

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

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 422/MUM/2016 (A.Y. 2011-12)**

Ashwin S. Mehta 32, Madhuli, Dr. A.B. Road Worli, Mumbai – 400018  <b>PAN: ABAPM2121M</b>	v.	DCIT – Central Circle – 23 [now DCIT, CC-4(1)] 4 <sup>th</sup> Floor, Aayakar Bhavan M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA.No. 2734 & 2735/MUM/2017  
(A.Ys. 2012-13 & 2013-14)**

Ashwin S. Mehta 32, Madhuli, Dr. A.B. Road Worli, Mumbai – 400018  <b>PAN: ABAPM2121M</b>	v.	ACIT, CC-4(1) Air India Building, Nariman Point Mumbai – 400 021
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Dharmesh Shah</b>
<b>Department Represented by</b>	<b>:</b>	<b>Dr. P. Daniel</b>
<b>Date of Hearing</b>	<b>:</b>	<b>29.09.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>28.10.2022</b>

## **ORDER**

### **PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.11.2015, 02.02.2017 and 02.02.2017 for the A.Y. 2011-12, 2012-13 and 2013-14 respectively.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No.422/MUM/2016 for Assessment Year 2011-12 as a lead appeal.

### **ITA.No. 422/MUM/2016 (A.Y. 2011-12)**

3. 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 his assets including bank accounts were attached and vested in the hands of the Custodian appointed under the said Act. Assessee filed his return of income in response of notice u/s 148 of Income-tax Act, 1961 (in short "Act") on 13.01.2014, declaring total income of ₹.3,33,69,418/-. A notice u/s. 148 of the Act dated 16.10.2012 was issued

and duly served on the assessee on 16.10.2012 and questionnaire dated 26.06.2012 calling for certain details u/s 142(1) of the Act. Notice u/s.143(2) and 142(1) of the Act were issued and served on the assessee. In response to the above notices, authorized representative of the assessee attended and submitted the details vide letter dated 15.07.2013, 13.01.2014, 25.02.2014 and 18.03.2014 as called for.

4. Assessee has filed his revised computation vide letter dated 25.02.2014 on 26.02.2014, in view of revised computation filed by the assessee, assessee was asked for clarification with regard to (i) produce proof of purchase of shares as claimed in your return of income. And (ii) Why professional charges of ₹.1,16,000/- should not be disallowed?. In response to the show cause, vide order sheet dated 03.03.2014, assessee has filed written submissions dated 18.03.2014.

5. After due consideration of evidence produced, Assessing Officer proceeded to complete the assessment by observing as under: -

**"3. DIVIDEND INCOME:**

*As per the income and expenditure account, the assessee has received dividend income of 17,89,207/- which has been claimed as exempt. Assessee's claim of exempt income in respect of this dividend receipt is accepted and the dividend is assessed as such. This dividend is also exempt u/s 10(34) of the Income Tax Act, 1961.*

4. **BUSINESS INCOME:**

Assessee has offered business income of 2,53,85,698/-. This income comprised of, inter alia other expenses, interest payable to Canna, amounting to 1,75,00,000/-. With regard to this interest payable to CanFina, it is noticed that the said liability has been crystallized in view of the decree passed by the Hon'ble Bombay High Court. On perusal, it is further noticed that the loan in respect of which, said interest was payable has been utilized by the assessee for purchase of shares and securities. During the relevant financial year, assessee has received exempted dividend of 17,89,207/- on such investment. Since the entire amount of loan was utilized for acquisition of shares and securities, interest amounting to 1,75,00,000/- is being disallowed in terms of Rule 8D(i) being expenses directly attributed to exempted part of income. A similar disallowance was made in the earlier assessment year 2010-11 by this office.

4.2 De-mat charges of 1,10,597/- are also being disallowed as expenses disallowable u/s 14A for earning of the exempt income.

4.3 Professional charges of 1,60,000/- are also being disallowed as assessee has debited in P&L a/c which was for A.Y. 2010-11 as per assessee's letter dated 25.02.2014.

5. **INTEREST ON TERM DEPOSITS/FIXED DEPOSITS:**

5.1 The term deposit and fixed deposits accounts on behalf of the assessee are maintained by the Custodian under the TORTS Act, 1992. Interest on TDR/FD and Interest on receivable totaling to 2,63,24,642/- has been offered by the assessee in his computation of income.

6. **DISALLOWANCE OF THE INTEREST EXPENSE OF 1,83,40,922/- ON LOANS**

6.1 During the course of present proceedings assessee was asked to explain as to why deduction u/s. 57 in respect of interest expenditure I should not be disallowed as the same was not crystallized. In reply thereto, assessee filed written submission as per letter dated 25.02.2014.

6.2 During the assessment proceedings, assessee's authorized representative was asked 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 is rejected. For rejecting assessee's claim of interest payment, following are the findings.

6.3 *The principle followed to establish the burden of proof is "He who asserts must prove". Onus is always on the person who asserts a proposition or fact which is not self evident. The proof of any particular fact lies on the party who alleges it and not on the person who denies it. The party asserting the existence of a positive fact is supposed to place the material in proof of its existence. In view of the above, the burden of proof is on the assessee to establish that the creditors are genuine.*

6.4 *The Burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person (Section 103 of Indian Evidence Act).*

6.5 *Burden of proof in its primary sense means the duty of establishing the case. It remains where it is throughout the case it never sits. The Hon'ble Supreme Court in its decision in the case of CIT VS BEST & Co. Ltd 60 ITR 11 has laid out the principle as under:*

*"It has never been laid out that the burden to establish that the income was taxable was immutably on the revenue. It is only in the first instance. As per the law of Evidence the process is shifting of the onus in the course of proceedings. When sufficient evidence has been disclosed by the revenue and adverse inference can be drawn against the assessee, if he fails to put before the department material which was in his exclusive possession."*

6.6 *The Hon'ble Madras High Court in the case of CIT Vs Krishnavani Ammal 158 ITR 826 held that "as a matter of fact the Law of Evidence mandates that if the best evidence is not placed before the Court an adverse inference can be drawn as against the person who ought to have produced it."*

*From the above, it is clear that the burden of proving that the expenditure incurred by the assessee is genuine and for the purpose of business is on the assessee. As assessee has failed to discharge the burden, an adverse inference is made. Accordingly, the claim of deduction of interest of the assessee is not allowed for the following reasons:*

- 1) *The interest payable is tentative and provisional.*
- 2) *There is no basis as per which the assessee has a right to pay and the creditors has a right to receive.*
- 3) *There is no basis of computation of interest payable which has been provided by the assessee.*

4) *The provisions made on account of interest payable is a contingent liability and therefore, cannot be allowed as business expenditure.*

5) *It is also seen that these broking firms have not charged any interest on the amounts receivable from the companies of this group where the books of accounts have been produced before the Assessing Officer.*

*In view of the above facts, there is no merit in the contention of the assessee therefore the claim of net interest expenses of 1,83,40,922/- is rejected."*

**6.** Further, Assessing Officer rejected the claim of the assessee in respect of personal household expenses and noticed in his Assessment Order as under: -

*"PERSONAL HOUSEHOLD EXPENSES:*

*8.1 Vide notice dated 20.02.2014 assessee was asked to give details about personal drawing during the year. Assessee was further asked to file details of payment made to Legal/Professionals/C.A., etc. In connection with legal proceedings in assessee's own cases, initiated and pending before various judicial authorities. Assessee was also asked to explain sources of fund utilized for this. In reply, assessee filed written submission in terms of letter dated 26.02.2014. Assessee's submissions on the subject matter have been carefully considered.*

*8.2 The assessee is one of the entities of Harshad Mehta Group. There are various litigation matters pending against the assessee before various Courts of Law and govt. /local authorities. Assessee is required to incur sizeable expenses advocate/authorized on representative's professional fee, travelling expenses for attending before various Courts/authorities, documentation charges, court fee, etc. Assessee stays at Worli which is one of the posh localities of Mumbai city. Considering the size of family, their modern standard of living, there ought to be sizeable expenses incurred by the assessee. Such expenses in the nature of household and personal expenses may comprise of kitchen/ food expenses, expenses for maintenance of residence, expenses on religious occasions, expenditure on tour and travels, expenses for special occasion of celebration on anniversaries/birthdays, medical expenses, etc. The assessee has not furnished any satisfactory explanations during the course of the assessment proceedings and other details to explain as to*

*how all these essential expenses to pull on the day to day life have been incurred. I therefore conclude that these expenses have been met from the undisclosed sources of income of the assessee. I therefore estimate an amount of 1,00,000/- per month as his personal expenses. Accordingly, an amount of 12,00,000/- is added to assessee's total taxable income u/s 69C of the Income Tax Act, 1961*

**7.** Accordingly, Assessing Officer concluded the assessment u/s.143(3) r.w.s. 147 of the Act by assessing the income of the assessee at ₹.7,06,80,940/- and rejected the contentions of the assessee after making disallowances on account of interest expenses on loans and personal household expenses.

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

**9.** Aggrieved with the above order, assessee is in appeal before us by filing following grounds in its appeal: -

*"1. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming assessment order passed u/s. 143(3) r.w.s. 147 of the Act dated 27.03.2014.*

*2. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming disallowance of interest expenditure amounting to Rs. 12,66,78,687/-.*

*3. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the estimated addition on account of personal household expenses at Rs.3,00,000/-.*

4. *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.*

5. *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. 234B and 234C of the Act.*

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

**10.** Assessee has further revised the above grounds. Revised Grounds of appeal are reproduced below: --

"1. *The Ld. Commissioner of Income-Tax (Appeals) erred in law and in facts in confirming the assessment order passed u/s. 143(3) r.w.s. 147 of the Act dated 27.03.2014.*

2. *The Ld. Commissioner of Income-tax (Appeals) ought to have allowed the deduction of following interest expenditure subject to s. 14A of the Act*

Sr. No	Entities	Interest @ 12% p.a. payable
1.	Jyoti H. Mehta	1,12,59,823
2.	Harshad S. Mehta	10,56,41,550
	<i>Total</i>	11,69,01,373

3. *The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the estimation of addition on account of personal household expenses at Rs. 3,00,000/-.*

4. *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.*

5. *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. 234B and 234C of the Act.*

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

**11.** Assessee has further raised following additional grounds in its appeal: -

**Additional grounds of appeal No.1**

1. *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.*

**Additional grounds of appeal No. 2**

1. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the assessment re-opened u/s. 147 of the Act was invalid and bad in law.*

**12.** Ld. Counsel for the assessee submitted that the above additional grounds of appeal are purely legal grounds and do not require any fresh examination of facts. Therefore, Ld. Counsel for the assessee prayed it may be admitted.

**13.** Ld. DR objected for admission of the additional grounds as they were never raised before lower authorities and therefore cannot be admitted.

**14.** Considered the rival submissions and material placed on record, we observe that as the said additional grounds are legal grounds, wherein,

the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited *v.* CIT 229 ITR 383 (SC), we admit the said additional grounds of appeal.

**15.** First we take up the revised grounds of appeal filed by the assessee in its appeal for adjudication.

**16.** Coming to Ground No. 1 which is in respect of reopening of the assessment u/s. 147 of the Act, Ld. AR submitted that this ground is not pressed, accordingly, the same is dismissed as not pressed.

**17.** With regard to Ground No. 2 which is in respect of interest expenditure, Ld. AR brought to our notice that similar ground has been raised before the Coordinate Bench in the case of Smt. Jyoti H. Mehta *v.* DCIT in ITA.No. 7131 & 6896/Mum/2018 dated 04.11.2020 and the Coordinate Bench adjudicated the issue in favour of the assessee. Ld. AR submitted that the facts in the present case are identical to the facts in the case of Smt. Jyoti H. Mehta *v.* DCIT (supra) and prayed that the same decision be adopted.

**18.** Ld.DR relied on the order of the Ld.CIT(A).

**19.** Considered the rival submissions and material placed on record, we observe that similar issue on identical facts was considered and adjudicated by the Coordinate Bench in the case of Smt. Jyoti H. Mehta v. DCIT (supra) and decided the issue in favour of the assessee. We further observe from the record that various courts and Tribunals in catena of judgements have decided the issue and allowed the claim of the assessee. The relevant ratio in the case of Smt. Jyoti H. Mehta v. DCIT (supra) is reproduced below: -

"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.**"*

**20.** Since the issue is exactly similar and the facts are also identical, respectfully following the above decision, we are inclined to accept the submissions of the Ld. AR and allow the ground No.2 raised by the assessee. Accordingly, ground raised by the assessee is allowed.

