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KMF INFOTECH LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR.

IN THE ITAT BANGALORE BENCH 'B'

B.R BASKARAN, AM & BEENA PILLAI, JM.

IT(TP)A No. 329/Bang/2015, 126/Bang/2015

Mar 5, 2020

(2020) 58 CCH 0233 BangTrib

Legislation Referred to

Section 10B, 115JB, 143(3)

Case pertains to

Asst. Year 2010-11

Issue

Transfer Pricing Adjustments

Decision in favour of:

Matter remanded

Transfer Pricing Adjustment— Assessee is engaged in business of providing software development and premium solution worldwide — Assessee is a subsidiary of company — Assessee company pays commission to KMG USA for marketing services rendered by it — Assessee company applied CUP method (Internal CUP) to bench mark international transactions entered with its AETPO, however, rejected CUP method and adopted TNMM method as most appropriate method and accordingly made transfer pricing adjustment — DRP granted relief with respect of comparables — Held, identical issue was examined by coordinate bench in assessee's own case for asst. year 2011-12 and issue relating to transfer pricing adjustment was restored to file of AO/TPO with directions that during course of hearing assessee vehemently argued that assessee only exports software development services to AEs as well as non-AEs in USA and domestic clients — Thus KMG USA does extensive marketing and secure contracts with third parties and outsources same to KMG India on Back to Back basis — Assessee-company serves as an execution centre for contracts won by KMG USA — KMG USA does not retain any margins from amount billed to end customers — For services performed by AE, assessee company pays commission at 10% for off share services and

25% on onsite revenue services — Thus, revenue earned by 'assessee-company from its AE is only pass through income and they are not an international transaction — It is contention of assessee that TPO had not considered submissions of assessee-company — DRP rejected assessee-company's contentions without assigning reasons whatsoever — A assessee also contends that TPO as well as DRP had not assigned any reason as to why CUP method is not most appropriate method in nature of transactions assessee company had with its AE — It was also submitted that TPO has not considered alternative submissions of assessee company that in case TNMM is adopted as most appropriate method, same should be applied based on internal comparables rather than external comparables — Now, law is quite settled that internal comparables are more preferable to external comparables — Finally, assessee submitted that TPO had not considered submissions of assessee-company for adjustment towards unutilized capacity — AO also not followed directions of DRP while passing final assessment order — CIT(DR) had no serious objections for restoring matter back to file of AO/TPO for fresh analysis of TP study — In circumstances, court remit matter back to AO to consider above submissions de novo — Since facts are identical in this year also, following decision rendered by coordinate bench (referred supra) in assessee's own case, court restore this issue to file of AO/TPO for de novo consideration — Matter remanded.

Held

Identical issue was examined by the coordinate bench in the assessee's own case for asst. year 2011-12 and the issue relating to transfer pricing adjustment was restored to the file of AO/TPO with the following directions.

During the course of hearing counsel for the assessee vehemently argued that the assessee only exports software development services to AEs as well as non-AEs in USA and domestic clients. Thus KMG USA does extensive marketing and secure contracts with third parties and outsources the same to KMG India on Back to Back basis. The assessee-company serves as an execution centre for contracts won by KMG USA. KMG USA does not retain any margins from the amount billed to end customers. For the services performed by AE, assessee company pays commission at 10% for off share services and 25% on onsite revenue services. Thus, revenue earned by the 'assessee-company from its AE is only pass through income and they are not an international transaction. It is the contention of the counsel for the assessee that TPO had not considered the submissions of the assessee-company. DRP rejected the assessee-company's contentions without assigning reasons whatsoever. The assessee also contends that the TPO as well as DRP had not assigned any reason as to why CUP method is not most appropriate method in the nature of transactions assessee company had with its AE. It was also submitted that TPO has not considered the alternative submissions of the assessee company that in case TNMM is adopted as the most appropriate method, same should be applied based on internal comparables rather than external comparables. Now, law is quite settled that internal comparables are more preferable to external comparables. Finally, authorised representative of the assessee submitted that the TPO had not considered the submissions of the assessee- company for adjustment towards unutilized capacity.

The AO also not followed directions of the DRP while passing final assessment order. In the circumstances, it was prayed that the matter may be restored back to the file of the AG for de novo consideration.

On the other hand, CIT(DR) had no serious objections for restoring the matter back to the file of the AO/TPO for fresh analysis of TP study. In the circumstances, court remit the matter back to the AO to consider the above submissions de novo after affording due opportunity of being heard to the assessee company.”

(para 8)

Since the facts are identical in this year also, following the decision rendered by coordinate bench (referred supra) in the assessee's own case, court restore this issue to the file of AO/TPO for denovo consideration.

(para 9)

In favour of

Matter remanded

Business expenditure— Foreign expenses in foreign exchange —A assessee had incurred foreign expenses to tune of Rs.18.64 crore in foreign exchange outside India — AO noticed that assessee, while computing deduction u/s 10B, has not reduced above said expenditure from export turnover — AO computed deduction u/s 10B by reducing above said expenditure from export turnover only — DRP held that expenditure incurred in foreign currency is required to be deducted from total turnover also —Held, ground raised by revenue is covered against revenue by decision rendered by Karnataka High Court in case of CIT Vs. Tata Elix Ltd., (ITA No.70/2009 and Others) — However, requirement of considering issue of deduction of foreign expenses from both export turnover and total turnover shall arise only if additional ground urged by assessee is decided against assessee, i.e., if additional ground is decided in favour of assessee by holding that there is no requirement of deducting foreign expenses from export turnover, then ground urged by revenue shall become infructuous —A additional ground has been raised for first time before present court — Hence D.R submitted that factual aspects relating to issue and applicability of decision rendered by Karnataka High Court in case of Mphasis Ltd (ITA No.1075/2008 c/w ITA No.196/2009 need to examined by AO — Court finds merit in submissions made by D.R. —Matter remanded .

Held

Ground raised by the revenue is covered against the revenue by the decision rendered by Karnataka High Court in the case of CIT Vs. Tata Elix Ltd., (ITA No.70/2009 and Others). However, the requirement of considering the issue of deduction of foreign expenses from both export turnover and total turnover shall arise only if the additional ground urged by the assessee is decided against the assessee, i.e., if the additional ground is decided in favour of the assessee by holding that there is no requirement of deducting foreign expenses from the export turnover, then the ground urged by the revenue shall become infructuous. additional ground has been raised for the first time before present court. Hence the D.R submitted that the factual aspects relating to the issue and the applicability of the decision rendered by Karnataka High Court in the case of Mphasis Ltd (ITA No.1075/2008 c/w ITA No.196/2009 need to the examined by the AO. Court finds merit in the submissions made by D.R.

(para 13)

AO has actually allowed deduction u/s 10B. DRP has referred to both sec.10B and 10A in its directions. The grounds urged by both the parties refer to sec.10A only. Thus, there is confusion about the section under which the deduction was claimed by the assessee.

(para 14)

In view of the foregoing discussions, court restore this issue to the file of the AO for examining it afresh by considering the additional ground raised by the assessee.

(para 15)

CIT Vs. Tata Elix Ltd., (ITA No.70/2009 and Others), Mphasis Ltd (ITA No.1075/2008 c/w ITA No.196/2009 referred.

In favour of

Matter remanded

Business expenditure —Doubtful debts foreign expenses— AO noticed that assessee has claimed a sum of Rs.1,15,265/- as provision for doubtful debts foreign expenses to tune of Rs.18.64 crore in foreign exchange — Assessing officer disallowed same by holding that it is unascertained liability and hence disallowable u/s 37(1) — DRP also confirmed same —Held, AO has disallowed claim u/s 37(1) — However AR submitted that provision for doubtful debts is allowable u/s 36(1)(vii) and in this regard placed reliance on decision rendered by Supreme Court in the case of Vijaya Bank vs. CIT — Since impugned claim has not been examined by AO in terms of 36(1)(vii) court restore this issue for examining same afresh —Matter remanded .

Held

AO has disallowed the claim u/s 37(1). However the ld AR submitted that the provision for doubtful debts is allowable u/s 36(1)(vii) and in this regard he placed reliance on the decision rendered by Supreme Court in the case of Vijaya Bank v. CIT. Since the impugned claim has not been examined by the AO in terms of 36(1)(vii), court restore this issue to his file for examining the same afresh.

(para 21)

In favour of

Matter remanded

Company—Special provision for payment of tax by certain companies— Issue raised is whether “Provision for Gratuity” is an ascertained liability eligible to be deducted from Net profit for purpose of computing book profit u/s 115JB —Held, in case of Dresser Valve India P Ltd vs. ACIT (2009)(30 SOT 495)(Mum) an identical issue was examined by Mumbai bench of Tribunal and it was held that it is noticed that objection of revenue is with regard to assessee's failure to follow AS-15 and ‘actuarial method’ referred therein and not disputed quantification of ‘provision of gratuity — In other words, incorrect quantification of provision makes provisions as an unascertainable liability and therefore, such provisions should be dealt with as per provisions of section 115JB read with Explanation1(c) and accordingly, book provisions should be increased — On other hand, case of assessee is that it is an ascertained liability as evident from books and method of quantification does not decide issue of ascertainment or otherwise of liability and therefore, provision for gratuity is required to be excluded for purpose of determining book profits

— Considering rival positions, it is noticed that said provision of section 115JB are code by itself and determination of book profits has to be done only as per provisions of section 115JB, which unambiguously provides for exclusion of provisions of ascertained liabilities for purpose of 'book profits' —A lthough provision are not allowable as deduction, certain provisions which are capable of estimation with reasonable certain without quantification are allowable as they are ascertainable — On finding that actual quantification is not a legal necessary in matters of ascertainment of gratuity', provision of gratuity in assessee's case is capable of being estimated with reasonable certainty and therefore, it is not a contingent or unascertained liability — Thus, it is an ascertained liability and same falls outside scope of provisions of clause (c) of Explanation 1 to section 115JB warranting no addition to 'book profits — Following above said decision, court holds that Provision for gratuity is an ascertained liability eligible to be deducted from net profit for purpose of computing book profit u/s 115JB —Assessee's ground allowed.

Held

In the case of Dresser Valve India P Ltd vs. ACIT (2009)(30 SOT 495)(Mum) an identical issue was examined by Mumbai bench of Tribunal and it was held as under:-

“18. From the facts, it is noticed that the objection of the revenue is with regard to the assessee's failure to follow the AS-15 and the 'actuarial method' referred therein and not disputed the quantification of the 'provision of gratuity. In other words, the incorrect quantification of the provision makes the provisions as an unascertainable liability and therefore, such provisions should be dealt with as per the provisions of section 115JB read with Explanation1(c) and accordingly, the book provisions should be increased. On the other hand, the case of the assessee is that it is an ascertained liability as evident from the books and method of quantification does not decide the issue of ascertainment or otherwise of the liability and therefore, the provision for gratuity is required to be excluded for the purpose of determining the book profits. Considering the rival positions, it is noticed that the said provision of section 115JB are code by itself and determination of the book profits has to be done only as per the provisions of section 115JB, which unambiguously provides for exclusion of provisions of ascertained liabilities for the purpose of 'book profits'.

19. Thus, although the provision are not allowable as deduction, certain provisions which are capable of estimation with reasonable certain without quantification are allowable as they are ascertainable. On finding that the actual quantification is not a legal necessary in matters of ascertainment of the gratuity', provision of gratuity in the assessee's case is capable of being estimated with reasonable certainty and therefore, it is not a contingent or unascertained liability. Thus, it is an ascertained liability and the same falls outside scope of the provisions of clause (c) of the Explanation 1 to section 115JB warranting no addition to the 'book profits'.”

Following the above said decision, court holds that the Provision for gratuity is an ascertained liability eligible to be deducted from net profit for the purpose of computing book profit u/s 115JB.

(para 26)

Conclusion

Provision for gratuity is an ascertained liability eligible to be deducted from net profit for the purpose of computing book profit u/s 115JB.

In favour of

Assessee

Cases Followed:

Vijaya Bank Vs. CIT (2010) 190 Taxman 257 , Dresser Valve India P Ltd vs. ACIT (2009)(30 SOT 495)(Mum)

Cases Referred to

Vijaya Bank Vs. CIT (2010) 190 Taxman 257

Dresser Valve India P Ltd vs. ACIT (2009)(30 SOT 495)(Mum)

CIT vs. Echjay Forgings P Ltd (2001)(116 Taxman 322)(Bom)

Eicher Motors Ltd vs. DCIT (2004)(82 TTJ 0061)(Ind)

Bharat Earth Movers (425 ITR 428)

Counsel appeared:

H Padamchand Khincha, C.A for the Revenue.: Mulaffar Hussain, CIT (DR) for the Assessee

B. R. BASKARAN, AM.

1. These cross-appeals are directed against the asst. order passed by the AO u/s 143(3) r.w.s 144C of the Act pursuant to the directions given by Id Dispute Resolution Panel (DRP) for asst. year 2010-11.
2. The grounds urged by the assessee related to the following issues :-

- a) Transfer pricing adjustment made by the AO
- b) Disallowance u/s 14A of the Act
- c) Disallowance of provision for doubtful debts made u/s 36(1)(vii) of the Act
- d) Interest charged u/s 234B of the Act.

The assessee has also raised an additional ground contesting that the foreign currency expenses need not be excluded from export turnover for the purpose of computing deduction u/s 10A of the Act. The said additional ground reads as under:-

“ The learned AO has erred in excluding foreign currency expenses from export turnover without appreciating that the Appellant is engaged in the business of rendering software development services and not in rendering technical services. ”

3. In the appeal filed by the Revenue following issues are urged :

- a) Relief granted by Id DRP in respect of Transfer Pricing Adjustments.
- b) Computation of deduction u/s 10A of the Act
- c) Computation of book profit by excluding the provision for gratuity treating the same as ascertained liability.

4. The assessee is engaged in the business of providing software development and premium solution worldwide. The assessee is a subsidiary of company named Key Management Group (KMG) (Inc), USA.

5. The first common issue related to transfer pricing adjustment made by the TPO and partially confirmed by Id DRP. Both the parties are in appeal challenging the decision rendered by Id DRP. The Id AR submitted that KMG, USA does extensive marketing and secure contracts from 3rd parties. It outsources the same to the assessee on back to back basis i.e, the assessee company serves as an execution center for contracts won by KMG USA. The Ld AR submitted that KMG USA does not retain any margin from the amounts billed to the end customers. However, the assessee company pays commission to KMG USA for the marketing services rendered by it. The assessee company applied CUP method (Internal CUP) to bench mark the international transactions entered with its AE. The TPO, however, rejected the CUP method and adopted TNMM method as most appropriate method and accordingly made transfer pricing adjustment. The Id DRP granted relief with respect of comparables.

6. The Id AR submitted that the identical issue was considered by the coordinate bench in the assessee's own case for asst. year 2011-12 in IT(TP)A No.286/Bang/2016 and the Tribunal, vide its order dated 4/4/2017, restored the issue to the file of the AO/TPO for denovo consideration, since the Tribunal was of the view that the TPO as well as DRP had not assigned any reason as to why CUP method is not appropriate method. The Id AR further submitted that the assessee has also sought for adjustment for unutilized capacity and it was not given by the TPO/AO. Further the directions given by Ld DRP in this regard have not been given effect to. The Id AR also submitted that he is ready to argue the matter on merits.

7. The Id DR, on the contrary submitted that the Tribunal has already restored an identical matter to the file of the AO/TPO in AY 2011-12. Accordingly he submitted that issues relating to transfer pricing adjustment may be restored to the file of the AO/TPO.

8. We heard the rival contentions and perused the record. We noticed that an identical issue was examined by the coordinate bench in the assessee's own case for asst. year 2011-12 and the issue relating to transfer pricing adjustment was restored to the file of AO/TPO with the following directions.

“ 7. During the course of hearing before us, learned counsel for the assessee vehemently argued that the assessee only exports software development services to AEs as well as non-AEs in USA and domestic clients. Thus KMG USA does extensive marketing and secure contracts with third parties and outsources the same to KMG India on Back to Back basis. The assessee-company serves as an execution centre for contracts won by KMG USA. KMG USA does not retain any margins from the amount billed to end customers. For the services performed by AE, assessee company pays commission at 10% for off share services and 25% on onsite revenue services. Thus, revenue earned by the 'assessee-company from its AE is only pass through income and they are not an international transaction. It is the contention of the learned counsel for the assessee that TPO had not considered the submissions of the assessee-company. DRP rejected the assessee-company's contentions without assigning reasons whatsoever. The assessee also contends that the TPO as well as DRP had not assigned any reason as to why CUP method is not most appropriate method in the nature of transactions assessee company had with its AE. It was also submitted that TPO has not considered the alternative submissions of the assessee company that in case TNMM is adopted as the most appropriate method, same should be applied based on internal comparables rather than external comparables. Now, law is quite settled that internal comparables are more preferable

to external comparables. Finally, learned authorised representative of the assessee submitted that the TPO had not considered the submissions of the assessee- company for adjustment towards unutilized capacity.

The AO also not followed directions of the DRP while passing final assessment order. In the circumstances, it was prayed that the matter may be restored back to the file of the AG for de novo consideration.

8. On the other hand, learned CIT(DR) had no serious objections for restoring the matter back to the file of the AO/TPO for fresh analysis of TP study. In the circumstances, we remit the matter back to the AO to consider the above submissions de novo after affording due opportunity of being heard to the assessee company. ”

9. Since the facts are identical in this year also, following the decision rendered by coordinate bench (referred supra) in the assessee's own case, we restore this issue to the file of AO/TPO for denovo consideration.

10. The second common issue relates to deduction claimed u/s 10A of the Act.

11. The ld DRP has directed the AO to compute the deduction u/s 10A of the Act after reducing expenditure incurred in foreign currency and lease line expenses both from export turnover and total turnover also. The assessee had incurred foreign expenses to the tune of Rs.18.64 crore in foreign exchange outside India. The AO noticed that the assessee, while computing deduction u/s 10B, has not reduced the above said expenditure from export turnover.

The AO computed the deduction u/s 10B of the Act by reducing the above said expenditure from export turnover only. The ld DRP, by following the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Tata Elix Ltd., (ITA No.70/2009 and Others) held that the expenditure incurred in foreign currency is required to be deducted from the total turnover also.

12. The revenue is aggrieved by the decision so given by Ld DRP. The assessee has also raised an additional ground, which is extracted above, contending that the expenses incurred in foreign exchange need not be deducted from the export turnover at all, since the computer software cannot be treated as technical services as mentioned in clause (iv) to Explanation 2 to sec.10A of the Act. The Ld A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of The Commissioner of Income tax vs. M/s Mphasis Ltd (ITA No.1075/2008 c/w ITA No.196/2009 dated 01-08-2014).

13. The ground raised by the revenue is covered against the revenue by the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of Tata Elix Ltd (supra). However, the requirement of considering the issue of deduction of foreign expenses from both export turnover and total turnover shall arise only if the additional ground urged by the assessee is decided against the assessee, i.e., if the additional ground is decided in favour of the assessee by holding that there is no requirement of deducting foreign expenses from the export turnover, then the ground urged by the revenue shall become infructuous. We notice that the additional ground has been raised for the first time before us. Hence the Ld D.R submitted that the factual aspects relating to the issue and the applicability of the decision rendered by Hon'ble Karnataka High Court in the case of Mphasis Ltd (supra) need to be examined by the AO. We find merit in the submissions made by Ld D.R.

14. We further notice that the AO has actually allowed deduction u/s 10B of the Act. The Ld DRP has referred to both sec.10B and 10A in its directions. The grounds urged by both the parties refer to sec.10A only. Thus, there is confusion about the section under which the deduction was claimed by the assessee.

15. In view of the foregoing discussions, we restore this issue to the file of the AO for examining it afresh by considering the additional ground raised by the assessee.

16. We shall now take up the other issues urged by the assessee.

17. At the time of hearing the Id AR did not press ground relating to disallowance made u/s 14A of the Act in view of the smallness of the amount. Accordingly the said ground is dismissed as not pressed.

18. The next issue urged by the assessee relates to Disallowance of Provision for doubtful debts claimed by the assessee u/s 36(1)(vii) of the Act.

19. The facts relating to the said issue are that the AO noticed that the assessee has claimed a sum of Rs.1,15,265/- as provision for doubtful debts. The assessing officer disallowed the same by holding that it is an unascertained liability and hence disallowable u/s 37(1) of the Act. The DRP also confirmed the same.

20. The AR submitted that the assessee has claimed the provision for doubtful debt u/s 36(1)(vii) of the Act, as the same is in the nature of “ bad debts written off ” , since the assessee had deducted the “ Provision for doubtful debts ” amount from the “ Sundry debtors balance ” shown in the asset side of Balance sheet. He relied on the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank Vs. CIT (2010) 190 Taxman 257 in support of his claim.

21. We heard Id DR and perused the record. We have earlier noticed that the AO has disallowed the claim u/s 37(1) of the Act. However the Id AR submitted that the provision for doubtful debts is allowable u/s 36(1)(vii) of the Act and in this regard he placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Vijaya Bank (Supra). Since the impugned claim has not been examined by the AO in terms of 36(1)(vii) of the Act, we restore this issue to his file for examining the same afresh.

22. The next issue relates to interest charged u/s 234B of the Act. Charging of interest u/s 234B is consequential in nature and hence this issue does not require adjudication.

23. We shall now take up the remaining issue in the appeal of the revenue.

24. The only remaining issue is whether “ Provision for Gratuity ” is an ascertained liability eligible to be deducted from the Net profit for the purpose of computing book profit u/s 115JB of the Act.

25. The Ld A.R submitted that the provision for gratuity is held to be an ascertained liability in the following case law:-

(a) Dresser Valve India P Ltd vs. ACIT (2009)(30 SOT 495)(Mum)

(b) CIT vs. Echjay Forgings P Ltd (2001)(116 Taxman 322)(Bom)

(c) Eicher Motors Ltd vs. DCIT (2004)(82 TTJ 0061)(Ind)

(d) CIT vs. Bechtel India P Ltd (2007)(Taxcorp (DT) 40696)(Del).

On the contrary, the Ld D.R placed his reliance on the assessment order.

26. In the case of Dresser Valve India P Ltd (supra), an identical issue was examined by Mumbai bench of Tribunal and it was held as under:-

“ 18. We have heard both the parties and have gone through the orders, decisions and judgments and provisions of the Income-tax Act. From the facts, it is noticed that the objection of the revenue is with regard to the assessee's failure to follow the AS-15 and the ‘ actuarial method’ referred therein and not disputed the quantification of the ‘ provision of gratuity. In other words, the incorrect quantification of the provision makes the provisions as an unascertainable liability and therefore, such provisions should be dealt with as per the provisions of section 115JB read with Explanation1(c) and accordingly, the book provisions should be increased. On the other hand, the case of the assessee is that it is an ascertained liability as evident from the books and method of quantification does not decide the issue of ascertainment or otherwise of the liability and therefore, the provision for gratuity is required to be excluded for the purpose of determining the book profits. Considering the rival positions, it is noticed that the said provision of section 115JB are code by itself and determination of the book profits has to be done only as per the provisions of section 115JB, which unambiguously provides for exclusion of provisions of ascertained liabilities for the purpose of ‘ book profits’. In this regard, we have perused the apex court judgment in the case of Bharat Earth Movers (425 ITR 428) and the relevant portions of the same reads as under.

“ Business liability arising in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with the reasonable certainty without actual quantification. Till these requirements are satisfied the liability is not a contingent one. The liability is one present/” though it will be discharged at a future date. It does not make any difference if the date of liability has to be discharged it is not certain.

19. Thus, although the provision are not allowable as deduction, certain provisions which are capable of estimation with reasonable certain without quantification are allowable as they are ascertainable. On finding that the actual quantification is not a legal necessary in matters of ascertainment of the gratuity', we are of the opinion that the provision of gratuity in the assessee's case is capable of being estimated with reasonable certainty and therefore, it is not a contingent or unascertainable liability. Thus, it is an ascertained liability and the same falls outside scope of the provisions of clause (c) of the Explanation 1 to section 115JB warranting no addition to the 'book profits ' . Accordingly, the ground 4 of the assessee is allowed. ”

Following the above said decision, we hold that the Provision for gratuity is an ascertained liability eligible to be deducted from net profit for the purpose of computing book profit u/s 115JB of the Act.

27. In the result, the appeal of the assessee as well as revenue are treated as partly allowed

Order pronounced in the Open Court on 5th March, 2020.
