

**IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.2968/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT Circle-6(2) (Now Dy. Commissioner of Income Tax Circle-6(3)(2) R. No. 563, Aaykar Bhava, M.K. Road, Churchgate, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Kansai Nerolac Paints Ltd. Nerolac House, K.G. Marg, Lower Parel, Mumbai- 400013.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG1376N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri S. Senthil Kumar (DR)	
Assessee by:	Shri Amit Kumar Vora	

सुनवाई की तारीख / Date of Hearing: 13/06/2019  
घोषणा की तारीख /Date of Pronouncement: 07/08/2019

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 24.02.2014 passed by the Commissioner of Income Tax (Appeals) -15, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2009-10.

2. The revenue has raised the following grounds: -

"1. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in treating UPS as an integral part of computer and accordingly allowed depreciation at 60% ignoring the fact that it can be attached to any gadget for*



*power backup and can exist independently and certainly is not an integral part of computer.*

2. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside to the file of the AO or confirm the order of the AO.*
3. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring total income to the tune of Rs.1,20,38,37,694/-. Thereafter the assessee filed the revised return of income on 19.11.2010 declaring total income to the tune of Rs.1,21,34,17,724/-. The assessee company was engaged in the business of manufacturing of paints and varnishes. The case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee claimed the depreciation @ 60% upon the UPS purchased more than 180 days and 30% purchased less than 180 days. The AO restricted the depreciation @ 15% upon the UPS purchased more than 180 days and 7.5% purchased less than 180 days. After some disallowance, the total income of the assessee was assessed in sum of Rs.1,23,75,80,490/- u/s 143(3) of the Act. Thereafter, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the revenue was not satisfied on account of admitting the claim of the assessee in connection with the allowance of depreciation @ 60% upon the UPS purchased more than 180 days and 30% upon the UPS purchased less than 180 days, therefore, the present appeal has been filed before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the UPS is not the integral part of the computer but the



CIT(A) has treated the UPS as integral part of the computer and allowed the depreciation @ 60% upon the UPS purchased more than 180 days and 30% upon the UPS purchased less than 180 days wrongly and illegally, therefore, in the said circumstances the finding of the CIT(A) is not justifiable and is liable to be set aside. It is also argued that the depreciation is allowable @ 15% upon the UPS purchased more than 180 days and 30% upon the UPS purchased less than 180 days in accordance with law. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*“6.3 I have considered the facts of the case, submissions of the appellant as against the findings / observations of the AO in his order ids 143(3)/144C(3) of the I.T. Act. The contentions and submissions of the appellant are being discussed and decided here in under:*

*i. The Assessing officer has disallowed the depreciation on UPS, which was claimed at the rates applicable to die computers, relying on the judgment of Hon'ble FIAT in the case of Nestle India. The AO made the disallowance of depreciation which was claimed at a rate of 60% and allowed depreciation at a rate of 15% only treating as plant and machinery.*

*ii. The appellant before me contended that UPS is an integral part of computer system and cannot be used as a standalone generator. Since UPS is necessary for proper continuous functioning of computer applying functional test, same has to be capitalized as computer and depreciation @60% is allowable. The appellant relied on the judgment of the Hon'ble Delhi High Court in the case of USES Yamuna Power Ltd. and Orient Ceramics & Industries Ltd. (supra). It was also stated that the 1-AT Delhi, in the case American Express Services India has considered the decision in case of Nestlé India relied upon by AO in his order and Delhi High Court decision in Orient Ceramic & Industries Ltd. and decided the issue in favour of the assessee allowing depreciation @ 60% on UPS.*

*In this regard it is noted that the Hon'ble High Court Delhi in the case of Orient Ceramic & Industries Ltd. have finally decided the issue observing*



*that depreciation @ 60% was allowable on UPS. Respectfully following the judgement of Honble High Court the AO is directed to. allow depreciation @ 60% on UPS.*

*iv. This ground of appeal is allowed.”*

5. On appraisal of the above mentioned finding, we observed that the CIT(A) has allowed the claim of the assessee @ 60% upon the purchased of the UPS more than 180 days on the basis of the decision of Delhi High Court in case of **CIT Vs. Yamunna Powers Ltd. (ITA. No. 1267 of 2010)** and on the basis of the decision in the case of **CIT Vs. Orient Ceramics & Inds Ltd. (200 Taxman 64)** Delhi High Court in which it is specifically held that UPS is the integral part of the computers system and accordingly depreciation was allowable @ 60%. The facts are not distinguishable at this stage. No law contrary to law relied by the Ld. CIT(A) in his order has been produced before us. Taking into account all the facts and circumstances we are of the view that the issue has decided by the issue has been decided by the CIT(A) in favour of the assessee correctly which is not required to be interfere with at this appellate stage. Accordingly, we affirm the finding of the CIT(A) on these issues and decided this issue in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 07/08/2019.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/08/2019

\*Vijay/ Sr. PS\*

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 2968/M/2014  
A.Y.2009-10

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**सत्यापित प्रति //True Copy//**

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**