

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI
SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER
AND
BEFORE SHRI. BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**ITA No. 6855/MUM/2025
(Assessment Year: 2014-15)**

Jayesh Kanungo HUF 203, Rajgiri Apartment, A Wing, 13 th Khetwadi Back Road, Mumbai 400004	Vs.	ITO -19(2)(1), Mumbai Piramal Chambers, Lalbaug, Parel Mumbai 400012
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AABHJ8492E		
(Appellant)		(Respondent)

निर्धारितीकीओरसे / Assessee by:	Shri. Rajkumar Singh a/w. Ms. Asifa Khan
/Revenue by:	Shri. Nakul Agrawal Sr. DR (virtually appear)

Date of Hearing	16.02.2026
Date of Pronouncement	06.03.2026

आदेश/ORDER

PER ANIKESH BANERJEE [J.M]:

Instant appeal of the assessee was preferred against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "Ld. CIT(A)"] order passed u/s. 250 of the Income Tax Act, 1961 [hereinafter referred to as "Act"] order passed for the Assessment Year 2014-15 date of order 17.09.2025. The impugned order emanated from the order of the Ld. ITO-19(2)(1), Mumbai [hereinafter referred to as "Ld. AO"], order passed u/s. 143(3) r.w.s. 147 date of order 30.12.2017.

2. The assessee has taken the following grounds:

"1. That on facts and circumstances of the case and in law the id. C.I.T. (Appeals), NFAC, Delhi has erred in not quashing the impugned assessment order dated 30/12/2017 passed u/s.143(3) r.w.s.147 by Id. Income Tax Officer-19(2)(1), Mumbai on either of or on all the following grounds:

i) That the impugned assessment order passed by Id. ITO-19(2)(1), Mumbai without recording his own reason to reopen the assessment and issuing any own notice u/s.148 but on the basis of reason recorded and notice issued u/s.148 by non-jurisdictional ITO-19(3)(1), Mumbai being without jurisdiction and void ab initio hence may be quashed and set aside,

ii) That the Impugned assessment order passed on the basis of sanction wrongly obtained to reopen the assessment from non-Jurisdictional designated authority, the Jt.C.I.T.-Range-19(3), Mumbai instead of obtaining the sanction from correct jurisdictional designated authority, the Jt. C.I.T.-Range 19(2), Mumbai being without jurisdiction and void ab initio hence may be quashed and set aside,

iii) That the impugned assessment order passed in absence of any order being passed or reason recorded by competent authority as required u/s.127 of the Act to transfer the assessment records of appellant from ITO-19(3)(1), Mumbai to ITO-19(2)(1), Mumbai being without jurisdiction and void ab initio hence may be quashed and set aside,

iv) That the impugned assessment order passed on the basis of statutory notice u/s.143(2) dated 20/11/2017 Issued by Id. ITO-19(2)(1), Mumbai beyond the prescribed limitation period in Income Tax Act, 1961 that too not in the format prescribed by CBDT being without jurisdiction and void ab initio hence may be quashed and set aside.

2. That on facts and circumstances of the case and in law the id. C.I.T. (Appeals), NFAC, Delhi has erred in confirming the denial of exemption claim u/s 10(38) and addition of entire sale proceed of listed long-term equity shares made as unexplained cash credit u/s 68 of 1,90,09,335/- which has duly been subjected to STT collection & payment on sales made through SEBI registered Stock Broker on recognized stock exchange after holding for more than one year.

3. That the addition made u/s.68 and confirmed solely on the basis of general findings of report of Investigation Wing but without bringing any shred of adverse evidence in respect of subject transaction on assessment record is contrary to tax law provisions and more particularly when the impugned addition has been made without rejecting or holding such evidences as untrue or sham or giving any adverse finding in respect of requisite supporting documentary evidences of sale and

purchase of the LTCG shares furnished on assessment record therefore impugned addition made being legally untenable may kindly be deleted.

4. That the impugned addition made and confirmed u/s.68 of the Income Tax Act, 1961 on the basis of sum found credited in the bank account of appellant whereas he is neither legally required nor has maintained any books of account being legally unsustainable hence may be quashed and set aside.

5. That the alleged denial of exemption claim and impugned addition made u/s 10(38) and u/s 68 denying the opportunity of cross examination despite specific request made being in gross violation of principal of natural justice renders the impugned assessment order as legally untenable hence may be quashed.

6. That both the lower income tax authorities have erred on facts and in law in making & confirming the disallowance u/s 69C at Rs.3,80,186/- by estimating 2% commission payment to alleged entry providers on gross sale proceeds of LTCG shares of Rs. 1,90,09,335/- on only assumption without backing of any shred of evidence of such payment by the appellant. In view of the same alleged disallowance made by Id. AO u/s 69C & confirmed by Id. CIT (Appeal) being wrong on fact and bad in law therefore, may be deleted.

7. That all the grounds raised in the above appeal are independent ground and without prejudice to each other.

8. That appellant craves the leave to amend, alter, substitute and or to raise new or additional grounds of appeal at the time of hearing."

3. Brief facts of the case is that, the assessee filed the return dated 31.07.2014 declaring total income of Rs. 3,56,630/-. The assessee claimed the exemption under section 10(38) of the Act of Long Term Capital Gain (LTCG) related to sale of share amount of Rs. 1,90,09,335/-. The Learned Assessing Officer (Ld. AO) issued the notice under section 148 of the Act. Ld. AO treated entire sale proceed of the shares as bogus transaction. Accordingly, the alleged sales was added back with total income. The Ld. AO also added back the commission amount of Rs. 3,80,186/- related to transaction of share which comes total amount of Rs. 1,97,46,151/-. The aggrieved assessee challenged the order of the Ld. AO before the Ld. CIT(A) by raising both the grounds on legal issue and on merit. The Ld. CIT(A) adjudicated all the grounds and

rejected the appeal of the assessee. Being aggrieved, assessee filed an appeal before us.

4. The Learned Authorised Representative (Ld. AR) advanced arguments and filed a paper book comprising **pages 1 to 277**, which has been taken on record. The Ld. AR challenged the jurisdiction of the Ld. AO in issuing the notice under section 148 of the Income Tax Act, 1961. The Ld. AR contended that the original jurisdiction over the assessee vests with the ITO, Ward 19(2)(1), Mumbai. In support of this contention, the jurisdiction list issued by the Learned Principal Chief Commissioner of Income Tax, Mumbai Region, was placed on record and is annexed at **APB pages 79 to 83**. It was further submitted that the reasons recorded and the reassessment notice issued under section 148 of the Act were issued by ITO, Ward 19(3)(1), Mumbai, who is a non-jurisdictional Assessing Officer. Referring specifically to the jurisdiction list placed at **APB page 82(a)**, the Ld. AR submitted that ITO, Ward 19(3)(1), Mumbai does not have jurisdiction over the assessee. The Ld. AR further submitted that the assessee falls within PIN Code No. 400004, and as per the jurisdictional allocation, the jurisdiction lies with ITO, Ward 19(2)(1), Mumbai who has passed reassessment order. The copy of the reassessment notice issued under section 148 of the Act dated 28.09.2016 is placed on record at **APB page 93**. It was also submitted that upon receipt of the said reassessment notice, the assessee filed objections on 27.10.2016, which was within one month of receiving the alleged notice. The copy of the objection letter filed by the assessee is annexed at **APB pages 94 to 95**, which is reproduced

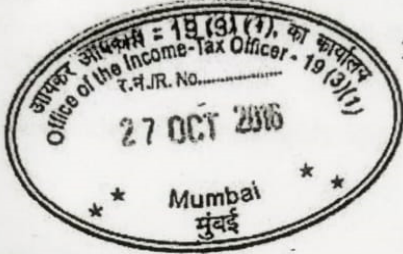
hereunder:

o/c 94

From :
Jayesh Vastimal Kanungo HUF,
203/A, Rajgiri Apartments,
13th Khetwadi Back Road,
Mumbai : 400004.

27th October 2016

The Income Tax Officer,
Ward 19(3)(1),
Mumbai.



Dear Sir,

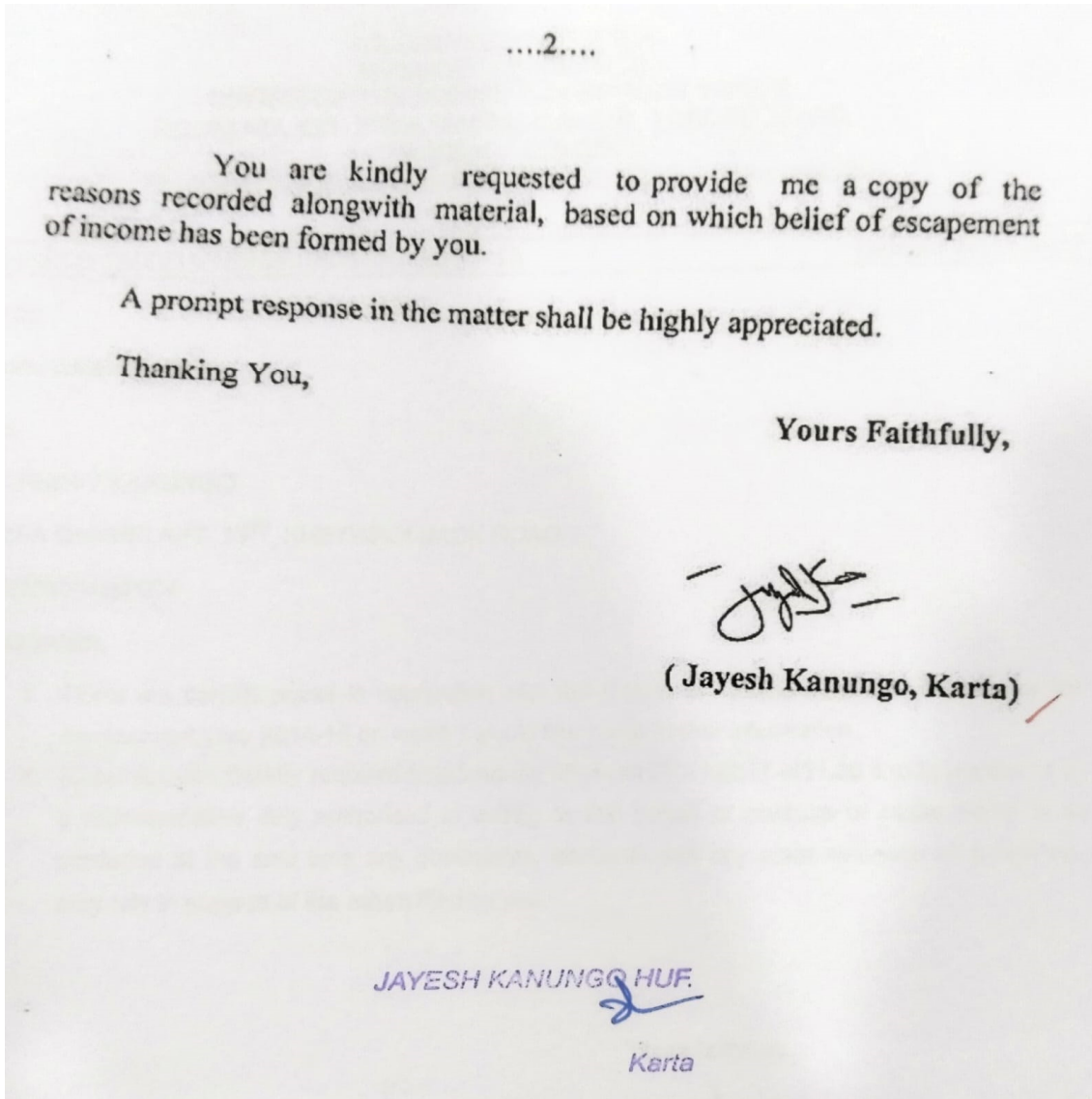
Ref : PAN : AABHJ 8492 E.
Asst Year : 2014-15.
Sub : Notice u/s 148 of the I.T.Act,1961 dt 28/09/2016.

I am in receipt of notice issued u/s 148 of the I.T.Act,1961, interalia stating that income has escaped assessment within the meaning of section 147 of the I. T Act, 1961, for the captioned assessment year, and that you are proposing to assess/reassess the income for the said assessment year.

In this connection I have to submit that on the basis of information available for public knowledge, the correct jurisdiction as per the area / work allocation amongst the Officers of Range 19, jurisdiction over my case rests with Income Tax Officer 19(2)(1), Mumbai, hence the notice issued is without jurisdiction and contrary to the provision of law.

Without prejudice to above and without prejudice to my right to contend the validity or otherwise of the notice issued, I submit that return of income e-filed by me on 31.07.2014 vide acknowledgement No: 306130031310714 for the year under reference may please be treated as return of income filed in compliance to the notice issued u/s 148 of the I. T. Act, 1961.

Without further prejudice to above, it is submitted that the notice issued is also void ab-initio, inasmuch as, the designation of the sanctioning authority whose satisfaction was obtained prior to issue of subject notice, in term of section 151 of the . T. Act, 1961, is not discernable on the face of the said notice.



5. The Ld. AR submitted that the written submission related to the factual proposition taken before the Ld. CIT(A) and before the Bench. The said submission is reproduced as below:

“FACTS OF THE CASE: Statement of facts has already been made part of FORM 35 being Memorandum of Appeal. However for the sake of convenience, we are reproducing said Statement of Facts for your honor's kind perusal.

1. The appellant is a HUF deriving income from capital gain and other sources.

2. *Return of income for the assessment year under appeal was originally filed on 31.07.2014 vide acknowledgement no. 306160031310714, showing total taxable income at Rs. 3,56,630/-and exempted income at Rs 1,82,64,534/-.*
3. *A notice u/s 148 of the i. T. Act, 1961, was issued on 28.09.2016 by the Income Tax Officer 19(3)(1), Mumbai, who did not have territorial jurisdiction over the appellants case and served on the appellant through a notice server.*
4. *The Assessing Officer in the said notice issued u/s 148 of the I.T. Act, 1961, also recorded that the necessary satisfaction of the Additional Commissioner /Commissioner of Income Tax / Chief Commissioner of Income Tax was obtained before issue of notice.*
5. *The appellant filed the objections challenging the issue of notice u/s. 148 of the I.T. Act, 1961, for want of jurisdiction vide letter dated 27.10.2016. No cognizance of the said letter was taken nor the facts stated in the said letter were controverted.*
6. *The appellant, vide letter dated 27.10.2016, filed on even date also requested to the Assessing Officer to treat original return as return in compliance to notice issued u/s 148 of the I. T. Act, 1961 and also requested for a copy of reasons recorded and tangible material / documents /evidences available on record, based on which belief of escapement of income was formed.*
7. *While the reasons for issue of notice were provided by the Assessing Officer, no tangible material was provided to the appellant.*
8. *Notices u/s 143(2) of the I.T. Act, 1961, as also 142(1) of the I.T. Act, 1961, were issued on 21.09.2017 by the Income Tax Officer 19(3)(1) calling for certain details fixing the hearing on 29.09.2017 when the case was adjourned sine die.*
9. *After a long silence at the end of the Income Tax Officer 19(3)(1), fresh notices u/s. 143(2)/142(1) of the I.T. Act, 1961, dated 20.11.2017 and 30.10.2017 respectively were issued by the Income Tax Officer 19(2)(1), Mumbai, calling for certain details. Said notices were issued beyond the statutory period prescribed vide the proviso to sec 143(2) of the I.T. Act, 1961.*
10. *During the course of the assessment proceedings, the appellant submitted all the details called for, which amongst the other details, also included the details of purchase /sale of shares, copy of D'mat statement, details of purchases of shares,*

copies of contract notes issued by share broker for sale of shares at Bombay Stock Exchange, copy of brokers account, global report, copy of bank statement and source of payment for purchase of shares etc.

11. The appellant is neither required under the provisions of the I.T. Act, 1961, to maintain books of account, nor in fact, he is maintaining such books. The Assessing Officer also during the course of assessment proceedings, did not call for the books of account.

12. In spite of complete compliance for submission of details, to the satisfaction of the Assessing Officer, the Assessing Officer disallowed the claim of exemption u/s 10(38) of the I.T. Act, 1961, relying on the extraneous material and information having no relevance to the appellants case, which is being impugned in this appeal."

6. The Ld. AR respectfully relied on the order of Hon'ble Bombay High Court in the case of **Ashok Devichand Jain vs Union of India** reported in **(2023) 452 ITR 43 (BOM)**. The observation of Hon'ble Jurisdictional High Court is reproduced as below:-

"3. Petitioner has filed return of income of about Rs. 64,34,663/-and therefore, the jurisdiction will be that of DC/AC and not ITO. Mr. Jain submitted that since notice under section 148 of the Act has been issued by ITO, and not by DC/AC that is by a person who did not have any jurisdiction over Petitioner, such notice was bad on the count of having been issued by an officer who had no authority in law to issue such notice.

4. We have considered the affidavit in reply of one Mr. Suresh G. Kamble, ITO who had issued the notice under section 148 of the Act. Said Mr. Kamble, ITO, Ward 12(3)(1), Mumbai admits that such a defective notice has been issued but according to him, PAN of Petitioner was lying with ITO Ward (12)(3)(1), Mumbai and it was not feasible to migrate the PAN having returned of income exceeding Rs. 30 lakhs to the charge of DCIT, Circle 12(3)(1), Mumbai, as the time available with the ITO 12(3)(1) was too short to migrate the PAN after obtaining administrative approval from the higher authorities by 31 March, 2019.

5. The notice under section 148 of the Act is jurisdictional notice and any inherent defect therein is not curable. In the facts of the case, notice having been issued by an officer who had no jurisdiction over the Petitioner, such notice in our view, has not been issued validly and is issued without authority in law.

6. In the circumstances, we have no hesitation in setting aside the notice dated 30th March, 2019.

7. Consequently the order dated 18th November, 2019 rejecting Petitioner's objection is also quashed and set aside."

7. The Learned Departmental Representative (Ld. DR) argued and stated that the change of jurisdiction is only mere the direction of the Ld. CIT maintain the official procedure. The Ld. DR stands in favour of the orders of revenue authorities. He sated that Ld. CIT(A) adjudicated the jurisdictional issue and relied on the observation of the Ld. CIT(A) in **Page No. 6 Ground No. 1 & 2** which is reproduce as below:

*"In Ground no.-1 & 2, the appellant has stated that the original notice u/s 148 of the Act was issued by ITO, 19(3)(1), Mumbai, who did not have jurisdiction over the appellant. From the perusal of submission of the appellant, it is seen that the appellant had challenged the jurisdiction issue before the Assessing Officer and information was requisitioned by filing a RTI. The information was duly provided. The appellant could not produce any evidence as to how the issuance of the said notice was from an Assessing Officer, not having jurisdiction over his case. It may be noted here that jurisdiction of a particular case or a class of case can be transferred from one Assessing Officer to the other within the same jurisdictional Commissioner of Income-tax, having jurisdiction over both the Assessing Officer and for this purpose no order u/s 127 of the Act is necessary. In subsequent proceedings, ITO, Ward-19(2)(1), Mumbai had issued notices u/s 142(1) and other notices and the appellant duly attended those proceedings and did not challenge the jurisdiction before him. In a recent judgment, **Supreme Court of India, in the case***

[2023] Dy Commissioner of Income-tax(Exemption) Vs. Kalinga Institute of Industrial Technology, reported in 151 Taxmann.com 434,

have, in the identical situation, held that the notice issued and assessment completed by the Assessing Officer was correct. Therefore, this ground of appeal cannot be entertained and is hereby Dismissed.”

8. We have carefully considered the rival submissions and perused the material available on record, including the paper book filed by the assessee. The primary issue raised by the assessee relates to the jurisdiction of the Assessing Officer in issuing the notice under section 148 of the Act. From the record, it is evident that the notice under section 148 of the Act dated 28.09.2016 was issued by ITO, Ward-19(3)(1), Mumbai. However, as demonstrated by the jurisdictional list issued by the Principal Chief Commissioner of Income Tax, Mumbai Region, the jurisdiction over the assessee, having PIN Code No. 400004, lies with ITO, Ward-19(2)(1), Mumbai. Thus, the notice initiating reassessment proceedings was issued by a non-jurisdictional Assessing Officer. We further note that the assessee had raised a specific objection regarding lack of jurisdiction vide letter dated 27.10.2016, which was filed within one month of receipt of the impugned notice. The said objection has been placed on record at **APB pages 94 to 95**. However, no order appears to have been passed disposing of the said objection, nor has any material been brought on record to demonstrate that the jurisdiction was validly assumed by the officer issuing the notice.

The issuance of notice under section 148 of the Act is a jurisdictional requirement, and such notice must be issued by the Assessing Officer having lawful jurisdiction over the assessee. In the present case, the initiation of reassessment proceedings by ITO, Ward-19(3)(1), Mumbai, who admittedly did

not have jurisdiction over the assessee, renders the very initiation of reassessment proceedings legally unsustainable.

In this regard, the Hon'ble Jurisdictional Bombay High Court in the case of **Ashok Devichand Jain** (supra) has categorically held that a notice issued under section 148 by an officer who does not have jurisdiction over the assessee is without authority of law and such a defect is not curable. We find that the Ld. CIT(A) has rejected the jurisdiction issue relied on the order of Hon'ble Supreme Court in the case of **Kalinga Institute of Industrial Technology** (supra). The relevant observation of the Hon'ble Supreme Court is reproduced as below:

“The impugned order set asides the assessment for AY 2014-2015 on the ground that the jurisdiction officer had not adjudicated 14:47:02 IST Reasons:

upon the returns. The jurisdiction had been changed after the returns were filed. However, the records also reveals that the assessee had participated pursuant to the notice issued under Section 142 (1) and had not questioned the jurisdiction of the assessing officer. Section 124(3)(a) of the Income Tax Act precludes the assessee from 30 days of receipt of notice under Section 142(1).

In the present case, the facts did not warrant the order made by the High Court. At the same time, this Court notices that the High Court had granted liberty to the concerned authority to issue appropriate notice.

It is clarified, therefore, that the assessing officer is free to complete the assessment (in case the assessment order has not been issued) within the next 60 days. In such event, the question of limitation shall not be raised by the assessee.

The special leave petition is allowed in the above terms. Pending application, if any, are disposed of.”

We have duly considered the ruling of the Hon'ble Supreme Court relied upon by the revenue. However, in the present case, it is evident from the record that

the assessee had raised a specific objection regarding the jurisdiction of the Assessing Officer within one month of receipt of the notice, thereby challenging the validity of the reassessment proceedings at the earliest opportunity. Therefore, the facts of the present case are distinguishable, as the assessee has not acquiesced to the jurisdiction of the Assessing Officer, but had promptly contested the same in accordance with law. The Respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court, we hold that the notice issued under section 148 by the non-jurisdictional Assessing Officer is invalid and void ab initio. In view of the above finding, the reassessment proceedings initiated on the basis of such invalid notice and the consequential assessment order passed under section 143(3) read with section 147 of the Act cannot be sustained in law. Accordingly, the impugned assessment order is quashed. Since we have allowed the appeal on the legal ground relating to jurisdiction, the grounds raised by the assessee on merits regarding addition under section 68, denial of exemption under section 10(38), and addition under section 69C become academic and therefore are not adjudicated.

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

9. In the result, appeal of the assessee bearing **ITA No. 6855/Mum/2025** is allowed.

Order is pronounced in the open court on 06.03.2026

Sd/-
BIJAYANANDA PRUSETH
(ACCOUNTNAT MEMBER)

Sd/-
ANIKESH BANERJEE
(JUDICIAL MEMBER)

Place: Mumbai
Dated: 06.03.2026

Divya Ramesh Nandgaonkar
Stenographer

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to:

1. **अपीलार्थी / The Appellant**
2. **प्रत्यर्थी / The Respondent.**
3. **आयकरआयुक्त / CIT**
4. **विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरणDR, ITAT, Mumbai**
5. **गार्डफाईल / Guard file.**

**सत्यापितप्रति //True Copy//
आदेशानुसार / BY ORDER,**

**सहायकपंजीकार (Asstt. Registrar)
आयकरअपीलीयअधिकरण / ITAT, Bench,
Mumbai.**