आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 950/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2012-13

Smt. Jothi Narayanan, No.24, Annai Illam, 46th Street, Mangaiyarkarasi Nagar, Chennai – 600 061.	vs.	**The Addl.CIT,** Central Circle-3(2), Chennai.

PAN: ACTPJ 2778B

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./**ITA No.: 519/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2017-18

Shri Thanushkodi Narayanan, No.24, Annai Illam, 46th Street, Mangaiyarkarasi Nagar, Chennai – 600 061.	vs.	**The Addl.CIT,** Central Circle-3(2), Chennai.

PAN: AAEPN 4579K

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by	:	Shri B. Ramakrishnan, F.C.A & Shri Shrenik Chordia, C.A
प्रत्यर्थी की ओर से/Respondent by	:	Shri N.B. Som, CIT
सुनवाई की तारीख/Date of Hearing	:	05.09.2023
घोषणा की तारीख/Date of Pronouncement	:	08.11.2023

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee in **ITA No.950/CHNY/2022** is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in DIN:ITBA/APL/M/250/2022-23/ 1045434885(1) dated 13.09.2022. The assessment was framed by the ACIT, Central Circle 3(2), Chennai for the assessment year 2012-13 u/s.153C r.w.s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 15.01.2022.

2. At the outset, the ld.counsel for the assessee drew our attention to additional grounds raised i.e., Ground Nos.1A & 2, which read as under:-

> 1A. For that the Learned Commissioner of Income Tax (Appeals) has erred in upholding the Order u/s 153C r.w.s.144 of the Act in the absence of any incriminating material pertaining to the Appellant found from the persons searched.
>
> 2. For that the Learned Commissioner of Income Tax (Appeals) has failed to appreciate that the Order dated 15.01.2022 made u/s.153C r.w.s. 143(3) of the I.T.Act, 1961 by the AO was without jurisdiction, as the provisions of section 153C(1) of the Act, 1961 did not apply to the Assessment year, in question, in facts and the circumstances of the case and in law.

3. The ld.counsel for the assessee filed petition under Rule 11 of the Income-tax Appellate Tribunal Rules, 1963 for admission of

additional grounds and adjudication of the same for the reason that the grounds raised are purely legal and jurisdictional grounds and facts are very much available on the record of the AO. The Tribunal has not to go into new facts. The ld.counsel drew our attention to details that the assessment in this case for the relevant assessment year 2012-13 was unabated and there is no incriminating material found during the course of search conducted on the assessee on 04.10.2017. The ld.counsel for the assessee drew our attention to original return of income filed on 27.09.2017 and no action whatsoever is pending with the Department as on the date of search i.e. 04.10.2017. Hence, in the absence of any incriminating material these grounds are to be admitted and adjudicated.

4. On the other hand, the ld.CIT-DR stated that the decision of National Thermal Power Corporation is against assessee and in favour of Revenue and he read out relevant para 4, 5 & 6 of the judgment but could not make out assessee's case falls under any of the condition that the facts are not available on record or the issue is not as regards to jurisdiction assumption by AO in the absence of any incriminating material.

5. We have noted the arguments of both the sides and seen the details which are as under:-

Events	Date	Relevant AY
Original Return of Income	27-09-2012	
Search and seizure operation	04-10-2017	2018-19
Issuance of Notice u/s.153C by ACIT, Central Circle-2(2)	08-04-2019	2020-21
Centralization of case to ACIT, Central Circle-3(2)	12-06-2019	2020-21
Issuance of Notice u/s 153C by ACIT, Central Circle -3(2)	21-08-2019	2020-21

We noted that this is purely legal issue raised by assessee that the assessment framed u/s.153C r.w.s. 143(3) of the Act, without incriminating material on unabated assessment is bad in law and moreover this issue is covered by the decision of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell (P) Ltd., [2023] 454 ITR 212. Hence, we admit this ground and adjudicate.

6. Brief facts relates to the above issue are that the assessee is a Director of Annai Builders Real Estate Pvt. Ltd., and filed her original return of income u/s. 139(4) of the Act on 27.09.2012 for the relevant assessment year 2012-13.A search and seizure action u/s.132 of the Act was conducted on the business premises and residence of Directors of Annai Builders Real Estate Pvt. Ltd., on 04.10.2017. The AO framed assessment u/s.153C r.w.s. 143(3) of

the Act dated 15.01.2022 in the case of assessee making assessment of various additions which are as under:-

A.	Income from salaries as returned	-	Rs.16,55,400/-	
Add:	Allowances disallowed (as discussed in paras 11.1 to 11.3)	-	Rs.1,44,600/-	Rs.18,00,000/-
B.	Loss from House property as returned	-	(Rs.42,16,950)	
Add:	Interest on borrowed capital disallowed as in para (12.1 to 12.4)	-	Rs.8,14,484/-	
Add:	Deemed rental income from Thillai Ganga Nagar property (as in para 13.2)	-	Rs.96,000/-	
Add:	Additional deemed rental income from Ponniamman Koil Street property (as in para 13.2)	-	Rs.24,000/-	
Add:	Disallowance of deduction u/s 24(a) (as in para 13.3)	-	Rs.7,200/-	(Rs.32,75,266)
C.	Income from Business as returned			Rs.15,75,000/-
D.	Income from Other Sources as returned	-	Rs.5,22,438/-	
Add:	Addition u/s 56(2)(vii)(c) as in para 15 above	-	Rs.15,80,200/-	Rs.21,02,638/-
E.	Deemed Dividend u/s.2(22)(e) as in para 14 above			Rs.1,00,000/-
	Assessed income			Rs.23,02,372/-

Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO and partly allowed some of the issues. Aggrieved, assessee is in appeal before us.

7. Now, the assessee before us contended that there is no incriminating material found during the course of search in the case

of Smt. Jothi Narayanan and the very additions made by AO are normal additions i.e., emanating from either regular books of accounts or the assessee filed her return of income only. Even the addition u/s.56(2)(vii)(c) of the Act is made based on special auditor's report obtained u/s.142(2A) of the Act in the case of assessee for assessment year 2012-13 which is enclosed in assessee's paper-book at pages 142 to 153. The rest of additions are additions/ disallowances from salary, interest on borrowed capital added and disallowed, deemed rental income from Thillai Ganga Nagar property and additional deemed rental income from Ponniamman Koil Street property and disallowance of deduction u/s.24(a) of the Act and addition u/s.56(2)(vii)(c) of the Act. When these facts were confronted to ld.CIT-DR, he only read out from the letter of the assessee filed with PCIT, Central Circle 2(2), Chennai dated 04.03.2019 that the assessee herself had asked for certified copies of sworn stated recorded during the course of search, copy of seized material, loose sheets and electronic device. The ld.CIT-DR stated when the assessee herself is asking these documents, there is no question of seized documents not available. On further query, the ld.counsel for the assessee stated that if the Revenue has these seized material, let them provide. On this, the ld.CIT-DR could not

answer or could not convert the statement that there is no seized material or he could not produce any seized material in relation to these issues for the relevant assessment year 2012-13. In the absence of any incriminating material, we feel that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell (P) Ltd., *supra* and hence, we allow the additional ground raised by assessee and quash the assessment framed u/s.153C r.w.s. 143(3) of the Act dated 15.01.2022. The appeal of the assessee is allowed on this issue only.

8. As regards to ground of merits, since we have adjudicated the jurisdictional issue by admitting the additional ground and decided in favour of assessee, we need not to go into the merits of the assessee. Therefore, this appeal of the assessee is allowed.

ITA No.519/CHNY/2013

9. This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in DIN:ITBA/APL/M/250/2022-23/1050516570(1) dated 08.03.2023. The assessment was framed by the ACIT, Central Circle 3(2),

Chennai for the assessment year 2017-18 u/s.153A of the Act vide order dated 17.01.2022.

10. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of expenditure towards helper allowance claimed as deduction u/s.10(14)(i) of the Act amounting to Rs.5,14,200/- without considering that the assessee is eligible for such claim.

11. Brief facts are that the assessee filed his return of income u/s.153A of the Act on 17.08.2019 for the assessment year 2017-18 and claimed allowances to the tune of Rs.4,80,000/- on account of helper allowance whereas said claim was not there in the original return filed by assessee on 12.08.2018. The AO noted that the assessee has not offered any additional income from salary in the return filed u/s.153A of the Act and also during the course of special audit carried out u/s.142(2A) of the Act and also no supporting documents have been submitted before the AO during assessment proceedings and hence, the AO disallowed this sum of Rs.5,14,200/- The AO noted that the assessee vide submissions dated 07.12.2021 produced sample copies of vouchers for claim of incurring of

expenditure towards helper allowances. The CIT(A) also confirmed the action of AO as these are neither fresh claim arising out of search proceedings found during the course of search and even no evidence were adduced to support his claim. Hence, CIT(A) also confirmed the action of AO. Aggrieved, assessee is in appeal before the Tribunal.

12. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the ld.counsel for the assessee only made submission that the assessee has expended the money and this claim is made by assessee in the return filed u/s.153(3A) of the Act. But on query from the Bench, the ld.counsel could not state any evidence is filed even now before us in regard to claim of helper allowance paid to them. The ld.counsel stated that only few self-made sample copies of vouchers are available. After hearing ld.counsel for the assessee and ld. CIT-DR, we are of the view that the CIT(A) has rightly confirmed the action of AO, we uphold the same.

13. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in holding the taxable

perquisites being electronic items like T.V. sets and furniture items placed in assessee's residence and claimed the same as tax free amounting to Rs.3,96,016/-

14. Brief facts are that the AO during the course of assessment proceedings noticed from the accounts of Annai Builders Real Estate Pvt. Ltd., that from financial year 2011-12 to 2012-13, the assessee purchased TV sets and furniture items amounting to Rs.39,60,161/- and was given to M.D. for his use and assessee claimed exemption of this perquisites of Rs.3,96,016/- as exempt u/s.17(2) of the Act. The AO added this sum of Rs.3,96,016/- towards the assets on the ground that same were used by the assessee at his residence and thus 10% of cost of such equipments/perquisites is charged to tax in the hands of the assessee as per section 17(2) of the Act. The CIT(A) also confirmed the action of the AO.

15. We have heard rival contentions and gone through the facts and circumstances of the assessee. Before us, the ld.counsel for the assessee could not adduce any evidence or could not controvert the findings of the CIT(A) or could not make any legal arguments on

this. Hence, we have no agitation in confirming the order of CIT(A). This issue of assessee's appeal is dismissed.

16. The next issue in this appeal of assessee is as regards to the order of CIT(A) sustaining the estimated income i.e., deemed rental income of Rs.1,20,000/- as against assessed by the AO at Rs.2,00,000/-.

17. Briefly stated facts are that the AO during the course of assessment proceedings noticed that the assessee has two properties i.e., one residential property, house located at Bakha Reddy Nagar, Medavakkam, Chennai and commercial property at Ponniamman Koil Street, Madipakkam, Chennai apart from self-occupied residential house at Velacherry, Chennai. The AO noticed that the assessee has not declared any notional rental income despite assessee having property but offered Rs.1.20 lakhs for residential house located at Bakha Reddy Nagar, Medavakkam, Chennai in both the hands i.e., assessee and his wife. The AO going through the properties advertised for rentals atGoogle app noted that the 1 BHK property getting rental income of Rs.7,000/- to Rs.9,000/- in this area i.e., Medavakkam, Chennai being prime

localities of Chennai. Therefore, he treated the total deemed rent at Rs.4,00,000/- and accordingly added a sum of Rs.3,40,000/- considering the assessee's rental income of Rs.60,000/-. Aggrieved, assessee preferred appeal before CIT(A).

18. The CIT(A) after considering the submissions of the assessee and factual aspect of the case estimated the deemed rental income at Rs.1,20,000/- as against Rs.3,40,000/- made by the AO by observing in para 7.3.3 as under:-

> *"7.3..3 In respect of the properties at Velachery and Nanganallur, the AO has adopted Rs.2,00,000 each as the gross rental value of the property and after deducting Rs.30,000 each offered by the appellant in the return, he made an addition of Rs.3,40,000/-. The AO has observed that the rental in the areas range from Rs.7000 to Rs.9000/-. I found that the AO by adopting Rs.2,00,000 as gross rent, has fixed the monthly rent more than Rs.16000/-. This is not justified. Considering the area and location of the property, I would estimate the fair rent of the property at Rs.7500 per month and the annual rental value is determined at Rs.90,000/-. For the two properties, the annual rental value would be RS.1,80,000 against which the assessee offered Rs.60,000 in the return. The addition to be made would only be Rs.1,20,000 against Rs.3,40,000 made by the AO. The grounds raised are partly allowed. The appellant would get a relief of Rs.2,20,000/-."*

Aggrieved, assessee preferred appeal before Tribunal.

19. Before us, assessee contended that the addition is made based on estimates and based on enquiries carried out on the basis of advertisement of rental properties on google app and there is a

scientific method provided in the Act for computing ALV i.e., Municipal valuation. The rent should be computed on the basis of municipal valuation and not on the basis of advertisement on google app. On the other hand, the ld. CIT-DR relied on the order of the CIT(A).

20. After hearing rival contentions and going through the facts of the case, we noted the fact neither the AO nor the CIT(A) has carried out the exercise of ascertainingthe market value of rent by adopting a scientific method or by going through the municipal valuation. Since the assessee suo-motto quantified deemed rental income of this house at Rs.1.20 lakhs and divided among himself and his wife and declared Rs.60,000/- from this property and none of the authorities below have carried out this exercise of computing the correct market value, we feel that on estimate deemed rental income cannot be added u/s.24 of the Act. Hence, we delete the addition and allow this issue of assessee's appeal.

21. The next issue in this appeal of assessee is as regards to foreign travel expenditure treating the same as unexplained expenditure u/s.69C of the Act, amounting to Rs.1,50,000/-.

22. Brief facts are that the AO during the course of assessment proceedings noticed from seized material seized during search conducted on the business premises of Annai Builders Real Estate Pvt. Ltd., that the passport of Shri T. Narayanan, the assessee and his company manager Shri P.N. Pandian are available and both have made frequent trips. The assessee during the course of recording of statement u/s.132(4) of the Act, dated 04.10.2017 admitted that he has incurred foreign trip expenditure to visit Dubai, Singapore and Thailand which were exclusively for business promotion but all other trips were pleasure trips and source of the same was out of his personal income. Subsequently, again statement recorded on 01.12.2017, the assessee offered a sum of Rs.1,50,000/- per year from assessment year 2014-15 to 2018-19 while answering question no.10, which reads as under:-

> "Q.No.10 While answering to Q.No.35 in the sworn statement recorded u/s.132(4) of the Income Tax Act, 1961 on 06.10.2017 from you, you have stated that you will submit the source of foreign travel expenses. So far you are not submitted the details. Please comment on this.
>
> Ans.: Sir, I am extremely sorry for the delayed submission. We have gone to foreign countries 10 to 15 times since 2013. I don't have the exact details of expenses. I hereby offer an amount of Rs.1,50,000/- each on estimate basis for the financial years 2013-14 to 2017-18 as additional income in my individual hands."

As the assessee could not give any details, the AO added the sum of Rs.1,50,000/- as unexplained expenditure u/s.69C of the Act. Aggrieved, assessee preferred appeal before CIT(A).

23. The CIT(A) after considering the submissions of the assessee confirmed the addition vide para 7.6.4 as under:-

> *"7.6.4. I have considered the submissions of the appellant. The appellant had admitted during the course of search that some of the foreign travelling were done for personal pleasure trips and not for the purpose of business and has agreed to offer Rs.1,50,000 for each of the assessment years including the impugned assessment year as additional income. Though the submission of the appellant that no addition can be made solely based on the admission of the assessee, the appellant was not able to prove that all the foreign travelling expenses were incurred only for the purpose of the company's business with sufficient evidence. Since the appellant has not adduced full proof evidence to show that all the foreign travelling expenses were incurred wholly and exclusively for the purpose of business of the company in which the appellant is a director, I have no other alternative except to sustain the addition of Rs.1,50,000 made by the AO and dismiss the grounds raised."*

Aggrieved, now assessee is in appeal before the Tribunal.

24. We have heard rival contentions and gone through facts and circumstances of the case. We noted that even now before us, the assessee could not file any details of his foreign trips and how he made the expenditure. Once details are not available before lower authorities or even now before us, we are of the view that the AO

has rightly made addition of foreign travel expenditure of Rs.1,50,000/- treating the same as unexplained expenditure u/s.69C of the Act and CIT(A) has rightly confirmed the same in the absence of any evidence to the contrary. We confirm the addition and dismiss this ground of assessee's appeal.

25. The next issue in this appeal of assessee is regarding additional ground raised during the course of appeal proceedings that the addition made in the assessment u/s.153A of the Act in the absence of any incriminating material found during the course of search in view of the decision of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell (P) Ltd., [2023] 454 ITR 212. At the time of hearing, the ld.counsel for the assessee has not pressed this issue and hence, the same is dismissed as not-pressed.

26. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition on account of allotment of equity shares of 23,04,114/- @ Rs.10/- each on private placement basis as against the book value of shares prior to allotment worked out at Rs.552/- per share in violation of provisions of section 56(2)(vii)(c) of the Act. For this, assessee has raised following ground Nos. 5 to 5.2 :-

"5. For that the learned Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.124,68,29,788/- u/s.56(2)(vii)(c) of the Act (Tax effect – Rs.43,01,56,277/-)

5.1 For that the Learned Commissioner of Income Tax (Appeals) ought to have accepted the contention of the appellant that provision of section 56(2)(vii) are applicable to tax those receipts which are received without consideration / for inadequate consideration whereas the present case is allotment of shares which cannot be equated with receipt of shares.

5.2 Without prejudice to the above ground, the Learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the appellant and her husband are the sole shareholders of the company and thus the impugned transaction would not be subjected to Tax in the view of Explanation (e) of the said section 56(2)(vii) of the Act.

27. Brief facts are that during the financial year 2016-17, the authorized share capital of the company Annai Builders Real Estate Pvt. LTd., was increased from 1,00,00,000/- (10,00,000 equity shares of Rs.10/- each) to Rs.4,00,00,000/- (40,00,000 equity shares of Rs.10/- each) in the Board Resolution dated 03.03.2017. It was resolved to create, offer, issue and allot 23,04,114 equity shares of Rs.10/- each on private placement to the assessee. Thus, the assessee has been allotted 23,04,114 equity shares on the face value of Rs.10/- per share on private placement basis. The shares have been allotted at a face value not withstanding the fact that as per section 42 of the Companies Act, 2013 r.w.r. 14 of the Companies (Prospects and allotment of securities) Rules, 2014,

private placement shall be made at the fair value of equity share. The book value of the share prior to allotment works out to Rs.552/- per share as worked out below in accordance with Rule 11UA:-

Particulars	Amount (Rs.)
Equity Share Capital	55,85,000
Reserves and Surplus as at 31.03.2017	30,26,58,624
Share holders funds	30,82,43,624
N. of shares existing	5,58,500
Book value per share	552

Thus, the value of the shares received by the assessee at Rs.552 per share is Rs.1,27,18,70,928/- whereas the value at which the shares have been allotted to the assessee works out under rule 11UA of the rules is at Rs.2,30,41,140/-. The difference of Rs.124,88,29,788/- is required to be assessed to tax as income from other sources as per the provisions of section 56(2)(vii)(c) of the Act. The AO issued show cause notice dated 13.04.2021 to assessee to showcause as to why the amount of Rs.124,88,29,788/- should not be added to the returned income of the assessee by invoking the provision of section 56(1)(vii)(c) of the Act. The assessee vide replied dated 15.11.2021 contended that additional shares of the company were allotted on pro-rota basis to shareholders including assessee based on their existing shareholding and hence in view of provisions of section 56(2)(vii)(c)

of the Act, the transaction with relatives will not apply as this transaction is between existing shareholders. It was also contended that in case there is disproportionate allotment by the company, it has to be applied only to the extent of excess share received by the assessee over and above the entitlement of assessee. It was contended that in the present case before us the shares were not allotted disproportionately and hence, the provisions of section 56(2)(vii)(c) of the Act will not apply. But the AO was not convinced and he rejected the assessee's submissions by stating that actually there is no allotment of shares to other shareholders i.e. spouse of the assessee Smt. Jothi Narayanan and only the assessee has received shares on allotment from the company Annai Builder Real Estate Pvt. Ltd., and the company being independent entity, assessee's case does not fit into the definition of close relatives. Hence, he added the differential amount of Rs.124,88,29,788/- being difference between the book value of shares and face value of shares allotted to assessee as 'income from other sources' u/s.56(2)(vii)(c) of the Act. Aggrieved, assessee preferred appeal before CIT(A).

28. The CIT(A) after considering the submissions of the assessee and also the factual aspect noted that the company and its shareholders are independent entities and either of them could sue each other and also it is a limited liability concern. Accordingly, he has rejected the explanation that transaction was not between the close relative but between the company and its individual shareholders. For this, he observed in para 7.5.3 to 7.5.6 as under:-

> *7.5.3 I have considered the submissions of the appellant. The transactions in the appellant's case is between the company and the shareholder. It is well settled law that the company and its shareholders are independent entities and either of them can sue the others. Under section 56(2) (vii), if the transactions are between the close relatives, then no addition could be made. In this case the transaction was not between the close relatives but by the company to the individual shareholder. No exemption was provided under section 56(2)(vii) for such transfers. The submission of the appellant that the benefit was passed on by the spouse to the appellant is not correct as only the company had allotted the shares and there was no transfer of shares by the appellant's wife to the appellant at all. Hence, the appellant's claim that no addition could be made u/s 56 since the transaction is between close relatives do not stand and is rejected.*
>
> *7.5.4 Under section 56(2)(vii)(c), if a person receives any property other than the immovable property for a consideration which is less than the fair market value, then the difference between the fair market value of the property and the consideration paid shall be deemed to be income from other sources. In this appellant's case, the appellant did receive 23,04, 144 shares at Rs. 10/- per share when the fair market value of the share was Rs.552. Thus, the appellant had obtained benefit in getting the property by paying a lesser amount when its market value was more. The provisions of section 56(2)(vii)(c) squarely applies to the appellant's case. It is the Golden Rule of interpretation that when the plain meaning of the statute poses no ambiguity, no extra words should be read into and no purposive interpretation can be resorted to and the statute is to be applied as such.*

7.5.5 The decision of the ITAT Visakhapatnam in the case of Sri Y Venkanna Choudhary relied on by the appellant does not apply to the appellant's case as the facts are distinguishable in that the Tribunal held that the excess benefit passed on between the relatives would not attract the provisions of section 56(2)(vii). In the appellant's case, the transaction was not between the relatives but between the company and the shareholder. Hence, the said decision cannot be applied to the appellant's case.

7.5.6 Hence, the addition made by the AO is quite justified and confirmed. I therefore sustain the addition of Rs.124,88,29,788/- made under section 56(2)(vii)(c) and dismiss the grounds raised.

Aggrieved, now assessee is in appeal before the Tribunal.

29. We have heard rival contentions and gone through facts and circumstances of the case. We have perused the assessment order and the order of CIT(A) and paper-book filed by assessee consisting of pages 1 to 230. We also perused the audited accounts filed by assessee of Annai Builders Real Estate Pvt. Ltd., for the year ended 31.03.2012. The short facts relating to the issue are that the assessee i.e., Shri Thanushkodi Narayanan, an individual, receives 23,04,144 shares of face value of Rs.10 each share as against the fair market value of each share at Rs.552 on preferential allotment on private placement basis. The value of shares received by assessee @ Rs.552 per share (fair market value) is Rs.127,18,70,928/- whereas the value at which shares have been

allotted to assessee @ Rs.10 i.e., face value of per share for the number of shares issued of 23,04,144 comes to Rs.2,30,41,140/-. Therefore, the differential amount of Rs.124,88,29,788/- was brought to tax by the AO as income from other sources as per the provisions of section 56(2)(vi)(c) of the Act. The CIT(A) noted that the assessee has obtained benefit in getting the property by paying lesser amount as against the fair market value which was more than the consideration paid by assessee or value paid @ Rs.10 per share. The CIT(A) noted that the company and its shareholders are independent entities and either of them can sue the others and the company and the individual i.e., the assessee both cannot be considered as relative within the meaning of definition as provided in Explanation 56(2)(vii) of the Act.

30. The ld.counsel for the assessee Shri B. Ramakrishnan relied on the following decision of Co-ordinate Benches of the Tribunal:-

i. Mumbai Bench in the case of ITO vs. Rajeev Ratanlal Tulshyan, [2022] 136 taxmann.com 42
ii. Raipur Bench in the case of Chhattisgarh Metaliks and Alloys (P.) Ltd., [2023] 147 taxmann.com 441
iii. Visakhapatnam Bench in the case of Kumar Pappu Singh vs. DCIT, [2019] 101 taxmann.com 122

iv. Visakhapatnam Bench in the case of ACIT vs. Y. Venkanna Choudary, [2019] 112 taxmann.com 71
v. Jaipur Bench in the case of Prakash Chand Sharma HUF vs. ITO, [2022] 139 taxmann.com 286

The ld.counsel for the assessee also stated that the Hon'ble Gujarat High Court in the case of PCIT vs. Jigar Jashwantlal Shah in Tax Appeal No.80 of 2023 along with Tax Appeal No.96 of 2023 dated 28.08.2023 has considered an identical issue but could not file judgment or could not give any citation during the course of hearing. Later after two or three days, he filed the copy of this judgment which is available in the file. The ld.counsel for the assessee stated that the provisions of section 56(2)(vii)(c) of the Act has been brought in the statute book to address the issue of consequent to abolition of gift tax where higher value is sought to be passed on from one person to another person without adequate consideration. However, the transactions between close relatives are excluded for the purpose of taxation under the income from other sources under section 56 of the Act. In the instant case, shares were issued by the company ABREPL to the existing shareholders who are husband and wife, being close-relatives and there was no other assessee for whom the shares were issued. Thus, the entire

shareholding of the company is retained by the family both prior and subsequent to the allotment of shares and no share was allotted to the outsiders. The assessee and his spouse have only applied for additional shares which were allotted by the ABREPL to increase the capital base by converting the unsecured loans as share capital. There is no increase in the assets of the company nor do the shareholders get any extra benefit or any amount other than the interest of the shareholders which they already had, since, both the shareholders of the company are closely related and having the interest over the entire assets i.e. reserves and surpluses. Thus, whatever excess benefit was passed on to the assessee was out of the interest of shareholding held by his spouse and therefore, it was submitted that such excess consideration or property is exempt from taxation u/sec. 56(2)(viii)(c)(ii) of the Act.

31. On the other hand, the ld. CIT-DR relied on the assessment order and the provisions of section 56(2)(vii)(c) of the Act.

32. We have considered the submissions of ld.counsel for the assessee as well as ld.DR and the case law relied on by the ld.counsel for the assessee. The facts are undisputed that the

assessee i.e., Shri Thanushkodi Narayanan, an individual, receives 23,04,144 shares having face value of Rs.10 each share as against the fair market value of each share at Rs.552 on preferential allotment on private placement basis. The value of shares received by assessee @ Rs.552 per share (fair market value) is Rs.127,18,70,928/- whereas the value at which shares have been allotted to assessee @ Rs.10 i.e., face value of per share for the number of shares issued of 23,04,144 comes to Rs.2,30,41,140/-. Therefore the differential amount of Rs.124,88,29,788/- was brought to tax by the AO as income from other sources as per the provisions of section 56(2)(vi)(c) of the Act. The CIT(A) noted that the assessee has obtained benefit in getting the property by paying lesser amount as against the fair market value which was more than the consideration paid by assessee or value paid @ Rs.10 per share. We have gone through the provisions of section 56(2)(vii) of the Act which provides for gift of money, immovable property and property other than immovable property exceeding Rs.50,000/- received by an individual or a HUF particularly any person or persons, the provisions of section 56(2)(vii) of the Act mandates that the provision of this section will apply subject to certain exceptions. The provisions of section 56(2)(vii)(c) of the Act reads as under:-

Sec.56.

(*2*) In particular, and without prejudice to the generality of the provisions of sub-section (*1*), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:—

……..

……..

(*vii*) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,

……..

……..

(*c*) any property, other than immovable property,—

(*i*) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(*ii*) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Further, the fourth proviso to section 56(2)(vii)(c) of the Act provides exceptions and which read as under:-

Provided further that this clause shall not apply to any sum of money or any property received—

(*a*) from any relative; or

(*b*) on the occasion of the marriage of the individual; or

(*c*) under a will or by way of inheritance; or

(*d*) in contemplation of death of the payer or donor, as the case may be; or

(*e*) from any local authority as defined in the *Explanation* to clause (*20*) of section 10; or

(*f*) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (*23C*) of section 10; or

(*g*) from any trust or institution registered under 1[section 12AA; or

(*h*) by way of transaction not regarded as transfer under clause (*vicb*) or clause (*vid*) or clause (*vii*) of section 47.

Explanation.—For the purposes of this clause,—

(*a*) "assessable" shall have the meaning assigned to it in the *Explanation* 2 to sub-section (*2*) of section 50C;
(*b*) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;
(*c*) "jewellery" shall have the meaning assigned to it in the *Explanation* to sub-clause (*ii*) of clause (*14*) of section 2;
(*d*) "property" [means the following capital asset of the assessee, namely:-]
(*i*) immovable property being land or building or both;
(*ii*) shares and securities;
(*iii*) jewellery;
(*iv*) archaeological collections;
(*v*) drawings;
(*vi*) paintings;
(*vii*) sculptures;
(*viii*) any work of art; [or] [(*ix*) bullion;
(*e*) "relative" means,—
(*i*) in case of an individual—
(*A*) spouse of the individual;
(*B*) brother or sister of the individual;
(*C*) brother or sister of the spouse of the individual;
(*D*) brother or sister of either of the parents of the individual;
(*E*) any lineal ascendant or descendant of the individual;
(*F*) any lineal ascendant or descendant of the spouse of the individual;
(*G*) spouse of the person referred to in items (*B*) to (*F*); and
(*ii*) in case of a Hindu undivided family, any member thereof;]
(*f*) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;

32.1 In the present case before us, the assessee has contended that the shares were issued by the company to the existing shareholders who are husband and wife being close relatives and there was no outsider to whom shares were allotted

and the entire share holding of the company is retained by both the parties prior and subsequent to the allotment of shares, the assessee case squarely falls in the exception as provided by the fourth proviso in term of the definition of 'relative'. We have considered the issue and noted that the transaction is between individual assessee i.e., the shareholder and the company. We are of the view that the assessee being individual shareholder and the allotter is the company, these are two independent entities being a person separately assessable to tax. We also noted from the provisions of section 2(31) of the Act, that "person" includes an individual and also a company. Here in the present case before us, the company has allotted shares to the individual who is also existing shareholder. A company is a separate and distinct taxable entity being a juristic person eligible to own property and to sue, or be sued, in its name. A company is separate and distinct from its shareholders. Hence, it cannot be stated that the individual assessee who has been allotted shares is relative within the definition provided in Explanation to the proviso to section 56(2)(vii) of the Act. Hon'ble Madras High Court in the case of K.S. Mothilal, K.S. Damodaran & others, (2003) 113 Comp Cas 562, held that it is the well settled legal position that a shareholder has no interest in

the property of the company, which is a juristic person and which is entirely distinct from the shareholders.

32.2 Further, the company is having limited liability under the definition as defined in the provisions of the Companies Act. The provisions of section 56(2)(vii) of the Act mandates that the section 56(2)(vii) of the Act would not apply to any sum of money or any property received from any relative and relative is defined vide Explanation to section 56(2)(vii)(e) of the Act. According to us, the the individual, the assessee in the present case and the allotter company does not fall under definition of relative. The definition to 'relative' as defined in the Explanation, as reproduced above, is categorical that the definition of relatives defines only blood relations or who are lineal ascendant or descendant of the individual or of the spouse of the individual and so on. Nowhere the company is defined under the definition of relative as provided in the Act. We are of the view that once the language used in the explanation is clear and categorical, we cannot ascribe any other meaning to the same. Further, we are of the view that fiscal statute shall have to be interpreted on the basis of the language used therein and not *de hors* the same. No words ought to be added and only the language

used ought to be considered so as to ascertain the proper meaning and intent of the legislation. We have to ascribe the natural and ordinary meaning to the words used by the legislature and ought not, under any circumstances, to substitute our own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions. This view has been held by the Hon'ble Supreme Court in the case of Orissa State Warehousing Corporation vs. CIT (1999) 237 ITR 589(SC).

32.3 As regards to the decision, which was handed over by the ld.counsel for the assessee after hearing was over, we have gone through the decision of Hon'ble Gujarat High Court in the case of Jigar Jashwantlal Shah, *supra*. We noted that the issue before Hon'ble Gujarat High Court was allocation of 1.03 lakh right shares allotted to the assessee proportionate to his shareholding in the company and in term of that, Hon'ble High Court held that the issue of new shares by the company as right shares is creation of property and merely receiving such shares cannot be considered as transfer u/s.56(2)(vii)(c) of the Act and accordingly, these provisions will not be applicable on the issuance of share by the company in the hands of the allottee. Hence, this case is

distinguishable on facts. We have gone through the provisions of section 56(2)(vii)(c)(ii) of the Act and noted that where an individual receives, in any previous year, from any person or persons on after the first day of October, 2009 any property, other than immovable property for a consideration which is less than the aggregate fair market value of the property, the aggregate value of that property has exceeds the consideration will be brought to tax under this provision except any exception craved out in this provision. The assessee's case squarely falls under the provision of section 56(2)(vii)(c) of the Act and according to our view, assessee's case does not fall under any exceptions as provided in this explanation to proviso to section 56(1)(vii)(c) of the Act. Hence, we are of the view that under the provisions of section 56(1)(vii)(c), where an individual receives, in any previous year, from any person or persons any property, other than immovable property, for a consideration which is less than the aggregate fair market value of the property, in excess of the prescribed limit of Rs.50,000/-, the aggregate of fair market value of that property as exceeds such consideration, will be brought to tax including allotment of shares and securities. Hence in the present case before us, the shareholder was allotted shares in private placement in

number 23,04,114 being equity shares at the face value of Rs.10 per share whereas the fair market value of each share was at Rs.552. Therefore in our view, the AO has rightly assessed the differential value of shares received by assessee of Rs.1,24,88,29,788/- to tax as 'income from other sources' as per the provisions of section 56(2)(vii)(c) of the Act and upheld by CIT(A). We also confirm the action of the lower authorities and dismiss this issue of assessee's appeal.

33. In the result, the appeals filed by the assessees in ITA No.950/CHNY/2022 is allowed and ITA No.519/CHNY/2023 is partly-allowed.

Order pronounced in the open court on 8th November, 2023 at Chennai.

Sd/-	Sd/-
(मंजुनाथ. जी)	(महावीर सिंह)
(MANJUNATHA.G)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 8th November, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त /CIT
4. विभागीय प्रतिनिधि/DR 5. गार्डफाईल/GF.