IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.131/GTY/2023
Assessment Year: 2020-21

Deputy Commissioner of Income-tax, Central Circle-1, Guwahati,	Vs.	ABCI Infrastructures Private Limited, 6th Floor, Vasundhara, 2/7, Sarat Bose Road, Bhowanipore, Kolkata-700020. (PAN: AACCM3317R)
(Appellant)		**(Respondent)**

Present for:
Appellant by : Shri Arun Bhowmick, JCIT
Respondent by : Shri S. K. Tulsiyan, Advocate

Date of Hearing : 11.01.2024
Date of Pronouncement : 17.01.2024

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Appeal filed by the revenue is against the order of Ld. CIT(A), Central NER, Guwahati dated 27.07.2022 passed against the assessment order by DCIT, Central Circle-1, Guwahati u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 29.09.2021 for AY 2020-21.

2. Grounds raised by the revenue are reproduced as under:

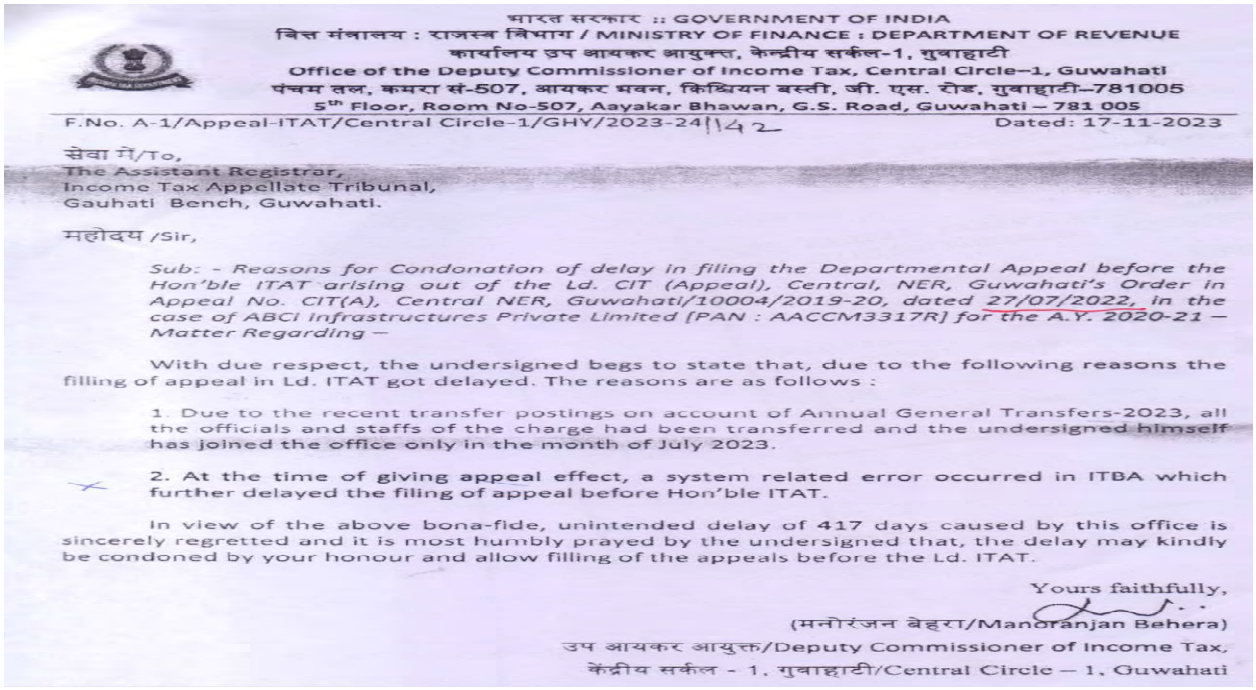
"1. Ld. CIT(A) has erred by deleting the addition of Rs.48,49,69,851/- i.e. the deduction claimed by the assessee for the AY 2020-21 u/s. 80-IA of the Act by not considering the fact that the assessee had not claimed deduction u/s. 80-IA in its original returns of income for the previous assessment years i.e. for 2017-18, 2018-19 and 2019-20 and all the deductions u/s. 80-IA for the AY 2017-18 onwards were claimed only after the search.

2. Ld. CIT(A) has erred by deleting the addition of Rs.48,49,69,851/- i.e. the deduction claimed by the assessee for the AY 2020-21) u/s. 80-IA of the Act by not considering the fact that by virtue of second proviso to clause (i) of sub-section (4) of section 80IA, the claim of deductions u/s. 80-IA for the assessment years

succeeding the assessment year 2017-18 can only be admissible if the deduction u/s. 80IA related to the same project(s) has been allowed in the assessment year 2017-18.

3. Ld. CIT(A) has erred by deleting the addition of Rs.48,49,69,851/- i.e. The deduction claimed by the assessee for the AY 2020-21 u/s. 80IA of the Act by not considering the fact that for the purpose of section 80IA, the assessee was a "works Contractor" and NOT a "Developer of Infrastructure."

3. The present appeal filed by the revenue is delayed by 417 days for which an application for condonation of delay is placed on record vide letter dated 17.11.2023. The reason given in the said application for condonation of delay states that order of Ld CIT(A) was passed on 27.07.2022 according to which appeal should have been filed on or before 25.09.2022. However, the appeal has been filed on 17.11.2023. The reason given in the said application is that owing to transfer posting on account of annual general transfer-2023 the undersigned joined the office only in the month of July 2023 and, therefore, delay occurred. The said application is general and vague in nature which does not in any way justify the cause of delay of 417 days which is more than a year. The contents of the said application are reproduced as under:



भारत सरकार :: GOVERNMENT OF INDIA
वित्त मंत्रालय : राजस्व विभाग / MINISTRY OF FINANCE : DEPARTMENT OF REVENUE
कार्यालय उप आयकर आयुक्त, केन्द्रीय सर्कल-1, गुवाहाटी
Office of the Deputy Commissioner of Income Tax, Central Circle–1, Guwahati
पंचम तल, कमरा सं-507, आयकर भवन, किश्रियन बस्ती, जी. एस. रोड, गुवाहाटी–781005
5th Floor, Room No-507, Aayakar Bhawan, G.S. Road, Guwahati – 781 005

F.No. A-1/Appeal-ITAT/Central Circle-1/GHY/2023-24/1142 Dated: 17-11-2023

सेवा में/To,
The Assistant Registrar,
Income Tax Appellate Tribunal,
Gauhati Bench, Guwahati.

महोदय /Sir,

Sub: - Reasons for Condonation of delay in filing the Departmental Appeal before the Hon'ble ITAT arising out of the Ld. CIT (Appeal), Central, NER, Guwahati's Order in Appeal No. CIT(A), Central NER, Guwahati/10004/2019-20, dated 27/07/2022, in the case of ABCI Infrastructures Private Limited [PAN : AACCM3317R] for the A.Y. 2020-21 – Matter Regarding –

With due respect, the undersigned begs to state that, due to the following reasons the filling of appeal in Ld. ITAT got delayed. The reasons are as follows :

1. Due to the recent transfer postings on account of Annual General Transfers-2023, all the officials and staffs of the charge had been transferred and the undersigned himself has joined the office only in the month of July 2023.

2. At the time of giving appeal effect, a system related error occurred in ITBA which further delayed the filing of appeal before Hon'ble ITAT.

In view of the above bona-fide, unintended delay of 417 days caused by this office is sincerely regretted and it is most humbly prayed by the undersigned that, the delay may kindly be condoned by your honour and allow filling of the appeals before the Ld. ITAT.

Yours faithfully,

(मनोरंजन बेहरा/Manoranjan Behera)
उप आयकर आयुक्त/Deputy Commissioner of Income Tax,
केंद्रीय सर्कल - 1, गुवाहाटी/Central Circle – 1, Guwahati

4. From the perusal of the grounds of appeal taken by the revenue, we note that revenue has stated that the assessee had not claimed deduction u/s. 80-IA in its original returns of income for the preceding assessment years i.e. AY 2017-18, 2018-19 and 2019-20 and that all the deductions were claimed from AY 2017-18 onwards only after the search. In ground no. 2, revenue has stated that claim of deduction u/s. 80-IA for the subsequent assessment year i.e. after AY 2017-18 can be admissible only if the deduction relate to the same project has been allowed in the AY 2017-18. In ground no. 3, revenue has claimed that assessee does not fall within the ambit of expression "*development of infrastructure"* rather it is to be treated as "*works contractor".* On confrontation of this to both the parties, it was brought to the notice of the bench that the issues in the present appeal have already been decided by the Co-ordinate Bench of ITAT in assessee's own case in ITA Nos. 37, 38 and 39/Ghy/2022 for AYs 2017-18, 2018-19 and 2019-20 as well as ITA No. 43/Ghy/2022 for AY 2014-15 vide consolidated order dated 05.04.2023 holding it in favour of the assessee by allowing the claim of deduction u/s. 80IA.

5. Considering the issue being covered by the decision of the coordinate bench of ITAT in assessee's own case for the preceding years on the identical issue, we are inclined to take up the present appeal to decide on its merit despite there being delay of 417 days at the end of the revenue for which no cogent and justifiable reasons have been placed on record.

6. The facts in brief are that assessee herein is a private limited company engaged in the business of civil construction and development of infrastructure projects such as roads, rails, bridges, tunnels, ports, harbours, runways etc. A search and seizure operation u/s 132(1) of the Act was conducted at the registered office of the assessee at Knowledge

Hub, DN 23, 2nd floor, Sector V, Salt Lake, Kolkata - 700 091, at its Corporate Office at Club Road, Silchar - 788 001 as well as at various branch offices of the assessee at Guwahati, Delhi Aizawl etc. on 20.09.2019. The search and seizure operation was finally concluded on 18.11.2019. Statedly, during the course of the search, no unaccounted cash, jewellery or any unaccounted/undisclosed asset was found or seized by the Search Team from the assessee. Prior to the search, the assessee was regularly assessed to income-tax at Kolkata. Consequent to the search and seizure operation, the assessee's case was centralized with ACIT/DCIT, Central-Circle-1, Guwahati vide order dated 23.12.2000 of the Ld. PCIT u/s 127 of the Act and accordingly, the jurisdiction over the case of the assessee was transferred from Kolkata to Guwahati.

7. The year under consideration before the Tribunal is AY 2020-21 which is the year of search by taking into account the date of conduct of search on 20.09.2019. It being the year of search the assessment has been completed u/s. 143(3) of the Act for the return filed by the assessee u/s. 139(1) of the Act wherein it had claimed deduction u/s. 80-IA of the Act. Return of income was filed for AY 2020-21 on 15.02.2021 reporting total income at Rs.81,80,12,850/- wherein deduction u/s. 80-IA of Rs.48,49,69,851/- was claimed. In the impugned assessment, Ld. AO has taken note of the claim made by assessee u/s. 80-IA for the preceding three years for AYs. 2017-18 to 2019-20 for the first time in the returns filed in response to notice issued u/s. 153A of the Act since these years formed part of the six years preceding the year of search as contemplated u/s. 153A of the Act. The observations made by the Ld. AO in this respect are extracted as under:

4. Deduction u/s 80-IA not claimed in original return of income but claimed in return of income e-filed in response to notice u/s 153A:

4.1 The assessee had e-filed original return on income for the assessment years 2017-18, 2018-19 and 2019-20 as under:

Assessment Year	Date of e-filing original ITR	Deduction claimed u/s 80-IA
2017-18	31/10/2017	0
2018-19	31/10/2018	0
2019-20	31/10/2019	0

4.2 In the said returns of income the assessee had not claimed any deduction under section 80-IA of the Income Tax Act, 1961 as tabulated above. However, in the returns of income e-filed in response to notice u/s 153A of the Income Tax Act, 1961 for the assessment years 2017-18, 2018-19 and 2019-20, the assessee claimed deduction u/s 80-IA of the Income Tax Act, 1961. Deduction u/s 80-IA were also claimed in the assessment year 2020-21.The deductions as claimed by the assessee in the respective returns of income as discussed above are tabulated below:

Assessment Year	Date of e-filing ITR u/s 153A	Deduction claimed u/s 80-IA (in Rs.)
2017-18	13/02/2021	4,34,49,829
2018-19	13/02/2021	35,43,62,431
2019-20	13/02/2021	33,71,04,495
2020-21	15/02/2021(Original ITR u/s 139)	48,49,69,851

4.3 Returns e-filed u/s 153A of the Act are in consequence of action taken under Section 132 of the Act on an assessee and thus can't be advantageous for the assessee since the object of the legislation is to assess undisclosed income. If new claims of deduction or exemption are allowed to such searched person, then the same shall become discriminatory to the other regular assessees who have lost a right as such to claim the deduction by efflux of time.

7.1. In this observation, Ld. AO has noted in para 4.2 that assessee claimed deduction u/s. 80-IA in AY 2020-21 also in its original return filed u/s. 139 on 15.02.2021. Ld. AO strongly agitated on the claim of the assessee of deduction u/s. 80-IA for AY 2017-18 in the return filed in response to notice u/s. 153A for which he observed as under:

> *"4.9. It is seen that for the AY 2017-18, the assessee e-filed the original return of income on 31.10.2017, which was the last date for filing of original return of income for that assessment year as per the statute. In its submission furnished before me on 24.02.2021, the assessee has claimed that the legal position that the assessee was eligible for claiming deduction u/s. 80-IA of the Act became clear to the assessee only after the decision of the Hon'ble ITAT in the case of the assessee company for the AY 2005-06 and 2006-07, which were passed during December 2017 and January 2018. Thus, assuming, but under no circumstances*

admitting, that the assessee was really entitled to any such deduction, the assessee still had time to e-file a revised return of income for the AY 2017-18 till 31.03.2018. However, no revised return of income was e-filed by the assessee for AY 2017-18. Rather, it was after one and a half years after the search was conducted on the assessee (on 20.09.2019) that the assessee claimed the deduction in return of income e-filed in response to notice u/s. 153A."

7.2. Based on the above observation, Ld. AO came to a conclusion that claim of deduction is not admissible for AY 2017-18 but also not admissible for the impugned Assessment Year i.e. AY 2020-21 made in the original return of income. He gave his finding in para 4.13 as under:

"4.13. The facts discussed in the foregoing paras make it amply clear that the claim of deduction made by the assessee under section 80-IA of the Income Tax Act, 1961 is not admissible. Thus, the claim of deduction u/s. 80-IA made by the assessee in the return of income e-filed for the assessment year 2017-18 in response to notice u/s. 153A of the Income Tax Act, 1961 but not made in the original return of income is thus being disallowed."

7.3. Ld. AO thus finally concluded in para 4.25 and 4.26 that relevant facts for AYs 2018-19 and 2019-20 are similar to AY 2017-18 and therefore, claim of deduction for these years are also not admissible. Basing his decision on the outcome of these three preceding assessment years, Ld. AO concluded that claim of deduction u/s. 80-IA for AY 2020-21 is also not admissible.

7.4. For the purpose of understanding, the outcome of appeal for the three preceding assessment years, we perused the order of Co-ordinate Bench in the assessee's own case (supra), wherein this issue which formed the basis of disallowing the claim by the Ld. AO as narrated above. We take recourse to the said order wherein identical issue has been elaborately dealt with. From the said order, we note that while making fresh claims for deduction u/s 80IA(4) of the Act in the Returns of Income filed in compliance to notices issued u/s 153A of the Act in respect of the preceding six assessment years, assessee filed the corresponding forms (being Report of Audit of the Eligible Undertaking from an Accountant) in Form 10CCB [as required u/s 80IA(7)]

electronically on 12.02.2021 i.e., within the time permitted as per Notices issued u/s 153A of the Act (i.e., before 15.02.2021). The reasons cited in the Assessment Orders u/s 153A/143(3) of the Act for disallowing the assessee's claim of deduction u/s 80IA(4)(i) of the Act can be broadly categorized as under:

> *"That, having not claimed the deduction in the Original Income Tax Return filed u/s 139(1) of the Act or by way of a Revised Return, the Assessee was not entitled to claim the deduction u/s 80IA(4)(i) of the Act in in the Returns filed by the Assessee in compliance to the Notice issued u/s 153A of the Act.*
>
> *That, the Audit Reports in Form-10CCB [as referred to u/s 80IA(7) of the Act] were not furnished by the Assessee within the time limit as referred to u/s 139(1) of the Act and, therefore, in the absence of the Audit Report (Form-10CCB) being filed by the Assessee within the time limit as referred to u/s 139(1), the Assessee could not claim the deduction u/s 80IA(4)(i) of the Act.*
>
> *That, for the purposes of Section 80IA, the Assessee was a "Works Contractor" and NOT a "Developer of Infrastructure".*

8. The relevant extracts from the said order on the observations and findings given by the Co-ordinate Bench are reproduced for ready reference:

> "61. The finding of ld. CIT(A) to the effect that for the purposes of Section 80IA of the Act, the assessee shall be treated as a "Developer of Infrastructure Facilities" and not a "Works Contractor" has not been contested/challenged by the Department in the appeals before us and has thus reached finality. Since the said issue does not constitute subject matter of appeals before us, the same is not required to be adjudicated by us.
>
> 62. Thus, the Revenue's appeal in the instant case is confined to the purported non-allowability of deductions claimed by the assessee u/s 80-IA(4) of the Act on the above two counts only, i.e., to put in other words - (i) as to whether fresh claim of deduction u/s 80IA(4) of the Act can be made in returns filed pursuant to section 153A of the Act when the same has not been claimed in original returns u/s 139 of the Act and (ii) whether, in terms of section 80IA(7) of the Act, the Audit Reports in Form 10CCB furnished within the time limit allowed in the Notices u/s 153A of the Act can be treated as filed within the time specified u/s 80IA(7) of the Act, given that the same were not filed with the original returns u/s 139 of the Act.
>
> 63. Barring the above, the Department has impliedly accepted the assessee's compliance with all the other conditions specified u/s 80IA(4) of the Act vis-à-vis the assessee's claim for deduction u/s 80IA(4) of the Act in respect of the impugned infrastructural facilities for the impugned AYs 2017-18, 2018-19 and 2019-20. The assessee has not filed any appeal before us to the extent the

impugned additions/disallowancesof Rs. 12,78,15,656/- in respect of deduction claimed u/s 80IA of the Act vis-à-vis two infrastructural projects for AY 2019-20 that have been sustained by the ld. CIT(A) in view of the applicability of second proviso appended to section 80IA(4)(i) of the Act to these projects. Hence, ld. CIT(A)'s findings on the above are left undisturbed.In the above backdrop, the grounds of appeal urged by the Department are decided.

64. Ground nos. 1 & 3 of the departmental appeal challenges the deletion of disallowance of fresh deductions claimed by the assessee u/s 80IA of the Act in returns filed pursuant to notice issued u/s 153A of the Act.

65. The relevant grounds are reiterated hereunder:

"1) On the facts and in the circumstances of the case the Ld. CIT(A) has erred in accepting the claim of deduction u/s 80IA which had not been made in the original return of income that was furnished u/s 139 but which claim has been made in the return for assessment of search case furnished consequent to notice u/s 153A, thus thereby arriving at paradoxical result that being a search case the assessee had derived more benefit which was not claimed in the original return furnished u/s 139.

3) The Ld. CIT(A) also erred in that the assessee never furnished revised return to the original return so as to claim for the deduction u/s 80IA."

66. As stated above, in the instant case, the dispute in the impugned appeal revolves around the fresh claims of deductions made by the assessee u/s 80IA(4)(i) of the Act in its Returns of Income filed pursuant to notices issued u/s 153A of the Act for AYs 2017-18, 2018-19 & 2019-20 although the said claims were not made in the original returns filed by the assessee u/s 139 of the Act for the said years. The factual matrix and the chronology of events leading to the impugned additions have already been alluded to by us earlier in this order.

67. Admittedly, the assessee company had been claiming similar deductions u/s 80IA(4)(i) of the Act in the past years but as per the assessee, discouraged by the litigation vis-à-vis its claim of deductions u/s 80IA of the Act in the past, the assessee company discontinued its claim of deduction since AY 2007-08 till the time it got the final Income-tax Appellate Tribunal (ITAT) Orders in December 2017 and January 2018 allowing the claim of the Assesseeu/s 80IA for AY 2005-06 [*vide ITAT order dt. 20.12.2017 in ITA No. 989/Kol/2013*] and for AY 2006-07 [*vide ITAT order dt. 10.01.2018 in ITA No. 990/Kol/2013*]. Pursuant to the search action, the purported valid claims of deductions u/s 80IA of the Act which were originally not made due to ignorance of correct legal position, were claimed for the impugned abated AYs 2017-18, 2018-19 & 2019-20 in view of the second proviso to Section 153A of the Act which provides that all pending assessments (wherein no such deductions had been claimed) and reassessments pending on the date of search shall abate.

68. The reasoning advanced by the ld. AO (insofar as relevant to the aforesaid grounds of appeal)in the assessment orders u/s 153A of the Act for the impugned years for disallowing the assessee's claim of deduction u/s 80IA of the Act in Returns of Income filed in response to notices issued u/s 153A of the Act for AYs 2017-18, 2018-19 & 2019-20 may be summarized as under:

"(i) That, returns e-filed u/s 153A of the Act were in consequence of action taken u/s 132 of the Act and thus, couldn't be advantageous to the Assessee since the object of the legislation was to assess undisclosed income. If new claims of deduction or exemption were allowed to searched persons, then the same would be discriminatory to the other regular assessees who had lost a right as such to claim the deduction by efflux of time.

(ii) That fresh claim of deduction u/s 80-IA in return u/s 153A, almost one and a half years after the search was conducted on the Assessee was an afterthoughtand mischief on the part of the Assessee to take wrongful advantage of opportunity to e-file return u/s 153A.

(iii) That, if the Assessee was allowed to claim an allowance, deduction etc. u/s 153A not claimed earlier in the original return, then it would mean that even in cases where the appeal arising out of the completed assessment had been decided by the CIT(A), ITAT and the High Court, on a notice issued u/s 153A, the A.O. would have the power to undo what had been concluded up to the High Court.

(iv) That, the decisions of the Hon'ble Kolkata ITAT in the Assessee's own case for AYs 2005-06 and 2006-07 were based on significantly different facts inasmuch as in those cases, the Assessee had claimed deduction u/s 80-IA in the original return of income whereas, in the present case for the impugned years, the Assessee had not claimed deduction u/s 80-IA in its original return of income.

(v) That, for the A.Y. 2017-18, the Assessee e-filed the original return of income on 31.10.2017. The ITAT order in respect of A.Ys 2005-06 and 2006-07 were passed during December 2017 and January 2018. Thus, assuming that the Assessee was entitled to any such deduction, it still had time to e-file a revised return of income for A.Y. 2017-18 claiming such deduction, which was not done.

(vi) That, notice u/s 143(2) of the Act for selecting the case of the Assessee in scrutiny for A.Y. 2017-18 was issued on 24.09.2018 whereas the search was conducted in the case of the Assessee only on 20.09.2019, which was almost one year after the notice u/s 143(2) was issued and served on the Assessee.During one year of pending scrutiny assessment proceedings before it was abated, no claim regarding deduction u/s 80-IA was made by the Assessee in any submission before the A.O. The original assessment was to get time barred on 31.12.2019. The Form 10CCB in the case of the Assessee was issued by the auditor on 12.02.2021. Thus, the Assessee could not claim that it had planned to claim any deduction u/s 80-IA before the A.O during the original assessment proceedings. Thus, the claim of the Assessee that the pending assessment proceedings for A.Y. 2017-18 was abated, provided no valid ground to the Assessee to claim in return u/s 153A a deduction which was not claimed in the original return of income."

69. The aforesaid assessment order(s) u/s 153A/143(3) of the Act for the impugned assessment years were challenged in appeal before ld. CIT(A). Apropos the impugned grounds challenging the disallowance of fresh claims of deduction u/s 80IA of the Act in returns filed u/s 153A of the Act, ld. CIT(A), after considering the submissions filed by both the sides, the various provisions of the Income-tax Act, 1961 and the relevant case-laws on the impugned

subject vide his order u/s 250 of the Act dated 27.07.2022finally held that even though the impugned claim of deduction u/s 80IA of the Act had not been made in the Original Income Tax Return filed u/s 139(1) of the Act or by way of a Revised Return, the assessee was still entitled to claim the deduction u/s 80IA(4)(i) of the Act in the Returns filed by the assessee u/s 153A of the Act in respect of the impugned assessment years.

70. Before dealing with the findings of ld. CIT(A) in respect of the above grounds, it is expedient to quote the relevant provisions of section 153A(1) of the Act (as applicable for the relevant period):

"Assessment in case of search or requisition.

153A. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years] :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years] :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso) specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years.

[Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.— For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceedings initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceedings, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.

Provided that such revival shall cease to have effect if such order of annulment is set aside.

Explanation- For removal of doubts, it is hereby declared that –

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

71. Firstly, analysing the provisions of Section 153A of the Act, ld. CIT(A) in his appellate order for the impugned yearshas observed (at pages 168 to 172 and pages 219 to 222 of his order) as under:

(i) That, in case of a search or requisition, in terms of section 153A of the Act, the A.O is compulsorily required to issue notices u/s 153A and the searched person is compulsorily required to file Returns of income afresh u/s 153A (and not u/s 139(1) or any other section) for each of the prescribed assessment years [i.e., six A.Ys immediately preceding the A.Y relevant to the P.Y. in which such search is conducted or requisition is made and for the relevant A.Y(s) defined under Explanation 1 to section 153A(2)]

(ii) That, the assessment or reassessment, if any, related to any of the prescribed assessment years, which is pending on the date of search or requisition and which is done on the basis of any earlier Return filed u/s 139(1) stands statutorily abated.

(iii) That, after filing of the Return u/s 153A, the earlier Return filed u/s 139(1) of the Act does not remain in existence, and thus cannot be used for the purpose of making the assessment or reassessment u/s 153A.

(iv) That, the Return filed u/s 153A is the only Return which is filed by the Assessee u/s 153A and which contains the details of the heads of income of the Assessee (including the additional income disclosed) by the Assessee after the search.

(v) That, the assessment or reassessment for each of the prescribed A.Ys is to be compulsorily made afresh by the A.O. u/s 153A of the Act only on the basis of the Return filed u/s 153A and not on the basis of Return filed u/s 139(1) or any other section.

(vi) That, the Return filed u/s 153A is not an addendum or an Annexure of the earlier Return filed u/s 139(1) and the proceedings u/s 153A are not an extension of the earlier proceedings which has either abated or remains unabated.

(vii) That, for one assessment, for the purpose of making an assessment, there can only be one return. After the search or requisition, for the purpose of making assessment or reassessment u/s 153A, details filed in both Returns [i.e., u/s 153A and u/s 139(1)] cannot be used by the A.O at his whims and fancies i.e., he cannot choose Return filed u/s 153A for the purpose of collecting taxes on additional income disclosed during the search and cannot rely on earlier Return u/s 139(1) for denying the benefit of deduction. The A.O cannot approbate and reprobate simultaneously.

(viii) That, while completing assessment u/s 153A, ALL provisions (including provisions of Chapter VI-A etc.) of the Act, "so far as may be", are applicable to the proceedings u/s 153A of the Act. The words "so far as may be" has been used to restrict the applicability of those provisions which are inconsistent with the provisions of section 153A. Meaning thereby that all other provisions of the Act (to the extent not inconsistent with the provisions of section 153A) will apply to a Return filed u/s 153A.

(ix) That, unlike the erstwhile provisions of section 158BC which contained a clear embargo on filing the revised return, current provisions of section 153Ado not contain any specific restriction. Rather, the current provisions are drafted in a way so as to align with the provisions contained in section 139 provided, they are not inconsistent with the provisions of section 153A. Thus, in the absence of specific restriction u/s 153A, it will be wrong to hold that the Assessee will be barred from filing even a revised return assuming he satisfies the conditions for filing such revised returns.

(x) That, from a perusal of the Explanation to Section 153A, the expression "save as otherwise provided in this Section, Section 153B and Section 153C, all other provisions of this Act shall apply to the assessment made under this section" it is evident that absence of any specific exceptions stipulated in the aforesaid sections, the provisions of all other sections of the Act will mutatis-

mutandis apply to the assessment framed u/s 153A. Thus, the A.O is required to permit the legally tenable allowance, deductions, relief, rebates etc. which have been claimed in return filed u/s 153A of the Act.

(xi) That, as per the Second Proviso to section 153A(1), any proceedings for assessment or reassessment of an assessee which are pending on the date of initiation of search or making a requisition will abate. Once those proceedings abate, the A.O is required to pass assessment orders for each of those years determining the total income of the assessee which will include both the income declared in the returns, if any, furnished by the Assessee as well as the undisclosed income, if any, unearthed during the search or requisition and declared by the assessee in Returns of Income filed u/s 153A of the Act.

(xii) That, since the "abatement" of proceedings means termination of the proceedings, the proceedings will have to be re-started. Section 153A talks about three things, viz.

(a) First, about abatement of pending proceedings which were initiated on the basis of the Return filed u/s 139

(b) Second, about filing of fresh Return of income u/s 153A of the Act, and

(c) Third, about assessment to be made on the basis of such fresh Return of Income u/s 153A.

(xiii) That, no other section in the Act talks about abatement of the proceedings. Thus, once section 153A is invoked, then all other proceedings and the basis of those proceedings are extinguished. The entire process of the Return of Income and Assessment is initiated de-novo and completed afresh after section 153A is invoked for the purpose of assessment or re-assessment.

(xiv) That, however, in case where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the total income, such orders will subsist at the time when a search is conducted or a requisition is made since there is no question of any abatement since no proceedings are pending. In this case, the A.O will assess or reassess the income strictly based on incriminating material found during the course of search or requisition.

(xv) That, however, the total income for such AYs (i.e., where the Assessments were pending i.e. where the Assessments had abated) will have to be computed by the A.O as a fresh exercise. Thus, in abated Assessments, the A.O retains the Original Jurisdiction as well as the Jurisdiction conferred on him u/s 153A. In order words, in case of abated assessments, the jurisdiction to make the original assessment and the assessment u/s 153A merges into one."

72. Ld. CIT(A), has thereafter gone on to demonstrate that the pending assessments for the impugned AYs 2017-18, 2018-19 & 2019-20 had abated in terms of Section 153A of the Act in the manner as follows:

TABLE-5

AY	*Date of filing the Original*	*Section under which*	*Date on which the Time limit as*	*Whether on the Date of*	*Section of the Notice by virtue of*	*If, the assessment was pending,*

	ITR	*the Original was ITR filed*	*per the Proviso to Section 143(2) expired*	*search any assessment was pending ? (Yes/No)*	*which assessment was pending*	*the Date off issuance of Notice u/s 143(2)/148*
2017-18	*31/10/2017*	*139(1)*	*30/09/2018*	*Yes*	*143(2)*	*24/09/2018*
2018-19	*31/10/2018*	*139(1)*	*30/09/2019*	*Yes(##)*	*Not Applicable*	*Not Applicable*
2019-20	*31/10/2019*	*139(1)*	*30/09/2020*	*Yes(**)*	*Not Applicable*	*Not Applicable*
2020-21	*15/02/2021*	*139(1)*		*Yes (**)*	*Not Applicable*	*Not Applicable*

(##) The assessment was pending since the time limit for service of Notice under Section 143(2) of the Act had not expired (the same would have expired on 30/09/2019). However, a Notice under Section 143(2) of the Act in respect of the AY 2018-19 was issued in the case of the Appellant on 22/09/2019.

(**) Since the ITR was filed only after the Date of the Search

Thus, in the case of the Appellant, as on the date of the Search (i.e. on 20.09.2019), the time limit to issue a Notice under Section 143(2) of the Act for and in respect of AY 2014-15 to AY 2016-17 had already expired and the assessments for these years could be said to have been completed (unabated) in the case of the Appellant in respect of these assessment years (i.e. AY 2014-15 to AY 2016-17).

Further, in the case of the Appellant, as on the date of the Search (i.e. on 20.09.2019), the assessment proceedings for AY 2017-18 (initiated vide Notice dated 24/09/2018, issued to the Appellant under Section 143(2) of the Income Tax Act, 1961) were pending.

Yet Further, in the case of the Appellant, as on the date of the Search (i.e. on 20.09.2019), the assessment proceedings for A Y2018-19 & AY2019-20 were pending since either the time limit for issuance to a Notice under Section 143(2) of the Income Tax Act, 1961 had not expired OR the time limit to furnish a Return of Income was still available.

Lastly, since on the date of Search (i.e. on 20.09.2019), the Appellant could not have furnished any Income Tax Act, 1961 in respect of the Assessment Year 2020-21 (relevant to the financial year 2019-20 during which the Search was conducted) since the relevant Financial Year had not expired and therefore the assessment proceedings for the aforesaid Assessment Year (i.e. AY 2020-21) were the Original/Regular Assessment Proceedings and could be said to pending.

74. Ld. CIT(A) (at pages 223 to 233 of his Order) has also taken note of the fact that the ld. AO, vide letter no. 88 dated 07.07.2022 had admitted that the original/regular assessment proceedings initiated u/s 143(3) of the Act for AYs

2017-18 & 2018-19 had abated and further for AY 2019-20, since the Income-tax Returns had not been furnished till the date of search (since the 'due date' as referred to in section 139(1) of the Act had not expired), therefore, the assessment proceedings for AY 2019-20 were also pending (i.e., were abated assessment). Based on the above, ld. CIT(A) has concluded that on the date of assuming jurisdiction u/s 153A of the Act, the prior pending assessments on the basis of original returns filed u/s 139 of the Act for AYs 2017-18, 2018-19 and 2019-20 got abated.

75. Ld. CIT(A) has thereafter relied upon the following case laws wherein it has been uniformly opined and held that Return of Income filed in response to notice u/s 153A of the Act is to be considered as Return filed u/s 139 of the Act and for all other provisions of the Act, the Return u/s 153A of the Act will be treated as the original Return u/s 139 of the Act:

"(i) KiritDahyabhai Patel vs. ACIT [Tax Appeal No. 1181 of 2010, Tax Appeal No. 1182 to 1185 of 2010, judgment dated 03/12/2014 – Gujarat High Court

(ii) PCIT vs. Neeraj Jindal [Income Tax Appeal No. 463 of 2016, judgment dated 09/02/2017; 79 Taxmann.com 96] – Delhi High Court

(iii) Shrikant Mohta vs. CIT [ITAT No.19 & 20 of 2015, GA No.246 & 247 of 2015, judgment dated 25/06/2018] – Calcutta High Court"

76. Further, ld. CIT(A) has relied upon the following case laws wherein after a detailed analysis of the relevant provisions of the Act, it has been unanimously held that the assessee is entitled to make a fresh claim of deduction, exemption, claim of expenses etc. in its Return of Income filed in response to notice u/s 153A of the Act which was not made in the Return of Income originally filed u/s 139 of the Act:

"(i) CIT vs. B.G. Shirke Construction Technology Ltd. [395 ITR 371; Income Tax Appeal No. 1392, 1531 of 2014, judgment dated 0/03/2017] – Bombay High Court

(ii) Pr. CIT vs. JSW Steel Limited [422 ITR 071; ITA No. 1934 of 2017, judgment dated 05/02/2020] – Bombay High Court

(iii) ACIT vs. Shantinath Detergents Pvt. Ltd. [2020 (3) TMI 964 - IT(SS) A No.27 to 32/Kol/2019, order dated 20/03/2020] – ITAT Kolkata

(iv) Universal Medicare Pvt. Ltd vs. DCIT [2018 (12) TMI 406 - ITA Nos. 2967 to 2971/Mum/2016, order dated 05/12/2018]– ITAT Mumbai

(v) Narendra Vegetable Products Pvt. Ltd. vs. ACIT [2015 (7) TMI 1298 - ITA 118/Nag/2013, 119/Nag/2013, 120/Nag/2013, 121/Nag/2013, 122/Nag/2013, 123/Nag/2013, 124/Nag/2013, order dated 30/07/2015]– ITAT Nagpur

(vi) BhanubenKantibhaiSavalia vs. DCIT [2019 (12) TMI 250 - IT (SS) Appeal Nos. 76 To 84 & 887 To 889 (Ahd.) Of 2015, order dated 17/09/2019] - ITAT Ahmedabad

(vii) Shree Yamuna Pulses vs. ACIT [2013 (2) TMI 344 - IT(SS)A No.233, 234, 235, 236, 237, 238 and 239/Ahd/2010, order dated 07/08/2012]- ITAT Ahmedabad

(viii) ACIT vs. SplendorLandbase Limited [2018 (6) TMI 444 - I.T.A. No.2461/DEL/2016 And C.O. NO. 215/DEL/2016, order dated 06/06/2018] - ITAT DELHI

(ix) A. Srinivas Rama Raju vs. DCIT [2016 (10) TMI 174 - TA.No.975/Hyd/2015, order dated 19/08/2016] - ITAT Hyderabad"

77. Next, ld. CIT(A) has placed reliance on the following judgments which are directly relevant to the issue at hand, wherein the Hon'ble Courts have opined and held that fresh claim of deduction u/s 80IA of the Act can be made in Returns of Income filed in response to notice u/s 153A of the Act although the same was not made in the original Return of Income filed u/s 139 of the Act:

"(i) PCIT vs. Vijay Infrastructure Limited [2017 (7) TMI 956 - Income Tax Appeal No. 29 of 2016, judgment dated 12/07/2017] - Allahabad High Court - SLP filed by the Department against the aforesaid Judgment of the Hon'ble Allahabad High Court was dismissed by the Hon'ble Supreme Court of India [SLP (Civil) Diary No. 10863 of 2018, order Dated 13/04/2018]

(ii) DCIT vs. MBL Infrastructure Limited [2020 (1) TMI 457 - ITAT KOLKATA; IT(SS) No.77/Kol/2016 & C.O No.22/Kol/2019 & IT(SS) No.78/Kol/2016 & IT(SS) No.46/Kol/ 2016, order dated 23/12/2019]– Kolkata ITAT

(iii) DCIT vs. Megha Engineering & Infrastructure Ltd. [607/Hyd/ 2016 (AY 201011), 608/Hyd/ 2016 (AY 2011-12), 609/Hyd/ 2016 (AY 2012-13), 610/Hyd/ 2016 (AY 2013-14), 1375/Hyd/ 2016 (AY 2014-15) & 1540/Hyd/ 2016 (AY 2015-16) – ITAT Hyderabad"

78. Ld. CIT(A) has also dealt with and distinguished two seemingly adverse judgements rendered in the following cases, wherein in context of non-pending/completed assessments (i.e., unabated assessments)(and hence not applicable vis-à-vis abated assessments as in the instant case) the Hon'ble Courts had opined that it was not open to the assessee to claim and be allowed such deduction or allowance of expenditure which it had not claimed in the original assessment proceedings which stood completed:

"(i) Jai Steel (India) vs. ACIT (and other connected matters) [(2013) 259 CTR (Raj) 281; ITA No. 53/2011, judgment dated 24/05/2013] – Rajasthan HC

(ii) GMR Infrastructure Limited vs. DCIT 2021 (7) TMI 527; I.T.A. NO.1036 OF 2017 dated 06/07/2021] – Karnataka High Court"

79. In light of the aforesaid judgments, ld. CIT(A) has gone on to conclude as under:

"1. That, a Return of Income filed in compliance with the Notice issued under Section 153A of the Act substitutes the Original Return filed under Section 139(1) of the Act.

2. That, an Assessee cannot make any Fresh/ New / Revised claim in its Income Tax Return filed in compliance with the Notice issued under Section

153A of the Act, vis-à-vis those Assessment Years for which at the time of initiation of Search, assessments were completed (i.e., unabated Assessment Years)

3. That, in respect of the Assessment Years whose assessments were pending / had abated, upon filing Returns of Income in compliance with the Notices issued under Section 153A of the Act, the aforesaid Returns filed in compliance with the Notices issued under Section 153A of the Act NOT ONLY substitute the Original/Earlier Income Tax Returns (filed prior to Search or even afterwards) under Section 139(1) of the Income Tax Act, 1961, BUT, the Original Returns (filed, as aforesaid) become non-est (i.e. a nullity).

4. That, in respect of the Assessment Years whose assessment were pending / had abated, since the Returns of Income filed in compliance with the Notices issued under Section 153A of the Act substitute the Original/Earlier Income Tax Returns (filed prior to Search or even afterwards) under Section 139(1) of the Income Tax Act, 1961, an assessee was entitled to make Fresh/ New/ Revised Claim in the aforesaid Returns (i.e. under Section 153A), notwithstanding that the aforesaid claims were not made by the assessee in earlier income tax returns filed prior to /after the Search."

80. Ld. CIT(A) has also opined (at page 367 of his order) that even if the assessee, at the time of filing the Returns of Income u/s 139(1) of the Act was under a mistaken belief that he was not entitled to the said deductions under Section 80IA of the Act and, subsequently, on a re-think or on legal advice came to believe that he was actually entitled to the said deductions, the deductions permissible to the assessee would depend on the provisions of Law and not on the view which the assessee might have taken of his rights to be entitled to such deductions. Similarly, looking from the stand point of ld. AO, the deductions permissible to the assessee would again depend on the provisions of Law and not on the view or the interpretation which ld. AO might have taken of the rights of the assessee to avail of such deductions. Ld. CIT(A) has relied upon the following judgments in support of the proposition that claimof any deduction depends on the provisions of law and not on the view which the Assessee or ld. AO might take:

"(i) Commissioner of Income-Tax vs. C. Parakh& Co. (India) Ltd. [on 2 March, 1956; Equivalent citations: AIR 1958 SC 775, 1956 29 ITR 661 SC] – Supreme Court of India

(ii) Pope The King Match Factory vs. Commissioner of Income-Tax, Madras [1962 (3) TMI 81 - Madras High Court

(iii) Commissioner of Income-Tax, West Bengal II vs. Royal Boot House [1969 (6) TMI 37, [1970] 25 STC 243 (Cal), [1970] 75 ITR 507] -Calcutta High Court

(iv) Kedarnath Jute Mfg. Co. Ltd vs Commissioner of Income Tax [On 17 August, 1971; 1971 AIR 2145; 1972 SCR (1) 277] – Supreme Court of India

(v) Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. Commissioner of Income-Tax [1997 (7) TMI 4 - Supreme Court; Other Citation: [1997] 227 ITR 172 (SC) – Supreme Court of India

(vi) United Commercial Bank vs. Commissioner of Income-Tax [1999 (9) TMI 4 Supreme Court; Other Citation: [1999] 240 ITR 355 (SC) – Supreme Court of India

(vii) Taparia Tools Limited vs. Joint Commissioner of Income Tax [2015 (3) TMI 853 - [2015] 372 ITR 605 (SC) - Supreme Court of India

(viii) Pt. Sheonath Prasad Sharma vs. CIT [(1967) 66 ITR 647 (All)] – Allahabad High Court (at page 926 of CIT(A) Order)

(ix) S.R. Koshti vs. CIT [276 ITR 165] – Gujarat High Court (at page 928 of the CIT(A) Order)

(x) CIT (Central) vs. Devi Films Private Limited [1981 (11) TMI 10 - [1983] 143 ITR 386 - Madras High Court (at page 928 of the CIT(A) Order)

(xi) Mayank Poddar (HUF) vs. WTO [262 ITR 633] - Calcutta High Court (at page 929 of the CIT(A) Order)"

81. Ld. CIT(A) has further referred to (at page 921 of his order) the well settled proposition that ld. CIT(A) and the Hon'ble ITAT have power to allow deduction/exemption to an assessee to which he was entitled even though claim was not made by such an assessee in his Original Income Tax Return. In other words, the assessee, if entitled to a particular claim, which he missed in his Income Tax Return, may make the said claim during the Appellate Proceedings. He has placed reliance on the following judgments in this regard:

"(i) Himachal Gramin Bank vs. DCIT [(2009) 176 Taxman 433(HP)] - Himachal Pradesh High Court

(ii) V. Lakshmi Reddy vs. ITO [(2011) 196 Taxman 78 (Mad)] - Madras High Court

(iii) CIT vs. Jai Parbolic Springs Ltd. [(2008) 306 ITR 42 (Del.)] -Delhi High Court

(iv) CIT vs. Ramco International [221 CTR 491 (P&H)] -Punjab and Haryana High Court

(v) CIT vs. Bharat Aluminium Ltd. [303 ITR 256 (Del.)] -Delhi High Court

(vi) CIT vs. Jindal Saw Pipes Ltd. [(2010) 328 ITR 338 (Delhi)]- Delhi High Court

(vii) Pruthvi Brokers & Shareholders Pvt. Ltd. [[(2012) 349 ITR 336 (Bom.); ITA No.3908 of 2010 decided on 21/06/2012] – Bombay High Court (referred to at page 927 of the CIT(A)'s Order)

(viii) GiridharlalParasmal v. State of Mysore [(1967) 20 STC 64 (Mys)] – Mysore High Court (at page 928 of the CIT(A)'s order)"

82. Referring to Article 265 of the Constitution of Indiawhich provides that "no tax shall be levied or collected except by the authority of law", ld. CIT(A) (at page 925 of his order) has averred that in terms of Article 265 of the Constitution, tax can be levied only if it is authorized by law. The taxing

authority cannot collect or retain a tax that is not authorized. Any retention of tax collected, which is not otherwise payable, will be illegal and unconstitutional. He has relied upon the following case laws in support of the above proposition:

"(i) CIT vs. Shelly Products and another [261 ITR 367] – Supreme Court of India

(ii) CIT vs. Bharat General Reinsurance Co. Ltd. 81 ITR 303 (Del) - Delhi High Court

(iii) Balmukund Acharya vs. DCIT [310 ITR 310] – Bombay High Court

(iv) Nirmala L. Mehta vs. CIT [(2004) 269 ITR 001] – Bombay High Court"

83. Finally, based on the ratio laid down in the above referred judgments, ld. CIT(A) has held that the observation of the ld. AO that the assessee having not claimed the deduction in its original Income Tax Return filed u/s 139(1) of the Act, or by way of a Revised Return, cannot claim the deduction u/s 80IA(4)(i) of the Act in the Returns filed in compliance to the Notice issued u/s 153A of the Actis devoid of legal legs. Accordingly, since the assessment proceedings for the impugned AYs 2017-18, 2018-19 & 2019-20 had abated pursuant to the search action by virtue of operation of section 153A of the Act, the assessee was duly entitled to make a fresh/revised/new claim of deduction u/s 80IA(4) of the Act in its Returns of Income filed in compliance with notices issued u/s 153A of the Act although the said claim was not made in the original returns filed u/s 139 of the Act. With these observations, the impugned ground has been allowed by the ld. CIT(A) in favour of the assessee.

84. In the course of hearing before us, ld. Counsel for the assessee supported the order of the ld. CIT(A) vis-à-vis the deletion of disallowance of fresh claim of deduction u/s 80IA of the Act made in returns filed u/s 153A of the Act. He also filed a detailed written submission to support his assertions. Since the arguments made by ld. Counsel for the assessee apropos the impugned grounds are similar to and in alignment with those advanced by ld. CIT(A) while allowing the claim of the assessee and the same have already been elaborately discussed by us *(supra)*, the same are not reiterated here to avoid repetition.

85. Per contra, ld. D/R vehemently challenged the order of ld. CIT(A) in deleting the disallowance of fresh claim of deductions u/s 80IA(4) of the Act made by the assessee in its Returns filed in response to Notices issued u/s 153A of the Act. He also filed a written submission dated 25.01.2023 reiterating the reasons advanced by ld. AO while making the impugned disallowance in the impugned assessment orders u/s 153A of the Act *qua* the years under appeal. Vide his written submissions, apropos the impugned grounds of appeal, ld. D/R has further stated as follows:

"(i) That the Ld. CIT(A) has failed to appreciate that the A.O hasno power to entertain a claimmade by the Assessee otherwise than by filing a revised return – the Ld. DR has placed reliance on the judgment of the Hon'ble Supreme Court in Goetze (India) Ltd.Vs. CIT (2006) 284 ITR 323

(ii) That, since the Assessee had not filed the return of income within the due date prescribed/s 139(1) of the Act, the right course of action for the Assessee

would be to file condonation of delay u/s 119(2)(b) & (c) of the Act with the Appropriate Authority for filing of return of income, which was not done.

(iii) That the Hon'ble Jodhpur ITAT in the case of Suncity Alloys (P) Ltd. Vs. ACIT [2009] 124 TTJ 124 had held that the assessments or reassessments made pursuance to notice u/s 153A of the act were not de-novo assessments and therefore no new claim of deduction or allowance could be made by the assessee.

(iv) That, in the case of Charchit Agarwal Vs. ACIT [2009] 34 SOT 348 (Del), the Hon'ble ITAT, Delhi Bench had held that since the search proceedings u/s 153A were for the benefit of the Revenue, the assessee was not permitted to value the closing stock for concluded years in a different manner adopted in earlier years and claim lower income.

(v) That, in the case of K.P. Varghese Vs. ITO [1981] 131 ITR 597/7Taxman 13, the Hon'ble Supreme Court held that "it is well settled recognized rule of construction that a statutory provision must be so construed, if possible that absurdity and mischief may be avoided." Hence, if an assessee is allowed to claim an allowance, deduction etc. u/s 153A not claimed earlier, then it would mean that even in cases where the appeal arising out of the completed assessment has been decided by the CIT(A), ITAT and the High Court, on a notice issued u/s 153A, the A.O will have power to undo what has been concluded upto the High Court. Any interpretation which leads to such conclusion has to be repelled/avoided as held by the Hon'ble Supreme Court in K.P Varghese (supra)."

86. We have heard rival contentions and perused the records placed before us and the relevant provisions of the Income-tax Act, 1961 and the case laws relied upon by both the sides. Reiterating the relevant facts in brief, in the instant case a search and seizure operation u/s 132(1) of the Act was conducted in the case of the assessee company on 20.09.2019. Pursuant to the said search, Notices u/s 153A of the Act were issued *inter alia* for the impugned AYs 2017-18, 2018-19 & 2019-20 on 04.02.2021[authenticated (i.e., digitally signed) by ld. AO on 05.02.2021], requiring the assessee to furnish its Returns of Income for the said years within 10 days of service of such notices i.e., on or before 15.02.2021. In response to the Notices issued u/s 153A of the Act, the assessee furnished its Returns of Income on 13.02.2021 i.e., well within the time permitted under the Notices u/s 153A of the Act. Vide the said Returns of Income filed in response to Notices u/s 153A of the Act, the assessee claimed deductions u/s 80IA(4)(i) of the Act as per the details compiled in Tables *supra*. The original Returns of Income u/s 139(1) of the Act for the impugned assessment years were earlier filed by the assessee without claiming any deduction u/s 80IA of the Act.While making fresh claims for deduction u/s 80IA(4) of the Act in the Returns of Income filed in compliance to notices issued u/s 153A of the Act in respect of the impugned assessment years, the assessee filed the corresponding forms (being Report of Audit of the Eligible Undertaking from an Accountant) in Form 10CCB [as required u/s 80IA(7)] electronically on 12.02.2021 i.e., within the time permitted as per Notices issued u/s 153A of the Act (i.e., before 15.02.2021) [this aspect has been dealt with later on in this Order while deciding Ground No. 2]. The details of assessment year-wise Form 10CCB e-filed and the corresponding amount of deduction claimed by the assessee in respect of the corresponding eligible undertakings are tabulated at page 153 of ld. CIT(A)'s order.

87. Admittedly, as on the date of search i.e., 20.09.2019, the assessments for the impugned AYs 2017-18, 2018-19 & 2019-20 were pending on account of the following reasons:

"(i) A.Y. 2017-18 – Assessment proceedings initiated vide Notice u/s 143(2) dated 24.09.2018 (i.e., issued prior to the date of search) were pending.

(ii) A.Y. 2018-19 – The original return of income had been filed on 31.10.2018 and the time limit for issuance of Notice u/s 143(2) (available up to 30.09.2019) had not expired as on the date of search. Notice u/s 143(2) qua the original Return of Income filed u/s 139(1) on 31.10.2018 was issued after the date of search i.e., on 22.09.2019. Thus, assessment proceedings were pending.

(iii) A.Y. 2019-20–As on the date of search, the time limit to furnish the original Return of Income was still available. The original Return of Income was filed after the date of search i.e., on 31.10.2019. Thus, the assessment proceedings were pending."

88. The above facts are compiled in Table 5 *(supra)*. Further, the fact that the assessments for the impugned AYs 2017-18 and 2018-19 were pending as on the date of search and were thus dropped by ld. AO after being abated due to the search operation on 20.09.2019 has also been admitted by ld. AO, vide letter no. 88 dated 07.07.2022reproduced by ld. CIT(A) at page 228 of his order. The same is also evident from the Note-Sheet Entries for the said years, reproduced by ld. CIT(A) at 229-232 of his order stating that the above assessment years were selected for scrutiny assessment vide Notice u/s 143(2) of the Act dated 24.09.2018 and 22.09.2019 and the case had abated. Further, for AY 2019-20, the original Income-tax Return had not been filed as on the date of search as the 'due date' referred to u/s 139(1) of the Act had not expired. Thus, the proceedings for AY 2019-20 were also pending (i.e., were abated assessments). The above position has thus not been disputed by the Department.

89. Pursuant to the search and seizure operation in the case of the assessee, by virtue of operation of the second proviso to section 153A(1) of the Act, the pending assessments before ld. AO consequent to the original returns filed u/s 139(1) of the Act in respect of the impugned AYs 2017-18, 2018-19 & 2019-20 had abated. As per the provisions of Section 153A(1)(a) of the Act,the assessee was required to furnish fresh Returns of income for each of the impugned yearsin regard to which the Notices u/s 153A of the Act had been issued. As a result of abatement of pending assessment proceedings, only one fresh Assessment Order could be passed for each of the impugned assessment years on the basis of fresh Return of Income filed u/s 153A of the Act [and not on the basis of the original Returns filed earlier u/s 139(1) of the Act] by virtue of the provisions of section 153A(1)(b) of the Act and the first proviso thereto.

90. Even though the word "abate" has not been defined under the Income-tax Act, 1961, the said expression has been judicially explained vis-à-vis section 153A of the Act by the Hon'ble Courts in the several judgments, few of which are extracted hereunder:

"(i) <u>Pr. CIT vs. JSW Steel Limited [422 ITR 071; ITA No. 1934 of 2017, judgment dated 05/02/2020], it was held/averred, as follows, by the Hon'ble Bombay High Court</u>:

"8.3. The second proviso says that any assessment or re-assessment proceedings falling within the said period of six assessment years pending on the date of initiation of search under Section 132 or making of requisition under Section 132-A shall abate. The third proviso mentions that the Central Government may frame rules to specify such class or classes of cases in which the assessing officer shall not be required to issue notice for assessing or re-assessing the total income for the said six assessment years.

8.4. Reverting back to the second proviso what is to be noticed is that as per this proviso, any assessment or re-assessment in respect of any assessment year falling within the said period of six assessment years is pending on the date of initiation of search or making of requisition, those assessment or re-assessment proceedings shall abate. In other words, pending assessment or re-assessment proceedings on the date of initiation of search or making of requisition shall abate.

8.5. That brings us to the crucial expression, which is 'abate'. The ordinary dictionary meaning of the word 'abate', as per Concise Oxford English Dictionary, Indian Edition, is to reduce or remove (a nuisance). Derivative of abate is abatement. In Black's Law Dictionary, Eighth Edition, 'abatement' has been defined to mean an act of eliminating or nullifying; the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. In Supreme Court on Words and Phrases (19502008), "abating" has been defined to mean "an extinguishment of the very right of action itself"; to "abate", as applied to an action, is to cease, terminate, or come to an end prematurely."

(ii) <u>CIT (Central), Kanpur vs. Smt. Shaila Agarwal [2011 (11) TMI 213 –The Hon'ble Allahabad High Court has observed as under</u>:

"……11. The second proviso of Section 153A reads as under:

"Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate."

12. A plain reading of Section 153A would show that where notice under this Section is issued as result of any search under Section 132, assessment or reassessment if any relating to any assessment year falling within the period of six assessment years referred to under Section 153, pending on the date of initiation of search under Section 132 or requisition under Section 132A shall abate. The words, pending on the date of initiation of search under Section 132, or making of requisition under Section 132A, as the case may be, has to be assigned simple and plain meaning. Where the assessment or re-assessment is finalised, there are no pending proceedings to be abated, and restored to the file of the assessing officer. To abate means to diminish or to take away. The word 'abatement' has been defined in the Concise Law Dictionary (P. RamanathaAiyer) as follows:

"Abatement. "Abatement" means, in respect of any chargeable accounting period, ending on or before the 31st day of March, 1947 a sum which bears to a sum equal to:

(a) in the case of a company, not being a company deemed for the purposesof Section 9 to be a firm, six per cent of the capital of the company on the first day of the said period computed in accordance with Schedule II, or one lakh of rupees, whichever is greater, or

(b) in the case of a firm having(i) nor more than two working partners, one lakh of rupees, or (ii) three working partners, one and a half of rupees, or (iii) four or more working partners, two lakh of rupees, or

(c) in the case of a Hindu undivided family, two lakhs of rupees, or

(d) in any other case, one lakh of rupees,

The same proportion as the said period bears to the period of one year and, in respect of any chargeable accounting period beginning after the 31st day of March, 1947, such sum as may be fixed by the annual Finance Act. [Business Profits Tax Act (21 of 1947), S.2 (1)]

Removal or destruction, (as) of a nuisance; failure; premature end, suspension or diminution, (as) of an action or of a legacy.

The action of abating; being abated. [O.XXII, R.1, CPC (5 of 1908)]; decrease [S.12 (3) (b) (i), Specific Relief Act (47 of 1963)].

Of An Action Or Suit: In civil law an abatement of a suit is a complete termination of it. Abatement of a matter or cause is caused by the same becoming defective on account of the death of the parties materially interested. (Ency. of the Laws of England)

A suspension or termination of proceedings for want of proper parties or due to some technical defect.

The abatement of the main action abates proceedings ancillary or collateral to it.

In Criminal Law: Abatement of proceedings connotes their termination without any decision on merits and without the assent of the prosecutor. (Ency. of the Laws of England)

In Revenue Law: Abatement is a deduction from or refunding of duties on goods damaged during importation or in store."

13. The word 'abatement' is referrable to something, which is pending alive, or is subject to deduction. The abatement refers to suspension or termination of the proceedings either of the main action, or the proceedings ancillary or collateral to it. The word is commonly used in the legislations, which provide for abatement of action/ suit; abatement of legacies; abatement of nuisance; and all actions for such nature, which have the pendency or continuance. The proceedings, which have already terminated are not liable for abatement unless statute expressly provides for such consequence thereof.

14. The word 'pending' occurring in the second proviso to Section 153A of the Act, is also significant. It is qualified by the words 'on the date of initiation of the search', and makes it abundantly clear that only such assessment or reassessment proceedings are liable to abate

……."

91. Viewed in the aforesaid light, the expression "abatement" of proceedings means termination of proceedings. Thus, with the abatement of the pending assessment proceedings for the impugned AYs 2017-18, 2018-19 & 2019-20 pursuant to the search action, the assessment proceedings were re-started/ re-initiated *de-novo* on the basis of fresh Returns of Income filed u/s 153A of the Act. In other words, the Returns of Income filed u/s 153A for the impugned assessment years were the subject of assessment for the Revenue for the first time in the case of abated assessment proceedings of the said years. Consequent to the notice issued u/s 153A of the Act, the earlier Returns of Income filed u/s 139 of the Act for the impugned years for the purpose of assessment which were pending on the date of search, were to be treated as *non-est* (i.e., a nullity) in law [see para 11 of the judgment of the Hon'ble Bombay High Court in *CIT vs. B.G. Shirke Construction Technology Ltd. (395 ITR 371)*]

92. Upon a conspectus of section 153A(1)(a) of the Act, it is seen that it provides that "the provisions of this Act" [i.e., the provisions of Income-tax Act, 1961, which impliedly includes the deduction under Chapter VI-A], "shall, so far as may be, apply accordinglyas if such return were a return required to be furnished under section 139 of the Act" thus, implying that all other provisions of the Act (to the extent not inconsistent with the provisions of section 153A of the Act) shall apply to a Return filed in compliance with the Notice issued u/s 153A of the Act. The Explanation to section 153A(2) of the Act further, lays downthat"save as otherwise provided in this Section, Section 153B of the Act and section 153C of the Act, all other provisions of this Act shall apply to assessment made under this section." This, to our mind, clearly implies that for the purpose of making an assessment u/s 153A of the Act, ld. AO is mandatorily required to allow the legally tenable deductions, allowances, claims of expenses etc. which have been claimed by the Assessee in the Returns of Income filed u/s 153A of the Act.

93. The Hon'ble Courts and various benches of the Tribunal, in a plethora of cases have uniformly held that Return of Income filed in response to notice u/s 153A of the Act is to be considered as Return filed u/s 139 of the Act and for all other provisions of the Act, the Return u/s 153A of the Act will be treated as the original Return u/s 139 of the Act. Once ld. AO accepts the return filed u/s 153A of the Act, the original return under Section 139 of the Act abates and becomes *non-est*. The relevant observations of the Hon'ble Courts in few such cases are reproduced hereunder for facility:

"(i) KiritDahyabhai Patel vs. ACIT [Tax Appeal No. 1181 of 2010, Tax Appeal No. 1182 to 1185 of 2010, judgment dated 03/12/2014 – The Hon'ble Gujarat High Courtheld as under:

"13. Considering the facts and circumstances of the case and also considering the decisions relied upon by learned senior advocate for the appellant, we are of the considered opinion that the view taken by the Tribunal is erroneous. The CIT(A) rightly held that it is not relevant whether any return of income was filed by the assessee prior to the date of search and whether any income was undisclosed in that return of income. In view of specific provision of Section 153A of the I.T. Act, the return of income filed in response to notice under Section 153(a) of the I.T. Act is to be considered as return filed under Section 139 of the Act, as the Assessing Officer has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty under Section 271(1)(c) of the I.T. Act and the penalty is to be levied

on the income assessed over and above the income returned under Section 153A, if any."

(ii) Shrikant Mohta vs. CIT [ITAT No.19 & 20 of 2015, GA No.246 & 247 of 2015, judgment dated 25/06/2018] – The Hon'ble Calcutta High Courtheld as under:

"The non obstante clause at the beginning of Section 153A (1) of the Act suspends, for the purpose and to the extent as indicated in such provision, the operation of several other provisions of the Act, including Section 139 and even Section 147 in course of any reassessment. In other words, when a search is initiated under Section 132 of the Act, the assessee is not required to file the assessee's return till such time that the assessee receives a notice under Section 153A(1)(a) thereof. Once such notice is received the liability fastens on the assessee to file the return within the reasonable time specified in the relevant notice.

To boot, the second proviso to Section 153A(1) of the Act, insofar as it is material for the present purpose, mandates that any "assessment or reassessment ... relating to ... the relevant assessment year or years ... pending on the date of initiation of the search under Section 132. ... shall abate".

It goes without saying that since the search operations in this case were initiated on September 2, 2004, it was no longer necessary for this assessee to file his regular return by October 31, 2004 notwithstanding the mandate of Section 139(1) of the Act. The obligation to file the return remained suspended, in view of the clear opening words of Section 153A(1) of the Act, till such time that a notice was issued to him under clause (a) of such sub-section. If such is the meaning of Section 153A(1) of the Act, the operation of Section 139(3) of the Act qua the time available for filing a return in order to avail of the benefit of carrying forward any loss stands extended till a return is called for under Section 153A(1)(a) of the Act and such return is filed, provided the return is filed within the time indicated in the relevant notice under Section 153A(1)(a) of the Act. There can be no dispute to such being the effect of Section 153A(1)(a) of the Act…..

The second question is answered thus:

When search operations are conducted under Section 132 of the Act, the obligation of the assessee to file any return remains suspended till such time that a notice is issued for such purpose under Section 153A(1)(a) of the Act. If the return is filed by the assessee within the reasonable time permitted by such notice under Section 153A(1)(a) of the Act, such return would then be deemed to have been filed within the time permitted under Section 139 (1) of the Act for the benefit under Section 139(3) of the Act to be availed of by the assessee."

94. This brings us to the conclusion that the provisions of the Act which would otherwise be applicable in case of a return filed in the regular course u/s 139(1) of the Act (including deductions under Chapter VI-A) would continue to apply in case of return filed u/s 153A of the Act even though the same may not have been claimed by the assessee in its original return of income u/s 139(1) of the Act.

95. Ld. CIT(A) has referred to a catena of judgments in support of the proposition that the assessee is entitled to make a fresh claim of deduction, exemption, claim of expenses etc. in its Return of Income filed in response to notice u/s 153A of the Act which were not made in the Return of Income originally filed u/s 139 of the Act. The same have been enlisted by us earlier in this order. Upon going through the case laws on the subject cited by ld. CIT(A), we find that these sufficiently address the issue at hand and unanimously uphold the above proposition of law. We would like to quote few judgments rendered in support of the aforesaid proposition including those which directly deal with the allowability of fresh claim of deduction u/s 80IA of the Act in Returns of Income filed in response to notice u/s 153A of the Act despite the same not being made in the original Return of Income filed u/s 139 of the Act:

"(i) PCIT vs. Vijay Infrastructure Limited [2017 (7) TMI 956- ITA No. 29 of 2016, judgment dated 12/07/2017] – The Hon'ble Allahabad High Court held as under:

"3. It was admitted on the following substantial questions of law:

"(i) Whether the Income Tax appellate Tribunal was justified in allowing the deduction u/s 80IA to the assessee on the basis of return filed after the issue of notice u/s 153A of the Act.

"(ii) Whether the Income Tax Appellate Tribunal was justified under the facts and circumstances of the case in confirming the order of CIT (A) who has travelled beyond the statutory provision of Chapter VIA, u/s 80A(5) of the Income Tax Act, 1961 which clearly provides that if assessee fails to make a claim in his return of income of any deduction; no deduction shall be allowed to him thereunder".

4. Tribunal has justified deduction under Section 80IA on the basis of return filed under Section 153A by observing that for the assessment year 2009-10 and onwards, the time for filing revised return has not expired and, therefore, claim for deduction under Section 80IA if not made earlier could have been made in the revised return. Once it could have been claimed in revised return under Section 139 (1), the same could have also been claimed under Section 153 (A).

5. Sri Manish Misra, learned counsel for appellant contended that return under Section 153 (A) is not a revised return but it is a original return. If that be so, then in our view, deduction under Section 80IA, if otherwise admissible, always could have been claimed and we are not shown any authority otherwise to take a different view. Therefore, in both way, deduction under Section 80IA, if otherwise admissible, could have been claimed by Assesses. Hence, we answer both the aforesaid questions in favour of Assesses and against Revenue affirming the view taken by Tribunal.

…… In the result, appeal is dismissed."

The SLP filed by the Department against the aforesaid Judgment of the Hon'ble Allahabad High Court was dismissed by the Hon'ble Supreme Court of India [SLP (Civil) Diary No. 10863 of 2018, order Dated 13/04/2018]

(ii) DCIT vs. MBL Infrastructure Limited [2020 (1) TMI 457 - ITAT KOLKATA; IT(SS) No.77/Kol/2016 & C.O No.22/Kol/2019 & IT(SS) No.78/Kol/2016 &

IT(SS) No.46/Kol/2016, order dated 23/12/2019]–The Kolkata ITAThas held as under:

"17. We notice from a perusal of the case file in former assessment year 2010-11 that assessee had filed its original return u/s 139(1) of the Act on 13.10.10. The department carried out a search in question in its office and other business premises on 28-29/10/2010. The Assessing Officer issued section 153A notice dated 20.07.2011 for assessment years 2005-06 to 2010-11 asking for return of income within 15 days of service thereof. This notice stood served on the very day itself.

18. The assessee filed its post-search return on 30.09.11 reiterating the earlier income (supra). It had admittedly not claimed the impugned section 80IA deduction in either of these two returns. The assessee rather chose to file revised return/computation dated 15.03.2013 claiming section 80IA deduction for the first time inter alia pleading therein that the very claim stood accepted in assessment year 2005-06 to 2006-07 in search assessment frames u/s 153A, section 80IA explanation had not been taken into account therein, some of its projects had not been considered as eligible for this relief due to amendment introduced vide Finance Act No.2 of 2009 with retrospective effect from 01.04.2000 and that it had finally considered itself as eligible for the deduction in question as per various judicial pronouncements at that point of time.

19. The Assessing Officer's assessment order dated 22.03.13 declined assessee's section 80IA deduction claim on multiple grounds. He observed that this relief could not be allowed in absence of a revised return as per Goetze (India) Ltd. Vs. CIT [2006] 284 ITR 323 (SC). That the assessee had also filed a revised return on the same day which was not valid since submitted beyond a period of one year from end of the relevant assessment year. The Assessing Officer went on to quote date of section 153A notice i.e., on 20.07.2011 asking for return within 15 days of service. He observed that assessee's return; which was required to be filed on or before 11.08.11 inclusive of 15 working days; came on 30.09.2011 only. He held that the said return was also a belated one u/s 139(1) which could not be revised. And that section 234A(1) interest provision was also indicative that section 139(1) and section 153 return are identically meted. Case law (1996) 86 TAXMAN 122(SC) Jagdish Chandra Sinha vs. CIT that only a return u/s 139(1) and (2) could be revised u/s 139(5) and not that submitted u/s 139(4) of the Act was also quoted. The Assessing Officer thus ruled that the assessee's twin recourse(s) adopted in filing both revised return as well as computation suggested sheer confusion on its part as well.

…….

24. Mr. Tulsiyan strongly supported the CIT(A)'s action deleting the impugned deduction disallowance. He starts with admitted facts regarding the assessee having filed section 139(1) return on time followed by search, section 153A notice, its service date, time limitation of 15 days post-search return, revised computation (supra). His case is that the Assessing Officer has himself accepted the assessee's post-search return as a valid one and therefore, the same cannot be allowed to be held as an invalid one as per Revenue's stand……

26. We have given our thoughtful consideration to the above rival contentions. We reiterate that the assessee's regular return u/s 139(1) of the Act came on 13.10.10 followed by department's search action dated 28/29.10.10 and issuance of section 153A notice dated 20.07.11 seeking return within 15 days which stood served on the very day. The assessee furnished his section 153A return on 30.09.11. We find no substance in either of the Revenue's technical as well as legal arguments. It emerges first of all that the impugned section 80IA deduction claim on merits, is already covered by the tribunal common order (supra) in assessment years 2005-06 to 2009-10 dated 01.05.2019 that it is a developer having undertaken business risk in similar infrastructural projects. Revenue's pleadings in the instant appeal nowhere pinpointed any distinction in law and on facts in all these assessment years. It is further noted that the assessee has been deployed its fixed assets and also paid retention money to the payers concerned. All this sufficiently indicates that the assessee's payers nowhere undertook any risk in the corresponding projects.

28. Coming to technical aspect involved in the instant lis regarding the filing of belated revised return, we find that hon'ble apex court's judgment in NTPC (supra) settled the law long back that if the assessee is a legally entitled for a deduction claim which is not taxable and the corresponding claim can also be allowed to be raised for the first time even in section 254 proceedings. It has also come on record that the assessee had very well explained the reasons of having not raised the impugned scheme due to the corresponding legislative amendments in section 80IA followed by CBDT's explanatory memorandums. This tribunal in (2012) 22 taxmann.com 2(Hyderabad) ITO vs. S. Venkataiah also holds that an assessee's legally allowable claim which could not be raised owing to circumstances beyond its control and pressed later on by way of belated return, could not be declined on account of mere technicality.

29. Coming to the statutory aspect viewed from various legislative developments right from "block" to "search assessments" applicable up to 31.05.03 and w.e.f. 01.06.03 onwards; respectively, we find that the same sufficiently answer the Revenue's arguments. The former scheme of block assessment in section 158BCA(i) and (ii) read with 2nd proviso thereto made it clear that a person; who had furnished a return under this clause, would not be entitled to file a revised return. The legislature has nowhere employed such a restrictive expression in the new scheme of search assessment in section 153A to section 153C applicable w.e.f. 01.06.03. More particularly u/s 153A(1)(a) reads that "the provisions of this Act shall so far as the case may be applied accordingly as if such return was furnished u/s 139" meaning that a return filed u/s 153A is treated as that filed u/s 139 of the Act only. Same analogy therefore applies to a revised return covered under the said general scheme of the Act only. We therefore hold that the Revenue's emphasis seeking to delete assessee's return itself as an invalid one does not deserve to be accepted."

(iii) <u>Pr. CIT vs. JSW Steel Limited [422 ITR 071; ITA No. 1934 of 2017, judgment dated 05/02/2020] – The Hon'ble Bombay High Court has held as under</u>:

"2. The assessee is a widely held public limited company engaged in various activities including production of sponge iron, galvanized sheets and cold-rolled coils through its steel plants located at Dolve and Kalmeshwar in Maharashtra. The assessee filed original return of income on 30.09.2008 for

Assessment Year 2008-09 declaring loss at ₹ 104,17,70,752/- under the provisions of Section 139(1) of the said Act. The assessee's case was selected for scrutiny under Section 143(2) of the said Act on 03.09.2009.

3. During pendency of the assessment proceedings, a search was conducted under Section 132 of the said Act on the ISPAT Group of companies on 30.11.2010.

3.1. Following the search, notice under Section 153A of the Act was issued. In response, assessee filed return of income declaring total loss at ₹ 419,48,90,102/- on 29.03.2012. In this return of income assessee made a new claim for treating gain on pre-payment of deferred VAT/sales tax on Net Present Value (NPV) basis for an amount of ₹ 318,10,93,993/- as "capital receipt".

4. This new/fresh claim of assessee was disallowed by the Assessing Officer (hereinafter referred to as "AO) while finalising assessment under Section 143(3) read with Section 153A of the said Act vide the order dated 25.03.2013 by considering the same as "revenue receipt" instead of "capital receipt". The reasoning given by the AO was that the assessee had availed of sales tax deferral scheme and the State Government had permitted premature re-payment of deferred sales tax liability at the NPV basis. Therefore, according to the AO, assessee treated this as capital receipt even though the same was credited to the assessee's profit and loss account being difference between the deferred sales tax and its NPV.

5. However, the primary question that arose before the AO was whether the claim which was not made in the earlier original return of income filed under Section 139(1) of the said Act, could be filed and considered in the subsequent return filed by the assessee in pursuance to notice under Section 153A of the said Act (which was consequent to search action conducted under Section 132 of the said Act). AO held that the assessee could not raise a new claim in the return filed under Section 153A which was not raised in the original return of income filed under Section 139(1). Thereafter, the claim was disallowed and was treated as "revenue receipt"

5.1. By order dated 15.04.2013, the first appellate authority i.e. the Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT(A)") upheld the order passed by the A.O. In further appeal, the I.T.A.T., however, by the impugned order dated 28.09.2016, allowed the assessee's appeal and set aside both the orders passed by the A.O. and C.I.T.(A).

5.2. Hence the appeal by the revenue.

……..

6.1. Mr. A.R.Malhotra drew our attention to the proposed question of law in the present appeal which reads thus :

"Whether on the facts and in the circumstances of the case and in Law, the Hon'ble Tribunal was justified in holding that in the return of Income filed u/s. 153 A of the I.T. Act, 1961 or even during the course of assessment proceedings undertaken u/s. 153A of the I.T.Act, 1961 the assessee can lodge new claims, deduction or exemption or relief which remained to be claimed in regular return of income?"

……..

6.5. He, however, fairly referred to the following two cases delivered by this Hon'ble Court, viz; CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom) and DCIT Vs Eversmile Construction Co. Pvt. Ltd. 65 DTR 39 in support of the proposition that the assessee was entitled to make a fresh claim in the return filed in pursuance to initiation of proceedings under Section 153A of the Act which were referred to by the Tribunal in the impugned order. This stand of Mr. Malhotra is appreciated.

…..

8. At the outset, we may advert to Section 153-A of the Act. It deals with assessment in case of search or requisition. Sub-section (1) is relevant. It says that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, in the case of a person where a search is initiated under Section 132 or books of account, etc. are requisitioned under Section 132-A, after 31.05.2003, the assessing officer shall - (a) issue notice to such person for furnishing return of income in respect of each assessment year falling within six assessment years, within such time as may be specified and upon such return of income being filed, the provisions of the Act shall apply as if such return were a return required to be furnished under Section 139; and (b) assess or re-assess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.

8.1. In other words, Section 153-A(1) provides that where a person is subjectedto a search under Section 132 or his books of accounts, etc. are requisitioned under Section 132-A after 31.05.2003, the assessing officer is mandated to issue notice to such person to furnish return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Such returns of income shall be treated to be returns of income furnished under Section 139. Once returns are furnished, income is to be assessed or re-assessed for the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, once Section 153-A(1) is invoked, assessment for 6 assessment years immediately preceding the assessment year in which search is conducted or requisition is made becomes open to assessment or reassessment. Two aspects are crucial here. One is use of the expression "notwithstanding" in sub-section (1); and secondly, that returns of income filed pursuant to notice under Section 153-A (1)(a) would be construed to be returns under Section 139. The use of non obstante clause in sub-section (1) of Section 153-A i.e., use of the expression "notwithstanding" is indicative of the legislative intent that provisions of Section 153-A(1) would have overriding effect over the provisions contained in Sections 139, 147, 148, 149, 151 and 153.

8.2. Having noticed the above, we may also refer to the second and the third proviso to Section 153-A(1). For the sake of convenience, the second and third proviso to Section 153A(1) of the said Act which is relevant is reproduced below and reads thus :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to

in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

[Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

8.3. The second proviso says that any assessment or re-assessment proceedings falling within the said period of six assessment years pending on the date of initiation of search under Section 132 or making of requisition under Section 132-A shall abate. The third proviso mentions that the Central Government may frame rules to specify such class or classes of cases in which the assessing officer shall not be required to issue notice for assessing or re-assessing the total income for the said six assessment years.

8.4. Reverting back to the second proviso what is to be noticed is that as per this proviso, any assessment or re-assessment in respect of any assessment year falling within the said period of six assessment years is pending on the date of initiation of search or making of requisition, those assessment or re-assessment proceedings shall abate. In other words, pending assessment or re-assessment proceedings on the date of initiation of search or making of requisition shall abate.

8.5. That brings us to the crucial expression, which is 'abate'. The ordinary dictionary meaning of the word 'abate', as per Concise Oxford English Dictionary, Indian Edition, is to reduce or remove (a nuisance). Derivative of abate is abatement. In Black's Law Dictionary, Eighth Edition, 'abatement' has been defined to mean an act of eliminating or nullifying; the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. In Supreme Court on Words and Phrases (19502008), "abating" has been defined to mean "an extinguishment of the very right of action itself"; to "abate", as applied to an action, is to cease, terminate, or come to an end prematurely.

9. Therefore, from a critical analysis of the provisions contained in Section 153A(1) of the Act more particularly the key expressions as referred to above, it is evident that assessments or reassessments pending on the date of initiation of search would stand abated. Return of income filed by the person concerned for the six assessment years in terms of Section 153-A(1)(a) would be construed to be a return of income under Section 139 of the Act.

.....

12. In this perspective we are called upon to decide the question projected by therevenue as substantial question of law arising from the order of the Tribunal. We have considered the grounds of appeal and the orders passed by the AO, CIT(A) and the Tribunal with the assistance of learned counsel for the Appellant. From a reading of the above it is clear that Section 153A of the said Act, provides for the procedure for assessment in search cases. As alluded to hereinabove, the said section starts with a non-obstante clause stating that it is, "notwithstanding anything contained in section 147, 148

and 149……." Further sub Section(a) of Section 153A(1) provides for issuance of notice to the persons searched under Section 132 of the Act to furnish a return of income. However, the second proviso to Section 153 A of the said act makes it clear that assessment relating to any assessment year filed within a period of the six assessment years pending on the date of search under Section 132 of the Act shall abate. Thus if on the date of initiation of search under Section 132, any assessment proceeding relating to any assessment year falling within the period of the said six assessment years is pending, the same shall stand abated and the Assessing Authority cannot proceed with such pending assessment after initiation of search under section 132 of the said Act.

13. In the present case, search was conducted on the assessee on 30.11.2010. At that point of time assessment in the case of assessee for the assessment year 2008-09 was pending scrutiny since notice under Section 143(2) of the Act was issued and assessment was not completed.

Therefore, in view of the second proviso to Section 153A of the said Act, once assessment got abated, it meant that it was open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be, etc. That apart, assessee could lodge a new claim for deduction etc. which remained to be claimed in his earlier/ regular return of income. This is so because assessment was never made in the case of the assessee in such a situation. It is fortified that once the assessment gets abated, the original return which had been filed looses its originality and the subsequent return filed under Section 153A of the said Act (which is in consequence to the search action under Section 132) takes the place of the original return. In such a case, the return of income filed under Section 153A(1) of the said Act, would be construed to be one filed under Section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly. If that be the position, all legitimate claims would be open to the assessee to raise in the return of income filed under Section 153A(1).

…….

16. From the above we conclude that in view of the second proviso to Section 153A(1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under Section 153A(1) which was not claimed in his regular return of income, because assessment was never made/finalised in the case of the assessee in such a situation."

96. Respectfully following the above judgments, we hold that pursuant to the search & seizure operation conducted in the case of the Assessee on 20.09.2019, since the pending assessment proceedings for the impugned AYs 2017-18, 2018-19 & 2019-20 had got abated by virtue of application of the second proviso to section 153A(1) of the Act,it was open for the Assessee to make a legitimate claim of deduction u/s 80IA(4) of the Act which had remained unclaimed in the earlier Returns filed for the impugned years (AY 2017-18 & AY 2018-19) u/s 139(1) of the Act and for AY 2019-20 for which no return was filed due to initiation of search before the due date of filing return for AY 2019-20. This was because the assessment was never made in the case of the Assessee in respect of the impugned assessment years. As uniformly opined in the above cited cases, once assessment gets abated, the original return which had been filed u/s 139 of the Act becomes *non-est* and loses its originality and subsequent fresh returns filed u/s 153A of the Act takes place of the original

return and forms the sole basis from framing the de-novo assessments re-started/ re-initiated u/s 153A of the Act. On a perusal of section 153A(1)(a) of the Act read with the Explanation appended to section 153A(2) of the Act, it is seen that all other provisions of the Income-Tax Act, 1961 (which includes deductions under Chapter VI-A) to the extent not inconsistent with sections 153A, 153B and 153C of the Act shall equally apply to the Returns filed in compliance to notices issued u/s 153A of the Act and the subsequent assessments framed u/s 153A of the Act on the basis of such Returns filed u/s 153A of the Act.In the instant case, since the Returns of Income filed u/s 153A(1) of the Act for the impugned assessment years substituted the original Returns filed u/s 139(1) of the Act, the said Returns u/s 153A(1) of the Act would be construed as the one filed u/s 139(1) of the Act and as specifically laid down u/s 153A(1)(a) of the Act, all the provisions of the Act [including Chapter VI-A and the impugned deduction u/s 80IA(4) of the Act] would apply to such Returns u/s 153A of the Act and the assessments u/s 153A of the Act framed pursuant thereto. We are, thus, of the considered view that the assessee in the instant case wasentitled to all legitimate claims of deduction, including its claim u/s 80IA(4) of the Act, in its Returns filed pursuant to Notices issued u/s 153A for the impugned A.Ys although the same were not claimed in its original Returns u/s 139 of the Act.

97. Reverting to the various counter-arguments/assertions made by ld. D/R vide his written submissions dated 25.01.2023, it is stated that insofar as the reliance placed by ld. D/R on the judgment rendered by the Hon'ble Supreme Court in the case of *Goetze India Ltd. Vs. CIT (2006) 284 ITR 323*is concerned, we find that the said judgment was rendered on completely incongruent set of facts i.e., in the context of deciding whether an assessee could amend a return filed by him for making a claim for deduction by way of a letter before ld. AO other than by filing a revised return in the course of normal assessment proceedings (and not proceedings u/s 153A of the Act pursuant to a search action). On the said question, the Hon'ble Apex Court ordained that ld. AO had no power to entertain a claim for deduction not made in the return of income otherwise than by filing a revised return. The aforesaid judgment is clearly inapplicable to the disparate set of facts in the present case wherein pursuant to the search and seizure operations u/s 132(1), the original returns of income for the impugned assessment years [wherein no claim of deduction had been made u/s 80IA(4) of the Act] had become *non-est* (i.e., rendered to a nullity) and the fresh returns filed u/s 153A of the Act [wherein deductions had been claimed afresh u/s 80IA(4) of the Act] had substituted and taken place of the original returns filed u/s 139(1) of the Act. Thus, unlike the factual matrix in the case of *Goetze India Ltd. (supra)*, the present case does not involve any request made by the assessee for allowing fresh claims of deductions not claimed in the original return filed u/s 139(1) of the Act via a letter before ld. AO, but claims of legally tenable deductions in Returns filed u/s 153A of the Act, which substituted the original Returns filed earlier u/s 139(1) of the Act after such Returns u/s 139(1) of the Act and the pending assessment proceedings pursuant thereto had abated/ terminated and rendered to a nullity/ had become *non-est*in view of the second proviso to 153A(1) of the Act. Thus, as distinguished from the judgment rendered in context of the dissimilar factual backdrop in case of *Goetz India Ltd.(supra)*, in our considered view, by virtue of the operation of section 153A(1)(a) of the Act, the assessee, in the instant case is entitled to claim all legally tenable deductions in Returns filed afresh u/s 153A of the Act as if such Returns were Returns furnished u/s 139 of the Act.

98. Next, the contention of ld. D/R to the effect that since the Returns wherein the impugned deductions u/s 80IA(4) of the Act had been claimed were not filed within the time allowed u/s 139(1) of the Act, the right course of action would be to file condonation of delay u/s 119(2)(b) and (c) of the Act - also to our mind does not hold much substance.It is a fact on record that the Returns u/s 153A of the Act were duly filed within the time permitted in the Notices issued u/s 153A of the Act and since the said Returns u/s 153A of the Act substituted the original Returns filed u/s 139(1) of the Act, the same would be deemed to have been filed within the time permitted u/s 139(1) of the Act. We derive support to our aforesaid line of reasoning from the judgment rendered by the Hon'ble Kolkata High Court in the case of *Shrikant Mohta vs. CIT* [*ITAT No.19 & 20 of 2015, GA No.246 & 247 of 2015*, judgment dated 25/06/2018] wherein the Hon'ble High Court held as under:

"The second question is answered thus:

When search operations are conducted under Section 132 of the Act, the obligation of the assessee to file any return remains suspended till such time that a notice is issued for such purpose under Section 153A(1)(a) of the Act. If the return is filed by the assessee within the reasonable time permitted by such notice under Section 153A(1)(a) of the Act, such return would then be deemed to have been filed within the time permitted under Section 139 (1) of the Act for the benefit under Section 139(3) of the Act to be availed of by the assessee."

99. Thus, the Returns u/s 153A of the Act wherein the impugned deductions u/s 80IA(4) of the Act have been claimed [and which substitute the original returns u/s 139(1) of the Act] are not delayed and hence the question of filing any condonation of delay does not arise.

100. Next, ld. D/R's reliance on the judgment of the Hon'ble Jodhpur Bench of the ITAT in the case of *Suncity Alloys (P) Ltd. Vs. ACIT [2009] 124 TTJ 124* to the effect that assessments or reassessments made pursuant to notice u/s 153A of the Act are not *de-novo* assessments and therefore no new claim of deduction or allowance can be made by the assessee is also misplaced. The judgment in the said case was rendered in context of completed assessment proceedings i.e., unabated assessment yearswhich are not covered under the second proviso to Section 153A(1) of the Act. In case of completed/unabated assessment proceedings i.e., where assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income prior to the date of search, such orders shall subsist since there is no question of any abatement since no proceedings are pending. In such a case, ld. AO will assess or reassess the income of the assessee strictly based on incriminating material found during the course of search or requisition i.e., compute the undisclosed income based on incriminating material and simply aggregate it with the income already assessed in case of completed assessment. It was in this context that the Hon'ble Jodhpur Bench held that assessments or reassessments pursuant to notice u/s 153A of the Act in case of unabated assessment proceedings were not *de-novo* assessments. The said proposition, however, does not apply to abated proceedings in respect of pending assessment where the original assessment initiated on the basis of the original return filed u/s 139 of the Act terminates/abates and the entire assessment is re-initiated/re-started afresh on a de-novo basis on the basis of Return filed u/s 153A of the Act. Even in the context of completed/unabated assessment proceedings, it may be noted that a

contrary view was taken by the Hon'ble Hyderabad ITAT in the case of *DCIT vs. Megha Engineering & Infrastructure Ltd. [607/Hyd/ 2016 (AY 2010-11), 608/Hyd/ 2016 (AY 2011-12), 609/Hyd/ 2016 (AY 2012-13), 610/Hyd/ 2016 (AY 2013-14), 1375/Hyd/ 2016 (AY 2014-15) & 1540/Hyd/ 2016 (AY 2015-16)*, wherein even in context of completed/unabated assessments, the Hon'ble Tribunal opined that the assessee was entitled to claim deductions u/s 80-IA(4) of the Act on eligible projects afresh in Return filed u/s 153A of the Act although the same had not been claimed in the original Return filed u/s 139 of the Act and the original assessments had been completed on the said basis. In the face of contradictory views taken by the co-ordinate benches of the Tribunal in the above two cases, we are inclined to follow the view which favours the Assessee in consonance with the judgment rendered by the Hon'ble Apex Court in the case of *CIT vs. Vegetable Products Ltd. (88 ITR 192)*,wherein the Hon'ble Court held that when two interpretations are possible, one in favour of the assessee must be adopted.

101. Further, the reliance placed by ld. D/R on the judgment rendered by the Hon'ble Delhi ITAT in the case of *Charchit Agarwal vs. ACIT [2—9] 34 SOT 348 (Del)* also does not lend much credence to the Revenue's case. The said judgment was rendered in the context of specific and distinct set of facts and circumstances of that case vis-à-vis valuation of closing stock, wherein the very basis of valuation claimed in Returns filed u/s 153A of the Act was under challenge. The said facts are missing in the present case, making the ratio inapplicable to the present case. Further, insofar as the observation of the Delhi Bench in the above case to the effect that - fresh claims cannot be made u/s 153A of the Act which have the result of lowering income returned earlier considering that search proceedings are for the benefit of the Revenue - is concerned, it is seen that other benches of this Tribunal have taken a divergent view in this regard. To cite a few such judgments:

"(i) Srinivas Rama Raju vs. DCIT [2016 (10) TMI 174 - ITAT Hyderabad; TA.No.975/Hyd/2015, order dated 19/08/2016]: The Hon'ble ITAT Hyderabad held as under:

"11. We have carefully considered the rival submissions and perused the record. As could be noticed from the grounds of appeal and the arguments advanced by the Learned Counsel for the assessee, the main contention is not with regard to abatement of proceedings under section 153A of the Act. The limited issue is with regard to claim of deduction in response to notice issued under section 153A of the Act even if such claim was not made in the original return. In fact, the Ld. CIT(A) has not disputed that evidence is already on record but refused the claim of deduction on the limited ground that provisions of section 153A are meant for the benefit of the Revenue and not for the assessee. As we have pointed out in the preceding paragraphs, the ITAT Chennai Bench, Pune Bench and the Bombay Bench have considered identical issue in detail and observed that once return of income is filed under section 153A of the Act, it has to be considered as a return of income filed under section 139 of the Act and all other provisions would apply as though it is a return of income filed under section 139 which includes reconsideration of any deduction permissible under the law. It is also not in dispute that the assessee has placed all the facts on record even in the original return but did not claim set off of the expenditure and while declaring additional income, in response to the notice issued under section 153A of the Act, though he stuck to the income declared, set off was claimed as per law which should not be denied, overlooking the fact that the return of income filed under section 153A

of the Act should be deemed to be the return filed under section 139 of the Act; irrespective of the question as to whether it is for the benefit of the assessee or department, the assessee is entitled to claim deduction of interest expenditure, particularly when the facts are already on record. The same opinion was echoed by all the Benches of the ITAT and thus the ratio of the decision of the Hon'ble Supreme Court, which was in this context of Section 147 of the Act, should not be imported into the proceedings under section 153A of the Act, more particularly when the claim of the assessee is not a fresh claim un-connected to the income declared but the claim was linked with the income declared. Having regard to the circumstances of the case, we are of the view that the Assessing Officer as well as the Ld. CIT(A) were not justified in disallowing the claim of deduction of ₹ 24,57,965. We direct the Assessing Officer to allow the claim of deduction and recompute the income accordingly."

(ii) ACIT vs. VN Devadoss (2013) 57 SOT 67 (Chennai) (URO), ITAT:

The Chennai Bench addressed the issue as to whether a search under section 132 is conducted for the benefit of the assessee or department. It also took note of the fact that returns are not voluntarily filed by the assessee within the due date prescribed under section 139(1) but they are filed after the search operation was conducted but before the issuance of notice under section 153A of the Act. In para28 of its order, the Bench has observed as under:

"28. Next we have to examine the decision of the Commissioner of Income tax(Appeals) rendered on the alternate ground raised by the assessees before him. The alternate ground was whether the returns filed in response to notices issued under section 153A can be taken as returns filed within the time limit stipulated under section 139(1). The Commissioner of Income-tax (Appeals) has decided in favour of the assessees holding that the returns filed under section 153A are to be treated as returns filed under section 139(1) within the time allowed under the statute."

102. Further, the proposition that fresh claims of deductions can be made in returns filed u/s 153A of the Act even though such deductions were not claimed in the original returns has been decided in favour of the assessee in a plethora of judgments by the Hon'ble High Courts and various benches of this Tribunal across the country (cited earlier) and hence is no longer *res integra*.

103. Next, the observation of ld. D/R that if an assessee is allowed to claim an allowance or deduction u/s 153A of the Act not claimed earlier, it would mean that even in cases where the appeal arising out of completed assessment has been decided in cases by ld. CIT(A), ITAT and the High Courts, on a notice issued u/s 153A of the Act, ld. AO would have power to undo what has been concluded does not hold good for the pending/abated assessment proceedings for the impugned years under consideration. Since the proceedings for the impugned years were pending i.e., not concluded as on the date of search, there is no question of any concluded assessment orders for the impugned years or issues arising therefrom which have been decided by the appellate authorities or the Hon'ble High Court andaresought to be undone by filing of Returns u/s 153A of the Act. As stated earlier, in the case of pending assessment proceedings, the original assessment initiated (and not concluded) on the basis of the original return filed u/s 139 of the Act terminates/abates and the entire assessment is re-initiated/re-started afresh on a *de-novo* basis on the basis of

Return filed u/s 153A of the Act wherein all legally tenable deductions are allowable. As held by the Hon'ble Bombay High Court in *Pr. CIT vs. JSW Steel Limited [422 ITR 071; ITA No. 1934 of 2017*, judgment dated 05/02/2020] - "in view of the second proviso to Section 153A(1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under Section 153A(1) of the Act which was not claimed in his regular return of income, because assessment was never made/finalised in the case of the assessee in such a situation." [at para 16 of the order]

104. In light of the aforesaid discussions, we have no hesitation in holding that the Assessee in the instant case was very well within its rights to claim deductions u/s 80IA(4) of the Act in its Returns filed in compliance to Notices issued u/s 153A of the Act in respect of pending/abated assessment proceedings for the impugned AYs 2017-18, 2018-19 & 2019-20 although such deductions were not made in the original Returns filed u/s 139(1) of the Act (prior to search) and such claims were also not raised vide revised Returns of Income filed u/s 139(5) of the Act.

105. In view of the above, Ground Nos. 1 & 3 of the Department's Appeal are dismissed."

9. In respect of ground nos. 1 and 2, we find that coordinate bench has given its finding by concluding it in para 104 extracted above, holding it in favour of the assessee, allowing the claim of deduction u/s. 80IA. By way of these grounds, revenue has contested that claim of deduction u/s. 80-IA for the assessment years succeeding the AY 2017-18 can only be admissible if the deduction u/s 80-IA related to the same project(s) has been allowed in AY 207-18. Claim of assessee has been allowed in AY 2017-18 by the Coordinate Bench (supra). Accordingly, ground nos. 1 and 2 of the revenue are dismissed.

10. Ground no. 3 relating to treatment of assessee as a "Developer of Infrastructure facility" and not a "Works Contractor" has been dealt with in para 61 extracted above, in which the coordinate bench observed and held that this issue had not been contested by the revenue in the appeal before it and thus, had reached finality. Accordingly, once the assessee has been taken as "Developer of Infrastructure facility" in the preceding years in which the claim of deduction u/s. 80IA has been allowed, in the year under consideration different treatment to the assessee for the same

activities cannot be held as a "Works Contractor". Accordingly, ground no. 3 taken by the revenue is dismissed.

11. We thus dismiss the appeal of the revenue by taking into consideration elaborate findings given by the coordinate bench in the assessee's own case in the preceding years as referred above on the identical issue with similar facts and circumstances.

12. In the result, appeal of the revenue is dismissed as indicated above.

Order pronounced in the Court on 17.01.2024

Sd/-	Sd/-
(Rajpal Yadav)	**(Girish Agrawal)**
Vice President	**Accountant Member**

Dated:17th January, 2024

JD, Sr. P.S.
Copy to:

1. The Appellant:
2. The Respondent
3. CIT(A), Central NER, Guwahati
4. CIT
5. DR, ITAT, Guwahati Bench, Guwahati
6. Guard file

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata