

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO. 1837/MUM/2023 : A.Y : 2014-15**

Alka Dilip Doshi  
20, 4<sup>th</sup> Floor, Hanuman Sharan,  
Nr. Parsi Hospital, Kemps Corner,  
Mumbai 400 036.  
**PAN : AJIPD6974F** (Appellant)

Vs. ITO – 19(1)(1), Mumbai.  
(Respondent)

**Appellant by : Shri Dharmesh Shah &  
Ms. Mitali Gopani  
Respondent by : Shri Manoj Kumar Sinha**

**Date of Hearing : 20/02/2024  
Date of Pronouncement : 28/02/2024**

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 24-03-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of the Ld CIT(A) in confirming the addition of Rs.1.96 crores made by the Assessing Officer under section 68 of the I.T. Act, being sale proceeds of shares of alleged penny stock company and also addition of Rs.3.92 lakhs made u/s 69C of the Act towards estimated expenses incurred in procuring bogus long term capital gains.

2. The facts relating to the above said issue are discussed in brief. The assessee filed her original return of income declaring NIL income and the same was processed u/s 143(1) of the Act. Subsequently, the AO received

information from the Investigation wing of Kolkatta that certain brokers are involved in manipulating the prices of small companies (called “penny stock”) in order to generate bogus capital gains/losses. It was also informed that the assessee has sold one of the penny stocks named “Sunrise Asian Ltd” for a consideration of Rs.1,96,77,276/- and declared Long term capital gain of Rs.1,88,08,631/-, which was claimed as exempt u/s 10(38) of the Act. Based on the information so given by the Investigation wing, the AO took the view that the long term capital gains declared by the assessee is not genuine one and accordingly reopened the assessment by issuing notice u/s 148 of the Act.

3. It was noticed that the assessee had purchased 40000 shares of Sunrise Asian Ltd for a consideration of Rs.8.00 lakhs on 28.11.2011. She sold all the shares from 03-12-2013 to 06-01-2014 for an aggregate value of Rs.1,96,08,631/-. Since the shares were held for more than one year, the assessee claimed the capital gain of Rs.1,88,08,631/- as exempt u/s 10(38) of the Act. The assessing officer extensively relied upon the report given by the investigation wing. He observed that the financial results of the company do not justify steep rise in the prices shares of above said company. He also noticed that the above said company was declaring very low income. He also noticed that the trading in the above said scrip was suspended in financial year 2010-11 and the suspension was revoked from 16<sup>th</sup> August, 2011. He noticed that the prices of shares have started increasing abnormally thereafter. The AO also referred to the price movement charts prepared by the Investigation wing, wherein it was observed that the price movements in the form of ups and downs has happened in batches, which was considered as manipulation of price movements. The AO also noticed that the shares sold in the case of Sunrise Asian Ltd has been purchased by 22 entities only, who were identified as “Exit Providers” and these exit providers have also facilitated manipulation in the prices of shares. One of the Exit providers named M/s Comfort Securities Ltd had confirmed before the investigation wing that it is involved in providing accommodation entries in various companies, which included Shares of Sunrise Asian Ltd.

4. Based on the above said information, the AO sought explanations from the assessee. In response thereto, the assessee furnished all evidences in support of purchase and sale of shares of Sunrise Asian Ltd. The AO also issued summons u/s 131 of the Act to the assessee and recorded a statement from her. Even though the AO did not find any adverse thing in the statement recorded from the assessee, yet he took adverse view for the reasons that the assessee has not identified any advisor in the share market; that the assessee was not able to show any knowledge of penny stock company, its financial position or on the activities carried on by the company. Accordingly, the AO took the view that the purchase and sale of shares undertaken by the assessee are not genuine and accordingly held that the assessee has camouflaged her true income under the garb of exemption claimed u/s 10(38) of the Act.

5. During the course of assessment proceedings, the assessee also asked for cross examination of the person, on whose statement the AO sought to place reliance. However, the AO denied the same by observing that the statements were recorded by the Investigation wing at Kolkatta, which is 1200 Kms away from Mumbai. The AO also placed his reliance on the decision rendered by the Tribunal in the case of Golden Tobacco Ltd (65 ITD 380), wherein it was observed that the right of cross examination is not an invariable attribute of the requirement of dictum. The AO further held that the long term capital gain generated by the assessee is beyond the preponderance of human probabilities and a colourable device adopted by the assessee to show artificial income. In this regard, the AO placed his reliance on the decisions rendered by Hon'ble Supreme Court in the cases of CIT vs. Durga Prasad More (82 ITR 540), Sumati Dayal (214 ITR 801) and McDowell and Co Ltd vs. CTO (154 ITR 148).

6. Accordingly, the AO rejected the claim for exemption u/s 10(38) of the Act and assessed the entire sale consideration of Rs.1,96,08,631/- as unexplained cash credit u/s 68 of the Act. The AO also took the view that the assessee should have incurred expenses in procuring the bogus long term

capital gains. The AO estimated the same at 2% of the sale consideration, which worked to Rs.3,92,172/-. Accordingly, the AO assessed the above said amount as unexplained commission expenditure u/s 69C of the Act.

7. The Ld CIT(A) confirmed both the additions and hence the assessee has filed this appeal.

8. The Ld A.R submitted that the AO has placed his reliance entirely on the generalised report given by the investigation wing. He submitted that the AO did not find fault with any of the documents furnished by the assessee to prove the genuineness of purchases. He submitted that the AO has referred to an alleged exit provider, i.e., a broker named M/s Comfort securities Ltd. According to the AO, the above said company has confessed that it has facilitated price manipulation acting as exit provider. However, the fact would remain that the assessee has not dealt with the above said broker. He submitted that the assessee has sold the shares of M/s Sunrise Asian Ltd through a broker named M/s S.W capital. He further submitted that neither the assessee nor the above said broker has been subjected to any enquiry by SEBI.

9. He submitted that the shares of M/s Conart Traders Ltd were initially purchased by the assessee from a company named M/s Santoshima Trade links Ltd. Subsequently both M/s Conart Traders Ltd and M/s Santoshima Trade links Ltd were merged with M/s Sunrise Asian Ltd as per the order passed by Hon'ble Bombay High Court. Consequent to the merger scheme, the assessee was allotted shares in M/s Sunrise Asian Ltd and they were dematerialised and later sold in the stock exchange. He submitted that the consideration for purchase and sales were paid/received through banking channels. He submitted that the assessing officer did not find any defect in any of the documents furnished by the assessee to prove the genuineness of purchase and sales. Accordingly, the ld A.R contended that there is no reason to suspect the genuineness of purchase and sale of shares merely on the basis of a generalised report given by the investigation wing. The ld A.R

further submitted that the assessee had sought for cross examination of the person on whose statement the AO had placed reliance. However, the AO has denied the opportunity of cross examination by placing reliance on a case law. Thus, there is violation of principles of natural justice also in making the impugned additions. The ld A.R relied upon various decisions to support his contentions.

10. The Ld D.R submitted that the assessee has purchased shares on preferential basis. He submitted that, under preferential basis, the shares are allotted only to known persons. However, the assessee has stated in the Statement that she was not aware of any of the directors of M/s Sunrise Asian Ltd. Further, the assessee herein is not a regular investor in shares. The impugned transactions of purchase and sale were solitary transactions. He submitted that the AO has proved that the financials of M/s Sunrise Asian Ltd do not justify the market price of shares. He submitted that the Balance sheet and Profit and Loss account details have been extracted by the AO in the assessment order. He submitted that the perusal of Profit and Loss account would show that the above said company did not incur any expenditure on various heads like power and fuel, manufacturing expenses, selling & administration expenses. These aspects would prove that M/s Sunrise Asian Ltd was only having paper transactions. He further submitted that the assessee did not have knowledge of share transactions as evidenced from the replies given by her in the statement taken from her. The Ld D.R further placed his reliance on the decision rendered by the co-ordinate bench in the case of Smt. Asha Rajendra Gupta vs. ACIT (ITA No.7712/Mum/2019 dated 13-04-2023), wherein the ITAT had confirmed similar type of addition made by the AO.

11. In the rejoinder, the Ld A.R submitted that the assessee did not get the shares of M/s Sunrise Asian Ltd in preferential allotment, as submitted by Ld D.R. He submitted that the assessee has bought the shares of M/s Conart Traders Ltd from an existing shareholder. Later M/s Conart Traders Ltd was merged with M/s Sunrise Asian Ltd and accordingly shares were allotted to

the assessee in the above said amalgamated company. He submitted that M/s Sunrise Asian Ltd was already a listed company prior to amalgamation. He further submitted that it is wrong to say that the financial strength of M/s Sunrise Asian Ltd was weak. He submitted that the turnover of above said company has increased from 0.63 crores in FY 2010-11 to Rs.169.89 crores in FY 2014-15. When there is increase in turnover, the prices of shares is bound to increase. With regard to the reliance placed by Ld D.R on the decision rendered by the Tribunal in the case of Smt Asha Rajendra Gupta (supra), he submitted that the decision has been rendered in that case on the basis of facts prevailing therein.

12. We heard rival contentions and perused the record. We notice that the assessing officer has primarily placed reliance on the report given by the Investigation wing of the Income tax department, Kolkatta in order to arrive at the conclusion that the long term capital gains reported by the assessee is bogus in nature. We notice that the investigation report prepared by Investigation wing, Kolkatta is a generalized report with regard to the modus operandi adopted in manipulation of prices of certain shares and generation of bogus capital gains. We notice that the AO has placed reliance on the said report without bringing any material on record to show that the transactions entered by the assessee were found to be a part of manipulated transactions, i.e., it was not proved that the assessee has carried out the transactions of purchase and sale of shares in connivance with the people who were involved in the alleged rigging of prices. The Ld A.R also submitted that the regulator of stock market SEBI has not conducted any enquiry against the assessee or its broker.

13. In the statement recorded from the assessee, she has stated that she was guided by her husband in making the investment. Further, she has also stated that she has also invested in shares of another company named M/s Jackson Investments Ltd and has also subscribed to IPOs in some of the companies. Hence it cannot be said that the assessee was completely unaware of share market transactions. We also notice that the assessee has

- (a) purchased these shares by paying consideration through banking channels.
- (b) shares of M/s Sunrise Asian Ltd were allotted to the assessee in a scheme of amalgamation approved by Hon'ble High Court of Bombay.
- (c) dematerialized the shares and kept the same in the Demat account.
- (d) sold the shares through stock exchange platform
- (e) received the sale consideration through banking channels.

Further, the shares have entered and exited the demat account of the assessee. We notice that the AO himself has not found any defect/deficiencies in the evidences furnished by the assessee with regard to purchase and sale of shares. Further, the AO has not brought on record any material to show that the assessee was part of the group which involved in the manipulation of prices of shares. Hence, there is no reason to suspect the purchase and sale of shares undertaken by the assessee.

14. Before us, the Ld A.R placed his reliance on the decision rendered by the Ahmedabad bench of Tribunal in the case of M/s Iceworth Reality LLP (ITA Nos. 565 & 566/Ahd/2020 dated 13-03-2023. He submitted that above said assessee M/s Iceworth Reality LLP was holding about 8.67% shares of M/s Sunrise Asian Ltd and the shares sold by above said assessee was also disbelieved. However, the Ahmedabad bench of ITAT has held that the investment made by the above said assessee in M/s Sunrise Asian Ltd cannot be doubted and it was further observed that the finding given by the AO was baseless. Further, the Ahmedabad bench has relied upon following case laws to support its conclusions:-

- (a) PCIT vs. Muktaben Nishantbhai Patel (R/Tax Appeal No.294 of 2021 dated 12-04-2022)(Guj)
- (b) PCIT vs. Parasben Kasturchand Kochar (R/Tax Appeal No.204 of 2020 dated 17-09-2020)(Guj)
- (c) DCIT vs. Shri Dilip B Jiwrajka (ITA No.2349/Mum/2021)

(d) ITO vs. Devyani Dharmendra Shah (ITA No.576/Ahd/2020 dated 15.06.2022)

Further, the co-ordinate bench has referred to the decision rendered by Hon'ble Supreme Court in the case of Omar Salav Mohamed Sait (1989) (37 ITR 151)(SC), wherein it was held that no addition can be made on the basis of surmises, suspicion and conjectures. It also referred to the decision of Hon'ble Apex court rendered in the case of Daulat Ram Rawatmull (87 ITR 349) (SC), wherein it was held that the onus to prove that the apparent is not real is on the party who claims it to be so. Accordingly, identical addition made by the AO on identical reasoning has been deleted.

15. The Ld A.R also referred to the decision rendered by Jaipur bench of Tribunal in the case of Ashok Agarwal, Ritu Agarwal & others vs. ACIT (ITA No.124/JP/2020 & others dated 18.11.2020) and submitted that an identical addition made by the AO in the above said was deleted by the Tribunal. He submitted that above said decision was upheld by Hon'ble Rajasthan High Court in the very same case reported as PCIT vs. Ritu Agarwal Shreeram Bhawan (2023)(453 ITR 520)(Raj).

16. In our view, above said decision support the case of the assessee. We may also refer to the some of the decisions rendered by Hon'ble jurisdictional Bombay High Court. In the case of Shyam Pawar (54 taxmann.com 108) (Bom), the Hon'ble Bombay High Court has observed as under:-

**“3.** Mr.Suresh kumar seriously complained that such finding rendered concurrently should not have been interfered with by the Tribunal. In further Appeal, the Tribunal proceeded not by analyzing this material and concluding that findings of fact concurrently rendered by the Assessing Officer and the Commissioner are perverse. The Tribunal proceeded on the footing that onus was on the Department to nail the Assessee through a proper evidence and that there was some cash transaction through these suspected brokers, on whom there was an investigation conducted by the Department. Once the onus on the Department was discharged, according to Mr.Suresh kumr, by the Revenue-Department, then, such a finding by the Tribunal raises a substantial question of law. The Appeal, therefore, be admitted.

4. Mr.Gopal, learned Counsel appearing on behalf of the Assessee in each of these Appeals, invites our attention to the finding of the Tribunal. He submits that if this was nothing but an accommodation of cash or conversion of unaccounted money into accounted one, then, the evidence should have been complete. Change of circumstances ought to have, after the result of the investigation, connected the Assessee in some way or either with these brokers and the persons floating the two companies. It is only, after the Assessee who is supposed to dealing in shares and producing all the details including the DMAT account, the Exchange at Calcutta confirming the transaction, that the Appeal of the Assessee has been rightly allowed. The Tribunal has not merely interfered with the concurrent orders because another view was possible. It interfered because it was required to interfere with them as the Commissioner and the Assessing Officer failed to note some relevant and germane material. In these circumstances, he submits that the Appeals do not raise any substantial question of law and deserve to be dismissed.

5. We have perused the concurrent findings and on which heavy reliance is placed by Mr.Suresh kumar. While it is true that the Commissioner extensively referred to the correspondence and the contents of the report of the Investigation carried out in paras 20, 20.1, 20.2 and 21 of his order, **what was important and vital for the purpose of the present case was whether the transactions in shares were genuine or sham and bogus. If the purchase and sale of shares are reflected in the Assessee's DMAT account, yet they are termed as arranged transactions and projected to be real, then, such conclusion which has been reached by the Commissioner and the Assessing Officer required a deeper scrutiny.** It was also revealed during the course of inquiry by the Assessing Officer that the Calcutta Stock Exchange records showed that the shares were purchased for code numbers S003 and R121 of Sagar Trade Pvt Ltd. and Rockey Marketing Pvt. Ltd. respectively. Out of these two, only Rockey Marketing Pvt.Ltd. is listed in the appraisal report and it is stated to be involved in the modus-operandi. It is on this material that he holds that the transactions in sale and purchase of shares are doubtful and not genuine. *In relation to Assessee's role in all this, all that the Commissioner observed is that the Assessee transacted through brokers at Calcutta, which itself raises doubt about the genuineness of the transactions and the financial result and performance of the Company was not such as would justify the increase in the share prices. Therefore, he reached the conclusion that certain operators and brokers devised the scheme to convert the unaccounted money of the Assessee to the accounted income and the present Assessee utilized the scheme.*

6. It is in that regard that we find that Mr.Gopal's contentions are well founded. **The Tribunal concluded that there was something more which was required, which would connect the present Assessee to the transactions and which are attributed to the Promoters/Directors of the two companies.** The Tribunal referred to the entire material and found that the investigation stopped at a particular point and was not carried

forward by the Revenue. There are 1,30,000 shares of Bolton Properties Ltd. purchased by the Assessee during the month of January 2003 and he continued to hold them till 31 March 2003. The present case related to 20,000 shares of Mantra Online Ltd for the total consideration of Rs.25,93,150/-. These shares were sold and how they were sold, on what dates and for what consideration and the sums received by cheques have been referred extensively by the Tribunal in para 10. A copy of the DMAT account, placed at pages 36 & 37 of the Appeal Paper Book before the Tribunal showed the credit of share transaction. The contract notes in Form-A with two brokers were available and which gave details of the transactions. The contract note is a system generated and prescribed by the Stock Exchange. From this material, in para 11 the Tribunal concluded that this was not mere accommodation of cash and enabling it to be converted into accounted or regular payment. The discrepancy pointed out by the Calcutta Stock Exchange regarding client Code has been referred to. But the Tribunal concluded that itself, is not enough to prove that the transactions in the impugned shares were bogus/sham. The details received from Stock Exchange have been relied upon and for the purposes of faulting the Revenue in failing to discharge the basic onus. If the Tribunal proceeds on this line and concluded that inquiry was not carried forward and with a view to discharge the initial or basic onus, then such conclusion of the Tribunal cannot be termed as perverse. The conclusions as recorded in para 12 of the Tribunal's order are not vitiated by any error of law apparent on the face of the record either.

**7.** As a result of the above discussion, we do not find any substance in the contention of Mr.Suresh kumar that the Tribunal misdirected itself and in law. We hold that the Appeals do not raise any substantial question of law. They are accordingly dismissed. There would no order as to costs.

**8.** Even the additional question cannot be said to be substantial question of law, because it arises in the context of same transactions, dealings, same investigation and same charge or allegation of accommodation of unaccounted money being converted into accounted or regular as such. The relevant details pertaining to the shares were already on record. This question is also a fall out of the issue or question dealt with by the Tribunal and pertaining to the addition of Rs.25,93,150/-. Barring the figure of loss that is stated to have been taken, no distinguishable feature can be or could be placed on record. For the same reasons, even this additional question cannot be termed as substantial question of law.”

17. In the case of PCIT vs. Ziauddin A Siddique (Income tax Appeal No. 2012 of 2017 dated 4<sup>th</sup> March, 2022), the Hon’ble Bombay High Court has observed as under:-

“2. We have considered the impugned order with the assistance of learned counsels and we have no reason to interfere. There is a finding of fact by

the Tribunal that the transaction of purchase and sale of shares of the alleged penny stock of shares of Ramkrishna Fincap Ltd (“RFL”) is done through stock exchange and through the registered Stock Brokers. The payments have been made through banking channels and even Security Transaction Tax (“STT”) has also been paid. The Assessing Officer also has not criticized the documentation involving the sale and purchase of shares. The Tribunal has also come to a finding that there is no allegation against the assessee that it has participated in any price rigging in the market on the shares of RFL.

3. Therefore we find nothing perverse in the order of the Tribunal.

4. Mr. Walve placed reliance on a judgement of the Apex Court in Principal Commissioner of Income tax (Central)-1 vs. NRA Iron & Steel (P) Ltd (2019)(103 taxmann.com 48)(SC) but that does not help the revenue in as much as the facts in that case were entirely different.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

18. Further, in the case of CIT vs. Jamnadevi Agarwal (20 taxmann.com 529 (Bom), the Hon’ble Bombay High Court has held that the transactions of purchase and sale of shares cannot be considered to be bogus, when the documentary evidences furnished by the assessee establish genuineness of the claim. In the case of PCIT vs. Indravadan Jain (HUF) (ITA No. 454 of 2018) (Bom), the broker through whom, the assessee had carried out the transactions have been alleged to have been indulged in price manipulations and the SEBI had also passed an order regarding irregularities and synchronized trades carried out in the shares by the said broker. However, the evidences furnished by the assessee with regard to purchase and sale of shares were not doubted. Under these set of facts, the Hon’ble Bombay High Court held as under:-

“...The CIT(A) came to the conclusion that respondent bought 3000 shares of RFL, on the floor of Kolkatta Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent’s bank account has been debited. The shares were also transferred into respondent’s Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkatta Stock Exchange.

Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instruction slips and also received payment from Kolkatta Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT(A) found there was no reason to add the capital gains as unexplained cash credit under section 68 of the Act. The Tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal.”

19. The Ld D.R has placed reliance on the decision rendered by the co-ordinate bench in the case of Smt Asha Rajendra Gupta (supra), wherein the Tribunal had confirmed the additions relating to long term capital gains arising on sale of penny stock. We have gone through the said order passed by the Tribunal. First of all, we notice that none of the binding decisions rendered by Hon'ble jurisdictional Bombay High Court has been referred to by the Tribunal. Secondly, it has been mentioned clearly that the decision has been rendered on the basis of facts prevailing in that case. There cannot be any dispute that the question as to whether the capital gain declared by the assessee is genuine or not has to be decided on the basis of facts prevailing in each case. Accordingly, we are of the view that the decision rendered in the above said case cannot be taken support of by the revenue.

20. Accordingly, in the facts and circumstances of the case, we are of the view that the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the cases cited above shall apply to the present case, since the AO has not established that the assessee was involved in price rigging and further the AO did not find fault with any of the documents furnished by the assessee.

21. We noticed earlier that the AO has assessed the Sale consideration of shares as unexplained cash credit u/s 68 of the Act. It is pertinent to note that the purchase of shares made in an earlier year has been accepted by the revenue. The sale of shares has taken place in the online platform of the

Stock exchange and the sale consideration has been received through the stock broker in banking channels. Hence, in the facts of the case, the sale consideration cannot be considered to be unexplained cash credit in terms of sec. 68 of the Act.

22. Since we have held that the sale transactions of shares cannot be doubted with, the addition made by the AO with regard to estimated commission expenses is also liable to be deleted.

23. In view of the foregoing discussions, we hold that the sale consideration received on sale of shares cannot be assessed as unexplained cash credit u/s 68 of the Act and the long term capital gains declared by the assessee cannot be doubted with. Hence the addition relating to estimated commission expenses is also liable to be deleted. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned additions made by him.

24. The assessee has also raised a ground challenging the validity of reopening of assessment. Since we have decided the grounds urged on merits in favour of the assessee, this legal issue shall become academic in nature. Hence we leave the same open.

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

Order pronounced in the open court on 28<sup>th</sup> February, 2024.

Sd/-  
(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, Date : 28<sup>th</sup> February, 2024

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai