

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

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No.6957/Mum/2018 (Assessment Year 2013-14)

ITA No. 6958/Mum/2018 (Assessment Year 2014-15)

ITA No. 6959/Mum/2018 (Assessment Year 2015-16)

Harsh Estates Pvt. Ltd. 32, Madhuli Apartment, 3 <sup>rd</sup> Floor, Dr. A.B. Road, Worli, Mumbai-400018. <b>PAN: AAACH3480L</b>	Vs.	DCIT, CC-4(3) Room No. 1921, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
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Appellant

Respondent

ITA No.6765/Mum/2018 (Assessment Year 2013-14)

ITA No. 6766/Mum/2018 (Assessment Year 2014-15)

ITA No. 6767/Mum/2018 (Assessment Year 2015-16)

DCIT, CC-4(3) Cen Rg. 4 PR.CIT(C) -2, Room No. 1921, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.	Vs.	Harsh Estates Pvt. Ltd. 32, Madhuli Apartment, 3 <sup>rd</sup> Floor, Dr. A.B. Road, Worli, Mumbai-400018. <b>PAN: AAACH3480L</b>
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Appellant

Respondent

Appellant by

: Sh. Dharmesh Shah (AR)

Respondent by

: Dr. P. Daniel Special Counsel

Date of Hearing

: 15.09.2020

Date of Pronouncement

: 15.09.2020

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER BENCH;**

1. This set of six appeals, out of which three appeal by assessee and three appeal by revenue are directed against the order of Id. Commissioner of Income Tax (Appeals)-52 [for short the Id. CIT(A)], Mumbai dated

17.09.2018 for Assessment Years 2013-14, 2014-15 and 2015-016. In all appeals, the assessee as well as revenue has raised the identical grounds of appeal except variation of figures, therefore, all the appeals were clubbed, heard together and are disposed of by a consolidated order. For appreciation of facts, the appeals for A.Y. 2013-14 is treated as lead case. The assessee in its appeal in ITA No. 6957/Mum/2018 has raised the following grounds of appeal:

Following grounds of appeal are without prejudice to each other:

1. The Ld. Commissioner of Income-tax (Appeals) ought to have allowed the deduction of interest expenditure of Rs. 2,33,38,930/- as follows:

<b>Sr. No.</b>	<b>Entities</b>	<b>Interest @ 12% per annum payable</b>
1.	M/s. Jyoti H. Mehta	4,37,06,074
	<b>Total</b>	<b>4,37,06,074</b>
	Less: Proportionate disallowance of interest u/s. 14A of the Act	(-) 2,03,67,144
	<b>Total</b>	<b>2,33,38,930</b>

The Ld. Commissioner of Income-Tax (Appeals) ought to have held that the appellant was eligible for deduction at least to the extent of Rs. 4,07,230/-, being the income earned during the year .

2. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts that in confirming the levy of interest u/s. 234A, 2348 and 234C of the Act.

3. 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 appellant were subjected to the provisions of TDS and hence on the said amount of tax, no interest can be computed u/s. 234A, 2348 and 234C of the Act.

2. The revenue in its cross appeal has raised the following grounds of appeal:

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in capitalizing the disallowance of interest u/s. 14A of the I.T. Act, 1961 of Rs. 2,59,98,276/- only relying on the decision of the Hon'ble ITAT in

case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2014 for A.Ys. 2009-10 to A.Y. 2011-12 which has itself been challenged by the Department before the Hon'ble Bombay High Court.”

3. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that all the grounds of appeal raised by assessee as well as by revenue are covered by the decisions of Tribunal in assessee's group case.
4. For Ground No. 1, the Id. AR of the assessee submits that assessee is claiming deduction of interest expenses to the extent of Rs. 4,07,230/- being the income earned during the year. The Id. AR of the assessee submits that this issue is covered by the decision of Tribunal in assessee's group case in Cascade Holdings Pvt. Ltd. Vs. DCIT for A.Y. 2012-13, 2013-14 & 2015-16 in ITA No. 6965, 6966 & 6968/Mum/2018 dated 16.03.2020 as well as in Pratima H. Mehta vs. DCIT in ITA No. 5839/Mum/2018 dated 27.11.2019 for A.Y. 2014-15 and further in case of Aatur Holdings Pvt. Ltd. Vs. DCIT in ITA No. 6954 to 6956/Mum/2018 dated 13.03.2020 for A.Y. 2013-14 to 2015-16. The Id. AR of the assessee also placed the copy of all those decisions on record.
5. On the other hand, the Id. Special Counsel for revenue submits that he relied upon the order of Assessing Officer and of Id CIT(A).
6. We have considered the rival submission of the parties and find that on identical grounds of appeal in assessee's group case in ITA No. 6954 to 6956/Mum/2018 for A.Y. 2013-14 to 2015-16, the Co-ordinate Bench of Tribunal on identical grounds of appeal passed the following order:

9. We have considered the submission of both the parties and perused the record. We have noted that this issue has repeatedly being examined by Tribunal in assessee's group cases for various years. We have noted that in Growmore Leasing and Investment Ltd. (supra), the case of Sudhir S. Mehta in ITA No. 5799/M/2014 was treated as lead case and the Tribunal on similar ground of appeal passed the following order:

“12. We heard the rival submissions and carefully considered the same along with the orders of the Tax Authorities below. We have also gone through the case law as has been cited before us the relevant provisions of the [Special Court Act](#) which has been referred to before us during the course of hearing. This is an undisputed fact which we noted that the assessee is a notified person from 08.06.1992 under [Section 3\(2\)](#) of the Special Court Act. As per the provisions of the [Special Court Act](#) contract entered into by a notified person prior to notification made under [Section 3\(2\)](#) are not affected by the notification. [Section 4\(1\)](#) of the Special Court Act empowers the custodian to cancel any contract or agreement entered into between 01.04.1991 to 06.06.1992 if the custodian finds that these contracts have been entered into fraudulently or to defeat the provisions of the [Special Court Act](#). In A.Y. 1990-91, the AO in the assessment order passed under [Section 143\(3\)](#) dated 26.03.1993 allowed the interest expenses to the assessee to the extent of `5,86,404/-. From page 75 of the paper book which contains the computation of income for A.Y. 1990-91, we noted that the assessee has disclosed the loan taken for the purchase of investment. The assessee is consistently following mercantile system of accounting which is apparent even from the assessment order of A.Y. 1990-91 as well as from the impugned assessment year. The order for A.Y. 1990-91 in fact has been passed by the AO after the date of notification and the enactment of the [Special Court Act](#). We have gone through the order passed by the CIT(A) in the case of Shri Ashwin S. Mehta assessment years 2010-11 and 2011-12, where we noted that this issue of taxability of interest income of the assessee and other parties has specifically been dealt with by the CIT(A) and accordingly interest income of `10,68,83,732/- was brought to tax. In view of this fact it is apparent that the assessee is liable to

pay interest on the amount outstanding. Therefore the liability towards interest got accrued. Under the mercantile system of accounting interest is deductible when it has accrued. This also proves that there was an agreement, may be oral, to pay the interest on the borrowed funds by the assessee to the other family members. We, therefore, reject the plea of the learned D.R. that no liability towards Growmore Leasing & Investment Ltd. & Others interest has accrued but it was merely a contingent liability. We noted that [section 4](#) of the Special Court Act empowers the custodian and the court to cancel any contract or agreement in relation to the property of a person notified under that Act provided they have entered into fraudulently. In this case no cogent material or evidence has been brought to our knowledge or placed before us which may prove that the custodian under [Section 4\(1\)](#) of the Special Court Act has taken any action to cancel the terms relating to payment of interest. Rather we have noted from the affidavit of the custodian dated 01.03.2006 in M.P. No. 41 of 1999 that the custodian seeking to levy interest @ 15% to 18% per annum. Therefore the interest on outstanding credit balance of the brokerage firm has accrued as actual liability. The issue with regard to contract for payment of interest has been raised by the AO and the CIT(A) in the case of other notified entities duly approve the existence of liability. We noted that in the case of Growmore Leasing & Finance Ltd. for A.Y. 2007-08 by order dated 26.06.2014 the CIT(A) followed the finding in the case of other group concerns, i.e. Eminent Holding Pvt. Ltd. by observing as under: -

"6.3 I have gone through the submissions of the Ld. AR. I find that though there is no express document evidencing payment of interest to the brokerage firms, the intentions of the parties were always so, this is evident from the fact that identical claim was also made during A.Y. 1990-91 and the same was allowed to the appellant and other concerns. The claim made in the affidavit of Custodian in MP No. 41 of 1999 also supports this claim. I also agree with the appellant that there need not be any written agreement and that the oral agreement coupled with the actions and intentions of the parties is sufficient to prove the existence of the liability."

13. Similar issue was involved in the case of other family member, i.e. Shri Hitesh S. Mehta for A.Y. 2005-06 where also the AO has disputed the very existence of liability towards interest to creditors. The CIT(A) vide his order dated 31.08.2010 confirmed and approved the claim of the assessee that there

was no need for any written agreement and that the oral agreement coupled with action and intentions of the parties is sufficient to prove the existence of liability. This order of the CIT(A) was followed by him in the case of the assessee while adjudicating the ground relating to the Growmore Leasing & Investment Ltd. & Others interest expenses for A.Y. 2006-07 vide order dated 27.09.2013 under para 6 which has been reproduced under para 18 of the order of the assessee. These finding and observation in the above orders of the CIT(A) has not been disputed by the Revenue by filing an appeal. In view of this finding becoming final, in our view, the existence of liability for payment of interest cannot be disputed.

14. Coming to the objection of the Revenue that interest cannot be allowed as deduction has not been shown by recipients in their income. As has been discussed by us in the preceding paragraphs the interest has been shown as income by Mr. Ashwin S. Mehta in assessment years 2010- 11 and 2011-12. We also noted that Late Shri Harshad Mehta has been offering his income on cash basis and the method of accounting has been duly upheld by the Tribunal in his case for A.Y. 1989-90. Even otherwise disallowance of interest claimed by the assessee cannot be made merely because in the opinion of the AO the corresponding interest income has not been offered by the recipients. The interest can be allowed on the basis of method of accounting followed by the assessee. We noted that similar issue when arose in the case of [M/s. Growmore Leasing & Investment Ltd. vs. CIT](#) in ITA No. 51354 & 5136/Mum/2012 wherein the Coordinate Bench of this Tribunal while setting aside the issue to the file of the CIT(A) directed him to tax the income in the hands of recipient family members in accordance with the method of accounting followed by them. We find force in the submission of the learned A.R. that since the assessee as well as the recipients are notified entities under the [Special Court Act](#) unless the Court directs for distribution of the assets towards existing liabilities under [Section 11\(2\)](#) of the Special Court Act, the assessee cannot make the payment to these creditors. Even otherwise since the existence of liability towards interest has accrued especially when the assessee is following the mercantile system of accounting the interest is to be allowed. During the course of hearing we raised a query about the nexus of interest expenses with the interest income. The learned A.R. pointed out that the

liability in the present case was accrued on account of purchases of shares and Growmore Leasing&Investment Ltd. & Others securities by the assessee which were sold in terms of the directions of the Hon'ble Special Court in subsequent years and the sale proceeds so received were invested in term deposits with the banks and accordingly the assessee has claimed interest expenditure against the interest earned on term deposits. No contrary evidences or material were brought to our knowledge to contradict this fact. In view of this fact we find that there is a nexus between borrowed funds and investments in term deposits. Therefore, the interest paid on the borrowed funds has to be allowed out of the interest earned by the assessee on term deposits. We noted that identical issue was raised in the case of M/s. Growmore Leasing & Investment Ltd. in A.Y. 2007-08. The CIT(A) in his order dated 26.02.2012 considered the issue of nexus of interest expenditure with interest income, following his own finding in the case of another notified entity, i.e. Eminent Holding Pvt. Ltd. for A.Y. 2007-08 which are reproduced as under: -

"As regards the nexus of the interest expenditure with the interest income, I find that the Balance Sheet of the appellant and the affidavit filed by the custodian before the Hon'ble Special Court supports the fact that the funds borrowed from Shri Harshad S. Mehta were deployed by the appellant in various assets like shares and securities, properties, etc. These funds generated income in the form of dividend and interest income. After being notified, such shares and securities got converted into Fixed Deposits with various banks. These fixed deposits generated interest income which is offered to tax. Hence, a reasonable nexus can be said to exist between the interest liability incurred by the appellant, and the interest income earned from these assets. However, this matter being sub-judice before the Hon'ble Special Court, no finding can be given on these matters."

15. Similar issue has arisen in the case of Shri Hitesh S. Mehta for A.Y. 2005-06 wherein the CIT(A) vide his order dated 31.08.2010 approved the nexus between borrowed funds and the investment in term deposit which has been followed by the CIT(A) even in the case of the assessee for A.Y. 2006-07 dated 27.09.2013. We do not agree with the submission of the learned D.R. that interest expenses cannot be allowed till the Hon'ble Special Court decide the issue. The allowance or disallowance of the expenditure depends on the accrual of expenditure. Even

no dispute has been raised in respect of interest on such credit balances before the Growmore Leasing&Investment Ltd. & Others Special Court. Even on this basis, following the principle of consistency, as the interest has been allowed as deduction in the A.Y. 2006-07 and there is no change in the facts, the deduction in respect of the interest expenditure has to be allowed. Our aforesaid view is supported by the following decisions:

The Supreme Court in the case of [Radhasoami Satsang Saomi Bagh vs. CIT](#) 193 ITR 321 referred to the following passage from Hoystead v Commissioner of Taxation 1926 AC 155 (PC), wherein it was observed (page 328):

"Parties are not permitted to begin fresh litigation because of new view they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the Plaintiff and traversable by the Defendant, has not been traversed. In that case also a Defendant is bound by the judgement, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

At pg 329 of the judgement, Their Lordships observed as under:

"We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating though the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging Growmore Leasing & Investment Ltd. & Others the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

19. On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter and if there was not change it was in support of the assesses - we do not think the question should have been reopened and contrary to

what had been decided by the Commission of Income-Tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under [Sections 11](#) and [12](#) of the Income Tax Act of 1961."

The aforesaid dictum of law was reiterated recently by the Supreme Court in [CIT vs. Excel Industries Ltd.](#) : 358 ITR 295.

"It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the Assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather spend the tax payers money in pursuing litigation for the sake of it."

16. In view of our aforesaid discussion we set aside the order of the CIT(A) and direct the AO to allow deduction in respect of said interest accrued and calculated at 12% per annum amounting to `2,64,72,208/- after disallowing proportionate interest in respect of the investment in Growmore Leasing & Investment Ltd. & Others shares amounting to `3,51,176/- after verifying the calculation of the interest quantification."

The Growmore Investment Ltd. in ITA No.1219/M/17 was adjudicated in para-56 to 59 in the order dated 27.12.2017 with following observation.

"60. Ground No. 1 relates to the claim of interest by the assessee amounting to `1,43,721/- after disallowing proportionate interest amounting to `2,12,47,194/- out of interest earned by the assessee on term deposits. Both the parties agreed that similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 and whatever view the Tribunal may taken in that case the same view may be taken in the impugned case. After hearing the rival submissions and considering the same we noted that this Tribunal while disposing of the said ground allowed claim of the assessee in respect of interest expenditure after proportionate disallowance. We, therefore, respectfully

following our finding given in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 allow the claim of interest of the assessee to the extent of `1,43,721/- after proportionately disallowing a sum of `2,12,47,194/- and give similar direction to the AO as given in ITA No. 5799/Mum/2015. Thus, ground No. 1 is allowed.”

10. The aforesaid order dated 27.12.2019 was followed in Ashwin S. Mehta in ITA No. 2474/M/2015. Further, in case of Pratima H. Mehta v/s DCIT in ITA No. 5839/M/2018 dated 27.11.2019, the co-ordinate bench allowed similar relief by passing the following order:

“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."

11. Considering the consistent decision of the Tribunal and respectfully following the same, we direct the Assessing Officer to allow the interest expenses to the assessee. So far as objection of Id. DR for the revenue that in absence of written contract, no interest expenses is allowable, we have noted that similar objection was considered by Tribunal in earlier year and was not accepted.

12. We have further noted that on similar disallowance in assessee's group case in Cascade Holdings Pvt. Ltd. (supra) for A.Y. 2012-13, 2013-14 & 2015-16 similar relief was allowed to the assessee in ITA No. 6965, 6966 & 6968/Mum/2018 dated 16.03.2020. The relevant part of the order is extracted as under;

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.

13. Considering the consistent decision of the Tribunal in assessee's group case on identical grounds of appeal, the Ground No.1 of the assessee is allowed. No contrary facts or law is brought to our notice to take other view.

14. Ground No.2 & 3 relates to levy of interest under section 234A, 234B & 234C. The ld. AR of the assessee submits that these grounds of appeal

are also covered by the decision of Tribunal in assessee's group case in Aatur Holdings Pvt. Ltd. (supra).

15. On the other hand, the Id. Special Counsel for revenue relied upon the order of lower authorities.

16. We have considered the submission of both the parties and find that in assessee's group case in Aatur Holdings Pvt. Ltd. (supra) for A.Y. 2013-14, 2014-15 & 2015-16 the Co-ordinate Bench of Tribunal by following the order of Tribunal in assessee's group case in Sudhir S. Mehta in ITA No. 5799/Mum/2015, passed the following order:

12. Ground No. 2 & 3 relates to levy of collection of interest under section 234A, 234B & 234C and charging of interest excluding the income which is subject to TDS. We have noted that on similar ground of appeal in assessee's group case in ITA No. 5799/Mum/2015 in case of Sudhir S. Mehta, the issue was decided that interest levied under section 234A, 234B & 234C be recomputed after excluding the income which is subject to TDS. Therefore, considering the decision in ITA No. 5799/Mum/2015, the Assessing Officer is directed to re-compute the interest accordingly, In the result, these grounds of appeal are allowed for statistical purpose.

17. Considering the consistent decisions of Tribunal, the Assessing Officer directed to re-compute the interest by following the decision of Tribunal in assessee's group case in ITA No. 5799/Mum/2015 in case of Sudhir S. Mehta (supra).

18. In the result, these grounds of appeal are allowed for statistical purpose.

**ITA No. 6958 & 6959/Mum/2018 for A.Y. 2014-15 & 2015-16 by assessee**

19. The assessee has raised the identical grounds of appeal as raised in appeal for A.Y. 2013-14, which we have allowed by following the decisions of Tribunal in assessee's group case. Therefore, following the principle of consistency, these appeals are also allowed with similar directions.

**ITA No. 6765/Mum/2018 for A.Y. 2013-14 by revenue**

20. At the outset of hearing, the ld. AR of the assessee submits that the grounds of appeal raised by revenue is covered by the decision of Tribunal in assessee's group case in Cascade Holdings Pvt. Ltd. (supra) for A.Y. 2012-13, 2013-14 & 2015-16 in ITA No. 6768, 6769 & 6771/Mum/2018 dated 16.03.2020. The ld. AR of the assessee submits that in all above case, the Tribunal directed the Assessing Officer to treat the proportionate interest expenses disallowed to the part of cost of acquisition of share and securities.

21. On the other hand, the ld. Special Counsel for the revenue relied upon the order of Assessing Officer.

22. We have considered the rival submission of the parties and have gone through the orders of lower authorities. We have noted that on identical grounds of appeal in assessee's group case in Cascade Holdings Pvt. Ltd. (supra), the Tribunal passed the following order:

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 IT A T in ITA No. 5799/Murnl20 15 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.

23. Considering the consistent decision of Tribunal in assessee's group case, we do not find any merit in the grounds of appeal raised by revenue. No contrary facts or law is brought to our notice to take other view. In the result, appeal of the revenue is dismissed.

**ITA No. 6766 & 6767/Mum/2018 for A.Y. 2014-15 & 2015-16 by revenue**

24. We have noted that in both the years the revenue has raised the identical grounds of appeal as raised in appeal for A.Y. 2013-14, which we have dismissed, therefore, considering the principle of consistency, these appeals are also dismissed with similar observations.

Order pronounced in open court on 15/09/2020.

**Sd/-**

**RAJESH KUMAR  
ACCOUNTANT MEMBER**

Mumbai, Date: 15 .09.2020

SK

**Copy of the Order forwarded to :**

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

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**