

## IN THE HIGH COURT OF DELHI AT NEW DELHI

12.05.2009

Present : Ms P.L.Bansal and Mr M.P.Gupta, Advocates for the Appellant.  
Mr. Santanu Kanangu, Advocate for the Respondent.

ITA No.281/2009

B.J.DULPEX BOARD LTD

Notice was issued because of the reliance placed on CIT 'vs - Oriental Coal Co. Ltd. [1994] 06 ITR 682. In the present case the view taken by the Assessing Officer is that the assets were not put to use and, therefore, depreciation claimed to the tune of Rs 53,277,87/- was not allowable.

This view has not found favour with the ITAT. In a recent judgment of this Bench in CIT 'vs- Insilco Limited; 2009 IV AD (Delhi) 170, we had considered the previous decisions of the Division Benches of this Court in CIT 'vs- Refrigeration and Allied Industries Ltd. as also Capital Bus Service Pvt. Ltd. -vs- CIT; (1980) 123 ITR 404 (Del) etc.

The Refrigeration and Allied Industries Ltd. was cited before the CIT(Appeals). In these circumstances, reliance by counsel for the Revenue on Oriental Coal is misplaced. We clarify with respect that the views of the Calcutta High Court have not been followed by the Delhi High Court.

We do not propose to give an elaborate decision since a discussion on this question has been gone into in great detail in Insilco Limited and aforementioned judgments of this Court. Since there has been a passive user and that the machinery has been kept ready for use which is a pure finding of fact, the Assessee is entitled to depreciation.

No substantial question of law has arisen for our consideration.

Dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

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