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IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "B" DELHI ]

BEFORE SHRI R. P. TOLANI, JM AND SHRI K. D. RANJAN, AM

I. T. Appeal No. 4650 (Del) of 2010.

Assessment year : 2005-06.

Dy. Commissioner of Income-tax,  
Circle : 3 (1),  
NEW DELHI.

M/s. CMYK Printech Limited,  
Vs. H. No. 33 - A, Lane No. 10 - C,  
Sainik Farms, NEW DELHI.  
PAN / GIR No. AAACC 4999 H.

AND

C. O. No. 233 (Del) of 2011.

[ in I. T. Appeal No. 4650 (Del) of 2010. ]

Assessment year : 2005-06.

M/s. CMYK Printech Limited,  
H. No. 33 - A, Lane No. 10 - C,  
Sainik Farms, NEW DELHI.  
PAN / GIR No. AAACC 4999 H.

( Appellants )

Dy. Commissioner of Income-tax,  
Vs. Circle : 3 (1),  
NEW DELHI.

( Respondents )

Assessee by : Shri Ved Jain, C. A.;

Ms. Rano Jain, C. A.; &

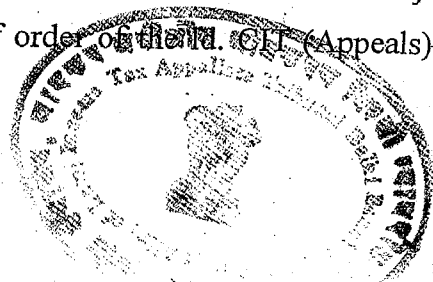
Shri V. Mohan, C. A.;

Department by : Shri Salil Mishra, Sr. D. R.;

ORDER.

PER K. D. RANJAN, AM :

The appeal by the Revenue and the Cross Objection by the assessee for assessment year 2005-06 arise out of order of the CIT (Appeals)-IV, New Delhi. These appeals were



heard together and are being disposed of, for the sake of convenience, by this consolidated order.

2. The grounds of appeal raised by the Revenue are as follows:-

" 1. In the facts and in the circumstances of the case, the Id. CIT (Appeals) erred in law and on facts in deleting addition of Rs.19,94,584/- made by the assessing officer on account of disallowance of extra depreciation on web portal ignoring that depreciation on web portal is not allowable since it is not covered under section 32(1) of the I. T. Act;

2. In the facts and in the circumstances of the case, the Id. CIT (Appeals) erred in law and on facts by allowing the depreciation @ 60 per cent on computer peripherals and accessories amounting to Rs.39,994/- though the I. T. Rules allows 60 per cent depreciation only on computer and computer software;

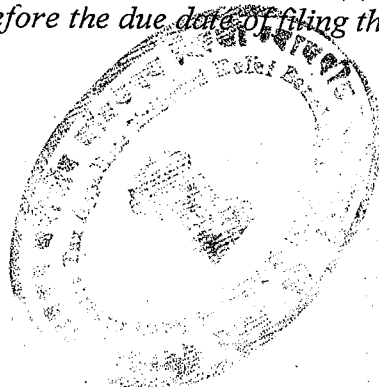
3. In the facts and in the circumstances of the case, the Id. CIT (Appeals) erred in law and on facts by deleting addition of Rs.1,00,00,000/- made under section 68 of the I. T. Act ignoring the fact that in spite of sufficient opportunities of being heard allowed, the assessee failed to submit confirmation from the lending party and also there was no response from this party to the notice under section 133(6) issued to it;

4. In the facts and in the circumstances of the case, the Id. CIT (Appeals) erred in law and on facts in deleting addition of Rs.18,00,000/- on account of financial charges ignoring the fact that the assessing officer has in his assessment order brought about the nexus that the interest bearing funds received which have been used to invest in non-business activity. "

3. The ground of appeal raised by the assessee in the cross objection is as follows:-

" 1 (i) On the facts and circumstances of the case, the Id. CIT (Appeals) has erred both on facts and in law in confirming the disallowance of Rs.15,83,739/- made by the assessing officer on account of late payment of TDS by invoking the provision of section 40(a)(ia) of the Act;

1 (ii) That the above said disallowance is not sustainable in view of the amendment brought out in section 40(a)(ia) of the Act, as all the payments have been made before the due date of filing the return. "



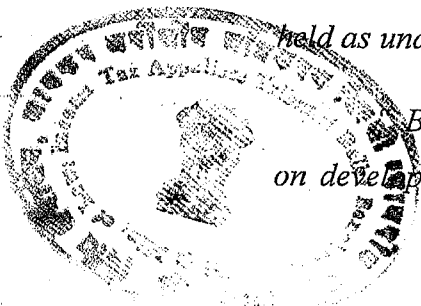
4. First we take up the appeal filed by the Revenue. The first issue in the Revenue's appeal relates to the addition of Rs.19,94,584/- made on account of disallowance of extra depreciation on web portal. The facts of the case relating to this ground are that the assessee claimed depreciation on web site at the rate of 60 per cent amounting to Rs.19,94,584/-. The AO, however, was of the opinion that Income Tax Rules were silent on allowability of depreciation on web sites. He was of the opinion that web site was neither a computer nor software. The AO following the order for assessment year 2003-04 held that depreciation on web site was not allowable as it was not covered under section 32(1) of the Act. The AO, therefore, disallowed the amount of Rs.19,94,584/-. On appeal, the Id. CIT (Appeals) following his decision for AY 2004-05 allowed depreciation on web site by holding that the term 'computer software' has a vast application and it takes into its ambit any computer programme recorded on any information storage device. The web site is computer software and, therefore, depreciation was allowable under section 32 of the Act.

5. Before us the Id. AR of the assessee submitted that the issue is covered by the decision of the ITAT in assessee's own case for AY 2003-04 and 2004-05 rendered by ITAT, Delhi Bench 'B' in ITA. No. 1549 and 1550 (Del) of 2010 dated 23<sup>rd</sup> July, 2010. On the other hand, the Id. Sr. DR supported the order of the assessing officer.

6. We have heard both the parties and gone through the material available on record. ITAT, Delhi Bench while allowing the relief has followed the decision of Hon'ble Delhi High Court in the case of CIT Vs. Indian Visit.com P. Ltd. 13 DTR 258 (Del) and has held as under:-

*" 8. We have heard both the counsels and perused the material available on record. We find that Hon'ble Delhi High Court in the decision cited supra has held as under :-*

*Business expenditure – Capital or Revenue expenditure – Expenditure on development of web site – Although the web site may provide an enduring*



*benefit to the assessee, the intent and purpose behind the development of a web site is not to create an asset, but only to provide a means for disseminating the information about the assessee among its clients – The same purpose could be achieved and was in fact achieved by the assessee in the past by printing travel vouchers and other published material and pamphlets – Mere enduring benefit, de hors any accretion to its capital, would not make an expenditure the capital expenditure.”*

*In the light of above, it is clear that expenditure on development of web site is allowable business expenditure. However, the ld. counsel for the assessee has fairly agreed that in view of the amendment brought out to appendix “A” with effect from assessment year 2003-04 by including ‘software’ eligible for depreciation at the rate of 60 per cent, assessee should be allowed depreciation 60 per cent and the claim as such is valid. Upon careful consideration we find that there is no infirmity in the order of the ld. CIT (A). Accordingly, we uphold the same. This issue raised by the Revenue accordingly, stands dismissed.”*

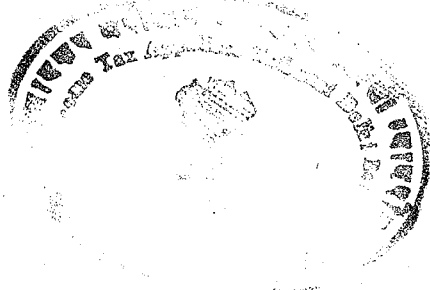
7. Since the facts of the case before us are identical to the facts of assessment years 2003-04 and 2004-05 and Revenue has not brought any material on record to distinguish the facts for the relevant assessment year from the facts of assessment years covered by the decision of ITAT, Delhi Bench. Respectfully following the precedent it is held that depreciation will be allowable on web sites developed by the assessee at the rate of 60 per cent. Accordingly, we do not find any infirmity in the order passed by the ld. CIT (A) deleting the addition.

8. Next issue for consideration relates to deleting the addition made on account of disallowance of depreciation at the rate of 60 per cent on computer peripherals. We also find that this issue is covered by the decision of the ITAT in assessee’s own case for assessment year 2003-04 and 2004-05 (supra) wherein depreciation on computer peripherals has been allowed following the decision of the ITAT, Kolkata Bench in the case of ITO Vs. Simran Majumdar 98 I.T.D. 119. Since the issue is covered by the decision of the ITAT in assessee’s own case, it is

held that the assessee is eligible for depreciation on computer peripherals at the rate of 60 per cent. Accordingly, we do not find any infirmity in the order of the Id. CIT (A) deleting the addition in respect of depreciation on computer peripherals.

9. The next issue for consideration relates to deletion of addition of Rs.1,00,00,000/- made by the AO under section 68 in respect of unsecured loan. The facts of the case relating to this ground are that the assessee had shown loans of Rs.1,57,16,108/- and Rs.4,83,039/- from Directors and others under the head 'unsecured loans'. The assessee company was required to furnish the details of persons from whom fresh loan was secured and also confirmation along with name, address and assessment particulars of such persons. The assessee submitted details vide letter dated 9/7/2007 according to which unsecured loan of Rs. One crore was received during the year under consideration from M/s. New Quest Corporation Pvt. Ltd. vide cheque No. 488284. The assessee company furnished PAN of the lender company. The assessee was also required to file confirmation. The Id. AR of the assessee, however, did not file confirmation from M/s. New Quest Corporation Pvt. Ltd. though the confirmation from the other creditors was filed. The AO, therefore, issued notice under section 133(6) which remained un-complied with. The AO, therefore, added the sum of Rs. 1,00,00,000/- under section 68 of the Act.

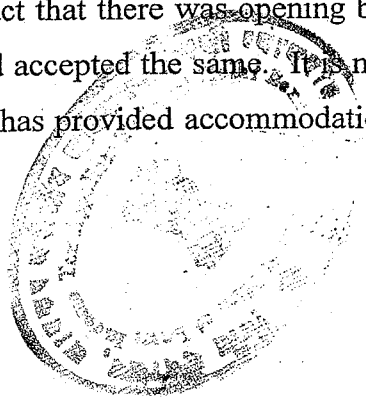
10. Before the Id. CIT (Appeals) the assessee filed additional evidence by way of confirmation on the ground that sufficient time was not allowed. The Id. CIT (A) after considering judicial precedents admitted additional evidence and called for the comments of the AO. In rejoinder, it was submitted by the assessee that a request letter was given to the lender to give confirmation and a copy thereof was filed before the AO. In so far as PAN was concerned, a confirmation was filed on 15<sup>th</sup> December, 2007. The confirmation in the form of FAX was filed before the AO. The Id. AR of the assessee placed reliance on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Dwarkadheesh Investment (P). Ltd. 210 Taxman. Co. (6) (84) (Del). The Id. CIT (A) admitted the additional evidence and decided the issue on merits. He observed that the assessee had transacted the loan amount through banking channels. The assessee had given the PAN of the lender company. There was no dispute that name and address



of M/s. New Quest Corporation Pvt. Ltd. had been supplied to the AO. What had not been submitted to the AO was the confirmation filed by the lender. The Id. CIT (A) also noted that when assessee had failed to file confirmation in the short period of time, the AO took up the matter under section 133(6) in respect of which no reply was received. From these facts the Id. CIT (A) came to the conclusion that the assessee had filed the name, address and PAN details and also the bank statement through which the loan was issued and returned. The confirmation and details from ROC were available on record. The Id. CIT (A), therefore, concluded that the assessee had discharged the initial onus and came to the conclusion that no addition could be made in the case of the assessee. Accordingly, he deleted the addition.

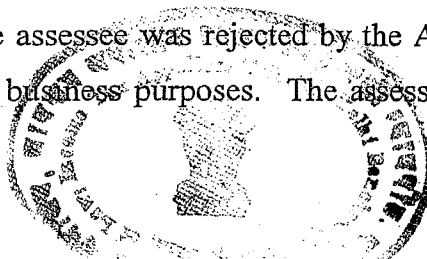
11. Before us the Id. Sr. DR submitted that the assessee had not filed evidence in the form of confirmation before the assessing officer and, therefore, the initial onus has not been discharged by the assessee. On the other hand, the Id. AR of the assessee supported the order of the Id. CIT (Appeals).

12. We have heard both the parties and gone through the material available on record. The assessee filed confirmation before the Id. CIT (A) under Rule 46-A and was admitted by the Id. CIT (A). The Id. CIT (A) has recorded a finding of fact that the time allowed to the assessee for filing the confirmation was short. The Id. CIT (A) has also recorded a finding of fact that loan transaction has taken place through banking channels. PAN number of M/s. New Quest Corporation Pvt. Ltd. was supplied to the assessing officer. It is also seen that when the assessee failed to file confirmation in the short period of time, the AO took up the matter with the lender under section 133(6). The only reason for which adverse inference was taken was non-filing of confirmation and the lender had not replied to notice under section 133(6) of the Act. The lender, New Quest Corporation Pvt. Ltd. belongs to Thapar Group from whom the assessee had acquired brand 'Pioneer'. The assessee was having regular transactions of such nature in the past which is evident from the fact that there was opening balance of Rs 52,41,568/- as on 1.4.2004 and the assessing officer had accepted the same. It is not the case of assessing officer that New Quest Corporation Pvt. Ltd. has provided accommodation entry. We have also gone through the



audited balance sheet and profit and loss account of lender company. The gross incomes for year ended on 30.06.2004 and 30.06.2005 are Rs 33,65,16,477/- and Rs 26,09,19,979 respectively. Profits before taxation for these periods are at Rs 13, 01,87,431/- and Rs 81,702,351/- respectively. Therefore, it cannot be treated to be a case of bogus creditor. The AO had all details including the payment of loan having come through banking channels were available with the assessing officer. Under these circumstances when the assessee had given the name, address and details of income tax including PAN and bank statements, the initial onus has been discharged by it. Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC) has held that where the Revenue had not perused the matter further after issue of notice under section 131 of the Act and initial onus has been discharged by filing the name and address, PAN number, Income Tax particulars, no addition can be made in the hands of the assessee. Therefore, in our considered opinion, the Id. CIT (A) in view of these facts is justified in deleting the addition made under section 68 of the Act. Accordingly, we do not find any infirmity in the order passed by the Id. CIT (A) deleting the addition.

13. The last issue for consideration relates to deleting the addition of Rs. 18,00,000/- made on account of financial charges. The facts of the case relating to this ground of appeal are that the assessee had invested Rs. 3,00,00,000/- with M/s. CMYK Multimedia Pvt. Ltd. on which no interest was charged. The assessing officer, therefore, required the assessee to explain as why the interest of Rs.22.98 lakhs appearing in Schedule 11 should not be disallowed. In response thereto the assessee submitted that such investment was a strategic investment in the business of another company by buying its shares. The claim of the assessee was that by joining hands with other company engaged in the same line of business would boost up its revenue in terms of collection from advertisements. The assessee placed reliance on the decision of Hon'ble Supreme Court in the case of SA Builders. It was also submitted that the assessee had more than six crores as interest free capital and the term loan were taken in earlier years. There was no direct nexus between the amount given for purchase of shares and the loans raised. However, this contention of the assessee was rejected by the AO on the ground that the assessee had not applied its funds for business purposes. The assessing officer while determining the interest





relatable to investment of Rs 3,00,00,000/- had noted that the date wise balances were not available on record. He therefore, took the average daily balance of Rs.1.5 crore in order to work out disallowance. The AO estimated interest @ 12 per cent per annum on Rs. 3,00,00,000/- at Rs.36,00,000/-. He disallowed interest of Rs.18,00,000/- taking the average daily balance at Rs.1.5 crores.

14. On appeal it was submitted by the assessee that M/s. CMYK Multimedia was in the business of publishing magazines for Indian Airlines, ONGC etc. while the assessee was engaged in printing newspaper. Since they had similar business, the assessee company decided to increase its stake in CMYK Multimedia P. Ltd. It was further argued that promotion of business of other company was definitely in the interest of the assessee company as it resulted in the value addition to the shares. The Directors of the company were actively involved in investing company and the assessing officer could not sit in the arm chair of the businessman to decide the issue. It was also contended that the assessee had interest free share capital to the tune of Rs.6,85,38,000/-. Further the AO had not established nexus between the borrowed funds and the money invested in M/s. CMYK Multimedia Pvt. Ltd. The Id. CIT (Appeals) on consideration of the submissions made by the assessee observed that the assessee had made investments in acquiring the shares of sister company. Both the companies were in printing business. The investment made by the assessee was still intact. He also noted that the AO had mentioned in the order that there were many transactions between the two companies, yet he had chosen not to comment on this aspect or deliberate the issue. The Id. CIT (A), therefore, concluded that money had been advanced for the purposes of commercial expediency. There was no adverse inference which would suggest that sister concern did not utilize the advance money for its business. He therefore, concluded that the assessee had utilized the money for the purposes of its business. He placed reliance on the decision in the case of CIT Vs. Dalmia Cement (B) Ltd. 254 ITR 377 wherein it has been held that once it was established that there was nexus between the expenditure and the purpose of the business, the Revenue could not justifiably claim to put itself in the arm chair of the businessman or in the position of Board of Directors and assume the role to decide how much was reasonable expenditure having regard to the



circumstances of the case. He also placed reliance on the decision of Hon'ble Supreme Court in the case of SA Builders Vs. CIT 288 ITR page 1 (SC). In this case assessee had given interest bearing funds to the assessee company. The Apex court held that the authorities and the courts should examine the purpose for which the assessee had advanced the money and what the sister concern did with the money. What was relevant was whether the amount was advanced as a nature of commercial expediency or not had to be seen. The Id. CIT (Appeals) in view of these facts concluded that the assessee had utilized the money for the purposes of business expediency. He, accordingly, deleted the addition.

15. Before us the Id. Sr. DR supported the order of the assessing officer. On the other hand, the Id. AR of the assessee supported the order of the Id. CIT (Appeals).

16. We have heard both the parties and also gone through the details amounts borrowed by the assessee. In year 199-00 the assessee had borrowed Rs.1,20,00,000/- from ICICI Bank; Rs.1,60,00,000/- from IDBI Bank; and from IFCI Rs.1,60,00,000/-. A sum of Rs.40,00,000/- was borrowed from M/s. New Quest Corporation in the year 2001-02. Therefore, the interest bearing secured loans had been received by the assessee company much earlier to assessment year 2005-06. The assessee had interest free share capital of Rs.6,85,38,000/-. The assessee had invested in shares of sister company at Rs. 3,00,00,000/-. Since the funds were mainly borrowed in 1999-2000 about six years before when the investment was made in the shares of the sister company, there is no apparent nexus between the funds borrowed by the assessee in the year 1999-2000 with investments made in year under consideration. The conclusion of the AO that the assessee company had not applied borrowed funds for business purposes is not supported by facts. Since there is no nexus between the funds borrowed and investment made in shares, no disallowance can be made on outstanding balance. Therefore, in our considered opinion, the Id. CIT (A) is justified in deleting the addition on account of financial charges.

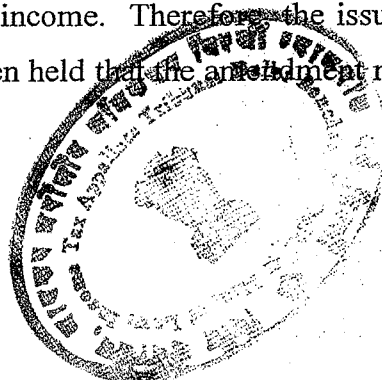
17. In the result, the appeal filed by the Revenue is dismissed.



18. Now coming the cross objection filed by the assessee, the only issue for consideration relates to confirming the disallowance of Rs.15,83,730/- made by the assessing officer on account of late payment of TDS by invoking the provisions of section 40(a)(ia) of the Act. The facts of the case relating to this ground of appeal are that the assessee deducted tax at source on payments made to contractors, professional fee, commission and scrap. The assessee having deducted tax at source made payment to the credit of the Central Government belatedly. The assessing officer, therefore, disallowed the amount of Rs.15,83,739/- as tax deducted at source was not deposited within the due date.

19. Before the Id. CIT (Appeals) it was submitted that out of Rs.15,83,739/- an amount of Rs.2,89,622/- related to tax collected at source and was not covered by provisions of section 40(a)(ia) the Income Tax Act. As regards the balance amount of Rs.12,94,117/-, there was no substantial delay in deposit and it was on account of lack of professional help available to the assessee. The Id. CIT (A) considered the facts and the arguments of the assessee. In so far as issue of tax collection at source vis-a-vis the scrap was concerned, no evidence had been filed. The Id. CIT (A) relying on the decision of ITAT in the case of DCIT Vs Dolphin Drilling Ltd. 28 SOT 141 (Del.) held that legislature had made it mandatory for the assessee not only to deduct tax at source under Chapter XVII-B, but also to make payment thereof before the expiry of the time prescribed under section 200. As such, no lenient view could be taken under the provisions of the Act. He, therefore, confirmed the addition. However, the Id. CIT (A) observed that the assessee may get benefit for the assessment year 2006-07 which might be considered on merits. The Id. CIT (A) accordingly upheld the addition made by the assessing officer.

20. Before us the Id. AR of the assessee submitted that in this case the delay in depositing tax deducted at source / collected at source is of a few days. All the payments had been made before the due date for filing of the return of income. Therefore, the issue is squarely covered by the decision of the ITAT wherein it has been held that the amendment made by Finance Act, 2010 is

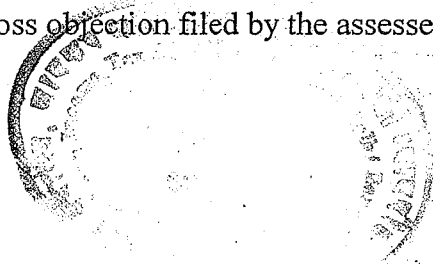


clarificatory in nature and no disallowance can be made, if TDS has been deposited before filing of return [Kannu Bhai Ramji Bhai Vs. ITO 135 TTJ 364]. On the other hand, the Id. Sr. DR supported the order of the Id. CIT (Appeals).

21. We have heard both the parties and gone through the material available on record. There is no dispute about the fact that tax deducted at source / collected at source has been deposited in the account of the Central Government before the due date of filing of the return of income. The Finance Act, 2010 has amended provisions of section 40(a)(ia) with effect from 1/04/2010 by virtue of which if the tax deducted at source is paid on or before the due date of filing of the return of income will be allowed as deduction.

22. ITAT, Ahmedabad Bench in the case of Kanu Ramji Bhai Vs. ITO (supra) has observed that provisions of section 40(a)(ia) as amended by Finance Act, 2010 with effect from 1/04/2010 is remedial in nature, designed to eliminate un-intended consequences which may cause undue hardship to the taxpayers and has to be treated as retrospective in nature with effect from 1<sup>st</sup> April, 2005, the date on which section 40(a)(ia) has been inserted and, therefore, no disallowance under section 40(a)(ia) can be made if the assessee had paid such tax deducted at source before the due date of filing the return of income. Therefore, the issue is squarely covered by the decision of the ITAT in the case of Kanu Bhai Ramji Bhai Vs. ITO (supra). Similar view has been taken by ITAT, Mumbai Bench in the case of Golden Stables Lifestyle Centre P. Ltd. Vs. CIT in ITA. No. 5145 (Mum.) of 2009 for assessment year 2005-06 dated 30/09/2010. Since the assessee had made payment of tax deducted at source before the due date of filing of the return, no disallowance under section 40(a)(ia) of the Act can be made. We, therefore, decide this issue in favour of the assessee.

23. In the result, the cross objection filed by the assessee is allowed.



24. To sum up the appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is allowed.

The order pronounced in the open court on : 14-10-2011.

[ R. P. TOLANI ;  
JUDICIAL MEMBER ]

[ K. D. RANJAN ]  
ACCOUNTANT MEMBER

Dated : 14/10/2011.

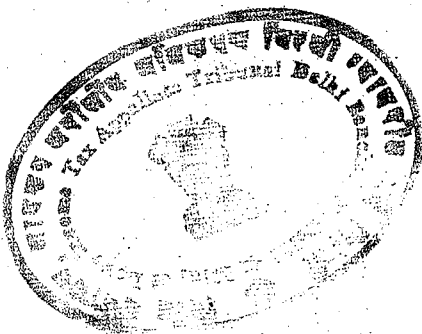
\*MEHTA\*

" Copy of the order forwarded to :-

1. Appellants.
2. Respondents. *By Memo*
3. CIT,
4. CIT (Appeals),
5. DR, ITAT, NEW DELHI.

True Copy. By Order.

Assistant Registrar, ITAT."



*[Signature]*  
सहायक पंजीकार  
Assistant Registrar  
आयकर अपीलिय अधिकरण  
Income Tax Appellate Tribunal  
नई दिल्ली/ New Delhi