IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, JAIPUR
(PHYSICAL HEARING)

Before: Shri Kuldip Singh, Judicial Member
And Shri Prakash, Accountant Member

ITA No: 1408/JPR/2025
Assessment Years: 2015-16

Brett Enterprises Private Limited Plot No. C-26, Chomu House, Bhura Tiba Gulab Path, Jaipur **PAN: AAACB6140K** **(Appellant)**	Vs	Central Circle-04 **(Respondent)**

Assessee Represented: **Sh. Prakul Khurana, Adv. (thr. V.C)**
Sh. Mukesh Soni, Adv. and
Sh. Sapan Jain, Adv. (Physical)
Revenue Represented: **Mrs. Namita Patel, JCIT**

Date of hearing : 23-09-2026
Date of pronouncement : 21-10-2026

आदेश/ORDER

PER : PRAKASH, ACCOUNTANT MEMBER:-

1. This appeal by the Assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), Jaipur-5 [hereinafter referred to as "the learned CIT(A)"] dated 27.08.2025 arising out of the assessment order dated 30.10.2017 passed by the Deputy Commissioner of Income Tax, Circle-1(1)(1), Mumbai (hereinafter referred to as "the AO") under

section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2015-16.

2. The grounds of appeal raised by the Assessee before us in the memorandum of appeal in Form No. 36 read as under:

> *1. On facts and in law, the Learned Commissioner of Income Tax (Appeals) [hereinafter referred to as Ld. CIT(A)] erred in confirming the disallowance of Rs. 22,58,100/- u/s. 14A. Under the facts and circumstances of the matter, the disallowance ought to have been restricted to Rs. 60,000/-.*
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> *2. On facts and in law, the Ld. CIT(A) erred in not appreciating the fact that no borrowed fund was used for making investments, the income of which is claimed exempt from tax. Under the facts and circumstances of the matter, the disallowance of interest u/s. 14A is bad in law and ought to have been deleted.*
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> *3. On facts and in law, the Ld. CIT(A) had failed to appreciate that Rule 8D cannot be made applicable without rejecting the claim of the assessee.*
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> *4. On facts and in law, the Ld. CIT(A) had failed to appreciate that no additional evidences were filed hence, attracting Rule 46A is without any basis.*
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> *5. On facts and in law, the Ld. CIT(A) erred in confirming the levy of interest u/s. 234B at Rs. 75,905/- as against Rs. 33,114/- as returned by the appellant.*
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> *6. On facts and in law, the Ld. CIT(A) erred in confirming the levy of interest u/s. 234C at Rs. 1,11,549/- as against Rs. 75,527/- as returned by the appellant.*
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> *7. Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law.*

3. Briefly stated, the facts of the case are that the assessee, formerly known as Brett Plastics Private Limited, is a company engaged in trading, financing and investments. It filed its return of income for the year under

consideration on 21.09.2015 declaring total income of Rs 1,28,18,940. In computing this income, the assessee itself disallowed Rs 22,58,100 under section 14A of the Act by applying Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules"), as the Rule stood before its substitution with effect from 02.06.2016. The disallowance is made up as under:

Limb of Rule 8D	**Basis**	**Amount (Rs)**
Interest: Rule 8D(2)(ii)	Interest on bank overdraft of Rs 15,59,960 × average investments of Rs 25,07,48,357 ÷ average total assets of Rs 38,94,60,143	10,04,358
Expenditure: Rule 8D(2)(iii)	0.5% of average investments of Rs 25,07,48,357	12,53,742
Total		**22,58,100**

4. The case was selected for limited scrutiny. By a letter dated 26.10.2017, four days before the assessment was completed, the assessee sought to reduce the disallowance to Rs 60,000. It contended that its share capital and reserves exceeded its investments, so that no interest could be disallowed, and that the expenditure on the investment activity could not exceed Rs 60,000 towards salary and other administrative expenses. A revised computation of total income of Rs 1,06,20,838 was furnished with the letter. No revised return under section 139(5) of the Act was filed. The AO completed the assessment on 30.10.2017 at the returned income without referring to the letter. Paragraph 3 of the assessment order reads as under:

> *"3. After verification of various details filed by the assessee, the return of income offered by the assessee is accepted and total income is assessed at Rs. 1,28,18,940/-."*

5. Before the learned CIT(A), the assessee pressed the reduced disallowance of Rs 60,000 and relied, among other things, on the computation and the assessment order for the assessment year 2016-17. A remand report dated 27.01.2020 was called for, to which the assessee filed a rejoinder dated 26.02.2020. The learned CIT(A) dismissed the appeal. The relevant findings in paragraph 4.2.1 of the impugned order read as under:

> *"In remand proceedings, the Assessing Officer objected to the admissibility of additional evidence and revised computation under Rule 46A, as the assessee had full opportunity to submit documents at the time of assessment and failed to explain why these were not filed earlier. The AO also noted that no working or documentary basis was submitted to substantiate the reduced disallowance of Rs. 60,000/-.*
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> *…*
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> *Further, the Hon'ble Supreme Court in Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC)] has categorically held that a claim for deduction not made in the original return cannot be entertained by the AO unless supported by a valid revised return. While this bar may not apply to appellate authorities, the appellant's revised claim lacks factual basis and has not been supported by any cogent evidence."*

The learned CIT(A) also upheld the interest charged under sections 234B and 234C of the Act as mandatory and compensatory in nature.

6. The learned Authorised Representative (hereinafter referred to as "the learned AR") submitted that the disallowance of Rs 22,58,100 in the return

was an inadvertent error, which the assessee corrected by the letter dated 26.10.2017 before the assessment was completed. It was argued that the share capital and reserves of the assessee exceeded its investments, so that, following ***CIT v. Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Bom)*** and ***CIT v. HDFC Bank Ltd. [2014] 366 ITR 505 (Bom)***, the investments must be presumed to have been made out of interest free funds. It was further argued that the fresh investment of about Rs 9.03 crore in the shares of Vaibhav Global Ltd. was met from funds released during the year. On the expenditure limb, the learned AR submitted that dividends were received through ECS and only some time of the accountant was spent on the related entries. A working placing this cost at Rs 60,000 was filed with the written submissions before us as Annexure-1. Reliance was placed on ***CIT v. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336 (Bom)*** for the proposition that the appellate authorities can entertain a claim not made in the return, on CBDT Circular No. 14 (XL-35) dated 11.04.1955 and on Article 265 of the Constitution of India. The learned AR also pointed out that a disallowance of Rs 1,20,000 offered for the assessment year 2016-17 was accepted in the assessment under section 143(3) of the Act. It was submitted that no additional evidence was filed before the learned CIT(A) and that interest under section 234C of the Act should be computed on the corrected income.

7. The learned Departmental Representative (hereinafter referred to as "the learned DR") supported the orders of the authorities below and filed written submissions. It was submitted that there is no addition in this case

and that the assessee is, in effect, appealing against its own return. The disallowance of Rs 22,58,100 is the exact result of Rule 8D applied to the audited accounts and is not an inadvertent figure. While accepting that the bar in ***Goetze (India) Ltd. v. CIT [2006] 284 ITR 323 (SC)*** does not restrict the appellate authorities, the learned DR contended that the assessee had to show that its own computation was wrong, which it had not done. The figure of Rs 60,000 was unsupported by any working at the assessment stage, before the learned CIT(A) or in the remand proceedings. The investment activity was substantial, as the assessee acquired 1,29,504 further shares of Vaibhav Global Ltd. at a cost of Rs 9,03,12,926 and earned exempt dividend of Rs 69,43,389. On the interest limb, the learned DR submitted that the own funds were deployed in interest bearing loans and inter corporate deposits, that the overdraft was in use during the year and that no fund flow statement was filed. Therefore, the presumption in ***South Indian Bank Ltd. v. CIT [2021] 438 ITR 1 (SC)*** could not be applied. The expenditure limb, it was argued, stands independently of the source of funds, and the assessment for the assessment year 2016-17 did not examine section 14A of the Act at all. In the alternative, the learned DR prayed that the disallowance of Rs 12,53,742 under Rule 8D(2)(iii) of the Rules be sustained in any event. On Grounds 5 and 6, it was pointed out that the interest charged is the interest computed by the assessee itself in the return, apart from rounding differences.

8. We have heard the rival submissions and perused the material on record, including the paper book and the written submissions of both parties. The central question is whether the assessee can, in appeal, reduce a

disallowance under section 14A of the Act that it computed and offered in its own return, and if so, to what extent. Since the interest limb and the expenditure limb rest on different considerations, we examine them separately after dealing with the preliminary objection.

9. The AO could not have entertained the revised claim made by a letter without a revised return. That is the ratio of ***Goetze (India) Ltd. (supra)***, where the Hon'ble Supreme Court, in paragraph 4, also made it clear that the limitation does not extend to the Tribunal:

> *"4. The decision in question is that the power of the Tribunal under section 254 of the Income Tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the assessing officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income Tax Appellate Tribunal under section 254 of the Income Tax Act, 1961. There shall be no order as to costs."*

10. The Hon'ble Supreme Court in ***Wipro Finance Ltd. v. CIT (Civil Appeal No. 6677 of 2008 (SC)*** has since held that the Tribunal may entertain even a claim which is inconsistent with the stand taken in the return. Paragraph 11 of that judgment reads as under:

> *"11. Learned ASG had placed reliance on the decision of this Court in Goetze (India) Ltd. vs. Commissioner of Income Tax in support of the objection pressed before us that it is not open to entertain fresh claim before the ITAT. According to him, the decision in National Thermal Power Co. Ltd. merely permits raising of a new ground concerning the claim already mentioned in the returns and not an*

inconsistent or contrary plea or a new claim. We are not impressed by this argument. For, the observations in the decision in Goetze (India) Ltd. itself make it amply clear that such limitation would apply to the "assessing authority", but not impinge upon the plenary powers of the ITAT bestowed under Section 254 of the Act. In other words, this decision is of no avail to the department."

11. The absence of a revised return is, therefore, no bar to our examining the claim. At the same time, the figure in the return is the assessee's own statement, made with the help of its audited accounts. A return is not an estoppel against the law, but the assessee who seeks to resile from it must show from the record that the figure is wrong. The material facts for both limbs are found in the audited accounts and the computation of income, which were before the AO. We therefore decide the claim on that material. The objection that the claim cannot be considered for want of a revised return is therefore rejected. The learned CIT(A) also proceeded on this footing.

Interest limb: Rule 8D(2)(ii) (Ground No. 2)

12. The position of the own funds and investments of the assessee, as per its audited balance sheet, is as under:

Particulars	31.03.2014 (Rs)	31.03.2015 (Rs)
Share capital and reserves	34,20,53,464	35,51,57,365
Non-current investments	20,55,91,894	29,59,04,820
Excess of own funds over investments	13,64,61,570	5,92,52,545

These figures are not in dispute. We note that the own funds exceeded the investments both at the beginning and at the end of the year.

13. The question whether interest can be disallowed under section 14A of the Act where interest free own funds exceed the investments is settled by ***South Indian Bank Ltd. (supra)***. Paragraphs 17 and 20 of the judgment read as under:

> *"17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interest- bearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure. For accepting such a proposition, it would be helpful to refer to the decision of the Bombay High Court in Pr. CIT v. Bombay Dyeing and Mfg. Co. Ltd where the answer was in favour of the assessee on the question, whether the Tribunal was justified in deleting the disallowance under Section 80M of the Act on the presumption that when the funds available to the assessee were both interest free and loans, the investments made would be out of the interest free funds available with the assessee, provided the interest free funds were sufficient to meet the investments. The resultant SLP of the Revenue challenging the Bombay High Court judgment was dismissed both on merit and on delay by this Court. The merit of the above proposition of law of the Bombay High Court would now be appreciated in the following discussion.*
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> *...*
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> *20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessees in bonds/shares using interest free funds, under Section 14A of the Act. In other words, if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax- free securities then in such cases, disallowance under Section 14A cannot be made."*

14. The learned DR contended that the own funds were deployed in interest bearing loans and inter corporate deposits, and that the overdraft was also in use during the year. That is precisely the situation of a "mixed fund" addressed in paragraph 17 of ***South Indian Bank Ltd. (supra)***. In such a situation, the investment is to be considered as made out of the interest free funds, and the Revenue may not estimate a proportionate figure. The finding of fact which the presumption requires is available from the audited balance sheet itself. Nothing on record links the overdraft, on which interest of Rs 15,59,960 was paid, to the purchase of shares. The Rule 8D(2)(ii) figure in the return is only the result of a formula that apportions common interest. Once the investments are presumed to have come out of interest free funds, no interest can be said to have been incurred in relation to the exempt income, and the formula cannot create a disallowance which section 14A of the Act does not permit. In this view, we do not find it necessary to examine the fund flow worked out by the assessee. The disallowance of Rs 10,04,358 is directed to be deleted. **Ground No. 2 is allowed**.

Expenditure limb: Rule 8D(2)(iii) (Ground Nos. 1 and 3)

15. The expenditure limb stands on a different footing. Section 14A(1) of the Act disallows expenditure incurred in relation to exempt income, whatever its source of funding. The availability of own funds has no bearing on the managerial and administrative effort that goes into investment activity. Further, Rule 8D was not applied by the AO against the assessee. It was applied by the assessee itself in its return, and the AO accepted it. The plea in Ground No. 3, that Rule 8D cannot be applied without rejecting the

claim of the assessee, therefore does not arise in the manner pleaded. The claim of the assessee in its return was its own Rule 8D computation. The later claim of Rs 60,000 was examined by the learned CIT(A) on merits, after a remand report, and was rejected with reasons. We have also examined it.

16. The burden lies on the assessee to show that the figure of Rs 12,53,742 it computed is wrong and that Rs 60,000 is the correct expenditure. The letter of 26.10.2017 gave no working. None was filed before the learned CIT(A) or in reply to the remand report. The working at Annexure-1 has been filed for the first time before us, about nine years after the letter of 26.10.2017. It takes the employee benefit expenses of Rs 10,08,000 and estimates one hour each for 54 entries, adding an equal amount for incidental expenses. It accounts only for the bookkeeping of dividend receipts. It ignores the decision during the year to invest Rs 9,03,12,926 in 1,29,504 further shares of Vaibhav Global Ltd., the oversight of a portfolio that grew from Rs 20.56 crore to Rs 29.59 crore, and the earning of exempt dividend of Rs 69,43,389. The statement in the letter dated 26.10.2017 that no new investment was made except additional shares in an existing investment does not change the nature or scale of this activity. A figure computed with care under the statutory formula cannot be displaced by an estimate offered without contemporaneous basis.

17. The reliance on the assessment year 2016-17 does not help the assessee. As pointed out by the learned DR, and not disputed before us, the assessment order for that year does not examine section 14A of the Act. The exempt dividend in that year was also only Rs 3,14,762, against Rs 69,43,389 in the

year under consideration. The rule of consistency in ***Radhasoami Satsang v. CIT [1992] 193 ITR 321 (SC)***, cited by the learned DR, applies where a fundamental aspect has been examined and accepted over the years, not where a figure has simply been accepted without examination in a later year. The CBDT Circular of 1955 and Article 265 of the Constitution of India support the assessee to the extent that tax must be levied only as the law permits. We have given effect to that principle by deleting the interest limb. They do not require the acceptance of an unsupported estimate. The disallowance of Rs 12,53,742 under Rule 8D(2)(iii) of the Rules is, therefore, sustained. **Ground No. 3 is dismissed**.

18. In the result, the disallowance under section 14A of the Act stands as under, and Ground No. 1 is partly allowed:

Particulars	**Disallowance in return (Rs)**	**As per this order (Rs)**
Interest: Rule 8D(2)(ii)	10,04,358	Nil
Expenditure: Rule 8D(2)(iii)	12,53,742	12,53,742
Total	**22,58,100**	**12,53,742**

Rule 46A (Ground No. 4)

19. The learned CIT(A) did not exclude any material from consideration. A remand report was called for, the rejoinder of the assessee was considered, and the appeal was decided on merits. We have also considered the entire material placed before us. The assessee has suffered no prejudice on this count, and the ground does not survive for adjudication. Ground No. 4 is dismissed.

Interest under sections 234B and 234C (Ground Nos. 5 and 6)

20. The interest under section 234B of the Act is consequential. The AO shall recompute it on the total income as determined after giving effect to this order. Interest under section 234C of the Act is computed with reference to the tax due on the returned income. The letter of 26.10.2017 is not a return, and the returned income remains Rs 1,28,18,940. The interest charged corresponds to the assessee's own computation in the return, apart from rounding differences. Ground No. 5 is allowed for statistical purposes and Ground No. 6 is dismissed.

21. Ground No. 7 is general in nature and does not call for adjudication.

22. In the result, **the appeal filed by the Assessee is partly allowed**.

Order pronounced in the open court on 21.10.2026

Sd/-	**Sd/-**
(KULDIP SINGH)	**(PRAKASH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated 21/10/2026

**Ganesh Kr., Sr. PS*

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT
6. Guard file.

By order/**आदेश से**,
सहायक पंजीकार
आयकर अपीलीय अधिकरण, जयपुर