

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM**

आयकर अपील सं. / ITA No.2658/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2010-11

Prakash R. Oswal,  
C/o. Shah Khandelwal Jain & Associates,  
Chartered Accountants,  
Level 3, Riverside Business Bay,  
Plot No.84, Wellesley Road, Near RTO,  
Pune-411001.

PAN: AAAP06465D

.... अपीलार्थी/Appellant

Vs.

The Income Tax Officer,  
Ward- 5(3), Pune.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Rajiv Thakkar &  
Shri Rishab Gujrathi  
प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawali

सुनवाई की तारीख / <b>Date of Hearing : 17.12.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 28.12.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-4, Pune dated 12.06.2017 relating to assessment year 2010-11 against order passed under section 143(3) read with section 147 of the Income-tax Act, 1961 (in short 'the Act').

2. The only issue arising in the present appeal is in relation to exercise of jurisdiction under section 147 of the Act and consequent addition to be made in the hands of the assessee.

3. Briefly, in the facts of the case, the Assessing Officer had reopened the assessment in the case of the assessee by recording reasons for reopening the same under section 147 of the Act and issued notice under section 148 of the Act. The reasons were recorded in respect of the issue of deemed dividend under section 2(22)(e) of the Act and the Assessing Officer made addition of Rs.5,45,000/- in the hands of the assessee. During the course of assessment proceedings, the Assessing Officer made another addition of Rs.1,04,310/- in the hands of the assessee on account of perquisites value of rent free accommodation provided by M/s Vijayshree Alloys Pvt. Ltd. to the assessee. The CIT(A) deleted the addition on account of deemed dividend, for which the reasons were recorded for reopening the assessment, i.e. under section 2(22)(e) of the Act. However, the CIT(A) upheld the addition on account of perquisites value of rent free accommodation.

4. The plea of the assessee before me is that once the addition which has been made in the hands of the assessee on account of reopening the assessment under section 147 of the Act and the same has been further deleted; then the second addition cannot stand in the hands of the assessee. The learned Authorized Representative for the assessee, in this regard, placed reliance on the ratio laid down by the Hon'ble Bombay High Court in CIT vs. Jet Airways (I) Ltd., (2010) 331 ITR 236 (Bombay) and also the decision of the Hon'ble Delhi High Court in CIT vs. Adhunik Niryat Ispat Ltd., (2011) 63 DTR

0212 (Delhi). He further placed reliance on the decision of the Delhi Bench of the Tribunal in M/s. Pragati Finsec Ltd. vs. ITO in ITA No.634/Del/2018 relating to assessment year 2002-03, order dated 20.06.2018.

5. The learned Departmental Representative for the Revenue placed reliance on the orders of the authorities below.

6. On perusal of the record and after hearing both the representatives, I find the assessment in the case of the assessee was reopened under section 147 of the Act on the ground of deemed dividend under section 2(22)(e) of the Act and the Assessing Officer made the addition on this account and also made further addition on account of perquisites value of rent free accommodation provided to the assessee. The first issue, on which reassessment proceedings were initiated, has been decided in favour of the assessee by the CIT(A), against which the Revenue is not in appeal. The question arises from the second issue; can the addition made on account of perquisites value of rent free accommodation be sustained in the hands of the assessee, in absence of any addition being made which was the basis for reopening the assessment under section 147 of the Act. The answer to the same is "No". In this regard, I find support from the judgement of the Hon'ble Bombay High Court in Jet Airways (I) Ltd. (supra) which is the Jurisdictional High court. Further, the Delhi Bench of the Tribunal in M/s. Pragati Finsec Ltd. (supra) has also held the same, in turn, relying on the ratio laid down by the Hon'ble Delhi High Court in Adhunik Niryat Ispat Ltd. (supra). Applying the said ratio laid down by the Jurisdictional High Court and following the parity of reasoning of the Delhi Bench of the Tribunal, I hold that there is no merit in the aforesaid addition

made in the hands of the assessee on account of perquisites value of rent free accommodation. Hence, the same is deleted.

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

Order pronounced on this 28<sup>th</sup> day of December, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28<sup>th</sup> December, 2018.

*Sujeet*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-4, Pune;
4. The Pr. CCIT, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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