

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.3278 & 3279/M/2018
Assessment Years: 2012-13 & 2013-14**

M/s. ITD Cementation India Ltd., National Plastic Building, A-Subhash Road, Paranjape B Scheme, Vile Parle (East), Mumbai – 400 057 PAN: AACT1426A	Vs.	Deputy Commissioner of Income Tax-14(2)(1), Mumbai
(Appellant)		(Respondent)

**ITA Nos.3639 & 3640/M/2018
Assessment Years: 2012-13 & 2013-14**

Deputy Commissioner of Income Tax-14(2)(1), Mumbai	Vs.	M/s. ITD Cementation India Ltd., National Plastic Building, A-Subhash Road, Paranjape B Scheme, Vile Parle (East), Mumbai – 400 057 PAN: AACT1426A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri Awungshi Gimson, D.R.

Date of Hearing : 26.09.2019

Date of Pronouncement : 17.12.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals two by the assessee and the other two by the Revenue have been preferred against the order dated 23.02.2018 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment years 2012-13 & 2013-14.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) partly confirming the disallowance to the tune of Rs.19,95,000/- as made by the AO under section 14A at Rs.2,53,36,000/-. The Ld. CIT(A) while sustaining the disallowance calculated the same under rule 8D(2)(iii) at 0.5% of the average value of investments.

3. At the outset, the Ld. Counsel of the assessee submitted that there is no exempt income earned by the assessee during the year and therefore there is no question of disallowance under section 14A of the Act. In defence of his argument, the Ld. A.R. relied on the decision of the Jurisdictional Hon'ble Bombay High Court in the case of Pr. CIT vs. Ballarpur Industries Ltd. in ITA No.15 of 2016 dated 13.10.2016 and prayed that the disallowance may kindly be deleted in entirety.

4. The Ld. D.R., on the other hand, relied on the order of AO.

5. After hearing both the parties and perusing the material on record, we observe that the assessee has not received any income during the year and apparently in the face of these facts, we are of the view that no disallowance under section 14A of the Act r.w. rule 8D could be made. The issue is covered in the decision of Pr. CIT vs. Ballarpur Industries Ltd. (supra) wherein the Hon'ble High Court has held that where there is no income, no disallowance under section 14A of the Act can be made. Accordingly, the appeals filed by the assessee are allowed.

ITA No.3639 & 3640/M/2018

6. Since we have allowed the appeals of the assessee, the appeals of the Revenue become infructuous and are accordingly dismissed.

Order pronounced in the open court on 17.12.2019.

**Sd/-
(Vice President)
VICE PRESIDENT**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.12.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.