

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND**  
**SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2483/Chny/2025

निर्धारण वर्ष / **Assessment Year: 2012-13**

<b>Bangalore Union Services Private Limited,</b> Unit No.705, Delta Wing, Raheja Towers, 7 <sup>th</sup> Floor, 177, Anna Salai, Chennai – 600 002.	vs.	<b>DCIT,</b> Corporate Circle -1(2), Chennai.
<b>[PAN:AACB-3369-B]</b> (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate (by Virtual)

प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 04.12.2025

घोषणा की तारीख/Date of Pronouncement : 26.02.2026

**आदेश / O R D E R**

**PER S. R. RAGHUNATHA, AM:**

This appeal by the assessee is filed against the order of the Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi ['Id. CIT(A)'] dated 23.07.2025 and pertains to assessment year 2012-13 against the order of the Deputy Commissioner of Income Tax, Corporate Circle 1(2), Chennai passed u/s. 147 r.w.s 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 22.12.2017.

2. The assessee is in appeal challenging the legality of the reassessment framed under section 147 r.w.s. 143(3) of the Act, 1961, as well as the additions of Rs.2,99,25,000/- made u/s. 2(22)(e) of the Act, treating certain loans/advances as

deemed dividend and Rs.6,57,79,675/- representing "Share Application Money Pending Allotment" brought to tax as income of the assessee for the year under consideration, on the following grounds:

*"1. The order of NFAC, Delhi dated 23.07.2025 vide DIN & Order No. ITBA/NFAC/S/250/2025-26/1078819060(1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.*

*2. The NFAC, Delhi erred in confirming the assumption of jurisdiction under Section 147 of the Act and consequently erred in confirming the passing of the re-assessment order under Section 147 of the Act without assigning proper reasons and justification.*

*3. The NFAC, Delhi failed to appreciate that the re-assessment order was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

*4. The NFAC failed to appreciate that the assumption of jurisdiction u/s.147 of the Act was without sanction of law and ought to have appreciated that the consequential re assessment order accordingly should be reckoned as bad in law.*

*5. The NFAC, Delhi failed to appreciate that having not followed the prescription of law/procedure for framing the re-assessment, the consequential re-assessment order passed should be reckoned as nullity in.*

*6. The NFAC, Delhi erred in sustaining the addition of Rs.2,99,25,000/- in reckoning the loan given to Dr. V Krishnamurthy amounting to Rs.99,25,000/- and loan given to Mr. Sivaramakrishnan amounting to Rs.2,00,00,000/- as deemed dividend in terms of Section 2(22)(e) of the Act in the computation of taxable total income without assigning proper reasons and justification.*

*7. The NFAC, Delhi to appreciate that the provisions of Section 2(22)(e) of the Act had no application to the present facts and in circumstances of the case, inasmuch ought to have appreciated that pre-requisite conditions required for invoking the provisions in Section 2(22)(e) of the Act were absent in the present case, thereby negating the finds in relating thereto.*

*8. The NFAC, Delhi failed to appreciate that the disputed sums/loans given to Dr. V Krishnamurthy and Mr. Sivaramakrishnan could not be brought to tax in the hands of the appellant company as deemed dividend in terms of Section 2(22)(e) of the Act in view of the fact that the said individuals were not the shareholders of the company during the assessment year, thereby vitiating the disputed additions made in its entirety on complete non application of mind.*

*9. The NFAC, Delhi erred in sustaining the additions of Rs.6,57,79,675/- being the "Share application money pending allocation" as income of the*

*appellant in the computation of taxable total income without assigning proper reasons and justification.*

*10. The NFAC, Delhi failed to appreciate that having substantiated the fact of the disputed share application money were received through property banking channel from foreign investors/non resident and further having substantiated the fact of the said sum being received during the earlier assessment year(s), the sustenance of such sum as income of the appellant for the assessment year under consideration in a mechanical manner should be reckoned as bad in law.*

*11. The NFAC, Delhi failed to appreciate that having not independently examined the nature and source of the disputed sums received/given, the disputed substance of the entire value of the sums so given/received as unexplained credit should be reckoned as bad in law.*

*12. The NFAC, Delhi failed to appreciate that having not adhered to the prescription of faceless regime, the consequential appellate order passed should be reckoned as bad in law.*

*13. The NFAC, Delhi failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

*14. The appellant craves leave to file additional grounds/arrangements at the time of hearing.*

3. The brief facts of the case are that the assessee is a Company and has filed its return of income for the year under consideration on 29.09.2012 declaring a total income of Rs.4,12,440/-. The assessment u/s.143(3) of the Act was completed on 16.02.2015 by accepting the returned income.

4. Thereafter, within the end of 4 years from the end of the AY 2012-13, reassessment proceedings were initiated u/s.147 of the Act, by issue of notice u/s.148 of the Act on 31.03.2017. It has been recorded in the assessment order that no return of income in response to notice u/s.148 of the Act has been filed by the assessee. Subsequently, the assessee filed written submissions dated 21.12.2017 before the AO. Thereafter, the AO completed the assessment u/s.147 r.w.s 143(3) of the Act, on 22.12.2017 by assessing the total income of the assessee at Rs.9,61,17,116/- by making an addition of Rs.6,57,79,676/- on account of share application money pending allotment and on account of loan given u/s.2(22)(e) of the Act amounting to Rs.2,99,25,000/- by holding as under:

*“a) Authorized Share capital is Rs.1,00,00,000/- whereas paid up is Rs.1,54,400/-. More than the Authorized Share capital, the share application money pending is Rs.6,57,79,676/-. It is admitted by the assessee that out of this, Rs.4,69,80,000/- is invested in M/s.Hydraulics Ltd. In other words, it is only siphoning off the amount, without allotting shares. Hence, the same is added.*

*a) Deemed dividend u/s. 2(22)(e)- i.e. Rs.99.25 Lakhs due from a director and Rs.200 Lakhs given to a relative of a Director as an interest free loan-totaling to rs.2,99,25,000/-. This addition is strengthened by the fact that there had been no business / commercial expediency meriting these transactions. It is nothing but deemed dividend for the purpose of income tax assessment. Hence the same is added to the total income”*

5. Being aggrieved, the assessee preferred an appeal before the Id.CIT(A) against the assessment order, dated 22.12.2017, passed u/s.147 r.w.s 143(3) of the Act challenging the validity of the re-assessment proceedings filed through additional Grounds of Appeal and as well as the additions on merits of Rs.2,99,25,000/- made u/s.2(22)(e) of the Act, treating certain loans/advances as deemed dividend and Rs.6,57,79,675/- representing “Share Application Money Pending Allotment” brought to tax as income of the assessee for the year under consideration. The Id.CIT(A) dismissed the appeal of the assessee with the following observations:

*“Precisely in all these GOA, appellant is contending the order of AO as bad in law as it involves improper initiation of reassessment proceedings with consequent additions on account of deemed dividend and unexplained money as involving not acceptable additions as per the facts of case and thereby pleaded to delete the order of AO as bad in law. However, on perusal of facts on record as brought out by AO in the assessment order it is clearly noticeable that appellant is indeed involved in reflecting substantial interest free loans against the director and its relatives as noticeable from the notes to accounts which warrants for reconciliation of deemed dividend provisions as per law. Further appellant is also involved in claiming huge share application money over the years pending for allotment and is apparently not involved in any commercial business activities in claiming such huge share application money pending for allotment as observed by AO and thereby apparently there exists enough information/details as noticeable from the notes to accounts as available to AO warranting for its examination as per law as reasoned in the reasons recorded involving escapement of income to that extent. In the light of these facts, apparently there exists no infirmity*

*in initiating reassessment proceedings as per the due procedure as reasoned by AO having apparent discrepancies on appellant claims as attributable to deemed dividend and share application money pending for allotment etc and thereby appellant various contentions/GOA/additional GOA as advanced to hold that there exists no fresh information/details to AO warranting for assumption of jurisdiction by AO neither has a basis not has any justification and accordingly relevant GOA are treated as dismissed.*

*In View of the same, appellant all grounds of appeal as advanced on these issues of additions are to be treated as not maintainable as there exists no infirmity in the order of AO as reasoned and discussed supra. Thereby, appellant appeal is dismissed as not maintainable as per facts available on record on merits and on consideration of appellant's submissions as reasoned and explained above"*

6. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

7. Before us, on the issue of reopening, the Id.AR reiterated the factual background and submitted that Ground Nos.1 and 5 go to the root of the matter, challenging the validity of the assumption of jurisdiction u/s.147 of the Act and the consequent reassessment proceedings. Bringing our attention to the reasons recorded for re-opening, Id.AR for the assessee submitted that the issue raised in the reasons was the subject matter of scrutiny in the regular assessment completed u/s.143(3) of the Act dated 22.12.2017. The Id.AR submitted that the re-assessment proceedings are liable to be set aside on the ground that the same amounts to "change of opinion". In the absence of any fresh material or tangible information coming to the AO's possession, the reopening of the assessment based on the same set of facts amounts to a mere change of opinion, which is not legally sustainable. Insofar as the addition made u/s.2(22)(e) of the Act is concerned, it was contended that the shareholding pattern of the promoters as on 31.03.2011 and 31.03.2012 had been duly examined during the original assessment proceedings. The audited financial statements were also furnished before the AO, clearly evidencing the shareholding details as well as the particulars of the loans advanced. Likewise, with respect to the addition relating to Share Application Money Pending Allotment, it was contended that this very issue had been specifically raised by the AO and examined in the course of the original assessment completed u/s.143(3) of the Act. It was thus contended that both

issues had formed part of the scrutiny assessment and were considered by the AO after due verification. The Id.AR drew our attention to the reply furnished in response to the notice issued u/s.142(1) of the Act dated 08.10.2014, which forms part of the paper book at pages 76 to 82, wherein the assessee had placed on record all the details and documents as called for by the AO. It was submitted that the said materials were duly examined by the AO during the course of the original assessment proceedings and that, upon such examination, he had formed an opinion on the issues in question. It was further contended that only after being satisfied with the explanations and documentary evidence produced, the AO completed the assessment u/s.143(3) of the Act by accepting the total income as returned by the assessee.

8. The Id.AR drew our attention to the reasons recorded for reopening, as extracted in the reassessment order passed by the AO, which are reproduced hereunder for the sake of clarity.

*“On going through the financials and notes on accounts, it is seen that the following points arose for consideration:*

*i) As seen from the notes on accounts under Schedule 7, an amount of Rs.99.2 Lakhs due from a Director and Rs.20 Lakhs given to a relative of a Director as an interest free amount which should have been assessed by applying Sec.2(22)( e) as deemed dividend. The reserves and surplus was Rs.133.77 Lakhs.*

*ii) It is also verified from the details of share application that an amount of Rs.657.80 had been kept pending. The finalization of allotment in respect of the share application money had not been done. The authorized capital of the company is Rs.one crore only. In other words, authorized capital is Rs.1,00,00,000/- and subscribed capital is Rs.1,54,400/-. This share application money required to be assessed as unexplained money”.*

9. The Id. AR submitted that the AO's initiation of reassessment proceedings regarding the additions of Rs.2,99,25,000/- made u/s. 2(22)(e) of the Act, treating certain loans as deemed dividend and Rs.6,57,79,675/- representing “Share Application Money Pending Allotment” brought to tax as income was based on information already available on record. It was further contended that such reopening constitutes a change of opinion, which is impermissible in law, as the

issue had been specifically examined and adjudicated upon during the original assessment proceedings. The assessment order was passed only after due verification and application of mind by the AO to the assessee's claim of the additions of Rs.2,99,25,000/- made u/s. 2(22)(e) of the Act, treating certain loans as deemed dividend and Rs.6,57,79,675/- representing "Share Application Money Pending Allotment" brought to tax as income. Consequently, having duly examined and accepted the assessee's explanation and supporting evidence, the AO took conscious decision not make any disallowance/additions in respect of the said issues in the original assessment order completed u/s.143(3) dated 16.02.2015. Accordingly, in the absence of any fresh tangible material, the AO lacked the jurisdiction to reopen the assessment u/s.147 of the Act, and in doing so would effectively tantamount to a review of the earlier assessment under the guise of reassessment, which is prohibited by settled judicial precedents.

10. Therefore, the Id.AR prayed for quashing the re-assessment order passed by the AO as invalid. In support of the legal contention challenging the validity of the re-assessment proceedings, Id.AR relied on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Kelvinator of India Limited reported in 320 ITR 561*.

11. Further, the Id. AR, at the outset, submitted that the assessee had duly filed its return of income in response to the notice issued under section 148 of the Act dated 31.03.2017 on 13.04.2017, contrary to the observation recorded by the AO in the assessment order stating that no such return had been filed. He drew our attention to the paper book and pointed out that a copy of the return filed in response to the notice under section 148 is placed at page 34 thereof, evidencing compliance on the part of the assessee.

12. On merits, challenging the addition made u/s.2(22)(e) of the Act, the Id.AR submitted that the sum of Rs.99.25 lakhs advanced to Dr.V.Krishnamurthy and the sum of Rs.200 lakhs advanced to Mr.Sivaramakrishnan could not be brought to tax as deemed dividend. It was contended that neither of the aforesaid

individuals was a shareholder of the assessee company and, therefore, the essential conditions prescribed u/s.2(22)(e) of the Act were not satisfied. The Id.AR further submitted that the impugned advances did not pertain to the assessment year under consideration. In this context, he drew our attention to pages 72 to 75 of the paper book to demonstrate that the said amounts were advanced during the financial years 2006-07 and 2007-08. Accordingly, it was argued that the aforesaid sums could not be assessed as deemed dividend in the hands of the assessee in the impugned assessment year.

13. With regard to the addition of Rs.657.80 lakhs towards Share Application Money Pending Allotment, the Id.AR vehemently contended that the AO has made the impugned addition without specifying the particular provision of the Act under which the said amount was sought to be brought to tax. It was submitted that in the absence of any reference to the relevant provision of the Act, the addition is rendered vague and arbitrary. According to the Id.AR, such omission deprives the assessee of a proper and effective opportunity to rebut the proposed addition and, therefore, amounts to a violation of the principles of natural justice. The Id.AR further submitted that the amounts received from investors did not pertain to the assessment year under consideration but were received in earlier years. In this regard, he drew our attention to page 77 of the paper book to demonstrate that the share application money had been received over a period commencing from November, 1995 and extending up to the financial year 2008-09, and hence could not be subjected to tax in the year under appeal. In conclusion, the Id.AR prayed that both the additions made by the AO be deleted in full in the interest of justice.

14. Per contra, the Id.DR strongly supported the impugned order of the Id.CIT(A) and submitted that the reassessment was validly initiated by the AO on a new issue which had not been specifically examined during the course of the original assessment completed u/s.143(3) of the Act as evident from the reasons recorded by him and contended that the reopening of the assessment was in accordance with law and fully justified in the facts and circumstances of the case.

With regard to additions of Rs.2,99,25,000/- made u/s.2(22)(e) of the Act, treating certain loans/advances as deemed dividend and Rs.6,57,79,675/- representing Share Application Money Pending Allotment brought to tax as income of the assessee for the year under consideration, the Id. D.R argued that the Id.CIT(A) has correctly sustained the additions after considering the submissions made by the assessee and prayed that the appeal of the assessee be dismissed in toto.

15. We have heard the rival contentions, perused material available on record and gone through the orders of lower authorities along with the paper book relied by the assessee. In order to appreciate the contention of the Id.AR for the assessee on the issue raised in this case challenging the validity of reopening of assessment, it is relevant to refer to the reasons as recorded by the AO for reopening *supra*. A perusal of the reasons recorded by the AO clearly shows that the reopening of assessment was based on the issues of the additions of Rs.2,99,25,000/- made u/s.2(22)(e) of the Act, treating certain loans/advances as deemed dividend and Rs.6,57,79,675/- representing Share Application Money Pending Allotment brought to tax as income of the assessee for the year under consideration. The Id.AR invited our attention to the relevant pages of the paper book *supra*, wherein the AO had issued a detailed questionnaire u/s.142(1) dated 17.06.2014 and invited our attention to the fact that the assessee had duly furnished its reply thereto during the course of the original assessment proceedings, providing all requisite details and explanations as were called by the AO with regard to the share application money received and the Promotes shareholding as on 31.03.2012 & 31.03.2011. Further, while framing the assessment order, the AO had considered the reply furnished by the assessee with regard to the share application money and took cognizance of the shareholding pattern of the assessee company and the assessment order was consequently completed after taking into account the aforesaid submissions and material available on record. Therefore, in our considered opinion, the reassessment has been initiated merely on account of a change of opinion by the AO on the very same set of facts that were already examined during the original assessment proceedings. The reassessment initiated by the AO is based solely

on the information already available in the assessment records, without any reference to new or tangible material which in our considered view constitutes a mere change of opinion, which is impermissible in law. The AO had examined the reply furnished with regard to the details of share application money received and had taken cognizance of the fact of the share holding pattern of the assessee company, applied his mind, and concluded the original assessment proceedings, indicating that an opinion was formed at that stage of original assessment proceedings and consequently, it was not permissible for him to exercise his power u/s.147 of the Act on the same material available on record. In light of the above facts, admittedly, the AO had fully examined the issue of the claim of the additions of Rs.2,99,25,000/- made u/s.2(22)(e) of the Act, treating certain loans/advances as deemed dividend and Rs.6,57,79,675/- representing "Share Application Money Pending Allotment" brought to tax as income of the assessee for the year under consideration. The assessment was completed after due application of mind to the issues raised in the reasons recorded by him before the re-assessment proceedings were initiated and no disallowances/additions were made in the original assessment u/s.143(3) of the Act dated 16.02.2015. Therefore, reopening the assessment u/s.147 of the Act, based on the same material amounts to a mere change of opinion, which has been consistently held by various judicial precedents to be impermissible in law. Consequently, the reassessment proceedings initiated by the AO are without jurisdiction and liable to be quashed. Accordingly, Ground no.1 to 5 raised by the assessee are allowed.

16. In the case of *CIT vs Kelvinator of India Limited* (supra), cited by the Id.AR for the assessee, it was held by the Hon'ble Supreme Court that after the amendment made w.e.f. 1st April, 1989, the AO has to have reason to believe that income has escaped assessment, but this does not imply that the AO can reopen an assessment on a mere change of opinion. It was held that the concept of "change of opinion" must be treated as an in-built test to check the abuse of power and hence the AO even after the amendments made in the relevant provisions from April 1, 1989 has the power to reopen an assessment provided

there is tangible material to come to the conclusion that there was escapement of income from assessment.

17. The aforesaid decision was also followed by the Hon'ble Delhi High Court in the case of *Usha International Ltd. 210 taxmann 188*, wherein the Hon'ble Delhi High Court held that when the AO completed an assessment u/s.143(3) of the Act, he is presumed to have accepted the contentions of the assessee even if there is no express reference to them in the assessment order and if within 4 years he issues a notice to re-open the assessment, it is nothing but a change of opinion. Further, the Delhi High Court in the aforesaid decision held that assessment proceedings cannot be validly reopened u/s.147 of the Act even within 4 years, if the assessee has furnished full and true particulars at the time of original assessment with reference to the income alleged to have escaped assessment, if the original assessment was made u/s.143(3) of the Act. While passing the order, the Hon'ble Delhi High Court made the following observation:

*“Reassessment proceedings will be invalid in case an issue or query is raised and answered by assessee in original assessment proceedings and Assessing Officer does not make any addition in assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.”*

18. In light of the facts as recorded hereinabove and upon careful consideration of the judicial precedents on the issue, including the observations of the Hon'ble Supreme Court in the case of *CIT v. Kelvinator of India Ltd. (supra)*, we are of the considered view that the initiation of reassessment proceedings in the present case has been made merely on account of a change of opinion. It is a settled proposition of law that reassessment cannot be initiated in the absence of any tangible material or fresh information coming to the possession of the AO. The Id. CIT(A) without considering these aspects has dismissed the legal grounds which is not correct. Accordingly, we hold that the reassessment order, having been passed on a mere change of opinion, is unsustainable in law and is, therefore, liable to be quashed.

19. Since we have quashed the assessment order, we do not find it necessary to adjudicate on the merits of the case and it is kept open.

20. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> February, 2026 at Chennai.

**Sd/-**

(मनु कुमार गिरि)

**(MANU KUMAR GIRI)**

न्यायिक सदस्य/**Judicial Member**

**Sd/-**

(एस. आर. रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 26<sup>th</sup> February, 2026

**SP**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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