IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

	I.T.A. No.6480/DEL/2016	
	A.Y.: 2011-12	
M/S VIPUL INFRACON PVT. LTD. 14/185-186, GROUND FLOOR, MAIN SHIVALIK ROAD, MALVIYA NAGAR, NEW DELHI – 110 017 (PAN: AAACT4544M)	VS	ADDL. COMMISSIONER OF INCOME TAX, RANGE-17, NEW DELHI
(ASSESSEE)		**(RESPONDENT)**

AND

	ITA NO. 891/Del/2017	
	A.Y. : 2011-12	
ACIT, CIRCLE 26(2), ROOM NO. 192, C.R. BUILDING, NEW DELHI	VS.	M/S VIPUL INFRACON PVT. LTD. 14/185-186, GROUND FLOOR, MAIN SHIVALIK ROAD, MALVIYA NAGAR, NEW DELHI – 110 017 (PAN: AAACT4544M)
(REVENUE)		**(ASSESSEE)**

Assessee by : Shri Sidhant Arora, CA
Department by : Shri Anuj Garg, Sr. DR.

Date of hearing : **27.07.2023**
Date of pronouncement : **09.08.2023**

ORDER

PER SHAMIM YAHYA, AM :

These cross appeals filed by the Assessee and Revenue are directed against the order of the Ld. CIT(A)-9, New Delhi dated 24.10.2016 pertaining to assessment year 2011-12.

2. The only ground taken by the assessee is given as under:-

> "The Ld. CIT(A) has erred in law and facts of the case in confirming the action of the AO in making disallowance of Rs. 95,27,110/- on account of loss on sale of the property in Vasant Square Mall ignoring the submissions of the appellant company, which is arbitrary, baseless, unjustified and bad in law and against the principle of natural justice."

3. On this issue, AO noted that assessee company has shown loss of Rs. 95,27,110/- on the sale of the property at Vasant Square Mall. These commercials properties were purchased by the assessee from the family members of the Directors of the company for a consideration of Rs. 3,98,46,460/-. The properties were sold for Rs. 3,03,10,350/- and hence a loss was incurred amounting to Rs. 95,27,110/-. On query by the AO in this regard, assessee responded with the details of loss incurred as under:-

> "As regard to the Vasant Square Mall, it is stated that a commercial property having area of 2886.70 sq.ft. was purchased by Mrs. Sunita Beriwala and Ms. Vishakha Beriwala from M/s Suncity Projects Private Limited. For this an amount of Rs. 30 lacs was made by them to the company. Also the assessee company took the booking from the sellers on cost to cost basis without paying any premium. The subsequent demands of the Builder were also paid by the assessee company. In this regards we are enclosing herewith copy of agreement to sell with Mrs. Sunita Beriwala and Ms. Vishakha Beriwala as Annexure-VII. The assessee company is in the business of Real Estate and expected to earn substantial profit by renting out the said property. Unfortunately, market for commercial property did not pick up and the assessee company transferred the booking for a consideration of Rs. 3,03,10,350/- to M/s Trishul Infratech Private Limited as business prudence."

4. AO noted from the sale agreement dated 29.09.2009, it is clear that the sale was effected on 29.09.2009 relevant to AY 2010-11. Hence, AO held that the loss on the transaction of this property has been wrongly claimed in the relevant assessment year. Accordingly, the same was disallowed and added to the income of the assessee.

5. Upon assesse's appeal, Ld. CIT(A) considered the submissions but he confirmed the AO's action as under:-

> " I have considered the submission of the appellant and order of the AO. The issue involved is that the appellant has purchased a property from its relatives of Rs. 3,98,36,460/-. The property was sold for Rs. 3,03,10,350/- and incurred a loss of Rs. 95,27,110/-. The transaction was with the related party and the agreement was also made on 29.09.2009 which relates to the AY 2010-11. So the AO held that the transaction does not pertain to this year and the same was disallowed. The loss claim of Rs. 95,27,110/- was disallowed. As against the appellant has submitted that in view of the liquidity and market conditions in the market, the assessee company decided not to hold on the property and agreed to sell vide agreement to sell dated 29.09.2009, in the process the assessee company suffered a loss of Rs. 95,27,110/-. The appellant has also submitted that the transfer was made effective only the previous year relating to the AY 2011-12.
>
> Considering the submission, I find that the agreement was made on 29.09.2009 which is the relevant AY 2010-11. The appellant has submitted that the agreement was effective in the previous year relevant to the assessment year for which appellant has not given any proof. When the expenditure was not incurred in previous year relevant to the assessment year, it is not allowable expenses as per accounting policy. In this regard it is held in the case of Seshasayee Bros. (Travancore) P. Ltd. v. CIT (1971) 82 ITR 442 (ker) that "for the purpose of computing yearly profits and gains for assessment to income-tax each year is a

separate and self contained period of time and losses and expenses incurred before its commencement or after its expiry cannot be the subject of any allowance in assessing the income of that particular year. In making the assessment for any particular year, deductions can therefore be permitted only in respect of expenses which are found to have been incurred in the relevant accounting period. In adjudging the admissibility of a claim for deduction, the determination of the question whether the assessee had incurred the expenditure during the relevant accounting period is an indispensable preliminary step". Further it has been held by Hon'ble High Court in CIT vs. Jai Parabolic Springs Ltd. (2008) 172 taxman 258 (Delhi) "The revenue expenditure, which is incurred wholly and exclusively for the purpose of business, must be allowed in its entirely in the year in which it is incurred. It cannot be spread over to a number of years even if the assessee has written it off in his books over a period of a number of years.

Since, the expenditure incurred is not relevant to the previous year of relevant assessment year i.e. 2011-12. So, the claim of the appellant is not allowable. Therefore, the disallowance made by the AO of Rs. 95,27,110/- is hereby confirmed. Hence the ground of appeal is dismissed."

6. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee submitted that though the agreement for sale was entered on 29.09.2009 but the purpose thereof was carried out in the present assessment year. However, Ld. Counsel for the assessee could not produce any material to justify the submission that the agreement of sale was given effect in the present assessment year. In these circumstances, we do not find any infirmity in the order of Ld. CIT(A) and we uphold the same. This ground of assessee is dismissed.

REVENUE'S APPEAL

8. The grounds of appeal taken by the Revenue are as under:-

1. On the facts and in the circumstances of the case and law, the Ld. CIT(A) has erred in deleting the addition of Rs. 72,11,000/- on account of interest and rent expenses claimed by the assessee as assured return on investments when there was no lawful agreement for such payment.

2. On the facts and in the circumstances of the case and law, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,24,08,048/- on account of compensation given to various parties.

3. On the facts and in the circumstances of the case and law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,29,458/- u/s. 14A.

9. As regards the addition of Rs. 72,11,000/- on account of interest and rent expenses claimed by the assessee is concerned, it is submitted by the Ld. AR that this issue is squarely covered by the decision of the ITAT for the assessment year 2010-11 in assessee's own case decided in ITA No. 6141/Del/15 in Revenue's appeal wherein, it has been observed that "*the payment made to the parties was verified by the Ld. CIT(A) and the funds received from these parties were received by way of cheques and same were utilized by the assessee for its business purposes for completing the project. The payment of assured return in the form of interest to Dinesh Nandini Ram Krishna Dalmia Foundation and assured rental to Sh. Arun Khanna and Kailash Khanna have been made after*

deducting TDS, therefore, there is no dispute about incurring of expenditure. Since the funds received from these parties were on the basis of valid MOUs against booking of space and on the basis of fixed return plans offered by the assessee, hence the expenditure incurred was for commercial expediency and is a requirement of the business." The aforesaid contention of the Ld. AR was not controverted by the Ld. DR. Similarly, in the case in hand that payments made to the parties is fully verifiable and the fund received from the parties were received by way of cheques and the same were utilized by the assessee for its business purpose for completing the project and the assessee has also made the TDS on interest payment and the funds received were on the basis of valid MOU against booking of space and on the basis of fixed return plan offered by the assessee, hence, the expenditure incurred was for the purpose of commercial expediency and meeting the fund requirement of the business. We further find that ld. CIT(A) has deleted the addition by following the order of his predecessor in appeal no. 233/14-15 dated 20.7.2015. In view of above and respectfully following the precedents as aforesaid, we do not find any infirmity in the order of the Ld. CIT(A), hence, we affirm the same and dismiss the ground no. 1 raised by the Revenue.

10. As regards the addition of Rs. 2,24,08,048/- on account of compensation given to various parties is concerned, Ld. AR submitted that compensation paid of Rs. 15618000/- to Gannon Dunkerly, Rs. 31,72,752 + Rs. 28,36,074/- to Unit Holders and Rs. 781722/- to Merlyn Project Limited. As regards compensation of Rs. 15618000/- is concerned, it is noted that this compensation was paid on account of termination from the contract of project Vipul Tech Square-1 for the work done by the Gannon Dunkerly and in the business when compensation is paid for breach of contract, such compensation is to be treated as normal incidence of business, hence, compensation was paid for business purpose and is an allowable expense u/s. 37(1) of the Act. As regards, Rs. 31,72,752 to Unit Holders is concerned, it is noted that the payment made during the year under reference for making the exit from the Kolkata Project and assessee has submitted the affidavit to making the compensation to the parties i.e. M/s National Welfare Foundation of Rs. 9,45,379 and to M/s Parents of Rs. 22,26,873/-. It is also noted that the AO has objected that customer had withdrawn their application voluntarily, so it does not fall into the purview of coercion. In this case the unit holders exited from the Kolkata project so the assessee has made the compensation, so the payment of Rs. 31,72,252/- being compensation is made for the

purpose of business. As regards compensation of Rs. 28,36,074/-, we note that Ld. CIT(A) has observed that this expenditure incurred was wholly and exclusively for the business purposes and his predecessor has also decided the appeal where the payment of compensation to unit holder was allowed. Therefore, this expenditure in the nature of compensation of amounting to Rs. 28,36,074/- was fully allowable under section 37(1) of the Act. As far as compensation paid of Rs. 7,81,722/- being the enhanced cost of the project, We note that the AO held that assessee company could not establish the reasons for shortfall in the quantity of steel for which the compensation was paid to M/s Merlyn Projects Ltd. The assessee company made an exit, the project was taken over by M/s Merlyn Project Ltd. The evaluation of the project was done by the engineers and on the basis of their evaluation the shortfall in the quantity of steel was calculated of amounting to Rs. 7,81,722/-. We note that since the project was given from Gannon Dunkerly to M/s Merlyn Projects Ltd, so the credit has to be given on the shortfall worked out in the quantity of steel and thus this expenditure is valid claim of the assessee and made for the purpose of business. In view of the aforesaid discussions, we are of the considered opinion, that the above expenditure of Rs. 2,24,08,048/-, on account of compensation given to various

parties are made for the purpose of business, hence, the same were rightly deleted by the Ld. CIT(A), which do not require any interference on our part, therefore, we affirm the same and dismiss the ground no. 2 raised by the Revenue.

11. As regards the addition of Rs. 1,29,458/- u/s. 14A is concerned, it is submitted by the Ld. AR that this issue is squarely covered by the decision of the ITAT for the assessment year 2010-11 in assessee's own case decided in ITA No. 5507/Del/15 in Assessee's appeal wherein, on exactly similar facts, the Tribunal deleted the addition made u/s. 14A and allowed the ground of appeal raised by the assessee by relying upon the decision of the Jurisdictional High Court in Cheminvest Ltd. (61 Taxman.com 118 Delhi. Similarly, in the case in hand, Ld. AR has submitted that the assessee has not earned any exempt income during the year under consideration and for this purpose the assessee has submitted the computation of income and copy of balance sheet. Here in this matter, vide paragraph no. 2.2 of the assessment order, it is found that the assessee has been pleading before the AO that in the year under consideration they did not have any exempt income. However, the AO while placing reliance on Special Bench decision of the 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 held that the expenditure shall be disallowed whether or not any income was generated and treated Rs. 1,29,458/- as expenses to earn the exempt income and disallowed the same. However, in view of the Jurisdictional High Court in Cheminvest Ltd. (supra) as well as on the anvil of ITAT deciasion in assesss's own case decided in ITA No. 5507/Del/15 in Assessee's appeal (AY 2010-11) 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 view that disallowance made by the AO is not permissible where no exempt income is received or receivable during the relevant previous year. Therefore, ld. CIT(A) has rightly held that Assessee has not earned any exempt income, after perusing the computation of income and the copy of balance sheet and by relying upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. in ITA No. 486/2014 wherein, it has been held that if there is no dividend income, no disallowance can be made u/s. 14A r.w.r. 8D. In view of above and respectfully following the precedents as aforesaid, we do not find any infirmity in the order of the Ld. CIT(A), hence, we affirm the same and dismiss the ground no. 3 raised by the Revenue and accordingly, the Revenue's appeal is dismissed.

12. In the result, the Assessee's appeal is dismissed and Revenue's Appeal is dismissed.

Order pronounced on 09/08/2023.

Sd/-	Sd/-
(YOGESH KUMAR US)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

SRB

Copy forwarded to: -

1. Appellant**.**
2. Respondent.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar