IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA No.	Asst. Year	Appellant	Respondent
589/Hyd/06	2002-03	M/s. Elem Investments Pvt Ltd., HYDERABAD **[PAN: AAACE4370L]**	Asst. Commissioner of Income Tax, Central Circle-1, HYDERABAD
731/Hyd/06	2003-04		
617/Hyd/08	2004-05		
121/Hyd/10	2005-06		

For Assessee : Shri K.C. Devdas, AR
For Revenue : Smt. Suman Malik, DR

Date of Hearing : 13-07-2018
Date of Pronouncement : 03-08-2018

O R D E R

PER BENCH :

These are appeals by assessee against the orders of the Commissioner of Income Tax (Appeals)-1, Hyderabad, for the AYs. 2002-03, 2003-04, 2004-05 & 2005-06. Originally, these appeal were disposed of by an *ex-parte* order as assessee has not appeared and later by way of Miscellaneous Applications, the appeals have been recalled. The issues in these appeals are with reference to disallowance of expenditure u/s. 37(1) of

the Income Tax Act [Act] and in AY 2002-03 enhancement of amount by way of loss claimed on valuation of certain shares by the Ld.CIT(A). Since the issues are common in all these appeals, we have heard together and disposed-of by this common order. For the sake of convenience, AY. 2002-03 is discussed hereunder:

2. Briefly stated, assessee-company is an investment company and filed its return of income on 31-10-2002 admitting total income of Rs. 31,40,780/-. On verification of the expenses of Rs. 30,40,384/- debited under the head 'Administrative and other expenses', it was found by AO that a sum of Rs. 18 Lakhs was claimed towards service charges paid to M/s. SRSR Advisory Services Pvt. Ltd., [SRSR]. It was explained by assessee that the said service charges were paid for the services like advisory services in its business area, accounting services, collection of interest and dividend, taxation, ROC related matters and maintenance of its land properties etc. It was also mentioned that the recipient company, SRSR was assessed to tax where all the receipts were declared as their income. AO found that assessee earned interest on dividend income, purchased shares of two concerns and sold shares of another company in two transactions. AO also noticed that the dividend income had been claimed exempt. Even though assessee owns some agricultural lands, no agricultural income was declared, coming to a conclusion that no agricultural operations were conducted by assessee. AO also was of the opinion that the Directors of SRSR are

related persons to the Directions of assessee-company. Considering all these facts and circumstances of the case, AO held that the service charges paid were dis-proportionate to the services received and therefore, entire expenditure of Rs. 18 Lakhs could not be said to have been expended wholly and exclusively for the purpose of business in terms of Section 37(1) of the Act. AO estimated sum of Rs. 3 Lakhs at Rs. 25,000/- p.m. as reasonable expenditure considering the nature and volume of business of assessee-company and the nature of services rendered by SRSR. The balance of Rs. 15 Lakhs was disallowed u/s. 37(1) of the Act.

3. Before the Ld.CIT(A), assessee filed copy of the agreement and gave submissions that expenditure was paid wholly and exclusively for the purpose of business. It was also contended that the provisions of Section 40A(2) are not applicable as there are no common directors in both the companies and the provisions of Section 40A(2) cannot be invoked. Assessee relied on various case law for the proposition that payment could not be disallowed, as was done by AO.

4. Ld.CIT(A), however, while agreeing that AO has not invoked the provisions of Section 40A(2) as they are not applicable to the facts of the case, however, confirmed that the disallowance of expenses have been made u/s. 37(1) only. Ld.CIT(A) also noted that assessee had further incurred expenses of Rs. 2,76,000/- on account of professional charges

and Rs. 26,250/- on account of audit fee, which have been allowed *in toto* by AO. It is also noticed that assessee is maintaining books of account on computers and Form 3CD has been filed. He has confirmed the disallowance by stating as under:

"06. Following facts clearly emerged from the above discussion –

(i) The major part of income of the appellant company is interest and dividend income which does not require any service from SRSR.

(ii) During the year, the appellant has purchased and sold shares of the concerns belonging to Satyam group to which the appellant company also belongs.

(iii) While the purchase of shares are made in the private deals, one transaction of sale is through the stock broker, which do not require the services of SRSR. There is no evidence on record that the said purchase and sale transactions of shares were made through SRSR.

(iv) The nature and quantum of business of the appellant company do not justify the payment of service charges of Rs. 18 lakhs per annum to SRSR especially when the appellant is separately incurring expenses of Rs. 2.76 lakhs on account of professional charges & Rs. 26,250/- on account of audit fee.

(v) The directors of the payer and payee companies are related to each other.

07. In view of these facts and circumstances of the case, I agree with the Assessing Officer that the amount of service charges paid was not necessitated by the business needs of the appellant company and the same was disproportionate to the services, if any, rendered by SRSR. Hence, the entire expenditure of Rs.18 lakhs cannot be said to have been expended wholly and exclusively for the purpose of business of the appellant company. The Assessing Officer has rightly estimated the allowable expenses at Rs.3 lakhs after considering the nature and volume of the business of the appellant company and nature of

services to be rendered by SRSR. The same is, therefore, upheld. It is pertinent to mention here that on exactly similar facts disallowance of service charges was also upheld in the appellate orders of even date in the case of other group concerns – M/s. Highgrace Investments (P) Ltd & M/s. Fincity Investments (P) Ltd."

4.1. Similar issue arises in AYs. 2003-04, 2004-05 & 2005-06, wherein AO has reduced the amounts as under:

A.Y.	Disallowed (Rs.in Lakhs)	Allowed (Rs.in Lakhs)
2003-04	15.00	3.00
2004-05	16.50	3.00
2005-06	20.00	3.00

4.2. Ld.CIT(A) following the order in AY. 2002-03, rejected the contentions of assessee and confirmed the amount of disallowance in all the three impugned assessment years i.e., AYs. 2003-04, 2004-05 & 2005-06.

5. In the course of appellate proceedings for the AY.2002-03, Ld.CIT(A) noted that assessee-company has purchased Rs. 40,323/- unquoted shares of M/s. Dataquest Management and Communications Ltd., (DQ) with a premium of Rs. 145/- per share on 14-07-2001. The same was valued in the closing stock as on 31-03-2002 at the face value of Rs. 10/- per share. These shares were shown as stock in trade of the business of purchase and sale of shares. Ld.CIT(A) was of the opinion that assessee has created a loss of Rs. 58,46,780/- in the share trading account which was set-off against interest income shown under the head 'business'. It was also further

noted that similar *Modus Operandi* was also adopted by the other group concerns in AY. 2002-03. He was of the opinion that method adopted by assessee was *prima-facie* not tenable in law. Accordingly, he issued show cause notice dt. 30-01-2006 with a proposal to disallow the loss of Rs. 58,46,780/- shown in the trading a/c. Ld.CIT(A) extracted the show cause notice in para 10 of the order. In response to the notice, assessee filed reply on 23-02-2006 stating that assessee is an investment company and also in the business of purchase and sale of shares and in the course of business operations, purchased 40,322 shares in DQ for an amount of Rs. 62,50,000/- i.e., at Rs. 155/- per share [premium of Rs. 145/- per share] on a private placement basis. The shares were tradable but not through stock exchange as the DQ is a limited company. The valuation of shares forming part of the stock in trade has to be made necessarily at cost or market value, whichever is lower as per the accounting standard No. 2 of the ICAI which was followed. Since the shares are not quoted, the shares of DQ are valued at face value in the closing stock as the intrinsic value was below the cost and net realisable value was estimated at Rs. 10/-. It was stated that Explanation to Section 73 cannot be invoked as assessee has earned interest income and dividend income and is carrying on business of dealing in shares. Assessee objected to invoking the Explanation to Section 73 and also contested that the transaction is not speculation as defined u/s. 43(5). It was submitted that assessee is entitled to set-off the business loss against its income from other sources viz., interest and

dividend income. Assessee relied on the decision of Rajan Enterprises Pvt. Ltd., [41 ITD 469] (Bom), Concord Commercial Pvt. Ltd., [95 ITD 117] (Mum.)(SB) and Godavari Capital Ltd., [91 ITD 274] (Hyd).

5.1. Ld.CIT(A), however, did not agree and after analyzing the agreement entered into on 16-08-2001 with the promoters of DQ and the case law on the subject and also the fact that the said company has allotted shares subsequently to various persons at higher price than the purchase cost, as listed out in para 13, Pg.18 of the order and also analyzing the provisions of Section 73, the Explanation, came to the conclusion that assessee has adopted *Modus Operandi* obviously to evade tax. Vide para 16 onwards, he also examined the various contentions raised by assessee in detail and at the end, he has concluded as under:

"17. After considering the entire conspectus of the issue, I have come to the following findings -

i) The appellant company had acquired the shares of DQ as an 'investment' and not as 'stock in trade'. These shares were, therefore, not to be taken into share trading account but have to be shown in the Balance Sheet under the head 'long term investment'. The valuation of these shares in the closing stock would not affect the business profits of the appellant assessable to tax.

ii) Without, prejudice to the above, the DQ shares cannot be valued In the closing stock at face value since the net realizable value of these shares was more than the cost price.

iii) Without prejudice to the above, the loss shown in the share trading account was deemed to be a loss from speculation business in terms of 'Explanation' to Section 73 of the Act. Such

loss cannot be set off against interest Income shown under the head 'business'.

iv) The technique adopted by the appellant and other group concerns in this year and earlier year by showing the 'investment' as 'stock in trade' and thereafter valuing the same in closing stock below the cost price or the net realizable value, was a tax planning with an intention to evade tax.

v) The loss of Rs.58,46,780/- claimed in the share trading account is disallowed and assessed income is enhanced to that extent.

In view of the above findings, penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 is also initiated against the appellant for furnishing inaccurate particulars of his income.

18. In the result, the appeal is dismissed and the assessed income is enhanced to the extent of Rs. 58,46,780/-. Show cause notice u/s 274 r.w.s. 271(1)(c) is issued for the reasons recorded above".

5.2. Thus, he has enhanced the total income by directing the AO to disallow the loss claimed in the trading account as directed above.

6. Assessee is aggrieved and raised various grounds on the above two issues.

7. Ld. Counsel referring to the issue of claim of service charges, submitted that AO cannot disallow the expenditure u/s. 37(1) as it is a business decision and the provisions of Section 37(1) permits either allowance of the entire claim or disallowance of the entire claim but not a partial claim. It was submitted that AO cannot step into the shoes of the businessmen to decide the reasonability of an expenditure and once a claim is made, the entire amount is to be allowed. He

also pointed out the finding of Ld.CIT(A) that the provisions of Section 40A(2) are not invoked and submitted that AO cannot restrict the amount claimed u/s. 37(1) as there is no finding that expenditure is personal in nature or for non-business purposes. Therefore, the claim as made by assessee is allowable in full. After referring to various principles on the claim u/s. 37(1), Ld. Counsel relied on the decision of the ITAT, Pune Bench in the case of Coca Cola India (P) Ltd., Vs. DCIT [116 TTJ 880], [ITAT (Pune)] to submit that the Co-ordinate Bench has summarized the principles according to which AO has to allow the amount in full once it is identified that expenditure is for the purpose of business.

7.1. Coming to the issue of enhancement, Ld. Counsel submitted that Ld.CIT(A) has travelled beyond the scope of appeal and relied on the principles laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Sardari Lal and Co. [251 ITR 864] (Del) to submit that whenever the question of taxability of income from a new source which had not been considered by the AO is concerned, the jurisdiction to deal with the same in appropriate cases may be dealt with u/s. 147/148 of the Act and Section 263 of the Act if requisite conditions are fulfilled. In the presence of such specific provisions a similar power is not available to the first appellate authority, Ld. Counsel also referred to the principles laid down by the Hon'ble Supreme Court in the case of CIT Vs. Rai Bahadur Hardutroy Motilal Chamaria [66 ITR 443] (SC) and CIT Vs. Shapoorji Pallonji Mistry [44 ITR 891] (SC) which

support the proposition that AAC has no power to enhance the assessment by discovering the new source of income.

7.2. Coming to the merits of the issue, Ld. Counsel submitted that assessee has adopted Rs. 10/- as the cost price as the shares are held by the company as stock in trade and there was no market at the end of the year. However, it was fairly admitted that while arriving at the cost price, the company has not taken the share premium amount into consideration and if that was taken into consideration, the valuation of the shares would be around Rs. 23.52.

7.3. Further referring to the amendment brought to Explanation to Section 73 by the Finance Act, 2014 w.e.f. 01-04-2015, it was the submission that the loss will not become 'speculation loss' as the principal business of the company is trading in shares and amendment brought subsequently has to be considered retrospective in nature and relied on the principles laid down by the Hon'ble Supreme Court in the case of CIT Vs. Vatika Township P. Ltd., [367 ITR 466] (SC) to submit that where benefit is conferred by a legislation, the rule against retrospective construction is different. Where a law is enacted for the benefit of community as a whole, even in the absence of a provisions, the statue may be held to be retrospective in nature. It was the submission that the provisions of Section 73 Explanation does not apply, in view of the subsequent amendment brought for the benefit of the companies involved in share trading.

8. Ld.DR, however, in reply submitted that there is no new source of income and CIT(A) has examined the annual reports and statements filed along with return of income and noticed that assessee has wrongly valued the closing stock. It was submitted that the power of AAC is not confined to the matter which had been considered by the ITO and appellate authority can consider any other issue also as the Hon'ble Supreme Court in the case of CIT Vs. Nirbheram Deluram [224 ITR 610] (SC) has upheld that scope of the power of the appellate authority is co-terminus with the AO. He can do what the AO can do and also direct him to do what he has failed to do.

8.1. Coming to the merits of the action taken by the CIT(A), it was submitted that assessee has purposely valued the stock at cost price when it was purchased at a cost of Rs. 155/- and Ld.CIT(A) also noted that the said company had issued further shares in later year at a higher cost. Therefore, valuation of share at Rs. 10/- is a methodology adopted for reducing the taxable income. He supported the orders of the Ld.CIT(A) on the issue of claim u/s. 37(1) as well.

9. In reply, Ld. Counsel submitted that the decision relied upon by the Ld.DR in the case of CIT Vs. Nirbheram Deluram [224 ITR 610] (SC) was considered by the Hon'ble Delhi High Court in the case of CIT Vs. Sardari Lal and Co. [251 ITR 864] (Del) and so the principles are already clear that CIT(A) cannot traverse beyond the issue before him.

10. We have considered the rival contentions and perused the orders of the authorities. As far as the issue of claim of professional charges to SRSR is concerned, AO accepts that there were certain services rendered by SRSR to assessee-company. He has allowed an amount of Rs. 25,000/- p.m. as against the claim of assessee. Thus, there is no dispute between the parties that SRSR has rendered some services for which payment was born by assessee. The issue is about the quantum of allowance as there is no dispute about services being rendered. According to section 37(1) of the Income Tax Act, 1961, any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". The Apex Court in CIT Vs. Bharat Carbon & Ribbon Mfg. Co. (P) Ltd., 1999 XII SITC 218 has observed that whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of accounts be decisive or conclusive in the matter. The expression "wholly" in section 37(1) has been used with reference to the quantum, while the expression 'exclusively' refers to the nature or the purpose of the activity in which the expenditure is incurred. In other words, the whole of the expenditure must have been solely and exclusively incurred for

business purposes, in order to qualify for allowance under section 37(1) of the Act. The expression "Wholly & exclusively" used in Section 37(1) of the Income-tax Act, 1961 does not mean "necessary". Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits assessee can claim deduction even though there was no compelling necessity to incur such expenditure. (Sasson J. David & Co. (P) Ltd. Vs. CIT (1979) 118 ITR 261 (SC)). Though the main objects of business is to earn profits, business purposes are wider than profit-making purposes. Business expediency does not require that expenses should be incurred only for earning immediate profits. Expenses incurred though not directly related to earning to income, may be allowable deductions if they are related to the carrying on of the business vide Birla Cotton Spinning & Weaving Mills Ltd. Vs. CIT (1967) 64 ITR 568 (Cal)). It is for the assessee to decide how best to protect its own interest. It is not open to AO to prescribe what expenditure an assessee should incur and in what circumstances he should incur that expenditure (CIT Vs. Dhanrajgiri Raja Narasingiri (1973) 91 ITR 544 (SC)). Expression "commercial expediency" is not a term of art. It mean everything that serves to promote commerce and includes every means suitable to that end. In applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the

purposes of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the revenue (Jamshedpur Motor Accessories Stores Vs. CIT (1974) 95 ITR 664 (Pat); J.K. Woollen Manufacturers Vs CIT (1969) 72 ITR 612 (SC). In CIT Vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC), it was held by the SC that in deciding whether a payment of money is a deductible expenditure, one has to take into consideration questions of commercial expediency and the principles of ordinary commercial trading.

10.1. The Co-ordinate Bench in the case of Coca Cola India (P) Ltd., Vs. DCIT [116 TTJ 880], [ITAT (Pune)] has considered the provisions of Section 37(1) and laid down the following principles:

"18.8 The position in law, in relation to s. 37(1) of the Act, as emerging from the decisions of the Supreme Court, discussed in the above paras, can be summarized as under:

(i) the expenses incurred should be 'incidental' to the carrying on of the business of the assessee.

(ii) the expression "wholly and exclusively" used in s. 37(1) of the IT Act, 1961, does not mean 'necessarily'.

(iii) an expenditure incurred 'voluntarily' without any 'necessity', would be permissible for deduction under s. 37(1) if it was incurred for promoting the assessee's business.

(iv) the fact that somebody other than the assessee was also benefited by the expenditure, should not come in the way of an expenditure being allowed for deduction under s. 37(1).

(v) the AO cannot justifiably claim to put himself in the armchair of the businessman to decide whether to incur an expenditure and how much to incur.

(vi) the requirement of 'commercial expediency' has to be determined from the point of view of a prudent businessman and not from the point of view of the AO.

(vii) the test is : existence of a 'nexus' between the expenditure and the 'purpose of business'.

10.2. Keeping in mind the above provisions and the principles laid down by the Hon'ble Supreme Court on the issue, we are of the opinion that AO cannot step into the shoes of assessee to re-fix the amount that should have been paid. There is no dispute that the amount was paid for the purpose of business, as AO has allowed the amount partly. Since the provisions of Section 37(1) does not have any restriction to allow the amount partly, so long as the expenditure was incurred for the purpose of the business wholly and exclusively, the same has to be allowed. The restrictions placed in other provisions like that 36(1)(iii) for the purpose of interest, u/s. 40A (expenses or payment not deductible in certain circumstances) and also restrictions placed u/s. 30 and 31 does not apply to the facts of the case. In view of that, we are of the opinion that AO has wrongly considered the claim. There is no power to AO to reduce the claim, whereas he can examine whether the amount can be allowed or not in full. In view of that, since the restrictions u/s. 37(1) are not applicable, the whole of the amount claimed is to be allowed as the expenditure is not proved to be personal or capital in nature, as provided in the section itself. AO is directed to

allow the claim in full. To that extent, the orders of AO and CIT(A) are modified. Thus, the grounds on this issue are allowed.

11. Coming to the issue of enhancement undertaken by the AO in AY 2002-03, the reliance on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Sardari Lal and Co. [251 ITR 864] (Del) will apply only in the case where the CIT(A) has traversed and found a new source of income. Hon'ble Supreme Court in the case of CIT Vs. Shapoorji Pallonji Mistry [44 ITR 891] (SC), has rightly held that the appellate authority has no power to enhance the assessment by discovering the new sources of income not mentioned in the return of assessee or considered by the ITO. It is to be noted that Ld.CIT(A) relied on the trading account of assessee filed along with return. Therefore, in our view, it is not a new source of income not mentioned in the return of assessee. The Hon'ble Supreme Court in the case of CIT Vs. Nirbheram Deluram [224 ITR 610] (SC) has held as under:

"The Supreme Court has held in Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688 that the declaration of law is clear that the power of the AAC is coterminous with that of the ITO and if that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO, The scope of his power is coterminous with the ITO, He can do what the ITO can do and also direct him to do what he has failed to do.

Having regard to the aforesaid decision it must be held that the High Court was in error in holding that the appellate power conferred on the AAC under section 251 was confined to the matter which had been considered by the ITO and that the AAC exceeded his jurisdiction in making an addition of Rs. 2,30,000 on the basis of the other 10 items of hundies which had not been explained by the

assessee. Therefore, even if it was not held that the sum of Rs. 2,30,000 was added by the AAC as new sources of income, not considered by the ITO from the point of view of assessability, the AAC had jurisdiction or power to add the sum of Rs. 2,30,000 in the facts and circumstances in which he had added the same. Accordingly, the appeal was to be allowed".

11.1. Respectfully following the same, we are of the opinion that Ld.CIT(A) has jurisdiction to consider the loss claimed of the assessee, which AO has not examined, as he has powers to enhance also given to him u/s. 251. The provisions of Section 251(1)(a) empowers the CIT in an appeal against an order of assessment to confirm, reduce, enhance or annul the assessment. Thus, since the CIT(A) has not un-earthed a new source of income, but only has gone by the annual report/ statements enclosed to the return in which assessee has claimed trading loss to set-off to other incomes, we are of the opinion that CIT(A) has power to enhance and accordingly the contentions of assessee on this issue are rejected.

12. Coming to the merits of addition made by Ld.CIT(A) i.e., disallowance of loss claimed, it is to be noted that assessee having purchased shares of Rs. 155/- per share has valued the same at Rs. 10/- as on 31-03-2002, so as to claim a notional loss in the transaction of purchase of shares. As pointed out by Ld.CIT(A) in the order, there is no fall in the value of the share and the said company (DQ) has issued further shares to others at Rs. 167/- as on 30-11-2001 to Rs. 290/- on 16-07-2004 (as stated in pg.18 of the order). It is also to be noted that in the course of argument also, Ld.

Counsel fairly admitted that the intrinsic value of the share is around Rs. 23.52 and therefore valuation of share at Rs. 10/- is certainly without any basis. Affirming the order of the CIT(A) in which he has discussed in detail the legal provisions and factual aspects, we agree with the Ld.CIT(A) that the valuation of shares at a lesser price than the cost was resorted to only to claim notional loss. Since we are affirming the order of the CIT(A) on this issue, the question of consideration of loss whether it is 'speculation' or not under the provisions of Section 73 Explanation does not arise. In view of that, we reject the contentions raised by assessee and grounds on this issue are rejected.

13. In AYs. 2003-04, 2004-05 & 2005-06, the issue is only with reference to disallowance of service charges paid to M/s. SRSR by restricting the amount paid to Rs. 25,000/- p.m. This issue was decided in AY. 2002-03 vide para 10 above. The facts are similar to the facts in AY. 2002-03, consequently, following the decision stated above on the issue, we direct the AO to allow the amount in full as claimed.

14. In the result, appeal of assessee for AY. 2002-03 is partly allowed, appeals in AYs. 2003-04, 2004-05 & 2005-06 are allowed.

Order pronounced in the open court on 3rd August, 2018

Sd/-	Sd/-
(P. MADHAVI DEVI)	**(B. RAMAKOTAIAH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated 3rd August, 2018

TNMM

Copy to :

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2. Asst. Commissioner of Income Tax, Central Circle-1, Hyderabad.

3. CIT(Appeals)-1, Hyderabad.

4. CIT(Central)-Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.