

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH '(Friday)' NEW DELHI**

**BEFORE : SHRI C.M. GARG, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**M.A. No. 269/Del./2014  
(in ITA No. 4395/Del./2013)  
Assessment year : 2008-09**

M/s. Green Meadows Pvt. Ltd.,  
A-5, Swasthya Vihar, New Delhi.  
[PAN:AAACG 0641C]  
(Applicant)

vs.

Income-tax Officer,  
Ward 12(2), New Delhi  
(Respondent)

Applicant by : Shri P.C. Yadav, Advocate  
Respondent by : Shri O.P. Meena, Sr. DR  
Date of hearing : 05.02.2016  
Date of pronouncement : 19.02.2016

**ORDER**

Per L.P. Sahu, Accountant Member:

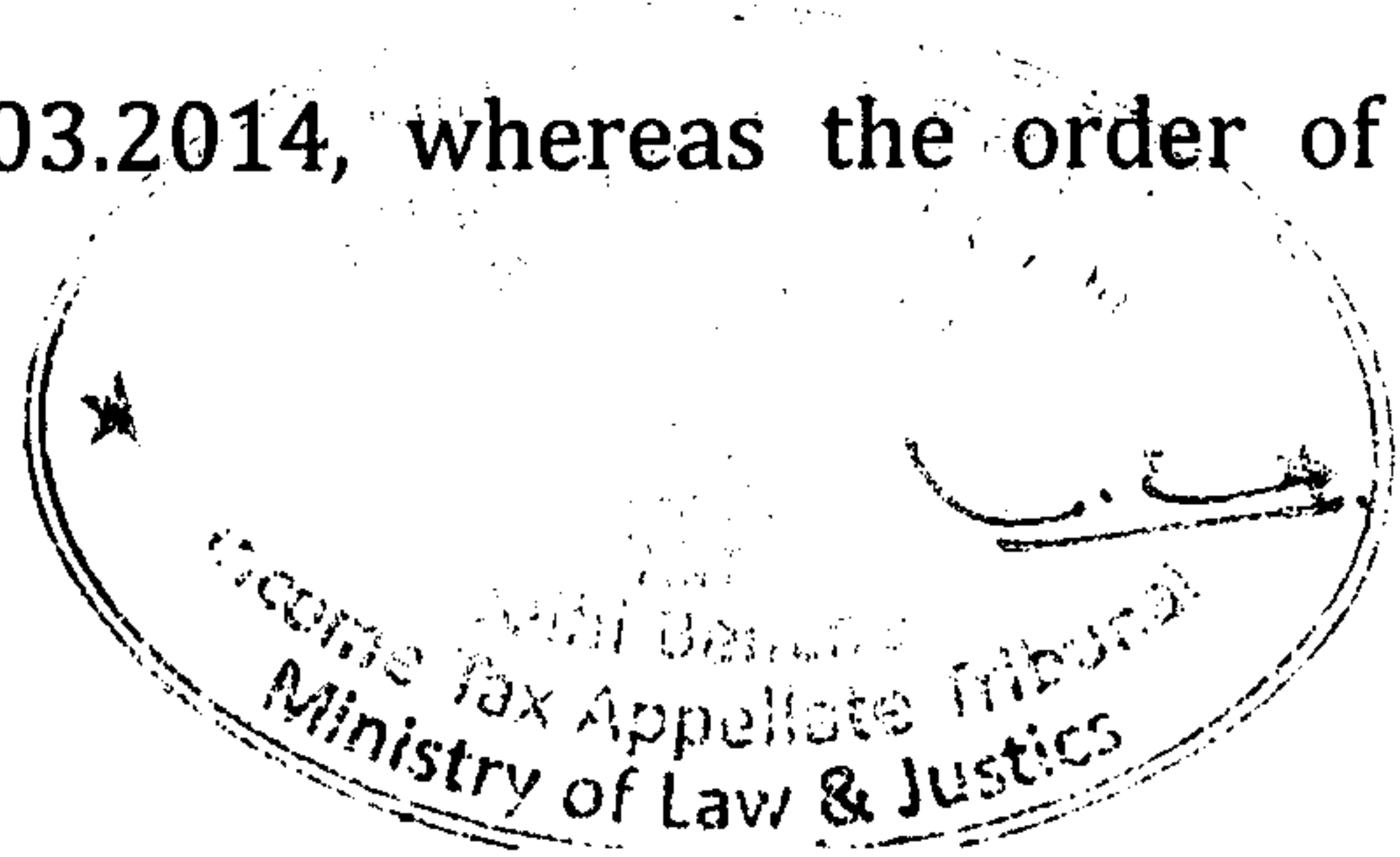
This miscellaneous application by the assessee-appellant has been filed u/s. 254(2) of the Income-tax Act, 1961 (for short 'the Act'), seeking rectification in the Tribunal order passed in ITA No. 4395/Del./2013 for assessment year 2009-10 dated 21.03.2014 (hereinafter referred to as 'Tribunal Order').



2. We have heard the arguments of both the sides and carefully perused the material placed before us, inter alia, rectification application and relevant appeal record.

3. The Id. Counsel for the assessee pointed out that in ground No. 1, the assessee challenged the addition made by the AO by invoking the provisions of section 14A read with Rule 8D(2)(iii) of the Income-tax Rules, 1962. The Id. Counsel also pointed out that as per submissions of the assessee, as noted by the Tribunal in para 2 (2) of the Tribunal order, it is clear that the assessee company has not received any income during the year which is exempt and includible in the total income of the assessee and in this situation, as per recent decision of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Holcim India (P) Ltd., reported as (2014) 90 CCH 0081 (Delhi H.C.), the provisions of section 14A cannot be involved when no exempt income was earned by the assessee during the relevant financial period. Therefore, in the light of dicta laid down by Hon'ble High Court, there is apparent error in the Tribunal order and the same may be rectified by recalling the order.

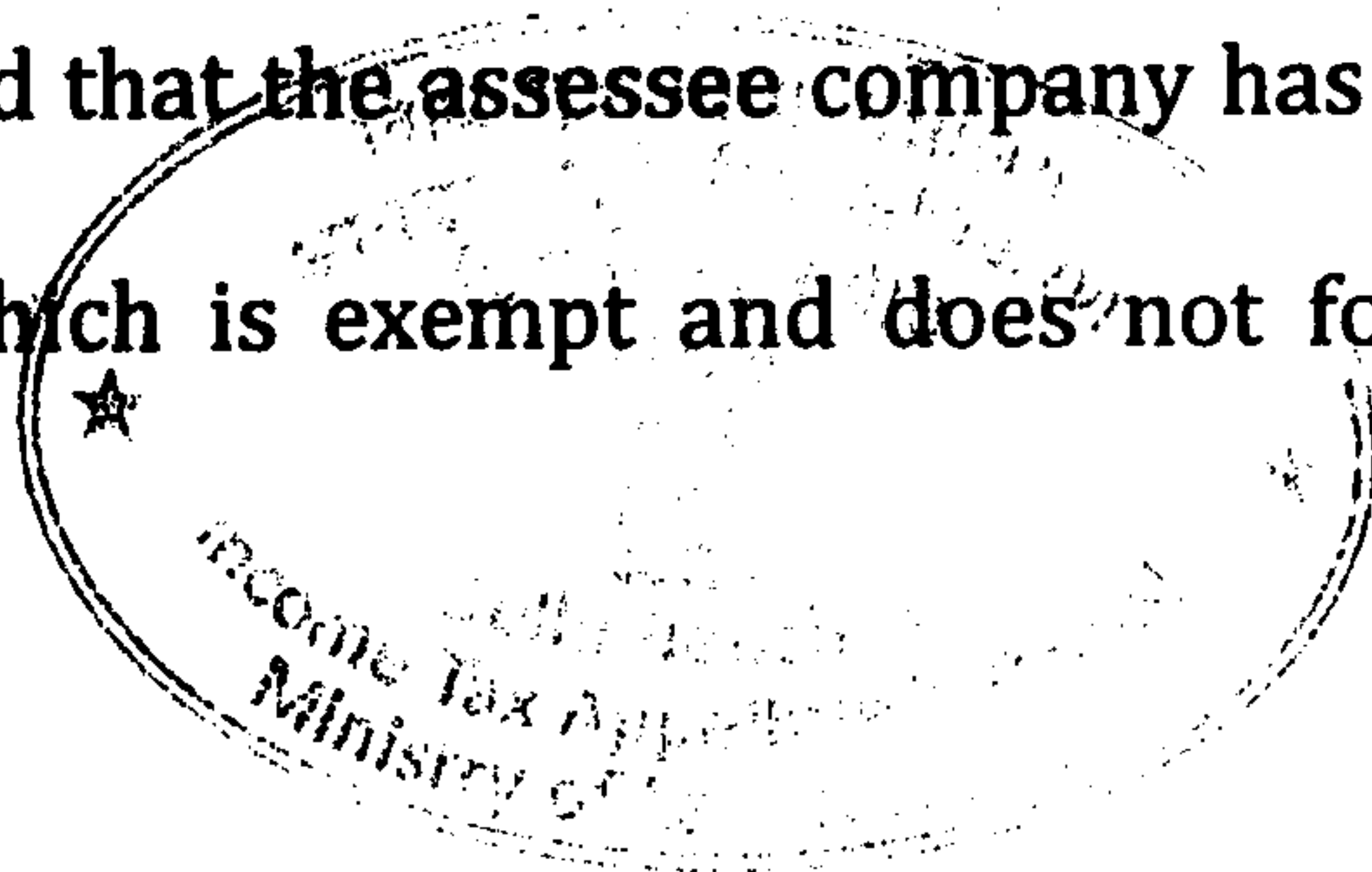
4. Replying to the above, the Id. Departmental Representative pointed that the Tribunal passed the order on 21.03.2014, whereas the order of the



Hon'ble High Court in the case of CIT vs. Holcim India (P) Ltd. (supra) was passed on 05.09.2014 subsequent to the Tribunal order. Therefore, it was not practically possible to consider the dicta of this decision. Therefore, it cannot be presumed that there is apparent error in the Tribunal order.

5. The Id. Counsel for the assessee also placed rejoinder to the above submission of the Id. Departmental Representative and placing reliance on the decision of Hon'ble Gujrat High Court in the case of ACIT vs. Saurashtra Kutch Stock Exchange Ltd., 262 ITR 146 (Guj.), submitted that non-consideration of a judgment of jurisdictional High Court would always constitute a mistake apparent from record, regardless to the fact whether the judgment is rendered prior or subsequent to the order of the Tribunal.

6. On careful consideration of the rival submissions of both the sides, we find that admittedly and undisputedly, the main dispute and ground agitated by the assessee before the Tribunal was pertaining to disallowance and addition made by the AO by invoking the provisions of section 14A read with Rule 8D(2)(iii) of the IT Rules. Further, in the Tribunal order, the submission of the assessee was recorded that the assessee company has not received any income during the year, which is exempt and does not form part of total



taxable income of the assessee. However, we note that the Tribunal order was passed on 21.03.2014 and the order of Hon'ble jurisdictional High Court in the case of CIT vs. Holcim India (P) Ltd. (supra) was rendered on 05.09.2014, subsequent to the Tribunal order, but as per the proposition laid down by Hon'ble Gujrat High Court in the case of ACIT vs. Saurashtra Kutch Stock Exchange Ltd. (supra), non-consideration of judgment of jurisdictional High Court would always constitute a mistake apparent from record and it is not relevant factor whether the judgment was rendered prior or subsequent to the order of the Tribunal. In the instant case, though the order of Hon'ble jurisdictional High Court was passed subsequent to the Tribunal order, but in the light of dicta / proposition, laid down by Hon'ble Delhi High Court in the case of CIT vs. Holcim India (P) Ltd. (supra), no disallowance can be made when there is no exempted income earned by assessee and now it is settled law that the provisions of section 14A read with Rule 8D cannot be invoked when the assessee has not claimed any exempt income.

7. In the light of our foregoing discussion, we are of the considered view that non consideration of proposition laid down by Hon'ble jurisdictional High Court Delhi in the case of CIT vs. Holcim India (P) Ltd. (supra) is an apparent



mistake in the order of the Tribunal. Therefore, we find it appropriate to recall the order of the Tribunal and we order accordingly.

8. Since, in the earlier part of this order, we have recalled the Tribunal order dated 21.03.2014 passed in ITA No. 4395/Del./2013 for the assessment year 2009-10, therefore, the Registry is directed to fix the said appeal for fresh hearing and adjudication before the regular Bench on 04.04.2016. On conclusion of hearing, both the parties were informed about the next date of hearing. Therefore, no notice shall be given regarding the next date of hearing.

9. In the result, the miscellaneous application of the assessee is allowed in the manner as indicated above.

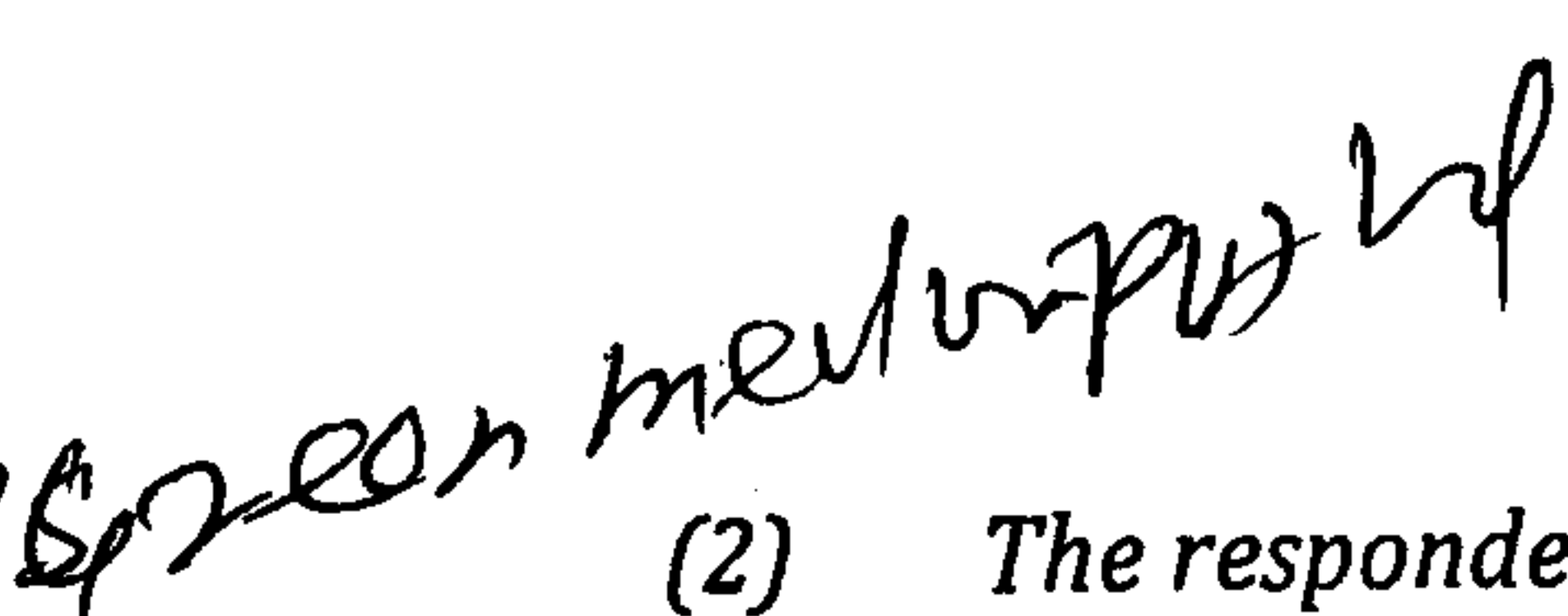
Order pronounced in the open court on.....19/02/2016

(C.M. GARG)   
Judicial Member


(L.P. SAHU)   
Accountant Member

Dated : 19/02/2016  
\*aks/-

Copy of order forwarded to:

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|---|--------------------|
| (1) <del>The appellant M/S</del>  | (2) The respondent |
| (3) Commissioner  | (4) CIT(A)         |
| (5) Departmental Representative   | (6) Guard File     |

 By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi  Delhi  
Assistant Registrar,  
आयकर अपीलपीठ अधिकरण  
Income-tax Appellate Tribunal  
दिल्ली पीठ, नई दिल्ली  
Delhi Benches. New Delhi