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

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No.4686/Mum/2016
(Assessment Year :2011-12)

ITA No.4684/Mum/2016
(Assessment Year: 2010-11)

ITA Nos.4798/Mum/2016 to 4801/Mum/2016
(Assessment Years: 2006-07 to 2009-10)

Ms. Hema Haresh Mehta 82/84, Ramanlal Building Babu Genu Road, 2nd Floor Kalbadevi Road Mumbai – 400 002	Vs.	DCIT-CC 8(4) (Erstwhile DCIT CC-47) Mumbai
PAN/GIR No. AFFPM4680L		
(Appellant)	..	**(Respondent)**

ITA No.4901/Mum/2016
(Assessment Year: 2011-12)

DCIT-CC 8(4) (Erstwhile DCIT CC-47) Mumbai	Vs.	Ms. Hema Haresh Mehta 82/84, Ramanlal Building Babu Genu Road, 2nd Floor Kalbadevi Road Mumbai – 400 002
PAN/GIR No. AFFPM4680L		
(Appellant)	..	**(Respondent)**

ITA No.4704/Mum/2016 to 4709/Mum/2016
(Assessment Year: 2006-07 to 2011-12)

Shri Haresh Mohanlal Mehta 82/84, Ramanlal Building Babu Genu Road, 2nd Floor Kalbadevi Road Mumbai – 400 002	Vs.	DCIT-CC 8(4) (Erstwhile DCIT CC-47) Mumbai
PAN/GIR No. ABMPM4541K		
(Appellant)	..	**(Respondent)**

ITA No.4879/Mum/2016
(Assessment Year: 2006-07)
ITA No.4881/Mum/2016
(Assessment Year: 2007-08)
ITA No.4883/Mum/2016
(Assessment Year: 2009-10)
&
ITA No.4884/Mum/2016
(Assessment Year: 2010-11)

DCIT-CC 8(4) (Erstwhile DCIT CC-47) Mumbai	Vs.	Shri Haresh Mohanlal Mehta 82/84, Ramanlal Building Babu Genu Road, 2nd Floor Kalbadevi Road Mumbai – 400 002
PAN/GIR No. ABMPM4541K		
(Appellant)	..	**(Respondent**)

Assessee by	Shri Mani Jain
Revenue by	Shri Nikhil Choudhary
Date of Hearing	**04/02/2021**
Date of Pronouncement	**05/05/2021**

आदेश / O R D E R

***PER BENCH*:**

ITA No.4686/Mum/2016 (**Assessment Year :2011-12**), **ITA No.4684/Mum/2016 (Assessment Year: 2010-11, ITA Nos.4798/Mum/2016 to 4801/Mum/2016, (Assessment Years: 2006-07 to 2009-10) & ITA No.4901/Mum/2016 (A.Y.2011-12)**

These appeals in ITA Nos.4686/Mum/2016, 4684/Mum/2016, 4798 to 4801/Mum/2016 & 4901/Mum/2016 for A.Y. 2006-07 to 2009-10, 2010-11 and 2011-12 respectively arises out of the order by the ld. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal Nos.

CIT(A)-50/IT-517/2014-15, CIT(A)-50/IT-516/2014-15 CIT(A)-50/IT-512/2014-15, CIT(A)-50/IT-513/2014-15, CIT(A)-50/IT-514/2014-15, CIT(A)-50/IT-515/2014-15 dated 31/03/2016 (ld. CIT(A) in short) against the order of assessment passed u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2014 by the ld. Dy. Commissioner of Income Tax, Central Circle 47, Mumbai (hereinafter referred to as ld. AO).

ITA No.4704/Mum/2016 to 4709/Mum/2016(AY: 2006-07 to 2011-12), ITA No.4879/Mum/2016 (A.Y.2006-07), ITA No.4881/Mum/2016(AY: 2007-08), ITA No.4883/Mum/2016 (A.Y: 2009-10) & ITA No.4884/Mum/2016 (A.Y: 2010-11)

These appeals in ITA Nos. 4704/Mum/2016 to 4709/Mum/2016, 4879/Mum/2016, 4881/Mum/2016, 4883/Mm/2016 & 4884/Mum/2016 for A.Yrs. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12 respectively arises out of the order by the ld. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal Nos. CIT(A)-50/IT-505/2014-15, CIT(A)-50/IT-506/2014-15, CIT(A)-50/IT-507/2014-15, CIT(A)-50/IT-508/2014-15, CIT(A)-50/IT-509/2014-15, & CIT(A)-50/IT-510/2014-15 dated 31/03/2016 (ld. CIT(A) in short) against the order of assessment passed u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2014 by the ld. Dy. Commissioner of Income Tax, Central Circle 47, Mumbai (hereinafter referred to as ld. AO).

2. As identical issues are involved in all these appeals, they are taken up together and disposed of by this common order for the sake of convenience.

3. The brief facts of these appeals are that a search and seizure action was carried out on Rohan group of companies on 26.05.2011 in which the impugned assessees were also covered. Shri Haresh Mohanlal Mehta, was one of the directors in the Rohan group of companies. Shri Haresh Mohanlal Mehta was also engaged in construction business through his own construction company namely M s. Raj Doshi Exports Pvt. Ltd. The ld AO observed that The 'Rohan Group' headed by Shri Haresh Mohanlal Mehta, is one of the leading builders of the South and Central Mumbai and is mainly engaged in construction of residential buildings and re-development of old and dilapidated buildings. The group has re-developed over 50 buildings and constructed over 2.5. million sq.ft residential space. Apart from M/s Rohan Developers Pvt Ltd, other main concerns in the group are M/s Goodwill Properties Pvt Ltd and M/s Silver Arch Builders & Promoters Pvt Ltd. The ld AO noted that main persons in this group are Shri Haresh Mohanlal Mehta and Late Mr Jitendra N Mehta.

3.1. The various sources of income of the assessee which are disclosed by Shri Haresh Mohanlal Mehta are as under:-

a) Salary income as director

b) Business income by way of remuneration

c) Interest on capital from partnership firm

d) Commission income

e) Income from house property

3.2. The ld AO observed that during the course of search action, various loose papers were found and seized by the search team, showing cash receipt and payments.During the course of search action, statement of Shri Haresh Mohanlal Mehta was recorded wherein he stated that he was looking after the tenants approval and liasoning & other clearance work from government organizations for various construction sites of Rohan group. In the said process, he would receive the amounts in cash from Rohan group out of the on money received from customers and the same would be incurred for various business purposes as stated above. The said loose papers also indicated investments made in LIC in the name of assessee's wife (Smt Hema Haresh Mehta) during the period 2001 to 2008 in cash. The ld AO observed that Shri Haresh Mohanlal Mehta earned unaccounted income from Rohan Group and same were partly applied for meeting business expenses as above and remaining applied for making investment in LIC in his name and in the name of his wife (Smt Hema Haresh Mehta), investment in jewellery, investment in Hotel Haredia, foreign travelling expenses and household expenses. The ld AO also observed in the assessment order that Shri Haresh Mohanlal Mehta had earned unaccounted income from Rohan group and made expenses from such unaccounted income. The ld AO also stated that Shri Haresh Mohanlal Mehta had furnished a statement u/s 132(4) of the Act in this regard, wherein it was admitted that unaccounted income was earned by him and out of which, he had incurred some unaccounted business expenses and also personal expenses in the form of investment in jewellery, investment in LIC policies in his name and in the name of his wife, investment in Hotel Haredia, foreign travel expenses, other household expenses etc. The ld AO further observed in the assessment order that the assessee submitted the details regarding the seized

materials before him on 14.3.2014 and further furnished the page wise explanation of the seized documents as required by the ld AO.

3.3. In the assessment order, the ld AO added the entire notingsas unexplained income as reflected in the seized material without referring to the nature of the same after reducing the duplicate entries and rough notings in the said seized materials.Before the ld CITA, the assessee explained initially that the notings do not relate to theassesseeand they do not reflect income of the assessee. Further, it was explained by the said receipts at the best, be treated as construction receipts and only profit element of the receipts can be added. However, subsequently, the assessee changed his stand by accepting the contents of the seized documents as pertaining to his construction activities and agreed to explain all the outgoings , both business expenditure as well as personal expenditure and investments out of the same seized documents. For this purpose, in order to provide a better clarity of the voluminous notings found in the seized material, the assessee entered the entire handwritten notings in the tally software under the name `Haresh M Mehta 86 Others' for the limited purpose of explaining the notings. While preparing the above accounts, the assessee accepted that the notings found in the seized material from the premises of his wife as well as his company M/s. Raj Doshi Exports Pvt. Ltd. as his own. All the said notings were entered into cash books in tally software. The entire receipts recorded in the seized material were considered as business receipts of the assessee and were recorded under the head `Haresh Mehta'. Further, out of the payments, the payments related to construction activity were bifurcated into business payments and were entered under the head Haresh Mehta'. Further, payments related to the administrative expenses of the assessee were entered under the Revenue expenses account of Shri Haresh Mehta.

Further, payments related to personal nature of the' assessee were entered under the Personal expenses account of Shri Haresh Mehta.

3.4. In the appellate order, the ld CITA stated that the assessee has withdrawn its contention that no income arose from the said documents. The ld CITA accepted proceeded to tax the peak credit of the entries found in the seized documents by referring to the tally accounts submitted during the course of appellate proceedings. While referring to the tally accounts prepared on the basis of seized material, receipts and payments recorded under the head "Haresh Mehta' made on account of business purpose were used for arriving at a peak credit. After arriving at the peak credit for each year, the ld CITA reduced the revenue expenses incurred for the purpose of business for such years and remaining amount was confirmed. With respect to all the other entries including personal expenses, the ld CITA allowed telescoping of the entries reflected in the tally account. For entries which were not reflected in tally account, the ld CITA confirmed such additions.

3.5. Similarly, in respect of appeal in the case of Smt. Hema Haresh Mehta, the ld CITA allowed the telescoping of the amounts which have been considered in tally account of which peak addition has already been made in the case of Shri Haresh Mohanlal Mehta.

3.6. In respect of peak credit additions and other miscellaneous additions, the assessee has preferred appeals before us and revenue has filed appeals against the relief provided by the ld CITA for various years.

3.7. In this regard, it would be relevant to consider the nature of the notings in the loose papers found during the course of search. We find that the ld AR had submitted that Shri Haresh Mohanlal Mehta is engaged

in the construction activity for the past 4 decades and is a director in Rohan Group of Companies which is also extensively involved in the construction activity. Apart from this, Shri Haresh Mohanlal Mehta was further engaged in construction business through his own company namely M/s Raj Doshi Exports Pvt Ltd. These facts are not in dispute before us. Hence it could be safely concluded that the entries containing certain receipts should have emanated only from the construction business in which Shri Haresh Mohanlal Mehta has carried out on behalf of his own company and also on behalf of Rohan Developers Pvt Ltd, wherein he had received on money from various prospective buyers of properties and had incurred certain business expenditure like vacation of tenants, liasoning work etc as detailed hereinabove. The left over portion of on money thereafter is also utilised for the purpose of meeting all the personal expenses of himself, his wife (Smt Hema Haresh Mehta) including investments in LIC policies , Jewellery and investment in Hotel Haredia etc. This fact is also admitted by Shri Haresh Mohanlal Mehta in his statement recorded during search u/s 132(4) of the Act which has not been retracted in the manner known to law. We find that the ld AR before us had completely owned up the entire entries as noted in the seized materials on behalf of the assessee Shri Haresh Mohanlal Mehta by reaffirming the earlier stand taken before the ld AO and at the time of search proceedings before the Investigation team. Hence the receipts mentioned in the loose papers represent on monies received by the assessee from his business. It is a settled principle that what can be taxed in respect of on money is only a profit element since the seized material clearly shows evidences of expenditure out of the said receipts. The summary of the total receipts as per seized material and duly quantified as per tally accounts, is provided hereunder:-

Details of aggregate cash receipts as per seized material

Particular	AY 06-07	AY07-08	AY08-09	AY 09-10	AY10-11	AY11-12	TOTAL
Cash receipts	35,90,000	2,05,25,000	53,40,000	6,30,72,740	5,13,76,977	5,50,000	14,44,54,717

3.8. We find that the total on money receipts reflected in the seized materials for the Asst Years 2006-07 to 2011-12 is only Rs 14,44,54,717 as tabulated supra, whereas the addition made by the ld AO in the hands of Shri Haresh Mohanlal Mehta itself works out to Rs 16,56,97,919/- on account of business receipts and expenses and personal outgoings and investments. This results in great anamoly as total additions made exceeds the total on money receipts itself. It is not in dispute that the only source of unaccounted income for the assessee is the receipt of on money from construction business. Hence at any cost, the total additions made cannot exceed the construction on money receipts. Obviously, the on money receipts cannot be taxed in its entirety as assessee had also incurred certain business expenditure which were also kept out of books and which are also reflected in the same seized materials. It is well settled that the seized documents should be considered in its entirety and the revenue cannot consider that part of the seized material which is favourable to it and ignore that portion which is detrimental to revenue. Reliance in this regard is placed on the decision of *Co-ordinate Bench of Pune Tribunal in the case of Chander Mohan Mehta vs ACIT reported in 71 ITD 245*.

3.9. In view of the above, we hold that only the reasonable profit percentage of the aforesaid total on money receipts is to be estimated for the purpose of taxation in the hands of Shri Haresh Mohanlal Mehta. In

this regard, we find that the *Co-ordinate Bench of this Tribunal in the case of M/s. Platinum Properties vide ITA No. 2600/Mum/2012 dated 12.09.2014* had dealt with the similar issue, wherein the profit percentage @ 8% was determined on onmoney receipts. The relevant portion of the said tribunal order is reproduced hereunder:-

> *"10. A perusal of these unaccounted entries shows that the assessee was making entries of the on-money received by it during the course of its business. U/ s. 153A, the AO has the power to assess or reassess the total income in respect of each assessment year falling within such assessment year in case of person where a search is initiated u/ s. 132 of the Act. Thus, the* AO *has the power to assess or reassess the total income of the assessee. What can be taxed is the undisclosed income and not the undisclosed receipts, this means that only a reasonable amount of profit which the assessee could have earned can be added. Seized paper indicates assessee was receiving on-money in the ordinary course of its business. Even the unaccounted expenditures are also reflected in the seized papers.*
>
> *10.1. Considering the facts in totality, in our considered opinion, a reasonable profit should be taxed which is embedded in the total unaccounted gross receipts and therefore 8% should meet the end of justice. We, accordingly, direct the AO to recompute the undisclosed income by taking 8% as net profit ratio on total unaccounted receipts. Since we have directed to estimate the profit at 8%, all the expenditures are deemed to be allowed."*

3.10. Respectfully following the aforesaid decision, we direct the ld AO to consider profit percentage at 8% of on money receipts to be taxed as business profits of the assessee for the relevant Asst Years.

4. Let us take up the assessee's appeal for the Asst Year 2006-07 in the case of Shri Haresh Mohanlal Mehtain ITA No. 4704/Mum/16. We find that the assessee has contended the peak addition confirmed by the ld CITA and addition on account of unexplained investment in LIC policies. In this regard, we have already held that profit percentage on money receipts should be determined at 8% of Rs 35,90,000/- for the Asst Year 2006-07. Accordingly, the question of any addition on account of peak

credit does not arise. Further, the business payment as well as administrative expenses are deemed to be allowed once the profit percentage is applied to the total turnover. Further, with respect to the personal expenses, the year wise details of the same were filed by the ld AR in a tabular form which was also placed before the ld CITA.Once the business profit is determined at 8% of undisclosed receipts, then what is required to be seen is whether the said profit of 8% is sufficient to explain all the outgoings in the form of personal expenses and personal investments made by the assessee year on year and accordingly the assessee would be entitled for benefit of telescoping. Hence there cannot be any separate addition for personal expenses as made by the lower authorities. Hence wherever, the aggregate of personal expenditure , investment in LIC premiumsetc., are more than the profit arrived as above, the excess of such outgoings need to be added to the total income of the assessee for the relevant Asst Year as it would result in negative cash balance. Wherever, there is positive cash balance in any year, the same would get carried forward as opening cash balance and would be considered as available cash for explaining the cash outgoings as stated supra. **A separate chart is enclosed as an annexure to this order, wherein the actual amounts to be taxed for the respective Asst Year is clearly mentioned after considering all the outgoings in the seized materials together with the on money receipts reflected thereon**.

4.1. Let us take up the appeal filed by the revenue in ITA No. 4879/Mum/16 for the Asst Year 2006-07. We find that the revenue had filed appeal in respect of the deletion of the addition by the ld CITA in respect of various notings of receipts as well as payments. In this regard, we find that the ld CITA had categorically observed that the said notings

are forming part of the Tally Accounts. We have also considered in our aforesaid tabulation (separate annexure enclosed to this order) certain entries, which were not considered by the assessee in Tally Accounts. Hence the table prepared by us considers the entire entries in the seized documents and the entire addition to be made for the seized documents is considered by us in the tabulation itself. Further, with respect to the contention of the revenue that the Tally accounts prepared by the assessee and submitted before the ld CITA constitute additional evidences under Rule 46A of the IT Rules for which no opportunity was provided to the ld AO, we find that the ld AR argued that the said Tally accounts have been prepared purely on the basis of seized materials already present before the ld AO. Such tally accounts have been prepared purely to provide better clarity of the amounts mentioned in the seized material and added by the ld AO. We are in complete agreement with this contention of the ld AO and we also find that the ld CITA had not simply accepted the Tally accounts submitted by the assessee as it is. We find that the ld CITA had also carried out verification of Tally accounts with specific reference to the seized documents on his own and then decided the matter. Hence we hold that filing of Tally accounts before the ld CITA which actually provides better clarity and understanding of the seized documents already on record before the ld AO cannot be considered as additional evidences filed by the assessee and hence we hold that there is no violation of provisions of Rule 46A of the IT Rules.

5. We find that the issue raised in assessee's appeal for the Asst Year 2007-08 in ITA No. 4705/Mum/2016 in the case of Shri Haresh Mohanlal Mehta is the same as was raised in Asst Year 2006-07. Hence the decision rendered by us for the Asst Year 2006-07 will hold good for Asst Year 2007-08 also.

5.1. With respect to revenue's appeal in ITA No. 4881/Mum/16 for the Asst Year 2007-08 in the case of Shri Haresh Mohanlal Mehta, we find that the tax effect on the disputed issues before us is less than 50 Lakhs and therefore, the same deserves to be dismissed as per CBDT CircularNo. 17 of 2019 dated 8.8.2019. We also find that the ld DR before us was not able to point out that the case falls under any of the exceptions provided in Para 10 of the said Circular of CBDT. It is well settled that the circular issued by the CBDT are binding on the tax authorities and hence the appeal of the revenue is hereby dismissed as not maintainable.

6. We find that the issue raised in assessee's appeal for the Asst Year 2008-09 in ITA No. 4706/Mum/2016 in the case of Shri Haresh Mohanlal Mehta is the same as was raised in Asst Year 2006-07. Hence the decision rendered by us for the Asst Year 2006-07 will hold good for Asst Year 2008-09 also.

6.1. We find that the revenue appeal for the Asst Year 2008-09 in ITA No. 4882/Mum/2016 has already been dismissed by this tribunal due to low tax effect by following the CBDT Circular No. 17/2019 dated 8.8.2019.

7. We find that the issue raised in assessee's appeal for the Asst Year 2009-10 in ITA No. 4707/Mum/2016 in the case of Shri Haresh Mohanlal Mehta is the same as was raised in Asst Year 2006-07. Hence the decision rendered by us for the Asst Year 2006-07 will hold good for Asst Year 2009-10 also.

7.1. With respect to revenue's appeal in ITA No. 4883/Mum/16 for the Asst Year 2009-10 in the case of Shri Haresh Mohanlal Mehta, we find that the tax effect on the disputed issues before us is less than 50 Lakhs

and therefore, the same deserves to be dismissed as per CBDT Circular No. 17 of 2019 dated 8.8.2019. We also find that the ld DR before us was not able to point out that the case falls under any of the exceptions provided in Para 10 of the said Circular of CBDT. It is well settled that the circular issued by the CBDT are binding on the tax authorities and hence the appeal of the revenue is hereby dismissed as not maintainable.

8. We find that the issue raised in assessee's appeal for the Asst Year 2010-11 in ITA No. 4708/Mum/2016 in the case of Shri Haresh Mohanlal Mehta is the same as was raised in Asst Year 2006-07. We find that there is yet another addition confirmed by the ld CITA in the sum of Rs 11,80,500/- which is not considered by the assessee in the Tally Accounts. We have already held that the only source of unaccounted income for the assessee is the on money receipts received from construction business. Hence this receipt of Rs 11,80,500/- is also to be construed only as on money receipts of the assessee and only profit percentage of 8% should be added thereon. We have already considered this figure also in the tabulation prepared by us (enclosed as a separate annexure to this order) wherein additions to be made year on year is clearly mentioned thereon. Hence the decision rendered by us for the Asst Year 2006-07 will hold good for Asst Year 2010-11 also.

8.1. With regard to revenue's appeal in ITA No. 4884/Mum/2016 for the Asst Year 2010-11 in the case of Shri Haresh Mohanlal Mehta, we find that the decision rendered by us for the revenue appeal in Asst Year 2006-07 will hold good for Asst Year 2010-11 also.

9. We find that the issue raised in assessee's appeal for the Asst Year 2011-12 in ITA No. 4709/Mum/2016 in the case of Shri Haresh Mohanlal Mehta is the same as was raised in Asst Year 2006-07. Hence the

decision rendered by us for the Asst Year 2006-07 will hold good for Asst Year 2011-12 also.

9.1. We find that no appeal was filed by the revenue for the Asst Year 2011-12 in the case of Shri Haresh Mohanlal Mehta.

10. Now coming to the appeal filed in the case of Smt. Hema Haresh Mehta, we find that the ld AO made addition in respect of notings found in the seized documents in her premises. During the appellate proceedings, the assessee submitted that all the notings are owned up by her husband Shri Haresh Mohanlal Mehta. We find that the ld CITA held that since the entire notings of receipts and payments mentioned in the seized documents are considered in the Tally accounts, no addition was to be made in the hands of the Smt. Hema Haresh Mehta. We find no infirmity in the said decision of the ld CITA in principle and hence the returned income in the hands of Smt Hema Haresh Mehta is to be accepted. However, we find that all the cash outgoings of Smt Hema Haresh Mehta have been duly considered by us in the tabulation (enclosed as a separate annexure) clearly mentioning the amount to be taxed in the hands of Shri Haresh Mohanlal Mehta year on year. Hence no separate addition need to be made in her hands from Asst Years 2006-07 to 2010-11. Accordingly, the appeals filed by Smt Hema Haresh Mehta in ITA No. 4798/Mum/2016 (Asst Year 2006-07) ; ITA No. 4799/Mum/2016 (Asst Year 2007-08) ; ITA No. 4800/Mum/2016 (Asst Year 2008-09) ; ITA No. 4801/Mum/2016 (Asst Year 2009-10) and ITA No. 4684/Mum/2016 (Asst Year 2010-11) are decided accordingly.

11. With regard to the appeal of the assessee Smt Hema Haresh Mehta for the Asst Year 2011-12 in ITA No. 4686/Mum/2016, we find that the

first addition relates to unexplained expenditure amounting to Rs. 70,000/-. This would get explained out of the common cash flow available in the separate tabulation referred to supra and therefore, telescoping benefit is allowed against the addition confirmed in the case of Shri Haresh Mohanlal Mehta. Further, with respect to second addition on account of unexplained expenses incurred on interior work of Hotel Haredia belonging to the assessee amounting to Rs.48,50,000/-, we find that the said addition has been made by the AO on the basis of statement of one Shri Jerry D'Cunha, an architect on 12.08.2011 recorded on oath u/s 131 of the Act.We find that the ld CITA had also confirmed the same merely relying on the said statement. Admittedly, Shri Jerry D'Cunha is a third party and not related to the assessee. It is well settled that any statement recorded from a third person by the ld AO behind the back of the assessee, should be put before the assessee for his rebuttal , if the ld AO proposes to use the said statement against the assessee. Admittedly, in the instant case, the statement of Shri Jerry D'Cunha was never furnished to the assessee either by the ld AO or by the ld CITA for her rebuttal. We find that the ld CITA had reproduced the relevant part of the statement recorded from Shri Jerry D'Cunha, which is used against the assessee, in para 8.2 of his appellate order as under:-

> *"Q. 4 What work have you done for Hotel Haredia and what amount is received by you for the work done by you at Hotel Haredia ?*
>
> *Ans: I have made the re-polishing of all the furniture / painting of walls and done the work of drainage system for the period April 2010 to June 2010. The interior work cost approx. Rs 50 Lacs. Rs. 1.5. lacs is due from Mr Haresh M.Mehta for the work done by me which was not paid by him."*

11.1. From the aforesaid statement, it could be safely inferred that there is absolutely no allegation or even mention of any cash payment of Rs 48,50,000/- made by Shri Haresh Mohanlal Mehta to Shri Jerry D'Cunha.

The third party only says that Rs 1.50 lacs is due from Mr Haresh M Mehta which was not paid by him. The interior work costed approximately Rs 50 lacs. Even the actual amount was not mentioned by him in his statement. Hence it could be safely concluded that the reliance placed on a third party statement is without any substance and deserves to be ignored at once. On the contrary, we find that Smt Hema Haresh Mehta had furnished the Audited Balance Sheet of M/s Haredia Hotel, proprietory concern of Smt Hema Haresh Mehta, as on 31.3.2011 relevant to Asst Year 2011-12. In the Fixed Assets Schedule reflected thereon, a sum of Rs 2,04,50,549/- was shown as Additions to Furniture & Fixtures during the Asst Year 2011-12 which is already disclosed in the audited books of accounts, sources of which are duly explained. Hence the payment made towards interior work had already been reflected in the audited balance sheet of M/s Hotel Haredia. Hence we hold that there cannot be any addition towards alleged investment in Hotel Haredia to the tune of Rs 48,50,000/-, which was made merely by placing reliance on the statement of a third party Shri Jerry D'Cunha, which is absolutely without any basis and substance. Hence the addition made in this regard deserves to be deleted. Accordingly, the said alleged outgoing of Rs 48,50,000/- is not considered by us in the tabulation (separately enclosed as an annexure to this order) while working out the cash available with Shri Haresh Mohanlal Mehta.

11.2. With respect to appeal of the revenue for the Asst Year 2011-12 in ITA No. 4901/Mum/16 in the case of Smt Hema Haresh Mehta, we find that the revenue had filed appeal in respect of the deletion of the addition by the ld CITA in respect of various notings of receipts as well as payments. In this regard, we have already held that all the notings in the seized materials were owned by Shri Haresh Mohanlal Mehta and all outgoings of Smt Hema Haresh Mehta mentioned thereon, would be met

out of profits taxed in the hands of Shri Haresh Mohanlal Mehta as per the tabulation (annexed separately to this order). We find that the revenue had also raised yet another ground on violation of provisions of Rule 46A of the IT Rules. We have already held hereinabove in the case of Shri Haresh Mohanlal Mehta that there is absolutely no violation of provisions of Rule 46A of the IT Rules in similar set of facts and circumstances.

12. To sum up,

a) Appeals filed by Shri Haresh Mohanlal Mehta for the Asst Years 2006-07 to 2011-12 are partly allowed.

b) Appeals filed by revenue in the case of Shri Haresh Mohanlal Mehta

Asst Year 2006-07 – ITA No. 4879/Mum/16 – Partly allowed

Asst Year 2007-08 – ITA No. 4881/Mum/16 - Dismissed

Asst Year 2009-10 – ITA No. 4883/Mum/16 - Dismissed

Asst Year 2010-11 – ITA No. 4884/Mum/16 – Partly allowed

c) Appeals filed by Smt Hema Haresh Mehta for the Asst Years 2006-07 to 2011-12 are allowed.

d) Appeals filed by the revenue in the case of Smt Hema Haresh Mehta for the Asst Year 2011-12 is dismissed.

Order pronounced on 05/05/2021 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 05/05/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai