

आयकर अपीलीय अधिकरण, मुंबई ए खंडपीठ**Income-tax Appellate Tribunal -“A”Bench Mumbai**

सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमित शुक्ल न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and Amit Shukla,Judicial Member

आयकर अपील सं./I.T.A. No.5801/Mum/2013 निर्धारण वर्ष / Assessment Year: 2005-06

Shri Ashwin S. Mehta 32, Madhuli, Dr. A.B. Road, Worli,Mumbai-400 018. PAN:ABAPM 2121 M	Vs.	Addl. CIT- Central Circle-23 R.No.409, Aayakar Bhavan M.K. Road,Mumbai-400 020.
---	-----	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Dr. Daniel**Assessee by:Shri Dharmesh Shah**सुनवाई की तारीख / **Date of Hearing: 03.03.2016**घोषणा की तारीख / **Date of Pronouncement: 03.03.2016****आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश****Order u/s.254(1)of the Income-tax Act,1961(Act)****लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the orders of CIT(A)-40,Mumbai,the assessee has filed the present appeal raising various grounds.

2.During the course of hearing before us,the Authorised Representative(AR) stated that the assessee was not interest in pursuing Grounds No.1-3 filed for the AY.under appeal. Therefore,same stand dismissed,as not pressed.He further stated that effective ground(GOA-4)dealt with interest and same needs to be adjudication.

We find that GOA-4 is about disallowance of Interest Expenditure of Rs.72.60 lakhs.During the course of hearing before us,Representatives of both the sides agreed that the issue has arisen in the Harshad S.Mehta(HSM)group on many occasions and that the Tribunal had decided the identical issue in the cases of the individual of the group as well as the corporate entities of the group.We find that the Tribunal has restored back the issue to the file of the AO in all such cases.We would like to reproduce the relevant portion of the case of Pratima H Mehta,one of the members of the HSM group,to which one of us was party (ITA/350/ Mum/ 2013(AY-2009-10 dt.11.5.2015).In that matter the third ground of appeal was about the disallowance of the interest expenditure and the Tribunal had decided the case as under :

"2. Ground No.3 was stated to be covered by the earlier decision of the Tribunal in group case.Reference was made to the decision dated 5/3/2015 passed in ITA No. 5135& 5136/Mum/2012 & ITA Nos.2151/Mum/2013 in the case of Growmore Leasing & Inv. Ltd. and reference was made to the following observations: "

3. Ground No. 4 relates to the disallowance of interest expense. The Ld. Counsel for the assessee brought to our notice that the decision relied upon by the Ld. CIT(A) while disposing this ground has been set aside by the Tribunal to the file of the Ld. CIT(A). 4. The Ld. Departmental Representative could not bring any distinguishing decision in favour of the Revenue.

5. We have carefully perused the orders of the authorities below. While disposing the ground relating to the 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 Nos. 2139, 2140 and 2141/Mum/2013 have followed the decision of the Tribunal given in common group case of Hitesh S. 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 files of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee. 6. 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 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 this fact while deciding the issue afresh. The 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 and as per the provisions of the law. Ground No. 4 is treated as allowed for statistical purpose."

3. Ld. Special Counsel did not controvert to such contention of Ld. AR that the issue is covered by the aforementioned decision.

4. In view of the situation, after hearing both the parties, we pass similar order and this ground is considered to be allowed for statistical purposes in the manner aforesaid."

Following the above, we pass similar order. Ground No.4 is allowed for statistical purposes for both the years."

Following the above, we allow Ground No.5 for statistical purposes for the year under appeal."

Respectfully following the orders of the earlier years of the members of the Harshad Mehta Group, we are remitting back the issue to the file of the FAA for fresh adjudication.

As a result, appeal filed by the Assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है।

Order pronounced in the open court on 3rd, March, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 3 मार्च, 2016 को की गई।

Sd/-

Sd/-

(अमित शुक्ल/ Amit Shukla)

(राजेन्द्र / Rajendra)

न्यायिक सदस्य/Judicial Member

लेखा सदस्य/Accountant Member

मुंबई Mumbai, दिनांक Date: 03.03.2016

व.नि.स. Jv. Sr. PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "D" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, A खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.