



IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1222/Mum/2017

(निर्धारण वर्ष / Assessment Years: 1992-93)

Harsh Estate Pvt. Ltd. 32, Madhuli, 3 rd Floor, A.B. Road, Worli, Mumbai-400018.	बनाम/ Vs.	ACIT, Central Circle-31 (Now Dy CIT (CC-4(3) R. No.1921, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH3480L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dharmesh Shah (AR)
Revenue by:	Shri Dr. P. Daniel

सुनवाई की तारीख / Date of Hearing: 20/06/2019

घोषणा की तारीख /Date of Pronouncement: 28/08/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 22.01.2016 passed by the Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.1992-93.

2. The assessee has raised the following grounds of appeal: -

- “1. The Ld. C Commissioner of Income-Tax (Appeals) has erred in law and in fact in upholding order passed by AO u/s 144 of the Act.
2. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts confirming the disallowance of various expenses amounting to Rs.1,32,476/- claimed by the appellant as under.:-

S. No.	Particulars	Amount
1.	Audit Fees	64,000/-
2.	Repairs and Maintenance Rs.1,00,000(-) (7,1324)	71,476



	<i>Total</i>	1,35,476
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3. *The Learned Commissioner of Income-Tax (Appeals) has erred in law and' in facts in confirming disallowance of depreciation claim in respect of property at Bandra and Bangalore.*
4. *The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts that in confirming the le' 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 facts in not appreciating that the income assessed in the hands of the appellants were subjected to the provisions of TDS and hence on the said amount of tax no interest can be computed u/s. 234A 234B and 234C of the Act.*
6. *The appellant craves leave of Your Honour to add to, alter, amend and/ or delete all or any of the foregoing grounds of appeal."*

3. The brief facts of the case are that the assessee was a private limited company promoted by Shri Harshad S. Mehta and Shri Ashwin S. Mehta who were the directors therein. The main business activities of the company comprises of dealings in shares and securities. The return of income was due on or before 31.12.1992 but the assessee failed to file the return of income u/s 139(1) of the I.T. Act. Specifically in the circumstances, when the assessee was having taxable income. The case of the assessee was selected for scrutiny, therefore, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee submitted the reply expressing his inability facing problems due to number of searches being conducted by IT Department and CBI Authorities on the premises of assessee and its directors. Thereafter, the notice u/s 142(1) of the Act was further issued. The summon u/s 131 was issued on 14.05.1993 to produce the books of account. However, the assessee asked for time to reply this notice. A notice u/s 94(6) on 7.06.1993 was issued to the assessee calling for information regarding transaction in share and securities undertaken by him for F.Y.1991-92 relevant to A.Y. 1992-93. The assessee failed to furnish the information. Thereafter, on dated 23.06.1994 a questionnaire alongwith notice u/s 142(1) was issued asking the assessee to furnish



required details and explanations. In response to the said notice assessee furnished only copies of bank-statement vide letter dated 14.07.1994 and asked 45 days time for reply the other query. The assessee was directed to furnish the details on 12.09.1994 but on that date the assessee simply replied but failed to furnish the details. Thereafter, the statement of Ashwin S. Mehta director of company was recorded u/s 131 of I.T. Act. On 21st October 1994 assessee submitted certain contract notes showing transactions in money market. On November 9, 1994 a details questionnaire based on seized accounts and documents were prepared and sent to the assessee for necessary compliance. The assessee sought time again and again but no required information was furnished, thereafter, on the basis of the seized data from the computer and other relevant record, the assessment of the assessee was completed assessing total income to the tune of Rs.1,71,51,104/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the ground raised above, therefore, the assessee has filed the present appeal before us.

4. The present appeal has been filed 310 days delayed. Shri Ashwin S. Mehta filed the affidavit stating therein the reason for filing the present appeal delayed. It is stated that the company was notified under the provisions of Special Court (Trail of Offences Relating to Transactions in Securities) Act, 1992 since 08.06.1992. All the properties of the company was attached. The bank account was also seized by CBI. The banking transaction was managed by the office of the Custodian as per the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 since 08.06.1992. Due to this reason, the present appeal has been filed delayed. In the similar circumstances in the assessee's group of companies, the delay was condoned in case of **(i) Harsh Estate Pvt. Ltd. & Ors. Vs. DCIT (ITA. No.1221/M/2017 & Ors.)**



dated 11.09.2017 (ii) Fortune Holding Pvt. Ltd. Vs. ACIT (ITA. No. 939/M/2017) dated 11.10.2017 (ii) Divine Holdings Pvt. Ltd. Vs. CIT (ITA (L) No.1983 of 2014 (Bom)) dated 07.08.2015 (iv) Growmore Leasing & Investment Ltd. Vs. DCIT & Ors (ITA. No.4180/M/2011) dated 20.11.2013. We find that the delay is out of control of the assessee in view of the reasons mentioned above. The reason for delay has been properly explained. Therefore, taking into account all the facts and circumstances of the case, we are of the view that the delay is liable to be condoned in the interest of the justice. Accordingly, we condoned the delay.

ISSUE NO. 1

5. This issue has not been pressed by the Ld. Representative of the assessee, therefore, in the said circumstances; this issue is being decided in favour of the revenue against the assessee being not pressed.

ISSUE NO. 2

6. Issue no. 2 is in connection with the disallowance Audit Fees expenses in sum of Rs.64,000/- and Repair and Maintenance in sum of Rs.71,476/- total in sum of Rs.1,35,476/-. The assessee did not challenged the expenses in sum of Rs.71,476/- being smallness of amount, therefore, in the said circumstances, the disallowance of the expenses in sum of Rs.71,476/- in connection with the Repair and Maintenance is hereby confirmed. So far as the claim of expenses of Audit Fees in sum of Rs.64,000/- is concerned, the Ld. Representative of the assessee has argued that the Hon'ble ITAT in the assessee's group concern case has allowed the claim of Audit Fees under similar circumstances in ITA. No.1807/M/2015 & 2192/M/2015 dated 17.11.2017, therefore, in the said circumstances, the issue is squarely covered by the said order, hence, the claim of the assessee in connection with the Audit Fees is liable to be allowed. Copy of order passed by Hon'ble ITAT for the A.Y.1992-93 dated 17.11.2017 is on the



file in which the relevant has been given in para nos. 18 to 20 which are hereby reproduced as under.:-

“18. The next issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of audit fee claim by assessee of Rs.1 lakh. 19. At the outset, the learned counsel for the assessee stated that this issue is squarely covered in assessee’s group cases in ITA No. 4087 and 4088/Mum/2002 for AY 1996-97 and 97-98 in the case of DCIT vs. Orion Travels Pvt. Ltd. vide order dated 21-03-2006, wherein, this issue is allowed in favour of assessee by observing as under: -

“3. The next common issue relates to the disallowance of Auditors fees payable by the assessee. The claim of the assessee was disallowed on the ground that it had not been crystallised during the year as there was change in the Auditors. However, the Learned CIT (A) has deleted such disallowance by following the order of the Tribunal in the case of Pallavi Holdings Pvt. Ltd. and M/s Devine Holdings Pvt. Ltd. for Assessment Year 1993-94. Aggrieved by the same, the Department is in appeal before the Tribunal,

4. After hearing both the parties, we find that this issue is covered in favour of the assessee by the decisions of the Tribunal mentioned above well as in various other cases. However, the Special Counsel for the Revenue Dr. Daniel has tried to distinguish on the ground that there as no contractual liability during the year under consideration as the previous Auditor was changed and the audit report was obtained through a new Auditor. In reply, the Learned Counsel for the Assessee has submitted that Auditors are appointed from one Annual General Meeting to another Annual General Meeting and, therefore, the contractual liability existed during the year under consideration despite the fact that subsequently a new Auditor was appointed by the order of the Special Court. We find force in the submission of the Learned Counsel for the Asses-see. The appointment is made in the Annual General Meeting and the liability to pay fees is incurred the moment the appointment is made. No adverse inference can be drawn merely from the fact that audit could not be done due to seizure or the books of accounts as well as from the fact that subsequently the Court directed that audit be done through new Auditor. In view of the same and following the decision of the Tribunal mentioned above, we do not find any merit in the ground raised by the Revenue. Accordingly, the orders of the Learned CIT (A) are upheld on this issue.

20. In view of the above, taking a consistent view we also delete the disallowance of audit fee and allow this issue of assessee’s appeal.”

7. On appraisal of the above said finding, we find that the claim of Audit fees for the A.Y.1992-93 has already been allowed by Hon’ble ITAT by the Hon’ble in the case referred to supra in ITA. No.1807/M/2015 &



2192/M/2015 dated 17.11.2017, hence, the issue which is squarely covered by this decision is liable to be allowed, hence, we ordered accordingly. Accordingly, this issue is decided partly in favour of the assessee.

ISSUE NOS. 4 & 5

8. At the very outset, the Ld. Representative of the assessee has argued that the issues squarely covered by the decision of Hon'ble ITAT in the assessee's own case for the A.Y. 1992-93 dated 17.11.2017, therefore, in the said circumstances, the issues are liable to be restored before the AO in accordance with law on similar directions. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT on record.:-

"23. The next common issue in this appeal of assessee is against the order of CIT(A) confirming the levy of interest under section 234A, 234B, 234C and 220 of the Act. For this assessee has raised following ground No. 9,10,11:-

"9. The Ld. Commissioner of IncomeTax (appeals) has erred in law and in facts in confirming the levy of interest under section 23A, 234B and 234C of the Act. 10. The learned Commission 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, interest can be computed under section 234B and 234C of the Act. 11. The Ld. Commissioner of Income Tax (Appeals) erred in law and in facts in not appreciating that the provisions of u/s. 220 of the Act could not have been invoked in the present case.

24. At the outset, the learned Counsel for the assessee stated that the identical issue has been dealt with by the Tribunal in assessee's own group cases, in the case of Harshad S Mehta vs. ACIT in ITA No. 3271/Mum/2015 for AY 2009-10 vide order dated 20.03.2017, wherein Tribunal has considered the issue and remanded the matter back to the file of the AO to recompute the interest under section 234A, 234B, 234C and also under section 220 of the Act by observing as under:

- 4. After hearing both the parties and on perusal of the record including the orders of authorities below and case law relied upon by the ld.AR, we find that the issue in hand has been decided by the Coordinate Bench of the Tribunal vide para 6 and 6.1 in favour of the assessee. For the sake of convenience, we reproduce the above referred paras as under :

"6. The only other issue in this appeal is with regard to the chargeability of interest under section 234A, 234B & 234C of the Act. On this aspect, pleas of the assessee are two fold. First, the plea is to the effect that provisions of section 234A, 234B and



234C are not applicable to notified entity. This aspect of the matter is required to be held against the assessee following the judgment of the Hon'ble Bombay High Court in the case of Divine Holdings Pvt. Ltd(ITA No.3334 of 2010 dated 7/3/2012), as decided by our Co-ordinate Bench in the case Eminent Holdings Pvt. Ltd. in ITA NO.2139/Mum/2013 dated 18/6/2014, which also was a case of notified entity under the Special Court (Trial of Offences relating to transactions in Securities) Act, 1992. At the time of hearing this aspect of the matter was fairly conceded by the Ld. Representative of the assessee. 6.1 The second plea of the assessee is with regard to the quantum of interest chargeable under section 234A, 234B & 234C of the Act which is to the effect that the interest should be charged after considering the amount of tax deductible at source on the income assessed. Similar plea of the assessee was upheld by our Co-ordinate Bench in the case of Eminent Holdings Pvt. Ltd. (supra). Following the same, we deem it fit and proper to restore the matter back to the file of AO who shall recompute the interest chargeable under section 234A, 234B & 234C of the Act after considering the amount of tax deductible at source on the income assessed. Needless to mention, the AO shall allow the assessee a reasonable opportunity of being heard and thereafter, recompute the interest chargeable under section 234A, 234B & 234C of the Act, as per law. Thus, on this aspect, the assessee partly succeeds.”

5. Respectfully following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case, we restore the issue to the file of the AO with a direction to recompute the interest u/s 234A, 234B and 234C after taking into account the tax deductible on total income of the assessee by affording fair and reasonable opportunity of being heard to the assessee.”

25. In view of the above, we direct the AO to recompute the interest under section 234A, 234B, 234C and 220 of the Act as held by Tribunal in the case of Harshad S Mehta (supra). This issue of assessee's appeal is allowed for statistical purposes.”

9. In view of the above said finding, we set aside the finding of the CIT(A) on these issues and restore the issues before the AO to decide the matter of controversy afresh on the similar directions as given by the Hon'ble ITAT while deciding the case of the assessee in the ITA. No.1807/M/2015 & 2192/M/2015 dated 17.11.2017. Accordingly, these issues are decided in favour of the assessee against the revenue for statistical purposes.

ISSUE NO. 6



10. Issue no. 6 is formal in nature which nowhere required for adjudication.

11. **In the result, the appeal of the assessee is hereby ordered to be partly allowed.**

Order pronounced in the open court on this 28/08/2019.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 28/08/2019
Vijay/Sr. PS



ITA No1222/M/2017
A.Y. 1992-93

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित //True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai