



ITA.No.2476/Mum/2015
Late Harshad S. Mehta
Assessment Year-2006-07

आयकरअपीलीयअधिकरण“ई”न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
**BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपीलसं./I.T.A. No.2476/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2006-07)

Late Harshad S. Mehta Through L/H Smt. Jyoti H.Mehta 32, Madhuli Dr. Annie Besant Road Worli, Mumbai-400 026	बनाम/ Vs.	Deputy Commissioner of Income Tax Central Circle-23 [Now ACIT-CC-4(1)] 4th Floor, Aaykar Bhavan M.K.Road, Mumbai -400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABAPM-1848-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Dharmesh Shah, Ld. AR
Revenue by	:	P.Daniel, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	16/05/2018
घोषणा की तारीख / Date of Pronouncement	:	17/05/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2006-07 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-52 CIT(A)], Mumbai, Appeal No. CIT-(A)/IT/DC/AC-CC-



4(1)/147/2014-15 dated 26/02/2015. The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax Central Circle-23, Mumbai [AO] u/s 143(3) read with Section 147 of the Income Tax Act, 1961* on 17/12/2009. The effective grounds raised by the assessee before us reads as under: -

1. *The learned Commissioner of Income Tax (Appeals) has erred in law and in facts in upholding the action of the Assessing Officer in rejecting the books of accounts of the appellant.*
3. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the addition on account of suspense entries amounting to Rs.24,54,357/- as income of the appellant under the head "Income from other Sources"*
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 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.*

2. Facts in brief are that the deceased assessee was re-assessed for impugned AY at Rs.21.63 Crores which was contested with partial success before Ld. CIT(A) vide impugned order dated 26/02/2015. Aggrieved, the assessee is in further appeal before us.

3. The Ld. Authorized Representative, at the outset, drew attention to the fact that similar issues arose in assessee's own case as well as in the case of group concerns / relatives and reached before this Tribunal and therefore, the same view may be taken in the matter. The Ld. DR, while opposing, fairly conceded the aforesaid fact.

4. After careful consideration, we find that so far as the rejection of books of accounts is concerned, the Tribunal in the case of *Ashwin S. Mehta Vs. DCIT [ITA NO. 6596-97/Mum/2013 dated 18/04/2016]*, has restored the matter back to the file of lower authorities for re-adjudication after considering the books of accounts produced by the assessee.



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Therefore, factual matrix being the same, this matter is restored back to the file of Ld. AO for re-adjudication on similar lines after providing opportunity of being heard to the assessee. This ground stands allowed for statistical purposes.

5. Upon perusal, we find that remaining grounds were subject matter of appeal in assessee's own case for AY 2003-04 before this Tribunal in ITA No. 3270/Mum/2015 where the matter has been adjudicated as follows:-

5. In this background, it is to be noted that the appellant is a person notified under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. In the course of the assessment proceedings the Assessing Officer completed the assessment at an income of Rs. 724,59,88,331/-, which, inter-alia, include an addition of Rs.681,17,39,634/- under the head 'suspense account'. The Ld. Representative for the assessee explained that the said addition was on account of various credits/deposits found in the bank account of the assessee. In the absence of any explanation forth-coming the Assessing Officer had treated the said amount as unexplained and added it to the total income. Before the CIT(A), assessee could obtain the relevant information from the office of the Custodian (TORTS) Act and on that basis the CIT(A) obtained the requisite Remand Report from the Assessing Officer. On the basis of the Remand Report and the explanations put-forth by the assessee the addition made by the Assessing Officer under the head 'suspense account' was deleted, but the additions reflected in the above said Ground of appeal No.1,2 &3 were retained. The Ld. Representative for the assessee pointed out that even with respect to the said entries, the details ought to have been obtained from the Custodian appointed by the Special Courts since requisite details were with him and not with the assessee. The Ld. Representative for the assessee pointed out that under similar circumstances, the Tribunal in the assessee's own case for assessment year 2002-03 in ITA No. 1731/Mum/2015 dated 07/02/2017 has decided the issue as under: -

6. It is brought to our notice that similar situation arose in the case of other family members. It is noted that in the case of Hitesh S Mehta vs DCIT the ITAT, vide its order dated 12-06-2013 disposed of similar issue as under: -

" 6. There is no other ground in the appeal of the assessee for assessment years 1994-95, 1995-96 and 2008-09. However, there are two more grounds in appeal of the assessee for assessment year 2001-02 i.e. grounds No.3 & 4, which relate to confirming the addition of interest income and confirming the addition on account of suspense entries at Rs.15,67,491/- and Rs,2,79,396/-, respectively.

6.1 In respect to these grounds, the learned counsel of the assessee stated that the AO as well as learned CIT(A) has made and confirmed these additions by observing that onus lay upon the assessee



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remained undischarged. It was submitted that all the details are lying with the custodian and this is not possible to the assessee to get the details from custodian. The assessee written various letters to the custodians also, copies of which are placed in compilation at pages 1 to 5. It was stated that time and again the assessee tried to get the details from the custodian but could not get the details. Accordingly, it was requested that the matter should be sent back to the file of the CIT(A) and to collect the details from custodian and thereafter the issue should be decided accordingly. 6.2 on the other hand, learned DR stated that ample opportunities have already been given and since no details could be filed on behalf of the assessee, therefore, this will be a futile exercise if the appeal is sent to the file of CIT(A) once again. 6.3 After considering the rival submissions and considering the material on record, we found that this issue needs readjudication at the end of the learned CIT(A). Learned CIT(A) has dismissed the ground of the assessee by observing in para 8.2 (iii) at page 6, which are as under: -

“(iii) In respect of the item at sr. no-2 to 4, the appellant has merely claimed that the same represents dividend income of the appellant. He has however, pleaded before the Assessing Officer that the said evidence is not in his possession and hence the same may be obtained from the custodian. / find that the onus to explain the deposit entry is on the appellant and hence unless the burden of proving the deposit is discharged, the onus does not shift on the Assessing Officer it is seen that no evidence is filed in respect of the claim of the appellant that the amount of Rs.37, 715/-, Rs.2,54,500/- and Rs 6,80,500/- does not represent interest income. In the light of the, same, the said addition of the " said amounts as interest income is confirmed."

After going through the finding of the learned CIT(A), we found that the learned CIT(A) should have obtained the details from custodian as the custodian appointed by the Special Court, is not obliged to assessee by providing necessary details in spite of various requests made on behalf of the assessee. Copies of requests are placed on record. In view of the above facts and circumstances of the case, we set aside this issue to the file of the CIT(A) to decide the issue afresh after obtaining necessary details from the custodian and after affording opportunity of hearing to the assessee. We order accordingly

Similarly, in the case of Mrs Pratima H Mehta also, the Tribunal vide its order dated 28-08-2013 following the order of Nitesh S Mehta, supra, remitted this matter to the file of the Ld. CIT(A). We find that facts circumstances of the case before us are identical to the one as has been already dealt by the Tribunal in aforesaid cases. Therefore, following these orders and in the interest of justice and fairness, we remit this ground back to the file of the Ld. CIT(A) with the same directions as has been given in these cases. We order accordingly. Ground 1 may be treated as allowed for statistical purposes.



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Following the above precedent, in the instant year also the issue is restored back to the file of CIT(A) to pass fresh order as per law keeping in mind the directions of the Tribunal vide order dated 07/02/2017(supra).

6. The next Ground relates to charging of interest under section 234A, 234B and 234C of the Act. On this issue it was a common ground between the parties that the said issue has been decided in the case of the assessee itself for assessment year 2002-03(supra), wherein the following discussion is relevant:-

"10. Grounds 3 & 4 deal with levy of interest u/s 234A, 234B and 234C. During the course of hearing, the Ld. Counsel stated at the very outset that this issue is covered by the decision of the Tribunal given in case of group company of the assessee, biz. M/s Growmore Exports Ltd vs DOT (ITA No.4358/Mum12013) dated 08-02-2016 and therefore this order should be followed. The Ld. Special Counsel did not point out any distinction in facts or legal position.

11. We have gone through the orders passed by lower authorities and find that identical issue has been decided by the Tribunal in the case of M/s Growmore Exports Ltd (supra). Relevant part of order of the Tribunal is reproduced below: -

"11. Ground No 6 relates to levy of interest u/s 234A, 234B and 234C of the Act. The Id. Counsel for the assessee company submitted that interest u/s 234A, 234B and 234C is mandatory but the interest liability is to be calculated after taking into account tax deducted at source. The Ld. Counsel for the assessee company relied upon decisions of the Tribunal in the case of DCIT v. Smt Rasila S. Mehta in ITA no. 5870/Mum/2011 vide orders dated 21.10.2015, Divine Holding Pvt. Ltd. v. ACIT in ITA no. 560/Mum/2013 dated 21.10.2015 and Aatur Holdings Private Limited v. DCIT in ITA no. 846, 1032 & 147/ Mum/2010 dated 23-09-2015, whereby Tribunal has restored the issue to the file of the learned assessing officer who would levy the interest as per provisions of Section 234 after reducing the amount of tax deductible at source and decide as per the provision of law. The Tribunal's decision in ITA no. 846,1032,2147/Mum/ 2010 dated 23. 09. 2015 is reproduced below:-

"6. Last ground of appeal for all the three assessment years pertain, to levy of interest u/s 234A, 234B and 234C of the Act. Before us, the representative of both the sides agreed that identical issue was decided in the cases of Topaz Holdings Pvt. Limited (IT4/21461/Mum/2013, A.Y.2002 -02 dt. 28.06.2014) and Eminent Holdings Pvt. Ltd. (1TA/2139/Mum/2013 A.Y.2002-03, dated 18.06.2014) that the Tribunal had upheld the levy of interest in principal, that it had set aside the issue for calculating the interest to the file of the AO) with direction that the tax deducted at source should be reduced while calculating the interest. We find that the issue was discussed in the case of Eminent Holdings Pvt. Ltd. (supra) as under:

5. Next ground of appeal is about levy of interest u/s. 234 of the Act. Before us, AR stated that the assessee was a notified entity, that the provisions of s. 234A,234B and 234C of the Act were deemed to have complied with, that the assets were already in attachment of the Custodian appointed under the provisions of the 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



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Pvt. Ltd. and Cascade Holdings Pvt. Ltd, had held that the provisions of sections 234A, 234.8 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 the provisions of 9 I.T.A. No.1731/Mum/2015 TDS, that the chargeability of section 234A, 2348 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. vs DC1T (95 LTD 269(Del)(SB). Sedco Pores Drilling Co. Ltd. (264 1TR 320), NGC Network Asia LLC (313 1TR 187). Summit Bhattacharya (300 1TR (AT) 347 (Bom)(SB), Vijay Gopal Jindal (1TA No. 4333/De1/2009) & Emillo Ruiz Berdejo (320 ITR 190(Bom). DR relied upon the cases of Divine Holdings Pvt. Ltd.

3.1 We have heard the rival submissions and perused the material before us. We find that in the case of Divine Holdings Put. Ltd..Hon'ble Bombay High Court has held that provisions of Section 234A, 2348 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. Ground no. 5 is allowed in part in favour of the assessee. Respectfully following the above order we restore back the issue to the file of the AO who would levy the interest as per the provisions of section 234 of the Act and give credit for the TDS amounts. Ground no, 6 for all the three A. Ys Stands partly allowed."

The Ld. Counsel for the assessee company submitted that the Tribunal has in the assessee company's own case has adjudicated the issue in 1TA no. 52031/Mum/2013 for assessment year 2003-04, vide orders dated 18. 12.2014 as under:

9. Ground No.5 relates to charging of interest u/s 234A and 2348 of the Act. In connection with the charge of interest u/s 2348 of the Act, Ld. Counsel for the assessee submitted that the assessee being a 'notified person there is no charge of interest. it is his further submissions that the receipts- of the assessee are subjected to TDS. On the contrary, Special Counsel for the Revenue filed various decisions of the Tribunal in support of charge of interest. The judgment of the jurisdictional High Court in the case of C1T vs. Divine Holding Pot, Ltd. was relied on by the Spl. Counsel for the Revenue. During the rebuttal time, Ld. Counsel submitted that this issue should also revisit the file of the AO for removal of certain inaccuracies in calculating the interest. We order accordingly. Thus, ground no. 6 is allowed for statistical purposes.

10. in the result, assessee's appeal is partly allowed for statistical purposes.'



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Ld. Special counsel of the Revenue submitted that the leviability of interest u/s 234A 2348 and 234C of the Act is mandatory. He Relied upon decision of the Hon'ble jurisdictional High Court in the ease of Divine Holdings Private Limited in 1TA No.3334 of 2010, whereby Hon'ble Bombay High Court has held that in case of notified parties under the Special Court Act interest u/s 234A, 2348 and 234C of the Act has to be levied, and contended that the interest u/s 234 is mandatory.

After hearing both the parties and carefully considering the material on records including relied upon case, Respectfully following the above order's of the Tribunal we restore the issue back to the file of learned, assessing officer who would levy interest as per provisions of Section 234 of the Act and give credit for the TDS amount. We order accordingly."

Both the parties jointly stated that aforesaid order is applicable on the facts of the case before us. Therefore, following the order, we send this issue back to the file of the AO with the same directions as have been given in the aforesaid order. The AO is directed to follow the order and decide the same afresh after giving adequate opportunity of hearing to the assessee. The assessee shall also be free to raise all legal and factual issues in this regard. This ground may be treated as allowed for statistical purposes."

6.1 Following the aforesaid decision, it has to be held that so far as the chargeability of interest under section 234A, 234B and 234C, the same is hereby affirmed in principle. So however, in so far as quantification of interest chargeable is concerned, the issue is restored back to the file of Assessing Officer to decide the amount of tax deductible at source on the income assessed. In fact, the Assessing Officer is directed to follow the directions of the Tribunal dated 07/02/2017(supra) in the case of the assessee for assessment year 2002-03 and decide the issue accordingly. Thus, on this aspect assessee partly succeeds.

Since a consistent view has been taken by the Tribunal in assessee's own case, we respectfully follow the same. Accordingly, Ground Number 3 stand remitted back to the file of Ld. AO on similar lines. Ground Number 4 is decided against the assessee whereas Ground Number 5 stand restored back to the file of Ld. AO on similar lines.

6. Resultantly, the appeal stands partly allowed for statistical purposes.



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Order pronounced in the open court on 17th May, 2018.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17.05.2018.
Sr.PS:- Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai