

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1213/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Rajmal Lakhichand,  
169, Balaji Peth,  
Jalgaon – 425001

PAN : AACFR8609L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

ITO, Ward-2(2),  
Jalgaon

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1396/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,  
Circle – 1, Jalgaon

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Rajmal Lakhichand,  
169, Balaji Peth,  
Jalgaon – 425001

PAN : AACFR8609L

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil S. Pathak  
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 29-06-2021

घोषणा की तारीख / Date of Pronouncement : 01-07-2021

**आदेश / ORDER****PER S.S. VISWANETHRA RAVI, JM :**

These two appeals by the assessee and Revenue, respectively against the common order dated 31-03-2017 passed by the Commissioner of Income Tax (Appeals)-2, Nashik [‘CIT(A)’] for assessment year 2012-13.

2. Both the parties consented that the issues raised in both the appeals are based on similar identical facts and prayed to take up the same together. Therefore, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal of assessee in ITA No. 1213/PUN/2017.

4. The only issue raised for our consideration is as to whether the CIT(A) justified in confirming the addition made by the AO u/s. 2(22)(e) of the Act in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. We note that the assessee is a registered firm and deals in the business of silver, gold ornament and bullion. During the course of assessment proceedings, the AO found that the assessee purchased shares from private limited companies through its partner having the share holding more than 10%. According to the AO, the assessee is a beneficiary share holder and the said investments of the shares are reflected in the Balance

sheet and show caused the assessee to explain as to why the provisions of section 2(22)(e) of the Act should not be applied. The assessee given explanation which is reproduced in assessment order. The AO held the provisions of section 2(22)(e) of the Act is applicable and an amount of Rs.1,26,86,901/- were added to the total income of the assessee. The CIT(A) justified the order of AO in holding the provisions of section 2(22)(e) of the Act are attracted. Before us, the ld. AR submitted that the similar issue were raised in earlier years and this Tribunal remanded the matter to the file of AO for verification of the payments received by the assessee constitute non-trade advances and not on account of current account to record the business transactions between or among the group concerns. We note that the order for A.Y. 2010-11 is placed at page No. 1 of the paper book and the order for A.Y. 2011-12 is placed at page No. 33 of the paper book. We note that the Co-ordinate Bench of this Tribunal in A.Y. 2011-12 followed the direction rendered by this Tribunal in A.Y. 2010-11 and remanded the matter to the file of AO to decide the issue raised therein which is similar to the issue raised in this appeal in conformity with the directions rendered by the Tribunal in its order for preceding A.Y. 2010-11 vide para No. 7. For ready reference the relevant portion of the said order in A.Y. 2011-12 is reproduced here-in-below :

*“5. The next issue taken up by the assessee in its appeal is against confirmation of addition amounting to Rs.2,07,84,694/- u/s.2(22)(e) of the Act.*

*6. The facts apropos this issue are that the AO found the assessee to have received loans from M/s. Manraj Jewellers Pvt. Ltd. and M/s. R.L. Gold Pvt. Ltd., with opening balances at Rs.37.67 crore and Rs.42.76 crore respectively and corresponding closing balances at Rs.55.69 crore and Rs.60.13 crore respectively. Considering the fact that he had made a similar addition in the preceding year, the AO made an addition of Rs.2,07,48,694/- , being, the amount of deemed dividend of Rs.1.18 crore in respect of M/s. Manraj Jewellers Pvt. Ltd. and Rs.89.01 lakh in respect of M/s. R.L. Gold*

*Pvt. Ltd. The ld. CIT(A) sustained the addition, against which the assessee has come up in appeal before the Tribunal.*

*7. Having heard both the sides and gone through the relevant material on record, it is observed that similar issue came up for consideration before the Tribunal in assessee's own case for the A.Y. 2010-11. A detailed discussion has been made in the order for such year and eventually the matter has been restored to the file of AO for a fresh a decision. Admittedly, the facts and circumstances of the ground for the instant year are similar to those of the preceding year. Respectfully following the precedent, we set-aside the impugned order on this score and remit the matter to the file of AO for deciding this issue in conformity with the directions given by the Tribunal in its order for the preceding year."*

6. In the light of the above, we deem it proper to remand the matter to the file of AO to decide the issue regarding the applicability of section 2(22)(e) of the Act in conformity with the directions rendered by this Tribunal in earlier years. Thus, the grounds raised by the assessee are allowed for statistical purpose.

7. In the result, the appeal of assessee is allowed for statistical purpose.

8. Now, we shall take up appeal of Revenue in ITA No. 1396/PUN/2017.

9. The only issue raised by the Revenue for our consideration is as to whether the CIT(A) justified in deleting the addition made on account of disallowance made u/s. 14A r.w. Rule 8D in the facts and circumstances of the case.

10. Heard both the parties and perused the material available on record. We note that according to the AO the assessee has utilized the business funds for investment in equity shares and made applicable Rule 8D for the

purpose of computing the expenditure in relation to the exempt income. Accordingly, an amount of Rs.7,34,02,058/- has been disallowed u/s. 14A r.w. Rule 8D by making applicable the CBDT Circular No. 5/2014 dated 11-02-2014. The CIT(A) held the circular issued by the CBDT is not binding on the appellate authority as was interpreted by the Hon'ble Supreme Court and High Courts deleted the addition made by the AO on account of disallowance u/s. 14A r.w. Rule 8D. The ld. DR relied on the order of AO and prayed to restore the same by allowing the grounds of appeal.

11. We note that the assessee clearly contended before the AO that when there is no exempt income the method prescribed in Rule 8D is not applicable which is evident from the assessment order at para No. 5.2 in spite of which the AO proceeded to make applicable the circular issued by the CBDT by holding it is binding on the assessing authority. The fact remains admitted by both the parties before us and also born by the record that no exempt income was derived by the assessee during the year under consideration. The CIT(A) examined the record and found that the assessee has not earned any exempt income warranting the disallowance u/s. 14A r.w. Rule 8D. Admittedly, the circular issued by the CBDT is not binding on the appellate authority as rightly held by the CIT(A) in impugned order at page No. 13 and it is justified. As discussed above it is clearly established that the assessee has not earned any exempt income. Therefore, no disallowance is warranted by applying the method prescribed under Rule 8D. Therefore, in our opinion the disallowance made by the AO is not warranted and the CIT(A) rightly deleted the same, therefore, we find

no infirmity in the order of CIT(A). Thus, the grounds raised by the Revenue fails and are dismissed.

12. In the result, the appeal of Revenue is dismissed.

13. To sum up, the appeal of assessee is allowed for statistical purpose and the appeal of Revenue is dismissed.

Order pronounced in the open court on 01<sup>st</sup> July, 2021.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01<sup>st</sup> July, 2021.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nashik
4. The Pr. CIT-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune