

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "F" NEW DELHI]****BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND****SH. YOGESH KUMAR U.S, JUDICIAL MEMBER****I.T.A. No. 7994/DEL/2019 (A.Y 2016-17)**

Ms. Poonam Malhotra, Prop. M/s. Poonam Deep Buillions and Jewellers, D-58, Upper Ground Floor, Kamla Nagar, Delhi – 110 007. PAN No. AAJPM4153D	Vs.	DCIT, Central Circle : 4, New Delhi.
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AND**I.T.A. No. 8080/DEL/2019 (A.Y 2016-17)**

ACIT, Central Circle : 4, New Delhi. (APPELLANTS)	Vs.	Ms. Poonam Malhotra, 5562/4, New Chandrawal, Gali No. 4, Delhi-110 006. PAN No. AAJPM4153D (RESPONDENTS)
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Appellant by	Shri Ved Jain, Advocate; & Shri Aman Garg, C. A.;
Respondent by	Shri T. Kipgen, [CIT] – D. R.;

Date of Hearing	30.11.2022
Date of Pronouncement	24.02.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These two cross appeals are filed by the Assessee and the Revenue for assessment year 2011-12 against the common order of the Id. Commissioner of Income Tax (Appeals)-23, New Delhi, dated 31.07.2019 respectively.

I. T. A. No. 7994/DEL/2019 (by the Assessee)
Assessment Year : 2016-17

2. The assessee has raised the following substantive grounds of appeal :-
 1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
 2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and order passed by the learned Assessing Officer (AO) under Section 153A/143(3) is without jurisdiction.*
 3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.*
 4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the additions made under Section 153A are bad in*

law in the absence of any incriminating material belonging to the assessee being found during the course of the search.

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO has erred in making the addition without taking the enquiry initiated by him by issue of notices to a logical end.*

6. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.11,75,140/- on account of suppressed of profit in the purchases made by the assessee.*

(ii) That the above addition has been confirmed arbitrarily estimating the profit percentage of 2% and 3% without there being any basis of the same.

(iii) That the above addition has been confirmed rejecting the detailed submissions and explanations made by the assessee in this regard.

7. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee in ignoring the fact that the quantity purchased and sold being completely tallying, the allegations that the assessee has not made purchases cannot be sustained.*

8. (i) *On the facts and Circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,00,000/- on account of addition in capital.*

(ii) That the above addition has been confirmed rejecting the detailed submissions and explanations made by the assessee in this regard.

9. (i) On the facts and Circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.2,00,000/- on account of deduction claimed by the assessee under section 24(b) of the Income Tax Act.

(iii) That the above disallowance has been confirmed rejecting the detailed submissions and explanations made by the assessee in this regard.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above additions by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.”

I. T. A. No. 8080/DEL/2019 (by the Revenue)
Assessment Year : 2016-17

3. The Revenue has raised the following substantive grounds of appeal :-

“1. That the order of the Ld. CIT (Appeals) is not correct in law and on facts.

2. The Ld. CIT (Appeals) has erred in deleting the addition of bogus purchase of Rs.4,71,56,854/- on account of unverified parties which were remained unverifiable at remand stage also.

3. *The Ld. CIT (Appeals) erred in ignoring the facts mentioned in Assessment Order as well as in remand report that purchases of Rs.4,83,31,994/- remained unverified.*

4. *The Ld. CIT (Appeals) erred in not upholding the entire addition on account of unverified bogus purchases and applying estimation of profit out of bogus purchases. “*

I.T.A. No.7994/DEL/2019 (A.Y 2016-17)
I.T.A. No. 8080/DEL/2019 (A.Y 2016-17)

I.T.A. No.7994/DEL/2019

4. Brief facts of the case are that, the assessee filed original return declaring total income of Rs.13,58,490/- which was processed u/s 143(1) of the Act at a returned income. Consequent to the search conducted u/s 132 of the Act where certain papers/documents belongs to the assessee were found and seized. The assessment order came to be passed u/s 153A read with Section 143(3) of the Act by disallowing interest paid on whom loan of Rs. 2,00,000/- made addition u/s 68 read with Section 115BBE of the Act, on account of unexplained credit of Rs. 1,00,000/- and also made addition on account of bogus purchase of Rs. 67,81,83,292/-.

5. As against the assessment order dated 31/12/2018, the assessee has preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) vide order dated 31/07/2019 partly allowed the Appeal by sustaining the addition of Rs. 11,75,140/- on account of suppressed of profit in purchases made by the Assessee and also confirmed the addition of Rs. 1,00,000/- on account of addition in capital and further confirmed the disallowance of Rs. 2,00,000/- on account of deduction claimed by the assessee u/s 24B of the Act.

6. Aggrieved by the order of the Ld.CIT(A) in sustaining the above additions, the assessee has preferred the appeal in ITA No. 7994/Del/2019 and as against the deletion of the additions, the Revenue has preferred the appeal in ITA No. 8080/Del/2019 on the grounds mentioned above.

7. Ground No. 1 of the assessee is general in nature which requires no adjudication

Ground No. 2 to 5

8. The Ld. Counsel for the assessee submitted that the addition made by the A.O. are not emanating from the incriminating material found during the course of search. There was no pending assessment for the Assessment Year 2016-17, the A.O. has made additions on the basis of document submitted during the course of assessment proceedings. Therefore submitted that, in the absence of incriminating material, no addition can be made. The Ld. Counsel has also relied on the judgment rendered in the case of CIT Vs. Kabul Chawla in ITA No. 707, 709 & 713/2014 of the Jurisdictional High Court.

9. Per contra, the Ld. DR relied on the order of the Lower Authorities.

10. We have heard the parties perused the material available on record and gave our thoughtful consideration.

11. In the instant case the search u/s 132 of the Act was conducted on 29/11/2016 at the residential premises of the assessee where certain paper/documents belongs to the assessee were found and seized. It is admitted fact that there is no pending assessment for the Assessment Year 2016-17. The Ld. A.O. made addition based on the documents submitted during the course of assessment proceedings in following manners:

“ADDITION ON ACCOUNT OF UNEXPLAINED CREDIT:

6. During the assessment proceedings, it was found that the assessee has made addition of Rs 1,00,000/- in his capital account. The assessee vide point No.5 of the questionnaire dated 21.12.2018 was asked to show cause as “From perusal of Balance sheet for the year under consideration, you have made addition of Rs 1,00,000/- in your proprietors capital account You are hereby asked to show cause why the amount of Rs. 1,00,000/- should not be added back to your income as unexplained credit for the year under consideration.”,

6.1 Vide reply dated 24/12/2018’, the AR of assessee replied that “the assessee has made additions of Rs 1 lac in the capital account by transferring from savings account.” The reply of the assessee was considered and found not to be acceptable.

6.2. Again the assessee was provided final opportunity to furnish the details vide final show cause and was asked vide point rip. 5 of the notice u/s 142(1) dated 26.12.18 as “From perusal of Balance sheet for the year under consideration, you have made addition of Rs 1,00,000/- in your proprietors capital account’ You are hereby asked to show cause why the amount of Rs. 1,00,000/- should not be added back to your income as unexplained credit for the year under consideration.

6.3. The reply of the assessee was considered and found to be non acceptable as the assessee has not submitted the requisite documents to prove the addition of Rs 1 lac has been made from saving account. A bare reading of section 68 of the Act suggests that

there has to be credit of amounts in the books maintained by an assessee; such credit has to be as sum during the previous year and if the assessed offers no explanation about the nature and source of such credit or the explanation offered is not satisfactory, then the sums so credited can be treated as income of the assessee for that previous year. The expression 'no explanation is offered' or the explanation offered is not satisfactory' puts an onus on the assessee to offer a lucid, reasonable and acceptable explanation. In present case, the assessee has failed to prove identity, creditworthiness and genuineness of the credit of Rs 1,00,000/- in her books of accounts, therefore, the Addition of Rs 100,000/- is being made to the income as unexplained credit u/s 68 r.w.s. 115BBE of the IT act.

I am satisfied that the assessee has concealed the income, therefore, Penalty proceedings u/s 271(l)(c) of the Income Tax Act, 1961 is to be initiated separately.

(ADDITION: RS. 1,00,000/-)

Addition on account of bogus purchases:

7. During the assessment proceedings, The assessee has furnished the details of all purchase parties. To check the genuineness of purchases, notice u/s 133(6) of IT Act were sent to some parties. Response to the notices received is mentioned in the following chart:-

Serial No.	Name of purchase party	Status of notice u/s 133(6)	Amount of Transaction
1.	Arihant Jewellers	No reply received.	5004237
2.3.	Brindavan Enterprises Pvt. Ltd.	No reply received.	17661708
4.	Delhi Jewellers Pvt. Ltd.	Reply received.	29853578
5.	Diamond Forever International	Reply received.	21202400
6.	Jindal Bullions Ltd.	Returned Back.	27482000
7.	Kay Ess Pvt. Ltd.	Reply received.	8211906
8.	Kanha Jewellers Pvt. Ltd.	No reply received.	10733200
9.	Kundan Rice Mills Ltd.	Reply received.	44054273
10.	Lalsons Jewellers Ltd.	Returned Back	97382803
11.	M D Overseas Ltd.	Reply received	33618700
12.	P P Jewellers (Delhi)	No reply received.	114495700
13.	Pannalal Mahesh chandra Jewellers	No reply received.	88933800
14.	Pradeep Jewellers	No reply received.	32432211
15.	Pooja Traders	No reply received.	20849994
16.	P P Jewellers (Exports) DTA Unit2008-09	No reply received.	10420000
17.	R K Bullions	Returned Back	20650624
18.	R P Jewellers	Returned Back	13564300
19.	RSBL Spot Trading Pvt. Ltd.	No reply received.	32174200
20.	S B Ornaments Pvt. Ltd.	Reply received.	112299220
21.	Sanmati Jewellers	Reply received.	18026390
22.	Shivam Traders	Reply received.	95412199
23.	Shree Ram Jewels Pvt. Ltd.	No reply received.	131948388
24.	Shreeji Trading Co.	Returned Back	39542800

25.	Ultimate Creations	Reply received.	29542299
26.	Yellow & White Metals	Returned Back	14907327

The assessee vide point No. 6 of the questionnaire dated 21.12.2018 was asked to show cause as "From the submission made on 10/12/2018, you have provided the details of all purchase parties along with their ledger accounts. In order to check the genuineness of the parties, notice u/s 133(6) of the IT Act, 1961 were issued to the purchase parties for the year under consideration. The status of

notices whether returned book/no reply received is provided in tabular form as below:-

Serial No.	Name of purchase party	Status of notice u/s 133(6)	Amount of Transaction
1.	Arihant Jewellers	No reply received.	5004237
2.3.	Brindavan Enterprises Pvt. Ltd.	No reply received.	17661708
4.	Delhi Jewellers Pvt. Ltd.	No reply received.	29853578
5.	Diamond Forever International	No reply received.	21202400
6.	Jindal Bullions Ltd.	Returned Back.	27482000
7.	Kay Ess Pvt. Ltd.	No reply received.	8211906
8.	Kanha Jewellers Pvt. Ltd.	No reply received.	10733200
9.	Kundan Rice Mills Ltd.	No reply received.	44054273
10.	Lalsons Jewellers Ltd.	Returned Back	97382803
11.	M D Overseas ltd.	Returned Back	33618700
12.	P P Jewellers (Delhi)	No reply received.	114495700
13.	Pannalal Mahesh chandra Jewellers	No reply received.	88933800
14.	Pradeep Jewellers	No reply received.	32432211
15.	Pooja Traders	No reply received.	20849994
16.	P P Jewellers (Exports) DTA Unit2008-09	No reply received.	10420000
17.	R K Bullions	Returned Back	20650624
18.	R P Jewellers	Returned Back	13564300
19.	RSBL Spot Trading Pvt. Ltd.	No reply received.	32174200
20.	S B Ornaments Pvt. Ltd.	No reply received.	112299220
21.	Sanmati Jewellers	No reply received.	18026390
22.	Shivam Traders	Returned Back	95412199
23.	Shree Ram Jewels Pvt. Ltd.	No reply received.	131948388
24.	Shreeji Trading Co.	Returned Back	39542800
25.	Ultimate Creations	No reply received.	29542299
26.	Yellow & White Metals	Returned Back	14907327



In view of above, You are hereby asked to show cause why purchases amounting Rs. .04,04,257 /- made from above parties should not be considered bogus and add back to your income for the year under consideration.

7.1 Vide reply dated 24/12/2018, the AR of assessee replied

that "in relation to the issue raised in para no.6,the assessee has already placed on record in consideration and the remaining details are under compilation and the same will be submitted at the earliest." The reply of the assessee was considered and found to be evasive and vague.

Again the assessee was provided final opportunity to furnish the details vide final show cause and was asked vide point no, 5 of the notice u/s 142(1) dated 26.12,18 as " Notice under 142(1) of the IT act,1961 dated 26.12.2018 was issued to you and you were asked to show cause that why the purchases amounting Rs. 107,04,04,257 /- made from the parties should not be considered bogus and add back to your income for the year under consideration, notices under section 133(6) of the IT act,1961 were issued to the purchase parties for the year under consideration. The status of notices whether returned back/no reply received is provided in tabular form as below:

Serial No.	Name of purchase party	Status of notice u/s 133(6)	Amount of Transaction
1.	Arihant Jewellers	No reply received.	5004237
2.3.	Brindavan Enterprises Pvt. Ltd.	No reply received.	17661708
4.	Delhi Jewellers Pvt. Ltd.	No reply received.	29853578
5.	Diamond Forever International	No reply received.	21202400
6.	Jindal Bullions Ltd.	Returned Back.	27482000
7.	Kay Ess Pvt. Ltd.	No reply received.	8211906
8.	Kanha Jewellers Pvt. Ltd.	No reply received.	10733200
9.	Kundan Rice Mills Ltd.	No reply received.	44054273
10.	Lalsons Jewellers Ltd.	Returned Back	97382803
11.	M D Overseas Ltd.	Returned Back	33618700
12.	P P Jewellers (Delhi)	No reply received.	114495700
13.	Pannalal Mahesh chandra Jewellers	No reply received.	88933800
14.	Pradeep Jewellers	No reply received.	32432211
15.	Pooja Traders	No reply received.	20849994
16.	P P Jewellers (Exports) DTA Unit2008-09	No reply received.	10420000
17.	K Bullions	Returned Back	20650624
18.	Jewellers	Returned Back	13564300
19.	RSBL Spot Trading Pvt. Ltd.	No reply received.	32174200
20.	S B Ornaments Pvt. Ltd.	No reply received.	112299220
21.	Sanmati Jewellers	No reply received.	18026390
22.	Shivam Traders	Returned Back	95412199
23.	Shree Ram Jewels Pvt. Ltd.	No reply received.	131948388
24.	Shreeji Trading Co.	Returned Back	39542800
25.	Ultimate Creations	No reply received.	29542299
26.	Yellow & White Metals	Returned Back	14907327

In this regard, no satisfactory reply was file by you till date. Now, in order to prove the genuineness of the transaction, you are asked to produce the following parties as mentioned below:-

Serial No.	Name of purchase party
1.	Arihant Jewellers
2.	Brindavan Enterprises Pvt. Ltd.
3.	Jindal Bullions Ltd.
4.	Kanha Jewellers Pvt. Ltd.
5.	Kundan Rice Mills Ltd.
6.	Lalsons Jewellers Ltd.
7.	M D Overseas ltd.
8.	P P Jewellers (Delhi)
9.	Pannalal Mahesh chandra Jewellers
10.	Pradeep Jewellers
11.	Pooja Traders
12.	P P Jewellers (Exports) DTA Unit2008-09
13.	R K Bullions
14.	R P Jewellers
15.	RSBL Spot Trading Pvt. Ltd.
16.	Sanmati Jewellers
17.	Shivam Traders
18.	Shree Ram Jewels Pvt. Ltd.
19.	Shreeji Trading Co.
20.	Yellow & White Metals

In case if you fail to produce these parties on 28/12/2018, it will be assumed that the transaction entered into with the parties are bogus and same will be added back to your income.”

a. The assessee appeared and submitted the reply on 28/12/2018, in his reply the assessee stated that which is as under:-

1. In pursuance of your recent notice, dated 26/12/2018 as well as earlier notice dated 21/12/2018, in Para No. 3 we have already complied with by filing of part details through our submission before your good self on 22/12/2018 and the details relating to unsecured loan obtained from various parties are being enclosed.

2. Further, in pursuance of your recent notice dated 26/12/2018 as well as earlier notice dated 21/12/2018 in Para No. 5 it is respectfully submitted that the perusal of issued notice reveals that tire income tax department issued notices u/s 133(6) of the Income Tax Act, 1961 to various parties with which the assessee had legitimate business transactions in order to verify the genuineness of submissions made by the assessee before respective income tax authority and in such process in certain cases the income tax authorities either did not received the reply from such parties or the notices wer returned back. Thereby, it is respectfully submitted that such non-compliance of the notices were may be due to the following reasons:-

a. The parties may be preoccupied in fulfilling various compliances applicable under various laws enforce as well as in their day to day tasks and due to such may have overlooked the notices received by them.

b. In certain cases where the notices were returned back it may be due to the reason that either the said party may have re-allocated to some other place or the said party's office would have been closed at the time when the delivery person from the postal department visited such office and therefore the notices went undelivered and returned back.

It is further submitted by the assessee that none of the above parties are fake on in genuine and the assessee is making its all efforts to get the above compliance completed as early as possible as the assessee is in constant touch with such parties. The latest updated address details of the few parties with which the assessee is having continuous business transaction and are within the reach of the

assessee are also enclosed the latest details of address for the parties for which the notices got returned. It is also submitted that in certain cases the parties have closed their offices as permanent shut down of business and also in certain cases the assessee had the business transaction in the particular financial year and not again thereby it is very difficult to locate the said parties. Therefore, the assessee is placing on record the updated address of the parties which is enclosed for your perusal.

It is further submitted that many parties have already complied with the notice issued to them by directly sending confirmation to the office of your good self and for the certain parties the assessee has already obtained the confirmation from them and the same is benign placed on record for your kind perusal and for the remaining the assessee will get the confirmations either directly sent to your good self's office or will obtain the confirmation and the same will be submitted as early as possible and also before the completion of the assessment proceedings.

Further, it is a settled law and based upon various upon various judgments of Hon'ble courts and HAT of which the latest is of ACIT vs. Karam Chanel Rubber Industries (ITAT' Delhi)ITA No.6599/Del/2014 in which it is held that either non service of notice u/s 133(6) of the Income Tax Act, 1961 to a vendor/Third party or non- submission of reply or non-compliance of notice served u/s 133(6) of the Income Tax. Act, 1961 by the Vendor/Third party is not a valid ground for making any additions or even of an adverse view against the assessee.

The reply of the assessee was considered and found to be evasive and vague, in order to prove the genuineness of the purchase parties

the assessee was asked to produce the purchase parties as per list mentioned above. As the assessee failed to produce the purchase parties in order to prove the identity and genuineness of the above mentioned 18 purchase parties (excluding Sanmati jewelers, Kundan rice mills ltd., M.D.Overseas ltd and shivam traders as the replies were replied). Therefore, in view of above, an addition of Rs. 67,81,83,292/- is hereby made to the total income of the assessee \$%-on account of bogus purchases.

I am satisfied that the assessee has concealed the income, therefore, Penalty proceedings u/s 271(l)(c) of the Income Tax Act, 1961 is to be initiated separately.”

12. Thus, it is evident that the above additions were made by the A.O. are not emanating from any incriminating material found during the search. But the additions were made on the basis of the documents produced during the assessment proceedings.

13. The Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla in ITA No. 707, 709 and 713/2014 dated 28/08/2015 held that in the absence of any incriminating material, no addition can be made in the assessment order passed u/s 153A/143(3) of the Act in following manners:-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made

separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

39. The question framed by the Court is answered in favour of the Assessee and against the Revenue.”

14. By respectfully following the above ratio laid down in the case of Kabul Chalwa (supra) we allow the Ground No. 2 to 5 of the assessee and the deletion sustained by the Ld.CIT(A) thereon is hereby set aside.

15. Since we have allowed the appeal on the legal issue by following the ratio laid down in the case of Kabul Chalwa (supra), at the stage we refrain from going into the issues involved in the Ground No. 6 to 9 of the Assessee and Ground No. 2 to 4 of the Revenue and the same is kept open.

16. In the result, the appeal of the assessee in ITA No. 7994/Del/2019 is partly allowed and the Appeal of the Revenue in ITA No. 8080/Del/2019 is dismissed.

Order pronounced in the Open Court on : 24th .02.2023.

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 24/02/2023

MEHTA/R.N, Sr. PS

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

