

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**I.T.A. No. 5433/Mum/2024
A.Y: 2020-21**

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| ACIT, Circle – 14(1)(2) Room No. 455, 4 th Floor, Aayakar Bhavan, MK Marg, Mumbai – 400020. | Vs | Lighthouse Learning Private Limited Windson, 8 th floor, 801- 803, Off CST Road, Vidyanagari Marg, Kalina Santhacruz E, Mumbai. PAN – AACCE2954N |
| (Appellant) | | (Respondent) |

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| Assessee by | Shri Viraj Mehta |
| Revenue by | Shri Rajesh Kumar Yadav |

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| Date of Hearing | 17.12.2025 |
| Date of Pronouncement | 30.01.2026 |

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the revenue challenging the impugned order dt. 16.08.2024 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2020-21. The revenue has raised the following grounds of appeal:

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the assessee was entitled to depreciation claim of Rs. 209,42,61,048/- on goodwill whose valuation was done at Rs. 834,77,96,858/- by placing reliance on

the decision of the Hon'ble Supreme Court in the case of CIT v. Smifs Securities Ltd. (2012) 348 ITR 302(SC)?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was correct in placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT v. Smifs Securities Ltd. (2012) 348 ITR 302(SC) ignoring the fact that the issue involved in that case was only whether goodwill is an intangible asset eligible for depreciation within the meaning of section 32(1) of the Income Tax Act, 1961 and the issue of valuation of goodwill and allowability of depreciation on goodwill in the light of Explanation 7 to Section 43(1) and 6th proviso to section 32(1)(ii) of the Act were never discussed by the Hon'ble Supreme Court in the said case?

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the value of all the intangible assets of all the transferee and the transferor companies amounted to only Rs. 2,42,44,595/- at the end of the assessment year 2019-2020 and the maximum depreciation allowable on the intangible assets for the. A.Y. 2020-2021 at the rate of 25% in the hands of the assessee company (amalgamated company) would be only Rs. 60,61,149/- or lesser.

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that in the light of the provisions of Explanation 7 to Section 43(1) and Explanation 2 to Section 43(6) of the Income Tax Act, 1961, the actual cost of "Goodwill" arising out of amalgamation in the books of the amalgamating companies was not correctly recorded in the books of the amalgamated company?

5. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the depreciation admissible to the assessee on goodwill post amalgamation should have been at the same value had there been no amalgamation at all, and accordingly depreciation on goodwill arising out of amalgamation should have been NIL in the light of the 6th proviso to section 32(1)(ii) of the Income Tax Act, 1961.

6. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that no disallowance u/s 14A could be made as the assessee had not earned any exempt income during the year?

7. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate the CBDT had issued Circular No. 5 of 2014 dated 11.02.2014 clarifying that Rule 8D read with section 14A of the Income Tax Act, 1961 provides for disallowance of the

expenditure even where tax payer in a particular year has not earned any exempt income?

8. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that even after issue of Circular No. 5 of 2014 by the CBDT, some, courts have taken a view that if there is no exempt income during a year, no disallowance under section 14A of the Act can be made for that year and in order to make the intention of the legislature clear and to make it free from any misinterpretation, the Finance Act, 2022 has inserted an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in the Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

9. The appellant prays that the order of the CIT(A) be set aside on the above grounds and that of the Assessing Officer be restored.

10. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

2. At the very outset we noticed that there is a 2 days delay in filing the present appeal before us. In this regard Ld.DR explained the sufficient cause for not filing the appeal within the time.

3. Considering the entire factual position as explained before us and also keeping in view, the principles laid down by Hon'ble Supreme Court in the case of **Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR 1353 (SC)**, wherein it has been held that where substantial justice is pitted against technicalities of non-deliberate delay, then in that eventuality substantial justice is to be preferred. In our view the principals of advancing substantial justice is of prime importance. Hence

considering the explanation put forth by the revenue by justifiably and properly explaining the delay which occurred in filing the appeal and construing the expression "sufficient cause" liberally we are inclined to condone the delay in filing the appeal before us and thus the appeal is registered to be heard on merits.

4. As per the facts of the present case, the assessment proceedings of the assessee were concluded and final assessment order dated 29.09.2022 was passed u/s 143(3) of the Act thereby making following additions on account of

- a) *Disallowance of amortization of Goodwill of Rs. 209,42,61,048;*
- b) *Disallowance of Rs. 6,23,58,295, 30% of expenses incurred Rs. 20,78,60,984; (Allowed by CIT(A), Not Challenged by Department before Hon. ITAT)*
- e) *Disallowance of Rs. 8,35,20,507, 10% of expenses incurred of Rs. 83,52,05,978; (Allowed by CIT(A), Not Challenged by Department before Hon. ITAT)*
- d) *Disallowance of Rs. 3,96,18,588, 10% of expenses incurred of Rs. 39,61,85,881; (Allowed by CIT(A), Not Challenged by Department before Hon. ITAT)*
- e) *Disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ('Rules') of Rs 8,10,655;*

5. Aggrieved by the said order of assessment, assessee preferred appeal and Ld. CIT(A) after considering the case of both the parties deleted all the additions and allowed the appeal. However being aggrieved from the said order the revenue has now preferred the present appeal thereby challenging the two additions which are reproduced herein above.

a. Disallowance of amortization of Goodwill of Rs. 209,42,61,048/-.

b. Disallowance u/s 14A of the Act r.w.r 8D of the IT Rules, 1962 of Rs. 8,10,655/-

6. **Ground No. 1 to 5** these grounds raised by the revenue are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in deleting the additions on account of depreciation claimed on goodwill. Therefore we have decided to adjudicate these grounds through the present consolidated order.

7. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. From the records we noticed that as per the facts of the present case the assessee has recorded Goodwill of Rs.8,34,77,96,858 was the time of amalgamation of its subsidiary and step-down subsidiary and claimed depreciation u/s 32(1). The assessee had made application for amalgamation of EIL (Euro Kid International Limited), KKEL (Kangaroo Kids Education Limited) and ESPIL (Euro School Properties and Infrastructure Private Limited) with the assessee and National Company Law Tribunal, Mumbai ("NCLT") had approved the scheme of merger /amalgamation. We noticed that the value of consideration paid (in the form of exchange of shares) at the time of amalgamation was higher than the net assets and the differential amount of Rs. 8,34,77,96,858 is recorded as Goodwill in the books of assessee (transferee company).

8. During FY 2019-20, the assessee had claimed depreciation on Goodwill at Rs. 209,42,61,048 as per the provisions of section 32 of the Income Tax Act. As section 32 of the Income Tax Act, as it stood before amendment by Finance Act 2021, allowed depreciation on both tangible as well as intangible assets, provided *(i) they are owned by the assessee (ii) they are used for the purpose of business of the assessee*. In this case the Goodwill was owned by the assessee which was supported with NCLT order and Valuation Report of Chartered Accountant. Also, there is no doubt that the said goodwill was used for the purpose of business. Therefore Depreciation was to be allowed on "written down value". The written down value is defined u/s 43(6) of the Income Tax Act. Clause *(a) says that "written down value", in case of assets acquired in the previous year, the depreciation is allowable on actual cost (of the asset) to the assessee*. In the present case, since this is the first year of goodwill, therefore depreciation is allowable on actual cost of goodwill.

9. However, AO rejected the claim of the depreciation on goodwill on the basis that goodwill was recorded by mere book entries and in its orders had compared total of depreciation on intangible assets held by the transferor company (+) transferee company before the amalgamation with the depreciation claimed by the assessee after amalgamation.

10. In this regard, we noticed that Ld. CIT(A) had dealt in detail with this issue and the operative portion of the order of Ld. CIT(A) is reproduced herein below:

In ground no.1, the appellant has contested the order u/s 143(3) of the IT Act, 1961 dated 29-09-2022 for the A.Y.2020-21 of the AO of making a disallowance of Rs.209,42,61,048 on account of depreciation on Goodwill.

I have carefully considered the submissions made by the Appellant. It is observed that the appellant has recorded Goodwill of Rs.8,34,77,96,858 at the time of amalgamation of its subsidiary and step-down subsidiary. The Appellant claimed depreciation u/s 32(1).The appellant has made application for amalgamation of EIL (EuroKid International Limited), KKEL(Kangaroo Kids Education Limited) and ESPIL (EuroSchool Properties and Infrastructure Private Limited) with the Appellant and National Company Law Tribunal, Mumbai ("NCLT") has approved the scheme of (merger / amalgamation. The value of consideration paid (in the form of exchange of shares) at the time of amalgamation was higher than the net assets and the differential amount of Rs. 8,34,77,96,858 is recorded as Goodwill in the books of appellant (transferee company). During FY 2019-20, the appellant has claimed depreciation on Goodwill at Rs. 209,42,61,048 as per the provisions of section 32 of the Income Tax Act. Section 32 of the Income Tax Act, as it stood before amendment by Finance Act 2021, allows depreciation on both tangible as well as intangible assets, provided (i) they are owned by the assessee (ii) they are used for the purpose of business of the assessee. In the given case the Goodwill is owned by the assessee which is supported with NCLT order and Valuation Report of Chartered Accountant. Also, there is no doubt that said goodwill is used for the purpose of business. The Depreciation is to be allowed on "written down value". The written down value is defined u/s 43(6) of the Income Tax Act. Clause (a) says that "written down value", in case of assets acquired in the previous year, the depreciation is allowable on actual cost (of the asset) to the assessee. In the given case, since this is first year of goodwill, the depreciation is allowable on actual cost of goodwill.) The AO in the assessment order has compared total of depreciation on intangible assets held by of the transferor company + transferee company before amalgamation with the depreciation claimed by the appellant after amalgamation. The AO has ignored the fact that Goodwill is recorded by the transferee company in the transaction of amalgamation and same cannot be ignored. The Assessing Officer has rejected claim of depreciation on goodwill on the basis that goodwill is recorded by mere book entries. However, from the documents submitted by the appellant it is evident that actual consideration is paid for the goodwill i.e.,

goodwill is recorded as difference between the consideration paid to acquire net assets of the transferor company over and above the book value of those assets. The Assessing Officer has concluded that the excess value of the investments being attributed to the goodwill taken over by the amalgamated company from the amalgamating company by way of a mere book entry can certainly not be attributed as the Actual Cost of the asset for the purposes of Section 43(1) of the Income Tax Act. I now proceed to examine whether Explanation 7 to section 43(1) militates against the claim. Section 43(1) defines "actual cost" to mean "the actual cost of the assets to the assessee" reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by another person or authority." The Explanation provides that where in a scheme of amalgamation any capital asset is transferred by amalgamating company to amalgamated company and the amalgamated company is an Indian company, the actual cost of such capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purpose of its own business. The said explanation applies only to "capital assets" and it cannot be disputed that any intangible asset (including goodwill) can be a capital asset. However, Explanation, postulates the existence of an "actual cost" to the amalgamating company in respect of the capital asset. If there is none, the result can only be that Explanation cannot apply; the result cannot be that the amalgamated company cannot claim depreciation on the capital asset even though it has acquired it by paying cost in terms of money.

*The function of an Explanation is to explain the meaning of the words contained in the section. It is part and parcel of the enactment. But it cannot be so construed as to take away a statutory right or set at naught the working of the enactment by becoming a hindrance to the interpretation of the same. These rules are set out by the Supreme Court in **Sundaram Pillai Vs Pattabhiraman (AIR 1985 SC 582)**. If the apprehended construction is placed on the Explanation, it will take away the entitlement of the amalgamated company to claim depreciation on goodwill for which it has incurred a cost in monetary terms, a right which is granted under section 32(1). The Explanation, has to be therefore limited to cases where the amalgamated company has not paid anything as cost in terms of money in respect of a capital asset, including goodwill. Moreover, the definition of "actual cost" in section 43(1) shall be applied, in consistent with the principles laid down by the Supreme Court in **Challapalli Sugars Ltd. Vs***

Commissioner of Income Tax, A.P (A.I.R 1975 SC 97) (98 ITR 167). As held by the Supreme Court in this judgement; in determining the commercial sense of an expression in a statute directed to commercial men but not containing any definition of that expression, it may be relevant to refer to the normal rules of accountancy prevailing in commerce and industry. If there has been a valuation of the assets / liabilities on fair value basis, it has to be accepted. No tax avoidance or tax-evasion angle can be said to be involved. It is pure business decision taken by the companies concerned. The amalgamation scheme is also subject to approval of the High Court / NCLT. The AO cannot put himself in the place of a businessmen or corporations and decide the issues.

The Hon'ble Supreme Court in the case of **CIT Vs Smifs Securities Ltd (2012) (13 SCC 488) (348 ITR 302)** held that "goodwill" is an intangible asset and is entitled to be depreciated in accordance with section 32 of the Act. It is significant to note that in **CIT Vs Smifs Securities**, there was an amalgamation of two companies, where the company which acquired the other company paid consideration in excess of the net assets of the acquired company; the excess was attributed towards goodwill, and the supreme court upheld the claim for depreciation on the amount so paid in excess. Post this decision of supreme court, there is amendment vide Finance Act 2021 and goodwill of a business or profession will not be considered as asset for the purpose of depreciation u/s 32(1). This amendment is applicable from AY 2021-22 and hence, the claim of appellant for AY 2020-21 cannot be rejected.

It is further observed that the AO has also analysed in detail about the excessive valuation of the amalgamating companies in order to emphasise that the said valuation was with the purpose of creating higher value of Goodwill for claim of depreciation by the amalgamated company(Appellant). It is observed that the AO has not brought out any specific adverse findings to negate the valuations of the Appellant. Moreover, if the Income Tax Department had any objection to the amalgamation process being undertaken for artificial Goodwill creation, the same could have been objected before the Judicial Authority NCLT, which had given sufficient opportunity for the same. The CBDT vide circular No.279/Misc. dated 11- 04-2014 has clarified that objections/representations to the NCLT during the amalgamation process was the only opportunity to the Department to ensure that the amalgamation was not taken up with the purpose of defrauding the Revenue. Thus, the circular goes in favour of the Appellant once

amalgamation order is passed by the Judicial Authority of NCLT to the extent that the Revenue cannot take a stand that the amalgamation process was merely for the purpose of artificial Goodwill creation in the books for tax avoidance.

In the view of above discussion and in the light of various decisions of the hon'ble Supreme Court as discussed in the above paragraphs, the AO was not justified in disallowing the claim of depreciation and the AO is hereby directed to allow the claim of depreciation on Goodwill of Rs. 209,42,61,048/-. This ground is allowed allowed

10. After having gone through the entire facts of the present case and considering the documents placed on record, we found that Hon'ble Supreme Court in the case of **CIT vs. Smifs Securities Ltd. (2012) 13 SCC 488 (2012) 348 ITR 302 (SC)** held that "goodwill" is an intangible asset and is entitled to be depreciated in accordance with section 32 of the Act. It is significant to note that in **CIT v. Smifs Securities**, there was an amalgamation of two companies, where the company which acquired the other company paid consideration in excess of the net assets of the acquired company; the excess was attributed to goodwill, and the Supreme Court upheld the claim for depreciation on the amount so paid in excess.

Further, the proposition of law laid down in **Smifs Securities (supra)** was applied for the AY 20-21 and the Hon'ble Bombay High Court had also followed the judgment of Hon'ble Supreme Court in **Smifs Securities Ltd. (supra)** in following cases.

(i) Taj Sats Air Catering Ltd. vs. CIT (ITA No. 743/2012) decided by the Bombay High Court on 5-9-2012;

(ii) Chowgule & Co. Pvt Ltd vs. Addl. CIT (Tax Appeal No.28/2012) decided on 12.1.2016. The Gujarat High Court

has adopted the same view in the case of Zydus Wellness (2018 SCC Online Guj 3439).

Moreover, recently the Coordinate Bench of Mumbai ITAT in the case of **ACIT v. Siyaram Silk Mills Ltd. (ITA No. 2941/Mum/2025) dt. 26.11.2025** had allowed depreciation on goodwill which arises on account of merger and has held that :-

"6. After having heard the counsels for both the parties at length, we find that although the goodwill is no explicitly covered in the definition of intangibles but Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd., (2012) 348 ITR 302 (SC) had held that goodwill arising at the time of merger is an intangible asset and is entitled to be depreciated u/s 32 of the Act. The facts of the case were that YSN Shares and Securities Pvt Ltd (YSN) amalgamated with the assessee company in accordance with a scheme of amalgamation sanctioned by both the Hon'ble Bombay and Calcutta High Courts. The excess consideration paid over the net assets acquired was treated as goodwill arising on amalgamation and depreciation was claimed by the assessee. The AO denied the depreciation holding that goodwill is not an asset by referring to explanation 3 to section 32. The question before the Apex Court was whether goodwill is an asset under section 32 and whether depreciation is allowable or not. The findings of the Apex Court were:

"The Commissioner of Income Tax (Appeals) [CIT(A)], for short] has come to the conclusion that the authorized representatives had filed copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal [ITAT', for short]. We see no reason to interfere with the factual finding.

The Hon'ble Court further held that:

Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial right of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(b). In the circumstances, we are of the view that 'Goodwill' is an asset under Explanation 3(b) to Section 32(1) of the Act.")

7. So, keeping in view the facts of the case and also relying upon the decision of the Hon'ble Supreme Court, we are also of the view that goodwill arising at the time of merger is an intangible asset and is thus entailed to be depreciated u/s.32 of the Act.

11. Amendment made to section 32 of the Act to the effect that the Goodwill shall not be considered as Intangible Asset for depreciation purpose was made by Finance Act, 2021, however such amendment shall apply from AY 2021-22. Since the present appeal is for AY 20-21 therefore the amendment in Finance Act, 2021 shall not apply to AY 20-21 which is the year under consideration.

Hence as per pre-amendment, goodwill was always considered as an Intangible Asset and was eligible for depreciation u/s 32.

12. During the hearing, Ld. DR stressed upon the valuation of shares considered during amalgamation. But we noticed that Ld. CIT(A) at page 20 of its order had relied upon CBDT vide circular No.279/Misc. dated 11-04-2014 which has clarified that objections/representations to the NCLT during the amalgamation process was the only opportunity to the Department to ensure that the amalgamation was not taken up with the purpose of

defrauding the Revenue. Thus, in this way the circular goes in favour of the assessee once amalgamation order is passed by the Judicial Authority of NCLT to the extent that the Revenue cannot take a stand that the amalgamation process was merely for the purpose of artificial Goodwill creation in the books for tax avoidance.

13. The assessee had very well informed the Department / revenue about the NCLT merger application. But the revenue had not raised any objections before the NCLT. The assessee had submitted relevant copies of application submitted before IT Department and NCLT to prove that IT Department was intimated of the merger application before NCLT. However, IT Department did not object anything before NCLT and hence, objection to valuation cannot be challenged at this stage.

14. Further, Ld. DR argued upon Rule 11UA we found that Rule 11UA is applicable for section 56 of the Act and in our view question of Section 56 does not arise at all in the present set of facts. Even the Lower Authorities have not at all pin pointed any defect in the valuation and even books of the assessee were audited which were accepted by the department. Hence the question of challenging the valuation does not arise.

15. Even, the valuation has not been challenged before us in any of the ground raised by the Department in this appeal. Even no new facts or circumstances have been placed on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to

interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the grounds No. 1 to 5 raised and by the revenue stands dismissed.

16 **Ground No. 6 to 8**, these grounds raised by the revenue are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in deleting the additions u/s 14A r.w.s 8D of the Act. Therefore we have decided to adjudicate these grounds through the present consolidated order.

17. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. From the records we noticed that assessee had not earned any exempt income during the year under consideration from the investments company in fact the assessee had opted for growth option in respect of all the mutual funds. Therefore question of earning any dividend income from such investments does not arise.

18. In our view, provisions of Section 14A of the Act can be applied only where an exemption in respect of certain income is claimed. In the instant case, no dividend income had been earned by the assessee therefore, no expenses can be disallowed.

19. Moreover the issue as to whether provision of Section 14A are applicable even when no exempt income is earned came up for adjudication before the Hon'ble Supreme Court in the case of **PCIT vs D.B. Corp Ltd (SLP 27054/2016)**. It would be pertinent to note that the Hon'ble Supreme Court had dismissed Revenue's SLP and thus upheld order of the Hon'ble High Court.

20. Further, the SLP filed before the Hon'ble Supreme Court in the case of ***CIT vs Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com 250 (SC)*** on the same issue has also been dismissed by the Hon'ble Court and the Court has specifically observed that the SLP is dismissed on merits as well.

21. Even no new facts or circumstances have been placed on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or to deviate from the lawful findings so recorded by Ld. CIT(A). Hence, the grounds No. 6 to 8 raised and by the revenue stands dismissed.

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

Order pronounced in the open court on 30/01/2026.

Sd/-
(PRABHASH SHANKAR)
(ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:

Dated: 30/01/2026

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai