

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

Before Shri Amarjit Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A Nos.446 to 451/Mum/2016  
(Assessment years: 2006-07 to 2011-12)

Dy.CIT, Cent.Cir.7(1), Mumbai	vs	M/s Pharmasia Ltd Plot No.16, Phase-III, IDA, Jeedimetia, Hyderabad-500 055 PAN : AABCP2286M
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA 5167/Mum/2016  
(Assessment year : 2012-13)

M/s Pharmasia Ltd Plot No.16, Phase-III, IDA, Jeedimetia, Hyderabad-500 055 PAN : AABCP2286M	vs	Dy.CIT, Cent.Cir.7(1), Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	Shri Kiran Kapadia / Ms Pooja Sheth
Revenue by	Shri H.N. Singh

Date of hearing	16-04-2018
Date of pronouncement	18-05-2018

**ORDER**

Per G Manjunatha, AM :

This bunch of six appeals filed by the revenue for AYs 2006-07 to 2011-12 and one appeal filed by the assessee for the assessment year 2012-13 are directed against separate, but identical orders of the

CIT(A)-49, Mumbai for the assessment years 2006-07 to 2011-12 and separate order for AY 2012-13. Since facts are identical issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The revenue has raised more or less common grounds of appeal for all assessment years. For the sake of brevity, the grounds of appeal raised for the assessment years 2006-07 are extracted below:-

*"1. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made by the AO amounting to Rs.3,42,38,462/- on account of suppression of profit by extrapolating the figures of sales and bogus expenditure emerging out of the seized loose paper pertaining to A.Y.2012-13 and applying the gross profit margin on the proportionate basis as that of A.Y.2012-13 without appreciating the fact that the assessee has been doing the same business during the previous year's relevant to A.Y.2006-07 and the material found in the seized documents is indicative of the trend or modus operandi being followed by the assessee for inflating expenditure by acquiring bogus bills and suppressing the profit in the earlier years also."*

*2. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made by the AO amounting to Rs.3,42,38,462/- on account of suppression of profit by extrapolating the figures of sales and bogus expenditure emerging out of the seized loose paper pertaining to A.Y.2012-13 and applying the gross profit margin on the proportionate basis as that of A.Y.2012-13 without appreciating the fact that the AO has correctly applied the ratio of Hon. Supreme Court decision in the case of H.M. Esufali H.M. Abdulali (90 ITR271) in extrapolating the assessee's income in earlier years,"*

*3. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made by the AO amounting to Rs.3,42,38,462/-- on account of suppression of profit by extrapolating the figures of sales and bogus expenditure emerging out of the seized loose paper pertaining to A.Y.2012-13 and applying the gross profit margin on the proportionate basis as that of A.Y.2012-13 relying on the decision of the ITAT Murnbai Bench in the case of M/s. Thakkar Popatlal Velji Sales Ltd. without appreciating the fact that the above said decision has not been accepted by the Department and appeal u/s. 260A has been filed and the same is pending."*

3. The brief facts of the case are that the assessee is a limited

company, engaged in the business of pharmaceutical products and contraceptives. The assessee's main activity is to manufacture pharmaceutical products and contraceptives on its own and also derived conversion charges for manufacturing goods for other companies. The assessee's main product is production of contraceptive pharmaceutical product and sales, that too, mainly to government bodies in India and neighbouring countries like Nepal. A search and seizure action u/s.132 of the IT Act, 1961 was conducted in the group cases of M/s Maneesh Pharmaceuticals on 29-08-2011 and the assessee being one of the associates of the above group was also covered under search and seizure action. During the course of search, certain incriminating material found and seized from the assessee's office at Hyderabad which are marked as Annexure A-1 pages 23 & 41. These two documents contained information of an order for supply of oral contraceptive pills for Ministry of Health & Family Welfare, Government of India, New Delhi for supply of 248 lakhs cycles of pills. As per the said document, the order for supply has been received vide order No.S.14013/4/2010/OP/Pharma/DCP/107 dated 15-07-2011. During the course of search, seized documents were confronted to Shri YN Bhaskar Rao, Executive Director of the company. During the course of search certain e-mail conversation between Shri YN Bhaskar Rao and Hospitec

Pharma, Nepal were found. The seized paper Annexure A-1 pages 23 & 41 contained details of order value, cost of different component of product, margin, other expenses and the basis of arrangement to offset the margin and other expenses. The details of seized document Annexure A-1 pages 23 & 41 are reproduced by the AO in his assessment order on page 3 to 5. On the basis of seized documents, it was observed that the assessee was inflating cost of packing materials to off-set Delhi expenses and also margin derived from sale of oral contraceptive bills.

4. Consequent to search, notice u/s 153A of the Act was issued. In response to the notice, the assessee has filed return of income on 17-05-2013. Subsequently, the case has been selected for scrutiny and notices u/s 143(2) and 142(1) of the Act, alongwith detailed questionnaire were issued. In response to notice, the authorized representative of the assessee appeared from time to time and filed relevant details, as called for. During the course of assessment proceedings, the AO called upon the assessee to explain contents of seized material Annexure A1 page 23 & 41. In reply, the assessee submitted that it has received order for supply of 248 lakhs cycles of oral contraceptive pills @ ₹.3.18 per pill to Ministry of Health & Family Welfare, Government of India, New Delhi and such order has been

received on 15-07-2011. The assessee further submitted that it has to execute order in the next 3 financial years starting from the financial year 2011-12 relevant to AY 2012-13 for which it has made necessary working to ascertain viability of supply to be made to Ministry of Health & Family Welfare, Government of India, New Delhi in the light of its existing business and also specification provided by the party. The assessee further submitted that it has analysed the order with reference to cost of basic raw materials, other raw materials, other freight, conversion and GMSD and also QC expenses. The details contained in the seized paper is only estimate made for the purpose of identifying the source of raw materials and also cost of raw materials to be incurred for executing the order. The assessee has filed detailed explanations with regard to the contents of each and every amount appearing in the incriminating material, pages 23 & 41.

5. The AO, after considering relevant details, has worked out total cost per cycle of oral contraceptive pills as per the noting made in the seized paper as per which the cost per pill is worked out to Rs.2.21 per cycle which has been reproduced in assessment order on page 11. The AO further observed that as against the cost of Rs.2.21 per cycle, assessee company has received the order for supply of 248 lakhs cycles @ ₹ 3.18 per cycle, thereby derived a net margin of Rs.0.97 per cycle on the order

of 248 lakhs cycles which worked out to 30.5% net profit. While doing so, the AO has excluded Delhi expenses at 10% of the order and also bills to be obtained on the ground that the assessee has obtained bills to cover up Delhi expenses and also to reduce profit. The AO further observed that on analysis of pages 23 & 41 of Annexure A-1, it was clear that the assessee has inflated cost of packing material of Rs.,0.97% per cycle and thereby offsetting unexplained Delhi expenses and profit earned from the said order. Similarly, the AO has analysed pages 44 & 45 of Annexure A-1 which contained details of export sales made to Hospitec Pharma, Nepal, as per which the assessee has sold oral contraceptive pills @6.85 per pill, whereas the cost per pill worked out to Rs.2.21. The AO also analysed the contents of e-mail messages exchanged between the parties and also has taken into account the statement recorded from the Executive Director of the company to come to the conclusion that the assessee was siphoning off the funds by arranging bogus bills to reduce huge profit margins. Therefore, he opined that whatever documents found and seized during the course of search including statement recorded from the Executive Director were considered to be true and correct and accordingly arrived at a net profit margin of 50% on the sale of oral contraceptive pills by interpolating the figures contained on pages 23 & 41 of Annexure A-1 and extrapolating

such estimated net profit margin for the assessment year 2006-07 to 2012-13 and arrived at a net profit of 50% on total sales made by the assessee from oral contraceptive pills which has been reproduced by the AO in a tabular form in his assessment order on page 18. The AO, after reducing net profit already admitted by the assessee from sales of oral contraceptive pills determined undisclosed net profit derived from sale of OCP for each year and made additions.

6. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee has reiterated its submissions made before the AO and also filed elaborate written submissions on the issue which has been reproduced by the CIT(A) in his order at para 6.2 on pages 16 to 34. The assessee also relied upon a plethora of judgements in its support and also filed various decisions to distinguish the case laws heavily relied upon by the AO in the case of Commissioner of Sales-tax vs HM Esafali HM Abdulali ,reported in 90 ITR 271 (SC). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that the incriminating material found during the course of search, marked as Annexure A-1, page 23 & 41 is a mere MIS report prepared by the management for the purpose of ascertaining the viability of order received from Ministry of Health & Family Welfare, Government of India, New Delhi in the light of its existing

business. The contents of the said documents are only an estimate to ascertain the cost of basic raw materials, cost of packing materials and other overheads including assessee's margin. It is clearly evident from the notings in the said papers and also date of order. The assessee has received order from the Ministry of Health & Family Welfare, Government of India in the financial year 2011-12 relevant to AY 2012-13 and the said order has been executed by the assessee from the assessment year 2012-13 onwards. The assessee further submitted that it has explained each and every line appeared in the said document and also filed necessary evidences in support of its books of account including copies of purchase bills in respect of packing materials, ledger extract of the parties in respect of material purchases, details of Mala D, supplied to government authorities, cost incurred on Mala D as per cycle manufactured and other details. The assessee also filed further evidence in the form of audit reports issued by the statutory auditors under the Companies' Act, tax audit report issued u/s 44AB of the Income-tax Act, 1961 and cost audit report issued by the cost auditors, as per which none of the auditors has pointed out any inconsistency or irregularity in the books of account of the assessee. The assessee further submitted that the AO has examined the books of account with reference to bills and other details and could not find out any discrepancy

with regard to the purchases. Therefore, it is highly incorrect on the part of the AO to ascertain net profit margin @50% on sales of OCP by interpolating the figures appearing in the two documents and also extrapolating such estimated net profit on total sales made for earlier years without reference to any material in his possession found during the course of search.

7. In so far as the AOs reliance on Hon'ble Apex Court decision in the case of CST vs HM Esafali HM Abdulali (supra), the assessee submitted that the AOs reliance on the said judgement is highly misplaced in the light of facts of its case, as the facts of the case before the Hon'ble Supreme Court was that the assessee was registered dealer wherein he was not reported sales made for a period of 19 days in a year in its books of account. The AO estimated the turnover for the entire period of one year on the basis of unreported sales for the period of 19 days. The question that arose before the Hon'ble Supreme Court is as to whether the AO was right in estimating turnover by extrapolating the figures available for 19 days for the whole year. Under those facts, the Hon'ble Supreme Court held that in a matter involving unreported sales, the AO has to proceed on the basis of estimation which involved some amount of guess work. In the case of the assessee, there is no finding from the AO that the assessee has not accounted sales in its books of account. It

is also an admitted fact that the AO has not pointed out any discrepancy in books of account either with reference to purchase bills or expenses. Therefore, merely on the basis of a loose paper found during the course of search, which is an estimate made by the management for the purpose of its sales, estimating net profit of 50% by interpolating certain figures and extrapolating such estimated net profit for six assessment years is highly a guess work which is fully on the basis of surmises and suspicion.

8. The CIT(A), after considering relevant submissions of the assessee and also relying upon the decision of Hon'ble Supreme Court in the case of CST vs vs HM Esafali, HM Abdulali (supra) observed that the details contained on pages 23 & 41 of Annexure A-1 is clearly in the nature of projections or planning for executing the order for supply of 248 lakhs OCP which has been executed in the financial year relevant to AY 2012-13. Similarly, the proposal relating to supply of OCP to Nepal also pertains to AY 2012-13. Therefore, the inference drawn by the AO for rejection of books of account and estimation of net profit for AY 2012-13 may be valid, but the action of the AO regarding estimation of net profit for AYs 2006-07 to 2011-12 is merely based on presumption and not on any evidence found during the course of search. The CIT(A) further observed that the AO has not brought any material on record with

respect to AYs 2006-07 to 2011-12 to hold that the financial information appearing in the books of account cannot be relied upon and the suppressed gross margin as determined on the basis of Annexure A-1 can be applied to the earlier years. These assessments have been made u/s 153A pursuant to search proceedings and hence, the requirement of having incriminating materials from search for making additions is very much relevant. In the absence of the same, it is held that the inference drawn by the AO that books of account for AYs 2006-07 to 2011-12 were unreliable is found to be incorrect. Consequently, the extrapolations made to the net profit and addition of suppressed profits for AYS 2006-07 to 2011-12 is found to be without merit and proper justification.

9. The CIT(A) also analysed the case laws relied upon by the AO and held that the Hon'ble Supreme Court in the case of CST vs HM Esafali HM Abdulali (supra) is highly misplaced as the facts of that case is only for estimation of net profit when the materials is available for part of the financial year. In this case, there is no finding from the AO with regard to the incorrectness of books of account or sales made outside the books to bring the ratio of judgement of Hon'ble Supreme Court. The AO has estimated net profit only on the basis of jottings of 2 pages for which the assessee has filed necessary explanations. From this, it is clear that the

incriminating material found during the course of search is only a dumb paper which is nothing but MIS report for the purpose of the management which has nothing to do with sales made by the assessee. Therefore, it is incorrect on the part of the AO to interpolate certain figures to arrive at net profit margin of 50% on OCP sales and extrapolating such estimated net profit margin for previous six years. The relevant portion of the order of CIT(A) is extracted below:-

6.3 I have considered the assessment order, the submissions made by the appellant and the cases relied upon. I find that the seized documents referred to by the A.O. relate to the supply order dated 15/3/2011 of Ministry of Health and Family Welfare whereby the appellant company was to supply OCR of 248 lakhs cycles for a consideration of Rs.788.64 lacs. From the notings made at Page 23 and page 41 of Annexure A-1, the A.O. has inferred that cost per cycle was Rs.2.21 whereas the company has received the order for supply of 248 lac cycles @ Rs 3.18 per cycle and the net margin is Rs.0.97 per cycle. The A.O. has also inferred from the notings in the loose papers that the assessee i ; company has raised bill of Rs.240.56 lacs to cover the Delhi expenses and its own margin and suppressed the profit. The A.O. referred to page 44 & 45 of seized documents according to which sale price per tablet supplied to Nepal was Rs.6.85 whereas cost was Rs.2.21 as per page 41.

The A.O. has contended that the assessee company was earning huge profit , margin, but not offering the same for taxation by arranging bogus bills to claim expenditure which is not incurred in reality and has therefore considered the books of accounts for A.Y.2012-13 as unreliable since the supply order of Rs.788.64 lacs was executed in A.Y. 2012-13. Further the A.O. has proceeded to estimate profit on OCR sales @50% on such sales to work out the addition of unaccounted profit for A.Y. 2012-13 at Rs.49985576/-. The A.O. has made application of extrapolation to the profit rates for A.Y. 2006-07 to 2011-12 by applying the same profit ratio on the presumption that the assessee company would have suppressed its real taxable income in the same manner in earlier assessment years as well.

I find that the entries, in documents seized and relied upon by the A.O. as primarily relating to supply order dated 15/3/2011 with respect to which notings have been made on 29/3/2011 ( page 41) giving a break-up of various costs to be incurred in the execution of the said order. The above

said order has been executed in F.Y. 2011-12. Hence, the notings made on 29/3/2011 is clearly in the nature of projections or planning for executing the said supply order. Similarly, the e-mail transcripts relating to the supply of OCP to Nepal also pertaining to F.Y. 2011-12. Therefore the inference regarding rejection of books of account and estimation of net profit for A.Y.2012-13 may be valid, but the action of the A.O. regarding similarly estimating net profit @ 50% on OCP sales for A.Y. 2006-07 to 2011-12 on the ground that the appellant company would have similarly suppressed its income in these assessment years is found to be merely based on presumption and not on any seized material or evidence of undisclosed income emanating from search and; pertaining to these assessment years.

The AO has relied upon the judgment of the Supreme Court in the case of CST vs. H.M. Esufali H.M. Abdulali 1973 CTR (SC) 317 : (1973) 90 ITR 271 (SC). That was a case in which unreported sales were detected for a period of 19 days in a year. The AO estimated the turnover for the entire period of one year on the basis of the unreported sales for the period of 19 days. The question that arose before the Supreme Court is as to whether the AO was right in doing so. It was held by the apex Court that in a matter involving unreported sales, the has to proceed on the basis of estimation which involves some amount of guess work. The apex Court, accordingly, upheld the order of the AO in estimating the turnover on the basis of the unreported sales for a shorter period. In this decision the Hon'ble Apex Court has observed as under:

*"In the case of" best judgment" assessments, the Courts will have to first see whether the accounts maintained by the assessee were rightly rejected as unreliable. If they come to the conclusion that they were rightly rejected, the next question that arises for consideration is whether the basis adopted in estimating the turnover has reasonable nexus with the estimate made."*

However, in the present case, the AO has not made an estimate of the suppressed turnover. In the present case, the AO has estimated the suppressed profits for AYs 2006-07 to 2011-12, on the basis of notings made on 29/3/2011 (page 41 of Annex A-1) which are in the nature of projected expenses to execute the supply order received on 15.3.2011. on the presumption that the appellant company had incurred bogus expenses to suppress its profits during execution of the said order in FY 2011-12 and that the appellant company would have similarly suppressed its income in these earlier assessment years.

I find that the AO has not brought any material on record, with respect to AYs 2006-07 to 2011-12, to hold that the financial information appearing in the books of accounts cannot be relied upon and the suppressed gross margin as determined (from seized documents as per Annex A-1) can be applied to the turnover values of earlier assessment years also. As noted above, the entries in seized documents pertain to FY 2011-12 relevant to AY 2012-13 and these by themselves cannot lead to the conclusion that the books of accounts for AYs 2006-07 to 2011-12 were incorrect or

incomplete. These assessments have been framed under section 153A pursuant to search proceedings, the requirement of having incriminating evidence emanating from search for the financial years relevant to AYs 2006-07 to 2011-12 becomes all the more relevant. In the absence of the same, it is held that the inference drawn by the AO, that books of accounts<sup>^</sup> for AYs 2006-07 to 2011-12 were unreliable, is found to be incorrect. Consequently, the extrapolations made to the net profits and addition of suppressed profits in AYs 2006-07 to 2011-12 is found to be without merit and proper justification.

Further, reference is also made to the decision of the ITAT, Mumbai F Bench in the case of Thakkar Popatlal Velji Sales Ltd Vs. Department of Income Tax, cited by the appellant, wherein it was held that backward extrapolation of the turnover, which was not based upon or supported by any incriminating material for the years under consideration, could not be upheld.

In view of above discussion, I am of the considered opinion that the additions of Rs.342,38,462/- for A.Y 2006-07, Rs.352,49,724/- for A.Y.2007-08, Rs.92,10,624/- for A.Y. 2008-09, Rs.60,21,750/- for A.Y 2009-10, Rs.217,45,758/- for A.Y.2010-11 and Rs.85,76,186/- for A.Y 2011-12, are without merit and proper justification and are directed to be deleted. Accordingly, Ground No.3 for A.Yrs. 2006-07, 2008-09, 2009-10, 2010-11, 2011-12 and ground No.2 for A.Y 2007-08 is allowed.”

10. Insofar as AY 2012-13, the CIT(A) has analysed the contents on pages 23 & 41 and also conversations of e-mail messages exchanged between the parties had come to the conclusion that there is merit in the findings of the AO with regard to the rejection of assessee's books of account as the AO has given categorical finding in respect of difference in rates of certain raw materials procured from one party as per which there is a variation of 10% in price during the same financial year, therefore, opined that both the documents seized at Annexure A-1 pages 23 & 41 are in the nature of estimate and not actual figures of business transaction. These figures are illustration / plan of the assessee company to execute the said order. The CIT(A) further

observed that although specific evidences of bogus billing has not been found during the course of search are brought on record in the assessment proceedings; however, notings in the seized documents are indicative of suppression of profits by taking bills to cover up expenses relating to executing supply order of Ministry of Health & Family Welfare, Government of India to setting off of over payments received on over invoicing to exports to Nepal. This is evident from the fall in the net profit rate of total OCP sales from 3.34% for AY 2006-07 to 0.8% for A.Y. 2012-13. Such sharp fall in the profit rate cannot be explained only by the increase in the packing material relating to OCP sales or the export sales. The CIT(A) also analysed the contents of e-mail between the parties and also rates applied by the assessee for export sales to arrive at a conclusion that the AO was right in rejection of books of account u/s 145(3) of the Act. The CIT(A) further observed that in the absence of specific evidence regarding the quantum of overbilling or suppression of profits, the computation of unaccounted profits by taking net profit margin of 50% is not found to be justified. There is a reference of margin of Rs.0.578 in seized document at page 41, but the same is a rough estimate and it is not clear if reference to gross or net profit. Therefore, he opined that the suppression of profit can be better estimated by considering the net profit disclosed by the assessee from

sale of OCP for AY 2006-07 and AY 2007-08 in which years it has also executed supply order of OCP sales to Government of India in the range of Rs.7.31 crores to Rs.7.73 crores, respectively, which is comparable to OCP sales made during the impugned year of Rs.7.88 crores. The average net profit of OCP sales for AY 2006-07 and AY 2007-08 comes to Rs.3.97%. Allowing the margin for increase in cost over the years, it was considered reasonable to compute net profit rate from OCP sales for AY 2012-13 @3.6% which comes to net profit attributable to OCP sales at Rs.36,57,914. Since the assessee has disclosed net profit of Rs.8,18,788 attributable to OCP sales, the difference amount of Rs.28,39,126 could be considered as suppression of profits from OCP sales. Accordingly, he sustained addition to the extent of Rs.28,39,126 and the balance addition of Rs.4,71,46,540 has been deleted. Aggrieved by the order of CIT(A), the revenue as well as the assessee are in appeal before us.

11. The solitary issue that came up for our consideration from all these appeals is estimation of suppression of profit by interpolating net profit margin on sales of OCP and extrapolating such estimated net profit on OCP sales for previous six financial years. The Ld.DR submitted that the Ld.CIT(A) was erred in deleting the addition made by the AO towards suppression of profit from OCP sales by extrapolating the

figures of sales and bogus expenditure emerging out of the seized loose paper pertaining to AY 2012-13 and applying the gross profit margin on proportionate basis without appreciating the fact that the assessee has been doing the same business during the previous financial years and the material found in the seized document is indicative of the trend and modus operandi being followed by the assessee for inflating expenditure by acquiring bogus bills and suppressing the net profit in earlier years also. The Ld.DR further submitted that the CIT(A) failed to appreciate the facts brought out by the AO in his assessment order and also application of the ratio of Supreme Court judgement in the case of H.M Esufali H.M.Abdulali (supra) in extrapolating the assessee's income for earlier years as the seized material gives clear indication of assessee's modus operandi by enhancing sale price and booking bogus expenditure to offset such increase in sale price to siphon off profit which is evident from the contents of seized material pages 23 & 41 and also e-mail exchanges between the parties in Nepal and the assessee. The Ld.DR further submitted that the Ld.CIT(A) was erred in relying upon the decision of ITAT, Mumbai Bench in the case of Thakkar Popatlal Velji Sales Ltd without appreciating the fact that the above said decision has not been accepted by the department and appeal u/s 260A has been filed and the same is pending. The Ld.DR further submitted that Shri YH

Bhaskar Rao, Executive Director of the assessee has categorically stated that certain jottings in the seized paper is indicative of hawala payments with reference to sales made to Ministry of Health & Family Welfare, Government of India which is the primary basis for interpolating such margin for earlier years. The CIT(A), without appreciating the facts has deleted addition made by the AO towards suppression of net profit from OCP sales from AY 2006-07 to AY 2011-12 and also restricted net profit estimation to 3.6% to AY 2012-13 based on assessee's own net profit margin of earlier years. The CIT(A) failed to appreciate the fact when assessee is in the habit of inflating purchases by taking bogus entries, its own book results and consequent profit margin cannot be relied upon to estimate net profit. The AO has brought out clear facts to arrive at a net profit margin of 50% which is based on seized materials and also evidence in the form of e-mails between the parties, which clearly establishes a margin of more than 50% from sales of OCP to Nepal. The AO has rightly estimated net profit by interpolating profit percentage and also extrapolating such net profit for earlier years and his order should be upheld.

12. On the other hand, the Ld.AR for the assessee submitted that the Ld.CIT(A) has rightly deleted addition made by the AO towards addition made on account of suppression of profit from OCP sales made by the

AO on the basis of interpolation of net profit margin and extrapolating such margin for earlier years by rightly appreciating the fact that the AO did not have any material evidence to justify his action of estimation of net profit. The Ld.AR further submitted that the AO has merely relied upon two loose papers found during the course of search which are nothing but an estimation made by the assessee with reference to order received from Director of Health & Family Welfare, Government of India for supply of 248 lakhs cycles of OCP with reference to its existing business and cost factor to ascertain whether the order is economically viable or not. The contents of the seized paper clearly indicate that the assessee has worked out the order for supply on the basis of rate quoted by the party with reference to basic cost of raw materials and other raw materials and packing materials. The said order has been received in the financial year 2011-12 and has been executed by the assessee from AY 2012-13 onwards. The AO without appreciating this minimum facts has inferred that the assessee is inflating purchases and other expenses to cover up its margin and other expenses. The Ld.AR further submitted that the assessee has furnished complete details of cost of OCP alongwith bills to justify its books of account and the AO has not pointed out any incorrectness or discrepancy in books of account which is evident from the fact that except relying on two loose papers,

the AO has not brought out any other evidence to justify addition made for estimation of suppressed net profit from OCP sales. On the other hand, the assessee has furnished complete details along with bills and vouchers even during assessment proceedings and also during remand proceedings wherein the AO has issued notices to suppliers, who supplied packing materials and raw materials u/s 133(6) for which all the suppliers have furnished necessary details. The AO only on the basis of rate difference in one of the raw materials purchased from one party has inferred that the purchase of the assessee cannot be relied upon. But fact remains that the rate difference worked out by the AO on the basis of two bills obtained from one party pertained for the month of July, 2011 and March, 2012 wherein there is a difference of 10% which is quite common because there is a gap of almost six months between two bills. The assessee further submitted that these purchases were made from unrelated parties and the rates were subject to fluctuation depending upon changes in import duty, etc. Therefore, the AO was incorrect to come to the conclusion that the assessee's books of account are not reliable only on the basis of rate difference in one raw material, that too, a meager amount of 10%. The assessee has furnished complete details with respect to year of supply of 248 lakhs cycle of OCP along with bills of raw materials and packing materials and the AO has not pointed out a

single mistake in the books of account. Therefore, merely on the basis of two loose papers found during the course of search arriving at a net profit margin of 50% by interpolating figures appearing in the loose papers and extrapolating such estimated net profit for previous six assessment years without there being any evidences is a total guess work which cannot be accepted.

13. The Ld.AR referring to the decision of Hon'ble Supreme Court in the case of CST vs H.M Esufali H.M.Abdulali (supra) submitted that the AOs reliance on the decision of Hon'ble Supreme Court is highly misplaced in the light of facts of the assessee's case, as the case before the Hon'ble Supreme Court is on estimation of turnover for remaining period when the department has found unaccounted turnover for part of the financial year. In that case, the assessee has not reported 19 days' sales and on that basis, the AO has estimated turnover for the remaining period of the financial year. Under those circumstances, the Hon'ble Supreme Court held that when there is material with the AO for part of the period, the remaining period's sales can be estimated when such estimation is not unreasonable or arbitrary. In the present case, it is not the case of the AO that sales are not unaccounted.. The AO has not brought out any instance of unaccounted turnover of the assessee. The AO neither brought out any instance of inflation of purchases and expenses nor

sales made outside the books of account to rely upon the decision of Hon'ble Supreme Court to estimate net profit. The AO only on the basis of two loose papers has come to the conclusion that the assessee has inflated purchases to cover up certain expenses and margin from sales of OCP. Therefore, there is no merit in the findings of the AO that the assessee has siphoned off profits by inflating the purchases and expenses. The Ld.CIT(A), although rightly deleted addition made by the AO for earlier years, erred in even estimating 3.6% net profit for the assessment year 2012-13 having been accepted the fact that the loose papers found during the course of search is only an estimate, but not actual financial transaction and also fact that the AO has not brought out any evidence of inflation of purchase or expenses. Therefore, requested to uphold the order of the CIT(A) insofar as assessment years 2006-07 to 2011-12 and delete additions sustained by the CIT(A) towards estimation of 3.6% net profit on OCP sales made for AY 2012-13.

14. We have heard both the sides, perused the material available on record and gone through the orders of authorities below. We have carefully considered the case laws relied upon by the Ld.AR and also relied upon by the assessee. The solitary issue that came up for our consideration from these appeals is estimation of suppression of net profit from sales of oral contraceptive pills by interpolation of net profit

and extrapolating such net profit rate to earlier six financial years. The facts relating to the impugned dispute are that a search action u/s 132(1) of the Income-tax Act, 1961 was conducted in the assessee's case and during the course of search incriminating material in the form of two loose papers marked as Annexure A-1 pages 23 & 41 were found and seized. The said documents contains information about the order received from Ministry of Health and Family Welfare, Government of India, New Delhi dated 15-07-2011 for supply of 248 lakhs cycles of OCP @Rs.3.18 per pills. This fact is not disputed by either party. The said papers further contained the details of raw materials including basic and other information required for production of each unit of OCP, packing materials, other direct and indirect expenses and margin of the assessee per pill. In the said document, the assessee has taken cost of each raw materials including packing materials and also taken Delhi expenses @10% of total sale price. In the said document, the assessee recorded certain information about the bills required to be taken for packing materials. During the course of search, further document in the form of e-mail exchanges between the assessee company and one of the parties Hospetic Pharma, Nepal in relation to sale of OCP was found. As per the contents of e-mail conversation between the parties, it was noticed that the assessee has invoiced export sales @6.85% per

OCP, whereas the cost of production of such OCP remains Rs.2.21 as worked out by the AO. During the course of search, the statement from Shri YN Bhaskar Rao, Executive Director of the assessee company was also recorded u/s 132(1) wherein, in response to a question, he has explained the contents of incriminating material found during the course of search; however, failed to explain further question posed by the department with regard to the payment of hawala money, etc. The AO based on these documents, came to the conclusion that the assessee is siphoning off the funds by arranging bogus bills to reduce huge profit margin from sale of OCP and also to cover up certain expenses payable at Delhi. The AO further relied on the provisions of section 290C and inferred that the documents found during the course of search in the premises of the assessee company containing details of order, costing of the order and other details are considered to be true, accordingly proceeded to determination of net profit margin from sale of OCP on the basis of incriminating document page 23 & 41 and arrived at a total production cost per cycle at Rs.2.21 per cycle and net profit of 0.97 per cycle which works out to 30.5% in terms of percentage. The AO, on the basis of information contained in e-mail documents observed that the assessee has billed export sales @6.85% whereas the cost per pill worked out to less than Rs.3 and accordingly inferred that the assessee

is having huge margin from sale of OCP and hence, arrived at a net profit of 50% by interpolating figures. Further, on the basis of estimated net profit of 50%, the AO has determined net profit derived by the assessee from sale of OCP for AY 2006-07 to AY 2012-13 by extrapolating the estimated net profit from sale of OCP and arrived at undisclosed net profit attributable to OCP sales for each of the year and made addition. The relevant details has been reproduced by the AO in a tabular form which has been extracted hereunder:-

OOP sales	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Govt. of India	73145001	77645000	14325000	0	0	0	78861933
Assam	0	0	0	0	16507500	8640000	0
Hospitec Pharma, Nepal	0	0	0	12774000	11260000	0	22746795
Others	229465	0	3788727	0	16507500	8640000	0
Total OCP sales	73374466	77645000	18113727	12774000	44275000	17280000	101608728
N.P 50% (OCP sales)	36687233	38822500	9056864	6387000	22137500	8640000	50804364
Total Net profit	3763995	4607858	-932495	3930021	1009946	1863605	2820321
Total Turnover	112783569	100139825	109852730	137445963	114144826	504642561	349992053
Profit disclosed attributable to OCP sales	2448771	3572776	-153760	365250	391742	63814	818788
Addition	34238462	35249724	9210624	6021750	21745758	8576186	49985576

15. The AO has determined net profit margin from sale of OCP by interpolating the figures appeared in the incriminating document page 23 41 and extrapolated such net profit for six previous financial years on total sales from OCP to determine undisclosed profit attributable to such sales. The AO has heavily relied upon page 23 & 41 of Annexure A-1. The AO also relied upon the decision of Hon'ble Supreme Court in the case of Commissioner of Sales-tax vs H.M Esufali H.M.Abdulali (supra) and opined that once part of information is recorded from the assessee's premises which throws light on the undisclosed income of the assessee, based on such part information, estimation is possible for the remaining period of the financial year. According to the AO, the incriminating material indicates the modus operandi of the assessee to reduce profit from sale of OCP and also to cover up certain expenses payable at Delhi.

16. It is the contention of the assessee that incriminating material found during the course of search pertains to a MIS report prepared to ascertain feasibility of supply order received from Ministry of Health & Family Welfare, Government of India, New Delhi and to find out whether the said order is financially viable or not in the given circumstances considering the cost of raw materials and production expenses of OCP. The assessee further contended that the said order has been received in

the financial year 2011-12 relevant to AY 2012-13 and has been executed from the AY 2012-13 onwards which is clearly evident from the date of order and information contained on page 23 & 41. The assessee further explained the content of page 23 & 41 and submitted that it is only a MIS report prepared for the purpose of management to ascertain cost of production of OCP as well as profit margin. Therefore, it cannot be considered as a document which shows light on the modus operandi of the assessee to arrange bogus bills for siphoning off profit and also to cover expenses. The assessee also explained the case laws heavily relied upon by the AO in the case of CST vs H.M Esufali H.M.Abdulali (supra) and submitted that the AOs reliance on Hon'ble Supreme Court decision is highly misplaced in the given circumstances of the assessee's case as in that case, the assessee, a registered dealer did not include 19 days sales in its books of account and on the basis of sales of 19 days, the AO has estimated sales for the remaining period of the financial year. Under these circumstances, the Hon'ble Supreme Court has observed that as long as estimation made by the AO is not unreasonable or arbitrary, there is scope for estimation of turnover though it involves certain amount of guess work. In the present case, the AOs case is that the assessee is siphoning off the profit by arranging bogus bills and also to cover up certain expenses, that too, without any

evidence to suggest that the assessee has arranged bogus bills for packing materials and other expenses which is evident from the fact that the AO never pointed out a single discrepancy in books of account or bills and vouchers produced by the assessee. On the other hand, the assessee has filed complete details of books of account alongwith bills and vouchers and also details of cost of production of OCP which is further supported by 3 audit reports under various laws including Companies Act, Income-tax Act and Cost Audit Report which is applicable in this case wherein none of the auditors has pointed out any adverse comments on books of account of the assessee or its financial statements. Therefore, the AO was highly incorrect in interpolating net profit margin and extrapolating such net profit margin to earlier years.

17. The AO has estimated net profit only on the basis of two loose papers found during the course of search. If we look into the documents found during the course of search which clearly give information about order received from Ministry of Health & Family Welfare, Government of India for supply of oral contraceptive pills. On the basis of said document, the AO has arrived at a net profit margin of 50% from sales of OCP and extrapolated such net profit margin to earlier years. Except these two loose papers, there is no other evidences with the AO to support his estimation of net profit for the year for which such documents

pertain and also for the earlier years. Under these facts and circumstances, one has to examine whether the AO was right in interpolating net profit margin and extrapolating such estimated net profit for earlier years. We find that the assessee has explained the contents of the seized documents pages 23 & 41. As per the explanations given by the assessee, it is only an estimate prepared by the management for the initial purpose of ascertaining the financial viability of order received for supply of oral contraceptive pills. The assessee has filed complete details of books of account alongwith bills and vouchers in respect of all financial years. The assessee also furnished complete set of audit reports for all the years. The AO has never pointed out any irregularities or inconsistency in books of account or bills or vouchers submitted by the assessee which is clearly evident from the findings of the AO in his order. Nowhere he has commented on books of account and bills and vouchers. Even during remand proceedings, the AO has called for further evidence in the form of confirmation from the parties from whom the assessee has purchased packing materials. The AO also issued notices u/s 133(6) to all the parties for which they have filed complete details which has been accepted by the AO in his remand report. The only observation made by the AO in the remand proceedings is about the rate difference in one raw material purchased from a particular party.

The AO observed that there is a rate difference of 10% in purchase of a single raw material from one source. Accordingly, he opined that the books of account alongwith bills and vouchers produced by the assessee does not give true and correct picture of financial results. Except this, there is no other adverse observations on the books of account of the assessee or bills and vouchers. We further notice that none of the auditors has made any adverse comments on financial results of the assessee. In fact, it is not the case of the AO. The AO has accepted the fact that there is no adverse comments on books of account or financial results declared by the assessee for all the years. We further notice that the AO has not rejected the books of account of the assessee u/s 145(3) of the Income-tax Act, 1961 for any of the reasons. From this, it is abundantly clear that the AO has failed to point out any adverse comments on books of account of the assessee and bills and vouchers submitted in support of such books of account. Therefore, we are of the considered view that the AO was erred in interpolating net profit from sales of OCP only on the basis of two loose papers found during the course of search and estimation of net profit on the basis of such net profit margin for earlier years without any reference to incriminating material for earlier financial years.

18. Coming to the case laws relied upon by the Ld.AO in the case of

CST vs H.M Esufali H.M.Abdulali (supra). The Ld.AO heavily relied upon the decision of Hon'ble Supreme Court in the said case to arrive at a conclusion that estimation of net profit is possible on the basis of evidence found during the course of search for the impugned year including earlier previous years. We have gone through the case laws relied upon by the AO in the light of the facts of the present case. In the case before the Hon'ble Supreme Court, the assessee was a registered dealer under the Sales-tax Act dealing in iron & steel. The flying squad inspected the business premises of the assessee and found a bill book for the period 01-09-1962 to 19-09-1962. The bill book showed that the assessee had effected sales of iron & steel for Rs.31,171.28, and such sales had not been entered in the books of account maintained by the assessee. Based on the unaccounted turnover of 19 days, the AO estimated turnover for the remaining period of the financial year and made adhoc addition. Under these facts, the Hon'ble Supreme Court confirmed the estimate made by the AO by observing that the AO could make an estimate of the suppressed turnover on the basis of the material before him. So long as the estimate made by him is not arbitrary and has nexus with the facts discovered, the same cannot be questioned. In the very nature of things, an estimate made may be an over estimate or an under estimate, but that is not a ground for

interfering with his best judgement.

19. In these facts and circumstances of the case and also ratio laid down by the Hon'ble Supreme Court in the case of CST vs H.M Esufali H.M.Abdulali (supra), one has to look into the facts of the assessee's case. Whether the AO was right in interpolating net profit margin from sale of OCPs on the basis of two loose papers found during the course of search and extrapolating such estimated net profit margin for earlier six years? The answer is obviously No. First and foremost, the AO is incorrect in estimating the net profit margin on the basis of two loose papers for earlier six financial years from AY 2006-07 to 2011-12 for the reason that the said document pertains to AY 2012-13 onwards. This fact has not been disputed by the revenue. The second point is that the contents of the seized material has been satisfactorily explained by the assessee with its books of account. The information contained in the incriminating material has been recorded in the books of account of the assessee for the impugned assessment year. This fact also not disputed by the AO. The sales as well as expenditure recorded in the incriminating material are fully found recorded in the books of account. The AO has doubted the purchases of packing materials and daily expenses only on the ground that the assessee has failed to explain the bills to be obtained for packing materials and Delhi expenses @10% on

sale value. The assessee has explained the bills to be obtained in respect of packing materials and submitted that in the normal course of trade, it has made sales of its product with one layer of packing. In respect of order received from Ministry of Health and Family Welfare, Government of India, the assessee needed to make two layer of packing for which additional packing material was required. The assessee has estimated the additional requirement of packing material for the said order. The assessee also explained the expenses payable at Delhi and submitted that those expenses included direct and indirect expenses in relation to order received from Ministry of Health and Family Welfare, Government of India. Therefore, we are of the considered view that the AO was completely erred in inferring siphoning off funds by inflating Delhi expenses without any evidences in his possession to justify his action. We further are of the opinion that the AO was erred in interpolating net profit margin on the basis of two loose papers and extrapolating such net profit margin for earlier six financial years without any iota of evidences to justify that the assessee has inflated purchases and other expenses to reduce profit for the earlier years also. Therefore, we are of the considered view that the first appellate authority on due application of facts and circumstances of the case has arrived at the conclusion that there was no basis for the impugned backward

extrapolation of the suppressed profit especially when no incriminating evidences or material was found consequent to search to demonstrate that in the past years as well, the assessee was indulging in suppression of profit.

20. Coming to the assessment year 2012-13. There is no dispute with the fact that for the impugned assessment year 2012-13, there is an evidence in the form of incriminating material page 23 & 41 of Annexure A-1. The said incriminating material contains certain information about order received from Ministry of Health and Family Welfare, Government of India. Though the Ld.CIT(A) has accepted the fact that there is no specific evidence of bogus billing found in the course of search are brought on record in the assessment proceedings, the notings in the seized documents are indicative of suppression of profits by taking bills to cover expenses relating to executing the supply order of Ministry of Health and Family Welfare, Government of India. The Ld.CIT(A) also has taken a clue from the remand report of the AO wherein the AO has pointed out 10% rate difference in one solitary instance of purchase of raw material from a single party. Therefore, concurred with the findings of the AO for the assessment year 2012-13 insofar as the finding of suppression of profit from sale of OCP; however, declined to accept the net profit percentage adopted by the AO on the ground that the profit

percentage determined by the AO is unreasonable and arbitrary. The Ld.CIT(A) further proceeded to estimate the net profit on the basis of assessee's own financial results for AYs 2006-07 & 2007-08 in which years sales of OCP are almost equal and comparable to the OCP sales made during the assessment year 2012-13. Accordingly, by taking average net profit of OCP sale of AYs 2006-07 and 2007-08 which worked out to 3.97%, determined the net profit at 3.6%, after allowing the probable increase in cost of raw materials over the years and estimated net profit of 3.6% on total OCP sales and determined profit of Rs.3,65,57,914 in respect of OCP sales. The CIT(A), after allowing set off of profit already declared from sale of such OCP sales sustained addition of Rs.28,39,126 in respect of suppression of net profit from OCP sales. In this factual background, if we look into the addition sustained by the Ld.CIT(A), which is once again not based on a single solitary instance of 10% rate difference in one raw material, but not on the basis of loose documents found during the course of search. The assessee has already categorically proved that the contents recorded in two loose papers are found recorded in the books of account. Insofar as the observations of the Ld.AO with regard to the rate difference of raw material, the assessee has explained the details and clarified that the two purchase bills pertained to two different months, one in the month of

November, 2011 and the other in the month of March, 2012. The assessee further explained that it is quite possible that there would be a rate difference in materials based on the demand and supply and also on various parameters including import duty, etc., that too, in a period of six months' gap. Therefore, the AO as well as the Ld.CIT(A) was completely erred in arriving at a conclusion that there is a difference in raw material procurement price which leads to an inference that the assessee has inflated cost of raw material so as to reduce net profit. We find merit in the argument of the assessee for the reason that on the basis of loose papers and one solitary instance of rate difference in raw materials, addition cannot be made on suppression of net profit, more particularly when the assessee has categorically explained the defects pointed out by the AO in respect of loose papers as well as rate difference. Therefore, we are of the considered view that the Ld.CIT(A) was also incorrect in sustaining estimated net profit of 3.67% on sales from OCP.

21. Coming to the case laws relied upon by the assessee. The assessee has relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs MKE Memon 248 ITR 310 (Bom). The Hon'ble Bombay High Court while distinguishing the judgement of Hon'ble Supreme Court in the case of CST vs H.M Esufali H.M.Abdulali (supra)

has observed as under:-

In case of CIT Vs. Dr. M K E Menon, The Hon'ble Bombay High Court, while distinguishing the Judgment of Hon'ble Supreme Court in case of Commissioner of Sales Tax V/s. H.M Esufali H.M Abdulali reported in 90 ITR 271, in Para 7 of the Order observed as under;

**Quote**

*"7. Before concluding we may mention that in ail matters of block assessment, the Department heavily relies upon the judgment of the Supreme Court in the case of CST vs. H.M. Esufali H.M. Abdulali 1973 CTR (SC) 317 : (1973) 90 ITR 271 (SC).*

*That was a case in which unreported sales were detected for a period of 19 days in a year. The AO estimated the turnover for the entire period of one year on the basis of the unreported sales for the period of 19 days. The question that arose before the Supreme Court is as to whether the AO was right in doing so. It was held by the apex Court that in a matter involving unreported sales, the AO has to proceed on the basis of estimation which involves some amount of guess work. The apex Court, accordingly, upheld the order of the AO in estimating the turnover on the basis of the unreported sales for a shorter period. However, in the present matter, we are concerned with the block assessment of ten years. Ultimately, the said judgment of the Supreme Court must be seen in the context of the facts of each case. In the present matter, the assessee is a professional. It is highly improbable that the rate of the fees charged by a professional in 1983 would remain static for the entire block period of 10 years. The proportionate amount of refund also could not have remained static for the entire period of ten years. The assessee further pointed out that during the Gulf war the number of persons who went to the Gulf countries stood substantially reduced. These facts should have been considered by the Department On the other hand, in the present matter, the Department has applied the peak income rate of post-1993 period to the entire block period commencing from 1<sup>st</sup> April, 1986 up to 11th Dec., 1996. Hence, the Tribunal was right in coming to the conclusion that an arbitrary method has been adopted by the AO in estimating the income of the assessee under Chapter XIV-B."*

22. The assessee has relied upon the decision of Hon'ble Allahabad High Court in the case of CIT vs RML Mehrotra 320 ITR 403 (All). The Hon'ble Allahabad High Court while distinguishing the judgement of Hon'ble Supreme Court in the case of CST vs H.M Esufali H.M.Abdulali (supra), has observed as under:-

In case of CIT Vs. R.M L Mehrotra, The Hon'ble Bombay High Court, while distinguishing the Judgment of Hon'ble Supreme Court in case of Commissioner of Sales Tax V/s. H.M Esufail H.M Abdulali reported in 90 ITR 271, in Para 26 of the Order observed as under;

**Quote**

*"26. Now passing on to the multiplication formula adopted by the AO, we find ourselves unable to accord our nod to it. In the first place, one should not forget that it is a search case in which a search party is supposed and expected to find out all the incriminating documents, material as also undisclosed assets. A search assessment, much less a block assessment, therefore, stands on a footing different than a normal assessment much less an assessment based on the best judgment of an AO. It is for this reason that the ratio of the apex Court decision reported in the case of H.M. Esufali H.M. Abdulali (supra) would not come to the rescue of the Department, as it was a sales-tax matter and a best judgment assessment was required to be made. The material that the Sales Tax Officer had possessed was the figure of 19 days sale by the assessee not entered in their books of accounting. The Supreme Court held that in such a situation, it was not possible for the AO to find out precisely the turnover suppressed and he could only*

**Quote**

*"No doubt it is true that when the returns and the books of account are rejected, the AO must make an estimate, and **to that extent he must make a guess ; but the estimate must be related to some evidence or material and it must be something more than mere suspicion.**"*

**Unquote**

23. In this view of the matter and considering the facts and circumstances of the case and also by relying upon the case laws discussed above, we are of the considered view that the AO was erred in interpolating net profit margin from sale of OCP and extrapolating such net profit margin for earlier six years without any evidence. The Ld.CIT(A) on due appreciation of facts and circumstances of the case has arrived at the right conclusion that there was no basis for the impugned backward extrapolation of the profit especially when no incriminating evidence or material was found consequent upon the search to demonstrate that in the past years as well the assessee was

indulging in suppression of sales. Therefore, we affirm the findings of the Ld.CIT(A) and dismiss the appeal filed by the revenue for AYs 2006-07 to 2011-12. Insofar as AY 2012-13 is concerned, though the CIT(A) has accepted the fact that there is no specific evidence of bogus billing or inflation of purchases, erred in sustaining net profit of 3.6% on OCP sales. Therefore, we reverse the findings of the Ld.CIT(A) for AY 2012-13 and dismiss revenue's appeal and allow the appeal filed by the assessee.

24. In the result, appeals filed by the revenue are dismissed and appeal filed by the assessee is allowed.

Order pronounced in the open court on 18<sup>th</sup> May, 2018.

Sd/-

Sd/-

(Amarjit Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : May, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai