**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'C' BENCH : BANGALORE**

**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER**
**AND**
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

| **ITA No.1679/BANG/2019** |
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| **Assessment Year : 2014 – 15** |

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| M/s Narayana Hrudayalaya Ltd.,<br>(formerly known as Narayana Hrudayalaya Pvt. Ltd.,)<br>No.258/A,<br>Bommasandar Industrial Area,<br>Anekal Taluk,<br>Bengaluru-560 099.<br><br>**PAN – AABCN 1685 J** | **Vs.** | The Asst. Commissioner of Income-tax,<br>Circle-2(3)(1),<br>Bengaluru. |
| **APPELLANT** | | **RESPONDENT** |

| **ITA No.1684 & 1685/BANG/2019** |
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| **Assessment Year : 2014 – 15** |

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| The Dy. Commissioner of Income-tax,<br>Circle-2(3)(1),<br>Bengaluru. | **Vs.** | M/s Narayana Hrudayalaya Pvt. Ltd.,<br>No.258/A,<br>Bommasandar Industrial Area,<br>Anekal Taluk,<br>Bengaluru-560 099.<br><br>**PAN – AABCN 1685 J** |
| **APPELLANT** | | **RESPONDENT** |

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| Assessee by | : | Shri V Narendra Sharma, Advocate |
| Revenue by | : | Shri Pradeep Kumar, CIT |

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|---|---|---|
| Date of Hearing | : | 11-08-2021 |
| Date of Pronouncement | : | 24-08-2021 |

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals are filed by assessee as well as revenue against order dated 30/04/2019 passed by the Ld.CIT (A)-2, Bangalore for assessment years 2012-13 and 2014-15 on the following grounds of appeal:

***ITA No.1679/Bang/2019***

*"1. The order passed by the learned Commissioner of Income-tax [Appeals] in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*
*2. The appellant denies itself liable to be assessed over and above the income reported by it amounting to Rs. 30,21,17,510/- on the facts and circumstances of the case.*
*3. The learned Commissioner of Income-tax [Appeals] erred in not allowing the eligible claim of deduction under section 35 AD of the Act amounting to Rs. 23,96,71,138/- being 150% of the total capital investment on fixed assets made by the appellant amounting to Rs. 15,97,80,759!- on the facts and circumstances of the case.*
*4. The learned Commissioner of Income-tax [Appeals] erred in not allowing the eligible deduction claimed by the appellant under section 35AD of the Act during the assessment proceedings relying upon the ratio of the decision of the Hon'ble Apex Court in the case of Goetz [India] Ltd., Vs. CIT [2006] reported in 284 ITR 323 [SC]. The learned Commissioner of Income-tax [Appeals] ought to have appreciated that in accordance with the Board Circular and based on parity of reasoning of several case laws, even though if the assessee has inadvertently not claimed any eligible deduction in its return of income it is incumbent on the officers of the department to grant eligible deduction on the facts and circumstances of the case.*
*5. The Appellant craves leave to add, alter, amend, delete or substitute any of the grounds urged above.*
*6. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may*

*be allowed and appropriate relief may be granted in the interest of justice and equity."*

***ITA No.1684/Bang/2019 - AY 2012-13***

*"1. The Order of Ld. CIT(A) is clearly opposed to law as the findings are perverse,. contrary to the facts and circumstance of the case and hence not sustainable.*
*2. The Ld. CIT(A) has erred both in facts and in law by forming a view that the amount paid towards lease hold rights to acquire the business of M/s Asia Heart Foundation for carrying out its business as revenue in nature and erred in deleting the addition made at Rs. 88,64,000/-.*
*3 The Ld. CIT(A) has erred both in facts and in law by forming a view that the amount paid towards lease hold rights to acquire the business of M/s Modern Medical Institute of Society, Raipur for carrying out its business as revenue in nature and erred in deleting the addition made at Rs. 32,11,805/-.*
*4. The Ld. CIT(A) erred in deleting the disallowance made under Corporate Social Responsibility at Rs. 1,07,84391 without appreciating the facts that there was no relevance or nexus between this expenditure to that of the business carried out and also the assessee company has not proved that these expenses are incurred wholly and exclusively for business purpose.*
*5. The Ld.CJT(A) has erred in the deleting the disallowance of Rs.81,87,015/- on account of provision made towards leave salary without appreciating the facts that these have not been actually paid within the meaning of Sec.43B(f) and also erred in admitting the assessee's addl. ground of appeal on this issue."*

***ITA No.1685/Bang/2019 - AY 2014-15***

*"1. The Order of Ld. CIT(A) is clearly opposed to law as the findings are perverse, contrary to the facts and circumstance of the case and hence not sustainable.*
*2. The Ld. CIT(A) has erred both in facts and in law by forming a view that the amount paid towards lease hold rights to acquire the business of M/s Asia Heart Foundation for carrying out its business as revenue in nature and erred in deleting the addition made at Rs. 88,64,000/-.*
*3 The Ld. CIT(A) has erred both in facts and in law by forming a view that the amount paid towards lease hold rights to acquire the business of M/s Modern Medical Institute of Society, Raipur for carrying out its business as revenue in nature and erred in deleting the addition made at Rs. 46,25,000/-.*
*4. The Ld. CIT(A) erred in deleting the disallowance made under Corporate Social Responsibility at Rs. 91,11,919/- without appreciating the facts that there was no relevance or nexus between this expenditure to that of the business carried out and also the assessee company has not proved that these expenses are incurred wholly and exclusively for business purpose.*
*5. The Ld.CIT(A) has erred in the deleting the disallowance of Rs. 1,40,84,420/- on account of provision made towards leave salary without appreciating the facts that these have not been actually paid within the*

*meaning of Sec.43B(f) and also erred in admitting the assessee's addl. ground of appeal on this issue."*

**Brief facts of the case are as under:**

2. The assessee is a company registered under the Companies Act and is engaged in the business of hospital services in the name and style of M/s Narayana Hrudayalaya Pvt. Ltd. For the years under consideration, assessee filed its return of income on the specified dates. Assessee was also subjected to book profits, however as taxes under normal provisions were higher than the book profit, assessee paid the taxes as per the normal provisions of the Act.

2. The return was processed under section 143(1) of the Act and the case was selected for scrutiny. The Ld.AO called upon assessee to file various details in regards to the queries raised under section 143(2) of the Act. The Ld.AO on verifying the details and submissions made by assessee concluded the assessment by passing an order under section 143(3) of the Act by making following additions and disallowance:

| Particulars | Amount | |
|---|---|---|
| | A.Y:2012-13 | A.Y: 2014-15 |
| Disallowance of Rental expenditure amortised in the books of account by debiting the profit and loss account-AHF Kolkata | 88,64,000/- | 8,64,000/- |
| Rental expenditure amortised in the books of | 32,11,805/- | 46,25,000/- |

| | | |
|---|---|---|
| accounts by debiting to profit and loss account-MMIS, Raipur | | |
| Corporate social responsibility expenses | 1,07,84,391/- | 91,11,919/- |
| Disallowance under section 14 A of the act | 4,58,678/- | - |
| Disallowance of provision towards unpaid leave salary encashment | 81,87,015/- | 1,40,84,420/- |
| Disallowance of Provision on doubtful debts | 75,64,370/- | 8,35,32,460/- |

2.1 Aggrieved by the additions made by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.2 The Ld.CIT(A) allowed the contentions of assessee while considering the disallowances *vis-à-vis* the submissions made by assessee. The Ld.CIT(A) deleted the rental expenditure amortised in respect of Asian Heart Foundation, Kolkatta and M/s. Modern Institute of society, Raipur and disallowance of the provision made towards salary based on the decision of coordinate bench of this *Tribunal* in assessee's own case for assessment year 2009-10.

For assessment AY 2014-15 assessee had raised issue of claim under section 35 AD, which was disallowed by the Ld.AO for the reason that, the said claim was not made by assessee by way of a revised return. The Ld.CIT(A) upheld this observation of the Ld.AO.

2.3 Aggrieved by the order of the Ld.CIT(A) for assessment years under consideration, assessee as well as revenue and appeal before us now.

2.4 We shall first take up the appeal filed by revenue for assessment year 2012-13 and 2014-15. Both sides agree that the grounds raised by the revenue are common on identical facts in both these years.

**3. Ground No.1** in both these appeals are general in nature and therefore do not require any adjudication

**3.1 Ground No.2** pertains to the amount paid towards leasehold rights amortised by assessee during the lease period.

3.2 The Ld.DR submitted that assessee entered into management agreement on 28/01/2008 to operate and manage the hospital at Kolkata for lease period of 25 years. It was submitted that, as per the terms and conditions of the agreement the assessee paid sum of ₹ 22,16,00,000/- as deposit for securing the rights over the existing hospital during the lease. Assessee amortised this expenditure during the period of 25 years and is treated as rent paid in the books of account. The Ld.DR submitted that this expenditure has been paid by assessee's capital in nature thereby acquiring the right of running the hospital business. He thus submitted that these are to be disallowed as capital expenditure.

3.3 On the contrary, the Ld.AR submitted that, this issue is a recurring issue, and has been subject matter for consideration before this *Tribunal* in the preceding assessment years. He placed reliance on the orders passed by this *Tribunal* in assessee's own

case for assessment year 2009-10 and 2010-11 placed at page 133-168 of paper book.

3.4 We have perused the submissions advanced by both sides in the light of records placed before us.

3.5 We observe that assessee obtained right to operate and manage Asian Heart Foundation by virtue of an agreement dated 20/01/2008 for 25 years, for which sum of ₹ 22.16 crore was paid by assessee. Assessee amortised the said amount over the lease period. When this issue came up before this *Tribunal* for the first time for assessment year 2009-10 in *ITA No. 564/B/2012 and 696/B/2012*, this *Tribunal* vide order dated 23/01/2015 observed and held as under:

*6.3.1 We have heard the rival contentions and perused and carefully, considered the material brought on record; including the judicial decisions cited. As rightly submitted, the entire Management Agreement dt.28.1.2008 between the assessee and Ws. Asia Heart Foundation, Kolkata for operation and management of the hospital at Kolkata by the assessee for a total lease period of 25 years by payment of a non-refundable lease deposit of Rs. 22.16 Crores ought to be read in its entirety to understand the intention and conduct of the parties thereto. Reading of clauses in isolation could lead to erroneous deductions; as has been done by the Assessing Officer in reading clause 7.8 in isolation. While it is true that clause 7.8 is a deterrent clause, it opens with the words 'subject to clause 7.7 and therefore it is to bee read in conjunction with clause 7.7. The deposit amount of Rs.22. 16 Crores was refundable only in the event of any default happening on the part of the Asia Heart Foundation during the lease period of 25 years. We also find from the material brought on record that the Trust i.e. Asia Heart Foundation has obtained a certificate under Section 197(1) of the Act from the concerned Assessing Officer for not deducting tax at source on the rental income of Rs. 88,64,000 under Section 1941 of the Act. This fortifies the fact that the intention of both*

*parties to the Management Agreement dt.28. 1.2008, was to treat the said amount of' Rs. 22.16 crores as a non-refundable deposit for the lease period of 25 years. The averments of the assessee that the Trust, M/s. Asia Heart Foundation has offered the same amount of Rs. 88,66,000 as its income as rental receipt during the relevant year itself has not been disputed by the authorities below. The assessee too is to amortising the amount of Rs.22.16 crores over the period of 25 years and has amortised Rs.88,64,000 in this year; being 1/25 th of Rs.22.16 crores. The judicial decisions relied upon by Revenue, we find, are distinguishable on facts. We also find that the learned CIT(A) has dealt with this issue in detail in the impugned order while holding the issue in favour of the assessee and with which findings we concur. in this context, it is relevant to extract the operational portion of the impugned order of the learned CIT(A) to clarify the factual position on this issues at paras 3.5 to 3.9 thereof :-*

*3.5 I have carefully considered the appellant's submissions and also also perused assessment order, remand report, etc. As can be seen from the assessment order, the Assessing Officer has disallowed the claim*

*of rental expenditure of Rs.88,64,000/- for the following reason :-*

*1,) The appellant has given an interest free loan to the Foundation for 25 years in lieu of which it has acquired the right to manage the hospital.*

*ii) The Foundation has also not treated the proportionate amount as income but has treated the entire amount received by it as interest free loan.*

*iii) Even after 10 years it is only for acquiring leasehold rights and, hence, not eligible for write off of either in the first 10 years or even thereafter.*

*3.6 As regards the first contention of the Assessing Officer, the appellant submitted that it had entered into a management agreement dt. 28.1.2008 within the Foundation to operate and manage the hospital at Kolkata for a total lease period of 25 years. As per the terms and conditions of the agreement, the appellant paid an amount of*

*Rs.22,16,00,000 as deposit for securing the rights over the existing hospital till the lease period of 25 years. The deposit is not refundable after 25 years. The appellant amortised the said lease deposit of Rs.22, 16,00,000 proportionately over a period of 25 years. As per the agreement, year ended 31.3.2009 is the first year of lease and, therefore, it amortised a sum of Rs. 88,64, 000 being 1125 th of the lease amount of Rs. 22, 16,00,000 and treated the same as rent in its books of account.*

*3.7 A careful consideration of the clauses in the management agreement shows that, according to one of the terms, the deposit of Rs.22,16,00,000 paid by it is refundable only, in the event of any default happening on the part of the Foundation during the lease period of 25 years and as such it is contingent clause. The Assessing Officer ought to have looked into the intention of the appellant to take the property on lease for a minimum period of 25 years and option renewing the said agreement has to be read as a whole and t/ intentions of the parties have to he looked into and not in bits and pieces. The appellant has also pointed out that the Foundation has treated the sum of Rs.88,64,000 in its books of account as rental receipt and, accordingly, obtained a certificate from the A.O (TDS) concerned for non-deduction of TDS on rent vide certificate dt. 31/3/2009. This aspect has not been controverted by the Assessing Officer.*

*3.8 From a perusal of the details filed by the appellant, it is clear that the intention of both parties to the agreement was to continue to lease for a period of 25 years and AO has relied on clauses, which are deterrent and come into effect only in case of default. It is well settled law that any agreement requires to be read harmoniously and the transaction is commercial in nature and for business expediency. In any commercial transaction, restrictive, contingent and penal clauses are placed in the agreement in order to safeguard the interest of the parties to the instrument in the event of contingencies taking place. Making the contingent covenants as the main issue is not in order. Thus, when an agreement is entered into, the pith and substance of the transactions has to be looked into and also to consider the intention of the parties. As, in the instant case, the intention of the parties is very, clear from their conduct that the lease is for a period of 25 years, the appellant was right in law to*

*amortise the lease deposit over a period of 25 years i.e. Rs. 88,64, 000 per year. The appellant has relied on certain judicial decisions in support of its case and made elaborate written submissions on the issue and drawn attention to the various clauses in the agreement to demonstrate that these are deterrent and contingent in nature. The deduction claimed is to be granted on the subject mailer of the transaction which, in my view, is that the appellant has taken the hospital on lease for 25 years and no amount is refundable 10 the appellant after the expiry of the lease. After considering the decision relied upon by the appellant, I am opinion that the transaction entered into by the appellant with the Foundation is commercial in nature and the intention of the parties is for taking the hospital premises for a period of 25 years. Therefore, the pith and substance of the transaction has to be looked into as held in various judicial precedents. It is also relevant to point out that the Foundation has also offered this amount as its income for the assessment year therefore, right in amortising the deposit of Rs. 22,16,00,000 and apportioning 1125 th thereof i.e. Rs. 88,64,000 to the assessment year in question.*

*3.9 The Assessing Officer 's inference that the Foundation has treated the amount of Rs. 22,16,00,000 as an interest free loan given by the appellant and, therefore, the entire amount is a capital expenditure, is incorrect. The appellant has produced copies of the financial statements filed &v the Foundation wherein it has reduced from the advance of Rs.22,16,00,000 a sum of Rs.1,03,41,333 comprising Rs.14, 77,333 being rent for 2 months pertaining to the assessment year 2008-09 and rent of Rs. 88 64,000 pertaining to the assessment year 2009-10 and shown the balance due to the appellant at Rs.21,12,58,667 as on 31.3.2009. It is also seen that the Foundation has counted the sum of Rs.1,03,41,333 as income from rent in its Profit and loss account. Therefore, the Assessing Officer 's conclusion that the sum of Rs.21,16,00,000 is an interest free loan from the appellant to the Foundation is baseless. Similarly, the Assessing Officer's conclusion that the Foundation cannot write off the amount of Rs.22,16,00,000 over a period of 10 years or even thereafter on the ground that ills capital in nature is also incorrect since the appellant is hound to return the property to the Foundation on expiry of the lease.*

*6.3.2 in view of the facts and circumstances of the case as discussed above and the detailed findings of the learned CIT(A) ('supra), we find that the Assessing Officer's inference that the amount of Rs.22.16 crores is an interest free loan from the assessee to M/s. Asia Heart Foundation is /actually unsustainable: as is the Assessing Officer 's conclusion that the lessor of the property cannot write off the amount of Rs. 22.16 Crores over the period of 10 years and thereafter, since it is capital in nature is also factually incorrect since the assessee is legally bound to return possession of the hospital property to M/s. Asia Heart Foundation after the lease period is over. in this view of the matter, we are of the considered view*

*that the impugned order of the learned CIT(A) does not call for any interference on this issue and consequently dismiss grounds 2 and 3 raised by revenue on the issue of the assessees claim amortisation of lease rental expenditure of Rs. 88,64, 000 during the period under consideration."*

3.6 In the present facts of the case the Ld.CIT(A) deleted the disallowance by following the above view taken by this *Tribunal*. Admittedly there is no difference in the facts considered by the co-ordiante bench for asst. year 2009-10 and the year under consideration.

We therefore do not find any infirmity with the view taken by the Ld.CIT(A) and the same is upheld.

**Accordingly ground number 2 raised by revenue in both the years under consideration stands dismissed.**

**4. Ground No.3** is in respect of the amount paid towards the leasehold rights of Modern Medical Institute of society, Raipur.

5. The Ld.DR submitted that assessee has paid sum of ₹ 46.25 lakhs for acquiring the rights to operate and manage the said hospital vide agreement dated 23/07/2011 for a period of 20 years. He submitted that this payment has led to acquisition of an asset and therefore deserves to be capitalised.

6. On the contrary, the Ld.AR submitted that the payment made to Modern Medical Institute of society, Raipur is identical and similar to the payment made to Asia Heart Foundation. He submitted that the money paid to Modern Medical Institute of society, Raipur is treated as rent in the books of the assessee by amortising the said total amount for a period of 20 years. He submitted that the view taken by this *Tribunal* in case of the payment made to Asia Heart Foundation in the preceding

assessment years would be applicable to the said payment also. He relied on the observations by coordinate bench of this *Tribunal* for considering the issues similar to Asian Heart Foundation in the preceding assessment years.

6.1 We have perused submissions advanced were both sides in light of records placed before us.

6.2 The assessee has placed before us the agreement dated 23/07/2011 entered into with the Modern Medical Institute society.

6.3 Admittedly the laundry observes that the said payment is made by assessee to operate and manage Modern Medical Institute of society, for a period of 15 years with an extension of five years . In the terms and conditions the consideration payable by assessee to Modern Medical Institute is 2.5% per annum of the gross revenue for each financial year of hospital or 1.25 crore per annum whichever is higher. It has also been agreed between the parties that in the first year 2.5% of the gross revenue shall be payable by assessee as in advance. The assessee has thus paid sum of ₹ 1.25 crore which stands adjusted towards the payment of outstanding loans as a precondition. It is also agreed between the parties that, all payment made by assessee to Modern Medical Institute shall be subjected to tax deducted at source. We note that the amortisation amount paid to Modern Medical Institute is different for every year. Under such circumstances, how the amortisation amount is determined by assessee for every year needs to be verified in terms of the payment condition agreed between the parties. We therefore remand this issue back to the Ld.AO for verification of the

working. We also direct the Ld.AO to apply the principle laid down by coordinate bench of this *Tribunal* while considering the payment made by assessee to Asian Heart Foundation.

**Accordingly this ground raised by revenue stands allowed for statistical purposes for both the years under consideration.**

**7. Ground No.4** has been alleged by revenue against deleting the disallowance made under corporate social responsibility.

7.1 The Ld.DR submitted that there is no nexus between the CSR expenditure made by assessee with that of assessee's business. He submitted that assessee has failed to establish that the expenditure has been incurred wholly and exclusively for the business carried out. The Ld.DR placed reliance on the observations of the Ld.AO.

7.2 On the contrary the Ld.AR submitted that the payment made during assessment years under consideration towards corporate social responsibility will not fall under the purview of *Explanation 2* to section 37(1). It has been submitted that during assessment years under consideration assessee incurred expenditure towards running free clinics and medical treatment camps at Ameathi in Uttar Pradesh. He further pointed out that similar disallowances for assessment AY 2009-10 and 2010-11 in assessee's own case was deleted by coordinate bench of this *Tribunal*.

7.3 We have perused submissions advanced were both sides in light of records placed before us.

7.4 We note that, in the preceding assessment years, coordinate bench of this *Tribunal* in assessee's own case in *ITA Nos.564 and 969/B/2012* observed and decided similar issue as under:

*"7.3 We have heard both parties at length and perused and carefully considered the material on record. It is seen from an appreciation of the facts on record on this issue that the AO has not disputed either the stated reasons for incurring the CSR expenditure or the genuineness of the expenditure so incurred. The only grievance of the revenue is that the assessee has not established that the said CSR expenditure is incurred wholly and exclusively for the purposes of the assessee's business. In the case on hand, there is no dispute with respect to the fact that the assessee has expended an amount of Rs.92,01,010 for conducting medical camps and clinics at Amethi; which includes the cost of medicines, doctors fees etc. The assessee is in the business of providing medical services and operating hospitals. In our considered view, there is no doubt that the CSR expenditure of Rs.92,01,010 incurred on medical camps and clinics at Amethi; being in the same line of providing medical services as is the business of the assessee, it clearly appears to be incurred for the purposes of furtherance of the assessees business only. Thus, the expenditure incurred for CSR, in the factual matrix of the case on hand is, in our opinion, allowable expenditure as per the provisions of section 37 of the Act and therefore the order of the learned CIT(A) on this issue is upheld. Consequently, Ground No.4 of Revenue's appeal dismissed."*

7.5 For year under consideration, it is not the case revenue that expenditure has not been incurred. As the facts are identical, and the expenditure incurred for CSR are of similar nature, in our opinion they are allowable as expenditure under section 37 of the Act, as it has been clearly incurred for furtherance of assessee's business in other parts of the country. Respectfully following the view taken by the co-ordinate Bench herein above we do not find any infirmity in the view taken by the Ld.CIT(A).

**Accordingly this ground is raised by revenue for both the years under consideration stands dismissed.**

**8. Ground No.5** is alleged by revenue against deleting the disallowance of provision of leave salary expenses.

8.1 The Ld.DR submitted that, assessing officer disallowed the sum towards provision made by assessee for leave salary

expenses under section 43B (f), for the reason that, the same has not been actually paid. The Ld.AO however for assessment AY 2014-15 restricted the disallowance to the amount that was not paid by the assessee during the relevant year under consideration.

On the contrary, the Ld.AR relied on observations of Ld.CIT(A).

8.2 We have perused submissions advanced by both sides in the light of records placed before us.

8.3 This issue now sand settle against assessee by the decision of *Hon'ble Supreme Court* in case of *UOI vs. Exide Industries* reported in *116 taxman.com 378. Hon'ble Supreme Court* upheld constitutional validity for the allowability of deduction for leave encashment under Section 43B(f) of the Income Tax Act, 1961, on payment basis.

8.4 We therefore direct the Ld.AO to compute the disallowance to the extent of unpaid amount, in accordance with the ratio of Hon'ble Supreme Court.

**Accordingly this ground is raised by revenue for both the years under consideration stands allowed.**

**Assessee's appeal for assessment year 2014-15**

9. The only issue alleged by assessee is in respect of the claim raised under section 35AD of the act.

9.1 Authorities below rejected the claim of assessee as it was not made before the Ld.AO by way of revised return.

9.2 We have perused the submissions advanced by both sides and record placed before us.

9.3 Similar issue was considered by *Hon'ble Supreme Court* in case of *Goetze India Ltd vs.CIT* reported in *157 Taxman 1.* The

*Hon'ble Court* held that the claim of deduction not made in the return cannot be entertained by the assessing officer otherwise than by filing a revised return. The court also held that the decision does not impinge upon the powers of the *Tribunal* under section 254 of the Act.

9.4 Respectfully following the above ratio, we remand this issue back to the Ld.AO for consideration. The Ld.AO shall verify the claim of assessee based on the details filed by assessee. The Ld.AO shall then consider the claim on accordance with law.

**Accordingly this ground raised by assessee stands allowed for statistical purposes.**

**In the result appeals filed by revenue stands partly allowed and appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 24th Aug, 2021

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| Sd/- | Sd/- |
| (B. R. BASKARAN) | (BEENA PILLAI) |
| Accountant Member | Judicial Member |

Bangalore,
Dated, the 24th Aug, 2021.
/Vms/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

| | | **Date** | **Initial** | |
|---|---|---|---|---|
| 1. | Draft dictated on | On Dragon | | Sr.PS |
| 2. | Draft placed before author | -08-2021 | | Sr.PS |
| 3. | Draft proposed & placed before the second member | -08-2021 | | JM/AM |
| 4. | Draft discussed/approved by Second Member. | -08-2021 | | JM/AM |
| 5. | Approved Draft comes to the Sr.PS/PS | -08-2021 | | Sr.PS/PS |
| 6. | Kept for pronouncement on | -08-2021 | | Sr.PS |
| 7. | Date of uploading the order on Website | -08-2021 | | Sr.PS |
| 8. | If not uploaded, furnish the reason | -- | | Sr.PS |
| 9. | File sent to the Bench Clerk | -08-2021 | | Sr.PS |
| 10. | Date on which file goes to the AR | | | |
| 11. | Date on which file goes to the Head Clerk. | | | |
| 12. | Date of dispatch of Order. | | | |
| 13. | Draft dictation sheets are attached | No | | Sr.PS |