

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.7025/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-6(2)(2) 5 th Floor, Room No. 510, Aayakar Bhavan, Mumbai- 400020.	बनाम/ Vs.	M/s. Design Deal Fashions Pvt. Ltd. 313, Jogani Indl. Estate, Tulsi Pipe Road, Dadar (W), Mumbai-400018.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACD5401D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Dharan Gandhi	
Revenue by:	Smt Mahita Nair (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 14/03/2024

घोषणा की तारीख /Date of Pronouncement: 22/03/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 06.04.2023 for the assessment year 2015-16.

2. The grounds of appeal of the revenue are as under: -

1. "Whether on the facts and in the circumstance of the case and in law, the Ld. CITA) is justified in not upholding the action of the AO in treating the unsecured loan of Rs. 1,80,00,000/- from entities operated and controlled by hawala operator Shri. Praveen Kumar Jain & Group as accommodation entry and assessing the same as assessee's own income.

2."Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) is justified in not upholding the action of the AO in treating the share application money received of Rs.



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80,00,000/- from entities operated and controlled by hawala operator Shri. Praveen Kumar Jain & Group as accommodation entry and assessing the same as assessee's own income?"

3. "Whether in the facts and circumstances of the case, the Ld. CIT(A) is right in simply deleting the addition made by the AO rather than taking the investigation/enquiries further either by himself or cause to get it done as per section 250(4) of the I T Act, especially after making the findings that the entire focus of the AO was on the modus operandi adopted by Shri. Praveen Kumar Jain to provide bogus accommodation entries of loan than to examine the application of section 68 in the case of the assessee?"

4, "Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs. 40,00,000/- without fulfilling the obligation of the first appellate authority to have ensured that effective enquiry was carried out as held by the Hon'ble Delhi High Court in the case of M/s. Jansampark Advertising & Marketing (P) Ltd. in ITA 525/2014 delivered on 11/03/2015?

5.The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

6. The appellant craves leave to amend or alter or add a new ground which may be necessary?"



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3. Brief facts are that the assessee was incorporated on 06.07.1995 and is carrying on the business of Manufacturing Readymade Garments, Commission Agents. The assessee filed its return of income for AY. 2009-10 on 24.09.2009 declaring total income at Rs.3,68,743/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter “the Act”). Later, the return of income was reopened by the AO by issuing notice u/s 148 of the Act which was served upon the assessee on 30.03.2015. According to the AO, he received information from the Investigation Wing of the Department that the assessee company is one of the beneficiaries of the accommodation entries provided by the companies controlled by Shri Pravin Kumar Jain through dummy companies which provided only accommodation entries in the form of bogus share capital/loan. The AO noted that the assessee company has availed accommodation entries provide by Shri Pravin Kumar Jain through his bogus companies in the form of unsecured loan/share capital as given in the table as under: -

Sr. No.	Name of the person with address	PAN of the bogus concern	AY	Amount (in Rs.)	Nature of benefit taken
(1)	(2)	(3)	(4)	(5)	(6)
1	Anchal Properties P. Ltd.	AAGCA0681A	2009-10	20,00,000	Unsecured Loan
2	Ansh Marcantile P. Ltd. (Newplane Trading Co. P. Ltd.)	AABCN8176E	2009-10	20,00,000	Unsecured Loan
3	Atharv Business P. Ltd. (Ostwal Trading (I) Pvt. Ltd.)	AAACF9430A	2009-10	20,00,000	Unsecured Loan
4	Casper Enterprises P. Ltd. (Ostwal Trading (I) Pvt. Ltd.)	AAACO7955M	2009-10	20,00,000	Unsecured Loan
5	Duke Business P. Ltd. (JPK Trading I P. Ltd.)	AABCJ6245N	2009-10	20,00,000	Unsecured Loan
6	Nakshatra Business P. Ltd. (Hema Trading Co. P. Ltd.)	AABCH4279G	2009-10	20,00,000	Unsecured Loan
7	Olive Overseas P. Ltd. (Real Gold Trading Co. P. Ltd.)	AACCR4512K	2009-10	20,00,000	Unsecured Loan
8	Sumukh Commercial P. Ltd. (Capetwon Mar. P. Ltd.)	AACC7400M	2009-10	20,00,000	Unsecured Loan
9	Traingular Infocom Ltd. (Lexus Infotech Ltd.)	AAACL4646G	2009-10	20,00,000	Unsecured Loan
10	Anchal Properties P. Ltd.	AAGCA0681A	2009-10	20,00,000	Share Application Money
11	Atharv Business P. Ltd. (Ostwal Trading (I) Pvt. Ltd.)	AAACF9430A	2009-10	20,00,000	Share Application Money
12	Casper Enterprises P. Ltd. (Ostwal Trading (I) Pvt. Ltd.)	AAACO7955M	2009-10	20,00,000	Share Application Money
13	Sumukh Commercial P. Ltd. (Capetwon Mar. P. Ltd.)	AACC7400M	2009-10	20,00,000	Share Application Money
TOTAL				2,60,00,000	



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4. According to the AO, there was a search/survey action u/s 132/133A of the Act conducted at the residential and business premises of Shri Pravin Kumar Jain and his associates. And it revealed that these persons are in the business of providing accommodation entries by way of cheque to various beneficiary companies, entities, persons in lieu of cash. And the AO noted that the assessee company has received unsecured loan/share application money from these companies of Shri Pravin Kumar Jain. Therefore, AO issued notice u/s 133(6) of the Act to Shri Pravin Kumar Jain controlled companies [refer chart (supra)] asking them to furnish various details [a copy of such notice and contents of which reproduced by AO at Page No. 3 & 4 of his assessment order]. And assessee was also directed to prove the identity, genuineness and the creditworthiness of the party from whom the assessee had taken unsecured loan. The AO on perusal of assessee's return of income and the balance sheet filed, noted that the assessee company has shown unsecured loan of Rs.3,20,00,000/- as on 31.03.2009. And out of the said loan, Rs.1,80,00,000/- has been received during the year from the companies controlled by Shri Pravin Kumar Jain. Further, according to the AO, Rs.40,00,000/- was received during previous AY. 2008-09 from the companies controlled by Shri Pravin Kumar Jain and the same was appearing in the balance sheet as opening unsecured loan. The AO also noted that in year under consideration, the assessee company had also received Rs.75,00,000/- and Rs.25,00,000/- as unsecured loan from Mrs. Prabhaven N. Rambhia and Mrs. Priti Rajesh Savla respectively. The amount of Rs.1,80,00,000/- has been shown as receipts from the companies &



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entities controlled/operated/managed by Shri Pravin Kumar Jain of Mumbai. The names of which entities has been mentioned by AO in para no. 2.2. According to AO, Shri Pravin Kumar Jain and his associates have clearly stated in their various statements (given before the department) in the search proceedings (and also in the post search proceedings) that they merely give accommodation entries of bogus unsecured loan/share capital/share premium to beneficiaries in lieu of commission. The *modus operandi* as explained by them was that the beneficiary will give them cash and the same will be returned to the beneficiary by issue of cheques, after charging their commission on such transactions. Thereafter, the AO took note of the fact that pursuant to his notice u/s 133(6) of the Act (to parties who gave loan to assessee) though, the parties complied with the notices, but they have not given the information called for by him. Therefore, he directed the assessee to produce the parties for verification along with the details and documents called for by him in his notices (supra), which direction, according to the AO, the assessee did not comply. The AO acknowledges that the assessee on the strength of certain documents contended that the lenders are i.e. identifiable and amounts given as loan to assessee were received/re-paid through banking channels and that lenders have credit-worthiness to lend such loan to the assessee company, and submitted that the transactions are genuine. But according to AO, *“assessee has not come forward with any material evidences to prove genuineness of these transactions or to counter the department’s findings and in contrary has asked the department to provide an opportunity of cross examination”*.



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Thereafter, the AO held that the companies named in the chart (supra) are entry operators and they are not doing any genuine business and are engaged in the business of providing share application money or share capital or bogus unsecured loans. And the AO noted that since the assessee in the year under consideration has received purported unsecured loan amounting to Rs.1,80,00,000/- and share application money of Rs.80,00,000/- from these paper companies of Shri Pravin Kumar Jain, the same need to be added in the hands of the assessee u/s 68 of the Act. The AO reproduced at Para No. 5.8 onwards, the finding of the department in the group cases of Shri Pravin Kumar Jain (*modus operandi and statement recorded*) which are reproduced from Page No. 7 to 28 of assessment order. According to the AO, merely by filing some documents, the genuineness of the transaction (*unsecured loan/share capital*) cannot be proved. According to the AO, the controlling persons of entities/lenders have admitted of providing only bogus accommodation entries for commission to their clients. According to the AO, since the entry providers have categorically admitted that they give to beneficiaries cheque and bills/ documents for corresponding cash from the beneficiaries, the AO held that the assessee has not proved the source, nature, creditworthiness and genuineness of the transaction. Therefore, the provisions of section 68 of the Act are clearly attracted in this case. And therefore, he added Rs.1.80 cr which assessee showed as unsecured loan from the entities shown in chart (supra) u/s 68 of the Act. Similarly, he made an addition of Rs.80,00,000/- u/s 68 of the Act which according to him, the assessee has been shown as share application money received from



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the entities named therein in chart (supra). The AO also was of the opinion that the assessee ought to have paid commission/brokerage to the entry operator which he estimated @ 2% which he computed as Rs.5.20 Lakhs. And thus, made an addition of Rs.1.80 Lakhs + Rs.80 Lakhs + Rs.5.20 Lakhs total of Rs.2,65,20,000/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the revenue is before us.

5. We have heard both the parties and perused the records. We note that the assessee is a limited company engaged in the business of manufacturing of readymade garments, commission agent and had filed its return of income for AY. 2009-10 on 24.09.2009 declaring total income of Rs.3,68,743/-. We note that the AO on receipt of information from DGIT (Inv.), Mumbai that the assessee was one of the beneficiaries of accommodation entries given by entities controlled by Shri Pravin Kumar Jain (known entry provider) in the guise of bogus unsecured loans and bogus share capital money, he issued notice for reopening the assessment for AY. 2009-10. As per the information, in the relevant assessment year, the assessee had taken loan of Rs.1,80,00,000/- [being Rs.20,00,000/- each from nine (9) companies controlled by Shri Pravin Kumar Jain] the AO re-opened the case after recording reasons. And re-assessed the income and made an addition of Rs.2,65,20,000/- (Rs.1.80 cr unsecured loan as well as Rs.80 Lakhs share application u/s 68 of the Act and commission of Rs.5,20 Lakhs). Regarding the addition of Rs.1.80 cr which assessee had received as unsecured loan from nine (9) entities, the assessee brought to the



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notice of the AO that it has received Rs.20 Lakh each from nine (9) entities (infra). In order to prove the nature and source of Rs.1.80 cr, the assessee brought to the notice of the AO that the nine (9) entities named in the chart (supra) are regular income tax assessee's and in order to prove their respective identities, the assessee filed their (i) PAN, (ii) Copy of ITR acknowledgements for AY. 2009-10; and in order to prove the creditworthiness, the assessee filed the copy of financial statements of all these entities for financial year 2008-09 as well as the bank statement [*highlighting the loan transaction and interest income being credited in their account (lender account)*]. The assessee also filed confirmation from these parties. However, the AO taking note of the search/survey action taken against Shri Pravin Kumar Jain who had admitted of providing accommodation entries to beneficiaries in the form of bogus share capital/loan in lieu of cash, held that the nine (9) companies from whom all assessee had taken unsecured loan of Rs.20 Lakhs each were controlled by Shri Pravin Kumar Jain, and he treated the, entire loan transactions are bogus transaction and disbelieved the documents filed by the assessee to prove the genuineness of the loan transaction and made an addition of Rs.1.80 cr u/s 68 of the Act.

6. On appeal before the Ld. CIT(A), the assessee filed relevant documents before the Ld. CIT(A), from which the chart infra has been created, which will give the name of lenders, amount they advanced/loan amount, interest given by assessee, TDS deducted and deposited by assessee on the interest, the date on which loan had been repaid and cheque number of repayment, which are as under : -



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Sr. No.	Name of the concern	Amount (Rs)	Interest (Rs.)	TDS deducting by assessee	Repayment date	Cheque No
1	Anchal Properties P. Ltd	20,00,000	1,06,667	21,973	26.10.2009	356159
2	Ansh merchandise P.Ltd (New Planet Trading Co. Pvt. Ltd)	20,00,000	90,000	18,540	10.11.2009	356168
3	Atharv Business P. Ltd (Faststone Trading Co. Pvt. Ltd.)	20,00,000	1,06,667	21,973	26.10.2009	356161
4	Casper Enterprises P. Ltd. (Ostwal Trading (I) Pvt. Ltd.	20,00,000	1,06,667	21,973	10.11.2009	356169
5	Duke Business P. Ltd. (JPK Trading I Pvt. Ltd.	20,00,000	3,35,334	21,973	26.10.2009	356163
6	Nakshatra Business P. Ltd. (Hema Trading Co. P. Ltd.)	20,00,000	92,000	69,079	26.10.2009	356162
7	Olive Overseas P. Ltd (Real Gold Trading Co. P. Ltd.)	20,00,000	1,06,667	18,952	10.11.2009	356140
8	Sumukh Commercial P. Ltd. (Capetown Mar. P. Ltd.	20,00,000	88,000	21,973	26.10.2009	356160
9	Traingular Infocom Ltd. (lexus Infotech Ltd.)	20,00,000	11,38,669	18,128	10.11.2009	356172
	Total	1,80,00,000	11,38,669	2,34,564		

7. In order to prove the creditworthiness of the lender, the Ld. CIT(A) has taken note of the chart given at Para No. 2.9.2 of impugned order is as under: -

Name of the share applicant	Reserves (Rs. In Crs)	Capital (Rs. In Crs)	Total Net Worth (Rs. In Crs)	Loan Amount (Rs. In Crs)
Anchal Properties P. Ltd.	0.54	0.49	1.03	0.2
Ansh Mercantile P. Ltd. (New Planet Trading Co. Pvt. Ltd.)	1.68	0.48	2.16	0.2
Atharv Business P. Ltd. (Faststone Trading Co. Pvt. Ltd.)	0.93	0.41	1.34	0.2
Casper Enterprises P. Ltd. (Ostwal Trading (I) Pvt. Ltd.)	1.12	0.46	1.58	0.2
Duke Business P. Ltd. (JPK Trading I Pvt. Ltd.)	1.32	0.46	1.78	0.2
Nakshatra Business P. Ltd. (Hema Trading Co. P. Ltd.)	0.57	2.00	2.57	0.2
Olive Overseas P. Ltd. (Real Gold Trading Co. P. Ltd.)	0.58	1.96	2.54	0.2
Sumukh Commercial P. Ltd. (Capetown Mar. P. Ltd.)	0.41	0.49	0.90	0.2
Traingular Infocom Ltd. (Lexus Infotech Ltd.)	5.25	2.99	8.24	0.2

8. It is noted that the assessee had filed the following documents to prove the *nature and source* of the credit entry to the tune of Rs.1.80 cr which are as under: -

- Confirmation of loan accounts for AY. 2009-10 from the company confirming the amount of loan given
- Copy of ITR acknowledgement for AY. 2009-10 filed by the investor/companies.
- Copies of the Financial Statement for AY. 2009-10
- Extracts of the bank statement showing the amount repaid by to the assessee.
- Ledger copy of assessee in the books of alleged parties.



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- f) The declaration given by the company duly confirmation the loan transaction.
- g) Duly certified banks statements of alleged parties.

9. From the aforesaid documents filed, it is noted that the assessee had filed the name of all the nine (9) lenders, their respective PAN, address (*on which the AO had served notices on the lenders*) as well as the copy of ITR's of the lenders, which proves that they are filing tax returns before the department; and PAN details and address of the corporate entities proves the identity of all the nine (9) lenders. The creditworthiness of the lenders cannot be doubted from the details given (*supra*) wherein we find that nine (9) lender/companies had own money/reserves & surplus capital to give loan of Rs.20 Lakhs to the assessee company. The genuineness of the transaction is revealed from the bank statement highlighting the loan transaction. And all the nine (9) parties received the notices issued by AO u/s 133(6) of the Act and pursuant to the notice of AO, they all have replied to the AO. And have also filed the confirmation of the unsecured loan transaction of Rs.20 Lakhs each with the assessee company. It is also noted that assessee company by way of cheque has repaid the loan back to these lenders on Oct/Nov 2009. In such a scenario, merely because the lenders did not appear before the AO, cannot be the sole reason for drawing adverse view against the assessee/transaction in question. Since the assessee filed the aforesaid relevant documents (*supra*) by the assessee, we find it had discharged the burden to prove the identity and creditworthiness of the lenders parties and genuineness of the loan



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given to assessee. Moreover, we note that the AO has taken an adverse view only because during search at the premises of Shri Pravin Kumar Jain, he admitted to be providing accommodation entries in the form of bogus loan/share capital for beneficiaries in lieu of commission/cash. However, we cannot countenance such an action of the AO for the reason that the statement relied upon by the AO to draw adverse view against the assessee was recorded during the search at the premises of Shri Pravin Kumar Jain on 01.10.2013 and the relevant year under consideration is AY. 2009-10. Admittedly his statement was recorded behind assessee's back and no opportunity was given to assessee to cross-examine Shri Pravin Kumar Jain, which was the only basis for drawing adverse inference against the loan transaction and consequent addition in the hands of the assessee. Such a statement of Shri Praveen Kumar Jain could not have been relied upon by AO for making addition; and for such a proposition, we rely on the decision of the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE reported in (2015) 281 CTR 241 (SC) wherein it was held that not providing cross-examination of maker of the statement on which AO relies upon to take adverse view against an assessee is a serious flaw which render the action of AO a nullity. Same view was reiterated in the decision of the Hon'ble Supreme Court in the case of CIT v Odeon Builders Pvt. Ltd. (2019) 418 ITR 315. Further, we note that the assessee has shown the nature of the receipt i.e. Rs.1.80 cr as unsecured loan, and has discharged the burden casted upon it u/s 68 of the Act by providing proof of creditors i.e. identity of the lender by furnishing their PAN details, their ITR acknowledgment for AY. 2009-



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10; and from a perusal of the relevant financials of share subscribers, we note that they had sufficient creditworthiness to make investment in assessee company; and from perusal of the bank statement it reveals that loan was given and repaid through banking channel. We further note that AO has not been able to find any infirmity in the aforesaid evidence furnished by the assessee. In such a scenario, we agree with the impugned action of the Ld. CIT(A) deleting the addition of Rs.1.80 cr. Therefore, we uphold the action of Ld. CIT(A) the deleting the addition.

10. Before parting, we note that the Ld. DR's reliance on the order of the Tribunal in the case of Shri Pravin Kumar Jain v DCIT (ITA. Nos. 7191/Mum/2018 and Others) dated 19.01.2023 in favour of the revenue cannot be treated as a binding judicial precedent because it is an ex parte order qua assessee; whereas the assessee had relied on the decision of the Hon'ble Bombay High Court (ITA. No. 616 of 2016) dated 24th Oct, 2018, therefore, we confirm the impugned action of Ld. CIT(A) deleting the addition of Rs.1.80 cr.

11. Regarding the addition of Rs.80 Lakhs made by AO, the assessee brought to the notice of Ld. CIT(A) that this amount was made as an investment in the form of share capital in earlier years and not infused in the year under consideration and therefore cannot be added u/s 68 of the Act. In this regard, it is noted that AO as per the report of the Investigation Wing noted that the assessee had received share application money of (i) Rs.20 Lakhs from M/s. Anchal Properties Pvt. Ltd, (ii) Rs.20,00,000/- from M/s. Atharv Business Pvt.



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Ltd. (Ostwal Trading (I) Pvt. Ltd.) (iii) Rs.20,00,000/- from M/s. Casper Enterprises Pvt. Ltd. (Capetown Mar. Pvt. Ltd). However, the assessee contended before AO that it had not received share capital from any of the above companies during the financial year 2008-09 relevant to the AY. 2009-10. But the AO made an addition u/s 68 of the Act to the tune of Rs.80 Lakhs only because these share investors/entities are purportedly controlled by Shri Pravin Kumar Jain. And therefore, he made an addition u/s 68 of the Act. On appeal, the assessee again brought to the notice of the Ld. CIT(A) that it had not received any amount as share application money from any of the above companies during the financial year 2008-09 relevant to the AY. 2009-10. And also contended that the statement of Shri Pravin Kumar Jain cannot be used against the assessee since it has not been tested on the touch-stone of cross-examination. The Ld. CIT(A) after going through the relevant documents gave a finding of fact that the share capital/share application money was not received by assessee during the year under consideration. Before us, the Ld. AR drew our attention to page no. 15 of PB wherein the balance-sheet of the assessee company as on 31.03.2009 is found placed. A perusal of the same, reveals that opening balance of share capital was Rs.56,53,000/- and the closing balance was Rs.56,53,000/- meaning an addition of only Rs.50,000/-. Thus, merely on the basis of information given by Investigation Wing and the statement recorded by Shri Pravin Kumar Jain as noted (supra) the AO without applying the mind made an addition of Rs.80 Lakhs, despite the fact that the assessee has infused share capital of only Rs.50,000/- in the year AY. 2009-10, and thus



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erred in making an addition of Rs.80 Lakhs which action of the AO cannot be countenanced and the Ld. CIT(A) rightly noted that the impugned share capital of Rs.80 Lakhs has not been infused in the relevant year under consideration from the companies named by AO as noted (supra). In such a scenario, we do not find any infirmity in the action of the Ld. CIT(A) deleting the addition which we confirm.

12. Ground no. 3 is general in nature so does not require any adjudication.

13. And ground no. 4 doesn't emanate from the order of the AO/Ld. CIT(A), therefore, stands dismissed.

14. In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on this 22/03/2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/03/2024.
Vijay Pal Singh, (Sr. PS)



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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 / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai