

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : G : NEW DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.4960/Del/2015  
Assessment Year: 2010-11

ITA No.2595/Del/2016  
Assessment Year : 2011-12

DLF Projects Ltd.,  
3<sup>rd</sup> Floor, Shopping Mall,  
Arjun Marg,  
CLF City Phase-1,  
Gurgaon.  
PAN: AACCD3093R

Vs    Addl.CIT,  
Range-1,  
Gurgaon.

ITA No.5135/Del/2015  
Assessment Year: 2010-11

ACIT,  
Circle-1(1),  
Gurgaon.

Vs.    DLF Projects Ltd.,  
3<sup>rd</sup> Floor, Shopping Mall,  
Arjun Marg,  
CLF City Phase-1,  
Gurgaon.  
PAN: AACCD3093R

(Appellants)

(Respondents)

Assessee By

:

Shri R.S. Singhvi &  
Shri Satyajit Goel, CA

Deptt. By

:

Shri Saras Kumar, Sr. DR

Date of Hearing

:

28.11.2019

Date of Pronouncement

:

10.12.2019

ORDER

PER R.K. PANDA, AM:

ITA No.4960/Del/2015 filed by the assessee and ITA No.5135/Del/2015  
filed by the Revenue are cross appeals and are directed against the order dated 10<sup>th</sup>

June, 2015 of the CIT(A)-1, Gurgaon, relating to the assessment year 2010-11.

ITA No.2595/Del/2016 filed by the assessee is directed against the order dated 4<sup>th</sup>

March, 2016 of the CIT(A)-1, Gurgaon, relating to the assessment year 2011-12.

2. These appeals were heard together and are being disposed of by this common order for the sake of convenience.

3. The grounds raised by the assessee and Revenue for assessment year 2010-11 are as under:-

ITA No.4960/Del/2015 (By Assessee)

1. That on the facts and in the circumstances of the case, the learned Commissioner of Income-tax(Appeals) erred in holding and treating the expenditure a sum of Rs. 75,10,303 incurred on payment of "License Fees" on renewal of software license as "Capital" in nature in place of "Revenue" claimed by the appellant.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding "License Fees" as a part of "Software" and treating it as a capital expenditure as defined in income tax rules for Rates of depreciation disregarding the fact that License Fee was paid for one year only and proof in support thereof was provided in appellate proceedings.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in disregarding the fact that the appellant has not purchased any new "Software" for its business. The Software were purchased in prior years and no expenditure was incurred on "Software Purchased".

3.1 That benefit of license fees is only for one year and no benefit of license fees payment can be drawn by appellant beyond that. Therefore no benefit of enduring nature have been taken by the appellant.

4. That the impugned order dated 10.06.2015 passed by the learned Commissioner of Income-tax (Appeals), Gurgaon is bad in law and wrong on facts to the extent as stated above.

ITA No.5135/Del/2015 (By Revenue)

1. On the facts and circumstances of the case , the Ld.CIT(A) has erred in fact and in law Deleting the disallowance of RS.19,81,467/-made on account of interest component attributable to Capital Work-in Progress(CWIP) which is capital in nature.

2. On the facts and circumstances of the case, the Ld. CIT(A)has erred in law deleting the addition of RS.14,85,496 /-made on account of disallowances of software expenses ignoring the provision as contained in the Appendix of the Income Tax Rules , 1962 read with section 32 of the income Tax Act 1961 and AMC expenses of the case, which are part of "Computer".

3. On the fact and circumstances of the case, the Ld CIT(A)has erred in fact and in law Deleting the disallowance of expenses / provisions of expense Rs.5,35,66,302/-under the below mentioned heads:-

a.	Provision for disallowed material other than (RMC)	Rs.34,65,157/-
b.	Provision for disallowance other subcontractor works.	Rs.1,41,61,380/-
c.	Disallowances under the head of administrative expenses	Rs.85,73,638/-
d.	Disallowances of purchase sundries	Rs.3,73,669/-
e.	Disallowances of contractor / Sub - contractor Provisions	Rs.2,69,92,558/-
	TOTAL	Rs.5,35,66,302/-

3.1 On the facts and circumstances of the case, the LD. CIT(A) has in erred in above disallowances of RS.5,35,66,302/- as the assessee is recognizing revenue on the basis of recoverable cost incurred during the period plus margin thereon.

4. That the appellant craves for the permission to add, delete or amend the Grounds of appeal before or at the time of hearing of appeal.

4. So far as ground of appeal No.1 by the Revenue is concerned, the facts of the case, in brief, is that the assessee is a company engaged in the construction and engineering works relating to residential and non-residential buildings as well as to undertake construction and engineering works in infrastructure projects which

include "design build", "turnkey" engineering projects and procurement and construction solutions in all major engineering disciplines like civil/structural, electrical and mechanical services, as a part of the construction activity. It filed its return of income on 29.09.2010 declaring total income at Rs.22,91,20,757/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee has shown capital work-in-progress (CWIP) as on 31.03.2010 at Rs.1,65,12,229/-. He, therefore, asked the assessee to give the details of working of CWIP and to submit why interest on CWIP should not be capitalized. Rejecting the various explanations given by the assessee, the Assessing Officer disallowed an amount of Rs.19,81,467/- being interest @ 12% on different items of CWIP.

4.1 In appeal, the Id.CIT(A) deleted the addition by observing that the funds utilized by the assessee in CWIP were for the purpose of its ongoing business. CWIP was appearing in the balance sheet on account of the fact that there was a gestation period between the acquisition of capital assets and their use for the purpose of business. Further the assessee has substantial amount of own funds at its disposal which is much more than the CWIP. The Assessing Officer has not brought any nexus between the borrowed funds and the CWIP and, therefore, there can be no basis for disallowance of interest. Further, the Assessing Officer, in the subsequent two years, has not made any such addition. He accordingly deleted the disallowance made by the Assessing Officer.

5. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

6. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. We find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year and the Revenue, vide ITA No.5178/Del/2014 had raised the following grounds:-

öb. Disallowance of interest expenses on estimated rate of 12% amounting to Rs.49,01,176/- on the ground that same pertains to Capital Work In Progress (CWIP)ö

7. We find, the Tribunal dismissed the ground raised by the Revenue by observing as under:-

ö7.0 Coming to ground nos. 2 and 3, it is seen that the dispute in hand is regarding disallowance of interest allegedly attributable to CWIP. At the outset, we find that the assessing officer has not given any basis for estimating the interest disallowance @12% on the monthly balance of CWIP. The Assessment year 2009-10 assessment order is silent with regard to the basis of such estimation and the assessing officer has failed to even prove slightest of nexus between the borrowed funds and the amount reflected under the head 'CWIP'. It is a fundamental principle that the assessment has to be made after due application of mind and any disallowance or addition must be backed by logical reasoning and supported from facts of the case. Further, while making the disallowance of interest, it is incumbent upon the assessing officer to establish as to why such claim is disallowed or capitalized. However, we find that in the present case, the capitalization and the consequential disallowance of interest has been made on an arbitrary basis without even appreciating the fact of availability of own funds and without establishing any nexus between the interest expense, which is apparently related to business activities, and the borrowed funds.

7.1 We find that the Ld. CIT (Appeals) has comprehensively dealt with this issue and his finding is reproduced hereunder:

"7.3 I have gone through the assessment order passed by the AO, submissions filed by the appellant from time to time and other discussion held. The following points emerge from them:-

(a) That the appellant is engaged into the business of construction as a Contractor.

(b) The plant and machinery of the appellant business is in the shape of cranes, cement feeding plants etc.

(c) Its quiet understandable that the cranes or other machinery purchased from various suppliers cannot be put to use immediately at the time of purchase, due to time lag in transporting these items to various sites and thereafter assembling of various items as per the requirement.

(d) The time period which is the gestation period from the date of its purchase/ payment till its "use "is being shown as CWIP. In the year under consideration, appellant had 17 projects in hand from locations as far away as, Mumbai, Chennai, Gurgaon, Cochin, Kolkatta etc.

(e) Only the purchase cost that has been incurred by the appellant has been shown in CWIP and no other costs have been incurred on the items shown in CWIP.

7.4 Before proceedings further it would be proper to examine the business of the appellant company. The appellant is engaged into the business of construction as a Contractor. It has fixed assets in the share of plant and machinery, furniture and fixture etc., on 31st March 2009, to the tune of Rs. 292.62 Cr. Out of these total fixed assets of Rs. 298.24Cr. i.e. 2% of the total fixed assets appear as the closing capital work in progress. Moreover the closing CWIP at the end of the year is at Rs. 4,69,42,604/- as compare to Rs. 22,26,69,694/- at the start of the year. The appellant has a share capital and reserve worth Rs. 111,39,95,205/- there are secured loans of Rs. 213,62,47,973/- on which interest of Rs. 26,58,49,339/- was paid.

As the company is into the business of construction as a contractor the plant and machinery is in the shape of steel shuttering, cranes, batching plant, generators etc. The appellant worked for different clients at different sites and for these purposes and the plant and machinery in the shape of cranes, batching plant etc. were deployed at several sites. The cranes, batching plants of different sizes and capacities were required to the appellant for different projects.

The appellant has purchased cranes, batching plants from different suppliers and in certain cases advances were given to different suppliers against the supplies to be made. Cranes, batching plant are huge in terms of size and have to be designed in accordance to the specific requirements of the project and

there is always a possibility of a time lag from the date of supplies of these items to the date of actual uses of these equipments. There is also no doubt that there is no value addition made in these items and the only question is in regard to the time gap between assembling and reassembling of these items.

It is also seen that in certain cases, advances were given to different suppliers for supplying equipment, however, the supplies were made subsequently and till the time of actual supply of these items have been received and put to use, such advances have been treated as CWIP.

As per the dictionary, meaning of capital work in progress (CWIP) is as below:-

"Capital WIP is referred to as Assets under construction and are represented by a specific asset class. IT is an asset on the balance sheet i.e. not considered to be a final product, but must still be accounted for because funds have been invested towards its purchase".

Thus by its very nature CWIP is a work that has not been completed but on which capital investment has already been incurred. In the case of appellant, there is no doubt that the CWIP is basically an asset which has not reached the final product stage. The details filed by the appellant during the course of assessment proceedings as well as during the course of appellate proceedings reveal that there is a closing CWIP of Rs. 4,69,42,604/- as on 31.03.2009, which represents the following:-

S.No.	Particulars	Amount (Rs.)
1.	Capital Work in progress-construction plant and equipment	11,29,866
2.	Capital Work-in-Progress ó Cranes	4,37,38,406
3.	Capital Work in Progress-Batching Plant	20,44,598
4.	Advance (debit balance ) to creditors for fixed assets	29,734
	Total	4,69,42,604

The above details makes it clear that the main part of CWIP represents expenditure incurred on cranes amounting to Rs. 4,37,38,406/- out of the total CWIP of Rs. 4,69,42,604/-. Similarly, there is an opening CWIP of Rs. 22,26,69,694/- as on 01.04.2008, and Rs. 1,65,12,229/- as on 31.03.2010. The above details makes it clear that the closing CWIP of Rs. 22,26,69,694/- standing in A.Y, 2008-09 has come down to Rs. 4,69,42,604/- in A.Y. 2009-10 and Rs. 1,65,12,229/- in A.Y. 2010-11. The said details leaves no doubt

that the time gap for putting CWIP into use is not more than one year in any case.

The appellant has a net worth of Rs. 325.02 Crores against which there is a closing CWIP of Rs. 4.69 Crores. The AO while making disallowance of interest presumed that the borrowed funds were actually being used for purchasing items shown under the head CWIP. However, the AO has not brought anything on record to prove that there is a time gap of more than one year in capitalization of CWIP. On the other side, the appellant has stated that CWIP is merely 1.44% of its net worth and it has sufficient funds to purchase the capital items. The appellant also stated that normally CWIP is capitalized in the books within a period of 3 to 4 months only. In support thereof copies of ledger accounts were filled by the appellant.

It's also a fact that in assessment proceedings for A.Y. 2011- 12, the same issue has been decided by the AO in the case of the appellant in which no disallowance on this account have been made by the AO. The facts of A.Y. 2011-12 as well as A.Y. 2009-10 are identical. In support of its contention a copy of assessment order for A.Y. 2011-12 was also filed by the appellant.

7.5 After pursuing the facts of the case, the observation of the AO made in the assessment order and the copy of the assessment order for A.Y. 2011-12, there is no doubt that there is no material on record that the borrowed funds were actually being used for purchasing CWIP. In this case, CWIP is merely on account of the time lag from the date of purchase/advance to the date of actual use of the equipment. It is a fact that in the case of appellant, who is working as a contractor at 17 different sites all across the country, that plant and machinery has to be deployed at different locations and there is bound to be a time lag. The AO has himself accepted the explanation of the appellant in subsequent years therefore, there is no reason to make disallowance of interest expenditure of Rs. 46,01,176/-."

7.2 The Ld. DR was not able to controvert the factual and legal findings of the Ld. CIT (Appeals) wherein the disallowance has been deleted by holding that the CWIP is towards current business needs and same could not be considered as capital in nature. The Ld. CIT (Appeals) has also held that the respondent/assessee has sufficient own funds and further that the net worth of the company is far more than the value of CWIP and as such there is no nexus between the borrowed funds and the CWIP. We also note that the assessing officer has accepted the claim of interest in AY 2011-12 wherein, on identical facts, no such disallowance was made. In these circumstances, the department cannot be allowed to agitate this issue in the year under reference. Accordingly, in our considered view, the order of Ld. CIT (Appeals) on this issue is well reasoned and warrants no interference and is hereby upheld. Consequently, ground nos. 2 and 3 are rejected.ö

8. Since the facts of the impugned assessment year are identical to the facts of the immediately preceding assessment year, therefore, respectfully following the decision of the Tribunal in assessee's own case, we find no infirmity in the order of the CIT(A) on this issue. Accordingly, ground of appeal No.1 raised by the Revenue is dismissed.

9. Ground of appeal No.2 by the Revenue and all the grounds raised by the assessee relate to part relief granted by the CIT(A) on account of disallowance of software expenses.

10. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, noted that the assessee company has claimed software expenses amounting to Rs.97,64,993/-. He, therefore, asked the assessee to explain the nature of software expenses and to explain as to why the same have not been capitalized. The assessee filed a reply, vide its letter dated 27.11.2012, which has been reproduced by the Assessing Officer in the body of the assessment order which reads as under:-

“It is submitted that there is all expenses are in nature of routine exp. Like licence fee, AMC, renewal fee of licences of software and other small routine computer exp. The licence fee paid for using MS Office and Windows which do not increase the efficiency level of the software but to maintain the existing performance of the software hence it is allowable a revenue expenditure. Since these items frequently became obsolete and have shorter span of usable period hence are claimed as revenue exp. It is, therefore, requested that considering the nature of expenses as explained above since these are essentially required for such type of business, the same may be allowed as revenue expenditure duly claimed by the assessee.”

11. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. According to him, bulk of the payments was on account

of licence fees of Rs.46,91,875/- paid to M/s Softcell Technologies Ltd. and Rs.47,83,490/-paid to M/s Wipro Ltd., for use of licensed software, etc. These give the assessee long term benefit to make use of the computer software for office use. In the absence of such licence fees the assessee cannot use the desired software itself which will render both the software and hardware useless. Since the licence fees, etc., paid brings to the assessee the benefit of enduring nature which allows day to day use of the software for one year and the benefit of the purchase entails the assessee the right to use licensed software for one year, therefore, the same cannot be allowed as business expenses. The Assessing Officer, therefore, only allowed depreciation @ 60% on the software which is relatable to the current year by observing as under:-

õ4.4 In view of the above, only Rs. 43,37,036/- out of total software expenses amounting Rs. 97,64,993/- claimed this year is allowed as a business expenses on account of depreciation on computer software. Depreciation @60% is allowed against the similar addition of Rs. 65,70,768/- made last year which works out to Rs. 39,42,461/-. Accordingly, the balance of Rs.14,85,496/- (Rs. 97,64,993 - Rs. 82,79,497) is disallowed and added back to the income of the assessee company.ö

12. Before the CIT(A), the assessee filed detailed submissions along with details of software expenses which include expenses on AMC, consumables, licence fee paid for renewal of software licence. Copies of various bills were also submitted by the assessee to substantiate that the expenditure incurred under various softwares was of recurring nature and no enduring benefit was derived. Relying on various decisions, it was argued that the action of the Assessing Officer is not correct. Based on the arguments advanced by the assessee, the Id.CIT(A)

held that while the Assessing Officer erred in treating the AMC and consumables as capital expenditure, the treatment of licence fees in connection with software was rightly held to be of capital nature.

13. Aggrieved with such part relief granted by the CIT(A), the assessee as well as the Revenue are in appeal before the Tribunal.

14. We have heard the rival arguments made by both the sides and perused the orders of the authorities below. We find identical issue had come up before the Tribunal in assessee's own case for the immediately preceding assessment year. We find the Tribunal, vide ITA No.5178/Del/2014, order dated 27.11.2018, for assessment year 2009-10, while holding the software expenses as revenue in nature has observed as under:-

8.0 Ground no. 4 is on the issue of capitalization of software expenses to the extent of Rs. 65,70,768/-. The assessing officer was of the view that Software expense of Rs. 1,03,95,322/- incurred by the respondent/assessee is of capital nature and same is required to be clubbed with 'Computer and other peripherals'. Accordingly, the assessing officer made a disallowance of Rs. 65,70,768/- after allowing depreciation @ 60%. The Ld. first appellate authority deleted the disallowance by observing as under:

"8.3 I have gone through the submission filed by the appellant from time to time, assessment order passed by the AO and the facts of the case. The company is into the business of construction as a contractor. It has around 17 sites in hand at different location and have more than 800 employees and have around 800 computers.

The details of computer software submitted by the appellant reveals that expenditure on AMC, Consumables and Licence fees were incurred during the year. The AO treated the expenditure incurred on software as "capital" in nature and accordingly, allowed depreciation on them @ 60% as against the appellant treating the entire amount as revenue expenditure. The AO has not given any concrete reasons for treating the entire software expenses as capital

in nature. The AO has simply said that as per provisions of income tax act, software has been clubbed with computers for depreciation purposes and therefore, software expenses are capital in nature. On the other side, the appellant submitted that the software expenses include expenditure incurred on AMC, Consumables and licence fees. These expenses were not of enduring nature and the details of the expenditure itself show that the expenditure pertains to only one year. Similarly expenditure incurred on consumables items includes purchase of small items like training expenses, auto card software, gateway checkpoint software etc and licence fees pertains to renewal of various licences for one year only. The appellant also stated that the expenditure incurred on AMC has been accepted by the AO in the assessment proceedings for the A.Y. 2011-12.

Thus the fact as evident from the various details filed by the appellant clearly reveals that the expenditure was incurred on the following three accounts.

- a) Annual Maintenance Cost
- b) Consumables
- c) Licence Fees.

The details filed also reveals that there is no such item which is enduring in nature, rather expenses were incurred in purchase of various software items, licence fees for renewal of licences, consumables etc. with a limited shelf life. The expenditure incurred on AMC is definitely only for one year and no enduring benefit can be derived there from. Similarly licence fees are being paid only for one year and no enduring benefit is being derived there from. As far as consumable items are concerned there are various software's purchased for different purposes and the warranty for these software's were not exceeding twelve months. As these items are not for any enduring benefit the entire expenditure cannot be treated as "Capital Nature". The Hon'ble Delhi High Court in the case of CIT Vs. Amway India Enterprises (2012) 346 ITR 341 opined that expenditure incurred on purchase of software application and payment for consideration for acquiring licence to use those application would be allowed as revenue expenditure.

Similarly, in the following cases it has been held that the expenses incurred for either upgrade the system or to run the system is allowable as revenue in nature.

- a) CIT Vs. Asahi India Safety Glass Ltd. (2012) 346 ITR 329 (Delhi)
- b) Chief CIT Vs. O.K. Play India Ltd. (2012) 346 ITR 57 ( P & HS.37(1)

- c) CIT Vs. GE Capaital Services Ltd. (2007) 164 Taxman 46 (Del.)
- d) Oracle India Pvt.Ltd. Vs. CIT (Delhi High Court) ITA Nos. 25/2012, 287/2008,417/2009, 447/2009, 461/2009 and 683/2009
- e) CIT Vs. Southern Roadways Ltd. (2007) 288-ITR-15 (Mad.)
- f) Naveen Projects Ltd. Vs. CIT (2005) 1 SOT 232 (Delhi)
- g) CIT Vs. Citicorp. Overseas Softwares Ltd. (2004) 85 TTJ (Mumb.)87
- h) CIT Vs. Jasper Investments Ltd. (2007) 109 TTJ (Mum.)530
- i) Ajit Kumar C Kamadar Vs. CIT (2005) 1 SOT 183 (Mum)

The above facts of the case read in light of the various judicial pronouncements make it clear that the item shown by the appellant under the head "Software Expenses" did not have any item in the nature of "Capital expenditure.

Therefore, the appellant is entitled to get a relief of Rs. 65,70,768/- and ground No. 4 is allowed."

8.1 Admittedly, the expenses claimed under the head software expense include AMC, consumables and license fee. We are conscious of the fact that the expenses towards AMC, consumables and license fee are regular feature in modern business particularly big organizations like the respondent/ assessee which is obliged to incur these expenses every year. Also, the very nature of these expenses is such that the subscriber/purchaser only gets the 'right to use' for a limited period of time and as such it could not be said these expenses provide any benefit of enduring nature. It is also relevant to take note of the fact that no new asset has comes into existence by incurring of such expenses and even the assessing officer has accepted the claim with regard to AMC expenses in AY 2011-12.

8.2 It is our considered view, the finding and reasoning of the Ld. CIT (Appeals) that software expenses are of revenue nature is well founded and in consonance with decision of the Hon'ble Jurisdictional High Court in the case of [CIT v. G.E. Capital Services Ltd.](#) reported in [2008] 300 ITR 420 (Del) which has been followed by the Delhi Tribunal in the case of the sister-concern of the respondent/assessee DLF Home Developers Ltd. (supra). Accordingly, we hereby confirm the order of the Ld. CIT (Appeals) and uphold the deletion of disallowance of software expenses. Thus ground no. 4 of the revenue's appeal stands dismissed.ö

15. Since the facts of the impugned assessment year are identical to the facts of the case for the immediately preceding assessment year, therefore, respectfully following the decision of the Tribunal in assessee's own case, we hold that the AMC, consumables and the software expenses are revenue in nature. We, therefore, dismiss the ground raised by the revenue and allow the grounds raised by the assessee on this issue. Accordingly, ground No.2 raised by the Revenue is dismissed and the grounds raised by the assessee are allowed.

16. Now, we take up ground No.3 and 3.1 raised by the Revenue.

17. Facts of the case, in brief are that the Assessing Officer, during the course of assessment proceedings, observed that the assessee has claimed the following expenses/provision for expenses in its accounts, the details of which are as under:-

Provision for disallowed material other than (RMC)	Rs.34,65,157/-
Provision for disallowed other subcontractor works.	Rs.1,41,61,380/-
Purchase Sundries	Rs.3,73,669/-
Disallowed Administrative expenses	Rs.85,73,638/-
Contractor / Subcontractor's Provisions	Rs.2,69,92,558/-

18. He, therefore, asked the assessee to give details of above provisions of expenses/other expenses and justify the claim so made in the accounts. Rejecting the various explanations given by the assessee and observing that these expenses are not approved by the clients inasmuch as these are not certified/valued by the cost auditors of the clients and that there was no necessity to incur such expenses,

the Assessing Officer made addition of Rs.5,35,66,402/-. The relevant observations of the Assessing Officer at para 5.3 reads as under:-

5.3 The contentions of the assessee have been duly considered but are found to be completely unacceptable.

- a. The submissions of the assessee itself point to the fact that these expenses are not approved by the clients in as much as that these are not certified/verified by the cost auditors of the clients. In other words, there was no necessity to incur such expenses which have been found to be inflated and/or unnecessary by the principal parties who have commissioned the works from the assessee.
- b. The assessee has stated that these expenses are put under different heads such as disallowed administrative expenses etc to analyse the extent of expenditure not approved. The very nature of the expenses such as boarding/lodging/travelling/ taxi service/training etc. indicate that the element of inflation cannot be ruled out. Clearly, such expenses have not been incurred in the ordinary course of business for business purposes or for commercial expediency of business. On the contrary, these represent arbitrary expenses incurred by employees, management etc. without any actual requirement/mandate for business purposes. Thus, the basic condition for allowability of expenses u/s 37(1) stands violated.
- c. Further, the assessee has led no evidence to show that any dispute has been raised or requisite effort has been made with any client regarding recovery of such expenses. It has also not shown any rate revision contract with any party/client to make good the escalation of prices, if any, on account of expenses so incurred.
- d. Likewise, the provision for Disallowed Material other than RMC expenses & Provision for disallowed other subcontractor works is totally unwarranted. The setting apart of amounts only to meet the contingency of disallowance by the client is not allowable. The assessee has also not led any argument/evidence to show that the provision for expenses was an ascertained liability duly certified/accepted by the clients to have been incurred at their instance. As such the allowability of these provisions is totally and completely unacceptable.
- e. Contractor/Subcontractors provisions to the tune of Rs. 2,69,92,558/- are unsubstantiated that liability to incur the same was crystallized during the year itself. The assessee has not led any evidence to show that these expenses were indeed incurred as a certainty/established liability duly certified and acknowledged by the clients.

- f. Reliance is placed on the rulings of the Apex Court in the following cases:  
É Indian Molasses Co. (P) Ltd V. CIT (1959) 37ITR 66(SC)  
É CIT V. Gemini Cashew Sales Corpn. (1967) 65ITR 643(SC)

5.4 In view of the detailed discussion in the preceding paras, it is clear that the expenses/provision for expenses are not allowable. Accordingly, an addition of Rs. 5,35,66,402/-is made on account of disallowance of expenses/provision for expenses. Penalty proceedings u/s 271(1)(c) are separately initiated for furnishing inaccurate particulars of income.

19. Before the CIT(A), the assessee filed detailed submissions and filed certain additional evidences based on which the Id.CIT(A) called for a remand report of the Assessing Officer. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the Id.CIT(A) deleted the addition. The relevant observation of the CIT(A) from para 9.9 onwards reads as under:-

ø9.9 I have considered the facts of the case and gone through the Assessment Order passed by the AO along with various submissions filed by the appellant during the course of appellate proceedings. The appellant is engaged in the business of construction as a Contractor. It takes contract from different customers and executes them. The appellant takes the contract from its clients for execution under "Cost Plus" basis for which it takes the help of Sub-Contractors for executing the work. During the year under consideration, the appellant disclosed construction and project revenue of Rs. 395.98 crores. Against the revenue of Rs.395.98 crores, the appellant claimed construction expenses of Rs. 221.67 crores, personnel expenses of Rs.64.82 crores, administrative expenses of Rs. 26.25 crores, financial expenses of Rs 20.60 crores and depreciation of Rs37.42 crores, resulting eventually in a profit of Rs. 27.71 crores.

9.9.1 During the course of assessment proceedings, the Assessing Officer sought details along with justification of the following expenses and provisions:-

	Amount/Rs.
1. Provision for Disallowed Material other than Ready Mix Concrete (RMC)	34,65,157

2. Provision for disallowed other subcontractor works	1,41,61,380
3. Disallowed Administrative Expenses	85,73,636
4. Purchase Sundries	3,73,669
5. Contractor / Sub contractor provisions	2,69,92,558

The appellant gave details along with requisite evidence in respect of all these expenses; but the AO was not satisfied with the submissions of the appellant as a result of which she made addition in respect of the aforesaid expenses. The appellant is in appeal against the said additions.

Let us examine each of these additions one by one:-

(a) Provision for Disallowed Material other than RMC

During the course of appellate proceedings, the appellant clarified that it was executing work in accordance with the 'Cost Plus' basis and under this system, the client was supposed to reimburse the appellant, all costs involved in execution of work on actual basis plus a certain percentage of margin as agreed in the Agreement. During cost verification, certain costs incurred by the appellant were objected to by the client. In response to this, the appellant submitted further details which could meet the client's objections in most of the cases. However, in some cases the clients could not be convinced resulting in their disallowance. This was an ongoing process. During the year under consideration, the appellant filed details of material other than RMC amounting to Rs. 1,51,49,135/- which were initially objected to by the client and after prolonged discussions with the client, an amount of Rs. 1,16,83,978/- was recovered and the resulting amount of Rs. 34,65,157/- was claimed as disallowed cost. The appellant hastened to add that though the material cost of Rs. 34,65,157/- was disallowed by the client, this did not mean that it was a non genuine expenditure. The expenditure disallowed by the client was actually incurred by the appellant for executing the contract for which proper documentation like Invoice, Challan, Voucher and other supporting documents were produced by the appellant.

(b) Provision for Disallowed other Sub-contractor Work

Regarding the disallowance of Sub-contractors' work of Rs.1,41,61,380/- it was stated that during the year a sum of Rs.17,90,054/- was initially disallowed by the appellant's client and after submitting various documents / clarifications, a sum of Rs. 12,87,943/- was allowed by the client. The remaining sum of Rs. 4,31,111/- was disallowed by the client. Further, a sum of Rs.1,37,30,269/- was disallowed on account of various invoices raised by the appellant from 26.06.2009 to 29.03.2010 amounting to Rs. 91,02,55,858/-. The aggregate of disallowance under this head comes to Rs.1,41,61,380/- (Rs. 4,31,111/-+ Rs. 1,37,30,269/-). It was further stated that

the amount of Rs. 1,41,61,380/- disallowed by the appellant's client was actually incurred by the appellant company for its business purposes for which proper documents were available and provision of TDS, Provident Fund, etc. along with other statutory compliances had been properly followed. In support thereof copies of Bills with supporting documents were submitted.

(c) Disallowed Administrative Cost

Out of total cost claimed amounting to Rs. 2,21,44,790, on account of administrative & other expenses, a sum of Rs. 85,73,638 was disallowed by the clients this year which comprised Rs. 14,60,015 (Partly disallowed) + Rs.93,28,498 (fully disallowed) - Rs. 22,14,875 being last year's cost allowed by the clients, which had been incurred as routine cost on account of administrative and other expenses Regarding this disallowance, the appellant submitted invoices, nature of payment, Bill No. along with complete details of disallowance. It was stated that the said expenditure was actually incurred by the appellant for business purposes for which complete details were available. In support thereof, copies of Bills along with supporting documents were filed.

(d) Disallowed Sundries

Regarding the disallowance of Sundries amounting to Rs. 3,73,669/-, it was stated that the same pertained to day to day routine expenses on purchase of small and petty items, like Chemical, Acid, Plastering Powder, Phenyl, Spare Parts, etc. used at different sites of the appellant. The expenditure was required to be incurred on routine basis for construction activities. Copy of ledger account with documentary evidence i.e. vouchers and bills were filed in support thereof.

(e) Contractor / Sub-contractor Provision

These were the provisions of sub-contractors and material for which works had already been executed / material procured. Further, corresponding revenue had also been provided against the said provisions in its profit and loss account under the head 'Construction & Project Revenue' which represented work executed but remained uncertified at the end of the year. The appellant submitted that, the said amount had been taxed twice/meaning thereby, that the amount was already included in the income as Unbilled Revenue under the head 'Construction & Project Revenue' and at the same time, it was disallowed by the Assessing Officer without giving deductions of the said amount. The AO disallowed the same due to non-providing the evidence relating thereto. It was stated that out of total provision of Rs. 16,57,86,202, the AO disallowed a sum of Rs. 2,69,92,558 for want of supporting documents and allowed remaining amount of i.e. Rs. 13,87,93,644/- since supporting documents to substantiate the same were provided. During the course of appellate proceedings, the appellant filed complete details of these expenses along with

documentary evidence i.e. bills & vouchers. The same was forwarded to the AO for his Remand Report who, after verification of the details and supporting documents, submitted his report in which he did not find any discrepancy. However, he objected to the admission of additional evidence under Rule 46A. In compliance thereof, the appellant submitted that the requisite details could not be filed before the AO as the same were never sought by her during the course of assessment proceedings.

9.9.2. After a careful consideration of the facts of the case together with the various heads under which additions were made by the AO, following observations/conclusions are made/derived:

- (1) The appellant is a contractor undertaking contracts on Cost Plus basis. Under the Cost Plus Contract, the appellant is entitled to get the actual cost incurred for execution of the work along with a fixed percentage of its margin. The margin varies from item to item as well as contract to contract. The actual cost incurred together with its margin is billed by the appellant as its construction and project revenue. The cost is incurred, since while executing the contract the appellant hired different Sub contractors, purchased material and incurred administrative cost on behalf of the client. After lapse of a certain period of time, invoices were raised on the client which included actual cost incurred, supported by proper documentation, and the appellant's margin. The appellant's client verified the cost incurred by the appellant and sought justification and supporting documents for incurring of expenditure. At times, the cost was subject to verification and in absence of proper satisfaction of the appellant's client, the cost incurred by the appellant and billed as revenue was disallowed. Out of the said disallowance of cost, the client allowed a certain amount on being convinced by the appellant's arguments in their discussions. Whenever, the costs were subsequently allowed by the client, the same were credited and reduced from expenses. The basis issue is once having incurred certain expenses and considered the same as revenue on cost plus basis, how can the appellant be denied to claim that portion of cost, not allowed by the client.
- (2) A mere disallowance of cost by the appellant's client does not mean that the expenditure was not incurred by the appellant for business purposes or it was an in genuine business expenditure. In support of incurring of the said expenditure, the appellant filed copies of Journal Vouchers in which the description of the invoices received by the appellant from its Sub Contractor / material supplier or any other services provided to the appellant for appellant's client were provided. The correspondence for disallowance of cost was also filed by the appellant during the course of appellate proceedings and it was clarified that all the payments to material suppliers / Sub contractors or in relation to administrative cost had been made through banking channel and due care of all statutory compliances

had been made by the appellant. In cases where TDS was applicable, the appellant deducted the same and deposited with the Government. Hence these facts make it amply clear that the liability was actually incurred and there was no provision made without actual payment.

- (3) The AO, while making the disallowance of expenditure treated the disallowed cost by the appellant's client as inflated or unnecessary cost. However, she did not establish as to how these costs were unnecessary or inflated. If these costs were inflated, why were the same allowed subsequently, in a number of instances. She did not conduct any inquiry in this respect. Neither any effort was made to question the appellant or give him a show cause notice. On the other side, the appellant during the course of appellate proceedings filed complete details of disallowed cost on account of material, Sub contractor and administrative cost. Copies of invoices raised by the appellant on its client and the correspondence held with the client was been filed. In these details, the break-up of the cost disallowed was highlighted and the correspondence reflected that these costs were disapproved by the appellant's client without assigning any reasons. In view of these facts, the AO should not have arrived at the conclusion that disallowed cost represented inflated expenses.
- (4) The disallowance of administrative cost was merely 0.105% of the total bills, material disallowance was 0.62% of invoices raised by the appellant and contractor disallowance was a mere 1.50% of total bill raised by the appellant. Thus there was a total disallowance of 2.22% of total invoices raised on clients. Further, the details filed by the appellant clearly showed that the disallowance was of various amounts and comprised around 280 entries in totality for Administrative Costs, 30 entries for disallowance of material cost and around 40 entries for disallowance of Sub-Contractor Cost. The disallowance of Administrative Cost was made on account of freight and cartage, books and periodicals, staff welfare expenses, conveyance, travelling expenses, roads and taxes, health and safety, etc. The denomination of expenditure disallowed in each entry was in certain instances in the range of Rs.50/-, Rs. 399/-, Rs. 1,545/-, Rs. 1,798/-, Rs. 14,246/- etc. When there were around 280 entries for a particular head under which disallowance was made, then it was up to the AO to find out as to how these costs were in genuine or inflated when the appellant had actually incurred these expenses. Similarly, in case of disallowance of Sub-Contractor Cost, the figures of disallowances were, for instance, of Rs.477/-, Rs.2589/-, Rs.3803/-, Rs.3,45,738/-, Rs.3,48,424/-, Rs.2,88,910/- etc.
- (5) The AO further stated while making disallowance that the disallowed cost was in the nature of contingent expenditure. She also stated that no evidences were filed to show that provisions of expenses was an ascertained liability duly certified / accepted by the client to have been

incurred at their insistence. In this regard, I tried to ascertain whether the provisions for disallowed material / Sub contractor and administrative expenses were in the nature of "Provisions". It was observed that "Provisions" were shown by the appellant in its Balance Sheet under the heading "Current Liabilities & Provisions" and an amount of Rs. 15.21 crores had been shown under this head. The break-up of provisions was given in Schedule-10 of the Balance Sheet which reads as under:-

Provisions for Leave Encashment	Rs. 1.66 Crores
Provisions for Other Employees Benefits	Rs. 4.30 Crores
Provisions for Shuttering	Rs. 9.24 Crores

Rs.15.21 Crores

The above "Provision" did not include the provision of materials / Sub contractors / administrative costs as mentioned by the AO in her order. It seems that she misunderstood the word "Provision" used in the nomenclature of the disallowed cost. The nomenclature "Provision" for disallowed material / Sub Contract work / administrative expenses did not mean that it was made on an adhoc basis or it was an unascertained liability. Rather, it was of the nature of actual expenditure incurred by the appellant and charged from its client. It was thus an ascertained liability and actually discharged by payments made through banking channel after making due compliance with various laws. The correspondence held between the appellant and its client and the vouchers produced by the appellant during the course of the appellate proceedings clearly established that the disallowed cost was not in the nature of "Provision" or unascertained liability, rather it was an ascertained liability and not in the nature of "Provisions".

(6)As regards the Assessing Officer's observation that there are no evidences to show that any dispute had been raised or requisite efforts had been made with any client regarding recovery of such expenses, the appellant submitted a detailed sheet vide letter dated 18.12.2014 as per which under "Other Sub Contractor" head, a total sum of Rs. 17,19,054/- was initially disallowed by the client. However, with the efforts of the appellant, a total sum of Rs. 12,87,943/- was recovered. Similarly, under "Material other than RMC", a total sum of Rs. 1,23,59,608/- was initially disallowed by the client and the appellant was eventually able to recover a total sum of Rs. 1,16,83,980/- out of that amount. Therefore a small portion of expenditure was disallowed. Thus, the Assessing Officer had unnecessarily put several remarks without any evidence.

(7)The appellant submitted that no addition/disallowance on this issue was made by the AO in earlier or subsequent years as the AO was satisfied with the explanation of the appellant.

(8) During FY 2009-10 a sum of Rs. 5,27,43,248 was disallowed out of which, a sum of Rs.2,65,43,073 had been justified and balance remained as disallowed amounting to Rs. 2,62,00,175. The AO disallowed the said amount. Since the appellant had taken the disallowed amount as its income and even added profit margin to it, its claim as a deduction on account of its disallowance by the client is nothing but a deduction on account of Bad debt. As per the Provisions of Section 36(1)(vii) of the Income Tax Act, 1961 which reads as under:-

"36. Other deductions:- (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-...

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.ö

This position in law is well-settled, After April 1, 1989, it is not necessary for the appellant to establish that the debt, in fact, had become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the books of account of the appellant.

In the case of the appellant, an amount of Rs. 2.62 Crores had been written off in the Books of Accounts in the nature of bad debt and after the amendment of Sec. 36 (1) (vii) of the Income Tax Act, 1961, with effect from 1st April, 1989, in order to obtain a deduction in relation to bad debt, it was not necessary for the appellant to establish that the debt, in fact, had become irrecoverable, it is enough if the bad debt is written off as irrecoverable in the accounts of the appellant. This view has been examined by the Hon'ble Supreme Court in the case of T.R.F Ltd v CIT [2010] 323 ITR 0397 and the same has been followed by various courts in the following cases:-

(i) [2012] 341 ITR 0641 (applied) First Leasing Company of India Ltd. V. Commissioner of Income tax-Mad.

(ii) [2012] 344 ITR 0407 (applied) Commissioner of Income Tax v. Modi Xerox Limited (No.1) - All.

(ii)[2012] 344 ITR 0411 (followed) Commissioner of Income Tax v. Modi Xerox Limited (No.2) - All.

(iii) [2013] 022 ITR (Trib) 0259 (followed) Deputy Commissioner of Income Tax v. Ray + Keshavan Design Associates P. Ltd ITAT [Bang]

(v)[2013] 023 ITR (Trib) 0447 (followed) Sonic Biochem Extractions P. Ltd. v. Income-tax Officer - ITAT[Mum]

(vi) [2013] 024 ITR (Trib) 0030 (followed) Indian Research Manifestation Labs P. Ltd. v. Assistant Commissioner of Income tax Assistant Commissioner of Income-tax v. Indian Research Manifestation Labs P. Ltd. - ITAT[Ahm]

(vii) [2013] 024 ITR (Trib) 0192 (followed) IGFT Ltd. v. Income-tax Officer - ITAT[Mum]

(viii) [2013] 352 ITR 0401 (applied) Commissioner of Income-tax v. Makpar Exports Pvt. Ltd ó MP

(ix) [2013] 356 ITR 0012 (followed) Commissioner of Income-tax v. Samara India P. Ltd ó Del

(x) [2014] 362 ITR 0647 (applied) Madhav Marbles and Granites v. Income-tax Appellate Tribunal - Raj.

(9) As regards disallowance on account of contractor/sub-contractor provisions, the facts are that the liability with regard to the expenses of Rs. 16,82,94,274 had crystallized during the year for which bills / cost Auditors Verification Certificate had been forwarded to the appellant after the close of the Financial Year and had been therefore, classified as "Provision", though accrued and accounted for on the basis of actual bills forwarded. This fact had been established before the Assessing Officer by furnishing supporting evidence. However, the Assessing Officer, accepted the expenses to the extent of supporting details furnished, and disallowed a sum of Rs. 2,69,92,558, comprising various amounts for which details could have been furnished at the assessment stage. The appellant during the course of appellate proceedings filed complete documentary evidence of Contractor Provision of Rs. 2,69,92,558/-. The same was sent to the AO for his counter comments and the AO, vide his remand report dated 02.03.2015 inquired into the said expenditure and did not give any adverse comment.

It may be pertinent to mention that in earlier years as well as in the subsequent year, the Assessing Officer, considering the appellant's submissions and details/bills, supporting vouchers/documents etc, did not make any disallowance on this issue while completing the assessment u/s 143(3) of the Act. Even during the year under consideration, on submission of evidence and bills and other documents relating to this issue, the Assessing Officer allowed an amount of Rs. 14,13,01,716 and balance Rs. 2,69,92,558, for which bills/evidence were not submitted before the Assessing Officer had been disallowed by her. Thus, after the submission of bills of the remaining amount, which were found to be in order by the AO, there is no ground for any disallowance on account of contractor/sub-contractor provisions.

10. As regards disallowance on account of Sundry purchases to the tune of Rs. 3,73,669/- without assigning any reason in the Assessment Order, the appellant filed complete details of these expenditures on a perusal of which it was revealed that the expenditure was incurred during the year and was in the nature of purchase of small items like Chemical, Wire, Phenol, Broom, Acid, Plastering Powder etc and there were around 200 entries throughout the year in relation to the expenditure of Rs. 3,73,668/-. Since the appellant has filed complete details of these expenses along with copies of invoices and vouchers, no disallowance can be made on this account.

9.10 Hence after a careful consideration of the facts of the case, the submissions of the appellant, the remand report of the AO, the past history of the case and various judicial pronouncements, I hold, on the basis of detailed reasoning given earlier in the order, that the AO erred in making an addition of Rs 2,62,00,175/- on account of provisions for disallowed material cost, Sub contractors expenses and administrative expenses and a disallowance of Rs 2,69,92,558/- on account of contractor/sub-contractor provisions. In addition the disallowance on account of Sundry Purchases amounting to Rs3,73,668/- is also deleted. Accordingly, Ground No.3 of the appeal is allowed.ö

20. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

20.1 We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions relied on by both sides. We find the Assessing Officer, in the instant case, made addition of Rs.5,35,66,402/- the reasons for which have already been reproduced in the preceding paragraphs. We find, the Id.CIT(A) after obtaining a remand report from the Assessing Officer and the rejoinder to such remand report, deleted the addition by passing a detailed order the reasons for which have also been extracted in the preceding paragraphs. We find no infirmity in the order of the CIT(A). He has given justifiable reasons while deleting each and every disallowance made by

the Assessing Officer. Even the complete documentary evidence filed before him which were forwarded to the Assessing Officer for his counter comments remained unattended by the Assessing Officer in the sense he did not give any adverse comment against the same. Since the Id.CIT(A) while deleting the disallowance has passed a speaking order by giving detailed reasons which could not be controverted by the Id. DR, therefore, we find no infirmity in the order of the CIT(A) deleting such addition. No distinguishable feature was brought to our notice by the Revenue so as to take a contrary view than the view taken by the CIT(A) on this issue. Accordingly, the order of the CIT(A) on this issue is upheld and the grounds raised by the Revenue are dismissed.

ITA No.2595/Del/2016 (A.Y. 2011-12) (By Assessee)

21. The grounds raised by the assessee are as under:-

1. That on the facts and in the circumstances of the case, the learned Commissioner of Income-tax(Appeals) erred in holding and treating the expenditure on software as "Capital" in nature in place of "Revenue" claimed by the appellant amounting to Rs.42,04,644. The expenditure on software was incurred on payment of "License Fees" on renewal of software licenses. Payment of Rs.4,10,852/- made on purchase consumables items were also disallowed by treating as "Capital" expenditure.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding "License Fees" as a part of "Software" and treating it as a capital expenditure for the purpose of calculating Depreciation under income tax rules 5 only, disregarding the fact that License Fee was paid for one year only and proof in support thereof was provided in appellate proceedings.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in disregarding the fact that the no benefit of enduring nature have been derived by assessee company. The expenditure is of recurring nature and is being incurred every year and life span of the expenditure is only for one year.  
3.1 The Ld.CIT(A) failed to bring anything on record to show as to how expenditure on License Renewal fees increased the efficiency of the assessee business or how profitability of the company increased.

3.2. That on the facts and in circumstance of the case, the Id.CIT(A) erred in following the decision made in appeal no.17/13-14 for A.Y. 2010-11 on the issue of expenses incurred on "License Renewal Fees" and without considering the fact that in A.Y. 2009-10 in appeal no.501/11-12, the expenses of similar nature has been allowed to the assessee by CIT(A), Faridabad.

3.3. That on the facts and in circumstance of the case, the Id.CIT(A) erred in not following the decision made in appeal no.17/13-14 for A.Y. 2010-11 wherein CIT(A) has allowed expenses incurred on "Consumables" as revenue expenditure.

4. That the impugned order dated 04.03.2016 passed by the learned Commissioner of Income-tax (Appeals), Gurgaon is bad in law and wrong on facts to the extent as stated above.

5. That the appellant craves leave to add, alter, amend, substitute, forgo any or all the grounds of appeal before or at the time of hearing.

22. After hearing both the sides, we find the grounds raised by the assessee are identical to the grounds raised in ITA No.4960/Del/2015 for assessment year 2010-11. We have already decided the issue and the ground raised by the assessee has been allowed by holding that the expenditure incurred on payment of licence fee on renewal of software licence is revenue in nature. Accordingly, the grounds raised by the assessee for this year are allowed.

23. In the result, ITA Nos.4960/Del/2015 and 2595/Del/2016 filed by the assessee for assessment years 2010-11 and 2011-12 are allowed and ITA No.5135/Del/2015 filed by the Revenue for assessment year 2010-11 is dismissed.

The decision was pronounced in the open court on 10.12.2019.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Dated: 10<sup>th</sup> December, 2019

dk

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi