

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

**BEFORE SHRI SAKTIJIT DEY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6965, 6966 & 6968/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13, 2013-14 & 2015-16)

Cascade Holdings Pvt. Ltd. 32, Madhuli Apartment, Dr. A. B. Road, Worli, Mumbai-400 018	बनाम/ Vs.	DCIT CC – 4(3), R. No. 1921, Air India Bldg, Nariman Point, Mumbai 400 021.
स्थायीलेखासं./जीआइआरसं./PAN No. AAACC5768N		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकरअपीलसं./ I.T.A. No. 6768, 6769 & 6771/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13, 2013-14 & 2015-16)

DCIT CC – 4(3), R. No. 1921, Air India Bldg, Nariman Point, Mumbai 400 021.	बनाम/ Vs.	Cascade Holdings Pvt. Ltd. 32, Madhuli Apartment, Dr. A. B. Road, Worli, Mumbai-400 018
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Dharmesh Shah, Shri Nilesh Mehta & Ms. Mitali Gopani, ARs
प्रत्यर्थीकीओरसे/Respondentby	:	Dr. P. Daniel, DR
सुनवाईकीतारीख/ Date of Hearing	:	19.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	16.03.2020

आदेश / ORDER

PER BENCH:

The present six (6) Appeals have been filed by the assessee and revenue against the order of Commissioner of Income Tax (Appeals)-52, Mumbai in short 'Ld. CIT(A)' dated 17.09.2018 for AY 2012-13, 2013-14 & 2015-16 respectively.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking appeal filed by the assessee in ITA No. 6965/Mum/2017 for AY 2012-13 as lead case.

3. Assessee had filed 4 grounds, out of which, Ground No. 2 & 3 are consequential in nature, accordingly these grounds raised by the assessee are **dismissed** and Ground No. 4 is general in nature, thus this ground needs no specific adjudication, accordingly, **dismissed**.

4. With reference to Ground No. 1, assessee was seeking relief on addition of Rs. 3,52,622/-, which is interest earned by

the assessee out of the deposits made as per the instruction of Special Court.

5. With regard to Ground No. 1, the brief facts of the case are, AO made disallowance of interest expenditure claimed by the assessee u/s 57 of the Act of Rs. 7,02,00,848/-. Against the above expenditure, assessee has made an adjustment of Rs. 3,53,672/- of interest receipts on term deposits. AO observed that assessee has shown interest receipts of Rs. 3,53,672/- on termed deposits of Rs. 39.9 lakhs and assessee has offered the same under the head 'Income from other sources'. With reference to calculation submitted by assessee, AO observed that assessee has claimed interest expenditure of Rs. 9,86,14,668/- u/s 57 of the Act on the amounts outstanding related to 3 notified broker entities i.e. M/s Harshad S. Mehta, M/s Ashwin Mehta and M/s J. H. Mehta. At the same time, assessee has made suo moto disallowance of an amount of Rs. 2,84,13,820/- and balance interest expenses of Rs. 7,02,00,848/- was claimed as deduction u/s 57 of the Act. Accordingly, AO disallowed the above claim made by the assessee u/s 57 of the Act and brought the interest

income under the head income from other sources to the extent of Rs. 3,53,672/-.

6. Aggrieved with the above order, assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, gave partially relief by observing as below:-

7.1 During the course of appellate proceedings, the Ld. AR of the assessee has made detailed submissions vide letters dated 15.06.2018, 21.08.2018 and 24.08.2018 which have been duly considered. In the submissions, the assessee has broadly submitted that the action of the AO of disallowing the said interest expenditure is not correct considering that (i) an oral contract existed between the assessee and the said notified broking entities as observed by the Hon'ble ITAT in the case of the assessee for A.Y. 2006-07 and also a number of other cases of Harshad Mehta Group, (ii) as per the bye-laws and regulations of Stock Exchange, she is required to compensate the broker for delay in the payment for purchase of shares by way of payment of interest, (Hi) the Hon'ble Special court has directed the other clients of the notified broker entities to pay interest on the amounts outstanding, (iv) the Hon'ble

Special Court has also been awarding/levying interest @12% p.a. on the funds used inter-se between notified entities, (v) the Custodian is the only authority as per Sec. 4(i) of the Special Courts Act, to seek cancellation of any contract on the ground that they are fraudulent or entered into with a view to defeat the provisions of the said Act, however, the Custodian has not sought cancellation of the contract between the assessee and the notified broker entities on charging of interest, (vi) the market price of the said shares purchased through the said notified broker entities has gone up multiple times and therefore, it is in the interest of the assessee to secure performance of the contract for purchase of shares by paying interest, (vii) the liability is not contingent in nature as no adjudication in respect of this issue is pending before the Hon'ble Special Court as noted by the Hon'ble ITAT in the case of the assessee for A.Ys. 2007-08, 2009-10 and 2010-11 in ITA No. 5135/5136/Mum/2012 and 21517Mum/2013 dated 05.03.2015 (viii) the corresponding interest income received by the said notified broker entities is being offered and assessed to tax as per the method of accounting followed by them, (ix) the deduction of the said interest expenditure against the interest income from Term deposits is also to be allowed as per the principles of matching concept laid out by the

jurisdictional High Court in the case of Taparia Tools Ltd. (260 ITR 102) and (x) this issue of interest expenditure has been adjudicated and allowed by the Tribunal in the case of the assessee as well as other notified entities. Further, the assessee has explained that as and when there are surplus funds available in the accounts of the assessee, the Hon'ble Special Court directs the Custodian to invest the same in term deposits with various banks. It was also explained that originally, substantial funds were invested in the form of shares, debentures etc. out of credit availed from the said notified broker entities. Thereafter, subsequent to notification on 08.06.1992, substantial portion of these investments, have been sold under the orders of the Hon'ble Special Court and the proceeds from such sale as well as income by way of dividend, interest etc. earned on the investments has been deployed in Term deposits. Accordingly, the assessee contended that the interest expenditure of Rs. 7,02,00,848/- has a connection with the interest income on the Term deposits and therefore, should be allowed as a deduction. Moreover, the assessee explained that it is incorrect to hold that the delivery of the shares in respect of the said notified brokers has not yet been taken considering that all the unregistered shares have

been handed over to the Custodian on behalf of the assessee.

7.2 I have considered the various submissions of the assessee as well as the order of the AO. It is observed that out of the total interest expenditure of Rs 9,86,14,668/-, the assessee has considered an amount of Rs 2,84,13,820/- for disallowance u/s 14A and the balance amount of Rs 7,02,00,848/- has been claimed as a deduction u/s 57 against the interest receipts of Rs 3,53,672/- on Term deposits while computing the income under the head, "Income from Other Sources". However, the AO has held that the entire interest expenditure claimed by the assessee of Rs. 7,02,00,848/- u/s. 57 cannot be allowed as a deduction against the interest income of Rs 3,53,672/- on term deposits since, the said expenditure is provisional/contingent and without any basis, he assessee contends that the action of the AO is incorrect since the entire expenditure is payable as per oral contract of the assessee with the said notified broker entities and since there is a nexus between the said interest expenditure and the interest income from Term deposits, the entire amount of interest expenditure claimed by it of Rs 7,02,00,848/- u/s 57 should be allowed as a deduction.

7.3 As regards, the dispute of the assessee with the AO that there is no basis/contract for incurring the said expenditure, it is observed that in the case of the assessee as well as the cases of other notified entities, the Appellate authorities have consistently been holding that absence of a written contract should not be viewed adversely against the assessee. As regards the dispute of the assessee with the AO that the said notified broker entities have not been offering the corresponding interest income in their hands, it is observed that the Hon'ble ITAT in the case of Sudhir Mehta for AYs 2009-10 to 2011-12 in ITA No 5799 to 5801/Mum/2015 dated 27.12.2017 has noted that the notified broker entities are offering the interest income for taxation as per the system of accounting regularly employed by them. Moreover, as regards the dispute of the assessee with the AO that the liability of interest is contingent in nature, it is observed that the Hon'ble ITAT in the case of Ms Deepika A Mehta for A.Ys. 2007-08, 2009-10 and 2010-11 in ITA No. 5135/5136/Mum/2012 and 2151/Mum/2013 dated 05.03.2015 has held that the said liability is not contingent in nature since no adjudication in respect of this issue is pending before the Hon'ble Special Court.

7.4 The income under the head 'Income from Other Sources' is to be computed as per the provisions of Sec. 56 to 58. The deductions which are allowable are as per the provisions of Sec. 57. As per the provisions of Sec. 57(iii), any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income is to be allowed as a deduction while computing the income under the head "Income from Other Sources'. Now the issue to be decided is what is the quantum of interest expenditure out of the total interest expenditure incurred of Rs. 9,86,14,668/-, which can be said to have been laid out or expended wholly and exclusively for the purpose of making or earning the interest income of Rs. 3,53,672/- on Term deposits. It is relevant to note that the said entire interest expenditure of Rs 9,86,14,668/- pertains to 3 of the notified broker entities, M/s. Harshad S. Mehta (Rs 7,37,36,318/-), M/s. J.H. Mehta (Rs 2,28,46,745/-) and M/s Ashwin Mehta (Rs 20,31,605/-) related to the shares purchased by the assessee through them during the period prior to 1992.

7.5 On examination of the Balance Sheet of the assessee for A.Y. 1992-93, it is observed that the amounts payable to the said 3 notified broker entities

are of Rs. 2578.74 lakhs. Interest has been charged @12% on the amounts payable to the said 3 notified broker entities. Against this total outstanding amount of Rs. 2578.74, the corresponding investments in shares, debentures etc. shown are of Rs. 2520.06 lakhs.

7.6 Similarly, on examination of the Balance Sheet of the assessee for the relevant year i.e. A.Y. 2012-13 it is observed that the amounts payable to the said notified broker entities are of Rs. 8201.10 lakhs. Interest has been charged of Rs. 9,86,41,668/- @12% on the amounts payable to the said notified broker entity. It has been submitted by the assessee that in the intervening period between the year ending 31.03.1992 and the year ending 31.03.2012 substantial portion of the said shares, debentures etc. purchased from the said notified broker entities and others have been sold off by the Custodian and the amounts realized have been utilized for payment of taxes etc. and the 'surplus has. been deployed for investment in Term deposits. The unsold investments in shares, debentures etc. shown are of Rs. 2388.96 lakhs as on 31.03.2012.

7.7 For ready reference, the Comparative figures of Balance Sheet for the years relevant to AYs 1992-93 and 2012-13 is reproduced as under:

**I.T.A. No. 6965, 6966 & 6968/Mum/2018 &
ITA No. 6768, 6769 & 6771/Mum/2018
Cascade Holdings Pvt. Ltd.**

(Figures in Rs Lakhs)

Particulars	As on 31.3. 12	As 31.03.92	-Particulars	As on 31.03. 12	As on 31.03.92
Capital	(-) 5043.88	49.27	Inv in shares, debentures	2388.96	2520.06
Payable to notified broker	8201.10	2578.74	Loans & Advances, taxes	6205.59*	5.32
Unsecured loans	5.3	—	Term deposits	39.9	—
Liabilities	5492.39	24.05	Fixed assets, etc	20.46	126.68
	8654.91	2652.06		8654.91	2652.06

* Loans & advances given includes loan given of Rs 6155.69 lakhs to Harshad Mehta as per the directions of the Hon'ble Special Court and payments made for Advance tax, TDS etc of Rs.49.9takhs

7.8 In course of the appellate proceedings, it was observed that the assessee is following mercantile system of accounting whereas M/s. H.M. Mehta as well as Harshad Mehta in individual capacity is following cash system of accounting. This difference in accounting policies has resulted in an extremely adverse situation against the Revenue whereby from A.Y. 1992-93 to the relevant assessment year; the assessee has claimed expenditure of more than Rs. 140 crores whereas M/s. H.M. Mehta has not booked any corresponding interest income in view of the cash system of accounting followed. If due to the different accounting systems being followed, the timing difference in booking of expenditure by the assessee and booking of income by M/s. H.M. Mehta was of a

year or two, it would, have been understandable. However, in the instant case, for a period of more than 20 years, the assessee is consistently booking expenditure whereas M/s. H.M. Mehta is not booking any income.

7.9 Further, in course of the appellate proceedings, it was also observed that the assessee has given loan of Rs 6155.69 lakhs to Harshad Mehta as per the order of the Hon'ble Special Court which does not carry any interest. Moreover, in course of the appellate proceedings, it was also observed that "Loans & Advances" included an amount of Rs 49.9 lakhs on account of advance tax, wealth tax, IDS, income tax, etc. and therefore, the interest attributable to such amounts is to be disallowed. Therefore, the assessee was asked to explain as to why interest has riot been charged on the said amount advanced to Shri Harshad Mehta of Rs 6155.69 lakhs and also as to why the interest attributable to the amount of Rs 49.9 lakhs related to payment of income tax, etc should not be disallowed. In response, the assessee submitted that the said amount of Rs 6155.69 lakhs was paid to Shri Harshad Mehta pursuant to order passed by the Hon'ble Special Court dated 25.02.2011 in connection with payment of the outstanding income tax dues and

this order did not have any stipulation for payment of interest. It was further contended that as per the Law laid down by the Hon'ble Supreme Court, the Hon'ble Special Court enjoys exclusive Civil jurisdiction and imposing of any tax liability on presumed interest income will be a violation of the said exclusive Civil jurisdiction of the Hon'ble Special Court thereby resulting into contempt of Court. As regards disallowance of interest attributable to the loans & advances given in the form of advance tax, wealth tax, income tax. IDS etc of Rs 49.9 lakhs it was submitted that no part of interest bearing funds have been deployed for the said payments of Income tax etc.

7.10 The contentions of the assessee have been considered. The following anomalies are noticed in the factual position as well as the contentions of the assessee:

(i) Due to the different accounting policies followed by the assessee and M/s H M Mehta as well as Harshad Mehta in individual capacity, the interest of Revenue has been adversely affected since on one hand over the past more than 20 years, the assessee has been claiming cumulative interest expenditure of more than Rs 140 crores whereas the corresponding interest income is not being offered in the hands of M/s H M

Mehta as well as Harshad Mehta in individual capacity,

(ii) the assessee is paying interest @ 12% on the loans taken from M/s H M Mehta as well as Harshad Mehta in individual capacity but is not receiving any interest on the huge loan advanced of Rs 6155.69 lakhs to Harshad Mehta as per the directions of the Hon'ble Special Court,

(iii) To justify its claim of interest expenditure related to the said notified broker entity, the assessee claims that even for loans inter-se between the notified entities, the Custodian as well as the Special Court is insisting on charging of interest, however, it is surprising that no interest has been charged on the huge loan of Rs 6155.69 lakhs advanced by the assessee to Harshad Mehta.

(iv) When it comes to disallowance of interest attributable to the income tax, etc. of Rs 49.9 lakhs, the assessee contends that the same is out of the surplus funds available at its disposal, however, when it comes to disallowance of interest expenditure claimed related to interest income .on Term deposits, the assessee contends that the same is out of the credit availed from the said notified broker entity for purchase of shares

way back in the year ending 31.03.1992 for which it is liable to pay interest @12% p.a.

7.11 From the above, it can be observed that the factual position as well as the contentions of the assessee are full of contradictions. The assessee in course of the appellate proceedings, was specifically asked to furnish details of the interest expenditure attributable to the income tax, etc. of Rs 49.9 lakhs, the interest expenditure attributable to exempt investments, the interest expenditure attributable to the interest income on Term deposits, etc. and also the details of the notional interest income arising to it on account of the loan advanced to Shri Harshad Mehta of Rs 6155.69 lakhs. As regards, the interest expenditure related to exempt investments, it was claimed by the assessee to be of Rs. 2,84,13,820/- and the / interest expenditure related to payments of income tax, etc was claimed to be of Rs. Nil. However, the details in respect of the interest attributable to Term deposits as well as the notional interest income on the loan advanced to Harshad Mehta of Rs. 6155.69 lakhs were not submitted by the assessee.

7.12 It can be observed from the comparative figures of the Balance Sheet for the year ending 31.03.1992 and 31.03.2012 in para 7.7 above, that the investments in

shares, debentures, etc as on 31.03.1992 were of Rs 2520.06 lakhs and in the intervening period, substantial portion of the said investments of Rs. 131.1 lakhs were sold and the unsold investments as on 31.03.2012 are of Rs 2388.96 lakhs. It is pertinent to note that the entire investments of Rs 2520.06 lakhs were purchased through the said 3 notified broker entities in the year ending 31.03.1992 and the interest payable on the amounts outstanding was @ 12% per annum. In the intervening period, substantial investments have been sold off but the balance unsold investments of Rs 2388.96 lakhs as on 31.03.2012 continue to be liable for interest @ 12% per annum as the direct nexus continues from the year ending 31.03.1992 till the end of the relevant year. Therefore, interest of Rs 2,86,67,490/- (12% of Rs 23,88,95,748/-) is directly attributable to the unsold investments in shares, debentures, etc of Rs 2388.96 lakhs as on 31.03.2012. Accordingly, this interest of Rs 2,86,67,490/- is disallowable u/s 14A being the direct expenditure in relation to the exempt investments as against the suo moto disallowance made by the assessee of Rs 2,84,13,820/- u/s 14A. The AO is, however, directed to allow capitalization as per the decision of the Hon'ble (TAT in the case of Shri Sudhir

S. Mehta in ITA No. 5799/Mum/2014 for A.Ys. 2009-10 to 2011-12.

7.13 As noted above, in the intervening period, between 31.03.1992 and 31.03.2012, investments of cost price Rs 131.1 lakhs (Rs 2520.06 lakhs - Rs 2388.96 lakhs) bearing interest @ 12% per annum have been sold off. The assessee itself admits that the said investments have grown multiple times and their sale has resulted into huge surpluses, however, due to indexation, it has not paid any tax on account of long term capital gains. This is also apparent from the fact that though investment in shares & debentures has come down by Rs 131.1 lakhs from Rs 2520.06 lakhs as on 31.03.1992 to Rs 2388.96 lakhs as on 31.03.2012 on account of sale of investments in the intervening period, however, the loans & advances, taxes etc has gone up by Rs 6200.27 lakhs from Rs 5.32 lakhs as on 31.03.1992 to Rs 6205.59 lakhs as on 31.03.2012. As can be observed, on account of the surpluses arising on sale of investments, the loans, advances, taxes, etc have gone up by Rs 6200.27 lakhs as against the decrease in investments on account of sale of Rs 131.1 lakhs. Thus, the interest burden on the outstanding amounts to the said 3 notified broker entities has been spread over the increase in loans, advances, taxes, etc of Rs

6200.27 lakhs in the intervening period from the year ending 31.03.1992 to the year ending 31.03.2012. Further, there is little doubt that the assessee maintains a common pool of funds for its investment in shares, debentures, etc as well as for its investments in Term deposits.

7.14 In view of the above factual position, the interest attributable to the income tax, etc of Rs 49.9 lakhs and the interest free loan given to Shri Harshad Mehta of Rs 6155.69 lakhs can be reasonably computed by adopting the formula which has been prescribed in Rule 8D(2)(ii) for computing the interest attributable to the exempt investments i.e. Interest expenditure x (Average of exempt investments/Average total assets) but in the said formula, the 'Average exempt investments' will be replaced by 'Average of Payments of Income tax etc and the interest free loans given to Harshad Mehta etc. Moreover, the interest to be considered, in this formula, will be the net interest of Rs. 6,99,47,178/- after excluding the interest of Rs 2,86,67,490/- directly attributable to the exempt investments. The AO is accordingly directed to compute the interest attributable to the income tax, etc and the interest free loan given to Shri Harshad Mehta etc and disallow the same.

*7.15 Similarly, the interest attributable to the Term deposits of Rs 39.9 lakhs can also be computed by adopting the same formula which has been prescribed in Rule 8D(2)(ii) for computing the interest attributable to the exempt investments i.e. Interest expenditure x (Average of exempt investments/Average total assets) but in the said formula, the "Average exempt investments" will be replaced by "Average Investments in Term deposits". Here also, the interest to be considered in this formula will be the net interest of Rs. 6,99,47,178/- after excluding the interest of Rs. 2,86,67,490/- directly attributable to exempt investments. The AO is accordingly directed to compute the interest attributable on the Term deposits and only allow this amount as a deduction u/s 57 against the interest receipts of Rs 3,53,672/- while computing the income of the assessee under the head "Income from other Sources". **Accordingly, ground no 3 is partly allowed.***

7. Before us Ld. AR submitted that the assets and liability of the assessee company are under control of Special Court and he submitted that assessee has borrowed funds from its sister entities and based on the oral agreement, the interest is payable @ 12%

per annum and the same is claimed by the assessee. The AO in its order treated the above interest expenditure as contingent liability, accordingly AO disallowed the same. He further submitted that AO observed that there is no nexus between investment made by the assessee and loan taken. However, he submitted that Hon'ble ITAT has allowed the appeal of the assessee and he brought to our notice the broker entities offering it as income and when broker entities are offering it as income, assessee is also eligible to claim it as expenditure. Accordingly, he brought to our notice para 7.2 of the order of Ld. CIT(A). He also brought to our notice balance sheet of the assessee company and submitted that assessee has made investment of 39.9 lakhs as term deposit and assessee has earned interest income and assessee has not claimed interest expenditure which even Ld. CIT(A) has accepted the facts. Now since all the activities of the assessee company are controlled by Spl. Court. He submitted that investment of term deposit are only out of the liquidation of some investments and out of such sale proceeds after meeting the tax obligation and other statutory dues, the balance are deposited

in bank and now assessee is seeking relief to the extent of interest earned only. However, drawing our attention to ground no. 1 raised by the assessee, Ld. AR submitted that the assessee should be allowed set off of interest expenditure to the extent of interest income earned of Rs. 3,52,622/-. In this context, he submitted that AO himself has allowed such benefit of set off in AY 2017-18 (he filed a copy of the assessment order).

8. On the other hand, Ld. DR agreed that all the entities are notified entities and he relied on the findings of Ld. CIT(A) and submitted that Ld. CIT(A) appreciated the facts of the case and gave a proper relief to the assessee.

9. Considered the rival submission and material placed on record, we notice from the records that the assessee has earned interest income from the deposits in bank. These deposits are out of the balance of liquidating certain investments. Since the assessee is under the direct control of Hon'ble Spl. Court and all the issues are pending before the Hon'ble Spl. Court. The plea of the assessee is that there is oral contract between the parties to pay 12% per annum and whatever the interest income earned by

the assessee are out of the surplus of the liquidation of certain investment. The investment as well as the fund management are under the supervision of the Hon'ble Spl. Court, assessee has no role to play. From the facts on record, prima facie, it appears that there is a nexus between the borrowed funds on which assessee has paid interest and the investment on which it has earned interest income. Therefore, the assessee should get deduction of interest expenditure to the extent of interest income earned of Rs. 3,52,622/-. It is relevant to observe, in assessee's own case in AY 2017-18, the AO himself has allowed claim of deduction of interest expenditure to the extent of interest income earned during that year. In view of the aforesaid, the ground is allowed as indicated above.

ITA No. 6966 & 6968/Mum/2018 (AY 2013-14 & 2015-16)

10. Now we take up ITA No. 6966 & 6968/Mum/2018 for AY 2013-14 & 2015-16 filed by the assessee. Since the grounds raised in these assessment years are similar to that of AY 2012-13 filed by the assessee as discussed above. Therefore, the conclusion drawn in above paras are applicable to this appeal as

well. Accordingly, grounds raised by the assessee in these assessment years are **allowed**.

ITA No. 6768, 6769 & 6771/Mum/2018 (AY 2012-13, 2013-14 & 2015-16)

11. Now we take up ITA No. 6768, 6769 & 6771/Mum/2018 for AY 2012-13, 2013-14 & 2015-16 filed by the revenue on account of findings of Ld. CIT(A) in capitalizing the disallowance of interest of Rs. 2,86,67,490/- u/s 14A of the Act by relying on the decision of ITAT.

12. At the outset, Ld. AR appearing on behalf of the assessee submitted that the ground raised by the revenue is squarely covered by the consolidated order of Coordinate Bench of Hon'ble ITAT in ITA No. 5799/Mum/2015 for AY 2009-10 in Shri Sudhir S. Mehta case, wherein the Hon'ble ITAT has allowed the ground of merit in favour of assessee.

13. On the other hand, Ld. DR supported the orders passed by AO and submitted that Ld. CIT(A) was not justified in capitalizing the disallowance of interest of Rs. 2,86,67,490/- u/s 14A of the Act only relying on the decision of ITAT in ITA No.

5799/Mum/2015 for AY 2009-10 to 2011-12 in the case of Sudhir S. Mehta.

14. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 5799/Mum/2015 for AY 2009-10 in Shri Sudhir S. Mehta case, wherein the Hon'ble ITAT has allowed the ground on merit in favour of assessee. For the sake of clarity, which is reproduced below:-

17. Now coming to the additional ground raised with respect to capitalization of interest we are of the view that to the extent the interest relate to the investment, i.e. being disallowable under Section 57 will become part of cost of acquisition of shares and therefore the AO is directed to take it as part of the cost of shares for determining profit on sale of the shares. Thus, the additional ground stands allowed to that extent.

15. Therefore, respectfully following the decision of Coordinate Bench of ITAT, which is applicable *mutatis mutandis* in the present cases, we are inclined to accept the findings of Ld.

CIT(A) and **dismiss** the ground raised by the revenue in all these appeals.

16. In the net result, all the appeals filed by the assessee are **allowed** and all the appeals filed by the revenue are **dismissed**.

Order pronounced in the open court on 16th March 2020.

<i>Sd/-</i> (Saktijit Dey) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 16.03.2020
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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