

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

ITA No.1/Ind/2023 (AY: 2017-18)

Shri Deepak Soni, Prop. Ambalika Jewellers, 18, Chowk Bazar, Bhopal  <b>(PAN: ACYPS8020J)</b>  (Assessee/Appellant)	<b><u>बनाम/</u></b> Vs.	ITO-4(3), Bhopal      (Revenue/Respondent)
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ITA No. 82/Ind/2023 (AY: 2017-18)

Shri Sandeep Kumar Soni, Prop. Ambey Jewellers, 18, Chowk Bazar, Bhopal  <b>(PAN: AVGPS0484F)</b>  (Assessee/Appellant)	<b><u>बनाम/</u></b> Vs.	ITO-4(3), Bhopal      (Revenue/Respondent)
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Assessee by	Shri Gagan Tiwari, AR
Revenue by	Shri Sanjiv Kumar, Sr. DR

Date of Hearing	18.12.2024
Date of Pronouncement	24.02.2025

**आदेश / ORDER**

**Per B.M. Biyani, AM:**

The captioned two appeals are filed by two different assessees who are brothers. The details of these appeals are as under:

- (i) **ITA No. 1/Ind/2023** is filed by assessee "**Shri Deepak Soni**" against order of first-appeal dated 26.08.2022 passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arise out of assessment-order dated 28.12.2019 passed by ITO-4(3), Bhopal ["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"] for AY 2017-18.
- (ii) **ITA No. 82/Ind/2023** is filed by assessee "**Shri Sandeep Kumar Soni**" against order of first-appeal dated 12.01.2023 passed by same CIT(A) which in turn arises out of assessment-order dated 28.12.2019 passed by same AO u/s 143(3) of the Act for AY 2017-18.
2. Since these appeals involve identical issue, they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience.

***ITA No. 1/Ind/2023 of Shri Deepak Soni:***

3. The registry has informed a delay of 69 days in this appeal. Ld. AR for assessee submitted that the assessee has filed a condonation-application supported by an affidavit. Referring to contents of same, Ld. AR explained that the delay has occurred due to the local counsel of assessee (Shri Jitendra Jain) as well as presently arguing counsel (Shri Gagan Tiwari) who were engaged for handling this appeal of assessee. To explain facts of delay,

Ld. AR iterated Para No. 5 to 11 of condonation-application wherein it is stated by assessee that he communicated the impugned order dated 26.08.2022 to his local counsel on the very same day and thereafter got engaged in business activity due to forthcoming season of Diwali. Subsequently, when he contacted local counsel in the month of December, the local counsel informed that the appeal had not been filed and another counsel had to be engaged. Thereafter on 07.12.2022, the local counsel engaged the present counsel and transmitted papers to present counsel through whatsapp, the screenshot of whatsapp is filed as Annexure (A/1) to condonation-application. Thereafter, the present counsel prepared appeal-papers and shared same to local counsel on 20.12.2022 through email, the copy of email is filed as Annexure (A/2) to condonation-application. Thereafter, the present counsel received hardcopies of appeal-papers from Bhopal via bus service but due to intervening vacations of High Court and non-working, the present counsel could not file appeal promptly. Ultimately, this appeal could be filed on 02.01.2023 after delay. Affidavit of present counsel, Shri Gagan Tiwari, confirming these very facts is also filed as Annexure (A/3) to condonation-application. Thus, the delay in filing appeal is attributable to counsels of assessee and the assessee has no role in making delay. Ld. AR very humbly submitted that there is no lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He

further submitted that the sole reason of delay is as explained in the condonation-application and affidavits. He prayed for condonation of delay. Ld. DR for Revenue left the matter to the wisdom of Bench without raising any objection. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a "sufficient cause" for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a "sufficient cause" for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in ***Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387*** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

4. The brief facts leading to this appeal are such that the assessee-individual is engaged in jewellery business the name of M/s Ambalika Jewellers, Bhopal. For AY 2017-18 under consideration, the assessee filed return declaring a total income of Rs. 8,73,380/-. The case was selected under scrutiny for the reason of 'abnormal increase in cash deposits during

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demonetisation period as compared to pre-demonetisation period'. The AO issued notices u/s 143(2)/142(1) which were complied by assessee from time to time. The assessee furnished copies of Computation of total income, Bank statements, Cash-book, P&L A/c, Balance-Sheet, Audit Report, etc. to AO (Para 5 of assessment-order). While conducting proceeding, the AO observed that the assessee made cash-deposits of Rs. 49,00,000/- in a bank a/c during demonetisation. When the AO show-caused assessee to explain the source of deposit, the assessee submitted that he was engaged in jewellery business as proprietor of M/s Ambalika Jewellers, Bhopal. The assessee also submitted that he was having sufficient cash-balance in books of business which was deposited in bank a/c due to declaration of demonetisation. The AO, however, passed following order and treated the impugned deposit as unexplained investment u/s 69 and made addition:

*"7. On perusal of material available on record, it is seen that on 08/03/2017, the assessee had claimed to have received gift of Rs. 58,60,000/- through Cheque number 029446 from his father Shri Sheetal Prasad Soni. Relevant records along with copy of bank statement of the assessee and his father were also duly considered. It was observed that the above 'gift transaction' is in fact a 'circular transaction' being a colourable device to evade tax which is evident from following facts:*

*1. In the bank statement of Shri Sheetal Prasad Soni [father of the assessee] [bank account number 33206118835 with SBI, Chowk Bazar, Bhopal] there are following entries:*

<i>Date</i>	<i>Particulars</i>	<i>Withdrawal [Rs.]</i>	<i>Deposit [Rs.]</i>
<i>08/03/2017</i>	<i>Radha Devi Soni Prop. New Ambika</i>		<i>34,11,825</i>

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	Jwellers [Mother of the assessee]		
08/03/2017	Sandeep Soni Prop. Ambey Jwellers (Brother of the assessee)		29,61,320
08/03/2017	Deepak Soni Prop. Ambalika Jwellers [Assessee]		47,35,262
09/03/2017	Gift made to the assessee	58,60,000	

2. From the above, it is clear that there are transfers of sums from the bank account of the assessee/his brother & mother prior to making gift to the assessee.

3. The assessee had shown purchase of gold jewellery amounting to Rs. 47,35,262/- on 4/10/2016 vide invoice no. 37 dated 04/10/2016 from the proprietorship firm of his father namely M/s Ambika Jewellers, Bhopal. It is also evident that the purchase of jewellery was made @Rs. 2,941/- per grams which is much higher than average market rate @ Rs. 2341/- per gram arrived on the basis of the submission of the assessee. After the above purchases, the assessee had shown cash sales from 04/10/2016 to 08/11/2016 to make up the cash deposit in specified bank notes of Rs. 49,00,000/- during demonetization period.

4. The payment against above bill of Rs. 47,35,262/- was made to the proprietary firm of his father on 08/03/2017. On the very day, payment of Rs. 34,11,825 & Rs. 29,61,320/- was credited in bank account of his father from Radha Devi Soni Prop. New Ambika Jewellers [Mother of the assessee] & Sandeep Soni Prop. Ambey Jewellers [Brother of the assessee). The above accumulated bank balance was in turn transferred to the bank account of the assessee in garb of 'gift of Rs. 58,60,000/-.

From the above discussion, it is apparent that the assessee through above 'circular transaction' has routed his own unaccounted money of Rs. 49,00,000/- which was deposited in the form of specified bank notes in his bank account number 03466238626 maintained with SBI, Chowk Bazar, Bhopal. Further, it is also noteworthy to mention here that reasons for the source of cash deposited in aforesaid bank account as submitted by assessee is not tenable as it is devoid of any merits and generally not depositing cash in

*his current account and subsequently keeping so huge cash in hand is quite suggestive of tax evasion which has also been duly applied in this case.*

*Thus, the above sum of Rs. 49,00,000/- is added to the total income of the assessee as 'unexplained investment' u/s 69 of the Act."*

5. Aggrieved by AO's order, the assessee carried matter in first-appeal. During first-appeal, the assessee made a detailed submission before CIT(A). The CIT(A), however, rejected assessee's submission and upheld AO's action. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

6. Ld. AR for assessee firstly narrated following facts with reference to documentary evidences filed in Paper-Book:

- (i) That the assessee is engaged in business of gold and silver in proprietorship concern named M/s Ambalika Jewellers, Bhopal.
- (ii) That the assessee was having opening cash balance of Rs. 50,52,518/- as on 09.11.2016 (date of commencement of demonetisation) in Cash-Book of business. The Cash-Book was filed to AO during assessment-proceeding and also placed in Paper-Book-I at Pages 8-21. Out of cash of Rs. 50,52,518/-, the assessee was having demonetised/Specified Bank Notes (SBNs) of Rs. 49,00,000/- which the assessee had to deposit in bank a/c due to declaration of demonetisation by Govt. The assessee made deposit on 15.11.2016 in one single shot immediately after declaration of demonetisation.

(iii) That the above cash balance as on 09.11.2016 was accumulated from sale of assessee's jewellery business made prior to demonetisation. The assessee filed following documents to AO during assessment-proceedings to demonstrate the purchases and sales; these documents are also placed in Paper-Book:

- (a) Monthly summary of Opening stocks, Purchases, Sales and Closing stocks in terms of quantities and values of gold/gold ornaments (Page 23 of Paper-Book-I).
- (b) Ledger A/cs of Purchases and Sales of gold/gold ornaments for the entire previous year 2016-17 (Pages 24-35 of Paper-Book-I).
- (c) Stock Register (Pages 36-39 of Paper-Book-I). This Register clearly shows that the assessee was having sufficient stock of gold/gold ornaments for making sales. There is no negative balance of stock at any time.

7. Ld. AR then referred the paras of assessment-order (re-produced above) and submitted that the AO has simply picked one purchase transaction of Rs. 47,35,262/- made by assessee from his father's proprietorship concern "M/s Ambika Jewellers" on 04.10.2016; connected the same with a gift of Rs. 58,60,000/- received by assessee from his father on 09.03.2017 and thereby made an inference that the assessee has, through circular transaction, routed his own unaccounted money of Rs.

49,00,000/- for making deposit in Bank A/c. Ld. AR submitted that the inference/conclusion taken by AO is self-made, baseless and devoid of any worth as can be seen from followings:

- (i) The assessee purchased gold from father's proprietorship concern M/s Ambika Jewellers on 04.10.2016 for Rs. 47,35,262/-. The gold was taxable under VAT and the assessee has declared the transaction of purchase in Quarterly Return filed to VAT department, copy of VAT return was filed to AO and is also placed at Page No. 11 to 15 of Paper-Book-III. The assessee claimed input credit of tax paid on purchase and also paid output VAT on sales from time to time and declared the same in VAT return. Thereafter, the assessee made payment of Rs. 47,35,262/- to M/s Ambika Jewellers on 08.03.2017 through banking channel. The payment so made was debited in assessee's bank a/c and credited in father's bank a/c.
  
- (ii) Subsequently, the assessee's father made a gift of Rs. 58,60,000/- on 09.03.2017 to assessee. The bank statement of father is partly extracted in AO's order (re-produced above) and partly not extracted but from the available entries therein, it is clearly discernible that assessee's father was having much higher funds from different sources (of course, including the payment of Rs. 47,35,262/- made by assessee) for making gift to assessee. Ld. AR submitted that a gift-

deed was also executed by father which was duly filed to AO, copy at Page 107 of Paper-Book-I. In this gift-deed, assessee's father has made a clear-cut declaration that he made impugned gift to assessee due to love and affection. Ld. AR submitted that the AO has not made any addition in assessee's hands *qua* the gift of Rs. 58,60,000/-, thus there cannot be any doubt *qua* the genuineness of gift. Ld. AR submitted that assessee's father has made a gift of Rs. 58,60,000/- to assessee whereas the purchase transaction from father's proprietorship concern was just Rs. 47,35,262/-. He strongly contended that the purchase transaction was altogether different from gift transaction and the AO has unnecessarily as well as baselessly connected the two transactions just to draw an adverse inference and make addition in the hands of assessee.

8. Ld. AR very forcefully and repeatedly contended that the AO has not found a single deficiency in the purchases, stocks, sales, books of accounts and financial transactions of assessee. Further, there is no connection of purchases made by assessee from father's proprietorship concern and the gift received from father and yet the AO has wrongly termed the same as circular transaction and made addition. He submitted that the AO's action is based on mere surmise, suspicion and presumption.

9. Ld. AR next submitted that in present case, the AO has not even rejected assessee's books of account and there is no flaw, fallacy or deficiency pointed out by AO in books of assessee. Therefore also, there cannot be any case for treating the impugned deposit in bank account as unexplained when the same stand duly recorded in Cash-Book of assessee accepted by AO. To support his stand, Ld. AR relied upon ***ITAT, Delhi in Fine Gujarwala Jewellers Vs. ITO (2023) 151 taxmann.com 340:***

*"19. In the present case, the department has not rejected the books of accounts of the Assessee accepted in VAT. The regular books of accounts were maintained in the normal course of business in which no flaw, fallacy or deficiency was pointed out by the AO. It is well settled law that once the assessing officer accepts the books of accounts and the entries in the books of accounts are matched, there is no case for making the addition as unexplained. In the assessee case of R S Diamond India Pvt. Ltd. Vs. ACIT, I.T.A. No. 2017/Mum/2021 (A.Y. 2017-18) the Income Tax Tribunal Bench at Mumbai has held as under:-*

*"4. I have heard the parties and perused the record. The facts that the deposit made into the bank account is from out of the books of accounts and the said deposits have been duly recorded in the books of account are not disputed. It is the submission of the assessee that it had received advance money from walk in customers for sale of jewellery over the counter and the amount so received was duly recorded in the books of account. The said amount alongwith other cash balance available with the assessee was deposited into the bank account after announcement of demonetization by the Government of India. He also submitted that the assessee has raised sale bills against the said advances in the name of respective customers. Since the transaction was less than Rs.2.00 lakhs, it was stated that the assessee did not collect complete details of the customers. Thus, it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded in the books of account. The impugned deposits have been made from cash balance available with books of account. I also notice that the Assessing Officer has not rejected the books of account. When cash deposits have been made from the cash balance available in the books of account, in my view,*

*there is no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer.*

*5. The Ld A.R relied on certain case laws which are relevant to the issue under consideration. In the case of Lakshmi Rice Mills (1974) 97 ITR 258 (Patna), it has been held that, when books of account of the assessee were 3 R. S. Diamonds India Private Limited accepted by the revenue as genuine and cash balance shown therein was sufficient to cover high denomination notes held by the assessee, then the assessee was not required to prove source of receipt of said high denomination notes which were legal tender at that time. In the case of M/s. Hirapanna Jewellers (ITA No. 253/Viz/2020 dated 12.5.2021), it was held that when the cash receipts represented the sales which has been duly offered for taxation, there is no scope for making any addition under [section 68](#) of the Act in respect of deposits made into the bank account.*

*6. I notice that the decision rendered in both the above said cases support the case of the assessee. Accordingly, in the facts and circumstances of the case, I am of the view that the addition of Rs. 45 lakhs made in the hands of the assessee is not justified, since the said deposits have been made from the cash balance available in the books of account. Accordingly, I set aside the Fine Gujranwala Jewellers, order passed by learned CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs. 45 lakhs."*

20. Further, in the case of [Lakshmi Rice Mills v. CIT](#) [1974] 97 ITR 258 (Pat.) Hon'ble Patna High court held as under:

*"It is, in my view, a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law."*

*Thus, considering the above ratio, when the Assessee's books of account were not rejected, the Lower authorities ought not to have made additions."*

10. Lastly, Ld. AR raised one more contention. He submitted that the AO has already taxed the transactions of purchases and sales of assessee which have given rise to accumulation of cash that was deposited in Bank A/c.

When it is so, the impugned addition made by AO has resulted in double taxation which is not sustainable. To support his stand, Ld. AR relied upon ***ACIT Vs. Dewas Soya Ltd. [IT Appeal No. 336/Ind/2012]***, a decision given by ITAT, Indore holding as under:

*"6.20 The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added [u/s. 68](#) of the Act.*

*6.21 This view has been held by the Hon'ble Supreme Court in the case of [CIT vs Devi Prasad Vishwnath Prasad](#) (1969) 72ITR194 (SC) that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."*

11. Per contra, Ld. DR for revenue made following submissions to oppose the submissions of Ld. AR:

- (i) Each case has its own facts, therefore the decisions relied by Ld. AR are not relevant.
- (ii) The AO has very well narrated in assessment-order about the colourable device of purchase from father and ultimate receipt by way of gift.

- (iii) The assessee made purchase from father on 04.10.2016 against which payment was made on 08.03.2017. Why the assessee consumed more than 6 months in making payment to his father? Further, the assessee did not pay any interest to his father. Why so?
- (iv) Pages 1 and 7 of Paper-Book-I filed by assessee show that there was an outstanding loan of Rs. 18,14,615/- as on 31.03.2017 receivable by assessee from father's proprietorship concern M/s Ambika Jewellers and the assessee received interest of Rs. 1,34,090/- from same concern. The question here arises as to why the assessee did not set off loan receivable against purchase price payable? Why father made gift to assessee instead of re-paying loan taken from assessee?

12. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents filed in Paper-Book to which our attention has been drawn. The dispute in present case is qua the addition of Rs. 49,00,000/- made by AO on account of unexplained cash deposit in Bank A/c. Admittedly, the assessee made deposit on 15.11.2016 immediately after declaration of demonetisation on 08.11.2016. The assessee is claiming that the impugned deposit was made from cash balance available in books of his business at the time of declaration of demonetisation. To show this factual aspect, the assessee filed Cash-Book and other documents to AO during assessment-proceeding and the same are

also placed in Paper-Book and referred by Ld. AR during hearing. On perusal of assessment-order, one thing is clear-cut that the AO has not rejected assessee's books of account, even the AO has not pointed out a single flaw or deficiency in assessee's books. However, the AO has picked a purchase transaction of Rs. 47,35,262/- made by assessee from his father's proprietorship concern and another transaction of gift received by assessee from his father; connected these two transactions and inferred that the money deposited by assessee in bank a/c was assessee's own money. However, the assessee has adduced complete documentary evidences to show that the purchase transaction was of gold which was a taxable commodity under VAT and the assessee paid VAT in purchase bill which was claimed as input credit. Further, the assessee paid VAT on sale of such gold. The impugned purchase transaction of gold from father and subsequent sale thereof were duly informed to VAT authorities in VAT return and the same were accepted. Then, the assessee made payment of purchase price of Rs. 47,35,262/- to his father through banking channel and not in cash. It is subsequent to completion of purchase transaction in all respect that the assessee's father made a gift of Rs. 58,60,000/- to assessee and that too from the funds available to him from various sources (including the payment received from assessee). Notably, the gift of Rs. 58,60,000/- made by father far exceeds the purchase price of Rs. 47,35,262/- and has been made out of funds generated from various

sources. The gift was made due to love and affection and a gift-deed executed by father was also filed to AO and the same is a part of Paper-Book as well. Therefore, the assessee is very correct in claiming that the gift transaction is nothing to do with purchase transaction and the two transactions are altogether independent of each other. The AO has made a wrong notion that there is a circular transaction by way of gift. It is also noteworthy that the AO has neither disallowed the purchase made from father nor made any addition qua the gift received from father. Thus, the transactions of purchase and receipt of gift are not disturbed by AO. The AO has, however, made addition treating the deposit in bank a/c as unexplained whereas the source of deposit in bank a/c is very much available in Cash-Book of assessee and the same Cash-Book is not even rejected by AO. It is also noteworthy that the AO has made addition u/s 69 even while accepting the books of account of assessee, the books of account in which the impugned cash deposit in bank a/c is recorded. Nobody can dispute that the section 69 applies only when a sum is not recorded in books of account whereas the position of present case is just opposite in as much as the impugned deposit is already recorded in cash-book accepted by AO. Therefore, in the light of decisions relied by Ld. AR as cited in foregoing para, the addition made by AO is not sustainable. Although we have noted the arguments of Ld. DR for revenue in foregoing para but those arguments are only to support the case made out by AO but do not have any merit and

not acceptable. Consequently, we delete the addition made by AO. The assessee succeeds in this appeal.

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13. There is a small delay of 3 days in filing this appeal. The assessee has filed a condonation-application supported by an affidavit stating that the delay of 3 days was caused by present counsel in filing appeal. The present counsel accepts his fault and prays to condone the delay so that no harm is caused to assessee. Ld. DR for Revenue left the matter to the wisdom of Bench without rejecting any objection. Taking a justice oriented approach, we condone the small delay of 3 days, admit appeal and proceed with hearing.

14. The facts and controversy involved in present appeal is identical to the ***ITA No. 1/Ind/2023 of Shri Deepak Soni*** decided in earlier part of this order except that there is a change in figures. In this case, the assessee made purchase of Rs. 29,61,320/- from father's concern on 01.10.2016; made payment of Rs. 29,61,320/- to father on 08.03.2017 through banking channel and thereafter received a gift of Rs. 88,00,000/- from father on 09.03.2017. The assessee made cash deposit of Rs. 45,50,000/- in bank a/c during demonetisation period which the AO treated as unexplained and made addition u/s 69. Since the underlying facts and controversy are same,

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the adjudication made by us in **ITA No. 1/Ind/2023 of Shri Deepak Soni** shall apply *mutadis mutandis*. Applying same, we delete the addition made by AO. The assessee succeeds in this appeal.

**15. Resultantly, these appeals are allowed.**

Order pronounced in open court / by putting on notice board  
as per Rule 34 of ITAT Rules, 1963 on 24/02/2025

Sd/-  
(DINESH MOHAN SINHA)  
JUDICIAL MEMBER

Sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक/ Dated : 24/02/2025

Dev/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore