

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-2549/Del/2014  
(ASSESSMENT YEAR-2008-09)**

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| Vipul Ltd.,<br>Vipul Tech Sqaure-I, Gold Course Road,<br>Sector-43, Gurgaon-122009.<br>PAN-AAACA5396C<br><b>(APPELLANT)</b> | vs | DCIT,<br>Circle-2,<br>New Delhi<br><br><b>(RESPONDENT)</b> |
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| <b>Appellant by</b>  | <b>Sh.Rajesh Arora, CA</b>      |
| <b>Respondent by</b> | <b>Sh. Sanjay Kumar, CIT DR</b> |

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|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>21.07.2016</b> |
| <b>Date of Pronouncement</b> | <b>28.09.2016</b> |

**ORDER**

**PER DIVA SINGH, JM**

The present appeal has been filed by the assessee assailing the correctness of the order dated 04.02.2014 of CIT(A)-III, New Delhi pertaining to 2008 – 09 assessment year on the following grounds:-

1. *“The Ld.CIT(A) has erred in law and facts of the case in confirming the penalty on Rs.5,07,605/- u/s 271(1)(c) of the Income Tax Act, 1961, treating the addition u/s 14A as concealed income and ignoring the submission and explanation of assessee, which is highly unjustified, arbitrary, bad in law and uncalled for.*
2. *The assessee craves to have the right to add, amend or modify the grounds of appeal.”*

2. Addressing the facts it was submitted that as a result of the appeal effect order passed by the AO u/s 250/143(3) dated 13.11.2013 the sole issue for levy of penalty is the addition sustained in appeal u/s 14A. In the facts of the present case, inviting attention to para 3 of the impugned order it was submitted that it

has consistently been claimed that no exempt income was earned by the assessee in the year under consideration. In these circumstances, relying upon the position rendered by the Jurisdictional High Court in the case of **CIT vs Holcim India Pvt.Ltd. [2014] 90 CCH 081 (Delhi HC)** and **Joint Investment Pvt.Ltd. [2015] 372 ITR 674 (Delhi)** which had been followed by the ITAT in the case of **ACIT vs Kajarja Ceramics Ltd.** in ITA No.4320/Del/2014 vide order dated 21.10.2015 it was submitted that in the facts of the present case even on merit the assessee had a good case thus the occasion to levy penalty thereon cannot survive.

2.1. The Revenue represented by Sh. Sanjay Kumar, CIT DR submitted that this is an assertion of fact by the assessee before the CIT(A) and is not a finding of fact arrived at by any authority.

2.2. In these circumstances, the Ld. AR submitted that he would have no objection if the fact is verified.

3. Accordingly in the light of the submissions of the parties before the Bench, the issue is restored back to the AO for verification on facts. In case it is found as a fact that no exempt income has been earned by the assessee in the year under consideration then considering the judicial precedent cited the penalty is directed to be quashed. No doubt, the penalty proceedings and assessment proceedings are separate and distinct but the mere fact that an argument was not advanced in the quantum proceedings can not be precluded in the penalty proceedings. If an argument is advanced it has to be considered in the penalty proceedings in the light of the requirements of the said provision. Accordingly we deem it appropriate to set aside this issue for verification on facts. The AO is directed to pass a

speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

**The order is pronounced in the open court on 28<sup>th</sup> of September, 2016.**

**Sd/-**

**(L.P.SAHU)**  
**ACCOUNTANT MEMBER**

*\*Amit Kumar\**

**Sd/-**

**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI