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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 24.05.2023

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Judgement pronounced on 04.07.2023

+ **ITA 301/2023**

PRINCIPAL COMMISSIONER OF INCOME
TAX DELHI 4

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
Standing Counsel.

versus

NESTLE INDIA LTD

..... Respondent

Through: Mr Ajay Vohra, Sr Advocate with Mr
Neeraj Jain, Mr Aniket D. Agarwal
and Mr Saksham Singhal, Advs.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

RAJIV SHAKDHER, J.:

1. This appeal concerns Assessment Year (AY) 2011-12.
2. *Via* the above-captioned appeal, the appellant/revenue has assailed the common order of the Income Tax Appellate Tribunal [in short, "Tribunal"] dated 31.07.2020 passed in ITA No.4816/Del/2016. The following questions of law have been proposed by the appellant/revenue in the above-captioned appeal:

“(i) Whether in the facts and circumstances of the case and in law Hon 'ble ITAT is correct in deleting the addition of Rs.90,77,99,068/- made by AO, on account of disallowance of license fee?”



(ii) Whether in the facts and circumstances of the case and in law Hon'ble ITAT is correct in reducing the disallowance u/s 14A of the Act to Rs. 17,58,758/- from Rs.18,33,783/- made by the Assessing Office in accordance with Rule 8D and according to CBDT Circular 5/2014 dated 11/02/2014?

(iii) Whether in the facts and circumstances of the case and in law Hon'ble ITAT is correct in allowing higher depreciation @60% as against depreciation @15% allowed by the AO overlooking the functional test proving and establishing perversity in the order passed by them both on facts and in law, especially when the case of BSES Rajdhani Powers has been overruled by Hon'ble Madras High Court in the case of Dinamalar Vs ITO Ward 1(1) Madurai [(2016) 74 taxmann.com 14 (Madras)]?

(iv). Whether in the facts and circumstances of the case and in law Hon'ble ITAT is correct in confirming the order of CIT(A) deleting the addition of Rs.50,82,770/- made by AO on account of disallowance of depreciation on energy saving & pollution control devices, which were not put to use by the assessee, during the year under consideration?"

3. Insofar as proposed question no. (i) is concerned, it is covered by the decision dated 11.05.2011 of the coordinate bench of this court rendered in ITA 662/2005. Via this decision, appellant/revenue's appeal was dismissed. Likewise, proposed question nos. (ii) and (iv) are covered by our judgement dated 17.05.2023, rendered in ITA 281/2023. Via the aforesaid judgement, we concluded that no substantial question of law arose for consideration and thus, sustained the view taken by the Tribunal.

4. The remaining question i.e., proposed question no. (iii) was also subject matter of another appeal preferred by the appellant/revenue i.e., ITA



303/2023 in which arguments were heard and judgement was reserved on 24.05.2023.

5. In ITA 303/2023, the appeal of the appellant/revenue has been dismissed and the questions of law, as framed, have been answered in favour of the respondent/assessee.

6. Hence, in the above-captioned appeal, no substantial question arises for our consideration.

7. The appeal is, accordingly, closed.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 4, 2023/vg