IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA
(Before Shri S. S. Godara, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 2159/Kol/2017 : Asstt. Year : 2010-11

D.C.I.T, Cir-10(1), Kolkata	Vs	M/s. Eureka Forbes Ltd PAN: AAACE 5767F
(APPELLANT/Department)		(RESPONDENT/Assessee)

ITA No. 2170/Kol/2017 : Asstt. Year : 2010-11

M/s. Eureka Forbes Ltd PAN: AAACE 5767F	Vs	A.C.I.T, Cir-10(1), Kolkata
(Assessee)		(Department)

ITA No. 2160/Kol/2017 : Asstt. Year : 2011-12

D.C.I.T, Cir-10(1), Kolkata	Vs	M/s. Eureka Forbes Ltd PAN: AAACE 5767F
(APPELLANT/Department)		(RESPONDENT/Assessee)

ITA No. 2171/Kol/2017 : Asstt. Year : 2011-12

M/s. Eureka Forbes Ltd PAN: AAACE 5767F	Vs	A.C.I.T, Cir-10(1), Kolkata
(ASSESSEE)		(RESPONDENT)

Department by : Shri Saurabh Kumar, Addl. CIT, ld.Sr.DR
Assessee by : Shri Abhijit Biswas, Advocate, ld.AR

Date of Hearing : 11-10-2018		Date of Pronouncement: 28.11.2018

ORDER

Per Dr. A.L.Saini, A.M.:

The captioned cross appeals filed by the Revenue and the Assessee, pertaining to assessment years 2010-11 and 2011-12, are directed against the separate orders passed by the Commissioner of Income-tax (Appeals)-22, Kolkata in Appeal Nos. 79/CIT(A)-22/

Kol/10-11/16-17 & 80/CIT(A)-22/Kol/11-12/16-17, both dated 12-07-2017, which in turn arise out of orders passed by the Assessing Officer u/s. 143(3) read with section 144C of the Income-Tax Act, 1961 (in short, the Act), dated 30-04-2014 and 19-03-2015 respectively.

2. The Revenue is in appeal for the A.Ys 2010-11 & 2011-12 vide ITA Nos. 2159 & 2160/Kol/2017. Similarly, the assesse is in cross appeals for the A.Ys 2010-11 & 2011-12, vide ITA Nos. 2170 & 2171/Kol/2017 respectively. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.2159/Kol/2017, for assessment Year 2010-11, have been taken into consideration for deciding the above appeals *en masse*.

3. In these cross appeals, the Revenue as well as the Assessee have raised multiple grounds of appeal. However, at the time of hearing we have carefully perused all the grounds raised by the Revenue as well as raised by the Assessee. To meet the end of justice, we confine ourselves to the core of the controversy and main grievances of Revenue and the Assessee as well. With this background, we summarize and concise the grounds raised by the Revenue as well as Assessee as follows:

(i).Ground nos. 1 & 2 of ITA No. 2159/Kol/2017, of Revenue appeal, for the A.Y 2010-11 and ground nos. 1 & 2 of ITA No. 2160/Kol/2017, of Revenue appeal, for the A.Y 2011-12, relate to disallowance of excess depreciation of Rs.8,66,410/- & Rs. 2,99,564/- for the A.Y 2010-11 and Rs.24,67,795/- for the A.Y 2,011-12.

(ii).Ground no. 4 of ITA No. 2159/Kol/2017, of Revenue appeal, for the A.Y 2010-11 and ground no. 4 of ITA No. 2160/Kol/2017, of Revenue appeal, for the A.Y 2011-12, are identical and similar to ground no. 2 of ITA No. 2170/Kol/2017, of Assessee appeal, for the A.Y 2010-11, and ground no. 2 of ITA No. 2171/Kol/2017, of Assessee appeal, for the A.Y 2011-12, relate to common issue of disallowance u/s. 14A r.w.r 8D of the I.T. Rules, 1962.

(iii).Ground no. 3 of ITA No. 2159/Kol/2017, of Revenue`s appeal for the A.Y 2010-11 relates to disallowance of Rs.49,38,302/- on account of provision made for consumption of materials.

(iv).Ground no. 3 of ITA No. 2160/Kol/2017, of Revenue`s appeal for the A.Y 2011-12 relates to disallowance of excess depreciation of Rs.7,09,080/- claimed on building.

(v).Ground No.1 of ITA No. 2170, assessee`s appeals, for A.Y.2010-11 and Ground No.1 of ITA No.2171, assessee`s appeals, for A.Y.2011-12 relate to disallowance of expenses of Repairs and Maintenance.

4. Now, we shall take these summarized grounds one by one. Summarized ground No.(i) reads as follows:

(i).Ground nos. 1 & 2 of ITA No. 2159/Kol/2017, of Revenue appeal, for the A.Y 2010-11 and ground nos. 1 & 2 of ITA No. 2160/Kol/2017, of Revenue appeal, for the A.Y 2011-12, relate to disallowance of excess depreciation of Rs.8,66,410/- & Rs. 2,99,564/- for the A.Y 2010-11 and Rs.24,67,795/- for the A.Y 2,011-12.

5. The facts of the issue, which can be stated quite shortly are as follows. The assessee company being a trader had claimed depreciation @ 15% on various office equipment installed or fitted at various rented/leased office premises across the country. The assessee claimed depreciation @ 15% applicable for plant & machineries on the items, which are practically used in various office premises across the country like Wet & Dry vacuum cleaners, Water coolers, Z Power 3 in 1, Single Disc Scrubber, Ceiling Fans, Wall fans, Air Coolers, Refrigerators, Window Air Conditioners, Microwave Ovens, Faber Chimneys, Splits Air Conditioners, Mobile Sets etc. During the assessment proceedings the assessee was asked as to why all these items will not be considered as Office Equipment's and will not be classified under the block of assets of 'Furniture & Fixture' to allow 10% deprecation instead of 15% (claimed by assessee, treating as Plant & Machinery). In response, the assesse submitted that all those items or equipment claimed under plant & machineries are really essential for running the business of the assesse through various offices and the said equipments and items have identical use like the machines which are basically used by a manufacturer. However, the ld AO rejected the contention of the assessee and held that the aforesaid items are essential for all kind of business peoples to keep the business area clean and make everything hygienic. Therefore, the ld AO regrouped these items to allow depreciation @10% instead of 15% subject to the period of acquisition

and utilization. The assesse has claimed deprecation of Rs.26,02,230 @ 15% on written down value (WDV) of so called Plant & Machineries used for more than 180 days. Therefore, the ld AO disallowed depreciation to the tune of Rs.8,67,410 (Rs.26,02,230 – Rs.17,34,820).

The assessee had claimed depreciation of Rs.8,98,694/- for the Plant & Machineries used for less than 180 days. To rectify the claim, excluding the disallowable depreciation amount claimed on so called Plant & Machineries used for less than 180 days, which was computed at Rs.2,99,564/- (Rs. 8,98,694 – Rs.5,99,129). Therefore, the disallowable depreciation in this regard was determined at Rs.11,66,975/- (Rs.8,67,410 + Rs.2,99,564) and added to the total income of the assessee.

6. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals), Kolkata, who has deleted the addition made by the Assessing Officer. The ld. CIT(A) noted that the equipment such as Wet & Dry vacuum cleaners, Water coolers, Z Power 3 in 1, Single Disc Scrubber, Ceiling Fans, Wall fans, Air Coolers, Refrigerators, Window Air Conditioners, Microwave Ovens, Faber Chimneys, Splits Air Conditioners, Mobile Sets, fax machine & TC systems etc, which are an integral part of business and have been part of Plant & Machinery and not as office furniture & fixtures and therefore depreciation should be allowed at the rate which is applicable to plant and machinery, hence addition of Rs.11,66,975/- (Rs.8,67,410 + Rs.2,99,564) was deleted by ld CIT(A).

7. Aggrieved by the order of the Commissioner of Income-tax (Appeals), the Revenue is in appeal before us. The ld. DR for the Revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier paras and the same is not being repeated for the sake of brevity. On the other hand, the ld. Counsel for the assessee has defended the order passed by the ld. CIT(A).

8. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the impugned disallowance of Rs.11,66,975/- (Rs. 8,67,410 + Rs. 2,99,564) is on account of alleged excess claim of depreciation. We note that the assesse company had claimed depreciation @ 15% on the block of Plant & Machinery. There is no dispute that such plant & machinery also included items such as Wet & Dry Vacuum Cleaners, Water Coolers, Z Power 3 in 1, Single Disc Scrubber, Ceiling Fans, Wall fans, Air Coolers, Refrigerators, Window Air Conditioners, Microwave Ovens, Fabrer Chimneys, Splits Air Conditioners, Mobiles Sets etc. However, the ld AO re-classified these items mentioned above, as assets under the block of Furniture & Fixtures on which 10% depreciation was allowed instead of 15% claimed by the assessee. Therefore, the AO disallowed of Rs.11,66,975/- being differential depreciation. We note that all the assets on which partial depreciation has been disallowed by the ld AO, were essential for running assessee`s business smoothly and it served the purpose of plant and machinery. These assets had an identical use like machines and not of office equipment. These assets were wholly and exclusively used in the nature of plant & machinery and not in the nature of furniture & fixtures. We further note that there is no dispute that these assets have been used by the assessee company and are inextricably related to the business of the assessee. Therefore, we are unable to agree with the observation of the ld AO, that these are equipment used by normal business people to keep the business premises hygienic. We note that some of the equipments, such as drilling machines, switchgear, remote controls device hideaways are specific to the business of the assesse for installation and repair of the equipment supplied by it. We note that these assets in question are wholly and exclusively used in the nature of plant & machinery and would qualify as such. Therefore, as the assets were used in the nature of plant & machinery, depreciation on the same would be as per eligible rate of 15% as claimed by the assesse. For that, we rely on the judgment of the Co-ordinate Bench, of ITAT, Delhi in the case of ACIT Vs. Voith Paper Fabrics India ltd (ITA No. 1412/Del/2010), wherein it was held that air-conditioner, refrigerators etc. are 'plant' and depreciation should be allowed as applicable. Therefore, we are of the view fax machine, CCTV systems and Nokia Mobile sets, Wall fans, Ceiling

Fans, Air Coolers, Refrigerators, Window Air Conditioners, Microwave Ovens etc are part & parcel of plant & machinery. Therefore, depreciation is allowable as per applicable rate to the Plant & Machinery. That being so, we declined to interfere in the order of the ld. CIT(A), his order on this issue is hereby upheld and Ground nos. 1 & 2 of ITA No. 2159/Kol/2017, of Revenue appeal, for the A.Y 2010-11 and ground nos. 1 & 2 of ITA No. 2160/Kol/2017, of Revenue appeal, for the A.Y 2011-12, are dismissed.

9. Now, we shall take summarized ground no. (ii), which reads as under:-

(ii).Ground no. 4 of ITA No. 2159/Kol/2017, of Revenue appeal, for the A.Y 2010-11 and ground no. 4 of ITA No. 2160/Kol/2017, of Revenue appeal, for the A.Y 2011-12, are identical and similar to ground no. 2 of ITA No. 2170/Kol/2017, of Assessee appeal, for the A.Y 2010-11, and ground no. 2 of ITA No. 2171/Kol/2017, of Assessee appeal, for the A.Y 2011-12, relate to common issue of disallowance u/s. 14A r.w.r 8D of the IT Rules, 1962.

10. In this ground the main grievance of the Revenue is that the ld. CIT(A) has erred in law in restricting the disallowance made u/s. 14A to Rs.34,56,723/- and Rs.5,34,173/- for the A.Ys 2010-11 & 2011-12 respectively. Whereas the grievance of the assesse in ground no. 2 of ITA Nos. 2170 & 2171/Kol/2017 for the A.Ys 2010-11 & 2011-12 are that the ld. CIT(A) has rejected the revised disallowance computed by the assessee at Rs. 3.67 lakhs and Rs.0.21 lakhs and submitted by the assesse for the A.Ys 2010-11 & 2011-12 respectively.

11. The brief facts qua the issue are that in the A.Y 2010-11, the ld AO made addition to the tune of Rs.58,18,219/- by invoking the provisions of section 14A of the I.T. Act, 1961 r.w. rule 8D of the I.T. Rules, 1962. During the assessment proceedings, the assessee submitted before the ld AO that no direct expenditure have been incurred for earning exempt income and the investments have been made out of own funds and not out of borrowed funds. Only dividend bearing securities should be considered in taking the total value of investment while computing average investments under Rule 8D(2)(ii) and 8D(2)(iii) of the IT Rules 1962 for computing disallowance u/s. 14A of the Act. Before the

AO the assessee also contended that investments in foreign companies, which yielded taxable dividend income, would not attract the disallowance u/s. 14A/r.w.r 8D of the IT Rules, 1962. The assesse company also prayed before the AO that disallowance under Rule 8D if any should be made by excluding investments made in foreign companies while computing average investments, as the dividend received from the foreign companies are taxable dividend income.

However, on scrutiny of accounts of the assessee company, it was noted by the AO that the assessee company has invested huge amount into shares of various subsidiary companies and in other quoted shares also. The assessee has received dividend income to the tune of Rs.5,56,55,497/- (exempted u/s. 10(34) during the year. Initially, the assesse had disallowed, *suo motu* of Rs. 34,56,723/- u/s. 14A of the I.T. Act, followed by the provisions laid down in Rule 8D of the IT Rules. However, during the course of scrutiny proceedings the assessee submitted that by mistake it offered for tax of Rs. 34,56,723/- as disallowance u/s. 14A read with rule 8D(2)(iii). The assessee also submitted the summary of balance sheet as on 31-03-2010 in respect of issue under consideration, which is given below:-

Liability	*Rs .*	*Asset*	*Rs*
Share Capital + Reserve & Surplus (Schedule-A & B of B/S	*105,57,30,882*	*Fixed Asset (Net Block) (Schedule-E of B/S)*	*82,67,24,859*
Deferred Tax Liabilities	*Nil*	*Current Assets, Loans and Advances(Schedule-G of B/S)*	*373,71,68,309*
Current liabilities & Provisions (Schedule-H & Point Nos. 9,10 & 11 of B/S)	*288,00,85,656*	*Deferred Tax Assets (Net Note-15)*	*2,22,97,821*
Secured Loan + Unsecured Loan (Schedule-C & D of B/S)	*88,48,97,298*	*Investment in shares (Schedule-F of B/S)*	*23,45,22,847*
	482,07,13,836		*482,07,13,836*
Note: It is palpable that without the help of Loans on which interest has been paid, the assesse is unable to retain the investment.			

However, the AO rejected the contention of the assesse and computed the disallowance under Rule 8D(2)(ii) and 8D(2)(iii) to the tune of Rs.77,93,217/- and Rs.14,81,725/- respectively, the total disallowance came to Rs.92,74,942/- (Rs.77,93,217 + Rs.14,81,725).

Since the assessee disallowed suo motu u/s. 14A/r.w.r 8D to the tune of Rs.34,56,723/- , the net disallowance came to Rs.58,18,219/- (Rs.92,74,942 – Rs.34,56,723) and the AO added the same to the total income of assesse company.

12. Aggrieved by the stand so taken by the AO, the assessee carried the matter in appeal before the ld. CIT(A), who partly deleted the impugned addition made by the AO. Before the ld. CIT(A), the assesse submitted that during the year under consideration the assesse received Rs.556.55 lacs as dividend income, out of which Rs.447.89 lacs was from subsidiary companies, in which strategic investment had been made by assessee many years ago. During the appellate proceedings the assessee submitted that it incorrectly offered a disallowance of Rs. 34.57 lacs and disallowance for the purpose of section 14A, and R.W.R 8D (2)(iii) be considered of Rs.14.82 lacs.

13. Before the CIT(A), the assessee again submitted an analysis of amount of average investment (other than foreign and strategic investments), which are given below:-

Particulars	*Opening- as on 01.04.2009*	*Closing- as on 31.03.2010*
Long Term Investments-Trade Investments-Quoted (Sr.1 of Sh. F to Financials) (Strategic Investments in subsidiaries/group companies)	*21,57,57,030*	*22,99,85,115*
Long Term Investments-Other Investments-Quoted (Sr. 2 of Sh. F to Financials)	*48,07,064*	*25,06,950*
Long Term Investments-Other Investments-unquoted (Sr.2 of Sh.F to financials)	*13,50,00,000*	
Current Investments-Other Investments-quoted (Sr. 4 of Sh. F to Financials) (Post diminution)	*26,03,099*	*20,30,782*
Total	*35,81,67,193*	*23,45,22,847*
Less: Strategic Investments (including foreign investment)	*(21,57,57,030)*	*(22,99,85,115)*
Amount to be considered for the purpose of Rule 8D	*14,24,10,163*	*45,37,732*
Average Investments	*7,34,73, 948*	

Therefore, the disallowance under Rule 8D(2)(ii), had the correct figure of average investment were considered by the AO, would be worked out to Rs. 19,32,202/- and under Rule 8D(2)(iii) worked out to Rs.3,67,370/-. It was also submitted by assessee that disallowance under rule 8D (2) (ii) should be deleted, as the assessee had used its own funds and no borrowed funds were utilized by the assessee for making investments, and

therefore, the disallowance should be restricted under rule 8D (2) (iii) to the tune of Rs. 3,67,370/-.
However, the ld. CIT(A), having gone through the above submissions of assessee, partly allowed the appeal of the assessee.

14. Aggrieved by the orders of the ld. CIT(A), the Revenue is in appeal before us in ITA Nos. 2159 & 2160/Kol/2017 as well as the Assessee is in cross appeal vide ITA Nos. 2170 & 2171/kol/2017 for the A.Ys 2010-11 & 2011-12 respectively.

15. The ld. DR for the Revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier paras and the same is not being repeated for the sake of brevity.

16. On the other hand, the ld. Counsel for the assessee submitted that disallowance under Rule 8D(2)(ii) and (iii) should be computed excluding the strategic investment made in subsidiary companies, which did not yield exempt income and excluding the investments which did not earn exempt income. The ld. Counsel for the assessee submitted that for computation of disallowance under Rule 8D(2)(ii) & (iii), the strategic investment, investment in foreign companies and the investment in those shares and securities which did not yield exempt income, should not be considered. In addition to this, the ld. Counsel also pointed out that the assessee`s retained profits capital & surplus is more than the investments made by the assesse, therefore, it will be presumed that the investment in shares and securities were made out of free funds/own funds. Therefore, there should not be any disallowance under Rule 8D(2)(ii) of the IT Rules. Therefore, the ld. Counsel submitted that the assesse had submitted a revised calculation before the ld. CIT(A) excluding the strategic investment, investment in foreign companies and the investment in those shares and securities which did not yield exempt income. Therefore, disallowance under Rule 8D(2)(iii) should be restricted at Rs.3,67,370/- for the A.Y 2010-11 and Rs.0.21 lacs for the A.Y 2011-12.

17. We have given a careful considerations to the rival submissions and perused the material available on record. We note that assessee's free reserves and capital exceeds the investment made in shares. The assessee`s capital, reserve and surplus is to the tune of Rs.105,57,30,882/- whereas investments in shares and securities is at Rs.23,45,22,847/-, hence assessee`s own funds exceeds the investments made in shares and securities, therefore, the presumption would arise that investments would be out of Interest-free funds generated or available with the company. Therefore, in the present case under consideration, undisputedly capital, reserve surplus are higher than the investment in shares and securities. Therefore, it would be presumed that the investment made by the assesse would be out of interest free funds available with the assesse. For that we rely on the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd, reported in (2009) 313 ITR 340 (Bom), wherein it was held that if there are funds available both, interest free and overdraft and/or loans are taken, then a presumption would arise that investment would be out of interest- free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments. Similar stand was taken by the Hon'ble Gujarat High Court in the case of CIT Vs. Gujarat Power Corporation Ltd, reported in (2013) 352 ITR 583(Guj.), wherein it was held "that the assessee had demonstrated that it had other sources of investment and no part of borrowed funds could be stated to have been diverted to earn tax free income. The ld. CIT-(A) and Tribunal both on facts, found that assessee did not invest borrowed funds for earning tax free income".

We note that the coordinate Bench of ITAT Kolkata in the case of REI Agro Ltd. Vs. DCIT 144 ITD 141 (Kol-Trib) has held that it is only the investments which yields dividend during the previous year that has to be considered while adopting the average value of investments for the purpose of Rule 8D(2)(ii) & (iii) of the Rules. The aforesaid view of the Tribunal has since been affirmed as correct by the Hon'ble Calcutta High Court in

G.A.No.3581 of 2013 in the appeal against the order of the Tribunal in the case of REI Agro Ltd. (supra).

In view of the above, we direct the AO to examine the source of investment of assessee and the investments made by the assessee in tax free shares and securities and compute the disallowance under Rule 8D(2)(ii) of the I.T. Rules, and under Rule 8D(2)(iii) of the I.T. Rules and as per the discussion made (supra). Therefore, we allow ground nos. 4 of the Revenue's appeals in ITA Nos. 2159 & 2160/Kol/2017 and ground no. 2 of Assessee's appeals in ITA Nos. 2170 & 2171/Kol/2017 for the A.Ys 2010-11 & 2011-12, for statistical purposes.

18. Now, we shall take summarized ground no. (iii), which reads as under:-

(iii).Ground no. 3 of ITA No. 2159/Kol/2017, of Revenue`s appeal for the A.Y 2010-11 relates to disallowance of Rs.49,38,302/- on account of provision made for consumption of materials.

19. The main grievance of the Revenue in this ground is that the ld. CIT-(A) was erred in deleting the disallowance of Rs.49,38,302/- on account of provision made for consumption of materials and accepting the assessee's revised claim by the ld. CIT-(A) that out of it Rs.41.68 lacs was cost of conversion of lower version of spare parts (sure boil) into higher version spares parts, while Rs.7.69 lakhs relates to other purchases of spare parts, merely by relying a debit note produced by the assesse company.

20. The brief facts qua the issue are that during the assessment proceedings the ld AO disallowed an amount of Rs.49,38,302/-, provision made by the assessee for consumption of materials/purchases of goods and spare against services of Annual Maintenance Contract (AMC) on the alleged ground that the income against the said provision would be booked in the next year, therefore, such expenditure ought to have been claimed in the next year. During the assessment proceedings, the assessee submitted before the AO that the said consumption of material actually pertains to the consumables of items, like the value of charcoal, spares and others etc to be required to provide the services against the Annual Maintenance Contract (AMC) where the bills are raised by the suppliers but payment had

not been made as on 31-03-2010. It was also claimed by the assessee that the said amount of Rs.49,38,302/- was claimed as expenses following the mercantile system of accounting. However, the AO rejected the contention of the assessee. The AO noted that such provision for the goods, which may be used in the next year, for which no income during this year has been booked, is not an allowable expenditure for this year. Therefore, an amount of Rs.49,38,302/- was disallowed by the AO.

21. Aggrieved by the stand so taken by the AO the assessee carried the matter in appeal before the ld. CIT-(A), who has deleted the addition. The ld. CIT(A) noted that the out of total amount of Rs.49.38 lacs, a sum of Rs. 41.68 lacs was cost of conversion or lower version of spares (Sure Boil) into higher version of spares and the balance amount of Rs.7.69 lacs was cost of spares purchased. These items were held stock-in-trade by assessee. Therefore, after considering the remand report of the AO on this factual aspect the ld. CIT(A) deleted the addition.

22. Aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us. The ld. DR for the revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier paras and the same is not being repeated for the sake of brevity. On the other hand, the ld. Counsel for the assesse has defended the orders of the ld. CIT-(A).

23. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assesse company had claimed cost of spare parts purchased and cost of addition to purchase aggregating to Rs.49.38 lacs. This amount has been inadvertently referred to as provision for expenses during the assessment proceedings. Because of the terminology (provision) used by the assessee, the ld AO disallowed the said amount stating that income has not been accrued against the said expenses. The AO mainly disallowed the said amount on the ground that the goods may be used in the next year and no income during the year has been booked. We note that during

the assessment proceedings, the assessee had inadvertently submitted that the he has made a provision for consumption of Rs.49.38 lacs. However, later on, the assesse submitted the current details of the said expenditure through a letter dt. Feb 12, 2015 before the ld CIT(A). Out of the total amount of Rs.49.38 lacs a sum of Rs.41.68 lacs was cost of conversion of lower version spares (sure Boil) into higher version spares. The said amount was debited to purchase account and credited to vendor account. However, the said amount was routed through provision account in the SAP (accounting software) while crediting the vendor account, which led to certain confusion that the same was a provision. The balance amount of Rs. 7.69 lacs was also not provision, but cost of spares purchased. Therefore, both the amount i.e Rs. 41.68 lacs and sum of Rs.7.69 lacs representing the cost of purchase and such purchases were held in closing stock as on 31-03-2010. These facts and documents were submitted by the assessee during the appellate proceedings and requested for admission thereof as additional evidence. Accordingly, these additional evidences were remanded back to the AO the by the ld. CIT-(A) requesting him to examine the documents and the claims relating thereto and forward the remand report to him. The AO examined the matter and submitted the remand report to the ld. CIT(A). The ld. CIT(A) after considering the remand report of the AO came to the conclusion that out of total amount 49.38 lacs a sum of Rs.41.68 lacs was cost of conversion of lower version spares (Sure Boil) into higher version spares and the balance of Rs. 7.69 was cost of spares purchased. Therefore, the ld. CIT(A) rightly noted that the amounts relate to expenditure for the A.Y under consideration and it is not a provision. Therefore, we note that there is no reason to disbelieve these items which were held as stock-in-trade. These are actual expenses incurred during the year under consideration and not merely a provision made by the assessee. That being so, we decline to interfere in the order passed by the ld. CIT(A), his order on this issue is hereby upheld and grounds raised by the revenue in ITA No. 2159/Kol/2017 for the A.Y 2010-11, is dismissed.

24. Now we shall take next ‘summarized ground no. (iv)’, which reads as under:-

(iv).Ground no. 3 of ITA No. 2160/Kol/2017, of Revenue`s appeal for the A.Y 2011-12 relates to disallowance of excess depreciation of Rs.7,09,080/- claimed on building.

25. The grievance of the Revenue in this ground is that the ld. CIT(A) was erred in deleting the disallowance of excess depreciation of Rs.7,09,080/- claimed on building whereas the assesseee company failed to substantiate its claim properly and had no approval/permits from various authorities to use such a premise for guest house.

26. The brief facts qua the issue are that the AO restricted the claim of depreciation on guest house used by the assesse, to 5% in placed of claim of 10%. The assesse had claimed depreciation @10% on the residential flats and the details were submitted during the assessment proceedings. The assessee claimed that all these flats were used for guest house purpose, yet they could not file the occupancy registers for the whole year and also failed to furnish about utilization of the same for commercial purpose or business purpose, other than residential purpose. The total depreciation of Rs. 28,36,320/- was claimed in this regard, on WDV of Rs.2,88,59,076/-, @ 10% as admissible other than buildings used mainly for residential purposes except hotels and boarding houses and installation of machinery and plant etc. Therefore, the AO restricted the depreciation to 5% instead of 10% as claimed by the assesse. Hence, Rs.7,09,080/- was added to the total income of the assessee.

27. On appeal, the ld. CIT(A) deleted the said addition. Aggrieved, by the order of the ld. CIT(A) the Revenue is in appeal before us. The ld. DR for the revenue has primarily reiterated the stand taken by the AO. Whereas the ld. Counsel for the assesse has defended the order of the ld. CIT(A).

28. We have given a careful considerations to the rival submissions and perused the material on record. We note that the AO disallowed a portion of the claim of depreciation on the ground that the assesse was unable to submit adequate proof of the flats in question, which were used exclusively for the (guest house) business purpose. It was claimed by the

assesses that the flats in question were used for the guest house of the assesse company and would be eligible for depreciation @ 10%. However, the AO restricted the depreciation on the above said flats at 5% as against 10% claimed by the assesse. We note that the assesse used the flats for the purpose of business and the assesse produced copy of guest house register in respect of guest houses. The ld. CIT(A) sent these documents to the AO to examine and submit his remand report. After going through the remand report, the ld. CIT(A) came to conclusion that the assesse was having occupancy record in respect of guest house, which contains lists of the visitors's name, the company represented, place from which arrived, the room number and the dates and time of arrival and departure etc. It was also noted that the respective entries also bear the signature of the visiting / occupant of the guest house. During the remand proceedings, the AO submitted a detailed report to the ld. CIT(A), which contains the actual use of the guest house. Therefore, we are of the view that genuineness of the flats in terms of ownership not being doubted. The assessee has furnished the ownership details of one of the flats, and was ready to produce the same for the other property/flates as well. The maintenance receipts of both the properties have been furnished before the ld AO. Therefore, we are of the view that the assesse was using the flats for guest house purposes and entitled for higher rate of depreciation @ 10%. That being so, we are decline to interfere in the order of the ld. CIT(A), his order on this issue is hereby upheld and the ground raised by the Revenue in ITA No.2160/Kol/2017, is dismissed.

29. Next ground relates to assessee's appeals in ITA Nos. 2170 & 2171/Kol/2017 for the A.Ys 2010-11 & 2011-12, which relates to disallowance of expenses on repairs and maintenance. The summarized ground is as follows:

(v).Ground No.1 of ITA No. 2170, assessee`s appeals, for A.Y.2010-11 and Ground No.1 of ITA No.2171, assessee`s appeals, for A.Y.2011-12 relate to disallowance of expenses of Repairs and Maintenance.

30. At the outset itself, the ld. Counsel for the assesse submitted before us that the issue relates to disallowance of expenses on repairs and maintenance is squarely covered by the

judgment of the Hon'ble Co-ordinate Bench, ITAT, Kolkata in assessee's own case in ITA No. 2126/Kol/2013 for the A.Y 2008-09. The ld. CIT(A) has allowed the appeal of the assessee by following the said judgment of ITAT, Kolkata in assessee's own case (supra). Relevant portion of CIT(A)`s order is reproduced below:-

> *"5. After careful consideration of the matter, I find that the factual and legal matrix for this A.V 2010-11 under consideration is quite identical to the matrix for the A.Y 2008-09 decided by the Hon'ble ITAT in ITA No. 2126/Kol/2013, as discussed above. I find no reason to deviate from the adjudication rendered the by Ld. 1st Appellate Authority for the A.Y 2008-09, wherein he has allowed all expenses barring items of replacement, which have been held to be capital in nature. Also 10% of all of the expenses for which the details were not made available have been also disallowed on grounds that they are towards expenses for assets which are capital in nature. In that year, A.Y 2008-09, the 1st appellate Authority has been able to quantify the disallowance as the necessary figures were available. In this subject year however, neither the Ld. AO nor the Ld. A/R for the appellant-company have placed the figures which would correspond to the items of disallowance as in the year being followed. Nevertheless, the principle remains the same as decided by the 1st and 2nd Appellate Authorities for the A.Y 2008-09, and therefore I consider it fit to disallow Rs.11,41,239/- as the amount pertaining to Capital expenditure. This ground of appeal accordingly stands partly allowed."*

31. As the issue is squarely covered by the said order of ITAT, Kolkata in assssee's own case (supra) in ITA No. 2126/Kol/2013, for the A.Y 2008-09 and there is no change in facts and law. The ld.DR did not bring any cogent material on record, to show that the findings of the Tribunal are not correct. Therefore, respectfully following the said judgment of the Coordinate Bench of ITAT, Kolkata in the assessee's own case, we confirm the impugned order of the ld. CIT(A) on this issue and we partly allow ground no. 1 raised by the assessee in ITA Nos. 2170 & 2171/Kol/2017, for the A.Ys 2010-11 & 2011-12 respectively.

32. In the result, the appeals filed by the Revenue for the A.Ys 2010-11 & 2011-12 are dismissed and the appeals filed by the assessee for the A.Ys 2010-11 & 2011-12 are partly allowed as per the discussion made (supra).

Order Pronounced in the Open Court on 28-11-2018.

Sd/-	Sd/-
(S. S. Godara)	(Dr. A.L.Saini)
Judicial Member	Accountant Member

Dated: -11-2018

*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The Appellant/Revenue: The DCIT/ACIT, Cir-10(1) Kolkata, Aaykar Bhawan, 3rd Floor, P-7 Chowringhee Square, Kolkata-700069.
2 The Respondent/Assessee: M/s. Eureka Forbes Ltd.
7 Chakraberia Road (S), Kolkata-700025.
3. The CIT-I, 4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy, By order,

Asst. Registrar
ITAT, Kolkata Benches