

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH , JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6228/Mum/2018
(Assessment Year : 2014-15)**

Deputy Commissioner of Income Tax Central Circle – 4(1), Mumbai, Central Range – 4 Pr. CIT(C)-2, Mumbai	Vs.	Smt. Pratima H Mehta 44-A, Madhuli Dr. A.B.Road, Worli, Mumbai – 400 018
PAN/GIR No. ABAPM8226G		
(Appellant)	..	(Respondent)

**ITA No.5839/Mum/2018
(Assessment Year : 2014-15)**

Smt. Pratima H Mehta 44-A, Madhuli Dr. A.B.Road, Worli, Mumbai – 400 018	Vs.	Deputy Commissioner of Income Tax Central Circle – 4(1), Mumbai, Central Range – 4 Pr. CIT(C)-2, Mumbai
PAN/GIR No. ABAPM8226G		
(Appellant)	..	(Respondent)

Revenue by	Dr. P. Daniel
Assessee by	Shri Dharmesh Shah
Date of Hearing	07/11/2019
Date of Pronouncement	27/11/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

These cross appeals in ITA Nos.6228/Mum/2018 & 5839/Mum/2016 for A.Yrs.2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-52, Mumbai in appeal No.CIT(A)-52/DC, CC 4(1)/IT-685/16-17 dated 28/08/2018 (Id. CIT(A) in short) against the

order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 15/12/2016 by the Id. Dy. Commissioner of Income tax, Central Circle-4(1), Mumbai (hereinafter referred to as Id. AO).

ITA NO.6228/Mum/2018 (Revenue Appeal) – AY.2004-05

2. Both the parties before us mutually agreed that this revenue appeal is to be dismissed as not maintainable in view of the recent Circular issued by the CBDT dated 08/08/2019 wherein the revenue has been directed to withdraw the appeal preferred by it before the Tribunal if the tax effect on the disputed issues is less than or equal to Rs.50,00,000/-. It is well settled that this Circular is binding on the revenue authorities.
3. Respectfully following the said Circular, the appeal filed by the revenue is dismissed as not maintainable.
4. Incase, if the revenue is able to provide evidence that the case falls under any of the exceptions provided in the circular issued by the CBDT, then the revenue may prefer miscellaneous application for recalling of this order, if they so desire, in which circumstance this order shall be recalled by this Tribunal.
5. In the result, appeal filed by the revenue is dismissed as not maintainable.

ITA No.5839/Mum/2018 (Assessee Appeal) A.Y. 2014-15

6. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of interest in the sum of Rs.2,19,69,050/- in the facts and circumstances of the case.

7. We have heard rival submissions and perused the materials available on record. We find that the assessee had filed its return of income in the A.Y.2014-15 on 28/07/2015 declaring total loss of Rs.2,01,67,672/-. The Id. AO observed that the assessee had shown interest receipts of Rs.18,01,778/- on term deposits of Rs.332.11 lakhs kept with Andhra Bank, Bank of Baroda, Indian Bank, State Bank of Bikaner & Jaipur and UCO Bank. We find that these interest receipts were offered to tax by the assessee under the head 'income from other sources'. We find that against these interest receipts, the assessee had claimed deduction u/s.57 of the Act towards interest expenditure in the sum of Rs.2,19,69,050/- on the amounts outstanding to the related notified broker entities, i.e. M/s.Ashwin Mehta and M/s. J H Mehta. We find that the Id. AO disallowed the claim of deduction of interest u/s.57 of the Act in the sum of Rs.2,19,69,050/- on the ground that the said liability is provisional as well as contingent in nature. The Id. AO had also observed that the assessee was claiming interest expenditure on the amount outstanding to the said related notified broker entities, however, these broker entities were not charging on the other clients.

7.1. It is not in dispute that the assessee is notified person under the provisions of Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 since 08/06/1992 and in view of the notification issued by the Hon'ble Special Court, the properties of the applicants were vested with the custodian. We find that the entire issue revolves on the point of borrowed funds being diverted for non-business purposes by the assessee and hence, correspondingly the interest paid by the assessee requires to be disallowed, in the opinion of the Assessing Officer. We find that the Id. AR had pleaded that the borrowings were made by the assessee in the year 1990 and invested in the shares of various companies. The interest paid on such borrowings was allowed as deduction from time to time to the assessee in the past. The Id. AR pleaded that those shares were sold in the open market at much higher price in the year 2009-10 and the sale proceeds thereon were either kept in the form of fixed deposits with various banks or utilized for making payments to certain parties who are also notified entities. The Id. AR placed on the record the balance sheet of the assessee as on 31/03/2014 from which the following items require crucial consideration:-

Liability Side

1. Capital Account balance as on 31/03/2014	-	Rs.70,22,40,565/-
2. Loan from M/s. Ashwin S Mehta	-	Rs.11,58,95,466/-

3. Loan from M/s. J.H. Mehta	-	Rs.10,47,41,410/-
4. Loan from Ms Deepika A Mehta	-	Rs. 20,500/-
5. Loan from Shri Hitesh S Mehta	-	Rs. 15,480/-

Asset Side

1. Investment in Term Deposits	-	Rs.3,32,11,643/-
2. Prepaid Taxes		
a. TDS	-	Rs.6,15,17,832/-
b. Wealth Tax	-	Rs. 1,792/-
c. Income Tax	-	Rs.29,11,19,135/-
d. Advance Tax	-	Rs. 60,66,341/-
3. Loan to M/s. Harshad S Mehta	-	Rs.47,37,93,346/-

7.2. From the details provided in the balance sheet as on 31.3.2013 and 31.3.2014, we find that the own funds of the assessee in the form of capital account balance was Rs.70,22,40,565/- as on 31/03/2014 and Rs.70,03,89,126/- as on 31/03/2013. The Id. AR pleaded that the amounts were paid to Shri Harshad S Mehta in the sum of Rs.47,37,93,346/- out of withdrawal of fixed deposits kept with various banks and as per the directions of Hon'ble Special Court. Hence, there cannot be any charging of interest on the said loans paid to Shri Harshad S Mehta by the assessee. We find lot of force in the said argument of the Id. AR that when the amounts were advanced to certain notified persons in order to comply with the directions of the Hon'ble Special Court with specific directions for utilisation of those funds subsequently also, the assessee cannot be fastened with a notional interest liability while complying with the said directions of the Hon'ble Special Court. Moreover, we also find that the prepaid taxes paid by the assessee in the form of TDS, wealth tax, income tax and advance tax has got no relevance with the borrowings of the assessee as admittedly those were paid by the assessee over the years out of the income earned by the assessee in several years and out of maturity proceeds of fixed deposits / sale

proceeds of shares. Hence, there cannot be any assumption that the borrowed funds were used by the assessee for making payments towards the aforesaid taxes. The Id. AR also stated that the borrowings made by the assessee from the four parties i.e. M/s. Ashwin S Mehta, M/s. J.H. Mehta, Ms Deepika A Mehta and Shri Hitesh S Mehta were made way back in 1990 and no fresh borrowings had happened thereafter. Hence, there cannot be any allegation that those borrowed funds were utilized for making payments of taxes as detailed above. We find that in any case, assessee is having sufficient own funds in its kitty as is prevalent in the balance sheet and hence, there cannot be any disallowance of interest on that count itself. Reliance in this regard is placed on Hon'ble Jurisdictional High Court in case of Reliance Utilities and Power Ltd. reported in 313 ITR 340 (Bom). Hence, we direct the Id. AO to delete the disallowance of interest in the sum of Rs.2,19,69,050/-. Accordingly, the ground No.1 raised by the assessee is allowed.

8. The ground Nos. 2 & 3 raised by the assessee are with regard to chargeability of interest u/s.234A, 234B & 234C of the Act which are consequential in nature.

9. In the result, appeal of the revenue is dismissed as not maintainable and appeal of the assessee is allowed.

Order pronounced in the open court on this 27/11/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/11/2019
KARUNA, sr.ps

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai