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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

ITA Nos.2400, 2401, 2402/M/2021
Assessment Years: 2011-12, 2012-13, 2013-14
&
ITA No.2399/M/2021
Assessment Year: 2014-15

M/s. ASI Industries Ltd., Marathon Innova, A Wing, 7th Floor, Off. G.K. Marg, Lower Parel, Mumbai – 400 013 **PAN: AACCA3549F**	Vs.	DCIT, Central Circle-1(1), Pratishtha Bhavan, R. No.903, 9th Floor, Old CGO Building, Annexe, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Reepal Tralshawala, A.R.
Revenue by : Smt. Shailaja Rai, D.R.

Date of Hearing : 22 . 08 . 2022
Date of Pronouncement : 20 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid interconnected appeals bearing common question of law and facts are being taken up for disposal by way of composite order.

2. Appellant M/s. ASI Industries Ltd., Mumbai (hereinafter referred to as the assessee) by filing aforesaid appeals sought to set

aside the impugned orders dated 31.05.2021 & 03.06.2021 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)], on identical grounds except the difference in amount of addition/disallowance (grounds of A.Y. 2011-12 are being taken up) inter alia that:

> ***"A. Addition u/s.50C - Rs.21 ,73,350/- 1 . The Ld. CIT(A) has erred in upholding the addition made by AO u/s 50C of the Act in respect of sale of land on the ground that there is difference between the stamp duly valuation and the sale consideration shown in the agreement without appreciating the explanation given by the appellant and hence, the addition made u/s.50C of the Act of Rs. Rs.21, 73,350/- is unjustified and liable to be deleted. 2. The Ld. CIT(A) failed to appreciate that as per the provisions of section 50C of the Act, the AO was duty bound to call for the report from the DVO before making the addition of the differential amount and hence, the addition made under section 50C of the Act of Rs.21,73,350/- is without any justification and liable to be deleted.***
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> ***B. Disallowance of compensation paid on Taparies -Rs.42,22,000/- 3. The Ld. C1T(A) has erred in upholding the disallowance made by AO in respect of compensation paid Rs.42,22,000/- to tapries (encroachers) on the ground that the appellant was not required to pay such amount to unauthorized occupiers of land and cannot be allowed as revenue expenditure without considering the fact that hon'ble 1TAT, Jaipur bench has already allowed such compensation paid on tapries in the case of Appellant itself for the A.Y. 2008-09 under ITA no. 497/JP/2012 order dt 8.1.16 which also has been taken on record and the Ld. CTT(A) is bound to allow the expenses based on 1TAT Order, hence, disallowance of compensation paid to encroachers is without any justification and liable to be deleted. 4. The Ld. CIT(A) failed to appreciate the fact that the payment was made to encroachers out of business and commercial expediency and in order to continue the mining activity on Sand encroached- Separately Enclosed.***
>
> ***C. Disallowance of commission paid on sales - Rs. 14,07, 509/- 7. The Ld. CIT(A) has erred in upholding the disallowance made by AO in respect of commission paid on sales Rs. 14,07,509/- in excess of 5% on the ground that it would be reasonable to allow commission to the extent of 5% without appreciating that the commission payment on sales varies in this line of business from dealer to dealer and hence, the disallowance of commission in excess of rate of 5% is without any justification and liable to be deleted. 8. The Ld. CIT(A) failed to appreciate that the genuineness of the payment of commission is not at all doubted and the only reason for disallowance is variation in payment of commission from dealer to dealer, which cannot be said***

to be any cogent reason for making the disallowance and hence, the disallowance made out of commission on sales at the rate in excess of 5% is without any justification and liable to be deleted.

D. Disallowance of expenses claimed on vehicles - Rs. 4,00,000/- 9. The Ld. ClT(A) has erred in upholding the disallowance made by AO to the extent of Rs. 4,00,000/- out of the Rs. I6.76.907/- in respect of vehicles expenses such as depreciation, motor car expense, insurance charges, interest, etc. on the ground that personal uses of Vehicles cannot be completely ruled out without appreciating the fact that there is no concept of personal expenses in case of the company and the vehicles are used wholly and exclusively for the purposes of the business of the appellant since the mines are located in Rajasthan and the customers arc located throughout India and the directors are residing in Mumbai, Maharashtra, hence, the disallowance of vehicle expenses due to personal use is without any justification and liable to be deleted.

E. Disallowance of Foreign Traveling Exp. at Mumbai -Rs.3,00,000/- 10. The Ld. CIT(A) has erred in upholding the disallowance made by AO to the extent of Rs. 3,00,000/- out of the Rs.l 1,92,222/- in respect of foreign travel expenses incurred at Mumbai office on the ground that that element of personal uses cannot be totally ruled out without appreciating that the foreign travel was undertaken to meet existing customers and explore the market potential of various types of natural stone and also to contact such suppliers so that the stones could be imported and hence, the expenses is incurred wholly and exclusively for the purposes of the business of the appellant company and thus, the disallowance of Foreign Traveling Exp. amounting to Rs, 3,00,000/- due to personal use is without any justification and liable to be deleted.

F. Addition of undisclosed receipts as per Form 26AS -Rs.54,587/- 11. The Ld. CIT(A) has erred in upholding the addition made by AO towards undisclosed receipts of the appellant as per Form 26AS without appreciating that no addition could be made merely on the basis of Form 26AS and that there is no such undisclosed receipts in the hands of the appellant and hence, the addition made on the basis of form 26AS is without any justification and liable to be deleted.

G. Disallowance out of raising and mining expenses -Rs.5,00,000/- 12. The Ld. C1T(A) has erred in upholding the disallowance made by AO to the extent of Rs. 5,00,000/- out of the Rs.l 0,00,000/- in respect of raising and mining expenses on ad hoc estimated basis on the ground that Appellant has not submitted any supportive documents in regards to the self made vouchers and expenditure arc non-genuine without appreciating that all the supporting in respect of the expenses were duly furnished and no specific defects or discrepancy is pointed out in respect of the same and hence, the ad hoc estimated disallowance of Rs.5 Lacs made out of raising and mining expenses is

without any justification and liable to be deleted. 13. The appellant craves leave to add, amend, alter or deleted all or any of the above grounds of appeal."

3. Briefly stated facts necessary for adjudication of the issues raised vide aforesaid appeals are : assessee is a limited company into the business of mining and processing of kota stones, trading and wind power generation. Assessee filed its return of income which was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act'). Subsequently, on the basis of search and seizure operation carried out under section 132(1) of the Act on the premises of the assessee company on 13.08.2013, notice under section 153A of the Act was issued and in response thereto assessee filed its return of income declaring income of Rs.20,34,05,145/- reiterating the same return of income filed originally. Assessing Officer (AO) framed the assessment under section 143(3) read with section 153A of the Act at Rs.21,59,08,260/-, Rs.17,10,09,700/-, Rs.22,85,13,600/- & Rs.17,55,04,180/- for A.Y. 2011-12, 2012-13, 2013-14 & 2014-15 respectively by making additions under section 50C of the Act and addition on account of undisclosed receipt as per form 26AS, disallowances of compensation paid on taparies, disallowance of commission paid on sales, disallowance of expenses claimed on vehicles, disallowance of foreign travelling expenses and disallowance out of raising and mining expenses.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same for statistical purposes. Feeling aggrieved with the impugned orders passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeals.

5. 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 law applicable thereto.

Ground No.1 & 2 of ITA No. 2400 & 2401/M/2021 for A.Y. 2011-12 & A.Y. 2012-13 respectively

6. AO noticed from the profit & loss account that assessee has shown profit on sale of assets under the head "other income" amounting to Rs.40,07,800/- & Rs.24,00,023/- for A.Y. 2011-12 & 2012-13 respectively. AO noticed from the details filed by the assessee that there is a difference between the sale value shown in the registered documents vis-à-vis stamp duty value. On failure of the assessee to furnish any supporting evidence that it has only sold land and not land with constructed premises AO made addition of Rs.21,73,350/- & Rs.1,42,400 for A.Y. 2011-12 & 2012-13 being the difference in the sale consideration under section 50C of the Act respectively.

7. The Ld. CIT(A) upheld the findings returned by AO by emphasizing the fact that as per sub registrar and stamp valuation authority the value of this land was worked out at Rs.29,49,600/- & Rs.6,62,400/- for A.Y. 2011-12 & 2012-13 respectively thus rightly added by the AO.

8. The Ld. A.R. for the assessee challenged the impugned findings returned by the Ld. CIT(A) on the ground that when there is a difference in the stamp duty valuation and sale document

matter needs to be referred to the Department Valuation Officer (DVO) under section 50C of the Act and relied upon the decision rendered by Hon'ble Calcutta High Court in case of Sunil Kumar Agarwal Vs CIT 372 ITR 83.

9. When assessee has come up with a categorical plea that he has recorded the actual value of the land in question paid by the assessee the AO was required to refer the matter to the DVO before making any addition in the differential amount. Intention of the legislature in incorporating section 50C of the Act in the statute is to stop any miscarriage of justice. So we are of the considered view that reference to the DVO is must to arrive at the logical conclusion. So we remit this issue back to the AO to decide afresh after calling the report from the DVO qua the market value of the property in question. So ground No.1 & 2 of A.Y. 2011-12 & 2012-13 are decided in favour of the assessee for statistical purposes.

Ground No.3 to 6 of ITA No.2400/M/2021 for A.Y. 2011-12 ,
Ground No.3 to 6 of ITA No.2401/M/2021 for A.Y. 2012-13,
Ground No.1 of ITA No.2402/M/2021 for A.Y. 2013-14 &
Ground No.1 of ITA No.2399/M/2021 for A.Y. 2014-15

10. Aforesaid grounds raised by the assessee challenging the disallowance made by the AO and confirmed by the Ld. CIT(A) qua compensation paid to the taparies (the taparies are the people who have illegally encroached upon the land of the assessee meant for mining purposes) for A.Y. 2011-12, 2012-13, 2013-14 & 2014-15. The Ld. CIT(A) confirmed the disallowance by observing that "when the assessee has bought the land in question from the government of Rajasthan, it is the duty of the government to give

the assessee clear and peaceful possession of this land and moreover assessee has been claiming this deduction on account of compensation paid to the taparies year on year and it does not fit into the scheme of a business ordinarily run by a prudent businessman to allow the encroachment of his land every year and then to claim the compensation".

11. However, the Ld. A.R. for the assessee challenging the impugned findings returned by Ld. CIT(A) contended that this issue is already being decided in favour of the assessee since 2008-09 and even in subsequent years i.e. A.Y. 2017-18 and 2018-19 this issue has been settled in favour of the assessee by the Revenue, vide order dated 14.12.2019 & 26.02.2021 available at page 32 to 43 of the paper book for A.Y. 2011-12, by way of framing assessment under section 143(3) of the Act and relied upon the order passed by the Tribunal in assessee's own case in ITA No.497/JP/2012 order dated 08.01.2016 for A.Y. 2008-09.

12. Ld. D.R. for the Revenue relied upon the orders passed by the Ld. CIT(A).

13. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case on the identical issue which is decided in favour of the assessee by returning following findings:

> ***"3.1 Assessee is engaged in the business of mining of Kota stone since 1945, having a huge mining area of 9.991 Sq.Km. allotted by The Mines & Geology Department, Government of Rajasthan. The mining leases comprise of own purchase land, government land, Charagah land, agriculture land, wells, along with encroached, authorized and unauthorized houses, taparies etc. Every year a certain area is opened for mining which requires removal of such unauthorized encroachment as a business necessity. Like earlier***

years, assessee in this year paid Rs.210000/- & Rs.310000/- on 12.01.2008, to Mr. Ram Narain S/o Moolchand Koli and Mr. Birdhi Chand S/o Ram Narain, towards compensation for vacating unauthorized "Kacchi Taparies" situated in our mining lease area at Bhag No.6, of Laxmipura Mines. As on this unexplored area some unauthorized temporary houses/Kachhi taparies/Bada were there since 20-25 years. For mining activity of assessee they were to be vacated. Therefore, there services were utilized wholly and exclusively in the interest of mining business to evacuate unauthorized residents and settle the issue by paying some compensation for rehabilitation of them to avoid unnecessary complications, litigation, harassments, interruptions, violence etc. The copy of agreement in support of above payments was submitted during the course of Assessment proceedings. This expenditure is incurred year after year for smooth conduct of mining business was incurred wholly and exclusively in the course of business and commercial expediency and for preserving or protecting of business assets i.e. mining area. Ld. Assessing Officer erred in disallowing the same on technical grounds about court settlement, absence of notice, FIR etc. and stepping in the shoes of business to assume that there was no need to pay compensation to protect business asset and protect operations.

3.2 Reliance is placed on following judicial precedents:

1. [(1968) 45 TC 18 (HL)] – Commissioner of Inland Revenue v/s. Carron of Company - Held - Expenses incurred for removing obstacles / disabilities in the company's trading operation which prejudiced its operation; specially when achieved without acquisition of any tangible / intangible asset - Revenue Expenditure.

2. [(1971) 81 ITR 754 (SC)] – Dalmia Jain & Co. Ltd. v/s. CIT - Held - If expenditure is incurred to protect the business of the assessee, to defend a claim made against it, then such expenditure must be considered as revenue expenses.

3. [(1980) 124 ITR 1 (SC)] – Empire Jute Co. Ltd. v/s CIT - Held - Expenditure incurred for preserving and maintaining or protecting capital asset is revenue expenditure.

4. [(1990) 187 ITR 39 (SC)] – Bikaner Gypsums ltd. v/s. CIT - Held - Where the assessee has an existing right to carry on the business, any expenditure made by it during the course of business for the purpose of removing any restriction / obstruction or disability would be on revenue account, provided the expenditure does not acquire any capital asset. - Revenue Expenditure.

5. [(1994) 210 ITR 222 (Cal)] – CIT v/s Auto Distributors Ltd - Payment made to obtain vacant possession of a building was not capital expenditure but was incurred wholly and exclusively in the course of business and allowable as such.

6. [(1978) 114 ITR 434 (Cal)] – CIT v/s Deluxe Film Distributors Ltd. - Held - Amount paid for clearing title in the course of carrying on of business is for commercial expediency and therefore, allowable."

14. When the issue in question has already been decided in favour of the assessee by the Tribunal vide order dated 08.01.2016 in A.Y. 2008-09 and has not been challenged further and even in subsequent years i.e. 2017-18 & 2018-19 it is further allowed by Rrevenue itself by framing assessment under section 143(3) of the Act, there is no ground for the Revenue to not follow the "rule of consistency".

15. Moreover, every businessman's endeavor is to run the business without any litigation etc. and they have brought on record the complete list and compensation amount paid to the said taparies and the entire payment has been made through banking channel and in these circumstances the Ld. CIT(A) is not allowed to decide the issue merely on the basis of conjuncture and surmises without controverting the evidence brought on record by the assessee. So following the earlier order decided by the Tribunal we hereby set aside the findings returned by Ld. CIT(A) and direct the AO to delete the disallowance made/confirmed in this case on account of compensation paid to taparies. So Ground No.3 to 6 of ITA No.2400/M/2021 for A.Y. 2011-12, Ground No.3 to 6 of ITA No.2401/M/2021 for A.Y. 2012-13, Ground No.1 of ITA No.2402/M/2021 for A.Y. 2013-14 & Ground No.1 of ITA No.2399/M/2021 for A.Y. 2014-15 are decided in favour of the assessee.

Ground No.7 & 8 of ITA No.2400/M/2021 for A.Y. 2011-12 ,
Ground No.7 & 8 of ITA No.2401/M/2021 for A.Y. 2012-13,
Ground No.2 of ITA No.2402/M/2021 for A.Y. 2013-14 &
Ground No.2 of ITA No.2399/M/2021 for A.Y. 2014-15

16. During the years under consideration assessee sold certain lands etc. and profit earned thereon is duly reflected in the profit & loss account and offered to tax in the return of income. Assessee claimed certain expenses paid on account of commission on sales during the years under consideration. However, the AO questioned the claim of the assessee qua commission on sales ranging from 5.25% to 35.48%, which the AO has restricted to 5% of the sales and thereby disallowed an amount of Rs.14,07,509/-, Rs.3,59,800/-, Rs.8,78,557/- & Rs.2,11,859/- for A.Y. 2011-12, 2012-13, 2013-14 & 2014-15 respectively. The Ld. CIT(A) upheld the findings of the AO by returning following findings:

> ***"21.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. It is quite clear that the assessee had paid commission at varying rates like 5.25%, 5.65%, 8.4396, 13.37%, 13.52% and 35.48% etc. and there appears to be no uniform policy towards payment of the commission. It appears that assessee has paid commission without following any proper process or criteria or methodogy and the rate of commission is paid at sweet will of the assessee etc. From the above list, it also appears that assessee had paid commission to some ladies namely, Indu Gupta, kamla Bai, Monica Soni, Rekha Jain, Ritu Gupta, Sangeeta Khandelwal, Shweta Khandelwal, Sunita and Taranjeet Kaur etc. It appears that some family members of these ladies have also been paid commission like Aproova Khandelwal, Promod Kumar Soni, Dalveer Singh etc. Therefore firstly it is not clear as to what kind of services were rendered by the above mentioned ladies for which the commission had been paid to them and secondly it is also not clear whether they were capable of rendering such services like whether they were sufficiently qualified had sufficient expertise or experience so that they could have procured sales orders and could have managed payment of accounts by respective buyers. The assessee had failed to give any satisfactory reply to these questions. The assessee only claims that the commission has been paid to various parties on***

the basis of sales carried out by them and whosoever bought better sale rates, was given higher commission. However no evidence in this regard has been given by the assessee. Therefore I am not satisfied with the varied rates of commission paid by the assessee. Besides rate of payment of commission at the rates 1296, 13% and 35% appears to be too high. Therefore considering overall facts of the case I am of the view that limiting the commission at 5% of sales is fair and reasonable. Therefore disallowance of Rs. 14.07.509/- made by the AO is upheld."

17. Bare perusal of the findings returned by Ld. CIT(A) goes to prove that assessee has failed to discharge the onus that how and why there is a huge difference in the payment of commission paid on sale to different persons ranging from 5.25% to 35.48%. Because when all the commission agents engaged by the assessee to sell its land are located in the same area it is beyond human probability as to why there is a huge difference in the payment of commission to the different persons for the land situated in the same area. Assessee has not brought on record any such facts. Moreover, it is undisputed fact on record that for the subsequent years the assessee has itself accepted 5% commission on sales by not filing any appeal. So in these circumstances, we do not find any illegality and perversity in the impugned findings returned by AO as well as Ld. CIT(A). Hence, Ground No.7 & 8 of ITA No.2400/M/2021 for A.Y. 2011-12, Ground No.7 & 8 of ITA No.2401/M/2021 for A.Y. 2012-13, Ground No.2 of ITA No.2402/M/2021 for A.Y. 2013-14 & Ground No.2 of ITA No.2399/M/2021 for A.Y. 2014-15 are decided in favour of the assessee.

Ground No.9 of ITA No.2400/M/2021 for A.Y. 2011-12 ,
Ground No.9 of ITA No.2401/M/2021 for A.Y. 2012-13,
Ground No.3 of ITA No.2402/M/2021 for A.Y. 2013-14 &
Ground No.3 of ITA No.2399/M/2021 for A.Y. 2014-15

18. The assessee claimed insurance, depreciation, interest and car expenses in the profit & loss account on the vehicles registered in the name of Shri Deepak Jatia, Chairman & Managing Director (CMD). The assessee submitted that though the cars are registered in the name of CMD but the same are used for business purposes and payment has been made from the books of assessee company and part of its fixed assets. The Ld. CIT(A) has restricted the disallowance to 25% on adhoc basis by ruling out personal use of vehicles.

19. The Ld. A.R. for the assessee contended that this issue was first arisen in 2008-09 when the Ld. CIT(A) restricted the disallowance on adhoc basis to 10% of the total expenses on vehicles and in the subsequent year also the disallowance was retained at adhoc 10% of the total expenses.

20. Ld. D.R. for the Revenue relied upon the orders passed by the Ld. CIT(A).

21. We are of the considered view that when vehicles in question though registered in the name of CMD but are part of its fixed assets and entire payment has been made through books of accounts which have not been disputed by the AO and keeping in view the rule of consistency as in the earlier years and in the subsequent years adhoc disallowance has been made at 10% of the total expenses on vehicles by considering the personal use of vehicles,

the AO is directed to disallow 10% of the expenses claimed by the assessee. The impugned order passed by the Ld. CIT(A) on this ground is accordingly modified.

Ground No.10 of ITA No.2400/M/2021 for A.Y. 2011-12,
Ground No.10 of ITA No.2401/M/2021 for A.Y. 2012-13,
Ground No.4 of ITA No.2402/M/2021 for A.Y. 2013-14 &
Ground No.4 of ITA No.2399/M/2021 for A.Y. 2014-15

22. The assessee being in business of mining of kota stones which the assessee claimed to have exported to UK, USA, Italy, Israel etc. The assessee has also imports from various countries. The assessee claimed foreign travel expenses incurred on the foreign trade stated for the purpose of meeting foreign parties. The Ld. CIT(A) restricted the disallowance on adhoc basis to Rs.3,00,000/- towards the element of personal visits. Assessee has duly filed the detail of foreign travel expenses. It is the case of the assessee that except Bangkok the assessee has exported to all the countries visited. In A.Y. 2017-18 & 2018-19 the Ld. CIT(A) allowed all the expenses except the expenses claimed by the assessee on its visit to Bangkok.

23. We are of the considered view that when assessee has been exporting its product to various countries and all the expenses have been incurred through books of accounts which have not been disputed the same has to be treated to have been incurred for business purposes except the expenses stated to have been incurred for visiting Bangkok, to which country assessee has neither any export of its product nor any type of import from Bangkok. So in these circumstances, we are of the considered view that the Ld. CIT(A) has rightly disallowed small portion of expenses

claimed by the assessee towards element of personal views. So we find no reason to interfere into the adhoc disallowance made by the Ld. CIT(A) in the impugned order. So Ground No.10 of ITA No.2400/M/2021 for A.Y. 2011-12, Ground No.10 of ITA No.2401/M/2021 for A.Y. 2012-13, Ground No.4 of ITA No.2402/M/2021 for A.Y. 2013-14 & Ground No.4 of ITA No.2399/M/2021 for A.Y. 2014-15 are decided in favour of the assessee.

Ground No.11 of ITA No.2400/M/2021 for A.Y. 2011-12, Ground No.11 of ITA No.2401/M/2021 for A.Y. 2012-13, Ground No.5 of ITA No.2402/M/2021 for A.Y. 2013-14 & Ground No.5 of ITA No.2399/M/2021 for A.Y. 2014-15

24. During the year under consideration the AO made addition on account of interest income earned by the assessee company from Jaiput Vidyut Vitran Nigam Ltd. (JVVNL) as shown in the form 26AS which has been upheld by the Ld. CIT(A).

25. It is the case of the assessee that the interest in question has been earned from security deposit kept with JVVNL which has been duly offered to tax in the subsequent years and TDS has also been claimed. It is also the case of the assessee that the assessee has been disclosing income of crores of Rupees every year and there is no change in the rate of tax. In these circumstances, we are of the considered view that when interest income has been duly offered to tax in the subsequent years and TDS has also been claimed in the next years there is no reason to disallow the same. Moreover, the assessee has been paying income tax at the same rate. Identical issue has been dealt with by the Hon'ble Delhi High Court in case of CIT vs. M/s. Vishnu Industrial Gases P. Ltd. and

has been decided in favour of the assessee. So we order to delete the addition made by the AO on account of undisclosed receipt as per form 26AS for A.Y. 2011-12, 2012-13, 2013-14 & 2014-15. So Ground No.11 of ITA No.2400/M/2021 for A.Y. 2011-12, Ground No.11 of ITA No.2401/M/2021 for A.Y. 2012-13, Ground No.5 of ITA No.2402/M/2021 for A.Y. 2013-14 & Ground No.5 of ITA No.2399/M/2021 for A.Y. 2014-15 are decided in favour of the assessee.

Ground No.12 of ITA No.2400/M/2021 for A.Y. 2011-12, Ground No.12 of ITA No.2401/M/2021 for A.Y. 2012-13, Ground No.6 of ITA No.2402/M/2021 for A.Y. 2013-14 & Ground No.6 of ITA No.2399/M/2021 for A.Y. 2014-15

26. The assessee claimed raising and mining expenses on estimated adhoc basis in all the years under consideration, qua which AO called for details and examined the same. AO found that in some of the expenses complete details of addressees are not available on self made vouchers and in the absence of supporting evidence regarding such type of self made vouchers held that the entire amount of expenses is not incurred wholly and exclusively for the purpose of business and made adhoc disallowances to the tune of Rs.10,00,000/- each in A.Y. 2011-12, 2012-13, 2013-14 & 2014-15. However, the Ld. CIT(A) restricted the adhoc disallowance to Rs.5,00,000/- for each year.

27. The Ld. A.R. for the assessee contended that complete details of raising and mining expenses have been filed before the AO with name, place, PAN, amount and TDS deducted etc. and no specific defect has been brought on record by the AO as well as the Ld. CIT(A). The Ld. A.R. for the assessee further contended that in

the subsequent years i.e. A.Y. 2017-18 & 2018-19 no such disallowance has been made on the similar raising and mining expenses claimed by the assessee.

28. Ld. D.R. for the Revenue relied upon the orders passed by the Ld. CIT(A).

29. In view of above undisputed facts, we are of the considered view that when expenses incurred by the assessee have otherwise not been specifically disputed and books of accounts have been admitted as correct and all the payments have been made through banking channel, the Revenue Department cannot proceed at its whims and fancies by making disallowance for one year and allowing the same expenses in other years. Revenue Department is required to follow the rule of consistency. In these circumstances, we are of the considered view that no ground for making disallowance is made out, hence disallowance confirmed by the Ld. CIT(A) in A.Y. 2011-12, 2012-13, 2013-14 & 2014-15 is ordered to be deleted.

30. In view of what has been discussed above, aforesaid appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 20.09.2022.

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 20.09.2022.

* 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.