

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 543/Kol/2023
Assessment Year: 2012-13

M/s. Shipra Enclave Private Limited 47B, 2 nd Floor 134/1, MG Road, Burra Bazar Kolkata - 700007 [PAN : AADCS9457M]	Vs	Income Tax Officer, Ward - 9(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 26/09/2023
घोषणा की तारीख /Date of Pronouncement: 29/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dt. 24/05/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

"1. For that the Ld. CIT erred in confirming the action of the Ld. AO when the order u/s 143(3) is bad in law.

2. For that the Ld. CIT erred in confirming the addition of share capital & share premium of Rs.6,22,00,000/- made by the AO u/s 68 of the I.T. Act, 1961 when assessee duly discharged its onus to prove the credits by submitting all the relevant documents which proved the identity and creditworthiness of the subscribers and genuineness of the transactions.

3. For that the Ld. CIT erred in confirming the addition when notices u/s 133(6) issued by the AO to all the subscribers were duly served on them and replied back which has not been disputed or doubted by the Assessing Officer.

4. For that the Ld. CIT erred in confirming on the wrong facts stated by the AO that the summons issued u/s 131 by the AO remained unanswered by the director of the company when the Directors duly complied to the notices time to time when served on and even otherwise non-appearance of the directors cannot be a ground for making addition u/s 68.

5. For that on the facts and in the circumstances of the case the addition made u/s 68 is not justified.”

3. Brief facts of the case are that the assessee is a Non-banking financial company engaged in the business of shares, investments and financing. Loss of Rs.4,57,214/- declared in the e-return for Assessment Year 2012-13 e-filed on 29/09/2012. Subsequently case selected for scrutiny through CASS for the reason “to examine Large Share premium received”, followed by valid service of notices issued u/s 143(2) and 142(1) of the Act. Necessary details were called for by the Assessing Officer so as to examine the share capital and share premium of Rs.6,22,00,000/- received during the year. Though all the details were filed before the Assessing Officer which even the Id. Counsel for the assessee has filed in the paper book, however, the Id. Assessing Officer has not dealt with those details in the assessment order and came to conclusion that the assessee fell short of discharging the onus of explaining the said share capital in question and thus failed to establish the three ingredients, namely, identity and creditworthiness of the said sources of funds. The Id. Assessing Officer applying the judgments of the Hon’ble Apex Court in the case of *CIT vs. Durga Prasad More* (82 ITR 540) and various other decisions concluded that the alleged sum is assessee’s own undisclosed funds in the garb of subscription by shareholders and deserves to be added u/s 68 of the Act as unexplained cash credit. After adding the sum of

alleged sum of Rs.6,22,00,000/- in the hand of the assessee income assessed at Rs.6,17,42,786/- .

4. Aggrieved the assessee preferred appeal before the Id. CIT(A) and again filed all the details including the proof of reply to the summons u/s 131 of the Act stating that the Director himself attended the scrutiny proceedings regularly on the scheduled dates as and when called for by the Id. Assessing Officer. The Id. Counsel for the assessee also submitted that the assessee is a NBFC being registered with the Reserve Bank of India and its primary objective and the business is of loans and advances. However, the Id. CIT(A) was not satisfied with these details and observed that the assessee had failed to produce the directors of the shareholding companies and there is a failure on the part of the assessee to establish the creditworthiness of the investor companies. He further held that, merely because the assessee has filed all primary evidence, it could not be said that the onus of the assessee to establish the creditworthiness of the investor companies stood discharged. Accordingly, the finding of the Assessing Officer was confirmed.

5. Aggrieved the assessee is now in appeal before this Tribunal.

6. The Id. Counsel for the assessee referring to the various documents filed in the paper book submitted that whatever documents which are needed to explain the identity and creditworthiness of the share applicants and genuineness of the transactions have been filed before the lower authorities. Assessee being a NBFC company has to report the financials to the Reserve Bank of India as well as Ministry of Corporate Affairs. All the share

applicants are private limited companies duly assessed to tax, financial statements duly audited and transactions carried out through banking channel and relevant part of such bank statements stands filed. Even the source of source of the funds needed to carry out the alleged transactions have been submitted. He also stated that all the share allottee companies were issued notices u/s 133(6) of the Act to which necessary compliance was made and replies were given by the share applicant companies to the Assessing Officer. Reference was also made to paper book page 316 to 318 where the copy of order sheet has been filed to show that the director of the assessee company Shri Pramod Anchalia appeared in person before the Id. Assessing Officer and filed the details. He was also asked to provide the books of accounts and the same was duly complied to. He thus contended that both the lower authorities stated that the directors have not appeared before the Assessing Officer but the fact remains that the director of the assessee company has appeared in person and as far as the remaining share allottees are concerned, they have duly replied to the notice u/s 133(6) of the Act and it was beyond the control of the assessee to bring all the share applicants before the Assessing Officer. It was also submitted that whatever best the assessee could have done, was done and merely for non-appearance of the share applicant companies, additions cannot be made. In support, reliance was placed on the decision of the Hon'ble Jurisdictional High Court in the case of *Principal CIT vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal)*. Reliance was also placed on the decision of the Co-ordinate Bench of

the *M/s. Mahalakshmi Vinimay (P) Ltd. vs. ITO in ITA No. 35/Kol/2020; Assessment Year 2008-09; order dt. 18/05/2023.*

7. The Id. D/R vehemently argued supporting the order of the Id. Assessing Officer and stated that merely filing these paper documents cannot be treated as a compliance to explain the nature and source of the alleged sum. Surrounding circumstances which includes the meagre income offered by the share subscribers, no regular business activity carried out by the assessee company as well as by the share subscribers and the typical nature of flow of funds in the bank statement indicates that share subscribing companies are engaged in rotation of funds for providing accommodation entries and they are *jamakharchi* or shell/paper companies and, therefore, the Id. Assessing Officer has rightly added the sum in the hands of the assessee.

8. We have heard rival contentions and perused the record placed before us. Assessee has challenged the finding of the Id. CIT(A) confirming the addition made u/s 68 of the Act by the Assessing Officer alleging that the assessee has failed to explain the nature and source of share application money received from 15 share applicants. The Id. Counsel for the assessee apart from referring to the various documents filed in the paper book have also stated that all the share applicants had sufficient net worth to explain the investment in the equity capital of the assessee company. Details of share applicants, address, PAN, number of equity shares applied and allotted, share application money given to the assessee and net worth of the alleged share subscribers are tabulated below:-

TABLE B

NET WORTH

1	Ancient Nirman Pvt Ltd Business	AE-183, Rabindra Pally Bazar Kestopur Kolkata-700101	AAHCA2016L	17,500	3,500,000.00	14,54,24,867.66
2	Bright Star Tie-Up Pvt Ltd Business	80, Adyanath Saha Road Near Jaya Cinema, Lake Kolkata-700048	AAECB2314F	12,500	2,500,000.00	44,19,91,322.68
3	Evershine Vintrade Pvt Ltd Business	7A, Bentinck Street Kolkata-700001	AACCE3035G	4,500	900,000.00	3,41,51,759.00
4	Gannet Vintrade Pvt Ltd Business	AE-183, Rabindra Pally Bazar Kestopur Kolkata-700101	AADCG4706H	12,500	2,500,000.00	6,15,37,347.56
5	Image Vintrade Pvt Ltd Business	7A, Bentinck Street 4th Floor Kolkata-700001	AACCI0876P	3,000	600,000.00	6,86,98,669.85
6	Zest Vanijya Pvt Ltd Business	7A, Bentinck Street Kolkata-700001	AAACZ4008N	12,500	2,500,000.00	3,56,01,032.00
7	Mohan Infrarealty Pvt Ltd Business	33/1, N. S. Road 1st Floor Kolkata-700001	AABCB1363P	85,000	17,000,000.00	12,86,01,025=56
8	Astaroopa Dealcomm Pvt Ltd Business	13, B. B. Ganguly Street Ground Floor Kolkata-700012	AAICA2094D	25,000	5,000,000.00	6,44,31,420=00
9	Narayani Pratisthan Pvt Ltd Business	205, Rabindra Sarani 2nd Floor Kolkata-700007	AADCN1846M	27,500	5,500,000.00	41,66,48,907=61
10	Satvichar Dealer Pvt Ltd Business	125, N. S. Road 2nd Floor, Room No.-34 Kolkata-700001	AAMCS8151M	16,000	3,200,000.00	13,81,45,723=02
11	Landscape Vincom Pvt Ltd Business	83/85, Netaji Subhas Road 5th Floor Kolkata-700001	AABCL9277C	27,500	5,500,000.00	26,74,34,657=00
12	Rocky Vintrade Pvt Ltd Business	83/85, Netaji Subhas Road Kolkata-700001	AAFCR3894P	5,000	1,000,000.00	4,19,25,592=00
13	Greatful Commodeal Pvt Ltd Business	83/85, Netaji Subhas Road Kolkata-700001	AAECG3281E	20,000	4,000,000.00	2,48,80,547=00
14	Saidham Commotrade Pvt Ltd Business	74, Burtolla Street 4th Floor Kolkata-700007	AAOCS7896M	32,500	6,500,000.00	16,80,82,307=00
15	Rambhakt Tradelink Pvt Ltd Business	74, Burtolla Street 4th Floor Kolkata-700007	AAECR9494A	10,000	2,000,000.00	13,86,99,167=00
Total				311,000	62,200,000.00	

9. Further in support of its contention, all complete documentary evidence have been filed to explain the identity, creditworthiness of the share applicants and genuineness of the transactions. The Id. Counsel for the assessee took us through the following documents which are placed in the paper book including the copy of notice u/s 133(6) of the Act to the share allottee companies, copies of replies received by the Assessing Officer, copy of the order sheets etc.:-

<p>Details and evidence for Ancient Nirman Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement PAN Card Bank Statement of Ancient Nirman Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd Minutes of Board meeting held on 08/08/2008 Details of source of funds for payment made to Shipra Enclave Pvt Ltd Bank Statement highlighting the source of funds. Audit Report as on 31.03.2012.</p>
<p>Details and evidence for Brightstar Tie Up Pvt Ltd (Subscriber)</p> <p>Audit Report along with Financial Statement as on 31.03.2012. Bank Statement of assessee showing receipt</p>
<p>Details and evidence for Evershine Vintrade Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Bank Statement of Evershine Vintrade Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd PAN Card Notice of Annual General Meeting to be held on 28/09/2012 Audit Report as on 31.03.2012.</p>

P.S.:-This place has been left blank intentionally.

<p>Details and evidence for Gannet Vintrade Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement PAN Card Bank Statement of Gannet Vintrade Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd Audit Report as on 31.03.2012.</p>
<p>Details and evidence for Image Vintrade Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement PAN Cards Bank Statement of Image Vintrade Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd Audit Report as on 31.03.2012.</p>
<p>Details and evidence for Zest Vanijya Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement PAN Card Bank Statement of Zest Vanijya Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd Details of source of funds for payment made to Zest Vanijya Pvt Ltd Notice of Annual General Meeting to be held on 28/09/2012 Audit Report as on 31.03.2012.</p>
<p>Details and evidence for Astaroopa Dealcomm Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012. PAN Card Bank Statement of Astaroopa Dealcomm Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>
<p>Details and evidence for Narayani Pratisthan Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card Bank Statement of Narayani Pratisthan Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>

<p>Details and evidence for Mohan Infra Realty Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement PAN Card Audit Report as on 31.03.2012 Bank Statement of Mohan Infra Realty Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>
<p>Details and evidence for Satvihar Dealer Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card Bank Statement of Satvihar Dealer Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>
<p>Details and evidence for Landscape Vincom Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card Bank Statement of Landscape Vincom Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>
<p>Details and evidence for Rocky Vintrade Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card Bank Statement of Rocky Vintrade Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>
<p>Details and evidence for Greatful Commodeal Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card Bank Statement of Greatful Commodeal Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd</p>
<p>Details and evidence for Saidham Commotrade Pvt Ltd (Subscriber)</p> <p>Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card</p>

Bank Statement of Saidham Commotrade Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd
Details and evidence for Rambhakt Tradelink Pvt Ltd (Subscriber) Copy of ITR Acknowledgement Audit Report as on 31.03.2012 PAN Card Bank Statement of Rambhakt Tradelink Pvt Ltd showing payment made to Shipra Enclave Pvt Ltd
Copy of notice u/s 133(6) to share allottees companies. Copy of reply received.
Copy of order sheet

9.1. Now, from perusal of the above details as well as the statement showing the net worth of the assessee company and the amount invested and examining the same in the light of the provision of Section 68 of the Act, where for Assessment Year 2012-13, assessee was required to explain the nature and source of the alleged sum but in case the explanation offered by him is in the opinion of the Assessing Officer not satisfactory, the sum so credited may be charged to income tax as the income of the assessee.

9.1.1. In the case before us, the assessee provided complete details to explain the nature and source and has also explained the source of source of alleged share application money and thus has discharged the primary onus casted upon it and then the burden shifts over to the Assessing Officer who has to frame an opinion as to whether he is satisfied with these details or not. Such opinion cannot be merely a general observation but the same should be supported by in-depth examination of the details filed by the assessee and to find

discrepancies in such details and to also place evidence to prove the contrary. To arrive at such contrary opinion either investigation has to be carried out, any other information to be brought on record which could show that the assessee has converted its unaccounted money in the garb of share application money or it is proved that it is assessee's own money which has been routed from the share applicants or any evidence to prove that such arrangements of funds is in the form of accommodation entry.

9.2. However, before us, no such material has been placed by the revenue authorities and only the evidence which the assessee has put forth before the lower authorities and before us are the basis of examining the nature and source of the alleged sum. Perusal of these details clearly indicates that except for non-appearance of the directors of the share applicant companies, no other discrepancies have been noticed by the Assessing Officer in the details filed by the assessee. It has been held in plethora of judgments that merely for non-appearance of the directors of the share applicant companies, the ld. Assessing Officer cannot make the addition u/s 68 of the Act.

10. Recently, the Hon'ble Jurisdictional High Court in the case of *Principal CIT vs. Sreeleathers*, has held as follows:-

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where

the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

11. Further, this Tribunal in the case of *M/s. Mahalakshmi Vinimay (P) Ltd. vs. ITO in ITA No. 35/Kol/2020; Assessment Year 2008-09; order dt. 18/05/2023, holding in favour of the assessee, in application adjudicating similar issue observed as under:-*

"7. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the

directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

8. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of Commissioner of Income-tax vs. Manish Build Well (P.) Ltd. reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has

independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law."

12. We are thus inclined to hold that the alleged sum received from share subscribing companies is a genuine transaction of making investment into the equity of NBFC registered with the Reserve Bank of India and identity and creditworthiness of the share applicants is proved beyond doubt based on the income tax returns, audited financial statements etc. Thus, the finding of ld. CIT(A) is set aside and the addition made u/s 68 of the Act is hereby deleted. Effective grounds raised by the assessee are allowed.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 29th November, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 29/11/2023

**SC Sp/2*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata,
6. गार्ड फाई / Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata