

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

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

**ITA No 3890/MUM/2012  
Assessment Year: 1991-92**

Rasila S. Mehta., 32, Madhuli, Dr. A.B.Road, Worli, Mumbai- 400018.  PAN:- ABNPM8219R	<b>Vs.</b>	The Dy. CIT Central Circle-23, Aayakar Bhavan, M.K.Road, Mumbai- 400020.
<b>(Appellant)</b>		<b>(Respondent)</b>

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

Date of Hearing: 17/06/2016  
Date of Pronouncement: 20/07/2016

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been preferred by the assessee against order dated 18/01/2012 passed by the Ld. CIT(Appeals)-40, Mumbai for the assessment year 1991-92.

2. Brief facts necessary for adjudication of the issues involved in this case are that the appellant/assessee is the mother of Late Shri. Harshad S. Mehta involved in the securities scam. A search and seizure action u/s 132 of the Act was carried out at the premises of the appellant/assessee on 27/09/1990. During the course of search a large number of documents were seized. A second search and seizure operation was also carried out at the appellant's premises on 28/02/1992. During the course of second search also a large

number of documents and valuables were seized. Since the appellant/ assessee had not filed her return of income for the assessment year under consideration within a prescribed time, notice u/s 148 was issued by the AO. In reply to which, the assessee furnished certain details, however, no return of income was filed. Ultimately, assessment was completed u/s 144/143(3) r.w.s. 147 of the Act on 24/03/1994 determining the total income at Rs. 4,78,03,164/-.

3. The assessee challenged the assessment order before the Ld. CIT(A). The CIT(A) vide order dated 25/02/2003 granted partial relief only. Feeling aggrieved by the said order, the assessee filed second appeal before the ITAT. The ITAT after hearing the parties, considered it fit to set aside the matter back to the file of the Ld. CIT(A) to decide the issues afresh after admitting the books of accounts produced by the assessee. The order under challenge has been passed by the Ld. CIT(A) in compliance of order dated 31/03/2006 passed in by the ITAT in ITA no. 2804/M/04. The assessee has challenged the impugned order passed by the Ld. CIT(A) on the following effective grounds:-

*“1. The Learned Commissioner of Income-Tax (Appeals) has erred in law and facts in confirming validity of the assessment order passed u/s. 147 of the Act by the Assessing Officer.*

*2. The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not appreciating that the Assessing Officer has not complied with the principles of natural justice either during the course of the assessment proceedings or during the course of the remand proceedings.*

3. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in not determining the income based on the final books of account thereby confirming the net accretion method adopted by the Assessing Officer for determination of the total income. The Learned Commissioner of Income-tax (Appeals) ought to have accepted book results shown by the appellant.*

4. *The Learned Commissioner of Income-tax (Appeals) ought to have held that determination of total income of appellant by considering net accretion to various assets as under is wholly erroneous and unsustainable.*

<i>Particulars</i>	<i>Amounts (Rs.)</i>
<i>Net accretion to the other assets</i>	<i>(-) 3,65,93,656</i>
<i>Net accretion to shareholding</i>	<i>8,29,86,623</i>
<i>Declaration by Late Shri Harshad S. Mehta</i>	<i>24,00,000</i>
<i>Total ....</i>	<b><i>4,87,92,967</i></b>
<i>Add: Personal expenses</i>	<i>1,45,647</i>
<i>Total Net accretion to the non-revenue accounts</i>	<b><i>4,89,38,614</i></b>

5. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not appreciating that the correct quantity of purchase and sale of shares should be adopted as per the books of accounts while determining the income based on the net accretion method adopted by the Assessing Officer.*

6. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the determination of the shareholdings of the appellant in Annexure A-1 based on the seized data of the brokers.*

7. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the determination of unaccounted investments as per Annexure A-3 of the assessment order at Rs. 4,34,46,164/- on the basis of the information collected from various companies allegedly showing the shareholding of the appellant without appreciating that the copies of the said letters/information was neither provided to the appellant during assessment proceedings nor during remand proceedings.*

8. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the value of the unaccounted investment as per Annexure A-3 based on the average of the market rates as on 1.4.1990 and 31.3.1991 without appreciating that the value of investments ought to have been determined at the cost of acquisition based on the dates of purchase.*

9. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the disallowance of deduction on account of interest expenditure claimed by the appellant.*

10. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the disallowance of deduction of other expenses claimed by the appellant in the books of account.*

11. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not granting deduction u/s. 48 of the Act while computing the income of the appellant.*

12. *The Learned Commissioner of Income-Tax (Appeals) ought to have held that the alternate working of the total*

*income as given below, as wholly erroneous and unsustainable.*

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Revenue receipts as per seized books</i>	<i>25,21,616</i>
<i>Additional income being part of Rs.100 crores declaration</i>	<i>2,18,62,000</i>
<i>Total .....</i>	<b><i>2,43,83,616</i></b>
<i>Less: Expenses</i>	<i>950</i>
<i>Total income as per revenue accounts</i>	<b><i>2,43,82,666</i></b>

*13. 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.”*

4. Since the appellant has moved an application for condonation of delay of 55 days in filing the present appeal, the Ld. counsel for the assessee submitted that the delay in filing appeal was neither intentional nor willful act on the part of the assessee but it has happened due to the reason that all assets of the assessee had been attached and the applicant had to move an application for sanction and release of statutory fees in terms of section 3(4) of the Special Courts Act and after obtaining order from the court the assessee filed the present appeal. After hearing the Ld. departmental representative, we allowed the application for condonation of delay in the interest of justice holding that the aforesaid circumstances are sufficient to condone the delay in filing the present appeal. Hence, we allowed the Ld. Counsel to argue the case on merits.

5. On merits, the Ld. Counsel for the assessee submitted that the grounds raised in the present appeal are identical to the grounds raised in the case of Hitesh S. Mehta, ITA No 8023/M/2011 decided on 04.12.2013 by the Mumbai Tribunal. Therefore, the present appeal is squarely covered by the order passed by the ITAT Mumbai in case Hitesh S. Mehta (supra). On the other hand the Ld. Departmental representative (DR) relying on the findings of the authority below, submitted that the Ld. CIT(A) has decided the present appeal on the basis of evidence on record and in accordance with the law, therefore, there is no infirmity in the order passed by the Ld. Ld. CIT(A).

6. The Ld. Counsel for the assessee submitted that assessee does not want to press Ground No. 1 of the appeal. Hence, we dismiss ground no.1 of the appeal as not pressed.

7. As regards Ground No. 2 the Ld. Counsel for the assessee submitted that the identical ground raised in case of Hitesh S. Mehta (supra) was not adjudicated by the ITAT being general in nature, therefore, the same does not need separate adjudication. Accordingly, the same is not adjudicated.

8. The Ld. submitted that the Ground No.3 of the appeal is covered by the order of ITAT in the case of Hitesh S. Mehta (supra). In the said case the Ld. CIT(A) had confirmed the net accretion method adopted by the AO for determining the total income rejecting the final books of account produced during the appellate proceedings by the assessee. The coordinate Bench of ITAT issue direction to the Ld. CIT(A) to compute the income as per books of accounts holding as under:-

*“....., we do not find any reason why the Ld. CIT(A) should have rejected the book results. As the admission of the books of account have attained finality by the decision of the Tribunal, the Ld. CIT(A) is directed to compute the income as per books of account. Ground No 3 is allowed for statistical purpose.”*

9. In the present case also, the Ld. CIT (A) following its earlier finding in the case of Shri. Hitesh S. Mehta for A.Y. 1991-92), on the same issue, has rejected the books of account produced by the assessee. Since the identical issue has already been decided by the coordinate Bench, we respectfully following the finding of the coordinate bench direct the Ld. CIT(A) to compute the income of the assessee as per books of accounts. Ground no. 3 is accordingly allowed for statistical purpose.

10. Ground no. 4, 5 & 6 pertain to determination of the total income by considering net accretion to various assets. The Coordinate Bench in the case of Shri. Hitesh S. Mehta (supra) has allowed the corresponding Grounds holding as under:

*“11. As we have directed the Ld. CIT(A) to compute the taxable income as per books of account of the assessee qua in ground No. 3, additions contested for ground No. 4,5, & 6 are deleted. Ground No 4 to 6 are accordingly allowed.”*

11. Since, we have directed the Ld. CIT(A) to compute the taxable income as per books of account of the assessee, we delete the additions contested vide Ground No 4,5 & 6 of this appeal. Ground No. 4, 5 & 6 are accordingly allowed.

12. Ground No. 7 is also identical to the corresponding Ground No. 7 raised in the case of Hitesh S. Mehta (supra). The Co-ordinate bench has allowed the ground No.7 of the appeal holding as under:-

*“ ..... One of the basic principles of natural justice is that no evidence collected behind the back of the assessee could be used against the assessee unless an opportunity is given to the assessee to rebut the same. As the Revenue authorities have grossly erred in relying upon the evidences collected behind the back of the assessee, the additions based on such materials deserves to be deleted. We, accordingly reverse the findings of the Ld CIT(A) and direct the AO to delete the addition of Rs. 3,79,42,133/- which have been made on the basis of the information collected from various companies behind the back of the assessee. This Ground of appeal is accordingly allowed.”*

13. The question as to whether any investment is disclosed in the books or not can be answered only after examining the books of account of the assessee. In the earlier paragraphs, we have directed the Ld CIT(A) to determine income on the basis of books of account. Since the AO has determined certain investments as “undisclosed investments” on the basis of material collected by him and since they were not compared with the books of accounts and the assessee was not provided with the opportunity to explain her case, we set aside this issue to the file of Ld. CIT(A) with the direction to cause compare the alleged undisclosed investments with the books of account. The Ld. CIT (A) may get a remand report from AO in this

regard. If any investment is found not recorded in the books of account, to seek explanation from the assessee and take appropriate decision after providing adequate opportunity to the assessee.

14. Since, Ground No. 8 of the appeal is consequential to the finding of the ground no. 7 of the appeal, the same is also allowed.

15. Ground no. 9 pertains to confirmation of disallowance of deduction on account of interest expenditure claim by the appellant. As urged by the Ld. Counsel for the assessee, identical issue has also been dealt by the Co-ordinate bench in case of Shri. Hitesh S. Mehta, ITA No 9158/M/2010 for the assessment year 1996-97 vide order dated 29.11.2013. Following the decision rendered in the said case, the Co-ordinate Bench restored this ground of appeal back to the file of the Assessing Officer to follow the direction of the Tribunal in A.Y. 2005-06 and 2006-07. Following the decision of Co-ordinate Bench we restore this ground of appeal back to the file of the AO with the direction to follow the direction of the Tribunal passed in ITA no. 9158/M/2010 (supra). Ground no. 9 is accordingly allowed for Statistical purpose.

15. Ground No. 10 of this appeal is also identical to the ground no. 10 in the case of Hitesh S. Mehta (supra). The Co-ordinate bench has allowed this ground of appeal holding as under:

*“20. As we have directed the CIT(A) to compute the income as per books of account of the assessee, all the expenses debited in the books of account will automatically be allowed by the AO as per our findings*

*given in ground no. 3 of this order. Ground no. 10 is accordingly allowed.”*

16. Respectfully following the decision of Co-ordinate bench passed in Hitesh S. Mehta (supra), we allow Ground No. 10 of the appeal and direct the Ld. CIT(A) to compute the income as per books of accounts while allowing ground No 3 of this appeal .

17. Grievance raised vide ground no. 11 & 12 are consequential to our findings given for ground no. 3 of this appeal. As we have directed the AO to compute the income as per the books of account of the assessee, these grounds will be decided a fresh. Ground No. 11 & 12 are accordingly allowed.

18. Ground no. 13 relates to the chargeability of interest u/s 234A, 234B and 234C of the Act. Levy of interest is mandatory but consequential.

19. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 20<sup>th</sup> July, 2016

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

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2016

**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/ YORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.

Registrar)

आयकर अपीलीय अधिकरण, मुंबई  
/ ITAT, Mumbai

Pramila