

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

**BEFORE SHRI S. RIFAUR RAHMAN, AM &  
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 5456/Mum/2018

(निर्धारणवर्ष / Assessment Year: 2014-15)

&

आयकरअपीलसं./ I.T.A. No. 661/Mum/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

S. F. Dyes Pvt. Ltd. 1 <sup>st</sup> floor , Hague Bldg, 9 Sprrott road, Balllard Estate, Mumbai-400 001	<b>बनाम/ Vs.</b>	ACIT 2(3)(2), Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जी आइ आरसं./PAN No. AABCS5098L		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Shiv Prakash, AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	28.11.2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	17.01.2020

आदेश / ORDER

**PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):**

The present two Appeals have been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-6, Mumbai in short 'Ld. CIT(A)' dated 10.08.2018 and 10.12.18 for AY 2014-15 and 2015-16 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 5456/Mum/2018 for AY 2014-15 filed by the assessee.

3. The brief facts of the case are that assessee is engaged in the business of manufacturing of Dyes and Chemicals and Trading in Dyes & Chemicals and filed its return of income on 30.09.2014 declaring total income of Rs. 71,28,470/-. Subsequently, the case was selected for scrutiny under CASS and notice u/s.143(2) and 142(1) of the I.T. Act, 1961 were issued and served upon the assessee. In response, assessee filed relevant information as called for and after considering the detail submission of

assessee, AO rejected the contention of assessee and made disallowance.

4. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and made the detail submission before Ld. CIT(A) with respect to addition/disallowance made by the AO, but Ld. CIT(A) confirmed the disallowance made by AO and accordingly, dismissed the ground raised by the assessee.

5. Aggrieved with the above order, assessee preferred the appeal before us with the following grounds:-

*1. That the Learned CIT(A) has erred in confirming the Assessing officer's order of disallowance of depreciation of Rs. 2,20,797 and expenses of Rs. 1,63,246 in respect of the new car purchased.*

*2. That the disallowance of the above amounts was made by the Assessing Officer on wrong and improper grounds - the confirmation of the said disallowance by the learned CIT(A) is untenable and unjustified.*

*3. That the cost of the car having been fully paid for by the appellant and it forming a part of its assets and its use for business being evidenced by the expenses incurred by the appellant - the rejection of the claim of*

*depreciation and expenses by the Assessing officer was totally unjustified and the confirmation of the same by the learned CIT(A) is equally unjustified.*

*4. That the teamed CIT(A) was wrong in holding that the fact of usage of the car -as absent in the instant case - in spite of the availability of the expenses incurred on its usage by the appellant - being on record.*

*5. That the teamed CIT(A) has also erred in totally ignoring to take into consideration the various decisions of the jurisdictional and other High Courts -referred to him in confirming the order of the Assessing officer.*

*6. That the Appellate craves leave to add, alter or amend any of the grounds of appeal at or before the time of hearing.*

6. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that the grounds raised by the assessee are squarely covered by the order of Coordinate Bench of Hon'ble ITAT in ITA No. 5376/Mum/2011 for AY 2008-09 and ITA No. 4121/Mum/2014 for AY 2010-11 in the case of Edwise Consultants Pvt. Ltd. vrs. DCIT. He further submitted that Ld. CIT(A) has passed its order on this ground in favour of the assessee, which is reproduced below:-

6.3 I have carefully considered the facts of the case, discussion of the AO in! the assessment order, oral contentions and written submission of the appellant and material available on record. It is seen that the Assessing Officer has simply made the disallowance for the reason that such disallowance was made in the earlier years and that the questioned car was registered in the name of the Director. The appellant has placed reliance on various decisions including the decision of Hon'ble Jurisdictional ITAT in the case of Edwise Consultants Pvt. Ltd. Vs. DCIT.4(3) in ITA No.5376/Mum/2011 and ITA No,4121/Mum/2014. In the said decision the Hon'ble Jurisdictional Tribunal have placing reliance on the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Aravali Finlease Lid. 9341 ITR 282 (Guj.) and CIT Vs. Basti Sugar Mills Co. Ltd. 257 ITR 88 of Hon'ble Delhi High Court, allowed the depreciation of the car which was registered in the name of the Director in the said case. It is further mentioned that AO has not brought any fact on record that the car was used for other than business purposes. The facts in! the present case are similar to the case decided by the Hon'ble Tribunal in the aforesaid case and therefore, respectfully following the said decision of Hon'ble Jurisdictional ITAT, the action of the Assessing Officer in disallowing the expenses and depreciation on car simply for the reason that the

*questioned car was registered in the name of the Director, is not found to be justifiable and is accordingly directed to be deleted. Grounds No.1 and 2 are accordingly, **allowed**.*

7. On the other hand, Ld. DR fairly conceded that the grounds raised by assessee are covered by the order of ITAT.

8. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A) has passed its judicial order on this ground in para no. 6.3 in favour of the assessee. We also find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 5376/Mum/2011 for AY 2008-09 and ITA No. 4121/Mum/2014 for AY 2010-11 in the case of Edwise Consultants Pvt. Ltd. vrs. DCIT. For the sake of clarity, which is reproduced below:-

*25. We have heard the parties on this issue and perused the record. We notice that the Hon'ble Gujarat High Court has considered identical issue in the case of Aravali finlease Ltd (supra) and has taken the decision that the depreciation is allowable in the hands of the*

*company, even if it is registered in the name of its director provided that the vehicle is used for the purpose of business of company and income derived there from was shown as income of the company. In the instant case there is no dispute with regard to the fact that the vehicles are used for the purpose of business of the assessee company. In the case of Basti Sugar Mills Co. Ltd (supra), the Hon'ble Delhi High Court approved the decision of the Tribunal in holding that, since vehicle is a movable asset, the registration as required in the case of transfer of immovable property is not a condition precedent for legal ownership. In the instant case, the funds for purchase of vehicles have been provided by the assessee company and they have been shown as assets of the assessee company. Hence, in our view, the assessee company should be considered as owner for all practical purposes and hence it is entitled for depreciation. In view of the direct decision of Hon'ble Gujarat High Court is available on this issue, we prefer to follow the same to that rendered by the Tribunal in the assessee's own case for AY 2007-08. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to allow depreciation on vehicles.*

9. Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in

the present case, we are inclined to accept the submission made by Ld. AR. Accordingly, we **allow** the grounds raised by the assessee.

10. Since we have already decided the similar grounds of appeal in ITA No. 5456/Mum/2018 for AY 2014-15 filed by the assessee, therefore the other appeal in ITA No. 661/Mum/2019 filed by the assessee is also **allowed**.

11. In the net result, both the appeals filed by the assessee are **allowed**.

*Order pronounced in the open court on 17<sup>th</sup> Jan 2020.*

<i>Sd/-</i> (Ravish Sood) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 17.01.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR,  
ITAT, Mumbai
6. गार्डफाईल / Guard File  
**आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai