<u>आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर</u>

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 549/RPR/2024

(**निर्धारण वर्ष** Assessment Year: 2019-20)

Xander Finance Private Limited, Unit No. 2503, 25th Floor, One Lodha Place, Senapati Bapat Marg, Delisle Road, Lower Parel, Mumbai- 400013, Maharashtra	vs	Assistant Commissioner of Income Tax, Circle-1(1), Central Revenue Building, Civil Lines, Raipur, 492001, (C.G.)
PAN: AAACC9304N		
(**अपीलार्थी/Appellant**)	..	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agrawal, CA
राजस्व की ओर से /Revenue by	:	Smt. Taranuum Verma, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	23.01.2025
घोषणा की तारीख/Date of Pronouncement	:	31.01.2025

<u>आदेश / O R D E R</u>

<u>Per Arun Khodpia, AM</u>:

The captioned appeal is filed by the assessee against the order of Addl/ JCIT (A)-6, Kolkata, [in short "Ld. CIT(A)"], u/s 250 of the Income Tax Act, 1961 (in short "The Act"), for the AY 2019-20 dated 25.10.2024, which in turn arises from the order u/s 154 dated 28.01.2021 (against Intimation u/s 143(1) dated 13.01.2021), passed by Asstt. Director of Income Tax, Centralized Proceedings Centre (CPC), (in short Ld. AO").

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

1. Short grant of TDS credit

1.1. On facts and in the circumstance of the case and in law, the Hon'ble CIT(A) erred in upholding the order of the Central Processing Centre (passed under section 154 of the Act against intimation order issued under section 143(1) of the Act) of not granting credit of TDS deducted by the deductor amounting to Rs.1,82,20,456 solely on the ground that credit of such TDS is not reflecting in Form 26AS.

1.2. On facts and in the circumstance of the case and in law, the Hon'ble CIT(A) erred in not considering the provisions of Section 205 of the Act, per which the assessee should not be called upon to pay the tax on the income to the extent the deductor has already deducted tax from that income.

2. Interest under section 2348 & 234C

2.1. On facts and in the circumstance of the case and in law, the Hon'ble CIT(A) erred in confirming the levy of consequential interest under section 234B and 234C of the Act.

The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of the appeal.

Further, the Appellant craves leave to submit such facts/ documents/ evidence in the course of hearing as may be necessary.

3. The brief facts of the case culled out from the order of Ld. CIT(A) reads as under:

1. BRIEF FACTS OF THE CASE:- The appellant is a non-banking financial Company and derives income from Business of lending and providing finance. The appellant filed return of income for the A.Y 2019-20 on 29.11.2019 declaring total income of Rs:1,10,13,53,140/-. Subsequently, the Appellant revised its return of income for AY 2019-20 on 28.11.2020 declaring total income of Rs.1,08,94,96,020/-.

The return was processed u/s 143(1) by CPC on 13.01.2021 accepting the returned income but raising demand of Rs.2,75,45,259/-. CPC then rectified the Intimation dated 13.01.2021 and issued order u/s 154 dated 28.01.2021 again accepting the returned income but reducing the demand raised to Rs.2,69,77,960/-.

4. Being aggrieved with the aforesaid order u/s 154 assessee preferred an appeal before the Ld. CIT(A), who remitted the matter back to the jurisdictional Assessing Officer with the direction to reexamine and verify 26AS again and allow credit of TDS as eligible to the assessee. The relevant observations of Ld. CIT(A) are as under:

V. DECISION: -

5.1 *I have carefully gone through the original Intimation passed u/s 143(1) and the rectified Intimation passed u/s 154 as well as grounds of appeal and submission made by the appellant. Briefly stating facts of the case is that the appellant filed return of income which was first processed u/s 143(1) on 13.01.2021 giving short credit of*

TDS by Rs.2,54,70,378/-. After being pointed out by appellant, the CPC then rectified the first Intimation and issued an order u/s 154 on 28.01.2021 where credit to some more TDS was given but still the credit was short by Rs.2,48,37,091/-. The appellant again requested for rectifying the defect towards short credit of TDS and CPC issued another order u/s 154 on 09.08.2021 but again there was short credit of TDS by Rs.1,82,20,456/-. The present appeal is against the 154 order dated 28.01.2021. But since another order u/s 154 was passed on 09.08.2021 subsequent to filing of this appeal, the appellant has revised the grounds of appeal only revising the amount of short credit of TDS. The other grounds of appeal are related to consequential levy of interest u/s 234B and 234C of the Act.

5.2 *In this regard, without going into the merits of the issues involved and without going into what different Tribunals and Courts have given judgements on similar issues, I would like to mention the limitation of this authority regarding examination and verification of TDS / TCS and advance taxes paid by an assessee. The assessing officers (CPC including) are guided by circulars and instructions issued from time to time by CBDT that TDS credit to the extent of only that matching with 26AS shall be given. It is no fault of the assessing officers if the respective deductors either fail to deduct TDS properly or after deducting fails to deposit it with govt. account properly or even after deducting and depositing fails to upload it in the 26AS system properly. It is more so apparent in the present case itself when CPC carried out two rectifications of the original Intimation u/s 143(1) by giving credit of TDS as updated in 26AS from time to time. The jurisdictional assessing officer is therefore directed to examine and verify 26AS again and allow credit of TDS as eligible to the appellant. This ground of appeal is therefore allowed subject to the above examination and verification.*

5.3 *As regard the levy of interest u/s 234B and 234C, it is again reiterated that charging of such interest are mandatory as per Act. These depend on the amount and dates of payment of prepaid taxes which again are not accessible to this authority. On this*

> *issue also, the jurisdictional assessing officer is therefore directed to examine and verify the dates and amount of payment of prepaid taxes and determine the quantum of interest as per provisions of the Act. This ground of appeal is also therefore* ***allowed subject to the above examination and verification.***
>
> *In result, the appeal is* ***allowed subject to the above examination and verification.***

5. Aggrieved with the aforesaid decision of Ld. CIT(A), assessee preferred the present appeal for our consideration.

6. At the outset, Shri Ravi Agrawal, CA representing the assessee (in short "Ld. AR"), submitted that the assessee in the present case has been saddled with the liability to pay the taxes which are deducted from his income, whereas as the provisions of section 205 r.w.s. 201 of the Income Tax Act, the default is on the part of deductor for which there are sufficient provisions in Income Tax Act to recover the TDS amount from the persons who as deducted it. The assessee, therefore, should not be penalized for the act of deductors. Ld. AR placed his reliance on the following judgments and office memorandum issued by CBDT:

a. *Smt. Anusuya Alva Vs. DCIT [278 ITR 206 (Kart.)] -- relevant page - 97 and 98 of PB*

b. *Pushkar Prabhat Chandra Jain Vs. Union of India [309 CTR 218 (Born)] - Page - 104 of PB,*

c. *Incredible Unique Buildcon Pvt Ltd. Vs. ITO (Delhi)- Page 111 of PB*

d. *Yashpal Sahni Vs. Rekha Hajamavis, ACIT [293 ITR 539 (Born)] Page 118-119 of PB*

e. *Shri Rajesh Dadu Vs. DCIT [ITA No. 34/Hyd/2023, order dt.31/03/2023 (Hydrabad Bench of ITAT) - at page- 131 & 132 of PB*

f. *Office Memorandum issued by CBDT on 11/03/2016 - page - 133 of PB.*

Further reliance is placed on following decisions:

a. *Ashok Kumar Chowatia Vs. JCIT (TDS) [435 ITR 499 (Mad)]*
b. *ACIT Vs. Om Prakash Gattami [242 ITR 638 (Gau)]*
c. *Ahluwalia & Associates Vs. ITO [33 SOT 1 (Ahm)]*
d. *Chandrashekhar Sadashiv Potphode Vs. DCIT [147 taxmann.com 260 (Pune ITAT)]*

7. Ld. AR drew our attention to the office memorandum F. No. 275/29/2014-IT(B) dt. 11.03.2016, the same is culled out for the sake of reference:

F.No. 275/29/2014-IT (B)
Government of India
Ministry of Finance
Central Board of Direct Taxes
(CBDT)

New Delhi, Dated: 11th March, 2016

Office Memorandum

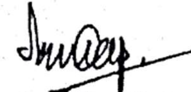
Sub: Non-deposit of tax deducted at source by the deductor- Recovery of demand against the deductee assessee.

Vide letter of even number dated 01.06.2015, the Board had issued directions to the field officers that in case of an assessee whose tax has been deducted at source but not deposited to the Government's account by the deductor, the deductee assessee shall not be called upon to pay the demand to the extent tax has been deducted from his income. It was further specified that section 205 of the Income-tax Act, 1961 puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch in such situations cannot be enforced coercively.

2. However, instances have come to the notice of the Board that these directions are not being strictly followed by the field officers.

3. In view of the above, the Board hereby reiterates the instructions contained in its letter dated 01.06.2015 and directs the assessing officers not to enforce demands created on account of mismatch of credit due to non-payment of TDS amount to the credit of the Government by the deductor. These instructions may be brought to the notice of all assessing officers in your Region for compliance.

This issues with the approval of Member (Revenue &TPS).



(Sandeep Singh)
Under Secretary (Budget)
Ph: 2309 4182
Email: Sandeep.singh68@nic.in

All Principal Chief Commissioners/ Principal Directors General of Income Tax.
All Chief Commissioners/ Directors General of Income Tax.

Copy to:

1. Chairperson and all Members of CBDT.
2. All Joint Secretaries and Commissioners in CBDT.
3. Pr. DGIT (Systems) and Pr.DGIT (Admin.).
4. Additional Directors General (Recovery) and (PR, PP&OL).
5. Web Managers of irsofficersonline.gov.in and incometaxindia.gov.in for placing the Office Memorandum on the respective portal.
6. Office of Comptroller & Auditor General of India (30 copies).

8. In backdrop of the aforesaid submissions, it was the prayer by Ld. AR that Ld. AO be directed to allow the credit of TDS sought granted and consequently, deleting the demand raised on the appellant including erroneous levy of interest u/s 234B, 234C of the Act.

9. Per contra, Smt. Tarannum Verma, Sr. DR representing the revenue, vehemently supported the order of Ld. CIT(A) and have submitted that the issue was judiciously decided by the First Appellate Authority by directing the Ld. AO to allow the available credits in accordance with data available in Form No. 26AS of the assessee. Ld. Sr. DR further furnished before us, a copy of communication from Income Tax Gazetted Officers Association, West Bengal Unit to the Chief Commissioner of Income Tax (CCA), Kolkata, dated 01.11.2013 referring to Instruction No. 5/2013 dated 08.07.2013 regarding SOP in the matters of TDS mismatch to be adhered to by the Assessing Officers. Copy of the said letter dated 01.11.2013 is culled out hereunder for the sake of clarity.

INCOME TAX GAZETTED OFFICERS' ASSOCIATION
WEST BENGAL UNIT
Aayakar Bhawan,6th floor, Room No.28, P-7,Chowringhee Square,Kolkata-700069

President : Mrinal Kanti Chanda
9477331010

General Secretary : Bhaskar Bhattacharya
8902198888

Date: 01-11-2013

To
The Chief Commissioner of Income Tax (CCA), Kolkata,
Aaykar Bhawan,
P-7, Chowringhee Square,
Kolkata 700 069.

Sir,

Sub.: TDS mismatch- CBDT's Instruction No. 5/2013

Kindly refer to the instruction no 5/2013 dated 08-07-2013 which has been recently issued resulting in a lot of confusion amongst the assessing officers.

On perusal of the above instruction it is not clear whether the earlier instructions of the CBDT on the issue of TDS mismatch in respect of A.Ys. 2008-09 to 2010-11 are still valid and has raised question regarding how to issue refund or adjust demands in those cases involving TDS mismatch.

As a result of this confusion the work of adjustment of arrear demands and issuing of pending refund has come to a standstill. If this situation is allowed to continue then the following complications may occur.

1. The assessees would suffer for no fault of theirs
2. The department would be flooded with grievance petition
3. Every charge will continue to remain overburdened with infructuous demands

We are of the view that the department should ask all the Assessing Officers to adopt uniform actions in this matter. In order to arrive at a uniform stand we shall have to consider all the prior instructions on the subject and find out their relevance.

The concept of 26AS was introduced from the A.Y. 2008-09 which mean from A.Y. 2008-09 the assessees will get credit of TDS only if such TDS is reflected in the 26AS.

1. In the initial years maximum number of deductors either did not file e-TDS return or filed e-TDS return with wrong data. This was truer when the deductors were offices of state and central government consisting of largest deductors.
2. This caused creation of huge number of infructuous demands across Tax India.
3. To circumvent this problem CBDT first came up with an instruction for A.Y. 2008-09 and later followed it up with separate instructions for A.Ys. from 2009-10 to 2011-12. In these instructions CBDT directed the Assessing Officers to give suo-moto credit to the TDS claimed by the assessee within a band despite the credit not being shown in 26AS. No submission was required from the end of the assessee if the case falls within the band. The band varied from year to year.
4. Now instruction no 5 of 2013 is being wrongly interpreted in various charges with many interpreting that the earlier instructions are no more valid. The various instructions in this regard are illustrated in the table below.:

Table A

A.Y.	Instruction no & Date	Applicable to ITR No.	Matter
2008-09	01/2010 dtd 25-02-2010	ITR 1 & 2	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 4,00,000/- 2. Refund up to Rs. 25,000/-
		All other	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 4,00,000/- 2. Refund up to Rs. 25,000/- 3. At least 70% TDS claim matched
		In all remaining cases TDS credit shall be given after *due verification*	
2009-10	05/2010 dtd 21-07-2010		Withdrawn
	07/2010 dtd 16-08-2010	ITR 1 & 2	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 3,00,000/- 2. Refund up to Rs. 25,000/- (*zero match excluded)*
		All other	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 3,00,000/- 2. Refund up to Rs. 25,000/- 3. At least 10% TDS claim matched
		In all remaining cases TDS credit shall be given after *due verification*	
	09/2010 dtd 09-12-2010		1. For ITR 1 & 2 the limit of Aggregate TDS claim is enhanced up to Rs. 4,00,000/- 2. For NIL matching in ITR 1 & 2 credit is to be given after *due verification* 3. *Due verification* may be done in the same manner as was being done in earlier years
2010-11	02/2011 dtd 09-02-2011	ITR 1 to 6	Credit should be given without matching, if 1.TDS claim – Matching is up to Rs. 1,00,000/- 2. For ITR 1 & 2 in case of zero matching TDS credit shall be given up to Rs. 5,000/-

			3. In other returns, in case of zero matching TDS credit shall be given after *due verification* 4. **TDS credit not be allowed with invalid TAN**
		In all other cases TDS credit shall be given after *due verification*	
2011-12	01/2012 dtd 02-02-2012	ITR 1 to 6	Withdrawn
	04/2012 dtd 25-05-2012	ITR 1 to 6	Credit should be given without matching, if 1.TDS claim – Matching is up to Rs. 5,000/- 2. In case of zero matching TDS credit shall be given after *due verification* 4. **TDS credit not be allowed with invalid TAN**
		In all other cases TDS credit shall be given after *due verification*	

5. However, the problem arises when the TDS mismatch that is beyond the band. Each instruction says that in such case the credit will be given after *due verification.* Same *due verification* is also required for zero matching cases of A.Ys. 2010-11 & 2011-12. Now, Para 2 of the instruction no 9/2010 dated 09-12-2010 clarifies that due verification means - *in the same manner as was being done in earlier years.* In earlier years i.e. before A.Y. 2008-09 credit of TDS used to be given on the basis of TDS certificates i.e. F-16 or F-16A. So it was clearly interpreted, in several charges, that *due verification* means checking the original TDS certificate before giving credit. But confusion runs high among the Assessing Officers as well as among the supervisory officers, who, gave contradictory instructions on both the premises i.e. within the band or beyond the band. A clear instruction in this matter is required for uniform action.

6. On careful reading of instruction number 5/2013 dated 08-07-2013 reveals that it **did not set aside** the instructions mentioned in Table A. Those instructions are still valid, but instruction No. 5/2013 has also created confusion as it extends the term "*due verification*" so as to include the followings as one of the methods of due verification:

    i. Verification from AO TDS
    ii. Write to the deductor to file correction statement
    iii. Verification from deductors.

For this point Para 2 of instruction no 5/2013 dated 08-07-2013 states

.... when an assessee approaches the AO with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount of the TDS the said AO will verify whether or not the deductor has made payment of TDS in the government account and if the payment is made, credit of the same should be given to the assessee.

7. The instruction no 5/2013 dated 08-07-2013 does not debar the AO from giving credit on mismatch amount on the basis of TDS certificates. If TDS certificates are furnished then there

is no need to get confirmation from deductor. Further if the AO has to get confirmation from the deductor then it does not remain *one of the methods* -- it virtually boils down to the only method. In that case the accepted explanation of *due verification* no more holds well. This is very confusing as only a couple of years back it was stated that TDS certificate would suffice. So before implementing this *verification from deductors* we request that there should be clear guide line as what constitutes *verification from deductors.* Whether a letter of confirmation from the deductor is sufficient as it was in respect of A.Ys. prior to 2008-09 or the AO is required to collect more evidences. if so. then what kind of evidences?

8. Further we fail to understand what fruitful result will be achieved by referring the matters of TDS mismatch to AO (TDS). Whatever data the deductor has uploaded is available to both the Assessing Officer and the AO (TDS). The only thing AO (TDS) can do is to impose fee u/s 234E where no TDS returns have been filed from A.Y. 2012-13. Hence. we are of the view that the assessing officers may be instructed not to refer these cases to AO(TDS) as the exercise would merely leads to wastage of time and stationery.

Conclusion

In view of above discussion it is evident that we need a clear clarification from the CCIT level in these areas. Till such clarification is issued we are of the view that the assessing officers may be instructed to follow the standard operating procedure (SOP) as under:

1. **For periods before A.Y. 2008-09**
   a. Allow credit on the basis of original TDS certificates, if returns are available. The AO. if he/she thinks it is necessary in a particular case, then may verify the TDS from the deductor. A letter of confirmation from the deductor would suffice.
   b. If the returns are not available then the assessee will not be able to file the original TDS certificates as during those periods the original TDS certificates were submitted along with the return. In these cases
      i. Get an indemnity bond from assessee in refund cases **AND**
      ii. Make verification from the deductor (irrespective of refund case or not). A letter of confirmation from the deductor would suffice.

2. **From A.Y. 2008-09 to 2011-12**

   a. Issue refund. reduce demand suo-moto or on the basis of assessee's application if mismatch is within the bands prescribed in the instructions mentioned in Table A.

b. For A.Ys. 2010-11 & 2011-12 no credit will be given under any circumstance in cases involving invalid TAN.

c. Beyond the band no action to be taken

   i. Till the time the credit is reflected in 26AS

   ii. Or the CCIT/CIT comes up with a clear instruction with the meaning of *due verification*

      a. Whether the AO can give credit on the basis of original TDS certificate and if so to what extent **OR**

      b. In each case the AO has to verify from the deductor

      c. If so, what are the documents that is to be collected from deductor (if this option is chosen then it may kindly be noted that a long time will be required to get confirmation especially from the government offices, the largest defaulter in the matter of uploading of e-TDS returns)

3. For A.Y. 2012-13

a. In case of mismatch no credit is to be given in case of any kind of mismatch till the correct data is available in 26AS.

We would like to request you to kindly adopt a uniform SOP for the entire charge. Right now there are wide divergences of action/opinion among the field officers on this issue. Supervisory officers have given instructions that are not only contradictory to each other but in some cases against the instruction of the CBDT. For example in several charges AOs have been directed not to issue refund / reduce demand unless the credit is seen in the 26AS – **irrespective of the amount of TDS or refund** (i.e. not even in cases falling within the band as discussed in Table A). Unfortunately all these instructions were verbal direction and obeying such direction would land the assessing officers in great trouble.

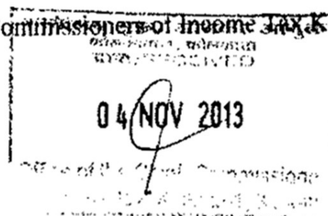
We therefore request you to kindly issue a SOP on this matter at the earliest.

Yours faithfully,

fro (Bhaskar Bhattachrya)

General Secretary

Copy to: All Chief Commissioners of Income Tax Kolkata for kind information & necessary action.



(Bhaskar Bhattachrya)

General Secretary

TDS mismatch

10. Based on the aforesaid submissions, Ld. Sr. DR submitted that since the matter is restored to the file of Ld. AO, the assessee is not remediless and can claim the eligible credits before the Ld. AO. In view of such facts, Ld. CIT(A) have rightly adjudicated the issue, fairly in the interest of justice, the same deserves to be sustained.

11. We have considered the rival submissions, perused the material available on record and case laws relied upon by the Ld. AR. Admittedly, on perusal of the copy of ITR acknowledgment, computation of income etc. It is apparent that the assessee had claimed an amount of Rs.23,66,44,625/-, however, Form 26 of the Assessee is not showing the entire credit of TDS which the assessee had claimed in its ITR. The sole grievance of the assessee is that the deductions made by various deductors are not reflected in it's 26AS, but the AO should allow the same based on assessee's claim without referring to 26AS. On the other hand, it was the contention by revenue that the Ld. AO is abided by the guideline's issues by CBDT and accordingly, he cannot accept the claim of assessee brushing aside the guidelines so issued. Since the assessee had furnished before us various documents, like copy of ITR Acknowledgment and Computation, copy of Form 26AS dated 30.08.2021, chart showing disallowed TDS claim, party wise ledgers, Bank

statements etc., all such documents and information needs verification and examination by the Ld. AO, which could not have been done as the same were not there before the Ld. AO, while the return of assessee was processed by CPC u/s 143(1) and further rectified u/s 154 of the Act, for this reason the matter requires to be set aside so as to decide the issue legitimately. As the matter is already restored to the file of Ld. AO by the Ld. CIT(A), the assessee had all the opportunities to substantiate with the support of corroborative evidence that such deductions are made by the respective deductors to establish that such claim of TDS is not reflected in Form 26AS on account of default on the part of the deductors. The claim of the assessee thereafter can be permitted as per the provisions of the Act and in accordance with instructions issued by CBDT in this respect. Ld. AO is directed to afford reasonable opportunity of being heard from the assessee and the assessee would be at liberty to raise the contentions based on facts, law and jurisprudence in the set aside assessment proceedings.

12. In backdrop of the aforesaid observations, we concur with the order of Ld. CIT(A) in setting aside the matter back to the files of Ld. AO, with slight modification to allow the claim of TDS and the enforcement of demand on account of mismatch of credit of TDS, in accordance with the mandate of law.

13. In result, the appeal of the assessee in **ITA No. 549/RPR/2024** is **partly allowed** for statistical purposes, in terms of our aforesaid observations.

Order pronounced in the open court on 31/01/2025.

Sd/-	**Sd/-**
(RAVISH SOOD)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

रायपुर/Raipur; दिनांक Dated 31/01/2025
Vaibhav Shrivastav

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant- Xander Finance Private Limited
2. प्रत्यर्थी / The Respondent- ACIT, Central-1(1), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur