

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.1409/DEL/2024
[Assessment Year: 2017-18]**

CARMA ARTS AND CRAFTS PRIVATE LIMITED, H-5/11, Mehrauli, Behind Qutub Minar, New Delhi-110030 PAN-AAACK0623L	Vs	Assistant Commissioner of Income Tax, Circle-5(2), Delhi-110002
Assessee		Revenue

Assessee by	Sh. M.P. Rastogi, Adv.
Revenue by	Sh. Shyam Manohar Singh, Sr. DR

Date of Hearing	12.08.2024
Date of Pronouncement	06.11.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the Ld. Addl.CIT/JCIT(A)-1, Visakhapatnam, dated 31.01.2024 pertaining to Assessment Year 2017-18.

2. The grounds of appeal raised by the assessee are as under:-

"1. That the Ld CIT (A) has erred on facts and in law in sustaining the addition in respect of cash deposited Rs.6,82,909/- after demonetization, even after admitting that the year under appeal the trend of business is different from the preceding year, comparing the results of the corresponding period of the previous year, is arbitrary, unjust and /or based on conjectures and surmises and at any rate excessive.

2. That the amount of Rs.6,82,909/- deposited in bank account are the sale proceeds of the business carried out by the Assessee and are in the nature of business receipts and accordingly applicability of section 115BE to the stipulated is arbitrary, unjust and not sustainable.

3. Brief facts of the case: The assessee company is engaged in the business of purchase and sales of designer garments. The assessee filed its return of income on 30.10.2017 declaring loss of Rs.1,88,27,034/-. During the Financial Year 2016-17 relevant to AY 2017-18, the assessee had deposited cash amounting to Rs.1,10,59,500/- during the period of demonetization period. The AO asked the assessee to furnish certain details with regard to cash deposit during the demonetization period. In response, the assessee vide reply dated 16.12.2019 submitted that the cash was received against sale of goods to different customers who walk in and buys goods and as such there is no regular one person from whom the cash was received. Further, the assessee submitted cash charts, bank statements and cash book for F.Y. 2016-17. However, the AO observed that the reply of the assessee was incomplete and was not supported by evidences. The AO noted that the copy of the cash account with narration of entries was also requested for verification of facts but the cash account provided by the assessee was without narration. The AO further observed that the assessee has also not provided the details of persons to whom the sales were made and noted that usually, in such retail stores, especially the ones which sell designer wear; they usually take the name and contact number of the persons making the purchase. The A.O noticed that there was an increase of 637.3% in the amount of cash deposited while comparing the cash deposit made during 9th November to 31st December of FY 2015-16 and FY 2016-17. Out of the total cash sales of Rs.3,07,89,595, as claimed by the assessee, it claims to have deposited Rs.1,10,59,500/- in bank during the demonetization period (i.e. approx. 36%). Further, after making a detailed analysis, out of total cash deposited during demonization of

Rs.1,10,59,500/- an amount of Rs. 6,82,909/- was treated as unexplained, which was added as unexplained cash deposit u/s 68 of the Act to be charged u/s 115BE of the ACT. In doing so, the AO held that monthly sales figure of the assessee is heavily manipulated to show higher cash in hand on the day of demonetization and the AO held that the veracity of the monthly distribution of cash sales cannot be established by the assessee. The AO, thereafter, recomputed the cash sales on the basis of monthly average and the determined unexplained cash of Rs.6,82,909/-. The Assessing Officer has made a comparative chart of cash deposits during the relevant period for FYs 2015-16 & 2016-17, total cash sales in 2015-16 & 2016-17, and credit/cash sales in FY 2015-16 & 2016-17 and made an analysis of the same on page no.2 to 6 of the assessment order, which is reproduced as under:-

“3. Unexplained cash deposit

The assessee deposited huge amount of cash amounting to Rs. 1,10,59,500/-during the period of demonetization (09.11.2016 to 31.12.2016). The same was verified from the information available in the ITBA, ITR and also from the bank statements of the assessee. Accordingly, vide notice u/s 142(1) of the Act, the assessee was asked to furnish certain details with regard to cash deposit during the demonetization period.

3.1 In response to the same, the assessee vide reply dated 16.12.2019 submitted that the cash was received against sale of goods to different customers who walk in and buys goods and as such there is no regular one person from whom the cash was received. Further, it submitted cash charts, bank statements and cash book for F.Y. 2016-17.

3.2 However the reply of the assessee was incomplete and was not supported by evidences. The copy of the cash account with narration of entries was also requested for verification of facts but the cash account provided by the assessee was without narration. The assessee has also not provided the details of persons to whom the sales were made. Usually, in such retail stores, especially the ones which sell designer wear; they usually take the name and contact number of the persons making the purchase. On perusal of the reply of the assessee following facts emerged:

2.1	1. Total cash deposit in bank in F.Y. 2015-16	4450000
	1. Total cash deposit in bank from 01.04.2015 to 08.11.2015	200000
	1. Total cash deposit in bank from 09.11.2015 to 31.12.2015	1500000

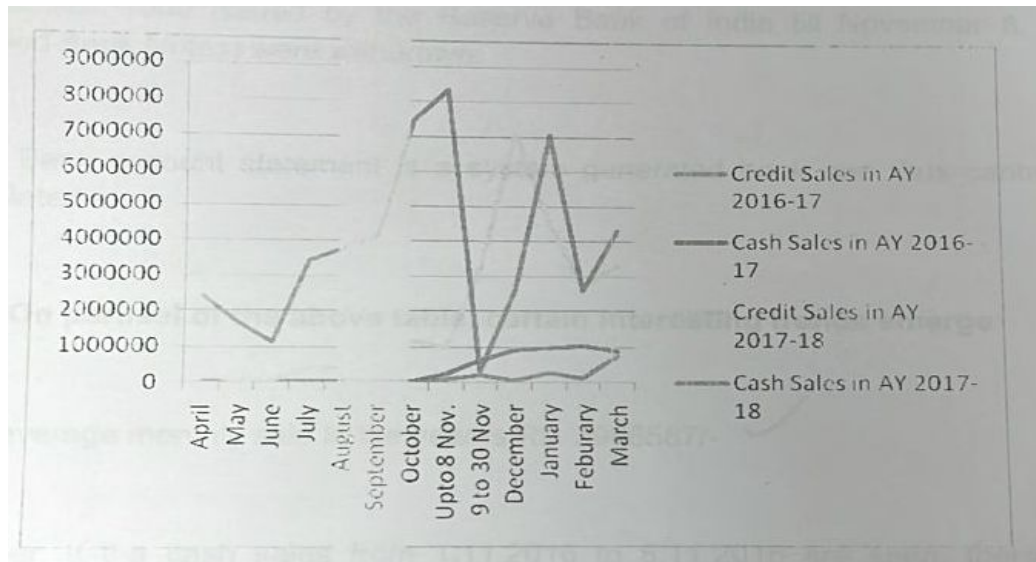
2.2	1. Total cash deposit in bank in F.Y. 2016-17	73324174
	1. Total cash deposit in bank from 01.04.2016 to 08.11.2016	21626880
	1. Total cash deposit in bank from 09.11.2016 to 31.12.2016	11059500

2.3	(a) Percentage increase between 2.2 (a) and 2.1 (a)	1547.73%
	(b) Percentage increase between 2.2 (b) and 2.1 (b)	10713.44%
	(c) Percentage increase between 2.2 (c) and 2.1(c)	637.3%

3.1	1. Total cash sales in F.Y. 2015-16	4642403
	✓ 1. Total cash sales from 01.04.2015 to 08.11.2015	218955
3.2	(a) Total cash sale in F.Y. 2016-17	49054053 ✓
	✓ (b) Total cash sale from 01.04.2016 to 08.11.2016	32244595
3.3	(a) Percentage increase between 3.2 (a) and 3.1 (a)	956.65%
	✓ (b) Percentage increase between 3.2 (b) and 3.1 (b)	14626%

Sales (In Rs.) F.Y. 2016-17					
Month	Credit Sales	Cash Sales	Total	Ratio of cash sales to total sales	Ratio of cash sales to total sales
April	224625	2375905	2600530	1058	91
May	36782	1661130	1697912	4516	98
June	70071	1105460	1175531	1578	94
July	368127	3423400	3791527	930	90
August	342075	3785350	4127425	1107	92
September	261040	4098610	4359650	1570	94
October	1158298	7443810	8602108	643	87
Upto 8 Nov.	950488	8350930	9301418	879	90
9 to 30 Nov	3242751	288133	3530884	9	8
December	7141376	2584980	9726356	36	27
January	4487959	7066170	11554129	157	61
Feburary	2713137	2566870	5280007	95	49
March	3273392	4303305	7576697	131	57
TOTAL	24270121	49054053	73324174	1059	72

Sales (In Rs.) F.Y. 2015-16					
Month	Credit Sales	Cash Sales	Total	Ratio of cash sales to total sales	Ratio of cash sales to total sales
April	0	0	0	0	0
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	0	0
August	0	0	0	0	0
September	0	0	0	0	0
October	0	0	0	0	0
Upto 8 Nov.	71061	218955	290016	308	75
9 to 30 Nov	195419	602125	797544	308	75
December	28722	914300	943022	3183	97
January	270578	985600	1256178	364	78
Feburary	108584	1035860	1144444	954	91
March	732215	885563	1617778	121	55
TOTAL	1406579	4642403	6048982	437	79



3.3 Since, the assessee changed the business model in the captioned year, the trends of this year cannot be compared to that of previous year. Therefore, it is essential to look at the trend of this year only.

3.4 Analysis of this data further established that during the demonetization period the assessee has made huge cash deposits which were not made in the earlier years. This is evident from the figures furnished by the assessee itself i.e when the cash deposit made during 09th November to 31st December of FY 2015-16 and FY 2016-17 is compared, there is an increase of 637.3%.

3.5 The increase in figures of cash sales as can be seen from the table above is mainly before the demonetization period which is nothing but manipulation of cash sales to justify the amount of cash deposit made during the demonetization period. As the sales register, purchase register and cash book are their internal ledger accounts which can easily get manipulated as and when need arise. And the need arises on 8th November, 2016 when the Reserve Bank of India (RBI) had withdrawn Legal Tender character of old bank notes in the denomination of Rs 500/-and Rs 1000/- w.e.f. 8th November, 2016, through Specified Bank Notes (cessation of liabilities) Act, 2017 and Specified Bank Notes (deposit of confiscated notes) Rules, 2017. The legal tender character of the bank notes in denominations of Rs.500 and Rs.1000 issued by the Reserve Bank of India till November 8,2016 (Specified Bank Notes) were withdrawn.”

3.7 On perusal of the above table, certain interesting trends emerge:

a) The average monthly sale in the year is Rs.3966587/-

b) Further, if the cash sales from 1.11.2016 to 8.11.2016 are seen, there is an astronomical increase in that. Also, cash sales from 09.11.2016 to 30.11.2016 is a meager of Rs.288133/-.

c) The above analysis show that the monthly sales figure of the assessee is heavily manipulated to show higher cash in hand on the day of demonetization.

d) Therefore, the veracity of monthly distribution of cash sales cannot be established and the cash sales are recomputed on the basis of the monthly average, as under

a) Total cash sales in FY 2016-17: Rs. 47599053/-

b) Monthly cash sales= $47599053/12 = \text{Rs. } 39,66,5871$ -

c) Cash sales from 1.11.2016 to 8.11.2016= $(3966587/30)*8 = \text{Rs. } 10,57,756$

d) Total cash sales in FY 2016-17, from 01.04.2016 to 08.11.2016= $\text{Rs. } (3966587*7)+1057756 = \text{Rs. } 2,88,23,865/-$

e) Total cash sales in FY 2016-17, from 01.04.2016 to 08.11.2016, as claimed by the assessee: Rs.30789595

3.7. Out of the total cash sales of Rs.3,07,89,595/- as claimed by the assessee, he claims to have deposited Rs.1,10,59,500/- in bank during the demonetization period (i.e. approx 36%). However, as per the genuine cash sales calculated above (Rs. Rs 2,88,23,865/-), 36% is considered genuine cash deposits. In view of this, Rs.1,03,76,591 is considered genuine cash deposits out of cash sales.

3.8. Bank account statement of the assessee revealed that during the demonetization period, the assessee has deposited Rs. 1,10,59,500/- which is excessive when compared to the figures of cash sales for the period covered under demonetization and the period of a month or two before demonetization, in view of natural justice (though there is no evidence). Therefore, the trend/facts stated above have to be considered in the light of relevant facts and circumstances. It also seems very unnatural that the assessee will deposit small amount of cash in banks and retain huge amount of cash in hand despite the fact that there are neither any cash expenses nor any cash purchases. As held by the Hon'ble Supreme court in the case of Sumati Dayal vs CIT (1995AIR 2109) the fact should be examined by considering the surrounding circumstances and applying the test of human probability. So considering the surrounding, circumstances and facts/trend of business as stated above and also applying the test of human probability also, assessee has not been able to provide any evidence to discharge its onus to prove identity, creditworthiness and genuineness of the transaction of the parties to whom cash sales were claimed to be made. Since the sales claimed to be made by assessee remained unverifiable therefore, I am of view that the account of assessee does not represent the true state of affair and books of account have been manipulated to inflate cash sales and also to suppress cash expenses to cover up its

unexplained cash, which has been deposited in the Bank, presenting it as a part of cash sales.

Extent of manipulation is calculated as under:

<i>Cash deposit during the demonetization period</i>	<i>A</i>	<i>Rs.1,10,59,500/-</i>
<i>Cash deposit actually explained from the monthly trend</i>	<i>B</i>	<i>Rs.1,03,76,591/-</i>
<i>Undisclosed income</i>	<i>C</i>	<i>Rs.6,82,909/-</i>

Excess Cash sales from 01.04.2016 to 08.11.2016 treated as manipulated to account for the part of cash deposited during the demonetization=Rs.6,82,909/-."

3.10 Therefore, out of total cash deposited during demonization of Rs.1,10,59,500/-, Rs.6,82,909/- is treated as unexplained. Therefore, said unexplained cash of Rs. 6,82,909/- is added to the total income of the assessee u/s 68 of the Act. Since the addition is made u/s 68 of the Act, tax is to be charged u/s 115BBE of the Act.

4. Against the above order, the assessee appealed before the Id. CIT(A).

The Ld. CIT(A) dismissed the appeal of the assessee accepting the detailed analysis made by the AO and confirmed the addition of Rs.6,82,909/- and by also observed that the amount added was just 6.18% of the total cash deposited amounting to Rs.1,10,59,500/-by the assessee during the demonetization period.

5. Against the above order, the assessee is in appeal before us.

6. In this regard, the Id. AR filed a written submission, which is reproduced as under:-

1. That the Assessee is in the business of purchase and sales of designer garments. In the preceding year, i.e. Assessment Year 2016-17, the modus operandi of the Assessee up to October 2015 was different as admitted by AO and thereafter the Assessee started the purchase and sale of the designer garments on its own trade.

2. That for the year under consideration, there was a Gazette Notification No. 2652 dated 8th November 2016 for the demonetization of Bank Notes of the denomination of Rs.1,000 and Rs.500. The Gazette Notification was issued in the evening of 8th November 2016 and w.e.f. 9th November 2016 these

notes of the denomination of Rs.1000 and Rs.500 ceased to be legal tender except in certain conditions specified in the gazette notification later notified.

The scheme of demonetization started from 9th November 2016 and was up to 30th December 2016. It is pertinent to mention here that after 30th December 2016 the specified bank notes of the denomination of Rs.1000 and Rs 500 were not accepted by the banks.

3. That during the period 9th November 2016 to 30th December 2016, the total cash deposits made by the Assessee in banks were Rs. 10539500, out of which the legal tender notes i.e. valid currency (not demonetized) were Rs. 2152000. In other words, the demonetized specified bank notes were only Rs. 8387500.

4. That before the AO, the Assessee had explained that all the cash deposits were made out of the sale proceeds of the garments. In support of its contention the Assessee had filed bank statements, cash book, cash charts giving details of cash sales and cash deposited in bank, details of purchases and sales, copies of VAT returns filed by the Assessee, details of suppliers from whom goods were purchased and so on. The abovementioned details were filed for the year under assessment as well as for the preceding year i.e. 2015-16 as well as subsequent year 2017-18.

The AO, in spite of such factual material available with her, had proceeded in her own way on surmises and conjectures and then calculated the genuine cash sales at Rs. 10376591 by applying the complex formulae not known to the law and then worked out the unexplained deposits of Rs. 682909 out of the total cash deposits made by the Assessee during the period 9th November 2016 to 31st December 2016 (though the scheme of demonetization was only up to 30th December 2024) and added the same u/s 68 of the Income-tax Act, 1961 (the Act).

5. That while computing the cash deposits, the AO has neither doubted the purchases which are totally through the banking channels nor rejected the books of account.

Assessee's contention:

6. That the whole action of the AO appears to be based on suspicion because out of the total cash deposits of Rs. 11059500 as worked out by the A O from the period 9th November 2016 to 31st December 2016, (including cash deposited by the Assessee on 31st December 2016 Rs 520000 which was valid legal tender currency in circulation) she accepted the amount of Rs. 10376591 as genuine deposits based on her own formula and treated the balance amount of Rs. 682909 as unexplained deposits u/s 68 of the Act. In other words, while doing so she added only a small amount of deposits as unexplained, whereas the Assessee' s contention is that total sales are genuine and whatever the deposits in cash of the specified bank notes were made during the period 9th November 2016 to 30th December

2016, the same was made out of the cash available with the Assessee as on the evening of 8th November 2016. As per books of account, the Assessee was having the cash balance of Rs. 8392366 on the evening of 8th November 2016 which includes the cash sales of Rs. 894400 made on 8th November 2016 also being the date on which the specified bank notes were tenderable because the business hours of the Assessee were from 11 AM to 8 PM.

6.1 It is a settled proposition of law that the suspicion howsoever strong may be cannot substitute the facts and no addition can be made based on suspicion.

** 37 ITR 288 (SC) Lalchand Bhagat Ambica Ram vs. CIT*

7. That the addition so made by the AO Rs. 682909 u/s 68 of the Act is also not valid in law because she made the addition not based on actual facts but on the basis of some imaginative formula by working out the average monthly sales. Your Honour would appreciate that in a business, there is no fixed monthly sales made on average basis, but it fluctuates every month and the fluctuation also depends upon the nature of items dealt by the Assessee. In the Assessee's case, the Assessee dealt in the designers' garments which are generally in high demand in the wedding season. In India the wedding preparations start from September onwards. So before applying the formula, the AO should have kept in her mind about the trade in which the Assessee deals.

8. That even otherwise, no addition is called for had the AO taken into consideration the actual facts about the money deposited. As already submitted above, during the period 9th November 2016 to 31st December 2016, the Assessee had deposited the legally tenderable notes in the bank amounting to Rs. 2672000 which is verifiable from the pay-in-slips available with the Assessee and may be verified from the bank. Had this amount been excluded from the total cash deposits made by the Assessee, then the resultant figure would have worked out less than the alleged genuine sales of Rs. 10376591 worked out by the AO.

Therefore, on such facts, the addition of Rs. 682909 deserves to be deleted."

6.1. The AR filed a table appearing on P.24 of Paper Book giving details of Cash Deposited between 9th November, 2016 and 30th December, 2016. The AR also filed a table in which the datewise deposit of cash for the period 11.11.2016 to 31.12.2016 in its two bank accounts in PNB Bank and HDFC Bank in the old currency and the new currency was submitted and as per the analysis made by the Ld. AR on the basis of genuine cash deposit out of

cash sales considered by the AO (para-3.7, page-7 and 8 of the assessment order) the unexplained cash deposit amounted to a negative figure of Rs.19,89,091/-. The said tabular chart along with the note of the Ld. AR is reproduced as under:

Details of Cash Deposited between 9th November 2016 and 30th December 2016

Cat.	Item	Amount		TOTAL
		HDFC Bank	PNB Bank	
A.4	Cash Deposit between 9th Nov. 2016 and 30th Dec. 2016 (as reported)	7217200	3326500	10543700
A.5	Cash Deposit between 9th Nov. 2016 and 30th Dec.2016 (as confirmed)	7213000	3326500	10539500
	Specified Currency	5781000	2606500	8387500
	Valid Currency	1432000	720000	2152000
B.1	Cash out of earlier income or savings	NIL	NIL	NIL
B.2	Cash out of receipts exempt from tax	NIL	NIL	NIL
B.3	Cash withdrawn out of bank account	NIL	NIL	NIL
B.4	Cash received from identifiable persons (with PAN)	NIL	NIL	NIL
B.5	Cash received from identifiable persons (without PAN)	NIL	NIL	NIL
B.6	Cash received from un-identifiable persons	NIL	NIL	NIL

CARMA ARTS & CRAFTS PVT LTD									
ASSESSMENT YEAR 2017-18									
ITA NO 1409/DEL/2024									
Date	PNB Bank			HDFC Bank			Total		
	Old Currency	New Currency	Total	Old Currency	New Currency	Total	Old Currency	New Currency	Total
11-11-2016	0	0	0	2000000	0	2000000	2000000	0	2000000
12-11-2016	500000	0	500000	2000000	0	2000000	2500000	0	2500000
15-11-2016	500000	0	500000	0	0	0	500000	0	500000
17-11-2016	800000	0	800000	0	0	0	800000	0	800000
18-11-2016	800000	0	800000	800000	0	800000	1600000	0	1600000
21-11-2016	0	0	0	502000	0	502000	502000	0	502000
23-11-2016	0	0	0	479000	0	479000	479000	0	479000
07-12-2016	0	0	0	0	32000	32000	0	32000	32000
15-12-2016	0	0	0	0	600000	600000	0	600000	600000
20-12-2016	0	200000	200000	0	0	0	0	200000	200000
21-12-2016	0	0	0	0	200000	200000	0	200000	200000
22-12-2016	0	320000	320000	0	0	0	0	320000	320000
22-12-2016	0	200000	200000	0	0	0	0	200000	200000
26-12-2016	0	0	0	0	200000	200000	0	200000	200000
27-12-2016	6500	0	6500	0	0	0	6500	0	6500
28-12-2016	0	0	0	0	400000	400000	0	400000	400000
31-12-2016	0	400000	400000	0	120000	120000	0	520000	520000
	2606500	1120000	3726500	5781000	1552000	7333000	8387500	2672000	11059500
	A	B	C	D	E	F	A+D	B+E	C+F

NOTE:	Total Cash Deposited Between 08-11-2016 to 31-12-2016	11059500
	Less:-Cash deposited on 31st December 2016	520000
		<u>10539500</u>
	Less: Deposit of Valid Legal Tender Money	2152000
		<u>8387500</u>
	Less: Genuine Cash deposit out of cash sales as per AO (Para 3.7 Page 7/8)	10376591
	Unexplained cash deposit	<u>-1989091</u>

7. The ld. DR relied upon the orders of the authorities below.

8. We have heard both the parties and perused the material available on record. On perusal of the assessment order, it is seen that the AO as per discussion in Para nos.3 to 3.10 of the assessment order, determined the amount of unexplained cash amounting to Rs.6,82,909/- on account of cash deposits during the period of demonization and added the same u/s 68 of the Act r.w.s. 115BE of the Act. In doing so, the Assessing Officer did not dispute the total cash sales figure of Rs.4,75,99,053/- as declared by the assessee but only recomputed the cash sales on monthly basis by dividing the total cash sales of Rs.4,75,99,053/- by 12 months and arrived at monthly cash sales at Rs.39,66,587/- and thereafter worked out the figure of undisclosed income of Rs.6,82,9090/-. The basis adopted by the Assessing Officer is very ad hoc as in no business the monthly cash sales will be the same. Therefore, the very basis of adopting the monthly cash sales at Rs.39,66,587/- and thereby calculating the amount of undisclosed income of Rs.6,82,909/- on account of cash deposits during the period of demonization is not justified and, therefore, the addition of Rs. .6,82,909/- is deleted. Ground nos. 1 and 2 of the appeal are allowed.

9. Ground no.3 is against the charging of interest under Section 234D of the Act. This ground is consequential in nature and the Assessing Officer is directed to levy interest as per law.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 16th November, 2024.

Sd/-
[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 06 .11.2024.

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi