

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 380/Mum/2023

Assessment Year: 1992-93

Ashwin S. Mehta L/H of Late Rasila S. Mehta 32, Madhuli Apartment 3 rd Floor, Dr. A.B. Road Worli Mumbai - 400018 [PAN: ABNPM8222C]	Vs	ACIT, CC-4(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 1181/Mum/2023

Assessment Year: 1992-93

DCIT, CC-4(1), Mumbai	Vs	Ashwin S. Mehta L/H of Late Rasila S. Mehta 32, Madhuli Apartment 3 rd Floor, Dr. A.B. Road Worli Mumbai - 400018 [PAN: ABNPM8222C]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 462/Mum/2023

Assessment Year: 1993-94

Ashwin S. Mehta L/H of Late Rasila S. Mehta 32, Madhuli Apartment 3 rd Floor, Dr. A.B. Road Worli Mumbai - 400018 [PAN: ABNPM8222C]	Vs	DCIT, CC-4(1), Mumbai [Erstwhile ACIT, CC 23, Mumbai]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 1182/Mum/2023
Assessment Year: 1993-94

DCIT, CC-4(1), Mumbai	Vs	Ashwin S. Mehta L/H of Late Rasila S. Mehta 32, Madhuli Apartment 3 rd Floor, Dr. A.B. Road Worli Mumbai - 400018 [PAN: ABNPM8222C]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Dharmesh Shah & Ms. Mitali Parekh, A/Rs
Revenue by :	Shri Dr. P. Daniel - Spl. Counsel

सुनवाई की तारीख/Date of Hearing : 12/02/2025
घोषणा की तारीख /Date of Pronouncement: 19/02/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 380/Mum/2023 & I.T.A. No. 1181/Mum/2023, are cross appeals by the assessee and the revenue for AY 1992-93 and I.T.A. No. 462/Mum/2023 & I.T.A. No. 1182/Mum/2023 are cross-appeals for AY 1993-94.

2. All these appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

I.T.A. No. 380/Mum/2023 & I.T.A. No. 1181/Mum/2023; AY 1992-93.

3. Representatives were heard at length. Case records carefully perused and the relevant documentary evidences duly considered in light of Rule 18(6) of the ITAT Rules, 1963.

4. The grievance of the assessee read as under:-

"1. The Ld. CIT(A) has erred in law and in facts in rejecting the books of accounts and holding that the same do not stand admitted.

2. *The Ld. CIT(A) has erred in law and in facts in confirming the addition of Rs. 5,10,025/- on account of alleged unexplained investments of the appellant.*

3. *The Ld. CIT(A) has erred in law and in facts in confirming the addition of Rs. 40,385/- on account of alleged unexplained receipts.*

4. *The Ld. CIT(A) has erred in law and in facts in making addition of Rs. 77,451/- by enhancing the income to that extent on account of unexplained receipts in the bank account. The Ld. CIT(A) has not complied with the provisions of 251 of the Act while making the said enhancement.*

5. *The Ld. CIT(A) has erred in law and in facts in confirming the addition on account of profit from partnership firm, M/s. Sunrise Enterprises of Rs. 2,52,075/-.*

6. *The Ld. CIT(A) has erred in law and in facts in allowing the deduction of interest expense only to the extent of Rs. 14,92,800/- as against the aggregate amount of Rs. 2,40,00,000/- claimed by the appellant.*

7. *The Ld. CIT(A) has erred in law and in facts in enhancing the assessed income of the appellant by Rs. 20,83,911/- on account of difference in the balance in the books of account of Late Mr. Harshad S. Mehta for A.Y. 1992-93. The Ld. CIT(A) has not complied with the provisions of s. 251 of the Act while making the said enhancement.*

8. *The Ld. CIT(A) has erred in law and in facts in not appreciating that interest u/s. 220(2) of the Act was incorrectly computed by the Ld. A.O.*

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

5. Ground No. 2 relates to the addition of Rs. 5,10,025/- on account of alleged unexplained investments of the assessee. Briefly stated the facts of the case are that the assessee is a notified person under the Special Court (Trial of Offences relating to transactions in Securities) Act, 1992 and all assets including bank accounts were attached and vested in the hands of the Custodian appointed under the said Act. The original assessment was completed on 28/02/1995 determining the total income at Rs. 23,43,22,140/-. The quarrel travelled up to the Tribunal and the

Tribunal vide order dated 28/04/2006 in ITA No. 400/Mum/2004, set aside the assessment to be re-framed *de novo* in accordance with law. Thereafter, in compliance with the order of the Tribunal, the proceedings were initiated and order was framed u/s 144 r.w.s 254 of the Act determining the total income at Rs. 24,65,02,868/-. The quarrel again went up to the Tribunal and the Tribunal vide order dated 07/06/2013 in ITA No. 583/M/2012 again set aside the assessment and restored the issues to the file of the AO. Pursuant to the order of the Tribunal re-assessment proceedings were initiated.

6. The AO found that in the original assessment order as well as the consequent assessment order, the addition of Rs. 21,86,46,178/- was made on account of unexplained investment and trading in shares which was based upon the information gathered from the Custodian appointed under the Special Court Act, 1992, various companies issuing shares dealt in by the assessee, dividend account and investment in shares accounts by the assessee, shares seized from various premises of the group, client of the group and contract notes. The status of the additions can be understood from the following chart:-

Sr. No.	Particulars/source of addition	Amount of addition (Rs.)	Additions deleted by Ld. CIT(A) (Rs.)	Additions sustained by Ld. CIT(A) (Rs.)
1	Custodian Letter dated 29.10.1993	6,27,750	6,27,750	-
2	Company letters received u/s 133(6)	63,67,586	59,36,861	4,30,725
3	Dividend details/warrants	82,42,720	81,63,420	79,300
	Total	1,52,38,056	1,47,28,031	5,10,025

7. On identical set of facts in one of the group cases, namely, Sudhir S. Mehta, Co-ordinate Bench in ITA No. 417/Mum/2023 & ITA No. 1179/Mum/2023 had considered the grievance in details and held as under:-

“15. Considering the facts in totality, we are of the considered view that even in the third round of litigations, the AO could not provide the specific information/details collected from the companies on the basis of which the impugned additions have been made, are in complete violation of the principles of natural justice.

16. We find that the Co-ordinate Bench in the case of Hitesh S. Mehta vs. DCIT in ITA No. 538/Mum/2012, while setting aside the issues to the file of the AO, has specifically mentioned that, “Therefore, the Assessing Officer is directed to provide 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 can not be made.” This specific direction has been upheld by the Hon’ble High Court of Bombay in ITA No. 2490 of 2013, vide order dated 07/06/2016, wherein the Hon’ble High court, held as under:-

“(d) We find that the impugned order of the Tribunal on the above issue is unimpeachable The basic principles of natural justice require that before any addition is made by the Assessing Officer on information obtained from third parties/own source, he must confront the assessee with the material so obtained. This above would enable the assessee to explain the correctness/incorrectness or unreliability of the evidence so obtained. In the absence of the necessary evidence sought to be used being given by the Assessing Officer to the Assessee, it would amount to condemning a person without a proper hearing.”

16.1. Similar view was taken by the Co-ordinate Bench in ITA No. 6026/Mum/2017 and ITA No. 5190/Mum/2017. The relevant findings read as under:-

“So far as, the second amount of 7,28,925/- representing the addition made on the basis of letters filed by four companies as mentioned at serial no. 9 to 12 in para no. 9 above, we find that in the said letters details provided were incomplete as it is not clear whether the same pertain to the year under consideration. For example, the details and information provided by these companies do not explain to which year these transaction relate to and there were several flaws in the said letters. Thus, the details provided by above 4 companies do not reflect the exact details to come to the conclusion the correct holding of the assessee and therefore, we find merits in the arguments of the Ld. AR that the addition on the basis of said letters is not justified and can not be sustained. Accordingly, we set aside the order of the CIT(A) on the issue and direct the AO to delete the addition.”

16.2. Similarly, the Co-ordinate Bench in the case of Pratima H. Mehta in ITA NO. 416/Mum/2023 and 1180/Mum/2023, had the occasion to consider an identical situation and the Co-ordinate Bench held as under:-

“18. As regards the addition made on the basis of company letters, the learned AR submitted that the enquiries were made by the AO during the course of original assessment proceedings with various companies seeking information in respect of the shareholding of the assessee. It was further submitted that although the said information so received was used to determine the shareholding in the various scrips

and treated the same as unexplained, however, copies of these evidences were never provided to the assessee. In this regard, the learned AR referred to details of various letters requesting the AO/learned CIT(A) to provide the information received from the company on the basis of which addition was made. The learned AR further submitted that to the extent company letters were provided by the AO, in the third round of proceedings, assessee's explanation was accepted by the AO and the addition to an extent of Rs.1,32,13,835, was deleted. It was further submitted that during the course of proceedings before the learned CIT(A), even though several letters were provided to the assessee, the copies of letters based on which the addition of Rs.3,13,213, was sustained, were not provided to the assessee. 19. We find that the coordinate bench of the Tribunal vide its order, in the second round of proceedings, in ITA No.2694/Mum./2012, vide order dated 30/06/2014, specifically directed the AO to provide copies of all information on the basis of which additions were made in the hands of the assessee. The coordinate [bench further held](#) that if the AO does not provide the material then the addition cannot be made. The relevant findings of the coordinate bench in the aforesaid decision, are reproduced as under:-

"5. After considering the impugned order, various Tribunal orders in the group cases of the assessee and also the grounds raised before us, we find that in the case of [Smt. Rasila S. Mehta](#) (supra) and in other cases also, similar grounds were raised. In these cases, the Tribunal has set aside the entire matter to the file of the Assessing Officer for making fresh assessment denovo. Since the facts of the assessee's case are similar to other cases viz. Hitesh S. Mehta, Rasila S. Mehta, Jyoti H. Mehta and Pratima H. Mehta, cited above, therefore, for the sake of ready reference, the relevant findings, as given in the decision of Rasila S. Mehta, is reproduced herein below:-

"3.2 Having considered the rival submissions and careful perusal of the relevant material on record, we note that the CIT(A) while deciding the matter has relied upon the order in the case of Shri Hitesh S. Mehta, as it is evident from para 9.20 as well as para 10.1 of the impugned order. We further note that the facts in the case of the assessee as well as in the case of Shri Hitesh S. Mehta, are identical and the matter arising from the same search and seizure action [u/s 132](#) of the Act. The coordinate bench of the Tribunal, while deciding the identical matter in the case of Shri Hitesh S. Mehta, has disposed off the same in Para-4 & 5 as under:-

4. We have heard rival submissions and consider them carefully. We have also perused the copies of the order of the tribunal in case of Smt. Pratima Mehta and the assessee passed in first round.

5. After considering all the relevant material, we found that the matter should go back to the file of the Assessing Officer to pass a fresh 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 accounts"

The Assessing Officer has to bring on record specific evidence or defect to prove falsity of books of account as 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 Id. 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, 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 issues 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 ours made in the order as above. We order accordingly.

4 Since the facts and circumstances are identical and the nature of issue raised in the case of the assessee as well as in the case of [Shri Hitesh S Mehta](#) (supra) are also similar; therefore, to maintain the rule of consistency, we set aside the matter to the record of the Assessing Officer with the similar directions and terms as in the case of [Shri Hitesh S Mehta](#) (above)."

6. Thus, consistent with the view taken by the Tribunal in all these cases, wherein identical facts and issues are involved, therefore, we also set aside the impugned order passed by the learned Commissioner (Appeals) and restore back the entire issue to the file of the Assessing Officer for denovo assessment with similar directions. The Assessing Officer shall provide due and effective opportunity of hearing to the assessee. We order accordingly."

20. We further find that the Revenue's appeal against the aforesaid decision was dismissed by the Hon'ble jurisdictional High Court in [CIT v/s Smt. Pratima H. Mehta, ITA No.258](#) of 2015, vide order dated 26/09/2017. Therefore, from the above, it is evident that the addition of Rs.3,13,213, is based on the evidence which was not furnished to the assessee. In view of the specific

directions of the coordinate bench of the Tribunal in assessee's own case, in the second round of proceedings, we find no basis in sustaining such an addition. Accordingly, the addition of Rs.3,13,213, made on the basis of company letters, which were not provided to the assessee is deleted. Further, the learned DR could not bring any material on record to controvert the partial relief granted by the learned CIT(A), accordingly, the relief so granted is upheld. Therefore, the appeal by the assessee in respect of the aforesaid addition is allowed, while the appeal by the Revenue is dismissed."

17. *In light of the above decisions of the Co-ordinate Bench, to sum-up even in the first round of litigation, the AO could not provide the details which were the basis for making the impugned additions. Therefore, in our considered view, such additions cannot be sustained, keeping in mind the number of decades passed since the original assessment order was framed. Moreover, the additions have been made in violation of audi alteram partem. We, therefore, direct the AO to delete the impugned addition.*
18. **(II) - The second addition is based upon the letter received from the Custodian - Rs.3,89,77,270/-.**

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The letter received from the custodian, reads as under:-

Annex - Y Y

<p>विशेष न्यायालय (प्रतिपत्ति) प्रकरण विचारण कोण्टी बनि</p> <p>Regd. No. 25/1 (Cus/Att/IT/72/CH)</p>	<p>OFFICE OF THE CUSTODIAN THE SPECIAL COURT (Trial of offences relating to transactions in Securities) Act, 1992 3rd Floor, Bank of Baroda Bhawan, 16, Parliament Street, NEW DELHI-110001 Phonos : 3320836, 3327279</p>	<p>दिनांक Dated the 19.10.1993</p>
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To
Shri C.P. Ramaswamy,
Dy. Director (Investigations)
Office of the Director General Investigations
Income Tax
Bombay.

Sir,

As requested by you we are enclosing the details of properties held by Harshad Mehta Group intimated to us by various companies as registered in their books. In this connection, I would like to state that these figures are subject to constant changes due to the following:

- 1) A part of these holdings may have been sold by the notified persons in blank which will need to be excluded on certification in terms of Special Court's order in Misc. Petition 1 of 1992.
- 2) The value of these shares are subject to the prevailing market quotations which is bound to fluctuate.
- 3) The companies who have not yet indicated the holdings to this office may send the information in future.

It may please be appreciated that for the reasons stated above, the figures can not be treated as firm and final figures.

Yours faithfully,
Rajiv Bhardwaj
(RAJIV BHARDWAJ)
Deputy Secretary

Encls: as above (Microdotive file - one)

19. A bare perusal of the aforementioned letter shows that there is not even a whisper of the impugned financial year or assessment year. It has also been clearly mentioned that the figures cannot be treated as firm and final figures. Moreover, when the office of the Custodian realised some glaring errors, it clarified the information already sent, as under:-

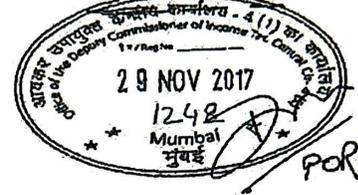
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Office of the Custodian
The Special Court (TORTS) Act, 1992
Department of Financial Services,
Ministry of Finance, Government of India,
10th Floor, Nariman Bhawan, 227, Vinay K. Shah Marg,
Nariman Point, Mumbai 400 021.
Phones: 22022251, 22856780, 22833007 Fax: 022-22810357
E-mail: custodian.mumbai@yahoo.com

No. 2302-CUS/BOM/HM/IT ASSESSMENT/ (2445) November 28, 2017

✓ To
The Deputy Commissioner of Income Tax
Central Circle -4(1), Central Range -4
Room No. 1916, 19th Floor,
Air India Bldg, Nariman Point,
Mumbai-400021



Sub.: Information u/s 133(6) of the IT Act, 1961 in the case of Shri.
Sudhir S. Mehta for the Assessment Year 1992-93

Sir,

With reference to your office letter no. DCIT-CC-4(1) clarification/2017-18 dated 20.11.2017 received in this on 24.11.2017 calling for the Information u/s 133(6) of the IT Act, 1961 in the case of Shri. Sudhir S. Mehta for the Assessment Year 1992-93, it is stated that as per your statement, your department had Assessed the Income of Shri. Sudhir S. Mehta, Smt. Deepika A. Mehta and other notified parties on the basis of information given by this office vide letter no. 2561/CUS/ATT/IT/92(118) dated 29.10.1993 in a floppy.

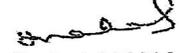
In this connection, it is clarified that the col. No. 6 of the statement meant for owner of the shares, was shown as owner 2 and the col. No. 7 meant for 2nd holder of the shares, was shown as Holder of the shares. As such shares actually held and owned by Ms. Rina and Rasila Mehta were shown as those of Shri. Sudhir Mehta, who was the second holder. In support of this please find enclosed letters of the following Companies showing holding of the each notified parties including Smt. Deepika Mehta and Sudhir Mehta, as on the date of notification. I hope this will help you in re-assessing the Income of Shri. Sudhir Mehta, Smt. Deepika Mehta and other notified parties for the

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Assessment Year 1992-93, if required. In case of any clarification required you may approach the concerned Company for the same.

Sr no	Name of the Company	Letter No.
1	ACC Ltd	SHR CUS DIV 4622 dated 05.10.2000
2	Mazda Industries & Leasing	MILL/FIN/97-98/1795 dated 20.04.1998
3	Castrol India Ltd	CIL:SD:021:44768:99 dated 14.07.1999
4	Apollo Tyres Ltd	CS/CL-209 dated 07.04.1999
5	Hindalco Ltd	9431/92 dated 11.11.1992
6	Swaraj Engine Ltd	SEL/O2 dated 30.12.1997
7	Tata Share Registry Ltd	SH/TIS/58392 dated 21.08.1992
8	Bharat Seats Ltd	BSL/FIN/2001/3686 dated 05.03.2001
9	Bombay Dyeing Manufacture Co. Ltd	SHR/1545/200 dated 22.05.2000

Yours faithfully,


(J. A. MAHALE)
UNDER SECRETARY

20. In fact, on 28/10/1993, the company, Fuller K.C.P. Ltd., certified that the dividend declared @24% was dispatched to the registered shareholders. Mr. Rasihal Shantilal Mehta, holding 11900 shares which had been added by the AO in the hands of the assessee. Thus, an example of wrong information and in some cases, the request for allotment of shares have been returned. One such company is TISCO, whose letter is place at page 403 in Paper Book volume-II.

21. On identical situation and facts, the Co-ordinate Bench in the case of CIT vs. Hitesh S. Mehta ITA No. 6026/Mum/2017 and ITA No. 5190/Mum/2017, had the occasion to consider a similar issue and held as under:-

"13. The second amount of addition of Rs.24,24,385/- as stated in para 8 above represented the addition made on the basis of Custodian letter. We observed that Rs.24,24,385/- was made on the basis of Custodian letter dated 29.10.1993. The information provided in the said letter were incomplete. For example the date of determination of the share holdings was not mentioned, constant change of the figure of holding due to reasons like non-consideration of sale of shares by notified parties, and the holding provided by the Custodian not matching with the companies letters.

Therefore, the addition made by relying on the Custodian letter can not be confirmed. The case of the assessee is supported by the decision of the coordinate bench in Growmore Leasing & Investments Ltd. Vs. DCIT in ITA. No.2192/M/2015 A.Y.1992-93 wherein it was held that where there was no evidence of the holdings of shares and securities as alleged by the revenue, the addition has to be deleted. Considering these facts and circumstances and the coordinate bench decision, we set aside the addition of Rs.24,24,385/ sustained by CIT(A) and direct the AO to delete the same.

22. Considering the facts of the case in totality in light of the letter of the custodian mentioned elsewhere and finding that no specific details of holding of shares for the

impugned assessment year has been mentioned or provided to the assessee, the additions cannot be sustained. The AO is directed to delete the same.

23. (III) - Additions made on account of dividend details/warrants - Rs.51,67,438/-

The details of alleged unexplained investment addition on the basis of dividend information is as under:-

SUDHIR S. MEHTA

A.Y. 1992-93

Details of Unexplained Investment addition on the basis of Dividend information

S.No.	Scrip Name	Holding as per A.O.	Credit Given by A.O. In original order (Qty)	Balance Quantity in dispute	Further credit given pursuant to order of the CIT(A)	Balance Quantity	Value (Rs.)
1	DCM SHRIRAM	2,500	-	2,500	-	2,500	6,31,875
2	EICHER TRACTORS	4,300	-	4,700	-	4,700	11,73,825
3	GOLDEN PROTIENS	15,300	100	15,200	-	15,200	45,600
4	GRASIM	5,000	19	4,981	-	4,981	20,54,663
5	KERALA CHEM	450	-	450	-	450	2,35,125
6	MUNJAL SHOWA	600	-	600	-	600	76,350
7	TATA METALS & STRIPS	1,000	-	1,000	100	900	3,54,375
8	UNITECH	100	-	100	-	100	5,750
9	VAM ORGANIC	4,150	2,500	1,650	-	1,650	5,89,875
	Total					Total	51,67,438

24. The details of shareholding of the assessee are exhibited from pages 414 to 418 of the Paper Book volume - II. The investment in shares DCM Ltd. of 2500 shares are coming from earlier years as the same is opening balance. Similarly, 3900 shares of Eicher Motors which were opening balance of the assessee were only 200 shares with bonus of 400 shares at the end of the impugned financial year. The holding of Golden Proteins at 15,300 shares have been wrongly taken from the opening balance of Gujarat Ambuja Proteins. The complete details of short-term capital gains and long-term capital gains on sale of shares during the impugned financial year have been given at pages 247 to 249 of the paper book with complete details of dividends received from shares during the financial year at pages 258 to 263 the paper book. It would be pertinent to mention here that the entire additions have been based on dividends declared by the companies of which the assessee may or may not have held the shares during the year under consideration as the same is not based on physical holding of shares and merely on the basis of information collected behind the back of the assessee for which we have already expressed our view elsewhere. Therefore, this addition also cannot be sustained. Accordingly, Ground No. 2 with all its sub- grounds is allowed."

8. On finding parity of facts, respectfully following the decision of the Co-ordinate Bench, we direct the AO to delete the impugned addition. Ground No. 2 is allowed.

9. Ground No. 3 relates to the addition of Rs. 40,385/- on account of alleged unexplained receipts.

10. We find that originally, the AO made addition of Rs. 7,60,100/- on the basis of details of bank accounts of the assessee provided by Reserve Bank of India. The details are as under:-

RASILA S MEHTA
AY 1992-93
Annexure -C Unexplained Receipts

Date	Amount Received	Account in which it is explained & reflected
22-05-1991	3,000.00	
08-08-1991	15.00	Interest on Saving Bank A/c. No 2001
28-08-1991	10,446.69	Dividend income A/c. No 2002
31-08-1991	4,957.00	
09-09-1991	22.56	Interest on Saving Bank A/c. No 2001
30-09-1991	4,591.77	
01-10-1991	16,400.00	Interest on Bank Loan A/c. No 1009
31-10-1991	4,682.44	Debenture Interest A/c. No 2003
31-10-1991	1,367.19	Debenture Interest A/c. No 2003
31-10-1991	2.06	Debenture Interest A/c. No 2003
31-10-1991	10.28	Debenture Interest A/c. No 2003
31-10-1991	3,201.00	Dividend income A/c. No 2002
31-10-1991	887.50	Dividend income A/c. No 2002
31-10-1991	2,400.00	Dividend income A/c. No 2002
31-10-1991	34,967.00	Dividend income A/c. No 2002
31-10-1991	76,917.00	Dividend income A/c. No 2002
04-01-1991	1,772.67	Interest on Saving Bank A/c. No 2001
04-01-1991	60,868.00	Dividend income A/c. No 2002
04-01-1991	97.50	Investment in share / Deb
07-02-1992	180.00	Debenture Interest A/c. No 2003
10-02-1992	15.00	Interest on Saving Bank A/c. No 2001
15-02-1992	600.00	
15-02-1992	350.00	
15-02-1992	2,460.00	
15-02-1992	1,364.00	
15-02-1992	2,542.00	
15-02-1992	1,766.00	
15-02-1992	350.00	
15-02-1992	350.00	
15-02-1992	4,100.00	
20-02-1992	5,080.90	Interest on Saving Bank A/c. No 2001
06-03-1992	22.89	Interest on Saving Bank A/c. No 2001
20-03-1992	150.00	
20-03-1992	14,123.00	
24-03-1992	5,00,000.00	M/s. Harshad S Mehta A/c No 4011
31-03-1992	41.11	
	7,60,100.56	

11. The AO repeated the additions. Before the Id. CIT(A), it was strongly contended that the alleged unexplained receipts are interest, dividend or investment related transactions which are already accounted for in the books. The Id. CIT(A) was convinced with the explanation of the assessee and deleted the addition except the addition to the tune of Rs. 40,385/- which was confirmed. The following chart will explain the alleged unexplained receipts confirmed by the Id. CIT(A).

ASWHIN S. MEHTA (L/H OF LATE RASILA S. MEHTA)
A.Y.1992-93

**Chart showing details of unexplained receipts in various banks as per
 Ld. A.O.**

Date	Amount received (Rs.)	Bank details	Particulars
22.05.1991	3,000	SBMDA-L	Bank charges reversed
31.08.1991	4,597	SBMDA-L	SB Interest
30.09.1991	4,592	BOABOM	SB Interest
15.02.1992	600	ANZADY	No such entry found
15.02.1992	350	ANZADY	No such entry found
15.02.1992	2,460	ANZADY	No such entry found
15.02.1992	1,364	ANZADY	No such entry found
15.02.1992	2,542	ANZADY	No such entry found
15.02.1992	1,766	ANZADY	No such entry found
15.02.1992	350	ANZADY	No such entry found
15.02.1992	350	ANZADY	No such entry found
15.02.1992	4,100	ANZADY	No such entry found
20.03.1992	150	ANZADY	No such entry found
20.03.1992	14,123	ANZADY	No such entry found
31.03.1992	41	AMXDNR	SB Interest
TOTAL	40,385		

12. Insofar as, savings bank interest and reversal of bank charges are concerned, the same has been included in the profit of the assessee.

Therefore, to that extent, we do not find any reason to sustain the addition. In respect of the other addition related to the entries in ANZ Bank, we find that the assessee has categorically stated that these entries do not pertain to her and, therefore, cannot submit any details. The lower authorities expected the assessee to prove the negative. Once the assessee has categorically stated that the entries do not pertain to her, then, it was for the Officer to bring evidence on record to show that the entries pertain to the assessee. Since no such evidence has been brought on record, we do not find any merit in the impugned additions. The AO is directed to delete the same. Ground No. 3 is allowed.

13. Ground No. 4 is not pressed before us, therefore, the same is dismissed as not pressed.

14. Ground No. 5 relates to the addition on account of profit from partnership firm M/s. Sunrise Enterprise amounting to Rs.2,52,075/-.

15. We find that the assessee has mis-interpreted the relevant provisions of law as the share of profit from a partnership firm is not taxable in the hands of the partner but this amendment has come from 01/04/1993 relevant to AY 1993-94 and the impugned AY is 1992-93. Therefore, the action of the AO cannot be faulted with. Ground No. 5 is accordingly dismissed.

16. Ground No. 6 relates to the restriction of the addition on account of interest expenses to the extent of Rs.14,92,800/- as against the aggregate amount of Rs.2,40,00,000/- claimed by the assessee.

17. The AO disallowed the claim of deduction of interest payable to broking firms of the family members on the following reasons:-

- (i) The liabilities were not crystallized during the year.
- (ii) Interest payable is tentative and professional.
- (iii) There is no basis as per which the assessee has right to pay and the creditor has the right to receive.
- (iv) There is no basis of computation of interest payable which has been provided by the assessee.
- (v) The provisions made on account of interest payable is a contingent liability and, therefore, cannot be allowed as a business expenditure.
- (vi) 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.

17.1. Similar disallowance was made in the case of Sudhir S. Mehta, which has been considered by the Co-ordinate Bench in *ITA No. 417/Mum/2023 & ITA No. 1179/Mum/2023*, in its order dated 06/02/2025.

The relevant findings read as under:-

"27. Ground No. 4, relates to the claim of interest expenditure Rs.2.04 Crores out of which the ld. CIT(A) allowed only Rs.12,93,360/-.

27.1. Similar issue came up for consideration before the Coordinate Bench in the case of Pratima H. Mehta (supra). The relevant findings read as under:-

"27. Since the issue arising in ground no.3, raised in assessee's appeal, and grounds no.2 and 3, raised in Revenue's appeal, pertains to the deduction of interest expenditure, therefore the aforesaid grounds are dealt with together.

28. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee submitted that the transactions in the capital market have been made through three broking firms belonging to the family members of the assessee. As per the details submitted by the assessee, it was submitted that the amount of interest of

Rs. 2,46,33,261 are shown as payable to family run broking firms such as M/s HSM, M/s ASM and M/s JHM. The AO vide order passed under [section 144](#) read with [section 254](#) of the Act did not agree with the submissions of the assessee and disallowed the deduction of interest claimed for the following reasons:-

- (i) The liabilities were not crystallise during the year.
- (ii) The interest payable is tentative and provisional.
- (iii) There is no basis as per which the assessee has a right to pay and the creditors has are right to receive.
- (iv) There is no basis of computation of interest payable which has been provided by the assessee.
- (v) The provisions made on account of interest payable is a contingent liability and therefore, cannot be allowed as a business expenditure.
- (vi) It is also seen that these broking firms have not charged any interest on the amount receivable from the companies of this group with the books of accounts have been produced before the Assessing Officer.

29. The AO following the approach adopted in earlier round of litigation rejected the assessee's claim of deduction on account of interest and disallowed interest payment of Rs. 2,46,33,261. The learned CIT(A), vide impugned order, partly allowed the ground raised by the assessee on this issue and held that the main purpose of incurring the interest expenditure was not earning income from dividends and unless the interest expenditure was incurred solely for the purposes of making or earning dividend income, no deduction is possible under [section 57](#) of the Act. The learned CIT(A) further held that in the acquisition of shares for capital gains, the dividend income is incidental and not a major factor, and it is thus clear that the sole purpose of borrowing by the assessee @12% per annum cannot be for the purpose of earning dividend income. Accordingly, the interest expenditure was held to be not allowable against dividend income. The learned CIT(A), however, allowed the interest expenditure only to the tune of Rs. 15,73,548 which is the share trading profit. Being aggrieved, both assessee and Revenue are in appeal before us.

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 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 Vijaykuberba 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

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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."

27.2. Similarly in the case of *Jyoti H. Mehta vs. ACIT* in ITA No. 436/Mum/2023 and ITA No. 1186/Mum/2023, the Tribunal has considered similar grievance, which reads as under:-

"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."

27.2.1. And the Co-ordinate Bench following the order of the case of *Pratima H. Mehta* (supra), held as under:-

"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."

28. In assessee's own case for AY 1991-92, the Coordinate Bench in ITA No. 5966/Mum/2017 and 635/Mum/2018, has allowed the claim of interest. On finding parity of facts, respectfully following the decision of the Coordinate Bench (supra), we direct the AO to allow the entire claim of interest. Accordingly, Ground No. 4 is allowed."

18. Finding parity of facts and circumstances, respectfully following the decision of the Co-ordinate Bench, we direct the AO to allow the entire claim of interest. Ground No. 6 is allowed.

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19. Ground No. 7 relates to the enhancement of the assessed income of the assessee by Rs. 20,83,911/- on account of difference in the balance in the books of account of Late Shri Harshad S. Mehta.

20. Reconciliation of balances as on 31/03/1992 in the books of the assessee and in the books of Late Shri Harshad S. Mehta can be understood from the following chart:-

A.Y. 1992-93
Chart showing Reconciliation of Balances as on 31.03.1992 in the Books of Late Rasila S. Mehta and in the books of Late Shri Harshad S. Mehta

In the Books of Mrs. Rasila S. Mehta				In the Books of Mr. & M/s. Harshad S. Mehta			
Sr.No.	A/c No.	A/c Name	Balances Payable / (-) Receivable	Sr.No.	A/c No.	A/c Name	Balances Payable / (-) Receivable
						M/s. Harshad S. Mehta	
1	4011	M/s. Harshad S. Mehta	12,39,62,826	1	3001 (13072)	Rasila S.Mehta	-12,18,78,915
2	1011	Mr. Harshad S. Mehta	26,35,000	2	2037	Rasila S.Mehta - Loan A/c	-26,35,000
						A....	-12,45,13,915
						Mr. Harshad S. Mehta	
				3	1006	Rasila S. Mehta	-20,00,000
				4	2010	Loan A/c (RSM)	15,00,000
						B....	-5,00,000
		Payable to Harshad S. Mehta	✓ 12,65,97,826			Receivable from Rasila S. Mehta (A+B)...	✓ -12,50,13,915
Closing Balance Difference Amount as per Books of A/cs submitted by the Notified Entities							15,83,911

21. The balance difference mentioned hereinabove amounting to Rs. 15,83,911/- is reconciled from the following chart:-

ASHWIN S. MEHTA (L/H OF LATE RASILA S. MEHTA)
A.Y. 1992-93
Chart showing Reconciliation of difference in the balances in the books of Late Shri Harshad S. Mehta and Late Smt. Rasila S. Mehta

Sr No.	Particulars	Rs.
	Difference in opening Balances (Chart A)	6,08,640
	Difference on account of one mismatch in transaction & excess brokerage charged by M/s.Harshad S. Mehta (Chart B)	9,77,652
	Miscellaneous Difference on account of Postage @20/- excess charged by M/s.Harshad S. Mehta (Chart C)	-2,381
	Total...	15,83,911

22. We find that certain entries which have been passed by the assessee in her books of accounts have not been passed in the books of Late Shri Harshad S. Mehta, which can be understood from the following chart:-

ASHWIN S. MEHTA (L/H OF LATE RASILA S. MEHTA)

A.Y.1992-93

(A) : Chart showing Reconciliation of Entries Forming part of Opening Balances of Books of Accounts of Late Rasila S. Mehta and Late Shri Harshad S. Mehta for Alleged Difference of Rs. 6,08,640/-

Rasila S. Mehta							Harshad S. Mehta						Difference Amount	Remarks
Sr. No.	Date	Amounts	Dr/Cr	In the Books of	Account No.	A/c Name	Date	Amounts	Dr/Cr	In the Books of (Business / Personal)	Account No.	A/c Name		
1	Op bal	10,18,76,110	Cr	RSM	4011	M/S. HSM	Op bal	-10,44,59,470	Dr	M/S. HSM	13072	MEHTA RASILA S	-25,83,360	
2							04.04.91	31,92,000	Cr	M/S. HSM	13072	MEHTA RASILA S	31,92,000	Sale of 20000 Tata Steel dt.20.03.91 by Mrs.RSM
		10,18,76,110						-10,12,67,470					6,08,640	

22.1. On 24/03/1992, the assessee credited Rs.11,14,344/- being on account of purchase of 30000 Nagarjuna Fertilizers, which entry has not been passed by Late Shri Harshad S. Mehta in his books of account resulting into the alleged difference of Rs.9,77,652/- which can be understood from the following chart:-

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ASHWIN S. MEHTA (L/H OF LATE RASILA S. MEHTA)

A.Y.1992-93

(B) : Chart showing Entries with Minor Discrepancies in the Books of Accounts of Late Rasila S. Mehta and Late Shri Harshad S. Mehta for Alleged Difference of Rs. 9,77,652/-

Sr. No.	Date	Rasila S. Mehta					Harshad S. Mehta					Difference Amount	Remarks	
		Amounts	Dr/Cr	In the Books of	Account No.	A/c Name	Date	Amounts	Dr/Cr	In the Books of (Business / Personal)	Account No.			A/c Name
1	01.08.91	-52,66,800	Dr	RSM	4011	M/S. HSM	01.08.91	52,61,520	Cr	M/S. HSM	13072	MEHTA RASILA S	-5,280	0.10% Brok. Diff shown more by M/s.HSM
2	05.08.91	-50,93,484	Dr	RSM	4011	M/S. HSM	05.08.91	50,88,378	Cr	M/S. HSM	13072	MEHTA RASILA S	-5,106	0.10% Brok. Diff shown more by M/s.HSM
3	05.09.91	59,72,400	Cr	RSM	4011	M/S. HSM	06.09.91	-59,78,325	Dr	M/S. HSM	13072	MEHTA RASILA S	-5,925	0.10% Brok. Diff shown more by M/s.HSM
4	25.09.91	-1,35,66,000	Dr	RSM	4011	M/S. HSM	03.10.91	1,35,52,400	Cr	M/S. HSM	13072	MEHTA RASILA S	-13,600	0.10% Brok. Diff shown more by M/s.HSM
5	08.10.91	-25,73,550	Dr	RSM	4011	M/S. HSM	08.10.91	25,70,970	Cr	M/S. HSM	13072	MEHTA RASILA S	-2,580	0.10% Brok. Diff shown more by M/s.HSM
6	29.11.91	-26,25,420	Dr	RSM	4011	M/S. HSM	29.11.91	26,22,788	Cr	M/S. HSM	13072	MEHTA RASILA S	-2,632	0.10% Brok. Diff shown more by M/s.HSM
7	18.12.91	-5,86,09,359	Dr	RSM	4011	M/S. HSM	02.01.92	5,85,50,603	Cr	M/S. HSM	13072	MEHTA RASILA S	-58,756	0.10% Brok. Diff shown more by M/s.HSM
8	19.02.92	-60,02,955	Dr	RSM	4011	M/S. HSM	19.02.92	59,96,937	Cr	M/S. HSM	13072	MEHTA RASILA S	-6,018	0.10% Brok. Diff shown more by M/s.HSM
9	24.03.92	11,14,344	Cr	RSM	4011	M/S. HSM							11,14,344	Purchase of 30000 Nagarjuna Fert. By Mrs.RSM Thru M/s.HSM
10	24.03.92	-42,84,761	Dr	RSM	4011	M/S. HSM	27.03.92	42,80,466	Cr	M/S. HSM	13072	MEHTA RASILA S	-4,295	0.10% Brok. Diff shown more by M/s.HSM
11	31.03.92	3,27,60,000	Cr	RSM	4011	M/S. HSM	31.03.92	-3,27,92,500	Dr	M/S. HSM	13072	MEHTA RASILA S	-32,500	0.10% Brok. Diff shown more by M/s.HSM
		-5,81,75,585						5,94,53,237					9,77,652	

22.2. Which is further evident from the ledger account of M/s. Harshad S. Mehta, from the following chart:-

24 Mar 92 JORN	607		MY BEHALF	
24 Mar 92 JORN	608		1114344.00	BEING PURCHASE OF 30000 NAGARJUNA @ 36.85 THRU M/S HSM (REVALIDATION ENTRY)
24 Mar 92 JORN	609		552309.00	Being Pur. of 3500 SPIC @ 156.55 in V.C 03 thru.M/s HSM Add 0.25% Brok.
24 Mar 92 JORN	610		25402.00	Being Pur. of 800 STANDARD MOT OR @ 31.50 in V.C03 thru.M/s H SM Add 0.25% Brok.
24 Mar 92 RECP	220 1		4284761.00	Being Sale of 12100 RELIANCE I ND. @ 355.00 in V.A01 thru.M/s HSM Less 0.25% Bro
31 Mar 92 JORN	636	BANK AM	500000.00	TRF BANK AM - HSM
31 Mar 92 JORN	642		32760000.00	Being Pur. of 200000 REVATHI C P LTD @ 162.50 in V.C08 thru.M /s HSM Add 0.25% B
31 Mar 92 JORN	644		34128.44	BEING INTEREST PAID BY HARSHAD S MEHTA ON MY BEHALF
			3600.00	BEING REVALIDATION ENTRY FOR POSTAGE RS. 20/- FOR PURCHASES THRU M/S.HSM
Page Totals	:	5611436.00	37558320.44	
Running totals	:	191997980.00	315960805.69_G	12,39,62,825.69 CR_

22.3. From the aforementioned reconciliation chart, it is evident that the entries passed by the assessee in her books of accounts have not been passed in the books of Shri Harshad S. Mehta and M/s. Harshad S. Mehta

which has resulted into the impugned difference. Since the entries are reconciled, we do not find any merit in the impugned addition. The AO is directed to delete the same.

24. Ground No. 8 relates to the levy of interest u/s 220(2) of the Act. The ld. CIT(A) has dismissed this grievance of the assessee stating that this levy of interest is not appealable before the ld. CIT(A). The ld. CIT(A) has based his decision on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. M/s. Chika Overseas Pvt. Ltd. in ITA No. 3737 of 2010*. We find that in that case, the Hon'ble High Court was seized with only the levy of interest u/s 220(2) of the Act before the ld. CIT(A) whereas in the case in hand, there are several grounds/issues taken, therefore, the levy of interest u/s 220(2) of the Act, can be challenged before the ld. CIT(A). The Co-ordinate Bench in the case of *DCIT vs. Shri Harsad S. Mehta in ITA No. 6227/Mum/2018*, has considered this issue and held as under:-

"6.1 The Co-ordinate Bench also considered the ground raised by the Revenue with regard to charging of interest under section 220(2) of the Act and concluded as under:-

"30.10. Now, coming to the various grounds taken by the Revenue being ground no. 9 to 12 regarding the levy of interest u/s 220(2) of the Act. We have heard the rival submissions and carefully considered the same. We noted that this Tribunal vide its order dt. 20.01.2017 in the case of M/s Orion Travels Pvt. Ltd. vs ACIT (ITA 939/MUM/2009) in which the Tribunal directed the AO to charge interest u/s 220(2) under Income Tax Act after 30 days of serving of demand notice from the fresh assessment order. We, therefore, noted that in the case of CIT vs. Chika Overseas Pvt.

Ltd [2012] 247 CTR 134 (Bombay), has taken the similar view. The decision Hon'ble Delhi High court in the case of Girnar Investment Ltd. vs. CIT [2012] 340 ITR 529 (Delhi) dt. 5.01.2012 as relied by the Ld. DR and not of Bombay High Court. The Jurisdictional High Court decision is binding on us. We noted the CIT(A) while holding that the interest u/s 220(2) is to be levied only from the due date of issuance of fresh notice of demand, considered these binding case laws as well as CBDT circular no 334 (F no 400/3/81-ITCC) dated 3-4-

1982 issued by CBDT, which we perused and in our view the case of the assessee falls within paragraph 2 (i) of the said circular. In view of this legal position, we do not find any illegality or infirmity in the order of the CIT(A) directing the AO to charge interest u/s 220(2) from the date of default of the fresh demand notice issued after the fresh assessment made in consequence of the order of the appellate authorities. Thus, the ground no 8 to 12 of the Revenue stands dismissed, while ground no 32 to 35 of the assessee are allowed to the extent stated above."

Thus in view of the above findings of the Tribunal, the ground raised by the Revenue in the present appeal does not require any further adjudication. The issues have already been considered and decided by the Co-ordinate Bench in an appeal arising from the assessment order passed under section 254 r.w.s. 143(3) of the Act.

7. The ld. Authorized Representative of the assessee has also brought to our notice that the Revenue in the case of assessee's brother Shri Ashwin S. Mehta in ITA No.3118/Mum/2018(supra) had raised identical grounds of appeal. The Tribunal, after considering the decision rendered in the case of ITA No.5702/Mum/2017 and 6028/Mum/2018 (supra) has dismissed the appeal of the Revenue.8. Thus, in view of the facts of the case and decision of the Co-ordinate Bench in assessee's own case, we do not find any merit in the grounds raised by the Revenue. The impugned order is upheld and the appeal of Revenue is dismissed sans merit."

25. Respectfully following the decision of the Co-ordinate Bench, we direct the AO to re-compute the interest u/s 220(2) of the Act. Accordingly, Ground No. 8 is allowed.

26. The additional ground relates to levy of interest u/s 234A, 234B & 234C of the Act. In our considered view, such levies are mandatory but only up to the date of original assessment order. The AO is directed to charge interest u/s 234A, 234B & 234C of the Act up to the date of original assessment order. Additional Ground is accordingly allowed.

27. Accordingly, appeal of the assessee for AY 1992-93 is partly allowed.

28. Coming to the revenue's appeal, the first grievance relates to the deletion of addition of Rs. 1,47,52,396/- made on account of unexplained

figures arrived at for AY 1992-93 are incorrect and should not be relied upon, the AO did not accept this objection of the assessee and proceeded by adopting figures of AY 1992-93. The AO went on to estimate the unexplained purchases as per Annexure 1 of his order and estimated the same at Rs. 12,03,08,087/-. The AO further estimated the unaccounted sales and profits as per Annexure 2 of his order and arrived at sale receipts at Rs. 18,31,86,511/- and profit at Rs.6,58,70,885/- and accordingly taxed the profit on sale of shares as unexplained income.

33. On a careful consideration of the assessment order, we find that the AO has not given any evidence for his presumed sale. On identical set of facts and circumstances, the Co-ordinate Bench in the case of *Pratima H. Mehta vs. ACIT* in ITA No. 3443 and 4288/Mum/2012 dated 05/09/2014 for AY 1993-94, has considered a similar issue and held as under:-

"19. The first grievance of the Revenue is that the ld. CIT(A) erred in deleting the addition of Rs. 3,31,20,180/- made on account of profit on sale of shares.

20. The ld. CIT(A) has considered this issue at para 6(C) of his order. During the course of assessment proceedings, on the basis of several information obtained from RBI, Custodian, BSE companies and third parties about the share holding of the assessee, the data were analysed and the holding in share of the assessee was determined as on 31-3-1992. The same was taken as opening stock for the year under consideration. The closing stock of the assessee was determined for the year under consideration and on comparing the opening stock and closing stock, whenever there was a difference where opening stock was higher than the closing stock, it was treated as sale and wherever the closing stock was higher than the opening stock, the difference was treated as unexplained purchase. The purchases were determined at Rs. 8,85,75,861/- and the sales were determined at Rs. 15,55,67,482/-. The profit on sale of shares was determined at Rs. 3,31,20,180/-. The A.O. added this amount. Before the Id. CIT(A), it was contended that the information relied upon by the A.O. were either given to the assessee during the proceedings of A.Y. 1992-93 or during the proceedings for A.Y. 1993-94. It was further contended that the A.O. has computed the holding of shares from the information collected from difference sources. It was further submitted that the working of opening stock is borrowed from the working given in A.Y. 1992-93 without any break-up and without any basis. After considering the facts and the

submissions, the Id. CIT(A) at para 9.7 of his order observed that the A.O. did not gave any breakup and the basis as to how the figures of sales and purchases were derived by him which fact was also admitted by the A.O. in the remand proceedings. At para 9.8, the Id. CIT(A) held "I find that during the course of present proceedings also, the things have not improved. The A.O. has still not been able to provide any break up or the details and information as to how the figure of profit on sale of shares have been derived by him in the assessment order. Thus, I find that the very basis details germane to the addition made by the A.O. are not available on record". Thereafter the Id. CIT(A) followed the findings given in the case of Shri Hitesh Mehta for A.Y. 1993-94 and deleted the addition. Aggrieved by this, the Revenue is in appeal before us.

21. The Id. D.R. strongly supported the findings of the A.O. Per contra, the Id. Counsel for the assessee reiterated what has been submitted before the lower authorities.

22. We have carefully perused the orders of the authorities below. We have also gone through the order of the first appellate authority in the case of Shri Hitesh Mehta dtd, 29-03-2012. We find that the entire addition has been made by the A.O. on the basis of information gathered from different sources. We find that the A.O. has merely picked up figure from the Annexure and arrived at the figure of addition without making enquiry or bringing any evidence on record. We find that on identical facts in the case of Shri Hitesh Mehta, the additions were deleted. The said order was challenged before the Tribunal in ITA No. 5138/Mum/2003 but this issue was not raised before the Tribunal. The facts and circumstances are being similar, we do not find any reason to interfere with the findings of the Id. CITA). Ground No. is accordingly dismissed."

34. The revenue preferred appeal against the said order before the Hon'ble High Court of Bombay and the Hon'ble Jurisdictional High Court in ITA No. 521 of 2015, affirmed the order of the Tribunal observing as under:-

10. We see no reason to allow such a course for the Tribunal found that the order of the First Appellate Authority in the case of Hitesh Mehta was dated 29-3-2012 and that was for the Assessment Year 1993-94. The entire addition has been made by the Assessing Officer on the basis of information gathered from different sources. The Assessing Officer merely picked a figure from one annexure and arrived at the figure of addition without making any inquiry or bringing any evidence on record. If such additions made by the Assessing Officer were deleted in the case of Hitesh Mehta and the Revenue filed an appeal being Income Tax Appeal No.5138 of 2003, but without

raising any such ground, then, there is no justification or reason for interference with the findings of the Commissioner of Income Tax (Appeals).

11. *We do not think that we should allow Mr. Kotangle to raise any additional ground. How the matter was approached by the Commissioner can be seen from para 20 of the Tribunal's order impugned in this case. It is apparent that information was obtained during the assessment proceedings from the Reserve Bank of India, Custodian, Bombay Stock Exchange companies and third parties about the share holding of the assessee. The data was analysed and the holding in the shares of the assessee was determined as on 31-3-1992. That was taken as the opening stock for the year under consideration. Mr. Kotangle would submit if that is how the matter is determined and decided by the Tribunal, then the closing stock for the past year would become the opening stock for the fresh accounting year. That is to be considered while adjudicating the correctness of the entries in the Books of Account. If for that purpose an opportunity is given, then, the correctness of these entries can be verified from the sources referred above.*

12. *We are unable to agree with him for the simple reason that the closing stock of the assessee was determined for the year under consideration - Assessment Year 1993-94, and on comparing the opening and closing stocks, whenever there was a difference and the opening stock was higher than the closing stock, it was treated as sale and wherever the closing stock was higher than the opening stock, the difference was treated as unexplained purchase. The Assessing Officer went about in this manner and made the additions. The Commissioner was of the opinion that the information relied upon by the Assessing officer was either given to the assessee during the proceedings of the Assessment Year 1992-93 or during the proceedings for the Assessment Year 1993-94. The Assessing Officer has computed the holding of shares from the information collected from different sources. The argument before the Commissioner was that the working of opening stock is borrowed from the working given in the Assessment Year 1992-93, without any break-up and without any basis. That is how the Commissioner faulted the exercise of the Assessing Officer. He held that how the figures of sales and purchases were derived by him has not been explained by the Assessing Officer. The Assessing Officer in the remand proceedings submitted a report, details of which are referred in para 9.8 of the Commissioner's order dated 30-3-2012 impugned before the Tribunal by the Revenue. It is clear that the Commissioner followed the findings in the case of Mr. Hitesh Mehta for the Assessment Year 1993-94 and deleted the addition.*

13. *To our mind, therefore, the Tribunal committed no error in refusing to interfere with the Commissioner's order. On facts, the Commissioner was justified in making the observations and reaching the above conclusion. To our mind, such an exercise being upheld by the Tribunal does not raise any substantial question of law."*

35. Respectfully following the decision of the Co-ordinate Bench and the Hon'ble Jurisdictional High Court (*supra*), we direct the AO to delete the impugned addition of Rs. 1,20,79,176/-. Ground No. 1 is allowed.

36. Ground No. 2 is not pressed before us, therefore, the same is dismissed as not pressed.

37. Ground No. 3 relates to the claim of deduction on account of interest expenses. Similar issue has been considered and decided by us for AY 1992-93 in assessee's appeal being ITA No. 380/Mum/2023, vide Ground No. 3 of that appeal. For our detailed discussion therein, the AO is directed to allow the claim of deduction of interest. Ground No. 3 is allowed.

38. Ground No. 4 is levy of interest u/s 234A & 234B of the Act. The AO is directed to levy interest as per the relevant provisions of law up to the date of filing of the original return of income.

39. Accordingly, assessee's appeal for AY 1993-94, is partly allowed.

40. The grievance of the revenue for AY 1993-94 reads as under:-

"1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in restricting the addition to Rs.1,20,79,176/- and granting relief of Rs.5,37,91,709/-, on account of profit on unexplained sale of shares, whereas assessee had failed to explain the source of acquiring the shares satisfactorily and the books of account produced by the assessee are unreliable?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in granting relief of Rs.33,85,597/- on account of dividend / interest income without appreciating the fact that A.O has made disallowance on the basis of data provided by Custodian and assessee failed to reconcile the same and the books of account produced by the assessee are unreliable?

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

41. The first grievance relates to the restriction of the addition to Rs. 1,20,79,176/- on account of profit on unexplained sale of shares. This issue has been considered by us in assessee's appeal (*supra*) vide Ground No. 1. For our detailed discussion therein, this Ground is dismissed.

42. Ground No. 2, relates to the grating of relief of Rs. 33,85,597/- on account of dividend/interest income. Similar grievance has been decided by us in AY 1992-93, vide ground No. 6 of that appeal. For our detailed discussion there, this Ground is dismissed.

43. In the result, appeals of the assessee are partly allowed and that of the revenue are dismissed.

Order pronounced in the Court on 19th February, 2025 at Mumbai.

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 19/02/2025

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai