

**आयकर अपीलीय अधिकरण, गौहाटी न्यायपीठ, गुवाहाटी**  
IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH, GUWAHATI

BEFORE SHRI GEORGE MATHAN, JM & SHRI LAXMI PRASAD SAHU, AM

(THROUGH : VIRTUAL HEARING)

आयकर अपील सं./ITA No.101/GTY/2025

(निर्धारण वर्ष / Assessment Year :2018-2019)

<b>Supriya Roy,</b> Ram Thakur Trading, Central Road, Agartala, Tripura-799001	Vs.	ITO Ward-1, Agartala
<b>PAN No. : ACBPR 7501 G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by : Shri Sanjay Mody, AR		
राजस्व की ओर से /Revenue by : Shri Santosh Karnani, Sr. DR		
सुनवाई की तारीख / Date of Hearing : 03/02/2026		
घोषणा की तारीख/Date of Pronouncement 03/02/2026		

**आदेश / O R D E R**

**Per George Mathan, JM:**

This is an appeal filed by the assessee against the order of the Id. Addl./JCIT(A)-2, Chennai, dated 13.12.2023 for the assessment year 2018-2019.

2. At the time of hearing the Ld.AR drew our attention to pages 9 to 16 of the paper book which was copy of the written submission filed. The same reads as follows:-

Supriya Roy  
Agartala  
PAN: ACBPR 7501 G  
Assessment Year : 2018-19

Brief Submissions cum Gist of Case Laws relied upon:

Facts of the case:

The assessee-individual is engaged in the business of trading in Mustard Oil. A survey under section 133A of the I. T. Act, 1961 (Act) was conducted in the business premises of the assessee on 21.03.2018.

During the course of survey physical inventory of stock and cash was prepared and a statement of Sri Tapan Kumar Roy, husband of the assessee, who was present in the business premises was recorded. The same are as under:-

1	Statement of Sri Tapan Kumar Roy recorded on 21.03.2018 during the course of Survey	Page no. 1 to 3 of PB
2	Stock - Rs. 2,51,798/-	Page 4 of PB
3	Cash - Rs. 10,03,040/-	Page 5 of PB

Thereafter, the assessee filed return of income along with audited financial statements on 13.10.2018 disclosing total income at Rs. 9,91,800/-. A copy of audited P&L Account is at Page no. 6 of PB.

Assessment was completed on 26.04.2021 under section 143(3) in faceless manner. Assessment was completed after making the following three additions, aggregating to Rs. 19,73,094/- :-

Rs. 9,94,500/-	On the basis of statement of Sri Tapan Kumar Roy recorded during the course of survey
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Rs. 4,62,826/-	Shortage of Stock found on physical verification of Rs. 5,41,212/- less Rs. 78,386/- u/s 69A of the Act.
Rs. 5,15,768/-	Excess cash found on physical verification of Rs. 5,22,308/- less Rs. 6,540/- u/s 69A of the Act.

**1. Ground No. 2 :**

**Issue :** Addition of Rs. 9,94,500/- merely on the basis of misreading and misinterpreting the statement of Sri Tapan Kumar Roy, and divorced of any material.

- That the aforesaid addition of Rs. 9,94,500/- is merely based on the reply to question no. 8 of the deponent, Sri Tapan Kumar Roy, who was present at the time of survey.
- That in the statement on 21.03.2018; Sri Tapan Roy has forecasted business income for the entire year (FY 2017-18) on estimate at Rs. 9,94,500/- and has clarified that the said estimated income excludes the income which is to be computed on account of differences in Stock and Cash.
- That the said forecasted, expected and estimated future income amount of Rs. 9,94,500/- was arrived at by forecasting and estimating the total turnover of the entire year at Rs. 7.65 crores (approx.) and by further expecting the estimated Net Profit thereon @ 1.3%, which is evident from the recorded statement.
- That as per the audited books of accounts, the actual turnover came to Rs. 7.71 crores (rounded off) and the Net Profit worked out to Rs. 9,65,360/-.
- Thus, in place of forecasted, expected and estimated income of Rs. 9,94,500/-, the actual income derived as per audited books worked out to Rs. 9,65,360/-.

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- That the said actual business income of Rs. 9,65,360/- as per audited accounts was on assessment found to be correct and was also duly accepted on assessment.
- That, however, thereafter most arbitrarily and without properly appreciating, reading and understanding the statement of Sri Tapan Kumar Roy and without any material, a separate and further addition of Rs. 9,94,500/- as business income has been made in the assessment, which not only on facts amounts to double addition but is also bad in law and legally impermissible.
- **Hon'ble Supreme Court** in the case of **S. Khader Khan Son (2013) 352 ITR 480 (SC)** has upheld the judgment of the **Hon'ble Madras High Court** in the case reported in **(2008) 300 ITR 157**, wherein in has been held that:-

*"Sec. 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition."*

It was concluded that :-

*"It could not be said solely on the basis of the statement given by one of the partners of the assessee-firm that the disclosed income was assessable as lawful income of the assessee. Since there was no material on record to prove existence of such disclosed income or earning of such income in the hands of the assessee."*

- That the **Hon'ble CBDT** also in its **instruction no. 286/2/2003 (Inv.) II dated 10.03.2003** has opined that assessment ought not to be based merely on the confession/admission obtained in the statement recorded during the survey u/s 133A of the Act. It has been made amply clear in the above instruction that an Assessing Officer should rely solely upon the evidences and materials gathered during the survey for making additions and framing the assessment orders and the statements or confession taken during the survey do not serve any useful purpose.

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- At this juncture, it may also be of some use to point out that the Hon'ble Apex Court in the case of Pullangode Rubber & Produce Co. Ltd. v. State of Kerala (1973) 91 ITR 18 (SC) has held that the entries in the account books of the assessee-company amounted to an admission and though was an important piece of evidence could not be said to be conclusive and that it was open to the person to make an attempt to show that it was incorrect.

The legal proposition which can be gleaned from the above dicta, is that a statement even when it is taken as an evidence, the maker of the statement is entitled to explain the statement and even show that the statement was not correct. The statement should not be treated as proven fact or conclusive and irrefutable.

- That further, reliance is placed on the following decisions:-

i) Chetnaben J Shah v. ITO (2016) 140 DTR 0235 (Gui)

The Hon'ble Gujarat High Court has observed that the learned CIT(A) has held as under:-

*"24. It is a normal presumption that statement under section 132(4) is given voluntarily unless it is proved otherwise. There is no evidence on record to show that this statement was given in any coercion. Therefore, I am unable to agree with the assessee that it was a forced statement. But I am reasonably impressed by the contention that this statement was subject to variation on either side after verification i.e. assessee could reduce the disclosure made or the Assessing Officer could enhance the same if the facts and evidence so warranted. May be, even if this fact is not mentioned in the statement itself, the point will still remain since it is no body's case to get any extra tax then is due. The reality remains that there is no evidence whatsoever with the department even in consequence of a serious action like search and seizure followed by detailed security which could support the earning of speculation income of Rs.10,50,000/- in this year. In other words, there is no evidence to support*

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*the very existence of this income except the so called statement u/s 132(4) of the Act. It defies logic that an assessee will or should admit any income which he had not earned and which the department had not found out. I do not find anything against the arguments that disclosure u/s. 132(4) was subject to variation and once the assessee had access to seized documents and he realised subsequently that there was no occasion to make this disclosure, he was having an inherent right to clarify the situation so that he could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise too. In addition, the very important fact that remains that inspite of the search, no material/evidence was found to show that the assessee was having any other undisclosed assets which could be linked with this disclosure. In view of the totality of the circumstances, arguments given by the assessee and reasoning as above, the addition made is deleted."*

ii) Kailashben Manharlal Chokshi v. CIT (2010) 328 ITR 411 (Guj)

The Hon'ble Gujarat High Court observed that statement recorded under section 132(4) of the Act was later on retracted by the assessee and despite the said fact no evidence has been led by the Revenue Authority to support the additions made. On the above facts, it has been held that, to quote:-

*"We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission."*

iii) Unique Art Age v. AO [2014] 152 ITD 600 (Jaipur – Trib.),

The Hon'ble Tribunal has also held that statement recorded under section 133A on oath cannot be relied as evidence. The Hon'ble Tribunal has held, to quote:

**"3.8 Effect of admission made in statements recorded during survey under section 133A of the Act**

*18. The position of law regarding the evidentiary value of admissions made in such statements is now settled. After considering the rival stands on this issue, we have already discussed the same in the earlier part of this order. No admission made in a statement recorded under section 133A on oath during survey can be relied as evidence against the maker or the assessee."*

**2. Ground No. 3**

Facts observed during the survey are tabulated as under:-

Assets	Found of Physical Verification	As per records	Short/ Excess found in Survey	Difference Found	Income declared by assessee	Additions made on assessment
Stock	2,51,798	7,92,000	Short	5,41,212	78,386	4,62,826
Cash	10,03,040	4,80,732	Excess	5,22,308	6,540	5,15,768
<b>Total</b>			<b>Short</b>	<b>18,904</b>	<b>84,926</b>	<b>9,78,594</b>

- Thus, on facts on physical verification stock was found short by Rs. 5,41,212/- and as against the same cash was found in excess by Rs. 5,22,308/- and thus, in aggregate short asset was found by Rs. 18,904/-.

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- On the above facts, though no addition was warranted, still on above facts, addition of Rs. 9,78,594/- has been made by the Revenue.
- That the survey commenced in the after-noon on 21.03.2018.
- That the sale which took place before commencement of the survey on 21.03.2018 explains the difference of stock and cash as above.
- That there is no provision in the Act under which shortage of asset found can be added to the income of the assessee.

### 3. Ground No. 4

Issue: No Draft Assessment Order (DAO) and SCN (Show Cause Notice) proposing any variation to the returned income was issued before making assessment by FAO and therefore, the variation made in the impugned order is in gross violation of section 144B and untenable.

- That the Faceless Assessment Scheme has been prescribed by section 144B of the Act.
- 
- That a perusal of clauses (xiv) and (xvib) of section 144B(1) and clause (vii) of section 144B(7) of the Act, as was in force at the material time, shows that the law mandates that before a final order of assessment is passed which contained any variation to the returned income which is prejudicial to the interest of the assessee, it was mandatory for the AO to issue a draft order of assessment to the assessee proposing such variation and allow him an opportunity to show cause as to why the proposed variation should not be made.
- 
- Thus, the variation made in final order of assessment cannot exceed the variation proposed in the DOA (draft order of assessment) or revised DOA.
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- In the instant case, the impugned order of assessment was passed on 26.04.2021 and prior to that on 16.04.2021 a notice was issued to the assessee, copy of which is placed at page nos. 7 & 8 of the PB.
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- The notice dated 16.04.2021 is styled as "Show Cause Notice as to why assessment should not be completed as per Draft Assessment Order". A perusal of the same shows that no specific variation to the returned income has been proposed therein. It simply requires the assessee to submit the computation of income and threatened that if the assessee failed to provide the same, whole of the amount declared will be added.
- 
- That accordingly in compliance to the said notice, the assessee provided computation of income.
- 
- That thus, as no variation to the returned income was proposed in the Draft Assessment Order (DAO) cum SCN, the variation of Rs. 19,73,094/- made vide the impugned order of assessment is without jurisdiction, untenable and deserves to be deleted.

3. It was submission that the assessee is a retail trader of mustard oil. It was submission that there was a survey on the premises of the assessee on 21/03/2018. In the course of survey, the statement of the assessee's husband, who is also an employee was taken. The Ld.AR drew our attention to the pages 1 to 5 of the paper book which is reads as follows:-

Final statement of Shri Tapan Kumar Roy Husband of Smt. Supriya Roy, Employee of M/s Ramthakur Trading, Central Road, Aartala aged about 61 years, a resident of Banamalipur, Agartala, West Tripura, recorded on oath/solemn affirmation on 21/03/2018 during the course of survey U/s.133A of the Income Tax Act, 1961 conducted in the business premises at Central Road, Agartala, West Tripura,

**OATH**

I Shri Tapan Kumar Roy, Husband of Smt. Supriya Roy aged about 61 years, a resident of Banamalipur, Agartala, West Tripura do hereby swear in the name of God that I shall speak the truth, only the truth and nothing but the truth. I fully understand that, if I give any false statement, I am liable to face legal action under the Income Tax Act and I.P.C. So, God help me please.

 21/3/18

Ramthakur Trading  
Signature of the Deponent: Tapan Kumar Roy  
Proprietor 21/3/18

The oath is administered by me.

(एस. एस. भाट्टाचार्य)  
(S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड-उदयपुर/Ward-Udaipur.

(Authorized Officer)

Q. 1 : Please Identify yourself :


Ans : I am Shri Tapan Kumar Roy, Husband of Smt. Supriya Roy, Prop. of M/s Ramthakur Trading- Central Road, Agartala aged about 61 years, a resident of Banamalipur, Agartala, West Tripura, My PAN is AJLPR6277Q

Q. 2 : What are the languages you know ?

Ans. I can speak, read and write Bengali, English language only.

Q.3. Do you understand the consequences of the oath taken by you ?

Ans. Yes, I understand consequences of the oath taken by me.

 21/3/18

Signature of AO

(एस. एस. भाट्टाचार्य)  
(S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड-उदयपुर/Ward-Udaipur.

Signature of Party  
Ramthakur Trading  
Tapan Kumar Roy  
Proprietor 21/3/18

Q.4. From the departmental data base it is seen that you have deposited in cash for an amount of Rs. 1,03,59,200/- during the period from 09/11/2016 to 30/12/2016 please explain the source of such deposit.

Ans: All the deposits made by me in my bank A/C are from my day to day sale proceeds and all the transaction made by me are reflected in my books of accounts as well as in my return of income for the Assessment Year 2017-18.

Q.5. Please produce all documentary evidence in support of deposit of Rs. 1,03,59,200/- into bank.

Ans. Yes, I am producing all the deposit slips of banks along with bank statement relating to the period for favour of your verification and record.

Q.6. As per Question No. 8 of preliminary statement you have stated that cash available at this business premise is Rs.5,75,000/-(approx) whereas as per physical verification it is found that cash available at this business premise is Rs.10,03,040/-.Please explain about cash balance found on physical Verification today.

Ans. Out of Rs.10,03,040/-, Rs.4,80,732/- being sale proceeds on 20/03/2018 which I could not deposited into bank due to appearance of survey team of IT department. As such cash balance of Rs.5,22,308/- is offered for Taxation on behalf of Smt. Supriya Roy, Prop. Ramthakur Trading as I cannot explain the difference right now.

Q.7. During the course of Survey Stock as per stock register maintained by you a quantum of stock found at Rs.7,92,000/- whereas as per physical verification stock available in this business premises at Rs.2,51,798/-. Please explain the difference of value of stock Rs.5,41,212/-.

Ans. Difference of valuation of stock for an amount Rs.5,41,212/- is offered for taxation on behalf of Smt. Supriya Roy, Prop. Ramthakur Trading as I cannot explain the difference right now.

Q.8. Do you want to say anything more?

Ans. Yes, I want to declare my income voluntarily over and above i.e. net profit @1.30% of total turnover for the current year i.e. financial year 2017-18 relating to assessment year 2018-19. This is in addition to offer for taxation of Rs.10,63,520/- as per my answer to question no. 6 & 7. The sum up of my total voluntary discloser is as under.

1. Difference of cash( explained as above)	Rs. 5,22,308/-
2. Difference of value of stock ( explained as above)	Rs. 5,41,212/-
3. 1.30% of total turnover of Rs. 7,65,00,000/- (approx)	Rs. 9,94,500/-
	Rs. 20,58,020/-

Signature of AO

(एस. एस. भाट्टाचार्य)  
(S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड - उदयपुर/Ward- Udaipur.

Signature of Party  
Ramthakur Trading  
Smt. Supriya Roy  
21/3/18

I also assure you that I will make payment of advance tax for Rs.3,00,000/- (Rupees Three Lakhs) only by 22.03.2018 and a copy of challan will be produce before you for record.

The above statement given by me is to the best of my knowledge and believes, without any coercion and threat. I have read, understood and agreed about the content of the statement and duly signed.

The above statement was recorded by me.

Sig. of the party  
Ramthakur Trading  
Japan Kumde Roy  
21/3/18  
Proprietor

21/3/18  
Sig. of the AO

(एस. एस. भाट्टाचार्य)  
(S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड-उदयपुर/Ward-Udaipur.

Annexure - 2

INVENTORY

Inventory of stock found during the course of Survey U/s 133A of the Income Tax Act, 1961 conducted on 21.03.2018 in the business premises of Smt. Supriya Roy Prop: Ramthakur Trading Central Road, Agartala, West Tripura

SL. NO	ITEM	QUANTITY (Cartons)	RATE COST PRICE [In Rs]	AMOUNT [In Rs]
1	TANK BRAND M. OIL 1 LTR X 20 BOTTLE IN EACH CARTOON.	13	1800	23400
2	TANK BRAND M. OIL 500 ML X 30 BOTTLE IN EACH CARTOON.	48	1530	73440
3	TANK BRAND M. OIL 200 ML X 80 BOTTLE IN EACH CARTOON.	21	1680	35280
4	TANK BRAND M. OIL 2 LTR X 9 BOTTLE IN EACH CARTOON.	33	1710	56430
5	TANK BRAND M. OIL 1 LTR X 16 POUCH IN EACH CARTOON.	19	1472	27968
6	TANK BRAND M. OIL 100 ML X 20 X 8 BOTTLE IN EACH CARTOON.	12	2240	26880
7	GOPAL BRAND M. OIL 200 ML X 80 BOTTLE IN EACH CARTOON.	5	1680	8400
TOTAL				251798

21/3/18  
Signature of AO  
(एस. एस. भाट्टाचार्य)  
(S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड-उदयपुर/Ward-Udaipur.

Received  
Ramthakur Trading  
Japan Kumde Roy  
21/3/18  
Proprietor

Signature of Party  
Ramthakur Trading  
Japan Kumde Roy  
21/3/18  
Proprietor

Annexure - 3

Inventory

Inventory of CASH found during the course of Survey u/s. 133A of the I. T. Act. 1961. on 21-03-18 at the Ground floor of the business/office/factory premises of Smt Supriya Roy, Propri- of M/s Ramthakur Trading at the place of Central Road Agartala.

Sl No.	Denomination	Number	Amount (In Rupees)
1	2000	264	5,28,000/-
2	500	658	3,29,000/-
3	200	4	800/-
4	100	681	68,100/-
5	50	1039	51,950/-
6	20	842	16,840/-
7	10	835	8,350/-
8	5		
9	Coins & others		
Total			10,03,040/-

Ramthakur Trading  
Party Hafan Kumar Roy  
21/3/18  
Proprietor

21/3/18 (एस. भाट्टाचार्य)  
A.O. (S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड-उदयपुर/Ward-Udaipur

Received back the full amount of Rs.(Rupees Ten lac three thousand forty)  
with full satisfaction.

Party  
Hafan Kumar Roy  
21/3/18  
Proprietor

Received  
Ramthakur Trading

21/3/18  
A.O.

21/3/18 (एस. भाट्टाचार्य)  
(S. S. BHATTACHARYA)  
आयकर अधिकारी  
Income-tax Officer  
वार्ड-उदयपुर/Ward-Udaipur.

4. It was submission that this was statement recorded along with the stock statement and the cash statement at the time of survey. It was submission that in the statement the survey team had found that there was shortfall of stock of Rs.5,41,212/- and cash availability surplus of Rs.5,22,308/-. It was submission that it was specifically mentioned that the sale proceeds has not been deposited in the bank on account of survey. In the course of survey, the survey team took a statement from the said employee being a husband of the assessee that there is a difference of Rs.5,22,308/- in respect of the cash. The difference in the value of stock Rs.5,41,212/- and over and above that 1.30% of the total turnover was treated as the undisclosed of the income of the assessee at Rs.9,94,500/-. In the return filed by the assessee, the turnover was shown by the assessee at Rs.7,70,95,391/- and net profit of Rs.9,65,360/- was shown. The alleged difference in cash and difference in the value of stock was not shown. The AO made an addition of the said two items to an extent of Rs.9,78,584/- and an addition of Rs.9,94,500/- as the undisclosed income of the assessee. It was the submission that, at the outset, in the course of itself the employee of the assessee being husband had categorically given the breakup of the differences. It was further submission that the statement of the assessee's husband would not, first of all, have been taken. The stock statement and cash availability statement clearly showed that the assessee had sold the products and the sales proceeds were found in cash. The reasons for the cash being found was also explained. The assessee having also disclosed a net profit further addition of Rs.9,94,500/- was not called

for. It was the prayer that the addition as made by the AO and as confirmed by the Ld.CIT(A) is liable to be deleted.

5. In reply, the Ld.Sr. DR vehemently supported the order of the AO and CIT(A). It was submission that the wife being assessee was only a name lender and the actual business was being conducted by the assessee's husband. It was submission that the statement given by the husband has also not been retracted. It was further submission that the statement should be considered in its entirety and the assessee's husband having offered the additional income, the same should be brought a tax. He vehemently supported the order of the AO and CIT(A).

6. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the statement has been recorded from the employee of the assessee and it is specifically recorded as such that the said employee is husband of the assessee does not may be any difference and, therefore, the addition cannot be made on the statement recorded from an employee of the assessee. The facts also clearly show that in reply to the question no.6 and 7, the employee has explained the difference in the stock and the surplus cash found. It is also noticed that the statement records that an additional net profit is being offered of 1.3%, therefore, how an employee can give such declaration even if he is the husband of the assessee, does not stand to reason. This being so, as the addition having made on the basis of the statement recorded from the employee of the assessee, the same is unsustainable is liable to be deleted. It must also be mentioned here that it has been categorically been

admitted by the Ld.AR on the behalf of the assessee that the bank accounts of the assessee are operated by assessee only even the cheque signing is done by the assessee only and not by the said employees, who is the husband of the assessee. The addition as been made by the AO and as confirmed by the Ld.CIT(A) stands deleted.

7. In the result, the appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 03/02/2026.

**Sd/-**  
**(LAXMI PRASAD SAHU)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(GEORGE MATHAN)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**गुवाहाटी Guwahati; दिनांक Dated 03/02/2026**

प्र.कु.मि/PKM, Senior Private Secretary

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A), Guwahati
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Guwahati
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**  
आयकर अपीलीय अधिकरण, गुवाहाटी / ITAT, Guwahati