

**"The Principal Commissioner of Income Tax (PCIT) passed an order u/s 263 of IT Act in case of late Shri Harshad Mehta for AY 1992-93 and reversed the reliefs granted to him in respect of 5 additions of Rs.1094.17 Crores on the ground that the AO had erred and incorrectly passed the order on 02.05.2018 without verification and all the submissions of the assessee were rejected."**



OFFICE OF THE  
Pr. COMMISSIONER OF INCOME TAX (C)-2,  
19<sup>th</sup> Floor, Air India Building, Nariman Point,  
Mumbai-400 021, Phone No.:22043610  
Email: Mumbai.pcit.cen2@incometax.gov.in

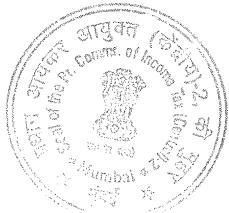
Name and Address of the Assessee	:	Late Shri Harshad S. Mehta (Through L/H Jyoti H. Mehta) 32, Madhuli, Dr.A.B. Road, Worli, Mumbai - 400 018
PAN of the assessee	:	ABAPM1848F
Ward/Circle	:	DCIT-C.C.-4(1)
A.Y	:	1992-93
Dates of hearing	:	As per order sheet notings
Date of Order	:	22.01.2020

#### **ORDER U/S. 263 OF THE INCOME TAX ACT, 1961**

In this case, the Assessing Officer (hereinafter referred to as 'AO') had passed an order dated 28.09.2017, giving effect to the CIT(A)'s order No.CIT(A)-52/IT/DC-CC-4(1)/306/2015-16 dated 28.06.2017, with respect to assessment order passed by the AO u/s.143(3) r.w.s. 254 of I.T. Act dated 15.03.2016. The relevant portion of the order is reproduced as under:

*"In pursuance of order of Ld.CIT(A) in order no.CIT(A)-52/IT-DC-CC-4(1)/306/2015-16 dated 28.06.2017 with respect to assessment order passed u/s.143(3) r.w.s. 254 dated 15.03.2016, the total income of the assessee is computed as under:*

	Total income as per order u/s.143(3) / 254 dated 15.03.2016	Rs.2346,32,06,080/-
Less:	Relief allowed by the Ld.CIT(A)	
a.	<u>Ground No.6,8,10,13,17 subject to verification from BSE for the purpose of rates of purchases to allow correct relief to the assessee.</u> <u>Hence revised total income remain unchanged</u>	
b.	<u>Ground No.28 - Credit of TDS &amp; Advance Tax. To give credit after due verification.</u>	
c.	<u>Ground Nos.29 &amp; 31 - compute the revised interest as per direction given by the Ld.CIT(A) order dated 28.06.2017.</u>	



Revised accordingly. Give credit for the prepaid taxes allowed after due verification as per ITNS-50 is annexed hereto. Charge interest as per law. Issue revised D.N / R.O accordingly."

2. Subsequently, the AO passed an order u/s.,154 of the Act dated 02.05.2018, in which it was mentioned that no effect for relief granted to the assessee was allowed in the above-mentioned order of the AO dated 28.09.2017, as verification pursuant to the directions of CIT(A) were pending. The AO further mentions in the said order passed u/s.154 of the Act that after verification, the effect to the various directions of the CIT(A) was given as under:

*"However, as the verification proceedings have been concluded, the effect to the various directions of the Ld.CIT(A) is being given now.*

*In view of the above, the directions of the Ld.CIT(A) are now being complied with. Hence the OGE dated 28.09.2017 to CIT(A)'s order dated 28.06.2017, is being rectified u/s.154 of the Act to give necessary appeal effects. The revised total income of the assessee is as under:*

Particulars		Amount (Rs.)	Amount(Rs.)
<i>Income computed as per OGE dated 28.09.2017</i>			<b>2346,32,06,080</b>
Less	(As per para 30.2 and 30.3 of CIT(A)'s order dated 28.06.2017) Addition on account of Profit on sale of shares in shortage - Credit in respect of 44 companies of letter dated 31.01.1995 (on proportionate basis)	71,09,68,698	
Less	(As per para 30.2 and 30.3 of CIT(A)'s order dated 28.06.2017) Addition on account of Profit on sale of shares in shortage - Credit of 740,000 shares of Apollo Tyres Ltd. seized by CBI (on proportionate basis)	10,26,55,590	
Less	(As per para 30.2 and 30.3 of CIT(A)'s order dated 28.06.2017) Addition on account of Profit on sale of shares in shortage - Credit of 138,790 mutilated shares of Apollo Tyres Ltd. seized by CBI (on proportionate basis)	1,92,53,434	
Less	(As per para 32.6 of CIT(A)'s order dated 28.06.2017) Addition on account of share market oversold position	NIL	
Less	(As per para 34.11 of CIT(A)'s order dated 28.06.2017) Addition on account of Unexplained income deleted	25,48,16,855	
Less	(As per para 24.22 of CIT(A)'s order dated 28.06.2017) Addition on account of money	438,43,55,195	



	<i>market oversold position - Relief due to decree transactions</i>		
<i>Less</i>	(As per para 24.16 of CIT(A)'s order dated 28.06.2017) Addition on account of money market oversold position - Relief due to inconsistencies in Annexure M-2	418,31,76,323	
<i>Less</i>	(As per para 24.24 of CIT(A)'s order dated 28.06.2017) Additional loss on account of money market trading activities	2,61,95,078	
<i>Less</i>	(As per para 24.24 of CIT(A)'s order dated 28.06.2017) Addition on account of money market unexplained stock - Relief due to order of Supreme Court dated 01.11.2002 and 03.12.2008	224,37,23,243	
<i>Less</i>	(As per para 27.9 of CIT(A)'s order dated 28.06.2017) Addition on account of interest on money market securities	10,42,27,500	
	<b>TOTAL TAXABLE INCOME</b>	<b>1143,38,34,164</b>	
		<b>Rounded off to..</b>	<b>1143,38,34,160</b>

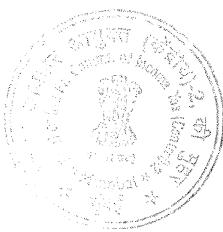
3. Subsequently, a proposal u/s.263 of I.T. Act was received in this office from the AO, duly forwarded by the Addl.CIT, C.R.4, Mumbai. The proposal was examined with reference to the records available with the AO. Accordingly, a show cause notice u/s.263 of I.T. Act was issued to the assessee by the then Pr.CIT(C)-2, Mumbai. The relevant portion of the same is reproduced as below:

*"An order u/s 154 of the IT Act. 1961 rectifying the order giving effect dated 'is 28.09.2017 to the order of Ld.CIT(A) dated 28.06.2017 was passed on 02.05.2018 by DCIT Cen. Cir.4(1), Mumbai.*

*However, it is noticed that the Order u/s.154 rectifying the order dated 28.09.2017, order giving effect to the order of the Ld.CIT(A) in order No.CIT(A)-52/IT/DC-CC-4(l)/306/2015-l6 dated 28.06.2017 is found to be erroneous and prejudicial to the interest of Revenue. The reasons for this conclusion is given in the following paragraphs:*

**A. Issue of relief of Rs.438,43,55,195/- due to decree transactions on account of money market oversold position:**

At the outset, it is pointed out that you are taking the support of the transactions contained in the decrees to correlate the transactions of Annexure M1 and M2. But you had challenged the decrees by filing the Miscellaneous Petitions as under:



S.No.	MP No.	Date	Reference made in MP
1	MP No. 5 of 2009 Mrs Jyoti Mehta vs Standard Chartered Bank & Others	12.06.2009	Order dated 25.07.2003 in Suit No. 28 of 1995
2	MP No 6 of 2009 Mrs Jyoti Mehta vs State Bank of India & Others	11.06.2009	Order dated 14.08.2003 in MP 14 of 1995
3	MP No 7 of 2009 Mrs Jyoti Mehta vs SBI Capital Market & Others	12.06.2009	Order dated 25.06.2003 in MP No 61 of 1992
4	MP No 8 of 2009 Mrs Jyoti Mehta vs State Bank of India & Others	11.06.2009	Order dated 22.04.2003 in MP No.63 of 1992
5.	MP No. 9 of 2009 Mrs Jyoti Mehta vs State Bank of India & Others	11.06.2009	Order dated 06.09.2002 in MP No.88 of 1998
6.	MP No 10 of 2009 Mrs Jyoti Mehta vs State Bank of India & Others	11.06.2009	Order dated 03.03.2003 in Suit No.41 of 1995

Since you yourself have challenged the aforesaid decrees in the Court, the basis of correlation of transactions between the decrees and Annexure M-1 & M-2 does not survive. Without prejudice to the above, even if you have taken contradictory stand as above, it has been found after examination that the securities are altogether different in both sets of transactions

You have pointed out in your submissions before the AO that the AO had ignored the claims made by various parties before the Hon'ble Special Court. Subsequently, the Hon'ble Special Court has passed decrees in several Suits in favour of banks and financial institutions. The issue of correlation between the securities mentioned in these decrees and the securities featuring in Annexure M-2 has also attracted the attention of the Hon'ble Supreme Court. Vide their order dated 03.12.2008 in the case of DCIT vs State Bank Of India and Others, the Hon'ble Supreme Court had the occasion to remand back the matter to the Hon'ble Special Court to give the findings on two issues. These issues include finding on the nexus between the decretal amount and the income included in the assessment of the notified person for the statutory period and on whether the decrees are with regard to oversold securities and if so, whether there is any duplication of amount while scaling down the tax liability. This direction of the Hon'ble Supreme Court is significant in that it clearly establishes that, *sui generis*, there is no direct nexus between the securities in the decrees and in the Annexure M-2 and that a conclusion on this can be drawn only after examination and analysis of the relevant facts. In this backdrop from the perusal of the decrees, study of Annexure M-2 and the rival submissions on the issue available on file, it is found that securities mentioned in the decrees are different from the securities featuring in Annexure M-2. To this end, from perusal of the analysis of the different Suits and decrees made by the AO, it is noted that there is no nexus between the securities mentioned in the decrees and the securities featuring in Annexure M-2. In essence, it is found that in respect of the



securities mentioned in the decrees, you had either received the payment on the transactions made not followed by the deliveries or siphoned off the money from the banks in an unauthorised manner. The Suits were filed to recoup the damage caused because of this conduct of yours. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of the complete transaction i.e. sale, receipt of payment and delivery had occurred. There is thus a clear distinction between these categories of securities.

The Annexure M-2 basically comprises the money market transactions wherein money market oversold position has been calculated and subsequent addition was made in the order. In the oversold securities featuring in Annexure M-2, only those entries have been taken into account from the Deal File which was simultaneously marked as 'RT' and 'T'. Deal File is the file which was seized from the computer of assessee at his premises during the course of search. Hence, it is basically your own file.

After due examination, the correct factual positions is as below:

<b>Suit No. 28 of 95 Standard Chartered Bank vs Harshad S Mehta, NHB &amp; Others</b>				
Date of transaction/ Delivery Date	Type of security	Quantity	Amounts for A.Y. 1992-93	Remarks
23.03.1992	Units 1964 Scheme	94,00,00	14,10,00,000	The purchase transaction is complete herein and accordingly it was captured in M1 and M2. However, the sale transaction never got completed because only payment was received by HSM but no delivery of securities was made. As per the decree awarded, the money was siphoned off by HSM without making delivery of any security in lieu of sale whereas the oversold position has been worked out by taking into consideration only those transactions where the actual delivery has been made on principal to principal basis.
23.03.1992	Units 1964 Scheme	17,87,000	2,68,00,000	The purchase transaction is complete herein and accordingly it was captured in M1 and M2. However, the sale transaction never got completed because only payment was received by HSM but no delivery of securities was made. As per the decree awarded, the money was siphoned off by HSM without



				making delivery of any security in lieu of sale whereas the oversold position has been worked out by taking into consideration only those transactions where the actual delivery has been made on principal to principal basis.
<b>TOTAL</b>			<b>16,78,00,000</b>	

<b>MP 63 of 92 State Bank of India vs Harshad S Mehta, NHB &amp; Custodian</b>				
Date of transaction/Delivery Date	Type of security	Quantity	Amounts for A.Y. 1992-93	Remarks
16.03.1992	Units Scheme 1964	2,50,00,000	37,71,75,000	As per the decree, transaction has been executed between NHB and SBI not with assessee. The assessee has merely siphoned off the money from SBI and therefore the decree was awarded to the bank.
14.03.1992	Units Scheme 1964	3,00,00,000	44,97,75,000	Transaction is with different party. The sale has been shown to the SBI whereas as per the Deal file, the sale transaction has been executed with State Bank of Patiala.
07.03.1992	11.5% C/L 2010	100,00,00,000	101,88,50,195	In the order of decree, there is no discussion of any such transaction. The only reference made is as below: “.. However, he has stated that he had advanced loans to SBI under Double Ready Forward Transactions against 11.5% Central Loan 2010 and that he had paid an excess amount of Rs.2.15 crores to SBI in April, 1992 for which he claimed credit as against SBI's claim for Rs.706.97 cr..”
16.11.1991	Units Scheme 1964	2,00,00,000	27,08,50,000	As per the Deal File, neither the purchases nor the sales have been executed.
31.01.1992	Units Scheme 1964	6,50,00,000	89,05,00,000	Transaction of purchase and sale have been executed between NHB and SBI and not with the assessee
<b>TOTAL</b>			<b>300,71,50,195</b>	



*Rakesh Pant*

In the above chart, you have claimed the transactions executed between the SBI and Harshad Mehta, whereas, as per the decree as well as Miscellaneous Petitions, the transactions of purchase and sales were executed between the SBI and NHB. There was no role of the assessee in these transactions. Shri B Balakrishnan, DGM, Security Services Branch of SBI also while answering the Q No. 4 before the AO admitted this fact which is being reproduced as under :

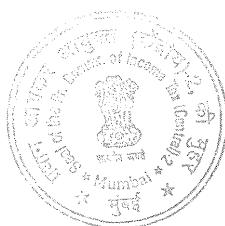
"Q.No.4 This amount of Rs.707.56 cr has been claimed by SBI from Shri Harshad Mehta. Kindly specify do you have any dealing with Shri Harshad Mehta in respect of the transactions covering 707.65 cr either as a broker or a dealer or in any other capacity?

Ans. As per our records, Harshad Mehta was not connected with the transactions in any manner."

However, as per decree, the assessee unauthorizedly siphoned off money amounting to Rs.707.56 cr from the funds of the SBI therefore the Hon'ble Special Court awarded the decree in favour of SBI.

MP 61 of 92 State Capital Markets vs Harshad S Mehta & Another				
Date of transaction/Delivery Date	Type of security	Quantity	Amounts for A.Y. 1992-93	Remarks
30.03.1992	Units Scheme 1964	28,00,000	4,25,00,000	<p>There is no single transaction of 28 lac units on 31.03.1992 with SBI Capital Market in Deal File. As per the deal file, there are four transactions aggregate to 28,00,000 units with Growmore on the following dates which the assessee has tried to correlate with the transactions of the decree:</p> <p>31.03.1992 - 6.60 L              31.03.1992 - 3.30 L              31.03.1992 - 14.80 L              31.03.1992 - 3.30 L</p> <p>Thus, the transactions at both the places i.e. decree and oversold securities are different and not the same.</p>
<b>TOTAL</b>			<b>4,25,00,000</b>	

MP 52 of 93 State Bank of Saurashtra vs Harshad S Mehta, SBI & Ors.				
Date of transaction/Delivery Date	Type of security	Quantity	Amounts for A.Y. 1992-93	Remarks
02.09.1991	Units 1964	5,00,00,000	67,74,50,000	This is not a complete



*Rakesh Patel*

	Scheme			transaction as delivery of securities has not taken place. Further, the transaction is between State Bank of Saurashtra (petitioner) and SBI (2 <sup>nd</sup> Respondent) and not with the assessee.
10.09.1991	Units Scheme	1964	2,00,00,000	26,81,80,000  In the deal file, sale is made to SBI, CBRT, not to the State Bank of Saurashtra as claimed by the assessee. This is not a complete transaction as delivery of securities has not taken place. Further, the transaction is between State Bank of Saurashtra (Petitioner) and SBI (and Respondent) and not with the assessee.
<b>TOTAL</b>			<b>94,56,30,000</b>	

Suit No.41 of 95 State Bank of India vs Harshad S Mehta				
Date of transaction/Delivery Date	Type of security	Quantity	Amounts for A.Y. 1992-93	Remarks
29.07.1991	Units Scheme	1964	25,00,000	3,37,75,000  As per the decree, SBI Caps has purchased 25,00,000 units from UCO Bank whereas the assessee has shown it as a sale to SBI.
31.03.1992	Units Scheme	1964	1,25,00,000	Transaction not in Deal File and hence not included in oversold position. The decree is awarded to the Bank for siphoning off the funds from bank
<b>TOTAL</b>			<b>22,12,75,000</b>	
<b>GRAND TOTAL</b>			<b>438,43,55,195</b>	

In view of the above remarks, the relief of Rs.438,43,55,195/- on account of decree transactions cannot be given. It is clearly erroneous to the interest of Revenue.

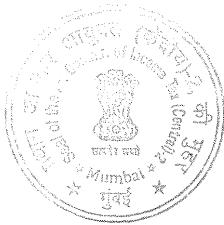
S.N	Security	Amount (Rs. In Crs.)	Remarks/findings
1.	13% NPC Bonds	25.97	The assessee has not made it clear how there could be no oversold position. The Annexure M-2 is very clear in this regard. The assessee has also not explained the letter addressed by the Canara Bank that how it contradicts the AO's findings. The chart below shows relevant data from the deal file which further substantiate that only the



			<i>sale transactions have been completed and delivery been made and none of the purchase transactions have been executed in complete manner on principal to principal basis.</i>
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SEC NAME	DELY DATE	DELY QTY	LAC_CROR	DELY RATE	S_SHORT_NM	S RATE	S. TRANS	B_SHORT_NM	B_DATE	B-RATE	B-TRANS	ENTRY_STAT
13.00% NPC BONDS	08/06/1991	40.00	C	97.10836	UCO	97.10836	RT	CANFIN	19910722	97.10836	RV	TRUE
13.00% NPC BONDS	12/02/1991	11.75	C	80.02770	SBICBRT	80.02770	RT	SCHAR-M	19911130	80.02770	RV	TRUE
13.00% NPC BONDS	19920217	30.00	C	80.00000	SBICBRT	80.00000	RT	SCHAR-M	19920217	80.00000	RF	TRUE

2.	13% NTPC Bonds	25.79	<i>The oversold position has been worked out on the basis of Deal file, on the basis of information received from banks. The assessee's explanation does not prove that this transaction is wrongly recorded. Explanation is only inferential presumption. The assessee has not brought anything on record to show that there was not transaction in this security. Further, the assessee has stated that 17% NTPC Bonds were wrongly considered as 13% NTPC Bonds in Annexure M-2. It is to be noted that there is no oversold position in 17% NTPC Bonds. Hence, there is no question of wrongly considering it as 13% NTPC Bonds.</i>
3.	9% HUDCO Bonds	0.945	<i>Assessee's contention that the purchase transaction has not been captured by the AO in Annexure M-2 is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.35,99,99,998.64 (Qty. + 374600000.00) as against the total purchase value of Rs.35,05,48,488.75 (Qty. + 364000000.00). The difference amount of excess sale over purchase of Rs.94,51,510/- has been taken as the oversold position.</i>
4.	13% MTNL Bonds	22.08	<i>Assessee's contention that there is no oversold position when security pertaining to 13% MTNL Bonds of interest payment date (18/08) and (18/02) is considered, is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.55,54,07,848.36 (Qty. = 591500000.00) as against the total purchase value of Rs.33,45,94,095.89 (Qty. - 341500000.00). The difference amount of excess sale over purchase of Rs.22,08,13,752/- has been taken as the oversold position. Further, Annexure M-2 clearly reveals that both the securities are different as can be distinguished by their different codes. For security 13% MTNL Bonds (18/02), the code no. is B13MT182 whereas 13% MTNL Bonds (18/08), the code no. is B13MT188.</i>

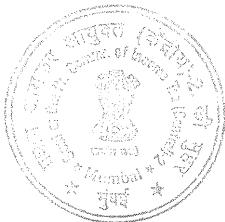


*Dinesh Patel*

5.	9% REC Bonds	0.49	Assessee's contention that the purchase transaction has not been captured by the AO in Annexure M-2 is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.6,65,75,822.27 (Qty. = 65500000.00) as against the total purchase value of Rs.6,16,58,506.85 (Qty. = 60000000.00). The difference amount of excess sale over purchase of Rs.49,17,315/- has been taken as the oversold position.
6.	13% NLC Bonds	8.53	Assessee's contention that there is no oversold position when security pertaining to 13% NLC Bonds of interest payment date (27/08) and (27/02) is considered, is incorrect. From the deal file, it is clearly seen that there is only one complete transaction reflecting nomenclatures 'RT' and 'True' done on principal to principal basis which amounts to Rs.85284931.51 (Qty. = 100000000.00) and there is not complete purchase transaction against this reflecting "RT" and 'True' values. Hence, the amount of Rs.85284931.51 is taken as an oversold position. Further, Annexure M-2 clearly reveals that both the securities are different as can be distinguished by their different codes. For security 13% NLC Bonds (27/08), the code no. is B13NL278 whereas for 13% NLC Bonds (27/02), the code no. is B13NL272.
7.	Treasury Bills	181.34	Assessee's contention that the transactions pertaining to following two dates viz. 25.01.1992 for Rs.150,00,00,000/- (FV) and 21.02.1992 for Rs.40,00,00,000/- (FV) have not been considered, is incorrect. The first purchase transaction of 150 cr. (FV) dated 25.01.1992 has already been included in Annexure M-2 and the second alleged purchase transaction of 40 cr. (FV) is in fact a sale transaction of assessee and purchase transaction of bank i.e. SBI, forms a part of Annexure M-2. Both the transactions are narrated as below (as from the deal file)

SEC NAME	DELY DATE	DELY QTY	LAC_CROR	DELY RATE	S DATE	S RATE	S. TRANS	B_SHORT_NM	B_DATE	B RATE	B-TRANS	ENTRY_STAT
TREASURY BILL	19920125	150.00	C	95.27800	19920124	95.27800	RV	SBICBRT	19920124	95.27800	RT	TRUE
TREASURY BILL	19920222	40.00	C	96.00000	19920222	96.00000	RT	GRIN	19920222	96.00000	RF	TRUE

8.	9% NHPC Bonds	1.87	Assessee's contention that the purchase transaction has not been captured by the AO in Annexure -2 is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.37395616.44 (Qty. = 40000000.00) as against the total purchase value of Rs.18706545.48 (Qty. = 20000000.00). The difference amount of excess
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			sale over purchase of Rs.1,86,89,071/- has been taken as the oversold position. Page No.175 of the paper book V, as mentioned by the assessee, consists of bank statement of SBI which reflects deposits and withdrawals in the bank account. It does not mention any security. The page no.176 is a copy of bank book of SBI (Main Branch) wherein the payment of Rs.1,87,97,458/- is reflected on account of purchase by Bank of 9% NHPC Bonds which, in turn, corresponds to the sale by the assessee, HSM. If this sale is taken into consideration, the oversold position to the extent of Rs.1,87,97,458/- would increase.
9.	ATBF - Non SLR	51.23	ATBF is like any other financial asset. In respect of ATBF (Asset To Be Fixed) it has to submit that the perusal of the Deal File reveals that the assets have been subsequently fixed before the end of the financial year, so far as the two sale transactions of Rs.37.78 crores and Rs.38.45 crores dated 31.05.1991, are concerned. These transactions are marked as "RT" & 'T' therefore, they have been taken into consideration. However, it is found that in respect of purchase transactions of Rs.25 crores, there is no indication of fixing the asset during the year though the transaction has been marked as 'RT' and 'T'. In such situation, if the logic of the assessee is taken into account then the purchase transaction of Rs.25 crores has to be ignored which will result into the increase in the oversold position upto that extent under the item of ATBF. The AO has only included ATBF transactions marked 'RT' and 'True' as found in the Deal File. The ATBF so added as oversold are dated 31.05.1991, 30.05.1991 and 31.05.1991. The ABTF's mentioned by the assessee do not form part of the oversold position are distinct.
10	Call Money	100.06	Call money is like any other financial assets. As defined by the RBI in its master circular No.FMD.MSRG No.36/02.087.2003/2009-10 dated 01.07.2009, Call Money means deals in overnight funds. Further, in this circular the Call Money has been recognized as a money market instrument being a financial asset. Page No.197 of the Paperbook V consists of Deal Slips reflecting the borrowing and lending transactions in Call Money as stated by the assessee. However, this alleged deal slip has no credibility and is a mere computer print out with no certification regarding payment made / receipt of money or delivery of security, whatsoever. Further, it shows that it's a 'RF' transaction and not 'RT'.
<b>TOTAL</b>		<b>418.31</b>	



*R.D.B. Dated*

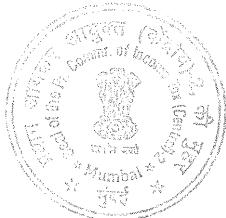
In view of the above remarks, the relief of Rs 418,31,76,323/- on account of inconsistencies in Annexure M-2 cannot be given. Therefore, the above order under review is clearly erroneous and prejudicial to the interest of Revenue

**C. Issue of relief of Rs.224,37,23,243/- due to Order of Honble Supreme Court dated 01.11.2002 and 03.12.2008 on account of money market unexplained stock :**

You have submitted that the National Housing Bank (NHB) filed a Civil Appeal No 4146 of 2002 on 26.10.2002 before the Hon'ble Supreme Court, wherein NHB has stated that the securities worth Rs.258 crores (listed in the Annexure R-1 Colly) do not constitute as the property of the assessee. Further, you have submitted that the Hon'ble Supreme Court of India vide its order dated 01.11.2002 in I A No. 4 of 2002 in Civil Appeal No. 4146 of 2002 has held that the assets (mentioned in Annexure R-1 Colly) are properties of NHB. You have urged that the AO has not considered the aforementioned orders passed by the Hon'ble Supreme Court and Hon'ble Special Court and held that the securities captured in Annexure M-5 do not form part of Annexure R-1 Colly to the Hon'ble Supreme Court Order for Civil Appeal No 4146 of 2002 ie the assets held not to be belonging to the assessee. Thereby upholding an addition of Rs.290,55,41,290/- in relation to money market unexplained stock. Out of this total amount, Id CIT(A) has confirmed the addition of Rs.66,18,18,047/- and verification for the remaining amount of Rs 174,37,27,243/- and Rs.50,00,00,000/- was pending

The above claim is verified with respect to the data available, the correct position of verification on this issue would be as follows:

S.N	Security	Value as per Annexure M-5	As per Annexure R-1 Colly of Supreme Court Order	Rebel to be given (Y/N)	Amount of relief	Remarks
1	Commercial Paper (Hundi of RCFT)	16,78,738	16,78,738	N	0	Entry not found
2	Cheque dated 09.08.1991 drawn by SBS for Indian Bank	1,07,260	1,07,260	N	0	Entry not found
3	9% RFC Bonds (BR No.3 dated 12.03.1992 - NHB)	9,46,63,078	9,46,63,078	Y	9,46,63,078	Entry matched
4	9% IRFC Bonds (01/04) (BR dated 14.03.1992 stock - NHB)	9,47,42,193	9,47,42,193	Y	9,47,42,193	Entry matched
5	9% IRFC Bonds (MAP 215)	61,01,83,000	52,01,560	N	0	Entry does not match
			2,10,06,300	N	0	Entry does not match



			14,00,42,000	N	0	Entry does not match
			50,01,500	N	0	Entry does not match
			9,00,270	N	0	Entry does not match
			13,00,39,000	N	0	Entry does not match
6	11.5% C/L 2008 (BR no. 122 dated 08.02.1992 - NHB)	50,70,17,317	50,17,317	Y	50,70,17,317	Entry matched
7	13% RINL	5,75,78,834	5,75,78,834	Y	5,75,78,834	Entry matched
8	Festival Bonanza	4,80,14,400	4,80,14,400	N	0	Entry not found
9	9% HUDCO (27/03)	14,85,00,000	9,90,00,000	N	0	Entry not found
10	17% NTPC (22/01)	48,31,12,410	42,14,83,723	N	0	Entry not found
11	Units	68,48,40,060	10,86,93,495	N	0	Entry not found
			35,52,075	N	0	Entry not found
12	9% IRFC (01/01)	17,51,04,000	0	-	-	-
<b>TOTAL</b>			<b>174,37,23,243</b>		<b>75,40,01,422</b>	

The correct position with respect to the amount of Rs.50,00,00,000/- which was to be verified, is as under:

S.No. of Annexure M- 5 to AOs Order	Security Name	Value of Securities covered by Hon'ble Special Court's Order dated 06.09.2002	Remarks
5	9% IRFC Ronds (01/04)	Rs.30,00,00,000	On perusal of the Hon'ble Special Court's order dated 06.09.2002, it is inferred that the assessee did not file any affidavit in support of his claim when he was alive and till today his heirs have not filed Vakalatnama The order further states that there are criminal cases pending in respect of the transactions involved in this Petition. Further, neither the assessee nor the Court order anywhere specifies the name of the bonds and the claim thereof. In view of this, no relief can be given
12	17% NTPC Bonds (22/01)	Rs.20,00,00,000	
<b>TOTAL</b>		<b>Rs. 50,00,00,000</b>	

In view of the above remarks, the relief of Rs 75,40,01,422/- can be given as per the order of Hon'ble Supreme Court dated 01.11.2002 and 03.12.2008. Whatever relief given further in the order giving effect is erroneous and prejudicial to the interest of revenue



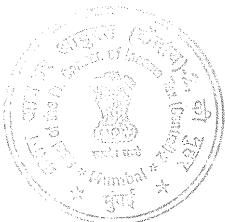
**D. Issue of relief of Rs.2,61,95,078/- due to loss on account of money market trading activities:**

You in your submission had provided a chart with the working of the above captioned amount. The correct position with respect to the said issue is narrated as below:

S No	Security	Corresponding (increase) / decrease in money market trading loss	Assessee's remarks	Final remarks after verification
1	13% N PC (04/01)	39,30,061	Purchase cost relief claimed of the purchase transaction not captured by the AO in Annexure M-2 even though the same is captured in Annexure M-1	The assessee has not made it clear how there could be no oversold position. The Annexure M-2 is very clear in this regard. The assessee has also not explained the letter addressed by Canara Bank that how it contradicts the AO's findings. The chart below shows relevant data from the deal file which further substantiate that only the sale transactions have been completed and delivery been made and none of the purchase transactions have been executed in complete manner on principal to principal basis.

SEC NAME	DELY DATE	DELY QTY	LAC_CROR	DELY RATE	S_SHORT_NM	S RATE	S. TRANS	B_SHORT_NM	B_DATE	B-RATE	B-TRANS	ENTRY_STAT
13.00% NPC BONDS	08/06/1991	40.00	C	97.10836	UCO	97.10836	RT	CANFIN	19910722	97.10836	RV	TRUE
13.00% NPC BONDS	12/02/1991	11.75	C	80.02770	SBICBRT	80.02770	RT	SCHAR-M	19911130	80.02770	RV	TRUE
13.00% NPC BONDS	19920217	30.00	C	80.00000	SBICBRT	80.00000	RT	SCHAR-M	19920217	80.00000	RF	TRUE

2	9% NHPC (27/03)	(-) 1,08,387	Purchase cost relief claimed of the purchase transaction not captured by the AO in Annexure M-2 even though the same is captured in Annexure M-1	Assessee's contention that the purchase transaction has not been captured by the AO in Annexure M-2 is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.37395616.44 (Qty. = 40000000.00) as against the total purchase value of Rs.18706545.48 (Qty. = 20000000.00). The difference amount of excess sale over
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				<p>purchase of Rs.1,86,89,071/- has been taken as the oversold position. Page No.175 of the paper book V, as mentioned by the assessee, consists of bank statement of SBI which reflects deposits and withdrawals in the bank account. It does not mention any security. The page No.176 is a copy of bank book so SBI (Main Branch) wherein the payment of Rs.1,87,97,458/- is reflected on account of purchase by Bank of 9% NHPC Bonds which, in turn, corresponds to the sale by the assessee, HSM. If this sale is taken into consideration, the oversold position to the extent of Rs. 1,87,97,458/- would increase.</p>
3	13% NTPC (12/01)	98,45,378	17% NTPC Bonds wrongly considered as 13% NTPC Bonds in Annexure M-2.	The oversold position has been worked out on the basis of Deal File, on the basis of information received from banks. The assessee's explanation does not prove that this transaction is wrongly recorded, explanation is only inferential presumption. The assessee has not brought anything on record to show that there was no transaction in this security. Further, the assessee has stated that 17% NTPC Bonds were wrongly considered as 13% NTPC Bonds in Annexure M-2. It is to be noted that there is no oversold position in 17% NTPC Bonds. Hence, there is no question of wrongly considering it as 13% NTPC Bonds.
4.	13% MTNL (18/08)	(-) 2,11,27,533	No oversold position when security pertaining to 13% MTNL Bonds of interest payment dated 18/08 and 18/02 is considered.	Assessee's contention that there is no oversold position when security pertaining to 13% MTNL Bonds of interest payment date (18/08) and (18/02) is considered, is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.55,54,07,848.36 (Qty = 591500000.00) as against the total purchase value of Rs.33,45,94,095.89 (Qty. = 341500000.00) The difference amount of excess sale over



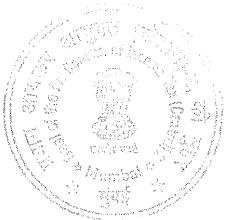
				<p>purchase of Rs.22,,08,13,752/- has been taken as the oversold position. Further, Annexure M-2 clearly reveals that both the securities are different as can be distinguished by their different codes. For security 13% MTNL Bonds (18/02), the code no is B13MT182, whereas 13% MTNL Bonds (18/08), the code no is B13MT188.</p>
5	13% NLC (27/08)	(-) 1,76,08,894	No oversold position when security pertaining to 13% NLC Bonds of interest payment date 27/08 and 27/02 is considered. Closing stock value of 13% NLC Bonds is revised.	Assessee's contention that there is no oversold position when security pertaining to 13% NLC Bonds of interest payment date (27/08) and (27/02) is considered, is incorrect. From the deal file, it is clearly seen that there is only one complete transaction reflecting nomenclatures 'RT' and 'True' done on principal to principal basis which amounts to Rs.85284931.51 (Qty. = 100000000.00) and there is no complete purchase transaction against this reflecting 'RT' and 'True' values. Hence, the amount of Rs.85284931.51 is taken as an oversold position. Further Annexure M-2 clearly reveals that both the securities are different as can be distinguished by their different codes. For security 13% NLC Bonds (27/08), the code no. is B13NL278 whereas for 13% NLC Bonds (27/02), the code no is B13NL272.
6	9% REC (27/03)	(-) 6,25,623	Purchase cost relief claimed of the purchase transaction not captured by the AO in Annexure M-2	Assessee's contention that the purchase transaction has not been captured by the AO in Annexure M-2 is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs 6,65,75,822.27 (Qty. =65500000.00) as against the total purchase value of Rs.6,16,58,506.85 (Qty. =60000000.00) The difference amount of excess sale over purchase of Rs.49,17,315/- has been taken as the oversold position.



7	Treasury Bill	18,28,515	Purchase cost relief claimed of the purchase transaction not captured by the AO in Annexure M-2.	Assessee's contention that the transactions pertaining to the following two dates viz. 25.01.1992 for Rs.150,00,00,000/- (FV) and 21.02.1992 for Rs.40,00,00,000/- (FV) have not been considered, is incorrect. The first purchase transaction of 150 cr. (FV) dated 25.01.1992 has already been included in Annexure M-2 and the second alleged purchase transaction of 40 cr (FV) is in fact a sale transaction of assessee and purchase transaction of bank i.e. SBI, forms a part of Annexure M-2. Both the transactions are narrated as below (as from the deal file).
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SEC NAME	DELY DATE	DELY QTY	LAC_CRO R	DELY RATE	S Date	S RATE	S. TRAN S	B_SHORT_N M	B_DATE	B-RATE	B-TRAN S	ENTRY_STA T
TREASUR Y BILL	1992012 5	150.0 0	C	95.2780 0	1992012 4	95.2780 0	RV	SBICBRT	1992012 4	95.2780 0	RT	TRUE
TREASUR Y BILL	1992022 2	40.00 0	C	96.0000 0	1992022 2	96.0000 0	RT	GRIN	1992022 2	96.0000 0	RF	TRUE

8	9% HUDCO (23/02)	(-) 5,93,693	Purchase cost relief claimed of the purchase transaction not captured by the AO in Annexure M-2.	Assessee's contention that the purchase transaction has not been captured by the AO in Annexure M-2 is incorrect. From the deal file, it is clearly seen that the total sale value amounts to Rs.35,99,99,998.64 (Qty. = 374600000.00) as against the total purchase value of Rs.35,05,48,488.75 (Qty. = 364000000.00). The difference amount of excess sale over purchase of Rs.94,51,510/- has been taken as the oversold position.
9	CALL	6,84,900	Not assessee's transaction. Purchase cost relief claimed of the purchase transaction not captured by the AO in Annexure M-2.	Call money is like any other financial assets. As defined by the RBI in its master circular No.FMD.MSRG No.36/02.087.2003/2009-10 dated 01.07.2009, Call Money means deals in overnight funds. Further, in this circular the Call Money has been recognized as a money market instrument being a financial asset. Page No.197 of



				the Paperbook V consists of Deal Slips reflecting the borrowing and lending transactions in Call Money as stated by the assessee. However, this alleged deal slip has no credibility and is a mere computer print out with no certification regarding payment made / receipt of money or delivery of security, whatsoever. Further, it shows that it's a 'RF' transaction and not 'RT'.
10.	17% NTPC (22/01)	(-) 24,19,802	17% NTPC Bonds wrongly considered as 13% NTPC Bonds.	The oversold position has been worked out on the basis of Deal File, on the basis of information received from banks. The assessee's explanation does not prove that this transaction is wrongly recorded. Explanation is only inferential presumption. The assessee has not brought anything on record to show that there was no transaction in this security. Further, the assessee has stated that 17% NTPC Bonds were wrongly considered as 13% NTPC Bonds in Annexure M-2. It is to be noted that there is no oversold position in 17% NTPC Bonds. Hence, there is no question of wrongly considering it as 13% NTPC Bonds.
	<b>TOTAL</b>	<b>(-2,61,95,078)</b>		

In view of the above remarks, no relief can be given to you due to loss on account of money market trading activities.

In brief, the summary of excess reliefs to be given to you is as under:

S.No.	Particulars	Relief as per OGE dated 02.05.2018
6	Additional on account of money market oversold position - relief due to decree transactions	438,43,55,195
7	Additional on account of money market oversold position - relief due to inconsistencies in Annexure M-2	418,31,76,323
8	Additional loss on account of money market trading activities	2,61,95,078
9	Additional on account of money market unexplained stock - relief due to order of Hon'ble Supreme Court dated 01.11.2002 & 03.12.2008	224,37,23,243
10	Addition on account of interest on money market securities	10,42,27,500



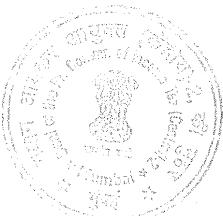
However, the entire exercise of verification needs to be redone. The above paragraphs only show the errors crept in the order of the AO.

*It is seen that the assessing officer has passed the order in a hurry without verifying the factual positions. Therefore, error has crept into the order causing prejudice to the interest of revenue as covered u/s. 263 of the Income Tax Act. Therefore, you are hereby requested to showcause why the older u/s.154 dated 02.05.2018 rectifying the order giving effect dated 28.09.2017 should not be cancelled as the same is prejudicial and erroneous to the interest of Revenue and thereby Assessing Officer be directed to re-compute the relief based on proper verification".*

4. The appellant submitted written arguments before the Pr.CIT(C)-2, Mumbai vide letter dated 18.06.2019. Further, on account of change in incumbent, fresh opportunity was given to the assessee. The AR of the assessee, Shri Sandeep Bhalla, CA and Shri Pankaj Shah, C.A, attended on 16.01.2020. He explained the written submissions filed earlier on 18.06.2019. During the course of hearing, it was submitted that he has produced before the AO, during the course of rectification proceedings, entire evidence on the basis of which detailed verification was made by the AO and the rectification order u/s.154 of the Act was passed on 02.05.2018. He was requested to file the evidence in this regard on 20.01.2020. The Counsel submitted copies of three letters filed before the AO dated 01.12.2017, 07.03.2018 and 20.03.2018. The case was discussed with them. The submissions made by the appellant and decision thereon are discussed hereinbelow:

5. It has been submitted that the assessment order dated 15.03.2016 (OGE to ITAT order) has been quashed by the ITAT vide its order dated 14.01.2019 at para 6.8 on page 22. It was claimed that since Hon'ble ITAT has quashed and set aside the order dated 15.03.2016, the additions made therein by the AO have also become void *ab initio* and any proceedings initiated also becomes liable to be dropped. Further, the CIT(A)'s order passed on 28.06.2017, against the said order dated 15.03.2016, and subsequent orders including the rectification order dated 02.05.2018, have consequently become void *ab initio*. Reliance was placed in the case of CIT v/s. New Mangalore Port Trust 382 ITR 434 (Kar.), in which it was held that CIT has no jurisdiction to revise the order which was not in existence. Further, reliance was placed on the decision of High Court of Guwahati in the case of Meghalaya Plywood Ltd. v/s. CIT 160 taxman 89, in which it was held that if the assessment order of AO is made on the basis of operating decision of the jurisdictional High Court it cannot be held that such an assessment order is erroneous and the fact that Apex Court has subsequently reversed the decision of High Court, cannot be ground for invoking the suo motto revisionary power of the CIT u/s.263 of the Act. Further reliance was placed on Mumbai ITAT decision in the case of Star India Ltd. v/s. Addl.CIT (2012) 143 TTJ Mumbai 307 and in the case of Westlife Development Ltd. v/s. PCIT-5, Mumbai (2016) 49 ITR (2) 406 (Mum. Trib.).

6. It was further submitted by the assessee that since the AO has passed the order u/s.154 of I.T. Act after making proper verification of documents and evidences, the same cannot be deemed to be erroneous or prejudicial to the interest of revenue and no proceedings u/s.263 of the Act can be initiated against such an order. Emphasis was placed on the first para of order u/s.154 of I.T. Act, dated 02.05.2018, wherein the AO has



mentioned that "no effect for the relief granted to the assessee was given as the verification pursuant to the directions of Id.CIT(A) was pending. However, as the verification proceedings have been concluded, the effect to the various directions of Id.CIT(A) is given now". It was further claimed that detailed Paper Books were filed before the AO at the time of remand proceedings and also pursuant to passing of CIT(A) order to enable him to pass the OGE. It was claimed that the said order u/s.154 of I.T. Act dated 02.05.2018 was passed only after carrying out and concluding the verification proceedings.

7. It was further submitted that the CIT(A) in his order dated 28.06.2017, during third round of appellate proceedings has perused through the documents and evidences available on record and those filed by the assessee. Only after being fully satisfied, he gave specific directions in his order while disposing off the appeal and directed the AO to re-verify the evidences filed by the assessee. It was claimed that when the CIT(A) / AO takes one of the two views permissible in law, and which the Commissioner does not agree with, and which results in loss of revenue, it cannot be treated as erroneous order, prejudicial to the interest of revenue, unless the view taken by CIT(A)/AO is completely unsustainable in law.

8. As regards assessee's submission that assessment order dated 15.03.2016 (OGE to ITAT order) being quashed by ITAT vide its order dated 14.01.2019 at para 6.8 on page 22, it is considered important to quote the relevant portion of order of the ITAT.

*"6.8. After going through the order of this Tribunal dated 29.10.2014 in the present case, we noted that this tribunal has not set aside assessment and has also not directed the AO to make a fresh assessment but as observed by the AO himself in his order giving effect to the order of the Tribunal dated 30.01.15 restored/set aside the issue to the file of AO and directed the AO to verify/examine each entry in the books of accounts and to decide the issue afresh after examining the books of accounts of the assessee. Consequently, we noted, that the AO, passed the order dated 30.01.2015 determining the income of the assessee at Rs.6,84,08,000/- as declared by the assessee against the income of Rs.2014,04,65,298/- determined vide assessment order passed u/s 144 dated 27.3.1995. The AO without resorting to the provisions of section 154 of the Act, passed another order giving effect to the order of the Tribunal dated 15.3.2016 purporting to be an order u/s 254 r.w.s 143(3) of the Act assessing the total income u/s 254 rws 143(3) of the Act which order is under challenge before us. Sh. Denial even though vehemently argued and tried to justify the action of the AO and the impugned order passed by the AO to be a valid order, he also contended that the facts involved in this case are different as to the facts involved in the case of Classic Share & Stock Broking Services Ltd(Supra) but we do not agree with his contention. The AO while passing the first order giving effect to the order of this Tribunal dated 20.09.2014 clearly mentioned that ITAT restored/ set aside the issue to the file of the AO to verify/examine each entry in the books of account and to decide the issue afresh after examining the book of account of the assessee and ultimately revised the assessed income accordingly, if there was a mistake in the order of the AO dated 30.01.2015, the only course of action available to the AO was to take an action u/s 154 of the Act but not to initiate the proceedings for passing a second order i.e.*



*the impugned order. The AO having once passed an order giving effect to the order of ITAT, becomes functus officio. The AO does not have any jurisdiction to pass second order giving effect to the order of the Tribunal . We do not find any such provision under the Act and even Sh. Denial could not bring to our knowledge or attention any such provision. It is an undisputed fact that the AO has not taken any action u/s 154 of the Act in respect of the first order dated 30.01.2015 giving effect to the order of Tribunal dated 29.10.2014. Even no contrary decision was brought to our knowledge which has taken a view that the AO has the power to pass a second order giving effect to ITAT order. We are bound to follow the decision of the jurisdictional High Court as well of the co-ordinate Bench. We therefore quash and set aside the assessment order dated 15.03.2016 passed u/s 144 rws 253 of the Act as invalid. Thus the ground no. 1 & 2 taken by assessee are allowed".*

9. In this regard, it may be seen that the Hon'ble ITAT has observed that vide its order dated 29.10.2014, the Tribunal has not set aside the assessment and has also not directed the AO make fresh assessment, but as observed by the AO in his order dated 30.01.2015, restored / set aside the issue to the file of AO with a direction to verify / examine each entry in the books of accounts. A perusal of OGE to ITAT order dated 30.01.2015, makes it abundantly clear that the AO has not made any verification of any entry with respect to books of accounts and has simply revised the income to Rs.6,84,08,000/- in place of assessed income of Rs.2014,04,65,298/-. In the detailed assessment order passed on 15.03.2016, the AO has carried out the directions of the ITAT of verification of each and every entry. In the said order, **the AO has clearly brought on record the issues involved and verification done by her and has passed the assessment order.** Thus, the first order which was dated 30.01.2015, was in fact an interim order and it was only in the second order that the directions of Hon'ble ITAT were carried out. It is also important to mention here that against the said order of the AO dated 15.03.2016, the assessee has preferred appeal before the CIT(A) who has also passed an order dated 28.09.2017, and appeal effect to this order was also given. The AO has passed an order u/s.154 of I.T. Act as in his opinion, there were certain mistakes in the order. It was this order of the AO passed on 02.05.2018, which is subject matter of appeal u/s.263. Thus, **to say that the AO has in fact given the effect to Hon'ble ITAT's order vide his order dated 30.01.2015, is not correct.** It is also important to mention here that the Hon'ble ITAT has on the one hand placed simply quashed the assessment order, and on the other hand has gone to decide each and every issue on merit. This order of Hon'ble ITAT on 14.01.2019 has not been accepted by the Department, and appeal u/s.260A of I.T. Act has been filed on 21.06.2019 before Hon'ble High Court Adjudicature of Bombay on the following substantial questions of law.

1. *On the facts and in the circumstances of the case and in law, the Department pleads for stay of Order of Hon'ble ITAT, as it is self-contradictory. On one hand it quashed the Order u/s 143(3) rws 254 dated 15/03/2016 and on the other, it has confirmed additions on certain issues on merits and has set aside some issues for verification of the Assessing Officer.*
2. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in quashing the order passed u/s 143(3) r.w.s. 254 dated*



A handwritten signature in black ink, appearing to read "Dinesh Pathak".

15.03.2016 where on the other hand the Hon'ble Tribunal has also adjudicated the issues on the merits based on the same order dated 15.03.2016.

3. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in accepting the order of Ld.CIT(A) where the Ld.CIT(A) has set aside some points to AO when the basic principle of setting aside was incorrect as Ld.CIT(A) has no power to set aside as per the section 251 of the IT Act, 1961.
4. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in quashing the order passed u/s 143(3) r.w.s 254 dated 15.03.2016 and accepting the order giving effect dated 30.01.2015 though the AO has not complied with the set aside directions given by the then Hon'ble Tribunal.
5. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in accepting the order of Ld.CIT(A), where the Ld.CIT(A) has set aside the issue of money market oversold position to AO where setting aside the issue to AO results in perversity.
6. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in ignoring the judgment of Hon'ble Delhi High Court in the case of CIT vs. Jansampark Advertising and Marketing Pvt. Ltd. 56 taxmann.com 286 (Del.), wherein it was held that in case of mistakes done by the Assessing Officer have been noticed by the Appellate Authority, it is the obligation of the Appellate Authorities to take to the logical conclusions.
7. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition on account of money market oversold position of Rs.856,75,31,518/- without discussing the case on the merits and simply relying on the order passed by the AO u/s 154 dated 02.05.2018 which is perverse as per the said AO?
8. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition on account of money market oversold position of Rs.856,75,31,518/- without discussing the case on the merits and without appreciating the fact that the Department had made submissions before the Hon'ble ITAT, that AO has referred the matter u/s 263 of the IT Act, 1961.
9. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition on account of money market oversold position of Rs.856,75,31,518/- without discussing the case on the merits and not considering the judgment of Hon'ble Delhi High Court in the case of Hon'ble Delhi High Court in the case of CIT vs. Jansampark Advertising and Marketing Pvt. Ltd. 56 taxmann.com 286 (Del.).
10. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) was justified in setting aside the issue of re-computation of money market overstock position to AO and Hon'ble ITAT upholding the said set aside order without considering the fact that the records and evidences in support of set aside cannot be subject to verification under set-aside proceedings?



11. Whether on the facts and in circumstances of the case and in law, the Ld.CIT(A) and Hon'ble ITAT was justified in setting aside and upholding the set aside when at the time of framing of issue in original assessment, the assessee was not having books of account neither books of account were audited nor complete evidences were furnished instead of giving considerable opportunities to the assessee?
12. Whether on the facts and in the circumstances of the case and in law, the issue of addition can be set aside for fresh computation when the auditor of the assessee at the time of audit itself pointed out insufficiency of evidences and non production of records by assessee.
13. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition of money market oversold unexplained investments without even considering the fact that money market oversold position was worked out after taking into account external evidences gathered by assessee during assessment proceedings and thereafter confronting the same to the assessee.
14. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition of money market oversold unexplained investments without even considering the fact that assessee nowhere produced evidences except mere arguments against money market oversold position worked out by AO from external evidences gathered by AO during assessment proceedings.
15. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in upholding the rectification order u/s 154 of the IT Act, 1961 wherein relief of Rs.856 crores was granted, when infact the Ld.AO suo-moto identified the order as erroneous and the said fact was also brought to the notice of Hon'ble ITAT.
16. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.103 crores without differentiating the securities and thereafter working out the difference between purchases and sales.
17. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs. 104.34 crores (23.70 + 80.64) by holding that there was no evidence, when in fact the seized material and information gathered during the course of assessment proceedings was duly taken into account while working the oversold position?
18. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in upholding the rectification order u/s 154 of the IT Act, 1961 wherein relief of Rs. 174,37,23,243 crores was granted, when infact the Ld.AO suo-moto identified the order as erroneous and the said fact was also brought to the notice of Hon'ble ITAT that the actual relief should be Rs. 75,40,01,422/- as per the order of Hon'ble Supreme Court dated 01.11.2002 and 03.12.2008.
19. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of money market trading profit of Rs.35,55,51,428/- wherein the Hon'ble Tribunal has not taken into consideration the fact that assessee has not acted as a Principal rather has squared up the transaction on the same day and correlation made by the assessee was inconsistent.



20. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of money market trading profit of Rs.35,55,51,428/- wherein the Hon'ble Tribunal has not taken into consideration the fact that assessee had not brought anything on record in support of his claim.
21. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of interest receivable on money market of Rs. 26,41,49,667 and also not adjudicating the part deletion of Rs. 10,42,27,500 made by CIT(A), wherein the Hon'ble Tribunal has not taken into consideration the fact that assessee had failed to furnish documentary evidence in respect of Annexure-I thereof .
22. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of interest receivable on money market of Rs. 26,41,49,667 and also not adjudicating the part deletion of Rs. 10,42,27,500 made by CIT(A), wherein the Hon'ble Tribunal has not taken into consideration the working given by the AO on page 48 and 49 of the assessment order and also assessee's claim vide his Miscellaneous Application No.215 of 1993 before the Hon'ble Special Court.
23. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in restricting the addition on account of share market trading profit to Rs.8,01,32,703/- out of total addition of Rs.16,02,65,407/-, wherein assessee failed to furnish documentary proof and AO had brought all facts and evidences on record.
24. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in restricting the addition on account of share market trading profit to Rs.8,01,32,703/- out of total addition of Rs.16,02,65,407/-, wherein onus lies on assessee to furnish documentary proof.
25. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of share market speculative profit of Rs.2,85,26,994/-, wherein onus lies on assessee to furnish documentary proof.
26. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition on account of share market speculative profit of Rs.2,85,26,994/-, wherein assessee failed to furnish documentary proof and AO had brought all facts and evidences on record.
27. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs. 253,16,78,501 being profits on shares trading on the ground that the addition was mere suspicion when infact, assessee was found to be owner of shares (benami & registered) in search proceedings and assessment proceedings from evidences gathered which has not been found otherwise by assessee.
28. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition being profit on sale of shares, when in fact the stock of shares found during assessment and search proceedings were not explained completely as to their subsequent disposal thereof.



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29. Whether on the facts and in circumstances of case and in law, the Hon'ble ITAT was justified in deleting the addition being profit on sale of shares without appreciating that, unexplained stock if not explained properly, then unaccounted sale is the only fact which has to be accepted and profit thereon needs to be computed.
30. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of share market badla income of Rs. 19,71,050/- where assessee failed to furnish details even before the Hon'ble Tribunal.
31. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition on account of share market oversold position of Rs.5,56,19,836/- where AO had worked out the Annexure S-1 on the basis of information received from various sources.
32. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition on account of share market oversold position of Rs.5,56,19,836/- where AO had worked out the Annexure S-1 on the basis of information received from various sources.
33. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition to the extent of deleted the addition on account of unexplained money to the extent of Rs.123,05,66,015/- and not adjudicating the Revenue's Appeal in respect of the relief granted by CIT(A) of Rs. 25,48,16,855 where assessee failed to furnish or explain the source and nature of fund received / details of fund paid in respect of entries which have not matched with the assessee's voucher file.
34. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of unexplained money to the extent of Rs.123,05,66,015/- and not adjudicating the Revenue's Appeal in respect of the relief granted by CIT(A) of Rs.25,48,16,855 where assessee failed to explain all the entries in bank transaction details provided by RBI do not match with the assessee's voucher file.
35. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the disallowance on account of transaction with Shri Niranjan Shah of Rs.12,00,00,000/- where assessee failed to explain the transactions with documentary evidence.
36. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the disallowance on account of transaction with Shri Niranjan Shah of Rs.12,00,00,000/- where the Tribunal ignored the findings of the Hon'ble JPC given in specific instances in para 17.16 of its discussion on 'Investigation of Foreign Accounts'.
37. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the addition of Rs.62,50,000/- where AO made addition on the basis of document found during Survey from the third party.
38. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.62,50,000/- where AO made addition on the basis of impounding document and onus was on the assessee to prove the same with documentary evidence.



39. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.11,85,00,000/- where the Tribunal held that assessee had consistently followed cash system of accounting, without appreciating the fact that, the Tribunal had ignored the findings mentioned in the assessment order for A.Y. 1993-94 that by assessee's own admission, mercantile system of accounting was being followed.
40. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.11,85,00,000/- where the Tribunal held that assessee had consistently followed cash system of accounting, however, the Tribunal ignored the findings mentioned in the assessment order for A.Y. 1993-94 that by assessee's own admission, mercantile system of accounting was being followed.
41. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.372,82,14,642/- on account of alleged difference in books of assessee and in books of Shri Ashwin Mehta and Smt. Jyoti Mehta, where assessee failed to match the debit and credit entries date-wise in the different sets of books.
42. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.69,63,00,000/- on account of alleged liabilities shown as 'other income not shown in the books' on the basis of the review of unaudited accounts prepared by M/s. Vyas & Vyas, from the audit report in case of the assessee's family members wherein it was found that the interest stood quantified by the Auditors.
43. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in accepting the cash method of accounting, wherein assessee for A.Y.1993-94 by his own admission accepting the accrual method of accounting and hence it would be improbable that for the immediately preceding assessment year, assessee would follow cash system of accounting.
44. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in directing the AO not to charge interest u/s 220(2) of the Act from the date of original assessment, but only from the date of re-assessment in the case of the assessee without appreciating the fact that demand becomes due from the date of original assessment."
45. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in not considering the decision of Hon'ble Bombay High Court in the case of M/s. Girnar Investment Ltd. WP(C) No. 5750/2010 dated 05.01.2012, wherein the Hon'ble Court has held that assessee is liable to pay interest u/s 220(2) from the date of original order u/s 143(3) dated 07.10.1997 till the date of final payment.
46. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in not considering provisions of section 240(a) of I.T. Act, wherein demand does not cease to exist when the order is set-aside by an Appellate Authority until a consequential assessment is made by the Assessing Officer.
47. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in not appreciating the CBDT's Circular No. 334 dated 03.04.1982 wherein it has been clarified that where assessment made originally by the Assessing Officer is either varied or set aside by one Appellate Authority but, on further appeal, the original order of the Assessing Officer is restored either in part or



*wholly, the interest payable u/s 220(2) will be computed from the due date reckoned from the original demand notice and with reference to the tax finally determined.*

10. Further, it is also important to mention here that as against the order u/s.254 r.w.s. 143(3) of I.T. Act passed by the AO dated 15.03.2016 the assessee has preferred an appeal before CIT(A) who decided the appeal vide order dated 28.09.2017 and the appeal effect order was rectified by the AO u/s.154 of the I.T. Act and since this order was erroneous insofar as prejudicial to the interest of Revenue, the same is subject matter of proceedings u/s.263 of I.T. Act.

11. **As regards assessee's submission that the AO has passed order u/s.154 of the I.T. Act dated 02.05.2018 (subject matter of proceedings u/s.263 of I.T. Act), after making proper verification of documents and evidences, and thus the same cannot be deemed to be erroneous and prejudicial to the interest of the Revenue, the relevant order is reproduced at para 2 above, needs to be revisited. But for the narration that "the verification proceedings have been concluded", the order does not show that the AO has made any verification of the documents.** The assessee also submitted that he has attended the proceedings before the AO and has placed various evidences / records before passing of this order u/s154 of the I.T. Act. **He was required during the course of proceedings u/s.263 to furnish evidence in this regard.** The assessee has filed copies of three letters dated 01.12.2017, 07.03.2018 and 20.03.2018. The said letters are scanned below.



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**HARSHAD S. MEHTA**  
33, Madhvan, Dr. Annie Besant Road, Worli, Mumbai - 400 018.

1<sup>st</sup> December, 2017

To:

Deputy Commissioner of Income Tax,  
Central Circle - 4(1),  
Mumbai

Dear Sir/  
Re: Late Smt Harshad S. Mehta  
PIN: ABAPM 1848P  
Assessment Year (A.Y.) 1992-93

Sub: Request for Rectification under section 154 of the Income Tax Act, 1961  
(the Act) or Order Giving Effect (OGE) dated 28.09.2017 delivered on 3.11.2017

We are in receipt of Order Giving Effect (OGE) dated 28.09.2017 passed in relation to the Hon'ble CIT(A)'s order passed under section 133(3) para 2(a) of the Act dated 28.06.2017 for A.Y. 1992-93. The said OGE is received on 3.11.2017. In relation to the same we submit as under:

1. Your Honour will appreciate that the Hon'ble CIT(A) vide his order dated 28.06.2017 provided substantial relief in respect of several grounds of appeal which are enumerated below:
  - a. Profit on sale of shares in shortage;
  - b. Share market oversold position;
  - c. Money market oversold position;
  - d. Money market trading profit;
  - e. Interest on money market securities;
  - f. Money market unexplained stock and
  - g. Unexplained moneyA chart is enclosed giving particulars of grounds and the relevant parts of the order of Hon'ble CIT (A) as enclosed at Annexure "A".
2. On perusal of Your Honour's OGE dated 28.09.2017 it is observed that no effect has been given by your kindself to the directions of the Hon'ble CIT(A). Accordingly, it is observed that the revised term reasons for granting



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the relief for relevant assessment year is computed at Rs. 2,346,32,06,080/-  
Rs. 2,346.32. Given without giving any relief. The same is a mistake  
apparent from records and therefore needs to be rectified.

2. Hence, we request your honour to rectify the same and accordingly pass a  
rectification order u/s. 134 of the Act granting several reliefs as allowed  
by the Hon'ble CIT(A).
3. The Assessee is aggrieved that the above demand raised is false as after  
the effects are given the same will result into a huge refund and therefore  
it is apparent that a proper OGE is not passed on it with a view not to make  
refund to the Assessee.

The Assessee is also aggrieved by the fact that before passing the OGE  
your Honour has not granted any opportunity of hearing and thereby the  
principles of natural justice have been violated. The Assessee states that  
in case involving this magnitude your kindself was bound to exercise  
greatest care and bound to comply with the principles of natural justice.  
Please note that the Assessee has quantified the relief and can present  
the facts and charts giving computation in that regard so that he does not  
suffer any further on account of completely erroneous OGE issued by your  
kindself.

The Assessee also humbly prays to your kindself to issue a proper OGE  
and make refund of monies to the Custodian or Hon'ble Special Court to  
enable them in correctly determining the assets position of Late Shri  
Harshad S. Mehta at the earliest. Your kindself is already aware of order  
passed by Hon'ble Special Court on 3.11.2017 in MA No.205 of 2003  
directing your kindself to issue OGE's giving effect to the reliefs in a period  
of 30 days from the date of order and even therefore your kindself is bound  
to comply with the above order at the earliest.

In case Your Honour requires any further information and/or clarifications in  
relation to the above, we shall be pleased to furnish the same on hearing from  
you.

Thanking You,  
Yours faithfully,

Jyoti H. Mehta  
(Legal Heir of Late Shri Harshad Mehta)



A handwritten signature in black ink, appearing to read "Jyoti H. Mehta".

**HARSHAD S. MEHTA**  
S.d. Madhusudan D. Anand Building, Worli, Mumbai - 400 018.

7<sup>th</sup> March, 2018

To:  
Deputy Commissioner of Income Tax,  
Central Circle - 4(1),  
Mumbai.

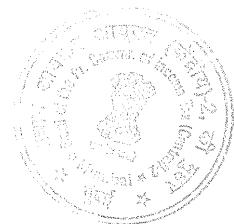
Dear Sir,  
Re: Late Shri Harshad S. Mehta  
PAN: ABAPM1848F  
Assessment Year (A.Y.) 1992-93

Sub: Request for Rectification under section 154 of the Income Tax Act, 1951  
We refer to the Order Giving Effect (OGE) dated 28.09.2017 delivered on  
(the Act) of Order Giving Effect (OGE) dated 28.09.2017 delivered on  
03.11.2017.

We refer to the Order Giving Effect (OGE) dated 28.09.2017 passed in relation  
to the Hon'ble CIT(A)'s order passed under section 143(3) r.w.s. 250 of the Act  
dated 28.06.2017 for A.Y. 1992-93.

In relation to the same I submit as under:

1. I have submitted my application for rectification of the aforesaid order  
vide letter dated 1.12.2018. I also refer to various submissions made  
before your goodwill vide letters dated 3.12.2017, 9.12.2017 and  
12.12.2017.
2. Thereafter, my representatives have visited your office on various dates  
including on 31.01.2018, 1.02.2018, 2.02.2018, 5.02.2018 and  
06.03.2018 to provide explanations and furnish detailed reply for the  
purpose of verification of the reliefs granted by the Hon'ble CIT(A).



*H.S. Mehta*

3. As discussed with your good self, I submit that further representation and submissions on the matter is required and the same shall be complied with by me shortly.
4. Accordingly, only after considering the additional representations and submissions to your goodself's utmost satisfaction I request you to issue a proper OGE.

In case Your Honour requires any further information and/or clarification in relation to the above, I shall be pleased to furnish the same on hearing from you.

Thanking You,  
Yours faithfully,  
**Jyoti H. Mehta**  
(Legal Heir of Late Shri Harshad S. Mehta)

*Yours*  
**(Ashwin S. Mehta)**  
Constituted Attorney



*Jyoti H. Mehta*

**HARSHAD S MEHTA**  
32 Madhuri, Dr Annie Besant Road, Worli, Mumbai 400 018

20.03.2018

To  
Shri Manpreet Singh Duggal,  
Dy. Commissioner of Income Tax,  
Central Circle 4(1),  
Central Range 4,  
Room No.1916, Air India Building,  
Nariman Point, Mumbai 400 021.



Dear Sir,

Sub : Request for rectification u/s 154 of the Income Tax Act, 1961  
of Order Giving Effect (OGE) dated 28.09.2017 delivered on  
13.11.2017

1. This is with reference to your letter No.DCIT CC-4(1)/Verification/2017-18 dated 19.03.2018 in respect of pending verification matters in the case of Harshad Mehta Group covering the case of Harshad S Mehta, Smt Jyoti H Mehta, and myself for A.Y 1992-93. In this regard, please note that your letter was received late on 19.03.2018 wherein your kindself called upon us to attend your Office on 20.03.2018 at 11.30 a.m.
2. That despite short notice I deputed my Chartered Accountants to appear before your kindself. It was conveyed to them that your kindself has just been given charge of the entities though earlier your kindself have been in charge of our matters. Notwithstanding the short notice, our representatives have presented to your kindself all the information that was required, most of which was already on your record because of our previous submissions

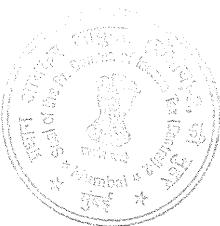


*Harshad Mehta*

3. In regard to the rectification u/s 154 of the I T Act to the OGE dated 28.09.2017 delivered on 03.11.2017 in case of Harshad S Mehta, your kindself has now called upon us to furnish all the documents and records for the process of review / verification particularly in respect of deletion of largest additions of Rs. 1080,58,89,691/- (Rs. 1080.56 crores) made under the head of Money Market Oversold Position ("MMOP")
4. Please note that we are ready and willing to take your kindself through each item of deletions on security wise basis under the above head so that the reliefs are properly accounted for and proper OGE is issued giving full effect to the reliefs granted to us. Since we have already received one incomplete and incorrect OGE, we are very keen and desirous that your kindself issues to us a correct OGE taking entirety of facts and submissions into account after giving us full and proper opportunity on every query that your kindself may have. In essence, we pray that a proper OGE may be passed rather than any incomplete or improper OGE which would only cause further delay and deny us the benefit of order of relief dated 28.06.2017
5. In the meantime, we draw your attention to substantial submissions already made by us previously on the issue, and therefore the same may be considered by your kindself. Kindly also advise us the time and date on which my representatives can appear before your kindself to accomplish the task at the earliest.

Yours faithfully,

(ASHWIN S MEHTA)  
For self and as Constituted Attorney



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*Abhishek Mehta*

12. On perusal of letter dated 01.12.2017, it seen that the assessee has only submitted a chart as per Annexure A to this letter which shows various issues decided by CIT(A) vide his order dated 28.06. 2017. The letter further requests the AO to issue a proper OGE and make refund of monies to the Custodian or Hon'ble Special Court. It nowhere mentions any documents being produced before the AO for verification. Further, the letter dated 07.03.2018 only mentions certain submissions made already but it does not clearly say what were those submissions or what verification was being done by the AO. It further mentions that assessee will submit further submissions shortly. As regards letter dated 20.03.2018, it only makes reference of the fact that the AO has joined very recently and only short notice was allowed to the assessee. As per para 4 of the letter, assessee's willingness to furnish entire evidence was shown, but it no where mentions any documents being enclosed or produced before the AO so as to make any verification. **Thus, to say that order u/s.154 of I.T. Act dated 02.05.2018, was passed by the AO after making due verification, is not borne out from the facts. Moreover, the order u/s. 154 passed by the AO is only one page and is a cryptic order which only mentions that the order is passed after due verification but no such verification is apparent from the order. Further, the proposal u/s.263 of the I.T. Act was submitted by the same AO, which clearly shows that the order has not been passed after making proper verification.**

13. It was further submitted by the assessee that following the doctrine of merger, the assessment order dated 15.03.2016, CIT(A)'s order dated 28.06.2017, the OGE to CIT(A) order 28.09.2017 and rectification order u/s.154 dated 02.05.2018, all have merged with ITAT order dated 14.01.2019. It was claimed that all the relief against which a revision u/s.263 of the Act is initiated have been subject matter of appeal and in fact already been adjudicated upon at length by ITAT in order dated 14.01.2019, and thus following the legally settled principle of the doctrine of merger, the order of the AO and CIT(A) have merged with the order of Hon'ble ITAT and, therefore, do not survive and therefore, they cannot be made subject matter of notice u/s.263 of the Act. Reliance was placed on some decisions of Courts on the doctrine of merger.

14. This contention of assessee was examined with respect to the details on record. As regards order passed by the ITAT dated 14.01.2019, it has already been discussed in para 9 above that the order passed by ITAT, has been challenged before the Hon'ble High Court on the ground inter alia that once the assessment itself has been quashed, the ITAT ought not to have passed the order again on merits. Further, on the basis of earlier order passed by ITAT dated 29.10.2014, the AO has vide order dated 30.01.2015, initially not given the appeal effect to the order, but has merely reduced the demand on ground that the additions were set aside and subsequently, after detailed verification, the order was passed by the AO dated 15.03.2016, and the appeal effect to the order of ITAT was given only through this order. Since the order of ITAT dated 14.01.2019 has not been accepted by the Department and the same is being contested before Hon'ble High Court, and in the third round of proceedings before the CIT(A) the CIT(A) has vide its order dated 28.09.2017, given certain relief and also gave directions to AO to re-compute income in respect of certain issues, the AO has given to this order of CIT(A) vide order dated 28.09.2017, which was rectified by him u/s.154 of the I.T. Act on 02.05.2018. It was in this order that the AO has given extra relief without making any verification. Thus it is



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clear that the doctrine of merger is not applicable to the facts of the case and the reliance placed by assessee on the rulings cited by him is not applicable to the facts of the case.

15. With regard to merits, being the addition on account of money market oversold position (MMOP) - relief due to decree transactions of Rs.438,43,55,195/- which was allowed as relief by AO u/s.154 of I.T. Act (and one of the issues under sec.263 of I.T. Act), it was submitted that in the third round of assessment, as per the directions of Hon'ble ITAT, the AO made assessment order on 15.03.2016 in which this amount was added to the income of the assessee. According to the assessee, the CIT(A) while passing the order dated 28.06.2017 has considered the findings given by his predecessor during the second round of proceedings (in the CIT(A)'s order dated 24.03.2010) and has directed the AO to re-compute such oversold position in the light of the orders of Hon'ble Special Court and Hon'ble Apex Court and allow the consequential relief to the assessee. According to the assessee, the AO was only to re-compute the money market oversold position in the light of orders of Hon'ble Special Court and Hon'ble Apex Court, and accordingly, in the view of assessee, the AO was only required to re-compute the position of money market oversold and thus, there was no error committed while recalculating the addition. Further, it was submitted that the Revenue has also challenged this order of CIT(A) dated 28.06.2017 vide ground no.1, which was allowed by the ITAT in favour of assessee.

16. As regards addition on account of money market oversold position (relief due to inconsistencies in Annexure M-2 OF Rs.418,31,76,326/- and additional loss on account of money market trading activities of Rs.261,95,078/- (the second and third issue u/s.263 of I.T. Act), similar submissions were made by the assessee. It was claimed that the CIT(A) while passing the order dated 28.06.2017, has given specific finding that AO is to verify the evidences filed by the assessee and to re-compute the oversold position of securities and to rework the money market trading profit or loss for the said securities in the light of the orders of Hon'ble Special Court and Hon'ble Apex Court and allow the consequential relief to the assessee. According to the assessee, the AO was only to re-compute the money market oversold position in the light of orders of Hon'ble Special Court and Hon'ble Apex Court, and accordingly, in the view of assessee, the AO was only required to re-compute the position of money market oversold and thus, there was no error committed while recalculating the addition. It was further submitted that the direction given by the CIT(A) to AO was only to re-compute the figures and in effect, the CIT(A) has deleted the additions made by the AO.

17. As regards addition on account of money market unexplained stock of Rs.224,37,23,243/- (the fourth point in notice u/s.263), it was submitted that the CIT(A), vide order dated 28.06.2017, has directed the AO to re-verify the details and evidences submitted during the course of appellate proceedings in the light of Special Court judgment and Hon'ble Apex Court judgement before allowing the relief. It was submitted that the scope of AO was restricted only to recalculation and not to re-adjudicate the matter afresh. In the opinion of assessee, the AO under the directions of CIT(A), and after carrying out the required verification of the details filed has granted the relief to the assessee of Rs.224,37,23,243/- vide order u/s.154 of I.T. Act dated 02.05.2018 and there was no error in the order.



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18. The submissions of the assessee on the merits of proceedings u/s.263 of the I.T. Act were examined. With reference to material on record, the order of CIT(A) dated 28.06.2017, the appeal effect order dated 28.09.2017 and 02.05.2018, it is important to note that the direction of CIT(A) given by him and the order u/s.154 passed by AO dated 02.05.2018, with respect to the issues on which proceedings u/s.263 have been initiated. As it is apparent from the show cause notice u/s.263 of the I.T. Act dated 30.05.2018, the order passed by the AO was considered *prima facie* erroneous insofar as to the interest of the Revenue on the following grounds:

S.No.	Particulars	Relief as per OGE dated 02.05.2018
1	Additional on account of money market oversold position - relief due to decree transactions	438,43,55,195
2	Additional on account of money market oversold position - relief due to inconsistencies in Annexure M-2	418,31,76,323
3	Additional loss on account of money market trading activities	2,61,95,078
4	Addition on account of money market unexplained stock - relief due to order of Hon'ble Supreme Court dated 01.11.2002 & 03.12.2008	224,37,23,243
5	Addition on account of interest on money market securities	10,42,27,500

19. The issue regarding addition on account of money market oversold position amounting to Rs.438,43,55,195/- has been discussed in paras 24.22 of the CIT(A)'s order. The issue regarding addition on account of money market oversold position amounting to Rs.418,31,76,323/- has been discussed in para 24.16 of the CIT(A)'s order. The issue of additional loss on account of money market trading activities amounting to Rs.2,61,95,078 has been discussed in para 24.33 of CIT(A)'s order. The issue of addition on account money market unexplained stock amounting to Rs.224,37,23,243/- has been discussed in para 25.7 of CIT(A)'s order. The issue of addition regarding addition on account of interest on money market securities of Rs.10,42,27,500/- is discussed in para 27.4 of the CIT(A)'s order.

20. The CIT(A) order in respect of all these issues states that "*AO is accordingly directed to re-compute such position in the light of orders of Hon'ble Special Court and Hon'ble Apex Court in light of my observations in the foregoing paras and allow consequential relief to the assessee*". The Hon'ble Supreme Court judgement against the order of Special Court has been reported in (2009) to Supreme Court cases 451 in the case of DCIT v/s. State Bank of India & Ors. Vide para 45 to 47 of the said order, the Hon'ble SC has set aside the order of Hon'ble Special Court to the file of Special Court with a direction to decide the issues afresh. For the sake of clarity, the relevant paras of Hon'ble Supreme Court are reproduced as under:

"45. To be specific, the Special Court will give its finding on the two below mentioned issues in addition to the other issues, if any:

1. Whether there is any nexus between the decretal amount and the income included in the assessment of the notified person for the statutory period.
2. Whether the decrees are with regard to the oversold securities, and if so, whether there is any duplication of amount while scaling down the tax liability.

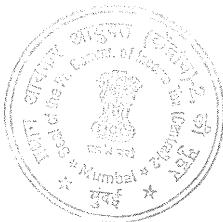


After giving its finding on the said issues, the Special Court will dispose of the matter in the light of the observations made hereinabove. We may however clarify that so far as the amounts of Rs.253 crores and Rs.101 crores are concerned, the appellants have not stated that the said amounts were not included in the income of the notified party for the statutory period. The consent decrees obtained in respect of Rs.253 crores were not challenged by the appellant which led the Special Court to believe that the appellant has accepted the settlement and accordingly scaled down the said amount from the income of Harshad Mehta. Similar is the case with the amount of Rs.101 crores. Thus, the scaling down of the said amount is upheld and will not be disturbed.

46. It is needless to say that the orders of disbursement made during the pendency of the disputes between the parties cannot be said to be final and the same will have to be interim in nature and would finally get settled and take shape on the determination of the final liability after final adjudication of the disputes by the appropriate forums.

47. In the light of the aforesaid observations and directions and till a decision is taken with regard to the aforesaid issues which are remanded back to the Special Court we direct that the said amount which was directed to be deposited by the Income Tax Department with the Custodian may not be refunded. We therefore set aside the directions of the Special Court, except to the extent mentioned in para 45 and remit the entire matter and claims of the parties to be decided afresh in terms of the observations made in this order. We also make it clear that none of the observations made in this order would be construed as any observations made by this Court on the merit of the claims. We request the Special Court to decide the aforesaid issues as expeditiously as possible preferably within a period of three months from today and while doing so give an opportunity to the parties to file such documents which are required or desired to be filed in support of the appeals."

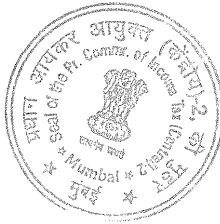
21. In view of the above, it is clear that the Hon'ble Supreme Court has set aside the decision of Hon'ble Special Court for deciding the issues afresh and the matter is still pending at the level of Hon'ble Special Court. The AO has, while passing the order u/s.154 of the I.T. Act, assumed that the CIT(A)'s has given directions to allow relief to the assessee without understanding the fact that the order of Hon'ble Special Court has been set aside. Further, it is clear from the show cause notice u/s.263 that in view of the inconsistencies mentioned therein, the relief granted to the assessee vide order u/s.154 of the I.T. Act was not an allowable relief and the relief was granted under erroneous assumption of facts which were not in existence. The detailed facts mentioned in the show cause notice u/s.263 are not being repeated again for the sake of brevity. The show cause notice to the proceedings u/s.263 of the Act has clearly brought on record that reliefs on these grounds are not permissible on facts of the case. Since no relief on these accounts were permissible to the assessee, and the AO has without making any verification allowed the relief, it is held that the order passed by AO is erroneous insofar as it was prejudicial to the interest of Revenue. The AO is accordingly directed not to allow the relief in respect of the following amounts which was incorrectly allowed as relief in the abovementioned order u/s.154 of the I.T. Act dated 02.05.2018. The total assessed income has been determined by the AO vide order u/s.154 dated 02.05.2018 at Rs.1143, 38,34,164/- . The AO is directed to modify the order u/s.154 of I.T Act passed as under:

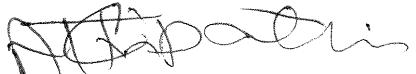


A handwritten signature in black ink, appearing to read "Rakesh Pathak".

S.No.		Particulars		Amount (Rs.)
A.		Total Taxable income determined vide order u/s.154 dated 02.05.18		1143,38,34,164
B	Add:	The following amounts on which relief was wrongly allowed		
	1	Additional on account of money market oversold position - relief due to decree transactions	438,43,55,195	
	2	Additional on account of money market oversold position - relief due to inconsistencies in Annexure M-2	418,31,76,323	
	3	Additional loss on account of money market trading activities	2,61,95,078	
	4	Additional on account of money market unexplained stock - relief due to order of Hon'ble Supreme Court dated 01.11.2002 & 03.12.2008	224,37,23,243	
	5	Addition on account of interest on money market securities	10,42,27,500	1094,16,77,339
C		<b>Total income on which the order u/s.154 passed by the AO dated 02.05.2018, is directed to be modified</b>		<b>2237,55,11,503</b>

22. On the basis of the above observations and finding of fact discussed in detail above, the order u/s.154 of the I.T. Act dated 02.05.2018 passed by the AO in the case of the Assessee for A.Y.1992-93 is held to be erroneous and prejudicial to the interest of Revenue, to the extent discussed above. The AO is directed to modify the order in the light of the above directions and treat the assessable income of assessee at Rs.2237,55,11,503/- . The AO is directed to give effect to this order.



  
 (Ashok Kumar Tripathi)  
 Pr. Commissioner of Income Tax  
 Central-2, Mumbai  
 प्रधान आयकर आयुक्त (के.)-2, मुंबई  
 PRINCIPAL C.I.T. (C)-2, MUMBAI

Copy to:

- 1. The Assessee
- 2. The Addl.CIT, Central Range-4, Mumbai
- 3. The Dy.CIT, Central Circle-4(1), Mumbai
- 4. The Master File

  
 ITO (HQ) to Pr.CIT, Central-2, Mumbai.



भारत सरकार/ GOVERNMENT OF INDIA  
वित्त मंत्रालय/ MINISTRY OF FINANCE  
आयकर विभाग/ INCOME TAX DEPARTMENT  
Pr.CIT (CENTRAL)-2, MUMBAI

सेवा में/ To,

HARSHAD SHANTILAL MEHTA (*Through L/H Ms. Jyoti H. Mehta*)  
32, Madhuli,, Annie Basent Road, Worli,  
Mumbai 400018,

स्थायी लेखा संख्या/ PAN:	निर्धारण वर्ष/ AY:	द.प.सं. एवं प्रपत्राक संख्या / DIN & Document No.: ITBA/COM/S/91/2019- 20/1024141226(1)	दिनांक/ Dated: 22/01/2020
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Intimation Letter

महोदय/महोदया/ मेसर्स,

Sir/ Madam/ M/s,

This is to inform you that Order/Notice/Letter dated 22/01/2020 is having Document No. (DIN)  
ITBA/COM/M/17/2019-20/1024140981(1).

This is a system generated document and does not require any signature.