IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI

Before Shri Saktijit Dey (JUDICIAL MEMBER)

AND
Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A Nos.1679 to 1682/Mum/2015
(Assessment years: 1993-94 to 1996-97)
AND
I.T.A Nos.1255 to 1258/Mum/2017
(Assessment years: 1993-94 to 1996-97)

Dhanraj Mills Pvt Ltd A-604, 6th Floor, Pranik Chambers, Saki Vihar Road, Sakinaka, Andheri (E), Mumbai-72 PAN : AAACD5580D	vs	ACIT(OSD-II), CR-7, Mumbai
APPELLANT		**RESPONDEDNT**

Appellant by	Shri Deepak P Tikekar
Respondent by	Dr P Daniel

Date of hearing	01-11 -2017
Date of pronouncement	19-01-2018

O R D E R

Per Bench :

These eight appeals filed by the assessee, two each for assessment years 1993-94 to 1996-97 against separate, but identical orders of the CIT(A)-52, Mumbai against consolidated order passed for each assessment year separately in respect of two appeals filed by the assessee against the orders of AO passed u/s 143(3) & 143(3) r.w.s. 147 of the Income-tax Act, 1961. Since the facts and issues involved in

these appeals are identical, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The assessee has raised more or less common grounds of appeal for all the assessment years. Therefore, for the sake of convenience, grounds of appeal raised for AY 1993-94 are reproduced below:-

> *"1. The Learned CIT (A) has erred in not following Hon'ble ITAT, Mumbai direction for competing the assessment.*
>
> *The Learned CIT (A) has erred in confirming Rs 1,59,73,852/- on account of unexplained investment in Jewellery*
>
> *3. The Learned CIT (A) has erred in directing to adopt the interest income at Rs 11,31,28,230/-*
>
> *4. The Learned CIT (A) has erred in confirming Rs 7,11,531/- as a dividend income.*
>
> *5. The Learned CIT(A) has erred in not reducing the interest income already shown in Profit and Loss account.*
>
> *The Learned CIT (A) has erred in law and in facts in rejecting the*
> *"-" contentions of the appellant company that no real income has become due to it from Cifco Group of Companies of Rs 2,57,60000/-.*
>
> *(The Learned CIT (A) has erred in law and in facts in rejecting the contentions of the appellant company about the taxability of interest come from M/s Excel & Co at Rs 2,31,00,000/-.*
>
> *The Learned CIT (A) has erred in law and in facts in not considering that no real income has become due to it from VKSA, and Swadeshi Enterprises*
>
> *9. The Learned CIT (A) has erred in law and in facts in not considering the additional grounds that appellant prays that if non-accruability of interest allegedly due from VKSA, Swadeshi Enterprises and Cifco Group of Companies., is rejected , then the amount so assessable ought to be correspondly allowed as a deduction on the premises that the interest has not been actually and really received by the Appellant from VKSA, Swadeshi Enterprises and Cifco Group of Companies.*
>
> *10. The Learned CIT (A) has erred in confirming the*

interest u/s 234A, 234B and 234C of the Income Tax Act 1961.

11. The Learned CIT(A) has erred in confirming the initiation of penalty proceedings u/s 271 (1)(c) of the Income Tax Act 1961.

3. There is delay in filing appeals in ITA Nos 1255/Mum/2017 to 1258/Mum/2017. The assessee filed a condonation petition dated 22-02-2017 praying for condonation of delay, which reads as under:-

Date: 22nd February, 2017

To,
Hon'ble"D" Bench
ITAT, Mumbai
Respected Sir,
Sub: Request for condonation of delay in filing Income Tax Appeals for
Ay 1993-94-PAN: ***AAACD5580D***
I, Rajendra Prasad Mehrotra, Director of the Dhanraj Mills Private Limited, hereby request to kindly condone the delay in filing Tax Appeal. We submit that Learned CIT(A) has passed the consolidate order dated 12-01-2015 for AY 1993-94 for order u/s 143(3) and Order u/s 143(3) r.w.s. 147 received on 09-02-2015, due to single order we inadvertently file single appeal bearing no. 1679/M/15. Recently it has been advised to file separate appeal for the both the order. Therefore, accordingly we are filing separate appeal for order u/s 143(3) r.w.s. 147. Kindly treat the appeal no. 1679/M/15 files for order u/s 143(3).
** to inadvertent there is delay in filing appeal by 685 days. Kindly condone the delay.*
Sd/-

For Dhanraj Mills Private Limited"

The above application of the assessee is duly supported by an affidavit sworn in by the director of the company, which reads as follows:-

"AFFIDAVIT

I, Rajendra Prasad Mehrotra, Director of the Dhanraj Mills Private Limited, do hereby solemnly state as under:

That the Learned CIT(A) has passed the consolidate order dated 12-01-2015 for AY 1993-94 for order u/s 143(3) and Order u/s 143(3) r. w. s. 147 received on 09-02-2015, due to single order we inadvertently file single appeal bearing no. 1679/M/15.
That the recently it has been advised to file separate appeal for the both the order. Therefore, accordingly we are filing separate appeal for order u/s 143(3) r. w. s. 147. Due to above verification of fact resulted in the cmiay in filing appeal by 684 days.
That I state that there was no malafide intention to delay submission of appeals.
Whatever stated above its true to the best of my knowledge 8i belief.
Kindly condone the delay.
(Mr. Rajendra Prasad Mehrotra)
Director Deponent"

The reasons for delay in filing the appels are convincing. Therefore, we admit the appeals for adjudication.

4. The assessee also filed a petition for admission of additional grounds vide application dated 21-10-2015 raising more or less common grounds of appeal for all the years under appeals. Therefore, for the sake of convenience, grounds of appeal raised for AY 1993-94 are reproduced below:-

*1) **The** Learned **CITA)** has erred in computing the interest income of Rs 2,31,00,000/- from Excel & Co.*

2) The Learned CITA) has erred in enhancing the interest income by Rs 2,12,03,280/- as receivable from Excel & Co. without issuing enhancement notice.

3) The Learned CIT (A) has no jurisdiction for enhancement in the appellate proceeding, which has to be completed as per direction given by Hon'ble ITAT.

4 The Appellant craves leave to add to and/or amend and/or modify and/or alter and/or delete the aforesaid additional ground of appeal.

5. From these grounds of appeal, the assessee has challenged additions made by the AO towards unexplained jewellery and accrued interest on loans and advances receivable from CIFCO group of companies, Excel & Co, VKSA & Swadeshi Enterprises. The assessee also challenged additions made by the AO towards dividend income, computation of interest income adopted from total loans and advances and also levy of interest u/s 234A, 234B and 234C of the Income-tax Act, 1961. Though the assessee has raised various grounds of appeal, filed a chart and explained that the issue for consideration from these grounds of appeal is for AY 1993-94 addition made by the AO towards unexplained jewellery and interest income receivable from loans and advances given to group companies. For rest of the assessment years, the only issue to be decided is addition made by the AO towards interest income receivable from CIFCO group of companies, Excel & Co, VKSA & Swadeshi Enterprises. The remaining grounds are either consequential in nature and / or not pressed. Therefore, the effective grounds remain for adjudication from assessee's ground of appeal in all

these appeals is addition made by the AO towards unexplained jewellery and interest income from group companies.

6. The brief facts of the case extracted from ITA No.1679/Mum/2015 for AY 1993-94 are that the assessee company was engaged in financing business and is a notified entity under Special Court (TORTS) Act, 1992. The company filed its return of income for the year under consideration on 30th December, 1993 declaring a loss of Rs.2,99,23,297. The return was processed u/s 143(1)(a) of the Act and while doing so, the AO disallowed assessee's claim of estimated liability of Rs.10,45,17,615/- on account of finance charges payable to A.D. Narottam. Consequently, the total income was determined at Rs.7,45,44,318. Subsequently, the case has been selected for scrutiny and the assessment was completed u/s 143(3) on 27-03-1996 determining total income at Rs.12,56,69,558. The assessee has filed appeal against the order of the AO before the first appellate authority. The CIT(A), vide order dated 24th March, 2000, partly allowed appeal filed by the assessee. In the meanwhile, the assessment was reopened u/s 147 of the Act on the ground that certain income was escaped assessment within the meaning of section 147 of the Income-tax Act, 1961 and the AO has completed assessment u/s 143(3) r.w.s. 147 of the Act on 27-03-2003 in which further addition of Rs.4,18,61,409 was made on account of interest from certain parties which was not considered in

the original assessment. The appeal filed by the assessee against order passed u/s 143(3) r.w.s. 147 has been dismissed by the first appellate authority vide his order dated 28-09-2006 wherein he upheld the addition made by the AO towards interest income of Rs.4,18,61,409. The assessee has filed further appeal against order of CIT(A) before the ITAT. The ITAT, vide order dated 25th February, 2011 restored the appeals filed by the assessee to the file of the CIT(A) with a direction to decide it afresh. The CIT(A) in second round of litigation, after considering the arguments of the assessee, partly allowed appeal filed by the assessee against order of the AO passed u/s 143(3) of the Act and dismissed appeal filed by the assessee against order of the AO passed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961. Aggrieved by the order of CIT(A), assessee is in appeal before us.

7. The first issue that came up for our consideration from assessee's appeal for the assessment year 1993-94 is addition of Rs.1,59,73,852 on account of unexplained investment in jewellery. During the course of assessment proceedings, the AO observed that during the course of search u/s 132(1) conducted in the premises of the assessee on 23-06-1992, certain jewellery was seized which was valued by departmental valuer at Rs.2,00,72,477. During the course of assessment proceedings, the AO asked the assessee to establish that the above jewellery was acquired through explained sources and had been

accounted for in the books of account. The assessee furnished complete chart in respect of jewellery seized from assessee's premises as well as from the premises of its directors and explained that the jewellery seized during the course of search had been purchased on the occasion of marriage of Shri D.T. Ruia and some of the jewelleries had already been declared in the wealth-tax returns of the family members and also in the wealth-tax return of the assessee company. The AO, however, observed that wealth-tax returns filed by the assessee coud not be of any help as in respect of most of the jewelleries, the returns had been filed after the search. He further observed that the jewellery could be considered as explained only where it is supported by purchase bills and / or bills for making charges. The AO further observed that the assessee had got a rough valuation report prepared by M/s Shantikumar Dwarkadas Jhaveri valuing the jewellery as on 10-10-1991 which had also been seized during the course of search. The AO had compared the jewellery items seized with the two valuation reports and wherever the assessee could co-relate the items with purchase bills and also the description given in the rough valuation report, such items were treated as explained. The items of jewellery that could not be co-related with valuation report has been treated as unexplained by the AO are given in Annexure A-1 to the assessment order and the total value of such jewellery was worked out at Rs.1,56,60,100. Similarly, the items of

jewellery which were treated as unexplained by the AO are given in Annexure A-2 to the assessment order and the total value of such items was worked out at Rs.3,13,352. Thus, the AO has made total addition of Rs.1,59,73,852 on account of unexplained jewellery.

8. The Ld.AR for the assessee submitted that the Ld.CIT(A) was erred in confirming additions made by the AO towards unexplained jewellery despite assessee furnished various details to explain the jewellery with wealth-tax returns filed in the name of the family members and also explained the sources with jewellery which was recorded in the books of account of the assessee. The Ld.AR further submitted that the AO made additions towards unexplained jewellery on the basis of two valuation reports, i.e. one obtained by the assessee in the year 1991 and the other valuation report obtained by the department after seizure of jewllery during the course of search on account of minor difference in description, weight and value of jewellery ignoring evidence filed by the assessee to prove that all jewellery have been explained in the wealth-tax returns filed and also the total value of jewellery seized during the course of search is less than the jewellery declared in the books of account of the assessee. The Ld.AR referring to the valuation reports which were filed in paper book submitted that the assessee has explained each and every item of jewellery with reference to purchase bills and could able to match the jewellery seized with that of jewellery

found in the valuation report except in a few cases where there is a minor difference of less than one milligram which is on account of error committed by the two valuers. The Ld.AR further submitted that the valuer has his own style of describing an item of jewellery and also in respect of weight where there is a milligram has been rounded off to the nearest gram. The Ld.AR of the assessee referring to the reconciliation statement of jewellery filed before the AO explained that except in two cases there is absolutely a narrow difference in weight as well as in value and the difference in two cases has been explained before the AO. Therefore, the CIT(A) was totally incorrect in confirming addition made by the AO by holding that the assessee could not able to explain certain items of jewellery with bills and vouchers. He further submitted that the AO had adopted a very rigid method while making the addition which is evident from the fact that even where the description, weight, value, etc of the items, as per rough valuation report where tallying, the AO treated such items as unexplained on the ground that the description of items did not tally with bills for purchasing / making charges.

9. On the other hand, Ld. Standing Counsel appearing for the revenue submitted that the assessee has failed to explain jewellery with reference to two valuation reports which is evident from the fact that the AO has brought out clear incidence of huge difference in weight and value of jewellery which is the reason in treating jewellery as

unexplained. Therefore, there is no merit in the arguments of the assessee that it has filed a reconciliation statement explaining jewellery seized during the course of search. The Ld.Standing Counsel further submitted that there is a difference in valuation report to the extent of 80% in which the assessee has not offered any explanation. The CIT(A) has given ample opportunity to the assessee to file reconciliation statement explaining the difference quantified by the AO with reference to two valuation reports in which the assessee has failed to file any evidence. Therefore, no relief could be given to the assessee.

10. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The AO has made addition towards jewellery wherever the assessee has failed to explain jewellery seized with two valuation reports, i.e. one obtained by the assessee in the year 1991 and the second one obtained by the department subsequent to the date of search. According to the AO, there is variation in description, weight and value of the jewellery as per two valuation reports. The AO has accepted jewellery as explained wherever the assessee could able to file necessary bills for purchase of jewellery and also match the weight, value and description of jewellery. The AO has treated certain jewellery as unexplained wherever the assessee could not able to match description, weight and value. The AO has brought out number of instances where the assessee could not

match the jewellery with that of valuation report and such list has been furnished in Annexures A-1 & A-2 to the assessment order. It is the contention of the assessee that jewellery found and seized during the course of search is completely explained with known source of income which is evident from the fact that the value of jewellery seized during the course of search is less than value disclosed by the assessee in its books of account in the relevant financial year. The assessee further contended that no addition can be made based on the difference in two valuation reports because each valuer has his own style of valuing jewellery and also taking the weight in terms of milligrams may be because of rounding off of the milligrams to the nearest grams. Therefore, unless there is substantial difference in weight, description and value, addition cannot be made, despite assessee has explained the jewellery found and seized during the course of search.

11. Having heard both the sides, we find merits in the arguments of the assessee for the reason that the total value of jewellery seized during the course of search valued by the departmental valuers at Rs.2,00,72,477, whereas the assessee has disclosed value 225,13,114. The value of jewellery seized during the course of search is less than the value declared by the assessee in its books of account. This fact has not been disputed the fact that the assessee has disclosed jewellery in the wealth-tax returns filed for the relevant assessment years on its own

and in the case of its family members was not disputed by the revenue. The AO made addition only on the ground that the assessee could not match item-wise jewellery seized with reference to two valuation reports in terms of description, weight and value. On the other hand, the assessee has filed a reconciliation statement explaining the reasons for such difference. On perusal of the reconciliation statement filed by the assessee, we find that the AO has adopted a very rigid method while making the addition which is evident from the fact that he did not even consider minor variation in weight and description of the jewellery. The assessee has explained the reasons for difference in description and weight. According to the assessee, each valuer has his own method of describing jewellery and also taking the weight and value. The assessee has filed copies of valuation reports, list of inventory of jewellery seized during the course of search and corresponding purchase and / or making charges bill. Such details has been furnished in paper book pages 27 to 72. The assessee has explained item-wise jewellery seized with reference to two valuation reports and also explained the difference. According to the assessee, there is a minor difference in weight of the jewellery, that too, in milligrams which is very minimal and also because of different method of valuation followed by two different valuers. Insofar as difference in value quantified by two valuers, the assessee has explained in the remarks column and stated

that there is a timing gap between two valuation reports because of which obviously, there will be an increase in / or decrease in value of jewellery. Therefore, it cannot be the reasons for making addition when the assessee was able to match item-wise jewellery of description and weight. We find merit in the argument of the assessee on the ground that first and foremost, the jewellery declared by the assessee in its books of account is more than the value of jewellery determined by the departmental valuer. However, we are not sure whether the assessee has furnished these documents before the AO to explain the difference quantified in terms of two valuation reports. Therefore, we are of the view that the issue needs to be re-examined by the AO in the light of re-conciliation statement filed by the assessee with reference to bills and other details and hence, we set aside the issue to the file of the AO and direct him to consider the evidence filed by the assessee and decide the issue in the light of our observations in accordance with law.

12. The next issue that came up for our consideration for AYs 1993-94 to 1996-97 is on account of addition made by the AO towards interest receivable from CIFCO group of companies,through Kenilworth Investment Co. Pvt Ltd, Excel & Co, VKSA & Swadeshi Enterprises. The assessee had given advances to CIFCO group of companies,through Kenilworth Investment Co. Pvt Ltd, Excel & Co, VKSA & Swadeshi Enterprises out of its interest bearing funds and no

interest was charged on such loans. The petition filed by the custodian for seeking direction from the Hon'ble Special Court in respect of such loan / advances made by the assessee directing the concerned debtors to make payments of the outstanding amounts along with the interest thereon has been accepted by the Special Courts and has passed orders on the petitions filed by the Custodian requiring the debtors to make payment of the outstanding amount along with interest thereon. The Special Court has passed separate orders making the debtors to make payment of principal amount alongwith interest thereon at varying rates. However, the assessee has not accounted for interest amount receivable from these parties in respect of relevant previous years in its books of account. The order passed by the Hon'ble Special Court quantified the interest liability of the debtor alongwith principal amount. Since the Special Court has passed orders directing these parties to make payment of principal amount alongwith interest thereon at the rate specified therein, the AO observed that interest on such loans accrued to the assessee for the period from AY 1993-94 onwards. The AO has quantified the interest on the basis of order passed by the Special Courts and made additions in the assessment order passed u/s 143(3) and also in the re-assessment order passed u/s 143(3) r.w.s. 147 of the Act. The Special Court has passed order making the debtors to pay interest ranging from 12% to 20%. The AO has quantified interest for

the relevant period at the rates directed by the Special Courts and made additions for the assessment years 1993-94 to to 1996-97.

13. The Ld.AR for the assessee submitted that the Ld.CIT(A) was erred in confirming addition made by the AO towards interest receivables from CIFCO group of companies,through Kenilworth Investment Co. Pvt Ltd, Excel & Co, VKSA & Swadeshi Enterprises even though the assessee has not been able to recover any amount due from the debtors as the matter is under the control of the Custodian of the Special Court. The Ld.AR further submitted that though the SpecialCourt has passed order decreeing loans alongwith interest payable by the debtors, the assessee is not having any control over the recovery of debts due from the parties and hence, wherever the Custodian has recovered the amount from the debtors, the assessee has offered to tax interest received from those debtors in the relevant financial year. The Ld.AR further submitted that in respect of amount due from CIFCO group of companies,through Kenilworth Investment Co. Pvt Ltd, it has received interest in the financial year relevant to AYs 1996-97 and 1997-98 and the same has been offered to tax. Similarly it has received interest in the financial year relevant to AY 1996-97 and the same has been offered to tax for that assessment year. Asfar as Swadesh Enterprises, the assessee has received interest from the debtor in the financial year relevant to AYs 1997-98, 1998-99, 2007-08, 2012-13 and 2014-15 and the same has

been offered for assessment. Insofar as VKSA Investment Pvt Ltd and Excel & Co, the assessee could not able to realize any interest including the principal amount which is evident from the fact that the Custodian in his report submitted stated that there is no chance of recovery of due from Excel & Co as the proprietor of the company is notified party, whose dues to income-tax arrears are huge and hence, chance of recovery of amount due to the assessee is very less. Insofar as VKSA Investment Pvt Ltd, the report of the Custodian states that the Custodian has recovered Silver articles worth Rs.15,35,400 and unquoted shares belonging to the debtors. Except this, there is no chance of recovery of amount due from the said party. Under these circumstances, making addition towards interest receivable from the above parties on the basis of order passed by the Special Court merely on the ground that the assessee is following mercantile system of accounting ignoring the fact that whether the interest receivable from the debtors is really accrued to the assessee or not during the relevant financial year is incorrect. The Ld.AR for the assessee referring to the decision of Hon'ble Supreme Court in the case of Godhara Electricity Co Ltd vs CIT (1997) 225 ITR 746 (SC) submitted that the question whether there is real accrual of income to the assessee in respect of interest receivable from those debtors has to be considered by taking the probability or improbability of realization in a realistic manner before making any additions. The AO, in

a mechanical manner, without appreciating the facts, whether the amount due from the debtors is recoverable or not, has made additions on accrual basis only on the basis of assessee's method of accounting which is irrelevant insofar as interest receivable from those companies as when the recovery of principal itself is in default, the question of taxing interest on accrual basis is against the principles of law. In this regard, he relied upon the following judgements:-

1. CIT vs Elgi Finance Ltd (2007) 93 ITR 357 (Mad)
2. CIT vs M|ahavir Co P Ltd (1996) 206 ITR 68 (Raj)
3. CIT vs Vasisth Chay Vyapar Ltd (2011) 330 ITR 440 (Del)
4. CIT vs Canfin Homes Ltd (2012) 347 ITR 382 (Kar)
5. M/s Greenland Finance & Leasing P Ltd vs ITO – ITA No.6166/Del/2012

14. The Ld.Standing Counsel appearing for revenue submitted that the assessee has been given enough time to substantiate his case with necessary evidences, but the assessee has failed to file any evidences. Therefore, at this juncture the assessee's argument that interest is not accrued for the relevant financial year cannot be considered. The Ld. Standing Counsel further submitted that the order passed by the Hon'ble Special Court directing the debtor to pay the dues alongwith interest is enough evidence to justify accounting interest on accrual basis. The assessee failed to account interest receivable from parties even though

such interest is accrued in the relevant financial year in terms of order of Special Court. The Ld.Standing Counsel further submitted that insofar as CIFCO group of companies, the argument of the assessee cannot be accepted for the simple reason that the assessee could able to recover interest amounting to Rs.11,37,51,284 from the assessment year 1996-97 onwards which is evident from the fact that the assessee itself has admitted interest income in those assessment years on receipt basis. Similar is the case in the case of Swadesh Enterprises where the assesse could recover interest of Rs.1640 lakhs which has been offered to tax on receipt basis. Since the assessee could not controvert the fact that these debtors could pay the dues and, therefore, the assessee should have considered interest accrued for the relevant financial years by following regular method of accounting followed in its business. The assessee admittedly followed mercantile system of accounting and hence, it is necessary to account interest receivable from those companies on accrual basis which is certainly accrued on the basis of order of the Special Court. In respect of other two debtors, though the assessee claims that the chance of recovery of dues is very less, by the order of the Special Court, the debtors are bound to pay the dues to the company and hence, the interest receivable from those debtors is accrued to the assessee. The AO as well as the CIT(A) has rightly dealt with the issue in the light of the order of the Special Court which

mandates the debtors to pay interest and hence, the interest is certainly accrued to the assessee for the relevant financial year and hence, rightly taxed on accrual basis. The Ld.Standing Counsel referring to the decision relied upon by the Ld.AR of the assessee in the case of Godhara Electricity Co Ltd vs CIT (supra) submitted that the case law referred by the assessee are rendered in different set of facts and also in many of the case are in the light of Non banking financial companies and treatment of NPAs and interest accrued thereon which is not applicable to the facts of the case of the assessee, as in the assessee's case, interest is certainly accrued to the assessee on the basis of order of the Special Court.

15. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The facts with regard to amount due from CIFCO group of companies, through Kenilworth Investment Co. Pvt Ltd, Excel & Co, VKSA & Swadeshi Enterprises is not disputed by the assessee. The assessee has advanced loans and advances to these companies in the financial year relevant to assessment year 1992-93 and earlier years. It is also an admitted fact that the Special Courts (TORTS) Act, 1992 at Mumbai has passed orders decreeing amount due from those debtors alongwith interest. The AO has made addition towards interest receivable from CIFCO group of companies,through Kenilworth Investment Co. Pvt Ltd,

Excel & Co, VKSA & Swadeshi Enterprises on the basis of order passed by the Special Court wherein it has quantified interest payable to the assessee. The AO has estimated interest at the rate prescribed by the Special Court and made addition for each of the assessment years starting from AYs 1993-94 to 1996-97. According to the AO, the assessee is following mercantile system of accounting and hence, necessarily to account all receipts on accrual basis, whether or not received during the relevant period. The AO further observed that in terms of order passed by Special Court, interest due from those debtors is accrued to the assessee.

16. It is the contention of the assessee that the question whether there was real income accrued to the assessee in respect of interest receivable from those debtors in terms of order passed by the Special Courts has to be considered by taking into account probability or improbability of realization in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was a real income accrued to the assessee in respect of interest receivable from those debtors as the assessee is not having any control over recovery of dues from those debtors which is under the control of Custodian appointed by the government under the Special Courts (TORTS) Act, 1992. The assessee further contended that wherever it has received amount from debtors, the same has been offered to tax which is evident

from the fact that in the case of CIFCO group, it has received interest of Rs.11,37,51,284 in 3 years, which has been offered to tax. Similarly, in the case of Swadeshi Enterprises, it has received interest amount of Rs.1640 lakhs and the same has been offered to tax in those assessment years on receipt basis. The assessee further contended that in respect of VKSA, as per the report of the Custodian appointed by the Special Court(TORTS) Act, 1992,chance of recovery is very less. As regards Excel & Co, the Custodian has categorically stated that the proprietor of the company is a notified party and whose dues to income-tax is huge and hence, there is no chance of recovery due to non availability of assets with the Custodian on his behalf. Therefore, it is highly incorrect on the part of the AO to tax interest income on accrual basis, which is not really accrued to the assessee. The assessee further contended that merely by following mercantile system of accounting, the income cannot be taxed on accrual basis and the question whether such income is accrued to the assessee or not has to be seen by taking the probability or improbability of realization in realistic manner. If one look into the matter in this light, it is incorrect to hold that the interest is accrued to the assessee for the relevant assessment years.

17. Having heard both the sides and considered material on record, we find that the AO has made addition towards interest receivable from CIFCO group, VKSA Investments Pvt Ltd, Excel & Co and Swadeshi

Enterprises on the basis of order passed by the Hon'ble Special Court (TORTS) Act, 1992 which has passed order decreeing amount due to the assessee by the above parties alongwith interest. The AO has estimated interest at the rate quantified by the Special Court and made additions in each of the assessment years under consideration. Admittedly, the issue of recovery of dues from those debtors is not in the control of the assessee as the matter is seized by the Custodian appointed by the Government under the Special Courts (TORTS) Act, 1992. Therefore, under these facts and circumstances, one has to see whether interest receivable from those debtors is accrued to the assessee in the light of the order passed by the Special Court. No doubt, the Special Court has passed order decreeing the amount due from the above parties. As per the order of the Special Court, the Custodian appointed by the government has to recover the amount due from the parties. We further notice that in the case of CIFCO group of companies, the assessee could able to recover amount from the party in the financial year relevant to AY 1996-97, 1997-98 and 2007-08 totalling Rs. 11,37,51,284. Similarly, in the case of Swadeshi Enterprises, the assessee recovered an amount of Rs.1640 lakhs in 5 years which has been accounted for on receipt basis and offered to tax. As far as other two debtors, viz. VKSA Investment Pvt Ltd and Excel & Co, except to the extent of Rs.15,35,400 the assessee could not able to recover any

amount and this fact has been confirmed by the report of the Custodian as per which, the chance of recvovery of amount due from those debtors is very less as the proprietor of Excel & Co did not have any asset. Similarly, in the case of VKSA Investments Pvt Ltd, the Custodian has recovered certain assets to the extent of Rs.15,35,400 and further stated that the chances of recovery of remaining amount is very less. Under these circumstances, the issue has to be considered by taking the probability or improbability of realization of amount due from those debtors in a realistic manner.

18. Under the Income-tax Act, income is charged to tax, i.e. received or is deemed to be received in India in the previous year relevant to the year in which assessment is made or on the income that accrues or arises or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with the method of accounting regularly employed by the assessee. It may be either cash system where entries are made on the basis of actual receipts or it may be mercantile system where entries are made on accrual basis, i.e. accrual of the right to receive payment and the accrual of the liability to disburse or pay. If the accounts are maintained under the mercantile system what is to be seen is whether income can be said to have been accrued to the assessee. Even though mercantile system of accounting is followed, the question whether such income is accrued

to the assessee or not has to be seen in view of the fact whether the assessee is able to recover such income or the probability of recovering such income is realistic or not. In the light of the above legal proposition, if we examine the present case, whether interest due to the assessee from those debtors is really accrued to the assessee or not has to be seen. No doubt, the assessee is following mercantile system of accounting. If any receipt is accrued or deemed to accrue for the relevant financial year, the assessee has to consider those receipts for the relevant financial year for the purpose of taxation. If the income or receipt is merely accrued on account of method of accounting followed by the assessee, but not really accrued, if you follow the real income theory, then the question of taxing such receipts for the relevant financial year is not correct. In this case, the Court has passed order decreeing the amount due to the assessee on the petition filed by the Custodian. In the case of CIFCO group of companies, the arguments of the assessee cannot be accepted for the reason that interest is accrued for the relevant assessment year, because in the subsequent financial year the assessee has received interest which is evident from the fact that the assessee has offered to tax interest on receipt basis. Similarly in the case of Swadeshi Enterprises, the assessee has recovered interest which has been offered to tax for the relevant assessment years on receipt basis. Therefore, we are of the considered view that in respect

of CIFCO group and Swadeshi Enterprises, interest receivable from the debtors is accrued to the assessee by virtue of mercantile system of accounting followed by the assessee and hence, the AO was right in taxing receipt on mercantile basis. However, this finding cannot be applied to the other two cases, viz. VKSA Investment Pvt Ltd and Excel & Co. Though the debtors are liable to pay interest by virtue of order of the Special Court, the Custodian of the Special Court in his report categorically stated that the chances of recovery of amount due from those two companies is very less because the proprietor of the company is a notified party and his income-tax dues are huge and hence, there is no chance of recovery due to non availability of assets. Since the assessee did not have any control over the affairs of collection due from those debtors and which has been under the control of custodian. The report of the Custodian specifically states that the chance of recovery of amount due from those parties is very less. Therefore, whether there was real income accrued to the assessee in respect of interest has to be considered by taking into account the probability or improbability of realization in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee in respect of interest receivable from VKSA Investment Pvt Ltd and Excel & Co. Therefore, we are of the considered view that the AO was erred in making addition towards interest receivable from VKSA

Investment Pvt Ltd and Excel & Co. However, the facts are not clear whether the assessee has furnished this or not. Therefore, we are of the view that the issue needs to be re-examined by the AO in the light of our observations and also in the light of paper book filed by the assessee containing report of the Custodian. Therefore, we set aside the issue to the file of the AO and direct him to consider the issue in the light of our findings as well as report of the Custodian in respect of interest receivable from those two companies. Needless to say, the assesse is directed to file all the evidences and also if necessary, obtain latest report from the Custodian about the possibility of recovery of dues, from those companies.

19. Coming to the case laws relied upon by the assessee, the assessee has relied upon various decisions including the decision of Hon'ble Supreme Court in the case of Godhara Electricity Co Ltd vs CIT (supra). We have gone through the case laws relied upon by the assessee in the light of the facts of the present case and find that the case law relied upon by the assessee on different facts and also most of the cases are in respect of treatment of non performing assets and also interest accrued on NPAs except in the case of Godhara Electricity Co Ltd vs CIT (supra). Therefore, we are of the considered view that the case law relied upon by the assessee are not applicable to the facts of the present case and hence, are not considered. In the case of Godhara Electricity

Co Ltd vs CIT (supra), the issue was whether the enhanced electricity charges accrued to the assessee in the light of either by Court orders or by government orders and having been able to realize the enhanced rates, still it was taken over by the electricity board. Under these facts and circumstances, the Hon'ble Supreme Court came to the conclusion that no real income accrued to the assessee and nothing on that could be added even though the assessee is following mercantile system of accounting. In this case, facts are entire different and hence, the ratios of the above case laws are not applied to the facts of the assessee's case.

20. In the result, the ground raised by the assessee in all the assessment years challenging additions made by the AO towards interest receivable from CIFCO group of companies, Excel & Co, VKSA Investments P Ltd and Swadeshi Enterprises is restored back to the file of the AO.

21. The Ld.AR for the assessee, at the time of hearing, submitted that the other grounds in all the assessment years are either consequential with reference to the addition made towards income from CIFCO group of companies, Excel & Co, VKSA Investments P Ltd and Swadeshi Enterprises and are not pressed. Therefore, the other grounds raised by the assessee except grounds relating to unexplained jewellery and accrued interest from loans and advances are dismissed, as not

pressed.

22. In the result, all the eight appeals filed by the assessee are treated as partly allowed, for statistical purpose.

Order pronounced in the open court on 19th January, 2018.

Sd/-	sd/-
(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 19th January, 2018
Pk/-
Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/ By order

Asstt. Registrar, ITAT, Mumbai