IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.390/Del/2020
(ASSESSMENT YEAR 2011-12)

M/s Best Realtrech (India) Pvt. Ltd., H-8, First Floor, Best Plaza, Netaji Subhash Place, Pitampura, Delhi-110034 PAN:AADCB1848D	Vs.	Income Tax Officer, Ward-4(3), New Delhi
(Appellant)		**(Respondent)**

Assessee by	Shri Salil Kapoor, Adv. & Shri Anil Chachra, Adv.
Department by	Shri Javed Akhtar, CIT-DR

Date of Hearing	11/12/2024
Date of Pronouncement	27/12/2024

O R D E R

PER BENCH:

This appeal by assessee is arising out of the order of Learned Commissioner of Income Tax (Appeals)-2 New Delhi in appeal No.10382/18-19 vide order dated 13/11/2019. Re-assessment was framed by Income Tax Officer, Ward-4(3), New Delhi for the relevant Asst. Year 2011-12 u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated

24/12/2018. The original assessment was framed by Income Tax Officer, Ward-2(4), New Delhi u/s 143(3) r.w section 153C of the Act vide order dated 28/02/2024.

2. The first issue in this appeal of assessee is as regards to assumption of jurisdiction by the AO for re-opening of assessment u/s 147 by issuing notice u/s 148 of the Act, which is bad in law for the reason that the original assessment was completed u/s 143(3) of the Act and the re-opening is beyond four years and, further, there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant Asst. Year 2011-12. For this, assessee has raised various grounds i.e., ground No.1 to 11 which are argumentative, factual and exhaustive, hence, need not be reproduced.

3. Brief facts relating to issue are that the original assessment was completed by the ITO, Ward-2(4), New Delhi for the AY 2011-12 u/s 153C r.w.s. 143(3) of the Act in pursuance to search conducted u/s 132 of the Act on the business and residential premises of Best Realtrech (India) Pvt. Ltd. group of cases on 28/03/2011. The assessee company is carrying out activities of real estate development and related services. Subsequent to completion of assessment u/s 153C r.w.s. 143(3) of the Act notice u/s 148 of the Act dated 27/03/2018 was issued and served on the assessee. The AO recorded the reason for issuing of this notice, the assessee in response to notice u/s 148 of the Act filed its return of income on

13/10/2018. Consequently, notice u/s 143(2) along with notice u/s 142(1) of the Act along with questionnaire asking relevant details were issued. Accordingly, re-assessment was framed u/s 143(3) r.w.s. 147 of the Act, thereby, making addition of Rs.6.75 Cr. being unexplained investment and consequent bogus commission of Rs.13.50 lacs. The AO noticed that the M/s RKA International Pvt. Ltd. has received a sum of Rs.6.75 Cr. from following 11 entities:-

S. No.	Name of Party	Amount given to assessee	PAN	Income as per ITR for A.Y.2011-12	A/C. No.
1	AKT FLASH TRADING CO.	45.00,000/-	AEKPT9692R	0	26090200007193 BANK OF BARODA
2	MANGLAM ENTERPRISES	35.00,000/-	CDAPS1171B	NO ITR	06921900005012 In DCB BANK
3 '	PORTER BUILDCON PVT. LTD.	50,00,000/-	AAECP3823H	54,940/-	910020044927727 In AXIS BANK
4	AXIS REALCON PVT. LTD.	60,00,000/-	AAGCA7940J	2,32,327/-	910020034813498 IN AXIS BANK
3	GOPALAN AGRO FARMS PVT. LTD.	25,00,000/-	AACCG666P	0	910020048510408
6	POOJA INFOSOLUTIONS PVT. LTD.	2,00,00,000/-	AAFCP3605G	0	00980200001116 IN BANK OF BARODA
7	RACHAITA BUILDCON PVT. LTD.	50,00,000/-	AADCR7795P	41,185	166010200041690 IN Axis Bank
8	SORUS POWER PVT. LTD.	50,00,000/-	AAPCS2574M	(-27,062)	911020014399696 IN AXIS BANK
9	AADHAR TECHNOLOGY PVT. LTD.	2,90,00.000/-	AAECA3018K	Invalid PAN	600320110000110 IN BANK OF BARODA
10	VKJ INFRADEVELOPERS PVT. LTD.	50,00,000/-	AADCV3407E	2,23,770/-	910020036929379 IN AXIS BANK
11	ZOOM HERITAGE PROPERTIES PVT. LTD.	20,00,000/-	AAACZ3059K	3,54,458/-	910020034599963 IN AXIS BANK

It is to be noted that M/s RKA International Pvt. Ltd. has received share application money from above mentioned 11 entities and this amount was transferred by M/s RKA International Pvt. Ltd. to the assessee i.e., Best Realtrech (India) Pvt. Ltd. The Assessing Officer also added bogus accommodation entry commission at 2% of the above value of 6.75 Cr. and thereby made addition of commission at 13.50 lacs. Aggrieved, assessee preferred the appeal before the Ld. CIT(A).

4. The Ld. CIT(A) also confirmed the action of the AO by observing in para 6.8 to 6.16 as under:

> *"6.8 Ground no. 8 & 9: These grounds are directed against addition of Rs.6.75 crore u/s 68 on account of unexplained cash credit. It is agitated that the addition has been made on the ground that the appellant has failed to discharge its onus by not furnishing the sources of sources of transaction with RKA International Pvt. Ltd.*
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> *6.9 As discussed in Ground no. 1 to 7, the AO had received information from Investigation wing about the appellant receiving this amount from RKA International Pvt. Ltd whose financials did not support such a huge credit to the appellant. RKA International Pvt. Ltd., in turn, received this amount from several entities whose existence could not be established on enquiry by the AO.*
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> *6.10 The AO made independent enquiry about these entities by issuing letters u/s 133(6) but the notices were not responded by nine parties. Out of these nine entities, one could not be traced and the letter returned unserved. Two more parties' address was not provided and no notice could be sent to them.*
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> *6.11 The AO required the appellant to produce the director of RKA International Pvt. Ltd. but the appellant could not produce the director. The AO made further enquiries. He issued summons under section 131 to RKA International Pvt. Ltd to furnish the details of transaction and also produce its director for personal deposition on 12.12.2018. But none appeared on the date nor filed any details. Two more opportunities were given. But the director did not appear in response to several opportunities given by the AO on the ground of illness. Some details were filed by the creditor*

company. But in the background of serious allegation, the creditor company has miserably failed to refute the AO's allegation that it is a case of bogus accommodation entries regarding money laundering by rotation of money through shell companies having no existence of their own. The allegation of the AO remains unchallenged.

6.12 To add to this, the existence of creditors of RKA International Pvt. Ltd is also questionable as they did not respond to the enquiry made by the AO. The prime reason of addition was lack of creditworthiness of source of credit - RKA International Pvt. Ltd. which had no financials to support this credit to the appellant. The negative result received after enquiry about source of source only compliments the prime reason. Therefore, the ground is not valid that addition was made by the AO for not furnishing the source of source of transaction with RKA International Pvt. Ltd.

6.13 In a case of accommodation entry-CIT vs. Nova Promoters & Finlease (P) Ltd. [2012] 18 taxmann.com 217 (Del.), important observations have been made by Delhi High Court as to the burden of proof and shifting of onus in the cases of cash credit u/s 68 of the Act. While confirming the additions made by the AO, important observations made by the Court are quoted below:

> *"19. In the present appeal, the evidence and material on record, properly considered in the light of the surrounding circumstances and without attaching weight to neutral circumstances or circumstances of no relevance, point to only one conclusion, namely, that the monies introduced by the assessee as share subscriptions from 15 companies were its own unaccounted monies...*
> *21.It is not in dispute in the present case that the assessment was reopened on the basis of information received from the investigation wing of the department about the existence of accommodation entry providers and their "modus operandi" in which the assessee was also found to be involved...*
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> *25..... In the present case, there is enough material on record to negate the claim of genuineness of the transactions and in the light of over-whelming material, the plea that the Assessing Officer should not have rejected the affidavits without cross-examination of the deponents has no force. The said exercise has resulted in complete miscarriage of justice....*
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> *31. The Tribunal also erred in law in holding that the Assessing Officer ought to have proved that the monies emanated from the coffers of the assessee-company and came back as share capital. Section 68permits the Assessing Officer to add the credit appearing in the books of account of the assessee if the latter offers no*

explanation regarding the nature and source of the credit or the explanation offered is not satisfactory. It places no duty upon him to point to the source from which the money was received by the assessee.

6.14 In the instant case, the Assessing Officer is in possession of material from accommodation entry cases that discredits and impeaches the particulars furnished by the appellant and also establishes the link between entry providers whose business is to help assessee bring into their books of account their unaccounted monies through the medium of share purchases. The AO has also conducted independent enquiry in respect of creditor party to which there is no compliance. The AO's onus stands discharged and his action is justified.

6.15 Further, the recent decisions of the Supreme Court and Delhi High Court in the cases of NDR Promoters 410 ITR 379 (Del) & NRA Iron & Steel103 TM. com (SC) have discussed in detail the issue of accommodation entry business including share capital / share premium and decided in favour of Revenue.

6.16 In view of the above facts and decisions, the addition made by the AO is confirmed. These grounds are ruled against the appellant."

Aggrieved, assessee is in appeal before Tribunal.

5. Before us, Ld. Counsel for the assessee stated that assessee's case falls under proviso to section 147 of the Act. He stated the fact that the relevant Asst. Year involved is 2011-12 and original assessment was completed, consequent to the search, by the ITO, Ward-2(4), New Delhi u/s 153C r.w.s.143(3) of the Act vide order dated 28/02/2014. He stated that the notice u/s 148 of the Act was issued on 27/03/2018 after recording of reasons. Ld. Counsel for the assessee stated that notice issued on 27/03/2018 in the relevant Asst. Year 2011-12, is beyond four years. He stated that original assessment was also completed u/s 143(3) r.w.s. 153C of the Act. In term of above, he took us through reasons recorded

which are enclosed in assessee's paper book at page 57 to 58. He drew our attention to the reasons, which are reads as under:

> *"4.1 In the light of above discussion, it is apparent that the assessee company has receive Unexplained investment amounting Rs. 6.75 crore during F.Y. 2010-11 relevant to A.Y.2011-12 which escaped taxation.*
>
> *4.2 Therefore, as per details given above and information in possession of this office. I have reason to believe that the income of Rs.6.75 crore has escaped assessment as defined by section 147 of the 11 Act for AY 2011-12. The income chargeable to tax has escaped Assessment for this year by the reasons of the failure on the part of the assessee to disclose fully and truly material facts. Therefore, it is a fit case for the issuance of notice u/s 148 of the Act for the FY 2010-11 relevant to A.Y. 2011-12."*

In view of the above reasons, Ld. Counsel for the assessee stated that there is no failure on the part of the assessee to the above information noted in the reasons that entire details of loan received from M/s RKA International Pvt. Ltd. of Rs.6.05 Cr. (wrongly noted in the assessment order and CIT(A)'s order Rs.06.75 Cr.) was available in the financial of the assessee from the beginning at the time of assessment completed in term of search conducted on the business premises. Ld. Counsel for the assessee stated that from the reasons, it cannot be inferred that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for relevant Asst. year 2011-12 in regard to this loan transaction. He drew our attention to another information that during the assessment proceedings this particular transaction was examined by the AO and assessee vide reply dated 11/11/2013 filed all the details of this transaction, the reply of the

assessee enclosed at pages 34 to 46. He read out the relevant portion of the reply at page 38 of the PB that the details of unsecured loans were provided and the relevant para 3 of the reply reads as under:

> *"3. Unsecured Loans:*
> *The details of unsecured loan taken by the assessee company during the year under reference along with the confirmation of accounts from the concerned parties have been enclosed herewith as per Annexure-3."*

He also drew our attention to the particular transaction disclosed during the original assessment proceedings in the details provided to AO of unsecured loans and particular transaction as it serial No.6 denoting that the transactions of 6.05 Cr..To query by Bench Ld. Counsel for the assesse also explained that how he informed the AO i.e., transactions of Rs.6.05 Cr.as against noted by AO in his order at Rs.6.75 Cr. He explained that by reply dated 24/10/2018.

> *"3. That to initiate the reassessment proceeding u/s 148, the Ld. AO has to believe that, the Income of the Assessee Company has escaped from assessment. Re-assessment u/s 148 cannot be initiated only on the basis of information provided by ITO (Inv) (OSD-2), Unit-4, Delhi. That your good self has initiated the assessment proceeding u/s 148 without application of mind and verification of facts, therefore notice issued u/s 148 is illegal and bad in law.*
>
> *The above facts are also evident from the facts that your good self has not even verified the amount of loan taken by the Assessee Company, your good self has initiated the reassessment proceeding for the amount of Rs 6.75 crore, however the Assessee Company has received unsecured loan of Rs 6.05 Crore therefore initiation of reassessment proceeding is u/s 148 is illegal and bad in law."*

Ld. Counsel for the assessee in view of the above facts stated that once there is no failure on the part of the assessee to disclosed fully and truly all material facts necessary for its assessment for the

relevant Asst. Year and assessment is completed u/s 143(3) of the Act and further it is re-opened beyond four years, it is clearly barred by limitation.

6. On the other hand, Ld. Sr. DR filed written submissions consisting of 15 pages and he drew our attention to para 36 and 37 of the written submission which reads as under:

> *"36. The expression "fully and truly disclose all material facts" has been discussed in multiple decisions of this Court as well as the Apex Court. In Honda Siel Power Products Ltd v. Dy. CIT [2012] 340 ITR 53 (Delhi), it was explained as to what is the meaning of the expression "disclose fully and truly all material facts" appearing in Section 147 of the said Act. In that decision, this Court observed as under:-*
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> *"12. The law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts are those facts which if taken into accounts they would have an adverse affect on assessee by the higher assessment of income than the one actually made. They should be proximate and not have any remote bearing on the assessment. Omission to disclose may be deliberate or inadvertent. This is not relevant, provided there is omission or failure on the part of assessee. The latter confers jurisdiction to reopen assessment."*
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> *37. Explanation 1 to the proviso to section 147 elaborates on the meaning of the phrase "disclosure" as mentioned in the proviso. Reference may be made to the decision of this Court in Rose Serviced Apartments (P) Ltd. Vs. Deputy Commissioner of Income-tax [2011] 9 taxmann.com 199 (Delhi), wherein it was observed that from a reading of the said Explanation, it is clear that that mere production of books of account or other material from which the Assessing Officer could with due diligence, have is covered escapement of income, does not bar reassessment proceedings. "Yet at the same time if the proviso applies and the assessee has fully and truly disclosed all the material facts necessary for assessment for that assessment year, reassessment proceedings cannot be initiated."*
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> *In the present case, however, the mere disclosure of the identity of the investor (as being holding company of assessee) in the return of income and the audited financial statements of the assessee as the source of share application money received, is not sufficient to constitute "disclosure" under the proviso to section 147. Therefore, the assessee cannot be said to*

have made true and complete disclosure Hence, the notice for reassessment is justified.

38. From a reading of the reasons recorded, it is clear that there is fresh tangible material in the hands of the Assessing Officer with respect to the dubious nature of the source of investments made into the assessee company, which fact had not been fully and truly disclosed at the time of the assessment. The factum of shareholding and business activity of the investor, i.e., Gold Singapore had not been disclosed at the time of assessment proceedings. Mere disclosure of the identity of the investor could not translate into a satisfaction with regard to creditworthiness of the investor. We have perused the audited financial statement and the return of income filed by the Petitioners. In the case of Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456 it was held by the Supreme Court that "where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of the "true" and "full" facts in the case and the Income Tax Officer would have the jurisdiction to reopen the concluded assessment in such a case". In the present case, the return of income merely lists Gold Singapore as the holding company and the Notes to the audited financial statement merely mention that securities application money has been received from the Holding Company, being Gold Singapore. The genuineness of this transaction as also the creditworthiness of the investor are doubtful in the present case and, therefore, mere mention of the said transaction does not amount to "full" and "true" disclosure. Therefore, this amounts to the fulfilment of the second condition, that is, failure to disclose fully and truly all material facts. relevant for his assessment in that assessment year.

39. Thus, on fulfilment of the second condition, the bar to reopening of proceedings after expiry of four years from the date of final assessment order, under the proviso, does not apply and the initiation pf proceedings is not barred by limitation."

Ld. Sr. DR in view of the above stated fact that disclosure of fully and truly material facts has been explained by Hon'ble Supreme Court in the case of Honda Siel Power Products Ltd. vs. Dy.CIT [2012] 340 ITR 53 (Delhi).

7. We have heard rival contentions and gone through facts and circumstances of the case. Admitted facts are that the original

assessment was completed by the AO u/s.143(3) of the Act on 25/03/2019. The assessment year involved is AY 2011-12 and notice u/s.148 of the Act was issued on 27/03/2018 and admittedly, it is beyond 4 years. Once the notice is beyond 4 years, we have to see whether there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year 2011-12. We noted the reasons recorded, copy of which was placed before us and the relevant reasons reads as under:-

(a) It was noticed from the Profit and Loss account of the assessee for the year ended 31-03-2012 that the assessee had debited Rs.6,30,000/- as house rent paid. The house rent was paid to one Shri Nagesh and the assessee had deducted TDS for the amount of Rs.5,40,000/- only and TDS was not deducted for the amount of Rs.90,000/- and it required to be disallowed u/s.40(a) (ia) of IT Act.

(b) The assessee had debited Rs.9, 79,125/- as building maintenance to the Profit and Loss account which includes Rs.7,50,000f- paid to Shri Nagesh as loan amount. As the payment was paid by way of loan it was not an allowable business expenditure and requires to be disallowed.

(c) The assessee had paid Rs.2,87,189/- to NM/s. Flame Advertisement and claimed it as advertisement expenditure. However, the assessee had not deducted TDS for the above payment and it requires to be disallowed.
(d) The assessee had debited consulting chares, interpretation charges, lab testing charges and reporting charges to the Profit and Loss account. In addition to the above expenditure the assesssee had debited Rs.48,44,023/- as referral charges to the P & L account. The referral charges are nothing but the payment made by the assessee for doctors/hospitals those refer the patients for various tests and scanning in the assessee scan centre. As per the decision reported in the case of CIT VS KAP Scan and Diagnostic centreItd (2012) 344 ITR 477 it was held that under the Indian Medical Council (professional conduct, etiquette and ethics) Regulation 2002 demanding commission / referral charges was bad and paying it was also bad. Such commission charges paid to doctors was opposed to public policy. The payment of commission/referral charges by the assessee for referring patients to it could not be

accepted to be legal or in accordance with the public policy and it requires to be disallowed and brought to tax.

(e) The assessee had claimed depreciation allowed of Rs.3,36,47,707/- to the P& L account which includes Rs. 1,50, 78,201/- for the CT machinery @ 40% on the WDV of Rs.3,76,95,503/-. The CT machinery used by the assessee to conduct various tests in the scan centre and not a life saving device moreover it had not been classified in (xia) life saving medical equipment under the head III machinery and plant in the New Appendix-I, Table of rates at which depreciation was admissible w.e.f AY 2006-07 onwards under the IT Rules. The allowable depreciation was @ 15% and the excess depreciation of Rs.84, 11,927/- claimed by the assessee required to be disallowed and brought to tax.

Hence, I have the reasons to believe that the income of chargeable to tax has escaped assessment for the assessment year 2012-13. In view of the above, the approval for the reopening of the Assessment for the A.Y 2012-13 is solicited from the Principal Commissioner of Income Tax, Madurai-1, Madurai.

From the above reason, it cannot be inferred or there is no word about the escapement of income, how the income has escaped due to the failure on the part of the assessee to file fully and truly all material facts necessary for its assessment. Once this is a fact, this issue is fully covered by the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, reported in (2003) 264 ITR 566, wherein the Hon'ble Supreme Court has affirmed the decision of Hon'ble Allahabad High Court in the case of Foramer France vs. CIT, reported in (2001) 247 ITR 436 by observing as under:-

14. Having heard learned counsel for the parties, we are of the view that these petitions deserve to be allowed.

15. It may be mentioned that a new Section substituted Section 147 of the Income-tax Act by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. The relevant part of the new Section 147 is as follows :

> "147. If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this Section and in sections 148 to 153 referred to as the relevant assessment year) :
>
> Provided that where an assessment under Sub-section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

16. This new Section has made a radical departure from the original Section 147 inasmuch as clauses (a) and (b) of the original Section 147 have been deleted and a new proviso added to Section 147.

17. In Rakesh Aggarwal v. Asst. CIT (1997] 225 ITR 496, the Delhi High Court held that in view of the proviso to Section 147 notice for reassessment under Section 147/148 should only be issued in accordance with the new Section 147, and where the original assessment had been made under Section 143(3) then in view of the proviso to Section 147, the notice under section 148 would be illegal if issued more than four years after the end of the relevant assessment year. The same view was taken by the Gujarat High Court in Shree Tharad Jain Yuvak Mandal v. ITO [2000] 242 ITR 612.

18. In our opinion, we have to see the law prevailing on the date of issue of the notice under Section 148, i.e., November 20, 1998. Admittedly, by that date, the new Section 147 has come into force and, hence, in our opinion, it is the new Section 147 which will apply to the facts of the present case. In the present case, there was admittedly no failure on the part of the assessee to make a return or to

disclose fully and truly all material facts necessary for the assessment. Hence, the proviso to the new Section 147 squarely applies, and the impugned notices were barred by limitation mentioned in the proviso."

7.1 In the absence of any failure on the part of the assessee to disclose fully and truly all material facts and assessment framed u/s.143(3) of the Act and reopening is beyond 4 years, the issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, *supra*. In view of the above, we find no infirmity in the order of CIT(A)-NFAC and hence, we confirm the order of CIT(A)-NFAC quashing the reassessment.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 27th December, 2024.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(MAHAVIR SINGH)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Dated: 27/12/2024
Pk/sps
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI