

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.1778/Ahd/2018**  
**Assessment Year : 2013-14**

M/s.Maher Cotton Industries F-42, Super Complex Opp: Sarkhej Police Station Nr.Sherali Bawa Dargah Sarkhej, Ahmedabad.  Also address at: Nr.RTO Circle, Lapur Patiya Himatnagar-Vijapur Road Himatnagar 383 001.	Vs.	ITO, Ward-3(3)(3) Ahmedabad.
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**ITA No.1949/Ahd/2018**  
**Assessment Year : 2013-14**

ITO, Ward-3(3)(3) Ahmedabad. PAN : AAQFM5384 H	Vs.	M/s.Maher Cotton Industries Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Assessee by :	Shri Dipak R. Shah, AR
Revenue by :	Shri Rakesh Jha, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : 27/12/2022  
घोषणा की तारीख /**Date of Pronouncement**: 28/12/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

These are cross-appeals by the assessee and Revenue against order passed by the ld.Commissioner of Income-Tax(A)-3, Ahmedabad [hereinafter referred to as "ld.CIT(A)"] dated 7.6.2018

under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2013-14.

2. Brief facts of the case are that the assessee is in the business of cotton ginning, cotton oil processing, cotton seed trading, cotton cake trading and agriculture allied trading. During impugned year, a survey action was carried out on the assessee on 9.1.2013, during the course of which it was revealed that there was surplus cash reflected in the cashbook of the assessee as against actual cash found with the assessee; and also excess finished goods found with the assessee as opposed to that reflected in the books of the assessee. In the statement recorded during the survey, excess cash as per Books was explained to a certain extent, while the remaining was admitted to be fictitious. Further, the assessee admitted to having inflated purchases to the extent of Rs.40,75,528/-. The excess stock found with the assessee was worked at Rs.76,46,384/-. During assessment proceedings, the assessee was asked to explain all the above. Due reply was filed by the assessee, after considering which, and noting the fact that the assessee had made disclosure of undisclosed income to the extent of Rs.1,01,19,284/- in its profit & loss account, the AO made addition of the inflated purchases admitted by the assessee of Rs.40,75,528/-, excess stock found with him of Rs.76,46,384/- and further made addition on account of unexplained cash deposits from various parties reflected in the books of the assessee amounting to Rs.1,01,19,284/-.

3. The matter was carried in appeal before the Id.CIT(A), where noting the fact that the addition on account of inflated purchases of Rs. 40,75,528/- was made solely on the statement recorded during survey of the partner of the assessee firm which was subsequently

retracted, and noting that the assessee maintained all books of accounts, disclosing all purchases, sales and had also duly explained profitability returned during the year, and that addition on account inflated purchases was overlapping to the addition made on account of excess stock found, the said addition of Rs.40,75,528/- was deleted. Further, addition on account of excess stock found of Rs. 76,46,384/- was reduced by inflated purchases of Rs.40,75,528/- and the remaining addition sustained by the ld.CIT(A). As for the addition on account of unexplained cash deposits, the ld.CIT(A) has deleted the same by noting that the assessee had already surrendered equivalent amount, returning it as undisclosed income of the impugned year.

4. Aggrieved by the said order of the Ld.CIT(A) both the assessee and the Department have come up appeal before us; with the assessee challenging confirmation of addition by the Ld.CIT(A) of excess physical stock found to the extent of Rs.37,70,856/-, raising the following grounds –

*“1 The part of impugned order is contrary to the evidence and material on record, contrary to the principles of law and binding judgments of the Court, contrary to the relevant provisions of the Act and deserves to be quashed and set aside.*

*2 The learned CIT(A) has erred while making the partial addition on account of excess stock on date of survey i.e. 9.1.2013 Rs. 35,70,856/- without examining the facts that the stock details as per books provided during assessment proceeding for 9.1.2013 and that on the recorded by the survey team are nearly the same. (\* As explained in following table). Your appellant further submit that LD (AO) has not found any inconsistency in the closing stock as on 31.3.2014 the Hon'ble CIT(A) out to have consider the appellant's argument for not making addition on account of excess stock on date of survey i.e. 9.1.2013, the said . addition made by Hon'ble CIT(A) being contrary to the facts and relevant provisions of the Act deserves to be quashed and set aside. It may be so held now.*

Sr No	Particulars	Stock recorded by survey team as on date of survey i.e. 9.1.2013 Quantity in KGS	Stock in books of account on 9.1.2013 details submitted to AO during assessment proceedings Quantity in KGS
1	STOCK OF COTTON BALES	154710	154710
2	STOCK OF Cotton Seed Oil	59000	59850
3	HYSICAL STOCK OF ' KHOL'	91200	95340

And the Revenue challenging deletion of addition on account of unexplained cash deposits, inflated purchase and excess stock found during survey, raising the following grounds:

*“(i) The Ld CIT(A) has erred in law and on facts in deleting addition of Rs 1,00,19,284/- towards unexplained cash receipts.*

*(ii) The Ld.CIT(A) has erred in law and on facts in deleting addition of Rs 40,75,528/- on account of inflated purchases.*

*(iii) The Ld CIT(A) has erred in law and on facts in granting partial relief to the extent of Rs 40,75,528/- as against the addition towards excess stock amounting to Rs 76,46,384/-.*

*(iv) The Ld CIT(A) has erred in law and on facts in accepting the retraction filed through affidavit by the partner of the assessee firm even though the same was filed without any substantiating document and after a duration of 26 days.*

*(v) The Ld CIT(A) has erred in law and on facts in accepting the retraction filed through affidavit by the partner of the assessee firm even though the same partner had not expressed any disagreement with his earlier statement recorded u/s 131 dated 09/01/2013 while his statement was again being recorded on 29/01/2013.”*

5. Since majority of the grounds raised by both the parties relate to the issue of inflated purchases and excess stock found during survey, we shall first be dealing with this issue, thus adjudicating both, the solitary ground raised by the assessee in its appeal, and ground nos.2, 3, 4 and 5 raised by the Revenue.

6. Taking up the first issue of excess stock found amounting to Rs.76,46,384/-, the ld.counsel for the assessee pointed out that the same related to difference between stock calculated as per the books of accounts of the assessee as on the date of survey and that physically found with the assessee on the date of survey. Our attention was drawn to excess stock details worked out by the survey team on the date placed before us at P.B page No. 87 as under:

	Rate	Amount
<u>Actual Physical Stock as per Inventory prepared as on 09/01/2013</u>		
A Production of cotton Bales (33% of Raw Cotton INPUT)	1674402	
B Opening Stock of Cotton Bales as on 01/04/2012	62888	
C Actual Sales of Cotton Bales as per Books till 09/01/2013	1659178	
Physical Stock as per Books (A+B-C)	78112	
<b>ACTUAL PHYSICAL STOCK AS PER INVENTORY MADE ON 09/01/2013</b> (955 Bales of Cotton each of 162 Kgs.)	154710	
<b>EXCESS PHYSICAL STOCK OF COTTON BALES FOUND</b>	76598	94.9 7269150
<u>Actual Physical Stock as per Inventory prepared as on 09/01/2013</u>		
A Production of cotton seed Oil (10% of Cotton Seed INPUT)	337406.5	
B Opening Stock of Cotton Seed Oil as on 01/04/2012	9045	
C Actual Sales of Cotton Seed Oil as per Books till 09/01/2013	293209	
Physical Stock as per Books (A+B-C)	53242.5	
<b>ACTUAL PHYSICAL STOCK AS PER INVENTORY MADE ON 09/01/2013</b> (Tank no. 1 - 80 inch + Tank no. 2 - 92 inch + 4000 Kgs in Filter)	59000	
<b>EXCESS PHYSICAL STOCK OF Cotton Seed Oil FOUND</b>	5757.5	62.3 358692
<u>Actual Physical Stock as per Inventory prepared as on 09/01/2013</u>		
A Production of 'KHOL' (85% of Cotton Seed INPUT)	286795.5	
B Opening Stock of 'KHOL' as on 01/04/2012	323220	
C Actual Sales of 'KHOL' as per Books till 09/01/2013	3101290	
Physical Stock as per Books (A+B-C)	89885	
<b>ACTUAL PHYSICAL STOCK AS PER INVENTORY MADE ON 09/01/2013</b> (1520 Bags of 60 Kgs each)	91200	
<b>EXCESS PHYSICAL STOCK OF 'KHOL' FOUND</b>	1315	14.1 18542
		7646384

Fodder

(H) ...

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7. Referring to the same ,Ld.Counsel for the assessee pointed out that the excess stock found related to:

stock of cotton bale	Rs.72,69,150/-,
cotton seed oil	Rs. 3,58,692/- and
'khol' /Fodder	Rs. 18,542/-;

making total in all of excess physical stock found to Rs.76,46,384/-.

The ld.counsel for the assessee contended that the same was calculated by the survey team by applying a standard/acceptable percentage to determine cotton bales produced from raw-cotton inputs, cotton seed oil produced from cotton seed inputs and 'khol' produced from the cotton seed inputs. Explaining the business of the assessee, ld.counsel for the assessee pointed out that raw cotton was purchased and thereafter ginning and oil process was done thereon, resulting in production of cotton bales, cotton seeds, cotton seed oils, cotton cake. All the items produced being processed from the raw-cotton purchased by the assessee, therefore production of each item was inter-linked and interdependent on the quantity of raw cotton purchased, from which cotton seeds and cotton bales were produced and from the cotton seeds, cotton oil and cotton-oil cake was produced.

8. The ld.counsel for the assessee thereafter contended that it had been pointed out to the authorities below that excess physical stock found during survey was only a calculation error in the stock as per Books by the survey team on account of certain bills for purchases of the initial input i.e. raw cotton input, not being taken into consideration by them. This error, it was explained to us, had a cascading effect on the estimated production of all items from raw cotton, all being derived and thus directly linked to the

consumption of raw cotton. The purchases of raw cotton short considered by the survey team resulted in reduced estimation of consumption of raw cotton, as a consequence of which production of cotton bales and in turn production of cotton seeds was also reduced, which in turn effected the quantity of closing stock of these items in the books, showing them at a smaller quantity than that actually found during the survey.

9. Ld. Counsel for the assessee contended that this anomaly had been brought to the notice of the department immediately post survey, and even during assessment proceedings, evidencing the same with *kanta chitthi* of the said purchases and also with the fact that these purchases were recorded in the cash book of the assessee prior to survey itself. Ld. Counsel for the assessee pointed out that a revised figure of stock as per books was prepared by the assessee, and it was pointed out to the Revenue authorities that there was actually no difference in the stock of all those found during the survey, and that as per the books of the assessee. Our attention was drawn in this regard to paper book page no.88 wherein working of stock by the survey team and that as recomputed by the assessee as on the date of survey taking note of the purchases of raw-cotton, not taken into consideration by the survey team, was detailed as under:

Stock working by Income Tax officer vis-à-vis recomputed as of 09.01.2013

		Annexure-7	
Sr	Particulars	As Computed by	As recomputed as
		Income Tax Officer on 9.1.2013	of date 9.1.2013 and recorded in computerised books
		in Kgs.	in Kgs.
A	opening stock of Raw Cotton (Shanker - 56) as on 01/04/2012	4,51,952	4,51,952
B	Purchase as per books ( between 01/04/2012 to 19/12/2012)	37,71,251	
C	Purchase reconciliation i.e. purchase not entered in books from 19/12/2012 till 09/01/2013 ( list attached)	11,50,743	52,76,534
D	<b>TOTAL PURCHASE DURING THE YEAR TILL DATE OF SURVEY</b>	<b>53,73,946</b>	<b>57,28,486</b>
	Less :		
E	Physical stock available in premises as on date ( Raw Cotton)	3,00,000	3,00,000
F	<b>CONSUMPTION OF RAW COTTON TILL DATE OF SURVEY</b>	<b>50,73,946</b>	<b>54,28,486</b>
G	Production of cotton Bales ( 33% of Raw cotton input)	16,74,402	17,51,000
	Yield		32.26%
H	Production of ' BINOLA' (Cotton seeds @ 65% of Raw Cotton INPUT)	32,98,065	34,74,231
	Yield		64.00%
	ADD:		
I	Direct Purchase of Cotton Seed During the FY	1,08,525	1,08,525
J	Total Cotton Seeds available for consumption	34,06,590	34,74,231
K	Physical Stock of Cotton Seed Found on 09/01/2013	32,525	32,525
L	Actual Consumption of Cotton Seeds during FY	33,74,065	35,50,231
M	Production of Cotton Seed Oil During the FY @10% of Seed INPUT	3,37,407	3,44,014
	Yield		9.69%
N	Production of 'KHOL' i.e Oil cake @ 85% of Cotton seed INPUT	28,67,955	28,69,270
	Yield		80.82%
O	production of ' SLURRY'@ 5% of Cotton seed INPUT (BAGARU)	1,68,703	38,454
	Yield		1.08%

10. Referring to the same, the Id.counsel for the assessee pointed out that while the survey team has taken purchase of raw-cotton at Rs.49.20 lakhs (Rs.37.71 lakhs plus Rs.11.50 lacs), the actual purchases were to the tune of Rs.52.76 lakhs, which resulted in a difference of consumption of raw-material of cotton to the extent of Rs.3.50 lakhs, with the consumption of raw-cotton taken by the survey team at Rs.50.73 lakhs and that shown by the assessee at Rs.54.28 lakhs. The Id.counsel for the assessee contended that this in turn impacted the figure of production of cotton bales which was estimated at the rate of 33% of the raw-cotton input and also production of 'binola' i.e. which was taken at remaining percentage of 65% of the raw cotton input. This change of figure of production

in cotton seeds in turn effected the increase in figure of quantum of cotton seed oil and oil cake produced during the year by the assessee. He thereafter drew our attention to the detail submitted by the assessee showing, as per the revised calculation showing that there was no difference in the stock of various items actually found, and that reflected in the books of the assessee, which was placed at PB page no.89 as under:

Stock working by Income Tax officer vis-à-vis recomputed as of 09.01.2013				Annexure-7			
Sr	Particulars	As computed by Income Tax Officer			As recomputed as of date 9.1.2013 and recorded in computerised books		
		in Kgs.	Rate	Amount	in Kgs.	Rate	Amount
A	Production of Cotton Bales ( 33% of Raw Ctton INPUT)	1674402			1751000		
B	Opening stock of Cotton Bales as on 01/04/2012	62888			62888		
C	Actual Sales of Cotton Bales as per Books till 09/01/2013	1659178			1659178		
	physical Stock as per Books ( A+B-C)	78112			154710		
	ACTUAL PHYSICAL STOCK AS PER INVENTORY MADE ON 09/01/2013 ( 955 Bales of Cotton each of 162 kgs.)	154710			154710		
	EXCESS PHYSICAL STOCK OF COTTON BALES FOUND	76598	94.9	7269150	0	94.9	0
A	Production of cotton seed Oil ( 10% of cotton Seed INPUT)	337406.5			344014		
B	Opening stock of Cotton Seed Oil as on 01/04/2012	9045			9045		
C	Actual Sales of Cotton Seed Oil as per Books till 09/01/2013	293209			293209		
	physical Stock as per Books ( A+B-C)	53242.5			59850		
	ACTUAL PHYSICAL STOCK AS PER INVENTORY MADE ON 09/01/2013 ( Tank no.1 - 80inch +Tank no. 2-92 inch + 4000 kgs in Filter)	59000			59000		
	EXCESS PHYSICAL STOCK OF Cotton Seed Oil FOUND	5757.5	62.3	358692	0	62.3	0
A	Production of ' KHOL' (85% of Cotton seed INPUT)	2867955			2869270		
B	Opening of Stock of ' KHOL' as on 01/04/2012	323220			323220		
C	Actual Sales of 'KHOL' as per Books till 09/01/2013	3101290			3101290		
	physical Stock as per Books ( A+B-C)	89885			95340		
	ACTUAL PHYSICAL STOCK AS PER INVENTORY MADE ON 09/01/2013 ( 1520 Bags of 60 kgs each)	91200			91200		
	EXCESS PHYSICAL STOCK OF ' KHOL' FOUND	1315	14.1	18542	0	14.1	0
				7646384			0

11. Ld.counsel for the assessee thereafter pointed out that while dealing with the issue of inflated purchases to the extent of Rs.45.7 lakhs, the ld.CIT(A) had given a detailed finding accepting all explanation of the assessee ,vis a vis purchases recorded upto

survey and thereafter and the reason for fall in GP.He drew our attention to the relevant findings of the Ld.CIT(A) at page no.11 of his order as under:

*“Contrary to the view of AO and as seen in the table above, the appellant has explained the purchases of Rs. 21.89 crore as recorded in books of account and furnished relevant documentary evidence i.e. purchase register with quantity details of raw-cotton purchase upto 1.4.2012 to 09.01.13 and 10.01.13 to 31.03.13, source of purchase documents i.e. KantaChitthi, raw cotton to finished cotton and cotton seed. The cotton oil and cotton cake yield (output) ratio was explained as per industry norms and GP ratio considering the price volatility for raw cotton (enhanced MSP). The appellant on the basis of (i) vouchers / bills i.e. Kanta Chitthi (ii) Consumption / yield ratio and (iii) GP method established that at the time of survey the survey team failed to record the entire purchases and without putting any effort A.O. solely relied on the observation of survey team. Therefore, the appellant argued against inflated purchases. It was made out by the appellant that the F.Y.2012-13 was unprecedented year in the history of cotton business wherein MSP is increased by 28% to 30% by government and sale price realization decreased by 15% to 20% due to influx of cheap cotton from China hence it was contended that overall profitability impacted by 43% to 50%. Shri Bharat Shah referred to Directors Report of Cotton Corporation of India Limited, a premier Central Government Company which has shown very dismal picture of the industry. Reasons for low GP have been explained through statistical charts and technical report of APITCO Ltd. for which no adverse findings are on record. Annexure-8 and Annexure-9 as submitted by the appellant are on record and has credible value. The data contained has remained uncontroverted during proceedings. Though the validity of Kantachitti is questionable as the same has been produced during assessment proceedings and not in survey proceedings but the analysis of GP/NP for both the period such as upto the date of survey and the period subsequent to survey is missing from the assessment record.”*

12. The ld.counsel for the assessee contended that similar finding was also given by the ld.CIT(A) while dealing with the issue of unexplained cash deposits at page No.27 and 28 of the order.

The ld.counsel contended that having accepted the books of accounts of the assessee were all correct, that the profitability returned by the assessee was consistent with that returned in this trade, and having accepted all explanation furnished by the assessee regarding purchase and *kanta chitthi* not taken into account while computing purchases made upto the date of survey, there was no

reason thereafter to reject the reconciliation filed by the assessee of the difference in the stock found during the survey and that recorded in the books which was based on this very same explanation of the assessee.

13. Coming to the issue of inflated purchases, he stated that the ld.CIT(A) had rightly found that the addition was made based on mere admission in this regard made in the statement recorded during the survey and no other documentary evidence was found. Further, since the fact was that the assessee was found to have excess physical stock, there could not be any question of inflated purchases reflected in the books of accounts, and which was a overlapping position only taken by the Revenue with regard to both the issue.

14. On the other hand, the ld.DR relied on the order of the AO vis-à-vis the issue of both the additions, on account of inflated purchases and also on account of excess stock found during the survey, stating that mere retraction by the assessee of his statement made during the survey under section 133 of the Act would not in any way effect the evidentiary value of the same and the assessee had to substantiate its retraction to make it effective. With regard to excess stock found, the ld.DR contended that plea of the assessee that evidence was produced of purchases not considered by the survey team while calculating the stock as per Books , was found insufficient to substantiate its claim, the *kanta chitthi* having been found by the AO to be identically made and the same being not found during survey.

15. We have heard both the parties at length on the issue of addition made on account of inflated purchases of Rs.40,75,528/- and excess stock found during survey of Rs.76,46,384/-. We have also gone through the different documents to which our attention was drawn during the course of hearing.

The addition on account of inflated purchases of Rs.40,75,528/- was made solely on the basis of statement recorded of the partner of the assessee firm who had surrendered the same in his statement so recorded during survey. The excess stock of Rs.76,46,384/- was worked out by the survey team on the basis of stock as per books of accounts and that actually found on the date of survey. The excess stock related to stock of cotton bales, cotton seed oil and Khol, all of which items were derived from raw cotton processed by the assessee. The stock as per Books of all these items was calculated applying a standard percentage to raw cotton consumed, from which production of cotton bales and cotton seed was derived, and from cotton seeds consumed the production of cotton oil and *Khol* was calculated. The consumption of raw cotton, in turn, was calculated considering all purchases, sales and opening stock of the raw cotton upto the date of survey as per Books and taking note of the physical stock of raw cotton found during survey.

16. All the above facts emanate from the records produced before us and are not disputed by either of the parties before us.

Thus the starting point / basis for calculating stock as per Books, of the various items found excess with the assessee, is the figure of consumption of raw cotton from which all other items have

been derived .The assessee has contended that this figure of raw cotton consumed was incorrectly worked out by the survey team at a lesser figure since they did not consider certain purchases upto the date of survey. This was explained to the Ld.CIT(A) also and substantiated with documentary evidences being kanta chitthi, vouchers and also with the consumption/yield ratio and GP method. As pointed out by the Ld.Counsel for the assessee, the Ld.CIT(A) found the contention of the assessee in this regard to be correct. At para 4.2 of his order, page 11, while dealing with the issue of inflated purchases, the Ld.CIT(A) categorically states that the assessee had explained all purchases upto the date of survey with the above evidences . Again while dealing with the AO's contention of low profitability of the assessee ,the Ld.CIT(A) reiterates his above findings vis-à-vis correctness of Books of accounts, at page 27 of his order. Sustaining any addition thereafter either on account of inflated purchases or excess stock is contradictory to his specific findings relating to correctness of the Books of the assessee and the GP/NP being justified. The Ld.CIT(A) it seems is blowing hot and cold at the same time.

17. Even otherwise we find that the Ld.CIT(A) dismissing the assessee's explanation for excess stock for the reason that the *katta chitthi* of purchases of raw material, allegedly remaining to be considered, appeared to be fabricated is not justified particularly when he categorically noted all purchases as stated by the assessee to be correctly recorded and explained and justified by GP / NP ratio also.

18. The addition on account of inflated purchases is also not justified, as held by the Ld.CIT(A), since it is based merely on the

statement of the partner of the assessee firm which was subsequently retracted and the retraction justified by the assessee also by his above explanation . Also the Ld.CIT(A) has rightly found the addition on account of inflated purchases to be overlapping with that on account of excess stock found.

The addition, therefore, on account of the excess stock of Rs.76,46,384/- and inflated purchases of Rs. 40,75,528/- is ,we hold, not sustainable and is directed to be deleted.

19. Appeal of the assessee on this issue is allowed and the grounds raised by the Revenue relating to the same in Ground No.2-4 are dismissed.

20. Now taking up the issue of addition of unexplained cash deposits of Rs.1,01,19,284/-, deleted by the Ld.CIT(A) and as a consequence raised by the Revenue as Ground No.1 in its appeal, we have gone through the order of the ld.CIT(A) and we have noted that he has deleted the same noting that the assessee had offered the said amount as its income, credited it to its profit & loss account, and had also shown the same as cash in hand. He therefore held that in the light of these facts that the assessee having already surrendered these cash deposits as its income, addition of the cash deposits again would only tantamount to double addition.

21. The ld.DR unable to controvert this finding of fact by the ld.CIT(A).

22. In view of the same, we see no reason to interfere in the order of the ld.CIT(A) deleting the addition of Rs.1,01,19,284/- on account

of unexplained cash deposits. Ground of appeal No. 1 raised by the Revenue is dismissed.

23. In the result, appeal of the assessee is allowed, and that of the Revenue is dismissed.

**Order pronounced in the Court on 28<sup>th</sup> December, 2022 at Ahmedabad.**

*Sd/-*  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 28/12/2022