

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 5609 /MUM/2011
Assessment Year: 2006-07**

Smt. Rasila S. Mehta. 32, Madhuli, Dr. A.B.Road, Worli, Mumbai- 400018. PAN:- ABNPM8219R	Vs.	The DCIT, Central Circle-23, Mumbai.
(Appellant)		(Respondent)

**ITA No 5496 /MUM/2011
Assessment Year: 2006-07**

The DCIT, Central Circle-23, Mumbai.	Vs.	Smt. Rasila S. Mehta. 32, Madhuli, Dr. A.B.Road, Worli, Mumbai- 400018. PAN:- ABNPM8219R
(Appellant)		(Respondent)

Appellant by : Shri. Dharmesh Shah
Respondent by : Shri. Dr. P. Daniel.

Date of Hearing: 01/03/2016
Date of Pronouncement: 31/05/2016

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee Smt. Rasila S. Mehta and the revenue in for the Asst. years 2006-07. Assessee has filed ITA 5609/M/11 against the order dated 27/05/2011 passed by Ld. CIT(Appeals)-40, Mumbai, and revenue has filed cross appeal ITA 5496/M/2011 against the same order. Since two appeals pertain to same assessee and the issues involved are

common, both the appeals are clubbed and heard together and are being disposed of by this common order for the sake of convenience.

ITA No.5609/M/2011 (A.Y- 2006-07)

Brief facts of the case are that the appellant/assessee is a notified person under the Special Court (Trial of Offences relating to transactions in Securities) Act,1992 and all her assets including Bank Accounts had been attached and vested in the hands of the Custodian appointed under the said Act. Since the assessee had not filed return of income even after the due date, notice dated 29/12/2008, under section 148 of the Income Tax Act, 1961 (in short the Act) was served upon her. In response thereof, the assessee filed return of income declaring total income of Rs. 97,90,901/-. After hearing the assessee, the AO framed assessment order under section 143(3) read with section 147 of the Act and determining the total income of the assessee at Rs. 1,96,17,100/-.

2. The assessee challenged the assessment order by filing first appeal before the CIT(A). The Ld. CIT(A) partly allowed the appeal of the assessee, however, confirmed certain additions including addition of Rs. 3,00,000/- on account of personal drawings and Rs.1,53,80,576/- on account of interest expenses, made by the AO.

3. Still aggrieved by the impugned order, the assessee is in appeal before the Tribunal. The assessee has raised the following effective grounds of appeal:-

- “1. The Learned Commissioner of Income-Tax (Appeals) has failed to appreciate that the reopening of assessment u/s 148 is invalid and bad in law.*
- 2. The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not appreciating that no income from attached assets can be assessed in the hands of the appellant.*

3. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming addition on account of personal drawings amounting to Rs. 3,00,000/-.*
4. *The Learned Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming disallowance on account of interest expense amounting to Rs. 91,23,497/-.”*

The assessee has further raised the following additional ground vide application dated 17/02/2014

“1. The Ld. Assessing Officer ought to have appreciated that as per the decision of Hon’ble Special Court dt. 26/02/2008 in MP No. 1 & 2 of 2007, the assets under consideration and the consequential income belongs to Shri. Harshad S. Mehta and hence the income assessed by the Assessing Officer ought to have been taxed in the hands of Shri Harshad S. Mehta and not in the hands of the appellant.”

4. Before us, the Ld. Assessee’s Representative (AR) submitted that the assessee does not want to contest Ground Nos. 1,2 and additional ground. Accordingly, Ground No 1, 2 and additional ground of appeal of the present appeal are dismissed as not pressed.

5. The Ld. AR further submitted that Ground No 3 and 4 are covered by the decision dated 21.10.2015 rendered by the Mumbai Tribunal in assessee’s own case Smt. Rasila Mehta vs DCIT Mumbai, ITA No. 6198/Mum/2011 and other group cases for the assessment year 2003-04, and the identical issues have been considered in the said cases. Hence, the issues involved in the present case are required to be decided accordingly. On the other hand the Ld. Departmental Representative (DR) relying on the concurrent findings of the authorities below submitted that the impugned order does not suffer with any legal infirmity to interfere with.

6. We have perused the material placed before us in the light of the respective submissions of the parties. Ground No 3 pertains to addition on

account of personal drawings. We notice that the coordinate Bench has dealt with the identical issue in Smt. Rasila Mehta vs DCIT Mumbai (supra) and restricted the addition to 50% of the addition sustained by the CIT(A), holding as under:-

“We have given thoughtful consideration to the facts brought on the record before us. We find that in the group cases, the addition on account of low withdrawals made by the AO amounting to Rs. 60,60,000/-have been restricted by the Ld. CIT(A) at Rs. 37,80,000/-which also includes the present addition of Rs. 3,00,000/-. Considering the factual matrix of the entire family, in our considered opinion, an addition of Rs. 1,50,000/-should meet the ends of justice. We, modify the findings of the Ld. CIT(A) and direct the AO to make disallowance of Rs. 1.50,000/-. This ground of assessee is partly allowed.”

7. Since the identical issue has been decided by the coordinate Bench, in assessee's own case, we respectfully follow the same and restrict the addition sustained by the Ld.CIT(A) to 50% and direct the AO to make disallowance of Rs.1,50,000/-. Accordingly, this ground of appeal is partly allowed.

8. Ground No 4 pertains to addition on account of interest expense. An identical issue has been considered by the coordinate Bench in the case of M/s *Growmore Research & Assets Mgt. Ltd.*, ITA Nos.5137&5138 and ITA No. 2150/M/13. The relevant paras of the order read as under:-

“We have carefully perused the orders of the authorities below. While disposing the ground relating to disallowance of interest, we find that the Ld. CIT(A) has followed the findings given in the case of Eminent Holdings Pvt.Ltd. We find that the Tribunal in the case of Eminent Holdings in ITA No. 2139,2140 and 2141/Mum/2013 have followed the decision of the Mumbai Tribunal given in common group cases of Hitesh Mehta at para 2.3 of the order and restored the

matter to the file of the Ld. CIT(A) for fresh adjudication. Respectfully following the findings of the co-ordinate Bench, we restore this issue to the file of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee.

Before closing this issue, the Ld. Counsel for the assessee pointed out that the Ld. CIT(A) has held that the issue of interest expenditure is pending before the Hon'ble Special Court. It is the say of the Ld. Counsel that the proceedings in which the the said issue of interest was issued by the custodian have been already concluded which fact has already been recorded by the Ld. CIT(A) in the impugned order. We, therefore, direct the Ld. CIT(A) to consider the facts while deciding the issue afresh. Ld. CIT(A) may also direct for the taxing of income in the hands of the recipient (family members) in accordance with the method of accounting followed by them as per the provisions of the law. Ground No. 4 is treated as allowed for statistical purpose”

9. The aforesaid findings were followed by the coordinate Bench in assessee's own case Smt. Rasila Mehta vs DCIT Mumbai (supra). Respectfully following the view taken by the coordinate Benches in the aforesaid cases, we restore this issue to the file of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee. Accordingly, this ground of appeal is treated as allowed for statistical purpose.

ITA No 5496/M/2011 (A.Y. 2006-07)

The Revenue has challenged the impugned order on the following effective grounds:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that legal sanctity of law, the interest chargeable under section 234A, 234B and 234C is not only consequential but is mandatory in nature.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Special Court Act 1992 has not ruled out the provisions of section 234A, 234B and 234C being not applicable to the notified persons or they are exempt from the liabilities of payment of interest under these section of the Income Tax Act, 1961.”*

2. The sole grievance of the revenue is that the Ld. CIT(A) erred in holding that no interest could be levied in the present case u/s 234A, 234B and 234C of the Act. The Ld. DR brought to our notice that this issue has been decided by the Hon'ble jurisdictional High Court in favour of the revenue and against the assessee to which the Ld. AR fairly conceded.

3. We notice that this issue has also come up before the ITAT Mumbai in one of the group cases viz., M/s Harsh Estate Pvt. Ltd. in ITA No. 1035, 1033 and 3464/M/2013 and the Tribunal allowed the issue in favour of the revenue, however, directed the Assessing Officer to recomputed the interest liability after reducing the amount of tax deductible at source and decide as per the provisions of law.

4. Respectfully following the findings of the coordinate Bench, in M/s Harsh Estate Pvt. Ltd.(supra) and followed in assessee's own case the DCIT vs. Smt. Rasila S. Mehta, ITA No. 5870/M/2011, we allow the appeal of the revenue for statistical purpose and direct the AO to re-compute the interest liability after reducing the amount of tax deductible at source and decide as per the provisions of law. Hence, this ground of appeal is allowed for statistical purpose.

5. In the result, the appeals filed by the assessee as well as by the revenue for the assessment year 2006-07 are partly allowed.

Order pronounced in the open court on 31st May, 2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated:31/05/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila