

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : NEW DELHI
(THROUGH VIDEO CONFERENCING)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.9145 & 7187/Del./2019
Assessment Years 2011-12 & 2012-13]

| | | |
|-----------------------------------------------------------------------------------------------|------|------------------------------------------|
| Smt. Lata Garg, H.No.128, Sector-16, Faridabad – 121 002. Haryana. PAN AFLPG9328K | vs., | The DCIT, Central Circle-4, Delhi. |
| (Appellant) | | (Respondent) |

| | |
|----------------|------------------------------------------------------------|
| For Assessee : | Shri Gurjeet Singh, C.A. And Shri Shantnu Jain, C.A. |
| For Revenue : | Smt. Sushma Singh, CIT-DR |

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|-------------------------|------------|
| Date of Hearing : | 15.11.2021 |
| Date of Pronouncement : | 11.02.2022 |

ORDER

PER R.K. PANDA, A.M.

ITA.No.9145/Del./2019 filed by the Assessee is directed against the order dated 30.09.2019 of the Ld. CIT(A)-23, New Delhi, relating to the A.Y. 2011-2012. ITA.No.7187/Del./ 2019 filed by the assessee is directed against the order dated 25.06.2019 of the Ld. CIT(A)-23,

New Delhi, relating to the A.Y. 2012-13. For the sake of convenience, both the appeals were heard together and are being disposed of by this common order.

ITA.No.9145/Del./2019 – A.Y. 2011-12 :

2. Facts of the case, in brief, are that the assessee is an individual and derived income from salary, income from house property, income from business or profession and income from other sources. She filed her return of income on 17.09.2011 declaring total income of Rs.23,75,500/-. The return was processed under section 143(1) of the I.T. Act, 1961. A search under section 132 of the Act was conducted on 28.02.2017 at the residential premises of the assessee at House No.128, Sector-16, Faridabad, Haryana from where certain papers/documents belonging to the assessee were found and seized. Notice under section 153A of the Act was issued on 15.09.2017 and the assessee in response to the same filed return of income under section 153A on 04.10.2017 declaring total income of Rs.23,75,500/-. The A.O. thereafter issued notice under section 143(2) on 25.01.2018. Subsequently notice under

section 142(1) along with a questionnaire was also issued to the assessee asking her to file the requisite details and clarifications which the assessee complied with.

2.1. During the course of assessment proceedings the A.O. noted that the assessee, Smt. Lata Garg, Prop, of M/s Automek Systems & Autosystem Services has shown purchases of Rs.1,90,43,829/- from the following parties during the year under consideration.

| Party Name | Amounts |
|-------------------------|-------------|
| Delite Trading Co. | 16,81,502 |
| India Sales Corporation | 1,18,63,490 |
| Shakshi Sales | 10,50,975 |
| Shivam Trading Company | 9,76,016 |
| Jai Shiv Enterprises | 34,71,846 |
| Total Purchases | 1,90,43,829 |

2.2. Purchase parties namely M/s Jai Shiv Enterprise, Delite Trading Co. And Ganesh Enterprises are connected with Sh Dalip Kumar, who is an identified accommodation entry provider. Statement of Sh Dalip Kumar was recorded on oath on 10.11.2016 and 17.12.2016 in which he admitted that he is the sole proprietor of 18 concerns namely M/s Jai Shiv Enterprises and others. He further admitted that no business activities were carried out by these concerns, no

sale/purchase of goods was made by these concerns. All the bank accounts of these concerns were used for providing bogus bills, accommodation entries to various beneficiaries and layering of funds. He also stated that the funds have been routed by using the bank accounts of various parties/concerns by some other persons like Sh. Ram Krishan Puri (connected with Delite Trading Company, Ganesh Enterprises) and Sh. Subhash Gupta connected with Supreme Enterprises of Sh. Ajay Kumar (Proprietor). Thereafter statement of Sh. Ajay Kumar prop Supreme Enterprises was recorded on oath and he also admitted that his concern was not doing any actual business and bogus bill on the name of his concerns were provided by Sh. Subhash Gupta. Sh. Dalip and Sh. Ajay Kumar both have also admitted in their statements that they never issued any bills from the above mentioned concerns to any party. Moreover, the bank accounts of these concerns were operated by persons who obtained signed copies of cheque books from Sh. Dalip Kumar against meager pocket money. Similarly Concerns India Sales Corporation, M/s Pace

enterprises and M/s C.Z. International are also bogus concerns which are involved in providing accommodation entries. These firms are controlled by Sh Vikas Kumar. Statement of Shri Vikas kumar was recorded on oath on 06.072015 wherein he admitted that these entities were incorporated by Mr. Ishwar chand Agggrawal, using his name and documents when he was working in kirana shop of Mr. Ishwar Chand Aggarwal. Sh. Vikas Kumar has admitted in his statement recorded on oath dated 08.11.2016 that no business activities were carried out by these firms, no sale/purchase of goods were made and the transactions occurred in the bank account of these firms were for only bogus billing and layering of funds.

2.3. In order to verify the genuineness of the purchases made by the assessee, the A.O. issued notice under section 133(6) of the Act to various parties. However, all the notices except M/s. India Sales Corporation were received unserved. An Inspector of the Office was deputed to serve the notice under section 131 of the Act by hand to all the parties and he also could not serve the notices as these

parties did not exist on the given address. Therefore, the A.O. asked the assessee to explain as to why the purchases made from the above parties should not be considered as bogus and be added to the total income of the assessee. Rejecting the various explanations given by the assessee and distinguishing the various decisions cited before him, the A.O. made addition of Rs.47,60,957/- being 25% of the purchase price of Rs.1,90,43,829/- accounted for in the books of account through such fictitious invoices in the name of the bogus parties. Similarly, the A.O. made addition of Rs.1,04,741/- being commission for arranging such bogus purchases of Rs.1,90,43,829/-. Thus, the A.O. determined the total income of the assessee at Rs.72,41,198/- as against the returned income of Rs.23,75,500/-.

2.4. Before the Ld. CIT(A), the assessee challenged the validity of assessment under section 153A of the I.T. Act, 1961 in absence of any incriminating material. So far as merit of the case is concerned, it was submitted that the purchases were made from the parties through

bills/invoices and such items were used in the job work. It was contended that the details of the stock maintained by the assessee are unique to the purchases and to the items used in the job work. It was submitted that the books of account were audited, the payments have been made through banking channels and no discrepancy of stock was found at the time of survey. It was argued that as per books although certain shortage in stock were noticed during the course of survey, however, they were reconciled subsequently, for which, no addition has been made on account of discrepancy in stock. Further the A.O. himself mentions in the assessment order that letters were served upon certain parties which prove that they are in existence. It was argued that G.P. rate is quite high and the percentage of disallowance at 25% is also very high. Relying on various decisions it was submitted that the disallowance made by the A.O. being quite high should be set aside and the grounds raised by the assessee should be allowed.

2.5. However, the Ld. CIT(A), did not accept the contention of the assessee. So far as validity of assessment under section 153A of the I.T. Act, 1961 in absence of any incriminating material is concerned, he rejected the ground raised before him holding that Ms. Jyoti Bisht an employee of Group concern and business associate of husband of the assessee deposed in his statement recorded under section 132(4) of the I.T. Act, 1961 and had stated that R R Carwell (P) Ltd., had not purchased any goods from any of the companies mentioned therein and was indulging in procuring bogus bills. Similarly, Shri Vishnu Kumar Garg, husband of the assessee in his statement recorded under section 132(4) of the I.T. Act, 1961 had also stated that companies from whom purchases were shown to have been made have been used for procuring bills only and no material has been supplied. He, therefore, held that there is incriminating material emanating from search which is related to the impugned additions.

2.6. So far as addition of 25% of bogus purchases is concerned, he restricted the same to 20% where the parties are existing and 25% where the parties are not existing.

2.7. So far as the addition of commission income of Rs.1,04,741/- is concerned, the Ld. CIT(A) sustained the same.

3. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

1. *Because the action for initiation, continuation and conclusion of assessment proceedings u/s 153A at an amount of Rs.72,41,198/- is being challenged on facts & law.*
2. *Because the action is being challenged on facts & law for making additions in assessment proceedings u/s 153A when there is no incriminating material/document found during the course of search u/ s 132 of the Act for the impugned year.*
3. *Because the action is being challenged on facts & law for completing the assessment u/s 153A having returned wrong findings of fact & evidence qua the denial/retraction of the surrendered amount, which is*

even contested since the quantum and relatability of the amount to the impugned year is not according to the document and material.

4. *Because the action is being challenged on facts & law for making an disallowance of purchases amounting Rs.47,60,957/- @25% of Purchases amounting Rs.1,90,43,829/- by rejecting books of accounts u/s 145(2), hence the basis of addition is against the commercial expediency, business exigency and accepted modus operandi of the business and business operations and additionally in the alternative the quantum thereof too is being disputed.*

5. *Because the action is being challenged on facts and] law for making addition on account of disallowance of purchases amounting Rs.47,60,957/- on estimation basis (25% of purchases Rs.1,90,43,829/-) overlooking and ignoring the Pleadings, Facts, Evidences, Provisions of Act, Principles of law advanced hence unsustainable addition and additionally in the alternative the quantum thereof too is being disputed.*

6. *Because the action is being challenged on facts and law for making addition on account of disallowance of purchases amounting Rs.47,60,957/- (25% of purchases Rs.1,90,43,829/-) on the basis of Honble supreme court in the case of Vijay Protein Ltd. whereas per assessee the facts of said case law is distinguishable and additionally in the alternative the quantum thereof too is being disputed.*
7. *Because the action is being challenged on facts and law for making addition on account of disallowance of purchases amounting Rs.47,60,957/- on the basis that no stock details submitted whereas per assessee stock register was duly submitted before AO both quantitatively as well as qualitatively and the stock physically tallied with the books of account on the date of search.*
8. *Because the action is being challenged on facts and law for making addition on account of disallowance of purchases considering whole purchases amounting Rs.1,90,43,829/- as bogus purchases whereas per*

assessee documents in support of genuine purchases has been duly submitted and AO has verified the said parties too and additionally in the alternative the quantum thereof too is being disputed.

9. *Because the action is being challenged on facts and law for making addition on account of commission expenses amounting Rs.1,04,741/-.*
10. *Alternatively and without prejudice to above, the action for not allowing telescoping of addition on account of commission expenses against addition on account of bogus purchases is challenged on facts and law as both additions cannot be made simultaneously.*
11. *For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

3.1. The assessee has also raised the following additional grounds :

Because the action is being challenged on facts & law for making additions in assessment proceedings u/s 153A wherein the seized documents relating to assessee were found from the premises of third parties, therefore the additions on the basis of the said documents can only be made u/s 153C of the Act & not u/s 153A of the Act.

3.2. However, at the time of hearing, the Learned Counsel for the Assessee did not press the additional ground, for which, the Ld. D.R. has no objection. Accordingly, the additional ground raised by the assessee is dismissed as 'not pressed'.

3.3. Grounds of appeal No.1 and 11 being general in nature are dismissed.

3.4. Learned Counsel for the Assessee did not press grounds of appeal Nos.2 and 3, for which, the Ld. D.R. has no objection. Accordingly, these grounds are dismissed.

3.5. Grounds of appeal Nos.4 to 8 relate to the order of the Ld. CIT(A) in giving part relief out of the addition of Rs.47,60,957/- being 25% of the bogus purchases of Rs.1,90,43,829/-.

4. Learned Counsel for the Assessee submitted that the assessee has done 20 types of job work with material during the year in which around 55-60% of material is used to complete the job work services and the same has been verified from the clients of the assessee by the Departmental Inspector. The technical person has given certificate that an amount of 60% of material will be used for job work of the above said works. He submitted that the purchases made by the assessee are bifurcated into two parts wherein in part-1 the material is purchased and bills were issued by some vendor and payments were made through proper banking channel and open for verification.

4.1. So far as part-2 is concerned, these purchases were made from grey market vendors who have supplied the material along with undertaking the responsibility for giving the grey market material supported with bills and the

vendors have issued bills to the assessee for the purchases by charging commission. He submitted that the sales of the assessee are not doubted and, therefore, by disallowing 20% of the purchases, the profit percentage will come to an absurd figure of 21% which is not possible in this type of business. Referring to various decisions, he submitted that a reasonable profit rate should be adopted on account of such grey market purchases.

4.2. Referring to the decision of Hon'ble Bombay High Court in the case of PCIT vs., Mohammad Haji Adam & Co. [2019] 104 CCH 391 (Mum.), the Learned Counsel for the Assessee submitted that the Hon'ble Bombay High Court in the said decision has held that the purchases cannot be rejected without disturbing the sales in case of a trader and the additions are limited to the extent of bringing to G.P. rate on purchases at the same rate of other genuine purchases.

4.3. Referring to the decision of Ahmedabad Bench of the Tribunal in the case of Sonal Parekh vs., ITO reported in 57 CCH 373, he submitted that the Tribunal in the said

decision has held that in the absence of any corroborative evidence, purchases made by the assessee from Hawala dealers cannot be treated as bogus purchases and cannot be added to the total income of the assessee.

4.4. The Learned Counsel for the Assessee also relied upon the following decisions to the proposition that profit in such cases have been estimated between 0.5% to 2%.

- 1. Hon'ble IT AT, Mumbai Bench-G in the case of Sai lifestyles P. Ltd vs ACIT in ITA No. 4465, 4310, 4466, 4311, 4467/2010 dated 25.11.2011.*
- 2. Hon'ble ITAT Mumbai Bench-H in the case of ACIT vs K.P. Sanghvi& Sons LLP in ITA No. 2455/2017 dated 28.09.2018.*
- 3. Hon'ble ITAT Delhi Bench-G in the case of Aggarwal Associates (Promoters) Ltd. vs DCIT in ITA No. 787/2016 dated 09.07.2019.*
- 4. Hon'ble ITAT Ahmedabad Bench-C in the case of Sonal Parekh vs ITO in ITA No. 91, 92 and 93 of 2017 dated 09.12.2019.*

5. *Hon'ble Bombay High Court in the case of PCIT vs Rishabhdev Tachnocable Ltd. in ITA No. 1330 of 2017 dated 10.02.2020.*
6. *Hon'ble Bombay High Court in the case of PCIT vs Pinaki D. Panani in ITA No. 1543 of 2017 dated 08.01.2020.*
7. *Hon'ble Bombay High Court Judgment in the case of PCIT vs Mohommad Haji Adam & Co. (2019) 104 CCH 0391 (Mum HC).*
8. *Hon'ble Supreme Court in the case of CIT vs M/s Odean Builders Pvt. in Review Partition (C) Diary No. 22394 of 2019 dated 21.08.2019.*
9. *Hon'ble Supreme Court in the case of PCIT vs Tejua Rohitkumar Kapadia in SLP(C) Diary No. 12670 of 2018 dated 04.05.2018.*

4.5. He accordingly submitted that some reasonable profit should be estimated and not the disallowance of 20% of the purchases as held by the Ld. CIT(A). So far as the commission estimated by the A.O. at 0.55% on such

purchases are concerned, he submitted that the same is also on the higher side.

5. The Ld. D.R. on the other hand, heavily relied on the order of the Ld. CIT(A) and submitted that when the assessee has admittedly indulged in bogus purchases and the Ld. CIT(A) has already restricted such disallowances to 20% in case of parties which were located at the given address during the visit made by the Inspector and are not figured adversely in any of the statements and upheld the disallowance of 25% on parties who are not available in the given address, the same is a very reasoned order and, therefore, no further interference is called for. She accordingly submitted that the order of the Ld. CIT(A) be upheld.

6. We have heard the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case made an addition of

Rs.47,60,975/- by disallowing 25% of the entire purchases from 05 parties from whom the assessee had made purchases of Rs.1,90,43,829/- on the ground that they are all identified accommodation entry providers. Further Mr. Dalip Kumar had admitted on oath that he is the sole proprietor of 18 concerns namely M/s. Jai Shiv Enterprises and others and that no business activities were carried out by these concerns and no sale or purchase of goods were made by these concerns. All the bank accounts of these concerns were used for providing bogus bills and accommodation entries to various beneficiaries etc. Similar statement has been given by different other persons who were the proprietors of the concerns from whom the assessee had made purchases. We find the Ld. CIT(A) restricted such disallowance to 20% in case of parties who were located at the given address during the visit made by the Inspector and are not figuring adversely in any of the statements including the statement of Mr. Dalip Kumar, Mr. Vikas Kumar, Ms. Jyoti Bisht and Mr. Vishnu Garg. However, he upheld the disallowance of 25% of such

purchases where the parties are not found to be available at the given address. It is the submission of the Learned Counsel for the Assessee that the letters were served upon certain parties proves that they were in existence and this fact is found in the assessment order. Further, the books of account were audited, the payments were made through banking channels, the sales have been accepted and there was quantitative tally of purchases with the quantities of the material used in the job work. The stock register showing relevant entries of the items purchased and issued for consumption in job work shows that these items were tallied. Therefore, it is his submission that disallowance @ 25% of the purchases is highly unjustified and some reasonable profit rate only should be adopted.

6.1. We find some force in the above arguments of the Learned Counsel for the Assessee. It is an admitted fact that the sales declared by the assessee has not been disturbed. The assessment order indicates that letters were served upon certain parties which proves their existence. The books of account were also audited and auditors have not

given any adverse remarks. All the payments have been made through banking channels. The assessee had produced the stock register showing relevant entries of the items purchased and issued for consumption in job work and the items were tallying and no discrepancy in the stock was found at the time of survey. Under these circumstances, we are of the considered opinion that disallowance of 20% of the purchases appears to be on the higher side especially when some of the parties to whom letters were issued were served and the payments have been made through banking channel. Considering the totality of the facts and circumstances of the case and in the interest of justice, the disallowance of 2% of the total purchases under the facts and circumstances of the case, in our opinion, will meet the ends of justice. We hold and direct accordingly. The A.O. shall do the re-computation. Accordingly the order of the Ld. CIT(A) is modified on this issue and the grounds raised by the assessee on this issue are partly allowed.

7. Grounds of appeal number.9 relates to the order of the Ld. CIT(A) in sustaining the addition of Rs.1,04,741/- on account of commission expenses.

8. After hearing both the sides we find the A.O. made addition of Rs.1,04,741/- being commission @ 0.55% on the bogus purchases of Rs.1,90,43,829/-. We find the Ld. CIT(A) sustained the addition on the ground that the entries were procured by paying commission. Since we have held that entire purchases cannot be considered as bogus since the sales have not been disturbed and some of the parties to whom letters were issued are existing in the given address and no discrepancy was found in the stock at the time of survey and the stock register was tallying with quantitative details, therefore, estimation of commission for the entire purchases, in our opinion, is not justified. At the same time, the conduct of the assessee is not above board. Considering the totality of the facts and circumstances of the case, we are of the considered opinion that *lump sum* addition of Rs.50,000/- on estimate basis under the facts and circumstances of the instant case will meet the ends of

justice. We hold and direct accordingly. Grounds of appeal number.9 of the assessee is accordingly partly allowed.

9. Grounds of appeal number.10 relates to giving telescopic benefit of the addition on account of commission expenses. It is the submission of the Learned Counsel for the Assessee that if certain addition on account of bogus purchases is made, then, the commission expenses can be met out such addition on account of bogus purchases. It is his submission that the Hon'ble Delhi High Court in the case of CIT vs., Sonal Constructions 359 ITR 532 (Del.) has accepted the theory of benefit of telescoping. He accordingly submitted that in case there is an addition on account of bogus purchases, such additional income should be available to the assessee to meet the expenses towards commission.

10. The Ld. D.R. on the other hand has opposed the above submissions of the Learned Counsel for the Assessee.

11. After hearing both the sides, we find in the preceding paragraph we have already held that 3% of the

total purchases of Rs.1,90,43,829/- are bogus which comes to Rs.5,71,314/-. Therefore, the A.O. is directed to allow the benefit of telescoping out of the said income to the assessee for meeting the expenses towards commission expenses. Grounds of appeal number.10 of the assessee is accordingly allowed.

12. In the result, ITA.No.9145/Del./2019 of the assessee is partly allowed.

ITA.No.7187/Del./2019 – A.Y. 2012-2013 :

13. The only issue raised by the assessee in the grounds of appeal relates to order of the Ld. CIT(A) in confirming the addition of Rs.6,41,725/- made by the A.O. under section 69C of the I.T. Act, 1961 on account of unexplained expenditure.

14. Facts of the case, in brief, are that assessee filed the original return of income on 28.07.2012 declaring total income of Rs.15,92,980/-. In response to notice under section 153A the assessee filed the return on 04.10.2017 declaring the same income as returned earlier at

Rs.15,92,980/-. During the course of assessment proceedings, the A.O. noted that at the time of search various bills of PC Jewellers were seized from premises 17/6, Hanspal Industrial Complex, Mathura Road, Faridabad. On perusal of the bills, he noted that assessee has purchased gold coin of an amount of Rs.6,41,751/- in cash. He, therefore, asked the assessee to show cause as to why such purchase of gold coin of Rs.6,41,751/- should not be considered as unaccounted expenditure and added back to the total income of the assessee. Rejecting the various explanation given by the assessee, the A.O. made addition of Rs.6,41,725/- to the total income of the assessee by invoking provisions of Section 69C of the I.T. Act, 1961.

14.1. In appeal, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

“6.2. It is noted that for the AY 2011-12, the AO has made disallowance of the expenses on account of bogus purchases to the extent of Rs.47,60,957/- (25% of purchase of Rs.1,90,43,829/-) Therefore, the plea of AR

is accepted because the AO will have to have a united stand. The fallout of addition in terms of part of bogus purchases, is generation of cash of equivalent amount which is sufficient to meet the expenditure under consideration. However, in the same breath, it is stated that the appellant has filed appeal against the above stated addition (made in AY 2011-12). In case, as a result of appeal for the AY 2011-12, the appellant gets the relief in terms of reduction of quantum of this addition and quantum of the addition is reduced below amount of this expenditure (Rs.6,41,725/-), the present addition would be revived to the extent of the amount by which the addition on account of bogus purchases (for AY 2011-12) would be less than amount of this expenditure (Rs. 6,41,725/-).”

15. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

16. We have heard the rival arguments of both the sides. The Ld. CIT(A) has given the benefit of telescoping out of the addition made on account of bogus purchases in the

A.Y. 2011-2012. Further, he had already given the direction that in case the addition so sustained by him is ultimately deleted, then the present addition would be revived to the extent of the amount by which the addition on account of bogus purchases could be less than the amount of this expenditure of Rs.6,41,725/-. It is the submission of the Learned Counsel for the Assessee that benefit of telescoping should be available to the assessee on account of addition, if any, in the case of other group concerns as a whole. The plea of the assessee, in our opinion, is not acceptable. The assessee can get the telescoping benefit for addition on account of bogus purchases in his case only and cannot get the telescoping benefit on account of the cash generated out of such bogus purchases in other group concerns for meeting the expenditure towards acquisition of gold coins amounting to Rs.6,41,725/- for this year. The ground raised by the assessee is accordingly partly allowed for statistical purposes.

17. In the result, ITA.No.7187/Del./2019 of the assessee is partly allowed for statistical purposes.

To sum-up, ITA.No.9145/Del./2019 is partly allowed and ITA.No.7187/Del./2019 is allowed for statistical purposes.

Order pronounced in the open court on 11.02.2022.

Sd/-
[Ms. SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated : 11th January, 2022.

VBP/-

Copy to

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT 'F' Bench, Delhi |
| 6. | Guard File. |

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.