

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Ram Lal Negi, Judicial Member**

ITA No. 1911/Mum/2015
(Assessment Year: 2004-05)

Smt. Pratima H. Mehta 32, Madhuli, 3 rd Floor A.B. Road, Worli Mumbai 400018	Vs.	DCIT, Central Circle-23 (Now ACIT, CC-4(1)) 4 th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020 PAN – ABNPM8226G
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Appellant

Respondent

Appellant by: Shri Ashwin Kashinath
Respondent by: Shri Dr. P. Daniel

Date of Hearing: 02.02.2017
Date of Pronouncement: 08.02.2017

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-52, Mumbai dated 15.01.2015 for A.Y. 2004-05, raising the following grounds: -

- “1. The Ld. Commissioner of Income-Tax (Appeals) ought to have appreciated that as per the decision of the Hon'ble Special Court dated 30.10.2010 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 Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in coming the disallowance of interest expenses of ₹17,67,336/-.*
- 3. The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the disallowance on account of advertisement/business promotion expenses of ₹17,685/-.*
- 4. The Ld. 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.*

5. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in fact in not appreciating that the income assessed in the hands of the appellant was subjected to the provisions of TDS and hence on the said amount tax, no interest can be levied u/s. 234B and 234C of the Act.*
6. *The appellant craves leave of Your Honour to add to, alter, amend and/or delete any of the foregoing grounds of appeal."*

2. **Grounds 1 & 3**

2.1 At the outset of the hearing, the learned A.R. of the assessee submitted that grounds of appeal raised at 1 and 3 (supra) are not being pressed by the assessee in this appeal. Since these grounds are not pressed, the same are rendered infructuous and accordingly dismissed.

3. **Ground No. 2 – Disallowance of interest expenses – ₹17,67,336/-**

3.1 Both counsels brought to the notice of the Bench that the issue raised on disallowance of interest expenses was covered by the decision of a Coordinate Bench of the Tribunal in the assessee's own case for A.Y. 1996-97 in ITA No. 6632/Mum/2013 dated 18.05.2016. We find on perusal thereof, that the Coordinate Bench in the aforesaid order for A.Y. 1996-97 (supra) had followed the decision of another Coordinate Bench in the assessee's own case in ITA No. 350/Mum/2013 dated 11.05.2015 wherein it was held as under: -

"3. Ground No. 4 relates to the disallowance of interest expense. The Ld. Counsel for the assessee brought to our notice that the decision relied upon by the Ld. CIT(A) while disposing this ground has been set aside by the Tribunal to the file of the Ld. CIT(A). 4. The Ld. Departmental Representative could not bring any distinguishing decision in favour of the Revenue. 5. We have carefully perused the orders of the authorities below. While disposing the ground relating to the 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 Nos. 2139, 2140 and 2141/Mum/2013 have followed the decision of the Tribunal given in common group case of Hitesh S. 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 Coordinate Bench, we restore this issue to the files of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee. 6. 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 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 this fact while deciding the issue afresh. The 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 and as per the provisions of the law. Ground No. 4 is treated as allowed for statistical purpose."

3. The learned D.R. did not controvert the contention of the learned A.R. for the assessee. In these circumstances we do not find any reason to interfere with the order of the CIT(A). Accordingly we restore the issue back to the file of the AO for fresh adjudication after affording reasonable opportunity of hearing to the assessee."

3.2 Following the aforesaid decision of the Coordinate Bench of the Tribunal in the assessee's on case for A.Y. 1996-97 in ITA No. 6632/Mum/2013 dated 18.05.2016, we restore this issue back to the file of the learned CIT(A) for fresh consideration and adjudication after affording both the assessee and Assessing Officer (AO) reasonable opportunity of being heard in the matter. We hold and direct accordingly. Consequently ground No. 2 of assessee's appeal is treated as allowed for statistical purposes.

4. Ground No. 4 & 5 – Charge of interest under section 234B and 234C of the Act

4.1 These grounds deal with the issue of the charging of interest under section 234B and 234C of the Act for A.Y. 2004-05. Counsels for both Revenue and the assessee agreed that this issue is covered against the assessee by the decision of the Coordinate Bench of this Tribunal in the assessee's own case for A.Y. 1996-97 wherein it followed the earlier decision of the Coordinate Bench for A.Y. 2009-10 in ITA No. 350/Mum/2013 dated 11.05.2013, wherein it was held as under at para 4 thereof: -

4. Ground no.3 and four deal with levy of interest u/s. 23B and 234C of the Act. The Representatives of both the sides agreed that the issue was decided in assessee's own case, by the Tribunal, while adjudicating the appeal for the AY.2009-10(ITA/350/Mum/2013 dtd. 11. 05.2015). We would like to reproduce the relevant portion of the order and same reads as under:

“The next ground of appeal is about levy of interest u/s.234 of the Act. Before us, the AR stated that the assessee was a notified entity, thus the provisions of s.234A,234B and 234C of the Act deemed to have complied with, that the assets were already in attachment of the Custodian appointed under the provisions of Special Courts Act, that the Tribunal in the case of the appellant and several other entities had held the view in favour of the appellant that the Hon’ble Bombay High Court in the case of Divine Holdings Pvt. Ltd. and Cascade Holdings Pvt. Ltd. had held the provisions of section 234A, 234B and 234C of the Act were mandatory and were applicable to the notified entities also, that the assessee was in the process of filing an appeal against the said order before the Hon’ble Supreme Court, that the income earned in the year under consideration was subjected to provisions of TDS, that the changeability of the section 234A, 234B and 234C of the Act should be after considering the amount of tax deductible at source on the income assessed. The appellant relies in this regard on the following decisions. He relied upon the cases of Motorola Inc. v. DCIT [95 ITD 269 (Del. (SB)], Sedco Fores Drilling Co. Ltd. [264 ITR 320], NGC Network Asia LLC [313 ITR 187], Summit Bhatacharys [300 ITR (AI) 347 (Bom) (SB), Vijal Gopal Jindal [ITA No. 4333/Del/2009 & Emillo Ruiz Berdejo [320 ITR 190 (Bom). DR relied upon the cases of Devine Holdings Pvt. Ltd.

3.1 We have heard the rival submissions and perused the material before us. We find that in the false of Devine Holdings Pvt. Ltd. Hon’ble Bombay High Court has held that provisions of section 234A, 234B and 234C were applicable to the notified person also. Therefore, upholding the order of the FAA to that extent, we hold that provisions of section 234 of the Act are applicable. As far as calculation part is concerned, we find merits in the submission made by the assessee. Therefore, we are restoring back the issue to the file of the AO for fresh adjudication who would decide the issue after considering the amount taxed deductible at source on the income assessed and after affording a reasonable opportunity of hearing to the assessee.

As a result, appeal filed by the assessee for the A.Y. 2002-03 stands partly allowed.

Respectfully, following the above we direct the AO to hear the assessee and decide the issue afresh.”

4.2 Following the decision of the Coordinate Bench in the assessee’s own case for A.Y. 1996-97 in ITA NO. 6632/Mum/2013 dated 18.05.2016 we hold that the provisions of section 234 of the Act are applicable to the case on hand and restore this issue back to the file of the AO for deciding the

issue afresh, in accordance with the findings rendered by the Coordinate Bench (extracted supra at para 4.1) after affording the assessee adequate opportunity of being heard.

5. **Ground No. 6** – being general in nature, no adjudication is called for thereon. We, therefore, dismiss this ground as infructuous.

6. In the result, the assessee's appeal for A.Y. 2004-05 is partly allowed for statistical purposes.

Order pronounced in the open court on 8th February, 2017.

Sd/-
(Ram Lal Negi)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 8th February, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -52, Mumbai*
4. *The CIT, Central - II, Mumbai*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.