

**IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM**

**ITA No.3342/Mum/2015
(Assessment Year :2009-10)**

Ms.Rina S Mehta, 32, Madhuli, Dr. A.B.Road Worli, Mumbai – 400 018	Vs.	ACIT – CC – 4(1), (Erstwhile ACIT-CC-23, Mumbai
PAN/GIR No.		ABNPM8222C
Appellant)	..	Respondent)

Assessee by	Shri Dharmesh Shah
Revenue by	Shri T.A. Khan
Date of Hearing	02/02/2017
Date of Pronouncement	21/04/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A) for the Assessment Year 2009-10 in the matter of order passed u/s.144 r.w.s.147 of the IT Act.

2. Ground No.1 was not pressed by learned AR. The same is therefore dismissed in limini as not pressed.

3. In Ground No.2 assessee is aggrieved for not granting deduction towards interest expenditure. Learned AR placed on record the order of the Tribunal in the case of other family members, wherein this issue was restored back to the file of the CIT(A). Learned DR fairly agreed for the same.

4. W found that Tribunal in the case of Rina S. Mehta vide order dated 16/12/2016 in ITA No.5451/Mum/2014 have restored similar disallowance of interest to the file of CIT(A) after observing as under:-

3. At the outset, the learned Authorised Representative placed a copy of order dated 31st May 2016, passed by the Tribunal in assessee's own case for the assessment year 2006-07 wherein similar issue was restored to the file of the learned Commissioner (Appeals). The observation of the Tribunal in this regard is reproduced below:-

"8. Ground No 4 pertains to addition on account of interest expense. An identical issue has been considered by the coordinate Bench in the case of M/s Growmore Research & Assets Mgt. Ltd., ITA Nos.5137&5138 and ITA No. 2150/M/13. The relevant paras of the order read as under:-

"We have carefully perused the orders of the authorities below. While disposing the ground relating to disallowance of interest, we find that the Ld. CIT(A) has followed the findings given in the case of Eminent Holdings Pvt.Ltd. We find that the Tribunal in the case of Eminent Holdings in ITA No. 2139,2140 and 2141/Mum/2013 have followed the decision of the Mumbai Tribunal given in common group cases of Hitesh Mehta at para 2.3 of the order and restored the matter to the file of the Ld. CIT(A) for fresh adjudication. Respectfully following the findings of the co-ordinate Bench, we restore this issue to the file of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee.

Before closing this issue, the Ld.Counsel for the assessee pointed out that the Ld. CIT(A) has held that the issue of interest expenditure is pending before the Hon'ble Special Court. It is the say of the Ld. Counsel that the proceedings in which the the said issue of interest was issued by the custodian have been already concluded which fact has already been recorded by the Ld.CIT(A) in the impugned order. We, therefore, direct the Ld. CIT(A) to consider the facts while deciding the issue afresh. Ld. CIT(A) may also direct for the taxing of income in the hands of the recipient (family members) in accordance with the method of accounting followed by them as per the provisions of the

law. Ground No. 4 is treated as allowed for statistical purpose”

9. The aforesaid findings were followed by the coordinate Bench in Smt. Rasila Mehta vs DCIT Mumbai (supra). Respectfully following the view taken by the coordinate Benches in the aforesaid cases, we restore this issue to the file of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee. Accordingly, this ground of appeal is treated as allowed for statistical purpose.”

4. We have carefully gone through the order of the authorities below as well as the order of the Tribunal cited supra and found that exactly similar issue of disallowance of interest was restored to the file of the learned Commissioner (Appeals). Learned Departmental Representative has not objection in restoring the issue back to the file of the learned Commissioner (Appeals). Consequently, respectfully following the order of the Tribunal cited supra, we restore this issue to the file of the learned Commissioner (Appeals) for denovo adjudication in terms of the directions given by the Tribunal in its order dated 31st May 2016. Accordingly, grounds no.1 and 2 are allowed for statistical purposes.

5. Respectfully following the order of the Tribunal in the case of other family members Rina S. Mehta dated 16/12/2016, this issue is restored back to the file of the CIT(A) for deciding in terms of direction given by the Tribunal in its order dated 16/12/2016 in case of Rina S. Mehta. We direct accordingly.

6. In Ground No.3 assessee has alleged upholding of addition on account of household expenditure amounting to Rs. 6 lakhs u/s. 69C. We found that exactly similar issue was dealt by the Tribunal in the case of other family members and the addition so made was reduced to 50% of what has been upheld by the CIT(A). The precise observation of Tribunal in

case of Sudhir S Mehta ITA No.4978/Mum/2013 dated 24/01/2017 was

as under:-

6. After hearing both the parties, we find that this issue is also covered by the order dated 31st May 2016 passed by the Tribunal in another family member of the assessee wherein the Tribunal have restricted the addition on account of low withdrawal to the extent of 50% of the amount upheld by the learned Commissioner (Appeals) after having the following observations:-

"6. We have perused the material placed before us in the light of the respective submissions of the parties. Ground No 3 pertains to addition on account of personal drawings. We notice that the coordinate Bench has dealt with the identical issue in Smt. Rasila Mehta vs DCIT Mumbai (supra) and the Bench restricted the addition to 50% of the addition sustained by the CIT(A), holding as under:-

"We have given thoughtful consideration to the facts brought on the record before us. We find that in the group cases, the addition on account of low withdrawals made by the AO amounting to Rs. 60,60,000/- have been restricted by the Ld. CIT(A) at Rs. 37,80,000/- which also includes the present addition of Rs. 3,00,000/-. Considering the factual matrix of the entire family, in our considered opinion, an addition of Rs. 1,50,000/- should meet the ends of justice. We, modify the findings of the Ld. CIT(A) and direct the AO to make disallowance of Rs. 1.50,000/-. This ground of assessee is partly allowed."

7. Since the identical issue has been decided by the coordinate Bench, in the aforesaid case, we respectfully follow the same and restrict the addition sustained by the Ld.CIT(A) to 50% and direct the AO to make disallowance of Rs.1,50,000/-. Accordingly, this ground of appeal is partly allowed."

7. As the facts and circumstances during the year under consideration are similar, respectfully following the aforesaid order of the Tribunal, we restrict the addition on account of low withdrawal to 3 lakh. Thus, ground no.3, is partly allowed.

7. Respectfully following the order of the Tribunal as stated above, we restrict the addition to the extent of 50% of household expenditure. We direct accordingly.

8. Insofar as ground no.4 is concerned, the assessee is aggrieved for confirmation of levy of interest under sections 234A, 234B and 234C of the Act.

9. After hearing both the parties, we find that this issue is also decided by the Tribunal vide order dated 31st May 2015, passed in another family member of the assessee. The précised observation of the Tribunal was as under:—

"The Revenue has challenged the impugned order on the following effective grounds:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that legal sanctity of law, the interest chargeable under section 234A, 234B and 234C is not only consequential but is mandatory in nature.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Special Court Act 1992 has not ruled out the provisions of section 234A, 234B and 234C being not applicable to the notified persons or they are exempt from the liabilities of payment of interest under these section of the Income Tax Act, 1961."

The sole grievance of the revenue is that the Ld. CIT(A) has erred in holding that no interest could be levied in the present case u/s 234A, 234B and 243C of the Act. The Ld. DR brought to our notice that this issue has been decided by the Hon'ble jurisdictional High Court in favour of the revenue and against the assessee to which the Ld. AR fairly conceded.

3. We further notice that this issue has also come up before the ITAT Mumbai in one of the group cases viz., M/s Harsh Estate Pvt. Ltd. in ITA No. 1035,1033 and 3464/M/2013 and the Tribunal allowed the issue in favour of the revenue, however, directed the Assessing Officer to recompute the interest liability after reducing the amount of tax deductible at source and decide as per the provisions of law.

4. Respectfully following the findings of the coordinate Bench, in M/s Harsh Estate Pvt. Ltd.(supra) and followed in the DCIT vs. Smt. Rasila S. Mehta, ITA No. 5870/M/2011, we allow the appeal of the revenue for statistical purpose and direct the AO to re-compute the interest liability after reducing the amount of tax deductible at source and decide as per the provisions of law.”

10. In view of the above discussion, we confirm the levy of interest under section 234B, in terms of the decision of Hon'ble Jurisdictional High Court. However, in respect of levy of interest under sections 234A and 234C is concerned, the matter is restored back to the file of the Assessing Officer to re-compute the interest liability in terms of the directions of the Tribunal vide order dated 31st May 2016. We direct accordingly.

11. In the result, assessee's appeal is partly allowed.

Order pronounced in the open court on this 21/04/2017

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 21/04/2017
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai