

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

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6026/Mum/2017

(निर्धारण वर्ष / Assessment Year: 1992-93)

DCIT, Central Circle-4(1) Central Range-4, Mumbai. Pr. CIT(2), Mumbai Room No.1916, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.	बनाम/ Vs.	Hitesh S. Mehta 32 Madhuli, Dr. A.B.RD, Worli, Mumbai-400018.
--	---------------------	---

आयकर अपील सं/ I.T.A. No.5190/Mum/2017

(निर्धारण वर्ष / Assessment Year: 1992-93)

Hitesh S. Mehta 32 Madhuli, Dr. A.B.RD, Worli, Mumbai-400018.	बनाम/ Vs.	ACIT, Central Circle-4(1) Air India Building, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABAPM4491J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vijay Mehta / Shri Dharmesh Shah
Revenue by:	Dr. P. Daniel

सुनवाई की तारीख / Date of Hearing: 31/08/2020

घोषणा की तारीख /Date of Pronouncement: 31/08/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue as well as assessee have filed the above mentioned appeals against the order dated 29.06.2017 passed by the Commissioner of Income Tax (Appeals) -52, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.1992-93.

ITA. NO.5190/Mum/2017



2. The assessee has filed the present appeal against the order dated 29.06.2017 passed by the Commissioner of Income Tax (Appeals) -52, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.1992-93.

3. The assessee has raised the following grounds: -

- “1. *The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in not appreciating that no income from the attached assets can be taxed in the hands of the appellant.*
2. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in rejecting the books of accounts of the appellant.*
3. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in fact in confirming addition of unexplained investment of 38,08,416/-.*
4. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming addition of unexplained deposits in bank account of the appellant amounting to 85,225/-.*
5. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming addition of share of profit of MIs. Sunrise Enterprises amounting to 252075/-.*
6. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming disallowance of interest expenditure amounting to 2.76,76,843/-*
7. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in not considering the claim of the appellant relating to deduction u/s. 80L of the Act amounting to Rs.12,000/-.*
8. *The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts that in confirming the levy of interest u/s. 234A, 234B and 234C of the Act.*
9. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in not appreciating that the income assessed in the hands of the appellant were subjected to the provisions of TDS and hence on the said amount of tax no interest can be computed u/s. 234B and 234C of the Act.*



10. *The appellant craves leave of Your Honour to add to, alter, amend and/ or delete all or any of the foregoing grounds of appeal.”*

4. The brief facts of the case are that the assessee was a notified person under the Special Court (Trial of Offences relating to transactions in securities) Act, 1992 and his all assets including bank accounts were attached and vested in the hands of the Custodian appointed under the said Act. The return of income was not filed u/s 139 of the Act and also in response to the notice u/s 142(1) of the I. T. Act. The original assessment was completed on 28.02.1995 at total income of Rs.20,38,95,716/-. No books of accounts were produced by assessee during the course of assessment proceedings. In the absence of books of account and on account of non-co-operation from the assessee and failure to comply the terms of notice u/s 142(1), the original assessment was completed u/s 144 determining total income to the tune of Rs.20,38,95,716/-. The assessee filed an appeal before the CIT(A) who confirmed the said addition. The Hon'ble ITAT vide its order dated 31.08.2005 set aside the assessment to be reframed denovo in accordance with the law providing the adequate and proper opportunity to the assessee in accordance with law. In compliance of the order of the Hon'ble ITAT, the proceedings were initiated and order u/s 144 r.w.s. was passed U/s 254 of the I. T. Act on 22.12.2006. The said order was completed by carrying out certain additions and the total income of the assessee was determined at Rs.22,59,48,341/-. Thereafter, the assessee preferred an appeal against the order passed on 22.12.2006. Thereafter, the CIT(A) has passed the order dated 30.12.2011 provided certain relief to the assessee. The assessee once again challenged the order of the CIT(A) before the Hon'ble ITAT and Hon'ble ITAT in its order dated 01.05.2013, once again set aside the order and restored the issues to the



file of the AO to pass the assessment de novo. In pursuance of the ITAT order, the re-assessment proceeding was initiated and notice u/s 143(2) of the Act was issued on 08.11.2013 which was served upon the assessee. Thereafter, the AO completed the assessment u/s 144 r.w.s. 254 of the Act determining the income to the tune of Rs.3,62,50,724/- after making the following additions.:-

(i) Unexplained investment	Rs.1,16,51,516/-
2. Unexplained receipts	Rs.1,62,327/-
3. Profit from Sunrise Ent.	Rs.2,52,075/-
4. Dividend and interest income	Rs.60,61,163/-
5. Share Trading Profit.	Rs.1,56,96,071/-
6. Long Term Capital Gain	Rs.23,61,869/-
7. Salary Income	Rs.65,703/-

Thereafter the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NO. 1

5. This issue was not pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

ISSUE NO.2

6. Under this issue the assessee has challenged the issue of rejection of the books of account by the AO which was confirmed by CIT(A). It is a



third round of the appeal before the Hon'ble ITAT. Initially assessment was completed u/s 144 of the Act on 28.02.1995. The books of accounts were rejected by AO. The said issue was upheld by CIT(A) vide its order dated 28.02.2003. Thereafter, the assessee has challenged the issue before the Hon'ble ITAT and vide order dated 20.10.2005, the issue was restored to the file of the AO to decide the matter of controversy afresh by giving certain directions. Thereafter, the AO completed the assessment vide u/s 144 r.w.s. 254 of the Act dated 22.12.2006 and once again the books of account was rejected. The assessee filed an appeal before the CIT(A) who confirmed the order of the AO vide order dated 30.12.2011. The assessee again challenged the order of the CIT(A) dated 30.12.2011 before the Hon'ble ITAT in view of the ITA. No.538/M/2012. The Hon'ble Tribunal vide order dated 01.05.2013 again restored the issue before the AO to decide the matter of controversy afresh in view of the certain guidelines. Thereafter, the assessment was completed on 30.03.2015. Thereafter, the matter was filed before the CIT(A) who confirmed the finding of the AO. The Ld. Representative of the assessee has argued that the books of account has been rejected by AO and confirmed by CIT(A) on the basis of the finding in the case of Late Shri Harshad Mehta who is the broker but in this regard the reason given for not accepting the books of account in the case of Shri Harshad Mehta is not liable to be considered for rejecting the books of account in the case of the assessee. It is also argued that the assessee has given the explanation for accepting the books of account by virtue of letter dated 20.02.2015 which lies at page no.248-263 of the paper book and the said reasons were not considered, therefore, the issue is liable to be set restored before the AO to consider the said reasons and to accepting the claim of the assessee. It is also argued that the CIT(A) has observed that the



books of account has not been filed which is contrary to the record because the books of account were filed which lies at page no.264 -265 of the paper book and the books of account has also been filed before Hon'ble ITAT which lies at page no. 136-242 of the paper book. It is specifically argued that the case of the Late Shri Harshad Mehta is quite different from the case of assessee, therefore, the finding of the case of Late Shri Harshad Mehta is not liable to be applicable in the case of assessee. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The assessee has given the details explanation to each of the objection by virtue of letter dated 20.02.2015 which has not been discussed and decided by the AO. The assessee has given the following explanation of the objection.:-

- a) As regards non furnishing of certified copy of bank statement, it is submitted that while completing the original assessment u/s 144 of the Act on 28.02.1995, the copy of the bank statements was called from the RBI and was available with the assessing officer. [Pg. 6-7 of PB].
- b) The objections in the Special Audit Report dated 06.02.2002 were mainly because certain documents were not submitted to the auditors due to its unavailability at the relevant point of time i.e. in 2001. This was mainly because, Late Shri Harshad Mehta had expired on 31.12.2001 and there was complete imbalance in the family. However, later in 2006, complete, books of account and explanations have been submitted before the Assessing Officer with respect to these discrepancies at the time of assessment proceedings. Hence, reference to the observations of special auditor is of no relevance as complete books of account have been filed subsequent to the report of the special auditor. In any case, the report given by the auditors was merely an opinion and cannot form basis for rejection of books of account.
- c) The contract notes were liable for stamp duty which was to be paid by the brokers. The brokers had paid the stamp duty periodically on consolidated basis and not on transaction to transaction basis. Further as regards the Rules of charging



brokerage etc. as per Bye laws, it is submitted that the contract notes are accepted by the department and hence such observations cannot lead to adverse inference. In any case, even if there is any default on the part of the brokers in not making payment of stamp duty, that cannot be reason to doubt the books of account of the assessee

- d) As regards non payment/receipt on purchase/sale of shares, it is submitted that the assessee used to carry out transaction through family broker firms namely M/s Ashwin Mehta, M/s Harshad Mehta and M/s JH Mehta. The payments/receipts were made with them on lumpsum basis and not on transaction to transaction basis. Further, the sale consideration it also adjusted against the liability. The net balance payable to these entities is reflected as liability at the end of the year. Further, interest on the same is also charged on such amounts payable to these entities. The same can be seen from the ledger accounts of broker entities in books of account of assessee.
- e) Further, as regards delivery of shares, it is submitted that the delivery of shares have been taken by the assessee. The shares are also registered in assessee's name and the capital gains and dividend income earned on these shares have also been offered by the assessee and accepted by the department in subsequent years u/s 143(3) of the Act.
- f) As regards benami and unregistered shares, it is submitted that the said issue arose from date of notification i.e. 08.06.1992 and hence not applicable for the year under consideration.
- g) As regards want of audit of books of account, it is submitted that the assessee has income in the nature of salary income, capital gains and income from other sources. The same can be seen from computation of income filed at Pg. 131 of PB. As there was no income from Business and Profession, there was no requirement to carry out audit u/s 44A6 of the Act. Further, the observation of the assessing officer that the assessee is having tens of crores of turnover is also factually incorrect as there is no business/professional carried out by the assessee. In any case, even presuming that audit was required to be carried out but not done so, the assessing officer should have verified the books of accounts independently and could have rejected the same only if specific defects were found in the books of account.
- h) As regards day to day drawing of books of account, it is submitted that at the time of search, incomplete books of



account were seized. The books of account could not be fully drawn due to notification and other difficulties. The assessee could draw its complete books in 2006. These books of account were filed before the assessing officer and hence ought to have been examined by the assessing officer and could not have been rejected at the threshold. Hence, the aforesaid observation is not relevant now.

- i) As regards uniform drawings of Rs. 5,000/- per month, it is submitted that the same is factually incorrect. There are no uniform drawings of such amount in case of the assessee. On perusal of ledger account of Drawings at Page 177, it can be seen that there are different amount of drawings by the assessee.
- j) Since the purchase and sale of shares were made through contract notes issued by brokers, the entries for the same have to be made by way of journal entries. Further, as stated above, the payments/receipts from these parties are made on lump-sum basis. The contract notes are also accepted by the assessing officer as explained.
- k) As regards cross verification of certain entries relating to various parties, most of the transactions are with relatives who are assessed in the same charge as that of the assessee. Hence, in such circumstances, it cannot be said that cross verification is not possible with respect to these entities."

7. On appraisal of the order of the AO, we nowhere find that the AO has dealt with the each and every explanation given by the Assessee. Moreover, the case of the assessee is quite different from the case of Shri Harshad Mehta who is the broker. The case of the assessee is independently liable to be examined and comparison if any with the case of the Shri Harshad Mehta is not justifiable specifically in the circumstances when the fact and figure are quite different. Moreover, the CIT(A) has observed that the assessee did not file the books of account whereas the books of account were filed page no. 264-265 of the paper book. Under these circumstances, we are not in agreement with the conclusion of Ld. CIT(A) on the issue rejection of books of accounts and hence we set aside the finding of the



CIT(A) on this issue. Accordingly, we decide this issue in favour of the assessee against the revenue.

ISSUE NO. 3

8. Under this issue the assessee has challenged the confirmation of the addition in sum of Rs.38,08,416/- The CIT(A) has confirmed the said addition in following manners:-

Sr. No.	Nature of additions	Additions sustained by Ld. CIT(A)
A	Based on company letters	12,38,857
B	Based on custodian letters	24,24,385
C	Based on dividend warrants	82,775
D	Based on seized assets	62,400
	Total	38,08,417

9. The CIT(A) has confirmed the addition in sum of Rs.12,38,857/- on the basis of the company letter which is hereby mentioned below:-

Sr. No.	Nature of scrip	Amount
1	Bihar Alloys & Steels Ltd.	4,175
2	Goa Carbon	53,250
3	Additions based on seized assets	58,652
4	Ispat Alloys Ltd.	4,410
5	Manglore Chemicals and Fertilizers Ltd.	1,638
6	Onida	81,763
7	Singer India Ltd.	1,000
8	Southern Petrochemical Ind. Corp. Ltd.	3,05,044
9	Reliance Capital and Finance Trust Ltd.	1,24,000
10	MRF Ltd.	1,34,625
11	Steel Tubes of India Ltd.	85,100



