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

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos.1033, 1034 & 1035/M/2021
Assessment Years: 2011-12, 2012-13 & 2013-14

DCIT 2(1)(2), Circle-7(1), Room No.676B, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	Dr. D.Y. Patil Educational Academy, Opp: M.I.G. Colony, Adarsh Nagar, Worli, Mumbai – 400 025 **PAN: AAATD7470M**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Satyaprakash Singh, A.R.
Revenue by : Shri Sandeep Raj, D.R.

Date of Hearing : 06.01.2022
Date of Pronouncement : 11.02.2022

O R D E R

Per Kuldip Singh, Judicial Member:

Captioned appeals bearing identical question of law and facts are being disposed of by way of composite order in order to avoid repetition of discussion.

2. Appellant DCIT 2(1)(2), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid appeals sought to set aside the impugned composite order passed by Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)] dated 16.03.2021

for A.Y.s 2011-12, 2012-13 & 2013-14 on identically worded grounds except difference in the figures of additions/disallowances on the grounds taken for A.Y. 2011-12 for the sake of brevity inter alia that;

> *"1. Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) is erred in deleting the disallowance made by the AO on account of development fee received by the assessee trust from the students amounting to Rs.53,07,564/-.*
> *2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in deleting the disallowance made on account development fee of Rs.53,07,564/- without appreciating the fact that the decision of the Bombay High Court in the case of All Cargo Logistics Pvt. Ltd (ITA No. 1414 of 2013) on similar issue has not been accepted by the department and SLP has been filed which is pending as on date.*
> *3. Whether On the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the assessee to carry forward the deficit, being excess of expenditure over receipts, to subsequent years and the same is eligible to be set-off with the income of subsequent years by relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection (IBPS), ignoring the fact that there was no express provision in the I T Act, 1961 permitting allowance of such claim.*
> *4. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in allowing the assessee to carry forward the deficit, being excess of expenditure over receipts, to subsequent years and the same is eligible to be set-off with the income of subsequent years ignoring the facts that the Hon'ble Supreme Court, in the case of M/s. Subros Educational Society in M.P.No.941/2018iin CA No.5171/2016 on the issue of carry forward of deficit has not been accepted by the department and a Review Petition has been filed before the Hon'ble apex Court with Diary No. 20745/2020.*
> *5. The appellant craves leave to amend or alter any ground and/or add new| grounds which may be necessary."*

3. Briefly stated facts necessary for adjudication for the controversy at hand are : the assessee trust being a society registered under section 12A of the Income Tax Act (for short the Act) with approval under section 80G of the Act is running an Engineering, Agriculture, Polytechnic, Architecture, MBA, MCA, Jr. College at Pune/Ambi/Navi Mumbai. Shri Vijay D Patil is the

President and Shri Ajinkya D Patil (brother) is the Vice-President of the assessee trust M/s D Y Patil Educational Academy.

4. On the basis of search and seizure operation conducted on 27.07.2016 under section 132 of the Act on the office/university/business franchise of M/s. Ajeenkya D.Y. Patil University & others, proceedings under section 153C have been initiated.

5. On the basis of relevant seized material unearthed during the course of search and statement recorded during search operation, a satisfaction note under section 153C of the Act was received from the Assessing Officer (for short 'the AO') of the searched person on 07.08.2018, the AO of the assessee trust after recording satisfaction note issued notices under section 153C of the Act for the years under consideration. In response to the notice issued by the AO under section 153C of the Act, the assessee trust filed a return of income. During the assessment proceedings, the AO noticed that the assessee trust has obtained corpus donation from A.Y. 2011-12 to 2017-18 and the assessee trust has shown development fee also as corpus donation received during the various years which is not in accordance with the provisions contained under section 11(d) of the Act. Declining the contentions raised by the assessee trust the AO made addition of Rs.53,07,564/-, Rs.1,02,69,738/- and Rs.1,48,51,509/- for A.Y. 2011-12, 2012-13 & 2013-14

respectively of the development fee/fund collected by the assessee trust. The AO also made disallowance of carried forward losses claimed by the assessee trust for A.Y. 2011-12, 2012-13 & 2013-14 and thereby framed the assessment under section 153C read with section 143(3) of the Act for A.Y. 2011-12, 2012-13 & 2013-14.

6. The assessee trust carried the matter before the Ld. CIT(A) by way of challenging the assessment orders who has partly allowed the appeals filed by the assessee trust.

7. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by the Ld. CIT(A) by filing present appeals.

8. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

9. Undisputedly, the earlier assessments in this case for A.Y. 2011-12, 2012-13 & 2013-14 were completed under section 143(3) of the Act at the total income at Rs.NIL. It is also not in dispute that the Ld. CIT(A) has decided the legal issue that "Assessing Officer has erred in framing the assessment under section 143(3) read with section 153C of the Act by making addition/disallowances not arising from incriminating materials found during the course of search in the face of originally

completed assessments under section 143(3) of the Act in all the A.Ys 2011-12, 2012-13 & 2013-14?, in favour of the assessee trust which had not been challenged by the Revenue rather the Revenue has challenged the addition/disallowances on merits only". It is also not in dispute that while disallowing the brought forward losses claimed by the assessee trust to be carried forward no reliance on any incriminating material has been placed by the AO. It is also not in dispute that such disallowance made by the AO in original assessment proceedings has already been allowed by the Ld. CIT(A) vide order dated 07.06.2018 & 28.03.2018 for A.Y. 2013-14 & 2014-15 respectively.

10. In the backdrop of the aforesaid undisputed facts, the grounds raised by the Revenue in the aforesaid appeals are determined as under:

Ground No.1 & 2 of ITA No.1033/M/2021 for A.Y. 2011-12
Ground No.1 & 2 of ITA No.1034/M/2021 for A.Y. 2012-13
Ground No.1 & 2 of ITA No.1035/M/2021 for A.Y. 2013-14

11. The AO by invoking provisions contained under section 11(1)(d) of the Act proceeded to decide that the assessee trust has shown development fee as corpus donation received during the various years which is not permissible and thereby made addition of Rs.53,07,564/-, Rs.1,02,69,738/- and Rs.1,48,51,509/- for A.Y. 2011-12, 2012-13 & 2013-14 respectively.

12. However, the Ld. CIT(A) decided this issue in favour of the assessee trust by relying upon the decision rendered by the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation 374 ITR 645 and decision rendered by Special Bench of the Tribunal in the case of All Cargo Global Logistics Ltd. vs. DCIT (2012) 18 ITR 106 (SB) confirmed by the Hon'ble Bombay High Court in ITA No.1414 of 2013. The Ld. CIT(A) has also considered plethora of judgments rendered by the Hon'ble High Courts and Tribunal by returning following findings:

> *"**7.3.34**. In view of the aforesaid detailed discussion and respectfully following the judicial precedents, I am of the view that for the assessment year which do not abate, proceedings u/s 153A/153C of the Act does not empower the AO to adjudicate the issues which are not based on any incriminating material found during the course of search and, hence, in such cases the AO does not have jurisdiction to make additions/disallowances which are not based on any incriminating material found during the course of search. To conclude, in the case of completed/un-abetted assessments, where no incriminating material is found during the course of search, the assessment u/s 153A/153C of the Act is to be made on originally assessed / returned income and no addition or disallowance can be made de hors the incriminating evidences recovered during the course of search.*
>
> ***7.3.35.** In this case, the AO has not referred to any incriminating material in the assessment order while making the additions. In the remand report, although the AO has stated that 'books of accounts" and the "receipts of payment" on account of tuition fee paid by the students were seized during the course of search action, but he failed to identify those documents and had not forwarded copies of the same despite of having been asked specifically as mentioned previously. The claim of the Id.AO made in the remand report that documents were found and seized in the search and that the additions were made on the basis of the same, therefore, remains unsubstantiated. **As evident from the judicial pronouncements referred to above, it is the responsibility of the AO to identify and bring the documents on record so as to establish that the additions were made on the basis of incriminating material found during the course of search. Moreover, it is not only that there should be some reference of seized material for making***

addition in the case of an unabated assessment, but the seized material should also be incriminating in nature. *Needless to say, that in an unabated assessment where the AO is revisiting an issue, it is incumbent upon him to identify the incriminating material found during the course of search to assume jurisdiction to revisit the issue in the assessment u/s 153A/153C of the Act. This onus cannot be said to have been discharged by making only vague and unsubstantiated statement that there were 'books of account' and "receipts of payment" to support the addition. I am, therefore, construed to hold that the Id. AO failed to substantiate the claim made in the remand report and, hence, there is nothing on record to hold a view that the impugned addition was made on the basis of any incriminating material found and seized during the course of search. In the given facts and circumstances of the case, the addition made by the Id.AO on this account cannot be upheld. The addition made on account of Development Fee received by the Trust is accordingly directed to be deleted.* ***The Grounds No. 2 and 3 are accordingly allowed.***

7.3.36*.* ***For AY 2012-13, also the assessee has challenged the addition made on account of Development Fee in similar manner vide Grounds No.2 and 3.*** *Material facts remain the same for this year as well, but for the fact that for this year, there was no assessment made u/s 143(8) previously. However, this does not in any manner alter the fact that this being an unabated assessment year, addition in this year too could not have been made without having support of any incriminating material found during the course of search. Since, in this year also the Ld.AO has not referred to any such documents in the assessment order and he further failed to bring any such material on record even during the remand proceedings, the addition on account of Development Fee is directed to be deleted.* ***The Grounds No. 2 and 3 for AY 2012-13 are accordingly also allowed.***

7.3.37. *So far as AY* ***2013-14****, is concerned, the material fact in this year remains exactly the same as AY 2011-12, as in this year also assessment was previously completed u/s 143(3) of the Act and there is no reference of any incriminating material in the assessment order and the Id. AO further failed to bring any such material on record even during the remand proceedings. Since, this too is an unabated assessment year, the addition could not have been made without having support of any incriminating material.* ***The grounds No. 1 and 2 of Assessment Year 2013-14 are, therefore, also allowed accordingly****.*

7.3.38. *The contentions and submissions of the assessee as to the merit of this addition for the all the aforesaid assessment years become only academic in view of the above and the same is, therefore, not adjudicated upon for ^the Assessment Years under consideration."*

13. We are of the considered view that the Ld. CIT(A) has returned correct findings on the basis of fact and law applicable

thereto because when original assessment has already been completed under section 143(3) of the Act the same cannot be disturbed by way of passing assessment order under section 153C of the Act, unless there is incriminating materials seized during the search operations. When undisputedly no incriminating material has been unearthed during the search operations qua the assessment years under consideration no addition can be made.

14. Even the bare perusal of the ground No.1 & 2 in all the aforesaid appeals raised by the Revenue goes to show that these appeals have been filed just for the sake of appeals on the ground that the decision rendered by the Hon'ble Bombay High Court in the case of All Cargo Global Logistics Ltd. (supra), on the similar issue has not been accepted by the Department as Special Leave Petition (SPL) has been filed which is pending adjudication by ignoring the settled principle of law that mere filing of SLP in the Hon'ble Supreme Court would not disturb the legal issue settled by the Hon'ble Bombay High Court. So finding no perversity and illegality in the impugned findings on ground No.1 & 2, the same are decided against the Revenue.

Ground No.3 & 4 of ITA No.1033/M/2021 for A.Y. 2011-12
Ground No.3 & 4 of ITA No.1034/M/2021 for A.Y. 2012-13
Ground No.3 & 4 of ITA No.1035/M/2021 for A.Y. 2013-14

15. The AO disallowed the set off of brought forward deficits/losses, being excess of expenditure over receipts, of prior

years against the income of the current years without relying upon any incriminating material, if any, found during the course of search. However, the Ld. CIT(A) allowed the set off of carried forward losses claimed by the assessee trust qua the years under consideration i.e. A.Y. 2011-12, 2012-13 & 2013-14 by relying upon the decision rendered by the Hon'ble Bombay High Court in assessee's sister concern case (CIT vs. D.Y. Patil Sports Academy in ITA No.1030 of 2017 dated 04.11.2019) which order has been upheld by relying upon the decision rendered by the Hon'ble Supreme Court in the case of CIT(Exemption) vs. Subros Educational Society 2018 (7) SCC 548 by returning following findings:-

> *"8.2.1. 1 have considered the facts of the 'case, the findings of the AO as incorporated in the assessment order, and the submissions of the assessee in this regard. In assessment order, the A.O. has not allowed set off in respect of losses brought forward from previous years and also not allowed the losses of the current year to be carried forward. It is observed that while disallowing such claim ld. AO has not placed reliance on any incriminating documents found during the course of search which could be said to be adversely affecting the case of the assessee as to this issue.*
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> *8.2.2. The assessee submitted that this disallowance was made previously during the original assessment proceedings and issue has been allowed in favour of appellant by the Ld.CIT(A), and the claim of carry forward and set off has been allowed vide order dated 06.07.2018 and 28.03.2018 for A.Y. 2013-14 and A.Y. 2014-15 respectively.*
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> *8.2.3. It was submitted in the online submissions filed that the deficit of impugned year being the excess of expenditure over receipts is eligible for carry forward to subsequent years. It was also submitted that the deficit incurred during previous year is to be regarded as application of funds in subsequent years and thus the appellant is eligible to set-off the deficit of previous year with the income of subsequent years. In this context, the assessee relied on several judicial decisions of Hon'ble*

Apex Court, Jurisdictional High Court and other High Courts to support the case of the appellant.

8.2.4. I find that the Hon'ble Jurisdictional High Court has considered this issue in the case of CIT vs. Institute of Banking Personnel Selection reported in 264 ITR 110, wherein following substantial question of law was admitted by Hon'ble High Court :

> *"3. Whether, on the facts and in the circumstances of the case, the tribunal was justified in law forward the deficit of earlier year and set it off against the surplus of subsequent years when the same was not allowable in the case of assessee trust in whose case income exempted under section 11 of the Income Tax Act, 1961."*

In this case, the Hon'ble Bombay High Court decided the aforesaid substantial question of law in favour of the assessee by holding as under: -

> *"5. Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier, years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a Charitable Trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the Charitable Trust was not assessable under the head "profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a Charitable Trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of subsequent years. We do not find any merit in this argument of the Department Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the Trust for charitable and religious purposes in the earlier years against the income earned by the Trust in the subsequent year will have to be regarded as application of income of the Trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the*

benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the Trust under section 11 (1)(a) of the Act. Our view is also supported by the Judgment of the Gujarat High Court in the case of CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293. Accordingly, we answer question No. 3 in the affirmative ie., in favour of the assessee and against the Department." (emphasis supplied)

Further, in the case of DIT vs. Mumbai Education Trust reported in 244 Taxman 163, Hon'ble Jurisdictional High Court of Bombay had decided that :

"Impugned order of the Tribunal has dismissed the Revenue's appeal on both the issues namely — allowability of depreciation on capital assets acquired for the purposes of carrying out charitable activities and set off of deficit of earlier years against income of the current year. The impugned order in fact followed decision of this Court in CIT v/s. Institute of Banking Personnel Services reported in 264 ITR 110 while holding in favour of the Respondent assessee."

In the case of cre Vs. Subros Educational Society reported in 166 DTR 257, Hon'ble Supreme Court has observed that;

"(a). Whether any excess expenditure incurred by the trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking Section 11 of the Income Tax Act, 1961?" ....

To this extent, Mr. K. Radhakrishnan, learned senior counsel appearing on behalf of the applicant/appellant is correct.

Therefore, we have heard him on the aforesaid question of law as well but did not find any merit therein."

In the case of CIT vs. Shri Plot Swetamber Murti Pujak Jain Mandal reported in 211 ITR 293, Hon'ble High Court of Gujarat had decided that :-

"There is nothing in the language of s. 11(1)(a) to indicate that the expenditure incurred in the earlier year cannot be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year, would not amount to such income basing applied for charitable or religious purposes. That apart income derived from trust property has to be determined on commercial principles and if commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against income earned by the trust in the subsequent year

will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which such adjustment has been made having regard to the benevolent provisions contained in s. 117 and will have to be excluded from the income of the trust under s. 11(1)(a). The deficit arising out of excess of expenditure over income during the previous year relevant to the assessment year should, therefore, be set off against the surplus of income over expenditure relating to subsequent year in computing the taxable income of the later assessment year."

(emphasis supplied)

In the case of CIT vs. Shri Gujrati Samaj (Regd) reported in 257 ITR 397, Hon'ble High Court of Madhya Pradesh had decided that :

"In view of s.11(1)(a) it cannot be said that the expenditure incurred in the earlier year cannot be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year would not amount to such income being applied for charitable or religious purposes: Having regard to s.11(1)(a) when the income of the trust is used or put to use to meet the charitable or religious purposes it is applied for charitable purpose and the said application of the income for charitable or religious purposes takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Thus even if the expenses for charitable and religious purposes have been incurred in the earlier year and the said expenses are adjusted against the income of a subsequent year, the income of that year can be said to have been applied for charitable and religious purposes in the year in which expenses incurred for charitable and religious purposes had been adjusted. There are no words of limitation in s.11(1)(a) explaining that the income should have been applied for charitable or religious purposes only in the year in which the income had arisen."

In the case of CIT vs. Matriseva Trust reported in 242 ITR 20, Hon'ble High Court of Madras had decided that :-

"4. With regard to the second question, the Tribunal has held that the trust is entitled to set off the amount of excess application of the last year against the deficiency of Rs.82,516 of the present assessment year.

5. When similar questions came up before Rajasthan High Court and Gujarat High Court in the case of CIT vs. Maharana of Mewar Charitable Foundation (1987) 60 CTR (Raj) 40 : (1987) 164 ITR 439 (Raj) : TC 23R.1198 and CIT vs. Shri Plot Swetamber Murti Pujak Jain Mandal (1994) 119 CTR (Guj) 144 : (1995) 211 ITR (Guj) 293 : TC 23R.1228 respectively, both Rajasthan High Court and Gujarat High Court have answered the questions in favour of the assessee and against the Revenue.

6. Following the aforesaid decisions of Rajasthan and Gujarat High Courts, we answer the second question referred to us in favour of the assessee and against the Revenue."

In the case of Gonvindu Naicker Estate vs. ACIT reported in 248 ITR 368, Hon'ble High Court of Madras had decided that:-

"The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year, even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the income of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other."

In the case of OTC Exchange of India vs. ADIT reported in ITA No.7189, 7190 & 7191/1 Mum/ 2016, Hon'ble ITAT, Mumbai had decided that;

"Ground No. 7 of the grounds of appeal is regarding confirming the action of the Assessing Officer in not allowing the setoff of earlier years loss against current year's income. .....

Respectfully following the said decision, we hold that excess of expenditure in earlier years can be adjusted against income of subsequent years and such adjustment would be application of income for subsequent years and therefore we direct the Assessing Officer to allow the claim of the assessee for set off of excess expenditure of earlier years against current year's income following the above decision of the Hon'ble Jurisdictional High Court (supra)."

8.2.5. It is found that the other Judicial decisions relied upon by the assessee also supports the case of the appellant. In fact, it is evident that the Hon'ble Courts, including the Hon'ble jurisdictional High court, and the Tribunal has consistently pronounced that in case of Charitable Trust excess expenditure over income is to be allowed to be carried forward for setting off against income of subsequent years.

8.2.6. Furthermore, it is found that the decision in the case of CIT vs. Institute of Banking Personnel Selection (supra) has subsequently been followed by the Hon'ble Bombay High Court in the case of Director of Income-tax Exemption v. Society for Applied Microwave Electronic Engineering & Research [2019] 106 taxmann.com 203 (Bom.) and the

SLP filed by the department in respect of order in this case has been dismissed by the Hon'ble Apex Court in 106 taxmann.com 204 (SC).

8.2.7. Hence, respectfully following the judicial decisions cited supra, I hold that the assessee is eligible to set off losses brought forward from previous years and carry forward the deficit, being excess of expenditure over receipts, to subsequent years and the same is eligible to be set-off with the income of subsequent years. The AO is accordingly directed to allow the set off of brought forward of deficit in AY 2011-12 and allow to carry forward the balance deficit in the succeeding years for setting off against income of such succeeding years.

8.3.8. I have also taken note of the fact that the issue was previously considered by the Id. CIT(A) in the case of the assessee during original assessment proceedings and the same was allowed to the assessee. Hence, this being an unabated assessment year, in any case the AO did not have jurisdiction to revisit the issue when it was not based on any incriminating material found during the course of search as held in the multiple judicial decisions referred to previously while adjudicating previous grounds of appeal. Ground No.4 for Assessment Year 201112 is accordingly Allowed.

8.3.9. So far as this issue is concerned, facts of the case related to AY 2012-13 and AY 2013-14 are identical to the facts for AY 2011-12 and accordingly the Ground No. 4 for Assessment Year 2012-13 and Ground No. 3 for Assessment Year 2013-14 are also allowed.

16. Moreover, this issue has already been decided in favour of the assessee trust for A.Y. 2011-12, 2012-13 & 2013-14 in the completed assessment framed under section 143(3) of the Act. Again it is a settled principle of law that in case of completed assessment framed under section 143(3) of the Act it cannot be disturbed by the AO by framing assessment under section 153A/153C of the Act unless incriminating material qua the issue in question has been unearthed during the search operation. Undisputedly, no such incriminating material has come on record.

17. Moreover, the Revenue has raised this issue just to generate unnecessary litigation on the pretext that since Department has not accepted the decision rendered by the Hon'ble Supreme Court in the case of M/s. Subros Educational Society in M.P. No.941/2018 in CA No.5171/2016 as the Department has already filed a review petition vide diary No.20745/202, the outcome of which has not been brought on record by the Ld. D.R. during the course of argument, which is not permissible under law.

18. So in view of what has been discussed above, the Ld. CIT(A) has validly and legally decided this issue in favour of the assessee by relying upon the decision rendered by the Tribunal, Hon'ble Bombay High Court and Hon'ble Supreme Court. Hence, ground No.3 &4 of appeal Nos.1033, 1034 & 1035/M/2021 are also determined against the Revenue.

19. In view of what has been discussed above, aforesaid appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 11th Feb 2022.

Sd/-	**Sd/-**
(PRAMOD KUMAR)	**(KULDIP SINGH)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Mumbai, Dated: 11th Feb 2022.

* 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.