

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA***  
***TAX APPEALS NO.52/2018, 55/2018, 56/2018 & 60/2018***  
***TAX APPEAL NO.52 OF 2018***

The Pr. Commissioner of Income Tax,  
Aayakar Bhavan, Patto Plaza,  
Panaji Goa. .... Appellant

Versus

Shri Rajesh Prakash Timblo,  
Timblo Niwas, Aquem Alto,  
Margao Goa 403 601 .... Respondent

***WITH***  
***TAX APPEAL NO.55 OF 2018***

The Pr. Commissioner of Income Tax,  
Aayakar Bhavan, Patto Plaza,  
Panaji Goa. .... Appellant

Versus

Smt. Vidya Rajesh Timblo,  
Timblo Niwas, Aquem Alto,  
Margao Goa 403 601 .... Respondent

***WITH***  
***TAX APPEAL NO.56 OF 2018***

The Pr. Commissioner of Income Tax,  
Aayakar Bhavan, Patto Plaza,  
Panaji Goa. .... Appellant

Versus

Smt. Vidya Rajesh Timblo,  
Timblo Niwas, Aquem Alto,  
Margao Goa 403 601 .... Respondent

**WITH**  
**TAX APPEAL NO.60 OF 2018**

The Pr. Commissioner of Income Tax,  
Aayakar Bhavan, Patto Plaza,  
Panaji Goa.

.... Appellant

Versus

Shri Rajesh Prakash Timblo,  
Timblo Niwas, Aquem Alto,  
Margao Goa

.... Respondent

Ms. Susan Linhares, Advocate for the Appellant.

Mr. Jitendra Jain with Mr. Gaurang D. Panandiker, Advocates for  
the Respondent.

***Coram : R.D. Dhanuka &  
Prithviraj K. Chavan, JJ.***

***Date : 15<sup>th</sup> April, 2019.***

**ORAL JUDGMENT : (Per R.D. Dhanuka, J.)**

1. These Appeals under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') arise against the common order dated 5.9.2017 in ITA No.215-216/PAN/2017 which are subject matters of Tax Appeal No.52/2018 and Tax Appeal No. 60/2018 for the Assessment Year 2011-12 and 2012-13 in case of Rajesh P. Timblo and the Order of the Income Tax Appellate Tribunal, Panaji Bench, Panaji in ITA Nos.217 & 218/PAN/2017 for the Assessment Year 2011-12 and 2012-13, in case of Smt. Vidya Rajesh Timblo which

are subject matters of Tax Appeals No.55/2018 and 56/2018.

2. All the aforesaid Appeals were heard together and are being disposed of by a common judgment.

3. The Revenue has urged the following questions of law for our consideration.

(A) Whether in law and circumstances of the case the ITAT has erred in deleting the action of the Assessing Officer of disallowing the expenses of ₹ 6,96,00,000/- in respect of payment of liquidated damages made for cancellation of contract during F.Y. 2009-10 ?

(B) Whether in law and circumstances of the case the ITAT was unjustified in allowing the claim made by the appellant at the time of hearing of appeal in respect of allowance of liquidated damages of ₹6,96,00,000/- paid for the cancellation of contract accrued the said sum during the F.Y. 2009-10 ?

(C) Whether in law and circumstances of the case the ITAT has erred in allowing the expenditure of ₹6,96,00,000/- (pertaining to the liquidated damages) accrued in the earlier year that is Assessment year 2010-11 and therefore the same cannot be allowed for the year under consideration ?

(D) Whether in law and circumstances of the case the ITAT erred in deleting the action of the Assessing Officer of disallowing the deferred revenue expenditure of ₹50,82,117/- claimed by the respondent in return of income filed for the year, when it was established by the A.O. that the expenditure claimed by the Assessee of ₹1,67,95,982/- for the TMPL has accrued in F.Y.2009-10. Also the expenditure claimed by the assessee of ₹6,96,00,000/- for TMPL has accrued in F.Y. 2009-10. Thus the total amount accrued in F.Y. 2009-10 comes to ₹8,63,95,982/- is divided into 17 installments by the assessee and claimed deferred expenditure of ₹ 50,82,117/- in each year which the AO has disallowed and added to the income ?

