IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

IT(TP)A No.1915/Bang/2017 & IT(TP)A No. 3377/Bang/2018
Assessment years : 2013-14 & 2014-15

Toyota Kirloskar Auto Parts Pvt. Ltd., Plot No.21, Bidadi Industrial Area, Bidadi – 562 109. Ramanagara District. Karnataka. **PAN: AABCT 5590Q**	Vs.	The Deputy Commissioner of Income Tax, LTU, Circle 1, Bengaluru. & The Assistant Commissioner of Income Tax, LTU, Circle 2, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, Advocate
Respondent by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.02.2020
Date of Pronouncement	:	18.03.2020

O R D E R

Per N.V. Vasudevan, Vice President

IT(TP)A No.1915/Bang/2017 is an appeal by the assessee against the final order of assessment dated 27.7.2017 passed by the DCIT, LTU, Circle 1, Bengaluru u/s. 143(3) r.w.s. 144C of the Income-tax Act, 1961 [the Act] in relation to assessment year 2013-14. IT(TP)A No. 3377/Bang/2018 is also an appeal by the assessee against the final order of assessment

dated 30.10.2018 of the ACIT, LTU, Circle 2, Bengaluru passed u/s. 143(3) r.w.s. 144C in relation to assessment year 2014-15.

2. One of the issues that arise for consideration in the appeal for AY 2013-14 and the only issue that arises for consideration in AY 2014-15 are common issue with reference to determination of ALP in respect of an international transaction between the assessee and its Associate Enterprises (AE) u/s. 92 of the Act.

3. As far as the aforesaid common issue is concerned, the factual details for AY 2013-14 are that the assessee is a company engaged in the manufacture of automotive front axle, rear axle and propeller shaft. The assessee is vendor to Toyota Kirloskar Motors Ltd. for their vehicles sold under the brand name 'Qualis' and 'Innova' for axles and propeller shafts. One of the international transaction between the assessee and its AE viz., Toyota Motor Corporation, Japan [TMC], was payment of royalty under agreement between the assessee and TMC. TMC was to provide technical know-how, which includes process know-how, designs & drawings to manufacture R-150 and C-550 transmission units and axles & propellers, shafts and engine assembly. There was an agreement dated 19.12.2012 between TMC and assessee and also another agreement dated 27.4.2012 named as Technical Assistance Agreement for axles and propeller shaft for IMV. As per agreement, assessee was to pay TMC royalty for using technology of which TMC had a right to permit the assessee to use the technology. A sum of Rs.48.23 crores was paid as royalty by the assessee in AY 2013-14.

4. Since the aforesaid payment of royalty was an international transaction, income arising from such international transaction had to be determined having regard to the ALP as prescribed u/s. 92 of the Act. The assessee in respect of its claim that the royalty paid was at arm's length

filed a Transfer Pricing (TP) analysis for which it had chosen Transaction Net Margin Method (TNMM) as the Most Appropriate Method [MAM] for determining the ALP. The PLI chosen for the purpose of comparison of the assessee's profit margin with comparable companies was OP/OR (operating revenue) which was worked out at 8.11% by the assessee. 8 comparable companies were chosen and the average arithmetic mean profit margin of those 8 companies i.e., OP/OR was 6.49. The assessee claimed that international transaction was at arm's length. Since the transaction of payment of royalty was closely linked to manufacturing operation, the transaction of royalty was aggregated with other transaction and TNMM was applied as the Most Appropriate Method.

5. The TPO, to whom reference was made by the AO for determination of ALP, was of the view that the technology provided by TMC was a start-up technology and since it included generic technology and proprietary technology, it had to be regarded as technology for setting up of business. He was of the view that economic life of such technology would be just 4 or 5 years and since in AY 2013-14, the assessee has been in operation for more than 5 years, there was no necessity to pay royalty of 5% on sales. He was of the view that the TNMM cannot be the Most Appropriate Method in such a situation. The TPO gave the following reasons for not accepting the TNMM as the MAM:-

> "5.4 HOW TNMM CAN BE MISUSED TO JUSTIFY PROFIT SHIFTING?
>
> Consider an auto ancillary company that purchased technologies and machinery for a new vehicle gear system back in 2003. It makes better profits than market average. Market average (what we call mean OP/OR) is the average of companies performing better than average and worse than average. Now, this company performs better than market average. It gets healthy profits and pays healthy taxes to Indian treasury. One fine day, in

2012, it decides to reduce its tax burden in India. So it starts an AE in Cayman Islands and pays royalty to the AE. By doing this, it reduces its profits in India to the market average. As a cover, it prepares documentation or how the AE gave the taxpayer the knowhow of a new technique to weld gear machines. There is no way of benchmarking such unpatented knowhow (even for patents, a survey shows that 98% of patents cannot be commercially harnessed). The company pays less tax in India, and can justify the profit shifting by saying that it is within tolerance limit of TNMM mean margin.

5.5. In this situation, TNMM actually defeats the very purpose of transfer pricing as an anti-abuse provision. There is no justification for application of TNMM, because the so-called tech supplied by the AE to this hypothetical company is not 'start-up tech'. It is technological update/upgradation. There is no benchmark of such technology intangible. As such, intangibles can be benchmarked only using analytical approaches. TNMM is very crude, and it definitely does not give any indication of the arms length nature of royalty transactions."

6. After having rejected TNMM, the TPO proceeded to apply the Profit Split Method [PSM] as the MAM for the following reasons:-

"5.10. ECONOMIC FACTS OF THE CASE AND PSM AS MAM

The TP audits in this case for past 5-6 years were studied. The ITAT decisions were also perused. The TPO makes the following remarks on facts of the case for FY 2012-13:-

The company has been in operation since 2003. Any "start-up technology" that the taxpayer would have got from the AE have already expired their useful economic life.

Start-up technology being very critical for the entire operation, making a net margin level analysis under TNMM still had merits in initial years of operation.

The Hon'ble ITAT has stated in this case for AY 2007-08 that TNMM should be used as the most appropriate method. This was reiterated for AY 2010-11

The **economic facts** are different for AY 2013-14. By this time, the useful economic life of bundle of technologies transferred for start-up and operationalizing the whole business has lapsed. Now royalty is being paid for *technical upgrades* and knowhow on better tech. The ALP of such technology cannot be assessed on net margin level analysis. TNMM definitely is not a good method for benchmarking technology transfer in the taxpayer's case for AY 2013-14.

CUP cannot be used because the relative value of this tech viz-a-viz the tech in other agreements cannot be determined due to lack of info on technical specifications.

PSM is the most appropriate method in this case. Internationally, PSM is used as the most appropriate method."

7. Thereafter by application of PSM, the TPO chose comparable companies which are the same companies that was chosen by the assessee in its TP report and attributed 50% of the payment as profits of the AE and to the extent of 50%, the TPO held that royalty paid was excessive and added 50% of Royalty paid to the total income of the assessee. The following were the relevant conclusions of the TPO in this regard:-

"6.1 RATIO OF PROFIT SPLIT

Corning back to the residual PSM, the residual profits of the taxpayer have been determined at 1.98% of operating revenue. This has to be split between the taxpayer and AE. Usually such typical transactions are so typical that market comparables on split are not available. Hence, a split has to be done on the basis of FAR analysis and relative weightages in FAR. From a detailed FAR analysis, the TPO concludes that the FAR of the AE are as under:

1) Functions
   a) Conducts all R&D Activities

2) Assets
   a) Owns the asset

3) Risks
   a) Takes all research risk, including risks in development of early stage technologies and disruptive technologies

The FAR of taxpayer relative to the royalty transaction are as under (note that there are many other functions of taxpayer it conducts as a full-fledged entrepreneur, but they are not relevant for a profit split analysis):

1) Functions
   a) Manufacturing and sales (these functions and returns from same are covered in routine market profits, and hence do not carry weight here).

2) Assets
   a) None

3) Risks
   a) Complete entrepreneurial risk

6.2. The most critical factor here is that the AE has given "start up tech" and "manufacturing know how". After few years, the start-up tech and manufacturing knowhow would have replenished their useful economic life. Then the AE would have to be compensated for incremental technologies only. Weightage of incremental tech is low, but weightage of manufacturing knowhow (how to start operations, what do do, how to establish the plant), and "start-up technology" arc high. Owing to this, the TPO makes the following weightage assignments:

	Taxpayer	AE
Functions	0	1
Assets	0	1
Risks	3	1
Total	3	3
Ratio	50%	50%

6.3. EBIT-R margin of Toyota Kirloskar Auto Parts Ltd:

TOYOTA KIRLOSKAR AUTO	
Revenue from operations	11762450000
Add: Exchange gain	0
Operating Revenues	11762450000
Total Costs	11422140000
Less Interest costs	99810000
Less Royalty	482390000
Less Provision of doubtful debts	3280000
Operating Costs (0C)	10836660000
EBIT-R	925790000
EB1T-R/Sales	**7.87%**

6.4 EBIT margin of comparables:

Bharat Gears Ltd	4.23%
Hindustan Hardy Spicer Ltd	3.99%
JMT Auto Ltd	6.75%
Talbros Engineering Ltd	6.14%
Raunaq Automotive Components Ltd	7.17%
RSB Transmission (I) Ltd	6.50%
Rane Madras Ltd	6.44%
MEAN	**5.89%**

6.5. Making a 50:50 split after a proper functional analysis of relative contribution of value drivers of taxpayer and AE to the technology transferred, the computation is as under:

ALP Royalty rate	**1.98%**	on sales
50:50 profit split	0.991%	over sales
ALP royalty	116574865	
Royalty paid	482390000	
Difference to be adjusted	**365815135**	

Therefore, an amount of Rs. 36,58,15,135/- is treated as adjustment u/s 92CA in respect of International Transaction of Royalty payment by the taxpayer to its AE."

8. Aggrieved by the aforesaid order of the TPO which was incorporated in the draft order of assessment by the AO, the assessee preferred objections before the Disputes Resolution Panel (DRP). The contention of the assessee before the DRP was that the MAM in the matter of determination of ALP in respect of payment of royalty has already been settled by the Tribunal in assessee's own case in AY 2007-08 in IT(TP)A No.1356/Bang/2011, order dated 22.10.2014 and therefore the approach adopted by the TPO was incorrect. In this regard it was pointed out that the in the intermittent assessment years i.e. prior to AY 2013-14, the TPO accepted the TNMM as the MAM and has taken a different stand only in AY 2013-14. It was also submitted that the PSM is not applicable because for application of PSM as the MAM, there should be contribution of unique intangible by the taxpayer also. In this regard, the submissions of the assessee was that PSM is generally applied in cases involving multiple transactions amongst associated enterprises (AEs) which are so inter-related and closely linked or continuous that they cannot be evaluated on separate basis for the purpose of determining Arm's Length Price of any transaction. The Assessee relied on the decision of ITAT Delhi Bench in the case of *Global One India (P). Ltd. v. Assisstant Commissioner Of income-tax, Circle 12(1), New Delhi [2014] 44 taxmann.com 100 (Trib.)* ITAT wherein it was held that in a case where the assessee generates out of operations that are highly integrated, when one transaction, requires deployment of assets and functions of different entities, located in different Geographical location to ultimately deliver services and when such combined efforts generate revenues, the MAM for determining arm's length price is "Profit Split Method" (PSM). Reference was made to Rule 10B(1)(d) of the Income Tax Rules, 1962 (Rules) which describes "Profit Split Method (PSM) as follows:

Rule 10B (1)(d) prescribes as follows:

(i) the combined net profit of the associated enterprises arising from the international transaction [or the specified domestic transaction] in which they are engaged, is determined;

(ii) The relative contribution made by each of the associated enterprises to the earning of such combines net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates haw such contribution would be evaluated by unrelated enterprises performing comparable functions in the similar circumstances;

(iii) the combined net profit is then split amongst the enterprises in proportion to their relative contributions, as evaluated under sub-clause (ii);

(iv) the profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction:

9. It was emphasised that this method may be applicable in case where transactions involve transfer of unique, intangible or any multiple interrelated international transactions, which cannot be evaluated separately for determining the ALP of any one transaction. It was highlighted that the profit split method first identifies the profit to be split for the associated enterprise from the controlled transactions in which the associated enterprises are engaged. It then splits those profits between the associated enterprises on an economically valid basis that approximates the divisions of profits that would have been anticipated and reflected in an agreement transactions or a residual profit intended to represent the profit that cannot readily be assigned to one of the parties, such as the profit arising from high value, sometimes unique, intangibles. The contribution of each enterprise is based upon a functional analysis and

valued to the extent possible by any available reliable external market data The functional analysis is an analysis of the functions performed (taking into account assets used risks assumed) by each enterprise. The external market criteria may include, for example, profit split percentages or returns observed among independent enterprises with comparable functions. It was pointed out that the transaction in the case of the Assessee has no such features where unique intangibles or any multiple interrelated international transactions, which cannot be evaluated separately for determining the ALP are involved. Reference was also made to the OECD-transfer pricing guideline for multinational enterprises and tax administration in Chapter 2 on transfer pricing methods, at page 93, para C.1.

10. Without meeting the specific objection of the Assessee that in the international transaction between the Assessee and its AE there was no contribution of unique intangible by the Assessee and that there were not multiple interrelated transactions which cannot be separately evaluated, the DRP upheld the application of RPM as MAM by observing as follows:-

> "2.11 Thus in PSM, the first step is to identify the combined net profit of the assessee and the AE, arising from the international transactions in which they are engaged in the present case is the royalty payment received by the AE. In the second step, the relative contribution made by each of the entities which have contributed to the earning of such combined net profit is evaluated on FAR analysis of each entity and based on that, it is seen how such contribution should be evaluated by unrelated enterprise performing functions in similar circumstances. Next, the combined net profit is split between the related enterprise in proportion to their related contribution which has been evaluated after carrying out FAR analysis. Lastly, the profit which has been apportioned to the assessee is taken into account to arrive at Arm's Length Price analysis to the international transactions. The object of detailed functional analysis in such a method is to assess

> the related contribution and risk taken by each party and income is assigned accordingly. In the case under consideration, given the complex and inter-related functions, PSM was selected as most appropriate method (MAM) to determine the reasonable allocation of profit in India arising on account of international transaction. The combined net profit amongst the entitites have been apportioned on the basis of their role and functions performed, risks assumed and assets deployed. Thus approach of the TPO is found to be appropriate."

11. The DRP also held that the earlier orders of Tribunal holding TNMM as MAM cannot be applied in AY 2013-14 because the decision rendered by the ITAT were in relation to start up stage and there was useful economic life of the technology obtained from the AE and those circumstances do not exist in AY 2013-14.

12. Aggrieved by the order of DRP which was incorporated in the fair assessment order, the assessee is in appeal before the Tribunal.

13. The submissions before us were almost identical to the submissions made by the assessee before the DRP.

14. The ld. DR relied on the findings of the DRP.

15. We have considered the rival submissions. We are of the view that the issue with regard to Most Appropriate Method in the case of assessee had already been settled by the Tribunal. The TPO as well as the DRP have not followed the aforesaid decision of the Tribunal on the ground that economic life of the technology had an impact on the MAM and that technology in question was to be used by start-ups and since the assessee was using the technology for a fairly long period of more than 5 years, it would not be proper to adopt the TNMM as the MAM, as the economic life of the technology would no longer exist. In our view, there is no basis for the TPO as well as the DRP to come to a conclusion that technology in

question was to be used by a start-up. There is no basis for the TPO and DRP to come to a conclusion that the Assessee is a start up in manufacture of various parts for automobiles. The technology in question was that of TMC Japan. The technology is being used by the Assessee even today. There is no basis for the TPO/DRP's conclusion that the useful economic life of the technology would be only 5 years. In any event passage of time cannot be the basis to discard TNMM which is already held by the Tribunal and upheld by the Hon'ble High Court as no longer the MAM because the conditions necessary for PSM as MAM are not met in the case of the Assessee. Even going by Rule 10B(1)(d), there should be contribution by each of the parties to a transaction for earning profits from sale of goods or provision of services. Then the contribution of each of the parties is identified and the profit is split between those parties. In the case of the Assessee the technology is given by TMC, Japan for which royalty is paid. The use of the technology in manufacturing and the sale of the product so manufactured contribute to the profit of the Assessee and TMC, Japan has nothing to do with that. There is therefore absence the first condition for application of PSM as MAM. As submitted by the Assessee PSM is used as MAM only in a case involving transfer of unique intangible or in multiple inter-related international transactions which cannot be valued separately for determining the ALP. The OECD guidelines cited on behalf of the assessee clearly supports the aforesaid approach and the OECD guidelines in this regard reads as follows:-

> "Further reliance is also placed on OECD Guidelines, which clearly lay down the situations in which the PSM is selected as an appropriate method for benchmarking. The relevant extract from the OECD Guidelines (para 2.109) is as below:
>
> "**A transactional profit split method may also be found to be the most appropriate method in cases where <u>both parties to a transaction make unique and valuable contributions</u> (e.g.**

contribute unique intangibles) to the transaction, because in such a case independent parties might wish to share the profits of the transaction in proportion to their respective contributions and a two-sided method might be more appropriate in these circumstances than a one-sided method. In addition, in the presence of unique and valuable contributions, reliable comparables information might be insufficient to apply another method. On the other hand, a transactional profit split method would ordinarily not be used in cases where one party to the transaction performs only simple functions and does not make any significant unique contribution (e.g. contract manufacturing or contract service activities in relevant circumstances), as in such cases a transactional profit split method typically would not be appropriate in view of the functional analysis of that party".

16. The **revised guidance (June 2018) on the application of transactional PSM**, provided by the OECD state the importance of delineating the transactions in determining whether the PSM is applicable or not. The relevant extract from the OECD Guidelines is provided below:

"2.125. The accurate delineation of the actual transaction will be important in determining whether a transactional profit split is potentially applicable. This process should have regard to the commercial and financial relations between the associated enterprises, including an analysis of what each party to the transaction does, and the context in which the controlled transactions take place. That is, the accurate delineation of a transaction requires a two-sided analysis (or a multi-sided analysis of the contributions of more than two associated enterprises, where necessary) irrespective of which transfer pricing method is ultimately found to be the most appropriate.

2.126. **The existence of unique and valuable contributions by each party to the controlled transaction is perhaps the clearest indicator that a transactional profit split may be appropriate.** The context of the transaction, including the industry in which it occurs and the factors affecting business performance in that sector can be particularly relevant to evaluating the contributions of the parties and whether such contributions ale unique and valuable. Depending on the facts of

the case, other indicators that the transactional profit split may be the most appropriate method could include a high level of integration in the business operations to which the transactions relate and /or the shared assumption of economically significant risks (or the separate assumption of closely related economically significant risks) by the parties to the transactions. It is important to note that the indicators are not mutually exclusive and on the contrary may often be found together in a single case.

2.127. At the other end of the, spectrum, where the accurate delineation of the transaction determines that one party to the transaction performs only simple functions, does not assume economically significant risks in relation to the transaction and does not otherwise make any contribution which is unique and valuable …….. "

"2.147. Under the transactional profit split method, the relevant profits are to be split between the associated enterprises on an economically valid basis that approximates the divisi6n of profits that would have been anticipated and reflected in an agreement made at arm's length. In general, the determination of the relevant profits to be split and of the profit splitting factors should:

Be consistent with the functional analysis of the controlled transaction under review, and in particular reflect the assumption of the economically significant risks by the parties, and

Be capable of being measured in a reliable manner."

17. It is clear from the above OECD guidelines that in 'order to determine the profits to be split, the crux is to understand the functional profile of the entities under consideration. Although the comparability analysis is at the "heart of the application of the arm's length principle", likewise, a functional analysis has always been a cornerstone of the comparability analysis. In the present case the Assessee leverages on the use of technology from the AE and does not contribute any unique intangibles to the transaction. It may be true that the Assessee aggregated payment of royalty with the transaction of manufacturing as it was closely

linked and adopted TNMM but that does not mean that the transactions are so interrelated that they cannot be evaluated separately for applying PSM. Further, the Assessee does not make any unique contribution to the transaction, hence PSM in this case cannot be applied.

18. Therefore, we are of the view that TNMM is the Most Appropriate Method in the case of assessee. The decision of the Tribunal in the earlier AY 2008-09 has also been upheld by the Hon'ble High Court of Karnataka in ITA No.104/2015, judgment dated 16.7.2018, which was an appeal of the revenue against the order of Tribunal for AY 2008-09. The Tribunal has upheld TNMM as MAM from AY 2007-08 to 2011-12. In those AYs the dispute was whether TNMM or CUP was the MAM. It is for the first time in AY 2013-14 that the revenue has sought to apply PSM as MAM. In the given facts and circumstances, we are of the view that TNM Method is the Most Appropriate Method and the AO is directed to apply the said method in determining the ALP, after affording opportunity of being heard to the assessee. The grounds of appeal of the assessee are treated as allowed.

19. The facts in AY 2014-15 are identical and the reasoning given in AY 2013-14 will equally apply to the AY 2014-15 also and the TPO is directed to compute the ALP for AY 2014-15 by applying TNMM as the MAM , after affording due opportunity to the assessee.

20. The other issues with regard to the objections regarding the manner in which ALP was determined by applying PSM as the MAM does not require any adjudication because of the conclusion that TNMM is the MAM.

21. As far as AY 2013-14 is concerned, ground No.12 raised by the assessee needs to be adjudicated and the same is as follows:-

"II. Corporate Tax

12. Disallowance of depreciation on assets purchased by way of slump sale

i. The learned AO erred in concluding that the appellant has claimed excess consequential depreciation on assets purchased by way of slump sale during the Financial Year 2002-03, amounting to Rs. 9,762,694.

ii. The learned AO ought to have appreciated that value as per the valuation report has to be considered for capitalizing the assets which are purchased on a slump sale.

iii. The learned AO erred in concluding that the Assessee has inflated the value of assets for the purpose of claiming depreciation."

22. The assessee acquired the Auto Component Business of Kirloskar Systems Limited ('KSL'), as a going concern on a slump sale basis in June 2002, as per the Business Purchase Agreement dated June 26, 2002 for a consideration of Rs. 1,349 million. The acquisiton included all assets relating to the auto components business comprising property, plant and machinery, other fixtures, book debts and intangible assets. In order to give effect to purchase in the books of account, the assessee obtained valuation reports for the purpose of determining value of assets acquired. Tangible fixed assets include land, factory buildings, plant and machinery, computers, furniture and fixtures, office equipment. Intangilbe assets include all benefit of subsisting contracts agreements, licenses, permits, approvals, certificates, renewals issued by the Government, employees, computer applications, programs including operating software, network software, firmware, middleware, systems documentation, right to use tradename of Kirloskar, cost information, pricing data, supplier records, customer and vendor data, product literature, artwork, design, development

and manufacturing files, vendor and customer drawings, formulations, specifications, surveys and reports.

23. In this regard, the assessee submitted that the sale transaction by KSL to the assessee has been accepted as slump sale in the hands of KSL by the respective AO. KSL has offered to tax income from such transaction as income from capital gains during the assessment year 2003-04 and copy of the order of this Tribunal is furnished. It was further submitted that depreciation is admissible only on actual cost. For this purpose, identification of actual cost in respect of different assets comprised in the business taken over by way of slump sale is required to be done on a reasonable basis by spreading over the net consideration as between different assets. Reference to Accounting Standard 10 issued by the Institute of Chartered Accountants of India was made wherein it has been stated that where several assets are purchased for a consolidated price, the consideration should be apportioned to various assets on a fair basis as determined by the competent valuers. Accordingly, the assessee has considered value of assets purchased on slump sale, based on the valuation done by the competent valuer and claimed depreciation on such value. Since in AY 2002-03 it was held that the sale was not a slump sale, the depreciation as claimed by the Assessee was not allowed. However, in AY 2002-03, the ITAT in the assessee's own case in its order dated May 5, 2017 has held that the aspect of valuation was not examined by the AO during the course of assessment proceedings and accordingly, remanded the issue of valuation to the file of the learned AO for fresh verification. The AO has passed an Order Giving Effect to the order of the ITAT allowing the claim of depreciation of assets acquired from KSL on the basis of valuation report of the Assessee.

24. As far as AY 2013-14 is concerned, in the final assessment order dated July 7, 2017 passed for AY 2013-14, the AO disallowed excess depreciation of Rs. 9,762,694, being the difference between depreciation on value of assets as per valuation report and depreciation on WDV in the hands of KSL. This is because the issue of depreciation had not attained finality in AY 2003-04 the year of slump sale. Now that the issue has been resolved, the DRP has already given a direction on this issue by holding that the issue is consequential to the order for AY 2003-04 and the AO is directed to give consequential effect based on the decision rendered in AY 2003-04. Now that the Tribunal in AY 2003-04 has already approved the value at which the assets were capitalized in the books of account, the depreciation as claimed by the assessee has to be allowed.

25. In view of the above, the addition made in the present assessment year cannot be sustained and accordingly the same is directed to be deleted.

26. In the result, both the appeals by the assessee are allowed.

Pronounced in the open court on this 18th day of March, 2020.

Sd/-	Sd/-
(B R BASKARAN)	(N V VASUDEVAN)
ACCOUNTANT MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 18th March, 2020.

/*Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.