

**“Smt Jyoti Mehta filed her Affidavit-in-reply in MA 21 of 2011 to oppose the relief prayed for by the I.T. department seeking release of Rs.1865.72 Crores which was not in accordance with law and based on misrepresentations by the department.”**

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

**M.A NO.21 OF 2011**

**Asst. Commissioner of Income Tax**

**..APPLICANT**

V/s

**State Bank of India & Ors**

**..RESPONDENTS**

**AFFIDAVIT IN REPLY OF RESPONDENT NO.6**

**SMT JYOTI H MEHTA**

I, Smt Jyoti H Mehta, Adult, Indian Inhabitant, residing at 32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018., do hereby state on solemn affirmation as under.

2. I state that I have perused through the contents of the aforesaid application and in response thereto, I am pleased to file my affidavit in reply in the capacity as legal heir of late Harshad S Mehta. I say that nothing should be deemed to have been admitted by me unless the same has been specifically dealt with and crave leave of this Hon'ble Court to file further affidavit, if necessary. I say that I am filing a separate paper book giving compilation of the documents relied upon in the present proceedings.

3. At the outset, I state that the present application is filed by the revenue in Report No.9 of 2010 which is filed by Custodian and which is pending adjudication in this Hon'ble Court. I say that I have opposed the said Report seeking distribution u/s 11 of the Special Courts Act on numerous grounds by filing my affidavits on 23.09.2010, 12.10.2010 and 10.11.2010. I crave leave of this Hon'ble Court to refer to and rely upon the aforesaid affidavits and adopt all that what I have stated therein, as if they are verbatim reproduced. I say that I am opposed to the reliefs sought for by the revenue on numerous legal and factual grounds, all of which are set out herein after and they are stated without prejudice to one another.

4. I say that the present application is not maintainable and it is premature. I say that the stage of distribution has not arrived as my liabilities are not crystallized u/s 9A and my liabilities towards the revenue are patently illegal and already under challenge and the same are pending adjudication before the appellate authorities and the Hon'ble I.T.A.T. I am pleased to enclose copies of my appeals filed before the Hon'ble I.T.A.T in the paper book at Exhibit A colly, for the priority period of A.Y 1992-93 and A.Y 1993-94. I say that this Hon'ble Court may therefore be pleased to grant me time to move an application for stay on the demand before the Hon'ble I.T.A.T where I have already preferred appeals challenging the order of Hon'ble C.I.T (A) dated 24.03.2010.

5. I say that the present application is liable to be rejected on the ground that the revenue has sought release of monies u/s 11(2)(a) for the period covering A.Y 1993-94 which admittedly covers the assessment period of 01.04.1992 to 31.03.1993 whereas I have been notified on 08.06.1992. I say that as per the law laid down by the Hon'ble Apex Court in Paras 25, 26 and 35 in the case of Harshad Shantilal Mehta V/s Custodian reported as (1998) 5 SCC 1 (herein after referred to Harshad Mehta's case), what would fall and qualify for distribution u/s 11(2)(a) would be the liability only upto the period covering till the date of my notification being 08.06.1992. I say that the revenue has suppressed this material fact and has claimed release of a sum of Rs.942.63 crores for liabilities of entire assessment period of A.Y 1993-94. I say that the Custodian who also carries the responsibility of pointing out the above legal and factual position has failed to do so in the Distribution Report filed before this Hon'ble Court and thereby the claim under the priority period has been exaggerated. As such, the Applicant is liable to show to this Hon'ble Court, the true liability of the statutory period.

6. I say that the revenue has sought payment on the basis of alleged Harshad Mehta Group and by seeking joint discharge of liabilities. I say that this Hon'ble Court neither has jurisdiction nor power to use the assets of one notified entity to meet the liabilities of another and on that ground alone, the present Application is liable to be rejected..

7. I say that admittedly the revenue has been disbursed till date, an amount of Rs.679.21 crores as disclosed by the revenue in their application under various orders of this Hon'ble Court and the Hon'ble Apex Court. I say that the primary object of this Act is to safeguard the interests of the banks and financial institutions which has been clearly held in numerous Judgments of the Hon'ble Apex Court including in Harshad Mehta's case and therefore the present Application is liable to be rejected.

8. I say that it is also a settled law that this Hon'ble Court has complete discretion to decide what is liable to be released to the revenue under the priority period under parameters which are laid down in Harshad Mehta's case. I say that this discretion is also exercisable by this Hon'ble Court by the guidelines given by the Hon'ble Apex Court which are specified in Para 35 of Harshad Mehta's case, and the same are extracted and reproduced herein below for ease of reference.

*But if the assessment is a "best judgment" assessment, the Special Court may examine whether, for example, the income which is so assessed to tax bears comparison to the amounts attached by the Custodian, or whether the taxes so assessed are grossly disproportionate to the properties of the assessee in the hands of the Custodian, applying the Wednesbury Principle of Proportionality. The Special Court may in these cases, scale down the tax liability to be paid out of the funds in the hands of the Custodian.*

I say that the above power and discretion is conferred upon this Hon'ble Court independent of the powers of scaling down upon application made by any creditors. I say that admittedly the liabilities claimed against Harshad S Mehta are under the best judgment assessment and a sum of Rs.679.21 crores has been disbursed to them and presently there is a balance of Rs.404.89 crores in the account. I say that therefore keeping in mind that taxes assessed are grossly disproportionate to the properties of the assessee in the hands of Custodian, this Hon'ble Court may reject the present application.

9. Notwithstanding above, I say that in fact even revenue has given concession before the Hon'ble Apex Court which is duly recorded in Para 36 of the aforesaid Judgment as under :-

***In fact, the Income Tax authorities have also accepted that exorbitant tax demands can be ignored, applying the Wednesbury Principles.***

I say that admittedly and on the very face of it, the demands made by the revenue are extremely high pitched and even therefore no monies are liable to be released as per the concession given by revenue itself.

10. I say that the present application filed by the revenue as well as the Distribution Report filed by the Custodian is on the basis of observations made by this Hon'ble Court in its Judgment dated 30.04.2010 ordering sale of the residential properties.

11. I say that the aforesaid order has already been challenged before the Hon'ble Apex Court by filing Civil Appeal No.6326 of 2010. This appeal came up for hearing before the Hon'ble Apex Court who has already been pleased to give interim relief by an order dated 06.10.2010 as under and a copy of the said order is also enclosed in the paper book at Exhibit B.

***Taken on Board.***

***Issue notice.***

***Dasti in addition.***

***Mr. Arvind Kumar, learned counsel, accepts notice on behalf of Respondent No.1 and seeks time to file counter affidavit. Let him do so within two weeks. Rejoinder affidavit, if necessary, may be filed within a week thereafter.***

***Learned counsel appearing for Respondent No.1 states that till further orders, the said Respondent shall not proceed further in the matter of auction of the subject property.***

***List on 29<sup>th</sup> October, 2010.***

12. I say that the notified entities have only one right of challenge and the order of this Hon'ble Court is already under challenge and awaiting adjudication. I say that pending such an adjudication by the Hon'ble Apex Court who are already seized of the matter and keeping in mind the aforesaid interim relief already granted by them and in the interest of justice, this Hon'ble Court may not proceed with disbursement of monies as sought for by the revenue since the same would render the aforesaid Civil Appeal infructuous.



13. I say that after the Custodian filed Distribution Report No.9 of 2010, I and the other notified entities have also moved an interim application before the Hon'ble Apex Court in Civil Appeal No.6326 of 2010 inter alia seeking relief of stay on the impugned order dated 30.04.2010 of this Hon'ble Court. I say that this interim application is due for hearing shortly. I say that even in view of the aforesaid I.A filed by me and other Appellants, this Hon'ble Court may await outcome of the same before proceeding to deal with the application of the revenue. I say that in the interest of justice, the notified entities may be permitted by this Hon'ble Court to seek relief as aforesaid before the application filed by the revenue is granted. I also crave leave of this Hon'ble Court to refer to and rely upon the aforesaid proceedings in C.A No.6326 of 2010 together with I.A as described above.

14. I say that the present application is filed on the basis of finding given by this Hon'ble Court in its order dated 30.04.2010 in M.P No.41 of 1999. I say that the said petition concerned sale of only residential properties and the Custodian had never prayed for sale of other assets in the said petition nor it had prayed to use the assets of other notified entities to meet the liabilities of Harshad S Mehta. I say that in fact, this Hon'ble Court had only ordered the sale of Madhuli flats. This Hon'ble Court was also pleased to hold in Para 36(iii) of the said order as under :-

*Various notified parties with whom this petition is concerned, are members of Harshad Mehta group and therefore, the properties of each notified party and entity can be sold for discharge of the liabilities of Harshad Mehta. That they constitute a group, is a finding recorded by the Supreme Court already, firstly in its Judgment in Sudhir Mehta's case and secondly in its Judgment in Jyoti Mehta's case. By referring to the account books maintained and the pattern of the transactions, I have also recorded a finding that all the notified parties and entities with whom this petition is concerned, operated in tandem with Harshad Metha in conducting the securities transactions as members of one family and therefore, they constitute a group.*

15. I say that thus this Hon'ble Court in the said Judgment has not held that the assets of other notified entities are liable to be used in discharge of liabilities of Harshad S Mehta as this issue was not put before this Hon'ble Court nor this Hon'ble Court examined all the transactions undertaken by me

and other notified entities. I say that this Hon'ble court has also not held that because there was a Harshad Mehta Group, the assets of one notified entity can be used for discharge of liabilities of another. I say that even therefore to the extent that the present application seeks use of monies lying in the account of one notified entity to discharge the liability of another notified entity, is without any basis. I say that merely because the said entities is held to be members of Harshad Mehta Group, does not mean that the assets of one can be used for discharge of liabilities of another. There is no finding to that effect.

16. I say that the present application is liable to be rejected as it is vague and that it contains several statements which are factually not true, and that the revenue has conveniently given their own interpretation to various Judgments of the Hon'ble Apex Court which interpretations are patently contrary to what has actually been held by the Hon'ble Court. The present application also suffers from the vires that several material facts and directions of the Hon'ble Apex Court have been suppressed which have a vital bearing on the present proceedings and in fact, would make the application of the revenue untenable. I say that the revenue has misrepresented that their best judgment assessments now no longer remains best judgment as an opportunity has been afforded to the assessee which averment is denied in toto and some examples are cited in support of my contention herein after. In fact, most of the demands against which the disbursement is sought are illegal, completely got up and highly exaggerated and the additions are in contravention to the law specifically laid down in the assessee's case and a list of such orders are as under.

- i) Order dated 29.09.2007 in Report No.15 of 2006 of this Hon'ble Court scaling down the demand of the revenue.
- ii) Judgment of Hon'ble Apex Court reported as (2009) 2 SCC 451
- iii) Judgment of Hon'ble Apex Court reported as (1998) 5 SCC 1
- iv) Judgment and order of Hon'ble I.T.A.T dated 25.09.2008 for A.Y 1990-91 in the case of Harshad S Mehta

- v) Judgment and order of Hon'ble I.T.A.T dated 24.08.2005 for A.Y 1992-93 in the case of Topaz Holdings Pvt Ltd and M/s Pallavi Holdings Pvt Ltd.
- vi) Three orders of Hon'ble I.T.A.T (reproduced herein after)

17. I say that the present application is vague in as much as the revenue has clubbed the demands of numerous entities and clubbed the bank and fixed deposit balances of numerous notified entities, and has not specified what is liable to be paid by each individual notified entity. I say that even assuming without admitting that there is Harshad Mehta Group and that liabilities can be jointly discharged as proposed, even then the manner in which it can be done has to be in compliance with what has been laid down by this Hon'ble Court in its Judgment dated 31.03.2006 in M.A Nos.114, 115, 124, 125, 127 and 130 of 2006 in M.P No.4 of 2001 and M.P No.41 of 1999, a copy of which is enclosed in the paper book at Exhibit C. I say that this Hon'ble Court on Page 10 of its Judgment has held as under.

*Now as a result of the judgment of the Supreme Court, the first question that is to be considered is as to what is liability of Harshad Mehta, what are funds collected by the Custodian from realisation of the assets of Harshad Mehta and whether considering the liability of Harshad Mehta and available funds in his account, it is necessary to sell the residential property owned by Harshad Mehta. Thereafter, the Court will have to consider the liability of each individual entity of Harshad Mehta group separately and the funds of that individual with the Custodian and then decide whether residential property of that individual is to be sold or not. It is only if the residential property of any individual entity is not required to be sold for satisfying the liability of that individual entity, then the question may arise whether the residential property of that individual entity is to be sold for satisfying the liability of Harshad Mehta and/or the liability of the other entity in the group. While the Court is to take up these questions for consideration, the above referred decree holder Banks have filed applications for permission to intervene."*

18. I say that from the above, it emerges that the assets available with each individual notified entity, are first liable to be used for discharge of liabilities of that notified person and the question of joint discharge of liability under Harshad Mehta Group would arise only if there was a surplus in the hands of a particular notified entity. I say that not only that, once such a surplus is

ascertained, as held by this Hon'ble Court it would have to be determined whether this surplus is liable to be used for discharge of liabilities of Harshad S Mehta or any other notified entity. I say that before such a surplus is determined, the revenue cannot seek to use the assets of any notified entity for discharging the liabilities of another notified entity. I say that the above is submitted without prejudice and giving up my rights and contentions that the finding of this Hon'ble Court on Harshad Mehta Group and joint discharge of liabilities is contrary to facts and law, and that the said issue is already under challenge and yet to achieve finality, and that I am opposed to it. I say that to give a birds eye view of the additions made to the income of late Harshad S Mehta as they stand after the orders of Hon'ble C.I.T (A) dated 24.03.2010, I am pleased to enclose a chart in the paper book at Exhibit D, giving addition wise particulars.

19. I say that in the present application, the revenue has misrepresented and sought release of even those amounts where this Hon'ble Court as well as the Hon'ble Apex Court has been pleased to confirm scaling down being an amount of Rs.253 crores in their Judgment dated 03.12.2008 in Civil Appeal No.D-32945 of 2007 in the case of DCIT V/s State Bank of India and Ors reported as (2009) 2 SCC 451 by holding in Para 45 as under :-

*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. Similarly 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.*

I say that the revenue is not entitled to seek release of the aforesaid sum of Rs.253 crores and yet release of this sum has been sought by the revenue.

20. I say that in the demand made before this Hon'ble Court, the revenue has claimed release of tax for even additions made on account of Money Market Oversold Position, being a sum of Rs.1080.59 crores for A.Y 1992-93 and Rs.1021.33 crores for A.Y 1993-94, and further a sum of Rs.159.72 crores



is added on this count under enhancement of income for A.Y 1993-94, thus making a total addition of an amount of Rs.2261.64 crores. I say that even the Hon'ble C.I.T (A) have confirmed the demand on account of this Money Market Oversold Position, no monies are liable to be released by this Hon'ble Court against the above additions for the following reasons :-

- a) That this Hon'ble Court had scaled down this addition by an order dated 29.01.2007 in Report No.15 of 2006 and thereafter the Hon'ble Apex Court has upheld this scaling down in its Judgment reported in the case of Dy. Commissioner of Income Tax V/s State Bank of India & Ors, reported as (2009) 2 SCC 451 (herein after referred to as "the said Judgment") and the principle behind it and has only directed this Hon'ble Court to adjudicate on the factual aspect on the two issues as were set out in Para 45 of the said Judgment. This adjudication was required to be undertaken within a period of three months but has not been undertaken despite a passage of more than two years. I say that in fact, this Hon'ble Court in its above order had directed recalling of a sum of Rs.546.22 crores which part of the order was stayed by the Hon'ble Apex Court pending the aforesaid adjudication. I say that applying the same principle, pending adjudication by this Hon'ble Court, no further sum is liable to be released atleast against the aforesaid addition.
- b) I say that the present application cannot be considered before the pending adjudication which is directed to determine whether monies lying with Harshad S Mehta are liable to be disbursed to the revenue or the banks, which issue is explained further herein after.
- c) That the Hon'ble Apex Court, in any event, upheld that part of the order of this Hon'ble Court wherein it was held that the entire amount cannot be added to the income on account of Money Market Oversold Securities but a deduction of the purchase cost is liable to be given. In essence, only the difference i.e. the profit made through such Oversold Securities can be brought to tax. I say that in fact in Para 44 of the said Judgment, the Hon'ble Apex Court has been pleased to hold as under

44. *We also hold that on account of oversold securities if the delivery has been given by Harshad S Mehta and the transaction is complete, only the difference between the payable and receivable will be taken and not the gross amount.*

Thus only difference on account of Money Market Oversold Securities is liable to be released to revenue and certainly not the addition of Rs.2261.64 crores.

d) That in any event, both before the Hon'ble C.I.T (A) and in the present proceedings, I have placed material to show and conclusively establish that the Money Market Oversold Position includes the decreetal transactions for which decrees have been awarded and even therefore no monies can be disbursed to the revenue for their demand made on account of Money Market Oversold Position. I say that this material is forming part of the enclosures to this affidavit which is also described and dealt with herein after.

e) That in any event, the Money Market Oversold Position is arrived at by the revenue is grossly incorrect as explained herein after.

f) That even as per the A.O, as held by him in the assessment order for A.Y 1992-93 in Para 4.6.1 on Page No.26 and Para No.4.6.2 on Page Nos.36, 39, the assessee Harshad S Mehta was denied deduction on account of liabilities for which he presented copies of the claim filed by the banks. This deduction was not allowed on the ground that at the relevant time, decrees were not awarded. I say that if the liabilities are established, the addition on account of Unexplained Investment would automatically go. I say that since passing of the assessment order, decrees have actually come to be awarded and therefore adopting the logic of the A.O himself, the assessee is entitled to deduction of the decreetal amounts from the additions made on account of Unexplained Investment through Money Market Oversold Position. I crave leave of this Hon'ble Court to refer to and rely upon the assessment order dated 24.03.2010 for A.Y 1992-93 as and when produced.

21. I say that the revenue has not disclosed the material fact that the Hon'ble C.I.T (A) has enhanced the income of Harshad S Mehta by issuing

enhancement notices for both A.Y 1992-93 and A.Y 1993-94 and the particulars of these enhancements are described in a chart enclosed in the paper book at Exhibit E. The total of new additions made on account of such enhancements comes to Rs.454.82 crores for A.Y 1992-93 and Rs.710.02 crores for A.Y 1993-94.

22. I say that the above enhancements were contested by me as the same are patently illegal both in facts and in law. I say that it is a settled law that if a matter is remanded to a lower authority with specific directions, the lower authority cannot take up adjudication on issues which are not the subject matter of the remand. I say that the above enhancements of income were not within the scope of the directions of remand and even therefore, the new additions are liable to be deleted. I say that therefore the demand made by the revenue in the present application arising out of the aforesaid enhancements are liable to be excluded from the purview of distribution in the present application. I say that these enhancements are also made by the revenue to replace several large false additions earlier made were directed to be scaled down by this Hon'ble Court as well as the Hon'ble Apex Court.

23. I say that the Special Courts Act has come into being to give a quick redressal to the affected banks and the revenue has been accorded priority keeping in with the principles of giving priority to the demands of the crown. I say that due to several events that took place as well as due to notification, multiple raids and subsequent seizure of records, loss of employees, and sale of offices, the notified entities were reduced to a position where they could not draw the books of accounts nor make their statutory compliance much as they would have liked. I say that the Hon'ble Apex Court was also pleased to take judicial notice of the conditions prevailing with the notified entities in Para 35 of their Judgment in Harshad Mehta's case. I say that taking advantage of their priority status under the Act as well as the circumstances prevailing with the notified entities, the revenue has drawn several high pitched assessments, year after year, against each and every notified entity. The revenue has also been taking advantage of the prejudice that has been prevailing against these notified entities. I say that the assessment orders were drawn by invoking discretionary powers under the provisions of the best judgment assessments

and most of the additions are based on presumption and not backed by any material evidence. These assessment orders are also drawn without complying with the principles of natural justice or giving a fair opportunity to the notified entities nor enquiries were caused to ascertain facts. In fact, these additions are contrary to the evidence on record. I say that it may be noted that the Hon'ble Apex Court has put the best judgment assessment orders on a different footing in the Judgment in Harshad Mehta's case.

24. I say that even under best judgment assessments, the revenue is required to cause enquiry and adduce evidence in support of additions but in the case of notified entities, it has deliberately chosen an easy path of making presumptions to make large additions by invoking the deeming provisions of the Income Tax Act, largely Section 69. In support of the above contentions, I am pleased to enclose a note in the paper book at Exhibit F, describing the various high handed and illegal methods adopted by the revenue in framing these assessment orders. I say that in this manner, the revenue has defeated the very purpose for which the Special Courts Act has come into being as because of these false demands, the affected banks and the other creditors could not secure an equitable and an early distribution u/s 11 of Special Courts Act despite passage of eighteen years. I say that in fact, the banks were compelled to file scaling down applications on the ground that their monies have come to be disbursed to the revenue.

25. I say that despite the strong opposition from me and the other notified entities, a large sum of Rs.1227.38 crores have come to be released to the revenue, the details of which are furnished in a chart enclosed in the paper book at Exhibit G. I say that it has always been apprehended by me and other notified entities and duly conveyed from time to time that if any monies are released to the revenue against such high pitched assessment orders, it would keep litigating and deny us the legitimate reliefs that are due to us in the appellate proceedings only so as to somehow retain the vast sums of monies which are paid to them just to avoid giving the refund. I say that by such adhoc payments released to the revenue on an adhoc basis, the distributable surplus diminishes to meet the liabilities of the genuine creditors.



26. I say that in support of my contention that the revenue has made high pitched assessments and the demands are both factually and legally not tenable, I am pleased to submit and rely upon the following :-

a) I say that since sometime, the notified entities are vigorously contesting the false additions of the revenue and in a large number of cases, these demands are either deleted, reduced substantially or the orders of assessments were quashed / set aside. I am pleased to enclose a chart in the paper book at Exhibit H, furnishing particulars of these orders of relief of the Hon'ble I.T.A.T and crave leave of this Hon'ble Court to refer to and rely upon these orders as and when produced. I say that the revenue being one of the litigants have copies of these orders and in almost all cases, copies of the same have also been forwarded to the Custodian.

b) I say that in several cases, the revenue has challenged the orders of Hon'ble I.T.A.T in higher forums like the Bombay High Court as well as the Hon'ble Apex Court. I say that in all the cases which are heard and disposed off till date, the revenue have lost these appeals. In support of my contentions, I am pleased to enclose a chart giving details of all such cases in the paper book at Exhibit I, and crave leave of this Hon'ble Court to refer to and rely upon the said orders as and when produced.

c) I say that this Hon'ble Court has also had occasion to examine the assessment orders of Harshad S Mehta for A.Y 1992-93 and A.Y 1993-94 on the scaling down applications that came to be filed by the banks. I say that this Hon'ble Court has come to the conclusion that there was gross miscarriage of justice in framing of the assessment orders for the aforesaid two assessment years in the case of Harshad S Mehta so much so that 91.82% of the demands were scaled down by this Hon'ble Court by an order dated 29.09.2007 in Report No.15 of 2006, a copy of which is enclosed in the paper book at Exhibit J. I say that in view of the findings given by this Hon'ble Court, the present application of revenue is liable to be rejected. I say that not only this Hon'ble Court scaled down the demand, but in fact ordered recalling of an amount of Rs.546.22 crores placed with the revenue together with



interest @ 9% p.a. so that the monies become available for distribution to the other creditors.

d) I say that thereafter the Hon'ble Apex Court also presided over appeals filed by the revenue as well as the banks challenging the aforesaid order of scaling down and the Hon'ble Apex Court was pleased to confirm and uphold the order of this Hon'ble Court save and except that on one of the largest addition made on account of Money Market Oversold Position, the Hon'ble Apex Court has remanded the matter back to this Hon'ble Court for adjudication of issues on facts though the Hon'ble Apex Court has upheld the finding of this Hon'ble Court that before any addition is made on account of Money Market Oversold Position, the cost of purchase of security is liable to be deducted and only the difference amount is liable to be brought to tax.

e) I say that the Hon'ble I.T.A.T has also criticized these best judgment assessments and the manner in which the assessments are made. The Hon'ble I.T.A.T has also observed that the authorities below are not following numerous binding judgments of Hon'ble I.T.A.T. The Hon'ble I.T.A.T was therefore pleased to outline a set of directions which were required to be followed by the assessing authorities in making the assessment and these guidelines are set out in its orders as under : \_

Order dated 13.12.2007 for A.Y 1988-89 in the case of Smt Jyoti H Mehta

**12. In the course of argument, the learned Chartered Accountant appearing for the assessee has expressed deep concern over the manner in which according to him, the lower authorities are executing the directions given by the Tribunal in various orders while disposing the appeals filed by the assesses relating to late Shri Harshad S Mehta Group. He has submitted that inspite of specific directions given by the Tribunal from time to time in various matters, the lower authorities do not follow them strictly and repeat the proceedings in a very arbitrary manner, which results in multifarious cycle of litigation before different authorities, never reaching a finality, this way or other way. He, therefore submitted that this Tribunal may give directions to the Assessing Authorities . CIT (Appeals) in completing the set aside proceedings, so that the rule of law is upheld.**

**13. For the sake of convenience, the submissions made by the learned Chartered Accountant are reproduced as below :-**

**"On the basis of our experience, we feel that the lower authorities have not followed the proper procedure for determining the total income of the assesses. In a number of cases, high pitched assessments have been made without following the principles of natural justice and binding precedence of the Tribunal in related cases. We submit that in set aside proceedings, if following directions are given to the lower authorities, it would result into expeditious and judicious determination of the correct total income of the assesses and would go a long way in curtailing protracted litigation. We submit that although, following directions are nothing but the well accepted principles of tax jurisprudence, they need to be emphasized so as to avoid repetitive litigation and waste of further time in the matters, which are already a decade or a decade and half old.**

**i) Earlier orders of the Tribunal in the related cases to be faithfully followed.**

**ii) Wherever the additions are to be made on the basis of the seized material or outside material, the copies thereof is to be provided to the assessee and cross examination to be given. Sufficient time should be granted to the assesses for compliance. The principles of natural justice to be strictly adhered to.**

**iii) Any addition to be made has to be based on positive and reliable material in possession of the revenue.**

**iv) Books of accounts to be relied upon if found to be broadly representing the correct income. It may be kept in mind that the books of account have been drawn under severe limitations of availability of information, manpower etc.**

**v) Assessee's request for obtaining material from Custodian, banks, companies etc. to be acceded to. Request for issue of summons u/s 131 of the Act is also to be acceded to.**

**vi) Even if best judgment or estimate is to be resorted to, it should be based on definite material and should be after taking into account the entire facts and circumstances of the case and not merely the presumption or inference based on partial material.**

**14. On the above submission made by the Chartered Accountant, after hearing the parties, we do not think that there can be any point of difference and hence the same are to be followed. It is a basic principle of judicial discipline that the orders and directions given by a higher forum need to be implemented in their letter and spirit. Otherwise, the rule of law may break down. Therefore, without commenting on the Officers of the proceedings completed by them, we take this opportunity to direct the authorities concerned to complete the set aside proceedings in a very judicially dignified manner.**

Order dated 02.01.2008 for A.Y 1988-89 in the case of late Shri Harshad S Mehta

**5.11** *Therefore, we direct the Assessing Officer to examine those parties and collect the details of the transactions from them and confront the materials with the assessee and then come to a lawful conclusion having a bearing on the assessee on the impugned assessment. Likewise it is the basic rule of natural justice that the assessee should know what are the materials collected by the Assessing Officer through search operations and from third parties and how much of them have been used against the assessee. Therefore, the Assessing Officer is directed to furnish the copies of those materials collected in the course of search and from others so that the assessee have an opportunity to contradict the allegations made by the Assessing Authority on the basis of those materials. If called for, the Assessing Officer is also directed to give opportunity to the assessee to cross examine the opposite parties.*

**5.12** *Therefore, the Assessing Officer is directed to follow all the above mentioned basic rules of natural justice and decide the matter fairly in accordance with law.*

**6.4** *As against the above submission, the learned Standing counsel contended that the Assessing Officer has already given copies of the materials relied upon and hence need not be furnished to the assessee again. He explained that the documents are very much in the possession of the assessee as they were seized from the assessee's own records.*

**6.5** *We considered the matter in detail. We are of the view that no prejudice would be caused to the Revenue if copies of the seized material is provided to the assessee even though it may have been provided to the assessee in the past. We also see that the issue has to be reconsidered by the Assessing Authority in the light of the submissions made by the learned Chartered Accountant, as extracted above. Therefore, we set aside the issue to the Assessing Officer for deciding it afresh. The Assessing Officer is further directed to decide the issue in the light of the following lines :-*

**(i)** *The Assessing Authority has to strictly follow the earlier orders of the Tribunal on respective subjects.*

**(ii)** *Wherever the additions are proposed on the basis of seized material or materials collected from third parties, the copies thereof need to be provided to the assessee. If requested for, the assessee must be given an opportunity to cross examine the concerned parties.*

**(iii)** *Additions should not be repeated on the basis of the presumptions and inferences. Additions must be made only on the basis of materials and evidences available on record.*

**(iv)** *Books of account should not be rejected on flimsy grounds and should be acted upon.*

(v) *The Assessing Officer has to accept the request of the assessee for obtaining materials from the Custodian, Banks and Companies etc. For that matter, wherever necessary, the Assessing Officer may issue summons u/s 131 and the inquiries must be made effective and fruitful.*

**Order dated 25.09.2008 for A.Y 1990-91 in the case of Shri Harshad S Mehta**

47. *We have heard the rival submissions. The information claimed to have been obtained by the Assessing Officer from the bank has not been confronted to the assessee. The assessee was also handicapped by the fact that the bank refused to co-operate with the assessee because of the stock scam. The reconciliation filed by the assessee can be verified from the bank and there has been only a vague statement from the Assessing Officer in this regard. In the interest of justice and fair play, it would be appropriate to set aside the order of the learned CIT (a) for fresh consideration. The CIT (A) will decide the issue afresh affording the assessee opportunity of being heard and also after making enquiries from bank and confronting the assessee, the material stated to have been obtained by the Assessing Officer from the bank. It is ordered accordingly.*

f) *I say that according to me, for the relevant assessment years, I have not earned taxable income which also emerges from the books of accounts which Harahd Mehta had drawn under the orders of this Hon'ble Court so as to present them to the three firms of Chartered Accountants appointed by this Hon'ble Court. I say that there is a huge variance between the income arrived at by him and that assessed by the revenue. I am pleased to give particulars of these variances in an enclosed chart in the paper book at Exhibit K*

*I say that since the books of accounts were drawn under the orders of this Hon'ble Court, the same ought to be made the basis to determine the tax liability but the revenue has been opposing admission of the same knowing fully well that the false additions made by them would not sustain in the face of evidence of books of accounts. I say that in fact the Hon'ble I.T.A.T has been pleased to hold in their order dated 13.12.2007 for A.Y 1988-89 as under:-*

iv) *Books of accounts to be relied upon if found to be broadly representing the correct income. It may be kept in mind that the books of account have been drawn under severe limitations of availability of information, manpower etc.*

g) I say that even the Chartered Accountant appointed by this Hon'ble Court viz. M/s Vyas & Vyas, have determined the taxable income for the period covering 01.04.1991 to 06.06.1992 to Rs.122.53 crores which is a miniscule sum of what has been assessed by the revenue. I say that without admitting this income, it is submitted that in face of such plethora of evidence, the demands of the revenue are liable to be disbelieved and rejected by this Hon'ble Court.

27. Notwithstanding the above, I also dispute the amount claimed by the revenue as the same is liable to be brought down on the following grounds :-

a) I say that credit remains to be given for taxes already paid from 1992 till date as and by way of T.D.S in terms of the Judgment and Order of Hon'ble Apex Court dated 13.02.2002 in Civil Appeal No.7572 of 1999 with Civil Appeal No.1175 of 2002. This credit is liable to be given against the taxes due and not against the claim of interest.

b) That from time to time and under various orders of this Hon'ble Court and order of Hon'ble Apex Court, an amount of Rs.686.22 crores is already released which is liable to be deducted from the claim of tax.

c) Reduction of amount of scaling down as ordered by this Hon'ble Court and duly confirmed by the Hon'ble Apex Court.

28. I say that the present application is in violation of the Judgment of Hon'ble Apex Court in Harshad Mehta's case. It is held that the Special Court enjoys substantial discretionary powers in the matter of distribution as well as enjoys powers to re-arrange the priorities of revenue u/s 11(2)(a) such that it can make the payments to the revenue only after meeting the liabilities to the banks for whom this Act has come into being. I say that this scaling down can be done if there is a finding of fraud, collusion or miscarriage of justice in the assessment orders or even if according to the Special Court, the assessed tax does not bear comparison with the amounts attached by the Custodian or that the taxes are grossly disproportionate to the properties of the assessee. I say that these second set of conditions admittedly exists in



Harshad Mehta's case and therefore this Hon'ble Court ought to examine this issue even on its own volition.

29 I say that so far as Harshad S Mehta is concerned, as against the liabilities claimed by the revenue, presently there is bank balance of only Rs.372.51 crores. I say that earlier this Hon'ble Court has already given a finding that there is gross miscarriage of justice in the assessment of Harshad S Mehta which was affirmed by the Hon'ble Apex Court in the said Judgment. I say that even otherwise, no monies are liable to be released to the revenue applying the second set of condition as explained earlier.. I say that in these circumstances, the revenue would actually have to refund the monies already collected by them so that the purposes and objects of the Special Courts Act are achieved. I say that even therefore unless the scaling down applications are adjudicated upon, it cannot be said that any monies are presently payable to the revenue and if any monies are released, the same would seriously prejudice my interests and those of my genuine creditors.

30. I say that the present application is also in teeth of what has been held by the Hon'ble Apex Court in the said Judgment which can be easily established by analyzing what has been held by the Hon'ble Apex Court. I say that admittedly the scaling down applications by both State Bank of India and Standard Chartered Bank are pending before this Hon'ble Court and before any monies are released to the revenue, this Hon'ble Court is bound to comply with the said Judgment and decide whether monies are to be released to the banks or to the revenue. I say that this question can be answered only if compliance is made with the directions of Hon'ble Apex Court in the said Judgment which are duly analyzed herein after.

31. I say that in the said Judgment, the Hon'ble Apex Court has been pleased to hold that the Special Court should examine the following two questions of facts which alone can determine whether the attached monies are liable to be disbursed to the revenue or to the banks. These questions are set out in Para 45 as under :-

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.*

32. I say that the Hon'ble Apex Court has further directed in Para 45 that the Special Court can take up even other issues, if any. I say that entire demand of the revenue for both the assessment years including the large enhancements made to the income of Harshad S Mehta by Hon'ble C.I.T (A) are open to scaling down, either at the instance of banks or even otherwise by this Hon'ble Court on its own volition. I say that if this Hon'ble Court were to scale down the entire demand of the revenue, then in fact, revenue will become liable to refund Rs.686.22 crores collected by them together with interest.

33. I say that under Para 42 of the Judgment, it has been directed by the Hon'ble Apex Court that a finding on the aforesaid two issues and questions under remand would be mandatory and the same cannot be dispensed with under any circumstances. I say that under Para 43 of the said Judgment, the Hon'ble Apex Court has given liberty to the parties concerned to agitate their cases before this Hon'ble Court by placing all the relevant documents so that it is able to come to a proper and considered finding. By making any payment at this stage to the revenue, the aforesaid reliefs will stand negated.

34. I say that admittedly a large sum of Rs.686.22 crores has been released to the revenue on an undertaking that it would be brought back together with interest if and when this Hon'ble Court or the Hon'ble Apex Court were to so direct. I say that the banks are already claiming that this amount belongs to them which is incorrectly released to the revenue. I say that earlier this Hon'ble Court has already directed recalling of Rs.546.22 crores with interest. However, the Hon'ble Apex Court stayed recalling of these monies pending re-adjudication on questions of facts and has therefore granted interim relief to the revenue and thus a status quo was maintained. However while doing so, in Para 46 of the said Judgment, the Hon'ble Court held as under :-

*It is needless to say that the orders of disbursement made during 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.*

I say that therefore disbursement cannot precede above re-adjudication

35. I say that the monies lying in the bank accounts of Harshad S Mehta together with monies released to the revenue to the extent it is recalled will become payable to the banks as held by the Hon'ble Apex Court in Para 44 of the aforesaid Judgment which reads as under :-

*However, while remanding the matter for a finding on the said issues and questions we decide the issue that if the nexus is shown by the banks between the amounts for which decrees have been obtained, which have become final and binding and the amount which is included in the income in the hands of Harshad S Mehta by the Department, the same will have to be disbursed to the banks by the Special Court.*

I say that in view of above, no monies are liable to be released to the revenue.

36. I say that I have disputed the high pitched demands of the revenue by addressing several letters and also made my detailed submissions, a list of which is enclosed to the paper book at Exhibit L. I say that in fact, before the Hon'ble C.I.T (A), I have adduced evidence which completely establishes such a nexus between the amounts for which decrees have been obtained and the amounts which are included as the income in the hands of Harshad S Mehta by the department. I have established that the decreetal transactions are part of additions under the head of Money Market Oversold Position as arrived at by the revenue. In support of my contentions, I am pleased to enclose a list my submissions and supporting evidence adduced before Assessing Officer and Hon'ble C.I.T (A) in the paper book at Exhibit M colly. I crave leave of this Hon'ble Court to refer to and rely upon all my submissions made to the revenue as and when produced. I say that therefore it is incorrectly averred in the present application that the orders of C.I.T (A) are now reasoned and final orders and are drawn after giving full opportunity

to me. I say that thus the demands of the revenue are patently illegal and the present application is liable to be rejected on that ground alone.

37. Notwithstanding the above, I say that during the course of proceedings, I led clinching evidence to establish that the additions were also liable to be deleted on the ground that the computation of Money Market Oversold Position was grossly erroneous and highly exaggerated. In this regard, I am pleased to enclose copies of my letters addressed to Assessing Officer during the course of assessment proceedings in the paper book at Exhibit M colly, and I crave leave of this Hon'ble Court to refer to and rely upon the same as and when produced. I say that glaring calculation and conceptual errors committed by the revenue were explained together with supporting evidence which has been completely ignored by Hon'ble C.I.T (A). I led evidence to establish that the oversold position was exaggerated by a sum of Rs.785.17 crores for A.Y 1992-93 and Rs.601.21 crores for A.Y 1993-94 (which figures are not exhaustive). I say that in fact, even double counting has taken place of the same Money Market Oversold Position by re-introducing it as opening balance in the next year for which additions were already made in earlier year. I say that on account of this double counting, an addition of Rs.107 crores is liable to be deleted for A.Y 1992-93 and Rs.441.49 crores for A.Y 1993-94. Similarly an addition of Rs.159.72 crores by way of enhancement in A.Y 1993-94 is also a brought forward balance for which addition was already made in A.Y 1992-93. I say that if these illegal additions are deleted for their factual inaccuracy, the exaggerated demands of the revenue would virtually disappear.

38. I say that in the assessment order of A.Y 1992-93, the A.O has given a deduction of Rs.601.22 crores in the Money Market Oversold Position arrived at by him on the ground that he had caused a verification with S.B.I and ascertained that the delivery of securities was not made by M/s Harshad S Mehta. However in the assessment order of A.Y 1993-94, the A.O reversed this deduction given in A.Y 1992-93 and reintroduced the entire addition of Rs.601.22 crores by giving a finding that the assessee had not explained the source of investment and under that pretext, the Money Market Oversold Position of two securities i.e. CL 11.5% 2010 of Rs.454 crores Face Value



and CL 11.5% 2007 of Rs.170 crores Face Value, the negative balances were reintroduced to make an addition of Rs.601.22 crores in A.Y 1993-94. I say that since the source of investment already stood explained both by the assessee and duly verified by his predecessor, there was no justification to reintroduce and make an addition of Rs.601.22 crores. I say that in any event, no addition could be made for A.Y 1993-94 on account of unexplained investment as Section 69 of the Income Tax Act mandates addition only for investment made during the relevant year.

39. I say that now the assessee is penalized once again by Hon'ble C.I.T (A) who has enhanced the income of the assessee under the head of Unexplained Money for A.Y 1993-94 by a sum of Rs.524.53 crores for nine cheques which according to the Hon'ble C.I.T (A) have not been satisfactorily explained by me. I say that M/s Harshad S Mehta arrived at an understanding with S.B.I and provided a sum of Rs.622.52 crores for purchase of securities which according to S.B.I remained to be delivered to them and for the purpose made payment by ten cheques. On account of these transactions, the assessee had been slapped with two additions viz. an addition of Rs.601.22 crores for not explaining the source of investments i.e. securities purchased by S.B.I, and then an enhancement of Rs.524.53 crores on account of unexplained money. I say that the assessee could not be slapped with two additions, one for not explaining the investment and the other for not explaining the money used for acquiring the very same assets.

40. I say that even otherwise as per the stand taken by the A.O himself in the assessment orders, the assessee is entitled to deduction equivalent to the amount of decrees awarded. I say that in the assessment order of A.Y 1992-93, the A.O refused to give credit for the claims lodged on Harshad S Mehta on the ground that at the relevant time, the decrees were yet to be awarded. I say that since then, the decrees have been awarded and yet the Hon'ble C.I.T (A) did not grant the deduction claimed by me. I urged that the Hon'ble C.I.T (A) was bound by the orders of this Hon'ble Court awarding the said decrees and he was also bound to follow the logic adopted by the Assessing Officer, but the Hon'ble C.I.T (A) failed to appreciate the submissions.



41. I say that the Applicant has falsely averred that the order of Hon'ble C.I.T (A) is a reasoned order and that the assessee has had full opportunity. I say that the assessee had no access to the business records of M/s Harshad S Mehta as they presently lie seized by the Custodian. I say that the assessee had made numerous requests for causing enquiries through issue of summons u/s 131 of the I.T. Act, for giving the break-up of all consolidated figures and seeking inspection of material relied upon by the A.O more particularly the break-up of consolidated figures including Money Market Oversold Position, to summon the records from the Office of Custodian as was ordered by this Hon'ble Court, for cross examination of third parties who had furnished the material to the A.O which was being heavily relied upon. I say that barring granting of request for inspection which was also not fully granted, the Hon'ble C.I.T (A) has not granted the above legitimate requests which are available to the assessee as a matter of right. I say that thus I was handicapped and I have not had full and proper opportunity. I say that in this manner, the order of Hon'ble C.I.T (A) is in complete violation to the principles of natural justice on numerous counts as explained above.

42. I say that notwithstanding above, the revenue though being represented on Joint Parliamentary Committee has completely ignored wide body of evidence in treating Money Market Oversold Position as income of late Harshad S Mehta. I say that the alleged scam was about non delivery of securities against purchases made by banks which position stands confirmed by Jankiraman Committee Report, Joint Parliamentary Committee Report, numerous charge sheets filed by C.B.I, and various orders of this Hon'ble Court awarding the decrees in favour of the banks. However, according to presumptions made by the revenue, M/s Harshad S Mehta delivered all the securities by effecting purchases outside the books of accounts in a strictly inter bank market and thereby made unexplained investments. These multiple presumptions are contrary to every evidence available on record and they are absurd in the extreme. I say that Harshad S Mehta always had sufficient assets but is now being portrayed as bankrupt due to the distortion caused by these false demands of the revenue totaling Rs.15944.38 crores.

43. Notwithstanding the foregoing, I say that I have already preferred an appeal challenging both the orders dated 24.03.2010 of Hon'ble C.I.T (A) before the Hon'ble I.T.A.T and the same are pending adjudication. I say that the I.T.A.T is the last fact finding body and had earlier made large deletions and granted relief to all the notified entities in general and late Harshad S Mehta in particular in view of such untenable orders of revenue. I say that the demands of the revenue made through numerous best judgment assessments are not in accordance with law and in any event, the same are neither final nor binding in terms of the law laid down in Harshad Mehta's case. In fact, I pray to this Hon'ble Court to direct the Hon'ble I.T.A.T to expeditiously hear the aforesaid two appeals so that all issues on facts attain finality. I say that the Hon'ble I.T.A.T is the last fact finding body.

44. I say that there are other equally absurd additions which are duly explained herein after. I say that the Hon'ble C.I.T (A) has sustained and upheld two largest additions on account of Profit on Shares in Shortage of an amount of Rs.253.16 crores for A.Y 1992-93 and Rs.138.68 crores for A.Y 1993-94. I say that contrary to all the evidence on record, the A.O has made presumption that the shares which were allegedly not found in the possession of the assessee, were sold by him at the highest rates then prevailing. This was despite the assessee explaining that as a brokerage firm, he was not liable to be taxed for transactions undertaken by his clients and that in any event, his clients were already taxed for these transactions undertaken thorough the assessee's firm. In this regard, I crave leave of this Hon'ble Court to refer to and rely upon the representations made to the Assessing Officer at the time of assessment proceedings as and when produced. I say that I made numerous submissions as to how the entire addition was illegal and contrary to the binding orders of Hon'ble I.T.A.T as were given in the case of the other notified entities. In support of my contentions, I am pleased to enclose copies of my letters (without enclosures) as per chart enclosed in the paper book at Exhibit L. I am also pleased to enclose a sample copy of the order dated 24.08.2005 of Hon'ble I.T.A.T in the case of M/s Topaz Holdings Pvt Ltd in the paper book at Exhibit N wherein by a reasoned order, the Hon'ble I.T.A.T has been pleased to hold that such presumption cannot be made without adducing cogent evidence. In fact, in the case of M/s Topaz Holdings Pvt Ltd

and other the entire additions were deleted and these orders have attained finality as the revenue has not got them reversed for past five years.

45. I say that even on facts, I have adduced evidence to show that a large part of the shares which are presumed to be sold were actually disclosed by late Harshad S Mehta and handed over to the Custodian under the orders of this Hon'ble Court and therefore these shares could not be presumed to be sold and thus the additions are contrary to facts and law. I say that such unimpeachable evidence has been completely ignored by Hon'ble C.I.T (A). I say that in fact, evidence has also been adduced to show that these shares were subsequently sold under the orders of this Hon'ble Court and profits made thereon, were offered to tax in the year of sales. Even these contentions and orders of this Hon'ble Court have been completely ignored by the Hon'ble C.I.T (A). Thus <sup>these</sup> ~~the~~ additions are illegal.

46. I say that this Hon'ble Court as well as the Hon'ble Apex Court was pleased to uphold the scaling down of an amount of Rs.101.46 crores on account of Unexplained Money. Out of the total addition for A.Y 1992-93 for a sum of Rs.251.80 crores. I have adduced evidence before the Hon'ble C.I.T (A) explaining each and every monies credited in the account of M/s Harshad S Mehta. In support of my contention, I am pleased to enclose copies of my letters (without enclosures) as per the chart enclosed in the paper book at Exhibit M colly and crave leave of this Hon'ble Court to refer to and rely upon the same as and when produced. I say that the Hon'ble C.I.T (A) has again ignored all the aforesaid submissions and evidence and sustained the balance addition of Rs.150.34 crores on account of Unexplained Money.

47. I say that but without appreciating or analyzing the seized material, the Assessing Officer (A.O) arrived at certain Money Market Stock of the brokerage firm of M/s Harshad S Mehta which computation was disputed by late Harshad S Mehta during the course of the assessment proceedings. I say that large additions of Rs.58.27 crores and Rs.143.67 crores are made respectively for A.Y 1992-93 and A.Y 1993-94 as interest presumed to be earned and received on the imaginary stock of securities as arrived at by the A.O. I say that no evidence has been brought on record by the A.O to show

that the assessee had actually received from the concerned public sector undertakings or R.B.I, the interest income allegedly earned by the assessee. I say that this was due to the fact that the positive stock arrived at by the A.O is grossly incorrect as no such stock ever existed. I say that therefore both the aforesaid additions purely made on the basis of presumptions and without adducing any evidence are liable to be completely deleted. I am pleased to enclose copies of my letters (without enclosures) addressed to Hon'ble C.I.T (A) as per the chart enclosed in the paper book at Exhibit M colly and crave leave of this Hon'ble Court to refer to and rely upon the same as and when produced..

48. I say that at the fag end of the appellate proceedings and so as to foist new liabilities, the A.O proposed numerous additions seeking enhancement of the income of the assessee. I am pleased to enclose these enhancement notices dated 11.08.2009 and 11.12.2009 issued A.O and dated 14.01.2010 issued by C.I.T (A) for both A.Y 1992-93 and A.Y 1993-94 in the paper book at Exhibit O colly, and the particulars of additions which have thereafter been made by C.I.T (A) for A.Y 1992-93 and for A.Y 1993-94. I say that the Hon'ble C.I.T (A) was required to comply with the directions of the Hon'ble Apex Court by March 2010 and the proceedings were initiated by a notice on 14.08.2008 for A.Y 1992-93 and on 15.05.2009 for A.Y 1993-94. I say that for the first time on 14.01.2010, the Hon'ble C.I.T (A) issued a notice of enhancement of my income. I say that notwithstanding the constraint of time, I contested these additions by making submissions and leading evidence in support thereof but the same has been completely ignored by the Hon'ble C.I.T (A) and each and every proposed additions was confirmed. These additions are illegal made in complete violation of the principles of natural justice on numerous counts and are therefore liable to be deleted on that ground alone.

49. I say that for A.Y 1992-93, the Hon'ble C.I.T (A) has confirmed the enhancement of income by an amount of Rs.454.82 crores and for A.Y 1993-94, income has been enhanced by a whopping Rs.710.01 crores. I say that admittedly the brokerage firm of M/s Harshad S Mehta had done business only for about fifteen days in A.Y 1993-94 as the alleged scam broke out on



23.04.1992 whereafter the business came to an abrupt halt and in fact even the bank accounts were later frozen by the C.B.I around 15.05.1992. However even for this truncated period of fifteen days, late Harshad S Mehta's income has been assessed at a whopping sum of Rs.2106.05 crores which works out to about Rs.141 crores per day which amount on the very face of it is preposterous. I say that as against this, for whole of A.Y 1992-93, the income has been assessed at Rs.2342.19 crores.

50. I say that the above enhancement notices are bad in law and outside the scope of remand proceedings and consequently all the additions made are illegal. I say that it is also a settled law that the powers of enhancement by appellate authority are circumscribed to the extent of only matters considered by the A.O and if a new source of income is to be considered, the power of remand should be exercised. The Hon'ble C.I.T(A) had no jurisdiction to enhance for a new source of income which had not been proposed by the Income Tax Officer and which was not disclosed in the Returns filed by the assessee.

51. I say that admittedly, a large number of the additions are based on the report of Chartered Accountants M/s Vyas & Vyas which came into existence only in November 2005 and therefore it could have never become the basis for enhancement of income by the A.O as the assessment orders were passed in the March 1995 and March 1996. Besides above, the A.O is also required to establish that the proposed additions are in the nature of taxable income earned by the assessee during the relevant years. I say that in fact, these additions are presumptive findings of the said Chartered Accountants and the same are contrary to the evidence on record. The addition of Rs.372.82 crores made for A.Y 1992-93 on account of difference in balances of books of accounts is not shown to be the income of the assessee earned during the relevant year. On the other hand, I have adduced evidence to show that the Chartered Accountants M/s Vyas & Vyas had completely ignored some accounts in the books of accounts which disclosed credit balance of M/s J H Mehta and M/s Ashwin Mehta. If the amounts which are deliberately ignored are taken into account, the said difference gets duly explained and neutralized. Thus the difference arrived at by M/s Vyas & Vyas was not only imaginary



but completely contrary to the evidence on record. I say that in this regard, I have duly explained these differences even in my affidavit dated 25.02.2010 filed before this Hon'ble Court in the proceedings in M.P No.41 of 1999 and collateral application and crave leave of this Hon'ble Court to refer to and rely upon the same as and when produced. I am also pleased to enclose copies of the letters addressed to Hon'ble C.I.T (A) in the paper book at Exhibit M colly.

52. I say that if new evidence is relied upon by the A.O, the matter was required to be remanded by Hon'ble C.I.T (A) so that the assessee is not deprived of an opportunity to contest the proposed additions before the A.O himself. I say that not only the matter was not remanded, even the assessee's legitimate request of giving an opportunity to cross examine the author of the report of M/s Vyas & Vyas was denied to the assessee, and therefore such material could not have been used against the assessee.

53. I say that on the very face of it, the addition of Rs.370.82 crores for A.Y 1992-93 is not justified merely because the Chartered Accountants gave a finding that there were differences between the balances in the books of M/s Harshad S Mehta, M/s Ashwin Mehta, and M/s J H Mehta though factually there were no such differences and Hon'ble C.I.T (A) was explained the patent errors committed by them. In fact, in order to support their concocted story that Harshad S Mehta had diverted the funds to the associate concerns, the Chartered Accountants had deliberately overstated the receivables from the family by an amount of Rs.495.80 crores. This was done by deliberately ignoring the amounts payable by M/s Harshad S Mehta to M/s Ashwin Mehta and M/s J H Mehta. I say that not only to the Hon'ble C.I.T (A), but even before this Hon'ble Court, I have duly explained on oath that these erroneous findings are deliberately given by the Chartered Accountants. I say that thus no monies are liable to be released to meet such illegal and baseless demands of the revenue.

54. I say that similarly M/s Vyas & Vyas have come to an incorrect finding of other income presumably earned by M/s Harshad S Mehta of Rs.69.03 crores for A.Y 1992-93 and Rs.13.91 crores for A.Y 1993-94 which

is not only imaginary but not backed by any evidence and are mere conjectures of M/s Vyas & Vyas. The Chartered Accountants have again presumed the interest receivable from the family members of a sum of Rs.19 crores between the two assessment years though admittedly M/s Harshad S Mehta follows a cash method of accounting and would therefore account for the interest only on its receipt. I say that contrary to the Judgment and order of this Hon'ble Court dated 03.12.2008, once again the Oversold position has been revised by a sum of Rs.159.72 crores and the entire proceeds have been treated as income without giving any deduction of the purchase cost. This addition is also in complete violation of the order of the Hon'ble I.T.A.T, this Hon'ble Court, and the Hon'ble Apex Court as held in Para 44 of the Judgment reported as (2009) 2 SCC 451.

55. I say that while this Hon'ble Court found the monies to be duly explained and accordingly Rs.101 crores was deleted from the addition under the head of Unexplained Money for A.Y 1992-93, the Hon'ble C.I.T (A) has now made a huge enhancement and an addition of an amount of Rs.524.54 for A.Y 1993-94 crores on the ground of Unexplained Money. I say that I was called upon to explain payment of an amount of Rs.622.52 crores to S.B.I between the period from 13.04.1992 to 24.04.1992 as and by way of ten pay orders. I say that not only did I fully explain the source of payment of the aforesaid ten pay orders but also matched the inflow and outflow of money on the relevant dates of payment which can be seen from my letters dated 20.01.2010 and 17.02.2010, addressed to the Hon'ble C.I.T (A), copies (without enclosures) of which are enclosed in the paper book at Exhibit M coly. I say that barring one payment of Rs.97.99 crores which was directly made on my behalf by a bank, the Hon'ble C.I.T (A) has treated the balance nine entries amounting to Rs.524.54 crores as income and the same has been added to my income for A.Y 1993-94. I say that in coming to such a finding, the Hon'ble C.I.T (A) has failed to examine both my submissions as well as the evidence of inflow and outflow of cash leading to the actual payments effected to S.B.I. I say that even a preliminary examination of my submissions can establish that the above addition has been made by Hon'ble C.I.T (A) in gross abuse of the discretionary powers vested in him and only

with a view to foist upon Harshad S Mehta a new set of additions knowing fully well that the old additions would not survive.

56. I say that last but not the least, while the Hon'ble C.I.T (A) as well as the A.O heavily relied upon the findings of M/s Vyas & Vyas to make large number of additions but when I pointed out that according to M/s Vyas & Vyas themselves, the total taxable income earned by the assessee for the two priority years was a sum of Rs.123.53 crores as against assessed sum of Rs.4448.23 crores, and that the same ought to be adopted for fixing assessee's income since the report of M/s Vyas & Vyas was being treated as a gospel truth, the Hon'ble C.I.T (A) has completely ignored my submissions. In essence, adopting double standards, the Hon'ble C.I.T (A) has used the report of M/s Vyas & Vyas only for the purposes of enhancement but when confronted with the finding on the income which is only a miniscule amount of what has been assessed, the report has been given a complete go by.

57. I say that thus such double standards adopted by the Hon'ble C.I.T (A) demonstrably and conclusively establishes that all the additions made on the ground of enhancement of income were malafide, were foisted on the assessee to somehow replace the illegal additions originally made on Harshad S Mehta which could not stand the scrutiny of either Hon'ble I.T.A.T, this Hon'ble Court, and even the Hon'ble Apex Court. I say that facing the prospect that the set of false additions originally made were liable to be deleted / scaled down and in fact, some of them have already been deleted, they have been promptly replaced by another set of false, illegal and totally baseless additions. These additions do not have any basis either in fact or in law and therefore no monies are liable to be released to revenue merely on the basis of order of Hon'ble C.I.T (A). I say that these additions are bound to be completely deleted by the Hon'ble I.T.A.T and it is imperative that in the interim, no disbursements are made to the Applicant.

58 I say that I have made numerous representations to the A.O during the course of assessment proceedings and prayed to the Hon'ble C.I.T (A) to take the same into account but he failed to apply his mind and examine my submissions, record them and deal with them. I therefore crave leave of this

Hon'ble Court to refer to and rely upon the records of all the assessment / appellate proceedings for the aforesaid two assessment years.

59 I say that in the bank and fixed deposit balances disclosed by the Custodian, the same includes balances on account of sale of shares which were registered in the name of the Custodian whether they were alleged benami shares or unregistered shares. These shares have come to be sold without determining the ownership and in terms of the order dated 12.11.2003 in M.A No.332 of 2003, the question of ownership has been kept open by this Hon'ble Court. I say that these funds cannot be used for distribution interim or otherwise u/s 11 of the Special Courts Act as the same would be contrary to what has been held by the Hon'ble Apex Court in Paras 12, 13, 15 and 18 of the Judgment reported in (1998) 5 SCC 1. I say that since the question of ownership of the said monies or concerned shares is yet to be adjudicated upon by this Hon'ble Court, the same cannot be distributed and ought to be excluded from the purview of distribution.

60. I say that this Hon'ble Court was already directed by the Hon'ble Apex Court to bring back to the Court, the monies paid or part or parts thereof after examining the claims of Income Tax authorities for tax u/s 11(2)(a) in the Judgment in Harshad Mehta's case. I am pleased to reproduce the extracts of Para 39 which contains the said direction to this Hon'ble Court and which are reproduced herein below for ease of reference.

*Pursuant to an interim order dated 26.8.1996, certain payments have been made to Income Tax authorities. The income Tax authorities, however, have given an undertaking which is filed by the Secretary (Revenue) in the Ministry of Finance, Union of India, that the Union of India shall, within four weeks of being called upon so to do, either by this court or by the Special Court in this or any other proceeding under the Special Court Act, bring back to court the monies so paid or part or parts thereof as directed, and pay thereon interest at the rate not less than 18% per annum as this Court or the Special Court may direct from the date of receipt until the date of return thereof. The Special Court shall examine the claim of the Income Tax authorities for taxes due under Section 11(2)(a) in the light of our judgment and decide whether any amount paid to the Income Tax authorities under the interim orders of this Court requires to be returned. The Special Court shall pass appropriate orders thereon in the light of undertaking given.*

I say that the Custodian has failed to show to this Hon'ble Court the pending compliance of the directions of the Hon'ble Apex Court as above in terms of which the monies paid to the revenue are liable to be recalled rather than granting any requests for further disbursements to them.

61 Without prejudice to what I have stated earlier and in the event this Hon'ble Court over-rules the objections raised by me, then I humbly pray to this Hon'ble Court to release the monies in favour of the revenue by securing an appropriate undertaking as directed by Hon'ble Apex Court by stipulating rate of interest of 18% p.a. for the following reasons :-

a) That in the first order made by the Hon'ble Apex Court dated 26.08.1996 in C.A No.5326 of 1996 with C.A No.5147 of 1995, a copy of which is enclosed in the paper book at Exhibit P, it was pleased to stipulate the rate of interest @ 18% p.a. or above.

b) That in order to secure release of large sums of monies, the revenue has been foisting upon me and other notified entities, false and highly exaggerated claims and then securing release of monies against the same. In the books of the Government, these monies are shown as recovery of tax dues though as per the order of this Hon'ble Court, the same is recallable with or without any reason together with accrued interest. I say that in order to discourage and to set up a deterrent against the revenue making false claims and then resisting the appeals filed by me on one frivolous ground or the other, higher rate of interest is required to be made applicable so that revenue is discouraged from litigating or foisting false liabilities. I say that if the revenue is sanguine about the genuineness of their demands, they ought to accept such higher rate of interest.

c) I say that even otherwise decrees have been awarded by this Hon'ble Court against me carrying interest rate of 15% to 18%. I say that the claimant who seeks release of monies ought to pay a minimum of 15% to 18% so that the notified entity and their creditors is not made to suffer the differential interest loss of what is payable by them and what could come to them i.e. 6% p.a. rate applicable to refund by the Income Tax Department. I say that the



loss caused by this difference runs into hundreds of crores and the revenue cannot be permitted to profit at the cost of interests of notified entities and other genuine creditors. I say that late Harshad S Mehta has already suffered huge loss of interest on account of such lower rate applicable to the revenue which has resulted into loss running into several hundred crores.

62. I say that I have addressed a letter dated 14.02.2011 to the Custodian, a copy of which is enclosed in the paper book at Exhibit Q, seeking inspection of my records which are currently lying under seizure to enable me to file my objections to the present application. I say that I am yet to be given such an inspection which I am entitled to in law in order that I can file my objection as per the opportunity granted to me by the Hon'ble Apex Court in their Order dated 06.01.2011 in I.A. 2 in C A No.2672 of 2009. I say that through my Advocate on record, I have also addressed a letter dated 14.02.2011 to the revenue, a copy of which is enclosed in the paper book at Exhibit R, seeking clarification on certain important issues having bearing on the present proceedings. I say that I am entitled to both the aforesaid inspection and access to my records in terms of the law laid down by this Hon'ble Court as well as the Regulations governing the functioning of the Special Court. I say that therefore I crave liberty of this Hon'ble Court to file further affidavit after I receive inspection and get access to my records and after the revenue replies to my aforesaid letter. In the meantime, I pray to this Hon'ble Court to treat the present reply as my interim response.

In view of what is stated herein above, I pray that the aforesaid application filed by the revenue may kindly be rejected. Whatever stated herein above are true and correct. Hence this affidavit in rejoinder is filed.

Place : Mumbai

Date : 18.02.2011

Sd/  
(Smt Jyoti H Mehta)

18/2/2011.

## VERIFICATION

I, Smt Jyoti H Mehta. Hindu adult, Indian inhabitant, in my own capacity as well as legal heir of late Harshad S Mehta, residing at 32, Madhuli, Dr Annie Beasant Road, Worli, Mumbai 400 018., do hereby declare that what is stated in the foregoing affidavit in rejoinder is true to my own knowledge.

Solemnly affirmed at Mumbai )

Dated this <sup>18</sup> of Feb, 2011 )

  
(R A Shaikh)  
Advocate for Respondent No.6

  
Jyoti H Mehta

18/2/2011.

IN THE SPECIAL COURT (TRIAL  
OF OFFENCES RELATING TO  
TRANSACTIONS IN SECURITIES)  
ACT, 1999 AT MUMBAI

M.A NO.21 OF 2011

ASST. COMMISSIONER OF  
INCOME TAX ..Applicant  
V/s  
STATE BANK OF INDIA & ORS  
..Respondents

**AFFIDAVIT IN REPLY OF JYOTI H  
MEHTA - RESPONDENT NO.6**

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Dated this 18<sup>th</sup> of Feb ,2011

R A Shaikh  
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