

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEM
BER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.603/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

The Income Tax Officer Sabarkantha Ward – 3, Himatnagar, Dist – Sabarkantha - 383001	बनाम/ Vs.	The Sabarkantha Dist. Purchase & Sales Union Ltd. Society Road, Old Vegetable Market Nr. Railway Crossing, Himatnagar Dist – Sabarkantha – 383001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAT 0524 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri James Kurian, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri A. C. Shah, A.R.

सुनवाई की तारीख / Date of Hearing	31/08/2017
घोषणा की तारीख/Date of Pronouncement	04/10/2017

आदेश / O R D E R

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the department against the order of the Commissioner of Income Tax(Appeals)-2,Ahmedabad, dated 29/12/2014 for the Assessment Year (AY) 2011-12, on the following Grounds:

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- i. *The Ld.CIT(A) has erred in law and on facts in partly allowing the appeal of the assessee by allowing the deduction claimed u/s.80P(2) of the I.T. Act, in violation of provisions of Rule 46A(3)(1) of the I.T. Rule by not allowing a reasonable opportunity to AO to examine or rebuttal of the documents submitted by assessee to the CIT(A).*
- ii. *The Ld.CIT(A) has erred in law and on facts in partly allowing the appeal of the assessee by allowing the deduction claimed by assessee*
(a) u/s. 80P(2)(e)for amount of Rs.22,79,433/- from Godown Rent
(b) u/s.80P(2)(d) for amount of Rs.14,72,486/- from Dividend & Interest
(c) u/s.80P(2)(a)(iv) for amount of Rs.4,80,591/- from Agriculture Commission income
- though the assessee does not fall within the ambit of Co-operative Society and on perusal of the annual report it was noticed that the assessee had indulged in various trading activities and was a profit making organization.*
- iii. *On the facts and in the circumstances of the case, the Ld.CIT(A) ought to have upheld the order of the Assessing Officer.*

2. The relevant facts as culled out from the materials on record are as under:-

The relevant extracts from the assessment order are reproduced under:-

“4. On going through the Annual report, it is seen that the co-op. society is engaged many activities, brief of each activity is given as under:

- (i) *Electric Section : In this section, ceiling fan, table fan of Crompton Greaves, Bajaj tube-light, lamp, all the items related to lightning, motors for irrigation and flour factory, mixture, iron, Electric and gas geezers, all light fittings related to Anchor*

and Welcon Co. furniture, fuse, changeover switch etc is sold here.

- (ii) Cloth Section : The assessee is engaged in the sale of suiting and shirting of Siyaram. Also suiting, shirting, ready-made pants, Shirt, T-Shift of different mills is sold. Pillow covers, sheets, sofa tapestry, curtains, carpet shawl, blankets, sweaters, muffler-cap socks, umbrella, rain-coat etc is sold in cloth department.*
- (iii) Provision section : All types of provision items such as grains, pulses, oil, sugar jiggery, dry fruit, garam masala, tea, toothpaste, brush, soap, chocolate, talcum powder, biscuits, hair oil, Eveready torch and power and many other items related to house-hold are sold in this section.*
- (iv) Pesticides Section: In this department all types of seeds i.e.cotton, castor, wheat, maize, groundnut, bajri, rice, tuvar, mug, udad dal etc purchase from Gujarat Rajya Bij Nigam, GUJCOMASOL, Krubhko Co are sold in this section.*
- (v) Retail fertilizer: All types of organic fertilizer and hybrid seeds are sold. All types of basmati rice, dal, pulses, groundnut oil, soyabin oil sugar is sold here.*
- (vi) Machinery section: In this section, galvanized sheets of Jindal, PVC pipes, garden pipe, drums to store grains, Spray pumps of Aspi Co. PVC tanks of Sintex and Kant Company, furniture, table, chair. Also cement of well-known companies is sold in this section.*
- (vii) Iron section: All tools and equipments related to farming are sold in this section.*
- (viii) Amul Parlor : In this parlor all the products of Amul such as milk, ghee, buttermilk, ice cream, curd, cheese, paneer, chocolate etc is sold.*
- (ix) Kerosene section : The assessee is holding agency for kerosene. Besides, Petrol, diesel and oil of IOC company is sold in Mahavirnagar, Ganbhoi, Dhansura, Bhiloda, Malpur, Hansalpur.*
- (x) Books section :. The assess© is whole-sale suppliers of books of Gujarat State in S.K.District. Books of Std 1 to 12, books related to P.T.C are sold here.*

The assessee society has claimed deduction under section 80P in respect of income derived by it from the above activities carried out by it. The assessee is a co-operative society deriving income on sale of various items as mentioned above. The products marketed by the society

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is not grown or manufactured by the members, the items marketed are obtained from outside and sold in the entire district of Sabarkantha. It has also shown income from Godown Rent, Tanker Rent, Pulse Mill Rent, Vehicle hire income, over riding petrol pump and has sold petrol, diesel and oil of IOC Ltd during the year.

In the instant case, the assessee had indulged in trading activities and therefore the assessee is a profit-making organization. The activities carried out by the assessee does not fall within the ambit of co-operative society.

4.1 Accordingly a letter was issued to the assessee on 06/01/2014 to show-cause as to why the claim of deduction u/s.80P of the I.T. Act 1961 should not be disallowed and added the total income. The relevant portion of the show-cause notice is reproduced as under:

“Please refer to the above.

2. On verification of annual report it is noticed that the activities carried out by you not fall within the ambit of co-operative society, you are therefore requested to show- cause as to why the deduction claimed u/s.80P of Rs.39,15,975/- should not be disallowed and added to your total income.

In response, the assessee furnished a letter dated 06/01/2014 which is inter-alia reproduced as under:

With reference to above we beg to state as under:

1. We have received the show cause notice [SCN] dated 06/01/2014 stating that the activities carried out by Co. op. society does not fall within the ambit of co-op society and therefore why the deduction of Rs.36,15,975/-claimed under section 80P be not disallowed. In this connection, it may please noted that the assessee is district apex co.op society and is carrying on the activities for the benefit of its members. The attention is drawn to reply to Q. No.8(a) of the Tax audit report in form No.3CD-part-B which has stated the activities carried on by the society. For the purpose of easy reference the same is reproduced as under:

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"Purpose and sale of agricultural implements, seeds, fertilizers and pesticides for members etc. and trading and proceeding in agricultural and non agricultural items for members and others."

2. *It may please be noted that the annual report you are referring is 63rd annual report and the assessee is getting deduction under section 80P right from its inception i.e. since 62 years.*
3. *It appears that the notes given below to the statement of income furnished during assessment proceedings are not looked at. As per the computation of income it is clearly stated that the assessee is eligible for deduction under section 80P to the extent of Rs. 44,62,957/- and that the claim is made to the extent of income available i.e. Rs.39,15,9757-.*
4. *The break-up of the eligible deduction under section 80P is given in the notes. The same is reproduced below for ready reference:*

<i>Basic deduction under section 80P(2)(c)</i>	<i>Rs. 50,000/-</i>
<i>Godown rent under section 80P(2)(e)</i>	<i>Rs.24,59,880/-</i>
<i>Dividend&Interest under section 80P(2)(d)</i>	<i>Rs.14,72,486/-</i>
<i>Agriculture commission income U/s 80P(2)(iv)</i>	<i>Rs. 7,55,591/-</i>
<i>Less: Estimated expenses</i>	<i>Rs. 2,75,000/- Rs.4,80,591/-</i>

From the above, it may please be seen that the assessee has claimed deduction under section 80P(2)(C), 80P(2)(e), 80P(2)(d) And 80P(2)(iv) which is allowable as per statute and therefore the question of disallowance does not arise. It may please further be noted that the income or loss from all activities other than refer to in eligible deduction are offered for taxation. However, as a result of deduction there is a loss and there is no taxable income. The impression that the assesses society does not offered income for taxation from its activities is erroneous. Therefore the question of disallowance as proposed does not arise. It is again reiterated that such deduction is granted to the assessee society right from its inception i.e. since more than 62 years.

You are therefore requested to allow the claim and drop the show cause notice."

*4.3 The reply of the assessee is duly considered but is not acceptable. It is seen from the annual report that the assessee is **neither a Primary Agricultural Credit Society (PACS) nor Primary co-operative Agricultural and Rural Development Bank (PCARDB) - It is***

noted from records that range of assessee's activities is not confined to one taluka but is extended to entire Sabarkantha district and, thus, in view of Explanation to section 80P(4), assessee is not PCARDB - Further primary object as well as activities of assessee is not confined to agricultural purposes but other purposes also. In view of explanation to section 80P assessee is not Primary Co-operative Agricultural and Rural Development bank. Further, primary object as well as activities of assessee is not confined to agricultural purpose but other purposes also, and hence, assessee cannot be regarded as PACS. Section 80P, inter alia, provides for a deduction from the total income of the co-operative societies engaged in the business of banking or providing credit facilities to its members, or business of a cottage industry, or of marketing of agricultural produce of its members, or processing, without the aid of power, of the agricultural produce of its members, etc. After insertion of sub-section (4) of section 80-P, by Finance Act, 2006, with effect from 1-4-2007, this deduction is available only to-

1. Primary Agricultural Credit Society (PACS)
2. Primary Co-operative Agricultural and Rural Development Bank (PCARDB)

Section 80P has been amended by Finance Act, 2006, and sub-section (4) has been inserted. The assessee is neither PACS nor PCARDB and hence not eligible for deduction under section 80P.

A society fulfilling two conditions is a PCARDB as per Explanation to section 80P(4)

- (a) Area of operation confirmed to a taluka
- (b) The principal object of which is to provided for long term credit for agricultural and rural development activities.

Primary object of principal business of P.ACS is to finance for agricultural purposes or purposes connected with agricultural activities. The primary object as well as activities of assessee are not confined to agricultural purposes but other purposes also. Hence, assessee is neither PACS nor PCARDB hence, no exemption is available to the assessee under section 80P.

6. *Since the activities carried out by the assessee does not fall within the ambit of co-operative society and on perusal of annual report it is noticed that the assessee is indulged in trading activities and is a*

profit-making organization, the total claim of deduction u/s.80P of Rs.39,15,9757- is hereby rejected and added to the total income. Penalty proceedings u/s.271(1)(c) are separately initiated for claiming wrong deduction u/s.80P of the I.T. Act 1961 and thereby furnishing inaccurate particulars of income.

3.2 Appellant's submission:-

The relevant extracts from the submission of the appellant are reproduced here under:-

- 1. "The learned AO has determined the income of Rs.39,15,976/- as against returned income of Rs.Nil on the ground that the income is derived from the activities which is not eligible for deduction under Section 80P.*
- 2. In this connection, it may please be noted that the AO has failed to appreciate the nature of business and the claim made by the assessee in the computation of income. The learned AO has treated the assessee as Primary Agricultural Credit Society [PACS] and Primary Co.op. Agricultural and Rural Development Bank [PCARDB]. Similarly, the assessee has discussed in the assessment order that the assessee is a Co.op. Credit Society. The learned AO has failed to appreciate the nature of business. The assessee submitted the reply to show-cause notice by letter dated 06/01/2014 reproduced in the assessment order on Page No.5 explaining the nature of business and the nature of deductions claimed.*
- 3. The assessee is a sales and purchases union. It makes the products both agriculture and non-agriculture and also to the members and non-members. The income is taxable. The income as per written of income is Rs.39,15,976. Thereafter the assessee has claimed deduction under Section 80P as stated in the notes to the statement of income. The assessee has claimed the deduction under Sections 80P(2)(c) i.e. basic deduction 80P(2)(e) i.e. godown rent, 80P(2)(d) i.e. dividend and interest & 80P(2)(iv) i.e. agriculture commission income. After deduction eventually the income is Rs. Nil.*
- 4. The learned AO has completely misappreciated the facts and the learned AO ignored the deduction claimed as if the assessee is a*

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co.op. credit society. This is erroneous. Your honour is therefore prayed to allow the deduction under Section 80P as claimed.

5. *It may please further be noted that the AO has allowed the deduction as claimed by the assessee in the past since many years. The copy of assessment order and statement of income for A.Y. 2009-2010 and AY. 2010-2011 are enclosed to show that the deduction as claimed is allowed. Therefore, the AO should follow the policy consistently and that the deduction should have been allowed.*

Your honour is therefore prayed to allow the appeal.

The appellant has given further submission in addition to its earlier submission in support of its appeal.

"With reference to above and in continuation of our written submission dated 12-09-2014, we further beg to state as under:

1. *The assessee is a sales and purchases union. It markets the products both agriculture and non-agriculture and also to the members and non-members. The income is taxable. The income as per written of income is Rs.39,15,976. Thereafter the assessee has claimed deduction under Section 80P as stated in the notes to the statement of income. The assessee has claimed the deduction under Sections 80P(2)(c) i.e. basic deduction, 80P(2)(e) i.e. godown rent, 80P(2)(d) i.e. dividend and interest & 80P(2)(iv) i.e. agriculture commission income. After deduction eventually the income is Rs. Nil.*
2. *In the course of hearing, your honour asked to furnish the note on the rent of Rs.24,59,880/-. In this connection, it may please be noted that the assessee has let out the godown for the purpose of marketing the commodities. Some of the main tenants are given below with the purpose specified against his name.*

<i>Sr. No.</i>	<i>Name of party to whom the godown is let out</i>	<i>Purpose</i>
<i>01.</i>	<i>KRIBHCO</i>	<i>For marketing the fertilizers and seeds</i>
<i>02.</i>	<i>Gujarat Sate Seeds Corporation Ltd.</i>	<i>For marketing seeds</i>
<i>03.</i>	<i>Krushhi Care</i>	<i>For marketing organic fertilizers</i>

04.	<i>Benani Cement</i>	<i>For marketing cement for agriculture purpose</i>
05.	<i>IFFCO</i>	<i>For marketing the fertilizers</i>
06.	<i>Asian Tradelink</i>	<i>For marketing cattle feed</i>
07.	<i>Mahakali Corporation</i>	<i>For marketing cattle feed</i>
08.	<i>Vinayak Corporation</i>	<i>For marketing cattle feed</i>
09.	<i>Ambica Trading Co.</i>	<i>For marketing cattle feed</i>
10.	<i>Dena Gramin Training Centre</i>	<i>For providing training to the farmers</i>
11.	<i>Hari Traders</i>	<i>For marketing cattle feed</i>

3. *From the above, it may please be seen that the godowns are let out for purpose of storing and marketing the commodities. The assessee has not incurred any expenses for earning the rent income since all maintenance expenses are borne by the tenants. The rent is eligible for deduction under Section 80P(2)(e).*
4. *As regards agricultural commission, the assessee is acting as commission agent for Gujarat State Co.op, Marketing Federation for marketing Inorganic fertilizer. The assessee has earned the commission of Rs.7,55,590/- from Gujarat State Co.op. Marketing Federation. The Xerox copy of credit note dated 18/01/2011 is enclosed herewith. The assessee has disallowed expenses on estimated basis incurred for earning such commission. The agricultural commission is eligible for deduction under Section 80P(2)(iv) since it is in connection with supplying fertilizers to the members.*
5. *The deduction under Section 80P(2)(d) being the interest and dividend from other Co.op. Society is eligible for deduction and the statutory deduction of Rs.50,000 is also eligible for deduction under Section 80P(2)(c).*
6. *It may please be noted that the claim has been allowed consistently for since years. The assessment order for A.Y. 2012-2013 is also enclosed to show that such claim is allowed. The claim for A.Y. 2011-2012 is disallowed not on merits but under the wrong impression that the assessee is a Credit Co.op Society. In other words, the learned AO mis-appreciated the facts during A.Y. 2011-2012.*

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7. *We enclose herewith Balance Sheet and Profit & Loss Account for A.Y. 2011-2012 in English as desired."*

The appellant has given further submission in addition to its earlier submission in support of its appeal.

"With reference to above and in circumstances of our written submission dated 12/09/2014 & 11/12/2014, we further beg to state as under:

1. *We submit herewith the breakup of godown rent as desired by your honour as under:*

<i>Sr No.</i>	<i>Name of party to whom the godown is let out</i>	<i>Purpose</i>	<i>Amount Rs.</i>
1	<i>KRIBHCO</i>	<i>For marketing the fertilizers and seeds</i>	<i>4,91,700</i>
2	<i>Gujarat Sate Seeds Corporation Ltd.</i>	<i>For marketing seeds</i>	<i>2,35,000</i>
3	<i>Krushu Care</i>	<i>For marketing organic fertilizers</i>	<i>1,31,200</i>
4	<i>Benani Cement</i>	<i>For marketing cement for agriculture purpose</i>	<i>3,36,000</i>
5	<i>IFFCO</i>	<i>For marketing the fertilizers</i>	<i>18,480</i>
6	<i>Asian Tradelink</i>	<i>For marketing cattle feed</i>	<i>1,80,000</i>
7	<i>Mahakali Corporation</i>	<i>For marketing cattle feed</i>	<i>2,94,000</i>
8	<i>Vinayak Corporation</i>	<i>For marketing cattle feed</i>	<i>2,94,000</i>
9	<i>Ambica Trading Co.</i>	<i>For marketing cattle feed</i>	<i>1,47,000</i>
10	<i>Dena Gramin Training Centre</i>	<i>For providing training to the farmers</i>	<i>2,76,000</i>
11	<i>Hari Traders</i>	<i>For marketing cattle feed</i>	<i>48,000</i>
12	<i>Subhashbhai Gangaram Inva</i>	<i>For marketing seeds</i>	<i>1,200</i>

13	Gajeshwari Garage	For repairing tractor used for agricultural purposes	4,800
14	Jay Shakti	For marketing seeds	1,100
15	Rajubhai Haribhai Sharma	For marketing cattle feed	1,400
		Total:	24,59,880

1.2 From the above, it may please be seen that the godown are let for marketing the commodities used for agricultural purposes and therefore the assessee is entitled to deduction under Section 80P(2)(e).

2. As regards commission, it is connection with sales of fertilizer to the member societies. Section 80P(2)(iv) is applicable to the purchase of other commodities intended for agriculture for the purpose of supplying them to the members. Now whether the assessee purchases and supplies or supplies and earns commission. It is one and the same and therefore the agricultural commission received from Gujarat Marketing Federation is eligible for deduction under Section 80P(2)(iv) as reduced by the estimated expenses. The kind attention is drawn to the SC decision in the case of assessee himself Sabarkantha Zilla Kharid Vechan Sangh Ltd. V/s. CIT 203 ITR 1027. The catch-notes are reproduced for ready reference:

"Co. op. society - society engaged in purchase of agricultural implements, seeds, livestock etc. intended for supply to members - deduction from income tax- society carrying on taxable activities also - deduction from tax available only in relation to net profits and not gross profits -deduction at average rate on amount on which no tax is payable".

Accordingly the assesses has deducted the expenses on estimated basis which is accepted by the AQ in the past.

It is hoped that the explanation offered will be satisfactory."

2.2 Finally assessee claimed u/s.80P(2) of the I.T. Act was disallowed and income of Rs.39,15,976/- was assessed.

3. Against the said order, assessee preferred first statutory appeal before the learned CIT(A), who partly allowed the appeal of the assessee.

4. We have gone through the relevant record and impugned order. Learned AR stated that claim of the assessee has been allowed from the date of inspection since sixty two years.

5. So far Ground No.1 is concerned. In this regard, assessee submitted that learned CIT(A) has coterminous power and he can decide the matter on his own, after appreciating the facts and circumstances of the case.

5.2 In our opinion, Ground No.1 is not sustainable and dismissed this Ground of department.

6. So far Ground No.2 is concerned. In this regard, the appellant has earned income from godown rent amounting to Rs.23,54,433/- and has claimed deduction u/s.80P(2)(e). The appellant has explained that the godowns have been let out for the purpose of marketing the commodities. The appellant has also furnished list of the parties to whom the godowns are let out. It has been contended by the appellant that the letting out of godowns is for the purpose of storing and marketing the commodities. The appellant had not incurred any expenses for earning the rent income as all the maintenance expenses were borne by the tenants. The provision of Sec.80P(2)(e) provides that any income derived by the co-operative

Society from the letting of godowns or warehouse for storage, processing or facilitating the marketing of commodities shall be fully entitled for deduction. Since, the appellant satisfies the conditions that claim for deduction is justified.

6.2 In our considered opinion, assessee claim for Rs.23,54,433/- u/s.80P(2)(e) is allowed. In the result, this Ground of the department is dismissed.

7. The appellant has earned dividend and interest income from other Co-operative Societies and it has accordingly claimed deduction u/s.80P(2)(d) of the Act. The details filed by the appellant show that it has made investment in shares and debentures of various cooperative societies details of which are given in schedule for of the balance sheet. As per the provisions of this section any income by way of interest or dividends derived by any Co-operative society from its investment any other Co-operative Society the whole income would be entitled for deduction. Since, the dividend has been received from other Co-operative Societies the deduction is allowable.

7.2 In our considered opinion, this Ground of department is dismissed.

8. The appellant has claimed the deduction of Rs.4,80,591/- on account of agricultural commission income. The gross income earned by the appellant on account of commission was Rs.7,55,591/- and after

reducing, the estimated expenses of Rs.2.75 Lacs the assessee has claimed this deduction. It has been explained by the appellant that it was acting as commission agent for Gujarat Estate Co-operative Marketing Federation for marketing inorganic fertilizer. It has earned commission for this activity. The assessee has itself disallowed certain expenses on estimated basis for earning such income. A perusal of the details filed by the assessee show that the appellant has earned this income from Gujarat State Co-operative Marketing Federation Ltd. for acting as an agent. The assessee company is acting as the nodal agency for all the smaller agencies at Taluka level. The provisions of the section clearly shows that the deduction is allowable for purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members. The assessee has acted as a marketing agent for supplying the fertilizers to its subsidiary cooperative societies meaning thereby that the product is being marketed to the members. Since, the income has been earned from a specified activities, the deduction claimed by the assessee were rightly allowed by the learned CIT(A). The reliance is also placed on the Supreme Court's decision in the case of appellant himself Sabarkantha Zilla Kharid Vechan Sangh Ltd. V/s. CIT 203 ITR 1027. It is also noted that the AO has disallowed the estimated expenditure disallowed by the appellant from the activity of commission as it has completely disallowed the claim. The claim made by the assessee was justified as the net profit was rightly allowed as deduction and not the gross income.

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8.2 In our considered opinion, learned CIT(A) has rightly allowed the agricultural commission to the assessee.

9. In the result, appeal filed by the department is dismissed.

This Order pronounced in Open Court on	04/10/2017
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 04/10/2017
Priti Yadav, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad