

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" , HYDERABAD**

**BEFORE**

**SHRI R.K. PANDA, VICE PRESIDENT  
AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA Nos.1287 and 1288/Hyd/2017**  
(निर्धारण वर्ष / Assessment Years: 2012-13 and 2013-14)

Super Dairy Farm, Hyderabad.  PAN : AAJFS7269L.	Vs.	The Assistant Commissioner of Income Tax, Circle – 4(1), Hyderabad.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आ.अपी.सं / **ITA No.1265/Hyd/2017**  
(निर्धारण वर्ष / Assessment Year: 2013-14)

The Assistant Commissioner of Income Tax, Circle – 4(1), Hyderabad.	Vs.	Super Dairy Farm, Hyderabad.  PAN : AAJFS7269L.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Sashank Dundu, C.A.  
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR.

सुनवाई की तारीख/Date of hearing: 01/02/2024  
घोषणा की तारीख/Pronouncement on: 28/02/2024

आदेश / ORDER

**PER LALIET KUMAR, JM:**

The appeals filed by the assessee and the cross appeal filed by the Revenue are directed against the common order of Commissioner of Income Tax (Appeals) – 1, Hyderabad dated 25.04.2017 passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') for the assessment years 2012-13 and 2013-14. In the present case, Revenue filed cross appeal for A.Y. 2013-14 only.

2. The grounds raised by the assessee in ITA No.1287/Hyd/2017 for A.Y. 2012-13 reads as under :

*“1. Your appellant submits that the CIT(A) erred in law and facts of the case in disallowing the interest paid of Rs.13,34,104/- on loan taken from Hyderabad Mutual Benefit Society (HMBS) in the course of business for the purpose of business.*

*2. Your appellant submits that it is member of HMBS, has not claimed the interest on principals of mutuality nor it is the case of your appellant that interest has to be allowed as per the principals of mutuality applicable to the Co-operative Societies Registration Act. Your appellant submits that interest paid to HMBS is claimed as business expenditure as the loan is taken for the purpose of business. The addition may be deleted.*

*3. Your appellant submits that it is not the case of the Assessing Officer or the CIT(A) that the loan from HMBS is not taken for the purpose of business, the case is that HMBS is claiming its income as exempt on the principals of mutuality has nothing to do with allowability of interest paid in the hands of your appellant.”*

2.1. The grounds raised by the assessee in ITA No.1288/Hyd/2017 for A.Y. 2013-14 reads as under :

*“1. Your Appellant submits that the CIT(A) erred in law and facts of the case in disallowing the interest paid of Rs. 21,34,193/- on loan taken from Hyderabad Mutual Benefit Society (HMBS) in the course of business for the purpose of business.*

*2. Your Appellant submits that it is member of HMBS, has not claimed the interest on principals of mutuality nor it is the case of your appellant that interest has to be allowed as per the principals of mutuality applicable to the Co-operative Societies Registration Act. Your Appellant submits that interest paid to HMBS is claimed as business expenditure as the loan is taken for the purpose of business. The addition may be deleted.*

*3. Your Appellant submits that it is not the case of the Assessing Officer or the CIT(A) that the loan from HMBS is not taken for the purpose of business, the case is that HMBS is claiming its income as exempt on the principals of mutuality has nothing to do with allowability of interest paid in the hands of your appellant.*

*4. Your Appellant objects to the disallowance of livestock related expenditure of Rs. 4,41,01,480/- without giving a notice of enhancement by the CIT(A) or calling for an explanation.*

*5. Without prejudice to the above ground, your Appellant submits that he ought to have appreciated the fact that out of Rs. 4,41,01,480.*

*(a) an amount of Rs. 2,58,41,771/- being purchase of livestock charged to Profit and Loss Account had been added back in computation of total income and*

*(b) an amount of Rs. 1,82,59,709/- being purchase of fodder ought to have been allowed as revenue expenditure as claimed in the Profit and Loss Account being feed for livestock to generate milk, which generates revenue.*

*The addition is not warranted.*

*6. Your appellant submits that the CIT (A) erred in not allowing indexation while computing the long term capital gains*

*7. Your Appellant submits that CIT(A) erred in law and facts of the case having held that livestock as capital asset in the hand ought to have allowed indexation while computing long term capital gains as per section 48 of the Income Tax Act, 1961.*

*8. The CIT(A) ought to have appreciated the fact that as per provisions of section 48 of the Income Tax Act, 1961 any capital asset held for more than 36 months is eligible for indexation while computing the long term capital gains, livestock having been held to*

*be capital asset, indexation may be allowed while computing long term capital gains.”*

2.2. The grounds raised by the Revenue in ITA No.1265/Hyd/2017 for A.Y. 2013-14 reads as under :

*“1.The ld.CIT(A) erred on both facts and law of the case.*

*2. The ld.CIT(A) erred in not upholding the action of the Assessing Officer in treating Capital Gains of Rs.11,71,48,821/- offered by the assessee as income from business.*

*3. The ld.CIT(A) failed to appreciate that the income has arisen in the course of business and to be treated as business income.”*

2.3 As the grounds filed by assessee for A.Y. 2012-13 are already covered in the grounds filed by assessee for A.Y. 2013-14, we are reproducing the facts in ITA 1288/Hyd/2017 for A.Y. 2013-14 for the sake of brevity.

3. The brief facts of the case are that assessee filed its return of income for A.Y. 2013-14 through e-filing on 31.03.2015 disclosing net taxable income of Rs.1,71,81,860/-. Subsequently, the case has been selected for scrutiny through CASS. Accordingly, the case was taken up for scrutiny and notice u/s 143(2) of the Act was issued on 31.08.2015. The assessee furnished information as called for along with books of accounts. The Assessing Officer had examined the information furnished and found that though assessee claimed interest payment of Rs.21,34,193/- to Hyderabad Mutual Benefit Society (HMBS) but the assessee has not shown the same in its Balance-Sheet either under unsecured loans or sundry creditors. Hence, the Assessing Officer disallowed the said interest and added the same to the returned income of the assessee.

3.1. Thereafter, Assessing Officer noticed that assessee had credited an amount of Rs.14,29,31,592/- being the sale of livestock and debited Rs.2,58,41,771/- towards cost of livestock. In this connection, Assessing Officer opined that livestock is not a capital asset and that it was nowhere mentioned in the IT Act that indexation cost of acquisition was applicable to livestock and hence, assessee was not entitled to claim capital gains on sale of livestock and also exemption of gain on self bred livestock and accordingly, disallowed the profit on sale of livestock of Rs.11,71,49,821/-. Thereafter, he completed the assessment u/s 143(3) of the Act determining the total income at Rs.13,64,49,821/-.

4. Feeling aggrieved by the orders passed by the assessing officer, assessee filed appeals before the Id.CIT(A), who dismissed the appeal of assessee for A.Y. 2012-13 and granted part relief for A.Y. 2013-14.

5. Feeling aggrieved with the order of Id.CIT(A) assessee is in appeal for A.Y. 2012-13 and both assessee and Revenue are in appeal for A.Y. 2013-14. As the grounds filed by assessee for A.Y. 2012-13 are already covered in the grounds filed by assessee for A.Y. 2013-14, we will deal with ITA 1288/Hyd/2017 for A.Y. 2013-14 for the sake of brevity.

**ISSUE NO.1 – Disallowance of Rs.21,34,193/- towards interest paid to Hyderabad Mutual Benefit Society (HMBS):**

6. Issue No.1 covers grounds 1 to 3 in assessee's appeals for A.Y. 2012-13 and 2013-14. The relevant portion from assessment order and the order of Id.CIT(A), respectively, read as under :

**"Disallowance of interest : (Assessment Order)**

*IN response to the notices issued, the assessee has furnished reply vide letter dated.29.09.2015 which reads as under –*

*"Further to your notice under section 147, in respect of Rs.13.34 lacs interest paid on loan for business obtained from Hyderabad Mutual Benefit Society in assessment proceedings under section 143(3) for the assessment year 2012-13 to returned income we wish to submit the following for your kind consideration -*

*We have submitted the books of accounts, materials, statement of accounts. The interest paid on the loan at Rs.13,34,000/- debited to Profit and Loss Account as the loan for entirely used to meet the working capital requirements and was used for business purpose during the previous year."*

*As per the principles of mutuality applicable to the Co-operative Societies Registration Act, the interest paid by the members of the society on the loans taken from the society is not deductible. This fact is also confirmed by the Chartered Accountant of the assessee in his letter dt.24.09.2014 addressed to the Hon'ble Secretary Hyderabad Mutual Benefit Society (HMBS). Therefore, the interest amount of Rs.13,34,104/- claimed towards interest on HMBS loan is disallowed and added to the total income."*

**7 Ground nos. 3 and 4 (CIT Order)**

*Disallowance of Rs.13,34,000/- towards interest paid to Hyderabad Mutual Benefit Society (HMBS):*

*7.1 During the assessment proceedings, the Assessing Officer noticed that the assessee claimed interest payment of Rs.13,34,000/- to Hyderabad Mutual Benefit Society (HMBS). The Assessing Officer contended that as per the mutuality applicable to co-operative societies Registration Act, the interest paid by the members of the society on the loans taken from the society is not deductible. This fact was also confirmed by the Chartered Accountant of the assessee in his letter dated 24.09.2014 addressed to the Hon'ble Secretary, Hyderabad Mutual Benefit Society (HMBS). Therefore, the Assessing Officer disallowed Rs.13,34,104/- claimed towards interest on HMBS loan.*

7.2 Before me, the appellant submitted that it has paid interest payment to HMBS and was also submitted proof as per ledger account of interest on HMBS loan A/c. No.727 for the F.Y. 2011-12. The appellant submitted a confirmation letter from Hyderabad Mutual Benefit Society, the statement of loan VHL/Housing/BCL account received Hyderabad Mutual Benefit Society and Certification of Rs.13,34,102/- for the period from 01.04.2011 to 31.03.2012. The appellant also submitted annual accounts for the A.Y. 2012-13.

7.3. Also, it is seen that interest payment of Rs.13,34,104/- the reason for the disallowance by the Assessing Officer in the Assessment order that as per the principles of mutuality applicable to the Co-operative societies Registration Act, the interest paid by the members of the society on the loans taken from the society is not deductible. This issue was not contradicted by the appellant before me. The submissions before me have been regarding the payment of interest. Also, it is seen that the interest was not paid by the appellant i.e., M/s. Super Diary Farms. All these payments referred by the Hyderabad Mutual Benefit Society (HMBS) in the confirmation letter does not talk of any bank transactions. That is to say, so called interest was not paid by the appellant, but by one of the partners and this transaction is not through bank. Also, appellant has not brought any evidence contradicting the submissions of Chartered Accountant of the appellant regarding letter dt.24.09.2014 addressed to the Hon'ble Secretary, Hyderabad Mutual Benefit Society (HMBS). Hence, in the light of the above, any submissions made by the appellant regarding allowability of interest as per the principles of mutuality applicable to the Co-operative societies Registration Act, has not been made. Hence, the interest paid by the members of the society on the loans taken from the society is not deductible. I uphold the addition made by the Assessing Officer."

6.1 Before us, the ld.AR has submitted as under :

- The assessee firm has utilized the loan amount taken from HMBS for the purpose business.
- Both the lower authorities have erred in mentioning that the loan amount did not appear in the balance-sheet of the assessee.
- The lower authorities have failed to appreciate that Sections 36 and 37 provides that when the loan utilized for the business purposes, the assessee is entitled to deduction.

- It is the case of the assessee before us that the assessee has utilized the loan exclusively for the purpose of business and this fact has not been disputed by the lower authorities.

6.2. The ld.AR also contended that as the loan amount appearing on liability side of the Balance-Sheet and therefore the expenditure incurred by the assessee was allowable expenditure in the hands of the assessee.

6.3. In support of his case, the ld.AR for the assessee filed written arguments. The relevant portion of written argument with respect to this ground reads as under :

**“Grounds 1, 2 and 3:**

***Interest paid to Hyderabad Mutual Benefit Society - Rs. 21,34,193/-***

*The loan taken from HMBS by the appellant has been utilized for the purpose of business, which has not been disputed by the AO/CIT(A). Both the authorities erred in mentioning that the loan amount did not appear in the balance sheet. Further, the authorities have failed to appreciate that section 36/37 of the Income-tax Act provide the benefit of deduction when the expenditure is utilized for business purpose. The sections no-where mention that the expenditure incurred, for it to be deductible, must be taxable in another person's hand. In the facts of the present case, since the loan amount has been exclusively used for the purpose of business of the appellant, which fact has not been disputed by the lower authorities till now, and the amount appears on the liabilities side of the Balance sheet, said interest expenditure must be allowable in the hands of the Appellant.”*

7. Per contra, the ld.DR has submitted that no evidence was shown by the assessee to the lower authorities that the loan amount was utilized for the business purpose after taking loan from HMBS and to that effect, the C.A. of the assessee has given a

Certificate which has been considered by the learned lower authorities. The Id.DR also submitted that the HMBS had issued a certificate for the assessment year under consideration at page 33 of the paper book, which is to the following effect :

**HYDERABAD MUTUAL BENEFIT SOCIETY**

512, 5th Floor, Babu Khan Estate, Basheer Bagh,  
HYDERABAD - 500 029. E-mail : hmbociety@gmail.com

Ref. :

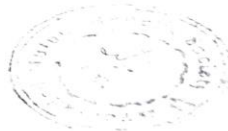
Date : 14-04-2017

TO WHOM SO EVER IT MAY CONCERN

This is to certify that the following amount have been received on the ECL Loan account during the period from 01-04-2012 to 31-03-2013 from M/s Super Dairy Farm, Membership No.727.

1. Instalment Amount	-	Rs. 67,20,000
2. Interest on Loan A/c	-	Rs. 21,33,493
3. Loan of/s on on		Rs. 1,16,00,000/-

  
IFTIKHAR HUSAIN  
HONY. SECRETARY



7.1. The Id.DR further submitted that from the perusal of the letter dt.14.04.2017 now produced by the assessee (which was after the date of passing of the order by the Assessing Officer) and just before the passing of order by the Id.CIT(A), it is not clear whether the amount has been received through banking channels or not. The Id.DR further submitted that the assessee is not entitled for the said deduction. In support of its case, the Id.DR has filed the written arguments and the relevant portion of the same reads as under :

**“Interest Expenditure disallowed by the A.O. ( AYs 2012-13 and 2013-14)**

19 The A.R. of the assessee argued that the loan from Hyderabad Mutual Benefit Society (HMBS) is appearing in the liability side of the Balance Sheet by filing a Balance Sheet for AYs 2010-11, 2011-12 and 2012-13. It is brought to the notice of the Hon’ble Bench that the balance Sheet for AY 2012-13 is not available in either in Paper Book or the assessment record of AY 2012-13. It is not possible that the Balance Sheet for AY 2013-14 was available during the proceedings before them, and the AO in para 1 and the CIT(A) in para 6.3 of the orders categorically gave a finding that “ the loan taken from HMBS is not reflected in the Balance Sheet either under unsecured loans or sundry creditors’. Therefore, it is humbly submitted that the Balance Sheet seen by the AO and the CIT(A) were different from the Balance Sheet being referred to by the A.R of the assessee in the Paper Book now. In addition to this, reliance is placed on the observations of the CIT(A) in para 6.3 of her order in support of the argument of the department that the interest claimed by the assessee is not allowable as expenditure. The ground of the appeal in appeals for AY 2012-13 an 2013-14 may be dismissed.”

7.2 It was further submitted that documents at pages 40 to 66 were not filed before Assessing Officer/ ld.CIT(A). Further, no application was filed for admission of those documents.

8. In rebuttal, ld.AR has submitted that the amount was paid by the assessee through one of its partners and for that purposes, he has drawn our attention to the statement of bank account of M/s. G.B. Bakers.

9. We have heard the rival submissions and perused the material on record. In the present case, we have asked the ld.AR for the assessee whether the assessee has filed the balance-sheet in the assessment year 2012-13 before us wherein the loan amount has been shown to have been received from Hyderabad Mutual Benefit Society. To that ld.AR for the assessee has shown his inability. Ld.AR relied upon ledger account of interest and the certificate from HMBS dt.14.04.2017, issued by the authority.

9.1. From a perusal of the list of documents, we find the assessee had filed a certificate and ledger account certifying that the documents issued by HMBS were available with the Assessing Officer. However, the date of the document dt.14.04.2017 which is subsequent to passing of the assessment order clearly shows that these documents are not available with the Assessing Officer. Therefore, in our view, the submission that the document was available with the Assessing Officer, is incorrect. We expect the learned advocate to be fair while filing the certificate of certifying documents and making the submissions before us. In our view, the application should have been filed by the assessee for admission of the additional documents / evidences before the lower authority as well as before us, before assessee choses to rely upon the documents / evidences. The assessee had not filed any application for admission of this document dt.14.04.2017, ledger of interest and also the bank statement of M/s. G.B. Bakers, which were relied upon by the Id.AR before us. With respect to the letter dt. 14.04.2017, issued by HMBS certifying that the interest instalments were paid by the assessee, we are of the opinion that the Assessing Officer is required to verify whether the interest certificate issued by HMBS is correct or not and further, the Assessing Officer is required to verify whether the amount received by HMBS was from banking channels or not. Further, the Assessing Officer is also required to verify whether the amount allegedly deposited by the common partner of M/s. G.B. Bakers, was claimed by the said partner as expenditure in the books of accounts of M/s. G.B. Bakers or not. Since the statements of bank account was not available before the Assessing Officer/ Id.CIT(A)

(Page 40 onwards), therefore, there was no question of examination of his bank statement and give finding.

10. In view of the above dissection, we remit the matter to the file of Id.CIT(A) with a direction to the assessee to move appropriate application for admission of additional evidence before Id.CIT(A) in respect of documents now filed before us. The Id.CIT(A) may consider the application in accordance with law. In the light of the above, we deem it proper to remand back the matter to the file of Id.CIT(A) with the following directions :

- 1) That the assessee shall file the balance-sheet of the F.Y. 2011-12 before the Id.CIT(A).
- 2) The Id.CIT(A) shall call for the remand report from the Assessing Officer, with a direction to find out whether the loan, after taking it from HMBS, were utilized by the assessee for its own business purposes.
- 3) The assessee shall produce the registered partnership deed of M/s. Super Diary Farms showing the existence of the common partner with M/s. Super Diary Farms and M/s. G.B. Bakers.
- 4) The Id.CIT(A) shall call for the report from HMBS with respect to the fact that whether the loan interest payment was made by the assessee through banking channels or not.
- 5) As it is the case of the assessee before us that one of his partners, who is associated with M/s.G.B. Bakers had paid the loan interest amount to the HMBS, therefore, in that

view of the matter, ld.CIT(A) shall verify from the record of HMBS whether the said amount was paid by the said person in cash or from the banking channel or not and further the ld.CIT(A) shall find out whether M/s. G.B. Bakers have claimed it as an allowable deduction while filing the return of income of the said G.B. Bakers.

10.1. With the above said directions, the matter is remanded back to the file of ld.CIT(A) to decide the issue afresh in accordance with law. Thus, grounds 1 to 3 in assessee's appeal for A.Y. 2012-13 and 2013-14 are allowed for statistical purposes.

11. In the result, assessee's appeal for A.Y. 2012-13 is allowed for statistical purposes.

**ISSUE NO.2 – Ld.CIT(A) cannot enhance without providing an opportunity of being heard.**

12. Issue No.2 covers ground no.4 of assessee's appeal for A.Y. 2013-14 in ITA No.1288/Hyd/2017.

12.1. With respect to ground no.4, ld.AR for the assessee submitted that the disallowances have been done by the ld.CIT(A) without issuing any notice for enhancement and thereby violated the principles of natural justice. In support of his case, ld.AR filed written submissions and the relevant portion of written submissions read as under :

***“CIT(A) cannot enhance without providing an opportunity of being heard:***

*In the facts of the present case, CIT(A) has made fresh additions by disallowing two items of the P&L account as under:*

1. *Expenditure pertaining to feeds and maintenance of livestock*
2. *Cost of purchase of livestock has been disallowed by the CIT(A) for the 2nd time, which was already disallowed by the appellant at the time of income tax computation.*

*Further, the aforesaid disallowances have been done without issuing any notice for Enhancement thereby violating the principles of Natural Justice. Section 251(2) of the Income-tax Act clearly states that the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) [, as the case may be,] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Expenditure pertaining to feeds and maintenance:*

*Even on merits, Expenditure pertaining to feeds and maintenance has to be treated as revenue expenditure and cannot be capitalized since the said feeds and maintenance are for the daily upkeep of the livestock, which is akin to fuel charges for running of a machinery and maintenance of the machinery for smooth running of the machine. Similarly, purchase of a car may be treated as a Fixed Asset but the fuel charges for running the car would be treated as revenue expenditure. In view of the same, it is submitted that feeds and maintenance of the livestock can, by no stretch of imagination, be considered as capital expenditure.*

*Cost of purchase of livestock:*

*Further, the cost of purchase of livestock debited to P&L account has been added back to the net profit determined as per books for the purpose of computing the taxable income as per provisions of Income-tax Act, which is evident from the Computation of income(Pg. 8 of PB). Hence, there is a double disallowance of the same amount, thereby violating Article 265 and Article 20(2) of Constitution of India and the principles of natural justice.”*

12.2. Per contra, the ld.DR has submitted that there was no enhancement by the ld.CIT(A) and therefore, the argument of the learned counsel for the assessee is without any merit. In this regard, ld.DR has filed the written submissions. The relevant portion of the written submissions are to the following effect :

### **Capitalisation and enhancement**

18 *The A.R argued that capitalization of fodder cost of 1.82 crores and purchase cost of buffaloes of 2.58 crores is not correct, particularly without giving notice of enhancement. Notwithstanding the stand of the department that the livestock is stock in trade, support the decision of the CIT(A) with regard to the capitalization of expense. It is also submitted that the income directed to be determined by the CIT(A) is below the income assessed by the AO in the assessment order. The CIT(A) has not directed the AO to assess any new head of income, but only directed to capitalize the revenue expenditure claimed.*

12.3 We have heard the rival submission and perused the material on record. Admittedly, in the present case, the Id.CIT(A) has made addition under the separate head of income. Infact, while passing the order, the income directed to be determined by the Id.CIT(A) would be below the income assessed by the Assessing Officer in his assessment order. Thus, there is no enhancement of income and therefore, there was no occasion to follow the procedure as argued by the Id.AR. In fact, in the paragraphs below, we have adjudicated the issue whether the livestock is capital asset or not and we have held that the livestock is not a capital asset. As we have held that the livestock is not a capital asset, therefore, the expenditure claimed by the assessee cannot be capitalized. In view of the above, the ground no.4 raised by the assessee, is dismissed.

### **ISSUE NO.3 – Addition of Rs.11,71,49,821/- towards profit on sale of livestock.**

13. Issue No.3 covers ground nos.6 to 8 of assessee's appeal for A.Y. 2013-14 and grounds 2 and 3 of Revenue's appeal for A.Y. 2013-14.

13.1 Before us, Id.AR has submitted that livestock was generated within the concern and on sale of such livestock for a consideration of Rs.8,63,58,527/- the assessee was not liable for capital gain as there was no cost of acquisition. He submitted that the livestock purchased earlier and if the indexation cost was taken into consideration, there would be a loss. In this regard, the Id.AR relied on the decision in the case of Sri Krishna Dairy & Agricultural Farm Vs. CIT reported in 169 ITR 291 (Andhra Pradesh High Court) In support of his case, Id.AR filed the written submissions and the relevant portion of the submissions for grounds 6 to 8 of assessee's appeal and ground nos.2 and 3 of Revenue's appeal as under :

**“Ground nos.6 to 8.**

*“Benefit of Indexation for computing Long Term Capital Gain:*

*Once an item is treated as a Capital Asset and liable for capital gains, while computing the said capital gains, rules of indexation as per section 48, Explanation clause (iii) would apply. Section provides for 'asset', which is a capital asset as defined u/s 2(14) of the Income-tax Act. Section 2(14) does not distinguish between living and non-living things. Hence, the provisions of law pertaining to indexation must apply uniformly even to livestock when the said livestock are treated as fixed assets and are held for more than 3 years.”*

13.2. Assessee has filed the written submissions and the relevant portion of the same reads as under :

**“Sale of livestock treated as Fixed Assets give rise to Capital Gain and cannot be treated as Business Income:**

*It is humbly submitted that the Appellant is only in the business of selling dairy products and not in the business of buying and selling of livestock. This is evident from the following:*

1. *Live Stock(Buffalos) - Rs. 2,05,88,778/- shown under Fixed Assets in Balance sheet for A.Y.2013-14 - (Pg. 9 of PB)*
2. *Live Stock(Buffalos) - Rs. 1,63,46,483/- shown under Fixed Assets in Balance sheet for A.Y.20 10-11 - (Pg. 28 of PB)*
3. *Live Stock(Buffalos) - Rs. 2,43,21,483/- shown under Fixed Assets in, Balance sheet for A.Y.201 1-12 - (Pg. 31 of PB)*
4. *Year on Year table showing closing Fixed Assets of Live Stock for A.Y. 2010-11 & 2011-12 which matches with the figures in Balance-sheet - (Pg. 13 of PB)*
5. *Year on Year table showing closing Fixed Assets of Live Stock for A.Y. 2013-14 which matches with the figure in Balance-sheet - (Pg. 12 of PB)*
6. *Ledger Account of Live Stock - Asset a/c showing Opening Balance and additions during the year - (Pg. 22 of PB)*

*Sale of Self-bred live stock is a capital receipt and not taxable:*

*Further, Self-Bred livestock do not have any cost of acquisition and hence the amount received on sale of such live stock is treated as capital receipt and hence exempt. If the provisions contained under sections 45 and 48 are scanned there can be no shadow of doubt that the cost of acquisition being unworkable in the case of this nature, no taxable income would be accrued. In CIT v. B. C. Srinivasa Setty [1981] 128 ITR 294, the apex court has held that section 45 is a charging section and section 48 provides base for computation.*

*If in the facts of a particular case, computation under section 48 is not possible, the charge under section 45 fails because it cannot be effectuated.*

*The same argument is supported by the following judgments:*

1. *Sri Krishna Dairy & Agricultural Farm v. Commissioner of Income-tax [1988] 169 ITR 291 (Andhra Pradesh) (HC)*

*"...because there was no cost of acquisition for the calves in this case, there cannot be a capital gain by their sale as capital asset. The question is, therefore, answered in the negative, in favour of the assessee and against the department. "(Para 4)*

2. *DOT v. Smt. Suniti Singh [2008] 299 ITR 183 (Madhya Pradesh)(HC)*  
*"...In the case at hand, the entire expenses was attributable to the production of milk. The whole intention of the assessee is to produce milk and sell it and not to produce offsprings and sell them. In view of the aforesaid, we are inclined to agree with the view taken in the case of Sri Krishna Dairy and Agricultural Farm v. CIT.(Para 19)*

*In view of the aforesaid premises we are disposed to think that the Tribunal is right in holding that the sale of calves by the assessee cannot be regarded as capital gain since the cost of acquisition is not ascertainable." (Para 20)*

14. Per contra, Id.DR has submitted that livestock cannot be treated as capital asset and it was excluded from the definition of 'plant' by section 43(3) of the Act and that livestock of the assessee has to be treated as part of 'stock in trade' of the assessee. The Id.DR relied on the decisions of Hon'ble Madras High Court in the case of L.G. Balakrishnan Vs. CIT reported in 129 taxmann.com 854 and ACIT Vs. S. Pathy (HUF) reported in 100 ITD 53. The Id.DR further submitted that accounting entries do not override the legal effect of any transaction and further contended that legality of any transaction needs to be established independently. In this regard, the Id.DR relied on the decision of Hon'ble Supreme Court in the case of India Discount Co. Limited reported in 75 ITR 191 and the decision in the case of Kedarnath Jute Mfg. Co. Ltd., reported in 82 ITR 363. In support of its case, the Id.DR has filed a detailed rejoinder / written submissions, which is to the following effect :

*"2 Assessee's A.R. in his written submissions argued that the firm (M/s. Super Dairy Farm) is engaged in dairy business, selling milk and milk products. It purchases and sells buffalos for maintaining/increasing the milk supply. The buffalos, calves and bulls are considered as livestock in the Balance Sheet as part of fixed assets, therefore the profit on sale of buffaloes is taxable under the head 'income from capital gains under section 45 with indexation benefit where the livestock was held more than three years. It is also argued that income from sale of self-bred calves is exempt as there is no cost of acquisition following the decision of High Court of AP in the case of Sri Krishna Dairy Agricultural Farm Vs. CIT 169 ITR 291(AP).*

*3 The A.O in the assessment order held that livestock is not a capital asset and the provisions for working out the capital gains do not apply. There is no provision for indexation of cost of acquisition or cost of*

improvement of live stock in the Act. He also held that income on sale of self-bred (born in the shed of the assessee) calves is not exempt. The AO held that the profit on sale of buffalos has to be assessed as business income and accordingly taxed the profit of Rs.11,71,49,821/- on sale of buffalos, calves and bulls made during the year 2012-13 relevant to A.Y. 2013-14.

4 The Id.CIT(A), did not agree with the A.O and observed that (para 9.3 on page 10) the business of the appellant is to sell milk and the milking buffaloes are the source of its business. The appellant is not an animal breeder or seller of buffaloes, hence income on selling buffaloes is not the main business of the appellant. The CIT(A) agreed with the assessee that the buffaloes are capital assets, and capital gain arise on sale of buffaloes, however indexation is not allowable on the livestock. The CIT(A) pointed out discrepancies / mistakes in the stock register of livestock produced before her and directed the A.O to rework the short term and long term capital gains. Further, following the decision of the A.P High Court in the case of Sri Krishna Dairy and Agricultural Farm Vs. CIT (1987) (35 Taxman 151) (A.P), the CIT(A) allowed the ground of exemption of self breeding live stock. However, as the details of self bred livestock are not available before her, she directed the A.O to verify the number of young calves born and allow the claim. Id. A.R added decision of Madhya Pradesh High Court in the case of DCIT vs Suniti Singh (2008) 299 ITR 183 (MP) to the arguments in the submissions.

#### **Departments' arguments**

5 In this connection, it is submitted that livestock cannot be treated as capital asset as it is excluded from the definition of 'plant' by the section 43(3) of the I.T Act. Livestock of the assessee has to be treated as a part of 'stock in trade' of the assessee, more so when the assessee has purchased 500 buffaloes during the year and sold all the buffaloes purchased at a higher rate making huge profits for the year. Reliance is placed on the following decisions:

- 1) L.G. Balakrishnan Vs. CIT ( 129 Taxman 854) (Mad)
- 2) ACIT Vs. S. Pathy (HUF) [100 ITD 53 ] (Chennai).

Hon'ble High Court of Madras in L.G. Balakrishnan (supra) held that having regard to the amendment of definition of word 'plant' in section 43(3) w.e.f. 1-4-1962 by the Finance Act, 1995, the 'livestock' cannot be regarded as 'capital assets' and therefore, they required to be valued as part of stock in trade of the assessee. Though, the Hon'ble High Court was dealing with the poultry, which is maintained for eggs and chicks, the livestock in section 43(3) of the Act applies to other livestock like buffaloes, horses, goats, camels etc.. Dealing with horses, Hon'ble ITAT Chennai Bench, held that activity of maintenance of horses in a systematic and organised manner over a period of time, though for earning income by letting out and sale of horses, income was business income and horses were to be treated as 'stock in trade'.

6 The AR of the assessee argued that the firm accounts the livestock as part of 'fixed assets' in the Balance Sheet, therefore capital asset. It is submitted in this regard that the accounting entries made by the assessee in the books do not determine the taxability of a transaction. Accounting entries do not over ride the legal effect of any transaction, legality of any transaction needs to be established independently. Reliance is placed on the decision of Hon'ble Supreme Court in India Discount Co. Ltd. (75 ITR 191) (P 195) and on Kedarnath Jute Mfg. Co. Ltd. 82 ITR 363 (P 367).

7 The assessee relied on the decision of A.P High court in the case of Sri Krishna Dairy Agricultural Farm Vs. CIT 169 ITR 291(AP) to argue that the livestock in a capital asset and the self generated livestock has no cost of acquisition therefore, the receipts on sale of self-bred livestock is exempt from tax. The CIT(A) placed reliance on decision of ITAT Mumbai in the case of D. K. Marathe (20 ITD 187). In this connection, it is submitted that the decision in Sri Krishna Dairy (supra) relates to A.Y 1976-77 was delivered on 02.04.1987 and the decision in the case of D. K. Marathe was rendered in 1986, both prior to the amendment to section 43(3) of the Act by the Finance Act, 1995 (W.e.f 1-4-1962), hence not applicable.

8 In view of the above legal position, it is respectfully submitted that the profit arising out of sale of buffalos and calves cannot be taxed under the head "capital gains", but it has to be treated as sale of 'stock in trade' and taxed as business income after reducing the relevant cost of purchase of the buffalos sold during the year. Indexation of cost of purchase does not arise, as the income is taxable under the head income from business on sale of stock in trade.

9 Stock details of buffaloes, calves and bulls for F.Y. 2012-13 has been filed by the AR on page 12 of paper book and also been quoted by the CIT(A) on page 8 and 9 of her order. Fluctuation of cost of buffaloes, incorrectness or improper maintenance of stock register, absence of proof of payment through banking channels for purchase of buffaloes and non-matching of average costs in the calculations presented by the assessee have been highlighted by the CIT(A) in para graphs 9.2 and 9.6.3 of her order, concluding that the gain of Rs. 8,63,58,527/- on sale of in home-bred livestock/ calves is not justified.

10 Observation of the CIT(A) is correct regarding the stock register maintained by the assessee. Sale receipts of livestock credited to the P&L account of AY 2013-14 is Rs.14,29,31,592/-. Out of these receipts, the assessee claimed Rs.8,63,58,527/- as exempt income on sale of self- bred calves born in the shed of the assessee during the course of business. It has to be noted that the assessee has not given any working of Rs.8,63,58,527/- as to how the same was arrived from the sale of self generated livestock during the year.

11 As per the stock details on page 12 of Paper Book, it is clear that 1600 livestock was sold during the year, which included 692 Buffaloes, 413 young calves and 495 bulls. Observations on the stock register are as under.

- (i) Average cost of buffalo in opening stock is Rs.35,407/- (1,45,17,233 /410). Assessee itself gave a value to the buffaloes in the opening stock, therefore, as per the assessee itself, milking buffaloes in opening stock are not self-bred.
- (ii) Generally male-buffalo (bull) have no value r very low sale value, which is can be seen from the fact that the assessee bought/added 20 bulls at zero to the sock during the year. However, as per stock register on page 12, average cost of a bull in opening stock is Rs.23,968 and average cost of a bull in closing stock is Rs.11,984/-.
- (iii) As per stock register, average rate per calf in opening stock is Rs.16,408/- and average calf rate in the closing stock is Rs.16,408/-.

12 Analysis of Stock appearing on page 12 is as under.

		OLD			NEW		
		Milking	Young	Bulls	Milking	Young	Bulls
Opening stock		410	20	20		875	450
Additions	Purchases	500	0	20			
	New Born					225	125
Deletions	Dead					55	20
	Sale from op. stock	192	0	0		413	495
	Sale from purchased	500					
Closing stock	Old	218	20	40			
	New					632	60

From the above table following observations can be drawn.

- a) Out of the opening stock 192 buffalos were sold and 218 are remaining in closing stock, however all the 500 milking buffalos purchased during the year were sold during the year,.
- b) Out of the total 1100 young calves (875 + 225), 55 were dead and 413 were sold, 632 are in closing stock.
- c) There were 20 old bulls valued of 4,79,370 (23,968 per bull) and assessee received 20 bulls for Nil value and the same 40 bulls are available in closing stock valued @ Rs. 4,79,370/- , therefore average cost of bull in closing stock in Rs. 11,984/-.
- d) Calves also have a stock value assigned by the assessee. Twenty young calves appearing in opening stock and the same

remain in the closing stock, the average cost of young calf is Rs. 16,408/-.

e) Average cost of buffalo, young calf and bull as per the stock register is as under:

	Opening Stock	Purchase	Sale	Closing Stock
Milking buffaloes	35,407/-	62,211/-	37,743/-	90,739/-
Young Calf	16,408/-	0	--	16,408/-
Bulls	23,968/-	0	--	11,408/-

f) Based on these details the value realised by the assessee by sale of 1600 livestock can be work out as under:

g)

	Category	sold	Average value in stock register	Sale receipts	Sale rate
Milking Buffaloes sold	From old op. stock	192	35,407	2,03,43,065	105953
	Purchased & sold	500	62,211	3,62,90,000	72,580

Income claimed Exempt

Young Calves	From stock or new born	413	16,408/-	67,76,504/-	
Bulls	From stock or new born	495	11,408/-	1,18,64,160/-	

13 As can be seen from the observations, 192 buffaloes were sold from opening stock (old) which have a value and all the 500 milking buffaloes purchased were also sold during the year, it can be said that all the receipts on sale of 692 buffaloes relate to other than 'self bred' live stock. The sale receipts (Rs.3,62,90,000 + Rs.2,03,43,065) total up to Rs.5,66,33065/-. The average sale price is Rs.81,840/-. It is seen that the assessee purchased a milking buffalo at Rs.62,211/- and sold at Rs.81,840/-. Therefore, the assessee's main business for the year is buying and selling the livestock.

14 Coming to young calves and bulls sold during the year, mal buffaloes/ bulls do not have any value or very low rate in the market, as can be seen from the purchase 20 bulls at '0' cost by the assessee during the year and Rs.11,984/- per bull shown in the closing stock. Therefore, even after taking the value of Rs.11,984/-, the probable sale receipts on sale of bulls works out to Rs.59,32,080/- and if Rs.23,968 is taken, it works out to Rs.1,18,64,160/-.

15 Young calves are valued at Rs.16,408 in the opening stock and closing stock. A young calf cannot have a higher value than a milking buffalo. If Rs.16,408 is taken as sale value of calf, the sale receipts works out to Rs.67,76,504/- and if Rs.32,816/- (double rate) is taken, the receipts for 413 calves works out to Rs.1,35,53,008/-. By no stretch of imagination 413 young calves and 495 bulls can fetch receipts of Rs.8,63,58,527/-. Therefore, the alleged amount of Rs.8,63,58,527/- claimed as exempt is a manipulated figure to get undue benefit.

16 Further, the argument of the assessee that the self-generated live stock does not have any cost is incorrect. In the case of V. Ramaswamy Mudaliar 196 ITR 939 (Mad), Hon'ble High Court of Madras examined such claim and did not agree with such argument. Dealing with a case where a mare was kept in stud farm to enable bring forth colt and fillies, Court held that though the expenditure was incurred apparently on mare, it was really incurred for the purpose of nurturing protecting and preserving the foetus in good shape and health to get healthy offspring. The expenditure incurred by the assessee was regarded as legitimately incurred for acquisition of the colt and filly and the expenditure incurred could be regarded as cost of acquisition of colt and filly. Drawing similarity, the expenditure incurred on feed, medicines and maintenance can be partly attributed to the cost of acquisition of the calves and young bulls and part of the expenditure for production of milk.

17 The A.R relied on the decision of Smt. Suniti Singh 299 ITR 183 (Madhya Pradesh). In that case referred by the A.R., main income of the assessee was from milk and sale of calves was very small. In the instant case, perusal of the P & L a/c for the year F.Y. 2012-13 shows that the sale receipts of milk were only Rs.6,03,75,281/- and sale receipts of live stock was Rs.14,29,91,592/-. Further, the assessee sold 192 buffaloes which were purchased in earlier years and sold all the 500 buffaloes purchased during the year, indicating the sale of buffaloes was the main business of the assessee during the year. Therefore, it is submitted that the decision of Smt. Suniti Singh (supra) cannot be applied to the facts of the present case."

15. We have heard the rival contentions and perused the material available on record. The Assessing Officer while deciding the issue has held that livestock is not a capital asset. Further, it was held by the Assessing Officer that the long term capital gain on sale of self breded livestock is not covered by the provision of section 10 of the Act and therefore, the assessee is not entitled to claim any exemption of this in the income of the assessee. The Assessing Officer further held that the assessee is

not entitled to indexation cost on the livestock. Therefore, Assessing Officer has held that the profit arising on sale of livestock is to be assessed as business income under profit on sale of assets. The Id.CIT(A) had decided that the livestock is a capital asset and had further, held in fact that the assessee is not animal breeder and therefore, the income from selling / breeding of buffaloes cannot be said be the main business of the assessee.

16. The core issue which is required to be adjudicated is whether the livestock is a capital asset or not. In this regard, the submission of the Id.AR are based on the decision rendered by the jurisdictional High Court in the case of Sri Krishna Dairy and Agricultural Farm Vs. CIT reported in (1988) 169 ITR 291 (Andhra Pradesh High Court) and also on the decision of Hon'ble Madhya Pradesh High Court in the case of DCIT vs Suniti Singh (2008) 299 ITR 183 (MP). Per contra, Id.DR relied upon the decision in the case of L.G. Balakrishnan Vs. CIT reported in 129 taxmann.com 854 and ACIT Vs. S. Pathy (HUF) reported in 100 ITD.

16.1. Before we examine the applicability of respective judgments cited before us, it is essential to look into the statutory scheme mentioned in Section 43(3) of the Income Tax Act, which is to the following effect :

*"43. Definitions of certain terms relevant to income from profits and gains of business or profession.*

*- In sections 28 to 41 and in this section, unless the context otherwise re quires -*

*(1) "actual cost" -----*

(2) "paid" means -----

(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes **or livestock** [or buildings or furniture and fittings] [ Inserted by Act 32 of 2003, Section 20 (w.e.f. 1.4.2004).];

17. From the reading of section 43(3), it is abundantly clear that the livestock's have been specifically excluded from the definition of plant. Section 43 provides the definition of certain terms relevant to determine the income from profit and gain of business / profession. Once the livestock has been excluded from the definition of 'plant', there is no question of considering the same for the purposes of considering it to be 'block of asset'. The logical conclusion of excluding the livestock from the definition of the 'plant' would be that the livestock is required to be treated as stock-in-trade.

18. The argument of the learned counsel for the assessee taken in the written submission is that the livestock is a capital asset and therefore, as per section 48, Explanation clause (3) shall apply. He had also relied upon the definition of 'capital asset' given in section 2(14) of the Act. In our view, the argument of the assessee is of no use as the Act had specifically excluded the livestock from the definition of the 'plant' and is therefore, required to be treated as stock-in-trade. Further, the law is fairly settled when the general provisions shall not be applicable in case the subject matter is covered by the specific provision. In the present case, the specific provision namely section 43(3) excludes the 'livestock' from the definition of 'plant', therefore, this specific provision shall override the general provision as mentioned in

Section 2(14) of the Act. Moreover, as mentioned hereinabove, the terms defined under section 43 are required to be understood for the purposes of computing the profit and gain of business or profession. In view of the above, the submission of the assessee that the assessee is entitled to indexation on the livestock is without any basis.

19. The reliance of the assessee on the decisions of Sri Krishna Dairy and Agricultural Farm (supra) and also on the decision of Hon'ble Madhya Pradesh High Court in the case of Suniti Singh (supra) are of no use to the assessee as much water has flown after passing of the judgments by amending Section 43(3) of the Act by the Finance Act, 1995 whereby the livestock has been taken out from the definition of 'plant'. Therefore, the judgments for A.Y. 1976-77 and 1991-92 relied upon by assessee are not applicable to the facts of the present appeal as the assessment year for the year under consideration is 2013-14.

20. The assessee in its books of accounts had mentioned under the head 'Assets' the livestock also and estimated the value at Rs.2,05,88,778.56. In our view, mere accounting entries in the books of accounts of the assessee do not correctly determine the nature of the asset. The nature of 'assets' whether it is fixed asset like plant and machinery or stock-in-trade is required to be determined on the basis of the correct nature of the asset. Based on the correct nature of the asset, the taxability of the transaction is required to be determined. In the present case, the nature of the asset namely, 'livestock' is not a fixed asset as mentioned hereinabove as it is so defined by the Income Tax Act and therefore,

the finding of the Id.CIT(A) holding it to be a capital asset is contrary to law.

21. As we have held that livestock is not a capital asset, the next argument decided by the Id.CIT(A) at para 9.62 of his order that the buffalo calves born in the shed has zero cost of acquisition. In our view, as we have decided that livestock is not a capital asset and therefore, there is no purpose to discuss whether what will be the cost of acquisition of newly born buffalo calves. In our view, the above said decisions relied upon by the assessee are not applicable to the facts of the present case. As mentioned hereinabove, the normal business principles as applicable for the purpose of determining the profit and loss of the business are required to be applied even for the purposes of computing the profit on sale of newly born buffalo calves and thereafter, the income earned used to be taxed as 'business income'.

22. Having held that livestock is not a capital asset and is only a stock-in-trade, the logical fallout of the above conclusion is that the income of the assessee is required to be determined by applying the principle as applicable for determining the profit and loss of the business and is to be taxed as business income. Further Assessee is not entitled to indexation on the cost of purchase of the livestock, as there is no provision for grant of indexation of the livestock, being not a capital asset. Therefore, we reverse the finding of the Id.CIT(A) whereby he had wrongly held that livestock is a capital asset, and the income of the assessee is to be determined on the basis of treating the livestock as capital asset and not as stock in trade.

23. In view of the above said discussion, we allow the ground No. 2 and 3 of the revenue appeal and the ground no. 6 to 8 of the assessee's appeal for A.Y. 2013-14 are dismissed.

**Ground no.5(a) of assessee's appeal for A.Y. 2013-14**

24. With respect to ground no.5(1) assessee has submitted that it has an amount of Rs.2,58,41,771/- being purchase of livestock charged to Profit and Loss Account and that the same was added back in computation of total income.

25. In this regard, the ld.AR had drawn our attention to page 8 of the computation of income and has submitted that since it has already been added back in the computation of income, therefore, it should not be charged to the profit and loss account.

26. The ld.DR has submitted that this issue is required to be verified by the Assessing Officer.

27. We have heard the rival contentions of the parties and perused the material available on record. Since the contention of the assessee is that the income has already been taken into account while computing the income of the assessee in the computation, therefore, it cannot be charged again in the profit and loss account, on the face of it, is required to be accepted. However, in view of the finding given hereinabove that livestock is not a capital asset and the sale of it is required to be computed as business income, therefore, we deem it appropriate to remand this issue to the file of Assessing Officer to verify the contention of the assessee and decide the issue afresh in the light of our finding

given hereinabove. Thus, ground no.5(a) is allowed for statistical purposes.

**Ground no 5(b) of the assessee's appeal for A.Y. 2013-14.**

28. As we have decided that the livestock is not a capital asset, therefore the expenditure incurred by the assessee towards feeding and maintenance of the livestock cannot be held to be capital in nature and therefore, the Ld. CIT(A) has erred in concluding that the expenditure incurred for feeding and maintenance was also capital in nature. In fact, the expenditure incurred by the assessee for maintaining and feeding the livestock is required to be treated as a revenue expenditure and accordingly we reverse the order passed by the Ld. CIT(A) to that extent. In view, thereof, we allow the ground 5(b) of the assessee appeal.

29. With respect to the short-term capital gains declared by the assessee, in the present case, the ld.CIT(A) as well as the CIT-DR had pointed out various discrepancies in maintaining the stock register which are reproduced hereinabove and also in the appellate order. We have already held that the sale and purchase of livestock is a business activity and is not subjected to determination of capital gain or loss under the head income from "Capita Gain". Therefore, the gain arising out of the sale of livestock during the year under consideration is required to be treated as business income only and, accordingly, is required to be taxed.

30. In the combined result, assessee's appeal for A.Y.2012-13 is allowed for statistical purposes, assessee's appeal for A.Y. 2013-14 is partly allowed for statistical purposes and Revenue's appeal for A.Y. 2013-14 is allowed.

Order pronounced in the Open Court on 28<sup>th</sup> February, 2024.

<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE PRESIDENT</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 28<sup>th</sup> February, 2024.

**TYNM/sps**

Copy to:

S.No	Addresses
1	M/s. Super Dairy Farm, Hyderabad, C/o. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad – 500 003.
2	The Assistant Commissioner of Income Tax, Circle – 4(1), Hyderabad.
3	PCIT-1, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*