

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

**BEFORE, SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.4916/Del/2014
(ASSESSMENT YEAR-2010-11)**

**ITA No.4816/Del/2016
(ASSESSMENT YEAR-2011-12)**

Dy.CIT Circle-1, (LTU), Delhi	Vs.	M/s Nestle India Ltd. M Block, Nestle House DLF City, Phase-II, Jacaranda Marg, Gurgaon-122 002 PAN:AAACN 0757G
(Appellant)		(Respondent)

**ITA No.4911/Del/2017
(ASSESSMENT YEAR-2012-13)**

**ITA No.4912/Del/2017
(ASSESSMENT YEAR-2013-14)**

**ITA No.4913/Del/2017
(ASSESSMENT YEAR-2014-15)**

Asst. CIT Circle-1, (LTU), New Delhi	Vs.	M/s Nestle India Ltd. M Block, Nestle House DLF City, Phase-II, Jacaranda Marg, Gurgaon-122002 PAN:AAACN 0757G
(Appellant)		(Respondent)

2. ITA No.4916/Del/2014 & Ors
DCIT (LTU) vs. Nestle India Ltd. Gurgaon

Cross Objection No.37/Del/ 2019
(Arising out of ITA No.4916/Del/2017)
(ASSESSMENT YEAR-2010-11)

M/s Nestle India Ltd. M Block, Nestle House DLF City, Phase-II, Jacaranda Marg, Gurgaon-122002 PAN:AAACN 0757G	Vs.	Dy.CIT (LTU), Delhi
(Cross Objector)		(Respondent)

ITA No.4121/Del/2017
(ASSESSMENT YEAR-2012-13)

ITA No.4122/Del/2017
(ASSESSMENT YEAR-2013-14)

ITA No.4123/Del/2017
(ASSESSMENT YEAR-2014-15)

ITA No.4390/Del/2016
(ASSESSMENT YEAR-2011-12)

M/s Nestle India Ltd. M-Block, Nestle House DLF City, Phase-II, Jacaranda Marg, Gurgaon-122002 PAN:AAACN 0757G	Vs.	Dy. CIT Circle-1, (LTU), New Delhi
(Appellant)		(Respondent)

3. ITA No.4916/Del/2014 & Ors
DCIT (LTU) vs. Nestle India Ltd. Gurgaon

Appellant By	Sh. Ajay Vohra, Sr. Adv. Sh. Neeraj Jain, CA Sh. Karan Jain, CA Sh. Ansul Sachar, Adv.
Respondent by	Ms Pramita M. Biswas, CIT-DR
Date of Hearing	27.07.2020
Date of Pronouncement	31.07.2020

ORDER

PER BENCH:

This group of ten appeals/cross objection for Assessment Years (A.Ys) 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 involve identical issues. Accordingly, they were heard together and are being disposed of through this common order for the sake of convenience.

2.0 ITA No.4916/Del/2014 is Department's appeal for Asst. Year 2010-11 and is preferred against the order of the Ld. Commissioner of Income Tax (Appeals) {CIT (A)} dated 14.07.2014. The assessee has filed Cross Objection bearing C.O. No.37/Del/2019 against the Department's Appeal. ITA No.4390/Del/2016 is the assessee's appeal for Asst. Year: 2011-12 which has been preferred against the order of the Ld. CIT (A) dated 21.06.2016 whereas ITA

No.4816/Del/2017 is the Department's cross appeal for the same year. ITA No.4122/Del/2017 is assessee's appeal for Asst. Year: 2012-13 which against the order of the Ld. CIT (A) dated 01.05.2017 whereas ITA No.4911/Del/2017 is the Department's Cross appeal for the same year. ITA No.4122/Del/2017 is assessee's appeal for Asst. Year: 2013-14 which challenges the order of the Ld. CIT (A) dated 01.05.2017 and ITA No.4912/Del/2017 is the Department's Cross Appeal for Asst. Year 2013-14. ITA No. 4123/Del/2017 is assessee's appeal for Asst. Year: 2014-15 and challenges the findings of the Ld. CIT (A) as contained in order dated 01.05.2017. The Department's cross appeal for Asst. Year: 2014-15 is captioned as ITA No.4913/Del/2017.

2.1 The respective grounds raised by both the parties for the captioned assessment years are as under:

2.2 ITA No.4916/Del/2014 for A.Y.2010-11 (Department's appeal):

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.73,40,98,815/- made by AO on account of disallowance of 40% of general licence fee, holding the same as not*

incurred wholly and exclusively for the purpose of business of the assessee.

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.16,95,310/- to Rs.2,43,995/- thereby granting relief to the extent of Rs.14,51,315/-.*

3. *On the facts and circumstance of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.2,80,321/- made by AO by restricting the depreciation on UPS @15% as against assessee's claim @60%.*

4. *On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.17,27,059/- 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. *The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing."*

2.3 ITA No.4816/Del/2016 for A.Y.2011-12 (Department's appeal):

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.90,77,99,068/- made by AO on account of disallowance of 40% of general licence fee, holding the same as not incurred wholly and exclusively for the purpose of business of the assessee.*

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.18,33,783/- to Rs.17,58,758/- thereby granting relief to the extent of Rs.75,025/-.

3. On the facts and circumstance of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.50,82,770/- made by AO denying the claim of depreciation in respect of pollution control equipment as there was no evidence submitted to indicate that they were pollution control equipments.

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

2.4 ITA No.4911/Del/2017 for A.Y.2012-13 (Department’s appeal):

1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs.1,06,54,85,768/- made by the AO on account of disallowance of 40% of general license fee, holding that the same as not incurred wholly and exclusively for the purpose of business of the assessee.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in reducing the disallowance made u/s 14A from Rs.31,21,639/- to 30,72,696/- thereby granting relief to the extent of Rs.48,943/-

3. 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.2,59,26,734/- made by AO denying the claim of depreciating in respect or pollution control equipment as there was no evidence submitted to indicate that they were pollution control equipments.

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

2.5 ITA No.4912/Del/2017 for A.Y.2013-14 (Department's appeal):

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs.1,17,83,98,395/- made by the AO on account of disallowance of 40% of general license fee, holding that the same as not incurred wholly and exclusively for the purpose of business of the assessee.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in reducing the disallowance made u/s 14A from Rs.32,42,193/- to 31,20,127/- thereby granting relief to the extent of Rs.1,11,033/-*
3. *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.4,50,01,287/- made by AO denying the claim of depreciating in respect or pollution control equipment as there was no evidence submitted to indicate that they were pollution control equipments.*
4. *The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.*

2.6 ITA No.4913/Del/2017 for A.Y.2014-15 (Department's appeal):

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition of Rs.1,25,91,03,440/- made by the AO on account of disallowance of 40% of general license fee, holding that the same as not incurred wholly and exclusively for the purpose of business of the assessee.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in reducing the disallowance made u/s 14A from Rs.21,18,404/- to 20,30,404/- thereby granting relief to the extent of Rs.88,002/-*
3. *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.41,66,502/- made by AO denying the claim of depreciating in respect or pollution control equipment as there was no evidence submitted to indicate that they were pollution control equipments.*
4. *The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.*

2.7 Cross Objection No.37/Del/2019 for Asst. Year: 2010-11 filed by the assessee:

- a. *That the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and in law in upholding the action of the Assessing Officer ['AO'] in confirming the disallowance of Rs.14,51,315/- under section 14A of the Income-tax Act,*

1961 [‘the Act’] read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 [‘the Rules’].

- b. 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.*
- c. That the CIT (A) erred on facts and in law in not appreciating that no satisfaction as required by law before resorting to Rule 8D of the Rules for purposes of making disallowance under section 14A of the Act was recorded by the AO.*
- d. The respondent craves leave to add, amend, alter or vary from the above grounds at or before the time of hearing.*

2.8 ITA No.4121/Del/2017 for A.Y.2012-13 (Assessee’s appeal):

1. That the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred on facts and in law in upholding the action of the assessing officer [‘AO’] in disallowing expenditure of Rs.30,72,696 under section 14A of the Income-tax Act, 1961 [‘the Act’] read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 [‘the 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 no satisfaction as required by law was recorded by the AO before resorting to Rule 8D of the Rules for purposes of making disallowance under section 14A of the Act.

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.9,64,928/- as per computation provided by the appellant.

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

2.9 ITA No.4122/Del/2017 for A.Y.2013-14 (Assessee's appeal):

1. That the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and in law in upholding the action of the assessing officer ['AO'] in disallowing expenditure of Rs.32,31,160/- under section 14A of the Income-tax Act, 1961 ['the Act'] read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 ['the 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 no satisfaction as required by law was recorded by the AO before resorting to Rule 8D of the Rules for purposes of making disallowance under section 14A of the Act.

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.20,13,989/- as per computation provided by the appellant.

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

2.10 ITA No.4123/Del/2017 for A.Y.2014-15 (Assessee's appeal):

1. *That the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and in law in upholding the action of the assessing officer ['AO'] in disallowing expenditure of Rs.20,30,402/- under section 14A of the Income-tax Act, 1961 ['the Act'] read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 ['the 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 no satisfaction as required by law was recorded by the AO before resorting to Rule 8D of the Rules for purposes of making disallowance under section 14A of the Act.*

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.17,02,026/- as per computation provided by the appellant.*

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

2.11 ITA No.4390/Del/2016 for A.Y.2011-12 (Assessee's appeal) :

1. *That the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and in law in upholding the action of the assessing officer ['AO'] in disallowing expenditure of*

Rs.17,58,758/- under section 14A of the Income-tax Act, 1961 [‘the Act’] read with Rule 8D (2)(iii) of the Income-tax Rules, 1962 [‘the 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 no satisfaction as required by law was recorded by the AO before resorting to Rule 8D of the Rules for purposes of making disallowance under section 14A of the Act.

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.10,02,954/- as per computation provided by the appellant.

2. That the CIT (A) erred on facts and in law in upholding the action of the AO in allowing depreciation on UPS @ 15% instead of 60% as claimed by the appellant, holding that UPS is neither a computer nor a computer accessory.

2.1. That the CIT (A) erred on facts and in law in confirming the aforesaid disallowance without appreciating that the UPS were used by the appellant along with computer systems at different locations.

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

2.12 Thus, it is seen that the assessee is challenging disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter called 'the Act) read with Rule-8D of the Income Tax Rules, 1962 ('the Rules') in all the assessment years under consideration. The Department also has challenged the part - relief allowed by the Ld. CIT (A) with respect to disallowance under Rule-14A made by the Assessing Officer. Apart from this, the assessee is also challenging the action of the Ld. CIT (A) in upholding the action of the AO in not allowing depreciation on UPS @ 60% in AY 2011-12 whereas the Department is in appeal in AY 2010-11 on the same issue challenging the action of the Ld. CIT (A) in directing that depreciation on UPS be allowed @ 60%. Apart from this, the Department is challenging the relief granted by the Ld. CIT (A) with respect to disallowance of license fee and depreciation on pollution control equipment/ energy saving devices in all the years under appeal.

3.0 The brief facts of the case are that the assessee company is manufacturer of wide range of food items covering beverages,

baby food powders, chocolates and confectionery, culinary products, etc.

3.1 The returns of income for the various years under consideration, the additions/disallowances made by the Assessing Officer (AO) and the income assessed as per the assessment orders are as under:

(i) Assessment Year: 2010-11

- (a) Returned income - Rs.7,79,66,41,380/-
- (b) Disallowance of license fee - Rs.73,40,98,815/-
- (c) Disallowance u/s 14A - Rs.16,95,310/-
- (d) Disallowance of depreciation - Rs.20,28,005/-
- (e) Total additions - Rs.73,78,22,130/-
- (f) Assessed income - Rs.8,53,44,63,510/-

(ii) Assessment Year: 2011-12

- (a) Returned income - Rs.10,10,12,81,200/-
- (b) Disallowance of license fee - Rs.90,77,99,068/-
- (c) Disallowance u/s 14A - Rs.18,33,783/-
- (d) Disallowance of depreciation - Rs.52,55,604/-
- (e) Total additions - Rs.91,48,88,455/-
- (f) Assessed income - Rs.11,01,61,69,655/-

(iii) Assessment Year: 2012-13

- (a) Returned income - Rs.12,53,68,36,330/-
- (b) Disallowance of license fee - Rs.1,06,54,85,768/-
- (c) Disallowance u/s 14A - Rs.31,21,639/-
- (d) Disallowance of depreciation - Rs.2,59,26,734/-
- (e) Total additions - Rs.1,09,45,34,141/-
- (f) Assessed income - Rs.13,63,13,70,471/-

(iv) Assessment Year:2013-14

- (a) Returned income - Rs.12,40,55,72,280/-
- (b) Disallowance of license fee - Rs.1,17,83,98,395/-
- (c) Disallowance u/s 14A - Rs.33,42,193/-
- (d) Disallowance of depreciation - Rs.4,50,01,287/-
- (e) Total disallowance - Rs.1,22,67,41,872/-
- (f) Assessed income - Rs.13,63,23,14,155/-

(v) Assessment Year: 2014-15

- (a) Returned income - Rs.15,43,73,93,380/-
- (b) Disallowance of license fee - Rs.1,25,91,03,440/-
- (c) Disallowance u/s 14A - Rs.21,18,404/-
- (d) Disallowance of depreciation - Rs.41,66,502/-
- (e) Total disallowance - Rs.1,26,53,88,346/-
- (f) Assessed income - Rs.16,70,27,81,726/-

3.2 In all the captioned years, the assessee had approached the Ld. First Appellate Authority against the additions/disallowances made in the assessment order as stated in the previous paragraphs.

3.3 With respect to the disallowance of license fee, the Ld. CIT (A) has deleted the addition made by the Assessing Officer in all the years under appeal. The Assessing Officer had made a disallowance of 40% on *ad hoc* basis of the royalty paid by the assessee to Societe Des Produits Nestle SA for the use know-how and provision of technical assistance alleging to same to be excessive and unreasonable and not having been incurred for the purpose of the business of the assessee. The Ld. CIT (A) has deleted the addition by relying on the orders of the Tribunal and the Hon'ble Delhi High Court in assessee's own case in earlier Asst. Years. The Department is in appeal against this deletion of disallowance by the Ld. CIT (A) in all the years before us.

3.4 The second issue under challenge by the Department in Asst. Years 2010-11, 2011-12, 2012-13 2013-14 & 2014-15 is action of the Ld. CIT (A) in deleting the addition with respect to

depreciation in respect of energy saving and pollution control equipment which had been disallowed by the AO on the ground that the equipment and the devices had not been put to use.

3.5 The third controversy in this bunch of appeals is whether depreciation on UPS is to be allowed @ 60% or 15%. The AO has taken a view that UPS is a part of plant and machinery and is, therefore, eligible to depreciation only @ 15% whereas it has been the contention and claim of the assessee that UPS, being an integral part of the computer, is eligible to depreciation @ 60%. In AY 10-11, the Ld. CIT (A) allowed the claim of the assessee and the Department is in appeal before us whereas in Asst. Year: 2011-12, the Ld. CIT (A) upheld the action of the Assessing Officer in restricting the depreciation on UPS to 15% and the assessee in appeal against the said finding of the Ld. CIT (A).

3.6 Disallowance u/s 14A of the Act read with Rule-8D is subject to challenge by both the parties during the years under appeal. The details of dividend earned by the assessee, *suo moto* disallowance offered by the assessee company, disallowance made

u/s 14A by the Assessing Officer, disallowance deleted by Ld. CIT (A) and disallowance sustained by the Ld. CIT (A) are depicted in the following chart:

ASST. YEARS	DIVIDEND INCOME (in Rs.)	DISALLOWANCE OFFERED BY THE COMPANY, ON <i>SUO MOTO</i> BASIS (in Rs.)		DISALLOWANCE UNDER 14A MADE BY THE ASSESSING OFFICER [A+B] (in Rs.)	Disallowance of 14A under Rule 8D(2)(iii), deleted by CIT(A) [A]	Disallowance of 14A under Rule 8D(2) (iii), sustained by CIT(A) [B] (in Rs.)
2010-11	3,27,60,532		11,52,656	16,95,310	2,43,995	14,51,315
2011-12	5,15,55,446		10,02,954	18,33,783	75,025	17,58,785
2012-13	7,97,78,187		9,64,928	31,21,639	48,943	30,72,696
2013-14	9,29,02,863		20,13,989	33,42,193	1,11,033	32,31,160
2014-15	12,02,94,974		17,02,026	21,18,404	88,002	20,30,402

3.6.1 The basic contention of the assessee against the disallowance u/s 14A as sustained by the Ld. CIT (A) is that since the assessee had made a *suo moto* disallowance under the provisions of section 14A, the Assessing Officer could not have made a disallowance in excess of the said *suo moto* disallowance without recording a satisfaction as to how the assessee's *suo moto* disallowance was defective. It is also the assessee's plea that the Assessing Officer could not have made the disallowance in absence of him having established any nexus between the amount of expenditure and the exempt income earned by the assessee.

3.6.2 On the other hand, the Department is challenging the action of the Ld. CIT (A) in deleting the disallowance made in

terms of Rule-8D (2)(ii) on the ground that since the assessee had surplus funds available with it, it could not be inferred that the assessee had utilized borrowed funds for the purposes of making investment and, therefore, no disallowance could be made for the interest expenditure.

4.0 At the outset, it has been submitted by the Ld. AR that all the issues before us i.e. both in the assessee's appeals/ Cross Objection and the Department's appeals were squarely covered in favour of the assessee by the order of the Tribunal in the immediately preceding assessment year i.e. Asst. Year: 2009-10 in assessee's own case vide order dated 22.07.2020 in ITA No.1954/Del/2014 being the assessee's appeal and in ITA 2020/Del/2014 being the Department's appeal. The Ld. AR has argued that on identical facts, the Tribunal has held all the issues in favour of the assessee and, therefore, detailed arguments were not required on any of the issues in this bunch of appeals. The Ld. AR drew the Benches attention to the relevant paragraphs of the said order of the Tribunal and submitted that the findings recorded

by the Tribunal in the immediately preceding Asst. Year: 2009-10 kindly be followed in these five years under appeal also.

5.0 Per contra, the Ld. CIT-DR fairly accepted that by and large all the issues in this bunch of appeals stood covered in favour of the assessee by the order of the Tribunal as aforesaid. The Ld. CIT-DR, however submitted that so far as the finding of the Tribunal with respect to non recording of satisfaction by the Assessing Officer prior to making the disallowance u/s 14A of the Act was concerned, each Asst. Year would have to be examined separately as there is no *res-judicata* in Income Tax proceedings. The Ld. CIT-DR also fairly accepted that depreciation on UPS was allowable @ 60% even as per the amended rates provided in the depreciation schedule.

6.0 We have gone through the records and have also perused the orders of the lower authorities and have also perused the order of the ITAT in assessee's own case for Asst. Year: 2009-10. So far as the issue of disallowance u/s 14A read with Rule-8D is concerned, which is also related to the Department's challenge to a part

deletion of the disallowance by the Ld. First Appellate Authority by holding that no disallowance could have been made in respect of interest expenses as the assessee had accumulated surplus, we find that this issue stands covered in favour of the assessee by the order of the Tribunal in Asst. Year: 2009-10. The relevant observations of the Tribunal are contained in paragraphs 7.1, 7.1.1. The same are being reproduced herein under for a ready reference:

“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."*

6.0.1 We also note that although the Ld. CIT-DR has submitted that the issue of recording the satisfaction has to be examined every year and that there is no *res-judicata* in Income Tax proceedings, all the same, a perusal of the Asst. orders for the years under appeal shows that the Assessing Officer has made identical observations in all the years under appeal and in all the years the factum of recording of satisfaction is completely absent. We also note that the assessee had made *suo moto* disallowances in the years under appeal as under:

2010-11	Rs.11,52,656/-
2011-12	Rs.10,02,954/-
2012-13	Rs.9,64,928/-
2013-14	Rs.20,13,989/-
2014-15	Rs.17,02,026/-

6.0.2 The above *suo moto* disallowances were not commented upon by the Assessing Officer but were completely disregarded and no satisfaction for not accepting the *suo moto* disallowances was recorded by the AO. The Ld. AR has also submitted that the disallowances may be restricted to the *suo moto* disallowance offered by the assessee company. Therefore, we

sustain the disallowance u/s 14A, as offered by the assessee company for the various years under appeal as under:

2010-11	Rs.11,52,656/-
2011-12	Rs.10,02,954/-
2012-13	Rs.9,64,928/-
2013-14	Rs.20,13,989/-
2014-15	Rs.17,02,026/-

6.0.3 Accordingly, the ground raised by the assessee stands partly allowed and grounds raised by the Department are dismissed with respect to disallowance u/s 14A in all the five years under consideration.

6.1 The next issue under challenge by the Department is the action of the Ld. CIT (A) in deleting the *ad hoc* disallowance @ 40 % of the license fee paid by the assessee company to M/s Societe Des Produtis Nestle, SA Switzerland. The Assessing Officer made the following disallowance in respect of the license fee for the different years under consideration:

Asst. Years.	License Fee
2010-11	Rs.73,40,98,815/-
2011-12	Rs.90,77,99,068/-
2012-13	Rs.1,06,54,85,768/-
2013-14	Rs.1,17,83,98,395/-
2014-15	Rs.1,25,91,03,440/-

6.2 The Ld. CIT (A), however, deleted the disallowance by relying on various orders of the Hon'ble High Court and the Tribunal in assessee's own case. It is seen that this issue is squarely covered in favour of the assessee by the orders of the Hon'ble High Court and the Tribunal in assessee's own case in earlier Asst. Years. We also note that this issue was also decided in favour of the assessee by dismissing the Department's ground in immediately preceding Asst. Year: 2009-10 by a Co-ordinate Bench of this Tribunal. The relevant observations of the ITAT in this regard are contained in paragraphs 7.4, 7.4.1 & 7.4.2 of the said order and the same are reproduced here in under for a ready reference:

“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 Productis 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 assessee'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."

6.2.1 Accordingly, in view of the above binding judicial precedents in assessee's own case and on identical facts, we uphold the findings of the Ld. CIT (A) on the issue and dismiss the ground raised by the Department *vis a vis* license fee in all the years under consideration.

6.3 The next issue before us is the rate of depreciation to be allowed on UPS. The assessee has claimed depreciation @ 60% in all the years under appeal whereas the AO has restricted the same to 15% in AY 2010-11 and 2011-12. In Asst. Years: 2010-11, the Ld. CIT (A) deleted the disallowance but in Asst. Year 2011-12 the Ld. CIT (A) has upheld the disallowance. We note that this issue is squarely covered in favour of the assessee by numerous orders of the Tribunal as well as of the Hon'ble Delhi High Court. Even in Asst. Year: 2009-10, the Tribunal, in assessee's own case has decided the issue in favour of assessee by upholding the order of the Ld. CIT (A) on the issue. The relevant observations of the

Tribunal are contained in paragraph 7.5 of the said order which are as under:

“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.”

6.3.1 We also note that now even the depreciation schedule provides depreciation on UPS @ 60%. Thus, the controversy is now settled by the amendment in the depreciation schedule itself. Accordingly, in Asst. Year 2010-11 we dismiss the ground raised by the Department and in Asst. Year: 2011-12 we allow the ground raised by the assessee with respect to depreciation

on UPS and direct that the assessee should be given benefit of depreciation on UPS @ 60%.

6.4 The only issue now remaining in the bunch of appeals is depreciation on pollution control equipment and energy saving devices. The Assessing Officer has denied depreciation on pollution control equipment and energy saving devices on the ground that the assessee could not establish that the pollution control equipment and energy saving devices were put to use by the assessee. The following disallowances were made by the Assessing Officer in respect of depreciation on such equipment and devices in the years under appeal as under:

Asst. Years.	Disallowance of license fee	Disallowance of depreciation on pollution control equipment (in Rs.)
2010-11	73,40,98,815	17,27,059
2011-12	90,77,99,068	17,27,059
2012-13	1,06,54,85,768	2,59,26,734
2013-14	1,17,83,98,395	4,50,01,287
2014-15	1,25,91,03,440	41,66,502

6.4.1 However, the Ld. CIT (A) has deleted these disallowances in all the years under consideration before us. We note that this issue is also covered in favour of the assessee by the order of the Co-ordinate Bench of the ITAT in assessee's own case for Asst. Year: 2009-10 wherein the Tribunal has upheld the findings of the Ld. CIT (A) in deleting the said depreciation disallowance made by the Assessing Officer. The relevant findings of the Tribunal are contained in paragraph 7.6 of the order of the ITAT and the same is being reproduced herein under for a ready reference:

“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 assets 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 depreciation 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.

6.4.2 Therefore, in view of the findings of the Co-ordinate Bench in assessee's own case for Asst. Year: 2009-10 as aforesaid, we dismiss the ground raised by the Department on the issue of disallowance of depreciation on pollution control equipment and energy saving devices in all the five years under appeal.

7.0 In the final result, the four appeals of the assessee and the Cross Objection of the assessee stands partly allowed and all the five appeals of the Department stand dismissed.

Order pronounced on 31/07/2020.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER

Dated: 31/07/2020

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI