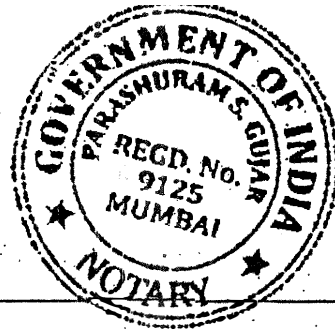


"The AO filed an affidavit in MA 135 of 2012 filed by Smt Jyoti Mehta and others and falsely denied the allegations made against the I.T. department that it had raised high-pitched demands on Mehtas. The AO urged that when reliefs are granted by the appellate authorities the department will give effect to such orders and communicate the latest demand position to the Custodian."



377 - t

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

MISCELLANEOUS APPLICATION (MA) NO. 135 OF 2012

Smt. Jyoti H. Mehta & Ors

... (Applicant)

VERSUS

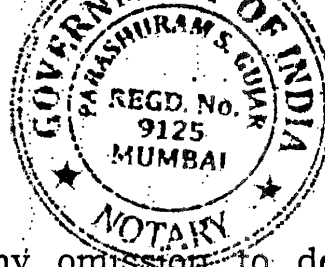
The Custodian

... (Respondents)

AFFIDAVIT IN REPLY OF THE RESPONDENT NO 2

I, Rajni Rani Roy, Deputy Commissioner of Income Tax, Central Circle - 4(1), Mumbai, having office at Room Number 409, Aayakar Bhavan, 4th floor, Maharshi Karve Road, Mumbai, being the 2nd respondent, do hereby on oath solemnly affirm and state as under:

1. I say that I have read the copy of the Miscellaneous Application No 135 of 2012 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.



378 2

2. It is further stated that any omission to deal with any statement, contention, allegation and / or averment, made in this petition, should not be treated as an admission thereof. I hereby deny each and every contention, statement, allegation and / or averment which is in any way contrary to or inconsistent with any contention and / or submission made in this affidavit, as if the same has been specifically laid out and dealt with. I seek the liberty of this Hon'ble Court to file a further affidavit, if required and / or so directed.

3. At the outset, I most respectfully submit that this application is **not maintainable** on following grounds:

A. I say that the appellant/appellants submitted that the Revenue had inflated liabilities in the group cases of the HSM group and as per appellants Profit and loss accounts, there is no outstanding demand. From the details filed by the appellants vide this Miscellaneous Application, it revealed that the appellants representing wrong facts regarding outstanding demand of the group cases. For example;

i) The appellant submitted that in case of Late Shri Harshad S Mehta for AY 1992-93 and 1993-94, Hon'ble ITAT had provided him 100% relief and claiming that a relief of Rs. 6255.88 Crore was granted by the ITAT in the chart produced before Hon'ble Special Court.

Fact of the case is that the Hon'ble ITAT has set aside the issue to the file of the Assessing Officer to decide the



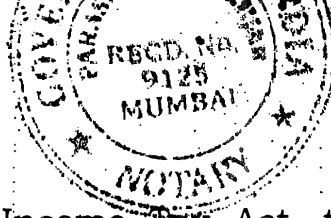
assessment afresh after giving opportunity to the assessee and directed the assessee to cooperate with the revenue in getting his account examined. It is also evident that the CIT(A) in respective cases held that the assessee was granted with sufficient opportunities and on the all major issues, the CIT(A) upheld the additions made by the Assessing officer.

Further **as per Income Tax Act, 1961, if an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any shall become due only on making of such fresh assessment.**

In view of the provision of Income Tax Act, the appellant representing wrong facts of the case, as the ITAT had not allowed relief of 100% to the assessee but has given direction to frame the assessment afresh.

- ii) Similarly, the ITAT had set aside the matter of Smt. Jyoti Mehta AY 1992-93, AY 1991-92 (Wealth Tax) and AY 1992-93 (Wealth Tax) and in case of Ashwin Mehta AY 1992-93 & Pratima Mehta AY 1992-93, to the file of Assessing Officer to decide the issue afresh. In these cases also, the CIT(A) in respective upheld the additions made by the Assessing officer.

Further, **as per Income Tax Act, 1961 if an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any shall become due only on making of such fresh assessment.**

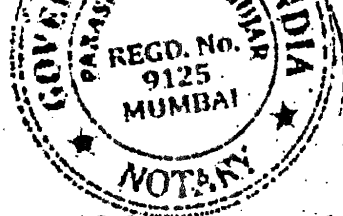


390 4

In view of the provision of Income Tax Act, the appellant representing wrong facts of the case, as the ITAT had not allowed relief of 100% to the assessee but give direction to frame the assessment afresh.

iii) Further, a substantial demand is outstanding on all the cases of Individuals of the HSM group; on account of interest levied under section 234A, 234B & 234C of the Act. It is worthwhile to mention here that the issue of levy of interest u/s. 234A, B & C is contended before Hon'ble High Court in number of cases in HSM group. **Recently Hon'ble jurisdictional Bombay High Court in some of the entity of the group cases has decided the issue of levy of interest u/s.234A,B &C in favor of the Revenue and held that levy of interest u/s.234A, B & C is mandatory in nature and applicable in the cases of notified parties also.**

iv) It is to submit that the appellant is misrepresenting facts of the cases on account of outstanding demand and sufficient outstanding demand is available in those cases, in which, in a particular assessment year refund is due to the assessee, there is sufficient outstanding demand for set off with refund as provided in section 245 of the Act. However department is not insisting upon doing so because of Hon'ble Supreme Court Judgment department will be entitled to the same on final distribution.

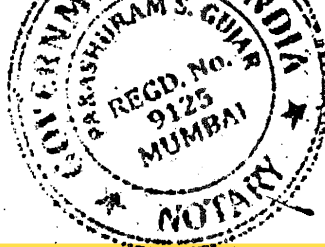


381

Section 245 of Income Tax Act, 1961 states that if any demand under the Act is payable by the assessee then refund of any assessment year may be set off with the outstanding demand after giving an intimation to the assessee.

- v) Similarly, in other matters, which were decided by the CIT(A), the appellant misrepresenting true facts of the case and actual relief granted to him. It is to submit that pending application under section 154 and order giving effects to the appellate orders is a continuous process and a routine work and same will be dealt as per Law.
- vi) It is to submit that estimated asset and liability position of the individuals of HSM group for priority and non priority period are enclosed as **Exhibit-A** and **Exhibit-B**.

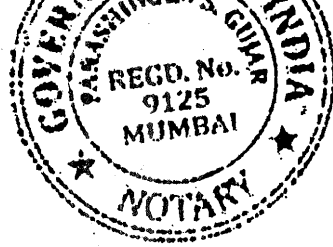
4. I say that the contention of the applicant, that the Income Tax Department is in contempt of this Court and the Supreme Court, is totally absurd and malafide. The department holds this Hon'ble high court in very high esteems and cannot do anything remotely which is in contempt of court. This Department has been consistently following and complying with all the directions issued to it by any court of law in this country. The amounts collected by the Department, on the direction of this Hon'ble Court, are so collected only after tendering an undertaking (listing the conditions laid by this court) given by the competent authority. Hence the directions of this court are complied with in letter and spirit.



382

5. I say that at no point in time of making any prayer before this Hon'ble Court, or the Supreme Court, or making any correspondence with the office of the Custodian, has the Department made any false statement, or submitted wrong facts or have colluded with any person, including the Custodian. The Income Tax Department is an extended arm of the Government of India, working to achieve the goals set by the Union Executive and the Legislature. The Department serves the people of India by collecting tax revenue on behalf of the Government. Working in a formal set-up, the Department complies, without fail, with the directions given to it by any or all superior authorities. The Department holds Courts in the highest esteem; therefore, there is no reason why the Department would not comply with the directions of this Court, or the Supreme Court. In the foregoing paragraphs, it has been explained how the directions have been complied with, vis-à-vis the observations made by the Hon'ble Supreme Court and the Hon'ble Special Court. Hence the question of contempt does not arise.

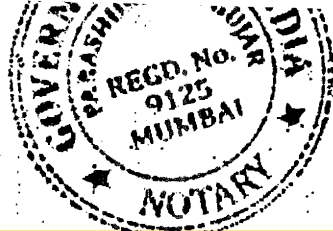
6. Similarly, the accusation by the applicant that the Department has worked in collusion with the Custodian, is also baseless and malafide. I say, that the offices of this respondent, and the office of the Custodian, are Public Offices, set up under the statutes passed by the Parliament, working to achieve the goals laid by the Government. The Income Tax Department has only performed its duties by communicating the demands of the applicant to the Custodian, for necessary action on their part. It is against the said



383

demands that this Hon'ble Court and the Hon'ble Supreme Court have been kind enough to allow release of monies against the demands. Such monies have been obtained by the Department only on the directions of this Hon'ble Court, and have been immediately deposited in the Government exchequer to make the same available for the welfare needs of the people of India. Such demands were raised on the directions and observations of the various Courts, and the appellate authorities. The demands raised are part of the Government records, subject to Audit Scrutiny by the officers working under the Comptroller & Auditor General (C&AG) of India. Hence the demands raised have not only been raised in the perfect legal manner, but have also been subject to scrutiny by the Constitutional Authority - the C&AG.

7. I say, that in absence of any malafide intention against the Income Tax Department and the Custodian, the applicant cannot claim that this respondent has colluded with the Custodian. I say, the assessment order is passed and demand is raised, the assessee is liable to pay the said demand unless same is either reversed by any appellate authority. Therefore allegation that custodian has taken the assessment as a gospel truth is totally absurd and without any basis. The fact is that the demands communicated to the Custodian are raised under a law, and subject to Audit Scrutiny. Hence there could be no reason on the part of the Custodian to doubt the genuineness of the demands communicated by this office. Therefore allegation of collusion between this respondent and the Custodian, to get any monies released from this Court, by



384 8

any misrepresentation is wild insinuation and should be treated with contempt it deserves. This respondent and the Custodian have only performed their duties in public interest, conscientiously, without any vested interest whatsoever. [This respondent reserves right to initiate proceedings against the applicant for such wild and reckless insinuations and allegations.]

8. I say, without prejudice to the above, that the demands shall be adjudicated upon by the forums made available in the appellate hierarchy of the Income Tax Act, 1961. If the appellate authorities, that include the Supreme Court of India, find that the demands are exaggerated or wrong, then the same shall be so directed by them to be modified and reduced / enhanced. The Department will give effect to such orders as and when they are passed and communicate the latest demand position to the Custodian.

9. I say, that in view of the above statements, there is no scope for collusion between this respondent and the Custodian, lest any actual misrepresentation or collusion.

10. [If the applicant has any grievance with the demands raised under proceedings under the Income Tax Act, 1961, then the applicant should only move the appropriate forums available to her under the Income Tax Act, 1961.] By raising the issues of assessments completed under the Income Tax Act, 1961, before this Court, the applicant is only attempting to waste the precious time of this Hon'ble Court, trying to mislead this Court by twisting the facts in a manner favourable to her.



385

11. I say rest of the paragraphs of the applications are like the applicants are seeking scaling down of various additions made by the Assessing Officer, which is not permissible under the law by the judgment of Hon'ble Supreme Court in the matter of Harshad Mehta Vs Custodian & Ors. (1998) 5 SCC 1. Only the creditors of the notified parties can make an application for scaling down of said demand and that it be done only on certain criteria enumerated in the said judgment. I say that this is not correct on the part of applicant to accuse the Custodian of taking assessment orders as gospel truth. She must know that the assessment orders are legal orders and the citizens of India pay their taxes due on the demands made under said assessment orders. However, Income Tax Act has provided various remedies to go into appeals against the said assessment orders.

Under these circumstances I most humble pray that this application be dismissed with cost.

Solemnly Affirmed at Mumbai]

Dated this ____ day of September, 2015]



(RESPONDENT NO 2)

(Rajni Rani Roy)

Deputy Commissioner of Income-tax
Central Circle -4(1), Mumbai.
रजनी रानी रॉय / RAJNI RANI ROY
आयकर उपायुक्त / Dy. Commissioner of Income Tax
केन्द्रीय मंडल- 4 (1) मुंबई / Central Circle- 4 (1) Mumbai

Settled by

(B. M. Chatterji)
Sr. Advocate

VERIFICATION



102
386

I, Rajni Rani Roy, Deputy Commissioner of Income Tax, Central Circle - 4(1), Mumbai, do solemnly declare and state that the statements made in paragraphs numbered 1 to 11 of the above affidavit are based on the information available from the records of the cases and I believe the same to be true.

Solemnly Affirmed at Mumbai]

Dated this 9th day of October ~~September~~, 2015]



(RESPONDENT NO 2)

(Rajni Rani Roy)

Deputy Commissioner of Income-tax
Central Circle -4(1), Mumbai.
रजनी रानी रॉय / RAJNI RANI ROY
आयकर उपायुक्त / Dy. Commissioner of Income Tax
केन्द्रीय मंडल- 4 (1), मुंबई / Central Circle- 4 (1) Mumbai

Vetted and Settled by

(B. M. Chatterji)
Sr. Advocate

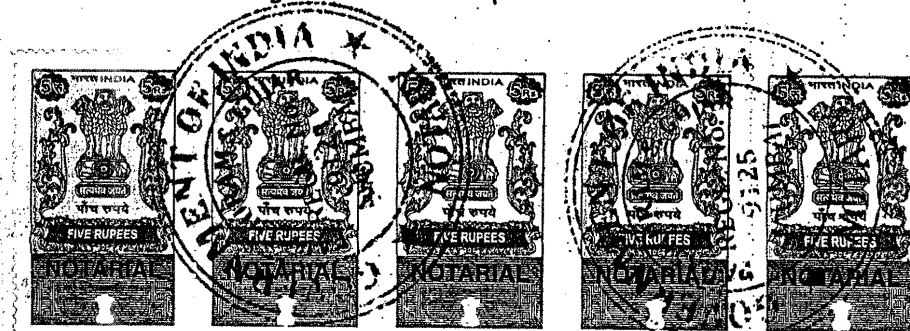
BEFORE ME

P. S. GUJAR
P. S. GUJAR
ADVOCATE & NOTARY
UNION OF INDIA
GREATER MUMBAI
REGD. NO. 9125

Before me

S. Shekhar

SWARNANGSHU SHEKHAR
Advocate for the Respondent No.2



SR. No 2571
Date: 9/10/2015