

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

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1072 & 2073/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2014-15

**Haneda Trading and
Construction SDN BHD,**
Suite 10-01 Subang Square,
Corporate Tower,
47500, Jalan SS,
15/4G, Subang Jaya Selangor,
West Malaysia

**The Deputy Commissioner
of Income Tax,**
Vs. Circle 1(2),
Chennai.

PAN: AAGCH 2363G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Arjun Raj, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Ms. E. Pavuna Sundari, CIT

सुनवाई की तारीख/Date of Hearing

: 17.06.2025

घोषणा की तारीख/Date of Pronouncement

: 23.06.2025

आदेश / O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

These appeals filed at the instance of the assessee are directed against the orders of the Commissioner of Income Tax (Appeals), Chennai-16 dated 19.03.2024 and 21.06.2024. The CIT(A) order dated 19.03.2024 is passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act') whereas the order dated

21.06.2024 is passed u/s.154 of the Act. The relevant Assessment Year is 2014-15.

2. Brief facts of the case are as follows: The assessee is a non-resident company incorporated in Malaysia. It is engaged in the business of construction of highways and bridges. The Department had received information that assessee company had subscribed 3,36,571 shares at face value of Rs.10/- from M/s. Haneda Infra Pvt. Ltd., during the assessment year 2014-15. According to the AO, the Fair Market Value (FMV) of the shares was Rs.135.71. The AO was of the view that section 56(2)(vii) of the Act has application and accordingly, issued notice u/s.148 of the Act. During the course of re-assessment proceedings, the assessee stated that the shares were issue at face value of Rs.10/- and actual share value is negative Rs.84/- per share. The assessee in support of the above contention had submitted a valuation report issued by the Chartered Accountant. The AO after considering the valuation report rejected the same and computed the value of shares in accordance with Rule 11UA(1) of the Income Tax Rules and arrived at the FMV of the unquoted equity shares at Rs.135.71/-. By adopting the FMV of equity shares at Rs.135.71/-, the AO determined the total share value allotted at Rs.4,56,76,050/- and after subtracting the value adopted by the assessee at Rs.33,65,710/- computed the income of

the assessee company u/s.56(2)(vii) of the Act at Rs.4,23,10,340/- vide his order dated 31.01.2023 passed u/s.144(1)(a) r.w.s.147 r.w.s.144C(1) of the Act,

3. Aggrieved by the draft assessment proposed, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP in reply to AO's letter dated 06.01.2023 stated (DRP's letter dated 09.01.2023) that assessee's objections have been rejected in Form No.35A dated 30.04.2022 for the alleged non-adherence to the procedure laid down in Rule 4(3)(a) of the Income-tax Dispute Resolution Panel Rules, 2009. The AO upon receipt of such confirmation dated 09.01.2023 from the office of DRP, Bangalore passed final reassessment order dated 31.03.2023 by reckoning such communication as a direction in terms of section 144C(13) of the Act. The AO placed reliance on the judgment of Hon'ble Madras High Court in the case of M/s.Inno Estates (P) Ltd., vs. DRP (Writ Petition No.1787 of 2017 judgment dated 14.06.2017) for coming to a conclusion that rejection of objection in Form 35A by the assessee as directions in terms of Section 144C(13) of the Act for the purpose of completing the assessment proceedings.

4. Aggrieved by the final reassessment order, assessee filed appeal before the First Appellate Authority on 13.03.2023 and also

as an abundant caution filed appeal before the Tribunal on 26.07.2023. The appeal filed before the ITAT was dismissed in ITA No.859/CHNY/2023 (order dated 07.05.2024). The appeal of the assessee was dismissed as withdrawn, since the DR in the said case had contended that assessee had also filed an appeal before the CIT(A) on 13.03.2023. It was further stated in the DR's letter (received on 18.04.2024) as under:

“Preferring an appeal before ITAT directly on a final order passed u/s 144C, knowingly well that the appellant company had simultaneously filed an appeal before the CIT(A) is mischievous, suppression of facts and opposed to the law.

For the aforesaid reasons, the appeal filed by the appellant may kindly be dismissed and appropriate cost be imposed under Rule 32A of ITAT Rules 1963, for the suppression of facts that could have led to passing of an order opposed to the law.”

4. As regards the appeal before the First Appellate Authority, the CIT(A) vide his order dated 19.03.2024 passed u/s.250 of the Act, partly-allowed the appeal of the assessee. The CIT(A) reduced the addition u/s.56(2)(vii) of the Act to Rs.12,01,558/- instead of Rs.4,23,10,340/- made by the AO. Thereafter the CIT(A) rectified his original order u/s.154 of the Act on 21.06.2024 by stating there is a mistake apparent on record with regard to the valuation of FMV of shares subscribed by the assessee company and reconfirmed the addition made by the AO u/s.56(2)(vii) of the Act.

5. Aggrieved by the order of the CIT(A) dated 19.03.2024 passed u/s.250 of the Act, the assessee has filed the appeal in ITA No.1072/CHNY/2024. Aggrieved by the CIT(A)'s order dated 21.06.2024 passed u/s.154 of the Act, the assessee has filed appeal in ITA No.2073/CHNY/2024.

6. We shall first adjudicate **ITA No.1072/CHNY/2024**. The grounds raised read as follows:-

1. The order of the CIT (Appeals) - 16, Chennai dated 19.03.2024 vide DIN & Order No. ITBA/APL/S/250/2023-24/1062946822 (1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The CIT (Appeals) - 16, Chennai erred in confirming the assumption of jurisdiction under Section 147 of the Act and consequently erred in confirming the order of reassessment passed under Section 147 r.w.s 144C of the Act without assigning proper reasons and justification.

3. The CIT (Appeals) - 16, Chennai failed to appreciate that the law laid down by the Supreme Court reported in 259 ITR 19 was not followed and ought to have appreciated that non adherence to the said law would vitiate the consequential reassessment passed in its entirety.

4. The CIT (Appeals) - 16, Chennai failed to appreciate that having not established the element of escapement of income within the scope of section 147 of the Act in the previous year relating to the assessment year under consideration, such presumption of escapement of income should be reckoned as nullity in law.

5. The CIT (Appeals) - 16, Chennai failed to appreciate that the order of reassessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

6. The CIT (Appeals) - 16, Chennai failed to appreciate that having observed the fact of rejection of the Objections filed in Form No. 35A before the Dispute Resolution Panel, the action in adhering to the provisions in Sub Section 144C(12) & 144C(13) of the Act with regard to

the time limit provided for passing the final reassessment order, the time limit prescribed under Section 144C(4) of the Act would automatically come into play, there by vitiating the final re-assessment order passed based on invalid directions of the Dispute Resolution Panel.

7. The CIT (Appeals) - 16, Chennai failed to appreciate that in the absence of directions issued by the Dispute Resolution Panel with in the time period provided under Sub Section 144C(12) of the Act, the appellant here in lost its characteristic of an "eligible assessee" in terms of Section 144C(1) of the Act, there by vitiating the final re-assessment order passed in Section 144C of the Act.

8. The CIT (Appeals) - 16, Chennai failed to appreciate that in any event, the email communication received from the Dispute Resolution Panel could not be construed as a "direction" in terms of Section 144C(12) of the Act, there by vitiating the decision to pass the final re-assessment order based invalid directions issued by them.

9. The CIT (Appeals) - 16, Chennai erred in partly the addition to tune of Rs.12,01,558/- being the differential sum quantified upon rejecting the issue price of equity shares at (-) Rs. 82.36/- per share in reckoning the Fair Market Value of Rs. 135.71/- per share in terms of Section 56(2) (viiia) of the Act without assigning proper reasons and justification.

10. The CIT (Appeals) - 16, Chennai failed to appreciate that the provisions of Section 56(2) (viiia) of the Act had no application to present case, there by vitiating the impugned order in its entirety.

11. The CIT (Appeals) - 16, Chennai failed to appreciate that the methodology used for the purpose of the calculating the Fair Market Value was not in accordance with provisions of Rule 11UA of the Income Tax Rules, 1962, there by negating the sustenance of the disputed addition based. on the erroneous calculation of the Fair Market Value in the impugned order.

12. The CIT (Appeals) - 16, Chennai failed to appreciate that in any event, the report on the calculation of Fair Market Value of the share provided by the Chartered Accountant was correct and where in the Fair Market Value per share of the appellant company was computed at (-) Rs. 82.36/- by adopting the Discounted Cash Flow Method in terms Rule 11 UA(2)(b) of the Income Tax Rules, 1962 which was completely over looked and brushed aside by giving wrong reasons, there by negating the findings in relation there to.

13. The CIT (Appeals) - 16, Chennai failed to appreciate that there power vested with the JAO to compute the fair market value of the shares issued and ought to have appreciated that the option vested with the appellant was

erroneously taken away in the process of substituting the fair market value adopted for making an addition u/s 56(2) (viiia) of the Act. 14. The CIT (Appeals)- 16, Chennai failed to appreciate that the determination of fair market value by the JAO was incorrect and suffered from multiple errors there by vitiating the addition made in terms of section 56(2) (viiia) of the Act.

15. The CIT (Appeals) - 16, Chennai failed to appreciate that the provisions of section 56(2) (viiia) of the Act was erroneously made applicable to the transaction of allotment/issue of equity shares among the Private Limited Company / Group Companies and hence ought to have appreciated that the applicability of the disputed provisions to the facts of the case was accordingly to be reckoned as bad in law.

16. The CIT (Appeals) - 16, Chennai failed to appreciate that the entire re-computation of taxable total income was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

17. The CIT (Appeals) - 16, Chennai failed to appreciate that there was no proper/reasonable opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

18. The Appellant craves leave to file additional grounds/arguments at the time of hearing

7. The assessee has filed a paper-book enclosing therein the details of the assessment proceedings, appellate proceedings and the case laws. The Ld.AR submitted the final reassessment order dated 31.01.2023 consequent to the DRP's direction dated 09.01.2023 is bad in law as the same is time barred. The Ld.AR submitted if the DRP's e-mail dated 09.01.2023 is reckoned as a direction in terms of Section 144C(5) of the Act, the same is beyond time as per Section 144C(12) of the Act (i.e., 9 months from the end of the month in which draft assessment order was forwarded). In the instant case, the DRP ought to have issued the directions on or

before 31.12.2022 however, has mentioned earlier DRP's (reckoned) directions is only on 09.01.2023. The AO has passed the final assessment order by relying on the judgment of the Hon'ble Madras High Court in the case of Inno Estates Pvt. Ltd., vs. DRP (Writ Petition No.1787 of 2017 judgment dated 14.06.2017).

8. The Ld.AR further submitted in the event the objections filed before the DRP is not maintainable, it should be construed that no objections were filed. It was submitted in such an event, time limit envisaged u/s.144(4)(b) of the Act would come into play i.e., within one month from the end of the month in which the period of filing objections in terms of Section 144C(2) of the Act expires. In the instant case, in such eventuality, the assessment order ought to have been passed on or before 31.05.2022 however the final reassessment order was passed only on 31.01.2023.

9. Further the Ld.AR submitted the case law relied on by the AO in the final assessment order in the case of Inno Estates Pvt. Ltd., *supra* is distinguishable on facts because in the said case, the assessee had filed objections before the DRP belatedly and furthermore the directions issued by the DRP dismissing such objections was passed within the due date prescribed under the Act

u/s.144C(12) of the Act. However, it was submitted that in the instant case, the objections filed in Form No.35A was within the time limit and the objections was disposed / dismissed by the DRP beyond the stipulated time u/s.144C(12) of the Act.

10. Per contra, the Ld.DR supported the orders of the AO and the DRP.

11. We have heard rival submissions and perused the material on record. We shall first adjudicate the legal issue raised in Grounds Nos.5 to 8 in ITA No.1072/CHNY/2024. In this context, it is to be mentioned that draft assessment order was passed in terms of Section 144C(1) of the Act on 29.03.2022 (received by the assessee company on 30.03.2022), proposing to make the disputed addition in terms of Section 56(2)(viiia) of the Act. The assessee company had thereafter filed its objections in Form No. 35A on 30.04.2022 before the jurisdictional Dispute Resolution Panel by opting for the procedure laid down in Section 144C(2) (b) of the Act. In this regard, we note that the said provision mandates filing of objection in Form No. 35A within 30 days from the date of receipt of the draft assessment in the event of objecting to said draft assessment order, which time limit has been complied with by the assessee company.

12. The Dispute Resolution Panel has to issue directions in terms of Section 144C(5) of the Act within 9 months from the end the month in which the draft assessment order was forwarded to the assessee herein as per the mandate prescribed in Section 144C(12) of the Act. On the facts of the present case, the directions ought to have been issued by the DRP, Bengaluru on or before 31.12.2022 (9 months from the end of the month of receipt of the draft assessment order; i.e. 29.03.2022). However, on the facts of the present case, the directions were not issued by the DRP, Bengaluru on or before the aforesaid due date, i.e. 31.12.2022.

13. The Assessing Officer vide email dated 06.01.2023 had sought for clarification with regard to the status of the directions to be issued in disposing of the objections filed in Form No. 35A dated 30.04.2022. The DRP - 2, Bengaluru vide their reply dated 09.01.2023 had communicated the fact of rejection of the objections filed by the assessee company in Form No. 35A dated 30.04.2022 for the alleged non adherence to the procedure laid down in Rule 4(3)(a) of the Income Tax (Dispute Resolution Panel), Rules, 2009. The Assessing Officer upon receipt of the such communication dated 09.01.2023 from the office of the DRP, Bengaluru, had proceeded to

pass the final re-assessment order dated 31.01.2023 by reckoning such communication as directions in terms of Section 144C(13) of the Act. The Assessing Officer placed reliance on the judgment of Hon'ble Madras High Court in the case of M/s. Inno Estates Private Limited vs Dispute Resolution Panel (Writ Petition No. 1787 of 2017 dated 14.06.2017) in reckoning such communication from the office of the DRP, Bengaluru in dismissing / rejecting the objections filed in Form No. 35A by the assessee company as directions (ought to be construed as directions) in terms of Section 144C(13) of the Act for the purpose of completing the final re-assessment proceedings.

14. The reliance placed by the AO on the aforesaid judgment of the Hon'ble Madras High Court is not correct inasmuch the said judgment is distinguishable to the facts of the present case. The following tabulation explains the said distinguishing element to the facts of the present Case:-

<i>Sl. No.</i>	<i>Event</i>	<i>In the case of Inno Estates Pvt. Ltd.</i>	<i>In the case of the appellant</i>
1.	<i>Pasing of the draft assessment order u/s.144C(1) of the Act</i>	29.03.2016	29.03.2022
2.	<i>Due date for filing objections in Form No.35A before the jurisdictional Assessing Officer</i>	28.04.2016	30.04.2022 <i>(Received on 30.04.2022)</i>
3.	<i>Actual date of filing</i>	29.04.2016	30.04.2022

	<i>objections in Form No.35A</i>		
4.	<i>Due date for issuance of directions by the DRP</i>	10.11.2016	31.12.2022
5.	<i>Actual date of Directions issued by the DRP in terms of Section 144C(5) of the Act</i>	31.12.2016	09.01.2023 <i>(If reckoning the email communication from DRP on 09.01.2023 as directions in terms of section 144C(5) of the Act.</i>
6.	<i>Final assessment order passed in consequent to directions issued by the DRP</i>		31.01.2023

15. In the case of the Inno Estates Private Limited, the objections in Form No. 35A were belated filed beyond the Stipulated due date. Furthermore, the directions issued by the DRP in dismissing such objections filed by the assessee (filed beyond the statutorily prescribed time limit) were passed within the due date prescribed under the Act. However, on the facts of the present case, the objections filed in Form No. 35A were within the time limit. However, the said objections were dismissed on account of non adherence to the procedure laid down in Rule 4(3) (a) of the Income Tax (Dispute Resolution Panel), Rules, 2009. Furthermore, the communication / directions issued by the DRP in dismissing such objections filed were passed beyond the stipulated time limit. Hence, the reliance placed upon the aforesaid judgment of Hon'ble Madras High Court in

treating the communication issued by the DRP dated 09.01.2023 as directions in terms of Section 144C(5) of the Act for the purpose of completion of the assessment was a case of misplaced reliance and completely distinguishable to the facts of the present case.

16. Furthermore, in the event of treating such objections filed in Form No. 35A dated 30.04.2022 as not maintainable in terms of Rule 4(3) (a) of the Income Tax (Dispute Resolution Panel), Rules, 2009, one ought to reckon that no objections were ever filed by the assessee company. In such circumstances, the procedure laid down in Section 144C(4) (b) of the Act, wherein the Assessing Officer ought to have passed the final re-assessment order within one month from the end of the month of the period for filing objections in Form No. 35A had lapsed, which on the facts of the present case would have lapsed on 31.05.2022. However, on the facts of the present case, the final re-assessment order came to be passed only on 31.01.2023. Hence, in either of the above scenario, the final re-assessment order is barred by limitation in terms of Section 144C(12) and Section 144C(4) (b) of the Act and accordingly, we quash the re-assessment order passed on 31.03.2023.

17. Moreover, the stand of the assessee company that the email sent by the DRP should not be reckoned as a direction in terms of Section 144C of the Act was further fortified by the letter filed by the Departmental Representative in the proceedings initiated directly against the final assessment order dated 31.01.2023 (to protect the interest of the Assessee) on the presumption that the communication is a direction wherein the Ld. Departmental Representative had requested the Bench to dismiss the appeal since the same is already entertained by the First Appellate Authority. The said stand would further fortify the stand of the assessee company that the email communication should not be reckoned as a direction in terms of Section 144C of the Act. Since, we have adjudicated the legal grounds (Ground Nos.5 to 8) in favour of assessee company, the other grounds on merits are left open and not adjudicated.

18. As regards appeal No. ITA No.2073/CHNY/2023, the same arises out of the CIT(A)'s order passed u/s.154 of the Act wherein he had reversed his earlier order dated 19.03.2024 passed u/s.250 of the Act. Since the original order of CIT(A) dated 19.03.2024 arises out of the final reassessment order dated 31.01.2023, which we have set aside by allowing the Grounds 5 to 8 in ITA No.1072/CHNY/2024, the consequent rectification order passed

u/s.154 of the Act is rendered infructuous. Accordingly, the CIT(A)'s order passed u/s.154 of the Act on 21.06.2024 is also set aside.

19. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 23rd June, 2025 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 23rd June, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT