

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No. 151/Mum/2022

(निर्धारण वर्ष / Assessment Year: 2014-15)

Shri Krishna D. Pawar 602, Suraj Apts, H. F. Sty Road, Jogeshwari East, Mumbai-400060.	बनाम/ Vs.	ITO-16(3)(4) Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFPP3851P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Dinesh Ahir	
Revenue by:	Shri Krishna Kumar	

सुनवाई की तारीख / Date of Hearing: 10/04/2023

घोषणा की तारीख /Date of Pronouncement: 25/04/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Mumbai dated 29.11.2021 for assessment year 2014-15.

2. Even though, the assessee has raised five (5) grounds of appeal, the main grievance of the assessee is against the action of the Ld. CIT(A) to have confirmed the action of the AO making an addition of Rs.95 Lakhs as unexplained expenditure u/s 69C of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts are that the assessee is a doctor by profession and had filed his return of income for AY. 2014-15 on 24.07.2014 declaring total income of Rs.64,68,380/-. Later, the case of the assessee was selected for limited scrutiny under CASS. Thereafter, the case of the assessee's jurisdiction was transferred to ITO, Ward-16(3)(4), Mumbai, pursuant to the order of the PCIT-16, Mumbai u/s 120(5) of



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the Act. The AO notes that the assessee has income in addition to his profession as doctor (salary), income from house property, income from business/profession, capital gains and income from other sources. The AO notes that he received an information from the DCIT, Central Circle-2(2), Pune regarding payment of Capitation fee/Donation of Rs.95,00,000/- by the assessee to Singhad Technical Education Society (STES) for admission of his daughter Smt. Dr. Sai Shrikrishna Pawar (hereinafter “Dr. Sai”) for securing admission for the course of Post-Graduation (PG) in Dermatology for academic year 2013-14. The AO asked the assessee to explain the source of the same. However, the assessee denied making any payment of Capitation Fees for securing admission for Dr. Sai for MD. Dermatology. Thereafter, the AO again issued show cause notice on the strength of the information received from the DCIT, Central Circle-2(2), Pune as to why Rs.95,00,000/- paid as capitation fees to STES for admission of his daughter should not be added to his total income as unexplained expenditure u/s 69C of the Act. And the assessee denied the allegation and replied that he has paid only a sum of Rs.5,50,000/- as tuition fees to STES and that also through cheque drawn from HDFC Bank account and asserted that no other payment was made to STES. And also brought to the notice of the AO that the bank account details of assessee would reveal that there was no major withdrawal in those years from where assessee could have made such a huge payment of capitation fees as alleged by the AO. But according to the AO as per information found [*during the course of search and seizure action in the case of STES and Shri*



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Maruti N. Navale Group of cases on 06.08.2013], certain incriminating documents regarding donation/capitation fees was seized from Dr. Arvind V. Bhore (Dean of Smt. Kashibai Navale, Medical College and General Hospital, Pune) which reveals that STES received unaccounted Capitation fees amounting to Rs.95,00,000/- from the assessee for admission of his daughter for the course of MD. Dermatology for academic year 2013-14. Therefore, the AO rejected the assertion of the assessee that he has not made any payment of capitation fees for securing admission of his daughter. Thereafter, the AO referred to the handwritten noting at page no. 45 which according to him reveal that STES received unaccounted capitation fees/donation of Rs.95,00,000/- from assessee for admission of his daughter for the course of MD Dermatology. And also drew support for his action from the contents of the appraisal report of the STES wherein it was mentioned that Dr. Sai had secured admission for MD. Dermatology for academic year 2012-13 by making payment of Rs.95,00,000/-. Thus, according to the AO, the assessee has paid the capitation fees of Rs.95,00,000/- and made an addition of Rs.95,00,000/- u/s 69C of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the AO by relying on the decision of the Hon'ble Supreme Court in the case of Sushil Bansal Vs. PCIT (2020) 115 taxmann.com 226 (SC) and relevant portion of the impugned order of Ld. CIT(A) is reproduced as under: -

“5.2 During the course of appellate proceedings, Ld. AO was in possession of information received from Dy. CIT, Central Circle 2(2), Pune that the assessee made capitation



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fee/Donation of Rs. 95,00,000/- to Singhad Technical Education Society for admission of his daughter for course of MD, Dermatology for academic year 2013-14.

5.3 I have carefully considered the facts of the case as well as submissions filed by the appellant. The matter under consideration is the capitation fee/donation of Rs. 95,00,000/- to Singhad Technical Education Society for admission of his daughter for course of MD, Dermatology for academic year. 2013-14. As per matter on record, Ld. AO was in possession of information received from Dy. CIT, Central Circle 2(2), Pune regarding payment of capitation fees. During the Search and Seizure Education Society incriminating documents were during assessment proceedings in Central Circle 2(2), Pune handwritten notings seized from Dr, Arvind V. Bhore (Dean of Smt Kashibai) reveals that Singhad Technical Education Society has received capitation fees of Rs. 95,00,000/- from Dr. Shrikrishna D. Pawar for admission of his daughter for the course of MD. Dermatology for Academic Year 2013-14.

However, the counsel for the Appellant denied for payment any capitation fees and pressed that account and bank details of the applicant may be checked as no a been made. But the arguments of the counsel are not tenable at all. it is a fact that capitation fees is paid in cash normally. 'Handwritten notings are evidence of payment, and they have been seized from the Dean of the college. There is a definite reaction in the payment of capitation fees and the evidence seized, where the name of the appellant is clearly mentioned. The hard evidence seized, where the name of



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the appellant is clearly mentioned. The hard evidenced so gathered in a search and seizure operation cannot be summarily dismissed by the appellant by a 'simple denial'. No other evidence has been furnished by the appellant to prove that the admission was granted to his son for a mere Rs.5,50,000/- paid through cheque. The only defense taken by the appellant is that no addition can be made on the basis of the evidence gathered from a 3rd party. However, this 'third party' has a definite relation with the appellant, in as much, he the dean of the college to which appellant's daughter has been admitted. The evidence of the payment of capitation fees would be most likely in possession of the Dean. Hence the Dean has to be taken as a related party of the appellant.

Further according to Ld. CIT(A), since the facts of this case is similar to that of Sushil Bansal (supra), he confirmed the action of AO.

4. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

5. We have heard both the parties and perused the records. We note that the assessee is a doctor by profession and his daughter (Dr. Sai) after having completed MBBS Degree from Government Medical College and General Hospital at Akola had secured admission in MD. Dermatology at Smt. Kashibai Navale Medical College and General Hospital, Pune in the academic year 2013-14. And as per the statement recorded of her by the DCIT, Central Circle 2(2), Pune on 07.10.2015, she has revealed that she got 65% while passing the MBBS and has paid tuition fees approximately of Rs.5.5 Lakhs for academic year



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2013-14 and another Rs.5.5 Lakhs for academic year 2014-15. The medical college where Dr. Sai was pursuing her MD Dermatology was under the management of the Singhad Technical Education Society (STES) which was subjected to search action on 06.08.2013 (AY. 2013-14). And during the search, they had gone through the records of the students who had secured admission for Post-Graduation course and came across the mark-sheet, pass-port copy etc of Dr. Sai (daughter of the assessee) from which certain handwritten noting was found as under at page no. 53 and page no. 43 as under: -

Page 53	Page 45
20.00 29/12	20.00 29/11
75.00 29/1/13	75.00 29/12

6. The aforesaid scribbling was confronted to Dr. Sai and the following questions were asked in respect of this as under: -

“Q. 14 Please provide the details of any extra payment or extra fees paid of Smt Kashibai Navale Medical College and General Hospital and Singhgad Tech. Education Society or any person related to this Society.

Ans:- No, I have not paid any extra fees to the above said college or society

Q.15 I am showing you seized material i.e. page No. 44 to 55 of bundle No.1 seized during the course of search and seizure operation u/s 132 of IT Act, 1961 on 7/8/2013 from office of Dr Arvind V. Bhore (Dean of Kashibai Navale Medical College and Gen. Hospital, S.No. 49/1 Westerly by pass Road, Narhe (Ambegaon) Pun-411041. Please confirm whether the



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said seized pages are belongs to you or not?

Ans:- The pages No.44 to 55 as mentioned above are related to me and

these pages are the admission forms but not filled and not signed by me and also by my parents which is attachment of MBBS first, second, third Part 1 and Part-2, MBBS passing certificate, attempt certificate,

Maharashtra Medical Council Certificate of provisional registration, copy of passport and National Eligibly cum Entrance Test for post graduate mark sheet.

16. I am showing you the reverse of page No. 45 and No. 53 of said seized material on which there is a hand written entry as under:

Page 53	Page 45
20.00 29/12	20.00 29/11
75.00 29/1/13	75.00 29/12

The meaning of the hand written entry is that you have paid Rs. 20 lacs on 29/12 and Rs.75 lacs on 29/1/2013 and as per page 45 you paid Rs. 20 lacs on 29/11 and Rs. 75 lacs on 29/12 to Smt. Kashibai Navale Medical College and Gen. Hospital to get admission.

Please clarify.

Ans. No, I do not know about the figures mentioned above. I have not paid anything other than the tuition fees.”



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7. And Dr. Sai having said that she passed out with 65% mark from Government Medical College had also stated that for PG admission, she had participated in the NEET Exam and having cleared it and became eligible for admission. And thereafter she had applied for admission for MD Dermatology from the aforesaid college run by STES and got the admission. The aforesaid material (page no. 53 and page no. 43) was forwarded to the assessee's AO, who issued show cause notice to assessee as to why Rs.95,00,000/- should not be treated as unexplained expenditure u/s 69C of the Act. Pursuant thereto, the assessee replied that he has not made any payment other than the tuition fee of Rs. 5.5 Lakhs per year which was paid through banking channel and denied having made any capitation fees of Rs.95 Lakhs for securing admission. However, based on the scribbling at page no. 43 and page no. 53 in the back side of Dr. Sai pass-port copy etc, as well as the fact that in the appraisal report of Investigation Wing have stated that Dr. Sai secured admission by making payment of capitation fees of Rs.95 Lakhs, the AO made an addition u/s 69C of the Act of Rs.95,00,000/- and the Ld. CIT(A) has confirmed the same by relying on the judgment of the Hon'ble Supreme Court in the case of Sushil Bansal (supra) wherein the Hon'ble Supreme Court has held as under:

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“4. Brief facts are that for the AY in question, the Assessee did not file any return of income. During the course of a search conducted in the Santosh Group of Institutions under section 132 of the Act on 27th June, 2013, it transpired that the Assessee had paid Rs. 30.18



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lacs at the time of admission of his son Dr. Jatin Bansal in the MBBS course in the Santosh Medical College, Ghaziabad on 8th August, 2012. The Chairman and managing trustee of the group in his statement given before the investigation wing of the Department admitted that in addition to the regular fees of the medical college, they had also accepted capitation fees. The complete working sheets indicating the capitation fees receipts student-wise for each financial year were also filed before the investigation wing. The name of the Assessee's son Dr. Jatin Bansal was found appearing at Sl. No.72. The capitation fee was shown as Rs. 23 lacs.

5. On the above basis, notice was issued to the Assessee under section 148 of the Act on 23rd March, 2015. He was also issued notices under section 142(1) on 23rd June, and 9th July, 2015 but neither he nor anyone on his behalf attended the hearing of the Assessing Officer (AO) in response thereto.

6. Finally, in response to summons under section 131 of the Act issued on 12th January, 2016, the Assessee appeared before the AO and statements were recorded. According to the Assessee, the admission process was undertaken by the Assessee's father-in-law Shri Jile Ram Bhati. The Assessee claimed not to be aware of any payment of capitation fee.

7. On the above basis, summons under section 131 of the Act were issued to Shri Bhati and his statements were recorded. According to Shri Bhati, he gave a total fees of Rs. 7.18 lacs to Santosh Medical College for the admission of Dr. Jatin Bansal. He had no recollection of



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payment of any capitation fee. Further, out of the abovementioned Rs. 7.18 lacs, Rs. 3 lacs was stated to have been given by the grandfather of the present Appellant/Assessee and the remaining Rs. 4.18 lacs was withdrawn from the bank account of Shri Bhati.

8. Since no credible evidence explaining the source of Rs. 23 lacs paid as capitation fee was forthcoming, the AO added it to the income of the Assessee under section 69C of the Act.

9. The appeals filed by the Assessee both before the Commissioner of Income-tax (Appeals) ['CIT(A)'] as well as the ITAT were dismissed.

10. Counsel for the Appellant has repeated the arguments urged before the CIT(A) and ITAT. According to him, the aforementioned sum of Rs. 23 lacs ought to be added to the income of Shri Bhati, who had undertaken the admission process for the Assessee's son Dr. Jatin Bansal, and not to the income of the Assessee himself. According to him, the Assessee had categorically stated that he was not even aware of the payment of capitation fees, much less its source. He submitted that the statements of his father-in-law were not considered in their true perspective.

11. This Court is unable to agree with the above submissions. The Court finds that the AO has taken pains to summon Shri Bhati, the father-in-law of the Assessee and record his statement. Unfortunately, the statement made by the Assessee's father-in-law was not helpful in explaining the source of payment of Rs. 23 lacs as capitation fees. Shri Bhati only explained the payment of Rs.7.18 lacs as regular fees. With there being no credible



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explanation offered by the Assessee for the payment made as capitation fee, the AO is justified in adding it to the Assessee's income.

12. The Court is unable to find any legal error committed by the ITAT in dismissing the appeal of the present Appellant. No substantial question of law arises from the impugned order of the ITAT. The appeal is accordingly dismissed. The pending application is also dismissed.”

8. Before us, the Ld. AR, assailing the action of the Ld. CIT(A)/NFAC submitted that the addition made by the AO cannot be sustained based on scribbling made on the back side of two pages which does not reveal that assessee had made any payment of Rs.95,00,000/- as capitation fees for securing admission for assessee's daughter (Dr. Sai) for Post-Graduation admission. The Ld. AR took pains to point out the paper (backside/reverse-side) on which scribbling has been made, which was the basis on which adverse inference has been drawn against the assessee to have made payment of capitation fees. According to him, Dr. Sai had completed her MBBS Degree from the Government Medical College and General Hospital at Akola and secured 65% mark for MBBS. And thereafter had participated in the NEET Exam and have qualified for PG admission, had applied for MD. Dermatology at Smt. Kashibai Navale Medical College and secured admission, had only paid made the tuition fees of Rs.5.5 Lakhs for academic year 2013-14 and for those years of her study there. And it was pointed out by the Ld. AR that Dr. Sai had denied before investigation wing of making payments other than the



tuition fees. The Ld. AR drew out attention to the scribbling of figures at page no. 43 and page no. 53 which is seen as under: -

20.00 29/12 20.00 29/11

75.00 29/1/13 75.00 29/12

9. According to the Ld. AR, the aforesaid scribbling of 20 & 75 cannot be the ground on the basis of which adverse inference can be drawn against the assessee having made payment of Rs. 95,00,000/- to STES for securing admission for his daughter. And therefore, he prayed that the addition may be deleted. Further, according to him, the Ld. CIT(A) erred in relying on the judgment of the Hon'ble Supreme Court in the case of Sushil Bansal (supra) because in that case during the search the Chairman and Managing Trustee of Santosh Medical College, Ghaziabad had admitted that they were accepting from students capitation fees in addition to regular fees. And they even furnished the complete working-sheets indicating the capitation fees receipts student-wise for each financial year and in that worksheet the name of that assessee's (Sushil Bansal) son of Dr. Jatin Bansal was found appearing at serial no.72 wherein it was recorded that capitation fees of Rs.23 Lakhs was paid. And in that case, during the assessment proceedings, even though that assessee stated his father-in-law Shri Jile Ram Bhati got the admission, and the AO summoned him also before him, wherein he submitted that he has made payment of Rs.7.18 Lakhs to the Santosh Medical College for admission of Dr. Jatin Bansal and out of that sum of Rs.7.18 Lakhs, Rs.3 Lakhs was stated to have paid by the grandfather of the assessee and the remaining Rs.4.18



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Lakhs was withdrawn from the bank account of Shri Bhati. In the aforesaid circumstances, since no credible explanation of the source of Rs.23 Lakhs paid as capitation fee was brought to the notice of the AO, he made addition u/s 69C of the Act which was confirmed by the Ld. CIT(A) and the ITAT which action has been confirmed by the Hon'ble Supreme Court. According to the Ld. AR, the facts are distinguishable in the present assessee's case. According to him, it can be seen that other than two scribbling seen at page no. 45 and 53 (supra), there was no iota of evidence to draw adverse inference against the assessee, whereas that was not the case in the decision rendered by the Hon'ble Supreme Court in the case of Sushil Bhansal wherein the managing trustee has given working sheet of all students who have given capitation fees along with complete details were furnished to the Investigation Wing which could not be rebutted by that assessee. Therefore, it was added in the hands of that assessee's which judicial precedent according to Ld. AR cannot be applied in the facts of the present case. And therefore he pleaded that impugned addition confirmed by the Ld. CIT(A) to the tune of Rs.95,00,000/- u/s 69C of the Act may be deleted.

10. Per contra, the Ld. DR submitted that page no. 53 and page no. 45 wherein the scribbling of numerical numbers 20 and 74 are emanating from the personal records of Dr. Sai from which inference was drawn by the AO/Ld. CIT(A); and the concurrent finding of both the authorities should not be ignored. According to him, the Ld. CIT(A) has rightly relied on the Hon'ble Supreme Court decision in



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the case of Sushil Bansal (supra) had confirmed addition and we should not interfere with the order of the Ld. CIT(A).

11. After hearing both the authorities and after careful perusal of the records placed before us and especially page no. 53 and 45 relied upon by the Ld. CIT(A)/AO for making the impugned addition, we note that entries are seen as under: -

Page 53	Page 45
20.00 29/12	20.00 29/12
75.00 29/1/13	75.00 29/12

12. On the basis of the aforesaid numerical and incomplete dates found at extreme right corner reverse side of page no. 53 (which is last page of admission form for the year 2012-13 of STES/Smt. Kashibai Navale Medical College) wherein numerical number “20.00” along with incomplete date 29/12 as well as numerical number “75.00” along with incomplete date 29/1/13 is found. Likewise, reverse side of page no. 45/43 (which is the copy of pass-port of Dr. Sai) wherein at left corner of page numerical number 20.00 and 75.00 is seen along with [29/12 or 11] or [24 or 29/12] incomplete dates, the AO has drawn adverse information against the assessee for payment of capitation fees of Rs.95 Lakhs and the addition has been made accordingly. We note that search took place in the premises of STES on 06.08.2013 (AY. 2013-14). Therefore, the only inference in the facts of the case that can be drawn is that the scribbled dates 29/12 and 29/1/1 may be 29/12/12 and 29/1/2013 which pertains to AY. 2013-14 because Dr. Sai took admission for the academic session (FY) 2012-13 corresponding to



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AY. 2013-14 And even if the amount shown as per the scribbling 20 and 75 is considered as Rs.20 Lakhs and Rs.75 Lakhs (Rs.95,00,000/-) then also the addition if any, could have been made in the hands of the assessee only for AY 2013-14 and not for relevant AY 2014-15. (Refer Hon'ble Supreme Court decision in ITO Vs. Ch. Atchiaiah 218 ITR 239 wherein it was held that AO has to tax the right person, right year and right income.

13. Having said so, we also note that the assessee's daughter had secured 65% for MBBS which completing her MBBS Degree from Government Medical College and General Hospital at Akola and secured her admission after clearing the NEET Exam which is the eligibility/qualifying test. And the addition has been made only on the basis of the scribbling noted aforesaid.

14. According to us, only on the basis of the aforesaid scribbling addition cannot be made for two (2) reasons (i) the documents on which these scribbling have been found, has been admittedly seized from the office of the Dean of the Medical College, so, before drawing adverse inference against the assessee it could have been prudent on the part of the AO to have summoned the Dean Dr. Arvind V. Bhore and asked him to explain about the aforesaid scribbling. And if the dean had made any statement which incriminates the assessee/Dr. Sai, then the AO ought to have given an opportunity to the assessee to have cross-examined the Dean and if the Dean is able to sustain the cross-examination (i.e,credibility of evidence of Dean couldn't be shaken), then AO could have drawn adverse inference against assessee/Dr. Sai.



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Without doing such an exercise, no addition could have been legally made. Secondly, the AO ought to have enquired as to whether capitation/donation is being taken by STES for admitting students; and if so, who collects the same on behalf of STES; and from that person, enquiries should have been conducted as to whether the assessee/Dr. Sai gave capitation fees for securing admission as alleged by the AO/Investigation Wing. Having not done so, the action of the AO/Ld. CIT(A) to have made the addition simply on the strength of scribbling as noted supra is not sustainable in the eyes of law. And therefore, we are inclined to delete the addition.

15. Before parting, we note that the Ld. CIT(A) erred in relying on the judicial precedent as laid down in case law of Sushil Bhansal (supra). In that case, the chairman/managing trustee of the Santosh Medical College has admitted that they were collecting capitation fees in addition to the tuition fees. And also submitted the working sheet/chart wherein the details of all the students who have given capitation fees along with amount collected from them; and thereafter the AO in that case has confronted that assessee, who failed to rebut with credible evidence regarding the source of Rs.23 Lakhs paid. Therefore, the addition was confirmed at the level of the Tribunal which has been confirmed by the Supreme Court. However, the facts of Sushil Bansal (supra) is clearly distinguishable. In that case as noticed the crucial evidence against that assessee was the admission made by Chairman/Managing Trustee of Santosh Medical College that for securing seat that assessee had given capitation fees; and they



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submitted the details of capitation fee collected from students which included the assessee in that case. And even though AO gave opportunity to as to rebut the evidence against that assessee, he failed to come out with credible evidence the source of Rs.23 Lakhs. So addition was made. However, in this case there is no other evidence other than the scribbling noted at the reverse side of page no. 53 & 3/45. Only on the basis of the scribbling note (supra) without any other oral/documentary evidence to support the allegation of capitation fees it is quite unsafe to fasten addition. So in the facts and circumstances discussed supra, we are of the opinion that addition is not warranted. And therefore the impugned addition of Rs 95 Lakhs is deleted.

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

Order pronounced in the open court on this 25/04/2023.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25/04/2023.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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