

**IN THE INCOME TAX APPELLATE TRIBUNAL “C”, BENCH KOLKATA**

**BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM**

**आयकर अपीलसं./I.T.A Nos.1473&1474/Kol/2019**

**(निर्धारण वर्ष / Assessment Years: 2013-14 & 2015-16)**

<b>Bhagawati Oxygen Ltd.</b> 67, Park Street, Kolkata – 700016.	<b>Vs.</b>	<b>DCIT, Circle-8(1), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCB2164N</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Miraj D Shah, AR

Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 27/11/2019

घोषणाकीतारीख/Date of Pronouncement : 19/02/2020

**आदेश / O R D E R**

**Per Shri S. S. Godara:**

These two assessee's appeals for assessment years 2013-14 & 2015-16 arise against the Commissioner of Income Tax (A) - 23, Kolkata's separate orders; both dated 15.05.2019 passed in Case No.CIT(A)-23,Kol/10244/17-18 and CIT(A)-23, Kol/10511/17-18 involving proceedings u/s 143(3) and 147/143(3) of the Income Tax Act, 1961 (in short 'the Act') respectively.

Heard both the parties. Case file perused.

2. The assessee's former substantive ground in assessment year 2013-14 and sole grievance in assessment year 2015-16 challenges correctness of both the lower authorities' action denying sec. 35(1)(ii) deduction in case of contribution for scientific research and development made to M/s Herbicare Healthcare Bio-Herbal Research Foundation ("HHBHR") involving sums of Rs.6,17,750/- and Rs.24,50,000/-; assessment year, wise respectively. The Revenue's case as per the

CIT(A)'s detailed discussion under challenge is that the assessee's recipient is a mere accommodation entry provider going by the DDIT(Inv.), Kolkata's investigation carried out in its case indicating bogus donation racket. The CIT(A) identical lower appellate discussion to this effect reads as under:

**“DECISION:**

*Ground No.1&10, These grounds of appeal are general in nature and hence not adjudicated upon separately.*

*Ground No.2 to 5 :-*

*The issue in these grounds of appeal are regarding the disallowance of Rs. 24,50,000/-, for Its donation of Rs. 14,00,000/- representing deduction U/s 35(1)(ii) of the Act on account of donation made to a research foundation namely M/s Herbicure Bio Herbal Research Foundation (HHBHRF), PAN:AABCH4849J.*

*In this regard it was submitted by the appellant that the donation made was genuine in manner.*

*On perusal of the findings of the Ld. AO. It has been observed that the Ld. Assessing Officer relied upon the information which was received from DDIT(Inv), U-4(1), Kolkata that the assessee had provided bogus donation to M/s Herbicure Bio Herbal Research Foundation (HHBHRF). The survey operation was carried U/s 133 on 27.01.2015, relevant portion of the report is produced below:-*

*"The Directorate of Investigation (Kolkata) received a number of complaints and other credible information against certain institution for Bogus Donation u/s 35(1)(ii). The complainant alleged that certain institution vide a network of the brokers are engaged in the bogus donation u/s 35(1)(ii) of the Income Tax Act, 1961. Discreet inquiries carried out by this office prima-facie affirmed the allegation. The institutions are as following.*

*1.School of Human Genetics & Population Health PAN;AABAS4570M R&D Unit/Office; 6A, Mangala Lane, 1<sup>st</sup> Floor, Kolkata 700112. Income tax Exempt;35(1)(11) [F. No.203/64/2009-itA-ii], Notification No.4/2010,Dated 28-1-2010 (Here after referred as SHG &PH)*

*2.Matrvani Institute of Experimental Research& Education, PAN;AABTM0125H Registered Office; 6.A Seven Tanks Lane Kolkata 700030.*

*Income tax Exempt; 35(1)(11) [F. No.203/29/2005-itA-ii],Notification No.229/2007,Dated 2108-2007 (Here after referred as MIER&E)*

*3. Herbicure Healthcare Bio Herbal Research Foundation, PAN; AABCH4849J Registered Office; Boral Saral dighi (East), Post Office, Boral,PS .Sonarpur, Kolkata - 700154.Registered u/s 25 of Companies Act 1956. Income tax Exempt; 35(1)(11) [F. No.203/135/2007-ITA-ii],Notification No.35/2008,Dated: 14/03/2008 (Here after referred as HHBHRF)*

*Accordingly, a survey action U/s 133A of the Income Tax Act, 1961 (hereafter, referred as Act) was carried out on 27.01.2015 at the registered/administrative offices of SHG&PH,*

*MIER&E and HHBRF. As all three institutes have followed more or less same modus operandi, they have been clubbed together for the sake of simplicity.*

*These institutes in connivance with donors, brokers and accommodation entry providers have indulged in a devious scheme of tax evasion, defrauding revenue and has ill-profited from the government intention to increase & encourage scientific research in social science or statistical research in the country. These institutes activities are not genuine.*

*These institutions are engaged in the bogus donation u/s 35(1)(ii) of the Act through various brokers in lieu of commission. Bogus donations are being taken vide cheque/RTGS and thereafter after taking commission, the same is routed back to the donor in the form of cash vide 3-4 layers after bogus billing or other accommodation entries in the books of these Institutes. The commission rate in market is 12 to 18 percent. Whereas share of the exempted organization is 8-10% of total amount and remaining 2 to 8 percent of total amount is charged by the broker. As the benefit is 175% of donated amount a large number of unscrupulous assessee is lured by these brokers. The whole cycle of transaction take place within 1 to 3 days. More than Rs. 724/- crores bogus donation has been given to these three institute from 1 April, 2011, on which more than Rs.380 crore tax(deduction of an amount equal to one and three fourth times of sum paid) has been evaded. A diagrammatic representation of the modus operandi is enclosed in the CD.*

*2. Statements of key persons like secretary/Treasurer/President and other persons recorded during the survey and confirming the above modus operandi is enclosed in the Survey Report.*

*3. Statement of the auditors of these institutes is also enclosed in the Survey Report which clearly shows lacunas in the audit done by them. Most of the audit is done from the bank statement.*

*4. A number of brokers/entry operators have admitted that they have done bogus billing or accommodation entries for these institutions which clearly establish the modus operandi of the institute. Statements of Brokers/entry operators are enclosed in Survey Annexures.*

*5. Most of the expense side parties of these institutes were issued notices. The register daks has return backed as not found/address insufficient etc. Pre-survey and post survey physical inquiries have found that most of the expense side parties of these institutes are paper & bogus concerns which has raised bogus bills in lieu of commission.*

- The bank statements of these institutes show clear pattern of donation coming and going vide above modus operandi. Most of the debit entries are in name of shell companies and paper concerns, which are found to be non-existing.*
- SHG&PH have gone in settlement commission admitting that in lieu of service charge they have provided accommodation entries of donation to the donors.*
- The books of accounts were not there at their registered offices. HHBRF have outsourced the books of accounts to one CA's office. In case of SHG&PH there are broker wise ledgers of commission. In all three cases, no purchase bills were found at their premises related to F.Y 2014-15. Documents relate to commission were found and impounded.*
- They do have some person with good C.V. on their board. On inquiry it is found that these persons are associated with these institutes only in honorary position and they are not involved in the day to day activities of the institutes. Some of them are relatives of the key person of the institute.*

- *The research work they are showing is just reproduction of the published material. Even just one or two person has education qualification to be a researcher. The institutes were asked to produce in the list of researcher along with their educational qualification, research contribution in last three years for the institute, expenses on their research, amount paid to researchers by the institutes in lieu of research. Forty days has been passed they have failed to submit these details.*
- *These institutions have minuscule presence and their contribution to scientific research is too negligible for the kind of donation they have received. Any independent valuation of their research work will reveal that it is nothing but copy, plagiarism and mixing/editing of the various published articles. The research facilities like instruments, lab, skilled staff, storage facilities etc are near about absent at these institutes.*
- *The institute approved u/s 35(1)(ii) have to follow rule 5C, 5D and 5E of Income Tax Rules. These institutes have blatantly violated the concerned income tax rules. Some of these violations, listed along with the conditions of Rule 5D of Income Tax Rules, are as following:*

*Rule 5D: Conditions subject to which approval is to be granted to a research association under clause (ii) or clause (iii) of the sub-section (1) of section 35.*

*1. The sole object of the applicant research association shall be to undertake scientific research or research in social science or statistical research, as the case may be.*

*-The sole object here seems to be getting commission on bogus donation.*

*2. The applicant research association shall carry on the research activity by itself*

*-There is no research activity commensurate with their expenses shown. As most of these are bogus expenses. Even the commission amount they have not applied for research activity. Neither they have research facility nor do they have skill man power. They have not produced a single original research in last three years. They have also transferred certain funds to obscure NGO's again for the rerouting of the donation to the donor.*

*3. The research association seeking approval under clause(ii) or clause (iii) of sub section (1) of section 35 shall maintain books of account and get such books audited by an accountant as defined in the Explanation to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income Tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.*

*-Though on paper they have compiled with the condition but as revealed from auditors statements there were lacunas and due standards of audit has not been followed by the auditors. Anyway the books of accounts were fabricated by the institutes.*

*4. The research association shall maintain a separate statement of donations received and amount applied for scientific research or research in social science or statistical research and copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-rule (3)*

*- No such separation was found during the survey. There were no separate accounts for amount applied for scientific research or research in social science or statistical research. As the paper accounting is done after the ending of financial year. As the bogus billing or other accommodation entries have been done, whatever they have got audited and submitted to the department are nothing but falsified accounts.*

*Even donation statement was not found during the survey as they told the same is prepared after financial year with the help of bank statement.*

*5. The research association shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income -tax or Director of Income-tax containing-*

*(i) a detailed note on the research work undertaken by it during the previous year;*

*(ii) a summary of research articles published in national or international journals during the year;*

*(iii) any patent or other similar rights applied for or registered during the year;*

*(iv) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme.*

*Most of the above is fabricated, copied and what is known as cut-paste research and on paper only. Any independent valuation of research done by these institutes will prove this."*

*The assessee was also confronted with the survey report of M/s Herbicare Bio Herbal Research Foundation (HHBHRF) and was also informed that the Certificate U/s 35(i)(ii) of the IT Act, 1961 was cancelled by the Central Govt.*

*Further, Notification No. SO 2882(E) [NO.79/2016(F.NO.203/135/2007-ITA. II)], Dated: 06.09.2016.*

*"In exercise of the powers conferred under clause (ii) of sub section (1) of section 35 of the Income Tax Act, 1961 read with rules 5C and 5E of the Income-Tax Rules, 1962, the Central Government hereby rescinds the notifications of the Government of India, Ministry of Finance, Department of Revenue number 35/2008 dated 14<sup>th</sup> March, 2008 published in the Gazette Of India, Part II, Section 3, sub section(ii) vide S.O. 798 dated 14th march 2008 with effect from 1st April ,2007 and shall be deemed that the said notification has not been issued for any tax benefits under the Income Tax Act, 1961 or any other law of the time being in force."*

*On careful perusal of the documents placed in the file I am of the considered opinion that the Ld AO relied upon the true facts and information provided by the DDIT(Inv). Before the AO as well as in appellate proceedings, the appellant was unable to controvert the facts & findings of survey report. It is noted that in the survey action conducted U/s 133A on M/s Herbicare Bio Herbal Research Foundation, to whom donation had been given, has specifically admitted to providing accommodation entries and the cash was returned to the donors. It is further noted that the donee only existed on paper having conducted no actual research whatsoever. All these facts cumulatively considered, prove that the donation given by the appellant to M/s Herbicare Bio Herbal Research Foundation was bogus and hence the claim made U/s 35(1)(ii) was rightly denied by the AO. Moreover even the certificate granted U/s 35(1)(ii) by the CBDT has since been withdrawn/ rescinded. Accordingly no infirmity is noted in the order of the AO. Hence, the impugned addition is confirmed and the appeal is hereby dismissed."*

3. Learned senior departmental representative vehemently contended thereof that both the lower authorities have rightly disallowed the assessee's impugned deduction claim.

4. After giving our thoughtful consideration against and in support of impugned disallowance, we notice that the instant issue is no more res integra. This tribunal's coordinate bench's decision in the case of Raj Karan Dassani vs. ITO ITA No.2346/Kol/2018 assessment year 2013-14 dated 08.05.2019 involving the very recipient "HHBRF" (supra) has declined the Revenue's identical stand in assessment year 2013-14 itself as under:

*"2. The assessee is an individual and is in the business of general order supplier of machinery and spare-parts. He filed his return of income on 25.03.2014 declaring total income of Rs.5,43,712/- . The return was processed u/s 143(1) and later it was reopened u/s 147 of the Act. The reopened assessment was completed u/s 16.12.2016 disallowing the claim for deduction u/s 35(1)(ii) of the Act of Rs.8,75,000/- which is 175% from Rs.5,00,000/- of donation paid to M/s Heribicure Healthcare Bio Herbal Research Foundation.*

*3. The facts, in brief, are that M/s Heribicure Healthcare Bio Herbal Research Foundation (hereinafter referred to as 'HHBRF') is a non-Government and non-profit entity registered under the West Bengal Societies Registration Act, 1961. HHBRF was approved u/s 35(1)(ii) of the Income Tax Act, 1961 as a scientific research organization. The assessee made a donation of Rs.5,00,000/- to HHBRF on 06.03.2013 by cheque No.339348 drawn on Citi Bank, Kolkata, in response to an appeal for donation. The recipient of the donation i.e. HHBRF, issued a certificate to the assessee enabling him to claim deduction u/s 35(1)(ii) of the Act.*

*4. The Income-Tax Authorities conducted a survey u/s 133A of the Act on HHBRF. A statement was recorded from Shri Swapan Ranjan Dasgupta, Founder Director of HHBRF. The Revenue alleged that Shri Swapan Ranjan Dasgupta admitted that they had received such donation and thereafter returned these donations in cash through some operators, to the donor, in lieu of a commission. The Revenue alleged that he had given a list of beneficiaries. A statement was recorded from Mr. Kishan Bhawsinghka, one of the broker. It was alleged that he also confessed to the similar modus operandi of returning the money taken as a donation. Further a statement was recorded from Smt. Sujata Ghosh Dastidar, one of the research directors of HHBRF. It is alleged that she also had admitted to the same modus operandi. After referring to the statement of these three persons, the Assessing Officer brought out the modus operandi. At Para 8 & 9 he held as follows:*

*"8. It is crystal clear from the above discussions and relevant portions of Statements of Mr. Swapan Ranjan Dasgupta, founder director of (HHBRF), Mr. Kishan Bhawsinghka, one of such broker, Smt. Sujata Ghosh Dastidar, one of the directors and research director of M/5. HHBRF and Shri Shanker Kumar Khetan, one of such Entry operator that HHBRF had accepted donation and routed back the same to donor in the form of Bogus Billing or other accommodation entries, in lieu of commission of 8-10% of the total amount. One of such donor is the present assessee i.e. Shri Raj Karan Dassani who had*

*donated Rs. 5,00,000/- to the said organization and claimed Rs.8,75,000/ (175% of Rs. 5,00,000/-) as deduction u/s 35(1)(ii) of the Act. In reply to the show cause notice dated 01.12.2016, the assessee denied the fact of the bogus billing, which is not accepted in the context of Statements of the persons mentioned above.*

*9. In the light of the above mentioned facts of the case and also considering the submission of the assessee's I am of the opinion that the assessee has made bogus donation u/s 35(1)(ii) of the I.T Act, made to M/s Heribicure Healthcare Bio Herbal Research Foundation (HHBRF) to the tune of Rs.5,00,000/-Hence, the same is disallowed and added back to the total income of the assessee."*

*5. Aggrieved, the assessee carried the matter in appeal. The first appellate authority considered the submissions of the assessee as well as the findings of the Assessing Officer. Thereafter at Para 12 onwards he applied the theory of human probabilities and relied on the decisions of the Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More & Ors. At Para 13 he held as follows:*

*13. In my opinion the suspicious evidence that the Ld. AO has gathered clearly bring forth that the transaction is a dubious one, and against the rational behavior of a businessman. No businessman would donate more than 50% of his hard earnings to anybody, and certainly least to a cause that has no proximate relationship with him or would benefit him or her in any manner. Research in the field of Herbal and Bio would not benefit a businessman in the field of Polymer and plastic granules. It is a settled proposition of law that the income tax liability is to be ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and the preponderance of probabilities. The material available on record for the Ld AO were the statements and confessions of the recipient of the donations, which have not been rebutted by the appellant-firm or its partners. The behavior of the appellant is therefore to be measured against the norms of human conduct. Similarly in the appeal stage the appellant has submitted certain documents which are mere self-serving recitals, and therefore they do not have any evidentiary value. Therefore on the preponderance of probability, I find that the ld. A.O has rightly disallowed the alleged donation and claim of deduction thereon as inadmissible, and added back the same to the returned income of the appellant. In view of the above discussion, I find no infirmity in the orders of the ld. A.O, and I accordingly confirm the same. The Grounds taken by the appellant are dismissed."*

*6. Aggrieved, the assessee is in appeal before us. The ld. Counsel for the assessee did not press the grounds for challenging the reopening of assessment. Hence these grounds are dismissed as not pressed. He only argued Ground No.4 & 5. The sums and substance of his argument is that (a) the organization, HHBRF, was granted registration, as a scientific industrial and research organization by CBDT, Government of India, u/s 35(1)(ii) under the Income Tax Act, 1961 ('the Act'). (b) That the assessee had donated the money to the said organization and after obtaining a valid receipt as well as a certificate from the donee, had claimed deduction in accordance with law. (c) That it is not within his control as to what this organization, HHBRF, would do with the money donated to it. (d) That the registration was valid and in force when he has made a donation and hence he is entitled to deduction. (e) That none of the copies of the statements referred to and relied upon by the Revenue have been given/confronted to the assessee. (f) That the assessee was not given any opportunity of cross-examination of any of with these persons. (g) That there is no proof that the assessee had received back the*

money in question. For this proposition he relied on the judgment of the Hon'ble Gujarat High Court in the case of Pr. CIT Surat vs. Tejua Rohit Kumar Kapadia judgment dated 18/09/2017. He relied on the decisions of the Kolkata 'B' Bench of the Tribunal in the case of Tushar Chawda vs. ITO; ITA No.2362/Kol/2017 order dated 23.03.2018, Kolkata 'SMC' Bench of the Tribunal in the case of Santosh Suresh Kumar Agarwal vs. ACIT; ITA No.1162/Kol/2018 order dated 05.09.2018.

7. The ld. Counsel also relied on the order in the case of Rajda Polymers vs. DCIT in ITA No.333/Kol/2017 order dated 08.11.2017, wherein a donation of Rs.24,75,000/- given to HHBRF was considered and the issue was adjudicated in favour of the assessee. He submitted that in all these cases, the statements of Shri Swapan Rajan Dasgupta, Founder Member of HHBRF was common and had been examined.

8. The ld. Counsel for the assessee further relied on the judgment of Hon'ble Supreme Court in the case of CIT vs. Chotatingrai Tea & Ors.; (2002) 258 ITR 529 and submitted that Hon'ble Supreme Court and High Courts have held that "if the approval of the Government of India was in force in the Assessment Year for the organization u/s 35(1)(ii) of the Act, the donations made to that organization shall be entitled to deduction in the hands of donor." He relied on certain other case laws which we will refer to as and when necessary.

9. The ld. Departmental Representative, on the other hand, submitted that the entire registration, donation and claim of deduction to HHBRF was a organized racket of money laundering and this was proved by the evidence collected by the Revenue in the form of numerous statements. He submitted that the statements of Shri Swapan Ranjan Dasgupta, Founder Director of HHBRF and statement of Smt. Sujata Ghosh Dastidar, one of the directors and research directors of HHBRF shows that money taken as donation was returned to those donors in cash through brokers. He also referred to the statements of Mr. Kishan Bhawasingka and Shri Shanker Kumar Khetan, entry operators and relied on the same, as evidence, in supporting the additions. He relied on the order of the Assessing Officer as well as ld. CIT(A) and submitted that human behavior and probabilities have to be considered and the addition in question to income be upheld.

10. Rival contentions heard. On a careful consideration on the facts and circumstances of the case, perusing the papers on record and orders of the authorities below as well as case laws cited, I hold as follows.

11. The statements of Mr. Kishan Bhawasingka and Swapan Ranjan Dasgupta are first examined. The entire statement is not filed. A part of statements of Mr. Kishan Bhawasingka is extracted at Page 4-5 of the Assessing Officer:

"I myself, my wife Smt. Sangita Bhawsinghka (House Wife), my son Vishal Bhawsinghka (self-business), he is going to start a factory for Polybedding by using raw material 'polyster fibre' etc. in the name of 'Polyfiber Fabricator', firm partner are myself, my son and Bhagwat Prasad Agarwal. The registered office of this factory is situated at 21, Hemant Basu Sarani, 3<sup>rd</sup> Floor, Room No.-318, Kolkats-700001 and factory premises has been taken on rent and Factory address is at 3/4, Forshore Road, Shalimar, Howrah-711103. My daughter-in-law Suruchi Bhawsinghka (House wife), One proprietorship business 'Shree Enterprise' is registered in her name and nature of business of this firm is trading of cloths.

I have two brothers. One is Vijay Bhawsinghka, he is engaged in business of trading in handicraft in local market in the name of 'Viki Export' situated at 6, Mullick Street,

*Kolkata-700007 and second is Shyamsunder Bhawsinghka" he is engaged in business of cloth merchants which is situated at 196, Jamunalal Bazar Street, Kolkata-700007.*

*Q.6 What is your occupation?*

*Ans. I am working as a broker. My office address is at 7, Mango Lane, 3<sup>rd</sup> Floor, Room No.-307, Kol-1 and this office is currently managed & controlled by my partner Ashok Kumar Sureka.*

*Q.7 What is your source of income?*

*Ans. My main source of income is from brokerage for land deals, arranging accommodation entry/jamakharchi work, raising bogus bills for various beneficiaries/parties. I also earn rental income from shop situated at Avani Mall, Shop no.12, 1<sup>st</sup> floor, Howrah which is given on rent to Sree Shoppers Limited. I also have some interest income. I also do investment through Dimensional Securities Pvt. Ltd.*

*Q.8 Are you assessed to tax? If yes, please state your PAN and jurisdiction.*

*Ans. Yes, I submit Income tax return regularly and my PAN number is ADDPB6929P. I am assessed with Ward 43(1), Kolkata.*

*Q.9 Please provide your bank account details of last six years which you have/had.*

*Ans. I have three bank accounts:*

<i>Sl. No.</i>	<i>Bank name</i>	<i>A/c no.</i>	<i>Branch</i>
<i>1</i>	<i>ING VYSYA Bank</i>	<i>504010047038</i>	<i>H.B. Sarani Branch</i>
<i>2</i>	<i>HDFC Bank</i>	<i>03821570006926</i>	<i>G.C. Avenue Branch</i>
<i>3</i>	<i>YES Bank</i>	<i>Not remember at present time</i>	<i>Stephen House Branch</i>

*Q.10 How do you know and associated with the company "Herbicare Healthcare Bio-Herbal Research Foundation" (HHBRF)?*

*Ans. I know this company through some common contract from last four years. Then I met the key person of the company Sri S.R. Dasgupta. The, he asked me help in donation for his company u/s 35(1)(ii). I used to send him donors. The donors used to give me Rs.2000 to 10000 per donation depending on the quantum.*

*Q.11 How many donors you sent to HHBRF? What is total quantum of donation done by them and brokerage earned by you?*

*Ans. I don't have any record of the donors and quantum. I have earned around Rs.100000.*

*Q.12 Kindly go through the statement of Shri S.R. Dasgupta taken on 27.01.2015. Read question no.23 and the answer. Offer your comment?*

*Ans. I have gone through the statement. I do not agree with his statement. I don't know anything about it. I have just introduced some donors to them and have received around Rs. one lakh from donors.*

*Q.13 Kindly go through the statement of Shri Manoj Kothary taken on 27.02.2015. Read question no.22 and the answer. Offer your comment.*

*Ans. I have gone through his statement. I don't agree with him. I have collected money receipts and appeal letter for my donors only.*

*Q.14 I want to remind you, you are on oath. As per S.S. Dasgupta you have arranged bogus donation and bogus expenses on commission. As per Shri Manoj Kothary, you are the one who used to collect money receipts and appeal letters on behalf of HHBRF from his office. Kindly offer your comment.*

*Ans. I don't agree with them. I have done some work for some donors only. **(Emphasis ours)***

*Q.15 Kindly go through the donor list of HHBRF for F.Y 2010-11 to 2012-13. Identify your donors.*

*Ans.*

<i>Sl. No.</i>	<i>Donors' Name</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>YASH-MAC RESORUCES</i>	<i>3,00,000/-</i>
<i>2</i>	<i>SHREE VRAJ GLOBAL</i>	<i>30,00,000/-</i>
<i>3</i>	<i>DR. ANJALI KUMAR</i>	<i>15,00,000/-</i>
<i>4</i>	<i>NATHMAL NEVATIA</i>	<i>35,00,001/-</i>
<i>5</i>	<i>BIPIN SHAH&amp; ASSOCIATES</i>	<i>10,00,000/-</i>
	<i>TOTAL</i>	<i>Rs.93,00,001/-</i>

*12. A perusal of that above statement demonstrates that all that Mr. Kishan states is that, he has to introduce the donor to the HHBRF and received a commission ranging from Rs.2000 to 10000 per donation from the donors. He also clearly states that he does not agree with the statement of Shri Swapan Ranjan Dasgupta, founder director of HHBRF, taken on oath on 27.01.2015 and to the statement of Mr. Manoj Kothari taken on 27.02.2015. He specifically answered so in reply to questions nos.12, 13 & 14. This statement does not help the revenue. The statement of Shri Swapan Ranjan Dasgupta and Mr. Manoj Kothari is not corroborated by Mr. Kishan Bhawasingka. On the contrary he denies the allegations. Hence these statements are not evidence for the revenue.*

*13. I now examine the statement recorded for Shri Swapan Ranjan Dasgupta. In response to question no.23, he states that bogus donations were received by cheque and RTGS through bank accounts and thereafter payments were made to paper/bogus companies on account of bogus purchase on the advice of Mr. Kishan Bhawasingka and that after the amount passes through in 2 to 3 layers of companies the same was returned back in cash to the original donors after deducting commission. The name of the assessee*

*is not mentioned in this statement. He states that the broker Mr. Kishan has done these transactions. Mr. Kishan denied the same. So nothing much turns on this statements.*

14. *Now, I come to the statement of Smt. Sujata Ghosh Dastidar, one of the directors of HHBRF. In her statement of Smt. Sujata Ghosh Dastidar alleges that Mr. Kishan Bhawasingka was the key man who has organized the entire operation of receiving donation and thereafter returning cash to those persons. This allegation, as already stated, are denied by Mr. Kishan Bhawasingka. In response to question no.18, Smt. Dastidar states that she has heard that this money being returned back which suggest that she did not have first hand knowledge. Now, I come to the statement of Shri Shankar Kumar Khetan, entry operator. In the statement of Shri Khetan stated that HHBRF had issued cheques to him and that he has given bogus bills and he has returned cash for a commission of 0.8%. This statement does not lead to a conclusion that the money was returned in cash to the assessee. All that it evidences is that HHBRF had booked bogus expenditure.*

15. *Nowhere in the statement recorded, the name of the assessee is stated, and there is no comment or evidence given against the assessee. What is clear is that donation was received by cheque from HHBRF, when the certificate issued to it by CBDT was still valid. There is no proof that this particular assessee, Shri Raj Karan Dassani, had got back the money in question in cash. On these facts the ratio laid down by the Hon'ble Gujarat High Court in the case of Pr. CIT Surat vs. Tejua Rohit Kumar Kapadia (supra) applies. The entire allegations made by Shri Swapan Ranjan Dasgupta, founder director of HHBRF is denied by Shri Kishan Bhawasingka. No additions would be made on such statements which are not supported by corroborative evidence. The copies of the statements are not furnished nor was the assessee given a chance of cross-examination.*

16. *We now examine the decision of the Co-ordinate benches of ITAT. The Bench of the Tribunal in the case of Rajda Polymers vs. DCIT (supra) held as follows:*

*"5. We have heard the rival submissions and perused the materials available on record. The brief facts pertaining to HHBRF are as under:-*

*a) HHBRF was registered u/s 12AA of the Act by the ld DIT(Exemptions), Kolkata with effect from 26.12.2003.*

*b) HHBRF was registered u/s 6(1)(a) of the Foreign Contribution (Regulation) Act, 1976 on 26.2.2008 vide registration no. 147120804.*

*c) HHBRF was also recognized in the year 2006-07 as a scientific industrial research organization (SIRO) by Ministry of Science & Technology, Government of India.*

*d) HHBRF was recognized vide Gazette Notification No. 35/2008 dated 14.3.2008 issued by the Central Board of Direct Taxes (CBDT in short), Ministry of Finance, Government of India, u/s 35(1)(ii) of the Act.*

*5.1. We find that the assessee had explained about its commercial objective for association with such an accredited institution apart from getting an immediate tax benefit via weighted deduction for any donation made to the institution. We find that when the ld AO informed the assessee that Director of HHBRF had given some statement before the Investigation wing as per which the donation made by the assessee was to be held as a bogus transaction and assessee would be invited with consequential disallowance thereon, the assessee asked for all the adverse materials which the ld AO proposed to rely upon and also sought an opportunity to cross examine the directors of*

HHBRF. We find from the perusal of the assessment order, that the ld AO had denied the cross examination and by placing reliance on the statement given by directors of HHBRF, proceeded to frame the assessment u/s 143(3) of the Act in the hands of the assessee by disallowing the deduction claimed u/s 35(1)(ii) of the Act. Hence it could be safely concluded that there was no cross examination of the adverse witnesses.

5.2. We find that on the other hand, the assessee had submitted all the documents pertaining to the claim of deduction u/s 35(1)(ii) of the Act before the ld AO. The undisputed fact before us is that the assessee had paid a sum of Rs 14,00,000/- vide Cheque No. 786400 dated 28.11.2012 drawn on Canara Bank, Brabourne Road Branch, Kolkata to HHBRF, which has been acknowledged vide letter dated 6.12.2012. This payment of Rs 14,00,000/- was duly reflected in the bank statement of the assessee. Hence the source for making this payment stood clearly explained and is not in dispute before us. We find that the entire assessment is based upon the statement of directors of HHBRF. It is an undisputed fact that neither a copy of the statement was supplied to the assessee (the assessee was asked to read the same in the presence of the ld AO), nor was any opportunity of cross examination given by the ld AO. In this regard, the reliance placed by the ld AR on the decision of the Hon'ble Apex Court in the case of [Andaman Timber Industries Ltd vs Commissioner of Central Excise](#) in Civil Appeal No. 4228 of 2006 reported in (2015) 62 Taxman 3 (SC) is very well founded, wherein it was held that :-

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected".

5.3. We find that similar views were taken in the following decisions :-

a) Decision of Hon'ble Bombay High Court in the case of [H R Mehta vs CIT](#) reported in 387 ITR 561 (Bom)

b) Decision of Hon'ble Delhi High Court in the case of [CIT vs Ashwani Gupta](#) reported in 322 ITR 396 (Del)

c) Decision of Hon'ble Delhi High Court in the case of [CIT vs SMC Chare Brokers Ltd](#) reported in 288 ITR 345 (Del)

d) Decision of Hon'ble Supreme Court in the case of [Prakash Chand Nahta vs Union of India](#) reported in 247 ITR 274 (SC)

e) Decision of Hon'ble Jurisdictional High Court in the case of [CIT vs Eastern Commercial Enterprises](#) reported in 210 ITR 103 (Cal)

f) Decision of Hon'ble Kerala High Court in the case of [P.S.Abdul Majeed vs Agricultural Income Tax & Sales Tax Officer & Ors](#) reported in 209 ITR 821 (Ker)

5.4. We find that the ld AO did not provide the material rather he merely allowed the assessee to read the statement. This, in our considered opinion, was not justified. The assessee cannot be expected to give reply to the statement without going through the same in detail and prepare its counter thereon. Hence it could be safely concluded that in the instant case, the ld AO did not provide the relevant materials to the assessee. Further despite request for cross examination being made by the assessee, the same was not allowed by the ld AO and hence respectfully following the aforesaid decisions of the Hon'ble Supreme Court

and various High Courts *supra* , we hold that there was no material available with the revenue on the basis of which it could justify its action of disallowing the claim of deduction u/s 35(1)(ii) of the Act.

5.5. Moreover, we find that the provisions of Explanation to [section 35\(1\)\(ii\)](#) of the Act also comes to the rescue of the assessee. For the sake of convenience, the said Explanation is reproduced below:-

[Section 35\(1\)\(ii\)](#) - Explanation The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn.

In the instant case, the ld DR argued that the recognition u/s 35(1)(ii) of the Act was withdrawn in the case of HHBRF by the CBDT with retrospective effect. In response to this, the ld AR argued that on the date on which donation was given, the notification u/s 35(1)(ii) of the Act was in force and valid and therefore the deduction claimed by the assessee was in order. We find that the ld CITA had ignored the provisions of the Act (i.e the Explanation to [Section 35\(1\)\(ii\)](#) of the Act) by merely stating that HHBRF had subsequently declared before the Hon'ble Settlement Commission, Department of Revenue, Government of India , additional income and admitted to the modus operandi of various transactions carried out by them. But this in our considered opinion, would not serve the purpose of the revenue. Merely because the donee goes to Hon'ble Settlement Commission and declares some additional income thereon, it does not automatically implead the assessee herein on the negative side and the express provisions of the Act cannot be ignored thereon. There cannot be any malafide that could be attributed on the assessee herein. We find that the assessee was under the bonafide belief and had made proper due diligence before granting donation to HHBRF which was duly recognized u/s 35(1)(ii) of the Act at the time of giving donation. We hold that if the subsequent notification cancelled the registration u/s 35(1)(ii) of the Act, the same does not affect the donation made by the assessee when the said notification was in force. The bonafide belief of the assessee donor at the time of granting donation to an institution on the basis of recognition then available, cannot be disturbed by subsequent event. This is more clearly spelt out in the provisions of the Act itself by way of an Explanation to [Section 35\(1\)](#) of the Act. Hence even as per the provisions of the Act, the denial of deduction u/s 35(1)(ii) of the Act is not in order. We also find that the Hon'ble Jurisdictional High Court in the caes of [B.P. Agarwalls & Sons Ltd vs CIT](#) reported in 208 ITR 863 (Cal) and [Jai Kumar Kankaria vs CIT](#) reported in 251 ITR 707 (Cal) had held that there was no power to cancel the registration retrospectively. Hence even on this count, the deduction claimed u/s 35(1)(ii) of the Act by the assessee deserves to be allowed.

5.6. We find that the ld CITA had made an observation which has been heavily relied upon by the ld DR that the assessee's line of business has got nothing to do even remotely with the healthcare or herbal healthcare industry much less in the area of research thereon and accordingly there was no need for the assessee to give donation of Rs 14,00,000/- to HHBRF . We find that this aspect has been duly addressed by the assessee by stating that one Cardiologist Doctor had introduced the assessee to HHBRF and donations were given after due satisfaction of the assessee based on personal visits to the two research centres of HHBRF and activities carried on by them. Moreover, it is well settled that it is always the prerogative of the assessee to give or not to give any donation to a particular institution, which wisdom cannot be questioned by the revenue. The question of business expediency of an expenditure had to be viewed from the point of view

*of the businessman and not from the view point of the revenue. The businessman knows his interest best. However, it cannot be denied that this donation paid to HHBRF is free from any suspicion. It definitely leads to further probe by the revenue, which has been carried out by the revenue by summoning the Director of HHBRF . The said Director Shri Swapan Ranjan Dasgupta, though could not appear in person before the ld AO for cross-examination (which was sought by the assessee) but had confirmed in writing that the donations given by the assessee to HHBRF were genuine in nature and had further confirmed that HHBRF had not paid any cash back to assessee in lieu of cheque donations paid to them. The revenue had left the matter at this stage itself and did not further probe into it to check the veracity of the confirmation made by Shri Swapan Ranjan Dasgupta. Therefore, the ld AO proceeded to make the addition only based on the statement recorded from Swapan Ranjan Dasgupta at the time of survey. It may be true that in the said statement, Swapan Ranjan Dasgupta may have deposed to the fact that HHBRF were in receipt of various donations from various persons in cheques and the same were routed back to the donors in cash after retaining certain portion as their commission and intermediaries' commission. This is only a general statement given by Swapan Ranjan Dasgupta about the modus operandi carried out by HHBRF. But nowhere in the said statement or in the subsequent enquires / investigation , it came to light that the assessee herein had indeed received back the cash in lieu of cheque donations given to HHBRF. This serves as a clinching missing evidence in the entire gamut of this case.*

*5.7. Now let us come to yet another legal aspect as to whether any addition / disallowance could be made merely based on statement recorded during survey which is not backed by any other supporting material. It would be pertinent to note that the sworn statement recorded during survey does not have any evidentiary value. In this regard, the decision of the Hon'ble Madras High Court in the case of S.Khader Khan (2008) 300 ITR 157 (Mad) assumes significance, wherein it was held that :-*

*"An admission is an extremely important piece of evidence , but it cannot be said that it is conclusive and it is open to the person , who made it, to show it has incorrectly been made and the person, making the statement should be given proper opportunity to show that it does not show the correct state of facts."*

*It was further held that the materials found in the course of survey could not be the basis for making any addition in the assessment. The word "may" used in [section 133A\(3\)\(iii\)](#) of the Act makes it clear that the material collected and statement recorded during the survey u/s [133A of the Act](#) are not conclusive piece of evidences by itself. This decision of Hon'ble Madras High Court was affirmed by the Hon'ble Apex Court in the case of [CIT vs S Khader Khan Sons](#) reported in 352 ITR 480 (SC) , wherein their Lordships of Supreme Court held as under:-*

*"Heard Counsel on both the sides.*

*Leave granted.*

*The civil appeal filed by the department pertains to Assessment Year 2001-02. In view of the concurrent findings of fact, this civil appeal is dismissed. "*

*We find that the sole basis of ld AO making this disallowance of deduction u/s 35(1)(ii) of the Act was on the basis of statement recorded during survey from the Director of HHBRF which does not have any evidentiary value. Hence respectfully following the aforesaid decision of the Hon'ble Madras High Court affirmed later by the Hon'ble Apex Court supra, we hold that there is no case made out by the ld AO for making this disallowance u/s 35(1)(ii) of the Act.*

5.8. We also find that similar issue came up before the co-ordinate bench of this tribunal in the case of [Saimed Innovation vs ITO](#) in ITA No. 2231/Kol/2016 for Asst Year 2013- 14 dated 13.9.2017, wherein it was held as under:-

"9. We note that the sole basis for making the addition is on the basis of the statement recorded on oath during survey at M/s. Herbicare of Shri Swapan Ranjan Dasgupta, other than the said statement there is no other evidence to show that the assessee has received back the donation as suggested in his general statement about providing accommodation entry by Shri Swapan Ranjan Dasgupta. We also note that the said Shri Swapan Ranjan Dasgupta has not stated anywhere that the assessee indulged in bogus donation or that the amount donated to it (M/s. Herbicare) was given back to the assessee after deducting the commission. We note that the statement recorded on oath during survey cannot be the sole basis for making the disallowance as decided by the Hon'ble Supreme Court in CIT Vs. S. Kader Khan Son (2013) 352 ITR 480 (SC).

In any case, if the AO was of the opinion that the statement of Shri Swapan Ranjan Dasgupta, the founder Director of M/s. Herbicare has adversely affected the veracity of the donation made by the assessee then he was duty bound to summon Shri Swapan Ranjan Dasgupta and allowed the assessee to have cross examined him, failing which the statement of Shri Swapan Ranjan Dasgupta could not be used against the assessee trust as held by the Hon'ble Supreme Court in Andaman Timbers Ltd. Vs. Commissioner of Central Excise 62 Taxman 3. We note that the AO had in fact, recorded the fact that the partners of the assessee firm desired to cross examine the founder Director of M/s. Herbicare Shri Swapan Ranjan Dasgupta regarding the purported deposition made at the time of survey. However, AO did not grant him that opportunity to cross examine Shri Swapan Ranjan Dasgupta. We also note that the AO issued notice u/s. 131 of the Act to the partners of the assessee firm and has recorded their statement on oath on 28.12.2015. We note for question no. 14 as to how the partner knew about M/s. Herbicare, the partner of the assessee firm has answered that Dr. Bhuban Chakraborty, a Cardiologist friend introduced them to M/s. Herbicare and to question no. 15 as whether the partners have visited the office of M/s. Herbicare to which the partners answered that they had visited the premises of M/s. Herbicare on two occasions and for question no. 16 as to whether the partners were satisfied with the work of scientific research carried on by the said M/s. Herbicare, the partners of the assessee firm had replied that during their visit at Pailan and Baral they were satisfied with the scientific research work and for question no. 17 the partners replied that they had seen the certificate issued by Govt. of India and also have gone through the research paper of the people working there. For question no. 20 they have given the name of the doctor who was a Cardiologist who introduced them to M/s. Herbicare. We note that the AO enquired about Dr. Bhuban Chakraborty's address for which the partner replied that the doctor resides at Kshudiram Sarani, Rathtala, Kolkata. For question no. 21 as to whether they knew about the Directorate of Investigation, Kolkata carried out survey u/s. 133A and that its investigation is found that the activities were not genuine, the partners replied that they were not aware of the survey, however, they added that after their visit of the two centers they were on a bona fide belief that M/s. Herbicare was a competent institute and based on the recommendation of the Cardiologist Dr. Bhuban Chakraborty they made donation to the said concern. We also note that the AO issued summons to Shri Swapan Ranjan Dasgupta who did not appear for cross examination due to ill health but the said Shri Dasgupta confirmed the donations made by the assessee firm to M/s. Herbicare in writing to the AO and clearly stated that no money was refunded back to assessee firm, which fact has been reproduced by the AO at page 7 of his order as under:

"Shri Swapan Ranjan Dasgupta, Director of M/s Herbicare Healthcare Bio-Herbal Research Foundation had filed a letter on 28/01/2016 stating "Referring to the above and

*your comments on my reply dated 22.01.2016, I would further request your good office to elaborate the financial years in question to enable our Accounts Deptt for verification and submission. However, we apparently observe from our records that following donations were received by us from M/s. Saimed Innovation, the assessee in the financial years mentioned against each:*

<i>F.Ys</i>	<i>Amount</i>	<i>Mode of transaction</i>	<i>Date</i>	<i>Receipt No.</i>
<i>2012-13</i>	<i>7,51,000/-</i>	<i>RTGS:UTR</i>	<i>No. 15.03.2013</i>	<i>HHBHRF/15-03-</i>
	<i>BARBH13074606758</i>		<i>13/004</i>	
<i>2012-13</i>	<i>7,51,000/-</i>	<i>RTGS:UTR</i>	<i>No 26.03.2013</i>	<i>HHBHRF/26-03-</i>
	<i>BARBH 13085899500</i>		<i>13/004</i>	

*Further, it is submitted for your kind record that no money was refunded to the above named assessee against donations given by them. Meantime, I may submit that I am critically indisposed due to acute lumber scoliosis and am not able to move. I am under strict medical supervision. As such, my personal appearance may kindly be waived on compassionate ground. I am attaching the current medical prescription/advice along with MRI reports for your kind record.*

*However, the information as submitted above may please recorded as my witness."*

*10. Thus we note from the entire facts and circumstances, that the AO got swayed away with the statement recorded on oath of Mr. Swapan Ranjan Dasgupta during survey conducted at the premises of M/s. Herbicure. We have reproduced Question no. 22 and 23 and answers given by Shri Swapan Ranjan Dasgupta, wherein he admits to provide accommodation entries in lieu of cash. This information we should say can be the tool to start an investigation when the assessee made the claim for weighted deduction. The general statement of Shri Swapan Ranjan Dasgupta against donation made the claim of assessee for deduction suspicious. However, when the AO investigated, Shri Swapan Ranjan Dasgupta has confirmed that M/s. Herbicure was in receipt of the donation and it has not given any refund in cash, then the sole basis of disallowance of claim as a matter of fact disappeared. It should be remembered suspicion howsoever strong cannot take the place of evidence. The confirmation from Shri Swapan Ranjan Dasgupta fortifies the claim of the assessee for weighted deduction u/s. 35(1)(ii) of the Act. The sole basis of the addition/disallowance based on statement recorded on oath during survey cannot be allowed as held by Hon'ble Supreme Court in Kader Khan & sons (supra). Moreover, we note that if the AO was hell bent determined to disallow the claim of the assessee, then he should have granted an opportunity to cross examine Shri Swapan Ranjan Das Gupta and Shri Kishan Bhawasingka as held by Hon'ble Supreme Court in Andaman Timber (supra).*

*11. In the light of the aforesaid facts and circumstances, we cannot sustain the order of the authorities below. Therefore, we set aside the impugned order and direct the AO to allow the deduction of Rs.26,28,500/- u/s. 35(1)(ii) of the Act.*

*12. In the result, appeal of assessee is assessee is allowed".*

5.9. *In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the various judicial precedents relied upon hereinabove, we direct the ld AO to grant deduction u/s 35(1)(ii) of the Act in the sum of Rs 24,50,000/- to the assessee. Accordingly, the Grounds 2 to 5 raised by the assessee are allowed.”*

17. *The Hon’ble Supreme Court in the case of CIT vs. Chotatingrai Tea & Ors.; (2002) 258 ITR 529 has held as follows:*

*“4. The High Court followed the reasoning of the Calcutta High Court in [Commissioner of Income Tax v. Bhartia Cutler Hammer Co.](#), 232 I.T.R 785 and came to the conclusion that once it was found that the assessee had fulfilled all the conditions which had been laid down under [Section 35CCA](#) of the Act for claiming deduction of the amount donated by it, there was no obligation on the part of the assessee to see that the amount was utilised for the purpose for which it was donated. Furthermore, the deduction was allowed on the certificate furnished and it was not for the assessee to show whether the institution to which the money had been donated was carrying on the rural development work, as envisaged under [Section 35CCA](#) of the Act.*

*5. In our view, the reasoning of the High Court while answering the question referred to it in favour of the assessee is sound and calls for no interference.*

*6. The final submission of the learned counsel appearing on behalf of the appellant is that the High Court's final observation that the order of the tribunal remanding the matter for decision would stand quashed and that the assessee was entitled to claim deduction was beyond the jurisdiction of the High Court. The learned counsel for the appellant may be technically correct but what has been observed by the High Court was as a necessary corollary to the answer on the referred question which was merely spelt out by the High Court.*

*7. We, accordingly, dismiss, the appeals without any order as to costs.”*

18. *The similar view has been taken by Kolkata ‘B’ Bench of the Tribunal in ITA No.16/Kol/2017 in the case of DCIT vs. M/s Maco Corporation (India) Pvt. Ltd. order dated 14.03.2018.*

18. *Applying the proposition of law laid down in the case laws to the facts of this case and also on evaluating the evidence relied upon by the parties, we uphold the contention of the assessee that he is entitled to deduction u/s 35(1)(ii) of the Act. We direct the Assessing Officer grant the same. Ground No.4 & 5 is allowed.*

5. We adopt the foregoing detailed reasoning mutatis mutandis and direct the Assessing Officer to delete the impugned section 35(1)(ii) disallowance amounting to Rs.6,17,750/- and 24,50,000/-; assessment year wise, respectively. The assessee’s former substantive ground in assessment year 2013-14 involving ITA No.1473/Kol/2019 and sole grievance in latter appeal ITA No.1474/Kol/2019 for assessment year 2015-16 is accepted.

6. Coming to section 14A r.w. Rule 8D disallowance of Rs.61,520/- in assessment year 2013-14 ITA No.1473/Kol/2019, learned counsel is fair enough in not pressing for the same keeping in mind the smallness of the amount involved. This latter disallowance u/s 14A stands confirmed therefore.

7. The assessee's former appeal ITA No.1473/Kol/2019 is partly allowed and latter appeal ITA No.1474/Kol/2019 is allowed in above terms.

Order is pronounced in the open court on 19.02.2020.

Sd/-  
**(J. Sudhakar Reddy)**  
ACCOUNTANT MEMBER

Sd/-  
**(S. S. Godara)**  
JUDICIAL MEMBER

**कोलकाता /Kolkata;**  
दिनांक/ Date:19/02/2020  
RS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Appellant - Bhagawati Oxygen Ltd.
2. The Respondent- DCIT, Circle-8(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.