

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO.1134 TO 1136 & 1158/MUM/2017
(A.Ys: 2011-12 TO 2013-14 & 2010-11)**

ACIT Circle – 2(1)(2) R.No.561, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Estrela Batteries Ltd., 40, Yusuf Building, 4 th Floor, Veer Nariman Road, Fort Mumbai -400 023 PAN NO: AABCE 3092 Q
(Appellant)		(Respondent)

Assessee by : Shri Sunil Hirawat

Revenue by : Shri V. Justin

Date of Hearing : 28.06.2018

Date of Pronouncement : 24.09.2018

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the Revenue against different orders of the Learned Commissioner of Income Tax (Appeals)–3 Mumbai dated 25.11.2016 for the Assessment Years 2010-11 to 2013-14.
2. We take up the appeals for the Assessment Years 2011-12 to 2013-14 as the issues are common.
3. The common grounds raised by the Revenue in these three appeals are as under: -

“1 “On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the overall indirect expenditure to the extent of ₹.2,40,000/-without applying the method enshrined in Rule 8D(iii) of the I T Rules.

2 “On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance U/R 8D(ii) without appreciating that computation of expenses U/R 8D is mandatory after A. Y. 2008-09. ”

3 “On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A while computing the Book Profit u/s.115JB of the Act. ”

4 “On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing depreciation on motor car when the rights of ownership of the motor car were not proved by the assessee company?”

4. First three grounds relate to the disallowance u/s. 14A r.w. Rule 8D(2)(ii) and 8D(2)(iii) of the Act while computing the income under normal provisions as well as the book profits u/s. 115JB of the Act.

5. The Assessing Officer while completing the assessment noticed that the assessee made suo moto disallowance in these Assessment Years only an amount of ₹.41,065/-, ₹.31,804/- & ₹.41,232/- and since the working made by the assessee is not on par with the provisions under section 14A r.w. Rule 8D the assessee was required to explain as to why provisions u/s. 14A r.w. Rule 8D should not be applicable. Assessee submitted that expenditure relating to exempt income is based on the time taken for making the entries for transaction relating to exempt income and also administrative and other expenses and detailed working was also furnished. Not satisfied with the suo moto disallowance made by the assessee the Assessing Officer invoking the provisions of section 14A r.w.

Rule 8D disallowed ₹.19,27,217/, ₹.39,01,843/- and ₹.39,72,639/- for the Assessment Years 2011-12 to 2013-14 respectively.

6. On appeal the Ld.CIT(A) deleted the disallowance in respect of interest disallowance made under Rule 8D (2)(ii) of the Act. In so far as the disallowance made under Rule 8D(2)(iii) the Ld.CIT(A) restricted the disallowance to ₹.2,40,000/-. In respect of disallowance u/s. 14A while computing the book profits he directed the Assessing Officer to compute the disallowance by restricting it to ₹.2,40,000/-. Against these orders the Revenue is in appeal before us.

7. Ld. DR vehemently supported the orders of the Assessing Officer and the Ld. Counsel for the assessee strongly placed reliance on the order of the Ld.CIT(A).

8. We have heard the rival submissions, perused the orders of the authorities below. In so far as the interest disallowance under Rule 8D(2)(ii) is concerned, we find that the Ld.CIT(A) deleted the same on the ground that the investments were made in the preceding Assessment Years 2008-09 from out of the advances received from M/s. Nariman Infrastructure Pvt. Ltd., It is also the finding of the Ld.CIT(A) that assessee has invested its own funds and did not incur any expenditure towards interest and for these reasons the Ld.CIT(A) deleted the disallowance

made under Rule 8D(2)(ii) which in our opinion was rightly deleted. Thus we sustain the order of the Ld.CIT(A) and reject the grounds of Revenue.

9. Coming to Rule 8D(2)(iii) the Ld.CIT(A) following the order of the Tribunal in assessee's own case for the Assessment Year 2009-10 in ITA.No. 7370/MUM/2012 restricted the indirect expenditure to ₹.2,40,000/-. In the circumstances, we do not find any infirmity in the order passed by the Ld.CIT(A), hence the same is sustained. The ground raised by the Revenue is rejected.

10. Coming to the disallowance made u/s. 14A of the Act, while computing the book profits u/s. 115JB of the Act, we find that the Ld.CIT(A) agreed with the contention of the Assessing Officer that there should be a disallowance while computing the disallowance. However, restricted to ₹.2,40,000/- being the administrative expenses as was done in the normal computations. This action of the Ld.CIT(A) is not required to be modified. Hence we sustain the same and reject the grounds of the Revenue.

11. Coming to ground No.4 i.e. allowing the depreciation on Motor Car by the Ld.CIT(A), we find that the Assessing Officer while completing the assessment disallowed depreciation on motor car for the reason that the vehicle was registered in the name of the Director.

12. On appeal the Ld.CIT(A) deleted the disallowance since the assessee company purchased the motor car and used for the purpose of business. The Ld.CIT(A) also referred to the decision of the Hon'ble Bombay High Court in the case of CIT v. Dilip Singh Sardarsingh Bagga [201 ITR 995], wherein it has been held that depreciation cannot be denied on the ground that the transfer was not recorded under the Motor Vehicle Act or that the Vehicle stood in the name of the Vendor in the records of the Authorities under the Motor Vehicle Act.

13. On a careful consideration of the facts and circumstances of the case, we do not find any infirmity in the order of the Ld.CIT(A) in allowing the claim for depreciation on motor car. It is not in dispute that the motor car was purchased by the assessee company itself and used for the purpose of business. Simply because the vehicle was not registered in the name of the assessee company and was registered in the name of the Director the assessee cannot be denied depreciation. Thus, we sustain the order of the Ld.CIT(A) in allowing the depreciation of motor car. Grounds raised by the Revenue on this issue are rejected.

14. Coming to the appeal for the Assessment Year 2010-11 the first two grounds are relating to the disallowance u/s. 14A r.w. Rule 8D (2)(ii) and 8D(2)(iii) of the Act and Ground No. 3 is relating to disallowance on depreciation of motor car.

15. Facts and circumstances for Assessment Year 2010-11 being identical to the Assessment Years 2011-12 to 2013-14, we uphold that the decision taken in above appeals applies mutatis mutandis to this appeal also. Thus, the grounds raised by the Revenue are rejected.

16. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on the 24th September, 2018.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 24/09/2018
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai