

**INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.259/M/2019  
Assessment Year: 1996-97**

M/s. Growmore Research & Assets Management Ltd., 32, Madhuli Aprt., 3 <sup>rd</sup> Floor, Dr. Annie Besant Road, Worli, Mumbai – 400 018 <b>PAN: AAACG4936C</b>	Vs.	DCIT, Cent. Cir.-4(3), Room No.1921, 19 <sup>th</sup> Floor, Air India Bldg., Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Dharmesh Shah, A.R.  
Shri Dhaval Shah, A.R.

Revenue by : Dr. P. Daniel, D.R.

Date of Hearing : 20.01.2021

Date of Pronouncement : 09.04.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 12.11.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 1996-97.

2. The issue raised in ground No.1 is against the order of Ld. CIT(A) upholding the reopening of assessment under section 147 of the Act as made by the AO.

3. The facts in brief are that the assessee did not file any return of income for the instant assessment year. The AO, on

the basis of his belief that assessee has substantial income during the year under consideration, reopened assessment under section 147 of the Act by issuing notice under section 148 of the Act dated 29.07.1998 which was served on the assessee on 03.09.1998. During the course of assessment proceedings the assessee requested the AO to supply the copy of reasons recorded under section 148(2) of the Act vide letter dated 24.08.1998 and letter dated 22.02.2001. However, the AO did not provide a copy of the reason recorded to the assessee even after the completion of reassessment proceedings. Even thereafter, the assessee requested to the AO on number of occasions to supply reason but to no avail. The ld CIT(A) affirmed the order of AO on jurisdictional issue of re-opening of assessment.

4. The ld AR submits before the bench that the assessee has challenged the jurisdiction of the AO on the ground that no reasons as recorded under section 148(2) of the Act were supplied to the assessee and therefore the reassessment proceedings are null and void. The ld. AR relied upon the following decisions:

- a. Rina S. Mehta v. DCIT [ITA No. 3120/Mum/2015] dated 17.07.2019
- b. ITO v. Pallavi Vij'en Jhaveri & vice-versa [ITA No. 5998/Mum/2017 & CO No. 225/Mum/2018] dated 17.12.2019
- c. CIT v. Videsh Sanchar Nigam Ltd [340 ITR 66 (Bom.)]
- d. CIT v. IDBI Ltd [76 taxann.com 227 (Bom.)]
- e. PCIT v. V. Ramaiah [103 taxmann.com 202 (SC)].

The Ld. A.R., therefore, submits that the issue is squarely covered by the decision of the coordinate benches in the cases of related parties as stated above and therefore, the reassessment proceedings may kindly be quashed.

5. The Ld. D.R., on the other hand, strongly opposed the arguments of the Ld. A.R. by submitting that since the assessee has not filed any return of income it is not obligatory on the part of the AO to supply the copy of the reasons as the pre-condition to supply the reasons recorded is that the assessee must file the return of income in compliance to notice under section 148 of the Act .

6. After hearing both the parties and perusing the material on record including the decisions of the coordinate benches as referred to by the Ld. A.R. as stated hereinabove particularly Rina S. Mehta vs. DCIT (supra), it has been held that reassessment proceedings are null and void where the copy of the reasons recorded under section 148(2) are not supplied. The relevant findings of the co-ordinate bench of the Tribunal are as under:

“13. We have heard the submissions of both the parties and perused the material on record including the various citations by the rival parties. We observe that in this case the assessee has not filed any return of income despite the issue of notice under section 148 due to the fact that all the records of the assessee were seized by the various government agencies and assessee was not having any access to such records at the relevant point of time. This fact was brought to the notice of the AO. Thereafter, the assessee requested by various letters dated 19.04.1999, para 5, 02.03.2001 para 9, during course of the assessment proceedings to supply the reasons but AO did not supply any reasons recorded for re-opening. Even after completion of the assessment, the assessee again requested vide letter dated 30.05.2018 and 01.05.2019 to supply copy of reasons but some were not supplied to the assessee. In our opinion, once it has established that assessee has not been supplied copy of reasons recorded, then the reassessment proceedings as well as the assessment framed as a result thereof are invalid. The case of the assessee is squarely covered by the decision of the Hon'ble Bombay High Court in the case of CIT vs. IDBI Ltd. (supra) wherein it has been held that where the reasons recorded are not supplied to the assessee, the order of reassessment would be without jurisdiction. The Hon'ble Bombay High Court while passing the decision followed the earlier order in the case of CIT vs. Videsh Sanchar Nigam Ltd. (supra). The case of the assessee is also covered by the decision of Hon'ble Delhi High Court in the

case of Pr. CIT vs. Jagat Talkies Distributors (supra) wherein it has been held that failure to provide copy of reasons recorded is not a procedural lapse and such failure renders the notice and consequent proceedings as void ab initio. The Hon'ble Apex court in the case of Pr CIT Vs V. Ramaih (supra) held that non communication of reasons recorded for re-assessment to the assessee did not amount to mere procedural lapse and is a fatal lapse and goes to the roots of the case. The decision relied upon by the Ld. D.R. in the case of DCIT vs. Zuari Estate Development & Investment Co. Ltd. (supra) was perused and found to be distinguishable on facts. We, therefore, respectfully following the decisions as stated hereinabove quash the reassessment proceedings and the consequent order passed by the AO. Since we have allowed the appeal of the assessee on additional ground raised, the main ground raised by the assessee need not be adjudicated.”

7. Since the facts before us are similar vis-à-vis facts before the coordinate bench in the above decision, we are, therefore, inclined to hold the proceedings under section 147 r.w.s. 148 of the Act as invalid. The ground No.1 is allowed.

8. The issue raised in the 2<sup>nd</sup> ground of appeal is against the order of Id CIT(A) not accepting the books of accounts as additional evidences.

9. The facts in brief are that in the assessment framed by the AO the additions were made on estimated basis in respect of dividend, debenture interest and interest on PSU bonds. During the course of hearing before the assessing officer, certain details and information were called from the appellant. The appellant is a notified entity u/s 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992 (Torts Act) and was notified on 08.06.1992 on and from which date all the assets of the appellant got simultaneously attached and came under the control and management of the Custodian and Hon'ble Special Court. The attached assets could be dealt with u/s 3(4) of the Torts Act only under the orders of Hon'ble Special

Court and therefore ever since the notification, the appellant has not undertaken any transaction or business. Whatever transactions that have taken place during the relevant period were under the orders of Hon'ble Special Court or under the directions and instructions given by the Custodian. The third parties viz. companies and banks were also interacting only with the Custodian on all matters pertaining to the assets of the appellants. During the relevant period, the appellant was aggrieved that the Custodian, banks and companies were not providing the information to the appellant regularly because of which it could not draw its books of account and make statutory compliance. It also did not have the records and the staff to meet the queries raised by the AO to make full and proper compliance. It was stated that the Tribunal in a number of orders has taken note of the aforesaid peculiar circumstances governing the appellant and granted substantial relief in number of cases in form of condonation of delay, waiver of penalties and ordered re-assessment in several cases after considering the difficulties and circumstances of the appellant. It was submitted that since the appellant was facing several difficulties all the details could not be submitted during the course of assessment proceedings. However, no sooner the appellant was able to compile the details and obtained/received these details from the custodian, the same were incorporated in the books of account and presented before the appellate authority with the prayer to admit the same.

10. However, the Ld. CIT (A) has rejected these books of accounts by stating that the said books of account are

inadmissible u/r 46A of the Rules. At the same time, it has been stated by him at para 3.1.9, Page 12 of his order that the books of account have been examined and have been found to be unreliable. It is observed by the Ld. CIT(A) that the assessee has not been able to satisfactorily reconcile the balances as per old books and the revised books of account submitted by the assessee.

11. It is submitted before us that the books of account originally submitted before Ld. CIT(A) have been subsequently revised to account for certain transactions which were not incorporated earlier. It was submitted that the books of account which were placed on record earlier had to be revised for the reason that certain transactions and investments in PSU bonds treated as own investments by the appellant were subsequently held by the Hon'ble Supreme Court as not constituting property of M/s. Harshad S. Mehta or the appellant and that such assets to be used to liquidate the liabilities to SBI/NHB. Thus, the ownership of the above assets was retrospectively taken away from the appellant and conferred on to SBI. It was therefore submitted that appellant became duty-bound to comply with the orders passed by Hon'ble Supreme Court and to give full effect to the same since the Custodian debited the bank accounts of the appellant and handed over the proceeds and incomes earned on above PSU Bonds to SBI. Therefore, after the verdict of the Hon'ble Supreme Court appellant could not have shown these investments as its own assets and accordingly the transaction reflecting investments and subsequent income earned on these investments had to be compulsorily reversed following the

Mercantile system of accounting and to give effect to the order of Hon'ble Supreme Court. Consequently, the entries made in the books of account had to be removed and necessary adjustment had to be done in various ledger accounts on account of the relevant transactions in regard to such PSU Bonds. Further, a reconciliation between the entries made in the old books of account and the revised books of account was also furnished to the Ld. CIT(A).

12. It was argued before us that the income from various other sources assessed by the Assessing Officer and confirmed by the Ld. CIT(A) have been determined on the basis of the bank statements and the entries in the books of account submitted by the appellant. During the course of the appellate proceedings, the appellant had pointed out that the interest on term deposits assessed by the Assessing Officer of Rs.3,03,18,467/- was incorrect in as much as the correct amount of interest income as per the books of accounts was Rs.4,31,46,771/-. It was therefore submitted before the Ld. CIT (A) that the income from term deposit actually earned by the appellant was more than the income assessed by the Assessing Officer and hence the correct income may be brought to tax. Accepting the submissions of the appellant, the Ld. CIT(A) enhanced the income of the appellant by an amount of Rs.1,28,28,304/- and directed the AO to adopt the income from term deposits as reflected in the books of account submitted by the appellant.

13. The Ld. A.R. therefore submitted that the Ld. CIT (A) has blown hot and cold as per his convenience as the books have been rejected when he wanted to estimate higher income of the

appellant and these very books have been accepted when the income shown in the books was higher than the income determined by the Assessing Officer.

14. The Ld. A.R. therefore contended that the rejection of books of accounts have been made without any cogent reasons and without pointing out any actual defects in the books of account. He also pointed out that the co-ordinate bench of the Tribunal in at least 3 of its following orders has framed guidelines for the AO to be followed when matters are set aside wherein it is directed that the books of accounts drawn with great difficulty and despite adverse circumstances should not be rejected on flimsy grounds.

- i. Order dated 13.12.2007 passed in the case of Smt Jyoti Harshad Mehta for AY 1994-95.
- ii. Order dated 02.01.2008 in the case of late Shri Harshad S. Mehta for AY 1989-90.
- iii. Order dated 21.03.2014 passed in the case of Smt Jyoti Mehta for AY 1992-93.

That in view of above, even in the appellant's case the rejection of books of account is on flimsy grounds and therefore not justified.

15. The Ld. A.R. also submitted that on the similar basis, the Assessing Officer has rejected books of account in the past, in case of several other entities related to the appellant which have been decided by the coordinate benches in favour of those entities. The ld AR placed reliance on decision of Mumbai Tribunal in the case of Hitesh S. Mehta v. ACIT [ITA no. 5190/Mum/2017] dated 31.08.2020 [Pg No. 196-219 of PB No. 3] wherein the Tribunal under similar facts held as under:

"7. On appraisal of the order of the AO, we nowhere find that the AO has dealt with the each and every explanation given by the Assessee. Moreover, the case of the assessee is quite different from the case of Shri Harshad Mehta who is the broker. The case of the assessee is independently liable to be examined and comparison if any with the case of the Shri Harshad Mehta is not justifiable specifically in the

circumstances when the fact and figure are quite different. Moreover, the CIT(A) has observed that the assessee did not file the books of account whereas the books of account were filed page no. 264-265 of the paper book. Under these circumstances, we are not in agreement with the conclusion of Ld. CIT(A) on the issue rejection of books of accounts and hence we set aside the finding of the CIT(A) on this issue. Accordingly, we decide this issue in favour of the assessee against the revenue."

It was submitted that the facts in the above cited case and the findings of AO are similar to the facts in the present case and hence rayed that the books of accounts of the appellant ought to have been accepted as admissible evidence and the income ought to have been determined on the basis of these books of account.

16. The Ld. D.R., on the other hand, relied heavily on the order of authorities below and submitted that the books of accounts which were not filed before the AO and nor Ld. CIT(A) in the first round of litigation but filed before the Tribunal for the first time, therefore cannot be relied upon and were rightly rejected by the authorities below.

17. After hearing both the parties and perusing the material on record, we find that dividend and interest income were determined by the AO on the basis of bank statements and dividend warrants filed by the assessee and the said incomes were duly accounted for by the assessee in the books of accounts. We also note that in view of such massive search on the assessee, the books of accounts could not be produced before the AO in the first round of litigation because these books could not be completed until the information and documents relating to the transactions of the assessee lying with custodian were made available to the assessee. We note that these books

were filed as additional evidences for the first time before the Tribunal in the first round and Tribunal after admitting the same restored the matter to the file of the Ld. CIT(A) with the direction to decide the appeal of the assessee afresh. However, we note that Ld. CIT(A) has disregarded the books of accounts filed by the assessee without even pointing a single defect for the said rejection. In our opinion, the rejection of books of accounts by the Revenue authorities is not correct in view of the fact that the related evidences such as contract notes, dividend, warrants and the bank statements and other relevant evidences were accepted which were used to complete the books of accounts. In our opinion the books of accounts constitute an important piece of evidence and therefore we are not in agreement with the conclusion drawn by the Ld. CIT(A) on this issue that too without pointing out any defects and deficiency in the books of accounts. We also note that the books of accounts were also rejected in the cases of the related entities. We note that in one of the related entities M/s. Hitesh S. Mehta vs. ACIT (supra), the co-ordinate bench of the Tribunal under similar circumstances has held the rejection of books of accounts as invalid and incorrect and accordingly decided the issue in favour of the assessee. Accordingly, following the said decision of the co-ordinate bench of the Tribunal we also hold that there is no reason for rejecting the books of accounts as both the authorities below have failed to give the reasons for rejection of books of accounts. Accordingly, we allow this ground in favour of the assessee.

18. In Ground No.3, the assessee appellant has challenged determination of dividend income at Rs. 1,59,34,304/- as against the income of Rs. 1,42,46,585/- as per the books of accounts of the appellant.

19. As seen from the orders of the authorities below, the Assessing Officer had determined the dividend income of the appellant at Rs.1,19,93,751/- on the basis of the entries in the bank statement of the appellant for the period. Since the said dividend income deposited in the bank account were net of TDS, the Assessing Officer grossed up the said dividend amount at Rs.1,59,34,304/- and the same being higher than shown by the appellant, brought the same to tax as dividend income. The said addition was upheld by the Ld. CIT(A) in his order.

20. It was argued by Ld. AR that the Assessing Officer had picked up certain figures from the bank statement and treating the same as dividend income grossed up the same to arrive at the dividend income of the appellant for the year at Rs.1,59,34,304/-. It was submitted that during the course of appellate proceedings, repeated requests were made by the appellant to direct the Assessing Officer to provide for the break up of the dividend income determined by the Assessing Officer. However, the Ld. CIT(A) failed to accept the said request and concluded that in absence of any evidence being submitted by the appellant, the dividend income determined by the Assessing Officer was correct. The Ld. AR also stated that the ledger accounts submitted by the appellant before the appellate authority clearly reflected the entries constituting the dividend income and the same can be correlated with the bank

statements. It was also argued that apart from the fact that the Assessing Officer has not brought on record the figures adopted for determining the dividend income, such figures adopted by the Assessing Officer may be suffering from several errors in as much as it was quite possible that the Assessing Officer may have considered the dividend income which may be below the limit attracting TDS and that even such income would have been grossed up by the Assessing Officer while estimating the dividend income in the hands of the appellant. Further, he brought to our notice that the TDS was deducted by different companies at different rates which could be one of the cause for difference in the dividend income. He therefore submitted that the said dividend estimated by the Assessing Officer arbitrarily and without explaining the basis cannot be sustained.

21. After hearing both the parties, we find force in the arguments of the Ld. AR. It is noticed that the break up of the dividend income has not been brought on record by the Assessing Officer. Even though request were made by the appellant before the Ld. CIT(A), such break up was not provided by the authorities. It is also noticed that the TDS has been deducted by different companies at different rates and hence it cannot be ascertained whether the grossing up of the dividend income has been rightly made by the Assessing Officer. In our opinion, if the Assessing Officer wanted to ascertain the correct amount of dividend, he could have very well written to the companies from whom the dividend income has been earned by the appellant and obtained the said details. He could have at the least, determined the dividend declared by the companies, which information is available in the public domain and could have

calculated the dividend on the holding of the appellant. However, by no stretch of imagination, such arbitrary method of selectively identifying the entries in the bank statement to be the dividend income and grossing up the same be acceptable as the correct manner of determination of income. We also believe that no fruitful purpose would be served by directing the Assessing Officer to write to companies now, after a span of 25 years, and get the correct information pertaining to the dividend income earned for the year under appeal as companies may not have retained such information pertaining to the period 25 years ago. In any case, we have adjudicated the ground relating to admission of the books of accounts in favour of the appellant and held that the income of the appellant be decided on the basis of the said books of accounts. In absence of any direct evidence being brought on record to suggest that the income from dividend earned by the appellant was higher than what was shown and offered in the books of account, the said estimation of income by the Assessing Officer cannot be sustained and the Assessing Officer is directed to take the dividend income at Rs.1,42,46,588/- as reflected in the books of account submitted by the appellant. Consequently ground no. 3 is allowed.

**22.**The issue raised in ground No.4 is against the confirmation of estimated addition of Rs.15,93,430/- being proportionate 10% of the grossed up dividend income from unregistered sale holding.

**23.** At the outset, the Ld. Counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by

the decision of co-ordinate bench of the Tribunal in the cases of related entities by the coordinate benches wherein it has been held that dividend earned on unregistered shareholdings cannot be brought to tax. The Ld. A.R. submitted that the said decisions of the co-ordinate bench of the Tribunal have been upheld by the Hon'ble Bombay High Court. The Ld. A.R. specifically relied on the decision of CIT vs. Aatur Holding Pvt. Ltd. ITA No.2214 of 2006 dated 12.03.2008 wherein the Hon'ble Bombay High Court has affirmed the view of the Tribunal that no addition can be made on the estimated dividend on unregistered holding held by the assessee. The Ld. A.R. also submitted that the issue has travelled up to Hon'ble Supreme Court in one of the related entities and the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue in the case of CIT vs. Pallavi Holding Pvt. Ltd. (SLP) CC No.2992 of 2008 dated 01.08.2011. The Ld. A.R. brought before the Bench that in view of these facts and ratio laid down by the various judicial forums as stated hereinabove, the ground raised by the assessee may kindly be allowed.

24. The Ld. D.R., on the other hand, relied on the order of authorities below.

25. We have perused the facts of the case as well as the decisions cited by the Ld. A.R. and also considered the rival submissions and contentions. We find that this issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in the case of CIT vs. Aatur Holdings Pvt. Ltd. (supra) which has been affirmed by the

Hon'ble Jurisdictional High Court by holding that no addition can be made on account of estimated dividend on unregistered share holding held by the assessee. Similarly, we note that in similar issue in the case of CIT vs. Pallavi Holdings Pvt. Ltd. (supra) the Hon'ble Apex Court has dismissed the SLP filed by the Revenue. In view of these facts, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition. Ground no. 4 is allowed.

26. The issue raised in ground No.5 is against the confirmation of addition of Rs.73,21,909/- by Ld. CIT(A) as made by the AO towards debenture interest by grossing up the same on the basis of bank statement as against the income of Rs.29,82,234/- as per the books of accounts of the assessee.

27. The facts in brief are that the AO, on the basis of bank statement furnished by the assessee, grossed up interest on debenture received by the assessee on the ground that the amount shown in the bank statement are net of TDS. In the appellate proceedings the Ld. CIT(A) affirmed the order of AO.

28. We have heard the rival submissions of both the parties and perused the material on record. In this case, we note that AO on the basis of bank statement has grossed up the interest on debenture calculating the same at Rs.73,21,909/- whereas as per the books of accounts the debenture interest comes to Rs.29,82,234/-. Both the parties before us agreed that the issue in this ground is similar to the issue relating to estimation of dividend income raised in ground no, 3 and the arguments raised in the said ground relating to addition on account of

dividend income would, mutatis mutandis, apply to the issue relating to addition on account of debenture interest income raised in this ground as well. Hence, relying on our findings in respect of addition on account of dividend income raised in the ground no. 3, we direct the Assessing Officer to delete the addition on account estimated debenture interest of Rs.73,21,909/- and adopt the income shown by the appellant at Rs.29,82,234/- as per the books of account.

29. The issue raised in ground No.6 is against the order of Ld. CIT(A) confirming the addition of Rs.18,29,41,410/- on account of interest on PSU bonds.

30. The facts in brief are that the AO, on the basis of bank statements and bank book provided by the assessee during the assessment proceedings, observed that the net interest on PSU bonds credited in the bank account of the assessee after TDS was Rs.13,77,00,000/-. The AO accordingly grossed up the said interest and determined the interest on PSU Bonds at Rs.18,29,41,410/- and added the same to income of the appellant. The appellant submitted that there are certain new developments on this issue post assessment because of which the said addition longer stands justified. The appellant submitted before the Ld. CIT(A) that Hon'ble Supreme Court has passed an order dated 01.11.2002 pursuant to which certain securities worth Rs.258 crores, which included 17% NTPC bonds of face value of Rs.81 crores belonging to the assessee, have been held to be the property of State Bank of India and accordingly complying with the said direction of the Hon'ble

Supreme Court, the custodian released the appropriate amount of securities to State Bank of India. The assessee contended that said interest of Rs.18,29,41,410/- on these 17% NTPC Bonds can not be taxed in hand of the appellant in light of the decision of the Hon'ble Apex Court. However, the Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO by observing that there is no infirmity in the order of AO as the said interest has to be taxed in the hands of the assessee.

31. During the course of hearing, the Ld. A.R. submitted that on 03.02.1992, the appellant had purchased 17% NTPC Bonds having face value of Rs. 81 crores at a price of Rs. 80.64 crores through the broker, M/s. Harshad S. Mehta (HSM). The Ld. AR submitted that in the course of the application made by the custodian, the Hon'ble Special Court vide its order in MA No. 280 of 1993 dated 10.06.1994 accepted the ownership of the assets in the hands of the appellant. However, the matter was subsequently taken up before the Hon'ble Supreme Court by S.B.I. who urged that the subject bonds along with several other assets which were found in the custody of NHB and forming part of a packet of securities delivered by Shri Harshad Mehta to NHB may be declared to be the property of S.B.I. to assist the process of recovery, S.B.I. wanted to make from Shri Harshad Mehta. The Hon'ble Supreme Court granted the aforesaid prayers made by SBI and conferred the ownership of the subject bonds and other assets by declaring them to be the properties of SBI. The AR, referred to the order of the Hon'ble Supreme Court in I.A. No. 4 of 2002 dated 01.11.2002 wherein the prayers no. a(i) to (iv) were allowed in terms of application for direction

wherein it was held that the securities along with all accruals thereon handed over by HSM to NHB in March, 1992 valuing at Rs. 258 crores does not constitute property of HSM and the appellant. The list of these securities was filed before Hon'ble Supreme Court in 'Annexure R-1 Colly', as copy of which is also filed before us. It was therefore submitted that the entire packet of securities worth Rs. 258 crores which includes securities being NTPC bonds worth Rs, 80.64 crores accounted for by the assessee as its own investments was held to be the investment not constituting property of HSM and that should be appropriated towards liquidation of the liability to SBI/NHB. More specifically, it was held that the custodian and the appellant (being Respondent No. 3) have no right, title or interest in respect of the securities in view of the fact that HSM had ceased to have any right, title or interest in them. The Ld. A.R., therefore, contended that in terms of the aforesaid decision of the Hon'ble Supreme Court, it is categorically proved that the said securities do not belong to the appellant and that any returns or income earned on the said securities since 1992 cannot be brought to tax as income of the appellant. He pointed out that in terms of the aforesaid order, several payments were also made by the custodian from the account of the appellant towards repayment of the interest earned for several years in the past. The copies of correspondences made by the Custodian in respect of these bonds are filed before us at Page 163-173 of PB No. 2. The AR submitted that by virtue of the order passed by Hon'ble Supreme Court, the incomes earned on account of the subject bonds is liable to be taxed in the hand of SBI and in fact SBI being the most respectable bank would have offered the

interest earned on the subject NTPC Bonds to tax. In view of the above, the said interest paid to the appellant on the NTPC Bonds cannot be brought to tax in the hands of the appellant.

32. In any case, without prejudice, Ld. A.R. submitted that the figure adopted by the Assessing Officer is also factually incorrect. He submitted that the Assessing Officer has once again obtained the figures from the bank account and grossed the figure on account of TDS deducted from the interest. This therefore shows that again the interest has been determined on estimated basis, which is factually and legally incorrect. He also strongly contended that the appellant is in fact entitled to a direction to the AO to give effect to the order of Hon'ble Supreme Court in respect of all the years for which such interest income has been taxed in the hands of the appellant contrary to the findings of Hon'ble Supreme Court.

33. The Ld. D.R., on the other hand, relied on the order of AO and Ld. CIT(A) and argued that the interest on PSU Bonds was lightly taxed by the AO as the same was arising from the bank statement of the appellant and that the same was also received by the appellant.

34. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that appellant had purchased NTPC VII Issue bonds 1992 on 03.02.1992 having face value of Rs.81 crores at a price of Rs.80.64 crores through broker M/s. Harshad S. Mehta. We also note that the Hon'ble Special Court vide its order in MA No.280 of 1993 dated 10.06.1994 accepted the ownership of the

assets in the hands of the assessee. Thereafter, the matter was taken to Hon'ble Supreme Court of India by State Bank of India urging the Apex Court that the said NTPC bonds along with other assets which were found in the custody of NHB and forming part of a packet of securities delivered by M/s. HSM to NHB be declared as property of State Bank of India so that recovery could be made from HSM. We further find that Hon'ble Supreme Court in I.A. No.4 of 2002 dated 01.11.2002 allowed the prayers no. a(i) to (iv) in terms of application for direction. The copy of said order of the Hon'ble Supreme Court is enclosed at Page 145 of PB No. 2. The relevant extract of the prayers in the application for direction [Page 148-162 of PB No. 2] are reproduced below:

*Prayer*

*(a) The applicant therefore pray that this Hon'ble Court be pleased to order and direct/declare*

*i) that the said securities alongwith all accruals thereon handed over by the late Harshad S. Mehta to the said officers of National Housing Bank in March 1992 having then the aggregate value of Rs. 258 crores list whereof is annexed hereto as ANNEXURE "R-1 Colly" does not constitute the property of HSM and should be appropriated towards liquidation of his liability to SBI/NHB*

*ii) that the Custodian, Respondent No. 3 hereto, had and has no right, title or interest to in respect of the said securities in view of the fact that the said late HSM had ceased to have any right, title or interests therein and in view of the fact that the said securities did not then belong to the late HSM.*

*iii) that the said securities not constituting the property of the late HSM and not belonging to the late HSM could not and should not have been handed over to the Custodian.*

*iv) that the said securities **and** all accruals thereon **and** the liquidated proceeds thereof should be handed over to SBI in view of the settlement arrived at between the said parties."*

35. From the concluding para of the order of Hon'ble Supreme Court, we find that in terms of the Hon'ble Supreme Court order,

all the securities worth of Rs.258 crores which included the NTPC bonds worth Rs.80.64 crores relating to the assessee were held to be not property of M/s. Harshad S. Metha and further directed that these may be appropriated towards payment of liability to State Bank of India and also it was specifically held that custodian as well as the assessee had and have no right, title or interest in respect of these securities. Therefore, there is a merit in the contentions of the Ld. A.R. that since the ownership of NTPC bonds is not belonging to the assessee, the interest income accruing there from said securities can not be assessed in the hands of the assessee. We have also perused Page 89-105 of the PB No.2 wherein the appellant has filed the copy of the Annexure R-1 Colly referred to by the Hon'ble Supreme Court in its order. Our attention was drawn to the securities referred to above being part of the said Annexure R-1 Colly reflecting the 17% NTPC Bonds which is subject matter of present dispute before us. This therefore shows that the findings of Hon'ble Supreme Court were squarely applicable to the facts of the present case thereby clearly establishing that the said bonds were not the property of the appellant and that the interest income pertaining to the said bonds cannot be brought to tax in the hands of the appellant. We also conscious of the fact that the said interest pertaining to the past period has been repaid by Custodian to SBI which fortifies the facts and contentions raised by the appellant. It is for this reason, we are not in agreement with the conclusion drawn by the Ld. CIT(A) and are inclined to set aside the finding of the first appellate authority on this issue and direct the AO to delete the said addition of Rs.18,29,41,410/-. Ground no. 6 is allowed.

36. The issue raised in ground No.7 is against the confirmation of addition of Rs.4,97,760/- by Ld. CIT(A) as made by the AO on account of long term capital gain on sale of 2000 shares of M/s. Reliance Industries.

37. The facts in brief are that the AO on the basis of information called for from M/s. Reliance Industries Ltd. came to conclusion that appellant has sold 31,000 equity shares of the said company whereas the appellant has claimed to have sold only 29000 equity shares. The AO thus calculated the capital gain on 2000 equity shares of M/s. Reliance Industries Ltd. at Rs.4,97,760/- and added the same to the income of the assessee.

38. During the appellate proceedings, the appellant submitted before the Ld. CIT(A) that since the appellant is a notified entity and the details of income earned by it including purchase and sale of shares are provided by the custodian based on which income was offered to tax. The Ld. A.R. submitted before the Ld. CIT(A) that 29000 shares of M/s. Reliance Industries Ltd. have been sold and that the AO has calculated the capital gain on 31,000 equity shares on the basis of information gathered from M/s. Reliance Industries Ltd. The Ld. CIT(A) directed the AO again to verify the issue on the basis of details as furnished by the custodian and also evaluate the same in the light of the information gathered by the AO from M/s. Reliance Industries Ltd and compute the long term capital gain accordingly. The Ld. CIT(A) also directed the AO to allow the carry forward of long term capital loss so determined after allowing the set off of long

term capital gain on sale of shares of M/s. Reliance Industries Ltd. Since the Ld. CIT(A), instead of deleting the said addition, gave directions to AO for verification, the appellant has challenged the issue before us.

39. The Ld. A.R. explained the facts and pleaded that only 29,000 shares were sold and therefore the addition on account of 2000 shares of M/s. Reliance Industries Ltd. may kindly be deleted.

40. Ld. D.R. on the other hand, relied upon findings of AO and Ld. CIT(A).

41. After hearing both the parties and perusing the material on record including the contract notes and other details as placed before us, we note that appellant has sold 29,000 equity shares of M/s. Reliance Industries Ltd. We have also examined the bank statement of the appellant wherein the consideration qua 29000 equity shares appeared. We also take note of the letter dated 31.07.1995 of custodian confirming that assessee has sold 29000 equity shares. Further, we observe that AO has not provided the copy of letter received from M/s. Reliance Industries Ltd. to the assessee which showed that assessee has sold 31,000 equity shares of M/s. Reliance Industries Ltd. On the contrary, from the letter of custodian, it is found that 31,000 shares of M/s. Reliance Industries Ltd. sold were that of the related entity and not of the assessee. In view of these facts and circumstances, the action of the AO can not be sustained as the evidences gathered by the AO can not be used against the assessee behind its back without confronting the same to the assessee. Accordingly, we are inclined to direct the AO to delete

the addition of Rs.4,97,760/-. Ground no. 7 of appeal is allowed.

42. The issue raised in ground No.8 is against the confirmation of disallowance of depreciation and other expenses by Ld. CIT(A) and also restricting the deduction to the extent of Rs.1,00,000/- only.

43. The facts in brief are that AO rejected the claim of the assessee in respect of its various expenses as well as depreciation on fixed assets on the ground that the operation of the assessee has completely ceased as the assessee is a notified entity and all the decisions are taken by the custodian. The Ld. CIT(A) in the appellate proceeding partly allowed the appeal of the assessee by directing that the claim of the assessee is to be allowed to the extent of Rs.1,00,000/-.

44. After hearing both the parties and perusing the material on record, we find that the assessee is a notified entity w.e.f. 08.06.1992 and post that date of the decisions including that pg banking , issue of sale and purchase of securities, payment of taxes etc. were taken by the custodian. The Ld. A.R. submitted before the Bench that expenses so incurred comprise of primarily electricity expenses of the premises owned by the assessee, certain maintenance charges pertaining to the property, bank charges and interest on loans received. After examining all the aspect of the issue, we are of the view that these expenses were necessary to be incurred by the assessee for the purpose of running and preserving its assets and therefore these expenses are necessarily to be allowed.

Moreover, the issue is squarely covered by the decision of the co-ordinate bench of the Tribunal in the cases of related entities. In the following cases, the co-ordinate benches of the Tribunal have allowed the similar claim:

- a. DCIT v. Orion Travels Pvt. Ltd. [ITA No. 5035, 5036/Mum/2002] dated 23.09.2005.
- b. DCIT v. Orion Travels Pvt. Ltd. [ITA No. 4087, 4088/Mum/2002] dated 21.03.2006.

45. Since the facts before us are similar to one as involved in the aforesaid cases before the co-ordinate benches of the Tribunal, we are therefore inclined to set aside the order of Ld. CIT(A) and direct the AO to allow these expenses and depreciation as claimed by the assessee. Ground no.8 is allowed.

46. In the ground no. 9 , the assessee has challenged the order of ld. CIT(A) enhancing the income by making an addition of Rs. 1,28,28,304/- on account of interest on term deposit.

47. The facts in brief are that Ld. CIT(A) noted during appellate proceedings that AO has made an addition of Rs.3,03,18,467/- on account of interest income from term deposits. However, as per the books of accounts filed by the assessee, the said income was Rs.4,31,46,771/- from term deposit and has also claimed the corresponding TDS. Accordingly, Ld. CIT(A) made an addition of Rs.1,28,28,304/- to the income of the assessee as income from term deposits. The assessee has challenged the said addition on the ground that if the books of the assessee are rejected, the income from the term deposit cannot be assessed based on these books.

48. Since we have reversed the findings on the issue of rejection of books of account by the Id CIT(A) and allowed the ground raised in favour of the assessee, this ground raised by the assessee becomes infructuous and is dismissed. Accordingly ground no. 9 is dismissed.

49. The issue raised in ground No.10 is against the order of Ld. CIT(A) confirming the levy of interest under section 234A, 234B & 234C of the Act thereby upholding the order of AO.

50. After hearing both the parties and perusing the material on record, we observe that issue is covered against the assessee by the decision of the Hon'ble Bombay High Court in the case of Divine Holding Pvt. Ltd. in appeal No.3334 of 2010 order dated 07.03.2012. appeal No.3334 of 2010 order dated 07.03.2012 wherein it has been decided by the Hon'ble Bombay High Court that interest under section 234A, 3234B and 234C is mandatory to be charged and accordingly the ground by the assessee is dismissed following the jurisdictional High Court decision. Ground no. 10 is dismissed.

51. The issue raised in ground No.11 is against the order of Ld. CIT(A) not excluding the income which is subject to provisions of TDS before levying interest as under section 234A, 234B & 234C of the Act.

52. At the outset, the Ld. Counsel of the assessee submitted that the issue is a recurring issue over the years and the co-ordinate benches of the Tribunal have consistently held that

interest should be computed by the AO in consonance with the judicial precedents referred to in the respective orders. The Ld. A.R. submitted that the AO has not been following and abiding by the orders of the higher authorities and wrongly levying higher interest on all incomes of the assessee. The Ld. A.R. submitted that in this case also the AO should be directed to compute the interest in terms of the following decisions:

- a. Growmore Leasing & investments Ltd. v. DCIT [ITA No. 1219/Mum/2017 and others] for A.Y. 2012-13 and others dated 27.12.2017.
- b. Sudhir S. Mehta v. DCIT [ITA No. 7147/Mum/2018] for A.Y. 2014-15 dated 3.11.2020.
- c. Harsh Estates Pvt. Ltd. v. DCIT [ITA No. 6957/Mum/2018 and others] for A.Y. 2013-14 to A.Y. 2015-16 dated 15.09.2020.

53. After perusing the facts on records and respectfully following the decisions of the coordinate benches in the case of related entities as stated above, we direct the AO to compute the interest u/s 234A, 234B and 234C of the Act after taking into account the TDS deductible at source on the income assessed which were subject the provisions of tax deduction at source. The ground no. 11 is allowed for statistical purposes.

54. The assessee has raised following additional grounds also:

- “1. Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld. CIT(A) ought to have granted deduction of interest expenditure of Rs. 18,69,05,605/- in the hands of the assessee.
2. Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld. CIT(A) ought to have granted capitalization of interest expenses attributable to shares and securities which is not allowable u/s 57(iii) of the Act.”

55. The Ld. A.R. submitted before the Bench that in the first round of litigation the assessee has challenged the order of ld CIT(A) dated 12.11.2018 partly confirming the order of AO

dated 30.03.2001. It is submitted that the additional grounds are being raised as the same were inadvertently not taken at the time of filing the appeal against the order of Ld. CIT(A). The Ld. A.R. submitted that the issues raised in the additional grounds of appeal are emanating out of the records before the authorities below and no new facts are required to be brought on record. The Ld. A.R. therefore requested that the same may kindly be admitted and decided in the interest of justice and equity. In defence of his arguments, the Ld. A.R. relied on the following three decisions:

1. National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC)
2. Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC)
3. Ahmedabad Electricity Company Ltd. vs. CIT 199 ITR 359 (Bom.)

The Ld. A.R., therefore, prayed that the ground may kindly be admitted and adjudicated.

56. The Ld. D.R., on the other hand, strongly opposed the admission of additional grounds raised at this stage by raising doubts about the intention of the assessee. The Ld. D.R. submitted that the assessee has neither raised this ground in the first round of litigation nor at the time of filing this appeal before the Tribunal. The Ld. D.R. submitted that only the legal issue can be allowed to be raised at this stage and not the factual issue as has been raised by the assessee. Therefore, the Ld. D.R. prayed that the additional ground may kindly be dismissed.

57. Having heard the rival submissions and perusing the material on record, we find that the issue raised by the assessee are arising out of the assessment records before the authorities below and does not require any verification of facts or any fresh material being brought on record. The assessee is very well within its right to raise these issues before the Tribunal and accordingly we are inclined to admit the additional ground for adjudication before us following the ratio laid in the above decisions.

58. The issue raised in the 1<sup>st</sup> additional ground is against the order of CIT(A) not allowing interest on borrowed funds to the assessee.

59. The brief facts of the case are that the appellant had purchased shares and securities out of the credit given by the brokerage firms. Subsequent to the notification of the appellant and the brokers as notified entities, the liability towards the purchase of these shares could not be paid as the entire affairs were then controlled by Custodian appointed under the Special Courts Act. Subsequently, the said shares and securities were liquidated and the funds were invested in the term deposits under the orders of Hon'ble Special Court. On these amounts payable by the appellant, the interest payable to the brokerage firms has been calculated. The said interest has been claimed by the appellant in past years and the same has been allowed to them.

60. The ld AR submitted that this issue is a recurring issue in the case of the assessee as well as many of its related entities

since several years. The coordinate benches have been deciding this issue in favour of the assessee by holding that the said interest payable to the brokerage firms is an allowable deduction. Some of the cases in which such findings have been given are as below:

- a. Harsh Estates Pvt. Ltd. vs. DCIT (ITA No.6957/Mum/2018) dated 15.09.2020
- b. Sudhir S. Mehta vs. DCIT (ITA No.7147/M/2018) dated 13.11.2020
- c. Growmore Leasing & Investment Ltd. vs. DCIT (6092/M/2018) & ors. dated 16.12.2020.

61. Thus, it is submitted that deduction of interest expenditure may be granted to the assessee. It is submitted that the interest expenditure should have been allowed at least to the extent of gross total income earned by the assessee.

62. We have perused the facts of the case including the decisions cited above and found the issue to be squarely covered in favour of the assessee. We, therefore, respectfully following the decisions of the coordinate benches set aside the order of ld CIT(A) on this issue and direct the AO to allow the interest

63. In additional ground No.2, the assessee has challenged the decision of the AO and Ld. CIT(A) in not granting capitalization of interest expenses attributable to shares and securities which is not allowable under section 57(iii) of the Act.

64. The facts in brief are that the assessee have incurred interest on the purchase of shares and securities. The Ld. AR submitted that to the extent the interest expenditure is not

allowable as deduction u/s 57(iii) of the Act , the same should be allowed to be capitalized in the cost of shares and securities.

65. We have perused the facts on records and note that in the foregoing paras, the interest expenditure has been allowed by us in total and no disallowance survived. The dividend and interest income as well as capital gains, if any, earned by the appellant were taxable during A.Y. 1992-93 and hence the disallowance invoking s. 14A is not applicable. In light of the same, since there is no disallowance called for, the question of capitalization does not arise. The additional ground no. 2 is dismissed.

66. In the result the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the open court on 09.04.2021.**

**Sd/-**  
**(Amarjit Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 09.04.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.