आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

आ.अ.सं. 379/मुं/2023 (नि.व. 1992-93)
ITA No.379/MUM/2023 (A.Y.1992-93)

Smt. Deepika A Mehta
32, Madhuli, Dr. A.B. Road,
Worli, Mumbai – 400 018
PAN: ABNPM8231D ..... अपीलार्थी /Appellant

बनाम Vs.

The Dy.Commissioner of Income Tax,
Cen.Circle-4(1), Mumbai-400 021 ..... प्रतिवादी/Respondent

आ.अ.सं. 1178/मुं/2023 (नि.व. 1992-93)
ITA No.1178/MUM/2023 (A.Y.1992-93)

The Dy.Commissioner of Income Tax,
Cen.Circle-4(1), Mumbai-400 021 ..... अपीलार्थी /Appellant

बनाम Vs.

Smt. Deepika A Mehta
32, Madhuli, Dr. A.B. Road,
Worli, Mumbai – 400 018
PAN: ABNPM8231D ..... प्रतिवादी/Respondent

Assessee by	:	Shri Dharmesh Shah & Ms. Mitali Gopani
Revenue by	:	Dr. P. Daniel (Special Counsel)

सुनवाई की तिथि/ Date of hearing	:	12.01.2024
घोषणा की तिथि/ Date of pronouncement	:	05.04.2024

आदेश/ **ORDER**

PER VIKAS AWASTHY, JM:

These cross appeals by the Assessee and the Department are directed

against the order of Commissioner of Income Tax (Appeals)-52, Mumbai (in short ' the CIT(A)'), dated 9.1.2023, for the Assessment Year 1992-93.

ITA No. 379/Mum/2023 (Assessee's appeal)

2. The gist of grounds/additional grounds raised in appeal by the Assessee are as under:

1. Rejection of books of account
2. Addition u/s.69 of the Income Tax Act, 1961 (in short 'the Act') on account of un-explained investments – Rs.14,90,103/-
3. Addition based on disclosure of income by Mr. Harshad S. Mehta – Rs.2,01,61,000/-
4. Addition on account of un-explained receipts – Rs.29,343/-
5. Disallowance of interest expense. As against interest expenditure of Rs.2.05,00,000/-, interest expenditure to the extent of Rs.9,08,273/- was allowed.
6. Addition on account of difference in balances in books of account of Mr. Harshad S. Mehta – Rs.42,49,266/-.
7. Levy of interest u/s. 234D of the Act.

Additional grounds of appeal

1. Addition of profit from partnership firm M/s. Sunrise Enterprises - Rs.3,12,253/-
2. Levy of interest u/s.234A and 234B of the Act.

3. Shri Dharmesh Shah on the behalf of the Assessee submitted at the outset that this is the 3rd round of litigation before the Tribunal. The Assessment Order dated 29.12.2017 u/s.144 r.w.s.254 of the Act was passed in pursuance to the direction of Tribunal vide order dated 15.9.2016 in ITA No.1189/Mum/2012 and ITA No.6164/Mum/2012, for AY 1992-93. The Learned Authorised Representative (in short 'ld. AR') submits that the Assessing Officer (in short 'AO') has rejected the Books of account of the Assessee and has passed the order u/s.144 of the Act. The reasons for rejecting the books of account are given in para 10.5 and 10.6 of the

Assessment Order. One of the reasons for rejecting books of account is, the Assessee has not furnished certified copies of its bank accounts. In first round of assessment the AO had collected bank statements from all bank accounts of the Assessee, therefore, all the relevant bank statements of the Assessee are already available with the AO. To support his submissions, the ld. AR placed on record copy of the Assessment Order dated 28.2.1995 for Assessment Year 1992-93 at pages 1 to 19 of the paper books. He pointed that at page-6 of the said order, the AO has recorded that the details of all bank accounts of the Assessee, all over India, with details of all receipts and payments for the period of 1.4.1991 to 31.5.1992 have been collected. Hence, the observation made by the AO in the present Assessment Order with regard to non availability of certified copies of the bank statements is not correct. He further pointed that the AO has dis-regarded books of account for the reason that the same are not audited as prescribed u/s 44AB of the Act. The ld. AR submits that non-auditing of books cannot be a ground for rejecting books of account u/s. 145 of the Act. He further asserted that the other reasons given in para 10.6 of the Assessment Order viz. books of account not written during the day to day conduct of business; majority of entries in the books of account, specially those pertaining to trading and investment are with closely related persons; limited number of entries involving outside parties; etc., cannot be a reason for rejection of books of account.

3.1 In respect to Ground No.2 relating to addition on account of alleged un-explained investments, the ld. AR submits that in 2nd round of litigation, the Tribunal vide order dated 15.9.2016 (supra) had restored the issue to the AO for de-novo assessment. The AO in the consequent order in the 3rd round of assessment made the same addition without providing any material to the Assessee as per the direction of the Tribunal. The AO further made addition in respect of those issues that were deleted by the Commissioner of Income Tax (Appeals) [in short 'the CIT(A)']. It is pertinent to mention here that no further appeal was filed by the Department against the order of the CIT(A). Thus, the findings of the CIT(A) attained finality. Now in de-novo

assessment proceedings, AO could not have made addition in respect of the issues that had attained finality. The ld. AR submitted that in original Assessment Order, the AO had collected information from three sources viz. Custodian appointed under the Special Court (TORTS) Act, Companies issuing shares, dividend account provided by Assessee and the shares registered in the name of Assessee and seized from various premises of the group. The letter from Custodian dated 29.10.2023 is at page 242 of the paper books. The list of investments is at page 266 of the paper books. The Assessee made repeated requests to the AO to provide the documents on the basis of which addition has been made on account of un-explained investments. Despite repeated requests and reminders from time to time, the Assessee was not provided with the documents. The ld. AR pointed that the Assessee had written 13 letters to AO/CIT(A). The details of letters requesting for evidences and cross examination of the evidences used for making the addition on un-explained investments is placed at page 1582 of the paper books. He pointed that out of addition of Rs.14.90 lakhs, addition of Rs.9 lakhs are based on the information from Custodian. A similar issue has been decided in favour of the Assessee in case of one of the family members, i.e., in the case of Mr. Harshad S. Mehta in ITA No.5190/M/2017 decided on 31.8.2020 and in case of Pratima Hitesh Mehta in ITA No.416/Mum/2023 in AY 1992-93 decided on 26.10.2023. He pointed that a perusal of para 12 of the order would show that the source of addition in the said case is identical to the source of addition in the case of Assessee. The source wise chart of addition on account of un-explained investments made in the case of Assessee is given at page 1517 of the paper books.

3.2 In respect to ground no.3 of the appeal, the ld. AR submits that the addition has been made based on disclosure by Mr. Harshad S. Mehta. He contended that once books are available and additions are based on books no further addition can be made on the basis of declaration. In support of his argument, the ld. AR placed reliance on the decision in case of Cascade Holdings Pvt. Ltd. Vs. DCIT in ITA No.1414/Mum/2019, for AY 1992-93 decided on 9.4.2021.

3.3 In respect of ground no.4, the ld. AR made a statement that the ground is not pressed on account of smallness of amount.

3.4 In respect of ground no.5 relating to interest expenditure, the ld. AR submits that the Assessee had borrowed funds from three brokers, i.e., Mr. Harshad S. Mehta, Mr. Ashwin S. Mehta and Ms. Jyoti H. Mehta and invested the borrowed capital in shares. The AO has disallowed interest against the above borrowings. Since the borrowed funds were invested, the interest on such borrowings has to be allowed against dividend income. The income is taxable under the head 'other incomes'. In support of his contentions, he placed reliance on the decision of the Tribunal in the case of Jyoti H Mehta Vs. ACIT in ITA No.436/Mum/2023 and ITA No.1186/Mum/2023 for AY 1993-94 decided on 27.10.2023. He further pointed that a similar view has been taken in the case of Pratima Mehta in ITA No.416/Mum/2023 & ITA No.1180/Mum/2023 decided on 26.10.2023.

3.5 In respect of ground no.6, the ld. AR submits that the CIT(A) has made addition on account of difference in the balance of the books of account of Harshad S. Mehta and Assessee for the period relevant to AY 1992-93. He referred to re-conciliation of the ledger balances at pages 552 & 553 of the paper books. He pointed that similar issue was decided in the case of Hitesh S. Mehta in ITA No.2623/Mum/2022 for AY 1994-95 on 23.3.2022.

3.6 In respect of ground no.7 of the appeal, the ld. AR submitted that the AO has levied interest u/s 234D of the Act. He pointed that no interest should be charged as the original assessment was completed on 28.2.1995. The provisions of Section 234D were introduced w.e.f. 1/6/2003. Since, section was not in existence when the assessment was completed, no interest can be charged under the said section in de-novo assessment proceedings. In support of his contentions, he placed reliance on the

decision in the case of DIT Vs. Delta Airlines Inc. 358 ITR 367 and CIT Vs. Reliance Energy 358 ITR 371 SC.

3.7 In respect of additional ground no.1 of appeal, the ld. AR submits that the issue can be sent back to the AO for verification. As regards additional ground no.2 of appeal the ld. AR made a short prayer that interest u/s 234 A and 234 B can only be charged upto the date of regular assessment. To support his submissions, he placed reliance on DCIT Vs. Harshad S Mehta in ITA No.6227/Mum/2018 decided on 17/10/2019.

4. Per contra, Dr. P. Daniel, Special Counsel representing the Department vehemently defended the AO and the order of the CIT(A) to the extent additions have been confirmed by the First Appellate Authority. He submitted that the AO rejected books of account of the Assessee as the AO was not satisfied with the correctness and completeness of the accounts of Assessee. The AO in the Assessment Order has recorded the reasons to come to such conclusion. The CIT(A) has upheld the findings of the AO for rejecting books of account.

4.1 In respect of ground no.2, relating to addition under section 69 of the Act on account of un-explained investments, the ld. DR submits that the addition is based on letter from the custodian. He vehemently supported the Assessment Order and the order of the CIT(A) on this issue. He pointed that even if it is assumed that the letter is wrong, it would not mean that there are no shares. The Assessee never reconciled the list given by the Custodian, no explanation whatsoever was furnished by the Assessee before the AO/CIT(A). In so far as information regarding dividend is concerned, the same is as per the records. As regards, other grounds of appeal, the ld. DR placed reliance on the findings of the AO/CIT(A).

5. We have considered the submissions made by the rival parties and have considered the decisions and documents on which reliance has been placed by the AR of the Assessee. The first issue raised in the appeal by the

Assessee is in respect to rejection of books of account. It is an undisputed fact that the Assessee has not filed its return of income either under Section 139 or in response to the notice u/s. 142(1) of the Act. The original assessment was made vide order dated 28.2.1995 assessing total income at Rs.27,63,93,984/-. No books of account were either produced during the course of assessment proceedings nor the books of account were found during search, in the year 1990 and thereafter in 1992. However, during the course of first assessment proceedings, the Department had collected details of all bank accounts of the Assessee along with details of all receipts and payments for the period from 1.4.1991 to 31.5.1992. For the various shortcomings in the assessment the matter travelled to and forth between AO and the Tribunal. This is the third round of litigation before the Tribunal. The impugned Assessment Order dated 29.12.2017 is passed in consequence to the directions of the Tribunal in Assessee's appeal in ITA No.1889/Mum/2012(supra). The AO has rejected books of account in the third round inter-alia for the reason that, books are not audited u/s. 44AB; Assessee has not been able to submit certified copies of bank accounts which according to the AO are primary source of ascertaining validity of books of account and the Assessee has not been able to answer substantive issues which are primary material in verifying books. The power to reject books stem from the provisions of Section 145(3) of the Act. The relevant extract of the provisions of section 145(3) is reproduced herein below:

> *145(3) "Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."*

A bare perusal of above provisions would show that non audit of accounts u/s.44AB cannot be a reason for rejection of books. A penal provision under the Act for non-audit of accounts may get attracted for such violation. Further, the AO pointed that the Assessee has not submitted copies of bank accounts which is a primary source to ascertain validity of the books of

account. The said observations of the AO is again contrary to the facts on record. In the Assessment Order dated 28.2.1995 for the AY 1992-93, the AO in para 2.5 of the order has categorically observed as under:

> *"In absence of any detail provided by the assessee, the department had to collect the information from the following sources:-*
>
> | *SNO.* | *SOURCE* | *INFORMATION COLLECTED* |
> |---|---|---|
> | *1.* | *Reserve Bank of India* | *Details of all bank accounts of the assessee, all over India alongwith details of all receipts & payments for the period 1.4.91 to 31.5.92"* |

Thus, bank statements of the Assessee were already in possession of the AO. The second reason given by the AO for rejecting books is also not sustainable.

5.1 The AO in para 10.6 of the Assessment Order has further pointed that the books of accounts are not reliable for the following reasons:

> *"i. Since the said books of accounts have not been written during the day to day conduct of business, but admittedly several years after close of the relevant previous year a number of entries in the said books appear to be made as an afterthought. For example, the drawing account shows uniform withdrawal of 5000/- for personal expenses at the end of every month. In a real situation, there is no such rigidly fixed pattern.*
>
> *ii. Majority of entries in the books of accounts, specially those pertaining to trading and Investment, are in the form of journal entries in the name of persons closely related to the Assessee such as Ashwin Mehta, Harshad Mehta etc. Here it may be noted that like the assessee, these persons had also not been maintaining their books of accounts in a regular manner and had written their books as late as the assessee. Thus, their books are as defective as those of the assessee and any cross verification would be meaningless.*
>
> *iii. Even in respect of the limited number of entries involving outside parties, any cross verification is now practically impossible as over twenty three years have lapsed since close of the relevant previous year and a person is not statutorily required to retain books of accounts for more than six years."*

The above reasons cited by the AO for rejecting books does not fall within the ambit of sub section (3) of section 145 of the Act. For rejection of books of account, the AO has to record (dis) satisfaction about the correctness or completeness of the accounts of Assessee. The reasons given by the AO with instances does not express AO's opinion regarding the correctness and completeness of the accounts. For instances, if in the opinion of AO drawings shown in the books for personal use are uniform every month and the AO is of the opinion that such withdrawals should be higher, the AO could have made addition accordingly, but that cannot be the reason for rejection of books. Similarly trading transaction with the closely related persons cannot be a reason for rejection of books unless, some deceitful element is shown in the transaction. In light of above observations, we hold that the AO has erred in rejecting books of account. Thus, the Assessee succeeds on ground no.1 of appeal.

6. In ground no.2, the Assessee has assailed addition u/s.69 of the Act on account of unexplained investments. The Tribunal in second round in ITA No.1889/Mum/2012 (supra) alongwith other grounds had restored the ground raised by the Assessee in respect of addition on account of unexplained investments. The Coordinate Bench following the decision in case of Hitesh S. Mehta in ITA No.538/Mum/2021 for AY 1992-93 decided on 1.5.2013 concluded as under:

> *"6. Since the coordinate Bench of the Tribunal has restored the identical issues to the file of the AO for fresh adjudication in the case of Harsh S. Metha (supra), we, respectfully following the view taken by the coordinate bench, restore all the grounds except ground number 8 and 14 of the present appeal to the file of AO to pass assessment order afresh after affording reasonable opportunity of being heard to the assessee. Accordingly, ground Nos. 1 to7 and 9 to 13 of the appeal are allowed for statistical purpose."*

In the case of Hitesh S. Mehta, the Tribunal held as under:

> *"4. We have heard the rival submissions and consider them carefully. We have also perused the copies of the order of the tribunal in case of Smt. Pratima Metha and the assessment passed in first round.*
>
> *5. After considering all the relevant material, we found that the matter should go back to the file of Assessing Officer to pass afresh order. It is seen that for*

rejecting the books of account, the AO has not given any valid reasons as no specific defect has been pointed out in the books of account, therefore in our view the Assessing Officer should go through the books for determining the income on the basis of books of accounts. The Assessing Officer has to bring on record specific evidence or defect to prove falsity of books of account is no falsity has been proved in the assessment order passed by the AO. Besides this the department has to provide all the details and material on which basis the addition have been made earlier. If such material is disputed by the assessee then in our view correctness of such material has to be examined as per provision of law. We are not convinced with the argument of Ld. DR that assessee can collect information from parties from where Assessing Officer has obtained the copies on which basis the addition have been made. Therefore the assessing officer is directed to provide the copies of all information on which basis, the AO wanted to made additions in the hands of the assessee. If the AO does not provide the material then in our view addition cannot be made. In view of above facts and circumstances, we set aside order of the authorities below and restore the issue to the file of the assessing officer to pass assessment de novo after affording reasonable opportunity of being heard to the assessee and as per observations of hours made in the order is above. We order accordingly."

The ld. AR of the Assessee pointed that the AO in assessment proceedings in the third round without providing the details and materials on the basis of which addition was made, again made the same addition, in violation of the directions of the Tribunal. It was further pointed that in the impugned Assessment Order, the AO has made addition in identical manner. We have examined the Assessment Order, dated 22.12.2006 that was quashed by the Tribunal in second round of litigation. We find that the AO in the Assessment Order dated 29.12.2017, i.e., passed in compliance of the Tribunal order has made addition on account of unexplained investments for identical reasons as was done in the past. Even the reasons given by the AO for making the additions are verbatim. A perusal of impugned Assessment Order reveals that some of the paras giving reasons for making addition on account of unexplained investments in shares are verbatim of para 4.3 to 4.10 of the Assessment Order dated 22.12.2006. The ld. AR of the Assessee has pointed that the AO has made addition even on those issues that were earlier allowed by CIT(A) and since the Department has not filed any appeal on the findings of the CIT(A), the finding of the CIT(A) qua issues decided in the favour of the Assessee has attained finality. Once the issue which have been decided in Appellate proceedings is not further challenged by party against whom the issue has been decided, to that extent the issue attains

finality. We are in agreement with the submissions made on behalf of the Assessee that the Assessing Officer has failed to follow the directions of the Tribunal. Since the issue has travelled thrice before the AO, we see no reason to again restore this issue to the file of AO. The AO should have complied with the directions of the Tribunal while deciding this issue. We have no hesitation in allowing ground no.2 of appeal.

7. The third ground of appeal is with regarding addition based on disclosure made by Harshad S. Mehta. In a statement recorded u/s 132(4), Harshad S. Mehta made a disclosure of Rs.100 crores on behalf of whole group which includes the present Assessee. We find that on the basis of same disclosure statement of Harshad S Mehta, proportionate additions were made in the hands of different constituents of the group. In the case of M/s. Cascade Holding Pvt. Ltd. in ITA No. 1414/M/2019 decided on 9.4.2021 the Coordinate Bench deleted the addition based on disclosure statement holding as under:

> *"26. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that Shri Harshad Mehta made a composite disclosure of Rs.100 crores for the entire group consequent to search action. We note that the breakup of the said disclosure was not available before the AO and he proportionately calculated the amount relating to the assessee at Rs.33,60,000/-. Now we note that the co- ordinate bench of the Tribunal in the first round of litigation has admitted the books of accounts as an additional evidence and restored the matter back to the file of the Ld. CIT(A) to decide the issues on the basis of books of accounts. We find merit in the contentions and arguments of the Ld. A.R. that the disclosure was made at a stage when the complete books of accounts were not available and it was not possible for the group to determine its correct income from share trading profit, dividend and capital gain etc. and the disclosure was purely on estimation basis. But now since the books of accounts are before the Revenue Authorities and contains all the information qua the income of the assessee by way of profit on share trading, dividend and capital gain etc and the actual income of the assessee has been assessed by the Revenue Authorities based on the bank statements and other accounting records, therefore the income as offered by way of composite disclosure by Shri Harshad Mehta cannot be added to the income of the assessee. The case of the assessee also is squarely covered by the decision of the co- ordinate bench of the Tribunal in the related concern case of M/s. Orion Travels Pvt. Ltd. vs. ACIT (supra) wherein identical issue has been decided in favour of the assessee. We, therefore, respectfully, following the decision of the co-ordinate bench of the Tribunal, set aside the finding of the Ld. CIT(A) and direct the AO to delete the addition. The ground no. 6 is allowed."*

In the instant case, since, we have accepted the books of account of Assessee, the addition based on disclosure statement of Harshad S. Mahta is liable to be deleted for parity of reasons. Hence, ground no.3 of the appeal is allowed.

8. In so far as ground no.4, the addition in respect to unexplained receipts of Rs.29,343/-, the ld. AR made statement at Bar that he is not pressing this ground on account of smallness of the amount involved. In view of the statement made by the ld. AR, ground no.4 is dismissed.

9. The ground no.5 of the appeal is against disallowance of interest expenditure. The Assessee has claimed interest expenditure of Rs.2,05,00,000/- on borrowings for investments in shares. The AO allowed interest expenses of Rs.9,08,273/- only. The Assessee had paid interest to the broking firms viz., Mr. Harshad S. Mehta, Mr. Ashwin S. Mehta and Ms. Jyoti H. Mehta. The interest expenditure has been disallowed for the reason that the books of account of the Assessee are un-reliable and interest payable is tentative and provisional. We find that a similar issue had come up before the coordinate bench in the case of Jyoti H. Mehta in ITA No.439 & 1186/Mum/2023. The Tribunal vide order dated 27.10.2023 decided the issue in favour of the Assessee holding as under:

> *"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."

The primary reason for rejecting interest expenditure is, books of account of the Assessee are unreliable. We have in preceding paragraphs of the order reversed the findings of authorities below in rejecting books of account u/s

145(3) of the Act. Therefore, the said reason for making addition is no longer sustainable. In so far as other reasons given by the Assessing Officer, i.e., interest payable is tentative, no basis for charging interest and that the broking firms have not charged interest, etc., the reasons are recorded without reference to any material on record. The Assessing Officer has not given reasons/basis to reach such a conclusion. Thus, in view of the aforesaid decision of the Co-ordinate Bench and facts of the case, the addition in respect of interest expenditure is deleted.

10. In ground no.6 of the appeal, the Assessee has assailed the addition made on account of mismatch in the balances of books of Harshad S. Mehta and the Assessee. The addition on account of difference of balances was not originally made by AO. It was during the first appellate proceedings that the CIT(A) made enhancement. The ld. AR pointed that similar addition was made in the case of Hitesh Mehta in Assessment Year 1993-94. We find that in the case of Hitesh Mehta, the Tribunal in ITA No. 2623/Mum/2022 restored the issue back to the files of AO as during the assessment proceedings, the AO had made addition based on alleged concession granted to the Assessee. The Assessee before the CIT(A) and the Tribunal contested that no such concession was granted. In the instant case, there is no such dispute. The addition has not been made by the AO on any concession but on merits. The Assessee has also placed reliance on the decision in the case of Ms. Jyoti H. Mehta in ITA No.436 & 1186/Mum/2023. We find that the coordinate bench while deciding this issue in para 49 of the order, restored the issue back to the file of AO holding as under:

> *"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 USTRY OF LAIN 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."

After taking into consideration facts of the case, we deem it appropriate to restore the issue back to the file of Assessing Officer for deciding the issue afresh on the line of directions aforesaid given in the case of Jyoti H. Mehta. Thus ground no.6 is allowed for statistical purpose.

11. In ground no.7 of appeal the Assessee has assailed levy of interest u/s. 234 D of the Act. The short prayer of Assessee is, the original assessment was completed on 18.2.1995 and the provisions of section 234 D were introduced from 1.6.2003, hence no interest should be charged under said section. We find that the Hon'ble Apex Court in the case of CIT Vs. Reliance Energy Ltd. (supra) held that where the assessment was completed prior to 1.6.2003, i.e., date of insertion of Section 234 D by the Finance Act, 2003, the interest under said section cannot be levied. In other words, the provisions of section 234 D cannot be applied retrospectively. Thus, in light of the aforesaid decision, the AO is directed not to charge interest u/s 234 D of the Act in the impugned Assessment Year . The ground no.7 of the appeal is thus, allowed.

12. The Assessee in additional ground no.1 of the appeal has assailed addition of profits from partnership firm M/s. Sunrise Enterprises. The short prayer of Assessee with respect to this ground is that the aforesaid ground was inadvertently left to be taken in the grounds of appeal hence is taken as additional ground of appeal. Except praying for restoring this issue back to the file of AO, no other submission was made by the ld. AR. A perusal of impugned order reveals that the ground emanates from the addition made in the assessment proceedings. The Assessee had assailed the addition in respect of profits from M/s. Sunrise Enterprises before the CIT(A) in ground no.7. In proceedings before the CIT(A), the AO had agreed for the addition. Thus, in view of the concession given before the CIT(A), we find no merit in additional ground no.1. Accordingly the same is dismissed.

13. In additional ground no.2 of the appeal, the Assessee has assailed levy of interest u/s. 234 A and 234 B of the Act. The ld. Counsel for the Assessee prayed that interest can be charged under aforesaid sections only up to the date of regular assessment. Charging of interest u/s 234 A and 234 B is mandatory and consequential. We deem it appropriate to restore this additional ground of appeal back to the file of AO for levy of interest in accordance with law.

14. In the result appeal of Assessee is partly allowed.

ITA No. 1178/Mum/2023 (Department's appeal)

15. The Department has assailed the order of CIT on following grounds:

> *1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.24,70,66,313/-, made on account of unexplained investment and trading in shares, wherein the assessee had failed to explain the source of acquiring the shares satisfactorily.*
>
> *2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in 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 in 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.*

16. Both the sides are unanimous in stating that ground no.1 in Departments' appeal is corresponding to ground no.2 in the appeal by Assessee and ground no.2 and 3 in the appeal by the Department are corresponding to ground no.5 in appeal by the Assessee.

17. Since we have allowed ground no.2 in appeal by the Assessee, as a sequitur, ground no.1 of the appeal by Department is liable to be dismissed.

We hold and direct accordingly. Ground no.2 & 3 of the Department's appeal are corresponding to ground no.5 of Assessee's appeal. As ground no.5 of Assessee's appeal has been allowed, as a consequence ground no.2 & 3 of Department's appeal are liable to be dismissed. We hold accordingly.

18. In the result appeal of Department is dismissed.

19. To sum up, appeal of Assessee is partly allowed and that of the Department is dismissed.

Order pronounced in the open court on Friday the 5th day of April 2024.

Sd/-	Sd/-
(GAGAN GOYAL)	(VIKAS AWASTHY)
लेखाकार सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 05.04.2024
Mini, Sr. PS

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai