

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.836/Chny/2025
निर्धारणवर्ष/Assessment Year: 2021-22
&
Cross-Objection No.38/Chny/2025
निर्धारणवर्ष/Assessment Year: 2021-22

The DCIT, Central Circle-2(2), Chennai.	v.	M/s. Aathmika – Holdings Pvt. Ltd., No.10, Sri Karpaga Vinayagar Nagar, Thoraipakkam, Chennai-600 097.
		[PAN: ABDCS 5539 D]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross-Objector)
Department by	:	Mr.Shiva Srinivas, CIT
Assessee by	:	Mr.Vikram Vijayaraghavan, Advocate
सुनवाईकीतारीख/Date of Hearing	:	09.06.2025
घोषणाकीतारीख /Date of Pronouncement	:	29.07.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue and cross objections filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as 'Ld.CIT(A)'), Chennai-19, dated 21.01.2025 for the Assessment Year (hereinafter referred to as 'AY') 2021-22.



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2. The facts in brief are that, a search action u/s 132 of the Act was carried out in the case of Thiagarajan Group on 04.11.2020, to which the assessee belongs. The assessee is noted to be an investment holding company. For AY 2021-22, the assessee had filed its return of income u/s 139(1) of the Act on 06.02.2022, declaring total income of Rs.22,32,201/-. The case of the assessee was selected for regular scrutiny and notice u/s 143(2) of the Act was issued on 09.02.2022. In the course of scrutiny, the AO *inter alia* called for several details by issuing notice(s) u/s 142(1) of the Act. It is noted that, during the year, the assessee had purchased 5,92,41,134 shares of M/s IG3 Infra Limited (in short 'IG3') on 08.08.2020 at the rate of Rs.12.43/- per share, viz., total consideration of Rs.73,63,67,296/-. The assessee had also purchased 18,43,73,618 shares of M/s ETL Power Services Limited (in short 'ETL Power') at the rate of Rs.14.30/- per share, which worked out to a total consideration of Rs.263,65,42,737/-. Both these shares were purchased from M/s Green Grid Group Pte Ltd., Singapore (in short 'G3'). According to the AO, this transaction involving acquisition of shares from G3 qualified as an international transaction with an associated enterprise (AE) and therefore, made a reference to the Transfer Pricing Officer (TPO) u/s 92CA(2) of the Act, after obtaining necessary approvals.



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3. The TPO is noted to have called for several details and the assessee is found to have furnished their reply as well as objections to the validity of the transfer pricing proceedings. The TPO vide show cause notice (SCN) dated 19.12.2022 proposed to ascertain the Arm's Length Price (ALP) value of the IG3 shares, purchased from G3, by benchmarking it to the price of Rs.29.48/share, paid by M/s Chidaatma Contractors Pvt. Ltd. for acquiring the same IG3 shares from ILFS Realty Fund C/o Vistra ITCL India Ltd, during the same year. The TPO, in his order dated 28.12.2022, rejected the submissions furnished by the assessee objecting to the SCN, and held that, the ALP price for purchase of IG3 shares from G3, Singapore ought to be Rs.29.48/share in terms of the internal CUP method. The TPO however didn't make any upward/downward adjustment in the order passed u/s 92CA(3) of the Act. Instead, the TPO recommended the AO to consider this ALP price for making addition under the appropriate section(s) of the Act.

4. It was brought to our notice that, upon receipt of the order of the TPO, the AO issued a show cause notice dated 07.12.2022, proposing to invoke Section 56(2)(x) of the Act, on the premise that the shares acquired by the assessee from G3, Singapore was at a price [Rs.12.43/share] lower than the Fair Market Value (in short 'FMV') [Rs.29.48/share] determined by the TPO. Likewise, adopting the FMV



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price of IG3 shares at Rs.29.48/share, the AO also re-computed the FMV of ETL Power shares [which also held IG3 shares] at Rs.53.95/share as opposed to price of Rs.14.30/share actually paid by the assessee. The assessee is noted to have objected to the show cause notice by their submission dated 27.12.2022, wherein it was *inter alia* submitted that, the FMV was to be ascertained in the manner as prescribed in Rule 11UA Income Tax Rules, 1962 (herein after 'the Rules') and that no other method or price could be adopted to arrive at the FMV, for the purposes of application of Section 56(2)(x) of the Act. According to the assessee, the prices at which the assessee acquired shares of IG3 and ETL Power was commensurate with their respective FMVs computed in terms of Rule 11UA(1). The assessee also furnished valuation certificate dated 06.07.2020 obtained on the basis of unaudited financials dated 31.03.2020 [hereinafter referred to as 'original valuation report'] in which the FMV as per Rule 11UA was worked out to Rs.12.125/- and Rs.13.67/- for IG3 shares & ETL Power shares respectively. According to the assessee, the FMV as per Rule 11UA was lower than the actual purchase price of the assessee and therefore no addition was warranted u/s 56(2)(x) of the Act. Later on, the assessee furnished another valuation report dated 09.12.2022 [hereinafter referred to as 'updated valuation report'] which was prepared on the basis of audited financial statements prepared for the valuation date 08.08.2020 viz., the date of transaction.



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In this updated valuation report, the FMV of IG3 shares & ETL Power shares as per Rule 11UA was re-stated at Rs.11.989/- & Rs.13.41/- respectively. Since the actual purchase price was comparatively higher than the corrected FMV of these shares, the assessee reiterated that, no addition was permissible u/s 56(2)(x) of the Act. The AO however is noted to have rejected the submissions put forth by the assessee and his reasons, as taken note of, is summarized below:-

- i. The assessee had originally relied on unaudited financial statements of M/s IG3 Infra Limited for share valuation, violating Rule 11UA r.w. Rule 11U, which mandates usage of audited balance sheet for valuation;
 - ii. On 08.08.2020, the assessee purchased IG3 shares at Rs. 12.43 per share, whereas on 07.08.2020, a third-party transaction for the same company shares occurred at Rs. 29.48 per share, which raised serious concerns on the reliability of report obtained under Rule 11UA;
 - iii. As there are two values i.e. Rs.12.43 and Rs.29.48 arrived by two independent valuation reports, the valuation of shares of IG3 Infra Ltd submitted by assessee was held not to represent FMV;
 - iv. The FMV as per assessee's valuation report suffered from infirmities inter alia the calculation wrongly included the value & number of preference shares in the total number of equity shares, thereby inflating the denominator. It was the AO's case that, if the correct number of equity shares [after excluding the preference shares] is considered, the FMV would align with Rs.29.48 per share instead of Rs.12.43 per share, as claimed by the assessee. Also, according to AO, value of certain assets held by the companies were not taken at fair value but adopted at book value.
- 5.** It is observed that, the AO while rejecting the submissions of the assessee, is found to have only taken cognizance of the original valuation



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report dated 06.07.2020, which in his opinion was unreliable. The AO thereafter embarked upon independent computation of the FMV of the IG3 Infra Ltd shares, in terms of Rule 11UA, which he worked out at Rs.30/- per share. Since this FMV determined by him was commensurate with the ALP determined by the TPO, the AO held that, the adoption of FMV per IG3 share at Rs.29.48/- was justified for making the addition u/s 56(2)(x) of the Act. Similarly, the AO also re-computed the FMV of ETL Power shares at Rs.53.95/- per share, by valuing their investment holding in IG3 shares at Rs.29.48/- per share. The AO accordingly passed a draft assessment order u/s 144C of the Act dated 30.12.2022, proposing addition u/s 56(2)(x) of the Act in relation to purchase of both IG3 & ETL Power shares, aggregating to Rs.832,04,75,288/-, in the same manner as set out in his show cause notice. Since the assessee didn't file objections before the Dispute Resolution Panel (DRP), the AO passed the final assessment order u/s 143(3)/144C of the Act on 20.02.2023. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A).

6. Before the Ld. CIT(A), the assessee *inter alia* submitted that, the only method prescribed u/s 56(2)(x) of the Act to ascertain the FMV was the method prescribed in Rule 11UA and that no other method or rule or formula could have been applied by the assessee or the AO to ascertain



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the FMV. The assessee contended that, a third-party transaction viz., the price at which M/s Chidaatma Contractors Pvt. Ltd. purchased the shares of IG3 from M/s Vistra ITCL India Ltd. could not be adopted as FMV for the purposes of Section 56(2)(x) of the Act as the same was not in accordance with the prescribed Rule 11UA. The assessee is noted to have explained that, as long as the purchase price for a property paid by the assessee or for that matter any third person, is higher than the FMV computed as per Rule 11UA in respect of such property, no adverse inference can be legally drawn in terms of Section 56(2)(x) of the Act, even if the third person had transacted the same property at a price different/higher than the price paid by the assessee. It was additionally pointed out that, the price negotiated and paid by M/s Chidaatma Contractors Pvt. Ltd. to M/s Vistra ITCL India Ltd. was pursuant to an extra ordinary situation viz., for withdrawing pending litigation in Court and therefore, even otherwise the said price, according to the assessee, could not be said to represent FMV.

7. The assessee also filed an application in terms of Rule 46A before the Ld. CIT(A), seeking consideration of the updated valuation report dated 09.12.2022, which was prepared on the basis of audited financial statements prepared as on the valuation date i.e. 08.08.2020. The assessee explained that, as originally the shares were valued on the basis



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of unaudited results as on 31.03.2020, which was not in accordance with Rule 11UA(1)(c) read with 11U(b)(ii)(A), the assessee had therefore obtained an updated valuation report dated 09.12.2022, which was based on the audited financial statements drawn up on 08.08.2020, being the date of share purchase by the assessee. The assessee contended that the updated valuation report reflected the true & correct fair value of the shares as on the date of transaction. The comparative details of the FMV as per the original and the updated valuation report of the assessee are noted to be as under:-

Company	FMV as per original Valuation Report dt 06.07.2020 (Unaudited Financials as on 31.03.2020)	FMV as per updated Valuation Report dt 09.12.2022 (Audited Financials as on 08.08.2020)	Purchase price per share
IG3	Rs.12.125	Rs.11.989	Rs.12.43
ETL	Rs.13.67	Rs.13.41	Rs.14.30

8. The Ld. CIT(A) is noted to have called for a remand report from the AO, in which though the AO confirmed that the assessee had indeed furnished the updated valuation report in the course of assessment on 27.12.2022, but according to the AO, such updated report was an afterthought and therefore was to be discarded. The AO is noted to have observed that, the updated valuation report was not available on the date of transaction and that the assessee, at that material time, had relied on



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the original valuation report dated 06.07.2020 and thus, the AO remarked that only the original valuation report was to be considered. It is noted that, the Ld. CIT(A) rejected this line of reasoning given by the AO for rejecting the updated valuation report, holding it to be untenable, and also contrary to the provisions contained in Rule 11U. The relevant findings of Ld. CIT(A), in this context, is noted to be as follows:-

“9.78 At this juncture, it is important to analyze the provisions section 56(2)(x) read with Rules 11U/ 11UA which mandates that for the purposes of determining FMV of an unlisted equity share, the respective equity shares must be valued based on audited financial statements as on the date of share transfer itself.

9.79 The undersigned concurs with the appellant's argument that while Rule 11UA, read in conjunction with Rule 11U, which clearly stipulates that the valuation of shares in an unlisted company must be based on audited financial statements as on the date of the share transfer, it may not always be practically feasible to comply with this requirement at the time of the transfer. This is primarily because that the share transfer if occurs at any time in between the financial year, the same may not synchronize with the regular year end closing balance sheet date. In such cases, the audited financials for the relevant period may not yet be readily available. Consequently, relying solely on unaudited financial statements or interim reports at the time of the transfer may be necessary to conduct the valuation in the first instance. Such circumstances are not unusual, particularly in cases where the share transfer occurs at a date other than the year end closing date, and the company has not yet completed the audit process. Therefore, while the intention of the rule is to base the valuation on finalized, audited figures, the practical constraints of timing often make it difficult to adhere to this requirement immediately upon the transfer. This is a reasonable position to consider when evaluating the fairness and accuracy of the valuation methodology used by the appellant in this case

9.80 While the law requires only a valuation based on the audited balance financial statements as on the date of transfer, but it does not mandate that such valuation must be made available on record on the same date of share transfer itself and as contended by the appellant, it is not practically possible to do as well.



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9.81 Accordingly, the undersigned is of the view that the submission of the updated valuation report is not an afterthought and the AO has not brought on record any other valid reasons as to why such updated valuation report was not considered for framing the assessment order, irrespective of the submission of such report by the appellant during the course of assessment proceedings itself. Therefore, the updated valuation report, based on audited financials, needs to be considered for the purpose of determination of FMV u/s 56(2)(x) of the shares of IG3 Infra Ltd and ETL Power Services Ltd.”

9. After admitting the updated valuation report, for the reasons set out above, the Ld. CIT(A) is noted to have called for a point-wise comment from the AO on the alleged inconsistencies highlighted in the valuation exercise in the impugned assessment order. It is observed that, the AO in the impugned order had mainly stressed that only the paid-up equity shares could be considered in the denominator for calculating the FMV in terms of Rule 11UA(1)(c). The AO was of the view that the assessee had inflated the denominator in the valuation report by wrongly including the preference shares which led to a substantially reduced FMV value that what it should actually be. Before the Ld. CIT(A), the assessee however pointed out that, the preference shares were converted into equity shares on 23.07.2020 and 07.08.2020, i.e. prior to the date of transaction being 08.08.2020. Hence, the paid-up number of equity shares stood increased as on 08.08.2020, due to conversion of the preference shares. The assessee accordingly showed that the denominator considered in the updated valuation report comprised of the correct number of paid-up equity shares (including the already converted preference shares) which



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was in accordance with Rule 11UA(1)(c). In support, the assessee is noted to have furnished the audited financials of investee companies in support of the same, along with relevant copies of Board Resolutions, Form PAS-3 etc. The Ld. CIT(A) is noted to have called for specific comments of the AO on this aspect. The relevant questions put up by the Ld. CIT(A) and the comments given by the AO are noted to be as under:-

"CIT(A): "3. With regard to the inconsistency in the valuation report pointed out at point (a) at Page No.23 of the assessment order, the appellant stated that the preference shares have been converted into equity shares before the date of drawing the audited financial statements as on 08.08.2020. The AO is requested to furnish his comments with regard to the same."

AO Comments: The company M/s IG3 Infra Ltd. has converted the preference shares into equity shares of M/s IG3 Infra Ltd. and the Ld. CIT(A) has asked to verify the same. The assessee was asked to submit the proof for the conversion of preference shares into equity shares of M/s IG3 Infra Ltd. In response, the assessee submitted the required details regarding conversion of preference shares into equity shares like the board resolutions, Form PAS-3 filed etc. of all the shares. The same has been verified and it was found that the M/s IG3 Infra Ltd. has converted the preference shares into equity shares on 1:1 ratio basis before the purchase of shares of M/s IG3 Infra Ltd. by M/s Aathmika Holdings Pvt. Ltd."

10. In view of the above answers given by the AO, the Ld. CIT(A) observed that, the preference shares had indeed been converted into equity shares prior to the date of transfer i.e. 08.08.2020, which was verified and confirmed by the AO in his remand report and therefore, the assessee's action of correspondingly increasing the denominator i.e. number of paid up equity shares (including converted preference shares)



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for the purposes of ascertaining the FMV per share as on the date of valuation i.e. 08.08.2020, was held by the Ld. CIT(A) to be correct and justified. The Ld. CIT(A) accordingly held that, on this aspect alone, there was a material reduction in the FMV of IG3's shares, as determined by the AO, which also had a cascading effect on the FMV of ETL Power's shares. The Ld. CIT(A) thus rejected the AO's alleged inconsistency that there was an inflation in the denominator used by the assessee in their valuation exercise. The relevant findings of the Ld. CIT(A) are noted to be as follows:-

"9.86 After carefully considering the written submissions, the remand report submitted by the AO, and the rejoinder filed by the appellant, the undersigned's is of the view that-

(f) The undersigned has carefully examined the facts, the written submissions, the remand report, and the rejoinder filed. The appellant's assertion—that, as on the date of the share transfer (i.e., 08.08.2020), the preference shares of IG3 no longer existed, having been converted into equity shares on 23.07.2020 and 07.08.2020—has been duly verified and confirmed by the AO in the remand report. Moreover, the FMV of IG3 shares, as computed by the AO in the annexure to the assessment order (Rs.30/- per share), would be significantly reduced if the denominator were revised to reflect the correct number of equity shares outstanding (including the preference shares converted into equity) as on 08.08.2020. This revision alone would lead to a material reduction in the FMV. Additionally, it would have a cascading effect, substantially lowering the FMV of ETL Power shares. Had the AO considered the updated valuation report, this discrepancy would not have arisen. In light of the above, the undersigned concludes that there is no inflation in the denominator used by the appellant for computing the FMV of the shares."

11. Likewise, the Ld. CIT(A) is found to have individually examined the alleged inconsistencies in the valuation of other assets & liabilities as



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mentioned by the AO in the impugned order and concluded that, the assessee had rightly computed the fair values of these assets & liabilities in their updated valuation report, which was in accordance with the methodology laid down in Rule 11UA(1)(c) of the Rules.

12. The next aspect examined by the Ld. CIT(A) was the AO's reliance on the third-party purchase price of Rs.29.48/share paid by M/s Chidaatma Contractors Pvt. Ltd. for acquiring shares of IG3 from ILFS Realty Fund C/o Vistra ITCL India Ltd, to benchmark the FMV value of the assessee's acquisition of same shares, for the purposes of application of Section 56(2)(x) of the Act. It is noted that, the AO had issued notice u/s 133(6) of the Act upon ILFS Realty Fund seeking copy of the valuation report for arriving at the price of Rs.29.48 per share, which was provided by the latter. Though the assessee is noted to have requested for a copy of the reply furnished u/s 133(6) by ILFS Realty Fund, the AO however only provided the covering letter furnished by ILFS Realty Fund, and he didn't share the share valuation certificate submitted by the ILFS Realty Fund. Taking note of this omission, the Ld. CIT(A) in the appellate proceedings required the AO to provide the copy of the valuation certificate submitted by ILFS Realty Fund, in response to the notice u/s 133(6) of the Act, to the assessee and his office as well. The Ld. CIT(A) is found to have extensively reproduced the valuation report submitted by



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ILFS Realty Fund, at Pages 121 to 125 in his appellate/impugned order, according to which the FMV per IG3 share as per Rule 11UA was Rs.12.125/-. In light of this material fact which came to light in the appellate proceedings, the Ld. CIT(A) observed that, though the price negotiated and agreed upon between M/s Chidaatma Contractors Pvt. Ltd. and ILFS Realty Fund was Rs. 29.48 per share, but the same was not based on any scientific valuation and rather the underlying valuation report obtained by the third party revealed that, the FMV of the IG3 share, which was transacted by them, in terms of Rule 11UA was determined at Rs.12.125 per share. Referring to the provisions of Section 56(2)(x), Explanation to Section 56(2)(vii), Rule 11U and Rule 11UA, the Ld. CIT(A) held that, only where the purchase price of shares is lower than the FMV as per Rule 11UA, that an addition can be made u/s 56(2)(x) of the Act, and that any comparison with any third party purchase price [which is different from FMV as per Rule 11UA], is unjustified and not relevant for the purposes of application of Section 56(2)(x) of the Act. The Ld. CIT(A) accordingly held that, the FMV of Rs.29.48/- per IG3 share adopted by the AO as the FMV for the purposes of Rule 11UA was contrary to the valuation report obtained by the third parties themselves and therefore the reliance placed by the AO on such third party price for making addition u/s 56(2)(x) of the Act was held to be both factually and legally unsustainable. On overall consideration of



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facts, the Ld. CIT(A) is found to have held that, the FMV of Rs.11.989/- as computed in the updated valuation report of the assessee was in accordance with Rule 11UA and therefore he held that the purchase price of Rs.12.43/share paid for IG3 shares by the assessee was adequate.

13. Consequentially, the Ld. CIT(A) held that, as a cascading effect, the FMV of IG3 shares, to be adopted for valuing the FMV of ETL Power shares [which held shares of IG3], was to be Rs.11.989/- and not Rs.29.48/- as adopted by the AO. Resultantly, the FMV of ETL Power shares, as per Rule 11UA, stood reduced to Rs.13.41/- per share as opposed to Rs.53.95/- per share, as computed by the AO. The Ld. CIT(A) accordingly held that, the assessee's purchase price of ETL Power shares of Rs.14.30/share was also adequate and higher than its FMV. The Ld. CIT(A) thus held that, since the price paid for purchase of both the shares were higher than their respective FMVs, the addition made by the AO u/s 56(2)(x) was impermissible and thus was directed to be deleted. Aggrieved by the order of Ld. CIT(A), the Revenue is now in appeal before us.

14. Assailing the action of the Ld. CIT(A), the Ld. CIT, DR appearing for the Revenue vehemently supported the order of the AO and the comments furnished by him in his remand report. According to him, the updated valuation report furnished by the assessee was post completion



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of the purchase transaction and therefore the same shouldn't have been entertained by the Ld. CIT(A). He argued that, only the valuation report, which is obtained prior to the date of the transaction, can be validly used for the purposes of Rule 11UA. He further argued that, even the audited financial statements, on the basis of which the updated valuation report was prepared, had been drawn-up post the date of transaction i.e. 08.08.2020 and therefore he claimed that the usage of such audited financials which was not available on the date of transaction was unjustified. He further supported the remand report of the AO objecting to the manner of valuation of assets & liabilities of IG3 shares and claimed that the basis adopted by the assessee was not in accordance with the provisions of Rule 11UA. He particularly urged that, the liabilities appearing in the balance sheet of IG3, which was advanced by IG3 to M3 companies had been taxed by way of deemed dividend u/s 2(22)(e) in the income-tax assessments of the M3 companies, and therefore the said amount was rightly excluded by the AO by way of '*amount set apart for dividends*' while working out the total liabilities to be reduced for the purposes of valuation of shares in terms of Rule 11UA. He further submitted that the fact that M/s Chidaatma Contractors Pvt. Ltd. had paid price of Rs.29.48/share for the same IG3 share just a day prior to the assessee's date of transaction supported the AO's case that, the true FMV of IG3 share was indeed Rs.29.48/share. The Ld. CIT, DR further claimed



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that, once the FMV of IG3 share is held to be Rs.29.48/share, then consequentially the FMV of ETL Power shares would also stand increased to Rs.53.95/share. According to him therefore, since the purchase price of these shares were lower than the respective FMVs computed by the AO, the addition(s) made u/s 56(2)(x) of the Act ought to be restored. Per contra, the Ld. AR for the assessee supported the order of the Ld. CIT(A).

15. We have heard both the parties and perused the material placed before us. The controversy before us concerns the valuation of IG3 shares & ETL Power shares which were purchased by the assessee in terms of Rule 11U and 11UA of the Income Tax Rules, 1962 and whether the purchase price paid by the assessee was commensurate with such fair market valuation or not? It is observed from the orders of the lower authorities that, the assessee had acquired shares of two Indian companies, IG3 and ETL Power, from a foreign company G3, Singapore at price of Rs.12.43/share and Rs.14.30/share respectively. It is observed that, the principal dispute relates to the valuation of IG3 shares, as the underlying valuation of ETL Power shares is dependent on the FMV of IG3 shares, because the latter shares are the major asset held by ETL Power. As noted above, the assessee had furnished original valuation report in which IG3 and ETL Power shares were valued at Rs.12.125/- & Rs.13.67/- and later on an updated valuation report was obtained on 09.12.2022,



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according to which, the FMV of IG3 and ETL Power shares was Rs.11.989/- & Rs.13.41/- respectively. It is observed that, the original valuation report dated 06.07.2020 was based on the unaudited financials as on 31.03.2020 and therefore there is no quarrel between the parties that this particular report was not in accordance with Rule 11U read with 11UA of the Income Tax Rules, 1962. Rather the dispute between the parties relates to the updated valuation report which was obtained by the assessee on 09.12.2022. It is not in dispute that, this report was obtained by the assessee subsequent to the purchase of shares but the valuation undertaken in this report is based on the audited financial statements drawn up as on 08.08.2020 i.e. the date of transaction. The fact that, the value of the shares has been ascertained by the assessee with reference to the valuation date of 08.08.2020 and the financials used for this purpose was audited, is not in dispute. However, the case of the Revenue before us is that, since this report was not available at the time when transaction was entered into i.e. 08.08.2020, such report cannot now be entertained by the authorities. Before adjudicating this contention, we would first like to re-produce the relevant provisions contained u/s. 56(2)(x) of the Act and the relevant Rules 11U & 11UA, which reads as under: —



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"Section 56(2)(x)

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-

(c) any property, other than immovable property,-

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Rule 11U

For the purposes of this rule and rule 11UA,—

.....

(b) "**balance sheet**", in relation to any company, means,—

(i) for the purposes of sub-rule (2) of rule 11UA, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956)²⁶ and where the balance sheet on the valuation date is not drawn up, the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and

(ii) **in any other case,—**

(A) in relation to an Indian company, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and

(B) in relation to a company, not being an Indian company, the balance sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been



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audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;]]

(j) "valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.

Rule 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,—

(c) valuation of shares and securities,—

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;



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(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 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;

PV = the paid-up value of such equity shares;

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

(2) Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1):—

(A) the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares, as shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (e), at the option of the assessee, where the consideration received by the assessee is from a resident ; and under sub-clauses (a) to (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, in the following manner:—.....”**[Emphasis given by us]**

16. The law is noted to stipulate that, where any property including any shares is received by any person for inadequate consideration, then the difference between the fair market value and the purchase price, is to be



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brought to tax by way of income from other sources u/s 56(2)(x) of the Act. It is seen that, the provisions of Section 56(2)(x) come into play only where the purchase price is lesser than the FMV and therefore, if the purchase price is equal or higher, the said provision has no implication. It is noted from Rule 11UA(1) that, the valuation methodology set out therein is to be applied for the purposes of Section 56 of the Act, and more specifically Rule 11UA(1)(c) is relevant to the present case. The valuation method set out in Rule 11UA(2) is noted to be applicable only for transactions covered by Section 56(2)(viib) viz., issuance of shares by a domestic company, which is not the issue involved in the present case, and therefore the said Rule 11UA(2) is not relevant to the case before us.

17. Hence, we find that the provisions of Section 56(2)(x) read with Rule 11UA(1)(c) is relevant to the present case. Rule 11UA(1)(c) provides that, the fair market value of unquoted equity shares shall be the value, on the 'valuation date', as determined in the manner set out therein, which contains the valuation methodology for different species of assets & liabilities as appearing in the 'balance sheet'. The term 'valuation date' for the purposes of Rule 11UA(1)(c) is found to be defined in Rule 11U(j) to mean the date on which the property is received by the assessee, which is 08.08.2020, in the present case. The term 'balance sheet' for the purposes of Rule 11UA(1)(c) is found to be defined in Rule 11U(b)(ii)(A)



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to mean the audited balance sheet as drawn up on the 'valuation date'. Hence, conjoint reading of Section 56(2)(x) r.w. 11UA(1)(c) r.w. Rule 11U reveals that, where any property by way of shares is purchased/received by the assessee, then its fair market value is to be ascertained in terms of Rule 11UA(1)(c), which requires the FMV is to be worked out on the basis of the figures of assets & liabilities appearing in the audited balance sheet drawn up as on the 'valuation date' i.e. the date of such purchase/receipt of property.

18. Having regard to the above legal principle, in the present case therefore, the FMV as per Rule 11UA(1)(c) was required to be worked out on the basis of the audited balance sheet drawn up on the valuation date i.e. 08.08.2020. As noted earlier, the original valuation report dated 06.07.2020 was prepared on the basis of unaudited financials dated 31.03.2020 which is not in accordance with the above discussed provisions and Rules and therefore it was rightly discarded by both the parties. We find that, the updated valuation report submitted by the assessee, was prepared on the basis of audited financials drawn up for the valuation date 08.08.2020, and therefore the same is found to be in accordance with the prescribed Rules, as discussed above. We thus countenance the Ld. CIT(A)'s findings admitting and accepting this updated valuation report because what the provision requires [i.e.



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conjoint reading of relevant provisions contained in Section 56 or Rule 11U or Rule 11UA] is only to ascertain that, the transacted price/consideration between the parties should not be lower than the FMV prevailing on the valuation date, which is to be computed in terms of prescribed Rule 11UA. We agree with the findings of the Ld. CIT(A) that, the date of transfer/receipt of shares may not coincide with the closing balance sheet date i.e. 31st March and it may happen on any date and therefore it is practically impossible to draw up and get the balance sheet audited immediately at the time of such transaction. Though the transaction may be negotiated/undertaken between the parties based on the unaudited results available then, but in terms of the intention of the Rule, the assessee, when called upon, is required to demonstrate the fairness of their actual consideration on the basis of valuation derived from the audited balance sheet drawn up on the date of the transaction, which understandably would be obtained at a date later to the date of transfer. Hence, according to us, even if, the assessee has obtained the valuation report at a later date, but as long as, the assessee is able to demonstrate that, the FMV has been ascertained in accordance with Rule 11UA(1)(c) on the basis of audited balance sheet drawn up on the valuation date [08.08.2020, in the present case], the said report cannot be rejected for being obtained post the date of transaction. In our considered view therefore, the reasoning given by the AO for rejecting the



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updated valuation report only because it was obtained subsequent to completion of the transaction, was misplaced in as much as it did not have any sanction of law, as discussed above.

19. Our above view finds support from the decision of the coordinate bench of this Tribunal in the case of **Sri Sakthi Textiles Limited vs. DCIT (188 ITD 946)**. In the decided case, the assessee had issued fresh equity capital having face value of Rs.10 at a premium of Rs. 142 per share. The PCIT in his order passed u/s 263 of the Act directed the AO to redo the original assessment after verifying the taxability of share premium u/s 56(2)(viib) of the Act. In the proceedings u/s 143(3) / 263, the assessee filed a valuation report which was obtained subsequently to support the fair market value of shares on the date of issuance and it was accordingly contended that, since the FMV of shares was more than the price at which the shares were issued, Section 56(2)(viib) could not be invoked. The AO inter alia rejected the valuation report by observing that the said report was not available at the time of issue of shares and it had been obtained subsequently from an independent Chartered Accountant. The Ld. CIT(A) also agreed with this line of reasoning advanced by the AO. On appeal, this Tribunal held that the AO cannot reject the valuation report merely because the said report was not available at the time of issuance of shares. It held that, what is relevant is whether the valuation



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report supports the issuance price or not and therefore, even if such report is obtained subsequent to the date of issue of shares, it would be of no relevance. The relevant findings of the Tribunal, which is found to be squarely applicable in the case before us is as follows:

"10. Coming back to observations of the Assessing Officer regarding valuation report. The Assessing Officer never stated that assessee has not filed valuation report in support of fair market value of shares. In fact, Assessing Officer has categorically admitted that assessee has filed valuation report from independent Chartered Accountant as well as statutory auditor of Assessee Company. But, he has ignored valuation report filed by assessee only for the reason that such reports were not filed during original assessment proceedings or even during revision proceedings. We have gone through reasons given by the Assessing Officer for rejection of valuation report and we do not ourselves subscribe to the findings recorded by Assessing Officer, because he cannot reject valuation report merely for the reason such valuation report was not filed at the time of assessment proceedings. Further, timing of filing valuation report at the time of original assessment proceedings u/s.143(3) or during revision proceedings u/s.263 of the Act is not a relevant criteria to decide whether fair market value of shares issued by assessee is substantiated to the satisfaction of Assessing Officer or not. But, what is relevant is whether valuation report supports share price determined by the assessee or not. In this case, valuation report obtained by the assessee from independent Chartered Accountant supports share price. Therefore, when the assessee has substantiated share price to the satisfaction of the AO with the help of valuation report, even if, such valuation report is obtained subsequent to the date of issue of shares, it does not alter the situation. Therefore, we are of the considered view that Assessing Officer as well as learned CIT(A) were erred in rejecting valuation report filed by assessee on this count."

20. We also gainfully refer to the decision of the coordinate bench at Ahmedabad in the case of **Jayshri Propack Pvt Ltd vs. ACIT (198 ITD**



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17). In this case, the assessee had issued shares at a premium and had originally submitted a valuation report obtained from a company secretary to justify the share premium in view of Section 56(2)(viib) of the Act. Both the AO and the Ld. CIT(A) rejected the report by observing that it was not in accordance with Rules 11U and 11UA, and accordingly added the share premium u/s 56(2)(viib) of the Act. On appeal, the Tribunal is noted to have admitted the subsequent valuation certificate which was obtained by the assessee from a Chartered Accountant in accordance with Rule 11UA in which, it had sought to justify the share premium based on the valuation of its assets as on the date of issue of shares, including both tangible and intangible assets. The Tribunal is noted to have admitted this subsequent valuation report obtained in support of the FMV as on the date of issuance and remitted the matter to the AO to consider the same.

21. In light of our above reasons and decision (supra), we thus reject the grounds raised by the Revenue objecting to the admissibility of the updated valuation report.

22. Though we have held that a valuation report obtained at a later date but on the basis of audited financials drawn up on the valuation date, is relevant and admissible, however, the Revenue is still empowered to verify and examine the contents of such valuation report and identify any infirmities or defects therein, and accordingly compute the true &



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correct FMV for the purposes of Section 56(2)(x) of the Act. In this regard, we take note of the decision of the Hon'ble Bombay High Court in the case of **Vodafone M-Pesa Ltd vs. PCIT (256 taxman 240)** wherein it was held that the AO can scrutinize the valuation report and he can determine a fresh valuation either by himself or by calling a final determination from an independent valuer to confront the assessee, but he cannot change the method of valuation which has been adopted by the assessee. The relevant para 9 of this judgment is reproduced below:

"9. We note that, the Commissioner of Income-Tax in the impugned order dated 23rd February, 2018 does not deal with the primary grievance of the petitioner. This, even after he concedes with the method of valuation namely, NAV Method or the DCF Method to determine the fair market value of shares has to be done/adopted at the Assessee's option. Nevertheless, he does not deal with the change in the method of valuation by the Assessing Officer which has resulted in the demand. There is certainly no immunity from scrutiny of the valuation report submitted by the Assessee. Therefore, the Assessing Officer is undoubtedly entitled to scrutinise the valuation report and determine a fresh valuation either by himself or by calling for a final determination from an independent valuer to confront the petitioner. However, the basis has to be the DCF Method and it is not open to him to change the method of valuation which has been opted for by the Assessee. If Mr. Mohanty is correct in his submission that a part of demand arising out of the assessment order dated 21st December, 2017 would on adoption of DCF Method will be sustained in part, the same is without working out the figures. This was an exercise which ought to have been done by the Assessing Officer and that has not been done by him. In fact, he has completely disregarded the DCF Method for arriving at the fair market value. Therefore, the demand in the facts need to be stayed."

23. In the present case, it is an admitted fact that the assessee has adopted the valuation methodology as set out in Rule 11UA(1)(c)(b), as prescribed in the context of Section 56(2)(x) of the Act. Unlike Section



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56(2)(viib) r.w Rule 11UA(2), which gives more than one option regarding the method of valuation, however for the purposes of Section 56(2)(x), the only method which has to be applied and followed by the assessee as well as the Revenue is only the FMV methodology based on the asset approach as set out in Rule 11UA(1)(c)(b). Taking guidance from the above judgment of Hon'ble Bombay High Court, we hold that the Revenue was empowered to ascertain the FMV only in accordance with the specific and sole method as prescribed in Rule 11UA(1)(c) and could not apply any alternate methodology, viz. external comparable method, as applied by the TPO. At the same time, we clarify that though the applicable method was the one as set out in Rule 11UA(1)(c) but the Revenue is empowered to scrutinize the same and point out any defect or correction therein so as to arrive at the correct FMV for the purposes of Section 56(2)(x) of the Act. We thus now turn our attention to the arguments raised by the Revenue regarding the correctness of the valuation of assets & liabilities as undertaken, in the updated valuation report. For the sake of convenience, the content of the relevant updated valuation report, which is in dispute before us, is reproduced below:-



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Valuation report under Rule 11UA of IG3 Infra Limited

9 December 2022

1. Background

IG3 Infra Limited ('IG3' or 'the Company') is a public limited company domiciled in India and incorporated under the provisions of the Companies Act, 1956. The Company is engaged in development and provision of Infrastructure facilities, including Special Economic Zones.

The Company has developed an Information Technology Special Economic Zone (IT SEZ) – "Chennai One" in Chennai with a total leasable commercial space of 3.7 million sq. ft in various phases. The Company completed the first phase of the IT SEZ on a land area of 7.86 acres with leasable area of 1.05 million sq. ft. in FY2007. The North Block of the second phase, on a land area of 12.84 acres, got commercialized in FY 2016 and has a leasable area of 1.29 million sq. ft. The Company has recently completed the South Block of Phase 2 and is now in the process of entering into agreement with various IT/ITES companies for 1.38 million sq. ft. of leasable area.

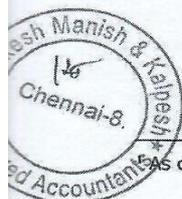
The Company has also made investment in certain projects and noncash generating assets including a mall, thermal power plant and land parcels.

The shareholding pattern as at Valuation date (8 August 2020) is as follows:

S. No.	Class of Shares	No. of Shares	% of Shareholding
1	Equity shares		
	ETL Power Services Ltd.	337,410,417	63.98%
	Southern Projects Management Private Limited	105,662,812	20.04%
	Green Grid Group Pte. Ltd., Singapore	59,241,134	11.23%
	Others	25,025,578	4.75%
	Total	527,339,941	100%

2. Purpose of valuation

- 2.1 We have been informed that the some of the shareholders of IG3, including non-resident shareholders will be transferring their shareholding in IG3 to Aathmika Holdings Pvt Ltd, an Indian resident entity, as on valuation date¹.
- 2.2 As per Section 56(2)(x)(c) of the Income Tax Act, 1961 ("the Act"), where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017 any property, other than immoveable property, for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration shall be taxable in the hands of recipient of the shares.



As of the date of issuance of report, the shares were transferred.



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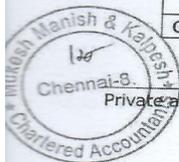
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- b. We were not provided with the information and documents for arriving at the FMV as per Rule 11UA for the shares held in Coimbatore City Infra Services Private Limited nor we were provided with a separate valuation report. We were informed that the FMV of such shares shall not be more than the face value of the shares and accordingly, we have considered the face value of the shares as the FMV for the purpose of this valuation.
6. The stamp duty value of the immoveable property (lands) has been considered based on the valuation report provided by the Registered valuer for the Chennai land and the guideline values provided by the management in case of other land parcels and is as follows:

S No.	Location of Land	Area Unit	Extent	Stamp Duty Value (Rs.)	Note Ref.
1	Chennai (Chennai One)	Acre	6.240	819,520,416	6(a)
		Acre	14.455	1,476,552,231	6(a)
			20.695	2,296,072,647	
2	Perundurai	Acre	256.429	126,424,492	6(b)
				126,424,492	
3	Akkalenahalli and Mallenahalli of Kasaba Hobli, Bangalore Rural	Acre	21.000	441,000,000	6(b)
	Akkalenahalli and Mallenahalli of Kasaba Hobli, Bangalore Rural	Acre	22.825	479,325,000	6(b)
			43.825	920,325,000	
4	Hanumanthai Village, Chengalpet	Acre	94.70	446,785,614	6(b)
	Hanumanthai Village, Chengalpet	Acre	6.18	28,984,200	6(b)
	Hanumanthai Village, Chengalpet	Acre	3.12	36,423,130	6(b)
	Kunnavakkam Village, Chengalpet	Acre	26.825	127,285,260	6(b)
		Acre	130.83	639,478,204	6(b)
	Total			3,982,300,343	

- a. The stamp duty value of the Chennai Land has also been certified by the registered valuer and we have relied upon the said report for the purpose of this valuation.
- b. The stamp duty value of the other Lands has been taken from the guideline value issued by the Government for stamp duty computation as certified by the Management and we have relied upon the said report for the purpose of this valuation.
7. The value of building, except for the Chennai One building, for the purpose of this valuation has been taken at the book value rather than the stamp duty value. The details of the value considered for the immoveable property (Buildings) is as follows:

Particulars	WDV as 8 August 2020	Stamp Duty Value	Value considered for Valuation
Chennai One (Phase I and II)	7,935,389,095	6,375,563,115	6,375,563,115



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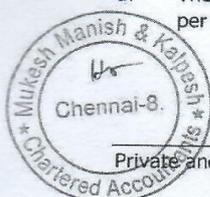
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- b. The MAT Credit entitlement for the AY 2014-15 and AY 2015-16 are as per the assessment orders issued by the income tax department for the respective years and recognised in the books during the financial year ended 31 March 2020.
- c. The Income tax refund receivable and MAT Credit entitlement has been verified with the amount of refund claimed by the Company in its Income Tax return filed/ assessment orders received/ income-tax records by the Company.
- d. The Income tax refund receivable for the FY 2020-21 (till 8 August 2020) has been considered as per the books of account.
3. We have been informed that the amount of Freehold land in the Balance Sheet as at 8 August 2020 includes Land Advance of Rs. 7,000 lakhs given for purchase of land. For the purposes of this valuation, the said advance has not been considered as immovable property but as advances (other assets) of the Company and accordingly the value of land advance has not been reduced from the total assets of the Company.
4. As at the Balance Sheet date of 8 August 2020, the Company has an amount of Rs. 38,390.16 lakhs as Capital work in progress representing under constructed thermal power plant. The said value comprises of the building / structure of the power plant and the machineries. The management of the Company has represented that the whole of thermal power plant should be considered as "power plant" and therefore, the civil construction portion of plant should be considered as plant and machinery and not as immovable property. Accordingly, the under constructed power plant has not been considered as an Immoveable Property (Building) for the purpose of this valuation but as a plant & machinery (tangible fixed assets) of the Company.
5. The details of fair market value of investment in shares and securities by the Company are as follows:

Company	No. of Shares	FMV per share (Rs.)	Total Amount (Rs.)	Note Ref
Buildkorp Engineers (India) Private Limited	4,000	511.95	20,47,800	5(a)
The Great Indian Linen & Textile Infrastructure Co. (P) Ltd	39,97,500	10.18	4,06,94,550	5(a)
Grand Luxe Hotels Limited	2,50,00,000	(6.746)	(16,86,50,000)	5(a)
Green Grid Power (India) Limited	2,50,000	(246.58)	(6,16,45,000)	5(a)
ETL Corporate Services Private Limited	2,50,000	(477.86)	(11,94,65,000)	5(a)
ETL Secure Space Limited	2,50,000	7.28	18,20,000	5(a)
Weavers Harvest (India) Private Limited	2,50,000	(921.10)	(23,02,75,000)	5(a)
Coimbatore City Infra Services (P) Ltd.	10,000	10	1,00,000	5(b)
Total			(53,53,72,650)	

- a. The FMV per shares of the respective subsidiary and associate companies have been arrived as per Rule 11UA based on the audited financial statements as at 8 August 2020 of the Company.



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Notes:

1. Book Value of Assets as per Balance Sheet, has been taken as per the audited financial statement as at 8 August 2020 prepared in accordance with the Indian Accounting Standards (Ind AS) as applicable to the Company.
2. The amount of refund receivable under the Act includes the income tax refund receivable as per returns filed / assessment orders and the MAT Credit Entitlement as per income tax returns / assessment orders. The details of the same is as follows:

Amount in Rs.

Financial Year	Asst year	Income Tax (Payable)/ Refund Receivable	MAT Credit Entitlement	Total	Note Ref
2011-2012	2012-2013	150,732,392	-	150,732,392	2(a)
2012-2013	2013-2014	73,788,432	-	73,788,432	2(a)
2013-2014	2014-2015	-	110,726,026	110,726,026	2(b)
2014-2015	2015-2016	-	76,283,510	76,283,510	2(b)
2016-2017	2017-2018	35,577,264	-	35,577,264	2(c)
2017-2018	2018-2019	15,015,008	28,415,097	43,430,105	2(c)
2018-2019	2019-2020	-	31,595,912	31,595,912	2(c)
2019-2020	2020-2021	(93,400)	31,610,002	31,516,602	2(c)
2020-2021 (year till 08 Aug 2020)	2021-2022	13,285,742	-	13,285,742	2(d)
Total		288,305,438	278,630,547	566,935,985	

- a. During the year ended 31 March 2020, the Company has received an Order from Honourable High Court of Madras against the Writ Petition filed by the Company in respect of the Order of the department rejecting the Company's application for condonation in filing of income tax return for FY 2011-12 (AY 2012-13) and FY 2012-13 (AY 2013-14). The Honourable High Court of Madras has set aside order of Commissioner rejecting the condonation application and has directed the department to examine the claim on merits and pass necessary orders within 3 months of the receipt of order.

Prior to the writ petition, due to belated filing of income tax return, the department has rejected the Company claim for deduction under section 80IAB of the Act and issued a demand of Rs. 13,87,47,186 for AY 2012-13 and Rs. 13,36,11,275 for AY 2013-14, after adjusting for the tax refund claimed in the return of income amounting to Rs. 1,35,57,243 and Rs. 6,80,49,905 for the respective years. Further, the demand amount has been adjusted with the refunds of Rs. 14,29,15,944 pertaining to other assessment years.

The Management of the Company is confident that the claim of the Company w.r.t 80IAB will be fully allowed and the Company would receive the full amount of refunds which has been adjusted by the department. Accordingly, in view of the above representation, the said amounts have been considered as refund receivable by the Company.



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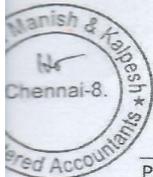
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Mukesh Manish & Kalpesh

Chartered Accountants

Annexure 2: Workings for valuation of shares as per Rule 11UA(1)(c)(b) of the Rules

S. No.	Particulars	Note	Amount (Rs.)	Amount (Rs.)
	Total Assets as per Balance Sheet	1	29,446,340,951	
Less:	Amount of Tax / Advance Tax Paid including MAT Credit		565,751,916	
	Less: Refund receivable (including MAT Credit) under the Act	2	(566,935,985)	
Less:	Unamortised amount of deferred expenditure			
Less:	Book value of shares and securities		276,130,000	
Less:	Book value of Jewellery and artistic work			
Less:	Book value of Immoveable Property - Land	3	4,379,197,485	
Less:	Book value of Immoveable Property - Building	4	9,107,013,215	
A	Book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property)			15,685,184,319
B	Open Market Value of Jewellery			Nil
C	Fair Market Value of Shares and Securities	5		(535,372,650)
D	Stamp Duty Value of Immovable Property			
	- Land	6	3,982,300,343	
	- Building	7	7,547,187,235	11,529,487,578
	Total Equity and Liabilities as per Balance Sheet		29,446,340,951	
Less:	Paid Up Capital		5,273,399,410	
Less:	Reserves and Surplus		3,410,917,858	
Less:	Provision for Income Tax as per books			
	Less: Income Tax payable			
Less:	Deferred Tax Liability	8	404,825,207	
Less:	Provisions for liability other than ascertained liabilities			
Add:	Liabilities other than arrears of dividends payable in respect of cumulative preference shares			
Less:	contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares			
E	Book value of liabilities			20,357,198,476
F	Total (A + B + C + D - E)			6,322,100,771
G	Paid Up Value of Such Equity Shares			10
H	Total amount of Paid Up Equity Share Capital			5,273,399,410
I	Fair Market Value per equity shares of Rs. 10 each (F / H * G)			11.989





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Annexure 1: Balance Sheet of IG3 as at 8 August 2020

Particulars	(Amount in Rs. Lakhs)	
	As at 8 August 2020 Audited	
I. ASSETS		
(1) Non-Current Assets		
(a) Property, plant and equipment		153,018.89
(b) Capital work-in-progress		38,390.16
(c) Financial assets		
(i) Investments		2,761.30
(ii) Trade Receivables		-
(iii) Loans		44,301.21
(iv) Others		2.25
(d) Non-current tax assets		3,150.84
(e) Other non-current assets		39,426.76
Total Non-Current Assets		281,051.41
(2) Current Assets		
(a) Financial assets		
(i) Trade receivables		1,784.55
(ii) Cash and cash equivalents		3,387.49
(iii) Other Bank balances		5,219.28
(iv) Other Financial Assets		99.45
(b) Other current assets		2,921.23
Total Current Assets		13,412.00
TOTAL ASSETS		294,463.41
II. EQUITY AND LIABILITIES		
(1) Equity		
(a) Equity Share capital		52,733.99
(b) Convertible non-participating preference share capital		-
(c) Other equity		34,109.18
Total Equity		86,843.17
(2) Non-Current Liabilities		
(a) Financial Liabilities		
(i) Borrowings		185,757.99
(ii) Trade payables		355.11
(iii) Other financial liabilities		13,929.07
(b) Provisions		39.98
(c) Deferred Tax liabilities (net)		4,048.25
(d) Other Non-current liabilities		60.84
Total Non-Current Liabilities		204,191.24
(3) Current Liabilities		
(a) Financial Liabilities		
(i) Borrowings		
(ii) Trade payables		624.03
(iii) Other financial liabilities		2,851.11
(b) Provisions		1.87
(c) Other current liabilities		(48.01)
Total Current Liabilities		3,429.00
Total Liabilities		207,620.24
TOTAL EQUITY AND LIABILITIES		294,463.41



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7. Scope limitations

- The scope of work is restricted to determining fair value of shares based on method prescribed under Rule 11UA of the Rules.
- This report is based on the information provided by the management of the Company. In arriving at the fair value of shares, we have relied on the audited financial statement as at 8 August 2020, report of registered valuer for the stamp duty value of the immovable property and other documents/ information provided by the Company and we have not independently verified the correctness and completeness of the same.
- Our work was not designed to verify the accuracy or reliability of the information provided to us and nothing in this report should be taken to imply that we have for the purpose of this assignment conducted procedures, audits or investigation in an attempt to verify or confirm any of the information supplied to us.
- Our views are necessarily based on the information made available to us, as of the date hereof. Any subsequent developments may affect our views and that we do not have any obligation to update, revise, or reaffirm the views expressed in this report.
- The report is issued only for the limited purpose of this engagement and cannot be used for any other purposes.



Date: 9 December 2022
Place: Chennai

UDIN: 22227392 BFASUC3523

For **Mukesh Manish & Kalpesh**
Chartered Accountants
(Firm Registration No: 015069S)

Kalpesh Jain
Partner
Membership No: 227392



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- (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;

PV = the paid up value of such equity shares;

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

4. Valuation Date

As per the provisions of the Act (i.e. section 50CA and Section 56(2) read with Rule 11U), the valuation date for the purpose of Rule 11UA shall be the date on which the property is transferred. In other words, the valuation date shall be the date of transfer of shares. Further, Rule 11U(b)(ii) provides that for the purposes of valuation, the balance sheet should be drawn up on the valuation date and needs to be audited by the auditor appointed under section 224 of the Companies Act, 1956 (i.e. section 139 of Companies Act, 2013).

We have been informed that the valuation date for the purpose of Rule 11UA valuation shall be taken as **8 August 2020**.

We have provided our valuation report based on the audited balance sheet of the Company.

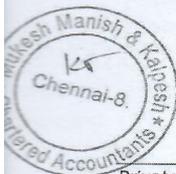
5. Source of information

We have primarily relied on the following information/ documents:

- Company's audited financial statement for the year ended 31 March 2020
- Company's audited financial statement for the period ended 8 August 2020
- Report of valuation of immovable property dt. 8 August 2020 issued by a Registered valuer for determining the stamp duty value in relation to the Chennai One immovable property
- Our valuation reports under Rule 11UA of investments in shares and securities by the Company dated on 9 December 2022 in respect to investment in equity shares by the Company except for investment in equity shares of Coimbatore City Infra Services (P) Ltd (Refer Note 5 below).
- Business profile of the Company.
- Time to time discussions with the management of the Company.

6. Conclusion

Our analysis is based on the valuation prescribed in the Rule 11UA of Rules and based on the said rule and considering the nature and availability of the data, the Fair Market Value per equity share of the company, as determined under Rule 11UA has been arrived at **Rs. 11.989**. Refer **Annexure 2** for the detailed workings.



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Further, as per Section 50CA of the Act, where the consideration received or accruing as a result of the transfer of a share of a company other than a quoted share, is less than the fair market value of such share, the value so determined shall, for the purposes of computation of capital

gain, be deemed to be the full value of consideration received or accruing as a result of such transfer

The fair market value of the shares under both the above provisions shall be the value as determined in accordance with the method prescribed under Rule 11UA of the Income Tax Rules, 1962 ("the Rules").

- 2.3 In this backdrop, the Company has appointed M/s **Mukesh Manish & Kalpesh**, Chartered Accountants, to perform the fair valuation of shares in accordance with Rule 11UA and issue a valuation report.

3. Methodology prescribed in Rule 11UA

The methodology prescribed under Rule 11UA with respect to transfer of unquoted equity shares of a Company is as follows:

The fair market value of unquoted equity shares = $(A+B+C+D - L) * (PV) / (PE)$
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;
- (iv) 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;



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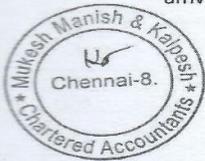
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Coimbatore Mall	1,171,624,120	Not Available	1,171,624,120
Total			7,547,187,235

The stamp duty value for the Chennai One building has been certified by the registered valuer and we have relied upon the said report for the purpose of this valuation. Further, the management has represented that the book value of the buildings at Coimbatore is more than the stamp duty value of the said property.

8. Deferred tax liability has been considered as equivalent to tax provision accounted in books, since such amount is not payable. Accordingly, we have reduced the amount from the total liability to arrive as at the book liability for the purpose of this valuation.





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24. The principal argument of the Revenue objecting to the correctness of the above valuation was that, M/s Chidaatma Contractors P Ltd. had purchased the same IG3 shares from an unrelated party, ILFS Realty Fund on 07.08.2020 for a price of Rs.29.48/share and therefore, according to the Revenue, this purchase price reflected the true FMV of the IG3 shares. Since purchase price of Rs.12.43/share paid by the assessee was inadequate with reference to the aforesaid value of Rs.29.48/share, it was claimed before us that, the AO had rightly made the addition u/s 56(2)(x) of the Act. We however are unable to subscribe to this contention of the Revenue. What the Revenue is seeking to do is to adopt the price at which a third person transacted in IG3 shares as an arm's length comparable to benchmark the assessee's transaction for the purposes of Section 56(2)(x) of the Act. This act of the Revenue is however found to be unjustified in as much as the same is contrary to the express provisions of law, as already discussed earlier. Section 56(2)(x) of the Act doesn't provide that, the FMV of the property received is to be valued at the price which it fetches in the open market or the arm's length price determined in terms of Section 92 of the Act or to be benchmarked against a price transacted between unrelated parties. Rather, the provisions are unambiguously clear that, the FMV is to be computed in the manner as laid down in the prescribed Rule 11UA and there is no other alternate method or valuation prescribed by the



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legislature. As held above, as long as the property is received for a consideration which is equal to or higher than the FMV as determined in terms of Rule 11UA, no addition can be made u/s 56(2)(x) of the Act. In the facts of the present case, the updated valuation report shows that the FMV as per Rule 11UA is Rs.11.989/share. Indeed, another party, M/s Chidaatma Contractors P Ltd. had purchased IG3 shares at a price of Rs.29.48/share during the same period when the assessee had also purchased the shares but their transacted price cannot *ipso facto* be presumed as the FMV for the purposes of Section 56(2)(x) of the Act. Rather, the AO was duty bound to ascertain the FMV or its correctness, only as per the methodology laid down in Rule 11UA(1)(c).

25. The Ld. AR pointed out to us that, the price of Rs.29.48/share was a price negotiated between the parties and it cannot be said to represent the FMV of IG3 shares. It was brought to our notice that, the price of Rs.29.48/share paid by M/s Chidaatma Contractors P Ltd. was determined after prolonged negotiations between the parties pursuant to dispute/litigation. It is seen that, the said parties had also relied upon the same original valuation report dated 06.07.2020 for the purposes of ascertaining applicability of Section 56(2)(x) of the Act to their transaction. Moreover, we note that, though the FMV in terms of Rule 11UA of their valuation report was Rs.12.125/share, still ILFS Realty



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Fund, apparently based on their own diverse commercial reasons, had negotiated higher price of Rs.29.48/share from M/s Chidaatma Contractors P Ltd. What is required to be seen is whether the transacted prices either by the assessee or M/s Chidaatma Contractors P Ltd for IG3 shares was equal to or higher than the FMV as per Rule 11UA or not, for the purposes of Section 56(2)(x) of the Act. However, there is no such stipulation in law that their respective transacted prices can be used as an FMV in each other's case, u/s 56(2)(x) of the Act. Only because a third party purchased the same shares for a price higher than its prevailing FMV as per Rule 11UA, such transacted value cannot be substituted with the FMV determined as per Rule 11UA, to be used as the new FMV for the purposes of Section 56(2)(x) of the Act. This may yet be viewed from a different perspective. We wonder that, had any third party transacted in the same shares at a value which was otherwise lower than the fair value as per Rule 11UA, then would the Revenue have adopted such third party price as the comparable price for the purposes of Section 56(2)(x) of the Act, ignoring the value as per Rule 11UA. The Ld. CIT, DR was unable to answer this query. Hence, if any transacted price, lower than FMV as per Rule 11UA, is not acceptable to Revenue, then likewise the transacted price, which is higher than FMV as per Rule 11UA, also cannot be used for the purposes of application of Section 56(2)(x) of the Act. We thus countenance the following findings recorded by the Ld. CIT(A) rejecting



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the usage of the actual price paid by M/s Chidaatma Contractors P Ltd to buy IG3 shares from ILFS Realty Fund as FMV for the purposes of application of Section 56(2)(x) of the Act, in the present case.

“9.96 The undersigned has carefully considered the issue in hand. Prima facie, the undersigned observes that there is no separate valuation report supporting the purchase price of Rs. 29.48 per share paid by M/s. Chidaatma Contractors Pvt. Ltd to ILFS Realty Fund (Vistra ITCL). The only valuation report available with ILFS Realty Fund (Vistra ITCL) is that of the same valuation report furnished by the appellant during the course of assessment proceedings with a value of Rs.12.125 per share. This fact on record confirms the stand of the appellant that there is no separate valuation report available for determining the FMV of IG3 shares at Rs. 29.48 per share and the price at which ILFS Realty Fund (Vistra ITCL) sold the shares of IG3 to M/s. Chidaatma Contractors Pvt. Ltd appears to be a negotiated price.

9.97 Further, the AR has contended that the provisions of section 56(2)(x) of the Act mandate to compute the FMV of unlisted equity shares only as per Rule 11UA of the Rules and does not provide for comparison of any other transaction involving the same share. At this juncture, it is important to analyze the provisions of section 56(2)(x) and Rule 11UA, the relevant portions of which are reproduced as below:

...

9.99 On a combined reading of section 56(2)(x) of the Act, the explanation provided under 56(2)(vii), Rule 11UA and Rule 11U, it is clear that the FMV of unquoted equity shares is to be determined in accordance to the above provisions, which is the first step. Then the FMV thus arrived in the first step needs to be compared with the purchase price paid by the appellant. If the purchase price paid by the appellant is less than the FMV determined in first step, then it is mandatory on the part of the AO to invoke the provisions of section 56(2)(x) of the Act and bring to the tax the differential value. The law is very clear on this aspect and there are no other methods to invoke the provisions of section 56(2)(x) of the Act.

9.100 To put it briefly, the undersigned observes that the purchase price of Rs. 29.48 per share paid by M/s. Chidaatma Contractors Pvt. Ltd is not supported by any separate valuation report as computed under Rule 11UA of the Rules and the share valuation certificate provide by



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Vistra ITCL in response to 133(6) of the Act, is the same certificate provided by the appellant at the first instance during the assessment proceedings. Further, the provisions of section 56(2)(x) of the Act is to be read with explanation to section 56(2)(vii) and Rule 11UA/11U clearly prescribe the manner and method to determine the FMV of unquoted equity shares. The said provisions do not prescribe any other method to determine the FMV for the purpose of invoking the provisions of section 56(2)(x) of the Act. Thus, the comparison of the price(s) paid by M/s. Chidaatma Contractors Pvt. Ltd to Vistra ITCL with the purchase price paid by the appellant per share is not correct. Accordingly, the undersigned is of the view that the action of the AO in comparing the purchase price of Rs.29.48 per share paid by M/s. Chidaatma Contractors Pvt. Ltd with that of the purchase price of Rs. 12.43 per share paid by the appellant is not justified and the AO is directed to delete the additions made u/s 56(2)(x) of the Act."

26. Now we come to the veracity of the FMV of Rs.11.989/share ascertained in the updated valuation report in terms of Rule 11UA(1)(c). As already noted above, the major difference in the FMV determined by the AO vis-à-vis the FMV as per the updated valuation report was due to the dispute relating to the denominator in the computation of FMV. In terms of Rule 11UA, the net value of assets & liabilities, as determined in the manner prescribed therein, was to be divided by the number of paid-up equity shares of the company as on the valuation date. According to AO, the assessee had wrongly included the preference shares while totaling the number of equity shares and thus the denominator in the calculation was inflated. To this, the assessee had pointed out that the preference shares had been converted into equity shares on 23.07.2020 & 07.08.2020 and therefore the base number of equity shares as on



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08.08.2020 stood increased, which was verifiable from the audited financials drawn up as on the valuation date 08.08.2020 and hence, the same was rightly considered by the assessee in the denominator. As observed at Paras 9 & 10 above, the AO in his remand report had verified and confirmed this assertion of the assessee. Before us, the Ld. CIT, DR also did not dispute the value of denominator, which was adopted by the assessee, as on the 'valuation date'. Accordingly, in our considered opinion, the base number of equity shares taken by the assessee in the updated valuation report does not warrant any interference. This significant correction in the AO's calculation materially reduces the FMV of Rs.30/share computed by him in the assessment order and the cascading effect affects the value of ETL Power shares as well. We therefore agree with the Ld. CIT(A) that, had the AO considered this issue correctly, there would not be any material difference in his FMV valuation as compared to that of the assessee.

27. The next aspect for our consideration is the dispute relating to valuation of assets as appearing in the audited balance sheet as on 08.08.2020. It was brought to our notice that, the AO had initially disputed the valuation of land advance of Rs.70 crores by observing that the impugned asset ought to have been valued at the prevailing market / circle rate. Before the Ld. CIT(A), the assessee had pointed out that the



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impugned sum represented advance towards land and that the company did not have ownership over the said land and therefore the value of advance was rightly adopted at the book value. We note that the Ld. CIT(A) taking note of these submissions of the assessee had called for a report from the AO, wherein the AO has acknowledged and accepted the aforesaid contention of assessee, which fact is noted by Ld CIT(A), who have observed as follows: -

iv) Valuation of Land advance

.....

After a careful review of the matter, the undersigned observes that the Appellant, in its written submission, has clarified that the amount of Rs. 70 crores represent an advance towards the acquisition of land, and that the appellant does not hold ownership of the land. Consequently, the question of applying stamp duty valuation to the said land advance does not arise. As such, these advances are classified as other assets, with the book value of the land advance being considered for the purpose of the Rule 11UA valuation. Furthermore, the AO in the remand report has acknowledged and accepted the appellant's submission. Therefore, the undersigned is of the view that that the adoption of the Rs. 70 crores value in the valuation report is well-founded and justified.

28. As noted by the Ld CIT(A), the AO in the remand report had acknowledged and accepted the assessee's submission that the sum of Rs 70 crores represented advance towards land and that the company didn't have ownership over the said land and therefore, the value of advance was rightly adopted by Ld CIT(A) at the book value by observing that, the impugned advance paid could be treated as 'other assets' and be therefore considered at book value, and the Ld. CIT(A) also countenanced



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the adoption of Rs. 70 crores as the value of advance for land, for the purposes of Rule 11UA. In our considered view, since the AO in his remand report has himself accepted the correctness of the valuation of land advance at Rs.70 crores, we see no reason to interfere with the valuation of this particular asset. Likewise, it is noted that, though the AO had originally disputed the valuation of other land and buildings adopted by the assessee for the purposes of Rule 11UA due to non-submission of the supporting valuation reports from the registered valuers, but, later on, in the remand proceedings, the assessee is noted to have furnished the relevant valuation reports and the AO, after examining the same, accepted the correctness of the values of land and building adopted by the assessee. For the sake of reference, the relevant portion of the remand report is reproduced below:

"CIT(A): "2) With regard to the inconsistencies and fallacies in the valuation report furnished by the assessee based on unaudited balance sheet pointed out by the AO at point Nos.(b) to (f) at page Nos.23 to 25 of the assessment order, the appellant furnished additional evidence by way of Valuation reports of the shares of other companies A held by M/s IG3 Infra Ltd and valuation reports of various immovable properties held by M/s IG3 Infra Ltd and by other companies whose shares are held by M/s G3 Infra Ltd. The AO is requested to examine the said additional evidences and furnish his comments with reference to the issues stated at point Nos. (a) to (f) at page Nos. 23 to 25 of the assessment order."

AO Comments:

Chennai-One Guideline Value: The assessee has adopted guideline value of the Chennai One land & Buildings as per the Govt. guideline value. The valuation report of the Chennai-One submitted by the assessee was verified and it was found that the assessee has taken guideline value as per the Govt. guideline value."



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29. In view of the above, we therefore see no reason to interfere with the following findings rendered by the Ld. CIT(A) upholding the correctness of the valuation of land and buildings adopted by the assessee in their updated valuation report;-

b) Non- furnishing of registered valuers reports and guideline value of lands which were used for valuation of Immovable property – Land & Building owned by IG3 Infra Ltd.

.....

vi. Furthermore, the Appellant, in support of its claim, submitted the required registered valuer's report and the guideline values for all the lands and buildings, which formed the basis for the updated valuation report. The AO, in the remand report, after thoroughly reviewing the additional evidence provided by the Appellant, acknowledged that the Appellant had appropriately adopted the guideline values for the Chennai land and building, in line with Rule 11UA of the Rules. After carefully considering the additional evidence, the Appellant's written submissions, the AO's remand report, and the rejoinder, the undersigned concludes that the updated valuation of the land and buildings is well-supported and merits consideration. Consequently, the AO's objections on this matter are found to be devoid of merits."

30. The last specie of asset in dispute was regarding the valuation of investments in unquoted shares and securities held by IG3. It is noticed that Rule 11UA(1)(c) provides for a specific mechanism to value the shares and securities which is stated to be *fair market value of shares and securities as determined in the manner provided in this Rule*. In our considered view therefore, the shares and securities held by the subject company [IG3] was to be valued in the like manner as provided in Rule 11UA. Consequently, the unquoted equity shares held by IG3 was to be



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valued in accordance with Rule 11UA(1)(c), which we have already extracted earlier. The Ld. AR pointed out that, the language used in the Rule is plain and unambiguous and, according to him, the fair market value of unquoted equity shares held by IG3, for the purposes of Rule 11UA, was to be computed as the summation of the value of assets less their liabilities, divided by the total equity capital and multiplied by the equity capital held by IG3. The Ld. AR brought to our notice that, the Chartered Accountant had followed this prescribed methodology to arrive at the FMV of unquoted shares held by IG3 in his updated valuation report. While doing so, it was ascertained that the value of liabilities was higher than the value of assets and therefore, the resultant figure working out in accordance with the prescribed rule was a negative. The assessee is noted to have adopted this negative figure in the updated valuation report. According to AO, though there was per-se no defect or infirmity in the calculation of the FMV of investments as per the Rule, but, according to him, since the resultant value was a negative, it ought to be ignored and instead the FMV of such unquoted investments had to be taken at its face value. We find that the Ld. CIT(A) has extensively dealt with this objection of the AO and rejected the same, by holding as under:

"g) The undersigned on a detailed examination of the provisions of Rule 11UA, the observations of the AO, the written submissions of the appellant, the remand report, and the rejoinder, observes that the appellant, while submitting additional evidence, furnished valuation reports for all the investee companies of IG3. In these valuation reports,



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the FMV of the respective shares was computed as per the methodology prescribed under Rule 11UA of the Income Tax Rules, the same have been verified and confirmed by the AO in the remand report. This establishes that the FMV of shares of certain investee companies, though resulting in negative values, was calculated strictly in accordance with Rule 11UA.

h) Furthermore, a plain and unambiguous reading of Rule 11UA demonstrates that there is no provision mandating the exclusion or adjustment of negative values while determining the FMV of unquoted equity shares. The appellant's contention—drawing a parallel with the provisions of Rule 11UAE and relying on case law rendered in the context of Section 50B of the Act—is well-founded. It is a well-settled legal principle that taxation laws must be interpreted with precision and strict adherence to their language, leaving no scope for presumptions, assumptions, or interpretative liberties.

i) The principles governing the interpretation of taxation statutes have been authoritatively laid down by the Constitution Bench of the Hon'ble Apex Court in the case of **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and Others [(2018) 9 SCC 1]**. The Hon'ble Apex Court has categorically held that in taxation statutes, neither contextual nor purposive interpretation can be applied, nor can external materials be relied upon to discern intent. The statute must be interpreted based solely on its plain and clear language, with no room for intendment, presumptions, or equity. Only the explicit wording of the law should guide its application, and nothing should be added, inferred, or implied unless absolutely necessary for its operation.

j) Moreover, as highlighted by the appellant, Rule 11UA(1) itself contains a specific clause prescribing that reserves and surplus—by whatever name called—even if resulting in a negative figure, should not be treated as a liability in the computation of FMV. This provision unequivocally underscores that negative values, when derived as per the prescribed computation methodology, are neither to be ignored nor substituted. This further reinforces the appellant's position that the valuation determined under Rule 11UA must be adopted as is, without deviation or reinterpretation. The relevant portion of such rule 11UA(1)(b) is reproduced below:

(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:—



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

A =

B=

C=

D=

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;

The aforementioned clause provides clear guidance on how to treat negative reserves and surplus when computing the FMV. However, there is no corresponding provision in the law that mandates the exclusion of negative FMV for unquoted equity shares held as investments. Had the legislature intended for negative FMV to be disregarded, it would have expressly stated so, similar to the explicit treatment of negative reserves and surplus.

k) In light of the above discussions and the absence of any explicit provision in Rule 11UA to disregard negative values, the undersigned is of the view that the adoption of the resultant negative value, as computed in accordance with Rule 11UA, **does not warrant** any substitution."

31. The Ld. AR reiterated that, the assessee had followed the unambiguous language contained in Clause 'C' of Rule 11UA(1)(c)(b) and applied the formula prescribed therein to value the unquoted investments. He showed us that, there was no such sub-rule or sub-clause contained in the formula, in terms of which, in case there was a negative resultant figure, then the same is to be ignored or be substituted with the face value of unquoted investments. Having considered the submissions of the



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Ld. AR and the views expressed by the Ld. CIT(A), in our considered opinion, the plain reading of the impugned rule indeed does not reveal any manner or calculation for excluding or adjusting the negative value, which is arrived at while applying the prescribed formula, and therefore, the view expressed by the Ld. CIT(A) is found to be plausible one.

32. The Ld. CIT, DR however insisted that, though, there was no such exclusion or adjustment provided in the Rule, but where the application of the formula yielded a negative value, the Tribunal ought to give an equitable consideration on this aspect and logically adopt the FMV of such unquoted investments at NIL. The Ld. AR, on the other hand, submitted that there is no presumption in tax laws and nothing is to be read in and nothing is to be implied in, which is not provided in the law and that one can only look at the language used. It is well settled that equitable considerations cannot be applied while dealing with a taxing statute and the words are to be taken as it stands. We have to construe the provisions of a taxing enactment according to the ordinary and natural meaning of the language used therein, particularly when, it is plain and unambiguous [literal interpretation]. While doing so, if the taxpayer is brought within its net, then he is caught or otherwise, he has to go free. In absence of any exclusion or adjustment provided in the Rule, where the resultant value is negative, we are unable to countenance the Ld. CIT,



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DR's plea which is to read in and import new words and substitute the negative value with NIL/face value or it will tantamount to us usurping legislative function. It is settled that legislative *casus omissus* cannot be supplied by judicial interpretation. *Casus Omissus* means 'the case omitted'. A *casus omission* can in no case be supplied by court of law/Tribunal, for that would be to make law. It is settled that courts are not entitled to usurp legislative function under the disguise of interpretation [refer Hon'ble Supreme Court decision in D.R. Venkatachalia vs Dy Transport Commissioner (1977) 2 SCC 273]. As noted, while interpreting a provision, the Court only interprets the law and cannot legislate. If a provision of law is misused and subjected to abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary, [refer Hon'ble Supreme Court decision in M/s Popular Trading Company (2000) (5) SCC 515] In the light of the discussion, we fully concur with the reasoned decision of Ld CIT(A) and hold that that the adoption of the resultant negative value, as computed in accordance with Rule 11UA, doesn't warrant any substitution.

33. In this context, we gainfully refer to the decision of the Special Bench of this Tribunal in the case of **DCIT vs Summit Securities Ltd (19 taxmann.com 102)** in the context of Section 50B of the Act regarding the computation of capital gains in case of slump sale. The



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essence of the issue under consideration was where the net worth (Assets less Liabilities) computed in accordance with the prescribed formula resulted in a negative figure, then whether such negative net worth was to be added while computing the capital gain or was the net worth presumed to be NIL (since negative). It is observed that the Tribunal took note of the formula prescribed for calculating 'net-worth' which was 'all assets minus all liabilities of the undertaking'. Having regard to the express language used in the provisions of Section 50B, it was therefore held that the calculation methodology implies that whatever be the net-worth, i.e. positive or negative, will have to be adopted accordingly. The Tribunal thus upheld the contention of the Revenue and it was decided that the negative value was to be adopted. This view is noted to have been endorsed by the Bangalore bench of this Tribunal in the case of **Medi Assist Insurance TPA Private Limited vs. DCIT (139 taxmann.com 162)**. According to us, these decisions (supra) supports the Ld. CIT(A)'s view that, the negative values when derived through prescribed methods, cannot be ignored. Overall therefore, we are unable to find any infirmity in the findings of the Ld. CIT(A) concerning the valuation of unquoted investments held by IG3.

34. The Ld. AR in the alternate, pointed out that if the Revenue intended to expand or import new words into the Rule 11UA(1)(c)(b),



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then as a corollary, this Tribunal should also take cognizance of sub-rule (4) of Rule 11UA, which provides for a tolerance limit of 10%, for the purposes of Rule 11UA(2). Having perused the said sub-rule, we find that the Rule making authority was well aware that there may be unintended minor variations between the transacted price and the fair value due to diverse commercial reasons and therefore, it provided for a tolerance limit of 10% on the valuation price and the issue price. The Ld. AR brought to our notice that, if the Revenue's argument is upheld, and the negative value of unquoted investments is ignored, then the revised calculation of FMV shall be Rs.13 as compared to the transacted price of Rs.12.43 and that there is only a minor difference of Rs.0.57 per share, which is well within the tolerance limit provided in Rule 11UA(4). We are in agreement with the Ld. AR that if equitable considerations is to be extended, then it has to be both for the Revenue as well as the assessee. In the given facts of the present case, if the negative value is to be ignored, going by the logic advanced by the Revenue [which, though as discussed above does not emanate from the prescribed Rule], then, we find merit in the Ld. AR's plea, that the benefit of tolerance limit set out in Rule 11UA(4) [which though is prescribed for the purposes of Rule 11UA(2)] may logically be extended to the assessee, for application of Rule 11UA(1) as well. By doing so, it is noticed that, the transacted price of the assessee



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would continue to commensurate with the FMV as per Rule 11UA, as it is within the tolerance range of 10%.

35. Hence, viewed from any of the above angle, we see no reason to interfere with the order of the Ld. CIT(A) upholding the valuation of unquoted investments, as calculated by the assessee.

36. The last point of dispute relates to the liabilities which were to be reduced from the total fair value of assets in terms of Rule 11UA(1)(c). It is observed that, the total liabilities of IG3 as per the audited financials as drawn on 08.08.2020 was Rs.2076.20 crores, which was reduced by the assessee from the value of assets, for arriving at the FMV in terms of Rule 11UA. According to the Revenue however, the liabilities to the extent of Rs.257.62 crores had been earmarked for payment of dividend and therefore the AO had rightly excluded the said liabilities from the value of total liabilities for the purposes of valuation, which resultantly would increase the net- worth/FMV of the IG3 shares. Though no such amount was found to be set-aside for payment of dividend from the face of the audited financials dated 08.08.2020, it was pointed out to us by the Ld. CIT, DR that, the assessee had given advances aggregating to Rs.337.24 crores to M5 companies, out of which Rs.257.62 crores had been taxed in the hands of the latter as deemed dividend u/s 2(22)(e) of the Act and therefore the AO had rightly deemed such amount having been set aside



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for payment of dividends. The Ld. AR, on the other hand, firstly brought to our notice that, the addition(s) made in the hands of M5 companies by way of deemed dividend u/s 2(22)(e) of the Act had been deleted by the appellate authorities including the Ld. CIT(A) and this Tribunal and therefore the foundational premise of the AO's action stood vacated. Upon enquiry by the Bench, the Ld. CIT, DR was unable to counter the same and he fairly stated that the decision of this Tribunal deleting the addition(s) made by way of deemed dividend in the hands of M5 companies had not been reversed by the Hon'ble High Court yet. We thus are in agreement with the Ld. CIT(A) that, on this score alone, the AO's action of reducing sum of Rs.257.62 crores from the liability side alleging it to represent amount set apart for dividend was unwarranted.

37. Additionally, the Ld. AR also pointed out that, the language used in Rule 11UA shows that, the entire book value of liabilities as appearing in the balance sheet is to be reduced from computation under Rule 11UA, but it will not include 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*". According to him, the loan(s) advanced by the investee company to other companies, which may have been taxed as deemed dividend in the hands of the loan recipient(s) cannot be regarded as



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amount which has been set apart for payment of dividend in the balance sheet, for the purposes of Rule 11UA. The Ld. AR argued that, the Revenue was importing new words and the deeming fiction of Section 2(22)(e) into the provisions of Rule 11UA, which was impermissible. According to him, only the actual dividend which has been set apart by the Board of Directors and later on declared & paid to the shareholders, can be regarded as amount set apart for dividends, for the purposes of Rule 11UA. According to him, if the AO's action is taken to its logical conclusion, then even the corresponding loan asset(s) which has been regarded as 'deemed dividend' in the hands of M5 companies and is therefore no longer a sum payable to the assessee should not be considered / excluded from the fair value of total assets for the purposes of Rule 11UA. Having considered the rival submissions, we find sufficient force in this alternate argument of the assessee as well. The amount(s) advanced by the assessee to M5 companies are accounted for as loan(s)/ advance(s) on the asset side of the balance sheet and it was also included in the valuation of total asset(s) for the purposes of Rule 11UA. For accounting purposes, the said advance(s) constitutes asset for the assessee and a liability payable by the loan recipient company. It may be that, due to a deeming fiction provided in the Act, such loan is deemed to be dividend for income-tax purposes so as to levy tax in the hands of the borrower, but the same would not change its character in the audited



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books of the assessee or the borrowing companies. We agree with the assessee that, if it is so held then, correspondingly such loan asset being in the nature of 'dividend' paid/set apart to M5 companies cannot be included in the fair valuation of total assets as well. In our considered view, the income-tax deeming fiction treating such loan(s) as deemed dividend in hands of the borrower companies cannot be extended beyond Section 2(22) and be said to constitute "*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*", for the purposes of Rule 11UA. In our considered view, the term "*amount set apart for payment of dividend*" is meant to include the liability provided by the Board of Directors in the books of the company towards payment of dividend to the shareholders, which is subject to approval at the Annual General Meeting. The loan(s) granted to other companies cannot be considered as amount set apart as dividend(s), having regard to the language used in Rule 11UA(1)(c).

38. Overall therefore, we concur with the Ld. CIT(A) that the FMV of Rs.11.989/share computed by the assessee in the updated valuation report was justified and consistent with the manner laid down in Rule 11UA and does not warrant any interference. Accordingly, as the price of Rs.12.43/share paid by the assessee was higher than the aforesaid FMV,



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we countenance the Ld. CIT(A)'s action deleting the addition made u/s 56(2)(x) of the Act in relation to the IG3 shares.

39. Coming to the valuation of ETL Power shares, it is noted that, the addition made by the AO was a consequence of the cascading effect of the valuation of IG3 shares. As noted earlier, ETL Power held shares of IG3, which had been valued by the assessee at Rs.11.989/share and consequently the value of ETL Power shares was worked out at Rs.13.41/share. Since the AO had substituted the FMV of IG3 shares at Rs.29.48/share, he had consequentially valued ETL Power shares at Rs.53.95/share. We have already upheld the Ld. CIT(A)'s finding holding that, the FMV of IG3 shares as per Rule 11UA was Rs.11.989/share, hence resultantly, the FMV of ETL Power shares computed by the assessee at Rs.13.41/share in the updated valuation report, is held to be justified and in accordance with Rule 11UA. Accordingly, we uphold the Ld. CIT(A)'s order concluding that the assessee had purchased shares of ETL Power shares [Rs.14.30/share] at a value higher than its FMV [Rs.13.41/share] and thereby deleting the addition made u/s 56(2)(x) of the Act.

40. Overall therefore, we see no reason to interfere with the order of the Ld. CIT(A) and uphold the same. Hence, all the grounds raised by the Revenue stands dismissed.



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41. The assessee in their cross objections has raised legal grounds, *inter alia*, challenging the validity of the reference made by the AO to the TPO in terms of Chapter X of the Act, for ascertainment of FMV of the shares transacted, and that the assessment order was barred by limitation. The assessee has also filed an application under Rule 27 supporting the impugned order of the Ld. CIT(A) on the legal issue(s) which have been held against it. Since we have already upheld the order of the Ld. CIT(A) deleting the impugned addition on merits and dismissed the appeal of the Revenue, the cross-objections and the grounds raised in Rule 27 by the assessee have become academic in nature and are therefore not being separately adjudicated upon and is left open.

42. In the result, the appeal of the Revenue stand dismissed and the Cross-Objection of the assessee being infructuous is also dismissed

Order pronounced on the 29th day of July, 2025, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29th July, 2025.

TLN



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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF