Purchase Quantity (nos.)	95,920	3,20,050
Purchase Cost (in Rs.)	9,59,200	5,79,29,050
Indexed Cost (in Rs.)	20,23,422	NA
Sale Date	27.09.2019 (Long-Term)	05.10.2019 (Short-term)
Sale Quantity (nos.)	95,920	3,20,050
Sale Value (in Rs.)	9,59,200	32,00,500
Capital Gain/Loss	-10,64,222(LTCL)	-5,47,28,550 (STCL)

5. *The valuation of the subject shares at the time of purchase/allotment by the issuing Company (Apex Homes) to the*

Appellant (i.c. buyer), was done lawfully at book value of assets as per Net Asset Method vide Rule 11UA(2)(a) of the Income-tax Rules, 1962 ("the Rules") r.w.s. 56(2)(viib) of the Income-tax Act, 1961 ("the Act") (refer pages 147 to 151 of the paper-book).

6. Subsequently, at the time of selling of shares by the Appellant (i.e. as seller) to a third party. specific provisions contained under Section 50CA r.w. Rule 11UAA determining full value of consideration of unquoted shares, shall apply in the hands of the Appellant/seller. As per the said provisions, higher of FMV or sale consideration of shares shall be deemed to be the full value of consideration received for the purpose of computing income under head Capital Gains of the Appellant/seller.
7. That for determining FMV in terms of Section 50CA r.w. Rule 11UAA, reference to Rule 11UA(1)(c)(b) has been made which further provides for book value of all assets except specified assets to be computed as per Net Asset Method. As regards the specified assets (such as jewellery, artistic work, share, securities and immovable property) FMV has to be computed in the manner prescribed vide therein. In respect of the underlying specified asset being an immovable property, the stamp duty value determined by Government Authority is considered as the FMV of such specified asset (refer Pgs.152 to 158 of the paper-book).
8. Appropriately, the valuation at the time of both purchase and sale was done lawfully.



9. However both, the Ld. CIT(A) and the AO, rejected the Appellant's contentions based on conjecture and surmises holding that the transactions made by the Appellant and valuation reports are colourable device to generate losses. With that, the Ld. CIT(A) erred in confirming the action of the Ld. AO in valuing the shares at the time of purchase/allotment and subsequently at the time of sale in a similar manner, i.e. at the book value, which is prima facie inconsistent with the settled law viz, in the case of unquoted equity

- shares, at the time of purchase Rule 11UA(2) will be applied (i.e. book value of all assets including land and buildings as per audited financial statements), per contra, at the time of sale Rule 11UA(1)(c)(b) will be applied (by which, inter alia for valuation of immovable properties the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty is to be adopted).
10. At the time of sale of shares, the FMV as per applicable Rule 11UA(1)(c)(b) r.w.s 50CA of the Act comes out at Rs. (-) 546.68 (@Pg. 155 of the paper-book) on account of the Stamp Duty Value (SDV) of immovable assets being determined at Rs. 151.27 Cr. (refer SDV working @ pages 113-120 of paper-book) as against its book value of Rs. 389.75 crores (@Pg. 110 of the paper-book).
 11. However, contrary to the facts of the case and legal position, the Ld. AO proceeded to determine the FMV of shares at the time of sale by arbitrarily taking the Book Value of all assets (including immovable assets) at Rs. 394.20 Cr., (@Pg. 103 of the paper-book & Para 9 of the AO order) for the sake of parity of FMV at the time of purchase/allotment vis-à-vis subsequent sale of shares (no legal basis) and thereby, assessed the FMV of shares (@Rs. 186/- per share (at book value) and determined Capital Gain of Rs. 1,74,17,948/- Consequently, made an addition of Rs. 7,01,25,181/-, which was later upheld by the 1.d. CIT(A).
 12. It reiterated that Rule 11UA(1)(c)(b) (as per applicable Section 50CA r.w. Rule 11UAA) states that at the time of calculating FMV of unquoted equity shares, if the underlying asset is an immovable property, then "the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property" has to be the FMV of such said immovable property. Consequently, for the purposes of Rule 11UA, the book value of land and building does not depict correct valuation of immovable property which and is not in accordance with the applicable provisions of law (vide Hon'ble Delhi High Court in PCIT v. Minda Sm Technocast Pvt. Lad. ITA 942/2018).
 13. With that, the legislature intent can be procured vide Press Release dated 05.05.2017, wherein, request was made to the stakeholders to comment on draft rules relating to the valuation of unquoted equity shares, for which, it was proposed to amend the Rules to prescribe the method of valuation of unquoted equity share for the purpose of section 50CA & 56(2)(x) of the Act by taking into account the FMV of jewellery, artistic work, shares & securities and stamp duty value in case of immovable property and book value for the rest of the assets. Consequently, the law was amended w.e.f. 01.04.2018, after-which, the valuation of FMV based NAV of unquoted shares are to be done as per the Rule 11UA(1)(c)(b) and the method of valuation of immovable property is Stamp Duty Value.
 14. Further, reliance can be placed on the decision of ITAT Bench of Bangalore in the case of Information Technology Park Ltd. v. ITO [2022] 143 taxmann.com 408, wherein, the Bench held that the Rule

11UA(1)(c)(b) makes it clear that for the purpose of arriving at the FMV of unquoted equity shares, the immovable property should be considered at guideline value and considering the guideline value of land and buildings to arrive at FMV of preference shares under NAV method is also right (construing the same harmoniously).

15. *In the view of above-stated fact, it is rightly contended that the Ld. CIT(A) & Ld. AO failed to consider the Present Appellant has correctly chosen the FMV based NAV method u/s 50CA r.w.r. 11UAA & 11UA(1) of the Act. With that, the Appellant has presented the valuation of shares done by the Merchant Banker i.e. Finshore Management Service Limited, based on the method prescribed under law. Thus, it is duly established that the FMV as lawfully computed by the Appellant is lawfully correct. Consequently, it is humbly prayed that the impugned addition of Rs. 7,01,25,181/- shall be quashed or set aside, as the same is based on the conjecture surmises of Ld. AO.”*

10. Ld.AR submits that the assessee has declared Long Term Capital Gain and Short Term Capital Gain on the sales of shares of M/s. Apex Homes Pvt. Ltd. and in support of the sales, a report of the valuer was filed before the AO which is placed at pages 152 to 158 of the Paper Book as was filed before the AO alongwith reply dated 05.08.2022 available at pages 146 of the Paper Book. Ld.AR submits that in the said valuation report, the merchant banker has taken the value of immovable assets owned by M/s. Apex Homes Pvt. Ltd. in terms of provision of Rule 11UA of the Income Tax Rules, 1962 (“the Rules”) r.w.s. 56(2)(viib) of the Act. It is further submitted by Ld.AR that in terms of provision of Rule 11UA(1)(c)(b), the fair market value (“FMV”) of the immovable assets is to be taken at a value assessed / assessable by stamp value authorities. Accordingly, the merchant banker while computing the value per share of M/s. Apex Homes Pvt. Ltd. as on the date of sale had taken value of the immovable property at INR 1,51,27,43,006/- as against book value at INR 3,93,78,35,262/- being the value assessable by the stamp value authorities. Ld. AR thus submitted that the

valuation done by the merchant banker which is solely based on the FMV of the immovable assets based on the value assessable by the stamp value authorities, thus, the same should be accepted. Ld.AR further submits that in the case of the assessee for the purposes of valuation of unquoted shares, the assessee has followed the procedure as laid down under the Act according to which the valuation has been done by the merchant banker and such report cannot be doubted. More particularly, when the AO has not brought on record any contrary valuation done in this regard. Ld.AR also placed reliance on the judgement of Hon'ble Jurisdictional High Court in the case of **PCIT vs Minda SM Technocast Pvt. Ltd. in ITA No.942/2018** order dated 04.08.2023 wherein the Hon'ble Court has held that for the purpose of valuation u/s 11UA of Rules, AO should have taken into account the circle rate prevailing in the area for value of land. In the last, Ld.AR submits that the AO has referred the valuation report of the buyer of the shares however, the said report is not obtained in the case of the assessee and was of other person and both are submitted on different nature of transaction and thus the valuation report of the buyer cannot be applied in the case of the assessee who got the valuation report done in accordance with the Rule 11UA of the Income Tax Rules, 1962 and therefore, the addition made in the capital gain declared by the assessee, based on the working done by the AO at his opinion, working of the FMV as on the date of sale deserves to be hold bad in law and addition be deleted. He prayed accordingly.

11. On the other hand, Ld. Sr. DR for the Revenue vehemently supported the orders of the lower authorities and submits that it is

surprising that the assessee had purchased the shares of company of M/s. Apex Homes Pvt. Ltd. in March, 2019 at a price of INR 181/- per share and when the same were sold, it was valued at a negative figure of INR 546.68/- per share. Ld. Sr. DR submits that no prudent businessman would bear huge loss without any reason and therefore, he submits that the AO has rightly rejected the valuation report submitted by the assessee and he placed reliance on the judgement of Hon'ble Supreme Court in the case of **Mc Dowell & Co. Ltd.** reported in **(1986) AIR 649 (SC)** and requested for the confirmation of the addition so made.

12. Heard the contentions of both the parties and perused the material available on records. The sole issue involved in these grounds of appeal is with regard to the Fair Market value (FMV) of shares of M/s Apex Homes Pvt. Ltd. as on the date of sale. For the purpose of determination of the FMV of the shares, Rule 11UA(1) provides how to value unquoted equity shares where one method is of determination on the basis of book value of the assets as reduced by the liabilities divided by the capital and called as Net Asset value method (NAV method). The other method is of discounted cash flow method. It is at the option of the assessee to adopt any of the method to value unquoted equity shares as specified in Clause (a) & (b) of Rule 11UA(2) of the Rules. The AO has no power to challenge the method adopted by the assessee and this view is supported by the judgement of Hon'ble Jurisdictional High Court in the case of **PCIT vs M/s. Cinestaan Entertainment Pvt.Ltd.** reported in **433 ITR 82.**

13. As per Rule 11UAA, for the purpose of valuation u/s 50CA of the Act, the FMV of share of a company other than quoted share shall be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-Rule (1) of Rule 11UA and the valuation date for the purpose is the date when the shares were transferred. Thus, it is clear that for the purpose of valuation of unquoted shares to compute capital gain in accordance with the provisions of section 50CA of the Act, one has to follow the provision of Rule 11UA of I.T. Rules.

14. In the present case, the assessee has obtained the valuation report from the merchant banker where the FMV was determined at net asset value as provided in Rule 11UA(1)(c)(d) of the Rules which reads as under:

“Determination of fair market value.

11UA.[(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

- | | | | |
|------------|---|----------|----------|
| <i>(a)</i> | <i>X</i> | <i>X</i> | <i>X</i> |
| <i>(b)</i> | <i>X</i> | <i>X</i> | <i>X</i> |
| <i>(c)</i> | <i>valuation of shares and securities,—</i> | | |

(a) X X X

[(b) **the fair** market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

the fair market value of **unquoted equity shares** = $(A+B+C+D - L) \times (PV)/(PE)$, where,

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

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

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(v) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;”

[Emphasis is ours]

15. From the perusal of above, “Item No.D” for the purpose of valuation of unquoted shares, the value of immovable property should be taken as the value adopted or assessable by any authority of Government for the purpose of payment of stamp duty. Nowhere in the Rule, it is stated that in case, the book value is higher than the stamp value, the same should be taken and it is stated in clear terms that the value assessed or assessable by for the purpose of stamp duty is to be considered. This view is supported by the judgement of Hon’ble Jurisdictional High Court in the case of *PCIT vs Minda SM Tecnocast Pvt.Ltd.* (supra) wherein in para 13, the Hon’ble Court has observed as under:-

13. *“In other words, if immovable property, such as land, had to be taken into account in arriving at the Fair Market Value of unquoted shares by adopting the formula prescribed in Rule 11UA of 1962 Rules w.e.f. 01.04.2018, i.e. AY 2018-19, the AO would have to factor in the value of such land, by taking into account the circle rate prevailing in the area.”*

16. Coming to the present case, from the perusal of the valuation report of the merchant banker in Annexure (I) i.e. the computation, value of the immovable property was taken by the valuer as assessed or assessable by any authority of the Government for the payment of stamp duty which was at INR 1,51,27,43,006/- as on the day when the shares were sold and the same was not disputed

by the lower authorities. The relevant extract of the valuation report is as under:-

Annexure-1: Valuation of Equity shares of AHPL as per Net Asset Value Methodology as on September 26, 2019

Amount In INR

Valuation of Apex Homes Private Limited as per Rule 11UA of Income Tax Rules, 1962		
A	Book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—	4,44,56,280
Less	Income Tax Paid less Income Tax Refund	47,682
Less:	Any amount shown as asset including unamortised deferred expenditure which doesnot represent the value of asset	-
TOTAL A =		4,44,08,598
B	The price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;	-
C	Fair market value of shares and securities as determined in the manner provided in this rule (Note below)	-
D	The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property)	1,51,27,43,006
Total Assets E (A+B+C+D) =		1,55,71,51,604
L	Book value of Liabilities:	3,94,20,14,112
Less	the paid-up capital in respect of equity shares;	3,25,37,990
Less:	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;	-
Less:	reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;	57,35,31,716
Less	any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;	-
Less	any amount representing provisions made for meeting liabilities, other than ascertained liabilities;	-
Less:	any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;	-
TOTAL L =		3,33,59,44,406
Total Fair Market Value (E - L) =		(1,77,87,92,802)
PE	Total amount of paid-up equity shares	3,25,37,990
PV	Paid up value of such equity share	10
Fair Market value of unquoted shares (E - L)*PV/PE		(546.68)



17. The AO had ignored the fact that there is difference between the valuation for the purpose of section 56(2)(vii)(b) read with under Rule 11UA(2), where the book value of assets appearing in the balance sheet is to be taken for the purpose of valuation. However, u/s 50CA of the Act, the provisions as contained in Rule 11UA(1) are applicable where the value of immovable property is to be taken at the value determined for stamp duty purposes. In this case the valuation done by the merchant banker for the shares of M/s. Apex Homes Pvt. Ltd. as on the date of sales at INR (-) 546.68 per share is based on the provisions of section 11UA(1) which has been taken by the assessee to compute the Long Term Capital Gain and Short Term Capital Gain from sale of such shares. Accordingly, the additions made by the AO by taking the value per share at INR 180/- being not in accordance with law and thus are hereby deleted. Thus, Ground Nos. 2 to 9 raised by the assessee are allowed.

18. **Ground No.11** is with respect to levy of interest u/s 234A & 234B which is mandatory and thus, the AO is directed to charge interest in accordance with law after giving effect to the order of the Tribunal. Ground No.11 raised by the assessee is accordingly, dismissed.

19. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 25.07.2025.

Sd/-

**(YOGESH KUMAR U.S)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Amit Kumar, Sr.P.S

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