

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.295/Del/2025
[Assessment Year : 2022-23]**

DCIT, Circle-49(1), Room No.1505, 15 th Floor, E- 2 Block, Civic Center, Delhi	vs	Bharat Kalia A-347, Outer Ring Road, Meera Bagh, Delhi-110087. <i>PAN-AUFPK1290H</i>
APPELLANT		RESPONDENT
Revenue by		Ms. Indu Bala Saini, Sr.DR
Assessee by		Shri Dinesh Gupta, CA
Date of Hearing		22.01.2026
Date of Pronouncement		10.04.2026

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the Revenue against the order dated 12.11.2024 by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld. CIT(A)”] in Appeal No. NFAC/2021-22/10326531 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 27.02.2024 passed u/s 143(3) r.w.s. 144B of the Act pertaining to Assessment Year 2022-23.

2. Brief facts of the case are that the assessee has e-filed its return of income on 22.07.2022, declaring total income of INR 54,98,42,700/-. During the year under appeal, assessee has sold 14,219 shares of M/s. Life Long Online Retail Pvt. Ltd. wherein the

assessee is a promoter Director and shareholder. The company is recognized as a start-up. The case of the assessee was selected under CASS for the reason large capital gain deduction claimed and notice u/s 143(2) followed by notices u/s 142(1) alongwith questionnaires were issued from time to time. The AO observed that assessee has sold 14,219 shares to M/s. Thrasio LL Acquisitions INC for total consideration of INR 83,05,57,146/- and has Long Term Capital Gain (“LTCG”) of INR 82,90,75,864/-. The AO further observed that during the year itself, the company M/s. Life Long Online Retail Pvt. Ltd. had issued 16,422 shares at a premium of INR 61,092.42 per share to M/s. Thrasio LL Acquisitions INC as against which assessee has sold his shares to same buyer at a price of INR 58,411.78 per share. Thus, the AO alleged that assessee has received less consideration of INR 2,680.64 per share and accordingly, total capital gain of INR 3,80,92,562/- was alleged as less shown. The AO after considering the submissions of the assessee, invoked the provisions of section 50CA of the Act and made the addition for the differential amount of INR 3,80,92,562/- as LTCG.

3. Against the said order, assessee filed an appeal before Ld. CIT(A), who vide order dated 12.11.2024, allowed the appeal of the assessee. Aggrieved by the same, Revenue is in appeal before the Tribunal wherein both the Grounds of appeal taken are with respect the deletion of additions made by Ld. CIT(A).

4. Before us, Ld. Sr. DR for the Revenue submits that during the year under appeal, assessee has sold shares of a unlisted company

at a price which is less than the fair market value at which shares were directly allotted by the company to the same buyer to whom shares were sold by the assessee. Ld. Sr. DR submits that Ld. CIT(A) has failed to appreciate the fact that assessee has placed reliance on the Valuation Report of a Chartered Accountant (“CA”) whereas after the amendment in Rule 11UA vide 6th Amendment Rules, 2018 w.e.f. 24.05.2018, fair market value of unquoted equity shares of a private limited company should be determined by a merchant banker as per discounted cash flow method and the word “by an Accountant” was omitted vide this amendment. He, therefore, submits that the Valuation Report furnished by the assessee since based on the fair market value of equity shares of the company, M/s. Life Long Online Retail Pvt. Ltd. is done by a CA therefore, such report cannot be made basis for deleting the addition. He thus, prayed that the additions made by AO deserves to be restored.

5. On the other hand, Ld. AR submits that in the case of the assessee, shares sold were unquoted equity shares of a private limited company and for which the full value of consideration should be in accordance with the provisions of section 50CA of the Act. Ld. AR further submits that u/s 50CA of the Act, fair market value of such shares is to be determined as prescribed under Rule 11UA of the Income Tax Rules, 1962 (the Rules). Under Rule 11UA of the Rules, valuation of unquoted equity shares of a private limited company for the purpose of section 50CA would be computed as provided in sub-clause (b) or sub-clause (c), as the case may be of clause (c) of sub-Rule (1) of Rule 11UA of the Rules. Ld.AR further

submits that as per Rule 11UA(1)(c) sub-clause (b), the fair market value should be determined on the basis of the net asset value and as per sub-clause (c), such report may be obtained from merchant banker or an Accountant in respect of such shares. In the instant case, Ld.AR submits that as per Rule 11UA(c) sub clause (c) of the Rules, assessee has obtained report from a C.A. namely Shri A. M. Chinmaya who valued the shares as per net asset value prescribed under Rule 11UA(1)(c)(b) at INR 1,650/- per shares. Ld. AR submits that since the assessee sold the shares at a higher price than the fair market value per share as determined by the valuer, therefore, provisions of section 50CA of the Act are not applicable. Ld. AR submits that Ld. CIT(A) appreciated these facts and deleted the additions which order deserves to be uphold.

6. Heard the contentions of both the parties and perused the material available on record. In the instant case, sole dispute is whether the Valuation Report submitted by CA U/R 11UA(1)(b)(c) of the Rules, is a valid report and acceptable or not. As per AO, said report must be obtained from merchant banker where DCF method should be applied for valuation of unquoted equity shares. Whereas claim of the assessee is that under Rule 11UA(b)(c) of the Rules, report can be obtained from the merchant banker or from CA and the valuation should be done at Net Asset value method as prescribed under Rule 11UA(1)(b) of the Rules. As per section 50CA, the valuation of share is prescribed under Rule 11UAA of the Rules. Rule 11UAA of the Rules provides that the fair market value of quoted share shall be determined in the manner provided under sub-clause

(b) or sub-clause (c) of Clause (c) of sub-Rule (1) of Rule 11UA of the Rules.

7. First we examine the provisions as contained in section 50CA of the Act and Rule 11UAA & Rule 11UA(1)(c) of the Rules which are as under:-

Section 50CA *“Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall for the purposes of section 48. be deemed to be the full value of consideration received of accruing as a result of such transfer:*

Provided that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.]

Explanation. For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.]”

.....

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.”*

.....

11UA. Determination of fair market value.

(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,-*

(a) valuation of jewellery,-

(i)

(ii)

(iii)

(b)

(c) valuation of shares and securities,-

(a) the fair market value of quoted shares and securities shall be determined in the following manner, namely,-

(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

(ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-

(a) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(b) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

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

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

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

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

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

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

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

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

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

- (i) the paid-up capital in respect of equity shares;*
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (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;]

- (c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.**

- (2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of 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 determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:-

.....

8. The AO has hold that valuation report should be obtained from merchant banker however, here the AO has made an error in applying Rule 11UA(2) as against Rule 11UA(1). Rule 11UA(2) is applicable for the valuation of the shares u/s 56(2)(viib) of the Act whereas the provisions of Rule 11UA(1)(b) are applicable where the valuation is done for the purpose of section 50CA of the Act. Ld. CIT(A) has appreciated these facts and by accepting the valuation report of a CA, has deleted the additions made by making following observations:-

7. Decision

“Although there are four grounds of appeal, the core issue revolves around addition of Rs.3,80,92,562/-on account of long-term capital gains on sale of unlisted equity shares. As such, all the issues are taken up together in deciding the appeals.

It is seen that by way of a share purchase agreement dated 28.12.2021 entered into between the appellant and six others with the buyer namely, Thrasio LL Acquisitions, Inc of USA, the appellant sold 14,219 equity shares of M/s Lifelong Online Retail Pvt. Ltd at a total consideration of Rs. 83,05,57,146/-, The sale value per share works out to Rs. 58,411.78. M/s Lifelong Online Retail Pvt. Ltd. also issued 16,422 equity shares by way of fresh issue to the same buyer at the rate of Rs. 61,092 42 per share and hence the difference of Rs. 2,680.64 per share was treated as Long Term Capital Gain (LTCG) by the AO (Assessment Unit).

M/s Lifelong Online Retail Pvt. Ltd. got two valuation reports prepared from a registered valuer and Chartered Accountant for arriving at Fair Market Value (FMV) of its equity shares. Valuation report dated 24.12.2021 was based on Discounted Cash Flow (DCF) Method and it arrived at FMV of the equity shares of the company at Rs. 47,373,02 per share. By another valuation report of Chartered Accountant dated 24.12.2021, valuing the equity shares of M/s Lifelong Online Retail Pvt. Ltd, as on 15.11.2021, FMV was determined in the manner provided

under Rule 11UA(1)(c)(b) of Income tax Rules, 1962. As per Net Asset Value Method prescribed under Rule 11UA(1)(c)(b), the FMV of unquoted equity shares of M/s Lifelong Online Retail Pvt. Ltd. was determined at Rs. 1,650 per share.

It has been submitted by the appellant that for the purposes of section 50CA of the Act, being special provision for calculating deemed full value of consideration for transfer of equity shares other than quoted share, the FMV of equity shares of the company shall be computed in terms of Rule 11UAA of the I.T.Rules. Rule 11UAA provides that the FMV shall be determined in the manner provided under Rule 11UA(1)(c)(b), which in the instant case, was determined at Rs. 1,650 per equity share of M/s Lifelong Online Retail Pvt. Ltd. Section 50CA also provides that the value so arrived at shall be deemed to be the full value of consideration received for purposes of section 48. It was submitted by the appellant that the full value of consideration actually received was in excess of FMV as determined in terms of section 50CA. It was also contended that when law prescribed a method for determining FMV of unquoted equity shares, the AO (Assessment Unit) cannot arrive at its own FMV/deemed sale consideration on some other basis.

The appellant maintained that the AO (Assessment Unit), while rejecting the valuation report filed by the appellant, determining FMV of unquoted equity share at Rs. 1,650/- as per Rule 11UA(1)(c)(b) and asserting that as per Rule 11UA, the valuation should be determined by a Merchant Banker and not by an accountant, probably lost sight of the fact that the provisions contained in Rule 11UA(2) are only applicable for the purposes of section 56(2)(viib) of the Act. Section 56(2)(viib) applies only to consideration received by a company for issue of shares i.e. fresh shares issued by company in which public are not substantially interested. In the present case, the assessment order under reference was made in respect of the appellant Bharat Kalia and not in respect of any company (in which public are not substantially interested) issuing fresh shares. So, the issue concerns application of section 50CA and not section 56(2)(viib) of the Act and the prescribed Rule is Rule 11UAA. For the purposes of determining fair market value of equity shares in terms of 11UAA, the value as per Rule 11UA(1)(c)(b) is to be applied. Also, there is no requirement in Rule 11UA(1)(c)(b) that the value shall be determined by a Merchant Banker or an accountant. The FMV in terms of Rule 11UA(1)(c)(b) can be determined by any person as long as the valuation methodology as mentioned in that rule is followed.

The AO (Assessment Unit) observed, "Thus the Fair market value as furnished by the registered valuer cannot not be accepted and the assessing officer is in liberty to adopt the share price at Rs.61,002/42/- per share which is higher price at which the unlisted equity share of Mis Lifelong Online Retail Pvt Ltd and the seller is also the same in the case

of direct transfer from Mis Lifelong Online Retail Pvt Ltd was directly sold to M/s Thrasio LL. Acquisitions INC."

The fact of the case is that

- (a) The transaction as declared by the appellant is supported by a Share Purchase Agreement where there are six other parties selling the same unquoted shares to the foreign entity.*
- (b) The AO (Assessment Unit) has not doubted the genuineness of the SPA entered into between the appellant & others on one side & the buyer on other side.*
- (c) The RBI has accorded approval to the allotment of shares to the said foreign entity.*
- (d) The sale value declared exceeds the value determined in terms of Rule 11UAA, which in this case works out to Rs. 1,650/- per share.*
- (e) There is no evidence on record that any hidden consideration in some undisclosed manner has passed on from the buyer to the appellant over and above the amount declared in the Share Purchase Agreement. Addition could have been made if the AO (Assessment Unit) were able to demonstrate with some tangible evidence that excess consideration had actually passed or had been received by the appellant.*
- (f) The AO (Assessment Unit) has not made a case that this is a case attracting the provisions of section 50D of the Act, where the consideration received or accruing as a result of the transfer is not ascertainable or cannot be determined.*

As per section 50CA, the FMV determined by applying Rule 11UAA shall be deemed deer to be the full value of consideration received or accruing as a result of transfer of unquoted equity shares. That Mis Lifelong Online Retail Pvt. Ltd. also issued 16,422 equity shares by way of fresh issue to the same buyer, namely, Thrasio LL. Acquisitions, Inc of USA at the rate of Rs. 61,092.42 per share cannot be a criterion for substituting the sale value declared by the appellant because as per the existing law, there is no such provision where the AO can exercise his discretion going beyond the provision of section 50CA and Rule 11UAA. As such, even if the same unquoted equity share is sold to the same entity at different prices, once by way of direct transfer (i.e. primary shares) and in the other instance by way of sale of existing shares of the company (i.e. secondary shares), the AO (Assessment Unit) is not at liberty to adopt the share price at Rs.61,092.42/- per share, being the higher price at which the unlisted equity share of M/s Lifelong Online Retail Pvt Ltd was allotted to the same Thrasio LL Acquisitions, Inc of USA, who was the buyer at the rate of Rs. 58,411.78 from the appellant and six other parties. Although there was enough provocation to redress the disparity in the transfer price. such

an action of the AO is not permissible within the existing provision of law. Except for a case covered u/s 50D of the Act, full value of consideration cannot not be substituted with the fair market value.

In the case of Nariman Point Building Services & Trading (P.) Ltd. Vs CIT, the ITAT, vide decision dated 25.7.2012 in IT Appeal No. 798 of 2011 for the AY 2006-07 held that full value of consideration cannot be substituted by market value unless there is a proof for extra consideration.

In the case of Smart Information Worldwide Ind vs ACIT, the ITAT, vide decision dated 06.08.2024 in IT Appeal No. 330/Chny/2024 for the AY 2006-07 held that full value of consideration could not be substituted with any other value unless specified.

There are other decisions supporting this issue. A few of them are as follows:

M/s. Suguni Constructions Pvt. Ltd., Hyderabad, (ITA No. 582/Hyd/2015, for the AY 2010-11)-decision dated 20.11.2015

- (a) CIT V/s. George Henderson (66 ITR 622)-SC*
- (b) CIT Vs. Gillanders Arbuthnot & Co.(1973 AIR 989) SC*
- (c) Reliance Communications Infrastructures V/s CIT (34 SOT 245)-Mum*
- (d) Morarjee Textiles Ltd. V/s. ACIT (ITA 1979/Mum/2009, for AY 2005-06)-decision dated 10.5.2013*
- (e) Nariman Point Building Services & Trading P. Ltd. V/s. CIT(ITA No.798/M/2011, for AY 2006-07)-decision dated 25.7.2012*
- (f) Venus Financial Services Ltd. V/s. ACIT (ITA No.5335/Del/2012, for AY 2009-10) decision dated 28.9.2015*

Considering the facts and circumstances of the case, the addition of Rs. 3,80,92,562/- made by the AO (Assessment Unit) cannot survive. The AO is directed to delete the addition.

In the result, appeal of the appellant is allowed..”

9. Further, it is observed that Ld. CIT(A) has duly appreciated the difference between the valuation done of the unquoted shares for the purpose of section 50CA and section 56(2)(viib) of the Act and thus, deleted the addition made.

10. As observed above, provision of Rule 11UA(2) of the Rules are applicable for the purpose of valuation of unquoted equity shares of section 56(2)(viib) of the Act. Whereas for the purpose of determination of fair market value of unquoted equity shares u/s 50CA of the Act, provisions as contained in sub-clause (b) & (c) of Rule 11UA(1)(b) of the Rule are applicable, according to which report could be obtained either from Merchant Banker or from CA. In the instant case, the assessee has obtained Valuation Report from CA who valued the unquoted equity shares sold by the assessee on the basis of NAV method as prescribed under sub-clause (b) of Rule 11UA(1)(b) of the Rules as per which value per share was computed at INR 1,650/-. Since the assessee has sold the share at the higher price than the fair market value determined as per section 50CA, therefore, no addition is required to be made.

11. In view of these facts, we find no error in the order of Ld. CIT(A) in deleting the additions which order is hereby, upheld. All the grounds of appeal of the Revenue are thus, dismissed.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 10.04.2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:-10.04.2026

Amit Kumar, Sr.P.S

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**ASSISTANT REGISTRAR
ITAT, NEW DELHI**