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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 741/2019

PR. COMMISSIONER OF INCOME TAX-04,Appellant

Through: Mr. Indruj Rai Singh, SSC with
Mr. Sanjeev Menon, JSC.

versus

M/S INDIA TODAY ONLINE PVT LTDRespondent

Through: Mr. Salil Aggarwal, Sr. Adv.
with Mr. Mahir Aggarwal, Mr.
Madhur Aggarwal, Ms.
MeeraBhatia & Mr. Uma
Shankar, Advs.

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CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**



ORDER
27.02.2025

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1. We take note of the question of law on which these appeals had come to be admitted. Undisputedly, the valuation report of 27 December 2012 had ascribed a value to the issued shares as on 31 March 2012. This becomes evident from a reading of the following conclusion:

“The value of the Company using the above basis comes to INR 18,566.88 lacs as on March 31, 2012. Thus, the price per Share comes out to Rs, 77.06 Per Share”

2. The Commissioner of Income Tax (Appeals) [“**CIT(A)**”], however, has while examining the issue, rendered the following pertinent observations:

“**8.23** Clause (a) sub clause (ii) to the Explanation which is a residuary clause provides assistance to the appellant company to explain and justify the value. Though, the appellant has not invoked the above sub-clause to justify the value of its share, I find it pertinent to discuss this aspect as part of a holistic approach to appreciate the facts and circumstances of the present case. One of the primary and most important condition inscribed in this clause is that value has to be as on the date of issue of shares and not otherwise. In this regard, I have considered the documents filed on record and certain valuations report filed on record. I have perused all the reports and the submission placed by the appellant in response to the enhancement notice. However, nowhere, the appellant was able to substantiate the price of the shares of the company as on the date of issue of shares. The valuation reports submitted on record, does not pertain to the value of the shares as on the date of issue of shares, hence the same would not fall within the ambit of sub clause (ii). Further, even in response to the show cause notice of enhancement, the appellant company has not substantiated the value of shares as on the date of the issue of shares. The appellant company only discussed about the value and valuation of the subsidiary of the appellant company on odd dates which is not the date of issue of shares. Thus, in this case the value of the shares taken by the appellant is not justified or substantiated in terms of the above sub-clause (ii).”

3. It has thereafter noticed the provisions made in Rule 11UA of the Income Tax Rules, 1962 [“**Rules**”]. However, and which fact is



not contested by the respondents, undisputedly, those Rules of valuation would not apply since they had not even been introduced in the statute on the relevant date.

4. Proceeding ahead, the CIT(A) has observed as follows:

“8.49 The above discussion clearly suggests that the valuation reports filed by the assessee cannot be considered while examining the applicability of section 56(2)(viib) of the Act because it does not fulfill the conditions prescribed in section 56(2)(viib) of the Act read with Rule 11 U and Rule 11UA. Obviously, these reports have been prepared by artificially inflating the valuation of appellant's investment in M/s Mail today as discussed above.

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8.51 After analysing sub-clause (b) and having rejected the same for multiple reasons as discussed (*Supra*), now sub-clause (a) of Rule 11UA(2) is to be considered which provides for computation of the fair market value as per the prescribed formula.

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8.52 As per Rule 11 UA(2)(a), the fair market value of the equity shares has to be computed as on the valuation date, of the book value of the assets and liabilities as per the formulae provided in the Rule. The formulae do not consider any market value of any of the assets or any of the liabilities as appearing in the balance sheet. Only book value as appearing in the balance sheet has to be considered.

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8.56 As per the formula:

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

Thus, as per the audited balance sheet for the financial year ended March 31, 2011,

Total Book value of assets as on March 31, 2011	Rs. 79,21,27,839/-
Less: Advance Income Tax as appearing in Balance Sheet	Rs. 1,32,12,448/-



Amount of A	Rs. 77,89,15,391/-
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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 tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

Thus as per the audited balance sheet for the financial year ended March 31, 2011,

Total Book value of liabilities as on March 31, 201	Rs. 79,21,27,839/-
Less:(i) paid up capital in respect of equity shares	Rs. 1,00,000/-
Less: (ii) the amount set apart for dividend	Rs. Nil
Less: (iii) reserve and surplus (It is in negative)	(-) 19,33,35,262/-
Less: (iv) an amount representing provision of tax	Rs. 1,32,12,448/-
Less: (v) provision made for liabilities other than Rs. Nil ascertained liabilities	Rs. Nil
Less: (vi) any amount representing contingent Rs. Nil liability	Rs. Nil
Amount of L	Rs. 97,21,50,653/-

Note: Since the reserve and surplus is negative, the amount will get added in total book value of liabilities.

PE Total amount of paid up equity share capital as shown in the balance sheet.

As per the balance sheet the same is Rs. 1,00,000/-.



Share Application money is not considered as a part of Share Capital since no shares have yet been allotted against them and it remains part of total liability.

PV = The paid up value of such equity share.

The paid up value as per the balance sheet for each equity share is Rs. 10/- per share.

Now, the fair market value of unquoted equity share is

$$[(A - L)] \times (PV)/(PE)$$

$$[(Rs. 77,89,15,391 - Rs. 97,21,50,653/-)] \times (10)/(100000) = (-) \text{Rs. } 19,323$$

Thus, the fair market value of unquoted equity share of the appellant company is Rs.(-)19,323/-

8.57 Even if we take balance sheet of FY 2011-12 into consideration, as mentioned in the notice of enhancement of income, FMV of the appellant still comes to a negative figure i.e. Rs.(-)89,336/- per share. Thus, I find that FMV of its share being emphatically relied upon by the appellant is incorrect in all respect and from all angles.

8.58 As discussed above, valuation of shares are not in accordance with the Act. Valuation report and methodologies adopted for valuation are totally unreliable and tailor made to artificially enhance the value of shares to justify receipt of premium.

8.59 The company during the year under consideration has allotted 2,40,83,333 equity shares at a price of Rs. 30/- of which Rs. 10 is face value and Rs. 20 is premium.

8.60 Since the fair market value of the equity share is in negative and the fact that the shares are issued at price of Rs. 30/- which exceeds the fair market value of the shares, the provisions of Section 56(2) (viib) read with Section 2(24)(xvi) are applicable. Therefore, premium charged at the rate of Rs.20/- per share for 2,40,83,333 equity shares allotted during the year needs to be taxed in terms of section 56(2) (viib) of the Act.”

5. However, Mr. Rai, learned counsel appearing in support of the appeals would contend that although the CIT(A) had alluded to Rule 11UA, it has independently arrived at the value of the equity shares on the basis of the Net Asset Value method [“NAV”] and which in any case is universally acknowledged and accepted and does not owe its genesis to Rule 11UA.



6. In order to enable Mr. Rai to address submissions in the aforesaid light, let the appeals be called again on 02.04.2025.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J
FEBRUARY 27, 2025/kk