

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 6598 /MUM/2013
Assessment Year: 2007-08**

Smt. Deepika A. Mehta. 32, Madhuli, Dr. A.B.Road, Worli, Mumbai- 400018. PAN:- ABNPM8231D	Vs.	The DCIT, Central Circle-23, Aayakar Bhavan, M.K.Raod, Mumbai - 400020.
(Appellant)		(Respondent)

**ITA No 6600 /MUM/2013
Assessment Year: 2007-08**

Smt. Rasila S. Mehta. 32, Madhuli, Dr. A.B.Road, Worli, Mumbai- 400018. PAN:- ABNPM8219R	Vs.	The DCIT, Central Circle-23, Aayakar Bhavan, M.K.Raod, Mumbai - 400020.
(Appellant)		(Respondent)

Appellant by : Shri. Dharmesh Shah
Respondent by : Shri. Dr. P. Daniel.

Date of Hearing: 02/03/2016
Date of Pronouncement: 31/05/2016

ORDER

PER RAM LAL NEGI, JM

These two appeals have been filed by two different assesseees against orders dated 12/09/13 passed by the CIT(A) Mumbai, for the assessment year 2006-07. Since, the issues involved in both the appeals are identical, The Ld. Counsel for both the assesseees sought permission to argue both the appeals

together. Accordingly, both the appeals were clubbed and heard together and are being disposed of by this common order for the sake of convenience.

ITA No.6598/M/2013 (A.Y- 2007-08)

2. Brief facts of the case are that the appellant/assessee is notified person under the special court (Trial of offences relating to transactions in securities) Act, 1992 and all her assets including bank accounts had been attached and vested in the hands of the custodian appointed under the said Act. The return of income for the assessment year 2007-08 was filed on 31/03/2009, declaring total income of Rs. 1,67,77,470/- The assessee submitted the details in response to notices issued u/s 143(2) and u/s142(1) of the Income Tax Act, 1961 (in short the Act.). On the basis of information furnished and submissions made by the assessee, the Assessing Officer passed assessment order u/s 143(3) of the Act, determining the total income of Rs. 3,28,96,030/-

3. The assessee challenged the assessment order by filing first appeal before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee, partly allowed the appeal, however, confirmed certain actions of the AO, including disallowance of interest expenditure amounting to Rs 1,55,00,564/-, addition of personal house hold expenses of Rs. 3,00,000/- and levy of interest u/s 234A, 234B & 234C of the Act.

4. Still aggrieved by the impugned order, the assessee in appeal before the Tribunal. The assessee has raised the following effective grounds of appeal;

“1. The Learned Commissioner of Income-Tax (Appeals) ought to have appreciated that as per the decision of Hon’ble Special Court dated. 30/04/2010 in MP No.41 of 1999, the assets under consideration and the consequential income belongs to Shri.Harshad S.Mehta and hence the income assessed by the Assessing Officer ought to have been taxed in the hands of Shri. Harshad S.Mehta and not in the hands of the appellant.

2. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not appreciating that the rejection of books of accounts of the appellant was incorrect and unjustified.*
3. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the disallowance of interest expenditure amounting to Rs. 1,55,00,564/-*
4. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the addition on account of personal household expenses of Rs. 3,00,000/-.*
5. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the levy of interest u/s 234A, 234B and 234C of the Act.*
6. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in not appreciating that the income assessed in the hands of the appellant were subjected to the provisions of TDS and hence on the said amount of tax no interest can be computed u/s 234B and 234C of the Act.”*

5. Before us, the Ld. Authorised Representative (AR) submitted that the assessee does not want to contest Ground No. 1 & 2. Accordingly, both the grounds of the present appeal are dismissed as not pressed. The Ld. AR further submitted that the Ground No.3 and 4 are covered by the decision dated 21/10/2015 rendered by the Mumbai Tribunal in Rasila Mehta vs. DCIT, ITA 6198/M/2011 for the A.Y. 2003-04 and identical issues have been considered in the said case. Hence, these grounds are required to be decided accordingly. On the other hand Departmental Representative (DR) relying on findings of the authorities below submitted that the impugned order does not suffer from any legal infirmity. The Ld. DR further submitted that Ground No. 5&6 which pertain to levy of interest u/s 234A, 234B and 234C of the Act, has been decided in favour of the revenue and against the assessee by the Hon'ble

jurisdictional High Court, therefore, these Grounds of appeal are liable to be dismissed.

6. We have heard the parties and perused the material placed before us in the light of the respective submissions of the parties. Ground 3 pertains to addition on account of interest expenses. We notice that the coordinate Bench had an occasion to consider an identical issue 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”

7. 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.

8. Ground No 4 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 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.”

9. 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.

10. Ground No 5 and 6 pertain to levy of interest under section 234A, 234B and 234C 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. We 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.

11. Respectfully following the findings of the coordinate Bench, in M/s Harsh Estate Pvt. Ltd.(supra), followed in the DCIT vs. Smt. Rasila S. Mehta, ITA No. 5870/M/2011, we dismiss the appeal of the assessee, however, 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. Accordingly appeal of the assessee is partly allowed.

ITA No 6600 /MUM/2013(A. Y. 2007-08)

Brief facts of the case are that the appellant/assessee is notified person under the special court (Trial of offences relating to transactions in securities) Act, 1992 and all her assets including bank accounts had been attached and vested in the hands of the custodian appointed under the said Act. The return of income for the assessment year 2007-08 was filed on 31/03/2009, declaring total income of Rs. 1,55,38,610/- The assessee submitted the details in response to notices issued u/s 143(2) and u/s142(1) of the Act. On the basis of information furnished and submissions made by the assessee, the Assessing Officer passed the assessment order u/s 143(3) of the Act, determining the total income of Rs. 2,61,07, 860/-

2. The assessee challenged the assessment order by filing first appeal before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee, partly allowed the appeal, however confirmed certain actions including the disallowance of interest expenditure amounting to Rs 97,40,757/-, addition on account of personal house hold expenses of Rs. 3,00,000/- disallowance of Rs. 2,00,000/- and bank charge of Rs. 11,932/- and levy of interest u/s 234A, 234B & 234C of the Act.

3. Still aggrieved by the impugned order, the assessee is in appeal before the Tribunal. The assessee has raised the following effective grounds of appeal.

1. *The Learned Commissioner of Income-Tax (Appeals) ought to have appreciated that as per the decision of Hon'ble Special Court dated. 30/04/2010 in MP No.41 of 1999, the assets under consideration and the consequential income belongs to Shri.Harshad S.Mehta and hence the income assessed by the Assessing Officer ought to have been taxed in the hands of Shri. Harshad S.Mehta and not in the hands of the appellant.*
2. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not appreciating that the rejection of books of accounts of the appellant was incorrect and unjustified.*
3. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the disallowance of interest expenditure amounting to Rs. 97, 40, 757/-*
4. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the addition on account of personal household expenses of Rs. 3,00,000/-.*
5. *The Ld. Commissioner of Income-Tax(Appeals) has erred in law and in facts in confirming the disallowance in respect of professional charges of Rs. 2,00,000/- and bank charges of Rs. 11,932/-.*

6. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the levy of interest u/s 234A, 234B and 234C of the Act.*

7. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in not appreciating that the income assessed in the hands of the appellant were subjected to the provisions of TDS and hence on the said amount of tax no interest can be computed u/s 234B and 234C of the Act.*

4. Before us, the Ld. Authorised Representative (AR) submitted that the assessee does not want to contest Ground No. 1 & 2. Accordingly, both the grounds of the present appeal are dismissed as not pressed. The Ld. AR further submitted that the Ground No.3 and 4 are covered by the decision dated 21/10/2015 rendered by the Mumbai Tribunal in assessee's own case, Rasila Mehta vs. DCIT, ITA 6198/M/2011 for the A.Y. 2003-04. Hence these grounds are required to be decided accordingly. As regards Ground No 5 of the appeal the Ld. AR submitted that the assessee has already determined the disallowance under section 14A of the Act. Therefore, the Ld. CIT has wrongly confirmed the disallowances made by the AO. On the other hand Departmental Representative (DR) relying on findings of the authorities below submitted that the impugned order does not suffer from any legal infirmity. The Ld. DR further submitted that Ground No. 6&7 which pertain to levy of interest u/s 234A, 234B and 234C of the Act, has been decided in favour of the revenue and against the assessee by the Hon'ble jurisdictional High Court, therefore, this Ground of appeal is liable to be dismissed.

5. We have heard the parties and perused the material placed before us in the light of their respective submissions. Ground 3 pertains to addition on account of interest expenses. We notice that the coordinate Bench had an occasion to consider identical issue 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”

6. The aforesaid findings were followed by the coordinate Bench in assessee’s own case, 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.

7. Ground No 4 pertains to addition on account of personal drawings. We notice that the coordinate Bench has dealt with the identical issue in assessee's own case, Smt. Rasila Mehta vs DCIT Mumbai (supra) and 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.”

8. Since the identical issue has been decided by the coordinate Bench, in assessee's own case aforesaid, 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.

9. Ground No. 5 pertains to confirming the disallowance in respect of professional charges of Rs. 2,00,000/- and bank charges of Rs. 11,932/- under section 14A of the Act. Since Rule 8D of the Income Tax Rule is applicable from assessment year 2008-09 onwards, we are of the view that this issue requires fresh examination. Accordingly, we set aside the order of the Ld. CIT(A) on this issue and restore to the file of AO for fresh adjudication after giving opportunity of being heard to the assessee.

10. Ground No 6 and 7 pertain to levy of interest under section 234A, 234B and 234C of the Act. We 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 recomputed the interest liability after reducing the amount of tax deductible at source and decide as per the provisions of law.

11. 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 dismiss these grounds of the appeal, however, 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.

12. In the result, both the appeals for the assessment year 2007-08 are partly allowed.

Order pronounced in the open court on 31st May, 2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated:31/05/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila