

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER  
&  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 3510/MUM/2023  
(Assessment Year : 2009-10)**

Income Tax Officer- 19(2)(2) 503, Piramal Chambers, Lalbaug, Parel Mumbai-400012	Vs.	Mr. Mukesh Hirachand Sanghvi. 105/106, Gagan giri Tower, 25/29, Dr. Deshmukh Lane, V. P. Road, Mumbai-400004.
<b>PAN/GIR No. AAGPS1251H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Prakash Pandit (Adv.)
Revenue by	Smt. Mahita Nair (Sr.DR.)
<b>Date of Hearing</b>	<b>08/05/2024</b>
<b>Date of Pronouncement</b>	<b>11/06/2024</b>

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. This appeal has been preferred against the impugned order dated 09.08.2023 passed in appeal no. CIT(A)Mumbai-30/12833/2015-16 by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the

Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2009-10, wherein learned CIT(A) has reduced the addition to 5% of the total bogus purchase of Rs. 5,76,30,455/- as against the addition of 100% and deleted the addition of Rs. 13,08,000/- as interest u/s. 36(1)(iii) of the Act made by AO vide assessment order dated 30.03.2015.

2. The brief facts related to the appeal state that the respondent/assessee is an individual and proprietor of M/s. Raymond Tubes dealing in Ferrous and Non Ferrous Metals. The Assessee filed the return of income for A.Y. 2009-10 on 19.02.2010, declaring total income of Rs. 11,82,684/-. The assessment was completed u/s. 143(3) of the Act, assessing total income of Rs. 11,94,100/-. In exercise of revisional power u/s. 263 of the Act, Commissioner Of Income Tax-15, set aside assessment order passed u/s. 143(3) and directed the Assessing Officer to pass assessment order afresh after verification of facts of genuineness of purchases. Assessee's representative Shri Shubhash Trivedi, CA, participated, in the fresh assessment proceedings. Assessing Officer found that the assessee derived income from business and received purchases from the 25 entities tabulated as under:

Sr.No	Name of the Hawala Parties	Bill Amount
1.	Manibhadra Trading Co.	8,87,072
2.	Nisha Enterprises	9,06,256
3.	Chirag Corporation	9,82,096
4.	Monar Impex	13,85,004
5.	Naman Enterprises	52,71,089
6.	Mahavir Corporatrion	41,74,474
7.	Coral trading Co.	12,37,498
8.	Shriti Enterprises	10,94,097

9.	P m Steel Alloys	76,24,888
10.	Subham metal corpn.	12,52,790
11.	Champion steel (India)	53,49,993
12.	Prakash steel(India)	81,19,388
13.	Aryen sales corpn.	10,96,836
14.	Murphy metal P Ltd.	40,97,707
15.	R K metal	5,60,044
16.	Raj star metal inds.	5,97,657
17.	Shree Yamuna impex	29,36,994
18.	Rishab metal (India)	26,53,570
19.	Manshi Traders	2,18,165
20.	Maruti steel Traders	4,87,148
21.	Great International	70,496
22.	Trishla Tradewings	4,46,410
23.	Drusti overseas	9,07,527
24.	Shree Ganesh steel	17,02,981
25.	Paras Enterprises	21,20,653
	Total	5,76,30,455

- 2.1 It was further found by the Assessing Officer that the aforesaid entities were declared as non genuine entities as per the information provided by the Maharashtra Sales Tax Department. These entities were indulged in issuing all the bogus sales/purchases through hawala bills/accommodation entries without supplying any goods. Assessing Officer found that income to the tune of Rs. 5,76,30,455/- had escaped assessment within the meaning of section 147 of the Act. Notice u/s. 148 of the Act was issued and served upon the assessee. Assessee responded and prayed before Assessing Officer to treat the original return of income as response to the notice u/s. 148 of the Act. Further details were also submitted by the representative of the assessee. The genuineness of the aforesaid entities could not be established as none of the representatives of these entities responded to

notice u/s. 133(6) of the Act nor produced by the assessee before the Assessing Officer. The assessee furnished his ledger accounts in the books, copies of purchase bills and bank statements showing payment made through cheques. The Assessing Officer rejected the contention of the assessee and after considering several judicial precedents, rejected the books of accounts of the assessee u/s. 145(3) of the Act and made 100% addition of Rs. 5,76,30,455/- as non genuine bogus purchases from Hawala parties as an unexplained expenditure. This apart, Assessing Officer disallowed interest paid on diversion of non business of borrowed fund u/s. 36(1)(iii) of the Act and calculated interest @12% on the interest free advance of Rs. 1,09,00,000/- amounting to Rs. 13,08,000/- and added to the total income of the assessee.

2.2 Learned Assessing Officer also initiated penalty proceedings u/s. 271(1)(C) of the Act for furnishing inaccurate particulars of income leading to the concealment of income. Assessee preferred an appeal against the assessment order dated 27.03.2015 before Learned CIT(A), who restricted the 100% addition to the extent of 5% only and deleted addition of Rs. 13,08,000/- u/s. 36(1)(iii) of the Act.

3. Aggrieved by the impugned order passed by Learned CIT(A), the Appellant revenue department, has filed this appeal on the following grounds:

“1. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in reducing the gross profit @ 5% as against the 100% addition made by the Assessing Officer on account of bogus purchases of Rs. 5,76,30,455/-by ignoring the fact that the Sales Tax Department has proved beyond doubt that parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation entry for the purpose?

2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in reducing gross profit @ 5% as against the 100% addition made by the Assessing Officer on account of bogus purchases of Rs.5,76,30,455/-, as the profit element embedded in these purchases, overlooking that the alleged suppliers were admittedly engaged only in giving accommodation entries to several parties including the assessee without supplying of good?

3. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in reducing gross profit @ 5% as against the 100% addition, made by the Assessing Officer on account, of bogus purchases of Rs. 5,76,30,455/- by ignoring the fact that the action of the Assessing Officer was based on credible information received from the DGIT(Inv.), Mumbai based on information supplied from Sales Tax Authorities and that the assessee during the course of assessment proceedings failed to prove the genuineness of the purchase transaction?

4. Whether on the facts and in the circumstances of the case and in law, the decision of Ld CIT(A) is right in presuming that purchases have been made during the year from the unknown parties, whereas bills have been received from Hawala dealer ?

5. Whether on the facts and in the circumstances of the case and in law, the decision of Ld. CIT(A) is right by presuming that purchases have been made from unknown parties, the Ld. CIT(A) has not clarified in its order, how the payment was made and whether section 69 of the IT. Act, 1961, will be applicable ?

6. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the ratio of the decision of THE Hon'ble Supreme Court in the case of N.K.PROTEIN Ltd. wherein the Hon'ble Court, has held that when the purchases are from bogus suppliers, the entire purchases are liable to disallowed?

7. Whether on the facts and on the circumstances of the case, The Ld. CIT(A) is erred in deleting the addition made by the AO, and allowing the disallowance of Rs. 13,08,000/- (@12% of the interest free advances of Rs. 1,09,00,000/- towards interest claimed u/s. 36(1)(ii) of the Income-Tax the Act?

8. Whether on the facts and on the circumstances of the case, the Ld, CIT(A) is right in ignoring the decision of the Hon'ble Bombay High Court, in the case of Phaltan Sugar Work Ltd. Vs Commissioner of Wealth Tax( Bom) 208 ITR 989, wherein it was held that deduction for payment of interest u/s 36(1)(iii) of the Income Tax Act allowable, only if the assessee borrows capital for its own business?

9. Whether on the facts and on the circumstances of the case, the Ld. CIT(A) is right in ignoring he AO's observation that the assessee has failed to establish “Commercial Expediency” of the interest bearing loan/advances given to various parties and failed to prove the nexus between advancing the funds and expansion of own business?”

4. In response to the notice issued by the Tribunal, assessee appeared and participated in the hearing and filed his corross objections.

5. We have perused the material on record and heard learned representatives for both the parties.
6. The main points for determination in this revenue's are:
  - a) Whether learned CIT(A) erred in restricting the addition to 5% of the total bogus purchases of Rs. 5,76,30,455/- as against the addition of 100% of bogus purchases made by the assessing officer?
  - b) Whether learned CIT(A) erred in deleting the addition made by Assessing Officer and allowing the disallowance of Rs. 13,08,000/- @12% of interest free advances of Rs. 1,09,00,000/- towards interest claimed u/s. 36(1)(iii) of the Act?
7. The learned DR for the appellant/revenue department has submitted that the assessee could not establish the genuineness of the transaction before the assessing officer. Learned CIT(A) has erred in restricting the 100% additions made by the Assessing Officer to 5% and also erred in deleting the addition of interest of Rs, 13,08,000/- u/s. 36(1)(iii) of the Act. Learned DR has supported the assessment order and prayed to set aside the impugned order passed by the first appellate authority.
8. Learned representative for the respondent assessee has submitted that, assessee submitted the ledger accounts in the books of assessee, copy of purchase bills and his bank statements before Assessing Officer, showing the payment made through bank for the year under assessment. The learned CIT(A) committed an error by restricting the addition to 5% as against the addition of 4% of the bogus purchases contrary to the order dated 15.12.2020 passed by the

Mumbai Bench of ITAT in ITA No.5917/MUM/2018 for A.Y.2011-12. He further submitted that the loan advances of Rs. 1,09,00,000/- were given to three parties by the assessee for commercial expediency with intention to expand his business. He further submitted that learned CIT(A) has rightly deleted the addition of Rs. 13,08,000/- u/s. 36(1)(iii) of the Act. Prayed to dismiss the revenue's appeal.

9. Firstly, we shall consider as to whether learned CIT(A) has committed any error in restricting the addition to 5% as against 100% of bogus purchases. This point shall cover revenue's ground no.1 to 6.
10. We find that learned CIT(A) has based his findings on the order dated 15.12.2020 passed by ITAT Mumbai in ITA No. 5917/MUM/2018 for the A.Y. 2011-12. Learned CIT(A) has referred relevant para 7 of the aforesaid ITAT order dated 15.12.2020, which is reproduced as under:

*“7.After hearing the Ld. D.R. and perusing the material on record, we observe that in this case the assessee is a dealer in ferrous and non ferrous metal items. Undisputed facts are that the assessee has made bogus purchases from 21 parties the details whereof are given on page 2 of the assessment order. Therefore, the only issue to decide by us is whether the GP rate applied by Ld. CIT(A) is reasonable or not. After considering the facts of the case, we are of the view that in the case of a ferrous and non ferrous items the profit is very meager ranging from 2% to 4% and GP rate as directed by the Ld. CIT(A) appears to be excessive and unreasonable. The co-ordinate benches of the Tribunal have been taking a consistent view that in such type of cases having trade of ferrous and non ferrous steel items, the profit GP can not exceed 3 to 4%. Though the Ld. CIT(A) has correctly followed the Hon'ble Gujarat High Court decision in the case of CIT vs. Simit P. Sheth (supra), however, the rate applied is on the higher side. We are, therefore, of the view that it would be reasonable if the GP rate @ 5% is applied on the said bogus purchases to bring the additional income on bogus purchases to tax which the assessee may have made by purchasing the goods from grey market. Accordingly, we direct the AO to apply a GP of 4% and the order of Ld. CIT(A) is modified to that extent. The appeal of the assessee is partly allowed.”*

11. It is pertinent to mention that according to the facts of the instant case, assessee also deals in the business of ferrous and non ferrous metals. It is also an undisputed fact that the assessee has made bogus purchases from 25 parties depicted in the tabular form at para 5 of the assessment order. The coordinate bench of this Tribunal, as referred above, has observed that in case of ferrous and non ferrous items, the profit is very meagre ranging from 2% to 4%. In the instant case the 100% addition of the total bogus purchases appears to be unreasonable and excessive. The above referred Mumbai bench of this Tribunal further observed to apply GP rate @5% on the said bogus purchases, however directed the AO to apply GP rate @4%. In the case in hand, due to clandestine activities of the assessee, he does not deserve any leniency and it appears reasonable to apply GP @5% of the said bogus purchases to bring the additional income on bogus purchases to tax which the assessee may have made by purchasing the goods from grey market. We are not inclined to disturb the findings arrived at by the impugned order passed by learned CIT(A), who has directed the AO to apply GP rate @5% on the said bogus purchases of Rs. 5,76,30,455/-. The facts of the judgement of Hon'ble Supreme Court in N.K. Proteins Ltd. referred by the revenue in the ground no. 6 are not attracted to the facts of the present case, hence for no avail to the revenue. The aforesaid first point is accordingly determined in negative against the revenue.

12. As regard, the second point for determination, we find that learned CIT(A) has elaborately discussed this issue in para 4 of the impugned order which is reproduced as under:

*“4.The first issue to be decided is regarding the addition of Rs. 13,08,000/- u/s, 36(1)(iii) of the Act. The AO noted that the assessee debited interest payment of Rs. 6,33,597/- on borrowed funds of Rs. 70,53,083/- and shown interest receipts only Rs. 11,161/-. In the light of provisions of sec. 36(1)(iii) of the Act and various judicial precedents as referred to at page nos. 2 to 4 of the assessment order, the AO observed that the assessee paid interest on borrowed funds and by giving interest free advances, undue benefits to the concerned parties was provided to reduce tax liability. The AO mentioned that since loans and advances were given to concerned parties for non business purpose as such interest paid on such diversion of borrowed funds had to be disallowed u/s. 36(1) (ili) of the Act. Accordingly, the AO worked out interest disallowable u/s. 36(1)(ill) of the Act at Rs. 13,08,000/- @12% of the interest free advances of Rs. 1,09,00,000/- and added the same to the total income of the assessee.*

*4.1. Regarding this issue, the appellant has submitted as under:-*

*“The assessee during the year under consideration has given Interest free loans to the three parties viz. (1) Francis John Rs. 49,00,000/- (2) Haros John Rs 25,00,000/- (3) Mokshi Industries Rs. 35,00,000/- Mumbai amounting to Rs. 1,09,00,000/-. As per the balance sheet of the assessee, the assessee has taken loans from various parties amounting to Rs. 70,53,083/-. Out of the said loans of Rs. 70,53,083/-, three loans amounting to Rs. 23,00,000/- were the only new loans taken during the year under consideration, (loan of Rs. 5,00,000/- taken on 23.06.2008 and two loans of Rs. 18,00,000/- taken on 25.3.2009) The assessee has paid interest on loans to various parties of Rs. 6,33,597/-*

*The assessee explained to A. O. that initially the advances of Rs. 49,00,000/- given to Francis John, Rs. 25,00,000/- given to Haros John and Rs. 35,00,000/- given to Mokshi Industries were trade advances given for commercial expediency as the assessee with an intention to expand his business, wanted to acquire shares in Trio Fab India Pvt Ltd. from them Thus the said advances were for commercial expediency for expansion of assessee's business. Further in the subsequent assessment year when the said deal was not materialized the said three parties have paid interest to the assessee amounting to Rs. 12,35,979/- which the assessee has duly disclosed in subsequent assessment year and therefore provisions of section 36(1)(iii) are not attracted. However the A.O. rejected assessee's contention and added Interest of Rs. 13,08,000/- on the ground that there is a diversion of borrowed funds though the interest paid is Rs. 6,33,597/- and not Rs. 13,08,000/- (Added by AO)*

*6 The assessee submits the no new loan was taken during the year except to the extent of what is stated in the previous para. The above mentioned advances of Rs. 1,09,00,000/- given were out of assessee's sale proceeds. (Pl see the bank statement) There is no direct nexus between the amount borrowed and the amount advanced to the said three parties. Further the sald advances were given for commercial expediency and therefore no*

*disallowance of Rs. 13,08,000/- u/s. 36(1)(iii) is called for. The assessee submits that in S. A. Builders Ltd vs. CIT 288 ITR pg 1, the Honorable Supreme Court has held that if the interest free advances are given for commercial expediency then the assessee is entitled for deduction of interest paid either u/s 36(1) (iii) or section 37 of the Act. Further Initially the said advances were interest free, however, when deal for commercial expediency was cancelled, the said three parties have paid interest on loans which is duly disallowed by the assessee. Therefore even otherwise disallowance is uncalled for.*

*7. Further Honorable Andhra Pradesh High Court following the decision of S. A. Builders Ltd. as well as decision of Supreme Court in Hero Cycle Pvt. Ltd. 94 CCH 097, has held in the ease of CIT vs. Seven Hill Hospital 370 ITR pg, 69 that in absence of any folding to the effect that the loan taken on interest has straightway passed on to the others, then no disallowance u/s 36(1) (iii) is called for.*

*8 In view of the above legal and factual submissions the assessee submits that addition of Rs. 13,08,000/- requires to be deleted. This is to be noted that interest paid on loans is Rs. 6,33,597/- and not Rs. 13,08,000/- and further the said loans were given for less than six months while the A. O. has calculated disallowance for entire period of one year."*

*4.2. I have considered the facts of the case, assessment order and appellant's submissions, The AO observed that the assessee diverted interest bearing funds towards giving interest free advances to three concerned parties. Accordingly, the AO worked out interest disallowable u/s. 36(1)(iii) of the Act at Rs. 13,08,000/- @12% of the Interest free advances of Rs. 1,09,00,000/- and added the same to the total income of the assessee. The appellant has submitted that during the year under consideration, he advanced interest free advances of Rs. 49,00,000/-, Rs. 25,00,000/- and Rs. 35,00,000/- to Mr. Francis John, Mr. Haros John and Mokshi Industries respectively which were nothing but trade advances given for commercial expediency. The appellant has submitted that these three parties paid interest to the assessee amounting to Rs. 12,35,979/- In subsequent year, hence provisions of sec. 36(1)(iii) are not attracted. The appellant has submitted that he paid only interest of Rs. 6,33,597/- against loans and advances taken by him. The appellant has relied on decision of the Hon'ble Apex Court in the case of S. A. Builders vs. CIT 288 ITR 1 to argue that where the loans and advances were given out of commercial expediency, no addition is required to be made u/s. 36(1)(iii) of the Act. Considering the facts of the case, I am inclined to agree with the appellant's claim. The relevant sec. 36(1) (iii) reads as under:-*

*"36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-*

*(1);*

*[(ia):]*

*[(ib)*

(17)

*(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:"*

*It is evident from the language of sec. 36 that above section deals only with allowability of claim of interest expenditure, for which the incurring of such expenditure or claim of such expenditure has to be first established. Since in the present case, the advancing of loans has been presumed to made out of own funds and trade creditors, clearly no interest expenditure has been incurred for making the same and, therefore, no question of allowability/disallowability of the same arises under section 36(1)(iii) of the Act, as has been held by the P&H High Court in the case of Bright Enterprises Pvt. Ltd. ([2016] 381 ITR 107).*

*In the instant case, the appellant has duly explained that initially the advances of Rs. 49,00,000/- given to Francis John, Rs. 25,00,000/- given to Haros John and Rs. 35,00,000/- given to Mokshi Industries were trade advances given for commercial expediency as the assessee with an intention to expand his business, wanted to acquire shares in Trio Fab India Pvt Ltd. from them, thus the said advances were for commercial expediency for expansion of assessee's business. The appellant has further submitted that in the subsequent assessment year when the said deal was not materialized the said three parties have paid Interest to the assessee amounting to Rs. 12,35,979/- which the assessee has duly disclosed in subsequent assessment year and therefore provisions of section 36(1)(iii) are not attracted. The issue of allowability of interest u/s. 36(1)(iii) of the Act was considered in detail by the Hon'ble Apex Court in the case of S. A. Builders vs. CIT [2007] 158 Taxman 74 (SC) and the Court held that the expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business., the expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency. The Court discussed as below regarding this issue:-*

*"19. In this connection we may refer to section 36(1)(iii) of the Income-tax Act, 1951 (hereinafter referred to as the 'Act') which states that "the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession" has to be allowed as a deduction in computing the Income-tax under section 28 of the Act.*

*20. In Madhav Prasad dalle v. CIT AIR 1979 SC 1291, this Court held that the expression "for the purpose of business" occurring under the provision is wider in scope than the expression for the purpose of earning, Income, profits or gains", and this has been the consistent view of this Court*

*21. In our opinion, the High Court in the impugned judgment, as well as the Tribunal and the Income-tax authorities have approached the matter from an erroneous angle. In the present case, the assessee borrowed the fund from the bank and lent some of it to its sister concern (a subsidiary) on interest free loan. The test, in our opinion, in such a case is really whether this was done as a measure of commercial expediency.*

22. *In our opinion, the decisions relating to section 37 of the Act will also be applicable to section 36(1)(iii) because in section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to section 37 that the expression "for the purpose of business" Includes expenditure voluntarily incurred for commercial expediency, and It Is Immaterial if a third party also benefits thereby*

23. *Thus in Atherton v. British Insulated & Helsby Cables Ltd. [1925] 10 TC 155, it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly to facilitate the carrying on the business. The above test in Atherton's case. ( supra) has been approved by this Court in several decisions e.g. Eastern Investments Ltd. v. CIT [1951] 20 ITR 1, CIT v. Chandulal Keshavlal & Co. [1960] 38 ITR 601 etc.*

24. *In our opinion, the High Court as well as the Tribunal and other income-tax authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed."*

*From the above discussion it is clear that where the advances have been made out of interest bearing funds, then the allowability of interest should be examined from the angle of commercial expediency. In the case of the instant appellant, the appellant has duly explained that said advances were given as per business expediency.*

*In view of the above, it is held that the AO is not justified in making the addition of Rs. 13,08,000/- u/s. 36(1) (III) of the Act, the same is hereby directed to be deleted. The ground nos. 2 and 3 raised by the appellant regarding this issue are allowed.."*

13. The aforesaid factual matrix goes to show that the appellant assessee has given advances of Rs. 49,00,000/- to Francis John, Rs. 25,00,000/- to Haros John and Rs. 35,00,000/- to Mokshi Industries as Trade advances for the commercial expediency to acquire shares in Trio Fab India Pvt. Ltd. The assessee intended to expand his business, which is his fundamental right under Article 19(1)(g) of the Indian Constitution, which provides right to practice any profession or to carry on any occupation, trade or business to all citizens subject

ofcourse to the restrictions that can be imposed U/A 19(2) of the constitution by the state. Since, the advances were made out of interest bearing funds, then the allowability of interest should be examined from the angle of commercial expediency. The Assessing Officer cannot be justified in view of aforesaid scenario in rejecting the appellant's explanation that the aforesaid advances were not intended for the purpose of business expediency. Learned CIT(A) was thus, right in deleting the addition of Rs. 13,08,000/- of u/s.36(1)(iii) of the Act, in view of commercial expediency with respect of the expansion of the assessee's business. The facts of Phatan Sugar Work Ltd. (Supra) referred by the revenue in ground no. 8, are not attracted to the facts of the instant case, hence for no avail to the revenue. The second point is also determined accordingly in negative against the revenue. Thus, the appeal is liable to be dismissed.

14. In the result, the appeal filed by the revenue stands dismissed.

Order pronounced on 11.06.2024.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 11/06/2024  
Anandi Nambi, *Steno*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**