IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI
(Through Video Conferencing)

BEFORE, SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.2020/Del/2014
(ASSESSMENT YEAR-2009-10)

Dy. CIT (LTU),NBCC Plaza Pushp Vihar, New Delhi-1100017	Vs.	M/s Nestle India Ltd. DLF City, Phase-II, Jacaranda Marg, Gurgaon-122002 PAN –AAACN 0757G
(Appellant)		**(Respondent)**

ITA No.1954/Del/2014
(ASSESSMENT YEAR-2009-10)

M/s Nestle India Ltd. M-5A, Connaught Circus, New Delhi-110001 PAN –AAACN 0757G	Vs.	Dy. CIT (LTU),NBCC Plaza Pushp Vihar, New Delhi-1100017
(Appellant)		**(Respondent)**

Appellant By	**M/s. Pramita M. Biswas, CIT-DR**
Respondent by	**Sh. Ajay Vohra, Sr. Adv.** **Sh. Neeraj Jain, Adv.** **Sh. Karan Jain, CA**
Date of Hearing	**01.07.2020**
Date of Pronouncement	**22.07.2020**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

These are cross appeals by the Department and the assessee against order passed by the Ld. Commissioner of Income Tax (Appeals)-LTU, New Delhi, {the Ld. CIT(A)}, vide order dated 20.01.2014 pertaining to Assessment Year 2009-10.

2.0 The brief facts of the case are that the asseseee company is a manufacturer of vide range of food items covering beverages, baby food powders, chocolates and confectionery, culinary products, etc. The assessee filed its return of income declaring total income of Rs.7,28,92,72,770/-. After initially processing the return u/s 143(1) of the Income tax Act, 1961 (hereinafter called 'the Act'), the case was selected for scrutiny. Since, during the year under consideration the assessee had entered into international transactions with its Associated Enterprise (AE) and the value of such transactions exceeded Rs.15 Crores, the case was referred to the Transfer Pricing Officer (TPO) u/s 92 CA of the Act for computing the Arm's Length Price (ALP). As per the order of the TPO, no adjustment was proposed on account of ALP of the international transactions. However, the following

additions/disallowances were made by the Assessing Officer (AO) while completing the assessment proceedings:

(i) Disallowance of license fee - Rs.61,01,74,000/-

(ii) Disallowance u/s 14A - Rs.39,25,411/-

(iii) Addition of interest u/s 244A - Rs.8,01,12,224/-

(iv) Disallowance of depreciation - Rs.35,29,482/-

(v) Addition of subsidy from Government of Goa - Rs.25,00,000/-

2.1 Thus, the income was assessed at Rs.798,95,13,887/- by the AO.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the additions and disallowances. The Ld. CIT (A) allowed the assessee's appeal partly by deleting the addition of Rs.61,01,74,000/- made on account of license fees. The Ld. CIT (A) also restricted the disallowance made u/s 14A of the Act to Rs.32,93,106/-. With respect to depreciation on UPS, the same was deleted. The Ld. CIT (A) also deleted the disallowance of depreciation of Rs.33,90,330/- in respect of energy saving and pollution controlling equipment. The Ld. CIT (A) also directed the

Assessing Officer to treat the subsidy received from the Government. of Goa as capital in nature thereby deleting the addition of Rs.25 Lacs. The CIT (A), however, directed the Assessing Officer to reduce, on proportionate basis, the capital subsidy received during the relevant assessment year from the written down value of respective block of assets for the purpose of computing depreciation allowance under the Act while directing that the subsidy should be treated as capital subsidy. The Ld. CIT (A) also upheld the addition of Rs.8,01,12,224/- with respect to the interest received u/s 244A.

2.3 Aggrieved with the Ld. CIT (A)'s order, both the Department as well as the assessee is now in appeal before this Tribunal. The following grounds have been raised by the parties:

Grounds raised by the Department in ITA No. 2020/Del/2014:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 61,01,74,000/- made on account of licence fee.

2. *On the facts and circumstance of the case and in law, the Ld CIT (A) has erred in reducing the disallowance made u/s 14A from Rs. 39,25,411/- to Rs.32,93,106/-.*

3. *On the facts and circumstance of the case and in law, the Ld CIT (A) has erred in deleting the disallowance of Rs. 1,39,152/- made by AO by restricting the claim of depreciation in respect of UPS from 60% to 15%.*
4. *On the facts and circumstance of the case and in law, the Ld. CIT (A) has erred in deleting the disallowance of Rs.33,90,330/- made by AO by denying the claim of depreciation in respect of energy saving and pollution control equipment on the ground that it was not put to use.*
5. *On the facts and circumstances of the case and in law, the Ld CIT (A) has erred in directing to treat the subsidy as capital in nature thereby deleting the addition of Rs,.25,00,000/-*
6. *The appellate crave leave to add, alter, amend or vary the above ground of appeal at or before the time of hearing."*

Grounds raised by the assessee in ITA No.1954/Del/2014:

1. That CIT(A) erred on facts and in law in upholding the action of assessing officer in disallowing expenditure to the extent of Rs. 32,93,106/- invoking section 14A of the Income Tax Act, 1961 ('the Act'), read with Rule 8D of the Income-tax Rules.

1.1 That the CIT (A) erred on facts and in law in confirming the aforesaid disallowance without appreciating that no

expenditure was actually incurred in earning the exempt dividend income.

1.2 That the CIT (A) erred on facts and in law in not appreciating that assessing officer made the disallowance invoking the provisions of section 14A of the Act without recording his satisfaction that having regard to the books of accounts of the appellant certain expenditure was actually incurred for earning the exempt dividend income.

1.3 That without prejudice, the CIT (A) erred on facts and in law in not appreciating that disallowance, if any, under section 14A of the Act had to be restricted to Rs. 8,34,934 as per calculation provided by the appellant.

2. That the CIT (A) erred on facts and in law in confirming the addition of Rs. 8,01,12,224/- made by the assessing officer in relation to the interest received under section 244A of the Act by the appellant during the relevant previous year, not appreciating that the aforesaid amount was not real income in view of the orders giving rise to the refund and interest thereon having been challenged in appeal by the Revenue before higher forums.

2.1 That the CIT (A) erred on facts and in law in holding that the principal amount on which interest was granted had become 'due' and therefore, interest income under section 244A of the Act had crystallized.

3. That the CIT (A) erred on facts and in law in directing the assessing officer to reduce on proportionate basis the capital subsidy received during the relevant assessment year from the written down value of the respective block of assets for the purposes of computing depreciation allowance under the Act, on the ground that such subsidy was provided on making capital investment in land, building and plant and machinery and was not a general or undirected subsidy.

The appellant craves leave to add, alter, amend or vary from the above grounds of appeal at or before the time of hearing."

3.0 The Ld. Authorized Representative (AR) submitted that ground No.1 of the assessee's appeal challenged the action of the Ld. CIT (A) in upholding the disallowance u/s 14A of the Act to the extent of Rs.32,93,106/-. It was submitted by the Ld. AR that during the relevant assessment year, the assessee had received dividend income amounting to Rs.4,31,86,107/- in respect of units held in various mutual funds which was claimed as exempt u/s 10(35) of the Act. It was further submitted that the assessee, vide letter dated 17.12.2012, filed during the course of assessment proceedings, had submitted that the disallowance could not have exceeded Rs.8,34,934/- being the costs of its treasury operations

which had been computed on the basis of the time spent by the treasury department in such activities and that the Assessing Officer had failed to point out any defect in such computation and had proceeded to disallow an amount of Rs.39,25,411/- by applying Rule-8D of the Income Tax Rules, 1962 in a mechanical manner. It was submitted that the Assessing Officer could not have made the disallowance in absence of any nexus of expenditure and the exempt income being established and that further in absence of the Assessing Officer having recorded satisfaction the impugned disallowance u/s 14A read with Rule-8D was unwarranted. Reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Maxopp Investment Limited, reported in 347 ITR 272 (Delhi) wherein it had been held by the Hon'ble Delhi High Court that before making any disallowance under the provisions of Section 14A read with Rule-8D, the Assessing Officer has to record a finding that he is not satisfied with the correctness of the claim of the expenditure incurred. Alternatively, it was pleaded that the disallowance, if any, u/s 14A of the Act should be restricted to Rs.8,34,934/- as per the computation provided by the assessee.

3.0.1 It was also submitted by the Ld. AR that the assessee's ground No.1 was connected to ground No. 2 of the Department's appeal. It was also submitted that the assessee had substantial interest free funds and, therefore, the disallowance under Rule-8D (iii) of the Act was not warranted. A chart depicting surplus fund available with the assessee for making investments was pointed out by the Ld. AR and it was submitted that since interest free funds were available with the assssee to the tune of Rs.578 Crores, the Ld. CIT (A) had rightly deleted the disallowance.

3.1 With respect to Ground No. 2 pertaining to addition on account of interest earned by the assessee u/s 244A of the Act, it was fairly accepted by the Ld. AR that this issue was covered against the assessee. It was, however, pleaded by the AR that since the quantum of interest received by the assessee was liable to change since appeals were pending before the Hon'ble High Court and the Hon'ble Apex Court, suitable directions may be incorporated in the order that the interest originally taxed be substituted by the

reduced/increased amount depending on final outcome of the appeals.

3.2 With respect to ground No.3 of the asssessee's appeal pertaining to the action of the Ld. CIT (A) in directing that the capital subsidy be reduced from the written down value of assets, the Ld. AR submitted that this ground and Departmental appeal's ground No.5 were related and could be taken up together. The Ld. AR drew our attention to the scheme of subsidy received from the Government of Goa which was placed at pages 237 & 238 of the Paper Book and it was submitted that the said subsidy was granted for making investment in backward areas. It was submitted that since the purpose of receiving the subsidy was not to reimburse the costs of fixed assets, directly or indirectly, the subsidy was, therefore, not required to be reduced from the costs of capital assets acquired. Reliance was placed on numerous case laws wherein it has been held that if the purpose of incentive/subsidy is towards capital account, then notwithstanding the mode of computation of incentive/subsidy with reference to the investment in assets, Explanation-10 to section 43(1) of the Act would not be attracted. It

was pleaded that the directions of the Ld. CIT (A) holding that the aforesaid subsidy was to be reduced from the actual cost of fixed assets and depreciation was to be allowed on actual cost so arrived at was not correct.

3.2.1 The Ld. AR, however, supported the order of the Ld. CIT (A) on the issue to the extent that the Ld. CIT (A) had held that the subsidy was capital in nature.

4.0 In response to the arguments of the Ld. AR with respect to the assessee's appeal, the Ld. CIT-DR submitted that as far as the disallowance u/s 14A was concerned, the Ld. CIT (A) had given a categorical finding in this regard and had given partial relief to the assessee already. It was submitted by the Ld. CIT-DR that it was an incorrect assertion by the assessee that not a single paisa was attributable towards earning exempt income. The Ld. CIT-DR submitted that the Assessing Officer had rightly invoked the provisions of Rule-8D.

4.0.1 The Ld. CIT-DR also submitted that the action of the Ld. CIT (A) in allowing partial relief to the assessee on the ground that the assessee company had significant surplus funds was

incorrect as it could not be established by the assessee that it was the surplus funds which had been utilized for making the investments.

4.1 With respect to assessee's ground No.2 challenging the addition on account of interest u/s 244A, the Ld. CIT-DR supported the orders of the Ld. CIT (A).

4.2 With respect to assessee's ground No.3 challenging the directions of the Ld. CIT (A) to reduce the value of the subsidy from the cost of capital investment, the Ld. CIT-DR vehemently argued that the conditions prescribed in the subsidy scheme were not fully met by the assesee and, therefore, the Ld. CIT (A) had erred in directing that the subsidy should be treated as capital investment.

5.0 Arguing on the grounds raised by the Department, the Ld. CIT-DR fairly accepted that ground No.1 of the Department's appeal challenging the action of the Ld. CIT (A) in deleting the addition of Rs.61,01,74,000/- on account of license fee was covered against the Department by the orders of the Tribunal in earlier assessment years.

5.1 With respect to ground No.3 of the Department's appeal, the Ld. CIT-DR again fairly accepted that the issue was covered against the Department by the order of the Hon'ble Delhi High Court as far as the depreciation on UPS was concerned

5.2 With respect to ground No.4 of the Department's appeal challenging the deletion of disallowance of Rs.33,90,330/- made by the Assessing Officer in respect of depreciation on energy saving equipment and pollution controlling devices, the Ld. CIT-DR argued that the assessee could not demonstrate that the assets had been put to use during the year under consideration. It was submitted that by the Ld. CIT-DR that depreciation was not allowable since the so called energy saving assets and pollution controlling devices had not been put to use by the assessee.

6.0 In response to the arguments of the Ld. CIT-DR made in respect of the Department's appeal, the Ld. Authorized Representative submitted that Ground No.4 of Department's appeal

challenging the disallowance of depreciation on energy saving and pollution controlling equipment had rightly been deleted by the Ld. CIT (A) as there were three certificates from the Chartered Engineers on record certifying that the equipment in question was energy saving and pollution control equipment. It was also submitted that if an asset is ready to be put to use, then deprecation has to be allowed in view of the numerous settled judicial precedents.

6.1 With respect to the license fee disallowed by the Assessing Officer but deleted by the Ld. CIT (A), reliance was placed on the order of the Ld. CIT (A) wherein the Ld. CIT (A) had decided the issue in assessee's favour by relying on the orders of the Hon'ble High Court and the Tribunal.

6.2 Similarly with respect to Department's ground No.3 regarding depreciation on UPS, it was submitted that the issue was covered in favour of the assessee by the order of the Hon'ble Jurisdictional High Court in the case of CIT vs. BSES Rajdhani Powers Ltd. in ITA 1226/2010.

7.0 We have heard the rival submissions and have also perused the material on record. We now take both the appeals for adjudication.

7.1 As far as the assessee's appeal is concerned, ground Nos.1, 1.1, 1.2, 1.3 are related to ground No.2 of the Department's appeal wherein the issue under dispute pertains to disallowance u/s 14A of the Act. The Assessing Officer had made a disallowance of Rs. 39,25,411/- u/s 14A of the Act r.w.Rule-8D of the Rules, 1962 and the Ld. CIT (A) restricted the disallowance to Rs.32,93,106/- by holding that no disallowance could have been made under the provisions of Rule 8D(2) (ii) in respect of interest expenses as the assessee company had accumulated surplus amounting to Rs.302 Crores and general reserve of 276 Crores. The Ld. CIT (A) also observed that the opening balance of investments was Rs.85.67 Crores, and, thus, investments subjected to Rule-8D were not brought forward from earlier years. It was also observed by the Ld. CIT (A) that the Assessing Officer could not demonstrate that loans were borrowed for making investments in dividend yielding

assets only. We find no reason to interfere with this factual finding of the Ld. CIT (A).

7.1.1 However, it has further been brought to our notice that in the alternate, the assessee had submitted a computation before the Assessing Officer wherein it was submitted that the disallowance, if any, could not exceed Rs.8,34,934/- being the costs of treasury operations. However, it is seen that neither the Assessing Officer nor the Ld. CIT (A) has commented on this computation of the assessee. Thus, apparently, the satisfaction, as contemplated and laid down by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. (supra) to be recorded by the Assessing Officer is completely absent and, therefore, in absence of the required satisfaction, such disallowance could not have been made. However, since, the Ld. AR has argued that the disallowance may be restricted to Rs.8,34,934/-, we, accordingly, restrict the disallowance to Rs.8,34,934/- and direct the AO to delete the remaining disallowance. Thus, ground No.1 of the assessee's appeal stands partly allowed.

7.2 As far as ground No.2 of the assessee's appeal is concerned, it challenges the addition of Rs.8,01,12,224/- on account of interest on Income Tax Refund for various earlier assessment years viz. 1999-2000, 2001-02, 2003-04. The Ld. AR has fairly accepted that this amount is taxable in the hands of the assessee. However, while dismissing this ground of the assessee's appeal, we direct that should the interest amount vary subsequently depending on the outcome of the appeals before the Hon'ble High Court and the Hon'ble Apex Court, the AO should substitute such varied amount as the case may be.

7.3 As far as ground No.3 of the assessee's appeal is concerned wherein the action of the Ld. CIT (A) in directing the Assessing Officer to reduce on proportionate basis the capital subsidy received during the relevant assessment year from the written down value of the respective block of assets is concerned, it is seen that it is connected with the ground No. 5 of the Department's appeal. It is also seen that the Ld. CIT (A) has adjudicated in assessee's appeal that the subsidy of Rs.25 Lacs received under the State Investment Subsidy Scheme was capital

receipt. The factual matrix pertaining to this controversy is that the assessee had, during the year ending 31.03.1997 relevant to assessment year 1997-98, set up a new unit in Bicholim in the State of Goa for manufacture of consumer food products namely noodles, tomato ketchup and other sauces, tomato based cooking sauces, dehydrated soups, curry paste etc. The unit was granted registration under the State Investment Subsidy Scheme by the Directorate of Industry and Mines as a large scale new unit which was entitled to the benefit of Goa State Investment Subsidy granted to it under the provisions of Goa State Investment Subsidy Scheme, 1990 for industrial units in selected backward districts/areas notified by Director of Industries, Trade & Commerce, Government of Goa ('DOI). Accordingly, an application was made in September, 1997 before the DOI for sanction of 25% State investment subsidy. During the relevant financial year corresponding to assessment year 2009-10, the DOI, vide letter dated 21.10.2008 sanctioned the subsidy of Rs.25,00,000/- in response to assessee's application received by it on 29.09.1997. The said amount of subsidy was claimed as capital receipt not liable to tax by the assessee as the aforesaid scheme was

introduced with a view to achieve faster dispersal of industries and to attract industries to the underdeveloped and developing areas of the State and for employment generation. The Scheme postulated the following important conditions, among others, for eligibility under the Scheme:

- Effective possession of land, building, plant and machinery by an eligible Unit;
- Tying up of the means of finance for the project to the satisfaction of the concerned Implementing agency;
- Acquisition of fixed Assets at site to the extent of at least 25% of the total fixed assets as envisaged for the project; and
- Evidence regarding expenditure on the project including evidence of ownership, registration certificate and other expenses paid, aggregating to at least 25% of the capital cost envisaged for the project.
- Employment of locals to the extent of 80% of the total workforce.

7.3.1 The quantum of the subsidy under the aforesaid scheme was subject to monetary ceiling of Rs.25 lakhs, specified as a percentage of fixed capital investment. The AO held that the amount of subsidy was taxable as a revenue receipt but on

appeal, the Ld. CIT (A) held that the aforesaid subsidy was a capital receipt in view of the following:

- the scheme was for promoting industrialization of notified backward districts;
- it was applicable to SSI units having valid SSI registration;
- the quantum of subsidy was 25% subject to a maximum of Rs.25 lakhs on the investment made on the fixed capital investment after 01.10.1998 only;
- one of the major requirement of the scheme was that the unit should employ at least 80% of the local employees.

7.3.2 The Ld. CIT (A) placed reliance on the following decisions while holding as aforesaid:

- Ponni Sugar & Chemicals Ltd. vs. CIT: 306 ITR 392 (SC) dated 16.09.2008
- Sahney Steel and Press Works Ltd. and Others v. CIT: 228 ITR 253 (SC) dated 19.09.1997
- CIT v. Ruby Rubber Works Ltd.: 178 ITR 181 (Kerala) dated 06.04.1989 [The said decision has been approved by the Supreme Court in the case of Kalpetta Estate Ltd. v. CIT: 221 ITR 601 (SC) dated 16.06.1996]

7.3.3 We note that it is settled law that the taxation of subsidy, by whatever name called, is determined by the

purpose for which the subsidy is granted and not the form/mode/manner in which the subsidy is received/disbursed. Therefore, we find no reason to interfere with the findings of the Ld. CIT (A) on the issue that the impugned subsidy was a capital receipt. Thus Ground No.5 of the Department's appeal does not hold any substance and the same is dismissed.

7.3.4 Coming back to the assessee's connected Ground No.3, we note that the Hon'ble Apex Court in the case of *CIT vs. PJ Chemicals Ltd. reported in 2010 ITR 830 (SC)* had held that where the Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of fixed capital costs, which is the basis for determining the subsidy, is only a measure adopted in the scheme to quantify the amount of subsidy and it is not a payment directly or in directly to meet any portion of the actual costs of assets. In the present case, as per the scheme of the subsidy, the same has not been received for meeting the costs of fixed asset directly or indirectly and it is only for the purposes of investment in backward areas and for generation of employment in

such area. This is evident from the condition that the industry receiving the subsidy should employ 80% of the local population. Therefore, it is our considered opinion that the Ld. CIT (A) was not correct in directing the Assessing Officer to reduce the amount of subsidy from the actual cost of fixed assets and, thereafter, allow depreciation on such actual costs so arrived that. We set aside the order of the Ld. CIT (A) on this issue and we direct the Assessing Officer to allow deprecation on the actual cost of assets without reducing the amount of subsidy there from. Thus Ground No.3 of the assessee's appeal stands allowed.

7.4 Coming to the remaining issues in the Department's appeal, Ground No.1 challenges the action of the Ld. CIT (A) in deleting the addition of Rs.61,01,74,000/- made on account of license fee. It is seen that the Assessing Officer, following the order of his predecessor for the immediately preceding assessment year 2008-09, disallowed on *ad hoc* basis 40% of the general license fee paid by the assessee to M/s Societe des Produtis Nestle, S.A. Switzerland for use for know-how and technical assistance, alleging that the same was excessive and not reasonable

and had not been incurred for the purposes of business of the assessee. The Ld. CIT (A) on appeal, relying on the various orders of the Hon'ble High Court and the Tribunal in assessee's own case deleted the disallowance.

7.4.1 It is seen that this issue is covered in favour of the assessee by the following orders of the Hon'ble High Court and the Tribunal rendered in assessee's case in the earlier Assessment Years as under:

Assessment Years	Authority Passing Order	Appeal No.	Date of order
1997-98	ITAT	ITA NO.4545/Del/2000	10.01.2005
1998-99	ITAT	ITA NO.2239/Del/2002	10.01.2005
1999-00	ITAT	ITA NO.2755/Del/2003	30.04.2007
2000-01	ITAT	ITA NO.2714/Del/2004	15.06.2007
2001-02	ITAT	ITA NO.1979/Del/2006	27.03.2009
2002-03	ITAT	ITA NO.1980/Del/2006	27.03.2009
2003-04	ITAT	ITA NO.1612/Del/2007	24.07.2009
2004-05	ITAT	ITA NO.3096/Del/2007	24.07.2009
2005-06	ITAT	ITA NO.319/Del/2010	22.03.2010
2006-07	ITAT	ITA NO.4477/Del/2010	18.11.2011
2007-08	ITAT	ITA NO.4669/Del/2012	03.01.2014
2008-09	ITAT	ITA NO.4670/Del/2012	03.01.2014
1997-98 to 2000-01 and 2005-06	Delhi High Court	ITA No.662/2005, ITA No.1202/2005, ITA No.96/2008, ITA No.294/2008, ITA No.288/2011,	11.05.2011
2006-07	Delhi High Court	ITA No.644/2012	21.11.2012

2007-08	Delhi High Court	ITA No.502/2014	10.09.2014
2008-09	Delhi High Court	ITA No.532/2014	10.09.2014

7.4.2 The Ld. CIT-DR also could not controvert this fact. Therefore, in view of the binding judicial precedents in asssessee's own case as enumerated above, we find no reason to interfere with the findings of the Ld. CIT (A) on the issue. Accordingly, Ground No.1, of the Department's appeal stands dismissed.

7.5 Ground No.3 of the Department's appeal challenges the action of the Ld. CIT (A) in deleting the disallowance of Rs.1,39,152/- made by the Assessing Officer by restricting the claim of depreciation in respect of UPS from 60% to 15%. The Ld. CIT-DR as fairly accepted that this issue is covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of CIT vs. BSES Rajdhani Power Limited in ITA No.1266/2010 vide order dated 31.08.2010 and CIT vs. BSES Yamuna Power Ltd. vide order dated 31.08.2010. It is seen that the Hon'ble Delhi High Court has held that UPS is to be considered as an integral part of

the computers and depreciation is to be allowed @ 60%. Accordingly, in view of the settled legal position, we find no reason to interfere with the findings of the Ld. CIT (A) on this issue also and dismiss ground No.3 of the Department's appeal.

7.6 Ground No.4 of the Department's appeal challenges the action of the Ld. CIT (A) in deleting the disallowance of Rs. 33,90,330/- made by the Assessing Officer by denying the claim of the depreciation in respect of energy saving and pollution control equipment on the ground that it was not put to use. It is seen that the Assessing Officer disallowed the claim of depreciation by alleging that the assessee has only established the factum of purchase of assets and not the condition of assests being put to use. The Assessing Officer further observed that comparative results were not submitted to establish that assets were energy saving and pollution control equipment. It is also seen that no adverse observation had been made by the Assessing Officer with respect to the purchase and installation of such assets. In addition to this, the assessee had also submitted certificates from Chartered Engineers to the effect that the assets purchased fall within the category of Air

Pollution Control Equipment, Water Control Equipment, Energy Saving Devices and Renewable Energy Devices. These certificates submitted by the assessee have been taken note of by the Assessing Officer but have not been commented upon. It is not in dispute that the assets fall within the description of the assets referred to in the Income Tax Rules which contains the deprecation schedule. The only objection of the Assessing Officer seems to be that the assets had not been put to use and that the assessee could not furnish comparative results. However, provisions of Sec.32 of the Act do not mandate such requirement. To assume that having purchased and installed the energy saving devices and pollution control equipment but not putting the same to use is, thus, just a baseless surmise and conjecture which stands negated by the certificates from the Chartered Engineers. Therefore, it is our considered opinion that the Ld. CIT (A) was absolutely correct in holding that having installed the devices, the assessee had extensively put the assets to use for the purposes of business and that under the law, the assessee was not required to monitor the outcome of use of such items in its business. The Hon'ble Delhi High Court in the case of *CIT vs. Insilco*

Ltd. reported in 2009 ITOL 115-HC-DEL had held that it would be more appropriate to understand the expression 'use' as comprehending cases where the machinery is kept ready by the owner for its use in its business. Therefore, we find no reason to interfere with the findings of the Ld. CIT (A) on this issue also and we dismiss ground No.4 of the Department's appeal.

8.0 In the final result, the appeal of the assessee bearing ITA No.1954/Del/2014 stands partly allowed and the Department's appeal bearing ITA No.2020/Del/2014 stands dismissed.

Order pronounced on 22/07/2020.

Sd/-	Sd/-
(G.S.PANNU)	**(SUDHANSHU SRIVASTAVA)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 22/07/2020
PK/Ps
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI