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

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos.5058, 5059, 5060 & 5061/M/2019
Assessment Years: 2011-12, 2012-13, 2014-15 & 2013-14

DCIT, Central Circle-1(2), 906, 9th Floor, Pratishtha Bhavan, Old CGO Bldg. (Annexe), M.K. Road, Mumbai - 400020	Vs.	M/s. Saudela Constructions Pvt. Ltd., 514, Dalamal Chambers, 211, F.P.J. Marg, Nariman Point, Mumbai – 400 021 **PAN: AALCS 0443D**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Vijay Mehta,, A.R.
Revenue by : Shri T. Kipgen, D.R.

Date of Hearing : 09.08.2021
Date of Pronouncement : 29.10.2021

O R D E R

Per Rajesh Kumar, Accountant Member:

The above titled four appeals have been preferred by the Revenue against the order even dated 10.05.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2011-12, 2012-13, 2014-15 & 2013-14.Since the appeals relate to the same assesse and also issues involved are similar in all the appeals, these are being decided and disposed by this consolidated order.First we shall take up appeal for A.Y. 2011-12.

ITA No.5058/M/2019 A.Y. 2011-12:

2. The grounds taken by the Revenue are as under:

"1. Whether on the circumstances and facts of the case, the learned CIT(A) was right in treating the order passed u/s 143(3) r.w.s 153Cof the Income Tax Act, 1961,

as invalid on the ground that assessment which are completed do not abate and that proceedings u/s 153A/153C do not empower the AO to re-adjudicate the same issues again unless fresh incriminating material is found during the course of search

2. Whether on the circumstances and facts of the case, the learned CIT(A) was right in holding that the AO cannot disturb the assessment order which has attained finality, unless the material Gathered during the search established that the income computed in the finalized assessment was not in accordance with the facts unearthed during the search ?

3. Whether on the circumstances and facts of the case, the learned CIT(A) was right in relying on the decision of Bombay High Court in the case of Continental Warehousing Corporation(374 ITR 645), even though the Department has not accepted the decision and has filed SLP before Hon'ble Supreme Court on the issue which is still pending ?

4. Whether on the circumstances and facts of the case, the learned CIT(A) was right in deleting disallowance made by the AO with regard to the business expenditure of Rs.3,20,86,059/- debited to Profit & Loss account and to carry forward the same to the construction Work-in-Progress relying on the decision M/s. Hiranandani Palace Garden Pvt. Ltd. even though the Department has filed appeal u/s 260A of the Act in the case before High Court on the issue vide ITAXL/1257/2016 dated 14.09.2016 ?

5. Whether on the circumstances and facts of the case, the learned CIT(A) was right in treating interest income of Rs.55,04,550/- earned by the assessee on fixed deposits placed with bank out of temporary surplus in business as 'Business Income" as against 'Income from Other Sources' relying on the decision of ITAT in the case of M/s. Hiranandani Palace Garden Pvt. Ltd. even though the Department has filed appeal u/s 260A of the Act in the case before High Court on the issue vide ITAXL/1257/2O16 dated 14.09.2016.

6. Whether on the circumstances and facts of the case, the learned CIT(A) was right in deleting the disallowance of preliminary expenses of Rs.48,11,076/- even though the assessee had incurred the expenses after the incorporation of the company and such expenditure were not incurred in relation to expansion of the undertaking or for setting up of new unit ?"

3. The issue raised in ground No.1 to 3 by the revenue is against the order of Ld. CIT(A) treating the assessment order passed under section 143(3) read with section 153C of the Act as invalid on the ground that assessment has not abated on the date of search and thus has attained finality thereby holding that addition can be made on the basis of incriminating material found and seized during the search by following the decision of

Hon'ble Bombay High Court in the case of Continental Warehousing Corporation 374 ITR 645 (Bom-HC).

4. The facts in brief are that a search action under section 132 of the Act and survey action under section 133A of the Act were conducted in the case of Hiranandani group cases on 11.03.2014 by DDIT(Inv.), Unit IV(3), Mumbai. During the course of search on residential as well as business premises including the lockers of Hiranandani group and its key personnel, several incriminating documents/materials were found and seized. The assessee is a group company of Hiranandani group and the return of income was filed on 29.09.2011 declaring business loss of Rs.2,61,45,374/-. Consequent to search notice under section 153A of the Act was issued on 02.12.2014 which was duly served on the assessee. In response to the notice under section 153A, the assessee filed the return of income on 07.01.2015 declaring the same loss as it had returned in the original return of income. Finally, the assessment was completed vided order dated 28.03.2016 passed under section 153A read with section 143(3) of the Act wherein the total income was assessed at Rs.55,04,550/- against the retuned loss of Rs.2,61,45,374/-.

5. The assessee challenged the jurisdiction of the AO to make addition in the assessment framed under section 153A read with section 143(3) of the Act on the ground that the assessment had attained finality on the date of search and has not abated on that date. The Ld. CIT(A) after admitting the ground of the assessee adjudicated the same in favour of the assessee by observing and holding and under:

"6.11 In the case of completed assessments, the provisions of Section 153A of the Act clearly restrict the scope of the assessment under these section to the extent of the material unearthed during the course of the search operation. It is evident from the assessment order that during the course of the search action, no incriminating material was found at the premises of the appellant based on which the addition has been made by the AO. Thus, admittedly, the additions made by A.O. are not based on any incriminating material found during the course of search.

6.12 The Section 153A(1) starts with a non-obstante clause and disregards the normal provisions of the assessment prescribed under the Act in the case of a search operation carried out u/s 132 of the Act. By virtue of clause (a) of section 153A(1), the AO is required to issue notice requiring the assessee to file the return of income for the six assessment years prior to date of search. The further consequences of a search carried out u/s 132 are mentioned in clause (b), whereby the A.O. is required to assess or reassess the total income of those six years. As such, the AO has no option but to make an assessment in respect of all the concerned six years. He has to bring the proceedings to a logical conclusion by making an assessment of the returns filed for all the six years. Having said so, the next question, which needs to be addressed is - what issues can be taken up for assessment u/s 153A / 153C of the Act, in a case where at the time of the search operation, the original assessment was already completed.

6.13 The Special Bench of Hon'ble Mumbai IT AT in the case of All Cargo . Global Logistics Ltd vs DCIT(2012) 147 TTJ 0513 (SB, : (2012) 74 DTR 0089 (SB) : (2012) 137 ITD 0287 (SB) : (2012) 18 ITR 0106 (SB) has observed as under:

> "5.2. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter."

6.14 It has been categorically observed in the above mentioned judgment that only the pending proceedings, as on the date of search shall abate meaning thereby that the completed proceedings attains finality. The use of the phrase 'so far as may be' in section 153A(1)(a) implies that all the provisions of the Act as contained under Chapter XTV prescribing the procedure for assessment or under any other Chapter of the Act with respect lo1 the return of income filed U/s. 139 shall be applicable to the returns filed pursuant to notice issued U/s. 153A/153C of the Act. The applicability of those provisions which are inconsistent with the provisions of section -153A are restricted by the use of the phrase 'so far as may be'.

6.15 As such, for the assessments proceedings which are abated, the AO gets all the powers prescribed under the law, as if the assessment is being made for the first time. Thus, if the assessment is made for the first time, all the provisions of assessment, relevant for making of an assessment u/s. 143(3) shall be applicable. In the case of re-assessment, the principles pertaining to assessment u/s .147/148 of the Act shall become applicable. As far as the assessments/reassessments, which do not abate or which have attained finality, the principle of time barring rule comes into play. The assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments can be disturbed, only in a case, where incriminating seized material is found, during the course of the search operation u/s 132 of the Act. Further, as observed above, the objective behind the; second proviso to section 153A(1) is to eliminate multlplieity of proceedings. In such cases it is only the seized material and undisclosed income emanating out of the search proceedings, which is relevant for the purpose of assessment.

6.16 The Hon'ble' Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (374 ITR 645], has held that when the assessment has attained finality, then the AO while passing the independent assessment .order u/s J53A of the Act can't disturb the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s 132 of the Act establish that the reliefs granted under the finalised assessment/reassessment were contrary to the facts unearthed during the course of search operation.

6.17 In the case referred, supra, the Hon'ble Bombay High Court has upheld the following observations of Hon'ble ITAT:-

> "i. On a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of the proceedings under Section 153A, it is only the assessment / reassessment proceedings that are pending on the date of conducting search 'under Section 132 or making requisition under Section 132A of ''A'-the Act stand abated and not the assessments/reassessments already finalised for those, assessment years covered under Section 153A of the Act.
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> ii. By a circular No. 8 of 2003 dated 18-9-2003 (See 263 TTR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/ reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal revision or rectification pending against finalised assessment/reassessments would not abate.
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> iii. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A(1) what stands revived is the

pending assessment/reassessment proceedings which stood abated as per section 153A(1)."

6.18 A similar view has been taken by the Hon'ble Bombay High Court (Nagpur Bench) in case of Murli Agro Products Ltd Vs. CIT 49 Taxman.com 172in ITA No 36 of 2009, wherein it has been held that on initiation of proceedings U/s. 153A, it is only the assessment proceedings that are pending on the date of conducting search U/s. 132 or making requisition U/s. 132A of the Act that stand abated and not the assessments already finalised. The relevant excerpts of the judgment are reproduced hereunder:-

"9. What Section 153A contemplates is that, notwithstanding the regular provisions for assessment/reassessment contained in the IT Act, where search is conducted under Section 132 or requisition is made under Section 132A on or after 31/5/2003 in the case of any person, the Assessing Officer shall issue notice to such person requiring him to furnish return of income within the time stipulated therein, in respect of six assessment years immediately preceding (he assessment year relevant to the previous year in which the search is conducted or requisition is made and thereafter assess or reassess the total income for those assessment years. The second proviso to Section 153A provides for abatement of assessment/reassessment proceedings which are pending on the date of search/requisition. Section 153A(2) provides that when the assessment made under Section 153A(1) is annulled, the assessment or reassessment that stood abated shall stand revived.

10. Thus on a plain reading of Section 153A of the Income-Tax Act, it becomes clear that on initiation of proceedings under Section 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessment/reassessments already finalized for those assessment years covered under Section 153A of the Act. By a circular No.8 of 2003 dated 18-9-2003 (See 263 ITR (Si) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalized assessment/reassessment shall not abate. It is only because, the finalized assessments/reassessments do not abate, the appeal, revision or rectification pending against finalized assessments/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalized for the assessment years covered under Section 153A of the Income-tax Act s\and abated cannot be accepted. Similarly on annulment of assessment made under Section 153A(1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A(1).

11. In the present case, as contended by Shri Mani, learned counsel for the assessee, the assessment for the assessment year 1998-99 was finalized

on 29-12-2000 and search was conducted thereafter on 3-12-2003. Therefore, in the facts of the present case, initiation of proceedings under Section 153A would not affect the assessment finalized on 29-12-2000.

12. Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the IT. Act could not have disturbed the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalized assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings.

13. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings which would show that the relief under Section 80 HHC was erroneous. In such a case, the A.O. while passing the assessment order under Section 153A read with Section 143(3) could not have disturbed the assessment order finalised on 29.12.2000 relating to Section 80 HHC deduction and consequently the C.I.T. could not have invoked jurisdiction under Section 263 of the Act."

6.19 In view of the aforesaid detailed discussion and judicial precedents, I am of the view that assessments which are completed do not abate. Further, proceedings U/s. 153A of the Act do not empower the AO to re-adjudicate the same issues again, unless fresh incriminating material is found during the course of search. The assessing authority cannot disturb the assessment order which has attained finality, unless the material gathered during the course of search, establishes that the income computed in the finalized assessment was not in accordance with the facts unearthed during the course of search. Accordingly, the Additional Ground of appeal raised by the Appellant is allowed."

6. After hearing both the parties and perusing the material on record, the undisputed facts are that a search action under section 153A was conducted on the assessee on 11.03.2014 whereas the return was filed on 29.09.2011 meaning thereby that on the date of search, the assessment has already attained finality and thus has not abated on the date of search. Thus we observe that indisputably the assessment in the instant year has not abated on the date of search. Keeping in view the said facts

and circumstances, we are of the considered view that addition to the income of the assessee can only be made on the basis of incriminating materials found during the course of search. In the present case, there is no such incriminating material and therefore, the AO has no jurisdiction to make addition in the unabated assessment. The ld CIT(A) has passed a very reasoned order by following various decisions including that of Bombay High Court in the case of CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2016) 374 ITR 645 (Bom)(HC) wherein it was held that no addition can be made in respect of assessments which have become final if no incriminating material is found during search. Since, there is no incriminating material found during the course of search, we therefore respectfully following the ratio laid down by the Hon'ble Bombay High Court in the above decision, uphold the order of the ld CIT(A) by dismissing the ground nos. 1 to 3 raised by the revenue.

7. The issue raised in ground No.4 is against the deletion of disallowance of Rs.3,20,86,059/- by Ld. CIT(A) which was made by the AO by rejecting the expenses claimed in the P&L account.

8. The facts in brief are that during the year under consideration the respondent-assessee was developing a residential building at Bannerghatta, Bengaluru. The assessee was following project completion method of accounting and accordingly expenses incurred during the year towards cost of const0ruction were shown in the work in progress account. Out of the total expenses incurred during the year, the expenses to the extent of Rs.130,50,41,601/- were shown as project work in progress after reducing the interest income on fixed deposits of Rs.55,04,550/-. The remaining expenses of Rs.3,20,86,059/-

were debited to P&L account and after making some adjustments, the net loss was computed at Rs.2,61,45,374/- which was shown in the return of income. According to the AO the project was in progress and the expenses debited to the P&L account should have been added to the project work in progress and accordingly a show cause notice was issued to the assessee as to why the business loss claimed by the assessee should be disallowed. The assessee replied the show cause notice by submitting that assessee is following project completion method of accounting and accounting has been done pursuant to accounting standard-9 for revenue recognition issued by ICAI. The assessee filed bifurcation of total expenses which were capitalized as project work in progress as well as the expenses which were written off during the year. The assessee submitted that these expenses were incurred in connection with the business of the assessee and is permissible to be written off in the year in which these are incurred even though the assessee is following project completion method to recognize the revenue. The said submission of the assessee did not find favour with the AO and he disallowed the said expenses by capitalizing the same in the project work in progress. The AO noted that these expenses were incurred towards administrative expenses including selling and other office expenses.

9. At the outset, the Ld. Counsel of the assessee submitted that the issue even on merit is squarely covered by the decision of the co-ordinate Bench of the Tribunal in the case of group concern of M/s. Hiranandani Palace Garden Pvt. Ltd. vs. ACIT in ITA No.4579/M/2013 A.Y. 2009-10 dated 30.12.2015 wherein the co-ordinate Bench of the Tribunal after following the

decision of Lodha Palazzo vs. ACIT in ITA No.2298/M/2012 A.Y. 2008-09 wherein it has been held after considering the accounting standard 2 & 7 and provisions of section 145A that indirect expenses such as office employees' salaries, administrative expenses, marketing and selling expenses are to be allowed. The Ld. A.R. submitted that the issue may kindly be decided following the decision of the co-ordinate Bench of the Tribunal in the group concern case.

10. The Ld. D.R., on the other hand, fairly agreed that issue is covered in favour of the assessee, however, relied on the grounds of appeal.

11. After hearing both the parties and perusing the material on record, we find that the issue of allowability of indirect expenses incurred by the assessee by way of administrative expenses, selling and marketing expenses have been decided by the lfd CIT(A) as discussed above by following the co-ordinate Bench of the Tribunal in M/s. Hiranandani Palace Garden Pvt. Ltd. vs. ACIT (supra). Accordingly, since the assessee has incurred these expenses under the head administrative expenses, marketing and selling expenses, we are inclined to dismiss the ground raised by the Revenue by respectfully following the decision of the coordinate bench as discussed above. The ground no. 4 is dismissed.

12. The issue raised in ground No.5 is against the deletion of Rs.55,04,550/- by Ld. CIT(A) as added by the AO on account of interest income on fixed deposits.

13. The facts in brief are that during the year under consideration the assessee earned income by way of interest on fixed deposits of Rs.55,04,550/- which was reduced from project work in progress . According to the AO the said interest income should be taxed as income from other sources and accordingly a show cause notice was issued. The assessee replied the show cause notice by submitting that the assessee has raised huge funds and there is a gap between raising of funds and deployment of funds. During the intervening period these funds are to be kept in the fixed deposits in order to reduce the interest cost of borrowings. The assessee submitted that the income from these fixed deposits are directly due to capital receipt of the assessee company to meet the requirement of project undertaken at Bengaluru and this is an income which is accrued to the assessee in the course of business and the said interest income is inextricably linked to the business of the assessee and has to be reduced from project cost of inventory. The AO did not accept the contention of the assessee and treated the interest income as income from other sources and brought to tax accordingly.

14. After hearing both the parties and perusing the material on record, we find that the issue has been decided by the co-ordinate Bench of the Tribunal in favour of the assessee in the case of sister concern case M/s. Hiranandani Palace Garden Pvt. Ltd. vs. ACIT (supra) wherein it has been held that interest income from fixed deposits during the intervening period i.e their borrowing and deployment is assessable as business income and thus allowed the appeal of the assessee. Therefore, we do not find any infirmity in the order of Ld. CIT(A) and accordingly

the same is upheld on this issue by dismissing the ground No.5 of the Revenue's appeal.

15. The issue raised in ground No.6 is against the deletion of disallowance of Rs.48,11,076/- by Ld. CIT(A) as made by the AO on account of preliminary expenses incurred after the incorporation of the company.

16. The facts in brief are that the AO observed during the course of assessment proceedings that assessee has claimed preliminary expenses of Rs.48,11,076/- during the year. According to the AO the claim is allowable under section 35D of the Act on fulfillment of certain conditions prescribed therein. The AO noted that such expenses are allowed to be amortized if they are incurred as per the scheme as envisaged in section 35D(2)(ii) either before the commencement of business or after the commencement of business in connection with extension of undertaking or setting up of new plant by the assessee. Then the deduction is allowed equal to 1/10th of such expenditure for 10th successive previous year. However, in the present case the AO noted that preliminary expenses were incurred during the period commencing from A.Y. 2008-09 to 2010-11 whereas the business was commenced on 10.07.2007 in F.Y. 2007-08 relevant to A.Y. 2008-09 and therefore preliminary expenses can not be said to have been incurred prior to the commencement of business and accordingly not allowable under clause 1 of section 35D(2)(ii) of the Act. Similarly, the AO observed that the claim is not allowable under section 35D(2)(ii) of the Act. Consequently the AO added the amount claimed of Rs.48,11,076/- to the income of the assessee, however, given a finding that since these

expenses were already included in total expenses of Rs.3,20,86,059/- claimed by the assessee under the head "business income" which are already disallowed in para 7.2 and therefore no separate disallowance is required.

17. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by following the decision of the co-ordinate Bench of the Tribunal in ITA No.2067/M/2014 for A.Y. 2009-10 in assessee's own case wherein Rs.14,87,379/- was claimed and allowed by the AO. However, the Ld. PCIT revised the assessment under section 263 of the Act on this issue which was reversed by Ld. CIT(A). The operative part of Ld. CIT(A) is reproduced as under:

> "17.2 I have noted that this issue is duly covered by the Hon'ble ITAT's judgment dated 23.09.2015 pronounced in ITA No. 2067/Mum/ 2014 for the A.Y. 2009-10 in the Appellant's own case, wherein the preliminary expenditure of Rs. 14,87,379/- claimed by the appellant in A.Y. 2009-10 was considered to be an allowable expenditure u/s. 3513 of the Act. The relevant excerpts of the said judgment wherein the order passed by the CIT u/s 263 of the Act was set-aside by the Hon'ble ITAT on this issue is reproduced hereunder:-
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> > "5. We have heard the rival submissions and carefully perused the order of the CIT. Undisputedly, the assessment was made u/s 143(3) of the Act. We have also gone through the contents of the impugned notice u/s 263 of the Act, which are also exhibited elsewhere. After going through the factual matrix, we find that the CIT(A) has proceeded on wrong assumption of facts. The CIT has held that the preliminary expenditure claimed by the assessee were incurred during the financial year 2008-09 whereas the business has commenced from 10.07.2007 relevant to assessment year 2008-09, therefore, the claim of the expense as 'prior period expense' and allowable u/s 35D of the Act carries no weightage. This entire finding of the CIT is based on the wrong assumption of fact that the assessee's business has commenced from 10.07.2007. The correct fact is that the assessee company was incorporated on 10.07.2007. The business has been commenced only during the year under consideration. Our view is also fortified by the fact that in the Balance sheet under the head "current assets, loans and advances" project work-in-progress as on 31.03.2008 was only Rs. 13,373/- and as on 31.03.2009 which is the impugned financial year, WIP is shown at Rs. 1,47,77,27,412/- which means that the entire purchase of land was done during the year which also means that the business has been commenced during the year under consideration and the expenditures claim as prior period expenditure are allowable u/s 35D of the Act."

> 17.3 Thus, this issue is covered in favour of the Appellant even on merits by the order of the Hon'ble ITAT, Mumbai in own case, referred supra. Accordingly, the Ground of Appeal No. 3 of the present appeal is allowed, on merits also."

18. After hearing both the parties and perusing the material on record including decision of the coordinate bench in ITA No.2067/M/2014 A.Y. 2009-10 (supra), in assessee's own case, we find that the issue is settled by the co-ordinate Bench of the Tribunal in favour of the assessee as similar claim was also made in F.Y. 2009-10. In the instant case also the CIT(A) by following the decision of the co-ordinate Bench of the Tribunal as stated hereinabove allowed the appeal of the assesse on this issue. Accordingly, we do not find any infirmity in the order of Ld. CIT(A) on this issue. However, as pointed out by the Ld. Counsel of the assessee that in the subsequent year the amount was higher, however, requested the Bench that the same amount of Rs.14,87,380/- may kindly be allowed in this year also. Accordingly, we are inclined to direct the AO to allow an amount of Rs.14,87,380/-. Consequently, the ground no. 6 is partly allowed.

In the result the appeal of the revenue is partly allowed.

ITA No.5059, 5069 & 5061/M/2019

19. The issue raised in ground No.1 in ITA No.5059, 5069 & 5061/M/2019 is identical to one as decided by us in ground No.4 in ITA No.5058/M/2019 A.Y. 2011-12. Therefore our decision in ITA No.5058/M/2019 A.Y. 2011-12 would, mutatis mutandis, apply to ground No.1 in all these appeals as well. Accordingly, ground No.1 in all the above appeals is dismissed.

20. Similarly, ground No.2 & 3 in the above appeals are also similar to one as decided by us in ground No.5 & 6 in ITA No.5058/M/2019 A.Y. 2011-12. Accordingly, our decision on ground No.5 & 6 in ITA No.5058/M/2019 A.Y. 2011-12 would mutatis mutandis apply to ground Nos.2 & 3 in the above three appeals as well. Accordingly, the ground No.2 in all the above appeals is dismissed whereas ground No.3 is partly allowed as the AO is directed to allow an amount of Rs.14,87,380/- under section 35D of the Act.

21. In the result, the appeals of the revenue are partly allowed.

Order pronounced in the open court on 29.10.2021.

Sd/-	**Sd/-**
(Pavan Kumar Gadale)	**(Rajesh Kumar)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated: 29.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.