

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI
BEFORE SHRI G. S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 6392/Mum/2017 (Assessment Year 1991-92)

DCIT CC -4(1) Room No. 1916, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.	Vs.	Smt. Pratima H Mehta 32, Madhuli, D.A.B. Road, Worli, Mumbai-400026. PAN: ABNPM8226G
--	-----	--

Appellant

Respondent

Appellant by : Dr. P. Daniel (Standing Counsel)

Respondent by : Shri Dharmesh Shah (AR)

Date of Hearing : 01.05.2019

Date of Pronouncement : 26.07.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT
PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by revenue is directed against the order of Id. Commissioner (Appeals)-52, Mumbai dated 28th July 2017 for Assessment Year 1991-92. The revenue has raised following grounds of appeal;

- (1) On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred while determining the income of assessee, in accepting his books of accounts notwithstanding the fact that during the assessment proceeding it was conclusively found that assessee has not maintained his books of accounts.
- (2) On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in reducing the assessed income to the extent of Rs. 1,07,97,934/- being interest expenditure without assigning any reason as to how books of accounts were relied upon.
- (3) On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in allowing interest expenditure in absence of complete details and further such claim remained payable for the year under consideration.

(4) On the facts and circumstances of the case and in law, the learned Commissioner (Appeals) while directing the Assessing Officer to quantify the allowable interest expenses are erred in computing the income of the assessee prior to allowable claim of interest at Rs. 1,29,03,374/- as income cannot be computed partly.

2. Brief facts of the case as gathered from the record of lower authorities are that assessee is an individual and relative (wife) of late Harshad Mehta, who was involved in security scam in 1992. The assessee is one of the notified assessee under the provisions of Special Court Act. A search and seizure action was carried out by the revenue on the premises of assessee on 27th September 1990 and again on 28th of February 1992. During the search voluminous document were seized. No valid return within the prescribed period of limitation provided under section 139 of the Act was filed by the assessee, therefore the notice under section 148 was issued to the assessee on 20th may 1992 directing the assessee to furnish return of income. After repeated notice to the assessee, no return was filed, accordingly assessment was completed under section 144 read with section 143(3)/147 on 24th of March 1994 assessing total income at Rs. 5,37,15,976/-. The Assessing Officer also used an alternative netting method of estimating income on the basis of revenue receipt as per ledger seized during the search operation and apportionment of income declared by her husband. The Assessing Officer as per alternate method determined total income at Rs. 2,57,24,717/- as income computed as per net accretion to the assets method was more than other alternate method, accordingly the

Assessing Officer adopted the figure of Rs. 5,37,15,976/- for determining total income of the assessee. On appeal before Commissioner (Appeals) no relief was granted to the assessee except on addition of Rs. 2,18,62,000/- made on account of apportionment of declaration by her husband in the hand of assessee for an amount of Rs. 7,37,878/- on account of certain factual inaccuracies. The assessee also filed application for admitting certain additional evidence in the form of books of account; however the learned Commissioner (Appeals) refused to admit said additional evidence. On further appeal before tribunal, the case was remanded back to the file of Commissioner (Appeals) to decide the issue afresh wide order dated 15th September 2005 in ITA No. 4599/Mum/2003.

3. In the set-aside proceeding is the Id. Commissioner (Appeals) again confirmed the action of Assessing Officer in computing the income as per net accretion to the assets method. Again, aggrieved by the order of Commissioner (Appeals), the assessee filed appeal before tribunal. The tribunal held that rejection of books of the assessee was incorrect and the computation of income on the basis of net assertion to the assets method is not valid. The case was again set aside to Id. Commissioner (Appeals) with the direction to determine the income as per regular books and as per direction of Tribunal in case of Hitesh Mehta in ITA No. 8023/Mumbai 2011 (for AY-991-92). In the proceeding taken by Id. Commissioner (Appeals) on the direction of Tribunal, the Id. Commissioner (Appeals)

directed the Assessing Officer to examine the books of assessee and determine its total income as per books vide order dated 19th of June 2017 and furnish his remand report not later than 28th of June 2017. The Assessing Officer not furnished any remand report; accordingly the Id. Commissioner (Appeals) examined the books produced by assessee along with the income and expenditure account. On perusal of books of account and the claim of assessee for interest expenditure of Rs. 1,07,97,934/-, the total income of assessee was worked out by Id. Commissioner (Appeals) to Rs. 1,29,03,374/-, which consist of 'capital gain' of Rs. 1,01,96,129/- and income from 'other sources' of Rs. 27,07,242/- and directed the Assessing Officer to quantify the allowable interest expenses as per the direction of Tribunal and to allow the set off against the total income prior to the interest expenditure. Aggrieved, by the order of Id. Commissioner (Appeals) the Assessing Officer/revenue has filed the present appeal before the Tribunal.

4. We have heard the submission of Dr. P. Daniel, Ld. Special Counsel (ld. DR) for the revenue and the Id. Authorised Representative (AR) for assessee. We have also perused the record with the active assistance of the Id. Representatives of the parties. The Id. DR for the revenue submits that accepted the books of accounts despite the fact that during the assessment proceedings, it was found that the assessee has not maintained books of accounts. The Id. Commissioner (Appeals) wrongly reduced the assessed

income to the extent of Rs. 1,07,97,934/- being interest expenditure without assigning any reason as to how books of accounts were relied upon. The Id. Commissioner (Appeals) wrongly allowed the interest expenditure in absence of complete details. The Id. DR for the revenue submits that the Tribunal remanded the case to Id. Commissioner (Appeals) to follow the decision in case of Hitesh Metha in ITA No. 8023/Mumbai 2011 (for AY-991-92). The Id. DR for the revenue further submits Hon'ble Bombay High Court on identical grounds and facts in case of Jyoti Mehta in ITA No. 1193/2014 has restored the issue to the file of Assessing Officer. Therefore, this appeal may also be restored to the file of Assessing Officer.

5. On the other hand the Id. AR for the assessee supported the order of the Id. Commissioner (Appeals). The Id. AR for the assessee further submits that the Id. Commissioner (Appeals) granted opportunity to the Assessing Officer to examine the books of accounts of the assessee and to furnish remand report. The Assessing Officer failed to examine and to furnish the remand report the Id. Commissioner (Appeals) examined the books of assessee and after full satisfaction granted relief to the assessee. The Id. AR for the assessee submits that stand of revenue in case of Hitesh Mehta before Hon'ble High Court in ITA No. 1193 of 2014 was different. The Id. AR for the assessee submits that the question of law before Hon'ble High Court was different wherein the Hon'ble Court affirmed the order of Tribunal for production of additional evidence i.e. books of account,

however, the test of genuineness and authenticity of entries in the books of account was left open for Assessing Officer. However, in the present case, the Id. Commissioner (Appeals) after granting opportunity to the Assessing Officer accepted the genuineness of the entries.

6. We have considered the submission of both the parties and gone through the orders of lower authorities. We have noted that the Id. Commissioner (Appeals) in third round of restoration/remand proceedings vide his order dated 19.06.2017 directed the Assessing Officer to examine the books of account of the assessee and furnish his remand report not later than 28.06.2017. The Id. Commissioner (Appeals) passed the order on 28.07.2017 on recording that till that date no remand report was furnished by Assessing Officer. The Id. Commissioner (Appeals) himself examined the books of account in accordance with the direction of Tribunal and came to the conclusion that assessee incurred expenditure of Rs. 1,07,97,934/- in earning the interest income of Rs. 1,29,03,374/-, which consist of capital gain of Rs. 1,01,96,129/- and Income from Other Sources of Rs. 27,07,242/- and directed the Assessing Officer to quantify the allowable expenses. We have noted that while examining the books of account of assessee. The Id. CIT(A) has examined the authenticity of books of account, thereby complied the directions of Hon'ble High Court as directed in Hitesh Mehta's case in ITA No. 1193/2014, even if, we argued with the stand of Id. DR that facts of this case are similar to fact of Hitesh Mehta.

The Id. DR for the revenue failed to specify as to how the conclusion arrived by Id. Commissioner (Appeals) are erroneous or perverse. No documentary evidence in support of grounds of appeal is filed by Assessing Officer. No contrary fact is brought on record to discard the finding of Id. Commissioner (Appeals). Therefore, we do not find any justification in interfering with the finding of Id. Commissioner (Appeals), which we affirm. Hence, the grounds of appeal raised by revenue are dismissed.

7. In the result, the grounds of appeal raised by revenue are dismissed.

Order pronounced in the open court on 26/07/2019.

Sd/-
G.S. PANNU
VICE-PRESIDENT

Mumbai, Date: 26.07.2019

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai