

IN THE INCOME-TAX APPELLATE TRIBUNAL “K” BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 279/Mum/2013 (Assessment Year 2008-09)
ITA No. 1007/Mum/2014 (Assessment Year 2009-10)

Greaves Cotton Ltd. Industry Manor, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025. PAN: AAACG2062M	Vs.	ACIT Circle-6(3), Aayakar Bhavan, M.K. Road, Mumbai-400020.
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Appellant

Respondent

ITA No. 754/Mum/2014 (Assessment Year 2009-10)

DCIT Circle-6(3), Room No. 522, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Greaves Cotton Ltd. Industry Manor, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025. PAN: AAACG2062M
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Appellant

Respondent

Appellant by : Smt. Arati Vissanji with
Shri Amol Patankar (AR)
Respondent by : Shri Sunil K. Jha (CIT-DR)

Date of Hearing : 14.11.2019

Date of Pronouncement : 17.01.2020

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This set of three appeals, out of which two cross appeal for Assessment Year 2009-10 and appeal by assessee for Assessment Year 2008-09 are directed against the assessment order passed under section 143(3) r.w.s. 144C passed in pursuance of direction of Id. Dispute Resolution Panel (Id. DRP). Mumbai

dated 04.09.2012 for Assessment Year 2008-09 and dated 28.10.2013 for Assessment Year 2009-10 respectively. In all appeals, the parties have raised certain common grounds of appeal, therefore, all the appeals were clubbed, heard and are decided by common order for the sake of brevity and convenience. In appeal for Assessment Year 2008-09, the assessee has raised the following grounds of appeal related with various additions/disallowances:

Ground A: Disallowance U/S 36(1)(iii) - Rs.3,46,618/-.

Ground B : Disallowance U/S 14A- Rs. 91,30,772/-

Ground C: Disallowances of pooja expenses - Rs. 11,86,451/-

Ground D: Disallowances of club expense - Rs.1,11,125/-

Ground E: Transfer pricing adjustment for corporate guarantee – Rs. 16,78,495/-.

Ground F: Capital receipt on account of TRANSFER OF TDR treated as Long Term Capital Gain.

Ground G: Unutilized Cenvat credit of Rs. 22721044/-.

Ground H: Interest under section 244A.

Ground I: Interest under section 234D.

Ground J: Addition to book profit under section 115JB on disallowance of section 14A r.w.r. 8D.

2. Brief facts of the case as gathered from the order of lower authorities are that assessee-company is in the business of manufacturing of marine and industrial gear boxes, diesel engines, generating sets etc. For the assessment year under consideration the assessee filed its return of income declaring total income of Rs. 84.53 crore under normal provision and book profit of Rs. 126.83 crore computed under section 115JB. While filing the return of income the assessee reported international transactions with its associated

enterprises (AE) including of corporate guarantee of its AE in Germany. Therefore, the assessing officer made a reference to Transfer Pricing Officer (TPO) for computation of Arms Length Price (ALP). The TPO passed its order under section 92CA(3) on 28.10.2011 and directed to charge a cost of guarantee of 6% of the guarantee of Rs. 16.78 crore. After receipt of order of TPO, the Assessing Officer passed draft assessment order under section 143(3) read with section 144C (1) dated 26.12.2011 and made adjustment of Rs. 67,13,980/- on account of guarantee commission. The Assessing Officer further made disallowance under section 36(1)(iii) of Rs. 3,64,618/-, disallowance under section 14A of Rs. 91,30,772/-, disallowance of Pooja Expenses of Rs. 11,86,451/-, Club Expenses of Rs. 1,11,125/- and added the disallowance of Rs. 91,30,772/- under section 14A to book profit under section 115JB. During the assessment, the assessee claimed that long term capital gain (LTCG) declared by assessee on sale of transfer of development right (TDR) is not taxable gain, on the basis of the decision of Hon'ble Supreme Court in CIT vs. B.C. Srinivasa Shetty (128 ITR 294). The claim of assessee was not accepted by Assessing Officer.

3. The assessee exercised its option for filing objection before the Id. DRP. The DRP after hearing the assessee granted partial relief on guarantee commission restricting the same @ 1.5% of the loan amount. However, all other additions/disallowances were upheld. On receipt of direction of Id. DRP, the Assessing Officer passed the final assessment order under section

143(3) r.w.s 144C(13) dated 21.11.2012. Aggrieved by the various additions/disallowances made in pursuance of direction of ld. DRP, the assessee has filed present appeal before this Tribunal.

4. We have heard the submission of ld. authorised representative (AR) of the assessee and ld. departmental representative (DR) for the revenue and perused the material available on record. At the outset of hearing, the ld. AR of the assessee submits that most of the grounds of appeal raised by assessee are covered in favour of assessee by the decision of Tribunal either in case of assessee for earlier years or other decisions of Tribunal or higher courts.
5. Ground No.1 relates to disallowance under section 36(1)(iii). The ld. AR of the assessee submits that this ground of appeal is covered in favour of assessee by the decision of Tribunal in assessee's own case for A.Y. 2006-07 & 2007-08 in ITA No. 7424/Mum/2010 dated 07.06.2019. There is no variance in the facts for the year under consideration, so far as disallowance under section 36(1)(iii) is concerned. The ld. AR further submits that the assessee gave advance to its subsidiary in A.Y. 1998-99, out of its own fund. The Assessing Officer made similar disallowance in earlier years, which have been deleted by the Tribunal.
6. On the other hand, the ld. DR for the revenue relied upon the order of lower authorities.
7. We have considered the submission of both the parties and perused the record. We have noted that on similar set of fact similar disallowance was

made in A.Y. 2006-07 & 2007-08 and on appeal the disallowance was deleted by the Tribunal by passing the following order:

6. We have considered the rival submission of the parties and have gone through the orders of authorities below. During the assessment, the Assessing Officer noted that the assessee has claimed interest expenses of Rs. 6.57 Crore. The assessee was asked to justify for interest paid on borrowed capital and to prove the nexus between the own funds and the interest free advance made to sister concern of Rs. 4.73 Crore. The assessee filed its reply and stated that the interest debited in Profit & Loss was paid in respect of capital borrowed for the purpose of business. The advance paid to subsidiary was on account of business expediencies. The contention of assessee was not accepted by Assessing Officer. The Assessing Officer worked out the disallowance of Rs. 22,42,759/- under section 36(1)(iii). The Id. DRP granted the partial relief to the assessee on the loan and advances given to Greaves Leasing Company holding that the advances were given to supply of equipment, therefore, it was in normal business operation and the Assessing Officer was directed to modify the assessment order accordingly. We have noted that the assessee's own fund consisting of share capital and reserve and surplus was Rs. 175.11 Crore. The assessee has given loans and advance to its subsidiaries i.e. Dee Greaves of Rs. 2,13,55,159/- only. The Hon'ble Bombay High Court in Reliance Utility & Power Ltd. (supra) held that if the assessee have funds available both, interest-free and overdraft and/or loans are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments. Therefore, in view of the decision of jurisdiction High Court as referred above, we are of the view that the assessee has sufficient interest free fund available with the assessee and therefore, no interest disallowance under section 36(1)(iii) was justified. Hence, the ground A (1&2) of appeal raised by assessee is allowed.

8. Considering the decision of Tribunal on similar set of fact and respectfully following the same, the disallowance under section 36(1)(iii) are deleted.

9. Ground No. B relates to disallowance under section 14A of Rs. 91,30,772/-.

The Id. AR of the assessee submits that during the relevant period under relevant to the assessment year consideration, the assessee earned dividend income of Rs. 2.41 crore from subsidiary company and Rs. 23,849/- from mutual funds. The assessee offered suo moto disallowance of DMAT charges of Rs. 105,400/- and Rs. 100,128/- being .4% of exempt income as per the decision of Tribunal in assessee's own case in earlier years. The Id. AR submits that before Assessing Officer vide submission dated 18.10.2011 submitted that the assessee has sufficient own fund, investment was not made out of borrowing and interest disallowance was not justified. The investment of the assessee was the same as in preceding year except investment in mutual funds which reduced to Rs. 12.73 crore from Rs. 25.26 crore in Financial Year 2006-07. The Id.AR further submits that section 14A is not applicable to the investment in growth fund as held by Tribunal in Manugraph India Ltd. ITA No. 4761/Mum/2013. Further, in A.Y. 2006-07 and A.Y. 2007-08, the Tribunal restricted the similar disallowance to 2% of the dividend income. The Id. AR submits that similar order for A.Y. 2006-07 & 2007-08 may be followed. In alternative submissions the Id AR for the assessee submitted that indirect expenses may be restricted to .5% of average value of investment.

10. On the other hand, the Id. DR submits that from the Assessment Year 2008—09, the disallowance under section 14A is to be computed as per the

methodology prescribed under Rule 8D. The ld. AR submits that Hon'ble jurisdictional High Court in Godrej & Boyce Ltd. (328 ITR 81) has upheld the validity of Rule 8D. Thus, the decision of Tribunal for A.Y. 2006-07 and 2007-08 is not helpful to the assessee as Rule 8D was introduced from A.Y. 2008-09.

11. We have considered the submission of both the parties and perused the order of lower authorities. The Assessing Officer while making disallowance made disallowance of interest expenses under Rule 8D(2)(ii) of Rs. 71,83,118/- and under Rule 8D(2)(iii) of Rs. 19,47,654/- being .5% of average value of investment. The ld. DRP upheld the action of Assessing Officer by taking view that Rule 8D is applicable for the Assessment Year under consideration. We have noted that before the Assessing Officer, the assessee specifically stated that investments are made out of the profit generated from the operation and not from borrowed money. The Reserve & Capital of the assessee are Rs. 332.63 crore (page no. 189/197 of the Paper Book. The assessee made investment of Rs. 70.26 crore and remaining of Rs. 80.75 crore were invested in preceding year. Considering the fact that assessee has made investment from its own interest free funds for the earning exempt income or the investment made are from the income generated from the business of assessee, therefore, no interest disallowance under Rule 8D(2)(ii) is warranted against the assessee. So far as disallowance under section Rule 8D(2)(iii) is concerned, the Assessing Officer have made disallowance @

.5% of average value of investment. In our view, the Assessing Officer has correctly made the disallowance of indirect expenses by applying the formula of Rule 8D. Therefore, we upheld the disallowance of .5% of average value of investment. The assessing officer is directed to allow the setoff of suo moto disallowance offered by the assessee. Thus, the assessee gets part relief on this ground of appeal. In the result, this ground of appeal is partly allowed.

12. Ground No. C relates to Pooja Expenses. The Id. AR of the assessee submits that this ground of appeal is covered by the decision of Tribunal for A.Y. 2007-08, wherein on similar disallowance was allowed subject to verification by lower authorities.

13. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

14. We have considered the submission of both the parties and perused the material available on record. We find that similar disallowance was made in A.Y. 2007-08, which was allowed by co-ordinate bench by passing the following order:

17. We have considered the submission of the parties and have gone through the orders of authorities below. We have noted that the assessee has claimed Pooja Expenses of Rs. 7,05,806/-. The Assessing Officer disallowed the expenses by following the decision of earlier years. The Id. DRP confirmed the action of Assessing Officer holding that the assessee has not established that expenses were incurred wholly and exclusively for the purpose of business. We have noted that the assessing office disallowed Pooja expenses of Rs. 8,41,279/- in AY 1998-99, on appeal before Id CIT(A) the deleted the said disallowances allowed vide order dated 31.03.2003. The Tribunal conformed the order of Id

CIT(A) vide ITA No. 7123/M/2003 vide order dated 15.04.2008. The revenue filed appeal before Hon'ble Bombay High Court for challenging the order of the Tribunal in ITA No. 50 of 2010. However, the revenue has withdrawn the said appeal vide order dated 29th November 2010. The copy of the Hon'ble High Court order is available on record. Therefore, we are of the view that this ground of appeal is covered in favor of the assessee. Hence, the AO is directed to delete the Pooja expenses. In the result this ground of appeal is also allowed.

15. Considering the decision of Tribunal on similar ground of appeal in assessee's own case for preceding year when no variance is brought to our notice. Thus, respectfully following the same, we direct the Assessing Officer to delete the disallowance of Pooja Expenses.

16. Ground No. D relates to Club Expenses of Rs. 1,11,125/-. The ld. AR of the assessee submits that this ground of appeal is covered by the decision of Tribunal for A.Y. 2007-08, wherein on similar disallowance was allowed subject to verification by lower authorities.

17. On the other hand, the ld. DR for the revenue supported the order of lower authorities.

18. We have considered the submission of both the parties and perused the material available on record. We find that similar disallowance was made in A.Y. 2007-08, which was allowed by co-ordinate bench by passing the following order:

20. We have considered the submission of the parties and have gone through the orders of authorities below. We have noted that the assessee has claimed club Expenses of Rs. 79,170/-. The assessee claimed club expenses of Rs. 7,07,477/-. The Assessing Officer disallowed the expenses by following the decision of earlier years. The ld. DRP directed the Assessing Officer to allow the club

membership fees only. The club membership fees was only Rs. 6,04,00/-, accordingly, the Assessing Officer disallowed the balance amount (Rs. 7,07,477 – 6,04,000). We have noted that in assessee's own case for A.Y. 1982-83 similar disallowances was allowed vide order dated 21st January 1992 in R.A No. 2569(Bom.)/1991 in ITA No. 6154/Bom/1987. Similar relief was granted to the assessee in appeal for A.Y. 1990-91 in ITA No. 7619/Bom/1993 dated 13.02.2002. We have further noted that after the decision of Hon'ble Bombay High Court in Otis Elevator Co. Ltd. (supra), this issue is no more *res-integra* wherein the Hon'ble High Court while considering the question of law about the allowance of club fees incurred/paid to employees, allowed the question in favour of assessee. Therefore, respectfully following the decision of Hon'ble Bombay High Court in Otis Elevator Co. Ltd. (supra) and decision of Tribunal in assessee's own case for A.Y. 1982-83 and 1990-91, this ground of appeal is also allowed in favour of assessee.

19. Considering the decision of Tribunal on similar ground of appeal in assessee's own case for preceding year when no variance is brought to our notice. Thus, respectfully following the same, we direct the Assessing Officer to delete the disallowance of Club Expenses.

20. Ground No. E relates to Transfer Pricing Adjustment for corporate guarantee.

The Id. AR of the assessee submits that corporate guarantee is not international transaction and the amendment made in the Act is applicable from A.Y. 2012-13. In alternative submission, the Id. AR submits that the assessee given a corporate guarantee for Euro 2450000/- to ABN Ambro Bank in India for credit facility extended to AE of assessee in Germany. Though, the transaction was reported in Form 3CEB. The TPO held that a benefit was given to AE and Arms Length compensation was required to be received by assessee. The TPO estimated 6% of the loan amount and

suggested adjustment of Rs. 67,13,980/-. However, ld. DRP restricted the corporate guarantee addition to 1.5% of the loan amount and accordingly, the Assessing Officer made adjustment of Rs. 16,78,495/-. The ld. AR submits that if adjustment required, it should be restricted to .5% of amount of guarantee and for the period, the guarantee was given. In support of her submission, the ld. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in Everest Canto Cylinders Ltd. (378 ITR 57) and decision of Tribunal in IL & FS Technology Ltd. (2019) 105 taxmann.com 117 (Mum Trib.).

21. On the other hand, the ld. DR for the revenue relied upon the order of lower authorities.

22. We have considered the submission of both the parties and perused the material available on record. So far as contention of ld. AR of the assessee that provision of guarantee is not international transaction is not acceptable to us. In our view after introduction of Explanation 1(c) to section 92B with retrospective effect from 01.04.2002, the provision of guarantee has to be considered as international transaction. However, following the decision of Hon'ble Bombay High Court in Everest Canto Cylinder Ltd. (supra), we direct the Assessing Officer to charge/add guarantee commission @ 0.5% p.a. for the period of guarantee. In the result, this ground of appeal is partly allowed.

23. Ground No. F relates to treatment of receipt received on transfer of TDR. The Id. AR of the assessee submits that during the assessment, the assessee vide letter dated 26.12.2011 requested the Assessing Officer not to adjust the gain on sale of TDR. The request of assessee was not accepted by Assessing Officer. The Id. DRP upheld the action of Assessing Officer by taking view that assessee had computed cost of acquisition and declared a LTCG in the return and the prayer of assessee of assessee is that capital gain is not taxable was rejected. The Id. AR of the assessee further submits that during the relevant period the assessee sold TDR for Rs. 5 crore. The details of purchaser is placed on record as per details on page no. 290 of Paper Book. Out of the total amount of TDR certain amount was paid to two companies namely Foseco Ltd. of Rs. 56,44,445/- and Premium Energy Transmission Ltd. of Rs. 82,22,255/- as part of TDR belongs to those companies. Balance consideration declared in the return and LTCG adjusted against brought forward capital losses. Thus, capital gain written was declared Nil. The assessee vide its letter dated 26.12.2011 requested the Assessing Officer not to adjust the gain on sale of TDR. The Id. AR further submits that acquiescence cannot take away from a party, the relief, which he is entitled to where the tax is levied or collected without authority of law as held by Hon'ble Bombay High Court in *Nirmala L Mehta* [269 ITR 1 (Bom)] and *Balmukand Acharya* [310 ITR 310 (Bom)].

24. On the ratio that appellate authority have jurisdiction to consider revised claim in the form of additional ground. The ld. AR relied on the decision of Hon'ble Bombay High Court in CIT vs. Pruthvi Broker & Shareholders Pvt. Ltd. [349 ITR 336 (Bom)] and Hon'ble Supreme Court in National Thermal Power Corporation [229 ITR 383(SC)]. On the point that no cost of acquisition of TDR, capital gain not taxable, the ld. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in CIT vs. Sambhaji Nagar Co-operative Housing Society Ltd. [370 ITR 325].
25. On the other hand, the ld. DR for the revenue submits that before Assessing Officer, the assessee claimed relief without filing revised return of income. In the computation of income, the assessee itself computed cost of acquisition and declared income in the form of Capital Gain. The ld. DR submits that in case, the additional claim of the assessee is admitted then the issue may be restored to the file of Assessing Officer for examination of facts afresh.
26. We have considered the submission of both the parties and gone through the orders of lower authorities. We have noted that during the assessment, the assessee raised claim before the Assessing Officer and submitted that the capital gain is not taxable. The contention of assessee was not accepted by Assessing Officer by taking view that the assessee itself computed the capital gain and adjusted against brought forward capital loss. Before us, the ld. AR of the assessee vehemently argued that the assessee is entitled to raise additional claim before the appellate authority. In our view, the Assessing

Officer is not entitled to accept revised claim without filing of revised return of income, however, we are in agreement with the contention of ld. AR of the assessee that the appellate authority have jurisdiction to consider revised claim as held by jurisdictional High Court in Pruthvi Brokers & Shareholder Ltd. (supra). We are also in agreement with the submission of ld. AR of the assessee that acquiescence cannot take away the right of the parties for the relief that he is entitled, where tax is levied or collected without authority of law. Therefore, considering the facts of the case, we admit the additional ground/claim raised by assessee about the receipt of income received on transfer of capital asset/TDR. Considering the fact that we have admits the additional ground/claim of assessee, therefore, we deem it appropriate to restore the issue to the file of Assessing Officer to decide this issue afresh in accordance with law. Needless to order that before passing the order, the Assessing Officer shall grant sufficient opportunity to the assessee to substantiate its claim. In the result, this ground of appeal is allowed for statistical purpose.

27. Ground No. G relates to unutilized Cenvat credit of Rs. 2.27 crore. The ld. AR of the assessee submits that this ground of appeal is covered in favour of assessee by the decision of Tribunal in assessee's own case for A.Y. 2007-08, wherein similar ground of appeal was restored back to the file of Assessing Officer.

28. On the other hand, the ld. DR for the revenue relied upon the order of lower authorities.

29. We have considered the submission of parties and perused the order of lower authorities. We have noted that similar ground of appeal in A.Y. 2007-08 was restored to the file of Assessing Officer for examination of issue afresh by passing the following order:

25. We have considered the submission of both the parties and perused the material available on record. The Assessing Officer made addition by following the order of earlier Assessment Years and made addition of Rs. 2.91 Crore. The ld. DRP also followed their order for earlier years. We have noted that the co-ordinate bench of Tribunal in assessee's appeal for A.Y. 2005-06 in its order dated 15.03.2019 in ITA No. 2482/Mum/2015 set-aside the order to the file of Assessing Officer for examination of figures furnished by assessee for reconciliation of statements. Therefore, considering the order of Tribunal for A.Y. 2005-06, the ground of appeal is also restored to the file of Assessing Officer to examine the issue afresh and pass the order by following the order of Tribunal dated 15.03.2019. In the result, this ground of appeal is allowed for statistical purpose.

30. Considering the decision of Tribunal in assessee's own case on similar set of fact for A.Y. 2007-08, this ground of appeal is restored back to the file of Assessing Officer with similar direction.

31. Ground No. H relates to interest under section 244A and Ground No. I relate to interest under section 234D. The ld. AR of the assessee submits that interest of Rs. 74,16,934/- should be allowed under section 244A instead of Rs. 29,04,767/- and further interest of Rs. 2,66,719/- should have been charged under section 234D instead of Rs. 11,19,423/-.

32. On the other hand, the ld. DR submits that these grounds may be restored to the file of Assessing Officer for recomputation of interest afresh.
33. Considering the rival submission of the parties, both the grounds of appeal are restored to the file of Assessing Officer to recompute the interest under section 244A and 234D in accordance with law. The assessee is directed to provide necessary details to the Assessing Officer. In the result, these grounds of appeal are treated as allowed.
34. Ground No. J relates to addition of disallowance under section 14A to book profit under section 115JB. The ld. AR of the assessee submits that in A.Y. 2007-08, the Tribunal has directed that computation under clause (f) of Explanation (1) to section 115JB(2) is to be made without resorting to computation/disallowance under section 14A.
35. We have considered the submission of parties and perused the order of lower authorities. We have noted that similar ground of appeal in A.Y. 2007-08, the co-ordinate bench has passed the following order:-

13. We have considered the submission of both the parties and have gone through the orders of authorities below. We have noted that this ground of appeal is covered in favour of assessee by the decision of Special Bench in Vireet Investment (P) Ltd. (supra), wherein Special Bench of Delhi Tribunal that the computation under clause (f) of Explanation 1 to section 115JB (2), is to be made without resorting to computation as contemplated under section 14A read with rule 8D. Therefore, respectfully following the decision of Special Bench, we direct the Assessing Officer to follow the decision of Vireet Investment Ltd. (supra) and pass the order for adjustment under section 115Jb of the Act accordingly.

36. Considering the decision of Tribunal in assessee's own case for A.Y. 2007-08 wherein the decision of Special Bench in Vireet Investment (supra) was followed. Therefore, direct the Assessing Officer to follow the decision of Special Bench and recompute the adjustment under section 115JB.
37. In the result, appeal of the assessee is partly allowed.

ITA No. 1007/Mum/2014 by assessee

38. Ground No.1 relates to transfer pricing adjustment for corporate guarantee. We have noted that this ground of appeal is identical to the ground no. E in appeal for A.Y. 2008-09, wherein we have directed the Assessing Officer/TPO to charge/add .5% of loan amount by following the decision of Hon'ble Bombay High Court in Everest Canto Cylinders Ltd. (supra). Thus, respectfully following the decision for A.Y. 2008-09, this ground of appeal is allowed with similar direction.
39. Ground No. B relates to Pooja Expenses of Rs. 1001460/-. We have noted that this ground of appeal is identical to the ground no. C in appeal for A.Y. 2008-09, which we have allowed. Thus, respectfully following the decision for A.Y. 2008-09, this ground of appeal is allowed with similar direction.
40. Ground No. C relates to issue of transfer of TDR. We have noted that this ground of appeal is identical to the ground no. F in appeal for A.Y. 2008-09, which we have restored to the file of Assessing Officer for adjudication. Therefore, respectfully following the order of A.Y. 2008-09, this ground of appeal is allowed with similar direction.

41. Ground No. D relates unutilized Cenvat credit. We have noted that this ground of appeal is identical to the ground no. G in appeal for A.Y. 2008-09, which we have restored to the file of Assessing Officer. Therefore, respectfully following the order of A.Y. 2008-09, this ground of appeal is allowed with similar direction.

42. Ground No. E relates to short credit of TDS, Ground No. F is missing, Ground No. G relates to excess charge of education cess, Ground No. H relates to interest under section 234B. The Id. AR of the assessee submits that Assessing Officer has not given credit of TDS of Rs. 22,92,403/-. Considering the nature of grounds with regard to various interests and charge of education cess, the Assessing Officer is directed to verify the fact and grant necessary adjustment and recompute the interest accordingly.

43. Ground No. J relates to book profit under MAT. The Id. AR submits that provision for expenses ought not to be added. In earlier years, the provisions of expenses were not added in the book profit. Considering the submission of Id. AR of the assessee, the Assessing Officer is directed to recompute the book profit in accordance with the provision of section 115JB. In the result this appeal is partly allowed.

ITA No. 754/Mum/2014 by revenue

44. The revenue has raised sole ground of appeal against restricting the guarantee commission to 3%. Considering the fact that in assessee's appeal on similar ground of appeal, we have directed the Assessing Officer to charge guarantee commission @ .5% of the loan amount by following the decision of Hon'ble

Bombay High Court in Everest Canto (supra), therefore, the ground of appeal raised by revenue has become infructuous.

45. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 17/01/2020.

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

Mumbai, Date: 17.01.2020

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "K" Bench, ITAT, Mumbai
6. Guard File

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai