

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 436/Mum/2023 (A.Y.1993-94)

Jyoti H. Mehta

32, Madhuli Apartment,
3rd floor, Dr. A. B. Road,
Worli, Mumbai-400 018
PAN: ABNPM8233B

..... Appellant

Vs.

ACIT Circle 4(1)

R. No. 1916, 19th floor,
Air India Building, Nariman
Point, Mumbai-400021
Mumbai

..... Respondent

&

ITA No. 1186/Mum/2023 (A.Y.1993-94)

ACIT Circle 4(1)

R. No. 1916, 19th floor,
Air India Building, Nariman
Point, Mumbai-400021
Mumbai

..... Appellant

Vs.

Jyoti H. Mehta

32, Madhuli Apartment,
3rd floor, Dr. A. B. Road,
Worli, Mumbai-400 018
PAN: ABNPM8233B

..... Respondent

Appellant by : Shri Vijay Mehta
Respondent by : Dr. P. Daniel, Spl. Counsel.

Date of hearing : 05/09/2023
Date of pronouncement : 27/10/2023

ORDER**PER GAGAN GOYAL, A.M:**

These cross appeals by Assessee and Revenue are directed against the order of Ld. CIT (A)-52, Mumbai, dated 09/01/2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 1993-94. The assessee has raised the following grounds of appeal:-

- 1. The Ld.CIT(A) erred in law and in facts in confirming the addition on account of dividend and interest income at Rs. 88,78,044/- on account of dividend and interest income estimated by the Ld. A.O. in the assessment order.*
- 2. The Ld. CIT (A) has erred in law and in facts in confirming the addition to the tune of Rs. 6, 83, 95,324/-on account of alleged share market trading profit.*
- 3. The Ld. CIT(A) has erred in law and in facts in confirming the addition to the tune of Rs. 26,65,106/- out of the aggregate addition of Rs. 1,40,55,678/- on account of alleged share market oversold position.*

4. *The Ld. CIT (A) has erred in law and in facts in confirming the addition of Rs. 2, 89,250/- on account of alleged profit on sale of shares in shortage.*
5. *The Ld. CIT (A) has erred in law and in facts in confirming the addition of Rs. 2, 08,453/- on account of alleged income from Badla transactions.*
6. *The Ld. CIT(A) has erred in law and in facts in not allowing interest expenditure only to the tune of Rs. 11,49,540/- out of the aggregate interest expense claimed by the appellant at Rs. 1,02,00,000/-.*
7. *The Ld. CIT (A) has erred in law and in facts in allowing deduction of various expenses claimed by the appellant and record in the books of accounts.*
8. *The Ld. CIT(A) has erred in law and in facts in making enhancement of income to the tune of Rs. 7,97,23,030/- on account of the alleged difference in the balance of the Late Mr. Harshad S. Mehta in the books of the appellant and the balance of the appellant in the books of Late Mr. Harshad S. Mehta.*
9. *The Ld. CIT (A) has erred in law and in facts in not appreciating that the interest u/s. 234A and 234B of the Act was not computed in accordance with law.*
10. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

2. The revenue has raised the following grounds:-

1. *Whether on the facts and in the circumstances of the case, the Ld.CIT (A) was justified in restricting the addition to Rs.6, 83, 95,324/- and granting relief of Rs.49, 86, 64,659/- made on account of profit earned on unexplained sale of shares, whereas assessee had failed to explain the source of acquiring the shares satisfactorily and the books of accounts produced by the assessee are unreliable?*
2. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified directing the A.O to ascertain the stock-in-trade and allow such expenditure on a proportional basis, made on account of interest expense which was claimed by the assessee disregarding the fact that the assessee failed to show that the respective entities have charged interest on the amounts paid by the respective parties.*
3. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified directing the A.O to ascertain the stock-in-trade and allow such expenditure on a*

proportional basis, made on account of interest expense which was claimed by the assessee disregarding the fact that the assessee has claimed the deduction u/s 57 of the Income Tax Act, 1961 and in that case, the assessee must prove that the interest expenditure was incurred wholly and exclusively for the purpose of earning of interest income.

4. "Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in treating the speculative loss incurred by the assessee of Rs. 2,47,59,074/- as normal business loss to be adjusted against other heads of income of the assessee.

5. "Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was correct in directing the AO to verify and grant relief of Rs. 1,13,90,573/- on account of oversold position in the capital market."

6. The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.

3. Against the additions /disallowances made in the assessment order the assessee approached the office of the Ld. CIT (A)-9, Mumbai. The Ld. CIT (A) passed order after considering the contentions, submissions, additional evidences filed by the assessee and remand report submitted by the A.O.

4. While disposing the appeal, the Ld. CIT (A) after taking into account the material available on record and evaluating the judicial precedents granted partial relief and sustained the following additions made by the A.O.

- a) Addition to the tune of Rs. 88, 78,044/- on account of dividend/debenture interest.
- b) Addition of Rs 6, 83, 95,324/- on account of share market trading profit.
- c) Addition of Rs. 26,65,106/- on account of share market oversold position
- d) Addition of Rs. 2,89,250/- on account of profit on sale of shares in shortage

- e) Addition of Rs. 2, 08,453/- on account of income from Badla Transactions.
- f) Partial allowance of interest expenditure to the extent of Rs. 11, 49,540/- as against total interest expenditure of Rs. 1, 02, 00,000/- claimed by the assessee.
- g) Other expenses claimed in books but disallowed.

5. The Ld. CIT (A) also enhanced income of the assessee by issuing notice u/s. 251(1A) dated 24.01.2013. After considering the reply filed by the assessee, the Ld. CIT (A) made addition of Rs. 7, 97, 23,030/- on account of the valan transactions explained and admitted by the assessee.

6. The CIT(A) also granted relief to the assessee with respect to following heads of additions/disallowances:

- (i) Relief for differential amount of Rs. 2,32,51,916/- which arose due typo error by determining income at Rs. 3,21,29,960/- as against total income determined as per para 4.1 of assessment order at Rs. 88,78,044/-.
- (ii) Relief in relation to the addition of Rs. 56,70,59,983/- made on account of unexplained income from sale of shares net relief of Rs. 49,70,91,591/- and further Rs. 15,73,068/- in respect of two scripts the profit of which was already offered to tax by the assessee. For balance Rs. 6, 83, 95,324/- the Ld. CIT (A) rejected the submission of the assessee that 50% relief should be granted and confirmed that addition.
- (iii) Relief for speculative loss of Rs. 2,47,59,074/- not allowed by the A.O. to set off against other income by relying on order passed by the predecessor Ld. CIT(A) in A.Y.1992-93 which order was approved by the Tribunal earlier in ITA no.4310/Mum/2017 vide order dated 14.01.2019.

- (iv) Relief of Rs. 1,13,90,573/- in respect of addition of Rs. 1,40,55,678/- made by the A.O. on account of oversold position in the capital market.
- (v) Relief of Proportionate Interest expenditure quantified at Rs. 11,49,540/- related to share trading business out of total interest expenditure of Rs. 1,02,00,000/- claimed by the assessee. Balance interest expenditure claimed by the assessee was disallowed as it related to earning of capital gains / dividends and held to be not allowable on the basis of provisions analyzed by the Ld. CIT (A).
- (vi) Relief in respect of arithmetical errors of Rs. 2,90,07,672/- while computing assessed income.

7. At the outset, we recapitulate the history of the assessment. The AO had passed the initial assessment order under section 144 of the Act on 29.03.1996 determining total income of the assessee at Rs. 66,62,59,784/-. The said order was challenged before the first appellate authority who, vide order dated 29.05.2003, dismissed it by invoking provisions of section 249(4) of the Act. The matter travelled to the Tribunal who vide its order dated 23.06.2008 in ITA no. 6885/M/2017 restored the matter to the file of the Ld. CIT (A). Thereafter, the Ld. CIT (A) disposed of the matter before him vide impugned order dated 09.01.2023 and granted relief to the assessee as discussed in para 3 above.

8. In cross appeals filed before us, plethora of submissions and documents were filed by assesseees who have been considered while disposing the appeals. We have also considered important factor that the issues brought before us are related to matters happened about three decades ago and parties to the appeal are still struggling to bring related evidence in support of their respective claims.

The events and circumstances related to appeal basically evolve around following the well settled principles of natural justice and both parties have rival claims in support of their arguments. Needless to say that principles of natural justice have to be followed but it is equally imperative that the exchequer should not be put to loss in realizing its revenue without loss of time and for that it is high time to put an end to disputes by exercising powers vested under the law and gain the finality of the demand taken into account peculiar facts and circumstances of the case instead of keeping alive the rounds of litigation even after almost thirty years have lapsed from the end of the assessment year under consideration.

9. The communication between the AO and Ld. CIT (A) with reference to the additional evidences filed by assessee for issues involved in the appeal and remarks by the A.O. / representatives of both parties before us form part of the record.
10. During the course of the hearing, we had called upon the parties to file their respective brief submissions and also called for counter comments and both the parties have filed their respective submissions/comments.
11. The material, details filed before us have been duly taken into consideration while disposing the present cross appeals.
12. With the above notes, we now proceed with to dispose the assessee's appeal initially as lead case.

ITA No. 436/Mum/2023 (A.Y. 1993-94)

13. The assessee in ITA No. 436/Mum/2023 has raised the following grounds of appeal which are without prejudice to each other:

1. *"The Ld.CIT(A) erred in law and in facts in confirming the addition on account of dividend and interest income at Rs. 88,78,044/- on account of dividend and interest income estimated by the Ld. A.O. in the assessment order.*

2. *"The Ld. CIT (A) has erred in law and in facts in confirming the addition to the tune of Rs. 6, 83, 95,324/- on account of alleged share market trading profit.*

3. *"The Ld. CIT(A) has erred in law and in facts in confirming the addition to the tune of Rs. 26,65,106/- out of the aggregate addition of Rs. 1,40,55.678/- on account alleged share market oversold position.*

4- *"The Ld. CIT (A) has erred in law and in facts in confirming the addition of Rs. 2, 89,250/- on account of alleged profit on sale of shares in shortage.*

5. *"The Ld. CIT (A) has erred in law and in facts in confirming the addition of Rs. 2,08,453/- on account of alleged income from Badla transactions.*

6. *"The Ld. CIT(A) has erred in law and in facts in allowing interest expenditure to the tune of Rs. 11,49,540/- only out of the aggregate interest expense claimed by appellant at Rs. 1,02,00,000/-.*

7.*"The Ld. CIT (A) has erred in law and in facts in allowing deduction of various expenses claimed by the appellant and record in the books of accounts.*

8. *"The Ld. CIT(A) has erred in law and in facts in making enhancement of income to the tune of Rs. 7,97,23,030/- on account of the alleged difference*

in the balance of the Late Mr. Harshad S. Mehta in the books of the appellant and the balance of the appellant in the books of Late Mr. Harshad S. Mehta.

9. "The Ld. CIT (A) has erred in law and in facts in not appreciating that the interest u/s. 234A and 234B of the Act was not computed in accordance with law.

10. the appellant craves leave to add to, amend, alters or deletes all or any of the foregoing grounds of appeal."

14. Ground no. 1 filed by the assessee deals with the confirmation of the addition by the CIT (A) of Rs. 88, 78,044/-.

15. The A.O., based on shares/debenture holdings determined by him, worked out the dividend/interest income of the assessee at Rs. 88,78,044/- as stated in para 4.1 at page 29 of the assessment order. However, while computing total income of the Appellant, the A.O. added Rs. 3, 21, 29,960/- as dividend /interest income of the assessee. This factual discrepancy was brought to the notice of the Ld CIT (A) in appeal filed. This being genuine error apparent from record, the Ld. CIT(A) confirmed the addition only to the extent of Rs. 88,78,044/- considering it as reasonable determination, it being just 1.54% of total shareholding of the assessee amounting to Rs. 57,70,64,581/- and deleted the balance amount. Being aggrieved, the assessee has filed appeal before us challenging the confirmation of the addition on account of dividend/interest income.

16. It is the case of the assessee that she had shown in her books dividend income of Rs. 66,28,489/- and debenture interest of Rs. 5,62,782/- as per the ledger account incorporated in the paper book filed before us at pages 59 to 72 thereof. Thus, the assessee in her books has shown aggregate income from dividend/interest to the tune of Rs. 71, 91,271/- The same stands reflected in the Profit & Loss account of the assessee placed at page 800 of the paper book filed before us.

17. The DR in his response to the submissions made by the assessee has objected to such determination on following counts :

- a) The assessee had not questioned the determination of dividend/interest income in the Grounds of appeal / Form 35 filed before the CIT(A)
- b) The new figures had not been submitted to the A.O. / Ld. CIT (A).
- c) Unless A.O. verifies details with custodian / company list, this ground needs to be dismissed.

18. The AR has countered the objections by arguing that

- a) The grounds filed before the Ld. CIT (A), assessee very much challenges the determination of dividend/interest income made by the AO. In fact, specific submission was made to the effect that the income should be quantified at Rs. 71, 91,271/-.
- b) The new figures were not available in first round of litigation and in the second round, the A.O. had called for bank account/statement details from RBI and the same is available on record.
- c) Book of account had been submitted before the Ld. CIT (A) and remand report from the A.O. had been called for. Thus, opportunity was provided to the A.O. at appellate proceedings to cause verification.

- d) The income from dividend/interest was computed by presuming holdings as on June 1992 and at that relevant time, the A.O. had not received any information from Custodian/companies.

19. On evaluation of the facts and circumstances of the case and details available on record, it is undisputed that the assessee has belatedly filed before the Revenue her books of account which reflect the details of interest/dividend income. It is also undisputed that the records pertain to the events that transpired almost thirty years ago and even if attempt is made to cause enquiries with companies and other related agencies, it is humanly not possible to complete the task of verification with necessary evidences. Even under the provisions of the Act, a person is not obliged to preserve the accounting data beyond period of eight years. Therefore, we are not hopeful that even if the enquiries are caused with related parties, such related parties would be able to furnish any details called for verification. Hence, restoring the matter only for the purpose of gathering further evidence for verification would not yield any practical results. This is apparent from the fact that although the case had been restored to the file of the Ld. CIT (A) in the year 2008, the Ld. CIT (A) has finally disposed the appeal in the year 2023 and no material additional evidences have been gathered/ brought on record by either party to the appeal. There is substance in the argument of the assessee that dividend/interest income having earned through banking channels and reflected in the bank accounts, the primary entries reflected in the bank statement should be considered as material sufficient to determine income. It is not the case of the Revenue that the assessee had earned any dividend /interest in cash from neither her holdings nor

any evidence is made available on record in support of such proposition. Therefore, taking into consideration peculiar facts of the case, in our opinion it would be reasonable to consider the dividend/interest income as shown in the books of account as taxable income of the assessee. Even otherwise, the difference between the figure arrived at by the A.O. is not much higher and as per the principle enshrined in Article 265 of the Constitution of India that State should not enrich itself unjustly, we are inclined to accept the plea of the assessee that addition in respect of dividend/interest income should be restricted to Rs. 71, 91,271/- as against Rs. 88, 78,044/-. **Thus, ground no.1 of the assessee's appeal is allowed for the aforesaid reasons discussed.**

20. Ground no. 2 of the assessee pertains to the addition of Rs. 6, 83, 95,324/- on account of share market trading profit. The assessee is seeking to challenge order passed by the Ld. CIT(A) for not accepting the plea of the assessee to delete the entire addition instead of granting partial relief by deleting Rs. 49,86,64,599/- (Rs. 56,70,59,983/- minus Rs. 6, 83, 95,324/-)

21. Thus, we have to decide upon the issue whether the assessee is entitled to total relief in respect of addition of Rs. 6,83,95,324/- or not.

22. It is the case of the assessee that she has not been furnished the material relied upon by the A.O. for preparing the annexure S-1 which forms the prime basis of making addition. Without having such documents, it is impossible for the assessee to rebut the findings of the A.O. This plea had been raised since the first

round of litigation. However, the Revenue has refuted this argument by referring the instances which granted the inspection to the assessee on number of occasions.

23. The DR has raised objections to the contentions of the AR that are similar to the reasons recorded by the AO i.e. non-filing of the return of income, non-cooperation by the assessee, granting of inspection opportunity, etc. and also referred to the rejection of granting any such concession by the Ld. CIT(A). The DR has maintained that the assessee need not be given any relief that has been granted by the Ld. CIT (A) as the assessee has not given source of acquisition of shares.

24. We notice that the assessee in the second round of litigation has been able to produce the books of account wherein direct evidences in support of such transaction are adduced for majority of transactions. However, the Revenue had been insisting on complete evidences and even as of today after lapse of about 30 years such insistence is maintained. This aspect has been considered in various orders by the Tribunal and in first round, in all fairness, the matters have been restored to the files of lower authorities but even in second round of litigation, these issues remain unsolved. However, taking into consideration that the considerable time has lapsed (i.e. almost 30 years) but finality is not being achieved at lower authorities, the righteous approach is to conclude the issues without causing loss and being reasonable to the parties to the dispute. The recent orders passed by the co-ordinate benches reflect this approach. It is

brought to our notice there are some errors that have been crept in while preparing annexure S-1 in identical circumstances in A.Y. 1992-93 in assessee's own case. As such, computation reflected in the annexure S-1 is not sacrosanct and subject to various types of errors. The Revenue is also skeptical about the correctness of the material produced by the assessee. However, taking into consideration all these various aspects and circumstances, we are persuaded to follow the ratio of the order dated 14.01.2019 passed by the co-ordinate bench of the Tribunal in ITA No. 4204/M/2017 wherein it has been held that considering the time taken and the various other factors the addition needed to be reduced by 50% of such addition.

25. We find that the A.O. has completed the assessment in the case of the assessee for A.Y.1993-94 on the same lines as he made assessment for A.Y. 1992-93. The Ld. CIT(A) has although referred to the above order and extracted relevant observations of the Tribunal , he has declined to follow the order of the Tribunal with following observations:

“7.11 In the year under consideration, the relief has been granted to the appellant on factual basis. The addition which stands confirmed is Rs. 6, 83, 95,324/-. Although the appellant had claimed that 50% relief should be given for this as well, no such relief is possible. As all possible reliefs has been granted on factual basis. Thus, no more relief is required on any estimation basis. The appellant cannot blow hot and cold at the same time.

7.12 In view of the above, this ground is PARTLY ALLOWED.”

26. We notice that the Ld. CIT(A) has denied to follow the order of the Tribunal relied upon by the assessee merely because the Ld. CIT(A) had granted substantial relief on factual basis. We also notice that the Ld. CIT(A) in para 7.5 of his order has mentioned that the assessee had not furnished any affidavit in support of her contentions and hence, she cannot make claims after 30 years without putting to test the factual aspects of the claim. We find the Ld. CIT (A) has not mentioned in his order that he had ever called upon the assessee to file such affidavit in support of her claims and the assessee had failed to file the same before him. It is undisputed that the assessee had been consistently carrying on business of brokerage all along till she was banned to act so under the law. As such, the activities carried on by the assessee cannot be doubted and be different from the A.Y. 1992-93.

27. We further find that the Ld. CIT (A) has given different treatment to the transactions resulting into loss. The Ld. CIT(A) has thereby ignored the transactions giving rise to loss of Rs. 1,28,74,523/-. We are of the view that what is taxable under the Act is net profit /income i.e. profit/income should be arrived at after taking into consideration by treating the loss and profit alike. Therefore, the Ld. CIT (A) has erred in arriving at figures without setting off the loss against the income determined. The assessee has incurred loss of Rs. 1,28,74,523/- details of which are on record and hence, what is taxable is net figure of Rs. 5,76,73,104/- (i.e. Rs. 6,83,95,324/- minus Rs. 1,28,74,523/-).

28. It is also required to appreciated that in the A.Y. 1992-93, the Tribunal had applied 50% yardstick on the gross amount because in that year the assessee had not filed any details related to share market trading profit but in the year under consideration, the assessee has provided details to the tune of Rs. 51, 15, 39,122/- Therefore, this figure of Rs. 51, 15, 39,122/- needs to be reduced from the figure determined by the A.O. in the assessment. The ratio of 50% should be applied in respect of those transactions for which details are not available. In the present case, the profit resulting from such transactions is Rs. 5, 76, 73,104/- as worked out hereinabove.

29. The Revenue has not brought on record to show any deviation made by the assessee in carrying out her business. We notice that the A.O. has consistently framed the assessment for A.Y. 1993-94 in case of the assessee and other related entities in the like manner as that of A.Y. 1992-93. Similarly, even the A.O. has not produced before us the material relied upon by him in order to substantiate the correctness of his working and disprove the figures of the assessee after lapse of 30 years. **In our opinion, different approach cannot be adopted when there is no change in facts and circumstances of the case.** The facts being similar, there being no material adduced before us to distinguish the circumstances and to follow the judicial discipline, we are respectfully following the order dated 14.01.2019 in ITA no. 4204/M/2017 and in all fairness, equity direct the A.O. to allow 50% relief in respect of addition of Rs. 5,76,73,104/- as discussed hereinabove. The addition to the extent of Rs. 2, 88, 36,552/- is sustained and the

balance addition of Rs. 2, 88, 36,552/- is deleted. **In result, the ground no. 2 is partly allowed.**

30. Ground no. 3 pertains to the confirmation of addition of Rs. 26, 65,106/- out of aggregate of Rs. 1, 40, 55,678/- on account of alleged share market oversold position.

31. We find that in submissions filed before us the assessee has sought relief on the basis of order of the Tribunal passed in the assessee's own case for A.Y. 1992-93 in ITA no. 4204/Mum/2017 (supra). The DR in his submissions has objected to it on the ground that cost of acquisition is out of undisclosed income as there is no source of acquisition explained before the Ld. CIT (A).

32. It is undisputed that the Ld. CIT (A) has granted relief to the assessee in respect of this addition to the tune of Rs. 1, 13, 90,573/- on factual basis. We notice that under similar circumstances, the Tribunal has accepted the contention of the assessee that the addition on account of share market oversold position is not sustainable in law since the relevant material relied upon by the AO for computing the additions has never been brought on record till date and therefore, the addition made by the A.O. cannot be sustained.

33. The DR has not brought any order or other material to our kind consideration to show that the facts in the year under consideration are different and distinguishable. Therefore, respectfully following the order of the co-ordinate

bench, we hold that the addition made by the A.O. does not deserve to be sustained in the facts and circumstances of the case and hence, delete the same.

In the result, ground no. 3 filed by the assessee is allowed.

34. Ground no. 4 pertains to addition of Rs. 2, 89,250/- on account of profit on sale of shares in shortage. The assessee has sought relief in respect of this ground by relying on order passed by the Tribunal in her own case for A.Y. 1992-93. The DR has submitted that factual issues of any earlier year order of the group cannot be considered as covered issue during the year. The DR has admitted that the Ld. CIT (A) has declined to grant relief on the ground that the assessee had not brought out any factual evidences.

35. We note that the A.O. has assessed the income of the assessee for A.Y. 1993-94 in the like manner and the DR has not pointed out any distinguishable facts in the appeal under consideration. Therefore, respectfully following the order dated 14.01.2019 (supra) passed by the co-ordinate bench and materiality of the addition, we also delete the addition of Rs. 2, 89,250/- confirmed by the Ld. CIT (A). **In the result, ground no. 4 of the assessee is allowed.**

36. Ground no. 5 pertains to the addition of Rs. 2, 08,453/- sustained by the Ld. CIT (A) on account of alleged income from Badla transactions. The addition has been confirmed with following observations:

“11.2 I found the above contentions of the appellant to be without any basis. The AO has clearly mentioned that the details of badla income are annexed in Annexure S-5. Even the appellant’s reply is couched in a way that the transactions are “largely undertaken”, thereby indicating that other transactions are also undertaken. Hence, this ground is DISMISSED.”

37. The assessee has relied upon the order dated 14.01.2019 (supra) passed by the co-ordinate bench of the Tribunal in her own case.

38. The DR has objected to the deletion of the addition based on earlier year’s ITAT order in following words :

“My submission is whether on factual issues whether a group case be considered as covered. I do submit that legal issues can be considered to certain extent as covered. But factual issues facts and figures have to be verified in each and every case. Even in assessee’s own case on factual issues my humble submission is the figures and circumstances vary from year to year and hence it cannot be considered as a covered issue at all. The Courts have held that every case is decided on the basis of facts and law of that case. It is usually not comparable to any other case except the ratio of that decision.

My humble submission is that on factual issues, for different assessment years, an issue decided in earlier year cannot be treated as covered issue.”

39. We have evaluated the facts and circumstances of the assessee for the year under consideration. Except for saying that figures and circumstances vary from year to year, the learned DR has not brought out any distinguishable fact to deviate from the view taken in earlier year. The A.O. has made the impugned

addition to the income of the assessee by merely observing on page 30 of the assessment order as under :

“During the relevant period the assessee has earned income from Badla amounting to Rs. 2, 08,453/-. The details of Badla Income annexed in annexure no. S-5.”

40. From the above, it is apparent that the A.O. has followed similar process of determining Badla Income as was done in earlier year and the annexure number remains same for both years. **The DR has not dwell upon any distinguishing feature.** In the facts and circumstances of the case, and also considering the materiality of the addition by respectfully following the order passed by the Tribunal in earlier year in assessee’s own case we delete the impugned addition. **In the result, ground no. 5 raised by the assessee is allowed.**

41. Ground no 6 pertains to sustaining the addition on account of interest disallowed. The Ld. CIT (A) has granted partial relief, by allowing on proportionate basis, the interest expenditure only to the extent of Rs. 11, 49,540/- as against the total claim of Rs. 1, 02, 00,000/- made by the assessee.

42. During the course of the hearing, it was argued by the AR that the issue under consideration had been argued at length before the co-ordinate bench C of the Tribunal in the case of related entity i.e. Smt. Pratima Mehta on 16.08.2023 and its order was awaited. It was submitted that the view taken by the co-ordinate bench in that matter may be adopted in the present appeal. The DR has

not raised any objection to it but filed his submissions vis-à-vis corresponding to ground no. 2 and 3 of the cross appeal filed by the revenue which will be duly considered hereinafter.

43. Subsequently, vide letter dated 27.10.2023 the AR has filed copy of the order passed by the co-ordinate bench on 26.10.2023 in the case of Smt. Pratima Mehta in ITA no. 416/Mum/2023. In that case also the Ld. CIT (A) has granted partial relief in respect of interest expenditure claimed and did not allow full interest claimed for the reason that interest expenditure from capital gains and dividend was not allowable. While disposing the cross appeals, the co-ordinate bench has held as under :

“30. We have considered the submissions of both sides and perused the material available on record. From the perusal of the computation of total income, forming part of the paper book on pages 464-466, we find that the assessee claimed interest on bank loans of Rs. 2, 46, 33,261/- against the income under the head “income from other sources”. It is evident from the record that the learned Ld. CIT (A) placed reliance upon the decision of the Hon’ble jurisdictional High Court in CIT v/s Jagmohandas J. Kapadia, [1966] 61 ITR 663 (Bom.), in order to support the conclusion that unless the interest expenditure was incurred solely for the purposes of making or earning dividend income, no deduction as possible under section 57 of the Act. The relevant findings of the Hon’ble jurisdictional High Court in the aforesaid decision, as relied upon in the impugned order, are as under:-

“It would be noticed that what is allowable as expenditure under the said sub-section is only the expenditure incurred solely for the purpose of making or earning dividend income. Emphasis thus appears to be on the object or purpose of incurring of the expenditure. The exclusive object of incurring the expenditure has to be the making or earning of

the dividend income. The mere fact that income by way of dividend has accrued and that the expenditure incurred is in some manner or other related to the accrual of the dividend income is not sufficient.”

31. We find that the Hon’ble Supreme Court in Seth R. Dalmia v/s CIT, [1977] 110 ITR 644 (SC) agreed with the view taken by the Hon’ble jurisdictional High Court in CIT v/s H.H. Maharani Vijaykuverba Saheb of Morvi [1975] 100 ITR 67 (Bom), wherein it was held that the connection between the expenditure and the earning of income need not be direct, and even an indirect connection could prove the nexus between the expenditure incurred and the income. We further find that in CIT v/s Smt. Sushila Devi Khadaria, [2009] 319 ITR 413 (Bom.), in a similar factual matrix, i.e. wherein the AO denied the deduction claimed under section 57(iii) of the Act on the basis that the expenditure was not incurred wholly for the purpose of earning income as the taxpayer was engaged in selling shares in the stock market and the dividend income had accrued as a by-product, the Hon’ble jurisdictional High Court by placing reliance upon the aforesaid decision of the Hon’ble Supreme Court in Seth R. Dalmia (supra), upheld the allowance of finance expenditure as deduction under section 57(iii) of the Act against the income by way of dividends, finance charges and interest which were shown as income from other sources by the taxpayer. Therefore, respectfully following the aforesaid decision of the Hon’ble Supreme Court in Seth R. Dalmia (supra), we are of the considered view that the assessee is entitled to claim a deduction of interest expenditure under section 57 of the Act since receipt of dividend is merely due to the shareholding of the assessee and the interest expenditure has nexus with the income under the head “income from other sources” including dividend income even though not direct. Accordingly, the AO is directed to allow the interest expenditure claimed by the assessee under section 57 of the Act. As a result, ground No. 3 raised in assessee’s appeal is allowed, while ground No. 2 and 3 raised in Revenue’s appeal is dismissed.”

44. It is apparent that the reasons given for not allowing the interest expenditure claimed by the assessee u/s. 57 of the Act are not tenable in view of

the decision of the Apex Court in the case of Seth R. Dalmia (supra) which is duly followed by the co-ordinate bench of the Tribunal in the case of Smt. Pratima Mehta (supra). Respectfully following these judicial precedents, we allow this ground of appeal in favour of the assessee and direct the A.O. to allow interest expenditure claimed by the assessee while computing the taxable income. **In the result, ground no. 6 raised by the assessee is allowed.**

45. **Ground no. 7 is not pressed by the assessee and as such the same stands dismissed.**

46. Ground no. 8 pertains to enhancement of Rs. 7, 97, 23,030/- made by the Ld. CIT (A) on account of difference noticed in the ledger accounts.

47. We notice that the assessee had submitted during appellate proceedings the reconciliation statement and balanced the amounts appearing in the books of the assessee and ledger of the assessee appearing in the books of Harshad S. Mehta. It was noticed by the Ld. CIT (A) that the entry for Rs. 7, 97, 23,030/- was not duly explained. Therefore, the Ld. CIT (A) added the same to the income of the assessee. This amount basically represents the amount receivable from stock exchange/counter party clients and payable to Harshad S. Mehta. In the books of Harshad S. Mehta corresponding entry inadvertently was not made and hence the discrepancy had arisen. Similarly, although no expenditure is claimed on account of this interest in the Profit & Loss account, placed at page 800 of the paper book filed before us, it was wrongly submitted before the Ld. CIT (A) that

the same needs to be disallowed in the hands of the assessee. It is accepted position that the assessee is the stock broker and Harshad S. Mehta had entered into transactions through the assessee. It is the case of the assessee that this transaction has no impact on her income whereas Harshad S. Mehta is supposed to account for the income in his books of account. It has been pointed out to us that the appellate proceedings are pending in the case of Harshad S. Mehta before the Ld. CIT(A) and this issue can be decided after due verification of accounts of counterpart i.e. Harshad S. Mehta.

48. The DR has objected to raising of this ground and the contentions made by the assessee for the reason that no arguments related to such inadvertent error were ever pleaded before the Ld. CIT (A). But at the same time, the DR has not dealt with the alternate submission of taking decision after due verification during pending appellate proceedings.

49. Taking into account the facts and circumstances of the case and the materiality of issue involved, in our opinion the facts are unclear. It is undisputed that the assessee carried on transactions on behalf of her client. But the contention of the assessee that it had not claimed deduction for interest payable to Harshad S. Mehta in her P & L account placed at page 800 of the paper book seems to be prima facie correct. Further, the appellate proceedings in the case of Harshad S. Mehta are pending before the Ld. CIT (A) and **if it is established that Harshad S. Mehta has offered this income for A.Y.1993-94 the same needs to be deleted from the total income of the assessee.** This relief to the assessee is

subject to addition in the hands of Harshad S. Mehta. **In the result, ground no. 8 raised by the assessee is allowed for statistical purposes.**

50. Ground no 9 pertains to the levy of interest u/s. 234A and 234B of the Act. In our opinion, the A.O. is duty bound to levy interest u/s. 234A and 234B of the Act as per the provisions of the Act. We accordingly direct the A.O. to levy interest as per the law. This ground of the assessee has no merit and stands dismissed.

51. Ground no. 10 pertains to general prayer to add/amend, etc. the grounds. The assessee has not exercised any option referred in the prayer clause and the same stands dismissed.

52. In result, the appeal filed by the assessee stands partly allowed for statistical purposes.

53. Now we proceed to deal with the appeal filed by the Revenue herein below as under.

ITA No. 1186/Mum/2023 (A.Y. 1993-94)

54. Revenue being aggrieved against relief given by Ld. CIT(A) , referred hereinabove, has raised the following grounds of appeal in ITA No. 1186/Mum/2023 for A.Y. 1993-94:

"1. Whether on the facts and in the circumstances of the case, the Ld.CIT (A) was justified in restricting the addition to Rs.6.83,95,324/- and granting relief of Rs. 49, 86, 64,659/- made on account of profit earned on unexplained sale of shares, whereas assessee had failed to explain the source of acquiring the shares satisfactorily and the books of accounts produced by the assessee are unreliable?"

2 Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified directing the A.O to ascertain the stock-in-trade and allow such expenditure on a proportional basis, made on account of interest expense which was claimed by the assessee disregarding the fact that the assessee failed to show that the respective entities have charged interest on the amounts paid by the respective parties.

3 Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified directing the A.O to ascertain the stock-in-trade and allow such expenditure on a proportional basis, made on account of interest expense which was claimed by the assessee disregarding the fact that the assessee has claimed the deduction u/s 57 of the Income Tax Act, 1961 and in that case, the assessee must prove that the interest expenditure was incurred wholly and exclusively for the purpose of earning of interest income.

4 "Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in treating the speculative loss incurred by the assessee of Rs. 2,47,59,074/- as normal business loss to be adjusted against other heads of income of the assessee.

5. "Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was correct in directing the AO to verify and grant relief of Rs. 1,13,90,573/- on account of oversold position in the capital market."

6. the appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.”

55. Ground No.1 filed by the Revenue pertains to restricting the addition to Rs.6.83,95,324/- and granting relief of Rs. 49, 86, 64,659/- in respect of the addition made on account of profit earned on unexplained sale of shares.

56. It is apparent that on this issue, the assessee has raised corresponding ground no. 2 of her appeal which has been disposed in favour of the assessee.

57. In addition to reasons recorded while disposing ground no. 2 of the assessee's appeal, we would like to refer to the brief written submissions and counter comments filed by the Ld. DR of the Revenue in support of its ground no.1. The main objection of the Revenue is that the assessee has not furnished source of acquisition of shares. The relevant portion of the submission and counter comments on behalf of the Revenue is extracted below for ready reference :

“Besides, during the assessment stage there was complete non- cooperation from the assessee as per the Assessing Officer. Hence the assessee cannot raise the issue now after almost 30 years that the materials collected behind the back of the assessee. Besides the assessee has not supplied any details at the assessment stage and no RETURN OF INCOME was filed by the assessee.

The Learned CIT (A) at page 22 to 27 of the appellate Order (Para 7) granted relief to the assessee of Rs. 49, 70, 91,591/- and additional relief of Rs. 15, 73,068/-. The remaining amount sustained is Rs. 6, 83, 95,324/-. The learned

CIT(A) also considered that in the assessment year 1992-93 the Hon. Tribunal in ITA/4204/M/2017 dated 14.01.2019 held that considering the time taken and various factors the tribunal reduced by 50% of Rs. 12,34,59,337/- and sustained Rs. 6,17,29,668/-.

However the learned CIT (A) at page 27 of the appellate order held as this is a factual issue and relief has been granted to the assessee on the basis of evidences available. The learned CIT (A) sustained an amount of Rs. 6, 83, 95,324/-. The assessee claimed before the learned CIT (A) to allow 50% of the said relief which is not granted to the assessee, as the Ld. CIT (A) arrived at the issue on a factual basis.

The Department submits that the assessee is not entitled even to Rs. 49, 86, 64,659/- as the assessee has not given the source of acquisition of shares. As the sources are not explained even now, it is submitted that the relief granted by the CIT(A) may kindly be withdrawn and the addition sustained be Rs. 56,70,59,986/- as income of the appellant.”

58. The AR in his counter comments has brought to our notice the order passed by the Tribunal in assessee's own case for A.Y. 1992-93 wherein it has been held that the addition cannot be made merely on the working made by the A.O. and as such, there is no question of establishing any source of acquisition of shares.

59. Thus, the main objection of the Revenue is that the assessee should not be granted relief as she had not furnished source of the investment. We notice that Revenue has not disputed the fact that the assessee acted as share broker and carried out most of the transactions with other related broker firms of the family at the relevant point of time. Similarly there is nothing brought to our attention that the transactions done by the assessee were not carried out on floors of the

stock exchange. As such, it is obvious that the assessee has carried out transactions on the floors of the exchange. We find that the facts and figures brought on record by the assessee before the appellate authority have to be disproved by Revenue by bringing any cogent material or evidence to the contrary. ITAT being final fact finding authority is more concerned about the facts to be established on record based on which a fair adjudication can be carried out. It is undisputed that the Ld. CIT (A) has granted relief to the assessee on factual basis. In our opinion, the impugned order passed by the Ld. CIT(A) on this issue granting relief of Rs.49,86,64,659/- to the assessee is judicious and needs no interference. **Hence, the first ground of appeal filed by the Revenue is dismissed.**

60. Ground no. 2 and 3 are interrelated and hence disposed of jointly. Ground no. 2 pertains to directions given by the Ld. CIT (A) to ascertain stock in trade and allow interest expenditure on proportional basis which was claimed by the assessee. It is the case of the Revenue that the directions are issued without considering fact that the assessee failed to show that the respective entities had charged interest on amounts paid by the respective parties. Ground no. 3 pertains to objection raised by the Revenue that the assessee had claimed deduction u/s. 57 of the Act hence; it is for the assessee to prove that the interest expenditure was incurred wholly and exclusively for the purpose of earning interest income.

61. Thus, it is apparent that the allowability of interest has been covered by cross appeal filed by the assessee in the ground no. 6 discussed at length hereinabove. This issue has been decided in favour of the assessee. Having held that the assessee is entitled to claim deduction for interest expenditure, **these grounds filed by the Revenue become infructuous and hence, ground nos. 2 & 3 are dismissed.**

62. Ground no. 4 raised by the Revenue is against relief granted to the assessee of Rs. 2, 47, 59,074/-. The Ld. CIT (A) has directed the A.O. to allow the loss of Rs. 2, 47, 59,074/- as normal business loss to be adjusted against other heads of income as against denial of such set off by the A.O. by considering it as speculative loss.

63. The A.O. had disallowed the said loss claimed by the assessee by treating the same as speculative loss. The relevant observations made by the A.O. on page 30 of the assessment are reproduced below :

“1.4 The assessee carried out speculative transaction in shares. The details are obtained from the clients of the assessee and others. Such details are enclosed herewith as annexure S-2. It shows that assessee had made a speculative loss of Rs. 2, 47, 59,074/-. The loss speculation is not allowed to be set off against other income.”

64. The assessee challenged non granting of set off of loss against other income in ground no. 5 filed before the Ld. CIT (A). We notice that the Ld. CIT (A) has followed the findings given by his predecessor while disposing appeal for A.Y.

1992-93 holding that proviso (c) to section 45(5) was applicable in the case of the assessee as she was stock broker. This finding of the predecessor Ld. CIT (A) has been upheld by the Tribunal in its order dated 14.01.2019 in ITA no. 4310/Mum/2017. It is the case of the Revenue that the appeal filed by it should be allowed as the A.O. in para 1.4 at page 30 of the assessment order has brought out that the loss is speculative. The relevant portion of the submissions filed before us by the DR on this issue read as under :

“The Ld. CIT (A) at page 27 & 28 at para 8 has detailed discussion of the above grounds of appeal. It is submitted that the Ld. CIT (A) followed his predecessor’s order. It is submitted that this relief may kindly be withdrawn and the Departments appeal be allowed on this issue as the learned A.O has brought out at page 30 para 1.4 that the transaction carried out here is speculative transaction. It is therefore prayed that this GOA of the Deptt be allowed.”

65. In the facts and circumstances the case, it is apparent that the A.O. has not adduced any material to show that the transactions captured are speculative in nature. It is apparent that the entire working or the basis of working (listed in annexure S-2, which is filed at pages 41 to 44 of the paper book filed before us) is arbitrary. Similarly, the Tribunal in assessee’s own case for A.Y. 1992-93 has upheld the view taken by the predecessor first appellate authority. No decision to the contrary has been brought to our attention by the Revenue. Therefore, the facts being identical, respectfully following the view taken by the Tribunal in earlier assessment year, we find no merit in the submissions made by the Revenue. **Therefore, this ground no. 4 filed by the Revenue is dismissed.**

66. In the ground no. 5, the Revenue has challenged the direction given by the Ld. CIT (A) to the A.O. to verify and grant relief of Rs. 1, 13, 90,573/- on account of oversold position in capital market.

67. It is apparent that the issue related to over-sold position in the capital market has also been raised in ground no. 3 of appeal filed by the assessee and the said issue has been decided in favour of the assessee for the reasons discussed hereinabove. **As such, this ground filed by the Revenue has become infructuous and hence, dismissed.**

68. Ground no. 6 pertains to general prayer to add/amend, etc. the grounds. The Revenue has not exercised any option referred in the prayer clause and the same stands dismissed.

69. **In result, the appeal filed by the Revenue stands dismissed.**

Order pronounced in the open court on 27th day of October, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 27/10/2023

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai