



# आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "A" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2275 & 2277/PUN/2025

निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

DCIT, Central Circle-2(2), Pune.	V s	Kakade Infrastructure Private Limited,20 <sup>th</sup> Floor, A Wing, Marathon FUTURX, N.M.Joshi Marg Lower Parel, Mumbai – 400013.
		PAN: AADCK5852G
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Jay Bhansali (Virtual)
Revenue by	Shri Amol Khairnar – CIT(DR)
Date of hearing	19/01/2026
Date of pronouncement	29/01/2026

## आदेश/ ORDER

### PER DR. DIPAK P. RIPOTE, AM:

These two appeals filed by the Revenue against the separate orders of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 of the Income Tax Act, 1961 for the A.Y.2013-14 A.Y.2014-15 both dated 30.07.2025 emanating from the Assessment Order passed under section 143(3) of the Act, dated 28.03.2016 and 30.12.2016 respectively. For the sake of convenience, these two



appeals were heard together and are being disposed of by this common order. We treat appeal for A.Y.2013-14 as lead appeal.

The Revenue has raised the following grounds of appeal :

*“1) Whether on the facts and circumstances of the case and in law, the CIT(A) is right in giving relief to the assessee holding that if there is no exempt income earned during the year, the very basis for disallowance collapses ignoring the provisions of section 14A r.w Rule 8D of the Income-tax Rules, 1962, and which are clarified by the CBDT vide its circular no. 05/2014 dated 11.02.2014.*

*2) Whether on the facts and circumstances of the case and in law, the CIT(A) is right in giving relief to the assessee holding that if there is no exempt income earned during the year, the very basis for disallowance collapses on the basis of decision of the Delhi High Court's order in the case of IL & FS Energy Development Co. Ltd. which is pending before the Hon'ble Supreme Court for adjudication.*

*3) The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal at the time of hearing.”*

**Findings & Analysis :**

2. We have heard both the parties and perused the records. In this case, Assessing Officer made disallowance under section 14A read with Rule 8D(ii) of Rs.4,03,41,761/-. Ld.CIT(A) allowed assessee's appeal. Aggrieved by the order of the ld.CIT(A), Revenue filed appeal before this Tribunal. Ld.CIT(A) for A.Y.2013-14 has noted that Assessee had not earned any exempt



income during the year. Therefore, Id.CIT(A) relied on following decisions :

- *Cheminvest Ltd. Vs. CIT [2015] 378 ITR 33 (Delhi HC)*
- *PCIT Vs. Ballarpur Industries Ltd. (ITA No.51 of 2016) Bombay HC*
- *CIT Vs. Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com 250(SC)*

3. Finally, Id.CIT(A) in para 5.5 held as under :

*“5.5 It is an admitted fact that the appellant has not earned any exempt income during the year under consideration. Therefore, in view of the above decisions, since no exempt income was earned or receivable by the appellant during AY 2013-14, disallowance u/s 14A cannot be sustained. Therefore, the addition u/s 14A deserves to be and accordingly deleted. However, as held in the above decision by the Hon’ble Delhi High Court, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of IL & FS Energy Development Co. Ltd. (supra). Accordingly, this ground of appeal is allowed subject to above clarification.”*

4. Ld.Departmental Representative(ld.DR) for the Revenue has not disputed the basic fact that there was no exempt income earned by the Assessee during the year. Ld.CIT(A) has relied on the decision of Hon’ble Delhi High Court(supra). Ld.DR has not brought to our notice any contrary decision of the jurisdictional high court.



4.1 Hon'ble Bombay High Court in the case of Pr.CIT vs **Kohinoor Project (P.) Ltd [2020] 121 taxmann.com 177 (Bombay) has held as under :**

*Quote, “ Section 14A of the Act deals with expenditure incurred in relation to income not includible in total income. As per sub-section (1) of section 14A, for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. In Cheminvest Ltd. (supra) Delhi High Court examined the expression "does not form part of the total income" as appearing in sub-section (1) of section 14A of the Act. Delhi High Court held that the said expression envisages that there should be an actual receipt of income which is not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. It was clarified that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.*

*9. This view has been followed in several decisions by this Court. In fact in Pr. CIT v. Man Infraprojects Ltd. [IT Appeal No. 259 of 2017, dated 9-4-2019], this Court followed the decision of the Delhi High Court in Cheminvest Ltd. (supra). It was further noted in MAN Infraprojects Ltd. that the decision of the Delhi High Court was challenged by the revenue before the Supreme Court by fling SLP but the SLP was dismissed.*



*10. In the light of the above, we hold that no substantial question of law arises from the order of the Tribunal. The appeal is devoid of merit and is accordingly, dismissed.” Unquote.*

4.2 The ITAT Pune Bench in the case of Kumar Properties and Real Estate (P.) Ltd. Vs DCIT, [2021] 128 taxmann.com 364 (Pune - Trib.) has held as under :

*Quote ,“Having heard the rival submissions gone through the relevant material on record, it is found as an admitted position that the assessee, in fact, did not earn any exempt income from the investment made in Marigold Properties during the year under consideration. The Hon'ble Delhi High Court in Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. Similar view has been taken by the Hon'ble Delhi High Court in CIT v. Holcim India (P.) Ltd. [2015] 57 taxmann.com 28. More recently the Hon'ble jurisdictional High Court in Pr. CIT v. Kohinoor Projects (P.) Ltd. [2021] 276 Taxman 180/[2020] 121 taxmann.com 177/425 ITR 700 (Bom.) has held that in the absence of any exempt income, there cannot be any disallowance of expenses u/s 14A of the Act.*

*19. The raison d'etre given by the ld. first appellate authority for sustaining the disallowance that the computation of income of the firm may result into positive income as well as negative income, i.e. loss and therefore, the provision of section 14A do not prohibit disallowance of expenditure in relation to exempt loss incurred by the assessee, is neither here nor there. The Hon'ble jurisdictional High Court in Pr. CIT v. HSBC Invest Direct (India) Ltd. [2020] 421 ITR 125 (Bom.) has held 'that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration.' If the disallowance is to be restricted to the amount of exempt income, the sequitur is that*



*there can never be any disallowance u/s 14A in the absence of positive exempt income for the year. Insofar as section 14A is concerned, there is no qualitative difference between two situations, first, where the exempt income is Nil and second, where there is negative income for the year joined with a possibility of earning positive income in future. As the assessee in the instant case admittedly did not earn any exempt income during the year, respectfully following the ratio of the above decisions, we hold that no disallowance was called for. ” Unquote.*

5. Revenue has relied on the CBDT Circular No.05/2014 dated 11.02.2014. However, it is observed that Hon'ble Bombay High Court's decision is after the Circular No.05/2014. The decision of Hon'ble Bombay High Court is binding on us. Therefore, respectfully following Hon'ble Bombay High Court and ITAT Pune Bench's decisions, we dismissed the grounds raised by Revenue. Accordingly, Grounds of appeal raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

### **ITA No.2277/PUN/2025**

7. Since we have decided the lead appeal i.e.main appeal, is dismissed, the same shall apply *mutatis-mutandis* to this present appeal also. Accordingly, grounds of appeal raised by the Revenue are dismissed.



8. To sum up, both appeals of the Revenue are dismissed.

Order pronounced in the open Court on 29 January, 2026.

**Sd/-**  
**VINAY BHAMORE**  
**JUDICIAL MEMBER**

**Sd/-**  
**Dr.DIPAK P. RIPOTE**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 29 Jan, 2026/ SGR

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

/ / TRUE COPY / /

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.