

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "K", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.4825/M/2015  
Assessment Year: 2009-10**

|   |     |   |
|---|-----|---|
| ACIT 19(1),<br>2 <sup>nd</sup> Floor,<br>Matru Mandi,<br>Tardeo Rd.,<br>Mumbai - 400007 | Vs. | Shri Dilip Kumar V<br>Lakhi,<br>102, 115, 116, Prasad<br>Chambers,<br>Opera House,<br>Mumbai - 400 004<br><b>PAN: AAGFD 1262M</b> |
| (Appellant)   |     | (Respondent)  |

**Present for:**

Assessee by : Shri Subhash Shetty, A.R.  
Revenue by : Shri Sunil Deshpande, D.R.

Date of Hearing : 10.12.2020  
Date of Pronouncement : 08.01.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 30.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The grounds raised by the Revenue are as under:

"(1). Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting entity level capital employed of the comparable (M/s Asian Star Company Ltd) when the comparable had segments other than the segment of the assessee.

(2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not holding loss on revaluation of outstanding foreign exchange forward contracts as on 31.03.2009 as notional loss.

(3) The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The 1<sup>st</sup> ground raised by the Revenue is against the order of Ld. CIT(A) accepting the entity level capital employed of comparable M/s. Asian Star Company Ltd. when the comparable had other segments which the assessee does not have.

4. The facts in brief are that the assessee is engaged in the business of manufacturing, selling, distribution, exporting and importing of cut and polished diamonds, gems and jewellery. During the year the assessee filed the return of income on 22.09.2009 declaring total income of Rs.31,23,19,680/- which was processed under section 143(1). Thereafter, the case of the assessee was selected under scrutiny and statutory notices were duly issued and served upon the assessee. The AO referred the case of the assessee to TPO to determine the arm length price of international transaction entered into by the assessee during the year on 11.09.2009. Accordingly, a notice under section 92CA(ii) of the Act dated 04.11.2010 was sent to the assessee calling upon to furnish the necessary details/documents in support of the arm length price which was filed by the assessee before the TPO from time to time. During the year the assessee has turnover of Rs.333.46 crores and the return on capital employed was 8.78%. The assessee followed TNMM as the most appropriated method and in the TP documentation it has considered 16 comparables for benchmarking its international transaction and calculated the average profit margin of 10.23% and average OP/OC at 5.56%. The assessee has not carried out the search process correctly as those companies which are having turnover even less than 1/5<sup>th</sup> of the assessee were taken

as comparable which is not appropriate criteria and therefore TPO held that these are not functionally compared. Finally, the AO reopened the final list of comparables in which the profit margin taken at 8.78% and arithmetic mean at 10.221%. The assessee adopted operating profit to operating cost as most appropriate profit level indicating, however, according to the TPO the diamond industry is highly working capital intensive and level of sundry debtors inventories are very high. The TPO observed that value addition as well as employee cost as per percentage sale is very less indicating that value addition as well as contribution of human capital is less when compared to value of goods purchased and sold and therefore came to conclusion that in these circumstances the appropriate base for computing profit level indicating can not be capital employed rather than cost or sales. The TPO observed that assessee has substantial international transaction on both sides of the profit & loss account and thus asset based PLI is most appropriate as it is less from the difference in functions as well as difference in products. Therefore, return on capital employed is considered as most appropriate profit level indicator which was calculated by dividing operating profit by average capital employed. The average capital employed was calculated by adding to its assets + current assets are share capital + reserves and surplus + debts – investments. The assessee has submitted return on average capital employed at 8.78% and the TPO considered the same for comparability analysis under TNMM. According to the TPO the arithmetic mean of PLI of comparables works out to 10.21 which is considered for computation of ALP. The assessee's PLI is 8.78% and the arithmetic mean price is not within  $\pm$  /-5% from

the price charged by the tax payer in its international transaction therefore transactions are not at arm length price and computed the adjustment under section 92CA at Rs.5,10,33,002/- which was added by the TPO. The AO framed the assessment under section 143(3) read with section 144C of the Act vide order dated 24.05.2013 by making various additions *inter alia* of TP adjustment of Rs.5,10,33,002/- assessing the total income at Rs.38,39,26,310/- as against the returned income of Rs.31,23,19,680/-. The assessee preferred appeal before the Ld. CIT(A) and filed the detailed submissions which are reproduced as under:

“6. In order to explain this we are referring to point 8 of his order the TPO states that the formula adopted by him for calculating ROCE is as follows:

ROCE = Operating Profits/ Average Capital Employed

Capital Employed= Fixed Assets + Current Assets OR Share Capital + Reserves & Surplus + Debt - Investments

Average Capital Employed = Average CE as on 01-04-2008 and 31-03-2009

Without keeping his own formula in mind for calculating the ROCE he has mechanically copied and pasted the excerpts from the notes to accounts and adopted an incorrect value of average capital employed which does not tie up with the audited financial statements of ASL. This is demonstrated as follows:

The total capital employed by ASL for year ending March 2009 as per the excerpt from the notes to accounts for all segments is (Rs.Lacs) 34,852.47. However if Your Goodself were to use the figures as per the audited balance sheet (attached to this submission) read with the TPO's own formula then the total capital capital employed works out as follows: -

|                          | <u>Rs. Lacs</u>  |                  |
|--------------------------|------------------|------------------|
|                          | <b>2008-2009</b> | <b>2007-2008</b> |
| Shareholders' Funds      | 34,514.32        | 32,960.14        |
| Loan Funds               | 52,709.96        | 54,264.74        |
| Total                    | 87,224.28        | 87,224.88        |
| Average Capital Employed |                  | 87,224.58        |

Therefore, going by the formula of the TPO and going with the figures emanating from the audited balance sheet of ASL, the correct ROCE for ASL works out to 7.02 and not 20.44 as contrived by the TPO. The following table is self-explanatory.

| Average Capital | Operating Profit | ROCE     |
|-----------------|------------------|----------|
| Rs. Lacs        | Rs. Lacs         | Rs. Lacs |
| 87,224.58       | 6,124.00         | 7.02     |

In view of the correct facts and scenario emerging from the above, the revised PLI comparison of ROCE, adopting the factually correct figures is as follows:

| St. No | Name of Company                                    | ROCE (in %) |
|--------|--|-------------|
| 1      | Surana Corporation Ltd                             | 9.31        |
| 2      | Suraj Diamonds & Jewellery Ltd (Suraj Winsome Ltd) | 7.04        |
| 3      | Asian Star Company Ltd                             | 7.02        |
| 4      | Classic Diamonds Ltd                               | 6.55        |
| 5      | Renaissance Jewellery Ltd                          | 16.29       |
| 6      | Gitanjali Gems Ltd                                 | 9.13        |
| 7      | Shrenuj & Company Ltd                              | 9.72        |
| 8      | Shyam Star Gems Ltd (Swarn Sarita Gems Ltd)        | 3.22        |
|        | Arithmetic Mean                                    | 8.54        |
|        | DVL's ROCE Margin                                  | 8.78        |

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

"I have considered the AO's order as *well* as the appellant AR's submissions. Having taken note to the same and also after taking note to the Annexure (II of the appellant AR's submission wherein the auditor's report of M/s. Asian Star Co. Ltd. have been filed and also to the Schedule VIII of the Balance Sheet which reflects that the segment-wise report revenue result and capital employed to the said company's audited Balance Sheet as on 31.03.2009, it is evident that the total capital employed in Asian Star Co. Ltd.'s business was 85,918.13 Lacs whereas in

Column 8 of the segment-wise report revenue, the total capital employed was merely shown as 34852 Lacs which is completely incorrect as evident from the appellant's submission. In view of the same, I find force in the appellant's submission that the ROCE % of Asian Star Co. Ltd. will be of 7.10% rather than 20.44% as adopted by the TPO in para 7 of his order. Thus, I find force in the appellant's request as made in his submission that when the Asian Star Co. Ltd. ROCE's correct percentage is taken then the appellant ROCE% which is 8.78% which is more than the average arithmetical mean of 8.85% as worked out by the appellant in its submission. In view of the same, the upward adjustment so made by the TPO/AO stands deleted. However, I direct the appellant firm to submit the necessary audit report of M/s. Asian Star Company Ltd. to the AO while giving appeal effect to this order which was in the appellate proceedings as Annexure III to the appellant's submission. The AO should take note of the same for working out the said arithmetical mean as adopted above. With this observation, the appellant's this ground of appeal is allowed."

**Add:** List of comparable given by the assessee is as under:

| SL No. | Name of the company           | OP/TC % |
|--------|-------------------------------|---------|
| 1      | Professional Diamonds Ltd     | 0.11    |
| 2      | Shukra Diamond Exports Ltd    | 0.36    |
| 3      | Surana Corporation Ltd        | 1.15    |
| 4      | Suraj Diamonds & Jewelry Ltd  | 2.86    |
| 5      | Sovereign Diamonds Ltd.       | 3.13    |
| 6      | Modern India Ltd.             | 3.59    |
| 7      | Shantivijay Jewels Ltd.       | 4.27    |
| 8      | Zodiac-JRD-MKJ Ltd.           | 4.48    |
| 9      | Asian Star Company Ltd.       | 5.06    |
| 10     | Banaras Beads Ltd             | 5.24    |
| 11     | Classic Diamonds Ltd          | 5.80    |
| 12     | Renaissance Jewellery Limited | 6.72    |
| 13     | Gitanjali Gems Limited        | 8.49    |
| 14     | Shrenuj & Company Ltd.        | 10.00   |

|    |                             |              |
|----|-----------------------------|--------------|
| 15 | Flawless Diamond India Ltd. | 10.64        |
| 16 | Shyam Star Gems Ltd         | 17.13        |
|    | <b>Average of OP/OC</b>     | <b>5.56</b>  |
|    | <b>DVL's OPM</b>            | <b>10.23</b> |

As against this the TPO drew the final list of comparable as under:

| SL No. | Name of Company                                  | ROCE (in %)  |
|--------|--|--------------|
| 1.     | Surana Corporation Ltd                           | 9.31         |
| 2.     | Suraj Diamonds & Jewelry Ltd (Suraj Winsome Ltd) | 7.04         |
| 3.     | Asian Star Company Ltd.                          | 20.44        |
| 4.     | Classic Diamonds Ltd                             | 6.55         |
| 5.     | Renaissance Jewellery Limited                    | 16.29        |
| 6.     | Gitanjali Gems Limited                           | 9.13         |
| 7.     | Shrenuj & Company Ltd.                           | 9.72         |
| 8.     | .Shyam Star Gems Ltd (Swarn sarita Gems Ltd)     | 3.22         |
|        | <b>Arithmetic Mean</b>                           | <b>10.21</b> |
|        | <b>Assessee's RoCE margin</b>                    | <b>8.78</b>  |

6. The Ld. A.R. submitted that the grounds raised by the Revenue is with respect to calculation of correct PLI for the purpose of computing arm length price of international transaction of the assessee. The Ld. A.R. submitted that in calculating the PLI as per return on capital employed method the capital as per accounts of the party should be taken and not as per the notes to accounts which are normally appointed on

the basis of estimates and future projections. The Ld. A.R. submitted that as per the formula adopted by the TPO for calculating return on capital employed the capital employed as per the notes to accounts for all segments which do not reflect the true picture were taken instead of the correct employed as per audited balance sheet. The Ld. A.R. submitted that the assessee itself has recorded that fixed assets and inventory used in the assessee's business are not identifiable to any particular repairable segment and can be used interchangeably allowing geographical segment and therefore the assessee believes that it is not practical to provide segmental disclosure relating to total assets. The Ld. A.R. submitted that TPO himself while calculating the returned capital employed has taken capital employed as per balance sheet in respect of 7 comparable whereas in the case of M/s. Asian Star Company Ltd. he adopted the comparable as per notes to accounts without any justification with the intention to increase the return on capital employed from 7.2% to 20.44%. The Ld. A.R. further submitted that M/s. Asian Star Company Ltd. has been taken by the assessee for computation of profit level indicator for earlier and later years where its PLI was less than 7% which was accepted by the Revenue. The Ld. A.R. therefore submitted that taking the principle of consistency and formula adopted by TPO himself the appellate order of Ld. CIT(A) on this issue needs to be upheld.

7. The Ld. D.R. relying heavily on the order of AO submitted that the assessee has followed the profit margin as PLI which is not correct in the assessee's trade and the TPO/AO has rightly taken the return on capital employed method as the most

appropriate method for ascertaining the arm length price of international transaction of the assessee. The Ld. D.R. while referring to the order of TPO/AO submitted that a very detailed analysis have been carried out and the action of the TPO/AO has been justified with reference to the reasoning given for adopting the return on capital employed method on the

8. We have heard the rival submissions of both the parties and perused the material on record. We find that in this case the assessee has filed TP documentation by adopting the TNMM method and has taken 16 comparables for benchmarking its international transaction. The operating profit to cost is taken as the most appropriate PLI. The profit margin of the assessee was 10.23% on cost which is higher than arithmetic mean margin of 5.56% on cost and thus the members charged in its international transaction was treated as arm length. According to the TPO the comparable selected by the assessee are not truly comparable as in some cases the turnover is even less than 1/5<sup>th</sup> of the assessee's turnover and the value addition and the cost of human sources vis-à-vis sale price is very less. This means that value addition as well as contribution of human capital is less without compared to value of goods purchased and sold and thus considered the capital employed rather than the cost on sales as the appropriate method for determining the PLI. According to the assessee the return on average capital employed was 8.78% whereas as per the TPO the same was computed as 10.21% and thus the arithmetic mean price is not within +/- 5% of the price charged by the tax payer in its international transaction not at arm length price and calculated

the adjustment to international transaction at Rs.5,10,33,002/-. The Ld. CIT(A) after considering the submission of the assessee passed a very reasoned order by pointing out several flaws and defects in the order of TPO/AO and accepted the contention of the assessee for the purpose that the capital employed the figures have to be taken as per the audited financial statements and not from the notes to accounts. Moreover, out of 8 comparable taken by the TPO in case of 7 the capital employed was computed on the basis of balance sheet whereas in the 8<sup>th</sup> comparable M/s. Asian Star Company Ltd. the capital employed was computed on the basis of notes to accounts which is not correct. We find that the TPO has calculated the return on capital employed at 20.44% on the basis of notes to accounts whereas as per the audited financial results of the company it worked out to 7.20%. It also pertinent to state that M/s. Asian Star Company Ltd. has been taken as comparable entity by the assessee in the earlier and subsequent year with PLI of less than 7% which has been accepted by the Revenue. Under these circumstances we find that there is no infirmity in the order of Ld. CIT(A) which has held correctly that the PLI has computed by the TPO on the basis of notes to accounts is wrong and therefore we are inclined to uphold the order of Ld. CIT(A). The ground No.1 raised by the Revenue is dismissed.

9. The issue raised in ground No.2 is against the order of Ld. CIT(A) whereby the Ld. CIT(A) has held that loss on revaluation of outstanding foreign exchange forward contracts as on 31.03.2009 is not a notional loss.

10. The facts are that assessee has been following the method of revaluing its sundry debtors in foreign exchange at the year end. The assessee has foreign exchange forwards contracts as on 31.3.2009 and all these contracts were to mature after the year end. The assessee has revalued these contracts at the exchange rates prevalent at the year end on estimated basis. In accordance with the AS -11 issued by the ICAI. The submissions of the assessee did not find favour with the AO and he rejected the methodology adopted by the assessee.

11. The Id CIT(A) allowed the appeal of the assessee by following the decision of the apex court in the case of CIT Vs Woodward Governor India Pvt Ltd. 312 ITR 254 (SC).

12. After hearing both the parties and perusing the material on record, we find that the issue is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's sister concern's case The ACIT vs. M/s. Vishinda Diamonds in ITA No.7330/M/2013 dated 29.01.2016 wherein identical issue has been decided in favour of the assessee. We would like to mention that Hon'ble Bombay High Court has accepted the decision of the Tribunal by rejecting the appeal by the Revenue against the order of the Tribunal. The operative part of the decision is as under:

"5.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. The facts of the case on hand as emerge from the record are that the assessee is engaged in the business of manufacture, selling, distribution and exporting and importing of cut and polished diamonds, gems and jewellery. In the return of income for assessment year 2009-10, filed on 22/9/2009, the assessee had declared income of Rs.19,85,43,671/-.

5.2 In the course of assessment proceedings, the Assessing Officer required the assessee to show cause as to why the re-valuation of debtors as on 31/03/2009 should not be rejected on the following grounds:-

- (i) non-uniformity of rates of re-valuation adopted for various debtors;
- (ii) not following the AS-II's categorical guidance on adopting closing rate of currency.
- (iii) introducing the contingent losses of the forward contracts of foreign exchange by Marked to Market ('MTM') Method indirectly by netting it with valuation of debtors on 31/3/2009 and why a uniform ITA No. 7330/MUM/2013 (Assessment Year : 2009-10) rate of debtors @ Rs.50.95 not be adopted or why the indirect MTM revaluation of forward contract not be disallowed.

5.3 After considering the explanations put forth, the Assessing Officer came to the view that the assessee had not followed the AS-II guidelines and also rejected the valuation adopted by the assessee treating the same as incorrect and consequently added an amount of Rs.1,62,98,847/- valuing the same @ Rs.50.95, i.e. the closing rate of US \$ as on 31/3/2009.

5.4 On appeal, the Ld. CIT(A), inter alia, following the ratio of the decision of the Hon'ble Apex Court in the case of Woodward Governor India P.Ltd. (supra) and other decisions of the Co-ordinate Benches of the ITAT, Mumbai allowed the assessee's appeal.

6.1 On a careful consideration of the rival contentions, the material on record and the judicial pronouncements referred to, we find that the identical issue of Mark to Market loss arising on valuation of the forward exchange contracts on the closing date of the accounting year not being a notional loss has been considered by a Co-ordinate Bench of this Tribunal in its order in the case of Venus Jewel (Mum), ITA Nos.7328& 7329/Mum/2013 dated 31/07/2016 and has decided the issue in favour of the assessee, holding as under at paras 8 to 10 thereof:-

"8.We find that the issue arising in the present appeal, i.e. loss on account of forward contract entered into by the assessee to hedge against the loss arising on account of fluctuations in foreign exchange arose before the Tribunal in a series of ITA No. 7330/MUM/2013 (Assessment Year : 2009-10) cases. The learned A.R. for the assessee placed reliance upon the following decisions of different Benches:

- i) ACIT vs. M/s. Monarch Gems - ITA No. 2613/Mum/2013 dated 09.07.2014
- ii) ACIT vs. M/s. Vimal Export - ITA No. 6610/Mum/2012 dated 08.01.2014
- iii) ACIT vs. M/s. Rupam Impex - ITA No. 4008/Mum/2012
- iv) ACIT vs. M/s. H. Dipak & Co. - ITA No. 7629/Mum/2011 dated 30.04.2013
- v) [The Paper Products Ltd. vs. Addl. CIT](#) - ITA No. 7761/Mum/2012 dated 28.03.2014

- vi) ECL Finance Ltd. vs. The DCIT - ITA No. 6612/Mum/2011 dated 30.01.2013
- vii) Reliance Communications Ltd. vs. CIT - ITA No. 671/Mum/2013 dated 12.02.2014
- viii) DCIT vs. M/s. Laguna Clothing Pvt. Ltd. - ITA No. 6129/Mum/2012 dated 04.12.2013

9. The Tribunal, in M/s. H. Dipak & Co. - ITA No. 7629/Mum/2011 relating to assessment year 2008-09, vide order dated 30.04.2013 observed as under: -

"8. In the case of Banque Indosuez (supra) cited by the Id. counsel for the assessee, the co-ordinate Bench of this Tribunal had an occasion to consider a similar issue and the same was decided by the Tribunal in favour of the assessee following the decision of Special Bench of ITAT in the case of Bank of Bahrain & Kuwait (supra) as is evident from para 15 of the order of the Tribunal passed in the said case which is reproduced hereunder:-

"After considering the rival submissions and perusing the relevant material on record we find that the assessee entered into forward foreign exchange contract during the year. In respect of the unmatured contracts as at the year end, the assessee valued such unmatured forward foreign exchange contracts at the rate of exchange prevailing as at the end of the year which resulted into loss of Rs. 7.14 crore. It can be considered by way of simple example. If the assessee undertakes a forward foreign exchange contract as on 18th January, 1998, on which the rate of dollar is Rs.42. Further suppose that the contract is to mature on 30th April at the price of Rs. 46 per dollar. Suppose at the end of the year 31st March, the rate of dollar has gone up to Rs. 43, the assessee's claim is that the difference of Rs. 1 (Rs. 43 -42) as on 31st March, 1998 should be taken as loss and allowed deduction accordingly. The Special Bench of the Tribunal in the case of Dv. CIT (International ITA No. 7330/MUM/2013 (Assessment Year : 2009-10) Taxation) v. Bank of Bah rain & Kuwait [2010] 41 SOT 290 (Mum.) has held that the loss incurred by the assessee on account of evaluation of the contract on the last day of the accounting year i.e. before the date of maturity of the forward contract, is allowable as deduction. In that view of the matter this loss of Rs. 7.14 crore representing difference of Re. 1 (Rs. 43 - 42) is liable to be allowed as deduction".

9. In the latest decision rendered on 9th January, 2013 in the case of Societe Generale (supra) cited by the Id. counsel for the assessee, the coordinate Bench of this Tribunal has again allowed a similar claim of the assessee for the loss of Rs. 9.16 crores on foreign exchange contracts outstanding as on 31-3-1998 holding that this issue is squarely covered in favour of the assessee by the decision of

the Special Bench of ITAT in the case of Bank of Bahrain & Kuwait (supra). In our opinion, the issue involved in the present case thus is squarely covered in favour of the assessee by various judicial pronouncements discussed above and respectfully following the same, we uphold the impugned order of the Id. CIT(A) allowing the claim of the assessee on account of "marked to market" loss on revaluation of the pending forward contract for foreign exchange."

10. The issue arising in the present appeal before us is identical to the issue before the Tribunal and also in view of the ratio laid down by the Hon'ble Supreme Court in the case of [CIT vs. Woodward Governor India Pvt. Ltd.](#) (supra) which squarely covers the issue in favour of the assessee, we uphold the order of the CIT(A) in deleting the addition made on account of disallowance of the loss incurred on forward contract in foreign exchange. The grounds of appeal raised by the Revenue are thus dismissed.

11. The learned D.R. for the Revenue had placed reliance on M/s. Vinod Kumar Diamonds Pvt. Ltd. (supra). The said decision is contrary to the view taken in Badridas Gauridu P. Ltd. 261 ITR 256 (Bom). We find no merit in the said reliance. Allowing the claim of the assessee, we dismiss the grounds of appeal raised by the Revenue.

12. The issue in ITA No. 7329/Mum/2013 is identical to the issue in ITA No. 7328/Mum/2013 and our decision in ITA No. 7328/Mum/2013 applies mutatis mutandis to the issue in ITA No. 7329/Mum/2013."

7.2 Following the aforesaid decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Venus Jewel in ITA NO.7328 & 7329/Mum/2013 dated 31/7/2015, which squarely covers the dispute in favour of the assessee, we dismiss the Grounds raised at Sl.No.1 to 5 by the Revenue in this appeal.

8. In the result, Revenue's appeal for assessment year 2009-10 is dismissed."

11. The Ld. A.R. also submitted that the issue is already covered by the decision of the Apex Court in the case of CIT vs. Woodward owners India Pvt. Ltd. (supra) which has also been followed by the first appellate authority wherein the identical issue has been decided in favour of the assessee by holding that the loss on valuation of outstanding foreign exchange forward contract is not a notional loss. Therefore, in view of the above facts and decision of the Hon'ble Supreme Court and also the

decision of the co-ordinate bench of the Tribunal in assessee's sister concern case, we are inclined to dismiss the ground raised by the Revenue.

12. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 08.01.2020.**

**Sd/-  
(Ram Lal Negi)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 08.01.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.