12	Indo Rama Synthetics India Ltd.	3,84,800
	Total	12,38,857

10. The Ld. Representative of the assessee has argued that the AO nowhere provided company letter of scrips corresponding the addition of Rs.5,09,932/- on account of following parties.:-

Sr. No.	Nature of scrip	Amount
1	Bihar Alloys & Steels Ltd.	4,175
2	Goa Carbon	53,250
3	Additions based on seized assets	58,652
4	Ispat Alloys Ltd.	4,410
5	Manglore Chemicals and Fertilizers Ltd.	1,638
6	Onida	81,763
7	Singer India Ltd.	1,000
8	Southern Petrochemical Ind. Corp. Ltd.	3,05,044
	Total	5,09,932

11. The basic contention of the assessee is that the AO nowhere provided company letter of scrips before addition, therefore, in the interest of justice, the company letter/material should be given before raising the addition in accordance with law, hence addition is not liable to be sustainable. It is against the principal of natural justice. Accordingly, we are of the view that the addition in sum of Rs.5,09,932/- is liable to be examined once again by the necessary documents/opportunity to the assessee in accordance with law. So far as the remaining addition in sum of Rs.17,76,26,579/- is concern, the addition was raised without any evidence. The addition in sum of Rs.24,24,385/- is on the basis of scrips namely



Reliance Capital & Finance Trust Ltd. The said scrips was in respect of share holder namely Hitesh Shantilal Mehta having residential address at Ahmedabad instead of Hitesh Shantilal Mehta residing at Mumbai. On account of similar name the addition was raised. The second scrips was with the name of MRF Ltd which was with the name of other family members Smt. Rina S. Mehta and third scrips Steel Tubes of India Ltd. nowhere reflected the data when the share was purchased. The company letter is of the date of 26.08.1994 which was not pertaining to the year under consideration. The last scrips pertains to Indo Rama Synthetics Ltd. There is no cogent and convincing evidence is on record to which it can be assumed that the same pertains to the assessee. Since all these contention are nowhere meet out by the AO, therefore, these addition are required to be examined by giving an opportunity of being heard to the assessee in accordance with law. The addition in sum of Rs.24,24,385/- is also on the basis of the information provided by the custodian vide letter dated 29.10.1993. The contention of the assessee is that the said letter is not liable to be considered on the basis of the following grounds.:-

- “a. The letter does not reflect the date as on which the shareholding has been determined by the custodian.*
- b. It has been clarified by the custodian that the figures of holding are subject to constant changes due to several reasons like non-consideration of sale of shares by notified parties, the companies who have not yet indicated the holdings may send the information in future, the value of the shares are subject to prevailing market rate which is bound to fluctuate.*
- c. The figures of shareholding cannot be treated as firm and final figures.*
- d. The figures so derived by the custodian are on the basis of company letters are itself not matching with the company letters. Hence, the figures stated in the custodian letter cannot be relied.”*



12. We observe that the said addition comprised of various amounts as have stated in para 8 above. The first amount of Rs.12,38,857/- comprised of two components one Rs.5,09,932/- in respect of which the assessee has not been provided the third party evidences relied upon by the AO i.e. companies letters and these companies are stated on serial no 1 to 8 in para 9 above. Since the assessee has not been provided the copies of these letters at the time of assessment proceedings and the fact has been brought to the notice of the AO during assessment proceeding vide letter dated 27.03.2015, therefore, the addition of Rs.5,09,932/- cannot be sustained. This has been held by the Tribunal in the earlier round in ITA. No.538/M/2012 vide order dated 01.05.2013 in assessee's own case. Pertinent to the mentioned that the order of the Tribunal was challenged of the revenue before the Hon'ble High Court and Hon'ble Bombay High Court vide order dated 07.06.2016 in ITA. No. 2490 of 2013 has upheld the views of Tribunal and dismissed the question of law raised by the revenue. The case of the assessee is also supported by the decision of the Tribunal in the case of assessee's brother Late Shri Harshad S. Mehta in ITA. No.637/M/2007 dated 02.01.2008 wherein it was categorically observed that wherever additions were made on the basis of seized material or material collected from third parties and copies thereof were not provided to the assessee, in that case, the addition cannot be made. It was also held that if the assessee has requested for the cross examination, an opportunity must be provided to the assessee for such cross examination. 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.

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.



14. As regards, the additions on account of dividend warrant of Rs.82,775/- and seized assets of Rs.62,400/- as mentioned in para 8 above, we find that the assessee has not been provided with the dividend details and details of seized assets on the basis of which the holdings were determined and accordingly we are not in agreement with the conclusion of the Ld. Of the CIT(A) of sustaining the addition of these amounts in view of the fact that the assessee has not been provided these evidences during the course of assessment proceedings. We would like to refer to the decision of the coordinate bench in assessee's own case in ITA. No.538/M/2012 dated 01.05.2013 wherein it has been categorically held that if the material on the basis of which addition is made is not provided to the assessee, then the addition has to be deleted and can not be sustained which was also affirmed by the Hon'ble Bombay High Court in ITA. No.2490 of 2013 vide order dated 07.06.2016. Accordingly, we set aside the order of the CIT(A) on this issue and direct the AO to delete the addition.

The ground no. 3 is allowed in favour of the assessee.

ISSUE NO.4

15. Issue no. 4 is in connection with the addition of unexplained deposits of Rs.85,225/-. Initially AO raised the addition in sum of Rs.1,62,327/- however the CIT(A) deleted the addition to the tune of Rs.77,102/- remaining in sum of Rs.85,225/- has been confirmed. The assessee has explained the deposits in the bank account in the following manners.:-

Sr. No.	Date	Amount received Rs.	Relevant Pg. of Pbk	Remarks
1	13.04.1991	44	Pg 155 of paper book	Rs.175 is received towards dividend of



ITA No. 5190/M/2017
6026/M/2017
A.Y.1992-93

				past years.
2	13.04.1991	44	-	
3	13.04.1991	44	-	
4	13.04.1991	44	-	
5	13.04.1991	44	-	No entry found in bank statements
6	13.04.1991	44	-	No entry found in bank statements
7	27.07.1991	12169	Pg 419 of paper book	Offered as part of miscellaneous income
8	8.8.1991	15	Pg 158 of paper book	Bank Interest from bank of india offered by the assessee
9	11.10.191	2100	Pg. 157 of paper book	Rs.9,643/- Dividend income from BCL forging Ltd. offered by the assessee
10	11.10.1991	7543		
11	04.1.1992	3759	Pg. 145 of paper book	Bank interest from ANZ Grindlays Bank offered by the assessee
12	15.02.1992	600	Pg 419 of paper book	Offered as part of miscellaneous income
13	15.02.1992	58138	Pg 419 of paper book	Offered as part of miscellaneous income
14	31.03.1992	638	Pg 143 of paper book	Bank Interest from American express bank offered by the assessee
	Total	85,225		

16. After hearing the rival parties and perusing the material on record, we find that the said addition of Rs.85,225/- was made by AO u/s 69 of the Act on account of unexplained deposits. However, the entries qua these amounts were duly reflects in the books of account of the assessee and



offered to tax as part of the income by the assessee in the form of dividend and bank interest. The detailed chart has been apprehended in para no. 15 above. In our opinion these entries were subsequently explained on the basis of the books of accounts and there being no material to prove to the contrary and therefore, we are inclined to set aside the order of the CIT(A) on this issue and direct the AO to delete the addition.

ISSUE NO.5

17. Issue no. 5 is in connection with the addition of share of profit from partnership firm of Rs.2,52,075/-. The Ld. Representative of the assessee has argued that the addition in sum of Rs.2,52,075/- was raised on the basis of the share profit from partnership firm namely M/s. Sunrise Enterprises. It is specifically argued that the final figure is not on record, therefore, the issue is liable to be restored to the file of the AO to decide the matter of controversy afresh to adopt the final figure of profit determined in case of M/s. Sunrise Enterprises in the hands of the assessee. Anyhow when the profit figure has been taken from the M/s. Sunrise Enterprises, therefore, it is necessary to determine the matter of controversy on the basis of the final figure of profit determined in the case of M/s. Sunrise Enterprises. Accordingly, we set aside the finding of the CIT(A) on this issue and direct the AO to decide the matter of controversy afresh, after obtaining the final figure of the profit determining in the case of M/s. Sunrise Enterprises. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO. 6



18. Under this issue the assessee has challenged the disallowance of interest expenditure amounting to Rs.2,76,76,843/- It is argued that the interest expenses have been allowed in ITA. No.4430/M/2017 for the A.Y.2012-13 dated 27.12.2017, therefore, in the said circumstances, the interest expenses is liable to be allowed in the interest of justice. It is also argued that in the case of brother of the assessee Ashwin S. Mehta Vs. ACIT in ITA. No.2474/M/2015 dated 07.12.2018, the expenses has also allowed, therefore, the claim of the assessee is liable to be allowed in the interest of justice. It is specifically argued that the assessee nowhere earned any exempt income, hence, no disallowance u/s 14A of the Act. It is also argued that the issue has been challenged in the case of the assessee and several other family members wherein on similar facts, the interest claimed as payable to Late Shri Harshad S. Mehta, Shri Ashwin S. Mehta and Smt. Jyoti H. Mehta was held allowable by the Hon'ble Tribunal subject to verification of disallowance u/s 14A of the Act, hence the interest expenses is liable to be allowed. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Copy of order bearing ITA. No.4430/M/2017 for A.Y. 2012-13 dated 27.12.2017 is on the file in which the relevant finding is hereby reproduced as under.:-

“23 Ground No. 2 is similar to the ground No. 1 in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015. As agreed by both the parties that whatever view may be taken in the case of Sudhir S. Mehta in ITA. No. 5799/Mum/2015, the same view may be taken in the case of the assessee. We therefore, respectfully following our finding given while disposing of ground no.1 in the case of Sudhir S. Mehta in ITA. No.5799/M/2015 set aside the order of the CIT(A) and direct the AO to allow deduction to the u/s 57 in respect of interest accrued @ 12% amounting to Rs.1,10,86,8343/- out of the interest earned on term deposit after verifying the calculation of the interest quantification.”



19. The copy of order in the case of Shri Sudhir S. Mehta bearing ITA. No.5799/M/2015 is also on the file in which the relevant finding is hereby reproduced as under.:-

"12. We heard the rival submissions and carefully considered the same along with the orders of the Tax Author/ties be/ow. We have also gone through the case law as has been cited before us the relevant provisions of the Special Court Act which has been referred to before us during the course of hearing. This is an undisputed fact which we noted that the assessee is a notified person from 08.06.1992 under Section 3(2) of the Special Court Act as per the provisions of the Special Court Act contract entered into by a notified person prior to notification made under Section 3(2) are not affected by the notification. Section 4(1) of the Special Court Act empowers the custodian to cancel any contract or agreement entered into between 01.04.1991 to 06.06.1992 if the custodian finds that these contracts have been entered into fraudulently or to defeat the provisions of the Special Court Act. In A. Y. 1990-91. the AO in the assessment order passed under Section 143(3) dated 26.03.1993 allowed the interest expenses to the assessee to the extent of F5,86,4041-. From page 75 of the paper book which contains the computation of income for A. Y. 1990-91, we noted that the assessee has disclosed the loan taken for the purchase of investment The assessee is consistently following mercantile system of accounting which is apparent even from the assessment order of A. V. 1990-91 as well as from the impugned assessment year The order for A. Y 1990-91 in fact has been passed by the AO after the date of notification and the enactment of the Special Court Act. We have gone through the order passed by the CJT(A) in the case of Shri Ashwin S Mehta assessment years 2010-11 and 2011-12, where we noted that this issue of taxability of interest income of the assessee and other parties has specifically been dealt with by the CIT(A) and accordingly interest income of Rs. 10,68,83,732/- was brought to tax. In view of this fact it is apparent that the assessee is liable to pay interest on the amount outstanding. Therefore. the liability towards interest got accrued. Under the mercantile system of accounting interest is deductible when it has accrued. This also proves that there was an agreement, may be oral, to pay the interest on the borrowed funds by the assessee to the other family members. We, therefore, reject the plea of the learned D.R. that no liability towards interest has accrued but it was merely a contingent liability. We noted that section 4 of the Spec/al Court Act empowers the custodian and the court to cancel any contract or agreement in relation to the property of a person notified under that Act provided they have entered into fraudulently. In this case no cogent material or evidence has been brought to our knowledge or placed before us which may



ITA No. 5190/M/2017
6026/M/2017
A.Y.1992-93

prove that the custodian under Section 4(1) of the Special Court Act has taken any action to cancel the terms relating to payment of interest. Rather we have noted from the affidavit of the custodian dated 01.03.2006 in Al. P. No. 41 of 1999 that the custodian seeking to levy interest @ 15% to 18% per annum. Therefore, the interest on outstanding credit balance of the brokerage firm has accrued as actual liability. The issue with regard to contract for payment of interest has been raised by the AO and the CIT(A) in the case of other notified entities duly approve the existence of liability We noted that in the case of Growmore Leasing & Finance Ltd. for A. V. 2007-08 by order dated 26.06.2014 the CIT(A) followed the finding in the case of other group concerns, i.e. Eminent Holding Pvt. Ltd. by observing as under: -

"6.3 I have gone through the submissions of the Ld. AR. I find that though there is no express document evidencing payment of interest to the brokerage firms, the intentions of the parties were always so, this is evident from the fact that identical claim was also made during A. V. 1990-91 and the same was allowed to the appellant and other concerns. The claim made in the affidavit of Custodian in MP No. 41 of 1999 also supports this claim. I also agree with the appellant that there need not be any written agreement and that the oral agreement coupled with the actions and intentions of the parties is sufficient to prove the existence of the liability."

20. The copy of order in the case of brother of the assessee in Ashwin S. Mehta Vs. ACIT bearing ITA. No.2474/M/2015 dated 07.12.2018 is on the file in which the relevant finding is hereby reproduced as under.:-

"9. Since, the coordinate Bench has already dealt with the identical issue and decided the same on merits in favour of the assessee in assessee's own case for the earlier assessment years, we do not find any reason to deviate from the findings of the coordinate Bench. The revenue has not brought on any order passed by the courts of law, contrary to the decision of the coordinate Bench. Hence, respectfully following the decision of the coordinate Bench, we allow this ground of appeal of the assessee and set aside the findings of the Ld. CIT(A). We accordingly direct the AO to delete the addition."

21. The copy of order in the case of Cascade Holding Pvt. Ltd. Vs. ACIT & vice-versa bearing ITA. No.937 & 938/M/2017 dated 04.04.2019 is on the file in which the relevant finding is hereby reproduced as under.:-



ITA No. 5190/M/2017
6026/M/2017
A.Y.1992-93

“13. The facts of the present case are similar to the facts of the case of Sudhir Mehta vs. DCIT, discussed above and the issues involved in both the cases are identical. Since, the coordinate Bench of the Tribunal has dealt with the identical issue in the aforesaid case and directed the AO to allow deduction in respect of interest accrued and calculate @ 12% per annum after disallowing proportionate interest in respect of investment in shares after verifying calculation of the interest quantification, we respectfully following the decision of the coordinate Bench, set aside the findings of the Ld. CIT(A) allow this ground of appeal. Since the assessee had not earned any exempt income during the year relevant to the assessment year under consideration, we direct the AO to allow the deduction in respect of interest accrued and calculate @ 12% per annum in terms of the order passed by the coordinate Bench in the case of Sudhir Mehta vs. DCIT.(supra).”

22. In view of the above said finding in which the said addition has been allowed, we are of the view that the same is liable to be allowed, hence, we allowed the interest expenses in sum of Rs.2,76,76,843/-. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO. 7

23. Under this issue the assessee has challenged about non consideration of claim of the appellant relating to deduction u/s 80L of the Act amounting to Rs.12,000/-. The CIT(A) has rejected the claim of the assessee on the basis of this fact that there is no mentioned in the order of the AO in this regard. It is also observed by the CIT(A) that the assessee did not claim deduction u/s 80L of the Act in his computation of his income. No doubt, the AO nowhere discussed and decided the issues but the assessee raised the claim before the CIT(A) who declined the claim of the assessee on the ground that the assessee did not raise the claim before the AO. Anyhow, the claim raised before the CIT(A) is liable to be decided in accordance with law. The assessee earned the dividend income in sum of Rs.12,000/-. The assessee failed the claim of the said deduction in view of the negative income. Anyhow, the claim of the assessee is liable to be seen in



accordance with law, therefore, we set aside the finding of the CIT(A) on this issue and restored the issue before the AO to decide the matter of controversy afresh in accordance with law by giving an opportunity of being heard to the assessee in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NOS. 8 & 9

24. Under these issues the assessee has challenged the levy of interest u/s 234A, 234B & 234C of the Act and incorrect computation of interest under these sections. The Ld. Representative of the assessee has admitted that the issue of levy of interest has been decided against the assessee by the decision of Hon'ble ITAT Mumbai Bench in the related concerns namely Cascade Holdings ITA. No.937 & 938/M/2017 wherein it has been held that the provisions of Sections 234A, 234B & 234C of the Act are mandatory and applicable to notified of entities. However, in connection with the other issue, the issue is remitted to the file of the AO to compute the liability of the interest after reducing the tax deductible at source. In this regard, the finding has been given by Hon'ble ITAT Mumbai Bench in the case of M/s. Cascade Holdings Pvt. Ltd. Vs. ACIT and vice-versa bearing ITA. No.937 & 938/M/2017 dated 04.04.2019 and the relevant para 18 is hereby reproduced as under.

"18. Since, the coordinate Bench has dealt with the identical issue and set aside the said issue to the file of AO for re-computation after reducing the amount of tax deductible at source on the income earned and since there is no material change in the facts of the case, there is no reason to take a different view other than the view already taken in the similar matter Hence, respectfully following the decision of the coordinate Bench, we set aside this issue to the file of AO for re-computing the amount after reducing the amount of tax



ITA No. 5190/M/2017
6026/M/2017
A.Y.1992-93

deductible at source. Hence, this ground of appeal is allowed for statistical purposes."

25. We also find support of the decision in the case of Sudhir S. Mehta Vs. DCIT, Growmore Leasing & Investment Ltd. Vs. DCIT & Ashwin S. Mehta Vs. ACIT. Accordingly, we set aside the finding of the CIT(A) on these issues and restored the issue before the AO to re-compute the interest leviable under the Act after reducing the income on which tax is deductible at source. Accordingly, these issues are decided.

ITA. NO.6026/M/2017

26. The facts of the present case is quite similar to the facts of the case as narrated above in ITA. No.5190/M/2017, therefore, there is no need to repeat the same.

27. The revenue has raised the following grounds.:-

"1. On the facts and in the circumstances of the case and in law, the Lde. CIT(A) has erred in not appreciating the finding given by the AO in para 4.5 of the assessment order and deleting the addition of Rs.78,43,099/- being unexplained investment in shares."

28. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The revenue has challenged the deletion of the addition to the extent of 78,43,099/- on account of unexplained investment in shares. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"14. 1 have considered the facts of the case, submissions and contentions the assessee as also the order of the AO. On perusal of the assessment order, it is clear that this addition of Rs.1,16,51,515/- has been made by the AO in respect of 38 scrips which is annexed along-with the present order. The assessee has furnished a detailed explanation, in nature of Company letters including share holdings of the assessee at the relevant point of time which are appearing from Page 79 to 132 of



ITA No. 5190/M/2017
6026/M/2017
A.Y.1992-93

the paper book of the assessee, custodian letter appearing from page 133 to 151, affidavit filed by the 3rd parties showing purchases on behalf of the assessee as appearing from page 186 to 211 and other relevant details, in respect of the following scrips as per which the discrepancies as worked out by the AO earlier stands explained.

Scrip Name	Balance Unexplained Investment	Value of unexplained investment
Alkyl Amines	550	90063
Andhra Valley Caprihans	545	850200
Gajra Bevel	100	6500
Great Eastern Ship	213	62137
Indian Seamless DEB	540	54000
ITC Ltd.	12185	6068130
L&T DEB	110	13200
Metalman Pipe	3600	343800
Modi Cement	1290	62081
Mukund Steel-DEB	150	15000
Swaraj Engines	350	47688
Universal luggage	4900	2303000
Total		7843099

Therefore, the balance addition of Rs.38,08,416 is confirmed in the and of the assessee. Thus, this ground taken by the assessee is partly allowed."

29. On appraisal of the above mentioned finding, we noticed that the assessee has furnished the detailed explanation in nature of company letter including share holdings of the assessee company and the custodian letters and affidavit of third parties showing the purchase on behalf of the assessee. The discrepancies has been explained after due verification of the claim. The CIT(A) has deleted the addition to the extent of Rs.78,43,099/-. Nothing came into noticed that which scrips has not been explained by assessee. The transaction has been explained satisfactorily. Since the CIT(A) has allowed the claim of the assessee on the basis of satisfactorily



ITA No. 5190/M/2017
6026/M/2017
A.Y.1992-93

explanation of the assessee in connection with the transaction in question, therefore, we nowhere found any ground to interfere with the finding of the CIT(A) in question. Accordingly, we decide this issue in favour of the assessee against the revenue.

30. In the result, the appeal filed by the assessee is hereby allowed and the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 31/08/2020

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/08/2020
Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की 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//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai