

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'E': NEW DELHI.**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and**

SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

**ITA No.5120/DEL/2025
(Assessment Year :2015-16)**

Jan Kalyan Samiti
A-48, Chander Nagar Sahibabad,
Ghaziabad 201002

vs.

ITO Ward Exemption
Ghaziabad

(PAN: AAATJ5583B)

ASSESSEE BY : Sh. Gautam Jain, Adv &
Sh. Ankit Kumar Adv

REVENUE BY : Ms. Ankush Kalra, Sr. DR

Date of Hearing : 11.12.2025

Date of Order : 06.02.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to 'Id. CIT (E)') dated 17.07.2025 for Assessment Year 2015-16.
2. Brief facts of the case are, assessee filed return of income declaring NIL income on 28.09.2015. The case was selected for scrutiny under CASS,

notices u/s 143(2) and 142(1) were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for.

3. During assessment proceedings, the Assessing Officer observed that assessee society was granted registration u/s 12AA of the Income Tax Act 1961 (in short "Act"), by Id. CIT(A), Ghaziabad dated 31.08.2004. He observed that there were 7 office bearers of the society the details are reproduced at page 2 of the assessment order.
4. Further he observed that assessee has disclosed total receipts of Rs.3,98,108/-, and revenue expenditure of Rs.2,17,867/-and declared surplus of Rs.1,80,241/- in their financial statement. He observed that the case was selected on the ground of transaction with the specified person under Limited Scrutiny. On perusal of the balance sheet, he noticed that the assessee has sold the agricultural land for Rs.30,00,000/- to Shri Jagan Nanth Ganeshi Lal Bajaj Charitable Trust Samiti. He also observed that, assessee has also purchased 115000 shares of RPL Capital Finance Limited for Rs.69,00,000/- from the private limited company namely M/s Rinkpi Finance & Consultants Pvt. Limited (RFCPL). The Assessing Officer has reproduced the Share Certificate in his order, and observed that the President, Shri Sanjeev Agarwal is also having shareholding in M/s Rinkpi Finance & Consultants Pvt. Limited, from whom assessee purchased 115000

shares at Rs.60/- per equity shares, the fair market value works out at Rs.34/- per share. The Assessing Officer observed that the assessee has paid excess of Rs.26/- per equity share to M/s Rinkpi Finance & Consultants Pvt. Limited totaling to Rs.29,90,000/-. In order to verify the same, notice u/s 133(6) of the Act issued to M/s Rinkpi Finance & Consultants Pvt. Limited to furnish the share holding of the assessee as well as the president of the society Shri Sanjeev Agarwal. In response they submitted the list of share holders which is reproduced at page 5 of the assessment order.

5. From the above information the Assessing Officer noticed that the President Shri Sanjeev Agarwal (HUF) was holding total share holding of 25.84% in M/s Rinkpi Finance & Consultants Pvt. Limited out of total shareholding of 1,67,47,000/- equity shares . He listed the details of share holding of Sh. Sanjeev Agarwal (HUF) and assessee society as under:

1. Jan Kalyan Samiti (Assessee)	14.18%	Rs.23,74,724/-(Face.value)
2. Sri Sanjeev Agarwal(HUF)	<u>11.66%</u>	<u>Rs.19,52,700/-(Face.value)</u>
	<u>25.84%</u>	

6. With the above observation he held that, Shri Sanjeev Agarwal President of the society holds 25.84% voting power in M/s Rinkpi Finance & Consultants Pvt. Limited. Accordingly, the provisions of section 13 of the Act read with 'Explanation 3' attracts in this case.
7. By referring to the provisions of Section 13(2)(e) he came to the conclusion that, Shri Sanjeev Agarwal holds voting power of 14.18% through society

and 11.66% through Sh. Sanjeev Agarwal (HUF) totaling to 25.84% voting power in M/s Rinkpi Finance & Consultants Pvt. Limited from whom shares are purchased by or on behalf of the society or institution from the private company, in which specified persons are share holder during the previous year for consideration which is more than adequate.

8. When the assessee was to show cause as to rebut the above findings, in response assessee submitted as under:-

1. In connection with your query regarding purchase of shares from M/S Rinkpi Finance & Consultants Pvt Ltd of RPL Capital Finance Ltd at Rs.69/- per share though the market value is about Rs.34/- per share .As voting right is more than 20% hence section 13 of the Income Tax Act attracts and why the benefit of section 11 & 12A should not be withdrawn ; we have to submit that :

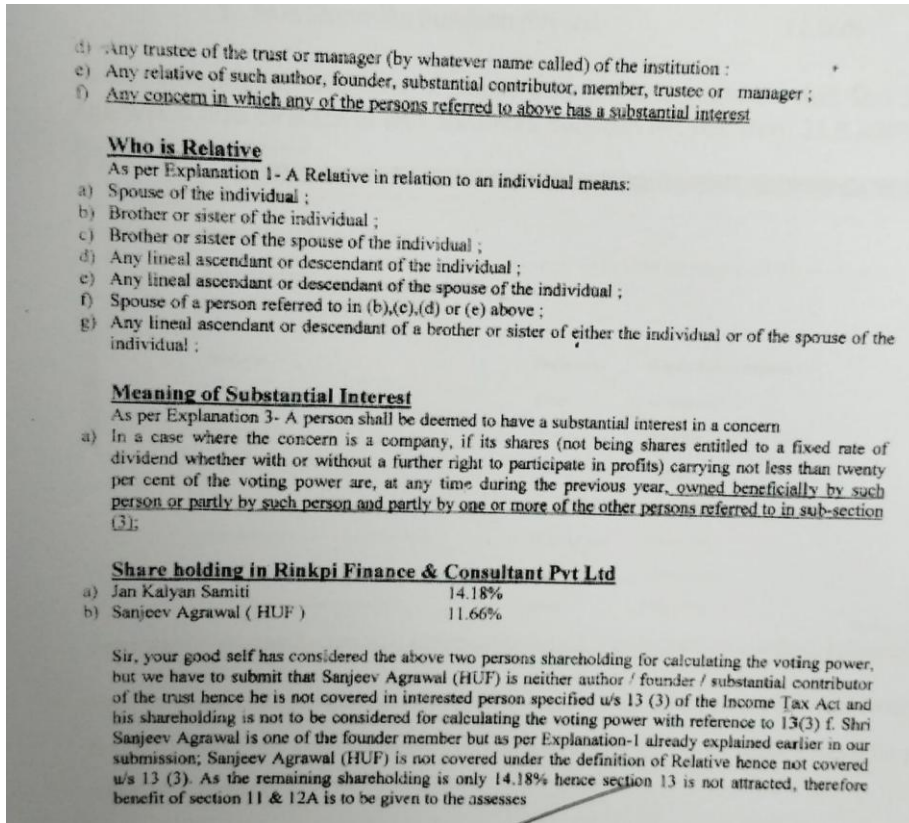
Where the section 13 applied

As per Income Tax Act section 13 is applied when the income / property of the trust is used / applied during the relevant year, for the direct / indirect benefit of the author of the trust and other persons mentioned in section 13 (3); hence it is necessary that there should be a benefit directly or indirectly to the persons covered u/s 13 (3).

Who is interested person U/S 13 (3)

For the purposes of section 13, the following are interested persons:

- a) The author of the trust or the founder of the institution ;
- b) Any person who had made a total contribution (up to the end of the relevant previous year) of an amount exceeding Rs. 50000/- (substantial contributor) ;
- c) Any member of the HUF (or any relative of such member) where such author or founder or substantial contributor is a HUF ;



9. After considering the above submissions, he rejected the same and further observed that as per the information available in the public domain, Sh. Sanjeev Agarwal is also Director of M/s Shramika Buildcon Pvt. Ltd. from 21.08.2006 wherein Sh. Sanjeev Agarwal extends from 12% in RFCPL through M/s Shramika Buildcon Pvt. Ltd. during the year under consideration.

10. Further he observed that another member of the assessee society namely Shri Rashmi Kant Mittal is also a director in M/s Rinkpi Finance & Consultants Pvt. Ltd. and also observed that Sh. Rashmi Kant Mittal is also a director in M/s SE Finvest Private Limited, the M/s SE Finvest Private Limited has share holding of 17.10% in M/s Rinkpi Finance & Consultants Pvt. Limited.

The member of the assessee society, Shri Rashmi Kant Mittal has also holds voting power of 17.10% in M/s Rinkpi Finance & Consultants Pvt. Limited through M/s SE Finvest Private Limited.

11. After considering the above observation, he came to the conclusion that assessee and another Director Sh. Rashmi Kant Mittal controls through other entities who are also hold shares in RFCPL and the detail share holding controlled by them consists of 37.84% as under:-

1. Jan Kalyan Samiti (Assessee)	14.18%
2. Sri Sanjeev Agarwal(HUF)	11.66%
3. M/s Shramika Buildcon Pvt Ltd.	<u>12.00%</u>
	<u>37.84%</u>

12. With the above observation, he was of the view that provisions of Section 13(2)(e) of the Act are clearly applicable, the benefit of section 11 or section 12 is not allowable to the assessee. Accordingly, he proceeded to disallow the whole investment to the extent of Rs.69,00,000/-. Further he observed that since the provision of section 13 of the Act, are applicable in this case the surplus earned by the assessee during the year under consideration to the extent of Rs.1,14,891/- is taken as income of the assessee. Accordingly, he completed the assessment by making the addition of surplus of Rs.1,14,891/- and disallowance u/s 13(2)(e) of the Act of Rs. 69,00,000/-.

13. Aggrieved with the above order assessee preferred an appeal before NFAC Delhi and filed a detailed submissions which are reproduced in the impugned

order. After considering the detailed submissions of the assessee and findings in the assessment order he proceeded to sustain the addition made by the Assessing Officer.

14. Aggrieved with the above order assessee is in appeal before us raising following grounds of appeal:

1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi in an order dated 17.7.2025 has erred both in law and on facts in upholding the determination of the income of the appellant society 70,14,890/- as income at Rs. 1,14,890/- in an order of assessment dated 17.11.2017 against declared u/s 143(3) of the Act at Rs.

2. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has erred both in law and on facts in upholding the denial of claim of exemption u/s 11 and 12 of the Act by applying the provisions of section 13(2)(e) of the Act read with section 13(3) of the Act

2.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the appellant was duly registered u/s 12AA of the Act then the assessee is duly entitled to claim of exemption u/s 11 and 12 of the Act.

2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the evidence and, explanation tendered by the appellant to support the claim of exemption u/s 11 and 12 of the Act and hence, findings mechanically recorded based on irrelevant and extraneous considerations are misconceived, misplaced and, untenable.

3. That the learned That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has erred both in law and on facts in upholding an addition of Rs. 69,00,000/- representing the investment in shares of M/s RPK Capital Finance Ltd. by the appellant society by invoking section 13(2)(e) of the Act.

3.1 That while upholding the above addition, the learned Commissioner of Income Tax (Appeals), has otherwise too failed to appreciate the factual substratum of the case, statutory provisions of law and as such, denial of exemption so made is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.

15. At the time of hearing Ld. AR of the assessee brought to our notice detailed findings of the Lower Authorities and submitted as under:-

Section 13(1) of the provides that nothing contained in section 11 or 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, in the case of charitable institution any income thereof if any part of such income or any property of the trust or institutions is during the previous year used or applied directly or indirectly for the benefit of any person referred to in section 13(3) of the Act. Further, Section 13(2) of the Act provides without prejudice to the generality of the provisions of clause (c) of 13(1) of the Act, that the income or the property of the trust or any part of such income or property shall for the purpose of clause (b) deemed to have been utilised or applied for the benefit of person referred to in section 13(3) of the Act, if any share, security or other property is purchased on behalf of any person referred to in section 13(3) of the Act during the previous year for a consideration which is more than adequate. The submission therefore, is that section 13(1) of the Act read with 13(2) of the Act are in respect of only denial of exemption claimed under section 11 and 12 of the Act on account of infringement of conditions either provided in section 13(1) (c) of the Act read with section 13(3) of the Act or more specifically in section 13(2) of the Act read with section 13(2) of the Act. In other words, the section does not in any manner enable the Assessing Officer to tax a sum which is not income per se. All that it does is to curtail the claim of exemptions on account of alleged infringement of section 13(1) (c) of the Act read with section 13(3) of the Act or alternatively under section 13(2) read with 13(3) of the Act.

The submission being on the facts of the instant case therefore to the revenue could not have by any logic or any legal implication could have arrived at a conclusion that investment in shares of M/s RPL Capital Finance Ltd. of Rs. 69,00,000/- represents income of the appellant charitable trust and thus addition made of Rs. 69,00,000/- is ex-facie

untenable.

It is submitted here that the undisputed facts are, that the appellant is a trust duly registered u/s 12AA of the Act vide Registration No. C. No. 57(9)/Registration/GZB/2004-05/1660 dated 31.8.2004 issued by the learned Commissioner of Income Tax, Ghaziabad. A copy of the registration certificate u/s 12AA of the Act is placed at page 1 Paper Book.

It is submitted here that on 28.9.2015 appellant had furnished a return of income declaring an income of Rs. 1,14,890/-, which was computed in the following manner.

Sr. No.	Particulars	Amount (Rs.)
i)	Income from other sources (A)	1,81,258 (Page 19 of PB)
ii)	Voluntary contributions (B)	1,51,500 (Page 19 of PB)
iii)	Gross Income (C) = (A+B)	3,32,758 (*)
iv)	Amount applied to charitable purpose (Revenue accumulated) (D)	2,17,867 (Page 19 of PB read with Page 17 of PB)
v)	Amount Accumulated u/s 11(2) of the Act (E) = (C-D) (Though not claimed in the return, since there is exemption up to Rs. 2.5 lakhs)	1,14,891 (Page 17 of PB)

(*) Agriculture income of Rs. 65,350/- was claimed as exempt income. A copy of acknowledgement of return of income along with its computation of income and audited financial statement for the financial year 2014-15 relevant to assessment year 2015-16 are placed at pages 2-19 of Paper Book.

In other words, once there is effectively no claim of exemption u/s 11 and 12 of the Act, the entire basis cited above either to made an addition u/s 69 of the Act, or otherwise deny the claim of exemption u/s 11 and 12 of the Act is misconceived, misplaced; and ex-facie untenable.

Further, even otherwise invocation of section 13(2) of the Act on the ground that, section 13(3) of the Act is applicable is also based on incorrect application of the provisions of the Act

The provision invoked is section 13(3)(e) of the Act i.e. Shri Sanjeev Aggarwal hold more than 20% shareholding in M/s Rinkpi Finance & Consultants (P) Ltd.

Factually Sanjeev Aggarwal who is the founder of the appellant does not hold any shareholding in M/s. Rinkpi Finance & Consultants (P) Ltd.

and once he does not hold any share in M/s. Rinkpi Finance & Consultants (P) Ltd., section 13(2)(e) of the Act cannot be invoked.

The authorities below have aggregates the shareholding held by three independent persons in their independent capacity to invoke section 13(3)(e) of the Act is satisfied which is a misconception. The learned Commissioner of Income Tax Appeals has held as under:

6.1.5 I concur with the findings of the Assessing Officer that Shri Sanjeev Aggarwal was substantially interested in the said company. Shri Sanjeev Aggarwal and his HUF may be different persons and separate legal entities under the Income Tax Act.

It is submitted that the shareholding for the purpose of section 13(3) of the Act has to be seen in independent capacity and not in aggregate. The fact of the matter remains that Sanjeev Aggarwal who is the founder of the appellant society does not hold any shareholding in M/s. Rinkpi Finance & Consultants (P) Ltd.

It is submitted that the shareholding of appellant cannot be assumed to be shareholding of Sanjeev Aggarwal, so as to invoke section 13(2)(e) of the Act. Likewise, shareholding of Sanjeev Aggarwal HUF cannot be said shareholding of Sanjeev Aggarwal to invoke section 13(3)(e) of the Act. Similarly, shareholding of the company, called by the name of Shramika Buildcon (P). Ltd. in which Sanjeev Aggarwal is the director cannot be taken as a shareholding of Sanjeev Aggarwal.

It is submitted that a legal entity with an independent existence and identity in the eyes of law is distinct and different from its directors or shareholders or founder. It is submitted that Hon'ble Supreme Court in the case of Mrs. Bacha F. Guzdarvs CIT reported in 27 ITR 1 has held that "there is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company". It has been held therein as under:

"It was argued by Mr. Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest [1924] 8 Tax Cas. 704 at 710 that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he

has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word "assets" in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the Sholapur Mills case [1950] SCR 869 at 904. That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the articles; of association, to declare that dividends should be, distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders. In Halsbury's Laws of England, Vol. 6 (3rd Ed.), page 234, the law regarding the attributes of shares is thus stated:

"A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the nature of real estate."

The aforesaid principles of respecting the distinct corporate identity was

reiterated by the Supreme Court in the decision of Vodafone International Holdings B.V. v. UOI reported in 341 ITR 1, wherein the Court held that companies and other entities are viewed as economic entities with legal independence vis-a-vis their shareholders/participants. It has been held therein as under:

"International tax aspects of holding structures

65. In the thirteenth century, Pope Innocent IV espoused the theory of the legal fiction by saying that corporate bodies could not be excommunicated because they only exist in abstract. This enunciation is the foundation of the separate entity principle.

66. The approach of both the corporate and tax laws, particularly in the matter of corporate taxation, generally is founded on the abovementioned separate entity principle, i.e., treat a company as a separate person. The Indian IT Act, 1961, in the matter of corporate taxation, is founded on the principle of the independence of companies and other entities subject to income-tax. Companies and other entities are viewed as economic entities with legal independence vis-a-vis their shareholders/ participants. It is fairly well accepted that a subsidiary and its parent are totally distinct taxpayers. Consequently, the entities subject to income-tax are taxed on profits derived by them on standalone basis, irrespective of their actual degree of economic independence and regardless of whether profits are reserved or distributed to the shareholders/participants. Furthermore, shareholders/participants, that are subject to (personal or corporate) income-tax, are generally taxed on profits derived in consideration of their shareholding/participations, such as capital gains. Nowadays, it is fairly well settled that for tax treaty purposes a subsidiary and its parent are also totally separate and distinct taxpayers.

In such circumstances the assumption that M/s. Rinkpi Finance & Consultants (P) Ltd. is a specified person of section 13(3) of the Act since Sanjeev Aggarwal holds substantial interest in M/s. Rinkpi Finance & Consultants Ltd. is not accordance with law and therefore not tenable.

Also, there is no valid basis to suggest that fair market value of the

shares is Rs. 34/-per share and, the appellant invested more than more than adequate consideration to the extent of Rs. 26/- per equity per share to M/s. Rinkpi Finance & Consultants Pvt. Limited. It is submitted that there are no evidences on record that the appellant has paid excess sum of Rs. 29,90,000/- for the purchase of shares of RPL Capital Finance Limited and merely on the basis of presumption holding that the appellant has paid excess sum which is higher than the market price the addition made is erroneous and liable to be deleted as such.

16. On the other hand, Ld. DR brought to our notice page 5 of the assessment order and submitted that as per the facts brought on record by the Assessing Officer the provisions of Section 13(2)(e) are applicable. Therefore he relied on the findings of the lower authorities.

17. Considered the rival submissions and material placed on the record, we observed that Assessing Officer, called information from RFCL regarding the details of shareholding, from that he observed that the President Sh. Sanjeev Agarwal having substantial interest on the basis that the assessee itself held 14.18% shares along with Sanjeev Agarwal (HUF) held 11.66%, and further observed that another member of the society Shri Rashmi Kant Mittal held shares through M/s Shramika Buildcon Pvt. Ltd. wherein Shri. Rashmi Kant Mittal held 17.10% shares in SE Finvest Pvt. Ltd. Therefore Sh. Sanjeev Agarwal and Sh. Rashmi Kant Mittal held more than 37.84% share holding in RFCPL from which assessee purchases the shares of RPL Capital Finance Limited from RFCPL. According to the Assessing Officer, assessee has paid more than the market value to purchase the above said

shares from RFCPL. It is also fact on record that Assessing Officer has not brought on record how he came to the conclusion that the shares purchased by the assessee from RFCPL by paying more than the fair market value of shares. Further we observed that as per the list of shareholders in RFCPL Sh. Sanjeev Agarwal as an individual is not a shareholder, however, he held shares as Karta of HUF of 11.66% and assessee itself held shares of 14.18%, as per the provisions of Income tax, the assessee is an independent entity and or such Sanjeev Agarwal (HUF) also is a separate individual person. As per the provisions of Section 13(2)(e) read along with explanation 3, we observed that if any share, security or other property is purchased by or on behalf of the trust from any person referred to in explanation 3, during the previous year for consideration which is more than adequate. As per the Explanation 3 a person shall be deemed to have a substantial interest in a concern in which he controls not less than 20% of the voting power, at any time during the previous year, owned beneficially by such person or persons.

18. From the above it is clear that there should be a transaction between the trust or society from the person referred u/s 13(3) of the Act. In the given case the person referred u/s 13(3) are 7 office bearers from whom the assessee should have directly purchased the above referred shares or through the entities wherein the above said office bearers controls or holds more than 20% of the voting power or having substantial interest in the above said concerns. In the

given case we observed that none of the office bearers directly held more than 20% of shares or substantial interest in the Company RFCPL. We observed that Assessing Officer misunderstood the provisions of the section and the assessee held 14.18% and combined with Sanjeev Agarwal (HUF) who is a separate individual who does not have any interest in the society and Shramika Buildcon Pvt. Ltd. in which one of the office bearer is a Director who held shares in SE Finvest Pvt. Ltd..

19. After considering, the findings of the Assessing Officer, we are of the view that Assessing Officer has combined provisions of Section 13(2)(e) and 2(22)(e) of the Act, therefore, in our view none of the office bearers of the society held or controlled more than substantial interest in RFCPL. Therefore, invoking the provisions of Section 13(2)(e) of the Act is uncalled for. Further we observed that on the similar issue ITAT Mumbai in the case of **Navajbhai Ratan Tata Trust Vs. Additional Director of Income Tax (Exemption) [2022] 140 taxmann.com 157 (Mumbai-Trib.)** has held as under:-

5. 7 It is evident from the facts of the present case, as also noted by the Assessing Officer, that Shri Ratan N. Tata, founder trustee of the assessee, was holding 3,368 ordinary shares of Tata Sons Ltd. constituting only 0.83% of the aggregate paid-up ordinary share capital of Tata Sons Ltd., which was much less than the threshold requirement of provision of Explanation-3 to section 13 of the Act. Therefore, Shri Ratan N. Tata cannot be held to be having 'substantial interest' in Tata Sons Ltd. Accordingly, the investment by the assessee trust in shares of Tata Sons Ltd. is not affected by the vice of section 13(2)(h) of the Act. In the present case, the only basis for invoking the provisions of section

13(2)(h) of the Act by the AO was that Shri Ratan N. Tata, being the Chairman of Tata Sons Ltd., could have influenced the decision of Tata Sons Ltd. as well as of the assessee trust at the time of investment, is nothing but conjectures/surmises which is not even supported by the statutory requirements of section 13(2)(h) read with Explanation 3 to section 13 of the Act.

20. Respectfully following the above decision and as per the above discussions

Assessing Officer had applied the assumptions and conjecture to invoke the provisions of Section 13(2)(e) of the Act in the given case. Therefore, we are inclined to allow the grounds raised by the assessee and direct the Assessing Officer to allow the claim.

21. In the result appeal filed by the assessee is **allowed**.

22. Order pronounced in the open court on this day of 6th February, 2026.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 6.02.2026

***Mitali Sr. PS**

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI