

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'D': NEW DELHI.**

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2261/Del/2022
(Assessment Year: 2018-19)**

RBS AA Holdings (Netherlands) B.V.,
Claude Debussylaan 94, Amsterdam,
1082, MD, Netherlands.

vs. DCIT, Circle 3(1)(1,
International Taxation,
New Delhi.

(PAN : AAGCR6168M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Percy Pardiwalla, Advocate
Shri Rahul Jalan, CA

REVENUE BY : Shri Saroj Kumar Dubey, CITDR

Date of Hearing : 26.08.2025

Date of Order : 19.11.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The appeal preferred by the assessee is directed against the assessment order dated 19.07.2022 passed by the Income Tax Department, Circle Int. Tax 3(1)(1), Delhi u/s 143(3) read with section 144C(13)/144B of the Income-tax Act, 1961 (for short 'the Act') for Assessment Year 2018-19 pursuant to the directions of the Dispute Resolution Panel u/s 144C(5) of the Act.
2. Brief facts of the case are, the assessee is a company incorporated in the

Netherlands and a tax resident thereof. During the financial year (FY) 2013-14, the assessee acquired 23,10,21,870 equity shares of an Indian entity i.e. RBS Prime Services (India) Private Limited (hereinafter referred to as “RBS Prime”) from another Netherland’s entity i.e. The Royal Bank of Scotland N.V. for a purchase consideration of Rs.300,86,48,195 (i.e. Rs.13.02 per share) pursuant to a share purchase agreement. RBS Prime surrendered its NBFC license in February 2017 and consequently ceased to do business in India. During the previous year relevant to the assessment year 2018-19, RBS Prime cancelled 14,67,69,790 equity shares held by the assessee under a scheme of reduction approved by National Company Law Tribunal (hereinafter referred to as “NCLT”) for a consideration of Rs.148,07,26,140 i.e. Rs.10.09 per share. The value of Rs.10.09 per share was determined per the valuation report submitted to NCLT, obtained in compliance with FEMA guidelines. The scheme of reduction became effective on 20th November 2017, when RBS Prime filed a certified copy of NCLT order sanctioning the scheme with the Registrar of Companies in Form INC-28.

3. The assessee treated this capital reduction transaction as a transfer of capital asset (an interpretation now confirmed by the Hon’ble Supreme Court in case of PCIT vs Jupiter Capital Pvt Ltd, SLP no. 63 of 2025), as

defined under section 2(47) of the Act and proceeded to compute capital gain/loss as per section 48 of the Act.

4. It was submitted before the AO that section 50CA of the Act provides that in a case where the consideration received or accruing as a result of the transfer of unlisted shares in a company is less than the fair market value of such shares as determined under Rule 11UAA read with Rule 11UA of Income Tax Rules, 1962, the fair market value so determined, shall be deemed to be the full value of consideration for the purpose of section 48 of the Act. Further, Rule 11UAA read with Rule 11UA prescribes the method for determination of fair market value as on the date of transfer of capital asset for the purpose of section 50CA of the Act. Accordingly, the fair market value of equity shares of RBS Prime as on 20th November 2017 (i.e. the date of transfer) was determined at Rs. 10.00 per share as per the method prescribed under Rule 11UAA read with Rule 11UA. Since the actual consideration received by the assessee at a value of Rs.10.09 per share was higher than the fair market value, the provisions of section 50CA were not attracted and the assessee adopted the actual consideration of Rs.148,07,26,140 (i.e. Rs. 10.09 per share) as the full value of consideration for computing capital gains under section 48 of the Act. Consequently, the assessee computed a long term capital loss on the cancellation of 14,67,69,790 equity shares during the previous

year relevant to the assessment year 2018-19 as under:-

Particulars	Per share	Amounts
Full value of consideration as per section 48	10.09	148,07,26,140
Cost of Acquisition (proportionate cost of 14,67,69,790 shares) i.e. [14,67,69,790 * 300,86,48,195 / 23,10,21,870]	13.02	191,14,14,983
Long term capital loss	(2.93)	(43,06,88,843)

5. It was also submitted before AO that the assessee received dividend of Rs.53,94,59,204 (i.e. final dividend of FY 2016-17 amounting to Rs. 47,85,03,227 and interim dividend of FY 2017-18 amounting to Rs. 6,09,55,977) during the year. As the dividend distribution tax (hereinafter referred to as “DDT”) was duly paid by RBS Prime under section 115-O of the Act, the dividend was exempt under section 10(34) of the Act in the hands of the assessee.
6. During assessment proceedings, the AO rejected the above submissions and observed as under:

“7. Summary & conclusion

This aforesaid discussion is summarized as under:

1. The investor (the assessee company) received its investment back at cost after 4 years of investment. The investment was made in November, 2013 at a cost of 10 INR per share whereas return on investment was received at 10.09 INR per share.
2. The assessee company has received dividend income to the tune of 53,94,59,204 INR during the financial year under consideration indicating that the business is making profit. Therefore, getting back the investment at cost is contrary to commercial facts.

3. The NCLT's order has categorically mentioned that the merger of two other Indian companies with RBS PS is independent of tax consequences. Therefore, approval of NCLT for merger is purely from commercial stand point and has no bearing on deciding tax liability of the transaction.
 4. The proportionate cost of acquisition of 14,67,69,790 shares of RBS PS in the hands of the assessee company is INR 146,76,97,900 as against the assessee claim of INR 1,91,14,14,983 as cost of acquisition.
 5. The fair market value of shares of RBS PS in this case needs to be computed as per the formula provided under Rule 11 UA(1) as per the formula provided therein which is determined at 184,66,08,756 INR.
 6. Assessee has employed a tax avoidance arrangement to avoid payment of legitimate taxes not only in India but also in the Netherlands and the UK. Therefore, the taxability of consideration received by the assessee in the nature of capital reduction is actually a consideration received in lieu of disposal of shares of RBS PS, an Indian Company.
 7. As assessee's affairs are considered to be tax avoidance, it is not entitled to any treaty benefits. Accordingly, the taxability of the consideration is decided only under the provisions of Income-tax Act.
 8. Under the provisions of the Income tax Act as per sections 45 LW.S 2(47) , 2(29A) and 2(29B), the purported transactions of share of RBS PS is liable to be taxed as long-term Capital gains.
 9. The long-term capital gains which is the difference between the full value consideration and cost of acquisition is determined at 37,89,11,756 INR.”
7. Based on the above conclusions, the AO recomputed the sale consideration and cost of acquisition adopted by the assessee. The AO determined fair market value of shares as on 31.03.2017 instead of 20.11.2017 (i.e. the date of transfer) at Rs.12.58 per share without adjusting for a dividend. The AO did not take into consideration fair market value of Rs.10.09per share which was determined by the assessee under Rule 11UA based on unaudited financials on the date of transfer.

The AO adopted the face value of shares at Rs.10 per share as per the financials of RBS Prime to be the cost of acquisition. He observed that assessee had not originally subscribed to these shares from RBS Prime and had acquired these shares as secondary purchase at Rs13.02 per share under a valid Share Purchase Agreement which is placed on record at pages 479 to489 of the paper book. Based on the above observation, AO passed draft assessment order dated 28.11.2021 recomputing the long term capital gain earned as under :-

Particulars	Per share	Amounts
Full value of consideration (based on a value computed as of 31 March 2017 without excluding dividends and adjustments prescribed under Rule 11UA)	12.58	184,66,08,756
Cost of Acquisition taken at face value in the balance sheet of RBS Prime	10.00	146,76,97,000
Long Term Capital Gain	2.58	37,89,11756

8. Aggrieved with the above order, assessee preferred objections before the ld.DRP. After considering the detailed submissions of the assessee, ld. DRP remanded the matter to AO to report after conducting necessary enquiries. The assessee also submitted the relevant information before the AO. The ld. DRP did not receive the remand report from the AO. The ld. DRP asked for the same information which was submitted before the AO relating to the cost of acquisition. The assessee filed detailed

submissions dated 10.06.2022 before the ld. DRP along with additional evidence, which were submitted before the AO. After considering the same, ld. DRP sustained the additions made by the AO. Based on the addition, AO passed a final assessment order dated 19.07.2022.

9. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“On the facts and circumstances of the case and in law, the learned AO based on the directions of the Hon'ble DRP:

General

1. On the facts and circumstances of the case and in law, the learned AO based on the directions of the Hon'ble DRP erred in assessing the total long term capital gain at Rs.37,89,11,756 as against a long-term capital loss of Rs.43,06,88,843 as per the return of income filed by the Appellant.

2. Without prejudice to the above, the learned AO and Hon'ble DRP has erred in not appreciating the fact that the Appellant qualifies for treaty benefits under Article 13(5) of the India-Netherlands DTAA on the ground that the capital reduction transaction would be regarded as a corporate reorganization and consequently capital gains arising out of it should only be taxable in Netherlands.

The Appellant prays before Hon'ble Income Tax Appellate Tribunal ('ITAT') to direct the learned AO to recompute total income for the year under consideration as long-term capital loss of Rs.43,06,88,843 after considering the documents and explanations submitted by the Appellant.

Adoption of face value of shares as the cost of acquisition

3. On the facts and circumstances of the case and in law, the learned AO based on the directions of the Hon'ble DRP erred in not considering the face value of shares (i.e. Rs.10 per share) appearing in the financial statement of investee company (i.e. RBS Prime) as the cost of acquisition of shares in the hands of the Appellant vis-à-vis the price actually paid by it (i.e. Rs.13.02 per share) for acquiring the shares as part of secondary purchase and as evidenced by the Share Purchase Agreement submitted by the Appellant.

4. On the facts and circumstances of the case and in law, the Hon'ble DRP has further erred in not considering the additional documents submitted

by the Appellant to substantiate the cost of acquisition, despite having specifically allowed the Appellant to submit them during the course of the proceedings.

The Appellant prays before Hon'ble ITAT to direct the learned AO to consider the actual consideration (of Rs.13.02 per share) paid under share purchase agreement, as the cost of acquisition in the hands of the Appellant.

Substitution of fair value of shares as the sale consideration under provisions of section 50CA of the Act

5. On the facts and circumstances of the case and in law, the learned AO based on the directions of the Hon'ble DRP erred in confirming the action of the learned AO in substituting the full value of consideration with a value allegedly held to be the fair market value ('FMV') computed in accordance with Rule 11 UA of the Income-tax Rules 1962 ('the Rules').

6. Without prejudice to the above, the learned AO erred in proposing and the Hon'ble DRP further erred in confirming the action of the learned AO in erroneously computing the FMV under Rule 11 UA of the Rules based on the financials of RBS Prime (the investee company) as at 31 March 2017, instead of as on the date of transfer of shares (i.e., 20 November 2017), as laid down in Rule 11UAA.

7. Without prejudice to the above, based on the facts and circumstances of the case and in law, the learned AO has erred in proposing and the Hon'ble DRP further erred in confirming the action of learned AO in recomputing the sale consideration at INR 12.58 per share, without following the mechanism prescribed under Rule 11UA of the Rules.

8. Without prejudice to the above, the learned AO and the Hon'ble DRP erred in not excluding the dividend of Rs.57.59 crore (paid after 31 March 2017 but before the valuation date of 20 November 2017) from the full value of consideration, which has already been subjected to dividend distribution tax under section 115-O of the Act, thereby resulting in double tax on the said amount.

The Appellant prays before Hon'ble ITAT to direct the learned AO to consider the full value of sale consideration at Rs.10.09 per share being higher than the value of Rs.10 per share computed as per the mechanism prescribed under Rule 11 UA of the Rules.

Allegation of usage of colourable device to avoid payment of legitimate taxes in India

9. On the facts and circumstances of the case and in law, the learned AO has erred in alleging and the Hon'ble DRP further erred in not adjudicating on

learned AO's allegations that transaction of capital reduction undertaken by the Appellant is a colourable device to avoid payment of taxes in India.

The Appellant prays before Hon'ble ITA T to direct the learned AO to withdraw the allegation of usage of colourable device by the assessee to avoid payment of legitimate taxes in India.

Penalty under section 270A of the Act

10. On the facts and circumstances of the case and in law, the AO has erred in initiating penalty proceedings under section 270A of the Act.”

10. At the time of hearing, ld. AR submitted as under :-

“ Ld. AR submitted that undisputedly the shares of RBS Prime were acquired by the Appellant in a secondary purchase pursuant to a share purchase agreement at Rs. 13.02 per share. It is well established fact that purchase price of a share of a company is not comparable to the face value of share appearing in the financials of investee company. Even in case of a primary issue of shares, the issue price of the share may be higher than the face value of share and the difference between the issue price and face value would be recognised as securities premium in the financials of investee company. Accordingly, the reliance of the AO and DRP on face value of the shares to arrive at cost of acquisition is completely misplaced and devoid of any merits. The Appellant had also submitted before the AO and DRP, its audited financial statement for year 2017 showing the carrying value of the investment at cost price (refer page 495 of the paper book). In view of the above, the claim for cost of acquisition cannot be restricted to the face value of share and the Appellant should be allowed the full cost of acquisition at Rs. 13.02 per share.

Further, in respect to the sale consideration, the Appellant has obtained a valuation report based on audited financial statement of RBS Prime as of 20 November 2017. A copy of the valuation report and the audited financial statement was submitted as additional evidence before this Hon'ble Tribunal on 18 August 2023 based on which the fair market value of the share as per Rule 11UA as on date of transfer works out to Rs. 9.99 per share (refer page 8 of valuation report dated 30 March 2023). It is pertinent to note that there is no significant difference with the fair market value of Rs. 10.00 per share which was determined based on unaudited financial statement as of 20 November 2017. In this regard, the Appellant also places it reliance on decision of Chandigarh Bench of Hon'ble Tribunal in case of **Electra Paper and Board Pvt Ltd vs Income tax officer (ITA no. 222/Chd./2021)** which was dealing with the issue of valuation report under Rule 11U(b) based on unaudited balance sheet which was subsequently audited. The Hon'ble Tribunal held that the rule does not mandate that the balance sheet should also be audited on the date of valuation. Even if the balance sheet is audited subsequently, it would

be sufficient compliance of the provisions of Rule 11U(b). However, in spirit and purpose of the provisions of rule defining 'balance sheet', there should not be material change in the financials of the Balance Sheet after audit so that it may not lose the tenacity and relevance of 'balance sheet on the date of valuation.

In view of the above and given that the actual consideration received by the Appellant was based on a value of Rs.10.09 per share being higher than the fair market value, the provisions of section 50CA would not be attracted and actual consideration based on Rs.10.09 per share would be the full value of consideration for the purpose of section 48 of the Act.

Without prejudice to the above, even if the fair market value as per 31 March 2017 is to be considered, the payout of dividend of Rs.57.59 crores (including DDT) ought to be excluded as it has already been subjected to DDT and including it again in the sale consideration value would amount to double taxation of the same income. If the dividend is excluded from the value as of 31 March 2017, the resultant value works out to Rs. 10.09 per share i.e. same price at which consideration was received by the Appellant from RBS Prime and accordingly, the adjustment made to the full value of consideration by AO has to be deleted.

In view of the above, the adjustment made by the AO is liable to be deleted and the long term capital loss claimed by the Appellant should be allowed in full.

Without prejudice to the above, it is submitted that in any event, the Appellant qualifies for treaty benefits under Article 13(5) of the India-Netherlands DTAA on the ground that capital reduction transaction would be regarded as a corporate reorganisation and consequently capital gains arising out of it should only be taxable in Netherlands.

It is further submitted that the AO has erroneously contended that the capital repayment was claimed by the Appellant as not liable to withholding tax on the alleged ground that the consideration is not chargeable to tax in India being in the nature of 'capital receipt'. The AO has also alleged that the characterization of income as capital receipt for capital reduction by the Company is a colourable device to avoid payment of taxes in India. As can be seen from the computation of income and tax of the Appellant (refer page 1 of paper book), this contention of the AO is completely misplaced and without any basis, as the Appellant had incurred a long-term capital loss pursuant to capital reduction and hence the question of the same being taxable in India or subject to withholding tax does not arise. Further, RBS Prime had stopped undertaking any business activities and had distributed its accumulated profits by way of dividends (on which DDT was duly paid in India). Consequently the fair value of RBS Prime pursuant to capital reduction worked out to be much lower than the cost at which the Appellant had acquired shares of RBS Prime.

Thus, the allegation made by the AO that the characterization of consideration received as being towards capital reduction is a deliberate attempt to avoid payment of legitimate taxes in India is devoid of any merits and deserves to be set aside.”

11. On the other hand, ld. DR of the Revenue submitted that AO followed the valuation as per Rule 11UA of the Income Tax Rules, 1962. He brought to our notice page 574 of the paper book and submitted that the assessee had submitted certified provisional financial statement as on 31.09.2017 to the valuer. He submitted that dividend declared after the audited balance sheet, therefore, the dividend should not be considered for valuation of the shares. He submitted that rule has to be applied as per law. Further he submitted that buy back of shares are nothing but internal arrangement for repatriation of the huge funds. Further he submitted that assessee has not submitted any financials of payment of Rs.13.02 per share as per the agreement submitted by the assessee. Therefore, he relied on the findings of the lower authorities.
12. Considered the rival submissions and material placed on record. We observed that the assessee has purchased the shares of RBS Prime in a secondary purchase from its related concern by entering into a share purchase agreement dated 1st November 2013 at Rs. 13.02 per share. It is also fact that the assessee has recorded the above cost of shares its balance sheet from the financial year 2013 to 2017. It is also fact that this transaction did not take place during the current financial year. Just

because the shares were held by the assessee of its subsidiary company in the India, the tax authorities taken view that it is an arrangement to evade tax.

13. On careful review of facts on record, we observed that the AO accepts the fact that the assessee had purchased the shares as secondary purchase. We observed that both the authorities rejected the contention of the assessee of cost of purchase on the basis that they have not submitted any proof of remittance or payment proof of such purchase. We observed that the share purchase agreement was dated 1st November 2013 and since then the assessee has been regularly declaring in their Balance Sheet under the head investments. It is not something purchased recently, so that revenue authorities can doubt the transaction as arrangements. It was purchased in the year 2013.
14. It is also fact that the merger of two companies took place with the approval of NCLT and the taxability of transactions before or after is based on the Income tax Act. It is also fact that the same NCLT had approved the reduction of shares based on the financial requirement of the Indian Company. The only issue before us is the valuation of shares on the date of transfer or as per the recently adopted balance sheet. It depends upon the fair market value of shares, whether the sale consideration is less than the fair market value or not. If it is less than the

fair market value, the provision of section 50CA will be attractive, otherwise, regular provision of section 48 will be applicable. In this case, the assessee has filed a valuation report on the date of transfer. We observed from the paper book that the valuation report submitted by the assessee is not only on the date of transfer, but it had also evaluated the valuation sometime in the month of June 2017. The relevant valuation report is part of the paper book. The value per share is exactly same as submitted for valuation of shares at the time of transfer as well as in the month of June 2017.

15. We observed that the AO had adopted the method of valuation of unquoted equity shares as per section 56(2)(viib) of the Act, accordingly, adopted the rule 11UA(1)(c)(b). We noticed that the transaction under consideration is reduction of shares, nothing but transfer of shares. Basically, present transaction is not falling under the head income from other sources, further the section 56(2)(viib) applicable only when the company **receives** from any person any consideration for issue of shares that exceeding the face value of such shares. Therefore, it is clear that present transaction does not fall under section 56.
16. Next is, whether the provision of section 50CA is applicable in this case, the dispute here is, the value of fair market value adopted by the AO by adopting the rule 11UA by considering the recent audited balance sheet

dated 31.03.2017. Whereas, for the purpose of section 50CA, the relevant rule applicable is rule 11UAA, the same is reproduced below:

[Determination of Fair Market Value for share other than quoted share.

11UAA. For the purposes of section 50CA, the fair market value of the share of a company other than a quoted share, shall be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1) of rule 11UA and for this purpose the reference to valuation date in the rule 11U and rule 11UA shall mean the date on which the capital asset, being share of a company other than a quoted share, referred to in section 50CA, is transferred.]

From the above rule, it is clear that for determining the fair market value of unquoted shares, it shall be determined in the manner provided under rule 11UA(1)(b) or (c). For the above purpose, the valuation date shall mean the date of such capital asset is **transferred**. Therefore, it is clear that the date of valuation has to be on the date of transfer. In the given case, the AO cannot adopt the fair market value as on 31.03.2017. It has to be on the basis of date of transfer. The AO should have adopted the value of shares on the date of transfer whether the sale consideration is fair or not, whether the provisions of section 50CA applicable or not. In this case, we observed that the assessee had submitted the valuation on the date of transfer i.e., 20.11.2017, which is Rs. 10.09 per share. Based on the approval of NCLT, repatriation was carried out against the reduction of shares. From the above fair market value determined and submitted by the assessee is not less than the actual consideration received by the assessee, therefore the provisions of section 50CA are not

applicable. The adoption of method of valuation by the AO is basically wrong and contrary to the provisions and rules.

17. Therefore, the shares are purchased in secondary market in the year 2013 and the same is declared in the Balance Sheet of the assessee from FY 2013 onwards, due to business exigencies, the group had decided to reduce the capital requirement in the Indian subsidiary, they have legally applied for reduction of shares in the Indian subsidiary and accordingly, at the approval of the NCLT, the funds were repatriated based on the fair market value on the date of reduction/cancellation. Hence, there is no arrangement in this case, Therefore, we are inclined to allow the grounds raised by the assessee in this appeal. With regard to dividend, the same is received by the assessee after payment of applicable rate of dividend distribution tax, the issue of dividend is not under dispute.
18. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 19th day of November, 2025.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 19.11.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI