

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI C. N. PRASAD, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 7131 & 6896/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13 & 2013-14)

Smt. Jyoti H. Mehta, 32, Madhuli Apartment, Dr. A. B. Road, Worli, Mumbai-400 018	बनाम/ Vs.	DCIT-CC-4(1) Air India Bldg, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. ABNPM8233B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Dharmesh Shah, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri P. Daniel, DR
सुनवाईकीतारीख/ Date of Hearing	:	20.10.2020
घोषणाकीतारीख / Date of Pronouncement	:	04.11.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present two appeals have been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) – 52 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 11.10.2018 for Assessment Year (in short AY) 2012-13 & 2013-14 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. Firstly, we are taking appeal filed by the assessee in ITA No. 7131/Mum/2018 for AY 2012-13.

3. The brief facts of the case are, assessee is a notified person under the Special Court (Trial of Offences relating to transactions in Securities.) Act, 1992 and all her assets including bank accounts were attached and vested in the hands of the Custodian appointed under the said Act. The assessee has not filed return of income before the due date, as provided u/s 139 of the Act. A notice u/s. 148 dated 08.11.2013 was issued and duly served on the assessee after recording reasons of reopening. The assessee was asked to file return of income within 7 days from the receipt of the above said notice, but assessee failed to comply the same. Notice u/s. 142(1) dated 04.08.2014, 27.11.2014 & 12.01.2015 were issued and duly served on the assessee. Subsequently, the assessee vide letter dated 05.02.2015 submitted a copy of return of income in response of notice u/s 148 of the Act. Further, AR of the assessee filed the relevant information as called for.

4. After considering the submission of assessee, AO as per computation, noticed that assessee has received dividend income of Rs. 23,29,223/-, which is claimed as exempt and earned income of Rs.7,28,077/- as Long term capital gain, which is claimed as exempt by the assessee. AO observed that assessee has earned interest income on term deposits of Rs.88,354/- and claimed interest on loan at Rs. 4,50,52,976/-. The assessee has claimed deduction of Rs.4,50,52,976/- under section 57 of the I.T. Act and the assessee was asked as to why deduction u/s. 57 in respect of interest expenditure should not be disallowed. In response, assessee filed the written submission against invoking section 57 of the Act, which is kept on record. During the assessment proceedings, it was asked to the assessee to furnish the basis of the provisions of interest expenditure made in their accounts along with the written contract including the terms and conditions between the creditors and the assessee. However, A.R. has relied on certain claims made before the Hon'ble Special Court. As there is no specific order from the Court, this claim was rejected. Accordingly, AO rejected the contention the assessee and passed assessment order u/s 143(3) of the Act by

making disallowances on account of interest expenses on loans and personal household expenses.

5. Aggrieved with the above order, assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, partly allowed the appeal of the assessee.

6. Aggrieved with the above order, assessee is in appeal before us by filing the revised grounds of appeal, which are reproduced below:-

1. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in reopening the assessment u/s. 147 of the Act.

2. The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming disallowance of interest expenditure amounting to Rs. 4,50,52,976/-.

The Commissioner of Income-Tax (Appeals) ought to have allowed deduction on account of interest expenditure atleast to the extent of Rs. 22,18,210/- i.e. gross assessed income.

3. *The Ld. Commissioner of Income Tax (Appeals) ought to have capitalized the interest expenditure to the extent disallowed u/s. 14A of the Act.*

4. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the estimated addition on account of personal house hold expenses to the tune of Rs. 6,00,000/- u/s. 69C of the Act.*

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

6. *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, 234B and 234C of the Act.*

7. *The appellant craves leave to add to, amend, alter and/or delete all or any of the foregoing grounds of appeal.*

7. Before us Ld. AR appearing on behalf of the assessee submitted that assessee is not pressing ground no. 1. With regard to ground no. 2 on account of disallowance of interest

expenditure, Ld. AR brought to our notice para 5 to 5.8 of AO's order and para 6 to 6.6 of Ld. CIT(A)'s order and submitted that Ld. CIT(A) had disallowed interest expenditure on the ground that details pertaining to nexus between borrowed funds and the investments in various assets is not available on record and hence it is not possible to determine the quantum of interest expenditure allowable. However, this issue has been decided in the past in the assessee's case for various years and deduction has been allowed by Hon'ble Tribunal. In this regard, reliance is placed on the order in assessee's own case for A.Y. 2010-11 & 2011-12 in ITA No. 419 & 420/Mum/2016 dated 27.12.2017 at para no.42-51 of the said Common Order. While deciding the said issue, the Hon'ble Tribunal has followed their decision in the case of Sudhir Mehta v. DCIT [ITA No. 5799/Mum/2015] dated 27.12.2017 for A.Y. 2009-10 at Pg No.5-16 in Para No.6-16 of the said order. He further relied on the decision of Cascade Holdings Pvt. Ltd. v. DCIT for A.Y. 2012-13, 2013-14 & 2015-16 in ITA Nos. 6965, 6966 & 6968/Mum/2018 dated 16.03.2020 in para no. 9 of the order, Hon'ble Tribunal has allowed deduction of interest expenditure to the extent of gross assessed

income for the year. He further relied on the following orders on similar issue, wherein the Coordinate Bench of ITAT has allowed the claim of interest expenditure:-

a) Pratima H. Mehta v. DCIT for A.Y. 2014-15 in ITA No. . 5839/Mum/2018 dated 27.11.2019.

b) Cascade Holdings Pvt. Ltd. v. DCIT for A.Y. 2014-15 in ITA Nos. 6967/Mum/2018 dated 23.09.2020.

c) Aatur Holdings Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6954-6956/Mum/2018 in order dated 13.03.2020.

d) Harsh Estates Pvt. Ltd. v. DOT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6957 6959/Mum/2018 dated 15.09.2020

e. Orion Travels Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA No. 6960 6962/Mum/2018 dated 23.09.2020.

8. On the other hand Ld. DR relied upon the orders passed by the revenue authorities, however he conceded that this ground is covered by the order of Coordinate Bench of ITAT.

9. Considered the rival submissions and material placed on record. We notice from the record that the identical ground raised

in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

48. After hearing and carefully considering the rival submissions, we are of the view that the correct interest income has to be assessed in the hand of the assessee. The assessee has given the calculation of interest income which has to be assessed in the hand of the assessee amounting to Rs. 24,18,43,334/-. We, therefore, set aside this issue and restore this issue to the file of the assessee and direct the AO to recalculate the interest income in the hands of the assessee and treat the correct income to be the income of the assessee from interest which has accrued to the assessee from various family members in whose hands the said income has been allowed as deduction. Thus, this ground is allowed for statistical purposes in both the years.

49. The additional ground No. 2 relates to capitalization of interest expenses. Similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10. We, respectfully following our decision in that case, direct the AO to treat the proportionate interest which stands disallowed while disposing of ground No. 1 as part of cost of shares and securities. Thus, this ground is statistically allowed.

50. Additional ground 2 is similar to additional ground admitted in the case of ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 we respectfully following the order in the case of ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta admit the additional ground No. 2. So far the additional

ground No. 1, after hearing the rival submission we noted that this ground is consequential in nature to the ground relating to deduction of interest and therefore has to be admitted as all the facts are available regarding interest by other family members. We, therefore, admit the same to tax correct income and income may not escape tax in the hands of the assessee.

51. So far as the ground relating to the claim of interest after disallowing proportionate interest is concerned in both the assessment years, both the parties agreed that similar issue has arising in ground 1 in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta same may be taken in the case of the assessee. While disposing of the appeal for A.Y. 2009-10 ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta relating to disallowance of interest we have deleted the said disallowance and directed the AO to allow the deduction of interest after reducing proportionate interest out of the interest earned on deposits. Respectfully following the said decision in the preceding paragraph we allow the ground on similar directions as given in ITA No. 5799/Mum/2015 relating to the claim of interest taken by the assessee.

Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

10. With regard to ground no. 3 on account of capitalization of interest expenditure, Ld. AR brought to our notice para no. 6 to 6.6 of the order of Ld. CIT(A) and relied on the order of assessee's own case for A.Y. 2010-11 & 2011-12 in ITA No. 419 & 420/Mum/2016 dated 27.12.2017 at Para No. 52 of the said order, wherein the amount of interest disallowance u/s. 14A be held to be capitalized to the cost of shares. While deciding the said issue, the Hon'ble Tribunal has followed their decision in the case of Sudhir Mehta v. DCIT [ITA No. 5799/Mum/2015] dated 27.12.2017 for A.Y. 2009-10 in para no.17 of the said order. He further submitted that in the following cases, the Hon'ble Tribunal has directed the assessing officer to treat the proportionate interest expense disallowed to be part of the cost of acquisition of shares and securities, which are as under:-

a.) DCIT v. Cascade Holdings Pvt. Ltd. for A.Y. 2012-13, 2013-14 & 2015-16 in ITA Nos. 6768, 6769 & 6771/Mum/2018 dated 16.03.2020

b.) DCIT v. Cascade Holdings Pvt. Ltd. for A.Y. 2014-15 in ITA No. 6770/Mum/2018 dated 23.09.2020

c.) DCIT v. Harsh Estates Pvt. Ltd. for A.Y. 2013-14 to 2015-16 in ITA Nos. 6765-6767/Mum/2C18 dated 15.09.2020.

11. On the other hand Ld. DR relied upon the orders passed by the revenue authorities, however he conceded that this ground is covered by the order of Coordinate Bench of ITAT.

12. Considered the rival submissions and material placed on record. We notice from the record that the identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

52. The additional ground No. 2 in both the assessment years relating to capitalization of interest attributable to acquisition of shares and securities. As both the parties agreed that similar issue has arising in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10 and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta the same view may be taken in the case of the assessee also. We therefore respectfully following the said decision of the Tribunal in the case of Shri Sudhir S. Mehta direct the AO to treat the proportionate interest disallowed in each assessment year to be part of cost of acquisition of shares and securities. Thus the additional ground No. 2 in each of the assessment year stand allowed.

Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

13. With regard to ground no. 4 on account of addition of personal household expenses, Ld. AR brought to our notice para no. 6 to 6.6.2 and 7 to 7.1 of the order of AO and Ld. CIT(A) respectively and relied on the order of assessee's own case for A.Y. 2010-11 & 2011-12 in ITA No. 419 & 420/Mum/2016 dated 27.12.2017 at Para No. 53 of the said order, wherein the Hon'ble Tribunal has followed their decision in the case of Sudhir Mehta v. DCIT [ITA No. 5799/Mum/2015] dated 27.12.2017 for A.Y. 2009-10 in para no.18-19 of the said order, has reduced the disallowance to 50% of the disallowance sustained by Ld. CIT(A).

14. On the other hand Ld. DR relied upon the orders passed by the revenue authorities and submitted that addition of personal household expenses, the Hon'ble Tribunal has always reduced the disallowance to 50% by following the decision in the case of

Sudhir Mehta v. DCIT. He further submitted that AO has disallowed 6 lakhs and Ld. CIT(A) has already disallowed 50%, therefore further deduction is not justifiable, accordingly prayed that disallowance made by Ld. CIT(A) be sustained.

15. Considered the rival submissions and material placed on record. We notice from the record that the identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

53. The next ground in both the assessment years relate to sustenance of addition on account of personal household expenses. Similar issue, as agreed by both the parties, has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10. As in that case we have reduced the addition on account household expenses by 50%, we therefore respectfully following our order in ITA No. 5779/Mum/2015 for A.Y. 2009- 10 reduce the addition on account of household expenses to 50% and sustain the addition to the extent of `1,50,000/- in each of the assessment years.

Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

16. With regard to ground no. 5 & 6 on account of levy of interest u/s 234A, 234B and 234C of the Act, Ld. AR brought to our notice para no. 8 of the order of Ld. CIT(A) and submitted that identical issue was involved in assessee's own case for A.Y. 2010-11 & 2011-12 in ITA No. 419 & 420/Mum/2016 dated 27.12.2017 in para no. 54 of the said order, wherein the issue has been sent back to the Assessing Officer to recompute interest u/s. 234B of the Act with a direction. While deciding the said issue, the Hon'ble Tribunal has followed their decision in the case of *Sudhir Mehta v. DCIT* [ITA No. 5799/Mum/2015] dated 27.12.2017 for A.Y. 2009-10 in para no. 20-21 of the said order. He further relied following case laws on similar issue, which are as under:-

- a) *Aatur Holdings Pvt. Ltd. v. DCIT* for A.Y. 2013-14 to 2015-16 in ITA Nos. 6954-6956/Mum/2018 in order dated 13.03.2020
- b) *Cascade Holdings Pvt. Ltd. v. DCIT* for A.Y. 2014-15 in ITA Nos. 6967/Mum/2018 dated 23.09.2020 2019

c) Harsh Estates Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6957-6959/Mum/2018 dated 15.09.2020

d) Orion Travels Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA No. 6960 & 6962/Mum/2018 dated 23.09.2020.

17. On the other hand Ld. DR relied upon the orders passed by the revenue authorities, however he conceded that this ground is covered by the order of Coordinate Bench of ITAT.

18. Considered the rival submissions and material placed on record. We notice from the record that the identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

54. The next two grounds in both the assessment years relate to levy and calculation of interest under Section 234A, 234B and 234C. As agreed by both the parties that similar ground has arisen in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10. Therefore the Tribunal may take the same view in the case of the assessee also. We, therefore, respectfully following our order in the preceding paragraph in ITA No. 5799/Mum/ 2015 dismiss ground No. 3 and direct the AO to recomputed the interest in accordance with

our direction given in the case of Sudhir S. Mehta in ITA No. 5799/Mum/2015 while disposing off ground No. 4 in both the years. Thus ground No. 5 is statistically allowed.

Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

19. Since the facts and grounds raised by the assessee in other appeals are similar to ITA No. 7131/Mum/2018 for Assessment Year 2012-13, therefore the other appeal filed by the assessee is also **allowed**.

20. In the net result, both the appeals filed by the assessee stands **allowed**.

Orders pronounced in the open court on 04.11.2020.

Sd/- (C. N. Prasad) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 04.11.2020
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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