

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No.6597/Del/2013
AY: 2009-10**

Positive Comsol P.Ltd.
701, Arunachal Bldg.
19, Barakhamba road, C.P.
New Delhi 110 001

vs. ITO, Ward 14(3)
New Delhi

PAN: AABCK 4672 L

(Appellant)

(Respondent)

Appellant by : Sh.Akshat Jain & Sh.Rajat Jain, CAs.

Respondent by : Sh. T. James Singson, Sr. D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of the Ld.Commissioner of Income Tax (Appeals)-XVII, New Delhi dated 24.10.2013 pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2009-10 on the following grounds.

"1. On the facts and in the circumstances of the appellant's case the Ld.CIT(A) erred both in fact and in law in confirming estimated disallowance of expenses of Rs.29,68,654/- u/s 14A of the Act r.w. Rule 8D made by the A.O. without appreciating the facts that the expenses claimed by the appellant was incurred in relation to income which was includible in total income and no expenses were incurred by the appellant in relation to income which does not form part of the total income.

2. On the facts and in the circumstances of the appellant's case the Ld.CIT(A) erred both in fact and in law in holding that premium paid on shares over and above paid up value of shares should be treated as 'investment' for the purpose of determining estimated disallowance of expenses u/s 14A by invoking Rule 8D without appreciating the fact that premium paid on shares is not an eligible amount on which exempted dividend income will accrue/arise.

3. The appellant may be allowed to modify or add any other ground which may be relevant to the appeal.”

2. We have heard ShriAkshat Jain, the Ld.Counsel for the assessee and Shri T. James Singson, Ld.Sr.D.R. on behalf of the Revenue. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

3. The undisputed fact is that the assessee has not earned any income during the year which is exempt from tax. Hence no disallowance u/s 14A of the Income Tax Act, 1961 (the Act) can be made in view of the following decisions of the Jurisdictional High Court.

- Cheminvest Ltd. vs. CIT (2015) 61 Taxman.com 118 Delhi
- Jt.Investments (P) Ltd. vs. CIT (2005) 59 Taxman.com 295 Del

3.1. Therefore, we delete the disallowance and allow the appeal of the assessee.

4. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 26th May, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 26th May, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar