

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA: JUDICIAL MEMBER

ITA no. 5293/Del/2011
Asstt. Yr: 2003-04

Daikin Air conditioning Vs. DCIT, Circle 10(1),
India Pvt. 12th Floor, New Delhi.
Surya Kiran Building,
19, K.G. Marg, New Delhi-110001.
PAN: AABCD 0971 F

AND

ITA no. 2922/Del/2011
Asstt. Yr: 2003-04

DCIT, Circle 10(1), Vs. Daikin Air conditioning
New Delhi. India Pvt. 12th Floor,
Surya Kiran Building,
19, K.G. Marg, New Delhi-110001.
(Appellant) (Respondent)

Assessee by : Shri Vishal Kalra Adv.
Revenue by : Shri Ramesh Chandra Danday Sr. DR

Date of hearing : 11/01/2016.
Date of order : 12/02/2016.

ORDER

PER S.V. MEHROTRA, A.M:

These are cross appeals, preferred by the assessee as well as the revenue against the order dated 29.3.2011 passed by the Id. CIT(A)-XX, New Delhi in appeal no. 111/2007-08, relating to A.Y. 2003-04.

2. Brief facts of the case are that the assessee, in the relevant assessment year, was engaged in the business of manufacture, export, assembly, supply, distribution and import of all types of refrigeration equipments and accessories. It is an 80 : 20 joint venture of Daikin Japan and Shriram Industrial Enterprises Ltd. During the year under consideration the assessee company had entered into following international transactions:

S. No.	Description of transaction	Method	Value (In Rs.)
1.	Import of finished goods	CPM	21,47,37,577/-
2.	Import of SKD/ CKDS	CPM	60781404/- 53125477/-
3.	Purchase capital goods	CPM	9,20,663/-
4.	Royalty	CUP	16,46,156/-
5.	Commission received	TNMM	14,11,595/-
6.	Cost recharge	-	40,940/-
7.	Reimbursement of Expenses by AE to Daikin for publicity and service warranty	-	82,89,550/-

3. The assessee company was selling products like water cooler and air-conditioners. Out of the total revenue, sale of air-conditioners was 86.24% and 13.72% from water coolers as per the segmental account prepared by assessee. The assessee company manufactured as well as traded in these products. Ld. TPO has noticed that the imports of material was restricted primarily to air-conditioner segment. He further noted that in the total activity of assessee company 63% was import contribution and remaining 37% was indigenous. The assessee company, during the year, had imported

both raw-material in the nature of compressor, SKD units as well as finished goods. Ld. TPO examined the P&L A/c of the assessee company from which it transpired that there was an increase in the ratio of cost of material upon total sales as compared to last year. The comparative analysis of two years was as under:

	Year ending	
	March 03	Mar 02
Sales	960586354	838784851
Accretion (Depletion) in inventories	31280270	35170191
Cost of material	674639391	471386713
Total cost	705919661	506556904
Percentage of cost upon sales	73.49	60.39

4. From the above details, the TPO noticed that after taking net effect of accretion of inventories during the year, the cost of material had increased from 60.39% to 73.49% sales of which was unusual in an industry like manufacturing/ trading of air-conditioners, particularly when other expenses remained comparable with last year. In the backdrop of this variation, ld. TPO examined the benchmarking analysis of assessee in regard to import of raw-material and noted that assessee had used cost plus method taking Associated enterprises (suppliers) as tested party. He noted that assessee had compared the mark up charged by respective AE's from assessee with mark up charged by similar companies operating in Asia pacific region. He further noted that using one source database assessee had concluded that comparable companies were charging mark up of 30.48%, whereas the AEs

were charging less than this on its cost and, thus, the assessee's transactions of import of raw-material were at arm's length. Ld. TPO did not accept the assessee's approach in considering foreign AE as tested party because assessee failed to demonstrate that foreign AE was less complex and its accounts were available and accessible for verification.

5. As regards the second argument of assessee that resale price method could not be applied because of insufficiency of data, he pointed out that the same was acceptable to the extent that if assessee company took itself as tested party and comparables of same and similar trade were not available, resale price method could not be applied. However, on this basis taking of foreign AE as tested party was not justifiable. Ld. TPO applied the TNM method and observed in para 4.4 as under:

“In these circumstances, to arrive at method which is most appropriate in this case for benchmarking international transaction, the functional, asset & Risk analysis submitted as transfer pricing report was perused. The applicability of CUP is ruled out because of the fact that assessee company does not purchase similar goods/ services from unrelated party. The Associated Enterprises also said to be not selling these goods/ services to unrelated parties. Applicability of Resale Price Method and Cost Plus Method has elaborately been discussed above, thus, TNMM is most appropriate method which can be sued to benchmark international transaction.”

6. PLI was taken as OP/OR. Ld. TPO carried out search and selected following comparables:

- Blue Star Ltd.;
- Videocon International Ltd.;
- Voltas Ltd.; and
- Whirlpool India.

7. He noted that these comparables were earning margin of 4.09% whereas assessee was incurring loss and, therefore, he determined the required adjustment at Rs. 141268918/- observing as under:

“It is seen from the above that the comparables are earning a margin of 4.09% upon their total revenue in the business line of the assessee company. In order to benchmark international transactions entered by the assessee Transactional Net Margin Method was held to be most appropriate method. Applying the margin of comparables on total revenue of the assessee as calculated in para 5.0 above at Rs. 880,885,953 the assessee must earn profit @ 4.09%. Thus in arm’s length circumstances the assessee company would have earned a profit of Rs. 3,60,28,644/- (i.e. 4.09% of 880,895,953) whereas as per para 5.0 above the assessee is making an operating loss of Rs. 10,52,40,274/-. In order to bring the assessee company to arm’s length the price of international transactions is to be adjusted by Rs. 14,12,68,918/- (Total of Rs. 3,60,28,644 and 10,52,40,274).

8. AO passed the assessment order as per the TPO’s observations.
9. Being aggrieved with the assessment order the assessee preferred appeal before the Id. CIT(A). Before Id. CIT(A) the assessee presented an alternative analysis vide submissions dated 11.3.2011 and 24.11.2011 and pointed out that gross level analysis should be carried out to justify the arm’s length nature of international transactions. It was further submitted that bench marking analysis should be done based on the segmentation into

manufacturing and trading functions and the gross margin of the respective segment be compared with the gross margin earned by the comparables selected by the TPO. Ld. CIT(A), however, did not accept the assessee's contention and observed that primary benchmarking analysis cannot be substituted by another benchmarking analysis. A secondary benchmarking analysis may be conducted to support the Primary benchmarking analysis and not to substitute the primary benchmarking analysis. Therefore, the gross level analysis presented by the assessee could not be accepted as a substitute for the benchmarking analysis. He, accordingly, upheld the TPO's order. Aggrieved, the assessee in appeal before the Tribunal. Grounds taken by the assessee in its appeal are as under:

Disallowance on account of arm's length price - Rs.
141,268,918

In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - XX (hereinafter referred to as "learned OT (An, has grossly erred in confirming the entire addition of Rs. 141,268,918 as 'arms length price ("ALP") adjustment' made by the learned AO/TPO in the assessment under section 143(3) of the Income Tax Act, 1961 (lithe Act"). In this regard, the learned CIT (A) erred by:

- 1 Rejecting the comparability analysis, done by the Appellant to determine the arm's length price;
- 2 Selecting the Appellant as a tested. party instead of Daikin Industries limited, Japan;

- 3 Rejecting the certified cost sheets submitted by the Appellant in support of transfer price of imports;
 - 4 Confirming the comparability analysis carried out by the learned TPO, in particular the inclusion of companies which have substantial difference in the functions, assets and risk analysis as compared to the Appellant;
 - 5 Computing the net margin of the Appellant in determination of the arm's length price after including interest on working capital;
 - 6 Not giving the appellant sufficient opportunity to explain I clarify / further substantiate the losses at net level;
 - 7 Not granting the appellant the option of a price which may vary from the arithmetic mean by an amount not exceeding five percent of such arithmetic mean as per the Act;
 - 8 Rejecting the secondary benchmarking analysis considering the gross level analysis conducted by the Appellant; and
 - 9 Mechanically following the order passed under section 92CA(3) by the learned TPO and completely ignoring the submissions made by the appellant to the learned AO and thereby confirming the disallowance made by the learned TPO leading to an addition of Rs. 141,268,918.
10. Ld. counsel submitted that no opportunity was provided to assessee to offer its comments on the selection of comparables by TPO. No objections were invited from assessee and this was specifically challenged before Id. CIT(A) vide ground no. 2.8 reproduced below:

“Without prejudice to Ground 1.1, on the facts and in the circumstances of the case, and in law, the learned AO (along

with the learned TPO- under reference from the learned AO) erred in not giving the appellant sufficient opportunity to explain/ clarify/ further substantiate the losses at net level.”

11. He submitted that matter is to be restored back to the file of ld. TPO.

In support of this contention ld. counsel relied on the decision in the case of

Metal Toys India Ltd. wherein in para 41 it has been observed as under:

“41. Now coming to the argument of the learned Departmental Representative that once the assessee itself has chosen TNMM as most appropriate method in TPR, then it cannot resort to change its method at an assessment or appellate stage. In our opinion, such a contention cannot be upheld because if it is found on the facts of the case that a particular method will not result into proper determination of the ALP, the TPO or the appellate authorities can very well hold that why a particular method can be applied for getting proper determination of ALP or the assessee can demonstrate a particular method to justify its ALP. Thus, even if the assessee had adopted TNMM as the most appropriate method in the transfer pricing report, then also it is not precluded from raising the contentions/objections before the TPO or the appellate Courts that such a method was not an appropriate method and is not resulting into proper determination of ALP and some other method should be resorted. The ultimate aim of the transfer pricing is to examine whether the price or the margin arising from an international transactions with the related party is at ALP or not. The determination of approximate ALP is the key factor for which most appropriate method is to be followed. Therefore, if at any stage of the proceedings, it is found that by adopting one of the prescribed methods other than chosen earlier, the most appropriate ALP can be determined, the assessment authorities as well as the appellate Courts should take into consideration such a plea before them provided, it is demonstrated as to how a change in the method will produce better or more appropriate ALP on the facts of the case. Accordingly, we reject the contentions of the

learned Departmental Representative and also the observations of the Assessing Officer and the learned Commissioner (Appeals) that the assessee cannot resort to adoption of RPM method instead of TNMM.

12. Ld. DR referred to page 12 of ld. CIT(A)'s order and pointed out that assessee did not produce certified cost sheets so as to enable the ld. CIT(A) to verify the veracity of the cost of the associated enterprises considered by the assessee while applying the cost plus method. He further pointed out that assessee submitted alternative analysis which could not be accepted because the transfer pricing document cannot be substituted at appellate stage.

13. We have considered the rival submissions and have perused the record of the case, Admittedly ld. TPO while selecting new comparables did not provide any opportunity to assessee for filing its objections. He rejected the cost plus method adopted by assessee and considered the TNM method as the most appropriate method, because assessee failed to substantiate the cost incurred by AEs which was adopted as base for applying cost plus method. On this count we do not find any reason to interfere with the order of ld. CIT(A). However, under such circumstance alternate analysis submitted by assessee was required to be considered by referring the same to ld. TPO. In this regard we may refer to the decision of Hon'ble Delhi High Court in the

case of Moser Baer India Ltd. Vs. Addl. CIT 316 ITR 1 has observed as under:

“Authorities which have power to decide and whose decisions would prejudice a party, entailing civil consequences, would be required to accord oral hearing even where the statute is silent. The provisions of sub-section (3) of section 92CA cast a duty in no uncertain terms on the Transfer Pricing Officer to afford an opportunity of an oral hearing. The reasons for coming to such a conclusion, apart from the clear wording of sub-section (3) of section 92CA, is that, apart from the civil consequences that the determination of the arm's length price would have on the assessee, any adjustment by the Assessing Officer to the arm's length price determined by the assessee based on the determination by the Transfer Pricing Officer under sub-section (3) of section 92CA, would result in imposition of penalty under section 271 (1)(c) of the Act read with Explanation 7 thereto.”

14. In view of above discussion, we are of the opinion that assessee has been denied proper opportunity to place relevant facts before the Id. TPO and, therefore, without going into the merits of the case, we restore the matter to the file of Id. TPO to decide the issue de novo after affording reasonable opportunity of being heard to assessee.

15. Assessee's appeal is allowed for statistical purposes.

ITA no. 2922/Del/2011 (revenue's appeal):

16. While completing the assessment, the AO had, inter alia, made following additions/disallowances:

- Disallowance of advertisement and publicity expenses;
- depreciation on WDV and exclusive business rights (goodwill) paid to Usha International Ltd. for AY 2001-02
- Depreciation on WDV on patents, trademarks and Intellectual Property Rights paid to Seil Aircon Ltd.

17. Ld. CIT(A) had deleted the disallowance. Being aggrieved the department is in appeal before us and has taken following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on a/c of advertisement and publicity expenditure.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on a/c of depreciation on Exclusive Business Rights (Goodwill).

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on a/c of depreciation on patents, trademarks and intellectual property rights acquired by the assessee company from Seil Aircon Ltd.

4. The appellant craves to leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.

18. Brief facts apropos ground no. 1 are that assessee had claimed a sum of R. 5,21,51,834/- on account of expenses incurred during the year on account of advertisement and publicity. The assessee's reply has been reproduced in the assessment order in which it was submitted that marketing costs incurred during the product campaign were deferred and amortized over a period of 4 years. The details of opening, expenditure incurred during

the year, written off during the year and closing balance of advertisement and publicity expenditure was explained as under:

Opening Balance	46074417
Add: Incurred during the eyar	52151834
Less: Written off during the eyar by debiting P&L A/c.	222280060
Closing balance	75998191

19. It was pointed out that though the expenditure of Rs. 52151834 was incurred during FY 2002-03, but only an amount of Rs. 22228060 was debited to profit & loss account in FY 2002-03. However, in the corporate tax return the entire amount of expenditure incurred during the FY 2002-03 amounting to Rs. 52151834 was claimed as revenue expenditure and the amount of Rs. 22228060 was added back. The assessee placed reliance on various decisions to submit that the entire amount was allowable as business expenditure:

- Kedarnath Jute Mfg. Co. Ltd. Vs. CIT 82 ITR 363;
- Amar Raja Batteries Ltd. Vs. ACIT 272 ITR 17 (AT)(Hyd-ITAT)
- Hindustan Commercial Bank Ltd. v. Re. 21 ITR 353 (All)
- National Industrial Corporation Ltd. 124 Taman 413 (Delhi)
- CIT v. Berger Paints (India) Ltd. 254 ITR 503 (Cal.)
- Campa Beverages (P) Ltd. V. IAC 34 ITD 241 (Delhi Tribunal)

20. The AO concluded that expenditure was basically for launch of a new business product as well as benefit of enduring nature was there. Accordingly, relying o the decision of the Hon'ble Supreme Court in CIT

Vs. Madras Auto Service (P) Ltd. (1998) 233 ITR 468, he denied the assessee's claim.

21. Before Id. CIT(A), the assessee pointed out that these expenses were incurred for the purpose of rental payments for putting hoardings of the assessee company, expenses incurred on posters/ banners for increasing the visibility of the product, designing of advertisement, advertisement agency commission, mega shows at different places, advertisement in news papers, fabrication and light fitting charges at places for mega shows, photographs assignment charges for shoots, glow sign boards, printing of envelopes, posters and stickers, cost of participation and holding exhibitions, printing of catalogues, calligraphy charges, hiring media clipping charges, booking of stalls etc. It was pointed out that no benefit of enduring nature had been received by assessee and the expenditure had been incurred for the treatment of the products already being dealt by the assessee. The assessee had relied on various case laws which have been mentioned at page 15 of the CIT(A)'s order. Ld. CIT(A) deleted the addition in view of the submissions made by assessee.

22. At the outset Id. counsel for the assessee submitted that this issue is covered by the order of the Tribunal in assessee's own case in ITA no. 1346 & 404/Del/2010 for AY 2002-03. The department's appeal filed against this

order has also been dismissed by Hon'ble Delhi High Court vide order dated 31.7.2013.

23. We have considered rival submissions and perused the entire material available on record. We find that Tribunal in ITA no. 1346 & 1404/Del/2010 in para 14 has observed as under:

“14. After considering the pleadings of both sides and case laws relied upon, we are of the view that the revenue has failed to bring out a case to establish that any capital assets had come into existence. Further, as held by the Hon'ble High Court, there is no concept of deferred revenue expenditure in Income-tax laws. The genuineness of the expenditure has not been doubted by the revenue authorities. Keeping all these facts in view and following the decision of Hon'ble jurisdictional High Court, we allow the grounds of assessee's appeal and dismiss the revenue's ground no. 4.”

24. Respectfully following the same this ground is dismissed.

25. Brief facts apropos ground nos. 2 & 3 are that assessee had claimed depreciation amounting to Rs. 41511312/- which included depreciation of rs. 28,12,500/- on goodwill and Rs. 1,53,70,313/- on patent and trade marks @ 25%. AO had disallowed the assessee's claim in regard to depreciation on goodwill observing that the same was not covered under intangible assets under the Income-tax Rules. As regards depreciation on patent and trademarks, the AO denied the assessee's claim, inter alia, observing that patent, trade marks were required to be registered under the Trademarks

Registration Act and only the company in whose name the same had been registered, was entitled to use the same.

26. Ld. CIT(A) noted that disallowance of depreciation of Rs. 28,12,500/- was in respect of written down value of the amount paid to Usha International Ltd. for acquiring the business and commercial rights in AY 2001-02. She noted that the assessee company vide Business Purchase Agreement entered on 8.8.2000, purchased the business of manufacture of air-conditioner/ cooler from Siel Aircon Ltd. Usha International Ltd. carried on the business of , inter alia, distribution of air-conditioners and water coolers manufactured by Siel Aircon Ltd. The assessee company also entered into an agreement with Usha International Ltd. called "Business Purchase Agreement" dated 1.5.2000 for purchase of said business and its assets including exclusive business rights. Ld. CIT(A) further noticed that as per clause 4 of the agreement with Usha International Ltd. consideration for exclusive business right payable to Usha International Ltd. was Rs. 1,73,00,000/- and for other business and commercial rights of Rs. 27,00,000/- was capitalized as goodwill in the books of a/c. She noted that in AY 2001-02 the Tribunal had allowed the assessee's claim and following the same she allowed the assessee's claim of Rs. 28,12,500/-.

27. Having heard both the parties, we find that the issue relating to depreciation on WDV of goodwill paid to Usha International Ltd., is covered in favour of the assessee by earlier decisions of the Tribunal. We find that The ITAT Delhi Bench 'B' vide its order dated 23.12.2011 rendered in ITA no. 1346/Del/2010 & 1404/Del/2010 has decided the issue in favour of the assessee by observing as under:

4. In the ground no.2 of revenue's appeal, the issue involved is deleting the addition of Rs.37,50,000/- made by the Assessing Officer claimed as 'Goodwill' by the assessee on account of depreciation on WDV paid to Usha International Ltd. for acquiring business and commercial rights.

5. Ld. DR relied on the order of the Assessing Officer. On the other hand, the learned AR submitted that the assessee company has purchased marketing , rights along with employees and premises and also trade names etc. from 'Usha International Ltd under the business agreement dated 1st May, 2000. As per the agreement, the Usha International Ltd. was not to compete with the assessee company for 20 years in the marketing of air-conditioners and water coolers of M/s. SIEL Aircon Ltd. The learned AR submitted that this agreement was for business rights, therefore, eligible for depreciation under section 32 of the Income-tax Act as intangible assets. He further pleaded that the exclusive business rights as defined in the agreement were represented as carrying on the business as successor to Usha International Ltd. which include all records of business including records of suppliers and customers; the benefit of the current orders; the benefit of all bids and proposals that have been made by Usha International Ltd. and all rights to Usha International Ltd. distribution network for the business excluding Usha International Ltd.'s company shop.

The consideration for exclusive business rights was payable of Rs.1,73,00,000/-. For other business and commercial rights Rs.27,00,000/- was paid. These amounts were capitalized as goodwill in books of accounts. These amounts were paid to Usha International Ltd. during the period relevant to assessment year 2001-02. These amounts were capitalized as Goodwill in the books of account. For computing the taxable income, depreciation was claimed @ 250/0 as prescribed in schedule of depreciation rates in respect of the intangible assets. The depreciation in the year 2001-02 was claimed at Rs.50,00,000/- and in assessment year 2002-03 at Rs.37,50,000/-. For the assessment year 2001-02, the CIT (A) 'granted the relief. The revenue went in appeal before the ITAT wherein the ITAT had dismissed the revenue's appeal by upholding the order of the CIT (A). The ITAT has held as under :-

“A perusal of the business purchase agreement also clearly shows that UIL as agreed to sell to the assessee and. the assessee agreed to purchase the business and the goodwill and the other assets thereof. A perusal of the consideration also clearly shows that the agreement is for selling 3 items, first one being the business, second goodwill and third other assets. The purchase consideration also shows the computation of such 3 items being the exclusive business rights for a consideration of Rs.1,73,00,000/-, 27,00,000/- Without any specifications and (c) the transferable deposits which would have to be considered as other assets. This being as the amount of Rs.27,00,000/- as shown in the purchase price has not been shown to be in relation to either exclusive business rights or for transferable deposits. The same would have to be treated as being towards "goodwill". This being

so, we are of the view that the amount of Rs.27,00,000/- as paid by the assessee would have to be treated as goodwill. In regard to the balance of 1.73 Crores, it is for the exclusive business rights."

The ITAT vide Para 7 of their order held as under:

"In these circumstances, we are of the view that the ld. CIT(A) was right in holding that the assessee was entitled to the depreciation in regard to the purchase of the exclusive business rights to the extent of Rs.1,73,00,000 and directing the AO to grant depreciation on the same. In regard to the amount of Rs.27,00,000 as paid by the assessee, as it has not been shown that this amount had been paid for any specific rights, the same would have to be treated as goodwill and the depreciation on the same cannot be granted.

In the circumstances, the findings of the Ld. CIT(A) on this issue is modified to the extent that the AO is directed to grant the depreciation on the consideration of Rs.173,00,000/- paid to UIL for the purchase of the exclusive business rights which are to be treated as intangible assets. The action of the AO in disallowing the depreciation on the goodwill to the extent of Rs.27,00,000 is confirmed."

Ld. AR pleaded that the facts are same and there is no change in the circumstances, therefore, the order of the CIT' (A) may be upheld:

6. We have heard both sides and perused the material on record. Since the assessee has got the relief from ITAT in the preceding year, on the same facts. The issue remains the same,

therefore, respectfully following the decision of IITAT, we dismiss this ground of revenue's appeal."

28. No change in facts, for the assessment year in question, have been brought to our notice. Therefore, respectfully following the earlier orders of the Tribunal in assessee's own case, we uphold the order of CIT(A). Ground is dismissed.

29. As regards depreciation on WDV of patent, trademark and intellectual property rights paid to Ciel Aircon Ltd. is concerned, Id. CIT(A) noted that assessee company vide business purchase agreement entered on 8.8.2000 purchased the manufacturing business of Siel Aircon Ltd. and the consideration for the Intellectual Property Rights, paid by the assessee was Rs. 109,300,000 to SAL. The assessee pointed out that as per provision of Trademark Act, 1999, a person is entitled to assign use of trademark. In this regard reference was made to sections 37 & 38 of the Trademarks Act, 1999. It was further pointed out that there was no statutory requirement under the law to get the trademark registered under the Trademarks Act, 1999 so as to enjoy the legal ownership thereof. It was pointed out that registration of trademarks was desirable but not a statutory compulsion. The assessee had relied on various judicial pronouncements wherein it was held that the registration of an asset in the name of purchaser was not necessary for the

purpose of claiming depreciation. Following the Tribunal's decision for AY 2001-02 the ld. CIT(A) allowed the assessee's appeal.

30. Having heard both the parties we find that we find that the issue relating to depreciation on patents, trademarks and intellectual property rights acquired by the assessee from Siel Aircon Ltd. is covered in favour of the assessee by earlier decisions of the Tribunal. The ITAT Delhi Bench 'B' vide its order dated 23.12.2011 rendered in ITA no. 1346/Del/2010 & 1404/Del/2010 has decided the issue in favour of the assessee by observing as under:

“8. The assessee company has purchased manufacturing business of M/s. SIEL Aircon Ltd. as a going concern vide agreement dated 08.08.2000. As a part of this agreement, the assessee company also acquired intellectual property rights which include patents, trademarks, etc. etc. and paid Rs.10,93,00,000/-. The amount was capitalized in books as pat fit and trademark and the same is treated as' intangible assets. These intellectual property rights have not been registered in the name of assessee company. The assessee company claimed depreciation as per section 32 of Income-tax Act read with Schedule for depreciation @ 25%. The Assessing Officer disallowed the same by following the order of earlier year. The CIT (A) has granted the relief to the assessee by following the decision of ITAT in assessee's own case for assessment year 2001-02 where the ITAT has held as under:-

“A perusal of the purchase price consideration as per the business purchase agreement entered into between the assessee and SAL shows that the

consideration has been 'paid for the intellectual property rights. Intellectual property rights are immovable asset. It is also an intangible asset as per the provisions of section 32 (1) (ii) of the Act. It is also undisputed that the 'assessee has used the intellectual property rights in its business and there has been no claim against the assessee for the use of the said trademarks. In fact as per the agreement in clause 8.1 (a)(i) it has been specifically agreed that on completion duly executed instruments of transfer, assignment etc. as the assessee may reasonably be required to complete the transfer, assignment and conveyance of the asset in accordance with the provisions of this agreement shall be delivered to the assessee at a place nominated by the assessee. This clearly shows that once the completion of the agreement is done by payment of the consideration as on the completion date specified in the agreement the assessee would be in possession of the duly executed instruments of transfer, assignment and Conveyances of the assets as specified in the agreement which are basically the intellectual property' rights and the fixed assets. This being so, as also the principles as laid down by the Hon'ble Supreme Court in the case of Mysore Minerals Ltd. referred to supra and reaffirmed the decision of Dalmia cements" it would have to be held that the assessee was the owner of the property and the assessee having used the same in its business was entitled to depreciation on the same. In the circumstances the finding of the Ld. CIT(A) on this issue stands confirmed."

Since the revenue has failed to brought on record any distinction of facts from the earlier year, i.e., 2001-02, therefore, respectfully following the decision of ITAT, we dismiss this ground of revenue's appeal also.

31. There being no change in facts and circumstances of the case and the order of Id. CIT(A) being in conformity with the earlier order of the Tribunal in assessee's own case, we uphold the order of CIT(A) on the issue in question. Ground is dismissed.

32. In the result, assessee's appeal is allowed for statistical purposes and the revenue's appeal stands dismissed.

Order pronouncement in open court on 12/02/2016.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 12/02/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.