

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3845 & 3846/Mum/2018
(निर्धारण वर्ष / Assessment Year : 2013-14 & 2014-15)

DCIT-10(2)(2) Room No. 216-A, 2 nd Floor Aayakar Bhavan, M K Road Mumbai-400020	बनाम/ v.	MIRC Electronics Limited, G-1, Onida House, Mahakali Caves Road, MIDC, Mumbai-400093
स्थायी लेखा सं./		PAN :
AAACM8055A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:		Shri. Satish Chandra Rajore
Assessee by :		Shri Dharmendra Singh

सुनवाई की तारीख /**Date of Hearing** : 10.08.2018

घोषणा की तारीख /**Date of Pronouncement** : 10.08.2018

आदेश / ORDER

PER Bench:

These two appeals, filed by Revenue, being ITA No. 3845 & 3846/Mum/2018 for assessment year 2013-14 and 2014-15 respectively , are directed against separate appellate order(s) both dated 27.03.2018 passed by learned Commissioner of Income Tax (Appeals)-17, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2013-14 and 2014-15 respectively , the appellate proceedings had arisen before learned CIT(A) from separate assessment order(s) dated 28.03.2016 and 29.12.2016 respectively passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act,

1961 (hereinafter called “the Act”) for AY 2013-14 and 2014-15 respectively.

2. These two appeals filed by Revenue were fixed on board as low tax effect appeals purportedly considered to be covered by CBDT circular no. 3/2018 dated 11.07.2018. When the appeal was called for hearing before the Bench, the learned counsel for the assessee at the outset fairly submitted that these two appeals are not low tax effect appeal as these appeals are not covered by aforesaid CBDT circular dated 11.07.2018. It was also submitted by learned counsel for the assessee that these two appeals are otherwise covered by Mumbai-tribunal decision in assessee’s own case for earlier years as well several decisions of Hon’ble Superior Courts . Thus, these appeals were taken up for hearing by the Bench with the consent of both the counsels of rival parties. First we will take up Revenue’s appeal in ITA no. 3845/Mum/2018 for AY 2013-14. The grounds of appeal raised by Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

“ 1) *“On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to restrict the disallowance to the extent of the exempt income ignoring the fact that the Hon’ble Bombay High Court in the case of M/s Godrej & Boyce Manufacturing Company Limited has held that the disallowance u/s 14A is to be worked out as per Rule 8D from A.Yr. 2008-09 onwards.”*

2. *“ On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that depreciation on moulds used in electronics goods is to be allowed @30% and not 15% as held by the Assessing Officer without appreciating the fact that the assessee is not manufacturing plastic goods and therefore, the depreciation is allowable only @15% and not 30% which is applicable in the manufacturing of plastic goods.”*

3. *The appellant prays that the order of the CIT(Appels) on the above grounds be set aside and that of the Assessing Officer be restored . “*

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing of electronic items like LCD/LED televisions, washing machines , air conditioners and also trading of air conditioners , DVD, Microwave ovens and mobiles. There are mainly two issues which arose in this appeal filed by Revenue. First issue concerns itself with disallowance of expenditure to the tune of Rs. 13,92,540/- purportedly incurred by the assessee in relation to earning of an exempt income which was disallowed by the AO keeping in view provisions of Section 14A of the 1961 Act read with Rule 8D(2)(iii) of the Income-tax Rules , 1962, being computed @ 0.5% of the average investment of Rs. 27,85,08,000/- held by the assessee. The assessee had of its own voluntarily disallowed an expenditure of Rs.33,333/- u/s. 14A of the 1961 Act stated to be incurred in relation to earning of an exempt income and the balance amount of Rs.13,59,207/- was added to the income of the assessee by AO while framing assessment order dated 28.03.2016 passed u/s 143(3) of the 1961 Act. It is an undisputed fact between rival parties that the assessee received an exempt income by way of dividend income of Rs. 97,314/- which was claimed as an exempt income u/s 10(34) of the 1961 Act. The assessee being aggrieved by the aforesaid assessment order passed by the AO u/s 143(3) , filed first appeal before learned CIT(A) . The learned CIT(A) by following several judicial precedents of Superior Courts restricted disallowance u/s 14A of the 1961 Act of expenditure incurred in relation to an exempt income to the tune of exempt income of Rs. 97,314/- earned by the assessee vide appellate order dated 27.03.2018, wherein learned CITA(A) relied on the ratio of judgment of following cases :

- a) Shivam Motors Private Limited (2015) 55 taxmann.com 262(All. HC)
- b) CIT v. Corrttech Energy Private Limited (2014) 45 taxmann.com 116(Guj. HC)

- c) Delite Enterprises (2010) 8 taxmann.com 10 (Bom. HC)
- d) CIT v. Winsome Textiles Industries Limited 319 ITR 204(P&H)
- e)Joint Investments Private Limited v. CIT (2015) 372 ITR 694 (Del. HC)
- f) Pr. CIT v. Empire Package Private Limited (2017) 81 taxmann.com 108 (P&H HC)

4. That's how Revenue is in appeal before us being aggrieved by relief granted by learned CIT(A). The learned DR relied upon assessment order passed by the AO while the learned counsel for the assessee relied upon decision of the Mumbai-tribunal in assessee's own case in ITA no. 3320/Mum/2016 for AY 2011-12, order dated 09.11.2017, wherein Accountant Member was part of Division Bench who passed the said order.

5. We have carefully gone through the entire material on records, case laws cited by rival parties and heard the rival counsel's. The assessee is engaged in the business of manufacturing of electronic items like LCD/LED televisions, washing machines , air conditioners and also trading of air conditioners , DVD, Microwave ovens and mobiles. The assessee held investment of Rs. 26.44 crores as at 31.03.2012 while the investment held as at 31.03.2013 was Rs. 26.42 crores. The assessee undisputedly earned an exempt income by way of dividend to the tune of Rs. 97,314/- during the year under consideration which was claimed exempt u/s 10(34) of the 1961 Act. The assessee suo motu disallowed an expenditure of Rs. 33,333/- u/s 14A of the 1961 Act which was claimed to be incurred in relation to earning of an exempt income. The AO enhanced disallowance to Rs. 13,92,540/- by invoking provisions of Section 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules. The learned CIT(A) restricted the disallowance u/s 14A to the exempt income of Rs. 97,314/- earned by the assessee by following ratio of several decisions of Superior

Courts which are cited in preceding para's of this order. The tribunal while deciding the issue of disallowance of expenditure u/s 14A of the 1961 Act in assessee's own case for AY 2011-12 in ITA no. 3320/Mum/2016 vide orders dated 09.11.2017 held as under:-

"6. We have considered rival contentions and we have perused the material on record including cited case laws and orders of the authorities below. We have observed that the assessee is engaged in the business of manufacturing of TV sets. It is also trading in certain FMCG . The assessee is also manufacturing washing machine and air conditioners. The assessee has earned dividend income of Rs.44,69,167/- which has been claimed as exempt from tax u/s 10(34). The assessee has voluntarily offered disallowance of Rs. 34,692/- u/s. 14A of the Act computed on the basis of 0.5% of salary of GM(Finance) and it is claimed by the assessee that this is the only expenses incurred by the assessee. The A.O invoked Rule 8D r.w.s.14A and made disallowance of Rs.16,67,098/- . We have observed that learned CIT(A) considered various heads of expenses incurred by the assessee which are in the nature of personnel expenses to the tune of Rs.92.25 crores, other/administrative expenses by the way of rent of Rs. 7.8 crores , rates and taxes to the tune of Rs. 4.44 crores and miscellaneous/administrative expenses to the tune of Rs. 30.85 crore which included professional fee of Rs. 3.20 crores, Printing and stationary expenses of Rs. 1.21 crore, tax-audit fee of Rs. 4 lacs , auditors remuneration of Rs. 4.68 lacs, internal audit fee of Rs. 22.2 lakhs, sitting fee of Rs.1.25 lakh etc to uphold the disallowance based on Rule 8D(2)(iii) r.w.s. 14A after arriving at the conclusion that the claim of the assessee of applying 05% to salary of GM(Finance) to arrive at disallowance u/s 14A is not correct. We have observed that during the year under consideration, investments held by the assessee at the beginning of the year was Rs.40.14 crore which has come down to Rs.26.54 crores as at the end of the year. The assessee has sold the investments during the year which comprised mutual fund which mainly led to fall in investments held by the assessee as at year end vis-a-vis held at the beginning of the year. The assessee has offered disallowance computed @0.5% of the salary of GM (Finance) u/s. 14A . The tribunal in the preceding year i.e. AY 2010-11 has held further disallowance of Rs. 50,000/- towards administrative expenses will meet the end of the justice. The authorities below have not gone deeply into the accounts and affairs of the assessee to find out who all were responsible for handling investments and to identify the expenditure/cost incurred towards the earning of the exempt income . The authorities below did not call for minute books of directors/shareholders , copies of resolutions, investment records , books of accounts and no information were called from the investee company/entity who holds investment in demat mode, even it was not considered appropriate to record statements of the Company Secretary/Directors and/or other persons incharge of investments by the authorities below as also to delve deeply into accounts to arrive at the conclusion that the claim of the assessee in making disallowance u/s 14A is incorrect and resort has to be made to Rule 8D in the midst of incorrect claim of the assessee. Rather, a superficial examination of the expenses of the company was made by the learned CIT(A) to justify that formula prescribed

in Rule 8D(2)(iii) is to be applied and claim of the assessee is not correct. The assessee is mainly dealing in the electronics products and has turnover of more than Rs.2000 crores during the impugned assessment year and exempt dividend income is merely Rs. 44.69 lacs as against the investment of Rs. 26.54 crores held at the end of the year. The assessee has undertaken activity/transactions of sale of mutual funds during the previous year relevant to the impugned assessment year which led to decline in investment as at year and necessarily expenses must have been incurred towards undertaking these transaction / activity of sale of mutual fund. Under these circumstances and keeping in view tribunal decisions in the preceding years in assessee's own case , thus , in order to maintain consistency and judicial discipline , end of justice will be met in the instant case if further disallowance of expenditure u/s 14A is kept at an additional amount of Rs.1,00,000/- towards administrative/misc. expenses to be added to the income of the assessee . This is in view of the non recording of proper satisfaction by the authorities below as to the incorrectness of the claim of the assessee's claim and also this disallowance u/s 14A so upheld by us is in consonance with the decision of Hon'ble Supreme Court in the case of Godrej and Boyce Manufacturing Company Ltd. v. DCIT (2017) 394 ITR 449(SC). We order accordingly."

We have observed that tribunal in the aforesaid order for AY 2011-12 upheld further additional disallowance to Rs.1,00,000/- u/s 14A of the 1961 Act in addition to an amount of Rs. 34,692/- suo motu disallowed by the assessee , mainly on account of non recording of proper satisfaction by the authorities below as is mandated u/s 14A of the 1961 Act before invoking Rule 8D of the 1962 Rules and also with a view to maintain consistency and judicial discipline by following decision of the tribunal for earlier year in assessee's own case.The tribunal while passing orders for AY 2011-12 relied upon Hon'ble Supreme Court in the case of Godrej and Boyce Manufacturing Company Limited v. DCIT (2017) 394 ITR 449(SC) . The assessee in AY 2011-12 received dividend income of Rs.44,69,167/- which was claimed as an exempt income u/s 10(34) of the 1961 Act ,while the assessee in the instant year under consideration before us received dividend income of Rs. 97,314/- which was claimed as an exempt income u/s 10(34) of the 1961 Act. The disallowance of expenditure u/s 14A of the 1961 Act was made by the AO towards expenses incurred in relation to earning of an exempt income by invoking Rule 8D(2)(iii) of the 1962 Rules wherein 0.5% of average value of investment held by the assessee was disallowed u/s

14A of the 1961 Act. Keeping in view factual matrix of the case for the instant year under consideration which is distinct from AY 2011-12 as noted by us as above, in our considered view, the learned CIT(A) has passed well reasoned order following ratio of law laid down by Hon'ble Superior Courts which decisions are mentioned in the appellate order passed by learned CIT(A) in his orders, wherein learned CIT(A) restricted the disallowance of expenditure u/s 14A of the 1961 Act to exempt income earned by the assessee. In the case of Joint Investments P. Limited v. CIT reported in (2015) 372 ITR 694(Del), the Hon'ble High Court of Delhi uphold the proposition that disallowance of expenditure u/s 14A of the 1961 Act cannot exceed exempt income earned by the taxpayer, by holding as under:

“ 9. By no stretch of imagination can s. 14A or r. 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s. 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.”

The decision relied upon by learned CIT(A) are detailed in preceding para's of this order. We have observed that Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT reported in (2015) 378 ITR 33(Del.) had held that no disallowance can be made u/s. 14A . if no exempt income is received or receivable during the year. The decision of the Hon'ble Delhi High Court is approved by Hon'ble Bombay High Court in the case of Principal CIT v. Ballarpur Industries Ltd. in ITA no. 51 of 2016 reported in {2016 (10) TMI 1039 Bombay High Court}. We have also observed that Hon'ble Supreme Court in the case of CIT v. Chettinad Logistics P. Ltd. vide decision in SLP (Civil) Diary no. 15631 of 2018 reported in (2018) 95 taxmann.com 250(SC), vide orders dated 02.07.2018 has dismissed SLP filed by Revenue on the ground of delay as well on merits . The said SLP filed by Revenue arose from the decision of Hon'ble Madras High Court in the case of CIT v. Chettinad Logistics P Ltd. reported in (2017) 80 taxmann.com 221(Mad). The relevant extract of the decision of Hon'ble Madras High

Court in the case of CIT v. Chettinad Logistics Private Limited reported in (2017) 80 taxmann.com 221(Mad. HC) from which aforesaid SLP filed by Revenue arose, is reproduced hereunder:-

“7. It is, in this background, that the Tribunal remanded the matter to the Assessing Officer, so as to reach a conclusion as to whether investments had been actually made, in sister concerns of the Assessee, out of interest free funds, albeit, for strategic purposes.

8. According to us, this exercise, in the given facts which emerge from the record, was clearly unnecessary, as the CIT(A) had returned the finding of fact that no dividend had been earned in the relevant assessment year, with which, we are concerned, in the present appeal.

9. In our opinion Section 14 A of the Act, can only be triggered, if, the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.

9.1 The legislature, in order to do away with the pernicious practice adopted by the Assessee's, to claim expenditure, against income exempt from tax, introduced the said provision.

10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.

10.1 Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.

10.2 Mr.Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.

10.3 According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.

10.4 Rule 8 D, in our view, cannot go beyond what is provided in Section 14 A of the Act.

11. Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, Redington (India) Ltd. v. Addl. CIT [2017] 77 taxmann.com 257 (Mad.) which was, subject matter of T.C.A.No.520 of 2016.

11.1 A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.

11.2 As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of Section 14A of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income was earned in the concerned assessment year expenditure under Section 14A could be disallowed against anticipated income.

11.3 Pertinently, the Division Bench in *Redington (India)Ltd. (supra)* case has repelled this precise argument.

12. The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of Section 5 of the Act, is made qua real income and not, vis-a-vis, notional income.

12.1 The Division Bench went on to hold that Section 4 of the Act brings to tax, that income, which is relatable to the assessment year in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked.

12.2 While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3 The reasoning of the Division Bench is contained in the following part of the judgment:

"4. The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7. Per contra, Sri. T. Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8. He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w.Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in *Commissioner of Income Tax v. Maharashtra Sugar Mills Limited* [[1971](#)] [82 ITR 452](#) and *Rajasthan State Ware Housing Corporation v. Commissioner of Income-tax* [[2002](#)] [242 ITR 450](#) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of *Commissioner of Income-tax v. Walfort Share and Stock Brokers (P) Ltd.* [[2010](#)] [326 ITR 1](#)

'... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11. The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far. (emphasis is ours)"

13. Mr.Senthil Kumar, seeks to distinguish the judgment in *Redington (India) Ltd.* case (supra) based on the fact that Rule 8D had not kicked-in by AY 2007-08, which was the AY being considered in the said case.

14. According to us, this was not the argument, put forth, before the Division Bench. As a matter of fact, the Revenue relied heavily on Rule 8D.

14.1 Mr.Ravikumar, who appeared for the Revenue, in that matter and who is present in this Court, informs us that he had in fact argued that the Rule was clarifactory in nature and would apply retrospectively, and that, the Division Bench, therefore, discussed the impact of Rule 8D of the Rules.

15. However, it is, our view, as indicated above, independent of the reasoning given in *Redington (India) Ltd.* case (supra) that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, Section 14 A of the Act.

15.1 Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue.

15.2 In any event, the Tribunal, via, the impugned judgment has remitted the matter to the Assessing Officer.

15.3 Therefore, for the foregoing reasons, we are of the view, that no interference is called for qua the impugned judgment.

16. To our minds, questions of law, which could have arisen are already covered by the judgment of a Co-ordinate Bench of this Court rendered in *Redington (India) Ltd.* case (supra).

17. The appeal is accordingly, dismissed. However, there shall be no order as to costs."

The Hon'ble Madars High Court followed the decision of the same Court in the case of *Redington (India) Ltd. v. Addl. CIT* [\[2017\] 77](#)

taxmann.com 257 (Mad.) while adjudicating Chettinad Logistics Private Limited(Supra) , wherein CBDT circular no. 5/2014 dated 11.02.2014 also came up for discussion before Hon'ble Madras High Court in the case of Redington (India) Limited and after considering the said CBDT Circular, Hon'ble Madras High Court affirmed the proposition in Redington (India) Limited (supra) that if no exempt income is received during the previous year relevant to the impugned assessment year, no disallowance of expenditure u/s 14A of the Act of 1961 is warranted. Respectfully following the ratio of aforesaid decision of Hon'ble High Courts including decision of Hon'ble Jurisdictional High Court and also taking note of dismissal of Revenue's SLP by Hon'ble Supreme Court in the case of CIT v. Chettinad Logistics Private Limited(supra) on grounds of delay as also on merits, we uphold the well reasoned order of Ld. CIT(A) on the proposition that disallowance of expenditure incurred in relation to an exempt income earned by the assessee u/s 14A of the 1961 Act cannot exceed exempt income earned by the assessee during relevant period. Thus, we dismiss the appeal of Revenue on this short ground only. Thus, Revenue fails on this ground. We order accordingly.

6. The second issue which is raised by Revenue in this appeal in ITA no. 3845/Mum/2018 for AY 2013-14 relates to allowability of depreciation @30% on moulds(plastic) used for manufacturing of electronic goods by learned CIT(A) as against depreciation @ 15% allowed by the AO on such moulds(plastics). The tribunal in assessee's own case for AY 2006-07, 2007-08, 2008-09 and 2011-12 has consistently taken and view and held that the assessee is entitled for depreciation @30% on moulds(plastic) used by the assessee for manufacturing of electronic goods. The Accountant Member was part of the Division Bench of Mumbai-tribunal in ITA no. 4050/Mum/2016 for AY 2011-12 wherein vide orders dated 31.01.2018 , the tribunal allowed the claim of the assessee for depreciation @30% on moulds(plastic) used by the assessee for manufacturing of electronic

goods by following earlier year decisions passed by the tribunal in assessee's own case. The AO while disallowing the claim of the assessee for depreciation @30% on moulds(plastic) used for manufacturing of electronic goods wherein the AO allowed depreciation @15% on such moulds(plastic) , although the AO noted that the tribunal has allowed the depreciation @30% on moulds(plastic) used for electronic items manufactured by the assessee but the AO observed that the claim cannot be allowed as Revenue has not accepted decision of the tribunal and appeal is filed by Revenue with Hon'ble Bombay High Court against decision of the tribunal granting relief to the assessee. The learned DR before us relied on assessment order passed by the AO while learned counsel for the assessee relied upon tribunal's order for earlier years.

7. We have heard rival parties and perused material on record including orders of authorities below and tribunal orders for earlier years relied upon . We have observed that under similar factual matrix as is prevailing in the instant year, the Mumbai tribunal has taken a consistent stand that the assessee is entitled for depreciation @30% on moulds(plastic) used in manufacturing of electronic goods. The tribunal order for AY 2011-12 in ITA no. 4050/Mum/2016 vide orders dated 31.01.2016 of which Accountant Member was part of DB passing the said order , the tribunal allowed depreciation @30% on moulds(plastics) used in electronic goods, which decision of the tribunal is reproduced hereunder:

“This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-53, Mumbai, [in short CIT(A)] in appeal No. CIT(A)- 53/ACC-36/IT-336/2014-15 dated 22-02-2016. The Assessment was framed by the Asst. Commissioner of income Tax, Circle-36, Mumbai (in short ACIT) for the assessment year 2011-12 vide order dated 28-03-2014 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of depreciation on plastic moulds used in electric goods. For this Revenue has raised following ground No.1: -

“1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is justified in holding that depreciation on moulds used in electronics goods is to be allowed @ 30% and not 15% as held by the Assessing Officer without appreciating the fact that the assessee is not manufacturing plastic goods and therefore, the depreciation is allowable only @15% and not @30% which is applicable in the manufacturing of plastic goods.”

3. Brief facts are that the assessee claimed depreciation of plastic moulds at 30% but AO restricted the depreciation at 15%. The CIT(A) deleted the disallowance by following the tribunals decision in assessee's own case by observing in Para 5.3 as under: -

“5.3 I have considered the submissions of the appellant and perused the materials available on record. The question for adjudication is whether the A.O. was justified in restricting the claim of depreciation on plastic moulds at 15% as against 30% claimed by the appellant. It is found that the issue under appeal stands covered in favour of the appellant by the aforesaid orders of Hon'ble ITAT. Mumbai Bench in its own case. The relevant extract of the order of Hon'ble Tribunal dated 13.03.2013 is reproduced below: -

"We have carefully considered the rival submissions in the light of the material placed before us. It is a question of allowance of depreciation 30% vis-à-vis 25%. The contention of the assessee that in the past, such depreciation has been granted A36W. Learned CIT(A) had invoked Section 263 and order of Ld.CIT was quashed by the Tribunal. Therefore, in view of the consistency, we are of the opinion that the claim of the assessee should have been accepted by the Assessing Officer as no new facts have been brought on record to justify for different stand taken during the year under consideration and such view is supported by Hon'ble Supreme court in the case of Radhasoami Satsang v. CIT (193 ITR 321). Accordingly, this ground of the appellant is allowed".

It is also observed that vide its orders dated 18.03.2013 and 29.05.2015 for A.Ys.2007-08 and 2008-09 respectively, the Hon'ble Tribunal directed the A.O. to allow depreciation on moulds at 30% as claimed by it. Since there is no change in the facts of the case on this issue, it is held that the appellant is entitled to claim depreciation on moulds @ 30% respectfully following the aforesaid orders of Hon'ble ITAT. The A.O. is, therefore, directed to allow depreciation on moulds @30% as claimed by the appellant. Ground No.2 of the present appeal is, accordingly, allowed.”

4. As the issue is squarely covered in assessee's own case by Tribunal's order for AY 2007-08 and 2008-09, respectfully following the same we confirm the order of CIT(A) by deleting the disallowance. The appeal of Revenue is dismissed.

5. In the result, the appeal Revenue is dismissed.”

As the issue in the instant year before us is squarely covered by assessee's own case by Tribunal's order's for AY 2007-08 ,2008-09 and 2011-12 and factual matrix remaining same in all these years, Respectfully following the same we confirm the order of learned CIT(A) by allowing depreciation @30% on moulds(plastic) used by the assessee for manufacturing of electronic goods. The appeal of Revenue in ITA no. 3845/Mum/2018 for AY 2013-14 is dismissed. We order accordingly

8. In the result, the appeal of the Revenue in ITA no. 3845/Mum/2018 for AY 2013-14 is hereby dismissed.

9. Our decision in ITA no. 3845/Mum/2018 for AY 2013-14 shall apply mutatis mutandis to Revenue's appeal in ITA no. 3846/Mum/2018 for AY 2014-15 as factual matrix is similar in both the years. The appeal of Revenue in ITA no. 3846/Mum/2018 for AY 2014-15 is dismissed We order accordingly.

10. In the result, both the appeals of the Revenue in ITA no. 3845/Mum/2018 for AY 2013-14 and ITA no. 3846/Mum/2018 for AY 2014-15 are dismissed.

Order pronounced in the open court on 10.08.2018.

आदेश की घोषणा खुले न्यायालय में दिनांक: 10-08-2018 को की गई ।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated:10 .08.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI