

“The AO filed a combined affidavit in MA 205 of 2003 in compliance with order of Hon’ble Special Court dated 08.12.2017 and stated that atleast in regard to relief granted by Hon’ble CIT(A) in the case of HSM for AY 1992-93 under order dated 20.06.2017 for interest amounting to Rs.7904.83 Crores because of which demand was reduced from Rs.9512.21 Crores to Rs.1607.38 Crores. The AO admitted that he had not given effect to reliefs of deletion of several other additions and explained the reasons for the same.”

BEFORE THE SPECIAL COURT CONSTITUTED UNDER THE
SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992
AT BOMBAY

MISCELLANEOUS APPLICATION NO. 205 of 2003

IN

SUIT NO.41 OF 1995

State Bank of India ... Applicant

Versus

The Custodian& ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 211 of 2003

IN

MISCELLANEOUSE PETITION NO. 63 OF 1992

State Bank of India ... Applicant

Versus

The Custodian& ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 250 of 2003

IN

MISCELLANEOUSE PETITION NO. 61 OF 1992

SBI Capital Markets ... Applicant

Versus

The Custodian& ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 321 of 2003

IN

SUIT NO. 28 OF 1995

Standard Chartered Bank ... Applicant

Versus

Rasila Mehta and Ors. ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 438 of 2003

IN

MISCELLANEOUSE PETITION NO. 14 OF 1995

State Bank of India ... Applicant



Versus
The Custodian & ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 671 of 2004

IN

SUIT NO. 41 OF 1995

State Bank of India ... Applicant

Versus

The Custodian & ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 51 of 2006

IN

MISCELLANEOUS APPLICATION NO. 210 OF 2003

State Bank of India ... Applicant

Versus

The Custodian & ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 32 of 2011

Standard Chartered Bank ... Applicant

Versus

The Custodian & ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 34 of 2011

SBI Capital Markets ... Applicant

Versus

The Custodian & ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 36 of 2011

IN

MISCELLANEOUS APPLICATION NO. 210 OF 2003

State Bank of India ... Applicant

Versus

The Custodian & ORS ... Respondents

WITH

MISCELLANEOUS APPLICATION NO. 43 of 2011



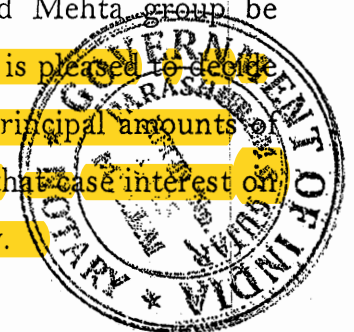
State Bank of India ... Applicant
 Versus
 The Custodian and Ors. ... Respondents

AFFIDAVIT

I, MANPREET SINGH DUGGAL, Deputy Commissioner of Income Tax, Central Circle - 4(1), Mumbai, having office at Room Number 1916, Air India Building, 19th floor, Nariman Point, Mumbai-400021, do hereby on oath solemnly affirm and state as under:

1. I say that I have read the copy of the Hon'ble Special Court Order dated 08.12.2017 and the contents therein. I have also perused the relevant records available in the office in connection with the issues involved in the present case. I am accordingly conversant with the facts of the case and am able to depose the same. Nothing should be deemed to be admitted by me save and accept the facts which are specifically admitted by me by this affidavit. At the outset, it is most humbly stated that there is no reason for banks to have any grievance vis-a-vis order giving effect. Infact, according to the Department, banks do not have any locus to raise these issues. This is totally between Notified Party and the Department as Income Tax Act is code by itself as propounded by Hon'ble Supreme court in the matter of Harshad Shantilal Mehta. At the most, at the time of final distribution, banks can ask for final demand of Harshad Mehta group after giving effect to the appellate orders, as different view can be taken by Hon'ble ITAT or Hon'ble High Court of the order of CIT(A) dated 28.06.2017. It is most humbly stated that banks have received almost all their principal amounts, except may be a very miniscule amount ^{is} ~~as~~ remaining to be paid, and custodian has enough funds to pay up that amount. It is not understandable as to why the banks are now again insisting on scaling down of assessment orders and working against the interest of Government revenue. It is most humbly stated that the balance principal amount of tax dues of Harshad Mehta group be disbursed without any further delay and if this Hon'ble court is pleased to decide that interest amount have to be given out in priority over principal amounts of tax of Harshad Mehta group other than statutory period, in that case interest on Income Tax for the statutory period be disbursed immediately.

2. It is most respectfully submitted that this department has tried to do its work to the best of its abilities. CIT (A) directed the AO to give relief to the assessee on the issue of interest vide para nos. 42, 43 & 44. Since this issue did not require any verification, the department has given relief to the assessee amounting to ₹ 5004.28 crores.



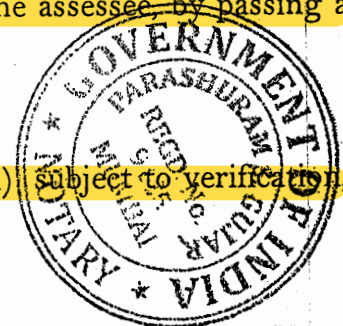
3. The order giving effect to order dated 28.06.2017 was passed on 28.09.2017, copy whereof is annexed and marked as Exhibit-1. The major relief which was given by Ld. CIT (A) was revision of interest amounting to ₹ 7904.83 crore. It is most humbly stated that said interest has been reworked and, therefore, the demand of Late Harshad Mehta for A.Y. 1992-93 which was ₹9512.21 crore has come down substantially to ₹1607.38 crores. Credit for TDS and advance tax was also duly given.

4. It is most humbly stated that this A.O. had joined the charge in the month of July, 2017 and at that time the top most priority was given to the refund of ₹290.39 crores to be issued in the case of Harshad Mehta group. Top most priority was given to the matter and the refunds were issued on 24.07.2017 without any further delay.

5. The order giving effect in the case of Harshad Mehta for A.Y. 1992-93 was solely given on the basis of CIT(A) order as the original case records for A.Y. 1992-93 at that time were not traceable. It is hereby brought on record that all the original assessment records alongwith seized materials were originally kept in the building – Aayakar Bhavan at Churchgate. On account of expansion of office space, the Central Circle where Harshad Mehta group is assessed alongwith many other charges got shifted to Air India Building, Nariman Point. The shifting of case records from one building to another has brought this office to a position where many original assessment records are not readily traceable. Despite the odds, order giving effect in the case of Harshad Mehta for AY 1992-93 were taken up by the department and all the necessary major reliefs, which were not subject to any verification, were duly given.

6. Subsequent to the OGE passed in the captioned case, efforts were carried out to trace the original assessment folder. The Court is kindly informed that this office has finally succeeded in finding the original assessment folder and the due verification process as directed by the Ld.CIT(A) has started. This verification could not have been started in the absence of original assessment folder. Now letter to the BSE has been issued for verification purpose. When the verification is over, due relief, if any, will be given to the assessee by passing a rectification order u/s 154 of the IT Act.

7. Certain relief has been allowed by the Ld.CIT(A) subject to verification, which is as under:



S.No.	Ground	Brief
1	6 & 8	Ground No.6 relates to trading loss of ₹14,77,09,288/- pertaining to money market transactions and Ground No.8 relates to addition on account of oversold position in money market securities amounting to ₹1080,58,89,691/-.
2	7	Ground No.7 relates to addition of ₹290,55,41,290/- made on account of money market unexplained stock.
3	10	Ground No.10 relates to addition of interest receivable on money market securities amounting to ₹58,27,13,670/-.
4	13	Ground No.13 relates to profit on sale of shares in shortage amounting to ₹253,16,78,501/-.
5	15	Ground no.15 relates to share market oversold position as computed in Annexure S-1 at ₹5,56,19,836/-.
6	17	Ground No.17 relates to addition of ₹150,34,33,835/- as unexplained money.

However, this Department is in process of verifying the same and will do the needful at the earliest.

8. As far as relief with respect to the purchase cost is concerned, it is to mention here that AO during the course of assessment proceedings has taken into account the purchase cost while considering the sale price of shares. The AO has taken the purchase cost into account while taxing the profit on the sale of shares in the hands of the assessee. Hence, the AO has allowed the purchase cost. Since the purchase of shares is from undisclosed sources, the same has not been proved by the assessee that purchase of shares is from accounted sources and, therefore, it has been added as unexplained investment in shares which have been sold by the assessee and the money is received in his bank accounts.

Sale Price – Purchase Cost = Profit
Or
Sale Price = Profit + Purchase Cost



As depicted above, the AO has taxed the profit after considering the purchase cost. The purchase cost has been separately added as unaccounted investment. Hence, for simplicity purpose, the AO has made an addition of the entire sale

price (Profit + Purchase Cost). Thus, it would be inappropriate to conclude that purchase cost has not been allowed to the assessee. This fact has been verified from the original assessment order. The assessee cannot make the Court believe what is not factual.

9. Necessary opportunity is being given to the assessee and wherever verification from third party is required, the required notices are being issued. The order giving effect will be rectified after receipt of replies without any further delay.

10. That the statements made above are true to the best of my knowledge and belief.

Solemnly Affirmed at Mumbai
Dated this 4th day of January,
2018



(Handwritten Signature)
(Respondent No. 5)

(MANPREET SINGH DUGGAL)
Dy. Commissioner of Income-tax,
Central Circle-4(1), Mumbai.

(Handwritten Signature)
Advocate for R-5
Ranit Basu

Settled by

(B. M. Chatterji)
Sr. Advocate

