

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI  
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG: JUDICIAL MEMBER

ITA no. 156/Del/2014

Asstt. Yr: 2009-10

Prime Cellular Ltd.,  
401, World Trade Tower,  
Barakhamba Lane,  
New Delhi.-110001.

Vs. Income-tax Officer,  
Ward 14(4), New Delhi.

PAN: AACCP 1015 H

( Appellant )

(Respondent)

Appellant by : Shri K.V.S. R. Krishna CA  
Respondent by : Ms. Rakhi Bimal Sr DR.

Date of hearing : 12/05/2016.  
Date of order : 27/05/2016.

**ORDER**

**PER S.V. MEHROTRA, A.M:**

This is assessee's appeal against the order dated 01.11.2013, passed by the Id. CIT(A)-XVII, New Delhi, relating to A.Y. 2009-10.

2. Brief facts of the case are that during the previous year the assessee company had earned income on funds given on loan to its joint venture company M/s Kujjal Builders Pvt. Ltd. Assessee had filed return of income declaring total income of Rs. 17,67,393/-. AO noticed from the balance-sheet of the assessee company that it had made substantial investments

amounting to Rs. 40.00 crores as on 01.4.2008 as well as on 31.3.2009. He noticed that assessee had made no disallowance u/s 14A of the I.T. Act. Accordingly, assessee was show caused as to why disallowance u/s 14A/Rule 8D be not made. The assessee in its reply, inter alia, pointed out as under:

“.... The funds received on account of share capital had been invested in 4,00,00,000 fully paid up equity shares of Rs.10/- each of Joint Venture Company i.e. Kujjal Builders Pvt. Ltd. in the earlier financial years .... No dividend has been received by the assessee company from the date of investment till date. Also no expenses has proximate relationship with the amount of investments made even in the absence of dividend income .... The proportionate expenditure to be disallowed as per rule 8D is to be calculated only when there is an expenses incurred in, relation to the investments, made irrespective of the fact whether exempted income is, derived from such investments or not. However, during the financial year relevant to the assessment year 2009-10, no such expenditure has been incurred by the assessee which can be said to be directly or indirectly relatable to the investments of the assessee company. ... In view of above it is respectfully submitted that the provisions of section 14A of the Income Tax Act 1961 read with Rule 8D of the Income Tax Rules, 1962 are not at all applicable to the assessee company.”

3. AO, however, did not accept the assessee's contention and computed the disallowance u/s 14A at Rs. 20 lacs and limited the same to personnel and operating and other expenses to the extent of Rs. 7,88,713/-.
4. Ld. CIT(A) dismissed the assessee's appeal, inter alia, relying on the decision of the ITAT Delhi Special Bench in the case of Cheminvest v. ITO.

5. Being aggrieved, the assessee is in appeal and has taken following grounds of appeal:

1. The CIT(A) has erred on facts and in law in upholding the disallowance of Rs. 7,88,713/- u/s 14A read with Rule 8D. The disallowance is made without appreciating the assessee's explanation that the investments were made by the assessee company in the financial year 2006-07 relevant to the assessment year 2007-08, out of its own funds Which are non-interest bearing, and the assessee company has not received any dividend from the date of investment till date. Hence, no expenditure has been incurred for earning tax free income. The disallowance made should be deleted.

2. The appellant contends that it has given all evidences to the A.O. and CIT(A) to prove that no expenditure has been incurred which would suffer any disallowance u/s 14A. Consequently, the Order of the CIT(A) upholding the AO's Order is wrong and bad in law on surmises and conjectures, the disallowance of Rs 7,88,713/- would be deleted.

3. The appellant contends that interest u/ s 244A and 234D of Income Tax, 1961 have been wrongly charged.

6. Ld. counsel for the assessee submitted that as is evident from the submissions made before AO, the assessee did not earn any dividend income during the year and, therefore, no disallowance was called for u/s 14A. He relied on the ratio of decision of Hon'ble Delhi High Court in the case of Cheminvest Vs. CIT 378 ITR 33.

7. Having heard both the parties, we find that since no dividend income has been earned during the year, therefore, in view of the decision of

Hon'ble Delhi High Court in the case of Cheminvest, supra, no disallowance u/s 14A is called for.

8. In the result, assessee's appeal is allowed.

Order pronouncement in open court on 27/05/2016.

Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER  
Dated: 27/05/2016.

Sd/-  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

**\*MP\***

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.