

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.666/PUN/2015

निर्धारण वर्ष / Assessment Year : 2009-10

Ishwarlal S. Lalwani (Jain),  
169, Balaji Peth,  
Jalgaon-425001

PAN : AADPL1002G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax officer,  
Ward – 1(3), Jalgaon

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.667/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Ishwarlal S. Lalwani (Jain),  
169, Balaji Peth,  
Jalgaon-425001

PAN : AADPL1002G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Dy. Commissioner of Income Tax,  
Circle – 1, Jalgaon

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.999/PUN/2015**  
**निर्धारण वर्ष / Assessment Year : 2009-10**

Manish I. Jain,  
169, Balaji Peth,  
Jalgaon-425001

PAN : AADPL1003H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Dy. Commissioner of Income Tax,  
Circle – 1, Jalgaon

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Pathak  
Revenue by : Dr. Vivek Aggarwal &  
Shri Mukesh Jha.

सुनवाई की तारीख / Date of Hearing : 10-01-2018

घोषणा की तारीख / Date of Pronouncement : 29-01-2018

**आदेश / ORDER****PER VIKAS AWASTHY, JM :**

These three appeals by two different assesseees are taken up together for adjudication as issues raised in the appeals are arising from same set of facts and identical issues are involved in all the three appeals. Both the assesseees are closely related to each other (Father & Son).

2. ITA No. 666/PUN/2015 by assessee [Shri Ishwarlal S. Lalwani (Jain)] is directed against the order of Commissioner of Income Tax (Appeal)-II, Nashik dated 27.03.2015 for the assessment year 2009-10.

In ITA No.667/PUN/2015, the assessee has assailed the order of Commissioner of Income Tax (Appeal)-II, Nashik dated 31.03.2015 for the assessment year 2010-11.

ITA No. 999/PUN/2015 by assessee (Shri Manish Ishwarlal Lalwani Jain) is directed against the order of Commissioner of Income Tax (Appeal)-II, Nashik dated 19.05.2015 for the assessment year 2009-10.

3. The facts germane to all the three appeals are: Assesseees are the Directors of M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. During the course of assessment proceedings in the case of respective assesseees, the Assessing Officer observed that the assesseees have purchased flat at Khar, Mumbai. Flat No.701 Mangal Sandesh, Khar, Mumbai was purchased in the name of Shri Ishwarlal S. Lalwani and Flat No.801 in the same building was purchased in the name of Shri Manish Ishwarlal Lalwani Jain. The loan installments for the flats and interest were paid by the company M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. Both the flats were joined and were made in the form of duplex residential single unit. The Assessing Officer held that interest and loan amount paid by the company in respect of flats is taxable as perquisite within the meaning of section 2(24)(iv) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the hands of both assesseees. Apart from above, Assessing Officer held that expenditure in respect of above said flats in the nature of Electricity and Telephone expenses paid by the company also constitute perquisite in the hands of both assesseees. The Assessing Officer made addition of the aforesaid expenditure as well, as perquisite

in the hands of assessee. Accordingly, following additions were made in the hands of assessee in respect of flats.

<b>(Amount in Rs.)</b>					
<b>In the case of Ishwarlal S. Lalwani (Jain)</b>					
<i>Assessment year</i>	<i>Addition on account of interest on house property</i>	<i>Addition on account of re-payment of loan</i>	<i>Addition on account of expenditure related to flats</i>	<i>Total</i>	
2009-10	21,92,769/-	30,52,150/-	24,000/-	52,68,919/-	
2010-11	21,01,227/-	27,48,724/-	2,71,142/-	51,21,093/-	
<b>In the case of Manish Ishwarlal Lalwani Jain</b>					
2009-10	21,92,769/-	30,52,150/-	24,000/-	52,68,919/-	

4. Aggrieved by the additions made during assessment proceedings, the assessee filed appeal in their respective cases for the respective assessment years. The Commissioner of Income Tax (Appeal) confirmed the additions made by the Assessing Officer. Now, both the assessee are in second appeal before the Tribunal.

5. Shri Sunil Pathak appearing on behalf of assessee submitted that Co-ordinate Bench of Tribunal in appeal filed by the company, M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. in ITA No. 891/PN/2013 for the assessment year 2007-08 decided on 29.02.2016 has held that duplex flat at Khar, Mumbai though purchased in the name of Directors is in fact owned by the company. The Tribunal has held that company is eligible for claiming depreciation, interest expenditure and other expenses in respect of said flats. The ld. AR furnished copy of order of

Tribunal in the case of M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. Vs. JCIT in ITA No.891/PN/2013 (supra).

The ld. Counsel submitted that once it has been held that the legal owner of the flat is company, there is no question of making addition in respect of interest on house property, repayment of loan and other related expenditure such as telephone and electricity in the hands of assessee as perquisite.

5.1 The ld. AR pointed that the flats in question are used for business purpose. The employees/officials of M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. use flat at Khar, Mumbai for stay as and when they visit to Mumbai in connection with company's business. The Ld. AR further contended that the flats are shown in the Balance Sheet of the company and depreciation is also claimed on same. The Assessing Officer in original assessment proceedings for assessment year 2007-08 had accepted company's claim of deprecation on the said flats.

6. Dr. Vivek Aggarwal and Shri Mukesh Jha representing the Department vehemently defending the findings of Commissioner of Income Tax (Appeal) submitted that two flats at Khar, Mumbai are registered in the names of Shri Ishwarlal S. Lalwani (Jain) (Flat No. 701) and Shri Manish Ishwarlal Lalwani Jain ( Flat No. 801), respectively. They had obtained loan from State Bank of India, Jalgaon for purchase said flats. The assesseees are real and legal owner of said two flats. Though the company has shown the flats in its book of accounts and has even claimed depreciation on the said flats but the company is not beneficial owner of the flats. The Authorities below rightly treated the

payment of interest, repayment of loan and other expenses relating to flats as perquisite/benefit u/s. 2(24)(iv) of the Act in the hands of both assesseees. The ld. DR submitted that in the case of sale of flats, it would be assesseees who would be claiming capital gain/ loss and not the company. The ld. DR further pointed that the flats are continuously occupied by Manish Ishwarlal Jain and his family, therefore, it cannot be said that the flats are used by staff/officials of the company for business purpose. The ld. DR prayed for affirming the findings of Commissioner of Income Tax (Appeal) and dismisses the appeals of assesseees.

7. The ld. AR Controverting the submissions made on behalf of Department submitted that flats were purchased by the company in the names of assesseees only as a matter of convenience. The de-facto and beneficial owner of the flats is M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. The Board of Directors of company had authorized purchase of flats in the name of Directors and flats are used for the business purpose of the company. The ld. AR stated at Bar that in case a situation arises that flats are sold, the sale proceeds of the flats would be accounted in the hands of company and not in the names of assesseees.

7.1 The ld. AR fairly admitted that one of the flat is occupied by Shri Manish Ishwarlal Lalwani Jain and his family, therefore, fair rent of the flat may be charged to him in respect of one flat.

8. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The common issue running through all the three appeals, is with respect to charging

of interest, repayment of loan and expenditure relating to flats at Khar, Mumbai as perquisite u/s. 2(24) (iv) of the Act in the hands of assessee.

It is an undisputed fact that two flats i.e. Flat No. 701 & Flat No. 801 were purchased in the names of Ishwarlal S. Lalwani (Jain) and Manish Ishwarlal Lalwani Jain, respectively. The aforesaid persons are Directors of M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. It is the contention of assessees that flats at Khar, Mumbai were purchased in the name of Directors for the sake of convenience. The Board of Directors of the company has authorized purchase of flats in the name of Directors. The cost of flats was paid by the company and company has reflected the said flats in its Balance Sheet. The company has been claiming depreciation on said flats. The flats are being used for the business purpose of the said company.

9. We find that the issue regarding payment of interest, loan and other expenses relating to flats whether admissible in the hands of company, was raised before the Tribunal in appeal filed by M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. in ITA No. 891/PN/2013 (supra). The relevant ground raised by the assessee company in its appeal reads as under :

*“1) The learned CIT(A) erred in confirming the disallowance of Rs.38,87,288/- on account of interest and of Rs.48,194/- out of telephone and electricity expenses on the ground that these expenses relate to the flats at Khar, Mumbai and these flats are not owned by the appellant company but by its directors Shri Ishwarlal Jain and Shri Manish Jain (page 12 CIT(A) order).”*

The Tribunal vide order dated 29.02.2016 held that company is eligible to claim interest expenditure and other expenditure such as telephone and electricity expenditure relating to the flats at Mumbai.

The relevant extract of the findings of Tribunal in the issue are as under:

*“11. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case disallowed interest of Rs.38,87,288 and telephone/electricity charges of Rs.48,154/- in respect of the property at Khar, Mumbai on the ground that the interest and other expenses claimed has no relation with the business of the assessee company. We find in appeal the Ld.CIT(A) not only upheld the action of the AO but he further enhanced the disallowance by Rs.31,71,672/- being the interest on loan amount of Rs.2,64,30,607/- diverted for non business purposes. The reasoning for such enhancement has already been reproduced in the findings given by the CIT(A). It is the submission of the Ld. Counsel for the assessee that since the flats have already entered into the block of asset and depreciation claimed in the original return has been allowed and the same has not been withdrawn, therefore, it is to be held that the flat at Khar is a business asset and utilized for the purpose of business. It is also his submission that in view of various decisions the flats need not to be registered in the name of the assessee company.*

*12. We find merit in the submission of the Ld. Counsel for the assessee. There is no dispute to the fact that the flats purchased at Khar has been shown in the asset side of the balance sheet and the loan obtained from bank in the name of the directors has been shown as liability in the liability side of the balance sheet. The Board of Directors vide resolution dated 10-02-2006 have approved for the purchase of the flats in the name of the 2 directors. Depreciation in the computation statement is as per Form No.3CD enclosed along with return of income. In the schedule of depreciation enclosed along with Form 3CD we find depreciation has been claimed at Rs.2,18,73,103/- which includes the depreciation of Rs.62,39,688/- on building/flats amounting to Rs.5,98,28,719/- (page 35 of the paper book). The submission of the assessee before the CIT(A) that the assessee's claim for depreciation has been accepted for the A.Y. 2007-08 is also not disputed by the CIT(A). We find before CIT(A) the assessee has inter alia made following submissions :*

*“It was only for the sake of convenience that the said flats were registered in the name of the Directors. The facts of the case clearly show that the company is the real owner of both the flats notwithstanding their registration in the names of directors. It is the de-facto and beneficial ownership which is material and relevant.*

*In the context of depreciation the courts have accepted the assessee's claim for the same even when property/vehicles are not registered in the name of company/firm but in the names of directors/partners.*

*Addl.CIT Vs. Manjeet Engg. Ind. 154 ITR 509 Delhi  
CIT Vs. Fazilka Dabwali 270 ITR 398; P&H*

*Ratio of the said decisions would also apply to the facts of our case also. It is also important to note that the*

*appellant's claim for depreciation has been accepted also for the A.Y. 2007-08.*

*We are enclosing herewith a copy of our sales tax registration certificate wherein the particulars of Offices and its addresses are mentioned."*

13. *From the above it is clearly seen that the assessee's claim of depreciation which has been accepted by the AO in the original assessment has not been withdrawn. This otherwise implies that the AO has accepted the flat as business asset used for the purpose of business. We find the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Fazilka Dabwali TPT Company Pvt. Ltd. following the decision of Hon'ble Supreme Court in the case of CIT Vs. Poddar Cement Pvt. Ltd. and others reported in 226 ITR 625 has allowed the claim of depreciation on buses purchased in the name of its directors. Although the buses were not registered in the name of the company it was held that registration of the same in the name of the company is not relevant and the company is entitled to depreciation in respect of the buses.*

14. *The Hon'ble Supreme Court in the case of CIT Vs. Poddar Cement Pvt. Ltd. (Supra) has held that under the common law, "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act, etc. But, in the context of section 22 of the Income tax Act, 1961 having regard to the ground realities and further having regard to the object of the Income tax Act, namely, "to tax the income", "owner" is a person who is entitled to receive income from the property in his own right. The Hon'ble Delhi High court in the case of Addl.CIT Vs. Manjeet Engineering Industries (Supra) has held that when a partner brings his property to the partnership firm and the firm treats his property as belonging to the firm only, it has the effect of transferring the property to the firm. Document in writing and registration is not necessary. Following the above principles and considering the fact that the company has already shown the asset in the balance sheet of the assessee company and the loan obtained by the directors for purchase of the flats has been shown as liability in the liability side of the balance sheet and the depreciation claimed by the assessee on such flat has not been rejected in the assessment completed u/s.143(3), therefore, disallowance of interest and the telephone/electricity expenses on account of flat at Khar, Mumbai in our opinion is not justified. In view of the above discussion, we are of the considered opinion that the CIT(A) was not justified in disallowing the interest expenditure and telephone and electricity expenditure relating to the flats at Mumbai. We accordingly set aside the order of the CIT(A) and the grounds raised by the assessee are allowed."*

The Co-ordinate Bench of Tribunal has held that the company is eligible to claim interest and other expenditure in respect of the flats, as the flats are owned by company. Thus, we find no merit in the

submissions of ld. DR that interest and other expenditure relating to flats at Khar, Mumbai should be charged as perquisites in the hands of assessee. In so far as apprehension of Department that at the time of sale of flats, the capital gain/loss, as the case may be, arising from such sale would be claimed by the assessee, the ld. AR has stated at Bar that once the flats are reflected in the Balance Sheet of company, there is no question of assessee claiming such benefit at the time of sale of flats. Even otherwise, once the flats are held to be assets of company, the individuals have no right to claim any benefit flowing from title of the flats. The apprehension of the ld. DR is without any substance.

10. Thus, in view of the facts of the case and the order of co-ordinate Bench in the case of M/s. Rajmal Lakhichand Jewellers (supra), the ITA No. 666 & 667/PUN/2015 are allowed.

**ITA No. 999/PUN/2015**

11. As regards taxability of payment of interest on house property, repayment of loan and expenditure related to flat at Khar, Mumbai as perquisite u/s. 2(24)(iv) is concerned, the findings given by us in ITA No. 666 & 667/PUN/2015 would *mutatis-mutandis* apply in present appeal.

12. In this case the ld. AR has fairly admitted that one of the flat has been occupied by Manish I. Jain (assessee) who is staying there with his family. The ld. AR has further admitted that so far no rent is being charged from him by the company. A fair rent may be assessed and charged for the use of flat from the said assessee. The ld. AR has been fair in admitting this fact. Since, this facet of the issue is highlighted for

the first time before the Tribunal, we deem it appropriate to remit this appeal to the file of Assessing Officer. The Assessing Officer shall determine the fair rental value of the flat and assess the same in the hands of assessee, in accordance with law. The Assessing Officer before making any such addition shall grant opportunity of hearing to the assessee. Thus, the appeal of assessee is allowed for statistical purpose.

13. In the result, appeal of assessee in ITA No. 666/PUN/2015 and 667/PUN/2015 are allowed and appeal of assessee in ITA No.999/PUN/2015 is allowed for statistical purpose.

Order pronounced on Monday, the 29<sup>th</sup> day of January, 2018.

Sd/- Sd/-  
(डॉ. करुणाकरा राव/D. Karunakara Rao) (विकास अवस्थी / Vikas Awasthy)  
लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> January, 2018

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-II, Nashik
4. The Pr. Commissioner of Income Tax-II, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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