

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' C '**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T.A. No.744/Bang/2018  
(Assessment Year : 2013-14)

Assistant Commissioner of Income Tax,  
Circle 4(1)(2), Room No. 230,  
2<sup>nd</sup> Floor, BMTC Building,  
80 Feet Road, 6<sup>th</sup> Block,  
Koramangala, Bengaluru-560 095.

.... Appellant.

Vs.

M/s. Mantri Technology Constellations Pvt. Ltd.,  
Mantri House, 41, VittalMallya Road,  
Bengaluru – 560 001.

..... Respondent.

**PAN : AAFCM 1653 D**

C.O. No.54/Bang/2018  
(Assessment Year : 2013-14)

M/s. Mantri Technology Constellations Pvt. Ltd.,  
Bengaluru – 560 001.

.... Appellant.

**PAN : AAFCM 1653 D**

Vs.

Asst. Commissioner of Income Tax,  
Circle -4(1)(2),  
Bengaluru.

..... Respondent.

Revenue By : Dr. P. V. Pradeep Kumar, Addl. CIT  
Assessee By : Shri V. Srinivasan, Advocate.

Date of Hearing : 21.03.2019.

Date of Pronouncement : 03.04.2019.

**ORDER**

***Per Shri Jason P Boaz, A.M. :***

This appeal by Revenue is directed against the order of the CIT(A)-4, Bengaluru, dated 21.11.2017 for Assessment Year 2013-14. The assessee has filed Cross Objections (C.O.) in respect of the impugned order of the CIT(A).

2. Briefly stated, the facts relevant for disposal of this appeal are as under:-

2.1 The assessee, a company engaged in real estate development, filed its return of income for Assessment Year 2013-14 on 26.11.2013 declaring loss of Rs.1,18,65,960/-. The case was taken up for scrutiny and the assessment was concluded under section 143(3) r.w.s. 92CA of the Income Tax Act, 1961 (in short 'the Act'), wherein the assessee's loss was determined at (-)Rs.69,46,460/-; in view of disallowance u/s 14A of the Act r.w.r. 8D(2)(ii) of Rs.44,60,800/- and u/Rule 8D(2)(iii) of Rs.4,58,705/- made by the Assessing Officer (AO). The assessee's appeal was partly allowed by the CIT(A)-4, Bengaluru in the impugned order dated 21.11.2017; wherein referring, *inter alia*, to the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., Vs. CIT [TS-5469-HC-2015 (DELHI)] the CIT(A) restricted the disallowance to the extent of

tax free / exempt dividend income of Rs.3,08,226/- earned during the year.

**Revenue's appeal in ITA No.744/Bang/2018 – Assessment Year 2013-14**

3.1 Aggrieved by the order of CIT(A)-4, Bengaluru, dated 21.11.2017 for Assessment Year 2013-14, Revenue has preferred this appeal wherein it has raised the following grounds: -

- 1. The Order of the Ld. CIT (A), in so far as it is prejudicial to the interest of the Revenue, is opposed to law and the fact and circumstances of the case.*
- 2. On facts of the case, Whether the decision of the Ld CIT (A) is right in allowing the appeal of the assessee despite the fact that the provisions to section 14A makes it clear that the expenditure has to be worked out as per Rule 8D(2)(ii) & 8D(2)(iii).*
- 3. On facts of the case, whether the decision of the Ld CIT (A) is right in allowing the appeal of assessee as the same contravenes the provisions of section 14A and also the Ld CIT (A) has not followed the instructions laid down in the Board's Circular No 5/2014 dated 11.02.2014 wherein, the Board's has made it clear that the disallowance u/s 14A r.w.r 8D has to be made even where the tax payer in a particular year has not earned any exempted income.*
- 4. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) in so far as it relates to the above*

*grounds may be reversed and that of the Assessing Officer may be restored.*

*5. The appellant craves leave to add, alter, amend and / or delete any of the grounds that may be urged.*

3.2 We have heard and considered the rival contentions and perused the material on record and the judicial pronouncements cited in this regard. In the case on hand, admittedly the assessee earned exempt dividend income of Rs.3,08,226/- in the year under consideration. In the order of assessment, the AO made disallowance of Rs.49,19,505/- under section 14A r.w.r. 8D (viz., Rs.44,60,800/- u/Rule 8D(2)(ii) plus Rs.4,58,705/- u/Rule 8D(2)(iii)). On appeal, the CIT(A) restricted / upheld the disallowance u/s 14A r.w.r. 8D to the extent of exempt dividend income of Rs.3,08,226/- earned by the assessee. In this regard, the Hon'ble Delhi High Court in the case of Joint Investments (P) Ltd., Vs. CIT (372 ITR 694) has taken the view that the disallowance u/s 14A of the Act cannot exceed the exempt income. Similar view has been expressed by the Hon'ble High Court in the case of CIT Vs. Holcim India Pvt. Ltd., (272 CTR 282) (Del HC). These decisions were considered and followed by the Mumbai Bench of the Tribunal in the case of Future Corporate Resources Ltd., Vs. ACIT (ITA No.4658/Mum/2015 dated 26.07.2017 and by the Co-ordinate Bench of this Tribunal in the case of Lamina Suspension Products Ltd., in ITA Nos.336 & 337Bang/2018 dated 11.01.2019 wherein it was held that the disallowance u/s 14A of the Act cannot exceed the

exempt income. Respectfully following the aforesaid judicial pronouncements (supra), we hold that the disallowance u/s 14A of the Act in the case on hand should be restricted to the exempt dividend income of Rs.3,08,226/- earned by the assessee in the year under consideration. Consequently, the grounds raised by Revenue are dismissed.

4. In the result, Revenue's appeal for Assessment Year 2013-14 is dismissed.

**Assessee's Cross Objections in C.O. No.54/Bang/2018 – Assessment Year 2013-14**

5.1 In its Cross Objections (C.O.), the assessee has raised the following grounds:

1. *The orders of the authorities below in so far as they are against the Cross-objector/respondent are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in sustaining the disallowance u/s 14A of the Act to the extent of Rs. 3,08,226/- on the mistaken notion and finding that the Cross-objector/respondent had claimed exempt income to the said extent and hence the disallowance under Rule 8D[2][iii] has to be sustained to the said extent of exempt income earned by the appellant*

*under the facts and in the circumstances of the cross objector's case.*

3. *For the above and other grounds that may be urged at the time of hearing of the Cross-Objection, your Respondent/Cross-Objector humbly prays that the appeal filed by the appellant A.O. in respect of the relief granted by the CIT [Appeals] may be dismissed and grounds of the Cross-Objection may be allowed and justice rendered.*

5.2 In the course of hearings, the learned AR for the assessee submitted that the assessee's cross objections are not being pressed. In that view of the matter, the grounds raised in assessee's C.O. are rendered infructuous and accordingly dismissed as not pressed.

6. In the result, both Revenue's appeal for Assessment Year 2013-14 and assessee's Cross Objections are dismissed.

Order pronounced in the open court on 3<sup>rd</sup> April, 2019.

Sd/-  
**(N.V. VASUDEVAN)**  
Vice President

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

Bangalore,  
Dated : 03.04.2019.  
/NS/\*

Copy to :

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

Asst. Registrar  
Income Tax Appellate Tribunal  
Bangalore.