

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.**

**BEFORE SH. RAMIT KOCHAR, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.199/Alld/2016  
Assessment Year: 2012-13**

M/s Mahesh Chandra Vishnu Chandra Sarraf, 37/164, Meerganj, Chowk Allahabad. [PAN:-[AAQFM2701G] <b>(Appellant)</b>	Vs.	ACIT-Circle-1, Allahabad.  <b>(Respondent)</b>
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**I.T.A. No. 216/Alld/2016  
Assessment Year: 2012-13**

Dy. CIT-Circle-1, Allahabad.  <b>(Appellant)</b>	Vs.	M/s Mahesh Chandra Vishnu Chandra Sarraf, 37/164, Meerganj, Chowk Allahabad. [PAN:-[AAQFM2701G] <b>(Respondent)</b>
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**C.O. No.34/Alld/2016  
(in I.T.A. No. 216/Alld/2016)  
Assessment Year: 2012-13**

M/s Mahesh Chandra Vishnu Chandra Sarraf, 37/164, Meerganj, Chowk Allahabad. [PAN:-[AAQFM2701G] <b>(Appellant)</b>	Vs.	DCIT-Circle-3, Allahabad.  <b>(Respondent)</b>
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<b>Appellant by</b>	None.
<b>Respondent by</b>	Sh. A.K. Singh, Sr. DR

<b>Date of Hearing</b>	03.05.2023
<b>Date of Pronouncement</b>	03.07.2023

## **ORDER**

### **Per Bench.: -**

The instant appeals of the assessee and revenue and Cross Objection of the assessee were filed against the order of the Id. Commissioner of Income-tax (Appeals), Allahabad, [in brevity the CIT(A)]for A.Y. 2012-13 order passed U/s 250(6) of the Income Tax Act, 1961(in brevity the Act). The impugned order was emanated from the order of the Id. ACIT, Circle -1, Allahabad, order passed u/s 143(3) of the Act.

### **I.T.A. No. 199/Alld/2016**

2. The assessee has taken the following grounds:

*“1- That in any view of the matter assessment framed u/s 143(3) of the IT Act and vide order dated 30-03-2015 huge and arbitrary additions were made by the assessing officer and his action as partly confirmed by the Commissioner of Income Tax (Appeals), Allahabad is highly unjustified and incorrect in the facts and circumstances of the case.*

*2-That in any view of the matter addition of Rs 2,60,88,428/- made by the assessing officer as per para 2 of the assessment order by considering the purity in the silver ornament simply on*

*the basis of departmental valuer's report who estimated the purity as per his own whims and likings. As a result addition was reduced by the Commissioner of Income Tax (Appeals) to the extent of Rs 79,17,668/- by reducing the purity from 65% to 52% on his imaginary/guess work without any supporting evidence by ignoring the submission. Hence, the addition of Rs 79,17,668/- as maintained by Commissioner of Income Tax (Appeals) is highly unjustified and called for.*

*3- That in any view of the matter the learned Commissioner of Income Tax (Appeal) at page 12 of his order has stated that he had called the departmental valuer and enquired from him as to on what basis he had valued purity of the silver ornaments but since the valuer failed to offer satisfactory explanation, hence the entire basis of the addition disappeared and - therefore question of maintaining the addition is unwarranted and illegal.*

*4- That in any view of the matter since the appellant deals in sarrafa business, maintains books of accounts which are audited too, disclosed turnover accepted by the Sales Tax department and proviso to section 145(3) of the IT Act not invoked, therefore the declared income is liable to be accepted in all fairness.*

*5- That in any view of the matter interest charged under different sections of the income tax act is unjustified and illegal in the facts and circumstances of the case.*

*6- That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”*

**I.T.A. No. 216/Alld/2016**

3. The revenue has taken the following grounds:

*“1. CIT(A) has erred in deleting the addition of Rs. 38,05,621/- when the assessee itself admitted during the survey that undisclosed silver amounts to Rs. 4,73,30,233/-.*

*2. The CIT(A) has erred in calculating the undisclosed stock of silver on average rate at Rs. 5,14,42,280/-*

*3. The CIT(A) has erred in ignoring the fact that assessee itself sold silver ornaments at 65% purity and the AO has quoted such details of sale in his assessment order.*

*4. The CIT(A) has erred in ignoring the fact that the assessee has not agitated the purity of silver adopted by the valuer during the course of survey.*

*5. The CIT(A) has erred in making comparison of other cases while valuing the stock of silver because each case has its own quality of ornaments and valuer is an expert in this matter and so his valuation cannot be interfered with, unless prejudice is not proved by the assessee.*

6. *The CIT(A) has erred in not giving opportunity of being heard to the AO, If he has examined the valuer on the point of valuation of silver ornaments, in so far as, purity of the same is concerned.*

7. *Any other ground that the appellant craves to add/amend at the time of hearing.”*

**Grounds of Appeal in C.O.No.34/Alld/2016**

4. The assessee has taken the following grounds in Cross Objection:

“1. *That in any view of the matter it is not correct to say that the learned Commissioner of Income Tax (Appeal) has erred in deleting the addition of Rs 38,05,621/-, hence learned Commissioner of Income Tax (Appeal) was perfectly justified in deleting the addition.*

2. *That in any view of the matter it is not correct to say that the learned Commissioner of income Tax (Appeal) has erred in calculating the undisclosed stock of silver at average rate of Rs 5,14,42,280/-, hence the action of learned Commissioner of Income Tax (Appeal) is correct.*

3. *That in any view of the matter it is not correct to say that learned Commissioner of Income Tax (Appeal) has erred in ignoring the fact that assessee has not agitated the purity of silver when the assessee repeatedly filed objection*

*from the date of survey that purity rate was wrongly taken by the Department.*

*4. That in any view of the matter the learned Commissioner of Income Tax (Appeal) was perfectly justified in examining the valuer during the appellate proceeding, hence the purity rate as adopted by the learned Commissioner of Income Tax (Appeal) is perfectly correct.*

*5- That in any view of the matter the order passed by the learned Commissioner of income Tax (Appeal) is a well reasoned, Speaking and judicious order as the same was passed by considering correct facts of the case and therefore by considering the merit of the case the departmental appeal liable to be dismissed in all fairness.*

*6- That in any view of the matter the assessee reserve his right to take any fresh ground of appeal before hearing of appeal.*

*It is therefore prayed that in the facts and circumstances of the case departmental appeal is liable to be dismissed.”*

5. The brief fact of the case is that the survey was conducted on 20.10.2011 u/s 133A of the Act. In the survey the assessee surrendered the income on excess stock of gold and silver ornaments and the excess cash. The revenue found the total stock of gold and silver amount to Rs.11,58,23,361/- and cash Rs.2,65,067/-. During survey assessee surrendered Rs.9 crore including the

excess cash. The unexplained excess stock of silver & silver jewellery was remained as not rendered amount to Rs.2,60,88,428/-. The assessee filed a return u/s 139(1) and surrendered the total gold and silver stock and excess cash amount to Rs.8,61,94,379/- which is in following break up as follows: -

SL NO	Unexplained Stock of	Amount (Rs)
1	Gold	414,63,902/-
2	Silver	444,65,410/-
3	Cash	265,067/-
	Total	861,94,379/-

The revenue claimed that the assessee retracted from his own statement and short declaration Rs.38,05,621/- (Rs. 9,00,00,000-Rs. 8,61,94,379) during filing of return. The assessment was framed u/s 143(3). The undeclared stock of gold and silver Rs.2,60,88,428/- was added back which is only related to the unexplained excess stock of silver. Further addition was made for undisclosed stock amount to Rs.38,05,621/- which is related to short declared of gold Rs.9,40,798/- and silver Rs.28,64,823/-. Aggrieved assessee filed an appeal before the Id. CIT(A). After considering the submission of the assessee the Id. CIT(A) fully focused on the excess rate of impurities and restricted the addition

amount of Rs.79,17,668/-, In the result, amount to Rs.1,81,70,760/- of unexplained stock was deleted (Rs.2,60,88,428/- - 79,17,668/-) by the Id. CIT(A) and appeal is partly allowed. Further the relief amount to Rs.38,05,621/- was granted by the Id. CIT(A) as there is no discrepancy in the disclosing stock. Aggrieved revenue filed an appeal before us. Also, the aggrieved assessee filed an appeal against the partial addition before the bench. The assessee filed a Cross Objection against the appeal of the revenue.

6. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is an application for seeking adjournment but large number of adjournments have been taken, last opportunity was granted and even cost was imposed on earlier occasions. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned DR and on the basis of material available on the record.

7. The Id. DR vehemently argued and submitted the documents related to the appeal which are kept in the record.

7.1 The Id. DR further argued and placed that the assessee disowned the self-statement made during the survey related to the unexplained excess stock of silver amount to Rs.2,60,88,428/-. During survey, the department was

accompanied by valuer who calculated the purity @ 65% on ornaments. The Id. CIT(A) in appeal order relied on local trader and ascertained the purity of silver jewellery from @ 40% to @62 % and without any basis ascertained the purity @ 52% on silver jewellery.

The Id. DR argued that the re-calculation of purity of the silver just an imaginary and guess work by the Id. CIT(A) and had no basis.

7.2 The Id. DR invited our attention in paper book page M Para -2 which is extracted as below:

2. Additions made by the AO-

Being not satisfied with the explanations of the assessee, the AO made two additions of Rs. 38,05,621/- and Rs. 2,60,88,428/- worked out as below:

Particulars	Excess cash	Overall stock		Total
		Gold	Silver	
A) found	2,65,067/-	4,24,04,700/-	7,34,18,661/-	11,58,23,361/- (stock) 2,65,067/- (cash)
B) Surrendered on survey	2,65,067/-	4,24,04,700/-	4,73,30,233/-	9,00,00,000/-
<b>C) Unexplained excess (A-B)</b>	<b>0</b>	<b>0</b>	<b>2,60,88,428/-*</b>	
D) Admitted in ITR (pp 76/pp 175)	2,65,067/-	4,14,63,902/-	4,44,65,410/-	8,61,94,379/-
E) Retracted from surrender (B-D)		9,40,798/-	28,64,823/-	<b>38,05,621/-*</b>

\* additions made by the AO as per para 1 & 2/page-4 of the assessment order

7.3 The Id. DR invited our attention in appeal order para 3.3 which is extracted as below:

*“3.3 Decision:*

*The departmental valuer had prepared the inventory of silver ornaments and other articles at Rs.73418661/- by adopting the average purity of silver @ 65%. In the statement recorded during the course of survey, partner Sri Mahesh Chandra Agarwal had objected to the value of silver ornaments as given by valuer and had surrendered the value of silver stock at Rs.47330233/-. The A.O. has added the difference between Rs.7,34,18,661/- and Rs.4,73,30,233/- which comes to Rs.2,60,88,428/- as undisclosed stock of silver articles found during the course of survey. It has been rightly argued by the Ld. A.R. that for deriving purity percentage, there is a specific process and there are "purity centres" where purity of silver/ gold can be found out but no such process was carried out by the departmental valuer. After the survey, the assessee had also filed an objection before the Ld. CIT, Allahabad regarding value determined by the department valuer and had also filed an affidavit vide letter dated 9-11-11. I have also gone through the valuation report of silver ornaments/ articles prepared during the course of survey proceedings in the case of M/s Ganesh Ornament Pvt ltd which is a sister concern of the assessee firm Where the purity of silver jewelry/ articles was taken by the same department valuer @ 52%, whereas in the case of the assessee firm, he has taken different purity for different articles, average of which comes to 65%. I had called the departmental valuer and enquired from him as to on what basis he had valued the silver articles so differently. He could not offer any satisfactory*

*explanation in this regard. Since no scientific method had been adopted by the departmental valuer in determining the purity of the said silver jewelry/ articles @ 65%, the same cannot be relied upon. On making local enquiries, I have been given to understand that purity of silver jewellery which is sold in these areas, vary between 42% to 62%. In cases of silver utensils, the average purity can be even higher. Since the impugned silver articles are not in the custody of the Department there is no other option left but to re-estimate the purity of silver articles to touchstone on these judicially noted facts. Looking to all the facts and circumstances of the case, I hereby estimate the purity of silver jewellery/ articles at 52%, which is what that had been estimated by the departmental valuer in another case (supra) and this estimate also fits within the range of 42% - 62%. It is also seen that the assessee has filed certain purity certificates of silver articles which had been sold after the date of search. Purity as per these certificates vary between 44% to 68%. This also substantiates my estimate @ 52%. Accordingly, the computation of undisclosed income on account of undisclosed silver found during the course of survey will be as under –*

- i) Quantity of stock of silver articles found on 2159.691 kg

physical verification at the time of survey, as per

the valuer's report dated 20.10.2011

ii) <b>Less:</b> Quantity of stock of Silver articles available as per the books of accounts as on 20.10.2011	(-) 268.162 kg
iii) Quantity of excess stock of silver articles found during the course of survey	1891.529 kg
iv) Applying purity of 52% on the excess stock found	1891.529 X 52% =
v) Value of excess stock 983.60 x 52,300/-	983.60 kg Rs.5,14,42,280/-
vi) <b>Less:</b> Excess Stock disclosed by the assessee in the return of income	Rs.4,35,24,612/-
vii) Value of excess stock	Rs.79,17,668/-

3.3.1 Thus, the addition (on account of excess jewellery found) is confirmed to the extent of Rs.79,17,668/- while the appellant gets relief of Rs.1,81,70,760/-.

7.4 The Id. DR further argued related to deletion of the undeclared stock amount to Rs.38,05,621/-. As per the chart provided by the Id. DR it is clear that the same amount was not considered by the assessee during the filing of the return after accepting the said amount in the survey. In argument the Id. DR invited our attention in page no. 6 of the appeal order para 2.3.3 which is extracted as below:

*“2.3.3 It is obvious that there was mistaken belief of facts (on part of the assessee), since the total inventory of gold jewellery was estimated at Rs.4,24,04,700/- and the same amount was disclosed by the assessee when admittedly there was a disclosed stock of Rs.9,93,992/- which should have been reduced while determining the excess stock of gold jewellery. This clearly shows that while disclosing the additional income on account of excess stock of silver and gold jewellery, the stock of gold and silver jewellery as per the books was not given effect to which totaled to Rs.41,54,000/-. If credit of the disclosed stock of Rs.41,54,000/- is given, there would be no discrepancy in the amount of additional income offered in the return and the income surrendered during the course of survey. The assessee cannot be subjected to prejudice because of his mistaken appreciation of facts. In this view of the matter, the assessee is entitled to the benefit of deduction on account of disclosed stock; as a result, addition made by the A.O. of Rs.38,05,621/- becomes unsustainable. The addition so made is, therefore, deleted.”*

7.6. The ld. DR respectfully relied on the catena of judgment which are as follows: -

**7.6.1. Dr. S.C. Gupta v. Commissioner of Income-tax, [2001] 118 Taxman 252 (Allahabad)**

*“6. As regards the assessee’s contention that the statement having been retracted, the Assessing Officer should have independently come to a conclusion that there was additional income as sought to be assessed and that there was no material to support that there was such income, this contention in our view is not correct. As held by the Supreme Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 an admission is an extremely important piece of evidence though it is not conclusive. **Therefore, a statement made voluntarily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and, in fact, there was no additional income.** This burden does not even seem to have been attempted to be discharged. Similarly, case - P.K. Palwankar v. CGT [1979] 117 ITR 768 (MP) and CIT v. Mrs. Doris S. Luiz [1974] 96 ITR 646 (Ker.) on which also the learned counsel for the assessee placed reliance, are of no help to the assessee. The Tribunal’s order is concluded by findings of fact and in our view, no question of law arises. The applications are, accordingly, rejected.”*

(Emphasis supplied)

**7.6.2. Sanjeev Agrawal v. Income Tax Settlement Commissioner, [2015] 56 taxmann.com 214 (Allahabad)**

*“11. No doubt, Sections 132(4) and 133A of the Act are distinct and different. Under Section 133A of the Act, there is no provision to administer oath and to take a sworn statement whereas under Section 132(4) of the Act there is no provision to examine a person on oath. But it does not mean that a statement under Section 133A of the Act can be retracted at the whim and fancy of the assessee. In the light of the aforesaid, the assertions made by the learned counsel for the petitioner cannot be accepted.”*

**7.6.3. Bachittar Singh v. Commissioner of Income-tax, [2010] 328ITR400 (Punjab & Haryana)**

*“7. As regards the judgments in Pullangode Rubber Produce Co.[1973] 91 ITR 18 (SC) and Ester Industries Limited[2009] 316 ITR 260 (Delhi) relied upon by the assessee, even though it may be open to show an earlier statement or an entry to be erroneous, in the present case, the Tribunal was justified in holding that the earlier statement was not proved to be incorrect. As regards the judgment of the Madras High Court in S. Khader Khan Son[2008] 300 ITR 157 , we are of the view that even if the statement under section 133A was not at par with the statement under section 132(4) and did not have that evidentiary value, such statement cannot be held to be irrelevant material so as to be ruled out of consideration in totality of facts, particularly in the absence of regular books of account. The Tribunal rightly followed the observations of the Allahabad High Court in Dr. S.C. Gupta[2001] 248 ITR 782 and of this court in Surinder Kumar [2006] 282 ITR 78 (P&H). Thus, having regard to the facts and circumstances of the case, the view taken by the Tribunal cannot be held to be perverse or illegal.”*

**7.6.4. Hiralal Maganlal & Co. v. Deputy Commissioner of Income-tax, SR-52, [2005] 96ITD113 (ITAT-MUM.)**

*“Whether further since retraction was not supported by any independent or reliable evidence to prove incorrect nature of facts confessed in statement, Assessing Officer was justified in basing impugned addition on basis of confessional statement made at time of search - Held, yes”.*

8. We heard the rival submission and relied on the documents available in the record. There is no discrepancy in cash or gold ornaments. The only difference is valuation of stock of silver ornaments of assessee during survey. We are unable to agree with the reasoning and the decisions of the learned CIT (Appeals). We need not mention that survey under section 133A is only one of

the two major instruments with the revenue to detect and find out the reality of the activities carried on by the assessee. The assessee conceded the difference of stock and during valuation had not made any objection before survey team, except stating in general terms that the value is on higher side. It was not supported by any evidence that during survey the assessee's consent or agreement which was given or arrived at under threat, coercion, undue influence, misrepresentation or wrong understanding of facts or law. Basis of retraction of own statement of assessee about determination of average value of purity of silver by the departmental valuer. The revenue relied on the order of Hon'ble Jurisdictional High Court related retraction of statement of assessee. But in factual matrix the issue is well explained by the assessee in paper books with supporting evidence related average valuation of purity of silver.

8.1. On perusal of the appeal order the basis of deletion of the amount to Rs.1,81,70,760/- is not proper. The basis applied by the Id. CIT(A) is unreasonable. The Id. AO had not got proper opportunity to ascertain the new fact related calculation of purity of silver ornaments. There is no proper comparative study made by the Id. CIT(A) to conclude the purity of silver ornaments @52%. In survey the Departmental Valuer prepared inventory by ascertaining the different rate of purity of silver ornaments. Finally, during determination of the purity, the average rate is ascertained @65%. Copy of

inventory prepared by departmental valuer of gold and silver ornaments on the date of survey is annexed in paper book page 94-121. The assessee surrendered the value of silver stock of Rs. 4,73,30,233/-, out of total stock of silver items valued at Rs. 7,34,18,661/- found during survey. The assessee has placed reliance on certificates considering the purity ranging 43%-45% which is on the basis of certificate issued by various valuers and those certificates are enclosed at page 160-185 of assessee's paper book, which is at a much later date post survey, and is merely to come out of clutches of tax liability. The assessee cannot now come out of clutches of tax liability based on lower purity rates, when an expert departmental valuer (who is an approved valuer) has identified each and every item of silver stock with actual weight and purity, and the assessee raising no objection during the survey operations as to weight and purity of the stock of silver inventoried by departmental valuer in the presence of the assessee. However, we are of the considered view that when the departmental valuer ( who is an approved valuer) in his valuation report prepared on the date of survey has identified and inventoried each and every item of stock of silver found during the survey on 20.10.2011 with defined purity which is not disputed by assessee, there is no rational of applying any average rate of purity and valuing the stock based on average

rate of purity, when every item of silver ornaments is inventoried with weight and purity by departmental valuer, rather every item of stock of silver item found during survey need to be valued based on the actual purity as well the rate of silver on the date of survey. The departmental valuer applied average rate of purity @65% and valued silver items, which was adopted by AO while framing assessment. The assessee has during survey stated that the value of silver is on higher side in a general manner. The departmental valuer ought to have valued each and every item of silver items based on actual weight, purity and the then prevailing rate, instead of applying average rate of 65%. The AO erred in adopting this average rate of 65% purity in silver items while framing assessment, and Id. CIT(A) also erred in adopting average rate of 52% of purity in silver items. We are of the considered view , that this matter need to be set aside to the AO and an expert departmental valuer(who is an approved valuer) be appointed by the department to find out the correct value of silver based on actual weight and purity and then applying the then prevailing rate of silver at that relevant point of time. The assessee has not disputed the weight and purity during survey, and merely has stated in a general manner that value is higher. Thus, the assessee cannot retract from his own

statement, and the only reason acceptable is the applicability of average rate of 65% of purity in silver item adopted by departmental valuer despite being actual weight and purity of each and every item of silver available with departmental valuer during the course of survey. Thus, this issue is restored to the file of the AO for fresh determination of value of stock of silver item based on the actual weight and purity of each item of inventory of silver items as prepared by departmental valuer on the date of survey. This exercise is to be done by AO with the aid and assistance of an expert being approved departmental valuer. The assessee be also given opportunity of being heard by the AO, to meet with principles of natural justice, the object being to compute correct income chargeable to tax in the hands of the assessee.

8.2. The dispute is raised related amount to Rs. 38,05,621/-which was deleted by the Id. CIT(A) for allowing the opening stock of silver (stock of silver ornaments claimed to be in the books of accounts on the date of survey on 20.10.2011). The Id.AO had not allowed the opening stock of silver (stock of silver claimed to be available in the books of accounts on the date of survey) which was already declared in the books of assessee. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set

aside and the matters are remitted back to the Id. AO for consideration thereof afresh related valuation of silver & silver jewellery for ascertain the rate of purity, as directed by us in the preceding para of this order. The opportunity for fresh valuation of silver & silver jewellery should be allowed to assessee considering the books of accounts, as directed by us in this order. The benefit of opening balance of silver and silver jewellery (stock claimed to be available in the books of accounts on the date of survey), be given during calculation of undisclosed stock by the AO after due verification of the claim of the assessee and if so found correct by the AO . Needless to say, that the Id. AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanations submitted by assessee in its defence shall be admitted by the Id.AO and adjudicated by the Id. AO on merits in accordance with law. We order accordingly.

9. The bench has noticed that the issues raised by the revenue and assessee in the above appeals are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. **199/Alld/2016** for the Assessment Year 2012-13 shall apply *mutatis mutandis* in the above listed appeals.

10. In the result, the appeal of the revenue **ITA No.216/Alld/2016** is allowed for statistical purpose. Further, the appeal of the assessee **ITA No.199/Alld/2016** is allowed for statistical purpose and **C.O. No.34/Alld/2016** is dismissed.

**Order pronounced on 03.07.2023 at Allahabad, U.P. in accordance with Rule 34(4) of the Income-tax (Appellate Tribunal) Rules, 1963**

***Sd/-***  
**(RAMIT KOCHAR)**  
**Accountant Member**

***Sd/-***  
**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order