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

BEFORE SHRI C. N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA. No. 7147/MUM/2018
(Assessment Year: 2014-15)

Shri Sudhir S. Mehta, 32, Madhuli Apartment, Dr. A. B. Road, Worli, Mumbai-400 018	*v.*	DCIT-CC-4(1) Air India Bldg, Nariman Point, Mumbai-400 021
PAN No. ABAPM4496R		
(Appellant)	:	**(Respondent)**

Assessee by : **Mr Mitali Gopani, AR**

Department by **Mr. P. Daniel, DR**

Date of Hearing : **21.10.2020**

Date of Pronouncement : **13.11.2020**

O R D E R

PER C. N. PRASAD, JM:

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)–52 in short referred as 'Ld. CIT(A)', Mumbai, dated 11.10.2018 for Assessment Year (in short AY) 2014-15.

2. The brief facts of the case are, 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 were attached and vested in the hands of the Custodian appointed under the said Act. The assessee has not filed return of income before the due date, as provided u/s 139 of the Act. A notice u/s. 148 of the Act was issued and duly served on the assessee after recording reasons of reopening. Notice u/s. 142(1) dated 28.06.2016 & 28.09.2016 were issued and duly served on the assessee. Subsequently, the assessee vide letter dated 22.08.2016 filed the relevant information as called for.

3. After considering the submission of assessee, AO observed that assessee has earned interest income on term deposits of Rs.12,66,861/- and claimed interest on loan at Rs. 2,20,45,030/-. The assessee has claimed deduction of Rs. 2,20,45,030/- under section 57 of the I.T. Act and the assessee was asked as to why deduction u/s. 57 in respect of interest expenditure should not be disallowed. In response, assessee filed the written submission against invoking section 57 of the Act, which is kept on record. During the assessment proceedings, it was asked to the assessee to furnish the basis of the provisions of interest expenditure made in their accounts along with the written contract including the terms and conditions between the creditors and the assessee. However, A.R. has relied on certain claims made before the

Hon'ble Special Court. As there is no specific order from the Court, this claim was rejected. Accordingly, AO rejected the contention of the assessee and passed assessment order u/s 143(3) of the Act by making disallowances on account of interest expenses on loans and personal household expenses.

4. Aggrieved with the above order, assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, partly allowed the appeal of the assessee.

5. Aggrieved with the above order, assessee is in appeal before us by filing the revised grounds of appeal, which are reproduced below: -

> *"1.The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming disallowance of interest expenditure amounting to Rs. 2,20,45,030/-.*
>
> *The Commissioner of Income-Tax (Appeals) ought to have allowed deduction on account of interest expenditure atleast to the extent of Rs. 23,95,370/- i.e. gross assessed income.*
>
> *3. The Ld. Commissioner of Income Tax (Appeals) ought to have capitalized the interest expenditure to the extent disallowed u/s. 14A of the Act.*
>
> *4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the estimated addition on account of personal house hold expenses to the tune of Rs. 6,00,000/- u/s. 69C of the Act.*
>
> *5. 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.*

6. 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. 234A, 234B and 234C of the Act.

7. The appellant craves leave to add to, amend, alter and/or delete all or any of the foregoing grounds of appeal.

6. Before me, Ld. AR appearing on behalf of the assessee submitted with regard to ground no. 1 on account of disallowance of interest expenditure, Ld. AR brought to our notice para 5 to 5.8 of AO's order and para 5 (5.1 to 5.5) of Ld. CIT(A)'s order and submitted that Ld. CIT(A) had disallowed interest expenditure on the ground that details pertaining to nexus between borrowed funds and the investments in various assets is not available on record and hence it is not possible to determine the quantum of interest expenditure allowable. However, this issue has been decided in the past in the assessee's case for various years and deduction has been allowed by Hon'ble Tribunal. In this regard, reliance is placed on the order in assessee's own case for A.Y. 2009-10, 2010-11 & 2011-12 in ITA No. 5799 to 5801/Mum/2015 dated 27.12.2017 at para no.06-16 of the said Common Order. Ld. Counsel further relied on the decision of Cascade Holdings Pvt. Ltd. v. DCIT for A.Y. 2012-13, 2013-14 & 2015-16 in ITA Nos. 6965, 6966 & 6968/Mum/2018 dated 16.03.2020 in para no. 9 of the order, Hon'ble

Tribunal has allowed deduction of interest expenditure to the extent of gross assessed income for the year. Ld. Counsel further relied on the following orders on similar issue, wherein the Coordinate Bench of ITAT has allowed the claim of interest expenditure: -

a) *Pratima H. Mehta v. DCIT for A.Y. 2014-15 in ITA No.5839/Mum/2018 dated 27.11.2019.*

b) Cascade Holdings Pvt. Ltd. v. DCIT for A.Y. 2014-15 in ITA Nos. 6967/Mum/2018 dated 23.09.2020.

c) Aatur Holdings Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6954-6956/Mum/2018 in order dated 13.03.2020.

d) Harsh Estates Pvt. Ltd. v. DOT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6957 6959/Mum/2018 dated 15.09.2020

e). Orion Travels Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA No. 6960 6962/Mum/2018 dated 23.09.2020.

7. On the other hand Ld. DR relied upon the orders passed by the revenue authorities, however he conceded that this ground is covered by the order of Coordinate Bench of ITAT.

8. Considered the rival submissions and material placed on record. It is noticed from the record that an identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

"12. We heard the rival submissions and carefully considered the same along with the orders of the Tax Authorities below. 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 `5,86,404/-. 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.Y. 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 CIT(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 `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 Special 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 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 M.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.Y. 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.Y. 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."*

13. Similar issue was involved in the case of other family member, i.e. Shri Hitesh S. Mehta for A.Y. 2005-06 where also the AO has disputed the very existence of liability towards interest to creditors. The CIT(A) vide his order dated 31.08.2010 confirmed and approved the claim of the assessee that there was no need for any written agreement and that the oral agreement coupled with action and intentions of the parties is sufficient to prove the existence of liability. This order of the CIT(A) was followed by him in the case of the assessee while adjudicating the ground relating to the interest expenses for A.Y. 2006-07 vide order dated 27.09.2013 under para 6 which has been reproduced under para 18 of the order of the assessee. These finding and observation in the above orders of the CIT(A) has not been disputed by the Revenue by filing an appeal. In view of this finding becoming final, in our view, the existence of liability for payment of interest cannot be disputed.

14. Coming to the objection of the Revenue that interest cannot be allowed as deduction has not been shown by recipients in their income. As has been discussed by us in the preceding paragraphs the interest has been shown as income by Mr. Ashwin S. Mehta in assessment years 2010- 11 and 2011-12. We also noted that Late Shri Harshad Mehta has been offering his income on cash basis and the method of accounting has been duly upheld by the Tribunal in his case for A.Y. 1989-90. Even otherwise disallowance of interest claimed by the assessee cannot be made merely because in the

opinion of the AO the corresponding interest income has not been offered by the recipients. The interest can be allowed on the basis of method of accounting followed by the assessee. We noted that similar issue when arose in the case of M/s. Growmore Leasing & Investment Ltd. vs. CIT in ITA No. 51354 & 5136/Mum/2012 wherein the Coordinate Bench of this Tribunal while setting aside the issue to the file of the CIT(A) directed him to tax the income in the hands of recipient family members in accordance with the method of accounting followed by them. We find force in the submission of the learned A.R. that since the assessee as well as the recipients are notified entities under the Special Court Act unless the Court directs for distribution of the assets towards existing liabilities under Section 11(2) of the Special Court Act, the assessee cannot make the payment to these creditors. Even otherwise since the existence of liability towards interest has accrued especially when the assessee is following the mercantile system of accounting the interest is to be allowed. During the course of hearing we raised a query about the nexus of interest expenses with the interest income. The learned A.R. pointed out that the liability in the present case was accrued on account of purchases of shares and securities by the assessee which were sold in terms of the directions of the Hon'ble Special Court in subsequent years and the sale proceeds so received were invested in term deposits with the banks and accordingly the assessee has claimed interest expenditure against the interest earned on term deposits. No contrary evidences or material were brought to our knowledge to contradict this fact. In view of this fact we find that there is a nexus between borrowed funds and investments in term deposits. Therefore, the interest paid on the borrowed funds has to be allowed out of the interest earned by the assessee on term deposits. We noted that identical issue was raised in the case of M/s. Growmore Leasing & Investment Ltd. in A.Y. 2007-08. The CIT(A) in his order dated 26.02.2012 considered the issue of nexus of interest expenditure with interest income, following his own finding in the case of another notified entity, i.e. Eminent Holding Pvt. Ltd. for A.Y. 2007-08 which are reproduced as under: -

> *"As regards the nexus of the interest expenditure with the interest income, I find that the Balance Sheet of the appellant and the affidavit filed by the custodian before the Hon'ble Special Court supports the fact that the funds borrowed from Shri Harshad S. Mehta were deployed by the appellant in various assets like shares and securities, properties, etc. These funds generated income in the form of dividend and interest income. After being notified, such shares and securities got converted into Fixed Deposits with various banks. These fixed deposits generated interest income which is offered*

to tax. Hence, a reasonable nexus can be said to exist between the interest liability incurred by the appellant, and the interest income earned from these assets. However, this matter being sub-judice before the Hon'ble Special Court, no finding can be given on these matters."

15. Similar issue has arisen in the case of Shri Hitesh S. Mehta for A.Y. 2005-06 wherein the CIT(A) vide his order dated 31.08.2010 approved the nexus between borrowed funds and the investment in term deposit which has been followed by the CIT(A) even in the case of the assessee for A.Y. 2006-07 dated 27.09.2013. We do not agree with the submission of the learned D.R. that interest expenses cannot be allowed till the Hon'ble Special Court decide the issue. The allowance or disallowance of the expenditure depends on the accrual of expenditure. Even no dispute has been raised in respect of interest on such credit balances before the Special Court. Even on this basis, following the principle of consistency, as the interest has been allowed as deduction in the A.Y. 2006-07 and there is no change in the facts, the deduction in respect of the interest expenditure has to be allowed. Our aforesaid view is supported by the following decisions:

The Supreme Court in the case of Radhasoami Satsang Saomi Bagh vs. CIT 193 ITR 321 referred to the following passage from Hoystead v Commissioner of Taxation 1926 AC 155 (PC), wherein it was observed (page 328):

"Parties are not permitted to begin fresh litigation because of new view they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the Plaintiff and traversable by the Defendant, has not been traversed. In that case also a Defendant is bound by the judgement, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

At pg 329 of the judgement, Their Lordships observed as under:

"We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating though the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

19. On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter and if there was not change it was in support of the assesses – we do not think the question should have been reopened and contrary to what had been decided by the Commission of Income-Tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under Sections 11 and 12 of the Income Tax Act of 1961."

The aforesaid dictum of law was reiterated recently by the Supreme Court in CIT vs. Excel Industries Ltd. : 358 ITR 295.

"It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the Assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather spend the tax payers money in pursuing litigation for the sake of it."

16. In view of our aforesaid discussion we set aside the order of the CIT(A) and direct the AO to allow deduction in respect of said interest accrued and calculated at 12% per annum amounting to Rs 2,64,72,208/- after disallowing proportionate interest in respect of the investment in shares amounting to Rs. 3,51,176/- after verifying the calculation of the interest quantification.

9. Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, I am inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

10. With regard to ground no. 2 on account of capitalization of interest expenditure, Ld. AR brought to our notice para no. 5.5 of the order of Ld. CIT(A) and relied on the order of assessee's own case for A.Y. 2009-10, 2010-11 & 2011-12 in ITA No. 5799 to 5801/Mum/2015 dated 27.12.2017 at para no. 17 of the said Common Order, wherein the amount of interest disallowance u/s. 14A be held to be capitalized to the cost of shares. Ld. AR further submitted that in the following cases, the Hon'ble Tribunal has directed the assessing officer to treat the proportionate interest expense disallowed to be part of the cost of acquisition of shares and securities, which are as under:-

a.) DCIT v. Cascade Holdings Pvt. Ltd. for A.Y. 2012-13, 2013-14 & 2015-16 in ITA Nos. 6768, 6769 & 6771/Mum/2018 dated 16.03.2020

b.) DCIT v. Cascade Holdings Pvt. Ltd. for A.Y. 2014-15 in ITA No. 6770/Mum/2018 dated 23.09.2020

c.) DCIT v. Harsh Estates Pvt. Ltd. for A.Y. 2013-14 to 2015-16 in ITA Nos. 6765-6767/Mum/2C18 dated 15.09.2020.

11. On the other hand Ld. DR relied upon the orders passed by the revenue authorities, however he conceded that this ground is covered by the order of Coordinate Bench of ITAT.

12. Considered the rival submissions and material placed on record. It is noticed from the record that an identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

> *"17. Now coming to the additional ground raised with respect to capitalization of interest we are of the view that to the extent the interest relate to the investment, i.e. being disallowable under Section 57 will become part of cost of acquisition of shares and therefore the AO is directed to take it as part of the cost of shares for determining profit on sale of the shares. Thus, the additional ground stands allowed to that extent."*

13. Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, I am inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

14. With regard to ground no. 3 on account of addition of personal household expenses, Ld. AR brought to our notice para no. 6 to 6.6.2 and 6 to 6.1 of the order of AO and Ld. CIT(A) respectively and relied on the order of assessee's own case for A.Y. 2009-10, 2010-11 & 2011-12

in ITA No. 5799 to 5801/Mum/2015 dated 27.12.2017 at Para No. 18-19 of the said order, wherein the Hon'ble Tribunal has followed their decision in the case of Sudhir Mehta *v.* DCIT [ITA No. 5799/Mum/2015] dated 27.12.2017 for A.Y. 2009-10 in para no.18-19 of the said order, has reduced the disallowance to 50% of the disallowance sustained by Ld. CIT(A).

15. On the other hand Ld. DR relied upon the orders passed by the revenue authorities and submitted that addition of personal household expenses, the Hon'ble Tribunal has always reduced the disallowance to 50% by following the decision of assessee's own case. Ld. AR further submitted that AO has disallowed 6 lakhs and Ld. CIT(A) has already disallowed 50%, therefore further deduction is not justifiable, accordingly prayed that disallowance made by Ld. CIT(A) be sustained.

16. Considered the rival submissions and material placed on record. It is noticed from the record that the identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below:-

> *"18. Ground No. 2 Relates to sustenance of the addition on account of personal household expenses by the CIT(A) to the*

extent of Rs. 6,00,000/-. The facts relating to this issue are that the AO made an addition on estimate basis on account of the personal household expenses at `12,00,000/- by applying provisions of Section 69C. When the assessee went in appeal before the CIT(A), the CIT(A), following his own order in the case of other family members, viz. Smt. Deepika A. Mehta and Smt. Rasila S. Mehta for A.Y. 2006-07 reduced the disallowance by 50% thus sustaining the addition to the extent of Rs. 6,00,000/-.

19. We have gone through the order of this Tribunal in the case of Shri Ashwin S. Mehta for A.Y. 2006-07 in ITA No. 6596/Mum/2013 and for A.Y. 2007-08 in ITA No. 6597/Mum/2013 dated 18.04.2016 and also in the case of Ms. Deepika A. Mehta for A.Y. 2006-07 in ITA No. 5487/Mum/2011 and others dated 31.05.2006, we noted that the Tribunal further reduced the addition sustained by the CIT(A) by 50% by observing as under: -

> *"19 Before us, the Ld. Counsel submitted that, appellant is living in joint family set-up and most of the expenses have been incurred by other family members. He submitted that, professional fees to the consultants and other expenditures have been mainly incurred by Dr. Hitesh S. Mehta. Looking to the overall withdrawals by the family members, the addition made and sustained is far too high and excessive. He further referred to the details of expenditure on account of personal and household expenses incurred and added in the hands of the following members of the family, which are as under:-*

Sr. No.	*Name*	*A.Y. 20O6-07*		*A.Y. 2007-O8*	
		Additions by AO (Rs.)	*Confirmed byCIT(A) (Rs.)*	*Additions byAO (Rs.)*	*Confirmed by CIT(A) (Rs.)*
1.	*Ashwin* S. *Mehta (Appellant)*	*12,00,0000*	*6,00,000*	*12,00,000*	*6,00,000*
2.	*Jyoti H. Mehta*	*18,00,000*	*9,00,000*	*18,00,000*	*9,00,000*
3.	*Rasila* S. *Mehta*	*6,00,000*	*3,00,000*	*6,00,000*	*3,00,000*
4.	*Deepika A.* Mehta	*6,00,000*	*3,00,000*	*6,00,000*	*3,00,000*
5.	*SudhirS. Mehta*	-	-	*12,00,000*	*12,00,000*
6.	*Smt. Rina* S. *Mehta*		-	*6,00,000*	*6,00,000*
	TOTAL	42,00,000	*21,00,000*	*60,00,000*	*39,00,000*

20 On the other hand, Ld. Special Counsel submitted that the appellant is maintaining motor car and live in posh area of Mumbai, and no details of household expenses has been given by

the appellant. In such a case, addition sustained by the CIT(A) appears to be far more reasonable.

21: After considering the rival submissions and on perusal of the relevant finding in the impugned order, we find that the addition made by the AO as well as sustained by the CIT(A) are though on ad-hoc basis, but same was done because no details of expenditures was filed by the appellant. Before us, the Ld. Counsel has submitted that, most of the expenses have been incurred by Dr. Hitesh S. Mehta and other family members living in a Joint family set-up. Further other members have contributed for household expenses and that some of the additions have been confirmed on account of personal household expenses by the Department. On these facts and circumstances, we are inclined to scale down the additions to Rs.3 lakhs. Accordingly, addition sustained on account of personal household expenses would be Rs.3 lakhs. Accordingly, the ground No.5 of the appellant is partly allowed."

Respectfully following the said order of the Tribunal we reduce the disallowance sustained by the CIT(A) by 50%, i.e. `3,00,000/-. Thus, ground No. 2 is partly allowed.

17. Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, I am inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

18. With regard to ground no. 4 & 5 on account of levy of interest u/s 234A, 234B and 234C of the Act, Ld. AR brought to our notice para no. 7 of the order of Ld. CIT(A) and submitted that identical issue was involved in assessee's own case for A.Y. 2009-10, 2010-11 & 2011-12 in ITA No. 5799 to 5801/Mum/2015 dated 27.12.2017 in para no. 20 of the said order, wherein the issue has been sent back to the Assessing

Officer to recompute interest u/s. 234B of the Act with a direction. Ld. AR further relied following case laws on similar issue, which are as under: -

a) *Aatur Holdings Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6954-6956/Mum/2018 in order dated 13.03.2020*

b) *Cascade Holdings Fvt. Ltd. v. DCIT for A.Y. 2014-15 in ITA Nos. 6967/Mum/2018 dated 23.09.2020 2019*

c) *Harsh Estates Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA Nos. 6957-6959/Mum/2018 dated 15.09.2020*

d) *Orion Travels Pvt. Ltd. v. DCIT for A.Y. 2013-14 to 2015-16 in ITA No. 6960 & 6962/Mum/2018 dated 23.09.2020.*

19. On the other hand Ld. DR relied upon the orders passed by the revenue authorities, however he conceded that this ground is covered by the order of Coordinate Bench of ITAT.

20. Considered the rival submissions and material placed on record. It is noticed from the record that the identical ground raised in the present appeal has already been decided by the Coordinate Benches of ITAT in assessee's own case as well as others on merits. For the sake of clarity, which is reproduced below: -

> *"20. Ground Nos. 3 & 4 relate to levy or interest under Section 234A, 234B and 234C as well as calculation of the said interest. We find that the said issue has been decided by the Coordinate Bench in the case of Eminent Holding P. Ltd. in ITA No. 2139/Mum/2013 for A.Y. 2002-03 in which this Tribunal while dealing with the said issue held as under: -*

"3.Next ground of appeal is about levy of interest u/s. 234 of the Act. Before us, AR stated that the assessee was a notified entity that the provisions of s. 234A, 234B and 234C of the Act were deemed to have complied with, that the assets were already in attachment of the Custodian appointed under the provisions of the Special Courts Act, that the Tribunal in the case of the appellant and several other entities had held the view in favour of the appellant, that the Hon'ble Bombay High Court in the case of Divine Holdings Pvt. Ltd. and Cascade Holdings Pvt. Ltd. had held that the provisions of sections 234A,234B and 234C of the Act were mandatory and were applicable to the notified entities also, that the assessee was in the-process of filing an appeal against the said order before the Hon'ble Supreme Court, that the income earned in the year under consideration was subjected to provisions of TDS, that the changeability of the section 234A, 234B and 234C of the Act should be after considering the amount of tax deductible at source on the income assessed. The appellant relies in this regard on the following decisions. He relied upon the cases of Motorola inc. v. DCIT [95 ITD 269 (Del.) (SB)], Sedco Fores Drilling Co. Ltd. [264 ITR 320], NGC Network Asia LLC [313 ITR 187], Summit Bhatacharya [300 ITR (AT) 347 (Bom)(SB)], Vijal Gopal Jindal [ITA No. 4333/Del/2009] & Emillo Ruiz Berdejo [320 ITR 190 (Bom)]. DR relied upon the cases of Devine Holdings Pvt. Ltd.

3.1.We have heard the rival submissions and perused the material before us. We find that in the case of Devine Holdings Pvt. Ltd. Hon'ble Bombay High Court has held that provisions of section 234A, 234B and 234C were applicable to the notified person also. Therefore, upholding the order of the FAA to that extent, we hold that provisions of section 234 of the Act are applicable. As far as calculation part is concerned, we find merits in the submission made by the assessee. Therefore, we are restoring back the issue to the file of the AO for fresh adjudication who would decide the issue after considering the amount taxed deductible at source on the income assessed and after affording a reasonable opportunity of hearing to the assessee. Ground no.5 is allowed in part in favour of the assessee."

Respectfully following the said order of the Tribunal in the case of Eminent Holding P. Ltd. (supra) we direct the AO to recomputed the interest liability after reducing the amount of tax deductible at source on the income earned. Thus, ground No. 3 stand dismissed while ground No. 4 stand partly allowed.

21. Thus, the appeals filed by the assessee for assessment years 2009- 10, 2010-11 and 2011-12 are partly allowed.

21. Therefore, respectfully following the above decisions which are applicable *mutatis mutandis* in the present case, I am inclined to accept the submission of Ld. AR. Accordingly, the ground raised by the assessee stands **allowed**.

22. In the result, appeal filed by the assessee stands **allowed.**

Order pronounced on 13.11.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 13/11/2020
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum