

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6555/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

All India Federation of Co-operative Spinning Mills Ltd., 2 <sup>nd</sup> floor, Canada Building, 226, Dr. D.N. Road, Mumbai - 400001.	<b>बनाम/</b> v.	ACIT - 1(1), Aayakar Bhavan, Mumbai - 400020.
स्थायी लेखा सं./PAN : AABCA 1971 E		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	Shri Bhupendra Karkhanis
Revenue by :	Shri Mohd Javed, CIT DR

सुनवाई की तारीख / **Date of Hearing** : 28-4-2016

घोषणा की तारीख / **Date of Pronouncement** : 13-07-2016

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee company, being ITA No. 6555/Mum/2013, is directed against the appellate order dated 20<sup>th</sup> August, 2013 passed by learned Commissioner of Income Tax (Appeals)- 1, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 22<sup>nd</sup> December, 2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) read as under:-

“1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in upholding the action of the learned Assessing Officer in invoking the provisions of section 50C of the Income Tax Act, 1961 and thereby erred in confirming the action of the learned Assessing Officer of making addition to the short term capital gain u/s. 50C, and the reasons assigned by him for doing so are wrong and contrary to the facts and Circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

2. (a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in making enhancement of the income by Rs. 17,19,800/- without giving the appellant an opportunity of showing cause against such enhancement in terms of the provisions of section 251 (2) of the Income Tax Act, 1961, and as such doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

(b) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have taken the value adopted by the stamp valuation authority of Rs.1,71,75,000/- instead of the value determined by the Valuation Officer of Rs.1,88,94,800/- as the full value of the consideration received as a result of the transfer in terms of the provisions of section 50C(3) of the Income Tax Act, 1961, and thereby erred in enhancing the income of the appellant by an amount of Rs.17,19,800/-, which is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

3. (a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in dismissing the ground of appeal of the appellant against non-granting of credit for tax deducted at source amounting to Rs.11,165/- claimed by the appellant, which is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

(b) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have directed the learned Assessing Officer to grant the appropriate credit of Tax Deducted at Source and not doing so is wrong and contrary to the facts

and circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

4. (a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in dismissing the ground of appeal of the appellant against non- granting of credit for self-assessment tax paid of Rs.14,85,000/- claimed by the appellant, which is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

(b) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have directed the learned Assessing Officer to grant the credit of Self-Assessment Tax paid by the appellant and not doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and the Rules made thereunder.

3. The brief facts of the case are that assessee is a mutual association registered u/s 25 of the Companies Act, 1956. The main activity of the Federation is to strengthen the cooperative spinning sector and seeking redressal of its various problems.

It was observed by the A.O. during the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act, that the assessee had sold a capital asset and had offered the short term capital gain earned in its return of income u/s 50 of the Act. On being asked to furnish the detail of the property sold, the assessee furnished the sale agreement dated 29<sup>th</sup> May, 2008 wherein the sale consideration of the capital asset sold was Rs. 1,60,00,000/- whereas the stamp valuation authorities valued the said property at Rs. 1,71,75,000/- for the purposes of payment of stamp duty for registration of the said property. The assessee was asked to explain by the AO as to why the stamp valuation authority value of Rs.1,71,75,000/- should not be adopted as full value of consideration for the purposes of Section 48 of the Act as stipulated u/s 50C(1) of the Act, for the purposes of computation of short term capital gain u/s 50 of the Act . In reply, the assessee submitted that the title of the said capital asset was in dispute and thus the actual sale

consideration received was less than the stamp authority value owing to defect in title of the said property . The A.O. after considering the reply of the assessee referred the matter to the Departmental Valuation Officer(DVO) u/s. 50C(2) of the Act, however, the reply from the DVO was not received till the conclusion of the assessment proceedings u/s 143(3) of the Act. Thus, the A.O. pending receipt of valuation report from DVO, to protect the interest of the Revenue considered the Stamp Valuation Authority Value of Rs. 1,71,75,000/- in accordance with mandate of Section 50C(1) of the Act instead of sale consideration of Rs.1,60,00,000/- as full value of consideration u/s 48 of the Act received or accruing as a result of transfer for the purposes of computing the short term capital gains u/s 50 of the Act , and accordingly Rs. 11,75,000/- was added to the short term capital gains earned by the assessee being difference between the sale consideration of Rs.1,60,00,000/- and stamp duly value of Rs.1,71,75,000/- , and additions were accordingly made to the income of the assessee of Rs.11,75,000/- vide assessment order dated 22-12-2011 passed by the AO u/s. 143(3) of the Act.

4. Aggrieved by the assessment order dated 22-12-2011 passed by the A.O. u/s. 143(3) of the Act, the assessee filed its first appeal before the learned CIT(A).

5. Before the learned CIT(A), the assessee submitted that the title to the said premises was not free from dispute which has adversely affected the contract amount or fair market value of the premises at the time of sale transaction and hence there is no understatement of consideration as it would not be reasonable to expect the said premises with disputed title to ownership to fetch sale consideration which is at par or more than the stamp duty valuation. It was submitted that the valuation by the stamp valuation authority is based on the circle rates which are uniform rates for the entire locality and adopt uniform rate of land. It was submitted that if the circle

rate fixed by the stamp valuation authorities was to be adopted in all situations, there was no need to refer the matter to the DVO u/s 50C(2) of the Act. It was also submitted that Income-tax is a tax on real income. The hypothetical income cannot be brought to tax which is not the intention of Section 50C of the Act.

The ld. CIT(A) considered the submissions of the assessee and observed that the A.O. had determined the sale consideration as per stamp duty valuation adopted by stamp valuation authorities for registering the property. Reference was made by the A.O. to the Departmental Valuation Officer but valuation report was not available with the A.O. at the time of framing assessment u/s 143(3) of the Act and assessment was to be completed before being getting time barred under the provisions of the Act and hence the AO adopted the stamp duty valuation of Rs.1,71,75,000/- u/s 50C(1) of the Act as full value of consideration for the purposes of Section 48 of the Act for computing short term capital gains u/s 50 of the Act in order to protect the interest of revenue while DVO report was awaited. But now the valuation report of DVO has arrived and the value estimated by DVO was at Rs. 1,88,94,800/- which is more than the value adopted by the stamp valuation authority of Rs.1,71,75,000/- , as against sale consideration of Rs.1,60,00,000/- . The said valuation report of DVO was forwarded by the AO to the learned CIT(A) with the request to adopt the value computed by DVO of Rs.1,88,94,800/- as full value of consideration u/s 48 of the Act keeping in view provisions of Section 50C of the Act with respect to the property sold instead of stamp duty value of Rs.1,71,75,000/- adopted by the AO while framing the assessment order dated 22.12.2011 passed u/s 143(3) of the Act. The ld. CIT(A) held that the argument relating to pendency of valuation report has become infructuous as the value adopted by the DVO as per valuation report has arrived and value as per DVO comes to Rs. 1,88,94,800/-. The assessee was given due opportunity by the Departmental

Valuation Officer to submit various documents and thus requirement for providing opportunity to the assessee for the purpose of valuation was also fulfilled. The said valuation report of the DVO exhibits details of methods, rates and criteria for determining the value so adopted by the DVO. The ld. CIT(A) thus adopted the value of Rs.1,88,94,800/- as full value of consideration for the purposes of 48 of the Act as per the valuation report submitted by the DVO which was higher than the value as per stamp duty valuation of Rs. 1,71,75,000/-, therefore, there was an enhancement of Rs. 17,19,800/- to the assessed income by appellate orders dated 20-08-2013 of the learned CIT(A) and thus the A.O. was directed to pass necessary order giving effect to the further enhancement of Rs. 17,19,800/- to the assessed income made by the learned CIT(A) vide appellate orders dated 20.08.2013.

6. Aggrieved by the appellate orders dated 20-08-2013 passed by the ld. CIT(A), the assessee is in further appeal before the Tribunal.

7. Before us, the ld. Counsel for the assessee submitted that the property consisting of units situated on 1<sup>st</sup> floor was sold for Rs. 1,60,00,000/- vide consolidated agreement to sale dated 29-05-2008 while the value adopted by the stamp duty authority was Rs. 1,71,75,000/- in the said agreement to sale dated 29-05-2008. However, the DVO determined the value at Rs. 1,88,94,800/-. The ld. Counsel submitted that the AO adopted the value as determined by stamp duty valuation authorities at Rs. 1,71,75,000/- as full value of consideration for the purposes of Section 48 of the Act by invoking deeming provisions of Section 50C of the Act. The learned Counsel submitted that the Valuation Officer's report was not available when the assessment was completed by the A.O. u/s 143(3) of the Act. The ld. CIT(A) has enhanced the value by adopting the value as computed of the property by DVO. The learned counsel for the assessee submitted that the assessee had sold units on the same day i.e. 29-05-2008 vide two separate agreement to sale on 1<sup>st</sup>

and 2<sup>nd</sup> floor in the same building respectively and the agreement value for units in both the floors was in aggregate was Rs. 3.6 crores while stamp duty value of units in both the floors was Rs.3.36 crores, hence, section 50C of the Act has no applicability keeping in view both the agreements to sale together as stamp duty value was lower than actual sale consideration but if the agreement to sale are considered separately then with respect to sale of units in first floor vide agreement to sale dated 29-05-2008 , the sale consideration is Rs.1,60,00,000/- while valuation as per stamp duty valuation authorities was higher at Rs.1,71,75,000/- . The dispute is regarding the units sold on 1st floor of the property which the assessee has sold for Rs. 1,60,00,000/- whereas the DVO adopted the rate as on 29.5.2008 at Rs. 1,88,94,800/- while the stamp duty valuation is Rs.1,71,75,000/-. With respect to units sold in second floor, there is no dispute as the sale consideration is Rs.2,00,00,000/- while stamp duty valuation is Rs.1,64,52,590/-. There are two separate agreement to sale both dated 29-05-2008 for the units sold on first and second floor respectively . Thus the dispute is with respect to units sold on 1<sup>st</sup> floor whereby the stamp duty valuation is Rs.1,71,75,000/- while sale consideration in agreement to sale dated 29-05-2008 is Rs.1,60,00,000/. The sale deeds and agreement to sale with respect to units sold both on first floor and second floor are placed in paper book page 23-161 filed with the Tribunal. There was some dispute with respect to the title of property sold i.e. units situated on first floor before the Small Cause Court, Mumbai which find mentioned in para 6 of agreement to sale deed dated 29-05-2008 which is placed at paper book page 51-52 filed with the Tribunal , hence the property consisting of units on first floor was sold on lower rate and hence higher value than sale consideration cannot be adopted. The A.O. has adopted the stamp duty valuation while the ld. CIT(A) enhanced the value keeping in view DVO report. The learned counsel submitted that Section 50C of the Act can be invoked and value adopted if the said value as per stamp duty valuation is higher than the actual consideration , but if DVO valued the property at

higher than the stamp duty value, the said valuation by DVO cannot be adopted as per provisions of Section 50C of the Act , while if the DVO value is lower than stamp duty value then in that case DVO value is to be adopted as provided u/s 50C(3) of the Act . The learned counsel submitted that Chennai Tribunal decision in the case of ACIT v. MIL Industries Limited ITA no. 988(Mad)/2011 for assessment year 2005-06 was brought to the notice of learned CIT(A) but the same was not considered on the grounds that the facts are different in that case.

8. The ld. D.R. submitted that there are units sold in two different floors vide two different sale deeds and agreement to sales respectively by the assessee which are placed in paper book filed with the Tribunal at page 23-161. The value is to be taken separately as per each agreement to sale both dated 29-05-2008 and it cannot be clubbed as contended by the ld. Counsel because there are two different agreement to sales although both are dated 29-05-2008. He submitted that the property on the first floor was sold for a consideration of Rs. 1,60,00,000/- which is a lower rate than stamp duty valuation of Rs.1,71,75,000/- as well as value as determined by DVO of Rs.1,88,94,800/-. The ld DR submitted that the assessee has not raised issue of Section 50C(3) of the Act before learned CIT(A) . It was submitted that DVO was fully informed of the litigation with respect to the property situated at first floor and the same is taken into consideration by DVO while valuing the said property.

9. We have considered the rival contentions and also perused the material available on record including case laws relied upon by the parties. We have observed that the assessee has sold nine units in two different floors i.e. 1<sup>st</sup> Floor (unit no 1,2A,2B , 3 and 4 admeasuring 2500 square feet) and 2<sup>nd</sup> Floor( unit no. 5,6,7 and 7 admeasuring 2300 square feet) together with two car parking space situated at Natasha Plaza, Chembur,Mumbai vide two

separate agreement to sale both dated 29-05-2008 with respect to each floor separately which are placed in paper book filed with the Tribunal. The sale deeds and agreement to sale for these two floors are separate and are placed in paper book page 23-161 filed with the Tribunal. Thus , in view of existence of two different sale agreements with respect to units located in two different floor albeit both agreement to sales are dated 29-05-2008 and hence these separate agreement to sales are to be considered as separate transactions for the purposes of computation of capital gains and cannot be clubbed together as contended by the assessee in view of provisions of Section 50C of the Act and hence this contention of the assessee is rejected. Thus, now the dispute is only with respect to the determination and adoption of full value of consideration for the purposes of Section 48 of the Act keeping in view provisions of Section 50C of the Act for computing short term capital gain u/s 50 of the Act with respect to units situated at first floor sold vide agreement to sale dated 29-05-2008 for sale consideration of Rs.1,60,00,000/- as against the value adopted by stamp duty authorities for registration purposes of Rs.1,71,75,000/- . There is no dispute with respect to agreement to sale dated 29-05-2008 with respect to units sold situated on 2<sup>nd</sup> Floor as sale consideration was Rs.2,00,00,000/- which was higher than the stamp duty valuation as adopted by stamp duty valuation authorities of Rs. 1,64,52,590/- and hence Section 50C is not applicable to the units sold on second floor. The A.O. has rightly invoked the deeming provisions of section 50C of the Act with respect to units sold situated in first floor as the sale consideration of Rs.1,60,00,000/- was lower than the stamp duty value adopted by stamp duty authorities of Rs.1,71,75,000/-. The A.O. has referred the matter to the valuation Officer u/s 50C(2) of the Act as the assessee contended that there is a dispute with respect to title pending in Hon'ble Small Cause Court and hence the sale consideration was lower than stamp duty value adopted by stamp authorities, however, the Valuation report of DVO was not received by the AO till the completion of assessment

u/s 143(3) of the Act. We find no infirmity in the action of the AO in concluding assessment u/s 143(3) of the Act by adopting stamp duty value of Rs.1,71,75,000/- as full value of consideration for the purposes of Section 48 of the Act under the deeming provisions of Section 50C of the Act as the sale consideration was lower than stamp duty value of the property adopted by stamp valuation authority as the DVO report did not arrived before the time barring period for concluding assessment u/s 143(3) of the Act . However, later on the valuation report of DVO was received which valued the property at Rs. 1,88,94,800/-. The assessee has submitted detailed documents before the DVO at the time of valuation which find mentioned in the ld. CIT(A) order as well in DVO report which is placed at paper book 163-168 and we have observed that litigation aspect is duly factored by the DVO in his valuation report valuing property at Rs.1,88,94,800/- , which details of litigation disclosed by the assessee to DVO duly found mentioned in DVO report dated 10-10-2012 para 1.4 item no 6 placed at page 164 of paper book. Thus in view of above, no further benefit/relief in valuing the property can be given to the assessee on account of factoring of ongoing litigation with respect to said property at Hon'ble Small Cause Court,Mumbai as the same was already factored by DVO while valuing the property . The ld. CIT(A) considered the Departmental Valuation Officer's rate and enhanced the value by substituting the value as determined by the Departmental Valuation Officer of Rs.1,88,94,800/- as full value of consideration for the purposes of Section 48 of the Act under the deeming provisions of Section 50C of the Act . We have observed that the provisions of section 50C(1), (2) and (3) of the Act are very clear that in case the sale consideration is less than the value adopted by the stamp duty authority , the value as determined by stamp duty authorities shall be adopted as full value of consideration for the purposes of Section 48 of the Act under the deeming provisions of Section 50C(1) of the Act, but if the assessee challenges the same , then the AO has to refer the matter to DVO under provisions of Section 50C(2) of the Act and in case the value

adopted by DVO exceed the value as determined by stamp duty valuation authorities then in that case, the value as adopted by stamp duty authorities shall be deemed to be the full value of consideration for the purposes of Section 48 of the Act under the provisions as stipulated u/s 50C(3) of the Act. In the instant case, the value determined by the DVO is higher than the value adopted by the stamp duty authority. The value adopted by the stamp duty registration authority was Rs. 1,71,75,000/- while DVO valued the property at Rs.1,88,94,800/-. The Departmental Valuation Officer's value in the instant appeal thus cannot be accepted keeping in view provisions of Section 50C(3) of the Act. The said Section 50C of the Act as applicable for the relevant assessment year is reproduced hereunder for ready reference:

***“[Special provision for full value of consideration in certain cases.***

**50C.** (1) *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of [section 48](#), be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

*(2) Without prejudice to the provisions of sub-section (1), where—*

*(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*

*(b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,*

*the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*

*Explanation.—For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of [section 2](#) of the Wealth-tax Act, 1957 (27 of 1957).*

*(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]”*

The Id. CIT(A) appellate order dated 20-08-2013 also suffers from infirmity to the extent that the learned CIT(A) has not given any notice to the assessee before making the enhancement and principles of natural justice are breached. Thus, in our considered view keeping in view the interest of justice as well mandate of Section 50C of the Act as per our detailed reasoning and discussions as set out above, we hold that the A.O. has rightly invoked and

applied the deeming provisions of section 50C of the Act whereby the value adopted by the stamp duty authorities of Rs. 1,71,75,000/- was adopted by the AO as full value of consideration for the purposes of Section 48 of the Act in which we do not find any infirmity in law and on facts, keeping in view the fact that the DVO report received subsequent to the assessment order has valued the said property at higher than the value adopted by stamp duty valuation authorities, thus keeping in view provisions of Section 50C(3) of the Act the value adopted by the AO of Rs.1,71,75,000/- as full value of consideration for the purposes of Section 48 of the Act stands confirmed by us. Hence, we set aside the order of the ld. CIT(A) and confirm the orders of the A.O. adopting Rs.1,71,75,000/- as full value of consideration under deeming provisions of Section 50C of the Act for the purposes of Section 48 of the Act. This disposes of ground no 1 and 2 of the grounds of appeal raised by the assessee. We order accordingly.

10. In the next grounds of appeal i.e. ground No. 3 & 4, the assessee is aggrieved on non-granting of credit for tax deducted at source amounting to Rs. 11,165/- and non-granting of credit for self assessment tax paid of Rs. 14,85,000/- respectively by the Revenue. We find that the ld. CIT(A) has dismissed these grounds observing that the alternative remedies for the grievances of the assessee are available with the assessee which could be availed. In our considered view, this aspect of non grant of prepaid taxes as claimed by the assessee needs verification by the authorities below and we are inclined to set aside and restore these issues of non-credit of pre-paid taxes by the AO as set-out above back to the file of the A.O. and the A.O. shall examine and verify the claim of the assessee on merits and proper tax credit should be granted to the assessee on merits after due verification by the AO. Thus, we set aside the orders of the learned CIT(A) on both these issues and restore these issues to the file of AO for de-novo determination on merits

after examination and verification of the claim of the assessee as indicated above. We order accordingly.

11. In the result, the appeal filed by the assessee in ITA NO. 6555/Mum/2013 for the assessment year 2009-10 is partly allowed for statistical purpose as indicated above.

Order pronounced in the open court on 13<sup>th</sup> July , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 13-07-2016 को की गई ।

Sd/-  
(AMIT SHUKLA  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 13-07-2016

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व.नि.स./ R.K., Ex. Sr. PS

**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)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai