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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 Singh Rai, SSC with Mr. Sanjeev Menon, Mr. Rahul Singh, JSCs & Mr. Anmol Jagga, Adv.

versus

M/S INDIA TODAY ONLINE PVT LTD .....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal, Mr. Uma Shankar & Mrs. Meera Bhatia, Advs.

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\+ ITA 744/2019

PR. COMMISSIONER OF INCOME TAX -04 .....Appellant

Through: Mr. Indruj Singh Rai, SSC with Mr. Sanjeev Menon, Mr. Rahul Singh, JSCs & Mr. Anmol Jagga, Adv.

versus

INDIA TODAY ONLINE LTD PVT .....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal, Mr. Uma Shankar & Mrs. Meera Bhatia, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **31.07.2024**

1. Having heard Mr. Rai, learned counsel appearing for the appellant, as well as Mr. Aggarwal, learned senior counsel who

represents the assessee, we are of the considered opinion that the matter would merit further consideration.

2. The issue itself pertains to the scope and intent of Section 56(2)(viib) of the Income Tax Act, 1961 [“**Act**”] and the Explanation as appended thereto. The appellants would contend that as would be evident from the conclusions drawn by the Income Tax Appellate Tribunal [“**Tribunal**”], it has failed to bear in mind the statutory requirement of the valuation report indicating the value of shares as on the date of issuance. The date of issuance of the shares in the present case is undisputedly 08 September 2012.

3. However, and on hearing submissions which were addressed today, the respondents failed to draw our attention to any valuation report which may have indicated the value of the shares as on the date of issue.

4. Although Mr. Rai also sought to press his case on the basis of sub-clause (i) of Explanation (a) of Section 56(2)(viib) and which speaks of the methods of valuation which may be adopted by an assessee, we note that notwithstanding Rules 11U and 11UA of the Income Tax Rules, 1962 having come into effect from 29 November 2012, and thus post the date of issuance of the shares, since the assessee chose to place its case solely in sub-clause (ii), the other questions which are posited would not merit consideration.

5. We, accordingly, admit this appeal on the following question of law:

A. Whether in the facts and circumstances of the case the Tribunal is legally correct in considering the valuation report dated 27 December 2012 for the purpose of Section 56(2)(viib) of the Act by ignoring the fact that the said report does not indicate the fair market value of shares as on the date of issue of shares?

6. Let the matter be called again on 30.09.2024.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

JULY 31, 2024/kk