आयकर अपीलीय अधिकरण, 'ए ' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.1560 & 1920/Chny/2019**
(निर्धारणवर्ष / Assessment Year: 2014-15 & 2015-16)

Assistant Commissioner of Income Tax (OSD), Corporate Range-1, Chennai-600 034.	Vs	M/s. Dong Woo Surface Tech India Pvt.Ltd. 126, Mappedu Village, Thiruvallur,Chennai-631 402.
		PAN: AACCD 3315L
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**I.T.A.No.939 & 940/Chny/2020**
(निर्धारणवर्ष / Assessment Year: 2011-12 & 2013-14)

M/s. Dong Woo Surface Tech India Pvt.Ltd. 126, Samathuvapuram Mappedu Village, Thiruvallur, Chennai-631 402.	Vs	Assistant Commissioner of Income Tax (OSD), Corporate Range-1, Chennai-600 034.
PAN: AACCD 3315L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Revenue by	:	Mr. AR.V.Sreenivasan, Addl.CIT
प्रत्यर्थी की ओरसे/ Assessee by	:	Mr.T.Vasudevan, Advocate & Mr.K.Venkataraman, CA

सुनवाई की तारीख/Date of hearing	:	06.10.2021
घोषणा कीतारीख /Date of Pronouncement	:	22.10.2021

आदेश / O R D E R

PER G.MANJUNATHA, AM:

This bunch of four appeals filed by the assessee as well as Revenue are directed against separate, but identical orders of the learned CIT(A)-1, Chennai all even dated 23.09.2020, 23.09.2020, 07.03.2019 & 29.03.2019 and pertain to assessment years 2011-12, 2013-14, 2014-15 & 2015-16.

Since, the facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for assessment years 2011-12 and 2013-14, therefore, for the sake of brevity, grounds of appeal filed for assessment year 2011-12 in ITA No.939/Chny/2020 are reproduced as under:-

> *"1. The order of the CIT(A) dismissing the appeal and confirming the disallowance of supervisory charges paid by assessee is contrary to law, erroneous and unsustainable on the facts of the case.*
>
> *Reopening of Assessment*
>
> *2. The CIT(A) ought to have seen that the reopening of assessment under sec.147 by notice issued u/s148 dated 28.3.2018 is without jurisdiction and untenable in law.*
>
> *3. The CIT(A) ought to have appreciated that the first Proviso to sec.147 would apply as the assessment was completed u/s.l43(3) vide order dated 26.3.2014 and that there was no failure on the part of the assessee to disclose any material facts warranting the reopening of assessment beyond the period of four years and hence is unsustainable in law.*
>
> *4. The CIT(A) also ought to have appreciated that there was no reason to believe that income had escaped assessment and in the absence of any fresh material pointing to failure on the part of assessee to disclose particulars of income, the reopening is not in accordance with law and needs to be annulled.*
>
> *5. The CIT(A), in any event, ought to have seen from the assessment records that the reopening is only based on material already available on record and constitutes a mere change of opinion which does not clothe the officer to initiate*

reassessment proceedings by issue of notice u/s.148 of the Act."

Merits :-

6. The CIT(A) failed to appreciate that the assessee had made a claim for deduction u/s.40(a)(i) of the 'supervisory charges' paid to the parent company of Rs.3,13,07,498 and was not justified in confirming the disallowance.

7. The CIT(A) failed to appreciate that sustaining the disallowance of the 'supervisory charges' to the extent of Rs.1,31,30,658/- is wholly arbitrary, unjust and unsustainable on the facts of the case.

8. The CIT(A) failed to appreciate that the claim of the assessee of the supervisory charges paid in the asst. year 2010-11 in the current year, i.e., 2011-12 on remitting the TDS amount, is in accordance with the proviso to sec.40(a)(i) and hence the disallowance of the claim under sec.37 of the Act is unjust and untenable on the facts of the case.

9. The CIT(A) further tailed to appreciate that the supervisory charges are paid to the parent company as consideration for the services rendered by Dongwoo HST Co. Ltd., by way of dispatching its employees to the factory site in rendering the technical knowhow for manufacture and maintenance of furnace machine and machine parts and is wholly and exclusively for the purpose of business, thus satisfying the parameters for allowance of the amount under sec.37 of the Act.

10. The CIT(A), in any view of the matter, ought to have seen that reopening of assessment in violation of Proviso to sec.147 was untenable in law and also ought to have deleted the entire disallowance with due regard to the contentions of the assessee and thus allowed the appeal."

3. The Revenue has more or less raised common grounds of appeal for assessment years 2014-15 and 2015-16, therefore, for the sake of brevity, grounds of appeal filed for

assessment year 2014-15 in ITA No.1560/Chny/2019 are reproduced as under:-

"1. The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.

2.1 The Ld. CIT(A) erred in giving relief to the assessee by deleting the supervisory fee based on fresh evidence submitted for the first time before the CIT(A) without giving opportunity to the AO under Rule 46A of the Income tax Rules, for verifying the said claim of the assessee based on evidences filed afresh during appellate proceedings.

2.2 The Ld. CIT(A) failed to appreciate that the AO had disallowed the supervisory fee u/s 37 of the Income Tax Act for lack of genuineness and commercial expediency.

2.3 The Ld. CIT(A) failed to appreciate that the assessee although disallowed the supervisory fee claimed during the previous year relevant to the A.Y.2014-15 u/s 40(a)(i) of the Act, without producing any proof for the genuineness of its claim, had claimed the same after deducting TDS for such fee incurred during the previous year relevant to the A.Y.2013-14 after deducting TDS during the subsequent previous year, thus avoiding furnishing of any detail/documentary evidence before the AO as not relevant to the year under consideration.

2.3 The Ld. CIT(A) ought to have appreciated that the assessee had not produced any proof for having received such services for the supervisory fee claimed during the previous year relevant to the A.Y.2013-14 which was actually disallowed u/s 40(a)(i) of the Act for the non-deduction of TDS and claimed the same during the previous year relevant to the A.Y. 2014- 15 after remitting the TDS in that year.

2.4 The Ld. CIT(A) ought to have appreciate the modus operandi of the assessee in as much as he had submitted the proof of having paid the TDS for the A.Y.2012-13 in the A.Y.2014-15 so as to escape disallowance of the same u/s 37 of the Act, but u/s 40(a)(i) of the Act during the relevant year which could be subsequently claimed in the year in which the TDS was deducted on the said payment.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the AO restored."

4. The brief facts of the case extracted from ITA No. 1560/Chny/2019 for Asst. Year 2014-15 are that the assessee company is engaged in the business of manufacturing, supply and installation of industrial furnaces and related services. The parent company of the assessee M/s. Dongwoo HST Co. Ltd., which is in possession of vital techniques, processes concerning heat treatment, coating, furnace of metal, sale and services to customers. The said technology was transferred to the assessee company as know-how. The assessee company carried out the process under the supervision of parent company. The parent company M/s. Dongwoo HST Co. Ltd renders supervisory services to the assessee by dispatching expatriates to India for carrying out work for which the assessee company has agreed to pay supervisory and managerial fees vide agreement dated 25.12.2007. The scope of supervisory services as per agreement dated 25.12.2007 has been defined as per which parent company shall provide necessary manpower support to enable inspection, testing of main and associated equipments in tune with latest approved national and international standards and code of practice. The assessee

has paid supervisory fees to its parent company in terms of agreement entered into between the parties dated 25.12.2007.

5. During the course of assessment proceedings, the Assessing Officer called upon the assessee to justify payment of supervisory fees to its parent company with necessary evidences. The assessee in response has filed necessary evidences, including agreement entered into with M/s. Dongwoo HST Co. Ltd. and claimed that it has paid supervisory fees to its parent company for rendering various services including dispatching its employees to factory site in rendering technical know-how for manufacture and maintenance of furnaces machine and machine parts. The Assessing Officer, however was not convinced with explanation furnished by the assessee and according to him, except copies of invoices and agreement assessee has not able to file any other evidences to justify payment of supervisory fees to its parent company for rendering services. The Assessing Officer further noted that scope of work specified in agreement between parties is general in nature and the assessee has not furnished any evidence to prove kind of services received from its parent company to justify payment

of supervisory fees. The Assessing Officer has discussed the issue at length in light of transactions between two related parties and opined that the assessee has by no means been able to provide any evidence, whatsoever to prove that such services as being mentioned in the agreement was received. Therefore, the Assessing Officer opined that it is only a device adopted by the assessee and its parent company to shift profit from one tax territory to another tax territory without any actual business expediency. Hence, the Assessing Officer disallowed entire payment of supervisory fees paid to its parent company and added back to the total income. The relevant findings of the Assessing Officer are as under:-

> *"The assessee has by no means been able to provide any evidence whatsoever to prove that such services as being mentioned in the agreement was received. This is after providing numerous opportunities as requested.*
>
> *In a company being a subsidiary of foreign parent company, it is routine to have a supervisory control by the parent company with regards to overall policy matters. However, that does not warrant or justify the payments being made which only serves in reducing the taxable profit of the subsidiary company in India. The companies are basically indulging in profit shifting and the same is being done under the pretext of such ghost charges with agreements put in place. It is to be reiterated the assessee was not even able to produce any evidence for routine supervisory communications as well.*

In such circumstances, it is only logical to conclude that the said payment is being made without any actual business expediency and against which no particular service is received. The same is therefore liable to be disallowed under section 37 of the Act. In view of the discussions made, it was concluded that the said payment of Rs. 1,19,90,852/- was disallowed and added back to the total income of the assessee for ÀY 14-15.

5.1 The deduction of sum of Rs.3,13,07,498/- claimed in AY 2011-12 as supervisory fees paid for earlier years (on the basis of TDS deducted in the current year) is not allowable as the principal issue of supervisory fees itself has been decided as not allowable under Section 37 of the Income-tax Act,1961. Further, the assessee could not furnish any proof for the receipt of actual services for which the huge payments were being made mentioning in only balance sheet and profit & loss account of the company as being vetted by the parent company and nothing in the matter of supervisory services being rendered as mentioned. This is despite the opportunities given and even after the show cause notice given. In such circumstances, it is only logical to conclude that the said payment is being made without any actual business expediency and against which no particular service is received and also in line with the stand taken by the assessing officer in assessee's own case for ÀY 2014-15. In view of the discussions made the deduction of sum of Rs.3,13,07,498/- claimed in AY 2011-12 as supervisory fees paid for earlier years (on the basis of TDS deducted in the current year) is disallowed and added back to the total income of the assessee."

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). The assessee has challenged additions made by the Assessing Officer towards disallowance of supervisory fees and argued that the assessee has paid supervisory fees to its parent company for

rendering various services including technology support for manufacture and installation of heat treatment furnaces and such services were provided by the parent company by dispatching expatriates to India for carrying out work at various sites. The assessee further submitted that it has paid supervisory fees to its parent company in pursuant to an agreement dated 25.12.2007 entered into which specifies scope of work. The assessee has also filed other evidences including bills issued by parent company and travel details of expatriates to India on various occasions to provide services.

7. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various reasons given by the Assessing Officer to disallow supervisory fees has opined that the assessee has provided various details including copies of travel orders, visa and other supporting bills in respect of Korean expatriates who had come and rendered services in India. The assessee had also furnished extracts of e-mail communication with respect to work instructions and draft plans made during the relevant period. The assessee had also furnished copy of agreement entered into with its parent

company for supervisory services to be rendered by them. The learned CIT(A) further noted that the assessee had also tested its transactions with Associated Enterprises by adopting Transactional Net Margin method, as per which transactions of the assessee with its AEs are at arm's length price. Therefore, the learned CIT(A) opined that the assessee being in the business of manufacturing and sale of machines and machine parts has carried out process concerning heat treatment, coating furnace of metal and such process had been carried out with assistance and technological support provided by parent company M/s. Dong Woo HST Co. Ltd. Hence, the learned CIT(A) opined that expenditure incurred under the head supervisory charges and paid to its parent company is supported by necessary evidences and accordingly, deleted additions made by the Assessing Officer. The learned CIT(A) has also taken note of fact that the assessee has remitted supervisory fees after deducting necessary withholding tax as per law. The relevant findings of the learned CIT(A) are as under:-

> *" The submissions of the appellant were considered vis-a-vis the findings of the A.O. During the appellate proceedings, the appellant furnished written submissions dated 2/1/2018. It was explained that the appellant company was carrying out*

processes concerning heat treatment, coating, furnace of metal and sales and services to customers. These processes had been transferred by the parent company i.e. Dong woo HST Company Ltd. The appellant carried out these processes under the supervision of the parent company. It was stated that these expenses were incurred wholly and exclusively for the purpose of business. The appellant also stated that the services had been rendered by the parent company by despatching expatriates to India for carrying out this work. A detailed note in this regard had been furnished during the assessment proceedings. Copies of travel orders, visa and other supporting bills with respect of the Korean expatriates who rendered services in India were submitted during the appellate proceedings. Extracts of e-mail communications with respect to work instructions and draft plans made during the F.Y. 2013-14 were also furnished. The appellant also furnished a copy of the agreement entered into by the appellant company for the supervisory services to be rendered by the parent company. The appellant stated that it had complied with the arms length price under Transactional Net Margin Method duly corroborated by the facts contained in Form 3CEB.

In the written submissions dated 15/2/20 18, the company stated that the said supervisory fee income of Rs.1,19,90,852/- had been offered to tax in the statement of income and taxed by the parent company in its ITR. The appellant filed a copy of the statement of income and ITR 6. The company also furnished workings with regard to Arms Length Price (ALP) for the said supervisory fee payment.

the appellant company had already disallowed Rs.1,19,90,852/- in their Income tax return of A.Y. 2014-15 u/s.40(a)(i) on account of non deduction/non payment of TDS. Hence, it was stated that disallowing the same once again results in erroneous double disallowance. The appellant had also furnished the relevant extract of ITR and statement of income computation along with annexures for the A.Y. 2014-15.

Taking into account these factual submissions and the evidences furnished by the appellant, I find that there is considerable merit in the contentions of the appellant. The disallowance of supervisory fee of Rs.1,19,90,852/- pertaining

to A.Y. 2014-15 requires to be deleted. This ground of appeal is allowed.

Disallowance of Supervisory fee totaling to Rs. 1,31,30,658/- pertaining to AY 2013-14 which was disallowed u/s 40(a)(i) of the Act for non-deduction of tax, claimed during AY 2014-15:

4A(1) Assessment proceedings:

During the course of assessment proceedings, the A.O. held that the assessee had claimed the supervisory fee of Rs.1,31,30,658/- paid in the previous year as a deduction in the current year as the same was disallowed in the previous year computation by the assessee for non deduction of tax. The A.O. held that the same was not an allowable expense. The deduction made in the computation of Rs.1,31,30,658/- was therefore disallowed.

4B(2) Appellate proceedings:

During the course of appellate proceedings, the appellant furnished the following submissions:

1. The Learned Assessing Officer has erred in disallowing the expenses incurred in the FY 2012-13 of the relevant Assessment Year 2013-14, Disallowing of expenses pertaining to the previous financial year is unjust.
ii. The expenses were incurred in the previous financial year and however no question regarding its allowability and genuinity during the relevant scrutiny assessment. Sole reason for suo moto disallowance was non deduction of tax at source as per section 40(a)(i) of the Income Tax Act, 1961.

In as much as the above facts, the disallowance of expenses with respect to previous year has to be deleted.

4B(3) CIT(A)'s Inferences and decision:

The submissions of the appellant were considered vis-ã-vis the findings of the A.O. In their submissions dated 2/1/2018, the appellant stated that the A.O. had erred in disallowing Rs.1,31,30,658/- stated as pertaining to A.Y. 2013-14 which was originally claimed at Rs.1,31,99,390/- u/s.40(a)(i) on remittance of TDS in the A.Y. 20 14-15 being the supervisory fees which was suo moto disallowed in the income tax return of A.Y. 2012-13 u/s.40(a)(i) on account of non deduction of TDS.

The appellant stated that the A.O. had not called for any submissions, explanations, supporting documents for verifying this expenditure. The appellant maintained that it was an admissible expenditure and these expenses had originally been fully allowed during A.Y. 20 12-13. In their written submissions dated 21/2/2018, the appellant furnished TDS chalan for Rs.13,33,870/- on the supervisory fee relating to A.Y: 2012-13 which had been remitted during the AY 2014-15.

In their written submissions dated 18/2/2019, the appellant furnished evidences such as copies of travel order, visa and other supporting bills with respect of the Korean expatriates who came to India during F.Y. 2011-12 for rendering services. The extracts of e-mail communications regarding work instructions, draft plans and basis of billing made on Dong woo India by HST Korea for Rs.1,31,99,390/- were submitted. The correctness of the pricing of the said supervisory fee was stated to be in line with the ALP as per TP Regulations. The relevant TP study extract and Form 3CEB were also furnished factual details.

Taking into account the explanations and documentary evidence that were furnished during the appellate proceedings, the appellant's contentions had been found to be tenable. This disallowance of Rs.1,31,30,658/- requires to be deleted. This ground of appeal is allowed."

Aggrieved by the order of learned CIT(A), the Revenue is in appeal before us.

8. The learned DR submitted that the learned CIT(A) has erred in deleting supervisory fees paid by the assessee to its parent company based on fresh evidences submitted for the first time during appellate proceedings without giving any opportunity to the Assessing Officer in violation of Rule 46A of

Income Tax Rules, 1962. The learned DR further submitted that the learned CIT(A) has failed to appreciate fact that the Assessing Officer had disallowed supervisory fees u/s.37 of the Income Tax Act, 1961, for lack of genuineness and commercial expediency, whereas the learned CIT(A) has deleted additions made by the Assessing Officer on the ground that necessary TDS has been deducted and thus, same cannot be disallowed u/s.40(a)(i) of the Act, without appreciating fact that once a particular expenditure is considered to be not allowable u/s.37 of the Act, then other formalities of non-deduction of TDS and consequent disallowances is academic in nature.

9. The learned A.R for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has paid supervisory fees to its parent company M/s. Dong Woo HST Co. Ltd. for rendering various services including technological support and process concerning heat treatment, coating furnaces of metal, sale and services to customers. The parent company has provided such services in pursuant to an agreement dated 25.12.2007 between the parties, as per which technicians from parent company has

travelled to India on various occasions for rendering services in connection with manufacturing and installation of heat treatment of furnaces for which the assessee has furnished necessary evidences including agreement between the parties, travel documents of expatriates who visited India for rendering services. The learned A.R further submitted that the assessee is in the business of manufacturing, supply and installation of industrial furnaces and said activity cannot be carried out without assistance of its parent company, because technology required for said activity is provided by parent company and further supervisory and process concerning heat treatment, coating furnaces of metals was also provided by parent company. The learned CIT(A) after considering relevant facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

10. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee is in the business of manufacture, supply and installation of industrial furnaces and related services. The assessee has carried out manufacturing and installation of

industrial furnaces under supervision of its parent company M/s. Dong Woo HST Co. Ltd. The technology required for process concerning heat treatment, coating, furnace of metal was provided by its parent company. The assessee has entered into an agreement with its parent company M/s. Dong Woo HST Co. Ltd. vide agreement dated 25.12.2007 and said agreement was renewed from time to time. The agreement between the parties specified scope of services to be provided by its parent company. As per said agreement, scope of services includes complete project management, design, erection, testing and commissioning for plant and machinery for heat treatment plant. The parent company shall provide necessary supervisory services to enable the assessee to successfully manufacture and supply industrial furnaces. The said agreement further provides for inspection, testing and other related services. For this purpose, parent company has deputed 3 to 4 senior members of the management headed by Mr.Chung Soo Jin and other persons, who frequently visits India for providing on sight supervisory services for manufacturing, supply and installation of industrial furnaces for which the assessee has paid supervisory fees to its parent

company. The assessee has furnished necessary evidences, including agreement between the parties, invoices raised by parent company, travel documents of expatriates, who visited India for rendering services, their visa, passport and air tickets. The assessee had also furnished e-mail correspondence between its parent company for exchange of information regarding technological support required for manufacturing and installation of industrial furnaces. The said payment has been made after withholding necessary TDS applicable as per law. Therefore, we are of the considered view that supervisory fees paid by the assessee to its parent company M/s. Dong Woo HST Co. Ltd. in pursuant to an agreement dated 25.12.2007 is genuine expenditure incurred wholly and exclusively for the purpose of business of the assessee and which is supported by necessary evidences.

11. The Assessing Officer has disbelieved genuine expenditure incurred by the assessee for the purpose of business only for the reason that said transaction was entered into between the assessee and its parent company. The Assessing Officer had also questioned necessity of making

such payments. Therefore, he opined that payment made to its parent company for rendering supervisory fees is nothing but shifting of profit from one tax territory to another tax territory without any actual business expediency and as against which no particular service is received. We have gone through reasons given by the Assessing Officer in light of various evidences filed by the assessee including agreement between parties and we do not ourselves subscribe to reasons given by the Assessing Officer for the simple reason that it is well settled principle of law that the Assessing Officer cannot sit in the armchair of businessman and decide whether particular expenditure is required to be incurred or not. It is also an admitted legal position that the Assessing Officer cannot question rational and necessity of incurring any particular expenditure. What is required to be seen is whether particular expenditure is incurred wholly and exclusively for the purpose of business of the assessee and further such expenditure is supported by necessary evidences. In this case, the assessee has filed all possible evidences including agreement between parties to prove genuineness of expenditure incurred for supervisory services. The assessee had also furnished

necessary supporting evidences including travel documents of expatriates, who visited India for rendering services. Therefore, we are of the considered view that the Assessing Officer was erred in disallowing expenditure incurred by the assessee for payment made to its parent company for rendering supervisory services. This legal position is supported by the decision of the Hon'ble Supreme Court in the case of CIT Vs Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC), where it was held that in deciding whether a payment of money is a deductible expenditure, one has to take into consideration questions of commercial expediency and the principles of ordinary commercial trading. If any payment or expenditure is incurred for the purpose of trade of the assessee, it does not matter that payment may inure to the benefit of a third party. Another test is whether the transaction is properly entered into as a part of the assessee's legitimate commercial undertaking in order to facilitate the carrying on of its business and it is immaterial that a third party also benefits thereby. But, in every case, it is a question of fact whether expenditure is expended wholly and exclusively for the purpose of trade or business of the assessee. In the present case, there is no doubt of whatsoever

with regard to genuineness of payment made by the assessee to its parent company, because such payment was made in pursuant to agreement between parties and further, the assessee has deducted applicable TDS as per law. The assessee had also furnished other supporting evidences to prove receipt of services from its parent company. Therefore, we are of the considered view that expenditure incurred by the assessee towards payment made to its parent company for rendering supervisory services is genuine expenditure, which was incurred wholly and exclusively for purpose of business of the assessee. The Assessing Officer without appreciating facts has simply disallowed supervisory fees paid to the assessee's parent company. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the Revenue.

12. The other aspect of non-deduction tax deducted at source and consequent disallowance of expenditure by the assessee in certain years and claiming deduction for said expenditure in the year of payment is not disputed by the

Assessing Officer, because the Assessing Officer has primarily held that expenditure incurred by the assessee under the head supervisory fees is held to be not deductible under section 37 of the Income Tax Act, 1961. But, the ld. CIT(A) has examined *suo motu* disallowance made by the assessee in earlier years for non-deduction of tax deducted at source and subsequent deduction claimed in the year of payment and held that the assessee has rightly claimed deduction towards expenditure incurred in earlier years in the impugned assessment years, because, it was disallowed in earlier years for non deduction of TDS and further, the same has been claimed as and when TDs has been deducted and remitted to Govt. account. Further, the ld. CIT(A) has recorded categorical findings that for the assessment year 2014-15, the assessee claimed deduction towards supervisory fee of Rs.1,31,30,658/- pertain to earlier assessment year, as the same was disallowed in the previous year in the statement of total income of the assessee for non-deduction of tax. Similarly, for assessment year 2015-16, the assessee claimed deduction of Rs.1,44,29,888/- towards supervisory fees incurred in earlier financial year and

disallowed in the statement of total income for non-deduction of TDS u/s.40(a)(i) of the Act.

13. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that there is no error in the findings recorded by the ld. CIT(A) to delete disallowances made by the AO towards supervisory fees paid by the assessee to its parent company. Hence, we are inclined to uphold findings of ld. CIT(A) and reject grounds taken by the Revenue for assessment years 2014-15 and 2015-16.

14. In the result, appeals filed by the Revenue for assessment years 2014-15 and 2015-16 are dismissed.

ITA No.939 & 940/Chny/2020: (A.Y. 2011-12 & 2013-14):

15. The facts and issues involved in these two appeals filed by the assessee are identical to the facts and issues which we had considered in ITA No.1560/Chny/2019 for assessment year 2014-15, but for reassessment u/s.147 r.w.s.143(3) of the

Income Tax Act, 1961. The issue of disallowance of supervisory fee paid to parent company is identical to the issue which we had considered in ITA No.1560/Chny/2019 for assessment year 2014-15. The reasons given by us in preceding paragraphs of ITA No.1560/Chny/2019 shall *mutatis mutandis* apply to these appeals as well. Therefore, for similar reasons, we direct the Assessing Officer to delete additions made towards disallowance of supervisory fee paid by the assessee to its parent company for Asst. Years 2011-12 and 2013-14. As regards legal ground taken by the assessee challenging validity of reopening of assessment u/s.147 of the Act, we find that since we have decided issue of disallowance of supervisory fee in favor of the assessee, legal ground taken by the assessee challenging reopening of assessment becomes academic in nature. Hence, legal ground taken by the assessee challenging validity of reassessment for Asst. Years 2011-12 and 2013-14 is dismissed accordingly.

16. In the result, appeals filed by the assessee for assessment years 2011-12 and 2013-14 are allowed and

appeals filed by the Revenue for assessment years 2014-15 & 2015-16 are dismissed.

Order pronounced in the open court on 22nd October, 2021

Sd/-	Sd/-
(वी.दुर्गा राव)	**(जी. मंजुनाथ)**
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 22nd October, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.