**21.** With regard to Ground No. 3 which is in respect of confirming the estimation of addition on account of personal household expenses at ₹.3,00,000/-, Ld. AR brought to our notice that similar ground has been raised before the Coordinate Bench in the case of Smt. Jyoti H. Mehta v. DCIT in ITA.No. 7131 & 6896/Mum/2018 dated 04.11.2020 and the Coordinate Bench adjudicated the issue in favour of the assessee. Ld. AR submitted that the facts in the present case are identical to the facts in the case of Smt. Jyoti H. Mehta v. DCIT (supra) and prayed that the same decision be adopted.

**22.** Ld.DR relied on the order of the Ld.CIT(A).

**23.** Considered the rival submissions and material placed on record, we observe that similar issue on identical facts was considered and adjudicated by the Coordinate Bench in the case of Smt. Jyoti H. Mehta v. DCIT (supra) and decided the issue in favour of the assessee. We further observe from the record that various courts and Tribunals in catena of judgements have decided the issue and allowed the claim of the assessee. The relevant ratio in the case of Smt. Jyoti H. Mehta v. DCIT (supra) is reproduced below: -

"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**.

**24.** Since the issue is exactly similar and the facts are also identical, respectfully following the above decision, we are inclined to accept the

submissions of the Ld. AR to allow the 50% of the household expenses and allow the ground No.3 raised by the assessee. Accordingly, ground raised by the assessee is partly allowed.

**25.** With regard to Ground No. 4 and 5 of grounds of appeal, which are in respect of levy of interest u/s. 234A, 234B and 234C of the Act, Ld. AR brought to our notice that similar ground has been raised before the Coordinate Bench in the case of Smt. Jyoti H. Mehta *v.* DCIT in ITA.No. 7131 & 6896/Mum/2018 dated 04.11.2020 and the Coordinate Bench adjudicated the issue in favour of the assessee. Ld. AR submitted that the facts in the present case are identical to the facts in the case of Smt. Jyoti H. Mehta *v.* DCIT (*supra*) and prayed that the same decision be adopted.

**26.** Ld.DR relied on the order of the Ld.CIT(A).

**27.** Considered the rival submissions and material placed on record, we observe that similar issue on identical facts was considered and adjudicated by the Coordinate Bench in the case of Smt. Jyoti H. Mehta *v.* DCIT (*supra*) and decided the issue in favour of the assessee. We further observe from the record that various courts and Tribunals in

catena of judgements have decided the issue and allowed the claim of the assessee. The relevant ratio in the case of Smt. Jyoti H. Mehta v. DCIT (supra) is reproduced below: -

"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
- 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.**"*

**28.** Since the issue is exactly similar and the facts are also identical, respectfully following the above decision, we are inclined to accept the submissions of the Ld. AR and direct the Assessing Officer to follow the terms mentioned in the above decision. Accordingly, ground No. 4 and 5 raised by the assessee are allowed.

**29.** Now we shall deal with the additional grounds filed by the assessee for adjudication.

**30.** With regard to Additional Ground No.1 raised by the assessee in respect of capitalization of interest expenses attributable to shares and securities which is not allowable u/s. 57(iii) of the Act, Ld. AR brought to our notice that similar ground has been raised before the Coordinate Bench in the case of Smt. Jyoti H. Mehta v. DCIT in ITA.No. 7131 & 6896/Mum/2018 dated 04.11.2020 and the Coordinate Bench adjudicated

the issue in favour of the assessee. Ld. AR submitted that the facts in the present case are identical to the facts in the case of Smt. Jyoti H. Mehta v. DCIT (supra) and prayed that the same decision be adopted.

**31.** Ld.DR relied on the order of the Ld.CIT(A).

**32.** Considered the rival submissions and material placed on record, we observe that similar issue on identical facts was considered and adjudicated by the Coordinate Bench in the case of Smt. Jyoti H. Mehta v. DCIT (supra) and decided the issue in favour of the assessee. We further observe from the record that various courts and Tribunals in catena of judgements have decided the issue and allowed the claim of the assessee. The relevant ratio in the case of Smt. Jyoti H. Mehta v. DCIT (supra) is reproduced below: -

*"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.**"*

**33.** Since the issue is exactly similar and the facts are also identical, respectfully following the above decision, we are inclined to accept the

submissions of the Ld. AR and allow the ground raised by the assessee. Accordingly, ground raised by the assessee is allowed.

**34.** Coming to additional ground No.2, challenging reopening of assessment u/s. 147 as invalid and bad in law, Ld. AR submitted that this ground is not pressed, accordingly, the same is dismissed as not pressed.

**35.** In the result, appeal filed by the assessee is allowed as per above terms.

**ITA.Nos. 2434 & 2435/MUM/2017**  
**(A.Ys. 2012-13 & 2013-14)**

**36.** Assessee has raised following identical grounds for both these Assessment Years except for change in figures. Grounds raised by the assessee in ITA.No. 2434/Mum/2017 for the A.Y. 2012-13 are reproduced below: -

"1. *The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming disallowance of interest expenditure amounting to Rs. 1,85,36,411/-.*

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

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

**37.** Assessee has raised common additional grounds for both the appeals except for change in figures. Additional grounds raised by the assessee in ITA.No. 2734/Mum/2017 are reproduced below: -

"1. *The Ld. CIT(A) has erred in law and in facts in not appreciating that the assessment re-opened u/s. 147 of the Act was invalid and bad in law.*

2. *Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld. CIT(A) ought to have granted capitalization of interest expense attributable to shares and securities which is not allowable u/s 57(iii) of the Act.*

3. *The Ld. CIT(A) erred in law and in facts in not allowing set off/ carry forward of business loss of Rs. 1,75,79,393/-.*

4. *The Ld. CIT(A) erred in law and in facts in not allowing set off/ carry forward of depreciation of Rs. 697/-."*

**38.** Ld. Counsel for the assessee submitted that the above additional grounds of appeal are purely legal grounds and do not require any fresh examination of facts. Therefore, Ld. Counsel for the assessee prayed it may be admitted.

**39.** Ld. DR objected for admission of the additional grounds as they were never raised before lower authorities and therefore cannot be admitted.

**40.** Considered the rival submissions and material placed on record, we observe that as the said additional grounds are legal grounds, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited *v.* CIT 229 ITR 383 (SC), we admit the said additional grounds of appeal.

**41.** First we take up the original grounds of appeal raised by the assessee for adjudication.

**42.** Ground No. 1 is similar to Ground No. 2 of grounds of appeal raised by the assessee for the A.Y. 2011-12, since facts in these cases are mutatis mutandis therefore the decision taken in A.Y. 2011-12 shall apply mutatis-mutandis to these appeals also i.e., for the A.Y. 2012-13 and 2013-14. Accordingly, ground raised by the assessee is allowed.

**43.** Ground Nos. 2 and 3 are similar to Ground Nos. 4 and 5 of grounds of appeal raised by the assessee for the A.Y. 2011-12, since facts in these cases are mutatis mutandis therefore the decision taken in A.Y. 2011-12 shall apply mutatis-mutandis to these appeals also i.e., for the A.Y. 2012-13 and 2013-14. Accordingly, grounds raised by the assessee are allowed.

**44.** Coming to additional grounds, additional ground No. 1 is similar to additional ground No. 2 of grounds of appeal raised by the assessee for the A.Y. 2011-12, since facts in these cases are mutatis mutandis therefore the decision taken in A.Y. 2011-12 shall apply mutatis-mutandis to these appeals also i.e., for the A.Y. 2012-13 and 2013-14. Accordingly, the ground raised by the assessee is dismissed as not pressed.

**45.** Coming to additional grounds, additional ground No. 2 is similar to additional ground No. 2 of grounds of appeal raised by the assessee for the A.Y. 2011-12, since facts in these cases are mutatis mutandis therefore the decision taken in A.Y. 2011-12 shall apply mutatis-mutandis to these appeals also i.e., for the A.Y. 2012-13 and 2013-14. Accordingly, ground raised by the assessee is allowed.

**46.** Additional Ground Nos. 3 & 4 are related to not allowing set off / carry forward of business loss, considering the overall merits on the submissions made by the Ld. AR of the assessee, we are inclined to remit this issue back to the file of Assessing Officer with a direction to verify the records submitted by the assessee on merit and as per law. It is needless to say that assessee may be given a proper opportunity of being heard. Accordingly, the issue under consideration is remitted back to the file of Assessing Officer for statistical purpose.

**47.** In the result, both the appeals filed by the assessee for the A.Y.2012-13 and 2013-14 are partly allowed for statistical purpose.

**48.** To sum-up, appeal filed by the assessee for the A.Y. 2011-12 is allowed and appeals filed for the A.Y. 2012-13 and 2013-14 are partly allowed for statistical purpose.

Order pronounced in the open court on 28<sup>th</sup> October, 2022.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 28.10.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**