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DRAFT RULES PRESCRIBED BY CBDT ON VALUATION OF UNLISTED SECURTIES*

ABSTRACT

Recently, the Central Board of Direct Taxes has provisioned draft rules for the purposes of section 56 (2)(x) and section 50CA *of the Income-tax Act, 1961 for regulating the fair market value of unquoted equity shares. In this article, we have examined the proposed rule to comprehend how the computation of the fair value of unquoted equity shares will be done, the manner in which it is conflicting from the erstwhile rules. Moreover, we have identified various open issues which would necessitate further clarity from the department. The draft rules furnished by CBDT for public comments in regard to the valuation methodology of 'unquoted equity shares' claims to bring clarity on the determination of fair market value under recently introduced* S.50CA by Finance Act 2017 *as well as plug a loophole prevalent in the existing valuation rules related to S.56(2). The proposed Rules aim to modify the mechanism of valuation for 'unquoted equity shares' endorsed under the existing R. 11UA to take a particular cognizance of the fair value of certain assets – viz, Jewellery, Artistic Work, Immoveable Properties and Shares & Securities which are possessed by the Company. The prevailing R. 11UA effectively permits such assets to be only appraised at their respective book values, while assessing the unquoted equity share valuation.*

INTRODUCTION

On 5th May 2017, the Central Board of Direct Taxes (CBDT) formulated the draft rules for calculating 'Fair Market Value' of unquoted shares of a company under section 56(2)(x) and Section 50CA. It would be intriguing to see how transfer of shares (of unquoted shares) with

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effect after 1 April, 2017 but before the notification date of these rules are dealt with by the tax department. These rules seek to substitute the subsisting sub-clause (b) of clause (c) of sub-rule (1) of Rule 11UA of the Rules.

(1) Section 50CA[1]: The Finance Act, 2017 has incorporated 'Section 50CA' in ITA 1961, with effect from 1 April, 2018 (i.e., assessment year 2018-19), which postulates that where the consideration accruing or received, on transfer of unquoted shares of a company, is less than the 'Fair Market Value' (FMV) of such shares, which is determined in accordance with the stipulated manner, the FMV shall be deemed to be the full value of consideration for calculating income under the head ***"Capital gains."***

(2) Section 56(2)(x): Similarly, the Finance Act, 2017 has incorporated clause (x) in section 56(2) in the Income Tax Act, 1961. Prior to its incorporation, section 56(2) (viia) and section 56(2)(vii) of the ITA had a similar framework of taxation—except for the fact that the former applied only to HUFs and individuals on any specified property or any sum of money received by them for inadequate consideration or without consideration, while the latter concerned with only receipt of shares of a closely held company by another closely held firm or company for inadequate consideration or without consideration.

Therefore, Section 56(2)(x) has broadened the ambit of taxability of such receipts and is now relevant to all assesses. It postulates that any specified property or sum of money received for inadequate consideration or without consideration with immediate effect from 1 April, 2018 (i.e., assessment year 2018-19) will be subject to tax. Although the scope of taxability was expanded, the valuation rules remained unaltered, i.e., it made a reference to ***Rule 11UA of the Income Tax Rules, 1962 (the Rules)***, which provided that unquoted shares of a company (subject to some adjustments) would be valued at book value.[2]

BACKGROUND

Historically, Indian Tax Laws, as an anti-abuse measure, taxed a Hindu Undivided Family (HUF) and an individual) when specified assets were received without consideration or for inadequate consideration. These included a sum of money, shares and securities, immoveable

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[1] PWC, *Valuation norms for unquoted stock – Book value no longer "fair"*, TAXSUTRA (May 10, 2017), http://www.taxsutra.com/expertspwc/column?sid=780.

[2] *id.*

property, archaeological collections, painting, drawings, sculptures or any work of art, and bullion. However, private companies and partnership firms - including limited liability partnership firms - were taxed only in relation to receipt of shares of closely held companies.[3]

Under the ITA 1961, when a person receives, inter alia, shares of an unlisted company for a consideration which is less than fair market value (FMV) of such shares, then the difference between the FMV and the consideration payable/paid by the person is regarded as 'income from other sources' of the person and is taxed in the recipients' hands at the tax rate relevant to the recipient on ordinary income.[4]

For this purpose, under Rule 11UA of the Income Tax Rules, 1962 (IT Rules), the FMV for unquoted equity shares was based on the book value of net assets of the company whose shares were transferred. Resultantly, any notional decrease/increase in the values of the assets surfacing in the company's balance sheet are not factored while calculating FMV of such unquoted equity shares at present.

INTRODUCTION OF AMENDMENTS VIA FINANCE ACT 2017

The following amendments were brought in by the FA 2017 which aimed at curbing tax avoidance:

- **Applicability of anti-abuse provisions:** A specific amendment was inserted to broaden the ambit of the above anti-abuse provision by overlaying all the taxpayers.
- **Taxation for transferor on transfer of unlisted shares at below Fair Market Value (FMV):** Anti-abuse provisions were relevant only to the recipient of specified properties. Except transfer pricing provisions which apply in case of international related party transaction, there were no provisions to tax the transferor where unlisted shares were transferred at less than the FMV. A new section was introduced to address this which

[3] Narendra Rohira, *Valuation of Unlisted Equity Shares: Impact Analysis*, BLOOMERANG QUINT OPINION, (May 13, 2017, 1:02 P.M), https://www.bloombergquint.com/opinion/2017/05/13/valuation-of-unlisted-equity-shares-impact-analysis-of-draft-rules.

[4] Khaitan Co, *Revised valuation norms proposed for unquoted shares: bidding adieu to the book- value driven approach,* LEXOLOGY (May 10, 2017), http://www.lexology.com/library/detail.aspx?g=d89c219d-7152-42dc-b8df-f028b4db3469.

imposes tax on the transferor at the FMV value of unlisted shares if the sale consideration in actual was less than the FMV even in an unrelated party transaction.[5]

❖ IMPACT OF THE ABOVE AMENDMENTS

I. By way of enactment of Section 56(2)(x) and Section 50CA in the Act, the government advances to remove the probable loss, arising out of the revenue on account of understatement of consideration for transfer of shares. However, in doing so, the Budget advocated a potential double taxation.

II. Whilst section 50CA advances to tax the difference between the consideration received for transfer of shares and the FMV as capital gains in the hands of transferor, section 56(2)(x) advocates to tax the same difference (value) in the hands of the transferee of such shares. The aforesaid calculation mechanism may lead to taxation of the same amount of consideration in hands of two tax payers i.e., transferee and the transferor.[6]

❖ ILLUSTRATION

Seller & Co. (S) purchased 10,000 shares of a private limited company at INR 50 per share. The shares were sold at INR 80 per share to Buyer & Co. (B) by S. On the date of transfer, the FMV of the shares was INR 100 per share. The impact of the section 56(2)(x) and section 50CA would be as follows.

- *Computation of capital gains in the hands of S*

Particulars	**Under extant provisions (in INR)**	**After proposed section 50 CA (in INR)**
Sale consideration	800,000	1,000,000
Less: Cost of acquisition	(500,000)	(500,000)
Capital gains	**300,000**	**500,000**

In the present example, pursuant to introduction of section 50CA, the sale consideration would tantamount to INR 1,000,000 [10,000 shares*INR 100]. The difference of the amount

[5] *id* 3.

[6] PWC, *Transfer of shares below FMV- A double taxation conundrum*, TAXMANN (February 8, 2017), https://www.taxmann.com/budget/t96/transfer-of-shares-below-fmv-a-double-taxation-conundrum.aspx.

taxed on account of incorporation of section 50CA in the hands of S comes up to INR 200,000. The said amount therefore, is taxed as an outcome of increase in sale consideration from INR 800,000 to INR 1,000,000.

- *Calculation of income from other sources in the hands of B*

Particulars	**Under extant provisions (in INR)**	**After proposed section 56(2)(x) (in INR)**
FMV of shares (10,000 shares * INR 100)	1,000,000	1,000,000
Less: Actual amount for acquisition of shares (10,000 shares * INR 80)	(800,000)	(800,000)
Income from other sources	**200,000**	**200,000**

Hence, Section 56(2) (viia) of the Act prescribes for taxing the difference between the purchase consideration and the FMV of unquoted shares under the head 'income from other sources', in the case where FMV exceeds the purchase consideration. Accordingly, under the extant provisions, the amount of INR 200,000 would have been taxed in the hands of the transferee.[7]

From the above illustration, as per the extant provisions of the Act, it may be seen that the amount of INR 200,000 was being taxed in the hands of transferee. However, the section 50CA advocates to tax the amount of INR 200,000 in the hands of transferor. Accordingly, the amount of INR 200,000 is being taxed in the hands transferee as well as transferor.

DRAFT RULES FOR DETERMINING THE FMV OF UNLISTED EQUITY SHARES

The provisions tabled via the Finance Act, 2017 commissioned the methodology for determination of the FMV through rules to be prescribed by the Central Board of Direct Taxes (CBDT). CBDT issued draft rules for public comments which replaced the existing valuation rules for unlisted equity shares.

❖ IMPACT ANALYSIS

[7] *id* 7.

- **The necessitation of valuation of specified capital assets at FMV:** The draft rules puts forward the valuation of specified capital assets (retained by the company whose shares are being transferred) at FMV as against the extant rules requiring them to be valued at book value. This calls for a complex procedure to be followed to determine the FMV of unlisted equity shares, thereby affecting inter-se restructuring among group entities and thereby giving effect to genuine commercial arrangements between unrelated parties, such as distress sale. For example, the rule necessitates immovable properties to be valued at stamp duty value. Determination of stamp duty value for factories located in remote areas could be wearying. Also, ambiguity prevails on whether plants & machinery and buildings are considered as immovable property and the manner in which FMV should be assessed (in absence of stamp duty value).
- **Retroactive application with effect from April 1, 2017:** The rules of valuation are advanced to be made applicable with retrospective effect from April 1, 2017. This may lead to the fabrication of unintended implications for various stakeholders (such as representative assesses and/ or parties to the transaction) who may have depended on the existing valuation rules based on the book value for consummating the transaction. This would lead to an uncertain tax environment and a higher tax burden. This would also be in disagreement with the self- proclaimed stance of the current government against the proposal of retrospective amendments. Taking this into consideration, various stakeholders need to examine the impact of the new FMV valuation rules - on transactions already in effect after April 1, 2017, and upraise their concerns to CBDT, which can be approached before the notification of the final rules.[8]
- **Valuation approach:** The virtual look-through approach will increase tax complexity involved in share transfer transactions and the consequential litigation as the method is in the form of lifting the corporate veil to determine FMV for direct and indirect investments in shares and securities. For instance, FMV would need to be assessed for all the downstream companies in the chain as on the date of the transaction even for a simple intra-group transfer of shares of a closely held company.

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[8] Narendra Rohira, *Valuation of Unlisted Equity Shares: Impact Analysis*, BLOOMERANG QUINT OPINION, (May 13, 2017, 1:02 P.M), https://www.bloombergquint.com/opinion/2017/05/13/valuation-of-unlisted-equity-shares-impact-analysis-of-draft-rules.

- **Minority interest:** As the minorities may not have access to all the relevant information, it would be practically difficult for them to determine the valuation of unlisted equity shares under the new rules. In this regard, CBDT could prescribe minimum threshold criteria (in terms of percentage holding or transaction value).
- **Conflict with existing provisions under Indian tax law:** The new rules may create a disagreement with respect to transactions which are covered by tax law provisions, for e.g., transfer pricing, or where the relevant regulatory provisions such as foreign exchange regulations may prescribe a different FMV determination.
- **Ambiguity regarding valuation of preference shares:** Even though, the anti-abusive provisions secure the transfer of both preference and equity shares at less than FMV, the rules only furnish a mechanism for the computation of FMV of unlisted equity shares.

Although the rules will require some adjustment, the purpose of the CBDT to create tax policies through collaborative efforts by incorporating and inviting public opinion displays the best international practice of consultative approach appropriated by the ruling government.[9]

Surmising, pursuant to the above, the apex tax administering body for direct taxes in India proposed a draft notification on 5 May 2017 (Draft Notification) advocating the following:

(a) Revise the mechanism of valuation for 'unquoted equity shares' postulated under Rule 11UA of the Income Tax Rules from the currently obeyed book-value driven approach to a FMV driven approach;

(b) Addition of a new Rule 11UAA to the IT Rules for postulating the mechanism of valuation for Section 50CA of the IT Act.

A SHIFT FROM THE AFORESAID BOOK VALUE DRIVEN APPROACH

The Draft Notification in relevance from the prospect of acquirer of unquoted equity shares marks a switch from the aforesaid book value driven approach. It advances that for the 'unquoted equity shares' valuation, what is to be kept in mind is the FMV of the net assets (as

[9] *id* 8.

against the current mechanism of considering their book values) and that such FMV would be assessed as under[10]:

1. Jewellery and artistic work owned by the company: Price which it would yield if sold in the open market on the basis of the report of valuation secured from a valuer (i.e. a valuer who is registered in regard with the Wealth Tax Act, 1957) ;

2. Immovable property owned by the company: Value of the Stamp Duty of the immovable property;

3. Shares and securities owned by the company: (a) For quoted securities and shares, FMV calculation has its' foundation on their exchange traded prices; (b) For unquoted securities and shares (other than unquoted equity shares): Price which it would yield if it is sold in the open market on the date of valuation and the assesse may acquire a report from a merchant banker with respect to such valuation; (c) For unquoted equity shares; FMV is to be calculated as per the amended Rule11UA advanced;

4. **For other assets (i.e. assets other than (1), (2), (3) above): Book Values**: The summation of the aforesaid asset wise FMVs will be considered for calculating the FMV of the unquoted equity shares.

Corresponding to what is prescribed in the prevailing valuation mechanism, the Draft Notification also allows deduction of book-value of liabilities in the FMV calculation. Interestingly, preference share capital sustains to form part of liabilities even in the Draft Notification. Moreover, it is pertinent to note that while in the current valuation mechanism, there is a particular reference that the book values of liabilities and assets have to be taken as per the balance sheet of the company, the Draft Notification does not explicitly mention that the aforesaid values of the liabilities and assets have to be taken as per the balance sheet of the company.[11]

❖ EFFECT OF THE SHIFT

[10] CA Shashank Desai, *Certification Requirement in relation to Non- Business Source of Income*, INCOME TAX REVIEW 60-67 (2012), http://ctconline.org/pdf/chamber-journal/CJ_August_2012/CJ_August_2012_09.pdf.

[11] Khaitan Co, *Revised valuation norms proposed for unquoted shares: bidding adieu to the book- value driven approach,* NEWSFLASH (2017), https://www.khaitanco.com/PublicationsDocs/Khaitan%20&%20Co%20Ergo-Newsflash-10May2017.pdf.

(1) The proposition to shift from a book value driven approach to a market value driven approach for unquoted equity shares' valuation symbolizes a notable shift in India's tax policy and is in line with its object of a substance (rather than form) dominated levy of income tax, especially with the **GAAR (General Anti Avoidance Rules)** with immediate force from 1 April 2017. This implies that transfers of unquoted equity shares would have to take into consideration the fair values of all the assets owned by such company.

(2) It has come into sight that investment which a company holds in a partnership firm or a LLP would still be valued at book values (provided that such investments do not qualify as securities). This means that the fair values of the assets of a partnership firm or a LLP in which the company has funded would not be seized in the FMV of the unquoted equity shares of the company.[12]

(3) Additionally, it is pertinent to note that while the new Section 50CA pertains to any type of unquoted shares (both preference and equity), provided the specific language of this new valuation rule, there is no clarity as to how preference shares would be valued for the basis of Section 50CA.

(4) Even though, the initiative to put the Draft Notification for public suggestions is in line with the best international practice of consultative approach, its' proposed incorporation with effect from 1 April 2017 may mean that there is retrospective change in law – something which would run in contradistinction to the approach of the government of not bringing about any change retrospectively which formulates a fresh liability.

(5) Resultantly, all corporate restructuring exercises would have to examine the impact of this proposed amendment – both from the acquirer's as well as transferor's perspective. Lastly, the method of calculating the FMV in case of assessment of excess premium at the time of issuance of shares remains unaltered.[13]

TABLE OF DETERMINATION OF FMV

1. Valuation of Quoted Shares and Securities[14]

Particulars	Basis of determination of FMV

[12] Reserve Bank of India, *Frequently Asked Questions* (February 13, 2013), https://www.rbi.org.in/scripts/FAQView.aspx?Id=26.

[13] *id* 11.

[14] CA Gautam Nayak & CA Vishesh Sangoi, *Regulatory Aspects of Valuation (Part 1- Direct Taxes)*, THE CHAMBER'S JOUNRAL (July 2013), http://ctconline.org/pdf/chamber-journal/CJ_July_2013/CJ_July_2013_09.pdf.

If quoted securities and shares are received by way of carried out transaction through any Recognized Stock Exchange	Value of transaction recorded in such RSE
If quoted securities and shares are received by way of carried out transaction other than through any RSE	In case where there is no trading on the date of valuation, lowest price is quoted on any RSE, then FMV will be the lowest price on the date immediately preceding the date of valuation when trading happened.

2. Valuation of Unquoted Shares and securities

Particulars	**Basis of determination of FMV**
Unquoted Equity Shares	As per balance sheet, the value on the valuation date in terms of the given formula: $\frac{(A - L) \times (PV)}{(PE)}$ Where, A = Book value of assets in the balance sheet less (i) advance tax or TCS or TDS as reduced by Income Tax Refund (ii) Unamortized amount of expenditure (deferred) which does not symbolise value of any asset; L= Book value of liabilities in balance sheet less (i) Amount set aside for undeclared dividend (ii) Paid-up equity capital (iii) Provision for tax other than TCS or TDS or Advance Tax limited by Income Tax Refund to the extent of tax payable with reference to book profits in accordance with law applicable thereto (iv) Surplus and Reserves other than set apart for depreciation (v) Provision for meeting unascertained liabilities (vi) Contingent liabilities other than Arrears of Dividend in respect of Cumulative Preference shares PV = Paid-up value of such equity shares received; PE = Total amount of paid-up equity share capital

3. Valuation of Unquoted Shares other than Equity Shares

Particulars	Basis for determination of FMV
Unquoted shares and securities other than equity shares in an unlisted company	Price it would fetch if sold in open market on the valuation date and the assesse is required to obtain a report from the Merchant Banker or a Chartered Accountant in support of the FMV

Sub-rule (2) of Rule 11UA of the Rules deals with valuation of shares in respect of shares and securities of a company in which the public are not substantially received by a similar company, which falls under the purview of section 56(2) (vii b). The provisions of this rule, which provides for two alternative methods of valuation, can be summarized as under:

Particulars	Basis for determination of FMV

Unquoted Equity Shares	Value as per balance sheet (including notes thereto) on the valuation date in terms of the following formula: (A – L) X (PV) (PE) Where, A = Book value of assets in the balance sheet less (i) TDS or TCS or advance tax as reduced by Income Tax Refund (ii) Unamortized amount of deferred expenditure which does not represent value of any asset L= Book value of liabilities in balance sheet Less (i) Paid-up equity capital (ii) Amount set aside for undeclared dividend (iii) Reserves and surplus other than set apart for depreciation (iv) Provision for tax other than TDS or TCS or Advance Tax reduced by Income tax Refund to the extent of tax payable with reference to book profits in accordance with law applicable thereto (v) Provision for meeting unascertained liabilities (vi) Contingent liabilities other than Arrears of Dividend in respect of Cumulative Preference shares PE = Total amount of paid-up equity share capital PV = Paid-up value of such equity shares received
Unquoted Equity Shares	FMV as determined by a merchant broker or an accountant as per the Discounted Free Cash Flow method.

Certain terms as defined in Rule 11U are defined differently for the purposes of sub-rule (1) and for the purposes of sub-rule (2). These differences are as under[15]*:*

For Rule 11UA Sub Rule (1)	**For Rule 11UA Sub Rule (2)**

[15] CA Gautam Nayak & CA Vishesh Sangoi, *Regulatory Aspects of Valuation (Part 1- Direct Taxes)*, THE CHAMBER'S JOURNAL (July 2013), http://ctconline.org/pdf/chamber-journal/CJ_July_2013/CJ_July_2013_09.pdf.

Balance sheet means the balance sheet of the company (encompassing of notes to and comprising part of accounts) as drawn up on date of the valuation and auditor under section 224 of the Companies Act, 1956 to be audited by the statutory auditor	Balance sheet means the balance sheet of the company (encompassing notes to and comprising part of accounts) as drawn up on date of the valuation and audited by the statutory auditor under section 224 of the Companies Act, 1956. Where balance sheet not drawn upon the date of valuation, the balance sheet drawn up on a date immediately preceding the date of valuation which has been accepted and adopted in the AGM of the company.

SOME ISSUES

Some of the concerned issues which crop up for consideration in regard of such valuation rules are discussed below:

1. Can Discounted Cash Flow Method of valuation be proceeded with for the purposes of sections 56(2) (viia) and 56(2) (vii)?

It is clear from the Rule 11UA that only the breakup value method can be proceeded for purposes of sections 56(2)(viia) and 56(2)(vii), while either DCF method or break-up value method can be pursued for purposes of section 56(2)(vii b).

2. Instead of the break-up value method, can yield method of valuation be approached for running companies?

Regarding this, the Supreme Court has observed in the case of ***Bharat Hari Singhania v CWT***[16] in the context of Wealth-tax Act, 1957: "If the rule is valid and good, it has to be proceeded in each and every case. It is not the case of option or choice. The rule-making authority has advised only one method for the valuation of unquoted equity shares. There is no

[16] Bharat Hari Singhania v. CWT, (1994) 1 SCR 1033 *(India).*

other method prescribed by the rules, if this practice were not to be followed. Where there is a rule recommending the manner in which a specific property has to be valued, the authorities under the Act have to pursue it. They cannot invent their own means and ways for the valuation of the assets. Therefore, where unquoted equity shares of a company (other than Investment Company or a managing agency company) have to be valued, **Rule 1D** has to be followed in every case. On a combined reading of Rule 11UA, it can be deduced that only the valuation methods prescribed by Rule 11UA can be appropriated for valuation of shares of any company, whether a running business or not.

3. In case of listed shares, should transaction costs, such as STT, brokerage, stock exchange, service tax etc. be incorporated for the purposes of valuation?

The rule necessitates consideration of value registered in the stock exchange. Such value does not cover such transaction costs, though such transaction costs certainly have to be incurred if securities or shares are acquired on the stock exchange.

4. In case of unlisted securities and shares other than equity shares, a merchant banker's report or a report of an accountant is required. Is the merchant banker or accountant necessitated to follow any specific method? Can an Assessing Officer confront the method of valuation adopted by the merchant banker or the accountant?

There is no specific method of valuation prescribed by the merchant banker. He can therefore pick to follow any method of valuation, which is appropriate to the security being valued and which is a recognized method. The valuation method can be confronted by the Assessing Officer only if it is not a recognized valuation method appropriate for the specific type of security being valued.

5. Sub-rule (1) entails a balance sheet on the date of valuation audited by the statutory auditor to be taken for the purposes of valuation of unlisted shares, unlike sub-rule (2) which allows use of the last Balance Sheet acquired by the AGM. Does this mean that audited accounts have to be formulated on each date when there is a transfer of shares by a shareholder? What would be the pertinent date – the date of lodgment of shares for

transfer with the company by the buyer, the approval date of transfer of shares by the directors or the date entered on the transfer form as the date of execution of the transfer?[17]

In this regard, Madras High Court in the case of ***CWT v. S Ram***[18] observed in the context of the Wealth-tax Act, 1957, "where a day or two separated the date of the gift from the date of the balance-sheet, it would be an unnecessary exercise of one's labor not to take note of the nearest balance-sheet, but to go upon some other labored valuation of the company's assets involving effort and time."

However, in all these cases of valuation of unquoted shares, the true fundamental is that if it were possible to draw up a precise balance-sheet as on the date of the gift that would afford quite an ideal solution and an accurate basis. But since the question of valuation arises only in a shareholder's assessment, neither the Department nor the Shareholder can expect the accountants and the staff of the company to oblige them by diligently drawing up a balance-sheet as on the date of the gift even presuming that the drawing up of a balance-sheet on that date would be viable or is capable of being done in a right manner, after a passage of time. In the non- existence of the facility of drawing up a balance-sheet promptly on the date of the gift, the next best thing, both for the Department and an assessee who is the holder of the unquoted shares which is charged with the fidelity of assessing the market value of the shares.

We cannot be assertive about taking, as the basis, either the balance-sheet which falls after or the balance-sheet which falls before the date of the gift. We have to take both into account.

Therefore, the better perspective is that the company need not get the accounts audited on the date of transfer of the shares, but the transferee of the shares by taking the audited accounts of the earlier year and the subsequent year into consideration can work out the evaluated fair market value of the shares on the date of purchase.

6. Is any adjustment required for deferred tax liability or deferred tax assets while doing the valuation?

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[17] *Id.* 15.

[18] CWT v. S. Ram, 197 (1992) ITR 262 (Mad.).

It has been clearly stated in the break-up value method formula that 'A' (Assets) stands for book value of the assets in the balance sheet as limited by any amount of tax paid as collection at source or deduction or as advance tax payment as limited by the amount of tax claimed as refund under the Income-tax Act and any amount depicted in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not indicate the value of any asset. From the above, it can be shown that as deferred tax asset is not an advance payment of tax, deferred tax asset does not needed to be deducted from the value of assets.

Though possibility a provision for taxation, Deferred tax liability is not in the nature of unascertained liability or reserve, as held by the Tribunal in the case of ***ACIT vs. Balarampur Chini Mills Ltd.***[19]

CONCLUSION

Hence, as announced by Press Release, with reference to the shares of unlisted company, new Rules have reformed the ambit of PAN reporting from primary subscription to secondary sale/ purchase transactions along with increase of monetary threshold from INR. 50,000 to 1, 00,000 INR per transaction. Section 50CA was incorporated as an anti-abuse measure to restrain the practice of transmission of unquoted shares at lower than fair market value ("FMV"). Section 50CA taxes the difference between the cost as capital gains for the "transferor" of such share and FMV of the unquoted share while section 56(2) taxes the difference between consideration as a deemed benefit under the head income from other sources for the "recipient" of such share and FMV. In this context, the said rules advance a methodology for calculating FMV of "unquoted equity shares" for purposes of the concerned sections. These rules do bring about greater coherency as (i) FMV basis has been limited to particular assets of a company, where normally a direct transmission of these assets could generate significantly higher taxes (ii) it advances to align the methodology of taxation for the transferee and transferor through Rule 11UAA and Rule 11UA. This is another example where the government is embracing a consultative approach, as stakeholders have been given an option to afford comments on the draft rules before finalization. However, this will lead to an extra tax burden for both the transferee and the transferor. Hence, transactions in unquoted equity shares will need to pursue the norms of fair values.

[19] ACIT vs. Balarampur Chini Mills Ltd., 3 (2011) TMI 1040.