

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA NO. 4207/MUM/2023 : A.Y :2017-18**

Brett Enterprises Private Limited,  
2-A, Kitab Mahal,  
192 Dr.DN Road,  
Mumbai 400 001  
**PAN :AAACB-6140-K**  
(Appellant)

Vs. DCIT 1(1)(1),Mumbai  
Room No.533, 5<sup>th</sup> Floor,  
Aaykar Bhavan, M.K. Road,  
Mumbai – 400 020  
(Respondent)

**Appellant by : Shri Sunil Hirawat**  
**Respondent by : Shri Ashok Kumar Ambastha**

**Date of Hearing : 22/04/2024**  
**Date of Pronouncement : 30/04/2024**

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 18/10/2023 passed by Ld CIT(A), Jaipur -5 and it relates to the assessment year 2017-18. The solitary issue urged in this appeal relates to the disallowance made by Assessing Officer u/s. 14A of the Act.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of trading of goods. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has made investment in shares. However, it did not make any disallowance u/s. 14A of the Act. When questioned about the same, the assessee submitted that the investments are in the nature strategic investments in subsidiary companies and further, no dividend income was received during the year. Accordingly, the assessee submitted that no disallowance u/s. 14A of the Act is called for. The Assessing Officer did not accept above said contentions

of the assessee. He took the view that the disallowance u/s 14A is required to be made even if the assessee did not receive any dividend income. Accordingly, the AO computed disallowance by applying Rule 8D of the I T Rules and the same worked out to Rs.70,63,216/-. The Assessing Officer added above said amount to the total income computed under normal provisions of the Act and also to the book profit computed u/s. 115JB of the Act. The Id.CIT(A) also confirmed the same by placing reliance on the amendment brought into sec.14A of the Act w.e.f 1.4.2022, as per which the disallowance u/s 14A is required to be made even when no dividend income was received.

3.The Id.A.R submitted that the disallowance u/s. 14A is not called for when the assessee has not earned any exempt income. In support of this proposition, the Ld A.R placed his reliance on the decisions rendered by Hon'ble Delhi High Court in the case of PCIT vs. Caraf Builders & Construction Pvt. Ltd. (2019) 414 ITR 122 and PCIT vs. Oil Industries Development Board (2019)(103 taxmann.com325)(Delhi). The Id. A.R further submitted that Hon'ble Supreme Court of India has since upheld the decision rendered by Hon'ble Delhi High Court in the case of PCIT vs. M/s. Oil Industry Development Board (supra) by not admitting the SLP filed by the revenue. The Id.A.R further submitted that the amendment made to sec.14A of the Act w.e.f. 01/04/2022 has been held to be prospective in nature by the Hon'ble Delhi High Court in the case of PCIT vs. Era Infrastructure (India)Ltd. (ITA 204/2022 & CM APPL.31445/2022 dated 20<sup>th</sup> July, 2022). Accordingly, he contended that the disallowance made by Assessing Officer is liable to be deleted. He also submitted that the disallowance computed u/s. 14A of the Act cannot be adopted for computing book profit u/s. 115JB of the Act.

4. On the contrary, the Id. Departmental Representative placed his reliance on the decision rendered by Id.CIT(A). He further submitted that the Hon'ble Karnataka High Court had held in the case of Delhi International Airport (P) Ltd. Vs. PCIT [2022] 138 taxmann.com 541 that no

disallowance would be made u/s. 14A is called for, when assessee has not earned any exempt income. The Revenue has challenged aforesaid decision by filing appeal before Hon'ble Supreme Court of India and the Hon'ble Apex Court has issued notice to the parties. Accordingly, he submitted that the issue has not yet attained finality.

5. We heard rival contentions and perused the record. The undisputed fact is that the assessee did not earn any exempt income during the year under consideration. We notice that the ld CIT(A) has followed the decision rendered by Guwahati bench of Tribunal in the case of ACIT vs. Williamson Financial Services Ltd (ITA Nos.154 to 156/Gau/2019 dated 06-07-2022) for holding that the amendment made to sec.14A by Finance Act, 2022 is retrospective in nature. However, the Hon'ble Delhi High Court has held in the case of M/s Era Infrastructure (India) Ltd (supra) that the above said amendment is prospective in nature. In the above said case also, the Hon'ble Delhi High Court has held that no disallowance u/s 14A is called for when no dividend income is earned. In this regard, the Hon'ble Delhi High Court has followed the decision rendered by it on an identical issue in the case of PCIT vs. IL & FS Energy Development Company Ltd (2017 SCC Online Del 9893). In view of the above, we hold that the no disallowance u/s 14A is called for, since the assessee did not earn any exempt income.

6. We noticed that the AO has added the amount of disallowance computed by him for the purpose of computing book profit u/s 115JB of the Act. Since the assessee did not earn any exempt income, the question of making any addition under clause (f) of Explanation 1 to sec.115JB will not arise.

7. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition made u/s 14A of the Act under normal provisions of the Act and also u/s 115JB of the Act.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30<sup>th</sup> April, 2024.

Sd/-

(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Mumbai, Date : 30<sup>th</sup> April , 2024

VM,Sr.PS(O/S)

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai