

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DELHI**

**BEFORE SH.G.D.AGRAWAL, HON'BLE PRESIDENT  
AND  
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 5507/Del/2015  
(ASSESSMENT YEAR: 2010-11)**

Vipul Infracon Pvt.Ltd., 14/185-186, Ground Floor, Main Shivalik Road, Malviya Nagar, New Delhi-110017. PAN-AAACT4544M	<b>vs</b>	DCIT, Central Circle-02, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Sh. Rajesh Arora, CA
<b>Respondent by</b>	Sh. F.R.Meena, Sr.DR
<b>Date of Hearing</b>	25.10.2017
<b>Date of Pronouncement</b>	25.10.2017

**ORDER**

**PER G.D.AGRAWAL, PRESIDENT**

Aggrieved by the order dated 20.07.2015 in Appeal No.233/14-15 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-I, New Delhi for 2010-11 Assessment Year, the assessee filed this appeal on the following grounds:-

1. *"The ld.CIT(A) has erred in law and facts of the case in confirming the action of the Ld.AO for invoking the provisions of section 14A of the Act read with rule 8D of Income tax Rules, 1962 ("the Rules") without recording the satisfaction and disregarding the submissions and explanations of the appellant company which is highly arbitrary, unjustified, uncalled for and bad in law.*
2. *The Ld.CIT(A) has erred in law and facts of the case in confirming the action of Ld.AO in computing the disallowance amounting to Rs.2,56,169 and applying rule 8D of the Rules read with section 14A of the Act which is highly arbitrary, unjustified, baseless and bad in law."*

2. Briefly stated facts are that the assessee is a company engaged in the business of real estate development and allied activities. For AY 2010-11 AY, they have filed their return of income of Rs.15,42,29,591/- on 14.10.2010 and during the proceedings u/s 143(3) of the Act, the AO made the following disallowances:-

(i)	<i>Disallowance of interest paid</i>	<i>Rs.22,50,000/-</i>
(ii)	<i>Disallowance of Rent</i>	<i>Rs.16,30,500/-</i>
(iii)	<i>Maintenance Income</i>	<i>Rs.50,32,287/-</i>
(iv)	<i>Disallowance of compensation expenses</i>	<i>Rs.1,09,17,200/-</i>
(v)	<i>Disallowance u/s 14A</i>	<i>Rs.2,56,169/-</i>

3. In the appeal preferred by the assessee, Ld.CIT(A) sustained the addition of Rs.2,56,169/- made u/s 14A of the Act and deleted all other additions. The assessee is, therefore, before us in this appeal challenging the order of the Ld.CIT(A) sustaining the addition of Rs.2,56,169/-.

4. At the outset, argument of the Ld.AR is that the authorities below erred in making and sustaining the addition of Rs.2,56,169/- by invoking the provisions u/s 14A of the Act, on the face of the submission of the assessee that in the year under consideration, the assessee did not derive any exempt income. Ld. Sr. DR placed reliance on the orders of the authorities below.

5. Ld. AR placed reliance on the decision of the Hon'ble Jurisdictional Delhi High Court in *Cheminvest Ltd. vs CIT-IV, [2015] 61 taxmann.com 18 (Delhi)* for the principle that section 14A of the Act envisages that there should be an actual receipt of income which is not included in the total income for application of section 14A of the Act and where there is no exempt income either received or receivable during the relevant previous year, section 14A of the Act has no

application at all. Here in this matter, vide Paragraph No.7.1 of the assessment order, it is found that the assessee has been pleading before the authorities that in the year under consideration they did not have any exempt income. However, the AO while placing reliance on Special Bench decision dated 05.05.2009 of this Tribunal in the case of *Cheminvest Ltd. vs ITO 317 ITR 86* wherein it was held that expenditure was allowable to the assessee without any requirement of earning or receipt of income. On that analogy, the AO hold that the expenditure shall be disallowed whether or not any income was generated. However, in view of the decision of the Jurisdictional High Court in *Cheminvest Ltd. (supra)* and on the face of the factual position that there is no dispute as to the assessee not deriving any exempt income, we are of the considered opinion that the disallowance is not permissible where no exempt income is received or receivable during the relevant previous year. We, therefore, find it difficult to sustain the order of the Ld. CIT(A) on the aspect of disallowance u/s 14A of the Act. We, therefore, allowing the ground of appeal and direct the AO to delete the same.

6. In the result, the appeal of the assessee is allowed.

**The order is pronounced in the open court on 25<sup>th</sup> October, 2017.**

**Sd/-**

**(K.N.CHARY)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**  
*Date:-25.10.2017*

Copy forwarded to:

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

**Sd/-**

**(G.D.AGRAWAL)**  
**PRESIDENT**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

