

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA.No.1138/Ahd/2012

निर्धारण वर्ष/ Asstt. Year: 2008-2009

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| DCIT, Cir.3 Surat. | Vs | Smt. Shailyben Sureshbhai Bapna Chankyapuri Society Jamna Nagar Road Bhatar Road, Surat. PAN : AHZPH 9620 M |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
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| Revenue by : | Shri James Kurian, AR |
| Assessee by : | Shri R.K. Malpani, AR |

सुनवाई की तारीख/Date of Hearing : 24/08/2016

घोषणा की तारीख /Date of Pronouncement: 01/09/2016

आदेश/O R D E R

PER RAJPAL YADAV, ACCOUNTANT MEMBER

Revenue is in appeal before the Tribunal against the order of the Id.CIT(A)-II, Surat dated 27.3.2012 passed for the Asstt.Year 2008-09.

2. In sole sustentative ground of appeal, the Revenue has pleaded that the Id.CIT(A) has erred in deleting the addition of Rs.6,47,15,000/- which was added by the AO by treating alleged claim of long term capital gain as a business income and by estimating the sale price of shares sold by the assessee.

3. Brief facts of the case are that the assessee has filed her return of income on 31.7.2008 declaring total income at Rs.3,13,89,121/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Income Tax Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that assessee has shown long term capital gain of Rs.3,12,50,000/- on sale of shares of M/s.PMC Buildwell Pvt. Ltd. ("PMCB" for short). On further inquiry, it revealed to the AO that the assessee has alleged purchases of 2500 shares of "PMCB" on 5.10.2006 at the rate of Rs.10/- per share. She has sold these shares on 27.11.2007 and 28.1.2008. She has sold shares at the rate of Rs.12,500/- per share. She computed long term capital gain and offered that gain for taxation. According to the assessee, she has paid long term capital gain tax at Rs.70 lakhs. The AO has made an inquiry about these transactions. He rejected the claim of the assessee and observed that the assessee did not submit copies of share certificate, share transfer form for purchase and sale of shares. The assessee did not file balance sheet or cash account or details of investments along with return of the Asstt.year 2007-08. She has shown holding of the shares as on 31.3.2007. Thus, according to the AO, the date of acquisition of the shares is to be taken as 31.3.2007, and if that be so, then shares have been sold within one year from the date of acquisition, i.e. the sales have been made 27.11.2007 and 28.1.2008. The Id.AO, thereafter, observed that the claim of the assessee for assessment of long term capital gain cannot be accepted, because, these transactions appears to be a pre-arranged transaction. The assessee failed to disclose as to how she came to know that shares of "PMCB" were available at the price of Rs.10/- per share whereas "PMCB" was holding 10.79 acres of land in Gurgaon which is supposed to be costliest city. The AO further observed that the assessee had sold shares at the rate of Rs.12,500/- per share in a very short span of time. It itself indicates that the transaction was stage-managed transaction by the assessee. The Id.AO, in this

way, treated this transaction as a business transaction and rejected all the claim of the assessee for assessment of gains as long term capital gain.

4. With regard to the quantification of the gain, the Id.AO has observed that the land value in the city of Gurgaon was not less than Rs.5,000/- per sq.yard. "PMCB" was having 10.79 acres of land. He has estimated the value of this land at Rs.25,89,60,000/-. According to the AO, the value of shares of this company could be determined at Rs.25,896/- per share. He accordingly worked out value of each share at Rs.25,896/-. The assessee was having 2500 shares of this company, and with this estimation of the value, he worked out the sale consideration at Rs.6,47,40,00,000/-.

5. On appeal, the assessee has explained that as far as allegation with regard to non-submission of share certificate, share transfer forms for purchase and sale are concerned, this aspect factually is incorrect. The assessee pointed out that the AO had sent a commission to Addl.DIT(Inv.), Unit-1, New Delhi to inquire into the following issues:

"A commission u/s. 131(1)(d) of the IT Act was issued to Addl. DIT(inv.), Unit-1, New Delhi on following issues:-

1) Date of registration of M/s. PMC Buildwell P. Ltd, and its share holding from the date of incorporation till date.

2) Total area of land owned by M/s. PMC Buildwell P. Ltd and market value of land as on 31.03.2007.

3) What is the nexus between M/s. Shaily Suresh Bapna and other share holders of M/s. PMC Buildwell P. Ltd and M/s. Spaze Towers P. Ltd.(Discreet enquiries conducted in this case have revealed that M/s. Shaily Suresh Bapna is closely related with the share holder of M/s. PMC Buildwell P. Ltd and M/s. Spaze Towers P. Ltd.

4) Date of registration of M/s. Spaze Towers P. Ltd. and its share holding from the date of incorporation till date.

5) *What is the nexus between the M/s. PMC Buildwell P. Ltd and M/s. Spaze Towers P. Ltd."*

6. The Id.ADIT had conducted an inquiry and submitted his report. Copy of the report is available at page nos.35 to 45 of the paper book. The assessee, thereafter, contended that she was a salaried person. She has made only investment in these shares. She has not carried out any business activities in the assessment year. She made reference to large number of decisions, which have been referred to by the Id.CIT(A).

7. With regard to the allegation of the AO that the assessee has shown lesser sale value of the shares, it was contended that the AO failed to take note of the liabilities of "PMCB". If those liabilities are deducted, then value per share would be around Rs.9,798/-. The assessee also pointed out she was holding 2500 shares only. There were other two persons who held remaining 7500 shares. In their case, Addl.DIT has accepted sale price at the rate of Rs.12,500/- per share. The Id.CIT(A) has examined all these aspects lucidly and elaborately. The Id.CIT(A) has accepted contentions of the assessee and directed the AO to accept the claim of long term capital gain disclosed by the assessee and also accepted sale price of the shares even for computing capital gain at the rate of Rs.12,500/- per share.

8. With the assistance of the Id.DR, we have gone through the record carefully. The first question posed before us in the statement facts filed by the Revenue along with appeal is, whether solitary transaction of the assessee in purchase and sale of shares is to be treated as a trading in the shares or not?. The issue, whether gain from sale of shares is to be assessed as a business income or short term capital gain/long term capital gain, is a highly debatable issue. It always puzzled the adjudicator even after availability of large numbers of authoritative pronouncements by the Hon'ble Supreme

Court/Hon'ble High Court. The reason for the puzzle is, one has to gather the intention of an assessee while he entered into the transaction. The expression "intention" as defined in Meriam Webster Dictionary means, what one intends to accomplish or attain, it implies little more than what one has in mind to do or bring out. It suggests clear formulation or deliberation. Thus, it is always difficult to enter into the recess of the mind of an assessee to find out the operative forces exhibiting the intention for entering into the transaction. This would give rise a debate. Nevertheless, we have to look into the curious features of this case which will goad us on just conclusion.

10. Before we embark upon an inquiry on the facts of present case so as to find out, whether assessee is to be termed as involving in the trading of shares or to be treated as a *simplicitor* investors. We would like to refer certain broad principle culled out by ITAT Lucknow Bench in the case of Sarnath Infrastructure Pvt. Ltd. reported in 120 TTJ 216. These tests read as under:-

"13. After considering above rulings we cull out following principles, which can be applied on the facts of a case to find out whether transaction(s) in question are in the nature of trade or are merely for investment purposes:

(1) What is the intention of the assessee at the time of purchase of the shares (or any other item). This can be found out from the treatment it gives to such purchase in its books of account. Whether it is treated stock-in-trade or investment. Whether shown in opening/closing stock or shown separately as investment or non-trading asset.

(2) Whether assessee has borrowed money to purchase and paid interest thereon? Normally, money is borrowed to purchase goods for the purpose of trade and not for investing in an asset for retaining.

(3) What is the frequency of such purchase and disposal in that particular item? If purchase and sale are frequent, or there are substantial transaction in that item, it would indicate trade. Habitual dealing in that particular item is indicative of intention of trade. Similarly, ratio between the purchases and sales and the holdings

may show whether the assessee is trading or investing (high transactions and low holdings indicate trade whereas low transactions and high holdings indicate investment).

(4) Whether purchase and sale is for realizing profit or purchases are made for retention and appreciation its value? Former will indicate intention of trades and latter, an investment. In the case of shares whether intention was to enjoy dividend and not merely earn profit on sale and purchase of shares. A commercial motive is an essential ingredient of trade.

(5) How the value of the items has been taken in the balance sheet? If the items in question are valued at cost, it would indicate that they are investments or where they are valued at cost or market value or net realizable value (whichever is less), it will indicate that items in question are treated as stock-in-trade.

(6) How the company (assessee) is authorized in memorandum of association/articles of association? Whether for trade or for investment? If authorized only for trade, then whether there are separate resolutions of the board of directors to carry out investments in that commodity? And vice versa.

7. It is for the assessee to adduce evidence to show that his holding is for investment or for trading and what distinction he has kept in the records or otherwise, between two types of holdings. If the assessee is able to discharge the primary onus and could prima facie show that particular item is held as investment (or say, stock-in-trade) then onus would shift to Revenue to prove that apparent is not real.

8. The mere fact of credit of sale proceeds of shares (or for that matter any other item in question) in a particular account or not so much frequency of sale and purchase will alone will not be sufficient to say that assessee was holding the shares (or the items in question) for investment.

9. One has to find out what are the legal requisites for dealing as a trader in the items in question and whether the assessee is complying with them. Whether it is the argument of the assessee that it is violating those legal requirements, if it is claimed that it is dealing as a trader in that item? Whether it had such an intention (to carry on illegal business in that item) since beginning or when purchases were made?

10. It is permissible as per CBDT's Circular No. 4 of 2007 of 15th June, 2007 that an assessee can have both portfolios, one for trading

and other for investment provided it is maintaining separate account for each type, there are distinctive features for both and there is no intermingling of holdings in the two portfolios.

11. Not one or two factors out of above alone will be sufficient to come to a definite conclusion but the cumulative effect of several factors has to be seen.”

11. The Hon’ble Gujarat High Court had also an occasion to consider this issue in the case of Commissioner of Income Tax vs. Riva Sharkar A Kothari reported in 283 ITR 338. Hon’ble court has made reference to the test laid by it in its earlier decision rendered in the case of Pari Mangaldas Girdhardas vs. CIT reported in 1977 CTR 647. These tests read as under:

“After analyzing various decisions of the apex court, this court has formulated certain tests to determine as to whether an assessee can be said to be carrying on business.

- (a) The first test is whether the initial acquisition of the subject-matter of transaction was with the intention of dealing in the item, or with a view to finding an investment. If the transaction, since the inception, appears to be impressed with the character of a commercial transaction entered into with a view to earn profit, it would furnish a valuable guideline.
- (b) The second test that is often applied is as to why and how and for what purpose the sale was effected subsequently.
- (c) The third test, which is frequently applied, is as to how the assessee dealt with the subject-matter of transaction during the time the asset was the assessee. Has it been treated as stock-in-trade, or has it been shown in the books of account and balance sheet as an investment. This inquiry, though relevant, is not conclusive.
- (d) The fourth test is as to how the assessee himself has returned the income from such activities and how the Department has dealt with

the same in the course of preceding and succeeding assessments. This factor, though not conclusive, can afford good and cogent evidence to judge the nature of the transaction and would be a relevant circumstance to be considered in the absence of any satisfactory explanation.

- (e) The fifth test, normally applied in case of partnership firms and companies, is whether the deed of partnership or the memorandum of association, as the case may be, authorizes such an activity.
- (f) The last but not the least, rather the most important test, is as to the volume, frequency, continuity and regularity of transaction of purchase and sale of the goods concerned. In a case where there is repetition and continuity, coupled with the magnitude of the transaction, bearing reasonable proportion to the strength of holding then an inference can readily be drawn that the activity is in the nature of business.

12. Before advertng to the facts, we would like to make reference to the finding of the Id.CIT(A) in this connection. It reads as under:

“In the light of the legal provisions explained by different courts as above, it has to be seen what the facts applicable in the case of assessee are. The assessee is maintaining her portfolio by treating the shares as investment; no sale transactions of shares have been made except the sale of shares of PMC Buildwell P. Ltd during the year under consideration; shares have been purchased from the own savings not from the borrowed funds; shares were held for the period more than twelve months; these shares reflect in the balance sheet as investment not the stock in trade and the intention of assessee has been that of making investment in shares and not dealing in shares as reflected from the details filed in the return of income. In view of these facts, sale on shares of PMC Buildwell P. Ltd transactions has to be treated Long Term Capital Gain not the Business Income as held by AO. Moreover, the Circular No. 4 dated 15.06.2007 of CBDT New Delhi has also laid down certain tests for making distinction between shares held as stock

in, trade and shares held as investment. Tests laid in this circular are that the substantial nature of transactions, the manner of maintaining the books of account, the magnitude of purchase & sales and the ratio between purchases and sales and holding of shares would furnish a good guide to determine the nature of transactions. Ordinarily, the purchase & sales of shares with the motive of earning profit would result in the transactions being in nature of trade / adventure in nature of trade; but where the object of investment in shares of a company is to derive income by way of dividends etc. then the profits accruing by sale of the shares will yield capital gains and not revenue receipt. If the facts of the assessee's case are tested on these guiding principles then it comes out that the investment made by the assessee in the shares of this private limited company was in the nature of capital investment. This was the solitary transaction of sale of shares during the year. As there is no open market for selling these shares and there were restrictions on transfer of these shares being shares of a private limited company, it cannot be said that the motive was to earn profit by re-selling the same. The arguments of the assessee that due to increase in the value of the assets (land) held by the company and due to leverage effect of borrowed funds, the value of shareholding of assessee increased manifold. In such a situation, merely because the assessee could sell these shares at a very good price it cannot be said that the motive behind this investment was to earn the profits by re-selling. The very fact that there are restrictions on transfer of shares of private limited company and there is no ready market for sale of these shares goes in favor of the assessee. The ratio of purchase & sale price is also very high which indicate that this was case of investment. The criterion of magnitude of transaction also goes in favor of assessee. Thus, if the facts of assessee's case are examined on the tests laid down in Circular no. 4 dated 15.06.2007 then it will be clear that these shares were held by the assessee as an investment (capital assets) and not as stock in trade. Therefore, profits and gains arising from transfer of these shares are assessable as 'Capital Gains' not the 'Business Income'."

13. The first reason assigned by the AO for harbouring a belief that long term capital gain made by the assessee on sale of shares is not acceptable, is based on the fact that, assessee has not produced copies of share certificate and share transfer forms for purchase and sale. On verification of these evidences, we find that it is factually incorrect. As observed earlier, the AO has issued a commission to Id.Addl.DIT, Delhi for making inquiries. The

Id.ADIT has made an inquiry and submitted his report vide letter dated 7.12.2011, which appears to have been received in the office of the AO after passing of the assessment order, and due to this reason, the AO has made the above observation. Before the commission, all the details with regard to "PMCB" and M/s.Space Towers P. Ltd. were submitted. Shri K.S. Tanwar was holding 5000 shares of "PMCB". Similarly, Shri Paras Badhwar was holding 2500 shares. The assessee was hold holding 2500 shares. "PMCB" was hundred percent subsidiary company of M/s.Space Towers Ltd. The Id. ADIT did not doubt on the transaction. He has referred to statement of all concerned persons and also made inquiry with other two share holders. He made reference to the replies given by Shri K.S. Tanwar and Shri Paras Badhwar. He also recorded statement of the assessee. This report is on the record. The Id.CIT(A) has considered this report. Other reasons assigned by the AO are based on suspicion only. He himself failed to collect any material for demonstrating the fact that these transaction as a pre-arranged transaction. There might be various reasons for all of sudden increase in the price of the shares. One possible reason could be permission to construct a tower on the land owned by "PMCB". Even a single transaction can be treated as a venture into a trade, but the AO failed to point out those peculiar circumstances. Reasons given by the Id.CIT(A) in the finding extracted supra would indicate that the assessee has not borrowed funds for making investment. She has not shown shares as stock-in-trade. She did not take help of experts; she did not incur any expenditure towards selling consultancy or maintaining of any office. She has not purchased shares of any other companies in this period. Thus, facts emerge out from the record, if we examine in the light of various tests propounded by the Hon'ble jurisdictional High Court as well as by the ITAT in the case of Sarnath Infrastructure Pvt. Ltd., 10 TTJ 216, then it would reveal that the Id.CIT(A) has taken a correct view of treating the transaction as *simplicitor* investment.

14. The next fold of dispute is whether the AO was justified in taking sale value of shares at Rs.25,896/- per share. The AO has observed that “PMCB” was owner of a land admeasuring 10.79 acres. He took the value of this land at Rs.25,89,60,000/- and divided this value by the total number of shares issued by the company. In this way, he worked out the value per share at Rs.25,896/-. On the other hand, the Id.CIT(A) has observed that the AO has committed an apparent error by estimating the value of shares at Rs.25,89,60,000/-. The Id.CIT(A) has observed that the AO has not taken into consideration the liabilities of “PMCB”, and if these liabilities are taken into consideration, then the value per share would be worked out at the rate of Rs.9798/-. The assessee has shown sale value of the shares at Rs.12,500/-. The finding recorded on this issue is worth to note. It reads as under:

“5.5 The next issue involve in this ground is the estimation of market value of shares. The AO has worked out the value of shares at Rs.25,896/- per share against the sale price of Rs.12,500/- per share shown by appellant. The reasons given by AO are that the sale price of shares of M/s. PMC Buildwell P. Ltd at Rs.12,500/- per share, in fact, represents market value of the property owned by M/s. PMC Buildwell P. Ltd at Gurgaon as the company does not have any reserves as on 31.03.2008 to enhance the value of its shares. By taking in to account that Gurgaon is one of the costliest cities so far as prices of real estate are concerned, AO estimated the value of land owned by M/s. PMC Buildwell P. Ltd at Rs.5,000/- per sq. yard and worked out the aggregate value of total land at Rs.25,89,60,000/- and, in this process, worked out the value of shares of company at Rs.25,896/- per share. Now the question arises whether AO can estimate the value of shares at higher prices against the rates appellant has shown in the return of income if the income is computed under the head 'business -come'. Hon'ble Delhi High Court in the case of CIT vs. Smt. Nilofer I. Singh (309 ITR 233), following the judgments of Hon'ble Supreme Court in the cases CIT vs. income if the income is computed under the head 'business income". Hon'ble Delhi High Court in the case of CIT Vs. Smt. Nilofer I. Singh (309 ITR 233), following the judgments of Hon'ble Surpeme

Court in the cases of Gillenders Arbuthnot and Co. (87 ITR 407) and CIT vs. George Henderson and Co. Ltd (66 ITR 622), has held that in the case of sale price of asset, there would be no question of any market value and all that one has to see that what is the consideration bargained for. Thus, even if presuming that the share transactions are business in nature, market rate cannot be applied in absence of any cogent material or evidence available in possession of AO. In the case of appellant, AO has estimated the value of shares by giving a general statement that the city Gurgaon is one of the costliest cities of the country therefore estimation of Rs.5,000/- per sq. yard is reasonable. AO has no comparable case or any specific information that the appellant has received money over and above what the appellant has shown in the return of income. Moreover, while estimating the market value of shares of company, AO has simply forgotten to reduce the cost value / book value of the property, owned by M/s. PMC Buildwell P. Ltd, from the sale value. As the appellant has also submitted during appellate proceedings that the AO has made apparent mistake in calculating the value of these shares at Rs.25,896/- per share. The appellant has given a chart to prove that even if value of land held by M/s. PMC Buildwell P. Ltd is taken as per prevailing market rate, the correct value of shares works out to be Rs.9,798/- per share, not Rs. 25,896/- as estimated by AO. The working given by appellant is as under:

| <i>Assets & Liabilities of PMC Buildwell Pvt. Ltd. as per Balance Sheet as on 31st March, 2008</i> | <i>Value of Share taking Land Value as adopted by Id.A.O.</i> | <i>Book Value as on 31st March, 2008</i> |
|--|---|--|
| <i>Assets:-</i> | | |
| <i>1. Cash & Bank Balances</i> | <i>3,80,29,742</i> | <i>3,80,29,742</i> |
| <i>2. Loans & Advances</i> | <i>1,09,47,185</i> | <i>1,09,47,185</i> |
| <i>3. Inventories (Land)*</i> | <i>25,89,60,000</i> | <i>16,16,24,278</i> |
| <i>4. Preliminary & pre-operative Expenses</i> | <i>30,523</i> | <i>30,523</i> |
| <i>TOTAL ASSETS (1+2+3) (A)</i> | <i>30,79,67,450</i> | <i>21,06,31,728</i> |

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| | | |
| <i>Less:- Liabilities & Provisions (B)</i> | 20,99,88,741 | 20,99,88,741 |
| <i>Net Worth of the Company (A-B) (C)</i> | 9,79,78,709 | 6,42,987 |
| <i>No. of Shares (D)</i> | 10,000 | 10,000 |
| <i>Value per Share (C/D)</i> | 9797.87 | 64.30 |

It can be seen from above working, AO has committed apparent mistake of not deducting the liabilities from the fair market value of the assets of the said company. The value has been arrived at by AO by only considering the value of land without deducting liabilities therefrom. In this way, the value per share is worked out @ Rs.9,798/- which is less than what the appellant has shown in the return of income. These facts and the working given by appellant has not been rejected or controverted by AO in the remand report submitted by him. Even the ITO (Inv.), in his report, has not given any adverse findings on the valuation of property owned by the M/s. PMC Buildwell P. Ltd or for that matter, the valuation of shares. The buyer of the shares has also confirmed that these shares were purchased at the rate of Rs. 12,5007/- per share. Thus, in view of these facts, even if the share transactions are treated in the nature of trade or business, the valuation per share @ Rs.25,896/- estimated by AO is on the wrong basis.

5.6 In the assessment order, it has been held by AO that all the transactions of purchase and sale of shares of M/s. PMC Buildwell P. Ltd by appellant were prearranged or stage managed and it was not a mere coincidence and the intention of entering in to these transactions was earning profit only. However, the AO has failed to substantiate this conclusion drawn by him in absence of any specific material or evidence. To examine this aspect of transactions, commission u/s.131(1)(d) was issued but the ITO (Inv.), Unit-V(3), New Delhi, in his report, after recording the statements of relevant persons as well as examining the transactions entered into, did not give any finding to show that these were the prearranged or stage managed transactions. In his remand report dated 10.02.2012, AO also has repeated the facts of assessment order but failed to give any specific reason to hold that

these transactions are prearranged or stage managed. On the other hand, appellant has shown Long Term Capital Gain of Rs.3,12,25,000/- in the return of income and paid taxes on that and AO himself has assessed this income under the head Business Income. Treating the transactions as sham and assessing the same as a taxable business income, both are contradictory. Investigation conducted by ITO (Inv.) also does not support the theory of AO. In view of these facts, it is held that transactions entered in to by appellant are genuine in nature.

5.7 In the assessment order, AO has proposed to assess the income on account of aforesaid share transactions, either as Business Income or as Short Term Capital Gain. So far as the issue of capital gains vis-a-vis business income is concerned, it has already been discussed in the above paragraphs. On the issue of assessing as Long Term Capital Gain or Short Term Capital Gain on the profit accruing on sale of shares, facts stated by appellant in the submissions and the report of ITO (Inv.), New Delhi are relevant. As per these, shares of M/s. PMC Buildwell P. Ltd were purchased by appellant on 05.10.2006 and sold on two dates i.e. 27.11.2007 and 28.01.2008. Since the appellant has held these shares for more than twelve months, income has to be computed as 'Long Term Capital Gain' and taxed accordingly."

15. We have duly considered rival contentions and gone through the record carefully. Section 48 of the Income Tax Act provides mode of computation of capital gain. This section contemplates that income chargeable under the head "capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of transfer of capital assets the following amounts, viz. (a)....., and (b)..... The assessee has shown full value of the consideration as Rs.12,500/- per share. The Id.AO intends to change this full value of the consideration. In his efforts, he made reference to the land holding owned by "PMCB". He considered the value of such land holding, and divided that holding with total number of shares issued by the company. What is the basis of changing this pattern ? There is no evidence with the AO that the assessee has received more value than the one disclosed by her. Unless he possesses some evidences, demonstrating the fact that full value of the consideration disclosed by the assessee was incorrect, he cannot

replace that value by estimation or on the basis of his own estimation. It is also pertinent to mention that his estimation is also not based on construction of facts in right perspective. The Id.CIT(A) has recorded that he failed to consider liabilities of "PMCB". Had these liabilities been deducted against the total value of the land, and the value of the shares were worked out, that value would be lesser than the one shown by the assessee. The Id.CIT(A) has examined both these issues elaborately, and after going through the finding of the Id.CIT(A), we do not see any reason to interfere in it. Accordingly, the appeal of the Revenue is dismissed.

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

Order pronounced in the Court on 1st September, 2016 at Ahmedabad.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 01/09/2016