4. Some of the relevant facts for the purpose of deciding these appeals are as under :

(A) The Assesseees were engaged in the business of extraction and sale of iron ore. In so far as the facts in Tax Appeal No.52/2018 and Tax Appeal No.60/2018 are concerned, the assessee Mr. Rajesh Prakash Timblo was granted mining lease by the State Government, which was renewed for a period of 20 years from 2008 upto 2018 on 21/09/2000. The Assessee entered into an agreement for extraction

and transportation of iron ore with M/s. Timblo Minerals Pvt. Ltd. and granted extraction of iron ore right in such mining lease to the said M/s. Timblo Mineral Pvt. Ltd.. The said extraction agreement was renewable automatically every five years till the iron ore contained therein were economically explorable.

(B) On 5<sup>th</sup> March, 2010, the Assessee and the said M/s. Timblo Mineral Pvt. Ltd. entered into an agreement with other parties as well, consisting of said M/s. Timblo Mineral Pvt. Ltd.. Under the said agreement, the Assessee agreed to pay ₹ 6,96,00,000/- to the said M/s. Timblo Minerals Pvt. Ltd. in installments. It was agreed that the first intallment of Rs.2,32,13,982/- would be paid upon deduction of tax at source amounting to Rs.4,64,280/- vide cheque No.018256 dated 5<sup>th</sup> March, 2010 in favour of M/s. Timblo Minerals Pvt. Ltd. It was agreed that the second installment of Rs.2,32,17,000/- would be paid upon deduction of tax at source amounting to Rs.4,64,340/- by cheques dated 15<sup>th</sup> April 2010 drawn in favour of M/s. Timblo Minerals Pvt. Ltd.. It was further agreed that the third installment of Rs.2,31,69,018/- to be paid upon deduction of tax at source amounting to Rs.4,63,380/- by cheques dated 20<sup>th</sup> May, 2010 in favour of M/s. Timblo Minerals Pvt. Ltd. The Assessee accordingly paid the three installments in the month of March, April and May, 2010 respectively, after deducting tax at source.

(C) In so far as payment of Rs.2,32,13,982 made on 5<sup>th</sup> March, 2010 by the Assessee to the said M/s. Timblo Minerals Pvt. Ltd. is concerned, the Assessee had deposited the tax deducted at source amounting to Rs.4,64,280/- on 29<sup>th</sup> May, 2010. In respect of the second installment of Rs.2,32,17,000/- paid on 15<sup>th</sup> April, 2010, the Assessee had deducted the tax at source at Rs.6,64,340/- and deposited with the Department on 18<sup>th</sup> September, 2010. In respect of payment of Rs.2,31,69,018/- paid on 20<sup>th</sup> May, 2010, the Assessee had deducted tax at source amounting to Rs.4,63,280/- and deposited the said amount with the Department on 5<sup>th</sup> September, 2011.

(D) In so far as Assessment Year 2011-12 is concerned, Mr. Rajesh Prakash Timblo filed his return of income on 29.9.2011, declaring total income of Rs. 81,20,660/-. The Assessing Officer, vide order dated 27<sup>th</sup> March, 2014, made various additions amounting to Rs. 29,67,871/-. The Assessee was aggrieved by the disallowance of deferred expenditure amounting to Rs.50,82,117/-. The Assessee filed an appeal before the Commissioner of Income Tax (Appeals) Panaji-1. By an order dated 20<sup>th</sup> June, 2017, the learned CIT (A) upheld the order made by the Assessing Officer and dismissed the appeal filed by the said Assessee. The Assessee filed an appeal before the Income Tax Appellate Tribunal, Panaji Bench (for short 'Tribunal') being ITA No.215/PAN/2017.

(E) By an order dated 5<sup>th</sup> September, 2017, the Tribunal allowed the said Appeal filed by the Assessee on the issue of deferred revenue expenditure in respect of payment made towards liquidated damages amounting to Rs.6,96,00,000/- and deduction amounting to Rs.9,87,993/- being 1/17<sup>th</sup> of Rs.1,67,95,982/-.

(F) In so far as Assessment Year 2012-13 is concerned, the said Assessee Mr. Rajesh Prakash Timblo filed his return of income on 28<sup>th</sup> September, 2012, declaring total income of Rs.1,47,12,570/-. The Assessing Officer, by order dated 4<sup>th</sup> March, 2015 made various additions, amounting to Rs. 34,90,325/-. The Assessee being aggrieved by the disallowance of deferred expenditure of Rs. 50,82,117/-, preferred an appeal before the CIT(A). The learned CIT(A), by an order dated 7<sup>th</sup> June, 2017, upheld the additions made by the Assessing Officer and dismissed the appeal filed by the said Assessee. The Tribunal, by an order dated 5<sup>th</sup> September, 2017, allowed the appeal filed by the said Assessee bearing ITA No 216/PAN/2017 filed by the said Assessee on the issue of deferred revenue expenditure related to payment of liquidated damages amounting to Rs.6,96,00,000/- and deduction amounting to Rs.9,87,993/- being 1/17 of Rs.1,67,95,982/-.

(G) In so far as the said Assessee Smt. Vidya Rajesh Timblo is concerned, on 21<sup>st</sup> September, 2000 the said Assessee had entered

into an agreement with M/s. Timblo Minerals Pvt. Ltd., granting extraction of iron ore rights in respect of the mining lease in favour of the said Company on the terms and conditions stipulated in the said agreement. Mr. Chandrakant Fondu Naik was a confirming party to the said agreement. In March, 2010, the said Assessee and the said M/s. Timblo Minerals Pvt. Ltd. entered into an agreement intending to terminate the said agreement entered into between them on 21<sup>st</sup> September, 2000 on the condition that the said Assessee would pay a sum of Rs.6,96,00,000/- in three installments on or before 5<sup>th</sup> September, 2010. The other facts of these two appeals are identical to the facts in Tax Appeal No.52/2018.

(H) In so far as Assessment Year 2011-12 is concerned, the said Assessee Smt. Vidya Rajesh Timblo filed a return of income on 3<sup>rd</sup> September, 2011 declaring total income of Rs.82,27,250/-. By an order dated 10<sup>th</sup> March, 2016, the Assessing Officer made various additions amounting to Rs.29,67,871/-. The said Assessee was aggrieved by the disallowance of deferred expenditure amounting to Rs.50,82,117/-. The CIT(A), by an order dated 27<sup>th</sup> June, 2017, dismissed the appeal filed by the Assessee. The Tribunal by an order dated 5<sup>th</sup> September, 2017, allowed the Appeal of the said Assessee i.e. No.217/PAN/2017 filed by the said Assessee on the issue of deferred revenue expenditure relating to payment of liquidated damages amounting to Rs.6,96,00,000/- and deduction amounting

to Rs.9,87,993/- being 1/17 of Rs.1,67,95,982/-.

(I) In so far as the Assessment Year 2012-13 is concerned, the said Assessee Smt. Vidya Rajesh Timblo filed a return of income on 16<sup>th</sup> October 2013, declaring total income of Rs.1,47,12,570/-. By an order dated 13<sup>th</sup> March, 2015, the Assessing Officer made various additions amounting to Rs.34,90,325/-. The said Assessee was aggrieved by the disallowance of deferred expenditure amounting to Rs.50,82,117/-. The CIT(A), by an order dated 7<sup>th</sup> June, 2017, upheld the additions made by the Assessing Officer and dismissed the appeal filed by the said Assessee. The Tribunal by an order dated 5<sup>th</sup> September, 2017, allowed the Appeal No.218/PAN/2017 filed by the said Assessee on the issue of deferred revenue expenditure related to payment of liquidated damages amounting to Rs.6,96,00,000/- and deduction amounting to Rs.9,87,993/- being 1/17 of Rs.1,67,95,982/-.

5. Being aggrieved by the order dated 5<sup>th</sup> September, 2107, passed by the Tribunal, the Revenue has filed these four Appeals under Section 260-A of the Act.

6. Ms. Linhares, learned Counsel for the Revenue invited our attention to various findings rendered by the Assessing Officer in the order dated 13 March 2015 and also in the order dated 27 June

2017 passed by the CIT(A) and would submit that the Assessing Officer had rightly disallowed the expenditure incurred by the Assesseees in respect of the payment towards liquidated damages for cancellation of the contract and deferred revenue expenditure in the Assessment Year 2011-12. She submits that the agreement was entered into between the Assesseees and the said M/s. Timblo Minerals Pvt. Ltd. in the Assessment Year 2010-11 and, thus, both the Assesseees were entitled to claim such deductions only in the Assessment Year 2010-11 and not in the Assessment Year 2011-12 or in the subsequent years.

7. It is submitted by the learned Counsel for the Revenue that the learned Tribunal could not have set aside the findings rendered by the learned Assessing Officer and the CIT(A).

8. Mr. Jitendra Jain, learned Counsel for the Assesseees, on the other hand, invited our attention to various findings of fact rendered by the Tribunal in the order and would submit that the Tribunal has rightly interpreted the agreement entered into by both the Assesseees with M/s. Timblo Minerals Pvt. Ltd. He submits that though the said agreement intending to terminate the agreement entered into between the Assesseees and the said M/s. Timblo Minerals Pvt. Ltd. was executed in the month of March, 2010 falling within the Assessment Year 2010-11, it was clearly provided in the

said agreement that the said agreement would stand terminated only on fulfilling the condition of payment of Rs.6,96,00,000/- by 5<sup>th</sup> September, 2010 and till then the parties would not claim any right under the original agreement. He submits that admittedly, the said sum of Rs. 6,96,00,000/- was paid by the Assesseees in three installments in the month of March, April and May, 2010 respectively. The final installment was paid on 20<sup>th</sup> May, 2010, which fell in the Assessment Year 2011-12.

9. It is submitted by the learned Counsel that the said contract entered into between the Assesseees and the said M/s. Timblo Minerals Pvt. Ltd., was a contingent contract and came to an end only upon the Assesseees complying with the condition of making payment of the last installment to the said M/s. Timblo Minerals Pvt. Ltd. which, admittedly, fell within the period of the Assessment Year 2011-12.

10. It is submitted by the learned Counsel that the Tribunal has interpreted the Clauses 1, 4, 5 and 6 of the Agreement entered by the Assesseees with the said M/s. Timblo Minerals Pvt. Ltd. and has rightly held that the agreement came to be terminated only upon payment of last installment of the liquidated damages by the Assesseees in favour of M/s. Timblo Minerals Pvt. Ltd. which fell in the period of Assessment Year 2011-12. It is submitted that the

findings of fact rendered by the Tribunal being not perverse, cannot be interfered with by this Court in this Appeal under Section 260-A of the Act.

11. The learned Counsel for the Assessee strongly relied on the Judgment of the Supreme Court in the case of ***Taparia Tools Ltd. vs. Joint Commissioner of Income-tax, Nasik***, [2015] 55 taxmann.com 361 (SC) and more particularly paragraphs 17 and 18 wherein it has been held by the Supreme Court that though the entire expenditure was incurred in that particular year, it was the Assessee who wanted the spread over. The Court was conscious of the principle that normally revenue expenditure is to be allowed in the same year in which it is incurred, but at the instance of the Assessee, who wanted spreading over, the Court agreed to allow the Assessee that benefit when it was found that there was a continuing benefit to the business of the company over the entire period. If the Assessee claimed that expenditure in that year, the IT Department cannot deny the same. However, in those cases where the Assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied, which upto then had been restricted to the cases of debentures. The learned Counsel for the Assessee submits that the rate of income tax, in so far as the Assesses in these four appeals, for the Assessment Years 2010-11 and 2011-12 was uniform.

12. The learned Counsel for the Assesseees also relied on the Judgment of this Court in the case of ***Commissioner of Income-tax vs. Nagri Mills Co. Ltd.*** 1958 33 ITR 681 (Bom.) and would submit that since the tax chargeable on the Assesseees in the Assessment Years 2010-11 and 2011-12 were at uniform rates, the deduction whether claimed by the Assesseees in the Assessment Year 2010-11 or in the Assessment Year 2011-12 was of no consequence to the revenue.

13. The learned Counsel for the Assesseees also placed reliance on the Judgment of the Delhi High Court in the case of ***Commissioner of Income-tax vs. Triveni Engg. & Industries Ltd.*** [2011] 196 TAXMAN 94 (Delhi) and in particular, paragraphs 1 and 12 and would submit that the Delhi High Court in the said Judgment has followed the Judgment of this Court in the case of ***Commissioner of Income-tax vs. Nagri Mills Co. Ltd.*** (supra).

14. The learned Counsel for the Assesseees placed reliance on the Judgment of this Court in the case of ***Commissioner of Income-tax-15 vs. Aditya Builders*** [2017] 79 taxmann.com 394 (Bombay) which has followed the Judgment of this Court in the case of ***Commissioner of Income-tax vs. Nagri Mills Co. Ltd.*** (supra). It is submitted that the tax rates in both the assessment years were uniform. The issue raised by the Revenue in these four appeals that

the Assessee could not have claimed deductions in the Assessment Year 2011-12 and ought to have claimed deduction in the Assessment Year 2010-11 is academic and does not raise any substantial question of law. He submits that none of the questions raised by the Revenue arise any substantial question of law.

15. A perusal of the order passed by the Assessing Officer indicates that according to him, the liability to pay Rs.6.96 crores had been incurred in the Assessment Year 2010-11 since the agreement under which the said amount was agreed to be paid was entered into on 5<sup>th</sup> March, 2010. He accordingly disallowed the claim of the Assessee amounting to Rs.6.96 crores for the Assessment Year 2011-12, which order came to be confirmed by the CIT(A). The Tribunal, however, rightly interpreted various clauses of the agreement entered into between the Assessee and the said M/s. Timblo Minerals Pvt. Ltd. and more particularly clauses 1, 4, 5 and 6, which recorded the terms of payment of the said sum in three installments. Admittedly, the second and the third installments fell after 1<sup>st</sup> April, 2010 and during the Assessment Year 2011-12. The Tribunal also interpreted those terms and has rightly held that the said agreement dated 5<sup>th</sup> March, 2010 would not have any effect till the full and final sum of Rs.6.96 crores was released to the said M/s. Timblo Minerals Pvt. Ltd. and would have stand cancelled only if the amount mentioned therein would have been paid in installments as provided therein.

16. In our view, the Tribunal rightly held that the agreement dated 5<sup>th</sup> March, 2010 would not have become effective on the date of its execution, but would stand effective only when the said amount of Rs.6.96 crores was received by the said M/s. Timblo Minerals Pvt. Ltd. The Tribunal rightly held that the liability of the Assessee accrued when the said agreement became effective, which was only after making full payment by the Assessee to the said M/s. Timblo Minerals Pvt. Ltd., in terms of the provisions thereof. It is held by the Tribunal that the amount became due only during the Assessment Year 2011-12 and not prior thereto.

17. A perusal of clauses 1, 4, 5 and 6 indicates that the said agreement dated 5<sup>th</sup> March, 2010 entered into between the Assessee and M/s. Timblo Minerals Pvt. Ltd. was a contingent contract under Section 32 of the Contract Act and could be enforced only when the conditions prescribed therein would have been complied with and not on the date of execution of the agreement. In our view, the Tribunal was thus right in holding that the Assessee was entitled to seek deductions in respect of the said amount in the Assessment Year 2011-12. We do not find any infirmity in the order passed by the Tribunal.

18. Be that as it may, it is not in dispute that the highest rate of income tax which attracted to both the Assesseees was uniform for

the Assessment Years 2010-11 and 2011-12. This Court in the case of *Commissioner of Income-tax vs. Nagri Mills Co. Ltd. (supra)* has considered this issue as to which year in which the deduction is allowable may be material, when the rate of tax chargeable on the Assessee in two different years is different. This Court held that in case of income of a company, tax attracting at an uniform rate, whether the deduction in respect of the expenditure claimed in that matter was granted in the Assessment Year 1952-53 or in the assessment year corresponding to the accounting year 1952, the Department would not fritter away its energies in fighting matters of this kind. It is held that however judging from the references that come up before the Court every now and then, the Department appears to delight in raising points of character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him, whether in one year or the other.

19. This Judgment in the case of *Commissioner of Income-tax vs. Nagri Mills Co. Ltd. (supra)* has been followed by this Court in the case of *Commissioner of Income-tax-15 vs. Aditya Builders (supra)*; Delhi High Court in the case of *Commissioner of Income-tax vs. Triveni Engg. & Industries Ltd (supra)* and the Gujarat High Court in the case of *Commissioner of Income-tax vs. Gujarat State Forest Department*, [2007] 163 Taxman 547 (Guj.). In our view, the Judgments of this Court in the

case of *Commissioner of Income-tax vs. Nagri Mills Co. Ltd.* (supra) and in the case of *Commissioner of Income-tax-15 vs. Aditya Builders* (supra) squarely apply to the facts of this case. We are respectfully bound by the said Judgments. We are in agreement with the view expressed by the Delhi High Court in the case of *Commissioner of Income-tax vs. Triveni Engg. & Industries Ltd* (supra) and the Judgment of the Gujarat High Court in the case of *Commissioner of Income-tax vs. Gujarat State Forest Department* (supra).

20. Hon'ble Supreme Court in the case of *Taparia Tools Ltd. vs. Joint Commissioner of Income-tax, Nasik* (supra) has considered the facts where the Assessee wanted to spread over the entire expenditure incurred in a particular financial year. It is held that the Court was conscious of the principle that normally revenue expenditure is to be allowed in the same year in which it is incurred, but at the instance of the Assessee who wanted spreading over, the Court agreed to allow the Assessee that benefit when it was found that there was a continuing benefit to the business of the company over the entire period. It is further held that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. However, in those cases where the Assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of

‘Matching Concept’ is satisfied which upto now has been restricted to the cases of debentures. The Supreme Court held that the Assessee would be entitled deduction of the entire expenditure of Rs.2,72,25,000 and Rs.55,00,000 respectively in the year in which the amount was actually paid. In our view, the Judgment of the Supreme Court would assist the case of the Assessee herein.

21. In our view, since the rate of income tax in the Assessment Years 2010-11 and 2011-12 being uniform, it was of no consequence to the Revenue whether to allow the said expenditure in the Assessment Year 2010-11 or 2011-12. The issue raised by the Revenue in these Appeals is thus academic and does not give rise to any substantial question of law. The questions thus raised by the Revenue referred to aforesaid in paragraph 3(A), (B) and (C) do not raise any substantial question of law.

22. In so far as disallowance of the deferred revenue expenditure of Rs.50,82,117/- claimed by the Assessee in return of income filed for the relevant year is concerned, there is no dispute between the parties that the expenditure claimed by the Assessee was the revenue expenditure. The Assessee had claimed deduction at the rate of 1/17<sup>th</sup> of the said expenditure while filing the return of income in the impugned assessment year. But during the course of assessment proceedings, the Assessee made a claim for full sum of

Rs.6.96 crores. There was no dispute about the genuineness as well as the nature of expenditure. It was urged by the Assessee before the Tribunal that in view of first proviso to Section 40(a)(ia) of the Act, since the Assessee had deducted the tax on the payment of Rs.2.32 crores, and Rs. 2.31 crores, in the Assessment Year 2011-12 and 2012-13, the Assessee be allowed deduction in respect of said sum in those years.

23. The Tribunal considered this submission in great detail in paragraph 8 of the impugned order and, after considering the fact that the amounts of TDS in the sum of Rs.4,64,280/-, Rs. 4,64,340/- and Rs.4,64,380/- which were deducted from the amounts paid under those three installments and were deposited on 29<sup>th</sup> May, 2010, 18<sup>th</sup> August, 2010 and 5<sup>th</sup> September 2011 respectively, the Tribunal held that the deductions for the second and third installment were made during the Assessment Year 2011-12 and thus no disallowance under Section 40(a)(ia) could be made. The deductions for both the payments were to be made even on the basis of Section 40(a)(ia) during the Assessment Year 2011-12

24. In so far as the tax deducted during the Assessment Year 2010-11 is concerned, it is held by the Tribunal that since the liability was as per interpretation of the accrual towards the said expenditure in the Assessment Year 2011-12 and since the Assessee had made

payment on 5<sup>th</sup> March, 2010, they were bound to deduct the tax at source even if the liability had accrued during the Assessment Year 2010-11 and accordingly, tax was deducted at source and was paid. The Tribunal, accordingly, held that the said sum of Rs.2,32,13,982/- was also not hit by the provisions of Section 40(a)(ia) of the Act and no disallowance under the said provision could be made during the Assessment Year 2011-12.

25. In paragraph 11.1 of the impugned order, the Tribunal held that following the rule of consistency, deduction to the Assessee amounting to Rs.9,87,993/- being 1/17<sup>th</sup> of Rs.1,67,95,982/- was allowed. These findings of fact rendered by the Tribunal in the impugned order are admittedly not impugned by the Revenue and have attained finality. In our view, the issue raised by the Revenue recorded in paragraph 3(D) aforesaid is also academic and does not raise any substantial question of law.

26. In our view, all these four appeals are devoid of any merits and are accordingly dismissed. There shall be no order as to costs.

***Prithviraj K. Chavan, J.***

***R.D. Dhanuka, J.***