

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

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

**ITA NO. 6356/MUM/2017 (A.Y: 2010-11)**

Asst. Commissioner of Income Tax Range - 2(1)(1) Room No. 561, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. Estrella Batteries Limited 40, Yusuf Building, 4 <sup>th</sup> Floor Veer Nariman Road, Fort Mumbai – 400 023  <b>PAN: AABCE3092Q</b>
<b>(Assessee)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Sunil Hirawt</b>
<b>Department by</b>	<b>:</b>	<b>Shri Maurya Pratap</b>
<b>Date of Hearing</b>	<b>:</b>	<b>02.12.2019</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>02.12.2019</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals)–6 Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.08.2017 for the A.Y. 2010-11.

2. The only issue in the grounds of appeal of the revenue is Ld.CIT(A) erred in restricting the disallowance u/s. 14A at ₹.2,40,000/- while

computing the Book Profits u/s. 115JB of the Act as against the disallowance of ₹.30,38,213/- made by the Assessing Officer.

3. Briefly stated the facts are that, the assessee is engaged in the business of "Real Estate Development" filed return of income on 21.09.2010 for the A.Y. 20010-11 declaring loss of ₹.68,97,886/-. Assessment u/s. 143(3) of the Act was completed on 22.03.2013 accepting loss of ₹.68,97,886/- returned by the assessee. Further, the Assessing Officer determined the book profits u/s. 115JB of the Act at ₹.57,32,670/-. Subsequently the Pr. Commissioner of Income-tax – 2, Mumbai passed order u/s. 263 of the Act on 23.03.2015 held that the disallowance u/s. 14A is attracted while computing the book profits u/s.115JB of the Act and such disallowance falls within the purview of Clause (f) of Explanation (1) to section 115JB of the Act. It was also observed by the Ld. Pr.CIT that similar view has been expressed by the Tribunal in the case of the Esquire Pvt. Ltd., in Appeal No. 5688/Mum/2011 and RBK Share Broking Pvt. Ltd., [60 SOT 61]. Therefore, he was of the view that since this issue was however not raised by the Assessing Officer during the course of the assessment proceedings and consequently was not examined and therefore the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

4. The present appeal has been filed by the revenue against the order of the Ld.CIT(A) who deleted the disallowance made by the Assessing Officer in the order passed giving effect to the order of the Ld.Pr.CIT u/s.263 of the Act. Ld. Counsel for the assessee at the outset, submitted that identical issue came up before the Tribunal in assessee's own case for the A.Y.2011-12 to A.Y. 2013-14 in ITA.Nos. 1134 to 1136/Mum/2017 dated 24.09.2018 wherein the Tribunal restricted the disallowance u/s.14A while computing the book profits to ₹.2,40,000/- confirming the order of the Ld.CIT(A). Copy of the order is placed on record.

5. Ld. DR vehemently supported the orders of the Assessing Officer.

6. We have heard the rival submissions, perused the orders of the authorities below and the order of the Tribunal in assessee's own case. On a perusal of the order of the Ld.CIT(A) we find that the Ld.CIT(A) following the decision of the Special Bench of Delhi in the case of the ACIT v. Vireet Investment Pvt. Ltd., [165 ITD 27] held that disallowance u/s. 14A r.w. Rule 8D cannot be made while computing book profits. The Ld.CIT(A) held that while computing normal provisions of the Act disallowance u/s. 14A r.w. Rule 8D should be restricted to ₹.2,40,000/- and also accepted the assessee's request that similar disallowance be adopted while computing the book profits instead of ₹.30,38,413/-. The

Ld.CIT(A) accepted the contention of the assessee and allowed the claim of the assessee. Against this order the revenue is in appeal before us. On a perusal of the order of the Tribunal for the A.Ys. 2011-12 to A.Y.2013-14, we find that the Tribunal observed as under: -

*“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.”*

7. As could be seen from the above the Tribunal following the order for the A.Y. 2009-10 in ITA.No. 7370/Mum/2012 restricted the disallowance u/s. 14A to ₹.2,40,000/ while computing the book profits u/s. 115JB of the Act. We also observe that for the very same assessment year i.e., A.Y.2010-11 the Ld.CIT(A) restricted the disallowance under Rule 8D(2)(iii) of I.T. Rules to ₹.2,40,000/- while computing the normal provisions of the Act following the decision of the Tribunal in ITA.No.7370/Mum/2012 for A.Y. 2009-10. In the circumstances, we hold

that the disallowance u/s. 14A while computing book profits u/s. 115JB shall be restricted to ₹.2,40,000/- for the A.Y.2010-11, we direct the Assessing Officer accordingly.

8. In the result, appeal of the revenue is partly allowed as indicated above.

Order pronounced in the open court on the 02<sup>nd</sup> December, 2019

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 02/12/2019  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**