

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA Nos.921 & 922/Chny/2018  
(निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15)

<b>M/s Expat Haven Estate Pvt. Ltd</b> No. 20/III Floor, Capital Towers, 180 M.G. Road, Chennai – 600 034.	<b>बनाम/ Vs.</b>	<b>ITO</b> Corporate Ward (2)(1), Chennai.
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AABCL-6482-D</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri T. Ravindra (CA) – Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri ARV Sreenivasan (Addl.CIT) – Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	21-04-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05-05-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2013-14 & 2014-15 arise out of separate orders passed by learned first Appellate Authority. However, facts as well as issues, in both the appeals, are identical i.e., addition u/s 56(2)(viib). The appeal for AY 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)] dated 28.12.2017 in the matter of

assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31.03.2016.

2. The Ld. AR advanced arguments and submitted that share valuation was done by adopting the discounted cash flow method (DCF) which is one of the prescribed method under Rule 11UA. The Ld. AR also submitted that few of the share holders were non-resident and accordingly, the provisions of Sec. 56(2)(viib) would not apply in such cases. For the same, Ld. AR pleaded to restore the matter back to the file of Ld. AO. The Ld. Sr. DR, on the other hand, justified the additions and submitted that valuation was not arrived at in the prescribed manner. Having heard the rival submissions and after going through the orders of lower authorities, our adjudication would be as under.

3.1 The assessee being resident corporate assessee is stated to be engaged in the business of real estate. However, it was noted that no business activity was commenced even up-to AY 2015-16. During assessment proceedings, it transpired that the assessee issued certain shares during the year at premium of Rs.40/- & Rs.50/- per share. The same has been detailed in para 4 of the assessment order. The share premium thus received amounted to Rs.316.90 Lacs. The assessee was directed to justify the premium in terms of Sec. 56(2)(viib).

3.2 The assessee submitted that shares were valued on the basis of DCF method which is one of the prescribed methods in terms of Rule 11UA of the IT Rules, 1962. However, Ld. AO opined that DCF methodology was irrelevant to the case of the assessee. Further, the valuation was not done by 'accountant' as required under the Rule. Finally, the share premium was treated as 'income from other sources'

as per Sec. 56(2)(viib) of the Act. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

3.3 Similar are the facts in AY 2014-15, wherein the assessee has issued further shares to many entities as detailed in para 4 of the assessment order. Taking the same view, the Ld. AO added the amount of share premium of Rs. 96.80 Lacs to the income of the assessee. The same was confirmed by Ld. CIT(A) against which the assessee is in further appeal before us.

3.4 Another addition made in AY 2014-15 is addition u/s. 37 for legal and professional charges. The assessee debited legal and professional fees of Rs.23.96 Lacs out of which Rs.19.51 Lacs was on account of salary reimbursement of Shri Debanjan Roy and Shri Rakesh Dhamani. The assessee submitted that Shri Debanjan Roy was employee of EPDPL whose services encompasses to oversee the operations of subsidiary / associated concern. Shri Rakesh Dhamani was stated to be full time consultant of EPDPL. However, since the assessee's project was not launched and there was no revenue from operations, Ld. AO disallowed the same. The Ld. CIT(A) confirmed the same on the ground that the assessee could not prove the nature of services rendered by these employees. Further, the assessee did not reflect any income and therefore, expenditure incurred before commencement of project was to be added to the cost of the projects. Accordingly the ground was dismissed against which the assessee is in further appeal before us.

#### **Our findings & Adjudication**

4. Upon due consideration of material fact, we note that the assessee has received share premium of Rs.316.90 Lacs during AY 2013-14 which has been added u/s 56(2)(viib) in view of the fact that the

assessee could not justify the quantum of premium. The share valuation was not supported by the report of 'accountant' as prescribed under the rules. Another submission made before us is that several share allottees are non-resident with respect to whom the provisions of Sec.56 (2)(viib) would not apply. Therefore, considering the factual matrix and keeping in view the prayer made by Ld. AR, we set aside the impugned order and remit the matter back to the file of Ld. AO for fresh adjudication with a direction to the assessee to substantiate its case. All the issues are kept open. Needless to add that adequate opportunity of hearing shall be granted to the assessee. The appeal for AY 2013-14 as well as corresponding grounds taken in AY 2014-15 stands allowed for statistical purposes.

5. The issue of legal and professional fees in AY 2014-15 would also stand restored back to the file of Ld. AO since Ld. CIT(A) has given a finding that the assessee could not prove the nature of services rendered by these employees. Further, the assessee did not reflect any income. The Ld. AO is directed re-adjudicate this issue after considering assessee's reply, in this regard. The ground taken by assessee, in this regard, stands allowed for statistical purposes.

6. Both the appeals stands allowed for statistical purposes.

Order pronounced on 05<sup>th</sup> May, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई / Chennai; दिनांक / Dated : 05-05-2022.

JPV

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF