

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

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1345/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Lalitkumar Kesarimal Jain,  
10<sup>th</sup> Floor, Kumar Business Centre,  
CTS-29, Bund Garden Road,  
Camp, Pune-411 001  
PAN : AAYPJ2211J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-7, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1346/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Kruti Lalitkumar Jain,  
10<sup>th</sup> Floor, Kumar Business Centre,  
CTS-29, Bund Garden Road,  
Camp, Pune-411 001  
PAN : AFXPJ2261C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-7, Pune.

.....प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.1347/PUN/2017****निर्धारण वर्ष / Assessment Year : 2012-13**

Pranay Lalitkumar Jain  
10<sup>th</sup> Floor, Kumar Business Centre,  
CTS-29, Bund Garden Road,  
Camp, Pune-411 001  
PAN : AJCPJ0683M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-7, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak

Revenue by : Shri S.B. Prasad

सुनवाई की तारीख / Date of Hearing : 20.09.2019

घोषणा की तारीख / Date of Pronouncement : 24.09.2019

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM :**

These three appeals preferred by the different assessees emanates from the separate orders of the Ld.CIT(Appeals), Pune-5, Pune of even dated 13.01.2017 for the assessment year 2012-13 as per the grounds of appeal on record.

2. *Prima facie*, in all the appeals, the common ground is with regard to disallowance of the assessee's claim for "**deduction of Long Term Capital Gain u/s.54F of the Income Tax Act, 1961** (hereinafter referred to as

**'the Act')**". That apart, in ITA No.1345/PUN/2017, there are other two grounds i.e. **"addition of Rs.3,54,94,895/- on account of deemed dividend u/s.2(22)(e) of the Act"** and **"addition of Rs.25,68,322/-"** which we would adjudicate separately in this order.

3. These cases were heard together. Since facts and issues being common, these cases are being disposed of vide this consolidated order. We would first adjudicate whether the assessee is eligible for deduction u/s.54F of the Act. For this purpose, we would take up ITA No.1345/PUN/2017 for assessment year 2012-13 as lead case.

**ITA No.1345/PUN/2017**  
**A.Y.2012-13**

**A. Ground No.1- Denial of exemption u/s.54F of Rs.18,96,18,422/-**

4. The facts with regard to this issue are that the assessee earned long term capital gain on sale of certain assets. In the return of income, the assessee had claimed exemption u/s.54F of the Act. The Assessing Officer has discussed this issue of claim of exemption u/s.54F in Para 4 of his order. The assessee had initially entered into an agreement for purchase of flat with M/s. Suryadoya Estates vide agreement dated 26.09.2012. Subsequently, the said agreement was cancelled and the assessee entered into an agreement with M/s. Kumar Builders for purchase of flat on 10.04.2014. The assessee submitted the relevant agreements before the Assessing Officer and also the proof of payment made to Suryadoya Estates and M/s. Kumar Builders. The Assessing Officer has stated that the assessee had entered into unregistered agreement with the above two entities. He has further stated that the

assessee is an interested party in both the above concerns. The assessee has further not received the possession of the flat within the specified time limit. The Assessing Officer has stated that the assessee has failed to comply with the provisions of section 54F of the Act and hence, the exemption claimed is not justified. Accordingly, the claim of exemption has been denied by the Assessing Officer.

5. The Ld. CIT(A) has confirmed the disallowance made by the Assessing Officer. The Ld. CIT(A) has discussed this issue in Paras 4.4 and 4.5 of the order. The Ld. CIT(A) reiterated the fact that the assessee has entered into unregistered agreements with both the entities wherein the assessee has substantial interest. It is further stated that no physical possession of the flat has been received by the assessee. Accordingly, the claim of the assessee has been rejected by the Ld. CIT(A).

Therefore, the contentions of the Revenue for denying the exemption claimed u/s.54F of the Act is because of the following reasons:

- i. The Agreements entered into were unregistered;
- ii. The assessee has not received possession of flat;
- iii. The assessee is interested party in both *M/s. Suryadoya Estates & M/s. Kumar Builders*.

6. The Ld. AR of the assessee submitted that he had booked a flat with *M/s.Suryadoya Estates* and the total agreement value was Rs.22,80,00,000/- and that agreement was not registered. The assessee paid amount of Rs.22.10 Crore before the due date of filing return. However, subsequently, the assessee was informed by the developer that it was not in a position to

give possession of the flat within prescribed time limit and accordingly, the assessee cancelled the said agreement and booked flat with M/s. Kumar Builders vide agreement dated 10.04.2014. The said flat was booked in project KUL Couture for a total consideration of Rs.23,65,60,000/- and an amount of Rs.22.10 Crore was paid against the said booking of the flat. The assessee had utilized the amount of Rs.22.10 Crore for the purchase of flat before the due date of filing return. In the course of assessment proceedings, the assessee had elaborated the reasons for delay in completion of project of M/s. Kumar Builders. The relevant details have been filed at Pages 97 to 101 of the paper book. Further, the assessee had also filed an affidavit clarifying the various reasons due to which development of the said project was delayed. The assessee has also stated that he has not cancelled the said booking of the flat and the amount is still lying with the developer. That apart from the assessee, there are other persons who had also booked flat of the said project i.e. KUL Couture. The Ld. AR vehemently argued that the assessee has not been refunded till date by the developer the amount of Rs.22.10 Crore paid against the said booking of flat. The Ld. AR further submitted that for the purpose of Section 54F of the Act, the relevant point is that the assessee should utilize the capital gain before the due date of filing return. In this case, Rs.22.10 Crore was already paid by the assessee to the developer which was before the due date of filing return. Therefore, there was no question of denying the assessee of exemption u/s.54F of the Act since the assessee acted bona-fide and utilized the amount before the due date of filing of return and the said amount is with the developer and has not been refunded back to the assessee.

6.1 The Ld. AR of the assessee further submitted that the project is genuine one since apart from the assessee there are other people who have paid advance to the developer in respect of their booking of flat and thus, it is clear that the transactions are genuine. The Ld. AR further submitted that Courts have taken a view, what is important is the utilization of money realized from sale of capital asset that utilization process should commence and if it is bona-fide utilization then just because physical possession was not given to the assessee, should not be a ground for denial of exemption u/s.54F of the Act. For this proposition, the Ld. AR of the assessee relied on the decision of the Mumbai Bench of the Tribunal in ITA No.3782/Mum/2014 in the case of Mr. Sanjay Sharma Vs. the Assistant Commissioner of Income Tax 26(1) and in that decision, the Mumbai Bench of the Tribunal had a occasion to consider the issue and followed the findings of the Hon'ble Karnataka High Court in the case of CIT Vs. Smt. B.S. Shanthakumar (2015) 233 taxman 347 (Karnataka) wherein it has been held that *"the words used in the sectioned are purchased or constructed. For such purpose, the capital gain realized should have been invested in a residential house. The condition precedent for claiming benefit under the said provision is the capital gain realized from sale of capital should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house. If after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of Section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was not a fit condition to be occupied within the period stipulated, that would not disentitle the assessee from claiming the benefit under section 54F of the Act."*

Therefore, neither a registered Sale Deed nor physical possession of the property is mandatory to get benefit of exemption u/s.54F of the Act. What is required is that the money got through sale of capital asset that should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house.

In reverting to the facts of the present case, the Ld. AR submitted that the assessee has already paid Rs.22.10 Crores to the builder before the due date of filing return and therefore, has parted away substantially with the money. Similarly, there was agreement entered into between the parties, though not registered. These facts are not disputed by the Revenue. Therefore, the assessee should get benefit of exemption u/s.54F of the Act.

6.2 The Ld. AR of the assessee also referred to the decision of the Co-ordinate Bench of the Chandigarh Tribunal in the case of Bhavna Cuccria Vs. ITO (165 ITD 124) (Chd.-Trib.) held that *“wherein substantial amount of capital gain has been invested by the assessee for purpose of purchasing a new house, deduction u/s.54 cannot be denied for the reason that construction was not completed within three years or house was not purchased within two years.”*

The Ld. AR further referred to the decision of the Mumbai Bench of the Tribunal in the case of Income Tax Officer, Ward-25(1)(5) Vs. Shri Uttamchand B. Jain in ITA No.1026/Mum/2017 for the assessment year 2011-12, in this case, there was no agreement entered into even by the assessee, however, he had paid 85% of the total cost of the said flat which he was purchasing from builder/developer. The Mumbai Bench of the Tribunal

in this case has observed that *“the only objection from the point of view of the Revenue is that the agreement was not registered and therefore, is not genuine document.”* However, in plethora of decisions, the Tribunal has noted the bona-fide nature of the assessee and the genuineness of the transactions and particularly in that case where more than 85% was already paid regarding cost of acquiring new property, the benefit of exemption u/s.54F was granted to the assessee.

6.3 The Ld. AR of the assessee further submitted that if in a case, total capital gain is not utilized for the purchase of new property or construction of a new property as enshrined u/s.54F of the Act, in such scenario, the requirement placed u/s.54F(4) of the Act states that the remaining amount should be deposited in the capital gain deposit scheme. The language enacted by the legislature in section 54F(4) is absolutely similar to Section 54G(2) of the Act. In reference thereto, the Hon'ble Supreme Court of India in the case of Fibre Boards (P.) Ltd. Vs. Commissioner of Income Tax, Bangalore (2015) 62 taxmann.com 135 (SC) has held that *“so long as the amount is utilized before the due date of filing return of income, the claim of exemption u/s.54G of the Act cannot be denied.”* The Ld. AR further submitted that there is a direct analogy which can be drawn vis-à-vis the provision, since the intent of the legislature is clear regarding the utilization of the amount of money before due date of filing return, in such situation, benefit of exemption has to be given to the assessee.

In the present case, the facts are undisputed that Rs.22.10 Crore was already paid by the assessee which is lying with the developer for the purchase of new flat before the due date of filing of return and in consonance

with the rule of the Hon'ble Apex Court, since the money has been utilized before the due date of filing return, benefit of exemption u/s.54F of the Act should be given to the assessee.

7. Per contra, the Ld. DR strongly relied on the orders of the Sub-ordinate Authorities and placed before us the decision of the Hon'ble Bombay High Court in the case of Rasiklal M Parikh Vs. Assistant Commissioner of Income Tax-19(2), Mumbai (2017) 88 taxmann.com 732 ( Bombay). In this case, the assessee surrendered tenancy rights in September 2005 and invested consideration towards construction cost of new flats before due date of filing return. However, the assessee was denied exemption u/s.54F of the Act on the ground of non-completion of construction of building within stipulated period. It was held by the Hon'ble Bombay High Court that *"in order to get exemption u/s.54F, the assessee had to obtain the allotment letter from the developer under the provision of the Maharashtra Ownership of Flats Act, 1963 (MOFA). The allotment letter issued by the developer did not confer title until the agreement for sale under the provisions of MOFA was registered. **The agreement sale was entered into only on 24.11.2008 beyond the period of three years from the date of surrender of tenancy.** Moreover, the developer had no approval for construction of the 9<sup>th</sup> floor wherein the assessee had booked three flats and such approval was received by the builders only in September, 2010. Thus, there was no question of the assessee establishing the title over the property which was not approved for construction at the material time."*

8. We have perused the case records and heard the rival contentions. We have also given considerable thought to the judicial pronouncements placed

on record. Here is a case, where the assessee had entered into an agreement with a developer for purchasing of new residential flat from a project undertaken by the said developer and had paid Rs.22.10 Crores as advance amount on account of purchase of the new flat. The agreement is not registered and neither the possession of the flat has been given to the assessee. It is also the ground of the Revenue that since the assessee is associated party with M/s. Kumar Builders, therefore, it is not genuine transaction and somehow, money had come back to the assessee. The assessee had filed an affidavit sealed and signed by notary wherein he solemnly affirms and states that *“he had booked a 21<sup>st</sup> floor and terrace above in the project Kumar Heights [now known as KUL Couture, Worli, Mumbai. The total consideration which was agreed for purchase of the said flat was Rs.23,65,60,000/- out of which the assessee had already paid Rs.22.10 Crore to M/s. Kumar Builders.”* Thereafter, he further affirms that *“he has not cancelled the said agreement nor the amount has been refunded by M/s.Kumar Builders.* The assessee further submitted through affidavit that *“the sanctioned plan of the building was done on 27.09.2011. The assessee in the affidavit further states that in the land where M/s. Kumar Builders were constructing the building, there were some tenants who were already occupying, they had to be rehabilitated in a separate building on the said land. Some of the tenants refused to shift to other accommodation and therefore, transit building was constructed to house those tenants on the same land and for the tenants who shifted to other rented accommodation, rents were provided by the developer. The tenants who did not move out of that particular land, transit building had to be made and they were shifted to the transit building and only thereafter, Kumar Builders had started construction of tenant building. Now that tenants building are almost completed and M/s. Kumar*

*Builders had applied for necessary NOC for occupation. That once the occupation certificate is received for the tenants building, the tenants would be allotted the respective units and thereafter, the transit building would be demolished and the work of the sale building would restart.*” These facts were already placed before the Revenue Authorities and because of these facts, it was stated by the assessee that there was delay in completion of the project by the developer and hence, possession was not provided to the assessee.

9. The case laws relied on by the Ld. AR of the assessee as hereinabove referred in the preceding paragraphs in this order, the Hon'ble Karnataka High Court in the case of CIT Vs. Smt. B.S. Shanthakumar (supra.) had observed and held that “*what is important for granting benefit of Section 54F of the Act is, the money got through sale of capital asset that should be parted by the assessee and invested either in purchasing a residential house or in constructing a residential house.*” Similarly in other decisions of the Tribunal as referred by the Ld. AR of the assessee wherein it has been held “*when it is established that the major part of the money has been utilized for procuring new residential house before the due date of filing return then the benefit of exemption u/s.54F of the Act should be given to the assessee.*” The intent of the legislature in order to incorporate Section 54F of the Act is to promote housing Project and development activities. That once a person sells some assets and acquires capital gain that money should be utilized for procuring some new assets as per requirements of the statutes. The assessee should have parted with that money or substantial amount of it in order for procuring new residential house. What essentially is looked into in this regard is bona-fide nature of the assessee and the genuineness of the transactions.

9.1. In the instant case, the facts are undisputed that the assessee had paid Rs.22.10 Crore to M/s. Kumar Builders and that money is still lying with the said developer as sworn in by the affidavit filed in record by the assessee and that once the project is completed, the assessee will go ahead and procure the new residential house by paying the balance amount.

10. The Ld. DR neither controverted these facts nor could bring any evidence on record to show that whatever money was paid by the assessee that again came back to him. The only contention of the Department is that the assessee is one of the associated parties in the same concern which was developing the project. This does not sanctify to deny the benefit of exemption u/s.54F of the Act to the assessee when genuineness of the all transactions are established and also the fact that it was placed on record there are several other persons who are purchasing flats from the same builder who have already paid advance amount. These facts were also not disputed by the Ld. DR. The decision of the Hon'ble Bombay High Court in the case of Rasiklal M Parikh Vs. CIT-19(2), Mumbai (supra.) relied upon by the Ld. DR is substantially different in facts as compared to the case of the assessee. In that case, the agreement for sale was itself entered into only on 24.11.2008 between the parties beyond the period of three years from the date of surrender of tenancy whereas, in the case of the assessee, agreement was entered into well in time and even the advance amount was already paid before the due date of filing return.

In the case of Rasiklal M Parikh Vs. CIT-19(2), Mumbai (supra.), the developer had no approval for construction of the 9<sup>th</sup> floor wherein the assessee had booked three flats and such approval was received by the

builders only in September, 2010. In the instant case of the assessee, there is no such problem. Therefore, having such heavy distinguishing features so far as facts are concerned, the decision in the case of Rasiklal M Parikh Vs. CIT-19(2), Mumbai (supra.) will not be helpful to the Revenue.

Further, in the case of Rasiklal M Parikh Vs. CIT-19(2), Mumbai (supra.) because of the above said features, genuineness of the transactions and the bona-fide nature of the assessee was not established. The assessee therein had kept money received from the selling of the assets in the form of capital gain for more than three years and thereafter, entered into an agreement. But in the instant case of the assessee herein within the time framed, the agreement was entered into between the assessee and the developer and even, advance was paid before the due date of filing return. The bona-fide attitude of the assessee and the genuineness of the transactions are clearly established in this case.

11. We further observe that the entire ambit of Income Tax Act is based within the larger framework of welfare legislation. The object of each provision is ultimately for the development of the society as well as for the individual and also at the same time taking care of the interest of tax payers. The interpretation, therefore, in the case of Income Tax Act in reference to a particular ratio or decision has to be interpreted in holistic manner and not separately. We have also perused the language inserted in Section 54F r.w.s. 54G(2) of the Act. The Hon'ble Supreme Court of India in the case of Fibre Boards (P.) Ltd. Vs. Commissioner of Income Tax, Bangalore (supra.) has held that *"so long as the amount is utilized before the due date of filing return of income, the claim of exemption u/s.54G of the Act cannot be denied."*

That even with regard to Section 54F of the Act, the decisions referred herein above in this order in the preceding paragraphs, the Courts are not making it mandatory (i) whether certain agreement is registered or not; (ii) whether possession has been given or not. If it is established that the transactions are genuine, the Judiciary has provided benefit of exemption u/s.54F of the Act to the assessee.

12. In the present case, we have already examined the bona-fide nature of the assessee and genuineness of the transactions for procurement of new residential flats and that genuineness remain uncontroverted. We further find even in the following decisions wherein it has been held that *“if the amount has been utilized before the due date of filing of return, the exemption u/s.54F of the Act cannot be denied on the ground that the assessee has not taken the possession of the flat within the stipulated period.”*

- (a) *ITO Siliguri Vs. Saroj Rani Gupta [104 taxmann.com 132 (Kol) (Trib)*
- (b) *ITO Vs. Narayana Rao [83 taxmann.com 73 (Hyd.) (Trib.)*
- (c) *Narasimha Raju Rudra Raju Vs. ACIT [35 taxmann.com 90 (Hyd.) (Trib)*
- (d) *CIT Vs. Sambandam Udaykumar [19 taxmann.com 17 (kar.) (HC)*
- (e) *Chetan Vithal Tupe Vs. ACIT [12 taxmann.com 125 (Pune) (ITAT)*
- (f) *ITO Vs. Anand Arvind Shah ( ITA No.2244/Ahd/2010)*
- (g) *Gautam Jhunhunwala Vs. ITO ( ITA No.1356/Kol/17)*
- (h) *Mr. Sanjay Sharma Vs. ACIT (ITA No.3782/Mum/14)*
- (i) *ITO Vs. Shri Uttamchand B. Jain (1026/Mum/2017)*

13. We have further observed that the delay in completion of the project was absolutely circumstantial and neither the assessee nor M/s. Kumar

Builders had any mala-fide intention for delay of the project. The sworn in affidavit has been filed by the assessee in this regard.

14. In view of the aforesaid discussion, examination of facts and legal propositions, we set aside the order of the Ld. CIT(Appeals) and allow the benefit of exemption u/s.54F of the Act to the assessee. The Assessing Officer is directed to provide appeal effect accordingly. Therefore, **on this ground of getting benefit of exemption u/s.54F of the Act, the assessee succeeds. Thus, ground No.1 raised in appeal by the assessee is allowed.**

15. The Ld. AR of the assessee submitted before us that he is not pressing ground No.2. In view of the submissions of the Ld. AR of the assessee, **ground No.2 is dismissed as 'not pressed'.**

**B. Ground No.3- Addition of Rs.3,54,94,895/- on account of deemed dividend u/s.2(22)(e) of the Act.**

16. The Assessing Officer has made an addition u/s.2(22)(e) of the Act on account of deemed dividend. He has discussed this issue in para 6 of his order. The Assessing Officer has stated that the prop. concern of the assessee mainly Kumar Builder had received a loan from Kumar Urban Development Ltd. of Rs.3,54,94,895/-. The Assessing Officer stated that assessee is having substantial interest in both the concerns and therefore, the provisions of deemed dividend are applicable.

17. The learned CIT(Appeals) has confirmed the action of the Assessing Officer.

18. The Ld. AR of the assessee submitted that the prop. concern of the assessee had already advanced an amount more than Rs. 5 Crs. to Mis. Kumar Builders a partnership firm in which Kumar Urban Development Ltd. is a partner. Advance tax was required to be paid of Shri Lalit Jain, the assessee herein. Since Shri Lalit Jain who is prop. concern had already advanced money to the partnership firm, it was directed to pay advance tax by adjusting against the amount already lent. The partnership firm in turn requested its partner Kumar Urban Development to pay the amount. In the books of the firm and Kumar Urban Development Ltd. these transactions are properly recorded. However, in the books of the prop. concern, through oversight, the amount was shown as loan from Kumar Urban Development Ltd. Accordingly, the Assessing Officer has made the addition. The assessee submits that he had to receive amount from the partnership firm. In the books of the partnership firm and the company i.e. Kumar Urban Development Ltd., the entries have been properly made. The balance sheet of the company is enclosed on pages 122-165 and this amount of Rs.3,54,94,895/- is not shown as a loan to the assessee. Thus, the contention of the CIT(Appeals) that the entries are made in order to circumvent the provisions of deemed dividend is not correct. Accordingly, the assessee submits that he has not received any loan from the company and in fact, the amount paid is repayment of the liability and therefore, there is no question of making any addition on account of deemed dividend to the hands of the assessee.

19. The Ld. DR, per contra, placed reliance on the orders of the Sub-ordinate Authorities.

20. We have perused the case records and heard the rival contentions. In the balance sheet of the company i.e. Kumar Urban Development Ltd, the amount is not shown as loan to the assessee. The words in Section 2(22)(e) of the Act clearly states “*any advance or loan given to a person*”. In this case, there is no loan or advance given from the company to the assessee. When no loan or advance has been given to the assessee, then Section 2(22)(e) of the Act is not triggered. We, therefore, set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete the addition on account of deemed dividend u/s.2(22)(e) of the Act. The Assessing Officer is directed to provide appeal effect accordingly. **Thus, ground No.3 raised in appeal by the assessee is allowed.**

**C. Ground No.4- Addition of Rs.25,68,322/-**

21. Ground No.4 pertains to the addition of Rs.25,68,322/- on the basis of ITS data.

22. The Assessing Officer has discussed this issue in Para 7 of his order. The Ld.CIT(Appeals) has confirmed the addition on the ground that the assessee was not able to reconcile the details.

23. At the time of hearing, the Ld. AR of the assessee prayed that an opportunity may be provided to the assessee so that they can file reconciled details before the Assessing Officer and place their case on merits and for this purpose, the matter may be remitted to the file of Assessing Officer for necessary verification and adjudication.

24. The Ld. DR fairly conceded to the prayer of the Ld. AR of the assessee.

25. We have perused the case records and heard the rival contentions. In view of the submissions made by the parties herein, we set aside the order of the Ld. CIT(Appeals) on this issue and restore the matter to the file of Assessing Officer for necessary verification and adjudication wherein the assessee is directed to file the reconciled details. The Assessing Officer is directed to adjudicate the issue after considering the reconciled details in compliance with the principles of natural justice. Thus, **ground No.4 raised in appeal by the assessee is allowed for statistical purposes.**

26. In the result, **appeal of the assessee in ITA No.1345/PUN/2017 is partly allowed for statistical purposes.**

**ITA No.1346 & 1347/PUN/2017**  
**A.Y.2012-13**

27. Both the parties herein are unanimous in stating that the ground No.1 raised in these appeals are identical to ground No.1 raised in ITA No.1345/PUN/2017. Since all other facts, arguments of the parties are same and similar, the same ruling as in ITA No.1345/PUN/2017 while deciding the ground No.1 shall apply *mutatis-mutandis* in these appeals also on this issue. Therefore, for these cases also, we set aside the order of the Ld. CIT(Appeals) and **allow the ground No.1 raised by the assessee.**

28. Ground No.2 in both these appeals are general in nature and hence no adjudication is required.

29. In the result, **appeals of the assessee in ITA No.1346 & 1347/PUN/2017 are allowed.**

30. In the combined result, **appeal of the assessee in ITA No.1345/PUN/2017 is partly allowed for statistical purposes and appeals of the assessee in ITA No.1346 & 1347/PUN/2017 are allowed.**

Order pronounced on 24<sup>th</sup> day of September, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> September, 2019.  
SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	20.09.2019	Sr.PS/PS
2	Draft placed before author	23.09.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		