

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM

**ITA No. 1628/MUM/2022**

(Assessment Year 2014-15)

M/s BD & Hotels (INDIA) Pvt.  
Ltd.  
Ground Floor, DB House, Gen.  
A.K.Vaidya Marg, Goregoan (E),  
Mumbai-400 063

Vs.

DCIT,CC-1(4)  
Room No. 902, 9<sup>th</sup> Floor, Old  
CGO Bldg,  
M.K.Road,  
Mumbai- 400 063

**(Appellant)**

**(Respondent)**

**PAN No. AABCB4615J**

**Assessee by** : Shri. Siddharth Kothari, CA  
**Revenue by** : Shri. Chetan M. Kacha, Sr. AR.

**Date of hearing:** 15.11.2022  
**Date of pronouncement :** 15.11.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by assessee against the appellate order passed by the CIT(A) 47 Mumbai [learned CIT (A)] dated 04.05.2022 for A.Y. 2014-15 against appeal of assessee challenging the assessment order passed under section 143(3) of the Income Tax Act, 1961 dated 27.12.2016 wherein disallowance under section 14A read with rule 8D of ₹76,22,179/- was dismissed. The assessee has raised the following grounds of appeal:

*"1. The learned Assessing Officer erred in computing the total income at ₹ 2,62,02,440/- as against the*

*total income of ₹ 1,85,81,287/- returned by the appellant.*

*2. The learned Assessing Officer grossly erred in involving the provision of section 14A of the Income Tax Act, 1961 r.w Rule 8D, thereby making disallowance of ₹ 76,22,179/- to the total income of the assessee, without appreciating the fact that the said provisions are not applicable in case of the appellant as it has not erred any exempt income during impugned assessment year."*

02. The brief facts of the case show that, Assessee Company engaged in the business of running residential hotel and restaurant. It filed its return of income at ₹1,85,81,260/-. As the assessee was having investment in equity shares of associate companies amounting to ₹17,50,57,760/-, on scrutiny the learned Assessing Officer noted that this investment income may result in exempt income. However, the learned Assessing Officer also recorded a fact that during the year the company has not earned any exempt income during the year, but this investment is likely to result in exempt income in the hands of the assessee. The learned Assessing Officer following circular No. 5 of 2014 invoking the provision of Rule 8D for disallowance under section 14 of the Act. The assessee submitted that, the assessee is holding strategic investment and has not earned any exempt income. Therefore, disallowance under section 14A cannot be made. The learned Assessing Officer rejected the argument of the assessee. He held

that as assessee has made investment in equity shares which are likely to result in exempt income and assessee has also claimed expenses during the year. Therefore, despite assessee not earning any exempt income during the year, the disallowance under section 14A read with Rule 8D in terms of circular of CBDT is required to be made. He further held that, the CBDT has clarified that Rule 8D read with section 14A of the Act provide for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income. Accordingly, he worked out disallowance of ₹76,22,179/- and passed assessment orders under section 143(3) of the Act on 27.12.2016 determining the total income of the assessee at ₹2,62,03,436/-.

03. Assessee aggrieved with the assessment order preferred an appeal before the learned CIT-A, who dismissed the appeal and confirmed the disallowance for the reason that amendment by Finance Act, 2022 applies retrospectively.
04. The assessee is aggrieved with that appellate order and has preferred appeal before us. The learned authorized representative vehemently submitted that during the year assessee has not on earned any exempt income and amendment made by The Finance Act, 2022 will take effect from 01.04.2022 and cannot be presumed to have retrospective effect. For this he relied on the decision of the Hon'ble Delhi High Court in case of PCIT (Central) Vs. Era Infrastructure India Limited [2022] 141 taxmann.com 289 (Delhi).



05. The learned Departmental Representative vehemently supported the orders of the lower authorities.
06. We have carefully considered the rival contention and pursued the orders of the lower authorities. We find that during the year the assessee has not earned any exempt income. As it is held by Hon'ble Delhi High Court in Era Infrastructure India Limited (Supra) that there cannot be disallowance in the hands of the assessee as the amendment made by the Finance Act, 2022 to section 14A by inserting a non obstante clause and explanation will take effect from 01.04.2022 and cannot be presumed to have retrospective effect. Therefore, in A.Y. 2014-15 no disallowance could be made under section 14A if no exempt income was earned by the assessee.
07. In view of this, the Ground No. 2 of the appeal is allowed. Assessing Officer is directed to delete the disallowance under section 14A of the Act of ₹76,22,179/-.
08. In view of this appeal of the assessee is allowed.

Order pronounced in the open court on 15.11.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.11.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)



4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai