

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI  
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 3100, 3101 & 3102/Mum/2023  
(Assessment Years: 2013-14, 2012-13 & 2011-12)

Lakshmi Mendalu Narayan Rao Naidu 302, Andheri New Link Road Extn, Ekdant CHS, Oshiwara Jogeshwari (W), Mumbai – 400 102	Vs.	National Faceless Assessment Centre Delhi
PAN/GIR No. AFWPN 4674 G		
<b>(Assessee)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Vimal Punmiya
<b>Respondent by</b>	:	Shri Manoj Kumar Sinha
<b>Date of Hearing</b>	:	23.01.2024
<b>Date of Pronouncement</b>	:	30.01.2024

**ORDER**

**Per Bench :**

The captioned appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short) 2011-12, 2012-13 and 2013-14.

2. The assessee has challenged the addition /disallowance made u/s. 69C, 2(22)(e) and 56(2)(vii) of the Act in the assessment years 2011-12 to 2013-14 respectively. The assessee has also raised an additional ground in A.Y. 2013-14. As all these cases pertain to the same assessee, though on different grounds, we hereby pass a consolidated order.

3. We heard the parties and perused the record. We shall first take up the appeal relating to AY 2011-12. The issue contested in this appeal is related to the addition of Rs.15.00 lakhs made by the AO, which related to advance received by the assessee from M/s Advance Technologies Ltd, which was considered by the AO as accommodation entry. We notice that the assessing officer has passed the assessment order u/s 144 of the Act to the best of his judgement. Before Ld CIT(A), the assessee filed details relating to advances and also confirmation obtained from M/s Advance Technologies Ltd. However, he rejected the same by observing that the same will not serve any purpose, meaning thereby, the Ld CIT(A) has not given proper reasoning for rejecting the documents filed by the assessee. Further, the Ld CIT(A) did not call for remand report from the AO in respect of the documents filed by the assessee, which is usually done. Accordingly, we are of the view that the order passed by Ld CIT(A) cannot be sustained and further, this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh. We also direct the assessee to fully co-operate with the AO for expeditious completion of assessment proceedings.

4. We shall now take up the appeal filed for AY 2012-13. The assessee is challenging the addition of Rs.14,85,000/- made as deemed dividend u/s 2(22)(e) of the Act. According to the AO, the assessee is a director in a closely held company named M/s Bhddheshwar Estates P Ltd and during the year under consideration, she has taken advance of Rs.14,85,000/-, besides salary of Rs.1,30,000/-. The AO took the view that the above said advance is assessable as deemed dividend u/s 2(22)(e) of the Act and

accordingly so assessed the same. Before Ld CIT(A), the assessee submitted that the advance of Rs.14.85 lakhs represented normal advance given to the employees and hence the provisions of sec. 2(22)(e) are not attracted. The assessee also submitted that she has resigned from the Board of the above said company and further does not hold substantial interest in the share capital of the company. Since the assessee did not furnish any evidence in support of the submissions made, the Ld CIT(A) confirmed the assessment made u/s 2(22)(e) of the Act.

5. We heard the parties on this issue and perused the record. We notice that the AO has invoked the provisions of sec. 2(22)(e) of the Act only for the reason that the assessee is a director in M/s Buddheshwar Estates P Ltd. However, we notice that the provisions of sec.2(22)(e) of the Act would get attracted only when the assessee is holding substantial interest in the closely held company as a shareholder, i.e., the provisions are not attracted on the basis of holding of directorship. Admittedly, the shareholding pattern of above said company at the time of taking of advance by the assessee was not examined by the AO, which would have determined the applicability of sec.2(22)(e) of the Act. According to the assessee, she has resigned from the Board and also does not hold substantial interest. However, the assessee has not furnished any supporting documents to substantiate above submissions. Besides the above, the provisions of sec.2(22)(e) exclude advances given to a shareholder during the course of carrying on business for business purposes. It is the contention of the assessee that the above said advance was given to her in the capacity of an employee and hence it was so given during the course of carrying on business for business purposes. We notice that this contention of the

assessee also was also not examined. Under these set of facts, we are of the view that this issue also requires examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh. We also direct the assessee to fully co-operate with the AO for expeditious completion of assessment proceedings.

6. We shall now take up the appeal filed for AY 2013-14. In this year, the assessee is challenging the addition made u/s 56(2)(vii) of the Act. During the year relevant to AY 2013-14, the assessee has purchased a flat for Rs.1.25 crores, whose stamp duty value was Rs.1,50,22,500/-. Hence the AO added the difference amount of RS.25,22,500/- as deemed income u/s 50C of the Act. In the appellate proceedings, the assessee submitted that there are certain deficiencies in the property and hence she could purchase the property at a price lower than the stamp duty value. Accordingly, she pleaded that the issue of valuation of property may be referred to the Departmental Valuation Officer (DVO) as contemplated in sec.50C of the Act. However, the Ld CIT(A) took support of valuation of flat in the same society as reported in the internet and rejected the above said request of the assessee.

7. Further, the Ld CIT(A) asked the assessee to furnish the details of sources for purchase of property. Though the assessee furnished the same, yet the Ld CIT(A) rejected them and accordingly held that the assessee did not have proper sources for purchase of property at Rs.1.25 crores. Accordingly, he enhanced the assessment by Rs.1.25 crores.

8. We heard the parties and perused the record. Under the provisions of sec.50C, the AO is bound to refer the matter of valuation to the DVO, if the assessee is disputing the valuation determined by Stamp duty authorities. Though the assessee has demanded for referring the matter to the DVO before the Ld CIT(A), yet the Ld CIT(A) rejected the same, which, in our view, is in violation of sec.50C of the Act. Further, we notice that the Ld CIT(A) has relied upon internet information about the valuation of property in the year 2023, for determining the value of property as on 2012. In our view, this approach of the Ld CIT(A) is also not correct and the provisions of sec.50C do not contemplate such an approach.

9. We further notice that the Ld CIT(A) did not call for remand report from the AO with regard to the sources explained by the assessee. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for both the issues, viz., addition made u/s 50C and u/s sec.56(2)(vii) afresh. We also direct the assessee to fully co-operate with the AO for expeditious completion of assessment proceedings.

10. In the result, all the three appeals of the assessee are treated as allowed.

*Order pronounced in the open court on 30.01.2024.*

Sd/-

Sd/-

(B R Baskaran)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 30.01.2024  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai