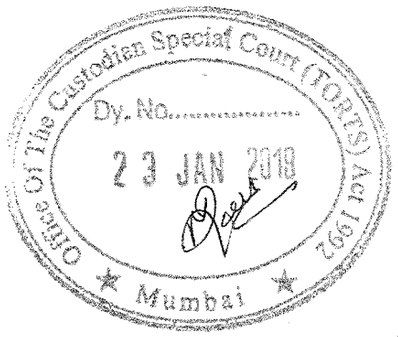
"Mehtas addressed a letter to Custodian forwarding a combined order of Hon'ble ITAT in 21 cases dated 27.12.2017 fully accepting the case set out by 8 Mehtas that they had availed interest bearing loans from 3 brokerage firms of M/s. Harshad S. Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta carrying interest @ 12% p.a. for purchase of shares and accordingly relief was granted of allowing the expense of interest which was not being allowed by the AO and CIT(A) for several years. It was conveyed to Custodian that the findings of facts by ITAT were binding upon Custodian an Hon'ble Special Court and in view of the findings the case of the Custodian that family members and corporate entities are fronts and benamidars of HSM and that all of them are members of Harshad Mehta Group stood demolished and they cannot be treated as 'one entity' and assets of family members and corporate entities cannot be used to meet the claims on HSM."

ASHWIN S MEHTA
32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018

22nd January 2018



To

Ms Molly Sengupta,
Director,
Office of the Custodian,
221 Nariman Bhavan,
Nariman Point,
Mumbai 400 021

URGENT

Madam,

Sub: Combined order of relief of Hon'ble Income Tax Appellate Tribunal (ITAT) in respect of 21 cases of 8 notified entities dated 27th December 2017

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1. I am addressing this letter on my own behalf as well as on behalf of Growmore Leasing & Investments Ltd., Smt. Deepika A. Mehta, Smt. Jyoti Mehta, Shri Sudhir S. Mehta, Smt. Rina S. Mehta, Smt. Rasila S. Mehta and Shri Hitesh Mehta. On behalf of all the above notified entities I am very happy to inform you that the Hon'ble ITAT has passed a combined order on 27th December 2017, a copy of which is enclosed at **Annexure-A** in which order substantial reliefs have been granted to us which are discussed and explained together with their implications as under:-

   a) At the outset I state that it has been the case of Custodian as well as notified entities that family members of Harshad Mehta and corporate entities promoted by them prior to notification/attachment of assets on 8.6.1992 had availed interest bearing loans and credits from the 3 brokerage firms in the family viz. M/s. Harshad Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta. These entities availed interest bearing loans by availing credit for part funding purchase of shares and had agreed to pay interest @ 12 % p.a.

   b) That your Advocates had also pleaded and advocated the above case loans and advances before Hon'ble Special Court and later before Hon'ble Supreme Court of India as can be seen from paras 10 and 48 in the judgment of the case of Ashwin Mehta V/s. Custodian reported as **(2006) 2 SCC 385**, a copy of which judgment is enclosed at **Annexure B** for ease of your reference.

c) That thereupon the Hon'ble Supreme Court accepted the above case of Custodian by directing him to file claim of recovery for and on behalf of lenders in Para 52 of their judgment which directions are reproduced hereunder supplying emphasis:-

Para 52: *Furthermore, the question as regards liability of the parties should have been determined at the stage of Section 9-A of the Act. The appellants have contended that the Custodian had taken contradictory or inconsistent stand inasmuch as the liabilities of all the entities were treated to be joint liabilities of Harshad Mehta Group. He furthermore wanted to treat the liabilities of the notified entities also as their separate liabilities. He has proceeded on the basis that even if the assets and liabilities of all individuals is taken on an individual basis, the liabilities would exceed the assets in the case of each individual and corporate entity.* ***It had, however, never been the case of Custodian that the examination of claims of all the notified parties is complete. It does not appear that claims inter se between the entities within so-called group had ever been taken into consideration. The Custodian does not appear to have preferred claims before thd Special Court on behalf of the largest lender on the so-called group against those he had to recover loans. Such claims may also be preferred."***

That admittedly Custodian did not make compliance with above express directions of Hon'ble Supreme Court and infact to seek the compliance we filed before Hon'ble Special Court M.A. No.271 to 277 of 2009 in M.P. No.41 of 1999 wherein the Hon'ble Special Court passed an order on 23.04.2010 directing the notified entities to prefer claims ourselves instead of seeking order against the Custodian.

d) Be that as it may, prior to the notification of all the above entities, agreement to pay interest were already disclosed by the borrowing entities in their returns of income and the revenue had also allowed expense of interest for such loans and therefore the understanding as it then existed was already accepted by the revenue. However post the notification the revenue was not allowing the expense of interest to the borrowing entities on several flimsy grounds and the same is the bone of contention in atleast 300 cases appeals in which regard are presently pending hearing before Appellate authorities viz. the CIT(A) and ITAT.

e) That earlier the Appellate authorities had accepted some of the contentions of the notified entities but the final adjudication taking all the contentions into account was yet to be made as

the matters were remanded to the lower authorities. However now this issue has been adjudicated by ITAT under the above order and we are pleased to state that it has accepted all the contentions of the notified entities and rejecting and over ruled the findings of revenue and has been pleased to allow the expense of interest in the hands of the borrower as claimed. That the above is the only major surviving ground of Appeal in large number of cases that are presently pending.

f) That because of the orders passed in the aforesaid 21 cases, not only the taxable incomes in the above 21 cases will come down sharply, but several other cases presently pending before Hon'ble CIT (A) or Hon'ble ITAT will get favourably affected by the above decision as it is reasonable to expect that as per settled law the above order will be treated as binding precedent and followed in other pending cases. That on account of the above the demands of revenue in respect of 21 cases has already come down as directions are already issued to A.O. to allow the expense of interest because of which demands will stand reduced upon the Assessing Officer passing the Order Giving Effect (OGEs).

g) That as and when the other matters come up for hearing even in their case the demands will similarly come down and the surviving demands of revenue will drop.

h) Besides above, it ought to be appreciated that the Hon'ble ITAT is the last fact finding body and this issue being an issue of fact the same has now attained finality and the arrangement of availing loans and credits by the family members and the corporate entities stands accepted under the Income Tax Act.

i) I say that because of the order passed by ITAT there will be positive implications for us in many ways. That as stated above demands of revenue will drop sharply. Secondly, even the Harshad Mehta group theory which has been advanced by the Custodian without filing any application or establishing their allegations now will not survive on this additional ground also. The Hon'ble ITAT has now given their findings to the effect that prior to our notifications we were availing loans and advances from the brokerage firms and paying interest on it and even the revenue had allowed the expense of interest on the said loans and credits.

j) That the above findings establishes the fact that all the notified entities are distinct and separate legal entities as has always been stated by us for all these years. That since it is factually established that we have availed interest bearing loans from the

brokerage firms the allegations of fronts and benamidars and Harshad Mehta Group does not survive any longer.

k) That we are now separately filing letters with revenue to seek OGEs to effect for given the reliefs granted to us. We will forward the copies of our letters to you when prayers are made to A.O. to pass OGE's to give effect to the above order.

l) The Hon'ble Special Court in the meantime has directed you to draw the assets and liabilities picture of all the notified entities in the family of Harshad in which regard I have to request you that the same may be drawn after taking into account the aforesaid order of reliefs granted to us and after taking into account the effect of the OGE's which remain to be passed by A.O. in 3 major orders of reliefs as per facts already disclosed in M.A. No.205 of 2003 so that a correct picture of the demands of the revenue is presented to Hon'ble Special Court.

2. If you so desire, you may also independently obtain the above order of ITAT from the site of the Hon'ble ITAT. We call upon you not to get guided by the false charts of demands regularly presented by the revenue in order to exaggerate the demands on us but are bound to get guided by the orders passed by higher authorities, in the present case being the order of Hon'ble ITAT, the last fact finding body. To sum up, I call upon you to desist from advancing the Harshad Mehta group theory in view of the findings now given by Hon'ble ITAT in case of each one of us including Harshad Mehta and proceed on the basis that Harshad Mehta himself has a surplus of assets over liabilities and now therefore there is no need or justification to apply the assets of other entities to meet the liabilities of late Harshad Mehta. This is stated without prejudice to our contentions that there is no basis either in law or in facts in support of alleged Harshad Mehta group.

Yours faithfully,

(Ashwin S Mehta)

Encl: as above

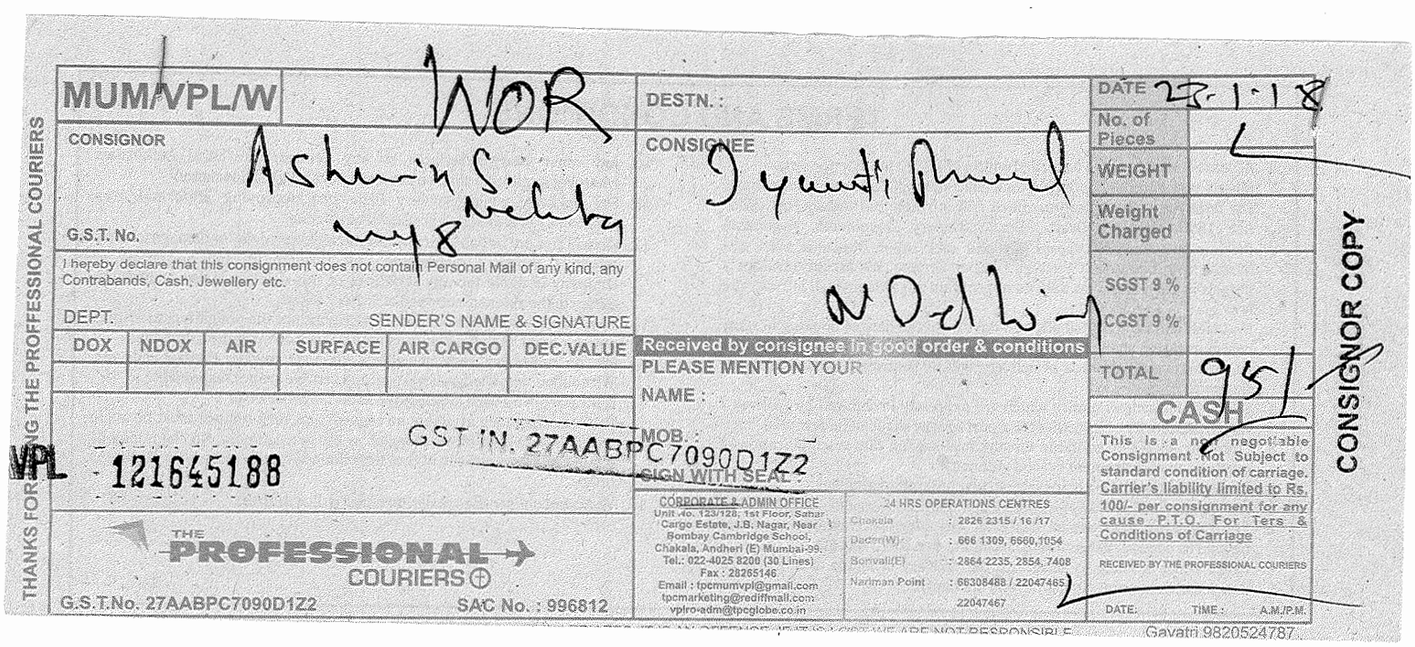
C.C. Mr. Jayanti Prasad,
Custodian,
Office of the Custodian,
Bank of Baroda Bhawan,
Parliament Street,
New Delhi-110 001

Please treat the above order of Hon'ble ITAT as one more vindication of our repeated assertions that each and every entity in the family of Harshad Mehta and corporate entities promoted by them are distinct and separate entity. That we have entered into agreement to avail interest bearing loans from the 3 brokerage firms. The adverse findings given by Chartered Accountants that we were not paying interest on funds borrowed by us and that there was diversion of monies by Harshad Mehta is demolished. It is established that the above 3 brokerage firms have advanced interest bearing loans and given credits to family members and corporate entities is now conclusively established by us before appropriate forum of ITAT the last fact finding body under the Income Tax Act. In view of the above we hope that your kindself will now give up completely baseless case of Harshad Mehta group because no sooner it is done it would pave the way for achieving the objects of the Torts Act. You would appreciate that cross usage of assets has invited more litigation and delayed final distribution u/s. 11(2) of the Torts Act. We call upon you instead to achieve the objects of the Act by seeking refund of thousands of crores already due from the revenue as conveyed by us from time to time and also make serious efforts in recovering all our attached assets lying in the hands of third parties including large assets belonging to Harshad Mehta which are deliberately not being recovered by your office.

C.C. : Leena Adhvaryu & Associates
Advocate for Custodian
2nd & 3rd Floor, Behramji Mansion,
4, Homi Modi Street,
Sir P.M. Road, Fort, Mumbai 400 001.

LEENA ADHVARYU & ASSOCIATES
RECEIVED ON
Date 23.01.18
Time 4.00 pm
No.
Sign
ADVOCATES

For information and necessary action



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai

Before Shri P K Bansal, Vice President
and Shri Pawan Singh, Judicial Member

ITA No.1219/Mum/2017
(Assessment Year: 2012-13)

M/s. Growmore Leasing & Investment Ltd. 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	DCIT, Central Circle - 4 (3) Central Range - 4 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020
PAN – AAACG4937D		
Appellant		**Respondent**

ITA No.418/Mum/2016
ITA No.2736/Mum/2017
(Assessment Years: 2011-12 & 2012-13)

Ms. Deepika A. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	ACIT, Central Circle - 23 [Now DCIT, CC - 4(1)] 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020
PAN – ABNPM8231D		
Appellant		**Respondent**

ITA Nos. 419 & 420/Mum/2016
(Assessment Years: 2010-11& 2011-12)

Ms. Jyoti H. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	DCIT, Central Circle - 23 [Now DCIT, CC - 4(1)] 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020
PAN – ABNPM8233B		
Appellant		**Respondent**

ITA Nos. 1728, 1729 & 1730/Mum/2015
(Assessment Years: 2002-03, 2003-04 & 2004-05)

Shri Ashwin S. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	DCIT, Central Circle - 23 [Now DCIT, CC - 4(1)] 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020
PAN – ABAPM2121M		
Appellant		**Respondent**

ITA Nos.5799, 5800 & 5801/Mum/2015
(Assessment Years: 2009-10, 2010-11 & 2011-12)

Shri Sudhir S. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	DCIT, Central Circle - 23 [Now DCIT, CC - 4(1)] 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020

PAN – ABAPM4496R

Appellant **Respondent**

ITA Nos. 5804 & 5805/Mum/2015
(Assessment Years: 2010-11 & 2011-12)
ITA Nos. 2600, 2601, 4570 & 4571/Mum/2017
(Assessment Years: 2012-13, 2013-14, 2004-05 & 2005-06)

Smt. Rina S. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	DCIT, Central Circle - 23 [Now DCIT, CC - 4(1)] 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020

PAN – ABNPM8222C

Appellant **Respondent**

ITA No.5806/Mum/2015
ITA Nos.2738 & 2739/Mum/2017
(Assessment Years: 2011-12, 2012-13 & 2013-14)

Smt. Rasila S. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	ACIT, Central Circle - 23 [Now DCIT, CC - 4(1)] 4th Floor, Aayakar Bhavan M.K. Road, Mumbai 400020

PAN – ABNPM8219R

Appellant **Respondent**

ITA No.4430/Mum/2017
(Assessment Year: 2012-13)

Shri Hitesh S. Mehta 32, Madhuli Dr. A.B. Road Worli, Mumbai 400018	Vs.	ACIT, Central Circle - 4(1) Air India Building Narimanpoint Mumbai 400021

PAN – ABAPM4491J

Appellant **Respondent**

Appellant by: Shri Vijay Mehta &
Shri Dharmesh Shah
Respondent by: Dr. P. Daniel

Date of Hearing: 13.11.2017
Date of Pronouncement: 27.12.2017

O R D E R

Per P.K. Bansal, Vice President

All these appeals have been filed the different assesses against separate of the CIT(A) for different assessment years. Since common issues are involved in all these appeals, all these appeals are disposed off by this consolidated order on the basis of the facts involved in the case of **Shri Sudhir S. Mehta in ITA No. 5799/Mum/2014 for A.Y. 2009-10** as agreed and argued by both the parties.

2. The assessee, Shri Sudhir S. Mehta, has filed the following revised grounds of appeal: -

"1. The Ld. Commissioner of Income-Tax (Appeals) ought to have allowed the deduction of interest expenditure to the extent of Rs.2,64,72,208/- as follows:

Sr. No.	*Entities*	*Outstanding amount payable*	*Interest @ 12% p. a. payable*
1.	*Ashwin S. Mehta*	*4,87,92,875*	*58,55,145*
2.	*Jyoti H. Mehta*	*4,43,50,467*	*53,22,056*
3.	*Harshad S. Mehta*	*13,03,84,858*	*1,56,46,183*
	Total	*22,35,28,200*	*2,68,23,384*
	Less: Proportionate disallowance of interest u/s. 14 A of the Act		*3,51,176*
	Total		*2,64,72,208*

2. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the estimated addition on account of personal household expenses amounting to Rs. 6,00,000/-.

3. 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.

4. 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."

Subsequently the assessee has taken the following additional ground: -

"Whether in facts and circumstances of the case, the Ld. Assessing Officer and Ld. CIT(A) ought to have granted capitalization of interest

expenses attributable to shares and securities which is not allowable u/s 57(iii) of the Act."

Similar additional ground was taken by the assessee in each of the case except one more additional ground taken in the case of Ms. Jyoti H. Mehta and Shri Ashwin S. Mehta wherein the assessee has taken one more additional ground. So far as the additional ground is concerned the learned A.R. vehemently contended that the additional ground taken is legal ground and the facts are verified, therefore there this has to be admitted in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. vs. DCIT 229 ITR 383. The learned D.R., though agitated but could not convince us as to why the ground taken by the assessee in each of the case cannot be admitted. Therefore, in view of the decision of the Hon'ble Supreme Court we admit this additional ground in the case of each of the assessee.

3. In respect of the additional ground the learned A.R. contended that the assessee invested the borrowed funds in shares and securities which were held as investment. Since the shares were held as investment the interest paid on the borrowings for acquiring such shares will form part of cost of acquisition and has to be capitalised. It was also pointed out that the interest to that extent cannot be regarded to be a deductible deduction out of the interest earned by the assessee on term deposit. In this regard reliance was placed on the following decisions: -

i. CIT vs. Mithlesh Kumari 92 ITR 9 (Del)
ii. CIT vs. Trishul Investments Ltd. 305 ITR 434 (Mad). SLP in this case stands dismissed by Hon'ble Supreme Court at 306 ITR 4 (St.)
iii. CIT vs. K.S. Gupta 119 ITR 372 (AP)
iv. DCIT vs. Shri Fritz D. Silva ITA No.236/Mum/2010 dated 08.05.2015.

4. The learned D.R., on the other hand, contended that this interest to the extent to be disallowed out of the interest earned on term deposit cannot form part of cost of acquisition of shares as it represent the maintenance cost of investment.

5. After hearing the rival submissions and going through the orders of the Tax Authorities below as well as the case law relied upon before us which we have gone through, we hold that to the extent the assessee has not incurred liability towards interest for earning of the income towards borrowing for the purpose of making investment in shares and securities. The interest to that extent shall form part of the cost of acquisition of shares and securities and has to be taken into account as part of cost of shares for determining the profit on sale of shares. To that extent we allow the additional ground in each of the case.

6. Ground No. 1 relates to the interest expenditure claimed by the assessee. The AO disallowed the same because the interest income on term deposits as claimed by the assessee, in the opinion of the AO, was not allowable due to the following reasons: -

(a) The interest payable is tentative and provisional.

(b) There is no basis as per which the assessee has a right to pay and the creditors has a right to receive.

(c) There is no basis of computation of interest payable which has been provided by the assessee.

(d) The provisions made on account of interest payable is a contingent liability and therefore cannot be allowed.

(e) The broking firms have not charged any interest on the amount receivable from companies of this group where the books of accounts have been produced before the AO.

7. Against the said disallowance the assessee went in appeal before the CIT(A). The CIT(A) dismissed the ground relating to deduction of interest on the ground that the assessee has only made provisions for interest but no interest has actually been paid to the creditors. Even the recipients have not offered the said interest in their returns filed before the AO. The interest was not payable as there is no agreement to pay the interest on the borrowed funds. The CIT(A) further held that the assessee has not

explained and established the nexus between the interest expenses and the interest income. Otherwise also the issue relating to the interest has to be decided by the Special Court and there is no order of the Special Court directing to pay the interest by the assessee to creditors.

8. Before us the learned A.R. contended that the disallowance of interest made by the AO is without appreciating the facts. He, at the outset, stated that in the original grounds the figures of interest were incorrect and therefore these should be replaced with the figures given in the revised grounds of appeal. Identical issue was raised in the case of the assessee and his family members in other years wherein the Tribunal has set aside the issue to the file of the CIT(A) for readjudication. The very first order setting aside the issue to the file of the CIT(A) was passed in the case of Dr. Hitesh S. Mehta vide order dated 26.04.2013 in ITA Nos. 7726 & 7727/Mum/2010 for A.Y. 2005-06 and 2006-07 which was followed by the Tribunal in the case of same assessee in ITA No. 5587 to 5589/Mum/2011 for A.Y. 1994-05, 1995-96, 2001-02 and 2008-09. The CIT(A) while passing the order in the case of the assessee has duly considered the order of the Tribunal in the case of Dr. Hitesh S. Mehta dated 12.06.2013. For this our attention was drawn towards para 8 of the order of the CIT(A). Since the order of the CIT(A) is after considering the order of the Tribunal therefore it was vehemently contended that the present appeal be decides on merit. The learned A.R. submitted that the finding of the AO in respect of interest not payable is factually incorrect. The assessee has entered into oral agreement with creditors being three brokerage firms, i.e. M/s. Harshad S. Mehta, M/s. J.H. Mehta and M/s. Ashwin S. Mehta to pay the interest @12% per annum on the credit balance. The family members are dealing with the above three brokerage firms within the family itself. There was no written agreement. Based on such understanding interest on credit balance was provided by the assessee as he followed mercantile system of accounting and therefore it is necessary for the assessee to reckon both income and expenditure. Our attention was drawn towards the assessment order in this regard that the assessee was following mercantile system of

accounting. It was further submitted that the assessee has made such claims in the past which were duly allowed by the AO. In this regard attention was drawn towards computation of income for A.Y. 1990-91 as well as assessment order dated 26.03.1993 passed under Section 143(3). In that year assessee claimed interest on mercantile basis, which was allowed. The order for A.Y. 1990-91 was passed well after notification of the assessee on 08.06.1992 and even without any order being passed by the Hon'ble Special Court. The learned A.R. also referred to the order of the CIT(A) dated 26.06.2012 passed in the case of M/s. Grow More Leasing & Investment Ltd. for A.Y. 2007-08 and other cases wherein the CIT(A) has accepted the existence of agreement to pay interest on such credit balances. The learned A.R. by referring to the order also contended that the CIT(A) following his own order in the case of M/s. Eminent Holdings Pvt. Ltd. for A.Y. 2007-08 had accepted the contention of the assessee and held that a reasonable nexus can be said to exist between the interest incurred by the assessee and the interest income earned from these assets. The learned A.R. also referring to the order of the CIT(A) dated 29.09.2013 for A.Y. 2006-07 in assessee's own case submitted similar findings were given by the CIT(A) which was not challenged by the Revenue before the Tribunal. The existence of agreement for payment of interest also stands confirmed by the fact that the interest income earned by the creditors have been offered to tax except by Mr. Harshed Mehta since he followed cash system of accounting. It was further submitted that interest income in the hands of recipients were brought to tax in all fairness the interest expenses incurred by the assessee must be allowed. The fact that the Hon'ble Special Court has not granted interest payment, will not have any bearing on allowability of interest expenses under law since the assessee followed mercantile system of accounts and therefore in view of the mercantile system of accounting interest accrued has to be allowed. The notification of the assessee on 08.06.1992 had no effect on the existing contracts and obligations. Our attention was drawn in this regard towards the decision of the Hon'ble Supreme Court holding that existing contractual rights and obligations created there under do not get affected by notification of any

person under the Special Court Act. Reference was invited to Section 4(1) of the Special Court Act empowering the custodian to make enquiry if he thinks fit to cancel any agreement entered into between 01.04.1991 to 06.06.1992 with relation to any property of the person notified provided they have entered into the contract fraudulently or to defeat the provisions of the act. Thus it was contended that section 4(1) conclusively prove that the existing contract or agreement do not get disturbed by invocation unless the custodian appointed under the Special Court Act invoke power under Section 4(1). The custodian in the impugned case during the past 25 years has not cancelled the agreement to pay interest between the assessee and his creditors. Our attention was also drawn to the evidence filed by the custodian in M.P. No. 41 of 1999 in which the custodian himself strongly advocated levy of interest and infact calculated interest on such credit balances @15% to 18% per annum to demonstrate that the liability of the family members including the assessee are more than the assets of the respective members. This proves that the funds borrowed by the assessee from the brokerage firms were subject to levy of interest as claimed, even as per the custodian. Thus it was contended that since the contract entered into by the assessee to avail interest bearing loans and advances has not affected by the notification and the assessee is liable to pay the interest. The said interest should be allowed as deduction. Reliance was placed in this regard on the decision of the Hon'ble Supreme Court in the case of Asea Brown Boveri Ltd. vs. IFCI 154 taxman 512 (SC) and BOI Finance Ltd. vs. Custodian and Others 10 SEC 488.

9. With regard to the contention of the AO that the recipient has not offered interest income to tax in their return, the learned A.R. submitted that though this issue has not relevant for the purpose of deciding the deductibility of expenses but the fact is that the interest payable by the assessee to the creditors Ashwani Mehta and Jyoti Mehta has actually been offered them in their respective returns of income. The learned A.R. also relied on the order of the CIT(A) dated 30.11.2005 in the case of Shri Ashwin S. Mehta for A.Y. 2010-11 wherein the issue relating to taxability

of interest income has specifically be discussed and adjudicated. Reliance was also placed on the decision of this Tribunal in the case of M/s. Growmore Leasing & Investment Ltd. vs. ACIT in ITA Nos. 5135 & 5136/Mum/2012 dated 03.05.2015 for A.Y. 2007-08 and 2009-10 wherein this Tribunal has already issued directions that the recipients can be taxed with respect to the income in case if the same is not brought to tax in their assessments.

10. With regard to income in the hands of Late Shri Harshad Mehta, the learned A.R. submitted that Late Shri Harshad Mehta has consistently following cash system of accounting and therefore the Tribunal in his case for A.Y. 1989-90 upheld this issue. Interest income in the case of Late Shri Harshad Mehta shall be offered only when the same is actually received by him. With regard to the objection of the AO that the interest has not been paid by the assessee, the learned A.R. submitted that the interest in the past has been paid to the account of the creditors referring to the interest claim in 1991. He submitted that several payment have been made to these creditors subsequent to A.Y. 1990-91, thereby the liability towards the creditors regarding principal and interest was discharged. The payment in the impugned year to the creditors could not be paid due to the notification dated 08.06.1992 and consequent attachment of all the assets on which notification has casted legal responsibility on the assessee and an assessee has less freedom to discharge his obligation towards creditors. In terms of provisions of Special Act the liability to pay interest falls under Section 11(2)(c). The liability towards interest can be made only at the stage of distribution to the creditors under Section 11(2) of the Special Court Act. It was further submitted that in pursuance to the direction of the Hon'ble Special Court some payment has been made to the account of Late Shri Harshad Mehta during A.Y. 2011-12 and for this attention was drawn toward the ledger account of Late Shri Harshad Mehta in his books for A.Y. 2011-12. For the objection of the AO that no basis for calculation of interest has been submitted by the assessee, the learned A.R. contended that this allegation is totally incorrect. The details were duly filed along

with revised ground of appeal and therefore the observations of the AO are not justified. With regard to allegation of the CIT(A) that the nexus of interest income with interest expenses is not established the learned D.R. contended that the monies were borrowed to meet the investment in shares and securities. Subsequently under the direction of the Hon'ble Special Court for other years part of these very investments were sold and the fund realised were invested in the fixed deposits with several banks. Thus the income generated has been brought to tax by the AO in the impugned assessment year. There was in fact a direct nexus between the money borrowed and the investment made in terms deposits. Reference was invited to the order of the CIT(A) dated 31.08.2010 passed in the case of Dr. Hitesh S. Mehta for A.Y. 2005-06 wherein this issue has been specifically considered and held that there was nexus between the credit balance and the investment in terms deposits. He submitted that following the said order the CIT(A) has also held in assessee's own case in his order dated 29.09.2013 for A.Y. 2006-07 accepting the nexus between such credit balance and investment in term deposits. Thus it was vehemently contended that there was nexus between the amount borrowed and the investment.

11. The learned D.R., on the other hand, contended that the assessee has not filed the return of A.Y. 2009-10. Income has been determined by the AO on the basis of the details filed by the assessee and the computation of income filed before the AO. He relied on the orders of the AO and CIT(A) by mentioning that three firms of Chartered Accountants appointed by the Special Court stated that the loan taken by the Directors are interest free and there are no terms and conditions to pay interest to the creditors on investment. He further stressed that no payment has been made by the assessee to the creditors towards interest and the recipients has also not offered the said interest income to tax. The payment of interest has not been decided by the Hon'ble Special Court and no order in this regard has been passed. Therefore, he vehemently contended that interest has rightly been disallowed by the AO and sustained by the CIT(A).

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 ₹2,64,72,208/- after disallowing proportionate interest in respect of the investment in

shares amounting to ₹3,51,176/- after verifying the calculation of the interest quantification.

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.

18. Ground No. 2 Relates to sustenance of the addition on account of personal household expenses by the CIT(A) to the extent of ₹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 ₹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. 2006-07		A.Y. 2007-08	
		Additions by AO (Rs.)	Confirmed by CIT(A) (Rs.)	Additions by AO (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.	Sudhir S. 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.

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.

Shri Hitesh S. Mehta – ITA No. 4430/Mum/2017

22. Since the first ground relating to taxing of the income in the hands of Late Shri Harshad S. Mehta is not pressed by the assessee, the same is dismissed as not pressed.

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/Mum/2015 set aside the order of the CIT(A) and direct the AO to allow deduction to the under Section 57 in respect of interest accrued @12% amounting to ₹1,10,86,8343/- out of the interest earned on term deposit after verifying the calculation of the interest quantification.

24. The additional ground taken by the assessee relates to the disallowance of proportionate interest amounting to ₹2,56,194/- which has been claimed by the assessee to be capitalised towards the cost of shares and securities. As both the parties agreed that similar issue has arising in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10 and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta the same view may be taken in the case of the assessee also. We therefore respectfully following the said decision of the Tribunal in the case of Shri Sudhir S. Mehta direct the AO to take the sum of ₹2,56,194/- as part of interest capitalised towards the cost of shares and securities. Thus this ground stands allowed.

25. Ground Nos. 3 & 4 relate to the levy and computation of interest under Section 234A, 234B and 234C. As agreed by both the parties that similar ground has arisen in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10. Therefore the Tribunal may take the same view in the case of the assessee also. We ,therefore, respectfully following our order in the preceding paragraph in ITA No. 5799/Mum/

2015 dismiss ground No. 3 and direct the AO to recomputed the interest in accordance with our direction given in the case of Sudhir S. Mehta in ITA No. 5799/Mum/2015 while disposing off ground No. 4. Thus ground No. 4 is statistically allowed.

26. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Smt. Rasila S. Mehta – ITA Nos. 5806/Mum/2015 & ITA 2378 & 2379/Mum/2017

27. In this case also the assessee has taken additional ground as has been taken in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015. In view of the discussion in the case of Shri Sudhir S. Mehta the additional ground taken by the assessee stands admitted.

28. In A.Y. 2011-12 assessee has taken identical grounds as taken in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015. In assessment years 2012-13 and 2013-14 the assessee has taken only ground Nos. 1 3 & 4 which were renumbered as ground Nos. 1, 2 & 3 except change in figure in ground No. 1. In ground No. 1 assessee has claimed deduction of interest at ₹1,29,51,465/- after proportionate disallowance of interest at ₹12,25,871/- for A.Y. 2012-13 and in A.Y. 2013-14 the assessee has claimed interest of ₹1,35,62,185/- after proportionate disallowance of interest of ₹6,15,151/- in place of ₹1,08,72,373/- after disallowance of proportionate interest of ₹33,04,963 in A.Y. 2011.12. Both the parties agreed that as the facts and claim of interest is similar to ground No. 1 in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015, the same view may be taken in the case of the assessee. While disposing of ground No. 1 relating to claim of interest of assessee in the case of Shri Sudhir S. Mehta we have allowed the claim of interest against interest on term deposit and confirmed proportionate disallowance of interest. We, therefore, respectfully following the decision of this Tribunal in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 set aside the order of the CIT(A) and allowed deduction of interest as

claimed by the assessee out of the interest on term deposit after disallowing the proportionate interest disallowed to be treated as cost of acquisition of shares and securities. Respectfully following the said decision of the Tribunal in the preceding paragraphs, we allow the deduction of interest expenditure as claimed by the assessee out of the interest on term deposit after verification of the calculation of interest quantification. We further direct the AO to allow capitalisation of interest which has been proportionately disallowed in view of the additional ground. Thus ground No. 1 and additional ground are allowed.

29. Ground No. 2 taken in A.Y. 2011-12 which relate to disallowance of interest under Section 14A, in our opinion became infructuous after taking additional ground by the assessee and claiming the capitalization of interest which has been disallowed. We have already allowed capitalisation of such interest while disposing of ground No., 1 and additional ground in the preceding paragraph. Thus, this ground stand dismissed as such.

30. Since ground Nos. 3 & 4 in A.Y. 2011-12 and Ground Nos. 2 & 3 in A.Y. 2012-13 and 2013-14 relating to levy and calculation of interest under Section 234A, 2343B and 234C are similar to ground Nos. 3 & 4 ground taken in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10, both the parties agreed that the Tribunal may take the same view in the case of the assessee also. We ,therefore, respectfully following our order in the preceding paragraph in ITA No. 5799/Mum/ 2015 dismiss ground No. 3 in A.Y. 2011-12 and ground No. 2 in A.Y. 2012-13 and 2013-14 and direct the AO to recompute the interest in accordance with our direction given in the case of Sudhir S. Mehta in ITA No. 5799/Mum/2015 while disposing off ground No. 4. Thus ground No. 4 in A.Y. 2011-12 and ground No. 3 in A.Y. 2012-13 and 2013-14 are statistically allowed.

31. In the result, appeals of the assessee are partly allowed for statistical purposes.

Smt. Raina S. Mehta – ITA Nos. 5804 & 5805/Mum/2015 & ITA Nos. 2600, 2601, 4570 & 4571/Mum/2017

32. Both the parties agreed that the issue involved in all these appeals are common. In A.Y. 2004-05 and 2005-06 there are two more grounds relating to the income to be taxed in the hands of Late Shri Harshed Mehta and not granting of credit of TDS being ground Nos. 1 & 3. Since these grounds were not pressed through in both the appeals, they are dismissed as not pressed.

33. Now, therefore, in all the years expect change in figures in the ground relating to disallowance of interest expenditure there survive only three grounds as per the revised grounds of appeal for our adjudication. As agreed by both the parties that all these appeals be decided on the basis of the facts relating to A.Y. 2004-05, we therefore reproduce the surviving grounds for A.Y. 2004-05 as under: -

"1. The Ld. Commissioner of Income-Tax (Appeals) ought to have allowed the deduction of interest expenditure to the extent of Rs.32,72,218/- as follows:

Sr. No.	*Entities*	*Outstanding amount payable*	*Interest @ 12% p. a. payable*
1.	*Ashwin S. Mehta*	*5,62,86,358*	*67,54,363*
2.	*Harshad S. Mehta*	*6,68,35,833*	*80,20,300*
	Total	*12,31,22,192*	*1,47,74,663*
	Less: Proportionate disallowance of interest u/s. 14 A of the Act		*1,15,02,445*
	Total		*32,72,218*

4. 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.

5. 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."

Similar grounds have been taken relating to the issue about the claim of interest expenditure and levy and calculation of interest under Section 234B and 234C in assessment years 2005-06, 2010-11, 2011-12, 2012-13

& 2013-14 except change in figures in ground relating to claim of interest. In A.Y. 2005-06, 2010-11, 2011-12, 2012-13 and 2013-14, the claim of interest be read as ₹1,06,22,235/- after proportionate disallowance of interest of ₹41,52,428/-, ₹80,62,066/- after proportionate disallowance of interest of ₹67,08,896/-, ₹29,18,359/- after proportionate disallowance of interest of ₹1,85,52,603/-, ₹10,23,246/- after proportionate disallowance of interest of ₹1,37,51,413/- and ₹1,12,,80,362/- after proportionate disallowance of interest of ₹34,94,301/- respectively. Both the parties agreed that this issue is similar to the claim of interest arising in ground No. 1 in the case of Shri Sudhir S. Mehta in ITA No. 4799/Mum/2015 and whatever view the Tribunal may take in that case the same view may be taken in the case of the assessee also. We, while disposing of the said issue in the case of Shri Sudhir Mehta has deleted the said disallowance. We, therefore respectfully following the said decision of this Tribunal in the preceding paragraph allow the deduction of interest after disallowance of proportionate interest in each of the assessment year after verifying the calculation of interest quantification.

34. The additional ground taken by the assessee relates to the disallowance of proportionate interest which has been claimed by the assessee to be capitalised towards the cost of shares and securities. As both the parties agreed that similar issue has arisen in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10 and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta the same view may be taken in the case of the assessee also. We therefore respectfully following the said decision of the Tribunal in the case of Shri Sudhir S. Mehta direct the AO to treat the proportionate interest disallowed in each assessment year to be part of cost of acquisition of shares and securities. Thus the additional ground in each of the assessment year stand allowed.

35. The rest of the two grounds in each of the assessment year relate to levy and calculation of interest under Section 234A, 234B and 234C. As agreed by both the parties that similar ground has arisen in the case of

Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10. Therefore the Tribunal may take the same view in the case of the assessee also. We, therefore, respectfully following our order in the preceding paragraph in ITA No. 5799/Mum/ 2015 dismiss ground relating to levy of interest and direct the AO to recompute the interest in accordance with our direction given in the case of Sudhir S. Mehta in ITA No. 5799/Mum/2015 while disposing off ground relating to calculation of interest is concerned. Thus this ground in each of the assessment year is statistically allowed.

36. In the result, appeals filed by the assessee are partly allowed for statistical purposes.

Smt. Deepika A. Mehta – ITA Nos. 418/Mum/2016 & ITA No. 2736/Mum/2017

37. In these cases in A.Y. 2011-12 the assessee has taken as many as five grounds of appeal. Ground No. 1 since not pressed stands dismissed as not pressed thereby surviving the following grounds: -

"2. The Ld. Commissioner of Income-Tax (Appeals) ought to have allowed the deduction of interest expenditure to the extent of Rs.1,35,81,461/- as follows:

Sr. No.	*Entities*	*Outstanding amount payable*	*Interest @ 12% p. a. payable*
1.	*Ashwin S. Mehta*	*99,17,408*	*11,90,089*
2.	*Jyoti H. Mehta*	*1,03,77,667*	*12,45,320*
3.	*Harshad S. Mehta*	*9,47,79,200*	*1,13,73,504*
	Total	*11,50,74,275*	*1,38,08,913*
	Less: Proportionate disallowance of interest u/s. 14 A of the Act		*2,27,452*
	Total		*1,35,81,461*

3. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the disallowance u/s. 14A of the Act.

4. 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.

5. 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."

Except the ground relating to sustenance of disallowance under Section 14A, ground relating to the claim of interest expenditure is similar to ground No. 4 in y 2011-12 except change in figure. In A.Y. 2012-13 the claim of the assessee for interest is ₹4,15,511/- after proportionate disallowance of ₹2,06,778/-. Both the parties agreed that both the appeals be decided on the basis of the facts relating to A.Y. 2011-12. In both the assessment years the assessee has also taken the additional ground relating to capitalization of interest. As the additional ground has been admitted in all the other cases, therefore the said ground stand admitted in both the years.

38. So far as the ground relating to the claim of interest after disallowing proportionate interest is concerned in both the assessment years, both the parties agreed that similar issue has arising in ground 1 in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta same may be taken in the case of the assessee. While disposing of the appeal for A.Y. 2009-10 ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta relating to disallowance of interest we have deleted the said disallowance and directed the AO to allow the deduction of interest after reducing proportionate interest out of the interest earned on deposits. Respectfully following the said decision in the preceding paragraph we allow the ground on similar terms relating to the claim of interest taken by the assessee.

39. The assessee has taken additional ground in both the assessment years relating to the disallowance of proportionate interest which has been claimed by the assessee to be capitalised towards the cost of shares and securities. As both the parties agreed that similar issue has arising in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10

and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta the same view may be taken in the case of the assessee also. We therefore respectfully following the said decision of the Tribunal in the case of Shri Sudhir S. Mehta direct the AO to treat the proportionate interest disallowed in each assessment year to be part of cost of acquisition of shares and securities. Thus the additional ground in each of the assessment year stand allowed.

40. The next issue raised in the two grounds in both the years relate to levy and calculation of interest under Section 234A, 234B and 234C. As agreed by both the parties that similar ground has arisen in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10. Therefore the Tribunal may take the same view in the case of the assessee also. We, therefore, respectfully following our order in the preceding paragraph in ITA No. 5799/Mum/ 2015 dismiss ground relating to levy of interest and direct the AO to recompute the interest in accordance with our direction given in the case of Sudhir S. Mehta in ITA No. 5799/Mum/2015 with regard to interest levied under Section 234A, 234B and 234C. Thus ground the ground relating to calculation of interest is statistically allowed.

41. In the result, appeals filed by the assessee are partly allowed for statistical purposes.

Ms. Jyoti H. Mehta – ITA Nos. 419 & 420/Mum/2016

42. In A.Y. 2010-11 the assessee has taken as many as five grounds of appeal. Ground No. 1 since not pressed stands dismissed as not pressed thereby surviving the following grounds for our adjudication: -

> *"2. The Ld. Commissioner of Income-Tax (Appeals) ought to have allowed the deduction of interest expenditure to the extent of Rs.5,98,27,767/- as follows:*

Sr. No.	*Entities*	*Outstanding amount payable*	*Interest @ 12% p. a. payable*
1.	*Ashwin S. Mehta*	*2,18,55,629*	*59,53,246*
2.	*Harshad S. Mehta*	*2,37,00,42,828*	*28,10,74,569*

	Total	*2,39,18,98,457*	*28,70,27,815*
	Less: Proportionate disallowance of interest u/s. 14 A of the Act		*17,51,42,729/-*
	Total		*11,18,85,023*

3. *The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the estimated addition on account of personal household expenses amount to Rs.3,00,000/-.*

4. *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.*

5. *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."*

43. In A.Y. 2011-12 the assessee has also taken similar grounds of appeal except change in the figure in ground No. 2. In ground No. 2 in A.Y. 2011-12 the claim of interest after disallowance of proportionate interest of ₹96,60,054/- is ₹3,24,62,732/- in place of ₹5,92,27,767/- after proportionate disallowance of interest of ₹17,51,42,792/- in A.Y. 2010-11.

44. In both the assessment years the assessee has taken the following additional grounds: -

1. *Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld.CIT(A) ought to have adjudicated the issue of interest income. The correct amount of interest income ought to have been determined to arrive at the correct taxable income as per law.*

2. *Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld. CIT(A) ought to have granted capitalization of interest expenses attributable to shares and securities which is not allowable u/s 57(iii) of the Act."*

45. After hearing the rival submissions, we noted that the additional grounds taken by the assessee go to the root of the matter and no new fact has to be brought on record. We, therefore, in view the decision of Hon'ble Supreme Court in the case of the NTPC Vs. DCIT 229 ITR 383 admit the additional grounds taken by the assessee.

46. In respect of additional ground No. 1 and learned A.R. contended that the interest accrued to him on the advances to various notified entities have not been correctly assessed to tax due to the difficulty caused by notification of the assessee under the provisions of Special Court Act and levying tax on such assessee could not followed properly at the relevant point of time. In the said additional ground the interest accrued to hear on the advances to various notified entities has been left to be offered to tax in some of the assessment years in the course of assessment proceedings due to difficulties and circumstances beyond the control arising out of notification of the assessee under the provisions of the Special Court Act, the assessee could not file the return at the relevant point of time. Therefore it was argued even though the assessee following the mercantile system of accounting the interest income has been left to be assessed to tax. Even the AO failed to calculate the interest income earned by the assessee from the family members who were assessed under his charge into her income even though the assessee is following mercantile system of accounting. The correct amount of interest to be assessed in the hands of the assessee. It was further submitted that the details of interest income have now been filed and provided under the prior admission of additional ground. Therefore he requested to give the direction to the AO to determine the income of the assessee after including the said interest income.

47. The learned D.R., on the other hand relied on the order of the Tax Authorities below.

48. After hearing and carefully considering the rival submissions, we are of the view that the correct interest income has to be assessed in the hand of the assessee. The assessee has given the calculation of interest income which has to be assessed in the hand of the assessee amounting to ₹24,18,43,334/-. We, therefore, set aside this issue and restore this issue to the file of the assessee and direct the AO to recalculate the interest income in the hands of the assessee and treat the correct income to be the income of the assessee from interest which has accrued to the assessee

from various family members in whose hands the said income has been allowed as deduction. Thus, this ground is allowed for statistical purposes in both the years.

49. The additional ground No. 2 relates to capitalization of interest expenses. Similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10. We, respectfully following our decision in that case, direct the AO to treat the proportionate interest which stands disallowed while disposing of ground No. 1 as part of cost of shares and securities. Thus, this ground is statistically allowed.

50. Additional ground 2 is similar to additional ground admitted in the case of ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 we respectfully following the order in the case of ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta admit the additional ground No. 2. So far the additional ground No. 1, after hearing the rival submission we noted that this ground is consequential in nature to the ground relating to deduction of interest and therefore has to be admitted as all the facts are available regarding interest by other family members. We, therefore, admit the same to tax correct income and income may not escape tax in the hands of the assessee.

51. So far as the ground relating to the claim of interest after disallowing proportionate interest is concerned in both the assessment years, both the parties agreed that similar issue has arising in ground 1 in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta same may be taken in the case of the assessee. While disposing of the appeal for A.Y. 2009-10 ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta relating to disallowance of interest we have deleted the said disallowance and directed the AO to allow the deduction of interest after reducing proportionate interest out of the interest earned on deposits. Respectfully following the said decision in the preceding paragraph we allow the ground

on similar directions as given in ITA No. 5799/Mum/2015 relating to the claim of interest taken by the assessee.

52. The additional ground No. 2 in both the assessment years relating to capitalization of interest attributable to acquisition of shares and securities. As both the parties agreed that similar issue has arising in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10 and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta the same view may be taken in the case of the assessee also. We therefore respectfully following the said decision of the Tribunal in the case of Shri Sudhir S. Mehta direct the AO to treat the proportionate interest disallowed in each assessment year to be part of cost of acquisition of shares and securities. Thus the additional ground No. 2 in each of the assessment year stand allowed.

53. The next ground in both the assessment years relate to sustenance of addition on account of personal household expenses. Similar issue, as agreed by both the parties, has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10. As in that case we have reduced the addition on account household expenses by 50%, we therefore respectfully following our order in ITA No. 5779/Mum/2015 for A.Y. 2009-10 reduce the addition on account of household expenses to 50% and sustain the addition to the extent of ₹1,50,000/- in each of the assessment years.

54. The next two grounds in both the assessment years relate to levy and calculation of interest under Section 234A, 234B and 234C. As agreed by both the parties that similar ground has arisen in the case of Shri Sudhir S. Mehta in ITA No. 5799/Mum/2015 for A.Y. 2009-10. Therefore the Tribunal may take the same view in the case of the assessee also. We, therefore, respectfully following our order in the preceding paragraph in ITA No. 5799/Mum/ 2015 dismiss ground No. 3 and direct the AO to recomputed the interest in accordance with our direction given in the case

of Sudhir S. Mehta in ITA No. 5799/Mum/2015 while disposing off ground No. 4in both the years. Thus ground No. 5 is statistically allowed.

55. In the result, appeals filed by the assessee are partly allowed for statistical purposes.

M/s. Growmore Leasing & Investment Ltd. – ITA 1219/Mum/2017

56. In this case the assessee has taken the following revised ground of appeal: -

"2. The Ld. Commissioner of Income-Tax (Appeals) ought to have allowed the deduction of interest expenditure to the extent of interest income i.e. Rs.1,43,721/- as follows:

Sr. No.	*Entities*	*Outstanding amount payable*	*Interest @ 12% p. a. payable*
1.	*Jyoti H. Mehta*	*25,06,82,692*	*3,00,81,923*
2.	*Harshad S. Mehta*	*61,60,61,525*	*739,27,383*
	Total	*86,67,44,217*	*10,40,09,306*
	Less: Proportionate disallowance of interest u/s. 14 A of the Act		*2,12,47,194*
	Total		*8,27,62,112*

3. 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.

4. 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."

57. The appeal filed by the assessee is barred by limitation of 391 days. We heard both the parties on the issue of condonation of delay. The assessee has submitted the application under Section 253(5). The main reason for condonation of delay is that the delay was caused on account of delay on the part of the custodian for releasing the appeal fees required for filing the appeal. It was pointed out that identical issue has arisen in the case of another notified entity, M/s. Fortune Holding Pvt. Ltd. wherein the delay in filing the appeal for 749 days was condoned by the Coordinate Bench of this Tribunal. The appeal in the present case is also identical.

Even it was also contended that this Tribunal has condoned the delay in the case of Aatur Holding Pvt. Ltd. and others vs. DCIT in ITA No. 1223/Mum/2017 for A.Y. 2012-13 of 391 days which was due to the inaction of the custodian. A chart showing chronology of events leading to the delay was filed.

58. On the other hand, the learned D.R. contended that this is a case of negligence on the part of the assessee, therefore the delay should not be condoned.

59. We noted that under identical facts and circumstances the Coordinate Bench of this Tribunal in the case of Fortune Holding P. Ltd. ITA No. 939/Mum/2017 has condoned the delay for more than 749 days. Respectfully following the said decision of the Coordinate Bench, we condone the delay and admit the appeal filed by the assessee.

60. Ground No. 1 relates to the claim of interest by the assessee amounting to ₹1,43,721/- after disallowing proportionate interest amounting to ₹2,12,47,194/- out of interest earned by the assessee on term deposits. Both the parties agreed that similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 and whatever view the Tribunal may taken in that case the same view may be taken in the impugned case. After hearing the rival submissions and considering the same we noted that this Tribunal while disposing of the said ground allowed claim of the assessee in respect of interest expenditure after proportionate disallowance. We, therefore, respectfully following our finding given in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 allow the claim of interest of the assessee to the extent of ₹1,43,721/- after proportionately disallowing a sum of ₹2,12,47,194/- and give similar direction to the AO as given in ITA No. 5799/Mum/2015. Thus, ground No. 1 is allowed.

61. So far as the additional ground is concerned as agreed by both the parties, similar additional ground has been taken in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10.

We, respectfully following our decision in that case direct the AO to treat the proportionate interest which stands disallowed while disposing of ground No. 1 as part of cost of shares and securities.

62. Ground No. 2 & 3 relate to levy and calculation of interest under Section 234A, 234B and 234C of the Income Tax Act. As agreed by both the parties, similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for 2009-10. We, therefore, respectfully following the said decision dismiss ground No. 2 regarding levy of interest but direct the AO in respect of ground No. 3 that the interest levied under Section 234A, 234B and 234C be recomputed after excluding the income which is subject to TDS. Thus, this ground is allowed for statistical purposes.

Shri Ashwin S. Mehta – ITA Nos. 1728, 1729 & 1730/Mum/2015

63. In A.Y. 2002-03 the assessee has taken the following revised ground of appeal: -

"1. The Ld. Commissioner of Income-Tax (Appeals) ought to have appreciated that as per the decision of Hon'ble Special Court dated 30.04.2010 in MP No. 41 of 1999, the assets under consideration and the consequential income belongs to Late Shri Harshad S. Mehta and hence the Income confirmed by the learned Commissioner of Income-Tax (Appeals) ought to have been taxed in the hands of Late Shri. Harshad S. Mehta and not in the hands of the appellant.

2. The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the addition of Rs.6,37,325/- on account of unexplained entries in the bank account of the appellant.

3. The Ld. Commissioner of Income-tax (Appeals) ought to have allowed the deduction of following interest expenditure to the extent of interest income i.e. Rs.1,47,13,638/-

Sr. No.	*Entities*	*Outstanding amount payable*	*Interest @ 12% p.a. payable*
1.	*Jyoti H. Mehta*	*9,38,31,858*	*1,12,59,823*
2.	*Harshad S. Mehta*	*80,79,93,217*	*9,69,59,186*

	Total	*90,18,25,075*	*10,82,19,009*
	Less: Proportionate disallowance of interest u/s. 14A of the Act		*8,39,99,631*
	Total		*2,42,19,378*

4. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in confirming the disallowance of audit fees Rs.40,000/-.*

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."*

64. Ground Nos. 1 and 4 since not pressed stand dismissed as not pressed. Ground No. 2 relates to sustenance of addition on account of unexplained entries in the bank account of the assessee.

65. We have heard the rival submissions and carefully considered the same along with the orders of the Tax Authorities below. The AO made the addition of ₹9,28,78,955/- in respect of the balance in the suspense account. When the matter went before the CIT(A), the CIT(A) after considering the remand report of the AO found that only a sum of ₹6,37,325/- remained unexplained. Therefore, the CIT(A) reduced the said addition to ₹6,37,325/-.

66. The learned A.R. before us contended that similar issue has arisen in the case of Smt. Jyoti H Mehta and in that case the CIT(A) has restored this issue to the file of the AO. We, therefore, in the interest of justice and fair play to both the parties restore this issue regarding non explaining the entries in the bank account to the extent of ₹6,37,325/- to the file of the AO with the direction that the AO shall redecide this issue after considering the submission of the assessee and in case the assessee has adduced evidences and explained the nature in respect of such entries to

his satisfaction, the addition may be deleted. Thus, this ground is allowed for statistical purposes.

67. Ground No. 3 relates to the claim of interest to the extent of ₹1,47,13,638/- after proportionate disallowance of ₹8,39,99,631/- out of the interest income earned by the assessee on term deposit. Both the parties agreed that this issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 and therefore whatever view this Tribunal may take in that case same view may be taken in the case of the assessee. Since we allowed the deduction towards interest expenditure out of interest earned on term deposit in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta, we therefore respectfully following the said decision of this Tribunal direct the AO to allow deduction to the assessee in respect of interest expenditure out of interest earned on term deposit amounting to ₹1,47,13,638/- out of interest earned on term deposit with the similar directions. Thus, this ground taken by the assessee is allowed.

68. Ground Nos. 5 & 6 taken by the assessee relate to levy and calculation of interest under Section 234A, 234B and 234C. As agreed by both the parties, similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for 2009-10. We, therefore, respectfully following the said decision dismiss ground No. 5 regarding levy of interest but direct the AO in respect of ground No. 6 that the interest levied under Section 234A, 234B and 234C be recomputed after excluding the income which is subject to TDS. Thus, this ground is allowed for statistical purposes.

69. The assessee has also taken the following additional grounds: -

> "1. *Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld. CIT(A) ought to have adjudicated the issue of interest income. The correct amount of interest income ought to have been determined to arrive at the correct taxable income as per law.*

2. Whether in facts and circumstances of the case, the Ld. Assessing officer and Ld. CIT(A) ought to have granted capitalization of interest expenses attributable to shares and securities which is not allowable u/s 57(iii) of the Act."

70. After hearing the rival submissions we noted that the additional grounds taken by the assessee go to the root of the matter and no new facts has to be brought on record. We, therefore, in view of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. vs. DCIT 229 ITR 383 admit the additional grounds.

71. In respect of additional ground No. 1 and learned A.R. contended that the interest accrued to him on the advances to various notified entities have not been correctly assessed to tax due to the difficulty caused by notification of the assessee under the provisions of Special Court Act and levying tax on such assessee could not followed properly at the relevant point of time. Even the AO failed to calculate the interest income earned by the assessee from the family members who were assessed under his charge. The correct amount of interest to be assessed in the hands of the assessee.

72. The learned D.R., on the other hand relied on the order of the Tax Authorities below. After hearing and carefully considering the rival submissions, we are of the view that the correct interest income has to be assessed in the hand of the assessee. The assessee has given the calculation of interest income which has to be assessed amounting to ₹10,68,83,731/-. We, therefore, set aside this issue and restore this issue to the file of the assessee and direct the AO to recalculate the interest income in the hands of the assessee and treat the correct income to be the income of the assessee from interest which has accrued to the assessee from various family members in whose hands the said income has been allowed as deduction. Thus, this ground is allowed for statistical purposes.

73. The additional ground No. 2 relates to capitalization of interest expenses. Similar issue has arisen in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10. We, respectfully following our

decision in that case, direct the AO to treat the proportionate interest which stands disallowed while disposing of ground No. 1 as part of cost of shares and securities. Thus, this ground is statistically allowed.

74. In A.Y. 2003-04 the assessee has taken as many as six revised grounds. Since ground Nos. 1 & 3 are not pressed, therefore the same is dismissed as not pressed. Grounds No. 2, 3, 5 & 6 are similar to Ground Nos. 2, 3, 5 & 6 taken in A.Y. 2002-03 except change in figure. Therefore, both the parties agreed that whatever view this Tribunal may taken in disposing off ground Nos. 2, 3, 5 & 6 for A.Y. 2002-03 same view may be taken in this assessment year also.

75. In assessment year 2002-03 we have restored ground No. 2 to the file of the AO with the direction that the AO shall redecide this issue relating to sustenance of the addition by CIT(A) on account of unexplained entries in the bank account of the assessee. We, therefore, respectfully following our order in the case of the assessee for A.Y. 2002-03 restore this issue regarding addition of ₹1,50,79,191/- on account of unexplained entries to the file of the AO with the direction that the AO shall redecide this issue afresh after giving proper and sufficient opportunity to the assessee. In case the AO is satisfied with the explanation of the assessee to that extent the addition should be deleted.

76. So far as ground No. 3 is concerned similar ground has arisen in A.Y. 2002-03. We have allowed the claim of interest out of the interest income earned by the assessee on term deposit. Respectfully following our finding in A.Y. 2002-03 we give similar direction to the AO in respect of allowance of interest expenditure amounting to ₹5,40,27,927/-. Thus, this ground to that extent stands allowed.

77. Ground Nos. 5 & 6 relate to levy and calculation of interest under Section 234A, 234B and 234C. Similar issue has arisen in the case of assessee in A.Y. 2002-03. We, therefore respectfully following the order of this Tribunal in the preceding paragraph in the case of assessee confirm the levy of interest under Section 234A, 234B and 234C and dismiss

ground No. 5 but direct the AO to recompute interest chargeable under Section 234A, 234B and 234C after excluding income which is subject to provisions of TDS. Thus ground No. 6 is statistically allowed.

78. In A.Y. 2004-05 also the assessee has filed two revised grounds which identical to ground Nos. 1 & 2 of A.Y. 2003-04 except change in figure in ground No.2. Ground No. 1 since not pressed, dismissed as not pressed. In respect of ground No. 2 both the parties agreed that similar issue has arising in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta and whatever view this Tribunal may take in that case, the same view may be taken in the case of the assessee. Since in the case of Shri Sudhir S. Mehta while disposing off similar ground relating to interest expenditure we allowed the deduction to the assessee out of the interest earned on term deposit. Respectfully following our said order in the preceding paragraph we direct the AO to allow deduction to the assessee amounting to ₹20,90,180/- out of the interest on term deposit by following our similar direction given therein. Thus, this ground to that extent is allowed.

79. In both the assessment years i.e. 2003-04 and 2004-05 the assessee has taken two additional grounds similar to the additional grounds taken in A.Y. 2002-03. Since these grounds have been admitted in A.Y. 2002-03 and both the parties agreed that whatever view this Tribunal may take in A.Y. 2002-03 the same view may be taken in assessment years 2003-04 and 2004-05. We, therefore, respectfully following our finding given in A.Y. 2002-03 while disposing off the appeal of the assessee admit both the additional grounds in assessment years 2003-04 and 2004-05. Since in A.Y. 2002-03 in respect of additional ground 1 we have restored the issue to the file of the AO with the direction that the AO shall bring to tax the correct interest income in the hands of the assessee receivable from family members and concern to whom the deduction has been allowed in respect of interest income by this Tribunal and details of which has been submitted along with the additional ground in each of the assessment year before us. We, therefore, respectfully following our finding given in A.Y.

2002-03 direct the AO to bring to tax in assessment years 2003-04 and 2004-05 also the correct interest income in the hands of the assessee which had been claimed by the assessee in A.Y. 2003-04 at ₹10,68,83,731/- and in A.Y. 2004-05 also at ₹10,68,83,731/- and add it in the income of the assessee.

80. So far as second additional ground is concerned in both the assessment years, both the parties agreed that the ground is similar to the additional ground taken by the assessee in A.Y. 2002-03 in the case of the assessee. After hearing the rival submissions in A.Y. 2002-03 we respectfully following the order of this Tribunal while disposing of similar issue in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta for A.Y. 2009-10 directed the AO to treat proportionate interest disallowed to be the part of cost of acquisition of shares and securities. In both these years also in respect of additional ground No. 2 we issue similar direction to the AO that the proportionate interest disallowed be taken as part of acquisition of shares and securities.

81. In the result, the appeals filed by the assessee for all the three assessment years are allowed statistically.

82. To sum up, all the appeals of the respective assessee are allowed for statistical purposes.

Order pronounced in the open court on 27th December, 2017.

Sd/-	Sd/-
(Pawan Singh)	**(P.K. Bansal)**
Judicial Member	**Vice President**

Mumbai, Dated: 27th December, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -52, Mumbai*
4. *The CIT - Central-2, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.