

“The CIT(A) passed an order in case of late Shri Harshad Mehta for AY 1993-94 upholding the additions made in the assessment order and further enhancing the income by Rs.710.02 Crores by relying upon the Report of Chartered Accountants, M/s. Vyas & Vyas.”

HARSHAD S. MEHTA

A.Y.1993-94

CIT(A) ORDER DT. 24.03.2014

In the Office of the Commissioner of Income Tax (Appeals)-40, Mumbai

Date of Order: 24/03/2010

Appeal No : CIT(A)C-V/ ACIT CC-23 /IT-65/96- 97

1. Date of Institution of appeal : 30.04.1996
2. Name & Designation of the officer who made the assessment order : Shri K.V.Radhakrishna, ACIT, Central Circle - 23, Mumbai
3. Assessment Year : 1993 - 94
4. Name of Appellant : Late Shri. Harshad S. Mehta Through L/H Smt. Jyoti H. Mehta
5. Income assessed : Rs.1396,02,84,865/-
6. Tax/Penalty/Fine/Interest demanded : Rs.1486,92,25,855/-
7. Section under which the order appealed against was made. : U/s.144 of the I.T. Act, 1961
8. Date of hearing : As per order sheet
9. Present for the Appellant : Mr.Vijay Mehta, CA., Mr.Dharmesh Shah, CA. & Mr.K.A.Shetty, C.A.
- Present for the Department : Addl.CIT, Central Range-7,Mumbai DCIT, Central Circle-23, Mumbai



APPELLATE ORDER AND GROUNDS OF DECISION

This appeal arises from the assessment order dated 29.3.1996 passed u/s 144 of the Income Tax Act- 1961 (ITA). The case was represented by Mr.Vijay Mehta, C.A., Mr.Dharmesh Shah, CA. & Mr. K. A. Shetty, CA on behalf of the appellant. The Department was represented by the Additional CIT, Central Range-7, Mumbai and the DCIT, Central Circle - 23, Mumbai.

Background

2. The assessment order dated 29.3.1996 was passed u/s 144 of the ITA. The appellant did not file the return of income. Notice u/s 142(1) issued on 24.8.94 was not complied with till the date of the assessment. The total income of the appellant was determined at Rs.1396,02,84,865/-. On appeal against the assessment order, the appeal order was passed by my the then predecessor vide his order dated 28.02.2003 in appeal No.CIT(A)C-V/ACCC 23/65/96-97. Subsequently, the Hon'ble ITAT 'K' Bench, Mumbai vide its order dated 23.06.2008 had the occasion to set aside this order for

Recd copy
K. V. Radhakrishna
K.A. Shetty
C.A.
28/3/2010
at 12:30 pm.

deciding on merits. The appellant's appeal was decided by my the then predecessor by applying the provisions of section 249(4) of the ITA. Subsequently, vide his letter dt. 8.5.2009, the DCIT(HQ)Judicial, Central-II, Mumbai had the occasion to forward the Hon'ble Supreme Court's order dt. 24.4.2009 in Interlocutory Application Nos. 9-11 and 12-14 of 2009 in Civil Appeal Nos. 7269-7271 of 2008 in the case DCIT V/s. State Bank of India and Others. In this order, the Hon'ble Supreme Court had the occasion to pass the following order:

" Interlocutory Applications seeking extension of time are partly allowed, in terms of signed order placed on the file, and the concerned Commissioner of Income Tax is directed to dispose of the appeals pending before him within a period of four months from this date, without granting unnecessary adjournment to either of the parties. "

Subsequent to this, vide another order dated 25.8.2005 in Civil Appeal No. 2672 of 2009, the Hon'ble Supreme Court directed me to dispose of the appeal within 6 months from August 25,2009. Subsequently, vide order dated 4.1.2010, the Hon'ble Supreme Court extended the time to dispose of the appeals by another month.

2.1 The present appeal order is being passed in the foregoing background. During the appeal proceedings, books of account were submitted along with submissions and request for inspection and copies of documents relied upon by the Assessing Officer. These were handed over to the Assessing Officer for reports and comments in course of hearing on 3.6.2009.

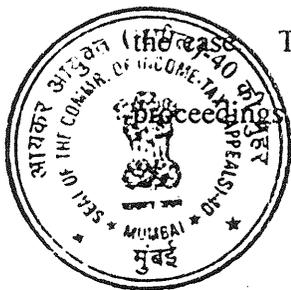
2.2 Before I go into the grounds of appeal, I would like to deal with two very important issues which have a significant bearing in the case. These are, i) inspection and supply of copies of documents and seized materials and ii) the books of account submitted by the appellant during the appellate proceedings. These key issues emerge from the order of the Hon'ble ITAT for the assessment year 1992-93. I would first deal with these issues.

3. Inspection and supply of copies of documents and seized materials

This has been a key issue right from the beginning of the statutory proceedings in

The appellant had raised this issue from time to time during the assessment

The issue was also raised by him during the appellate proceedings before

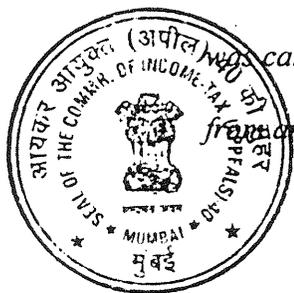


my the then predecessor. Subsequently, the matter was also raised by the appellant before the Hon'ble ITAT in his appeal for the assessment year 1992-93. In this light, the Hon'ble ITAT, while remanding the matter back to the CIT(A) for the assessment year 1992-93 had the occasion to direct the Revenue to comply with the appellant's request for supply of copies of documents on which the Assessing Officer has relied upon while making the assessment. Since the content and circumstances of the assessment order for the assessment year 1992-93 are identical to the content and circumstances for the present year under consideration, I considered the directions in the order dated 11.7.2008 of the Hon'ble ITAT for the assessment year 1992-93 as equally applicable to the assessment year 1993-94 also. Accordingly, the Assessing Officer was directed to grant inspection and supply of copies of documents to the appellant on the lines similar to assessment year 1992-93. This process went on simultaneously with that of assessment year 1992-93. Considering the magnitude of the case and the volume of records and data involved, the process of inspection and supply of the requisite documents went on for a considerable length of time during which both the appellant and the Assessing Officer had the occasion to engage in mutual disputes on the quality and extent of the process. Several letters were submitted by both the parties to emphasize and underline their respective positions. In order to comprehensively evaluate the positions of two parties in the context of these letters and the submissions made before me on the issue during the appellate proceedings, I asked the appellant to give his consolidated response on the quality and extent of the process of the inspection and supply of documents. The Assessing Officer was asked to respond to this. I now give my findings on the issue in line with the foregoing facts and circumstances.

3.1 Vide his letter dt. 31.7.2009, the appellant, inter alia, brought to my notice the following :

i) Copies of some of the documents have been received and for other documents, the assessee had been promised that in a short period of time, these documents would be made available. The assessee's representative has been now informed on 17.07.2009 that no further documents will be supplied. Earlier, the assessee

was called upon to point out and give a list of documents required by the assessee from amongst the documents for which inspection has been given and accordingly



the Assessee has already given a list of documents under cover of his letter dated 23.05.2009. Unfortunately after initially consenting to give these documents, for reasons best known to the A.O., some of the documents are now with-held and copies not made available.

ii)The department has granted inspection of large number of documents but failed to show as to which documents from amongst them has been used against the assessee while drawing the assessment order and in what manner, the same has been used.

iii)Even for availing the right of cross examination, it would be imperative that the Assessee is informed of which material has been used so that the assessee confines the cross examination only to those persons or banks whose material has actually come to be used against the assessee.

iv)Mere inspection or furnishing copies of all kinds of documents should not be construed as granting of an opportunity to the assessee unless the material used against the assessee is pointed out very clearly.

v) The assessee's apprehension will be appreciated by your Honour as for the first time ever, after passing of the assessment order, some documents are now being shown to the Assessee only after your Honour directed the AO. The assessee states that no make believe opportunity should be given to the assessee but a real and purposeful opportunity may be given since the proceedings are time bound.

vi) The assessee states that even her requests for making available to her the itemized details of each and every consolidated figure arrived at by the A.O. and shown in the assessment order in form of various enclosures have yet not been met despite passage of a considerable period of time.

3.2 In response to the appellant's submission, the Assessing Officer gave his version in the matter vide his letter dt. 10.8.2009. In his letter he gave consolidated details of the inspection and supply of copies of documents for the assessment year 1992-93 stating that in most cases, the documents were common to both



i) Inspection of seized material as well as material gathered from external agencies was granted as and when required by him on 27/01/2009, 30/01/2009, 25/02/2009, 03/03/2009, 04/03/2009, 05/03/2009, 12/03/2009, 17/03/2009, 04/05/2009, 05/05/2009, 06/05/2009, 07/05/2009, 11/05/2009, 12/05/2009.

ii) The list of documents inspected by the appellant has already been given to him. Copies of order sheet notings containing the details of the inspection running into 33 pages has also been submitted.

iii) The appellant was provided the zerox copies of the documents as identified by him on 12.6.2009, 15.6.2009, 16.6.2009, 22.6.2009. The chart containing the zerox copies has also been submitted to the appellant and the undersigned.

iv) In addition to the above, copies of the following documents were also handed over to the appellant on 30.6.2009 and 7.7.2009 although he had not specifically asked for the same :

- i) HSM share plastic folder with details of share transaction of ASM & HSM.
- ii) List of Benami share holders, Annx - 'C'. prepared on 01/10/1994 (b) List of names Sl. No. - 1 to 487.
- iii) Duplicate statement of HSM.
- iv) Statement of HSM, NHB, SBI.
- v) HSM Money market ANZ grindleys Bank.
- vi) Data of BOI (File No. 338)
- vii) Details from BSE received from M R Mayya.
- viii) HSM Miscl. File - reference received from BSE.
- ix) Can Bank Mutual Fund. (File No. 294).
- x) Journal 6(viii) (a) R. No. 1206 Vol 1 page 84. A/c. 91-92 HSM.
- xi) ASM, BSE 1-2 statement.
- xii) RBI Bank (File No. 272).
- xiii) Deutsche Bank. Inspected copies as required (File No. 186).
- xiv) Canara Bank. (File No. 114).
- xv) ANZ Grindlays (File No. 143).



v. In the following items, Xerox copies of documents were prepared and kept ready but the assessee refused to receive.

1. HSM – Cash withdrawal Basic Documents.
2. Harshad S. Mehta – Saving A/c. No. 752300
3. BSE info tainted shares.

vi. The total Xerox copies of the above documents run approximately 18 thousand pages. As submitted in earlier dated submissions that the Xeroxing of the bigger sheets took long time because each and every sheet had to be scaled down in size on the machine and then the Xerox was taken. The bigger sheets are the major part of the copies provided to the assessee.

vii. From the above it is clear that the assessee was provided almost all the documents/records containing combined data again for both the assessment years i.e. 1992-93 & 1993-94. First time it was given during the assessment proceedings.

viii. In addition to the above, the assessee was also provided the following documents / details:

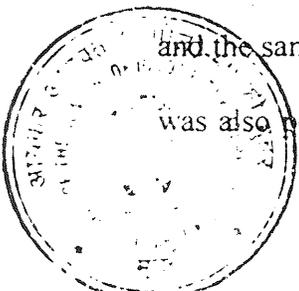
- i. a) Deal File (Part I) – From 01/04/1991 to 27/02/1992
(total pages 656)
- b) Deal File (Part II) – From 28/02/1992 to 31/03/1992
(total pages 28;
- c) Deal File of A.Y. 1993-94 (total pages 16)
- ii. Security-wise break-up of Deal Files of A.Y. 1992-93 & 1993-94
- iii. Software of Deal File
- ix. Demonstration was given on 31/07/2009 by the undersigned explaining the Deal File. A write up was also submitted on that day.

In the backdrop of the above details, it was pointed out that the data of Deal File was copied from the computer of the appellant seized during the search and returned to him within 3 days of the search. In this context, it was pointed out that the itemized details including place in Annexure M-1 and M-2, S-1, S-2, S-5 were submitted for the



assessment years 1992-93 and 1993-94 as applicable. Further, attention was also drawn to the fact that the basis of these item-wise details also have been provided. Referring to the appellant's complaint that some documents and their copies were not provided, it was pointed out that this was so because these documents did not have any relevance in the assessment proceedings under consideration. Regarding the appellant's objections on not being given opportunity to cross examine Mr. B. Balakrishnan, DGM, SBI and Mr. M.K.Rashid, DGM, NHB, attention was drawn to the fact that the former has passed away while the latter has retired 15 years back. It was also emphasized that the statements are in the context of suit No. 63 and now, the appellant has himself challenged the decree against the suit as a result, the cross examination has no relevance. Point was also made that the method of processing and working of money market transactions has already been explained to the appellant vide submissions dated 17.7.2009. Referring to the shortcomings pointed out by the appellant on the Deal File given to him, it was pointed out that the print-out of the Deal File given contains all the original data which was stored in the computer seized during the search and that no change was made in the original data. On the appellant's objection that he was not given opportunity to explain the source of the investments in the securities, it was argued that the Assessing Officer had given sufficient opportunity to explain the source.

3.3 The appellant submitted rejoinder dated 17.8.2009 to the Assessing Officer's comments made by his letter dated 10.8.2009. After acknowledging receipt of items listed 1 to 15 in the Assessing Officer's letter dated 10.8.2009, the appellant has recorded some more objections in this letter. In essence, it was pointed out that the Assessing Officer has not discharged his obligation of pointing out the materials used by him along with the manner in which they have been used. It was also pointed out that during the course of assessment proceedings also no material was offered. With regard to the Deal File, it was mentioned that the appellant does not have copy of the Deal File and as a result, is not in a position to verify and confirm that the Deal File handed over by the Assessing Officer is the same Deal File which was there in the appellant's computer. It was further mentioned that the demonstration given on 31.7.2009 was never asked for and the same was voluntarily given by the Assessing Officer without any prior notice. It was also pointed out that the Chartered Accountants representing the appellant clarified



that they are not experts and that a few thousand transactions can never be examined in an online demonstration. Clued into this, it was argued that the demonstration given by the Assessing Officer was only with a view to create some record that the appellant is being given every opportunity. On the issue of returning of the seized computer data within a period of three days, it was mentioned that all the records of the appellant are with the Custodian. A list of documents was also submitted where these documents are not given despite appellant's specific request. On the cross-examination of the executives of SBI and NHB, it was mentioned that the disclosure about their current status was made only at the fag end of the proceedings. It was also argued that cross examination of any person competent to depose on behalf of any of these two organizations may be given. The Assessing Officer's observation that the appellant has adopted delaying tactics was also contested. Reference was made to the numerous instances of errors pointed out in the Annexures on Money Market oversold position to argue that the position worked out is grossly erroneous. It was also pointed out that the hard copy print out was parted with by the Assessing Officer only after considerable resistance and due to direction given by me. Further, it was also contended that the data given is jumbled up and on this premise, it was argued that the data has been so given to make the task of the appellant onerous.

3.4 I have considered the above rival submissions. As I see, right from the stage of the initiation of the assessment proceedings through to the earlier appellate proceedings and the current proceedings before me, the issue of inspection and supply of documents has occupied the centrestage in the dispute between the two parties. Looking into the process and developments on this issue through the assessment proceedings, the earlier appeal proceedings and the present proceedings before me, I fail to find any substance in the various objections the appellant harbours. I come to this finding clued into the answers to the following questions :

- i) *What is the quality and extent of inspection and supply of documents during the assessment proceedings, the earlier appellate proceedings and the present proceedings before me ?*

What has been the historical responsiveness of the two parties to this process ?



As I find, answers to these questions make it very clear that the quality and extent of inspection and supply of copies of documents have been adequate and satisfactory and the Assessing Officer has been substantially responsive in making available to the appellant the necessary information and copies of documents and most significantly, the process has fully conformed to the principles of natural justice. In my order for the assessment year 1992-93, I have discussed in detail my findings on these questions. The rival submissions on this issue being common for the assessment years 1992-93 and 1993-94, to avoid repetition, I am not reproducing my discussion on these questions here in this order. In light of my discussion on these questions in my order for the assessment year 1992-93, for the present assessment year also, I hold that the quality and extent of inspection and supply of documents has been adequate and satisfactory.

Books of Account:

4. Vide his letter dated 3.6.2009, books of account were submitted by the appellant. As discussed these were handed over to the Assessing Officer for comments and reports. While submitting the books of account, reference was made by the appellant to the order dated 11.07.2008 of the Hon'ble ITAT for the A.Y.1992-93 in which vide paras-14 & 15 of the order, the order of my the then predecessor on appellant's appeal for the A.Y.1992-93 was set aside for a fresh consideration in terms of the directions given by the Hon'ble ITAT in its order. The details of this order have been discussed in my appeal order for the A.Y.1992-93 and I am not repeating them in this order. Clued into this order, it was requested by the appellant that the books of account may be admitted. Reference was also made to matters relating to appellant's family members where also the assessment has been set aside to the file of the Assessing Officer with the directions to consider the books of account. List of such cases were also submitted. Particular reference was made to the order of the Hon'ble ITAT in the case Growmore Research & Assets Management Limited for the A.Y.1991-92 in which the matter was remanded to the Assessing Officer to examine the veracity of the books of account and the issue of its admissibility. Elaborating, it was further mentioned that the remand report was filed by the Assessing Officer before the Hon'ble ITAT where after detailed arguments, the Hon'ble ITAT was pleased to hold that the books of account are admissible evidence and



ought to be considered for determining the income. In particular, attention was invited to para-17 of the order, in which the following finding was given:

“17. In view of the aforesaid observations of the Assessing Officer in the remand proceedings, it would not be proper to hold that the additional evidence produced by the assessee are irrelevant and inadmissible. After all, even in the case of a best judgement assessment, estimate have to be made on a fair and proper basis, and though there is an element of guess work, it shall not be a wild one, but shall have reasonable nexus to the available material and the circumstances of each case. Admittedly, the impugned assessment was made on total income of Rs.58,43,64,832/- without having benefit of books of accounts and other documents. Since even the Assessing Officer did not firmly state that the books of account now produced are totally reliable, in the interest of justice and equity, we are of the opinion that they require to be admitted. We, therefore, consider it fair and reasonable to admit the same.”

On the basis of the foregoing, it was submitted that admission of books of account will enable the Assessing Officer to have material facts and evidence to come to this finding. It was particularly emphasized that the books of account can be made as a starting point and ought to be referred to determine the appellant's income. Accordingly, request was made to admit the books of account in terms of Rule-46A r.w.s. 250 of the I.T.Act. The Assessing Officer gave her report vide letter dated 6.7.2009. In her report, reference was also made to the report of the Auditors Vyas & Vyas appointed by the Special Court. Clued into the reference, it was emphasized that the report of the Auditors for the A.Y.1992-93 having direct bearing on the opening balances for the A.Y.1993-94, reliance on the report of the Auditors is necessary for the A.Y.1993-94 also for determination of the correct total income of the appellant for the A.Y.1993-94. In this prespective, the following discrepancies noted by the Auditors in their report were highlighted:



"8.2 M/s. HSM while recording the transactions in its books of account totally ignored those transactions with an intention to hide the correct picture of its state of affairs. We were surprised to note the huge differences in the outstanding balances within its own group. This would clearly show beyond doubt his fraudulent intentions and it was a clear case of manipulation and misappropriation of the books of account of M/s. HSM.

8.3 It would therefore be reasonable and rational to conclude that the figure of liability towards banks, financial institutions and other parties shown in the balance sheet had to be ignored since it would be difficult to rely upon those figures which were at variance with those recorded by his clients / customers.

10.14The fraudulent transactions were routed in such a manner and way that it was difficult to connect the chain of the transactions, therefore, there was no authenticity of this account and could not be relied upon. However, in no case the details of this account could be retrieved as full information of the transactions were not available.

10.2.5From the above statement, it would be clear that books of M/s. HSM had not shown full amount, which has been accounted for by family members. There were huge differences in the account and books of HSM, which cannot be relied upon.

11.1 We scrutinized each head of Profit & Loss A/c and observed that no supporting evidence was available for expenses as well as receiptsin the books of accounts also complete narrations were not available.

11.2 Here it may be stated that all group transactions of HSM were not accounted for in the individual hands to which it pertained. Therefore, in our opinion, the figures drawn from the books of HSM were not reliable.

Further, almost all PSU, Banks and Financial Institutions provided details of transactions with HSM. The scrutiny of those details revealed major variance



in the transactions. HSM had not recorded those transactions in his books of accounts and therefore income / expenses on those transactions were also not recorded in Profit & Loss A/c. and therefore true results cannot be arrived at.

13.1 We have scrutinized the books of accounts and also written letters to the concerned parties and concluded that whatever liabilities shown in the books are not supported by sufficient evidence."

And finally the report of the auditors concludes with the following comment.

13.6 In our opinion books of accounts provided by HSM were not reliable and in the eye of law these deserved to be rejected."

Attention was also invited to the following notes given by the Auditors in the process of preparing the statement of affairs of the appellant :

- "1.The books of accounts prepared by HSM are manipulated and complete transactions are not recorded.*
- 3. Net profit has been shown as per books of accounts which are not reliable.*
- 5. Suspense account represents shortfall in the asset side of consolidated statement of affairs. Shortfall is due to huge debits in the name of banks and financial institutions under client control and client constituent account which are found fake on confirmation with these parties. After confirmation of accounts, it may only be concluded that these debits are nothing but unexplained investment."*

Clued into the above, it was argued that the foregoing remarks of the Auditors appointed by the Special Court indicate that reliability of the accounts of the appellant is doubtful.

Attention was also invited to the following observation made by the Hon'ble Special Court while deciding Miscellaneous Application No. 41 of 1993 :



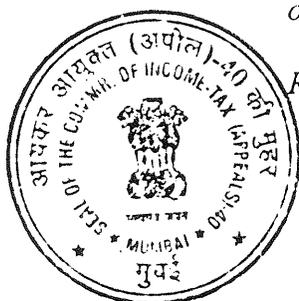
".....It is clear to Court that the reason why estimate was not filed before the Income Tax Authorities or before this Court, is because the Respondents or any of them, do not want to commit anything on oath or disclose all their assets. The idea appears to be to stay quiet and let the Income Tax Authorities or CBI or the Custodian discover whatever they can. The idea appears to be to wait and see what is discovered and then not disclose anything else. This could not be permitted. The court sees no difficulty in proper accounts being taken or prepared and / or estimates being filed. This is purposely not being done....."

In the above backdrop, the Assessing Officer made the following observations after going through the books of account submitted by the appellant :

- i) *The printouts of the trial balance, capital account, profit & loss account, balance sheet, account ledger, part of bank book and journal book etc. are self-certified and do not accompany any audit certificate. They bear the signature of Smt. Jyoti Mehta L/h of Late Shri Harshad Mehta.*
- ii) *From the books of account, it is not clear on which date they were prepared.*

Whatever may be the date of writing of the books, it is clear that these were written much after the relevant financial year and most probably in the recent past. The decision of the Hon'ble Madhya Pradesh High Court in the case Ladha Traders Vs. CIT 140 Taxman 104 on the sanctity of the books of account bears special mention in this respect.

- iii) *The regular books of account were not maintained in the manner as it ought to have been maintained as prescribed u/s 44AA of the ITA and IT Rules, 1962.*



- iv) *Even the ordinary audit has not been done on these books of account.*
- v) *The books of account do not accompany any supporting documentary evidence. The transactions in the book lack the support of any primary evidence which is the prime condition of testing the sanctity of any books of account.*
- vi) *The books are not complete set of accounting books. No complete cash book has been submitted and the bank book is also not complete as all the bank accounts have not been taken into account.*
- vii) *A number of entries in the books submitted appear to be afterthought. For example, drawing account shows a single withdrawal of Rs.25,000/- for gift in the month of June '1992 and it is inconceivable that there was no withdrawal for personal expenses.*
- viii) *Majority of the entries in the books of account, specially those pertaining to trading and investment are in the form of journal entries in the name of persons closely related to the appellant who like the appellant had also not been maintaining their books of account in a regular manner and had written their books as late as the appellant. This would make any cross verification meaningless.*
- ix) *Even in respect of large number of entries involving outside parties, 16 years having elapsed, any cross verification is practically impossible as a person is not statutorily required to retain books of account for more than 6 years.*

Based on the above observations, the appellant's claim that the books of account were

genuine as they had been drawn on the basis of contemporary documents was not accepted by the Assessing Officer. It was her view that the time of drawing of books of



account is a very relevant fact and that books of account maintained on day to day or at least regular basis are less prone to manipulation. In support, reference was made by him to Rule 6F of the IT Rules, 1962 which though does not cover the appellant's trade, illustrates the basic principle that reliability of the books depends on their being drawn on regular basis during the relevant accounting period. In this respect, it was particularly emphasized the belated drawing of the books after several years from the end of the relevant accounting year is more damaging in the appellant's case because most of the important connected journal entries are in respect of closely connected persons whose books were also not drawn in time and by so, suffer from similar short comings. In light of the foregoing, it was argued that self certified copies of computer print outs of incomplete set of unaudited account can hardly be accepted as regular books of account, much less as reliable ones. Based on this, it was argued that correct and true income cannot be deduced from the books of account submitted by the appellant. Dissatisfaction about the correctness and completeness of the books of account submitted by the appellant was also conveyed.

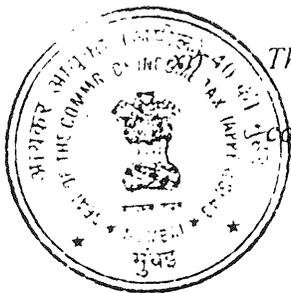
4.1 The Assessing Officer's report and comments on the books of account were forwarded to the appellant for his comments. In response, submissions dated 15.07.2009 and 22.07.2009 were filed in course of hearing. In these submissions, following comments were made on the Assessing Officer's observations on the books of account submitted by the appellant :

- i) *The qualifications made by M/s Vyas & Vyas, in their report are conclusive evidence of the unreliability of their report. Be that as it may, the income determined by the Auditors is much lower than the income determined by the Assessing Officer which shows that the assessment framed by the Assessing Officer is exaggerated and without any basis.*
- ii) *The Assessing Officer has stated that the books of account are self-certified and do not accompany any Audit Certificate. However, merely because the books of accounts are not audited would itself not make the books lose their sanctity. What is required by section 145 of the ITA is that the books of account deduce the true and correct profits.*



- iii) *During the relevant assessment year, after being notified on 8.6.1992, all incomes generated and transactions undertaken were under the directions of the Hon'ble Special Court and accordingly there is no scope for the appellant to report any transaction in any manner different from the way they have been directed by the Hon'ble Special Court.*
- iv) *The Assessing Officer has stated that from the said books, it is not clear as to when these books of account were returned. However, the books of account have been returned based on the contemporary documents like bank statements, contract notes etc. most of which are already in the possession of the Department. The Assessing Officer could have verified the books with the help of supporting evidences and materials.*
- v) *The correctness of the books of account has nothing to do with the time of writing the same as the books of account are based on primary documents. Vide letter dated 3.6.2009, it was already stated to the Assessing Officer that the contemporary documents are either available with him or will be produced at the time of remand proceedings.*
- vi) *While pointing out that books of account submitted are not complete set of accounts, the Assessing Officer has not given any specific instances.*
- vii) *The Assessing Officer has also placed reliance on the books required to be maintained as per section 44AA of the Act. However, the provisions of section 44AA prescribes the nature of books of accounts and not the timing of the books of accounts.*
- viii) *The Assessing Officer's inference out of the gift of Rs.25,000/- in the month of June 1992 is also baseless.*
- ix) *The Assessing Officer has rejected the books of account solely because there were journal entries which is unjustified.*
- x) *The legal difficulty of the Assessing Officer cannot be the reason for rejecting the books of accounts now once the same are admitted by the Hon'ble Income-tax Appellate Tribunal as well as your Honour.*

The Assessing Officer has not verified the books of account at all and the comments of the Assessing Office are identical to the comments given by the



Assessing Officer in the remand report for the A.Y.1992-93 while rejecting the books of account.

The Assessing Officer gave further comments on these submissions of the appellant vide his letter dated 17.07.2009. In these comments, he argued that in its order dated 23.06.2008, the Hon'ble ITAT has nowhere mentioned that the newly created books of account for the A.Y.1993-94 should be admitted for examination or verification. The appellant give further comments vide submissions furnished on 22.07.2009. In these submissions, it was particularly emphasized that since the additions for the A.Y.1993-94 are based on the discussions made for the A.Y.1992-93, the appellant had made the prayer for admissions of the books of account clued into this.

4.2 I have considered the rival submissions. As I note, the first issue to emerge from the arguments and counter arguments is the admissibility of the books of account as additional evidence. In this respect, going through the facts and material brought before me, I find that the books of account deserve to be admitted as additional evidence u/s 46A of the I.T.Rules-1962. To this end, I note that for the A.Y.1992-93, in appellant's own case, the Hon'ble ITAT has given direction to admit the books of account as additional evidence in view of the reasons stated by the Hon'ble ITAT in its order. Looking into this order, I find that identical facts and circumstances surround the appellant's case for the A.Y.1993-94 also. Further, I also note the other orders of the Hon'ble ITAT in cases of appellant's group entities in which books of account have been admitted. Besides, considering the nature and magnitude of the appellant's case, I find that examination of the appellant's books of account will be an important tool to assess the correctness or otherwise of the appellant's income. Accordingly, in terms of Rule-46A of the I.T.Rules, I admit the books of account as additional evidence and proceed to evaluate them in terms of the rival submissions and other facts and circumstances before me.

4.2.1 As discussed by me in my appeal order for the A.Y.1992-93, the report of the Auditor's Vyas & Vyas provides a crucial parameter to evaluate the appellant's income. As I note, the key issue here is how far the report of the Auditors Vyas and Vyas and the

books of account submitted in three volumes go on to reflect the completeness and truthfulness of the books of account submitted by the appellant. To this end, I find that



the matter has to be first analyzed on the established touchstones of qualitative characteristics of financial statements laid down by the relevant statutes and the accounting standards. These would include the Companies Act, 1956, section 145 of the Income Tax Act, 1961, the 'Generally Accepted Accounting Principles' (GAAP), the International Accounting Standards (IAS) and the Institute of Chartered Accountants of India (ICAI). Looking into the qualitative characteristics enumerated by these different statutes and standards, I find that the quality of financial statements are judged by the tests of the degree of their reliability, truthfulness, fairness and completeness. Subsections (1) and (2) of section 211 of the Companies Act, 1956 state that *every Balance Sheet should give a true and fair view of the statement of affairs of the company at the end of the financial year and every Profit and Loss account should give true and fair view of the Profit and Loss of the company for the financial year.* Thus, it may be seen that for the Company Law 'truth and fairness' is a fundamental qualitative characteristic of financial statements. Similar view is echoed in the Accounting Standards prescribed in section 145 of the ITA. The Notification No. SO69(E) dt. 21.5.1996 made under section 145(2) of the ITA lays down the spirit of the correct method of accounting by stating that *accounting policies adopted by an assessee should be such so as to represent a true and fair view of the state of affairs of the business, profession or vocation in the financial statements prepared and presented on the basis of such accounting policies.* The IAS requires *fair representation* in preparation of financial statements. GAAP includes the principles of *sincerity and full disclosure and materiality* as key to authenticity of financial accounting. In similar vein, para 46 of the ICAI framework enumerates that *application of the principal qualitative characteristics and appropriate accounting standards normally results in financial statements that convey what is generally understood as a true and fair view of such information.* Similarly, the ICAI has also identified *understandability and reliability* as two of the four principal qualitative characteristics of financial statements. *Reliability* in this respect is sought to free a piece of information from *material error and bias* and is stated to depend on, amongst other attributes, *faithful representation and completeness.* When examined against the foregoing fundamental tests, the books of account submitted by the appellant are found by me to be suffering from several infirmities and as a result, the appellant's books fail to

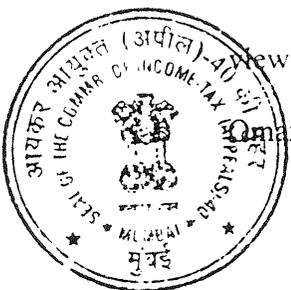


pass the tests of truthfulness, fairness, reliability and completeness as enumerated in the above statutes and standards. I will now discuss these infirmities. Since the admission of the books of account for the present assessment year is based on the order of the Hon'ble ITAT for the A.Y.1992-93 and appellant's reliance on it, I discuss the infirmities for the present assessment year based on the appellant's submissions on the issue for both A.Yrs.1992-93 and for the present assessment year under consideration. The infirmities are as under:

i) **The books of account are not contemporaneous and inordinately belated**

As pointed out by the Assessing Officer in her report dt. 30.1.2009, from the books of account, it is not clear on which date they have been prepared. In fact, the Assessing Officer also could not ascertain the dates and timings of the writing of the books of account in course of discussion with the appellant's representative. In this backdrop, the Assessing Officer has deduced that the books of account were written much after the relevant financial year and most probably in the recent past. Looking into the past history, the appellant's conduct, his response to the requisitions made by the Special Auditors Vyas & Vyas and other attending facts and circumstances, I agree with the Assessing Officer. As I find, the accounts having been written long after the actual transactions do not inspire confidence, especially when the inordinate delay is seen alongside the other infirmities in the accounts. Transactions if not recorded on day to day basis or at least reasonably regularly cannot be correctly reflected in the accounts. The decision of the Hon'ble Allahabad High Court in the case Bharat Milk Products Vs. CIT 128 ITR 682 underlines this proposition. In this case, the Hon'ble High Court has categorically held that if no day-to-day account books are maintained by the assessee, it cannot be said that the accounts are complete and accurate. In similar vein, in its decision in the case Ratanlal Omprakash Vs. CIT 132 ITR 640, the Hon'ble Orissa High Court has justified rejection of books by the Assessing Officer on the ground that the appellant was not maintaining the books of account specially day-to-day stock particulars. This

view has again been echoed by the Hon'ble Allahabad High Court in the case Omax Shoe Factory Vs. CIT 281 ITR 268. In this decision, the Hon'ble High



Court held that the assessee, having not maintained day-to-day production register and consumption register of raw materials as also proper accounts relating to payment of wages, rejection of books was justified. The appellant's accounts being not contemporaneous suffer from this infirmity and are thus, not reliable. On this, the appellant has submitted that the books of account have been written belatedly only because the appellant was not granted copies of the documents, seized materials and other records from the Custodian and from the Income-tax Department. This submission is misplaced. In this respect, most significantly, I note the Assessing Officer's observation in the assessment order that no books of account were produced even during the course of the searches in 1990 and 1992. This would make it very clear that the appellant was never maintaining contemporaneous proper books of account. This omission makes the appellant's submission sound hollow as before the searches, the appellant was not faced with the so-called difficulties to which he has attributed the delay. Coming to the post-search period, from perusal of the assessment order and attending records, I find that the appellant was given copies of relevant documents and was also asked to inspect them. As I note in para 3.3 of the assessment order for the assessment year 1992-93, the appellant was allowed to take the xerox copies of all the seized material as required by him on 30.1.1992. Similarly, the appellant was also specifically suo motu requested by the Assessing Officer through several letters to take inspection of all the seized materials. In response, inspection was taken. Further, very importantly, I also find that the main computers of the appellant were released within 3 days of the search. Para 3.3 of the assessment order for the assessment year 1992-93- gives full details including the dates on which the appellant was allowed to inspect the documents and take xerox copies of the materials seized during the course of search in 1990 and 1992. As I find, the appellant was also provided with copies of all seized computer data. The appellant has not brought anything on record to controvert these details of inspections and supply of copies of seized materials and computer data as brought

on record by the Assessing Officer. As I find, without being specific, the appellant has simply maintained that the documents have not been provided. As



against this, as I see, the Assessing Officer has specifically mentioned full details of the inspections and supply of copies of seized materials and computer data. As may be noted, the appellant had in possession all the primary data, copies of relevant documents and also the option and right to requisition documents from Government Agencies as found required by him. Despite this, the appellant did not prepare the books of account in time indicating thereby, he had no intention of preparing the books of account in time. This intention further comes into focus against the backdrop of the fact that even during the searches, the appellant did not produce the books of account. The non submission of the books of account during the searches also underlines the inevitable inference that the books of account now submitted are not based on credible and reliable primary contemporary documents. Looking into the report of Vyas & Vyas also, I see similar pattern in appellant's conduct while responding to the request of the Auditors for furnishing of necessary information and documents. As I note, in para 1.6 of their report under the caption 'Sources Utilized for The Audit', the Auditors have observed as under :

"Non-furnishing of information, documents and explanations by JHM, legal heir of HSM has imposed great limitation on scope and objective of the report. An annexure No. 3A enclosed to the report is regarding list of letters written to JHM and its purpose, which were not responded....."

In this regard, the following observations of the Hon'ble Special Court in Miscellaneous Application No. 41 of 1993 on non filing of the estimate also bear special mention :

" It is clear to court that the reason why estimate was not filed before the Income-tax Authorities or before this Court, is because the Respondents or any of them, do not want to commit anything on oath or disclose all their assets. The idea appears to be to stay quite and let the Income Tax Authorities or C.B.I. or the Custodian discover whatever they can. The idea appears to be to wait and see what is discovered and then not disclose anything else. This could not be permitted. The Court sees no difficulty in proper accounts being taken or prepared under / or estimates being filed. This is purposely not being done.

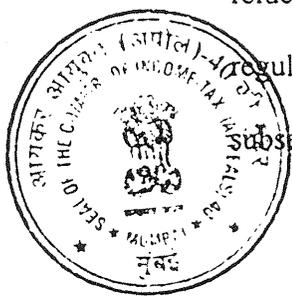


Under the Income-tax Act penalties might be imposed. At this prima facie stage the submission that there would be nil income is not acceptable. "

The above experiences of different authorities and the Hon'ble Court underline a pattern in appellant's conduct while complying with statutes, rules and regulations. This would also give a clear indication of the period during which the books of accounts were actually drawn. As I find, the books of accounts were not produced during the searches, the assessment proceedings, to the appellate authorities, to the three auditors appointed by the Special courts & as late as also to Special Auditors, Vyas & Vyas. Significantly, I also note that the Janakiraman Committee & the Joint Parliamentary Committee have also not mentioned anything about the appellant's books of account signifying thereby the fact that the books of account were not produced even before these high powered Committees. Taking into reckoning the foregoing, I find that the books of account of the appellant are not contemporaneous and more importantly that there was no justifiable reason for this. Accordingly, they are not found to be reliable.

ii) *The books of account are unaudited*

As I find, no audit as prescribed u/s 44AA or 44AB has been done. The books of account are, therefore, without any authentic certification from an impartial party. In these circumstances, the accounts cannot be held as reliable or capable of projecting the true and fair picture of the financial statements. On this, the appellant's defence is that merely because the books of account are not audited would itself not make the books unreliable. This argument is misplaced. As I note, audit is mandatory if the conditions prescribed in section 44AA are satisfied. The purpose of the audit is to authenticate the accounts of a person and without this, the accounts remain unreliable particularly when the accounts suffer from other infirmities also. In this respect, I find that the appellant has not specifically mentioned why the accounts were not audited. As already pointed out during discussion on foregoing point no. 1 above, there has always been a reluctance on the part of the appellant to discharge statutory and procedural regulations. This is noted not only during the contemporaneous period but also subsequently. The appellant has been attributing delay in discharge of his



statutory and procedural obligations to the difficulties faced by him following the action of the different enforcement and regulatory agencies. In this context, I note that the appellant was always in possession of the primary documents and as already discussed above, it was open to him to ask for the relevant documents in possession of the different Government Agencies. As already pointed out, the appellant never used these documents or his right. In these circumstances, the appellant cannot take the plea that his difficulties prevented him from getting the accounts audited. I particularly note the appellant's conduct even long after the period of searches and when the appellant got the opportunity to get his accounts compiled or audited. To illustrate, I note that the Hon'ble Special Court had appointed three firms of Chartered Accountants for auditing and compiling the appellant's accounts and the appellant did not co-operate with these firms. In this respect, the Custodian appointed by the Special Court had filed a M.A. 47 of 1996 enclosing a copy of the status report dt. 24.1.1996 by the three firms of Chartered Accountants. In this status report, the Chartered Accountants had the occasion to make the following observations :-

"As regards the compilation of the nine notified entities, the three firms of Chartered Accountants appointed for this purpose have not been able to make substantial progress in the absence of all the particulars asked for being made available. Moreover, whatever particulars have been furnished are not complete as is evident from the correspondence on record. Further, it was mentioned in one of meetings by Mr. Ashwin Mehta in the office of the Custodian that the Harshad Mehta group had undertaken considerable efforts to complete the work of these entities and therefore, it would be better that they furnish complied accounts which can be subjected to scrutiny of the three firms of Chartered Accountants. In spite of reminders such complied data has not been furnished to date. Further, because of the time lag involved in furnishing the piecemeal particulars, the three firms of Chartered Accountants have found it difficult to keep on hold their assistance till such time the particulars / records are furnished

by the HSM Group."



Then subsequent to this, as already discussed, the Special Auditors Vyas & Vyas also did not get appellant's co-operation. This pattern of the appellant's conduct would indicate that there was no justifiable reason for not getting the accounts audited not only when it was due but also subsequently when the appellant was given an opportunity to do so. In these circumstances, the unaudited accounts accompanied with several other infirmities cannot be held as reliable.

iii) *The books of accounts are not complete*

As pointed out by the Assessing Officer, the books submitted are incomplete. In this respect, I find that complete cash book has not been submitted. Further, I also note that all the bank accounts have also not been taken into account. In these circumstances, the appellant's books do not pass the fundamental test of reliability on the ground of their being incomplete. I have already discussed above how completeness of accounts is a necessary ingredient of reliability of books of account. This derives support from the decision of the Hon'ble Delhi High Court in the case Smt. Krishna Babbar Vs. CIT & Another 117 CTR 302. As may be noted, in this case, the books of account were not found complete till the date of the search and on account of this infirmity, the rejection of the books of account was upheld by the Hon'ble High Court.

iv) *The books of account of the transacting parties also suffer from several infirmities*

As I note, most of the entries in the books of account are in the form of journal entries in the names of closely related persons. These persons are either close relations of the appellant or intimate business associates. As I note, the accounts of these persons also have not been maintained in terms of the prescribed rules and procedures. Accordingly, the authenticity of the entries in relation to these persons is highly doubtful.

v) *The books of account are not backed up by primary documentary evidence*

The books of account submitted by the appellant are not backed up by authentic primary documentary evidence. I particularly note that the accounts are in the first place unaudited and self certified. In these circumstances, the accounts cannot be held as authentic. In this respect, the decision of the Hon'ble Kerala High Court in the case

Mani & Company Vs. CIT 256 ITR 373 bears special mention. As may be noted, in this case, the rejection of books of account on the ground of non production of books of



original entry was upheld by the Hon'ble High Court. Accordingly, in absence of the original primary documentary evidence, the appellant's accounts are found to be unreliable.

vi) *The books of account show improbable entries*

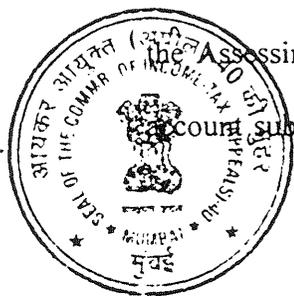
As I see, the drawing account of the appellant shows a single withdrawal of Rs.25,000/- for gift in the month of June 1992. Obviously, this is highly improbable since it leads to the inference that the appellant did not make any withdrawal for personal expenses. The appellant has not been able to justify this with any specific evidence. This would indicate to the possibility of existence of pre-decided entries particularly when the accounts have been substantially belatedly drawn.

4.2.2 In this respect, going through the submissions of the appellant, I find that the appellant has not brought out any specific or positive evidence to controvert the issues raised by the Assessing Officer. As I find, the tenor of the appellant's submission is restricted to pinpointing what the Assessing Officer could have done. To this end, the appellant has inter alia, mentioned that no specific defect has been pointed out and that the Assessing Officer has not attempted to open the books and verify the transactions. These arguments are misplaced. So far as the defects are concerned, they have been listed above. As may be noted, these defects and infirmities are too fundamental to make any books of account authentic or reliable. Besides, the appellant has also only made a guess that the Assessing Officer has not opened the books. This is not borne out by the facts. As I see, in her report, the Assessing Officer has pointed out several specific lacunae in the appellant's books which could not have been done without examination of the books. I also find that the Assessing Officer has gone through the trial balance, capital account, profit & loss account, account ledger, bank accounts and journal entries and has raised pertinent points on several of these statements. In these circumstances, the appellant's submission on this score only remains an unsubstantiated allegation. Accordingly, in light of the foregoing, I do not find any merit in the appellant's submissions on the issue.

4.2.3 I now come to the report of the Auditors Vyas & Vyas. As directed by the Hon'ble ITAT, I have gone through this report. The most vital aspect that has struck me while going through this report is the extent and degree of non-cooperation by the



appellant in making available the necessary information and documents to the Auditors. I have already quoted their comments as made in para 1.6 of the report in this respect. I next find that the Auditors have held the books of account prepared by the appellant highly unreliable. In this respect, the Assessing Officer has listed some crucial observation made by the Auditors. I have also gone through these observations and find them particularly incriminating. These observations have been listed by the Assessing Officer in the report. As may be seen, the discrepancies noted by the Auditors Vyas and Vyas are similar to the infirmities and discrepancies brought to my notice by the Assessing Officer. A combined reading of these two sets of observations will bring to light identical infirmities noted by the Auditors and the Assessing Officer. As may be noted, both have observed that the books of account are unreliable, incomplete and not backed up by any supporting evidence. This is obvious because the books of account examined by the Auditors and the Assessing Officer must be the same. It may also be noted that both have also observed that the appellant's group transactions are not accounted for in the hands of the individuals properly and as a result, the figures drawn from the appellant's books are not reliable. In this respect, the Auditor's notes while preparing the Statement of Affairs of the appellant bear particular mention. These notes have been reproduced in the preceding discussion. The notes clearly spell out that the appellant's accounts are manipulated and not reliable. Similar is the finding of the Assessing Officer with which I completely agree. These common observations by the Auditors and the Assessing Officer and me are obvious as the books of account under examination by the Auditors, the Assessing Officer and me must be the same. Clued into this, I find that the report of the Auditors Vyas & Vyas only endorse the findings of the Assessing Officer with respect to the appellant's books of account. In para 13.6 of their report, the Auditors have opined that the books of account provided by the appellant were not reliable and deserved to be rejected in the eye of law. In similar vein, looking into the established standards of accounting as enumerated by relevant statutes and appropriate bodies, the glaring infirmities noticed in the appellant's books of account, the report of the Auditors Vyas & Vyas and the specific deficiencies brought to notice by the Assessing Officer as well as the Auditors Vyas & Vyas, I find that the books of account submitted by the appellant cannot be accepted. As I note, it is the established



position of law that when the books of account suffer from a series of defects and infirmities, they cannot be accepted. This is also the firm and categorical view of the Apex Court. As may be noted, in the decision in the case Kachwala Gems Vs. JCIT 288 ITR 10, the Hon'ble Supreme Court has categorically held that when IT Authorities have rejected assessee's books of account citing several defects, there is no reason to take a different view. In line with the foregoing defects noted, the accounting principles, the report of the Auditors Vyas & Vyas and the judicial decisions cited, I find that the books of account submitted by the appellant cannot be accepted.

Grounds of Appeal

5. The appeal filed contained 18 grounds of appeal. In course of the present appeal proceedings, during the hearing 31.07.2009 the appellant submitted the synopsis of grounds of appeal and during the hearing it was decided that disposal of the appeal will be done with reference to this synopsis. Accordingly, the appeal is being disposed off with reference to the grounds of appeal as sequenced by the appellant in this synopsis.

6. **In the first & second grounds of appeal, the appellant has contended that the Assessing Officer has erred in not complying with the principles of natural justice and of best judgement assessment.**

6.1 These two grounds of appeal were taken for the assessment year 1992-93 also. In course of my decision on these grounds for the assessment year 1992-93, in terms of detailed discussion in the order, I have dismissed these grounds of appeal. Facts and submissions of the appellant remaining the same, for the detailed reasons discussed in my order for the assessment year 1992-93, I dismiss these two grounds of appeal for the present assessment year also. My discussion on these grounds for the assessment year 1992-93 may be taken as a part of this order also.

7. **In the third ground of appeal, it has been contended that the AO has erred in making the addition of Rs.1,33,03,513/- on account of dividend and interest income.**

7.1 In course of the assessment proceedings, the AO observed that the closing stock figures arrived at for the A.Y.1992-93 included both registered and unregistered shares and debentures. In this backdrop, the Assessing Officer observed that after the appellant

was notified on 8.6.1992, the companies in which the appellant had registered shares / debentures were required to forward the dividend / interest warrants to the Custodian.



The appellant was asked why such dividend / interest should not be calculated based on the holding of debentures / shares as per records available with the Income-tax Department and the published details of dividend issued. It was the appellant's objection that the figures arrived at for the A.Y.1992-93 are not reliable and have been contested in appeals. The appellant also argued that it is possible that he is still receiving dividend / interest on shares / debentures held by the third parties but still registered by the latter. The appellant also argued that since several applications have been filed before the Hon'ble Special Court on the unregistered shares / debentures, the same should be taxed on actual receipt. The Assessing Officer did not accept the appellant's submissions. He observed that so far as the Income-tax Department is concerned, the closing stock figures for the A.Y.1992-93 are final. It was also his observation that the appellant did not furnish any instances of sales to a third party which was yet to register the shares / debentures. The appellant's argument on taxation of the dividend / interest on receipt basis was also rejected by the Assessing Officer on the ground that income of a particular previous year has to be taxed in that year only. The Assessing Officer proceeded to collect the details of dividend / interest actually received from the office of the Custodian. He also observed that similar details had been forwarded to the appellant and that the appellant had forwarded such details according to the information received from Custodian and information in his own knowledge. In the foregoing backdrop, the Assessing Officer calculated the dividend / interest income on the basis of the June holding of the appellant. The dividend worked out to Rs.1,32,03,513/- mentioned at Rs.2,25,59,454/- in the computation of income on page-43 of the assessment order.

7.2 In appeal, it was mentioned that during the year under consideration, the appellant had earned dividend and interest income of Rs.8,82,899/- as reflected in the books of account submitted. Argument was put-forth that the Assessing Office had presumed that the shares and debentures held by the appellant yielded dividend and interest income out of the same and hence the same was liable to tax in the appellant's hands. It was argued that the Assessing Officer has not brought on record that the income had been actually received. Reference was made to several decisions of the Hon'ble ITAT to point out that in these decisions, the issue has been settled in appellant's favour. Reliance was also placed on the decisions in the cases M/s Aatur Holding Pvt. Ltd., M/s Pallavi Holding



Pvt. Ltd. and M/s Growmore Exports Ltd. Attention was also drawn to the fact that the Assessing Officer did not give the details of the holdings and the published rates. In his comments on these submissions of the appellant, vide letter dated 27.07.2009, it was emphasized by the Assessing Officer that the basis of the addition has been clearly spelt out in the assessment order. Further, attention was also drawn to the fact that the proceedings dated 02.02.1996 and 20.02.1996 also confirm this position. Regarding the decisions in the cases M/s Aatur Holdings Pvt. Ltd. and M/s Pallavi Holdings Pvt. Ltd., it was pointed out that in respect of the dividend issue, the Income Tax Department has preferred appeal in the Hon'ble Supreme Court and SLP has been admitted by the Apex Court in the cases M/s Pallavi Holdings Pvt. Ltd. (A.Yrs.1996-97 & 1997-98) and M/s Velvett Holding Pvt. Ltd. (A.Yrs.1996-97 & 1997-98). It was further mentioned that the SLP in the case of M/s Aatur Holdings Pvt. Ltd. was not filed because the tax effect was less than the monetary limit prescribed by the instruction of the CBDT.

7.3 I have considered the assessment order and the rival submissions submitted during the appellate proceedings. As I find, the dividend / interest in the case has been taxed on the basis of information collected from the office of the Custodian. In this respect, I also find that in para 3.1 of the assessment order, the Assessing Office has clearly mentioned that the details of dividend / interest actually received was collected from the Custodian. The appellant has not been able to bring anything on record to find fault with these observations. In these circumstances, I find that the income was taxed not on presumptions but on specific information that the dividend / interest was actually received. I fail to find any hint of estimate in this. Further, I also find that the appellant was also in possession of this information. Significantly, I also find that the basis of the holding and the rates have also been clearly spelt out by the Assessing Officer. As may be seen, the calculation has been done based on published details of dividend / interest of the relevant companies and in face of this, the appellant is not justified in complaining that the basis was not made available to him. As may be noted, the appellant had access to the published data. Further, as pointed out by the AO, the proceedings as recorded on 2.2.1996 and 20.02.1996 also clearly indicate the fact that the appellant was made aware

of the necessary details. These proceedings are reproduced as under”



"02.02.1996: (i) proposal to tax dividend and interest income on the basis of published data.

(ii) Closing stock as per assessment order for 92-93 and further transactions entered into after 1.4.1992.

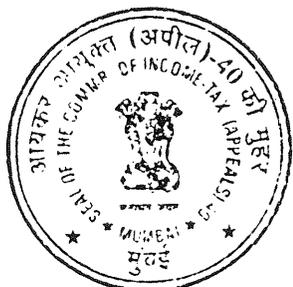
(iii) If proposal unacceptable then actual holding position may be given.

20.02.96: (i) Working proposal of interest & dividend income computation given."

The proceedings would make it very clear that the appellant was made aware of the information and the basis of the income. Further, they would also make it clear that the appellant failed to give the particulars sought for by the Assessing Officer. So far as the judicial decisions relied upon by the appellant is concerned, I find that in face of several facts brought on record by the Assessing Officer, in the appellant's case, the addition is very specific and accordingly, has to be judged by the facts prevalent in the appellant's case. Further, on the issue at hand, for the assessment year 1992-93, I have made detailed discussion in my appeal order for the assessment year 1992-93 in connection with grounds contesting taxing of interest income on substantially similar lines. This is particularly with reference to seventh ground of appeal for that assessment year. In my order for the assessment year 1992-93, I have confirmed the addition made on account of interest. My discussion on the issue for the assessment year 1992-93 may be treated as part of this order also in so far as the issues are common to both the assessment years. To avoid repetition, I am not reproducing my discussion made in the assessment year 1992-93 here. In line with the foregoing, I find the addition justified. It is confirmed and the ground of appeal is dismissed.

8. The appellant has submitted common submissions on the 4th, 5th & 6th grounds of appeal. Accordingly, these three grounds of appeal are being taken up together. The grounds are as under:

4th Ground: The Assessing Officer has erred in making addition of Rs. 58,16,25,124/- on account of share market trading profit.



5th Ground : The Assessing Officer has erred in determining the loss of Rs.3700/- on account of share market speculative transactions.

6th Ground: The Assessing Office has erred in making the addition of Rs.138,68,35,985/- on account of oversold position in stock market transactions.

8.1 In course of the assessment proceedings, appellant's income from the capital market was computed on the basis of information and documents received from RBI, BSE and other third parties. The appellant was given copies of these data and information and was also given inspection. On the basis of this information available and taking the opening stock from the closing stock as on 31.03.1992 in the assessment order for the A.Y.1992-93, scrip-wise trading account was prepared and was summed up as Annexure S-1 to the assessment order. On this basis, the profit from trading on shares earned by the appellant during the year was taken at Rs.58,16,25,124/- and added to the total income of the appellant. It was also found that the appellant had carried out speculative transaction in shares. The details of these transactions had been obtained from appellant's clients and others. These details have been enclosed as Annexure S-2 of the assessment order. In terms of this, the speculative loss was determined at Rs.3700/- which was not allowed to be set off against other income. In course of the assessment proceedings, the Assessing Officer also found that the appellant had oversold position in many scrips, the details of which have been illustrated in Annexure S-1 of the assessment order. In terms of these details, the total oversold position was worked out at Rs.1,38,68,35,985/-.

8.2 In appeal, it was submitted that the Assessing Officer has determined the above incomes without explaining the manner in which the incomes have been arrived at. It was also submitted that the source of the information used has also not been revealed. In this light, request was made to direct the Assessing Officer to provide to the appellant, the break-up of all transactions figuring in the working in Annexures S-1 & S-2. Cross-examination of the persons whose replies were relied upon by the Assessing Officer was also requested for. Further, it was also requested that evidences used may also be made available by the Assessing Officer. It was also maintained that the appellant had



undertaken few transactions for his own self and a large number of transactions were for and on behalf of the clients. Argument was put forth that treating the transaction of shares as the appellant's transactions is wrong and contrary to the provisions of Special Courts Act, according to which, only the Special Court has been entrusted with the exclusive jurisdiction to adjudicate and determine the issue of ownership of any attached asset. Instances of transactions were submitted where the transactions undertaken by the brokerage firms of M/s. J.H.Mehta have been incorrectly treated as the transactions of the appellant's brokerage firm. Point was also made that while determining the profit of Rs.138.68 crores on alleged sale of shares, the Assessing Officer has not given any credit on account of cost of purchase of shares. Attention was invited to the following transactions in particular to argue that additions on account of these transactions are not sustainable :

- i) Transactions of sale of 15 lac shares @ Rs.400/- on 8.4.92 which had not been undertaken by the appellant.
- ii) Addition of transactions amounting to Rs. 21,22,83,750/- with M/s. V.B. Desai is liable to be deleted as no shares have been sold by the appellant's brokerage firm to M/s. V.B. Desai.
- iii) Addition of Rs. 25,98,64,736/- is also liable to be deleted as a number of transactions entered into by the brokerage firm of M/s. J.H.Mehta have come to be treated as sales of the appellant's brokerage firm.
- iv) Addition on account of transaction in shares of M/s. Apollo Tyres Limited is also liable to be deleted because out of the shares sold, 96,500 shares were sold on behalf of M/s. Zest Holding Private Limited and balance have been sold for and on behalf of the appellant and is duly reflected in the books of account.

On the addition of Rs. 58.16 crores, it was pointed out that the transactions are of the clients of the appellant. Following counter comments were given by the Assessing Officer:

"The objections of the assessee are baseless. The perusal of the notings dated 17.11.95, 27.11.95, 13.12.95, 2.2.96, 29.2.96, 4.3.96 & 12.3.96, as reproduced in para 2 of this submission, clearly reveals that during the assessment proceedings, assessee was provided all the details and asked to explain the same.



Secondly, it is not understandable that what type of break-up the assessee wants. Annexure-S1 of the assessment order clearly shows that out of shares of 67 companies, oversold position is computed only in 6 shares. In all other transactions, there is opening stock which has been taken as closing stock at the end of the year, as there was no transaction during the year. From the annexure only, the difference earned by the assessee has also been computed. However, the assessee has not given any specific instance that any mistake has been committed by the assessing officer in working out the stock of oversold shares as well as the difference earned by the assessee.

8.3 I have considered the assessment order and the rival submissions. Looking into the basis of the addition, the information on the basis of which the addition has been made and the attending facts and circumstances, I find all the three additions justified. To this end, I find that the Annexures-S-1 & S-2 are very clear and self-explanatory. To this end, I find that so far as Annexure S-1 is concerned, it has been prepared the basis of information collected from RBI, BSE and other relevant parties. The Annexure clearly lists the shares, the openings stock, the closing stock and the purchases & sales. As pointed out by the Assessing Officer, I also find that as per proceedings dated 17.11.1995, 27.11.1995, 13.12.1995, 2.2.96, 29.02.1996, 04.03.996 and 12.03.1996, all the necessary details had been provided to the appellant and he was asked to explain the transactions. Further, as may be noted in my discussion on the inspection and supply of documents, during the present appeal proceedings also the appellant was allowed to inspect and take copies of majority of the relevant documents. In view of this, the appellant's objection that the details were not made available has no legs to stand upon. Further, I also find that out of the shares of 67 companies, oversold position has been worked in case of only 6 shares, which has been clearly identified in Annexure S-1. This Annexure is self-contained. The appellant has also not pointed out any specific discrepancy in these details. In view of the foregoing, I do not find anything wrong in the basis on which the additions have been made. The break-up of the share transactions has also been made available to the appellant. The appellant's argument that only the difference of purchase and sales in respect of oversold shares is to be taxed is out of sync with the provisions of section 69 of the ITA. As may be noted, the addition in this case is



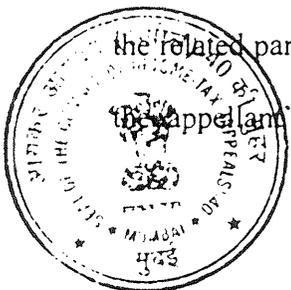
under section 69 and this being so, in terms of the provisions of the section 69, where the source of any investment does not stand explained, the entire investment is brought to tax. Similar is the case with all other deemed incomes mentioned in the Chapter VI in so far as it is stipulated in Sections 69A, 69B, 69C and 69D in cases of unexplained money, investments, expenditure and hundi. Further, the appellant has also argued that provisions of section 69 do not apply to the addition. This is again misplaced in that, all the conditions as stipulated in section 69 fully apply in this case. As may be noted, in this case, the conditions specified in section 69A for bringing to tax amount under unexplained money clearly stood satisfied. The conditions in section 69 are as under :

i) *The assessee should have made investments;*

ii) *The investments should not have been made in the books of account, maintained by him for any source of income.*

iii) *the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory....*

Tested on the above conditions, I find that the facts and evidences clearly revealed that the appellant is found to have invested money in shares. The transactions are also not recorded in the books of account and the appellant has also not been able to explain the source of the monies involved in these transactions. Accordingly, all the necessary conditions for application of section 69 in taxing the amount as unexplained money are cumulatively and collectively satisfied. The appellant has also argued that the difference between the cost and the sale price should be taxed, if at all. This argument is misplaced as in the appellant's case, the addition is made as unexplained investment and as discussed immediately above, in such a case, the entire investment is brought to tax. On the individual instances brought to my notice, I find that the appellant has not been able to substantiate his stand. In support, for transactions on account of RIL and ACC, I find that the appellant has only given reconciliation without any supporting details. The stated sellers are also related parties and accordingly, reconciling the transactions with the related parties suffers from lack of credibility, more so, because as already discussed, the appellant's accounts and the accounts of his related parties suffer from severe



infirmities. Similar is the case with transactions in the shares of M/s. Apollo Tyres Limited. The evidences submitted in support show that the confirmation has been given by a related party, whose books of account like the appellant is not credible. The appellant's explanation that part of the share transactions in this case is reflected in the books of account is also not credible because the appellant's books are not contemporaneous and suffer from several infirmities. Without any supporting credible evidence, the reconciliation remains flawed and unacceptable. Regarding the transactions with M/s. V.B.Desai, the evidence submitted in the form of letter dt. 9.5.92 addressed to M/s. V.B.Desai does not in any way prove the appellant's point. The letter only speaks of appellant's request without any indication on what happened in the future. Similarly, the letter also does not controvert the basis on which the Assessing Officer has made the addition. The appellant's reliance on the confirmation of M/s. J.H.Mehta for substantiating his stand on addition of Rs. 25,98,64,736/- is also not credible as the confirmation from a related entity is a self serving document and further, in the appellant's case is not backed up any other evidence. In light of the foregoing, I find that whereas the Assessing Officer has made the addition after obtaining material and information from various authentic sources, the appellant has not been able to substantiate his stand with equal credibility. In this respect, I would also like to refer to my appeal order for the A.Y.1992-93 on similar additions made in the assessment for that year. As may be noted that in my appeal order for the A.Y.1992-93, I have confirmed the additions for the reasons discussed by me in detail in this order. The basis and facts of the additions remaining the same, my discussion on the additions confirming them in my appeal order for the A.Y.1992-93 will hold good for the present assessment year under consideration also. My discussion made in the A.Y.1992-93 on these additions may be treated as a part of this appeal order also. In light of the foregoing, I find the additions justified. They are confirmed and the grounds of appeal are dismissed.

9. The appellant has submitted common submissions on the 7th, 8th & 9th grounds of appeal. Accordingly, these three grounds of appeal are being taken up together. The grounds are as under:



7th ground - The Assessing Officer has erred in determining the loss of Rs.3,29,49,085/- (wrongly considered at (-) Rs.32,94,908 in the computation) in respect of money trading activity.

8th ground - The Assessing Officer has erred in making the addition of Rs.20,76,95,398/- on account of difference in money market transactions.

9th ground - The Assessing Officer has erred in making the addition of Rs. 1021,33,43,699/- on account of oversold position of money market securities.

9.1 In light of the fact that the appellant had played an active role in the money market, in course of the assessment proceedings, the details of appellant's transactions in the money market was obtained from the following sources.

- (i) Information called for from various banks, financial institutions, companies and brokers who have dealt with the appellant.
- (ii) Receipts and payments of money in bank accounts of the appellant as provided by the R.B.I.
- (iii) Deal file and details of contract notes furnished by the appellant.

The details of receipts and payments as obtained from the sources at (i) & (ii) of above were matched by the Assessing Officer with the details filed by the appellant. This exercise revealed that only 18 transactions as furnished by the appellant match with the details collected by the Assessing Officer. On the basis of information gathered, the security-wise trading account was prepared. The details were illustrated in Annexure M-1 to the assessment order. The trading loss was determined at Rs.32,94,908/-.

9.1.1 So far as the addition of Rs.20,76,95,398/- on account of difference in money market transactions is concerned, in course of the assessment proceedings, in line with the assessment orders for the A.Yrs.1991-92 & 1992-93, the Assessing Officer observed that the appellant conducts two types of transactions in the money market as under:

- i) He acts as a principal and in this capacity, the transactions are included in the money market trading account of the appellant. These transactions have been shown by the appellant as 'RT' transactions in the deal file.



- ii) The appellant also is associated with the transactions in which he squares up the position on the same date. As part of these transactions, the appellant purchases securities from one party and sells the same quantity of security to the other person. The difference so earned / lost by the appellant is received by him from one of the parties.

In the above background, the Assessing Officer found that during the F.Y.1992-93 the differences received / paid by the appellant were as per working given in Annexure M-3. It showed that the difference came to Rs.20,76,95,398/-.

9.1.2 In respect of the oversold securities, in money market, the AO observed that the appellant had sold securities in excess of the stock found by the Department. Reference was made by the Assessing Officer to the assessment orders for the A.Yrs.1991-92 & 1992-93 on this issue in which the matter has been discussed in great detail. The Assessing Officer also had the occasion to refer to the statement of Shri Pankaj Shah, a close confidante of the appellant and the appellant himself. The relevant partition of Shri Pankaj Shah has been reproduced by the Assessing Officer on pages 30 to 32 of the assessment order. Relevant portions of the statement of the appellant recorded on 18.05.1992 and 26.05.1992 have also been reproduced by the Assessing Officer on pages 32 to 35 of the assessment order. Referring to these statements, it was pointed out by the Assessing Officer that the appellant has clearly stated that against every sale there was a corresponding delivery. Reference was also made by the Assessing Officer, the orders of the CIT(A) confirming similar addition for the A.Yrs.1990-91 and 1991-92. Referring to the assessment order for the A.Y.1992-93, on the sum of Rs.601,20,94,489/- treated as explained in respect of oversold position, the Assessing Officer observed that the contract notes and Deal File indicate that the appellant has not explained the source of acquisition of the securities made good to SBI. Taking all these into consideration, the Assessing Officer worked out the oversold position as per Annexure M-1 to the assessment order. The oversold position came to Rs.1021,33,43,699/-.

9.2 In appeal, inter-alia following submissions were made to argue why the additions

made are incorrect :



- i) *The funds were received by the appellant as advance against the sale of securities, which were not delivered.*
- ii) *The entire addition on account of the oversold position of stock is based on the assumption that the appellant has received the sale proceeds and delivered the securities, which ought to have been purchased through unexplained sources. As against this, various banks, financial institutions and government agencies have alleged that the appellant had not delivered the securities.*
- iii) *The Hon'ble Special Court has subsequently passed the decrees in favour of the banks and institutions directing the return of funds. The reduction from the total addition on this account would be Rs. 997,70,83,485/-.*
- iv) *The auditors appointed by Hon'ble Special Court has quantified the said amounts at Rs. 2,645.05 crores. This also establishes beyond any doubt that the funds received by the appellant did not represent delivery of securities. Further, the fact that no delivery was taken by the appellant is confirmed not only by the report of the auditors appointed by the Hon'ble Special Court, M/s. Vyas and Vyas, Chartered Accountants, but also by Jankiraman Committee, JPC, CBI, Custodian and other investigative agencies.*
- v) *Cash transactions are not possible in dealing with the banking institutions.*
- vi) *The Assessing Officer has not given any positive finding as to execution of delivery.*
- vii) *The fact that no such evidence supporting the assumption of the Assessing Officer has been found, in spite of such extensive inquiries, establishes that the assumption is baseless.*
- viii) *It is not known as to whether while inquiring about appellant's transactions in money market with the counter parties, the Assessing Officer had sought to know about the status of delivery of securities.*



- ix) *The Assessing Officer has not provided the copies of the programmes used by him for compiling various information and Annexures for determination of the appellant's income.*
- x) *The Assessing has worked out the closing stock of money market securities with the appellant at Rs. 1315,47,59,900/- and at the same time has worked out oversold position of Rs. 1021.33 crores. The Assessing Officer ought to have given credit of closing stock for arriving at the oversold position like given in the assessment for the A.Y. 1990-91.*
- xi) *Further, the fact that the appellant can purchase and / or sell money market securities without delivery has been judicially recognized in the case of Growmore Exports Ltd. V. ACIT by the Hon'ble Mumbai Bench of the Tribunal reported at 78 ITD 95.*
- xii) *The Hon'ble Supreme Court has observed, in the case of Harshad Shantilal Mehta v. Custodian (231 ITR 871) at page 889-B that a notified party may not explain the transactions before the Income-tax authorities in case his position is prejudicially affected in defending criminal charges.*
- xiii) *The Assessing Officer ought to have appreciated that considering the nature of business and margin in the business carried on by the appellant, the appellant cannot be said to have earned such a huge amount and that such a large magnitude of amount cannot be said to have earned by the appellant in cash.*
- xiv) *The Assessing Officer has relied upon the deal file prepared by the appellant and forming part of the books of accounts found during the course of search proceedings in order to determine the stock and profit from money market transactions although the said books of account are disregarded and rejected by him.*
- xv) *Assessing Officer has not granted inspection of relevant material and has not confronted the material with the case or material.*
- xvi) *Provisions of section 69 are not applicable because the conditions in the section are not satisfied.*



xvii) *If the delivery has been given by the appellant and the transaction is complete, only the difference between the payable and receivable will be taken and not the gross amount.*

xviii) *No such stock has been found with the appellant.*

The Assessing Officer responded to the appellant's submissions vide his letter dated 27.07.2009 in which reliance was also placed on the Assessing Officer's submissions made vide letter dated 10.06.2009 and 02.07.2009 on the issue for the A.Y.1992-93. Referring to these submissions, it was submitted that the submissions may be taken as submissions for the present assessment year under consideration also. Besides, in addition, reference was made to the appellant's statement during the assessment proceedings that the delivery of the securities were made in respect of oversold position. Further, referring to the appellant's reliance on reports of different Committees constituted by the Parliament, Special Court and Reserve Bank of India in support of his stand that there was no delivery in the security transactions executed by the appellant, it was pointed out that this is only a general observation and does not establish any co-relation between these reports and Annexure M-1. In this context, attention was invited to the fact that the findings of these Committees and Special Auditors only prove that the appellant had made delivery in respect of the oversold securities. To this end, it was particularly emphasized that whereas the total transactions in the whole scam was worked out at Rs.12,85,549 crores in the reports of the Committees and Auditors, the gross problem exposure where securities were not delivered has been worked out at 4024.45 crores by the same Committees. Further, attention was also invited to the fact that out of this gross problem exposure, the appellant's share was less in the reports of the Committees and the Auditors. The details of the workings have been given by the Assessing Office from pages-8 to 13 of his submissions dated 27.07.2009. Clued into this, it was pointed out that there were limited and specific transactions where delivery was not made and that in all other transactions delivery of security was given by the appellant. Attention was also invited to the fact that the amount worked out in respect of the problem exposure on the appellant also matches the amounts of the decrease awarded



to the banks. Reference was made to para-4 of the submissions dated 2.7.2009 furnished in the year 1992-93. It was also mentioned that even the Special Auditors have worked

out the unexplained investments in respect of the above head at Rs.1026.82 crores as against Rs.1021.33 crores worked out by the Assessing Officer. Clued into this, point was made that the unexplained investments worked out by the Assessing Officer is supported by an independent agency also.

9.2.1 During the appeal proceedings, the appellant gave further submissions from time to time. The points made in these submissions have been dealt with by me in course of my discussion in the succeeding paras on the issue.

9.3 I have considered the assessment order and the submissions made by the appellant as well as the Assessing Officer in course of the appeal. Looking into the different relevant aspects of the matter, I find the following to be the key to the answer to the question at hand :

- i) The nature, source and authenticity of the information on the basis of which Annexure M-1 have been prepared.
- ii) Whether or not there was delivery of securities.
- iii) The nexus between the securities covered by the decrees and the securities featuring in Annexure M-1

I will now discuss these issues as under :

i) The nature, source and authenticity of the information on the basis of which Annexure M-1 have been prepared.

The addition on account of the money market oversold position is based on the information and its analysis tabulated in Annexure M-1. The information in M-1, in turn, is based on the Deal File. The Deal File has been sourced from information collected from various banks, financial institutions, companies and brokers who have dealt with the appellant. As I note, the Assessing Officer handling the appellant's case had the occasion to collect, collate and analyze the information collected from the above sources through computer programming and data management process. This entire process has been delineated by the then ACIT (OSD) in his letter dt. 22.5.1995 to ACIT(Central)23, Bombay. The copy of this letter was furnished to me and the appellant by the Assessing Officer during the appeal proceedings. As elaborately mentioned in this letter, the working data and the program was kept in tape cartridges operated in 'DOS' system with



FOXBASE Utility. The data of money market and share market for the assessment years i.e. 1992-93 and 1993-94 was kept in the following sub-directories .

- 1) MATCH
- 2) SHARE
- 3) MONY
- 4) ACCOUNT

The details of information collected from external agencies and the data copied from the computer of the appellant were stored in the sub directories MATCH and ACCOUNT. In similar vein, the processed data and the software used to process the data were operated in the sub directories SHARE and MONY. The method of processing and different files created through this mechanism have been discussed in detail by the ACIT (OSD) in his letter dated 22.5.1995. In essence, it may be noted that the data collected and stored by the above method was bunched on the basis of independent categories of transactions and then run through the software to derive the results. In the present case, the results by this processing stand reflected in Annexure M-1. During the appeal proceedings, the Assessing Officer also had the occasion to give demonstration of the process to the appellant's Authorized Representatives. A note dated 31.7.2009 was submitted by him in this respect. From this note, I gather that two compact disks dt. 8.9.98 were created in which all the data contained in the two tape cartridges were transferred. As I understand, these disks were then processed in the MS-EXCEL software to take print outs of the data of the Deal file. The print outs were submitted to the appellant as well as to me. From the foregoing, I find that the information has been collected from the relevant and authentic sources. I also find that they have been processed in the most scientific, accurate and credible manner to arrive at the desired results. In this light, I find the information on the basis of which the workings have been made in Annexure M-1 for oversold securities and other annexures on the remaining additions have been prepared to be correct, relevant, authentic and reliable.

ii) Whether or not there was delivery of securities.

This issue has been discussed by me in detail in my appeal order for the assessment year 1992-93. Facts remaining the same, I am not reproducing my



discussion here. For the reasons discussed by me in my order for the assessment year 1992-93, for this assessment year also, I find that securities for this year also were backed up by delivery.

iii) The nexus between the securities covered by the decrees and the securities featuring in the oversold position

In his submission, the appellant has also taken a stand that the Assessing Officer had ignored the claims made by various parties before the Hon'ble Special Court. This was the state when the assessment was made. Subsequently, the Hon'ble Special Court has passed decrees in several suits in favour of banks and financial institutions. The issue on correlation between the securities mentioned in these decrees and the securities featuring in the oversold position has also attracted the attention of the Hon'ble Supreme Court. Vide their order dt. 3.12.2008, the Hon'ble Court had the occasion to remand back the matter to the Hon'ble Special Court to give findings on two issues. These issues include finding on the nexus between the decretal amount and the income included in the assessment of the notified person for the statutory period and on whether the decrees are with regard to oversold securities and if so, whether there is any duplication of amount while scaling down the tax liability. This direction of the Hon'ble Supreme Court is significant in that it clearly establishes that sui generis there is no direct nexus between the securities in the decrees and in the oversold position and that a conclusion on this can be drawn only drawn only after examination and analysis of the relevant facts. In this backdrop, from the perusal of the decrees, study of the oversold position and the rival submissions on the issue, I find that securities mentioned in the decrees are different from the securities featuring in the oversold position. To this end, from perusal of the analysis of the different suits and decrees made by the Assessing Officer, I note that there is no nexus between the securities mentioned in the decrees and the securities featuring in the oversold position. In essence, I find that in respect of the securities mentioned in the decrees, the appellant had either received the payment on the transactions made not followed by the deliveries or unauthorizedly siphoned off the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring the oversold position, the entire chain of a complete transaction i.e. sale, receipt of



payment and delivery had occurred. There is thus, a clear distinction between these two categories of securities. The following illustration will further amplify this :

Suit	Why is there no nexus ?
MP No. 61 of 1992	The bank itself had admitted that no delivery of units was made by the appellant.
MP No. 52 of 1993	Same as above
Suit No. 41 of 1995	Same as above
MP No. 14 of 1995	The decree has been awarded to the petitioner for compensating the damages in the form of interest and thus, no transaction of securities is involved.
MP No. 63 of 1992	The transaction was between SBI and NHB and not between SBI and the appellant. The Hon'ble Special Court has awarded the decree in SBI's favour only because the appellant had fraudulently withdrawn money and had utilized for his personal purpose. There was no effective transaction between the appellant and SBI.
MP No. 28 of 1995	The transaction was between SCB and NHB and not between SCB and the appellant. The Hon'ble Special Court has awarded the decree in SCB's favour only because the appellant had fraudulently withdrawn money and had utilized for his personal purpose. There was no effective transaction between the appellant and SCB.



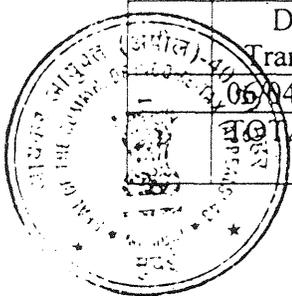
cluded into the foregoing analysis and the comparison, I find that there is no nexus between the securities mentioned in the decrees and the securities featuring

in the oversold position. This would be further clear from the study of the specific securities in these two categories. Summary of securities tabulated in the oversold position is as under :-

Sr. No.	Name of the Security	Amount (Rs. In crore)
1	ATBF - Non SLR	51.23
2	Call - Call	100.06
3.	11.50% C/L 2007 - Central Loan	173.32
4.	11.50% C/L 2010 - Central Loan	573.07
5.	11.50% C/L 2011 - Central Loan	103.80
6.	9% HUDCO (23/02) - UDCO Bonds	0.945
7.	9% IRFC Bonds	(-).3.92
8.	13% MTNL(18/08) - MTNL Bonds	22.08
9.	9% NHPC (27/03) - NHPC Bonds	1.87
10.	13% NLC (04/04) - NPC Bonds	8.53
11.	13% NPC (04/04) - NPC Bonds	25.97
12.	13% NTPC (12/01) - NTPC Bonds	25.79
13.	9% REC (27/03) - REC Bonds	0.49
14.	Treasury bills	181.34
15.	Units 1964 Scheme	417.19
	Total	1681.76

During the appellate proceedings, the appellant had submitted a chart to establish a correlation between the transactions mentioned in the decrees and the transactions taken by the Assessing Officer from the Deal File. The Assessing Officer has given a suit-wise analysis on this chart to bring out the fact that securities mentioned in the decrees are different from the securities referred to by the Assessing Officer. I am reproducing the appellant's chart along with the gist of the Assessing Officer's remarks :

1	Suit No.41 of 95	State Bank of India vs. Harshad S.Mehta				A.O.'s remarks
	Date of Transaction	Type of Security	Amounts	Ref. Page in Deal File	Year	As per the deed filed, the transaction was between Canbank Financial services and SBI, whereas in
	06/04/1992	1 Cr Units	151500000	Page No. 9	1993-94	
	TOTAL		151500000			



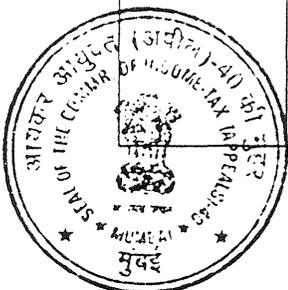
						the chart the transaction has been shown between SBI and the appellat.
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B.

2	Suit No.28 of 92	Standard Chartered Bank Vs. Harshad S.Mehta				
	Date of Transaction	Type of Security	Amounts	Ref. Page in Deal File	Year	A.O.'s remarks
	13/04/1992	9% Coal India 11.5 Crs.	101710410	Page No. 1	1993-94	The transaction does not find place in the decree
	13/04/1992	9% Coal India 15 Crs.	132665753	Page No. 1	1993-94	-do-
	13/04/1992	9% IRFC Bonds 25 Crs.	225739726	Page No. 10	1993-94	-do-
		9% IRFC Bonds 20 Crs.	180591780	Page No. 645	1993-94	-do-
		9% IRFC Bonds 5 Crs.	45147945	Page No. 645	1993-94	-do-
		9% IRFC Bonds 11 Crs.	99325479	Page No. 9	1993-94	-do-
		9% IRFC Bonds 10 Crs.	95295890	Page No. 9	1993-94	-do-
		9% IRFC Bonds 15 Crs.	142943835	Page No. 9	1993-94	-do-
	13/04/1992	17% NTPC Bonds 50 Crs.	858731101	Page No. 9	1993-94	No such transaction either in the Deal File or in the decree
	20/04/1992	17% NTPC Bonds 100 Crs.	1000952054	Page No. 13	1993-94	Transaction between NHB and Standard Chartered Bank
	13/04/1992	6.5 Crs. Units	997755000	Page No. 13	1993-94	-do-
	13/04/1992	3.5 Crs. Units	535500000	Page No. 13	1993-94	-do-
			4416358973			

From the rival submissions, as illustrated in the above table, I find that the Assessing Officer has brought out specific facts to distinguish the securities mentioned in the decrees and those featuring in the oversold position. The appellat has given his submissions on the Assessing Officer's observations. These are examined as under :-

Securities	Appellat's Submissions	Findings
1 crore units	The transaction pertains to SBI Caps and was entered into with the appellat's brokerage firm on principal to principal basis. Letter dated 18.10.1991 from SBI Caps would endorse this.	The list of the transactions enclosed with the letter dated 18.10.91 from SBI Caps gives details of transactions for the period 1.4.91 to 31.3.1992 and thus



		the present transaction being dated 6.4.92 is not in the list. Accordingly, the appellant is not able to substantiate his stand.
Securities in Suit No. 28 of 1992	All the transactions were entered into with brokerage firm of the appellant with NHB and ANZ has acted only as a routing bank. Evidence adduced in support of the decree of Rs. 707.54 crores prove this.	As already discussed, the appellant has not been able to substantiate his stand with regard to the decree of Rs. 707.54 crores. This has been discussed in detail in my appeal order for the assessment year 1992-93.

As illustrated in the above observations and findings, it is clear, the securities in the decrees are totally different from the securities forming part of the oversold position. The Assessing Officer has brought out in detail how this is so and the appellant has not been able to bring on record anything to controvert the facts presented by the Assessing Officer. On the other hand, the Assessing Officer has specifically established that the securities stated by the appellant as common to the decrees and in the oversold position are different and do not have any nexus with each other. In light of this, I accept the version of the Assessing Officer and hold that there is no nexus between the securities mentioned in the decrees and the securities forming part of the oversold position. In this respect, as pointed out by the Assessing Officer in his submissions dated 18.8.2009, I also find that the appellant has challenged the decree in Suit No.28 by filing Miscellaneous Petition against them. This conduct of the appellant again contradicts his own position. As I see, after having challenged the decree, the appellant cannot simultaneously claim that there is a correlation between the transactions referred to in the decrees and the transactions forming part of the oversold position.

The appellant has also argued that no stock has been found and no interest has been earned on the positive stock. This argument is misplaced in that as is well known



the scam was the result of serious irregularities and as such, the evidence of interest will be not material and possible because the transactions were executed in gross violation of rules and regulations. The appellant's repeated insistence on the non-existence of the assets is totally out of place because as is clear from the assessment order, the information about the securities was collected from various statutory and government agencies which are the authorities responsible for regulating the transactions in such securities. The appellant has also stated that no iota of evidence has been adduced to show that the attached stock has been existing. This again is misplaced as the assessment has been made on the basis of speaking documents collected from statutory and government agencies. The appellant has not been able to prove how the information collected and used were incorrect. The appellant has also relied on the decision of the Hon'ble ITAT in its order dated 11.07.2008 where interest income covered under block assessment has been deleted. The decision dated 11.7.2008 of the Hon'ble ITAT in the appellant's own case is in a totally different context. This was a block assessment for the block period ending 22.2.96 in which the Hon'ble ITAT had the occasion to hold that in a block assessment, estimation of income would not be proper in view of the fact that there was no material detected as a result of search which warranted making an estimation. As may be noted, the context of this order is totally different from the present assessment order under consideration, which is not governed by the established principles of a block assessment. With regard to the other objections of the appellant, I find that they are almost the same as for the A.Y.1992-93. I have dealt with these objections in detail in my discussion on the issue for the A.Y.1992-93. To avoid repetition, I am not discussing them again in this order. My discussion on these objections relatable to the facts for the A.Y.1993-94 may, therefore, be treated as part of this order also.

9.3.1 In view of the foregoing discussion, I find the addition of Rs.1021,33,43,699 justified. It is confirmed. The addition on account of difference received money market transactions of Rs.20,76,95,398/- are based on similar facts and circumstances. The appellant and the Assessing Officer have also given common submissions on these additions along with the submissions on addition of Rs. Rs.1021.33,43.699/-.. In view of this, they are confirmed in line with the foregoing discussion. Regarding the loss of Rs.



32,94,908/-, the appellant has stated that it would be Rs.3,29,49,085/-. The Assessing Officer is directed to verify this.

10. In the 10th ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs.143,66,88,450/- on account of interest on securities in money market.

10.1 In course of the assessment proceedings, the Assessing Officer observed that on money market instruments, the holder gets the interest on specified dates every year. The total amount of interest receivable by the appellant in respect of the securities held by him on interest payments was worked out as per Annexure-M2. The total interest receivable came to Rs.143,66,88,450/-. This was brought to tax.

10.2 In appeal, it was argued that the interest has been added on presumed stock without any evidence as to whether the appellant is having such security or has received such interest. It was mentioned that the receipt of interest in the bank account of the appellant was shown at Rs.1,74,736/-. Point was also made that the onus to prove that no interest is earned cannot be thrust upon the appellant. It was also argued that as per the principles of real income theory, no income can be taxed when the same is not received. Reliance was placed on the decisions Zest Holdings Pvt. Ltd. for A.Y.1995-96, Orion Travels Pvt. Ltd. for A.Y.1995-96 & 1993-99 and M/s Growmore Exports Ltd. and Ors. v. DCIT (6104-05/Mum/2007) dated 12.12.2007.

10.3 In his comments against the appellant's submissions, it was pointed by the Assessing Officer that interest has been worked out specifically on each and every security. It was also pointed out that the calculation of interest is very simple. Argument was put forth that the appellant is following the mercantile system of accounting which he has himself admitted vide his noting dated 25.03.1996. It was also argued that appellant's objection that interest has been estimated is baseless as the Assessing Officer has calculated the interest on stocks of specific securities for the specific period which is clear on the face of the Annexure.

10.4 I have considered the assessment order and the submissions of the appellant and the Assessing Officer submitted during the appellate proceedings. As I find, similar addition has also made in the assessment year 1992-93 and the appellant contested the addition in ground no. 7 of the appeal for the assessment year 1992-93. As I see, the



grounds of addition, the appellant's submission and the facts for the present assessment year are similar. Accordingly, to avoid repetition, I am not reproducing my decision on this issue, in this appeal order. For the reasons discussed in detail in my assessment order for the assessment year 1992-93, I dismiss this ground of appeal for the present assessment year also. My discussion on similar addition in the assessment year 1992-93 may be taken as a part of this order also.

11. In the 11th ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs.2,81,00,000/- on account of profit from transactions with M/s Mazda.

11.1 In course of the assessment proceedings, the Assessing Officer found that the appellant did not furnish any details regarding his money market transactions with M/s Mazda Ind. in which the appellant group has a substantial share holding. In this backdrop, the Assessing Officer observed that the M/s Mazda Ind. had shown a loss of Rs.2,81,00,000/- on account of transactions in 9% IRFC Bonds with the appellant. Accordingly, the Assessing Officer found that the appellant had made a profit of Rs.2.81 crores in this transaction. The appellant did not furnish the details of the transaction even though full particulars had been given to him. This led the Assessing Officer to hold that the appellant did not wish to disclose all his transactions specially the ones which did not suit him. In line with these findings, the Assessing Officer added Rs.2.81 crores to the appellant's income.

11.2 In appeal, it was submitted that the Assessing Officer had presumed profit on the appellant's part in view of corresponding loss in the hands of M/s Mazda Ind. Request was made to provide the appellant the necessary details and opportunity to cross-examine the persons after the evidences are provided. Argument was made that losses incurred by clients of the appellant do not necessary result into the profit in the appellant's hands unless it is established that the appellant's brokerage firm had acted as a principal. On the Assessing Officer's observation that the transaction was not disclosed by the appellant, it was mentioned that during the present proceedings, the books of account have been produced and the transaction is reflected therein. It was also stated that the transaction was at arm's length. Reliance was also placed on the decision of the Hon'ble CITAT in the case M/s. Triumph International.



11.3 In appeal, the Assessing Officer reiterated the stand taken during the assessment proceedings when called upon to give his comments on the appellant's submissions filed during the appeal. It was particularly emphasized that no details were filed.

11.4 I have considered the assessment order and the rival submissions. As I find, the Assessing Officer has rightly held that the appellant had made a profit from the transaction in question. As I note, the appellant's profit is an obvious off shoot of the loss incurred by M/s Mazda Ind. It is clear, if the transaction is loss in the hands of M/s Mazda Ind., correspondingly the other party of the transaction, i.e. the appellant will have the benefit of the corresponding profit. This is obvious as it is the same set of transactions and both the parties are acting on their own behalf on principal to principal basis. In view of this, the decision of the Hon'ble ITAT in the case Triumph International will also not be applicable. In this case, the Hon'ble ITAT has held that the brokerage firm could not be taxed for the transactions of their clients and since in the appellant's case, the transaction is on principal to principal basis, the decision is not applicable. The appellant also did not avail of the opportunity given to him during the assessment proceedings and subsequently to prove his point that he did not make profit from the transaction. This, despite the fact that the particulars of the security transactions were made known to him. The reluctance on the part of the appellant to come out with specific explanation and particulars only proves the point that the appellant was not in a position to prove that the transaction did not yield profit to him. When the security transactions were known to the appellant, particularly the transaction being with a group concern, the appellant's request for further details is only an attempt at evading the issue. The fact that the transaction is stated to be reflected in the books of account has no force as the appellant's books of account are not contemporaneous and as already discussed, they are not credible. In line with the foregoing, the addition is confirmed and the ground of appeal is dismissed.

12. In the 12th ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs.6,16,39,480/- on account of unexplained credits in the bank account.

12.1 In course of the assessment proceedings, the appellant had obtained details of credits into the various bank accounts of the appellant from the RBI. A print out mentioning the name of the bank, the account number, date and amount of credit was



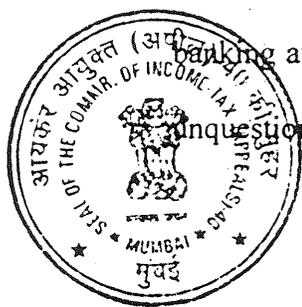
provided to the appellant. The appellant also took inspection of the data collected by the Assessing Officer. The details of the credits were explained by an employee of the appellant. The appellant was asked to explain the source of these credits. He could not explain the source of the credits to the extent of Rs.6.16,39,480/-. The Assessing Officer was of the view that since the onus was with the appellant to prove the source of the credits, he was not able to do so. Accordingly, the amount was treated as unexplained money of the appellant.

12.2 In appeal, it was submitted that the Assessing Officer did not grant the details of the transactions which were treated as unexplained by him due to lack of explanation on part of the employees of the appellant. In this context, it was submitted that explanation of the entries in question could not be given at the relevant point of time due to certain difficulties faced by the appellant and explained from time to time to various authorities. During appeal proceedings, letters dated 26.3.1996 addressed to Bank of America and the Assessing Officer were submitted. Point was made that the Assessing Officer has not discharged his onus u/s 69A in making available the details sought in these letters. In view of this, it was prayed that the Assessing Officer may be directed to provide the details of the transactions considered as unexplained.

12.3 In response to the appellant's submissions, in appeal, it was pointed out by the Assessing Officer that the appellant's objection that details were not given is patently wrong. To this end, attention was drawn to notings dated 17.11.1995, 27.11.1995 and 2.2.1996 in the assessment records to point out that details of bank credits had been provided to the appellant during the assessment proceedings and appellant was also asked to explain the source of the credits. Argument was put forth that the addition was made by the Assessing Officer only because the appellant was not able to explain the source.

12.4 I have considered the assessment order and the rival submissions. Looking into the fact that the addition has been made on the basis of credits in the appellant's bank accounts and appellant's inability to explain the source of these credits despite opportunities given, I find the addition to be justified. As I note, the information on the credits in the bank transactions had been obtained by the Assessing Officer from the apex

banking authority in the country i.e. the RBI. The authenticity of the evidence, thus, is unquestionable. Further, the appellant was also made aware of the names of the bank,



the account numbers, the dates and amounts of the credit by supply of print-out. In these circumstances, the appellant's contention that details had not been given is totally incorrect. The appellant has not specifically brought out anything on record to show that these details were not given by him. The notings dated 17.11.1995, 27.11.1995 and 02.02.1996 very clearly indicate that the necessary details had been made available to the appellant. The relevant notings from the assessment records are reproduced as under:

- "17.11.95 - i) Enclosure of bank credits given once again.
 ii) Inspection granted for 22.11.95
 iii) Sources to be explained with supporting evidence."

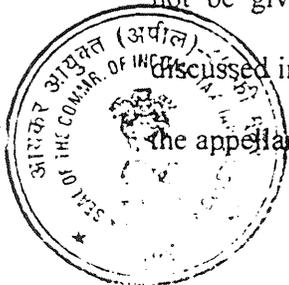
(Page-7 of the order)

"27.11.95 - ix) Copies of bank statements given." (Page-8 of the order)

- "02.02.96 - i) Details of credits into bank accounts given once again.
 ii) Proposal to treat them as income" (Page-10 of the order)"

The above would clearly indicate that the appellant was fully aware of the documents and the basis on which the addition was being proposed and despite this he chose to not explain the credits. In view of this, the credits have been rightly held as unexplained money of the appellant and added to the income. In light of the foregoing, I find the appellant's contention that the Assessing Officer has not discharged his onus u/s 69A as totally misplaced. As may be noted from the foregoing discussion, the Assessing Officer has brought relevant materials on record and on these bases only, he came to his finding. Not only this, the appellant was also confronted with the materials and was called upon to give his explanation. This was not done. Clued into this, it is clear, the necessary conditions for making the addition as stipulated in section 69A of the ITA stand fully satisfied. As I see, the bank accounts clearly revealed that the appellant was the owner of money which was not recorded in the books of account. Further, the appellant was not able to offer explanation about the source and acquisition of the money. In these circumstances, the credits into the account of M/s. Harshad S. Mehta were unambiguously hit by the section 69A. The appellant's stand that the explanation could not be given at the time of the assessment proceedings is weak in that, as already

discussed in course of my discussion on the books of account, the so called difficulties of the appellant did not exist when the assessment was being framed. This has been brought



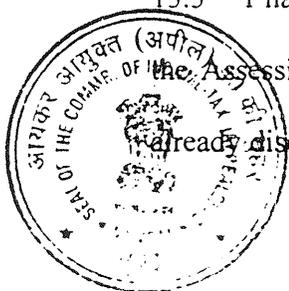
out in great detail by the Assessing Officer from pages 2 to 5 of the assessment order in course of his discussion on the appellant's failure to file the return of income. Notwithstanding this, as already discussed, the appellant has been given inspection and copies of a plethora of documents on his request and accordingly, it was open to the appellant to have access to the details required. In this respect, the appellant has not brought out anything specific before me to indicate that the requisite details on this addition requisitioned by him for inspection and copies of documents during the present appellate proceedings were not made available to him. In light of the foregoing, I find the addition to be justified. It is confirmed and the ground of appeal is dismissed.

13. In the 13th and 14th grounds of appeal, it has been contended that the Assessing Officer has erred in denying the interest and other business expenditure of the appellant and not capitalizing the interest so disallowed.

13.1 In appeal, it was submitted that the Assessing Officer has not considered the deduction on account of interest expense and other business expenditure on the ground that the appellant had not furnished the copy of the account of the borrowings. In this respect, it was submitted that the said copies had been made available to the appellant in the remand proceedings. Clued into this, it was submitted that the Assessing Officer has not disputed the claim in the books of account submitted before him. Point has also been made that even while rejecting the books, the Assessing Officer has not disputed the claim of interest and other business expenditure. Alternatively, it was argued that the interest expenses may be allowed to be capitalized to the investments and assets acquired out of the borrowed funds.

13.2 The Assessing Officer responded to the appellant's submissions vide his letter dated 4.8.2009. In this letter, it was particularly emphasized that the books of account have been rejected by the Assessing Officer being unreliable. Clued into this, it was submitted that there is no question of allowing any expenditure on the books of account rejected. Reference was also made to the fact that the appellant has not brought out any specific defect in the assessment order on this issue.

13.3 I have considered the assessment order and the submissions of the appellant and the Assessing Officer. As I find, the appellant's claim is in a void. To this end, as already discussed in detail, the appellant was not maintaining complete and proper books



of account. The appellant has also not given the details of the expenditure during the assessment proceedings. In this respect, the decision of the Hon'ble Supreme Court in the case Goetze (India) Ltd vs CIT (2006) 284 ITR 323 bears special mention. In this decision, the Hon'ble Supreme Court has held that a relief if omitted to be sought has to be claimed only by filing a revised return and that this requirement cannot be circumvented by claiming the relief in any other form. In this context, I find that during the appellate proceedings before me also, the details of the expenditure, the sections under which they can be allowed, the nexus between the stated expenditure and the head of income under which the expenditure can be allowed and like relevant details have not been produced. This apart, most significantly, the books of account on the basis of which the expenditure is being claimed have been found to be unreliable by me in terms of my discussion on the issue. I also find that my predecessor in his order dated 28.2.2003 had the occasion to find similar non-submission of necessary details, on account of which, he had the occasion to dismiss this ground of appeal for the A.Y.1992-93. Considering all these facts and circumstances, I do not find any merit in the appellant's claim on allowance of expenditure. The appellant's claim for capitalization is also misplaced. As I note, the additions have been made by the Assessing Officer based on the working done as on 31.03.1992 and this being so there is no duplication or overlapping of intra-head or inter-head transactions. In line with the foregoing, the ground of appeal is accordingly dismissed.

14. In the fifteenth ground of appeal, it has been contended that set off of peak working should be given.

14.1 It was submitted that without prejudice, the Assessing Officer should be directed to grant set off of peak working. Reliance was placed on the decision of the Hon'ble Bombay High Court in the case CIT Vs. Jawarmlal Gemaji Gandhi 151 ITR 353.

14.2 I have already considered this issue in course of my discussion on the appellant's prayer for telescoping on account of various additions made by the Assessing officer in my appeal order for the assessment year 1992-93. The issue being the same, for the

reasons discussed by me on the issue for the assessment year 1992-93, I dismiss this ground of appeal.



15. In the sixteenth ground of appeal, it has been contended that the Assessing Officer has erred in levying interest u/s 234A, 234B and 234C of the ITA.

15.1 In appeal, it was submitted that the interest charged under these sections is illegal. It was argued that interest under the section 234B is chargeable where the advance tax is not paid till 31.3.93. Point was made that interest under this section is leviable only when the assessee is liable to pay advance tax and has not paid. Clued into this, it was submitted that advance tax payment could not be paid because the appellant was notified and the accounts were attached under the orders of the Hon'ble Special Court. It was also pointed out that the appellant was prevented by law to operate his bank account and could operate it only under the directions of the Hon'ble Special Court. It was also mentioned that apart from this, interest u/s 234A also cannot be levied as the appellant was suffering numerous insurmountable difficulties. Point was also made that incomes which are liable to TDS cannot be subjected to levy of interest in terms of the case Motorola Inc. Vs. DCIT 95 ITD 269 (SB)(Delhi).

15.2 The Assessing Officer had the occasion to refer to para 1.1 to 3.0 on pages 41 to 43 of the assessment order to point out that the appellant's objections already stand replied by the Assessing Officer. In this respect, it was pointed out that in the later proceedings also, it has been held by different courts as well as Tribunals that charging of interest under these sections is mandatory. It was also mentioned that Special Bench, ITAT in the case of Motorola has opined that charging of interest on the additional income computed by the Assessing Officer is mandatory.

15.3 I have considered the submissions of the appellant and the assessment order. As I find, charging of interest u/s 234A, 234B and 234C of the ITA is mandatory for the Assessing Officer. This will be clear from the term 'shall' used in the sections while bestowing the power of levying interest to the Assessing Officer. The sections do not provide any exception to this power given to the Assessing Officer. Further, interest once levied cannot be waived by any authority apart from the Chief Commissioner of Income Tax. It is the established position of law that interest is mandatory and whatever

may be the reason for default in payment of advance tax, interest under these sections has to be levied. This was the decision given by the Hon'ble Kerala High Court in the case, Kuttukaran Machine Tools Vs. CIT 264 ITR 320. This was also the decision of



the Hon'ble Supreme Court in the case Anjum M.H. Ghaswala and Ors. 252 ITR 1. In the decision in the case Motorola Inc. Vs. DCIT also the Hon'ble Special Bench, Delhi has held similar view. The position is that if the interest is leviable in terms of these sections, it has to be levied. The Assessing Officer has not been given power in these sections to go into the difficulties in payment of advance tax. Accordingly, the levy of interest u/s 234A, 234B and 234C of the ITA is confirmed and the ground of appeal is dismissed.

16. **In the seventeenth ground of appeal, it has been contended that the Assessing Officer has erred in denying the benefit of tax deducted at source and advance taxes.**

16.1 In appeal, the Assessing Officer has noted that credit of TDS will be given subject to filing the details as well as the TDS certificates. In this light, I direct the appellant to give these details and the TDS certificates. The Assessing Officer is directed to verify the details and the certificates submitted and give / disallow credit depending on the results of his verification.

17. **Enhancement**

In course of the appeal proceedings, I found that enhancement is called for on the following issues :

- i) Enhancement by way of addition of Rs. 83,51,53,713/- as other income in view of the statement of affairs of your late husband and M/s. Harshad S. Mehta prepared by Vyas & Vyas, Chartered Accountants.
- ii) Enhancement by way of addition of Rs. 7,40,00,000/- on account of interest in view of para 11 on page 52 of the Audit Report by Vyas & Vyas, Chartered Accountants.
- iii) Enhancement outlined and proposed in notice dated 14.1.2010 issued u/s 251(2) of the ITA.

i) Enhancement by way of addition of Rs. 83,51,53,713/- as other income in view of the statement of affairs of your late husband and M/s. Harshad S. Mehta prepared by M/s. Vyas & Vyas, Chartered Accountants.

Wide letter dated 11.8.2009, attention was invited by the Assessing Officer that in the report on Review of Unaudited Accounts of the Statement of Affairs of M/s. Harshad



S. Mehta prepared by M/s. Vyas & Vyas, the statement of affairs of Mr. and M/s. Harshad S. Mehta was prepared on 8.6.92. Referring to this, it was pointed out that in this statement of affairs, on the liability side, an amount of Rs. 83,51,53,713/- has been shown as other income not shown in books. Copy of this was attached. In this context, attention was drawn to the fact that this amount had not been added in the income for the assessment year 1993-94 and clued onto this, prayer was made to enhance the appellant's income by this amount. After examining the Assessing Officer's report and the report of M/s. Vyas & Vyas, I found that there was a case for examining whether or not enhancement is called for. Accordingly, in terms of section 251(2) of ITA, vide my letter dated 12.8.2009, the appellant was asked to give submissions on the proposed enhancement. In response, it was submitted that the proposed addition being based on the report of M/s. Vyas & Vyas, the appellant may be granted an opportunity to cross examine the author of this report and all connected and responsible persons who have given the same finding. Point was made that contents of this report are not reliable. Reference was made to the observations of M/s. Vyas & Vyas themselves in this regard. Attention was drawn to the fact that the income of Rs. 83,51,53,713/- as determined by M/s. Vyas & Vyas is for the period between 1.4.90 to 8.6.92 and, therefore, it was argued that only that portion is liable to be added in assessment year 1993-94, which pertains to that year. It was also argued that the issue of enhancement is raised at the fag end of the proceedings. Point was also made that so far as the appellant is concerned, all the incomes earned are duly reflected in the books of account. Attention was invited to the fact that the Revenue itself has opposed the admissibility of the report of M/s. Vyas & Vyas before the Hon'ble ITAT when it was pointed out that in the report the appellant's income has been determined at Rs. 123.53 crores for the three assessment years i.e. 1991-92, 1992-93 and 1993-94. Attention was further invited to the fact that M/s. Vyas & Vyas have calculated the income on the basis of the finding of the JPC report. The related details were called for. Argument was put forth that the addition is contrary to material in that if the material is examined, it does not disclose that that the appellant has earned any taxable income during the relevant period. It was also submitted that the Assessing Officer has not made any enquiry or verification after receiving material. Reference was made to the fact that the appellant has been following the cash method of accounting and



cluded into this, it was argued that as the liability to pay tax arises only upon actual receipt of income, the onus is of the Assessing Officer to show the actual receipt of income. It was also pointed out that M/s. Vyas & Vyas have not given any show cause notice before making the aforesaid finding. It was argued that the incomes have been arrived at on the presumption that the monies received by M/s. Harshad S. Mehta would have been deployed at an average rate of 16% per annum upto the date of Notification. In this context, it was mentioned that the brokerage firm of the appellant did not necessarily deploy the fund in the interest bearing fund. It was also argued that if such monies were ever deployed, then both the Custodian and the Hon'ble Special Court would have recovered these large sums of monies as attached properties. Reference was also made to the fact that once large inflows and outflows take place through bank accounts, the same loses its identity and it is not possible to link inflow with outflow. Submissions were also given on parwise observations of M/s. Vyas & Vyas.

17.1 I have considered the Assessing Officer's letter dated 11.8.2009, the Janakiraman Committee Report, the report of M/s. Vyas & Vyas and the submissions of the appellant. As I find, most of the submissions of the appellant have also been made in respect of the other additions which are based on the reports of M/s. Vyas & Vyas, the Janakiraman Committee Report and the report of JPC for this assessment year as well as the assessment year 1992-93. In respect of these grounds, I have found the appellant's submissions misplaced. My discussion in respect of these grounds for both the assessment years may be taken as part of my decision on this issue also in so far as they relate to common submissions. As may be noted, I have already held why the appellant's request for cross examination of M/s. Vyas & Vyas is misplaced, how the report of M/s. Vyas & Vyas is correct and credible to the extent information is contained in the report and how the Hon'ble Courts have held that the report of the Janakiraman Committee and the JPC can be used as reference material. To avoid repetition, I am not separately reproducing my discussions on these issues here. The appellant has argued that the incomes earned by him are reflected in the books of account. This is misplaced because as repeatedly discussed, the appellant's books of account are not authentic and reliable. I

also find that contrary to what the appellant has argued the observations of Janakiraman Committee and the report of M/s. Vyas & Vyas clearly indicate that the appellant had



earned income as calculated by M/s. Vyas & Vyas. The appellant has not brought out anything specific to counter the findings of the Janakiramn Committee report and the report of M/s. Vyas & Vyas. The appellant's argument that the incomes are based on presumption is totally wrong as the break-up clearly reveals that the appellant had held the securities for various lengths of time and accordingly, in terms of the relevant guidelines, the appellant was bound to earn interest on them. I now come to the individual additions :

Addition in Rs.	Submissions of the appellant	Findings
34.76 crores (para 7.5)	Janakiraman Committee Report says that there were no transactions entered in the books of UCO bank and M/s. Vyas & Vyas have without explaining or citing any reasons come to the conclusion that the amounts were unauthorizedly credited into the account of M/s. Harshad S. Mehta with UCO Bank.	The submissions are misplaced. Para 4.4 (a) of the Janakiraman Committee Report on page 262 clearly mentions as under : <i>" UCO credited the under noted cheques drawn in its favour by Canara Bank (A/c Canfina) into the current account of HSM as per his instructions..... The above amounts received from Canfina and credited to HSM's account were largely utilized by the broker..."</i> This would clearly endorse the findings of the M/s Vyas & Vyas as given in para 7.5.
22.01 crores (para 6.2)	The appellant has entered into very few Ready Forward Transactions for an amount of Rs. 12 crores during the relevant period and these are reflected in the appellant's books of account under Account Head for SBI Capital Markets. In view of this,	The appellant's observations goes against the very specific finding of the Jankiraman Committee. The figure of Rs. 200 crore has been worked out by Jankiraman Committee. In Chapter- X, Para 3 (e) of page 52 of its report, the



	<p>the computation of sums of lending as arrived at by M/s. Vyas & Vyas on a sum of Rs. 200 crores is grossly inaccurate and exaggerated.</p>	<p>Jankiraman Committee has specifically observed that the sum of Rs. 1,397.11 crores represent the aggregate value of transfers but since the funds were rolled over under Ready Forward Deals, the peak outstandings would be lower. In this backdrop, the Janakiraman Committee has estimated the figures at Rs. 200 crores. These findings are the basis of the report of M/s. Vyas & Vyas. The appellant's reliance on its books of account is not credible as they are not authentic and reliable. Nothing specific has been brought on record apart from the entries in the books of accounts to controvert the findings of Janakiraman Committee Report.</p>
<p>10.4 crores (para 3.4)</p>	<p>M/s Vyas & Vyas have given the finding that an amount of Rs. 174.93 crores was unauthorizedly credited in the account of M/s. Harshad S. Mehta and no clear evidence is available regarding the payment to State Bank of Saurashtra by Mr. Harshad S. Mehta. It has not been explained how the amount of Rs. 10.04 crores is arrived at.</p>	<p>The working is again based on clear findings of the Jankiraman Committee Report as documented in para 3(b) on page 49 of its report. In this para, it has been clearly recorded as under :</p> <p><i>"All the above transactions were entered into through broker Shri Harshad Mehta. All the payments made to SBI have been credited to Shri Harshad Mehta's account. The amount paid to NHB has also</i></p>



		<p><i>ultimately been credited to Shri. Harshad Mehta's account in SBI. (Reference is invited to paragraph 5(b) of the Chapter on NHB in the report.)"</i></p> <p>The appellant has not brought out anything on record to controvert these very specific findings.</p>
10.24 crores (para 6.1)	<p>This amount represents credited into the account of appellant's brokerage firm on which presumption has been made that interest @ 16% per annum has been earned. The Hon'ble Special Court has awarded the decrees against the brokerage firm together with claim of interest @ 15% in a claim filed by SBI. The interest awarded will constitute the expense and there is no question of any interest income earned.</p>	<p>The Janakiraman Committee Report clearly mentions that for the corresponding transactions amounts were credited to the bank accounts of HSM. The claim of interest payment would be a subject matter of the assessment of a different year. The fact remains that amount being available with the appellant for a considerable period of time would definitely yield interest for the period for which it was with him.</p>
3.50 crore (para 7.2)	<p>There is no material to disclose how the said income has been earned and received by the appellant. The appellant's records do not reflect any such transaction.</p>	<p>The working is based on clear finding of Janakiraman Committee Report in para 3.3 (b) on page 260. It is thus wrong to say that there is no material.</p>
1.11 crore (para 7.1)	<p>The appellant's brokerage firm had borrowed an amount of Rs. 40 crores from NHB on 6.4.92 which was reversed on 16.4.92 by debit into bank account of the appellant at ANZ Grindlays Bank. The</p>	<p>The working is based on clear finding of Janakiraman Committee Report in para 3.3 (a) on page 259. The appellant has not brought anything on record to controvert the facts.</p>



	appellant's brokerage firm had actually therefore paid interest on the aforesaid sum and there is no question of earning any income as falsely suggested by M/s. Vyas & Vyas.	
0.97 crores (paras 2.2, 3.1 to 3.3., 4.2, 5.1, 7.3, 7.4, 8.1 & 8.2)	No specific submissions.	

From the above discussion, it may be seen that the appellant's arguments do not hold good. It may be noted that the working of the interest is sound and correct for the following signature facts :-

i) The findings are based on the reports of Janakiraman Committee and JPC. The Hon'ble Special Court has accepted the reports of the Janakiraman Committee, the JPC and the Chartered Accountants as a reference material and this strengthens the credibility and value of the observations and information recorded in these reports.

ii) The appellant's reference to the suits in appropriate cases is misplaced in that the very fact that the suits were advanced by banks would endorse that the monies were lying with the appellant for his utilization.

iii) In some cases, the appellant has only relied on his books of account, which as already discussed, are not reliable and authentic.

iv) As already discussed, interest income is assessable because of the mercantile system of accounting. Detailed discussions in this order and in the order for the assessment year 1992-93 on addition on account of interest may be treated as part of

discussion on this issue also.



common issues may be treated as part of this order also. I now proceed to discuss the issues unique to assessment year 1993-94.

Shortfall in Securities

Attention was invited by the Assessing Officer to the fact that out of the oversold position of securities at Rs. 1681,79,84,180/- in Annexure M-2. deduction of Rs. 601,20,94,489/- was given on the ground that shortfall on account of oversold securities in respect of the following two securities have been covered by issuing cheques by the appellant to the SBI:

Sr. No.	Security	Shortfall covered up by the assessee (Rs. In Crores)	Oversold position of the securities (Rs. In Crores)
1.	C/L 2010, 11.5%	454	595.61
2.	C/L 2007, 11.5%	170	174

It was further pointed out that the shortfall in the above two securities has been made good by purchase of securities by the cheques received by SBI from the appellant.

The details of the cheques were given by the Assessing Officer as under :

Date	Cheque No.	Bank	Amount (Rs.)
13/04/1992	311415	Grindlays Bank	2431868500.00
18/04/1992	301454	Grindlays Bank	979866961.44
18/04/1992	301453	Grindlays Bank	350000000.00
18/04/1992	301455	Grindlays Bank	90000000.00
20/04/1992	311473	Grindlays Bank	1250000000.00
20/04/1992	311475	Grindlays Bank	350000000.00
21/04/1992	311489	Grindlays Bank	210000000.00
21/04/1992	321128	Syndicate Bank	477644931.51
21/04/1992	311496	Grindlays Bank	22355068.49
24/04/1992	049049	Grindlays Bank	63500000.00
		(Cheque drawn by HSM on his Current A/c. with Grindlays)	



			622,52,35,461.44
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In the above backdrop, the Assessing Officer observed that the cheques had been issued to help the SBI to cover up the shortfall in securities in their SGL Account and are illustrated in Annexure L-3 of the assessment order. It was the Assessing Officer's observation that the appellant did not explain the source of the funds released through these 10 cheques. Looking into this issue, I find that the following two aspects emerge.

- a) The issues arising out of deduction of Rs. 601.21 crores in the assessment for the assessment year 1992-93
- b) The source of the payment of Rs. 622.52 crores as mentioned by the Assessing Officer in his letter dated 11.12.2009

So far as the issue at (a) is concerned, I have already noted in my order for the assessment year 1992-93 that it has no impact for that assessment year. However, so far as present assessment year is concerned, it calls for an enhancement of Rs. 159,72,02,056/- . To this end, from the perusal of the assessment order for the assessment year 1992-93, I find that Rs.601.21 crores had been deducted from the total oversold position of Rs. 1681.79 crores because as observed by the Assessing Officer, this amount was made good to the SBI by the appellant in the 10 banker's cheques listed by the Assessing Officer in his letter dated 11.12.2009. In this respect, in his assessment order for the present assessment year, the Assessing Officer observed that the source of the payment of Rs. 601.21crores against two securities namely 11.5% C/L 2010 and 11.5% C/L 2007 remained unexplained. On this premise, while carrying forward the oversold position from the year ending 31.3.1992 to 1.4.92, whereas in respect of the other securities on account of oversold position worked out in the assessment year 1992-93, the opening balance was taken as nil, in respect of the above two securities, negative opening balance was carried forward. On this, vide letter dated 18.8.2009, the Assessing Officer has invited attention to the fact that while working out the oversold position for the present assessment year, the Assessing Officer has inadvertently left the value of Rs. 159,72,02,056/- to be included in the working of the total oversold securities for the year.

As mentioned by the Assessing Officer, the negative opening balance has been mentioned in the Annexure M-1, but it has been omitted in the column of oversold

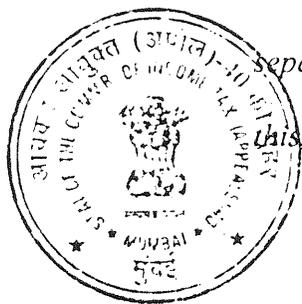


securities. In his various submissions on this issue in response to the Assessing Officer's letter dated 18.8.2009, 11.12.2009 and my notice dated 14.1.2010, the appellant has not given any specific explanation on this omission. The appellant has only contested the merit of the addition stating that the amount is not liable to be included in the money market oversold position. In the foregoing background, considering the facts brought on record and Annexure M-1, I find that the sum of Rs. 159,72,02,056/- has been omitted to be included in the oversold position worked out for the present assessment year. Accordingly, it is to be included. In my discussion on the addition on account of Money Market Oversold Position, I have already discussed in detail, how the oversold position worked out in Annexure M-1 has been rightly added to the appellant's income. In terms of this discussion, the sum of Rs. 159,72,02,056/- being part of the same oversold position and only inadvertently omitted will also stand included in the total oversold position. In view of this, the appellant's income for the present assessment year is to be enhanced by this amount.

I now come to the issue at (b) above. As I find, the Assessing Officer's case is that if the appellant is unable to explain the source of the funds, the appellant's income is liable to be enhanced. The general submissions given by the appellant on this issue along with the other issues raised in the notice dated 14.1.2010 has already been considered by me in my order for the assessment year 1992-93. To avoid repetition, I am not reproducing them here and will restrict myself only to the specific explanation given by the appellant on the payments. Following specific submissions were made in this respect :

- a) *The monies paid to SBI for purchase of securities was on account of the fact that the appellant's brokerage firm had failed to deliver the securities. The monies paid to the bank for utilization of client's funds stands automatically explained as a source.*
- b) *The amount of Rs. 601.21 crores allowed to be deducted was enjoyed as money market float until the actual payment was made to SBI.*
- c) *Until 1992 when the appellant's brokerage firm was active, there was no statutory requirement to maintain client's funds and appellant's own funds*

separately which regulation was introduced by SEBI after 1993. In view of this, one of the source for the aforesaid two sums was also appellant's own



funds which included the profits earned by the appellant during the relevant years. The copy of the bank statement filed confirms inflow of funds as source for payments made to SBI.

- d) *SBI has confirmed receipt of amount of Rs. 97.98 crores and Rs. 47.76 crores on behalf of the appellant from ANZ Grindlays Bank and Syndicate Bank respectively. This is confirmed by statement of SBI to CBI.*
- e) *The enhancement of Rs. 622.52 crores is bad in law. The Assessing Officer has already made an addition on account of this in the assessment for the assessment year 1992-93. The Assessing Officer has recovered the deduction of Rs. 601.22 crores given in the assessment year 1992-93 by reintroducing the addition in the assessment year 1993-94.*

I have considered the issues raised by the Assessing Officer, the submissions of the appellant and the facts and documents on board on the issue. As I find, the appellant has sought to explain his stand by basically holding that the funds available in the accounts were funds of his clients coupled with his own funds. In support, the appellant has enclosed a chart disclosing the particulars of inflow and outflow of monies leading to payments to SBI except two direct payments, one payment by ANZ Grindlays Bank and another by Syndicate Bank. I find this misplaced. When I see the appellant's chart and the supporting documents, I find that the appellant had sought to explain the payments through entries in the books of M/s. Harshad Mehta. In this context, as already discussed, being based on unreliable and unauthentic books, the explanation based on these books also stands unreliable. This apart, I find that the appellant has sought to link the deposits with the transactions undertaken by him in his books of account. Since the appellant's transactions are recorded in the Deal File, to test the authenticity of the entries in the books of account, the transactions relating to the deposits recorded in the books of account were matched with the transactions in the Deal File. In this process, several infirmities were noted which indicate that the appellant's entries in the books of account are not authentic as they do not match with the transactions in the Deal File. Some of these infirmities noted are as under :

Transactions are not in the Deal File.

The rate shown in the books of account and the Deal File are different.

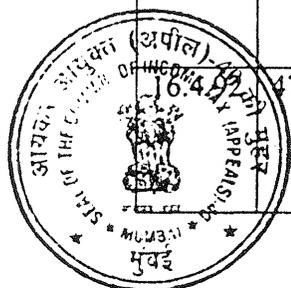


iii) Sale being shown as purchase in the Deal File.

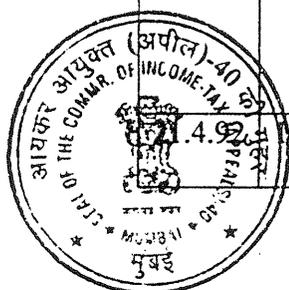
iv) In some cases, details in the books are inadequate or absent and cannot be matched.

Following illustration will prove this.

Date	Deposit	Narration	Findings on matching with the Deal File / break-up of the Deal File
13.4.92	199638356.16	17% NTPC Bonds F V 20 CR CNO 920413-BOS	Rate difference
13.4.92	153703767.12	17% NTPC Bonds F V 15 CR CNO 920413-B11	Not in Deal File
13.4.92	990000000.00	10 CR Units CNo 920413-B15 (Split Entry for Rs. 1635719178.08)	Not in Deal File
13.4.92	543250000.00	10 Cr Units CNO 920413-B15 (Split Entry for Rs. 1635719178.08)	Not in Deal File
13.4.92	733472054.79	On A/C Various deals	No details given
13.4.92	789044657.54	On A/C various deals	No details given
13.4.92	102469178.08	17% NTPC Bonds F V 10 CR C No. 920413-B19 (Split entry for Rs. 122294178.08)	Not in Deal File
13.4.92	152728767.12	17% NTPC Bonds F V 15 CR CNO 920413-B07	Not in Deal File
13.4.92	102469178.08	17% NTPC Bonds F V 15 CR CNO 920413-B03 (Split entry for Rs. 1635719178.08)	Not in Deal File
13.4.92	19825000.00	13 L Units CNO 920413-B21 (Split entry for Rs. 122294178.08)	Not in Deal File
16.4.92	316294520.55	9% CIL Bonds F V 35 CR CNO 920416-B10	Not in Deal File
16.4.92	47684931.50	9% CIL Bonds F V 5 CR CNO 920416-B22	Not in Deal File + no debit on this date



18.4.92	325509041.10	9% IRFC Bonds F V 36 CR CNO 920418-B49	----
18.4.92	40000000.00	TRF BOI (SEB)-JHM	No details
18.4.92	35500000.00	200000 G E Shipping @177.50 dt. 6/4/92 Part Payment	Not executed as per break-up
18.4.92	52026027.40	17% NTPC Bonds F V 5 CR CNO 920418-B55 (Split Entry for Rs. 99797260.28)	Not in Deal File
18.4.92	47771232.88	9% HUDCO Bonds F V 5 CR CNO 920418-B55 (Split Entry for Rs. 99797260.28)	Not in Deal File
20.4.92	150217808	17% NTPC Bonds FV 15 CR CNO 920420-B10	-----
20.4.92	50000000	C C Asset F V 5 CR CNO 920420- B14	Not in Deal File
20.4.92	17750000.00	200000 G E Shipping @ 177.50 DT 06/04/92 Bal Payment	Not entered
20.4.92	990000000.00	17% NTPC Bonds F V 100 CR CNO 920420-B05 (Split entry for Rs. 1000952054.79)	No separate entry of the two in the Deal File
20.4.92	10952054.79	17% NTPC Bonds F V 100 CR CNO 920420-B05 (Split entry for Rs. 1000952054.79)	No separate entry of the two in the Deal File
20.4.92	464785000.00	5000 ACC @5975/- , 25000 ATL @350/-, 1000000 RIL	No date
20.4.92	80000000.00	200000 RIL @415/- d: 08/04/92 Part payment	Not executed
20.4.92	295090582.19	12 Units CNO 920420-B39 & 9% IRFC Bonds F V 30CR CNO 920420- B41	Not in Deal File
20.4.92	175000000.00	13% NPC Bonds F V 20 CR CNO	Not in Deal File



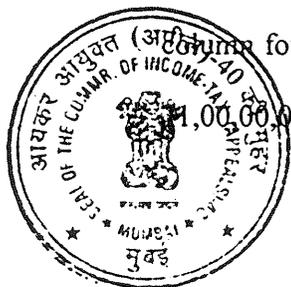
		920421-B21 A/c FGFSL	
21.4.92	185000000.00	R/F Deal for Equity with Pallav Seth A/c S.K.Jhaveri	Details not specific
21.4.92	102691780.82	17% NTPC Bond F V 10 CR CNO 920421 B02	Not in Deal File
21.4.92	25000000.00	TRF B01 (SER) – ASM	No specific details
21.4.92	46000000.00	GESCO 1 Lac dt. 2.4.92, 1 Lac dt. 3.4.92 1 Lac dt. 6.4.92 & 5000 dt. 7.4.92 Net P	No specific details
21.4.92	95400000.00	Wrongly debited on 20.4.92 Now reversed	No specific details
22.4.92	25000000.00	TRF Bank AM ASM	No details
22.4.92	30000000.00	TRF Bank AM ASM	No details
22.4.92	45000000.00	TRF BOI (SER) ASM	No details
22.4.92	362071232.88	9% IRFC Bonds F V 40 CR CNo – 920422-B03	As purchase in Deal File
22.4.92	30201900.00	RIL, Ruchi Soya (P) & Baroda Rayon (S) Part Payment	As purchase in Deal File
24.4.92	155550000.00	1.02 CR Units CNO 920424-B03	Not in Deal File
24.4.92	273000000.00	9% IRFC Bonds F V 30 CR CNO 920424-B05 (Accrued Int short Recd)	Not in Deal File

The above defects and infirmities will indicate that the above deposits listed by the appellant in the books of account cannot be treated as the source of the payments because the appellant has not transacted in the securities and shares mentioned against the deposits in the books of account. Had the appellant really transacted in these securities and shares, they would have been found recorded as completed transactions in the Deal File and the break-up of shares given. Since this is not so, the source of these payments represented by the above cheques remain unexplained. Accordingly, it is clear, the above cheques have been issued out of unexplained source. Further, I also find that there is a fundamental flaw in the appellant's explanation. The appellant has sought to



justify that the funds were available for the payments. In this respect, from the perusal of the banks books in the appellant's accounts, I find that there were many other withdrawals and accordingly, the books do not give a complete account of the deposits and withdrawals. Besides, the appellant has not been able to establish nexus between the deposit and the payments in question. In absence of this direct nexus, particularly in face of multiple withdrawals, the deposits cannot be authentically taken as the source of the payments. This gets underlined by the mismatches already discussed above. The appellant has also argued that the addition of Rs. 622.52 crores will be unfair because it is nothing but reintroduction of the deduction of Rs. 601.22 crores in the assessment year 1992-93. This is again misplaced. As may be seen, the deduction on account of Rs. 601.22 crores was on account of two securities which have already been mentioned in my discussion on the addition of Rs. 159,72,02,056/-. These two securities are different from the securities and shares involving the payments in question. Accordingly, the source of the payment relating to the securities in respect of deduction of Rs. 601.22 crores cannot be equated with the source of payment of Rs. 622.52 crores. In view of this, the source of payment of Rs. 622.52 crores is completely distinct and separate. The appellant has invited attention to two payments of Rs. 97,98,66,961.44 and Rs. 47,76,44,931/- on 18.4.92 and 21.4.92 respectively. As stated these cheques were directly paid by ANZ Grindlays Bank and Syndicate Bank to SBI. In support, the appellant has enclosed a statement furnished by SBI to CBI which has been stated to have been retrieved from the Chargesheet filed in Special Case No. 2 of 1994. I have considered this. From the statement of SBI as furnished by the appellant, I find that on 18.4.92, amount of Rs. 97,98,66,961.44 was received by SBI from ANZ Grindlays Bank account M/s. Harshad S. Mehta Cheque No. 301454. Since this was a direct payment and since the appellant has given evidence to substantiate this, I find that source to the extent of Rs.97,98,66,961.44 stands explained. With regard to the payment of Rs. 47,76,44,931/- from the same statement of SBI, I find that the SBI received Rs. 21,00,00,000/- from the ANZ Grindlays Bank vide cheque No. 311489 on 21.4.92. Apart from this, in the statement in respect of amount received from Syndicate Bank, the

amount for cheque no. and amount is blank. The total deposit is also mentioned at Rs. 1,00,00,000/-. Accordingly, the statement of SBI with regard to this payment of Rs.

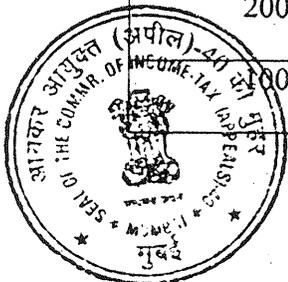


the appellant's income for this assessment year. So far as the other balances are concerned, I find that they are to be examined in the cases of the related parties to see whether or not the balances have been brought to tax in their hands. Accordingly, I direct the Assessing Officer to examine these cases and take appropriate actions in terms of the relevant provisions.

Loans and advances to outside parties

It was pointed out by the Assessing Officer that M/s. Vyas & Vyas, the Special Auditor had the occasion to observe that the appellant had given the following loans and advances to parties other than his family members and group concerns. As stated, this came to light during the examination of the books of account and other relevant records of the appellant by the Special Auditor.

Code No.	Particulars	Amount (Rs.)
262	Calestian Assets &	2500000
257	Matador Investment Pvt. Ltd.	1200000
267	Scopisecs Securities Holding Pvt. Ltd.	1000000
11185	T B Kaul	10000
2179	Rarjit Bhatia	3000
18034	Romil	17500000
19443	Harsha D Shah	1000000
245	Prime Securities Ltd.	849589.05
11001	K J Investment	3274000
19504	Space Builders Pvt. Ltd.	13500000
11197	Kalpana D Vadhani	2500000
19503	S J Jhaveri	3000000
5001	E. Ferri	380000
4	Shri Shyam	10000000
10082	JHB Construction Co. Pvt. Ltd.	4051000
13001	A Miran	197000
2001	B Blean	217000
2001	A Aruna	186000



16001	Premier	128925
11001	KPV Rao	191000
11002	K Venka	204000
13002	M Ferna	205000
34	M/s. V B Desai	(19600000)
		42496514.05
	Add: Details not available	2014000
		44510514.05

Clued into the above, it was pointed out that the Special Auditors have reported that full names and addresses of these parties were not available. In this background, request was made to ask the appellant to give full details about these amounts including the source thereof. Vide my letter dated 14.1.2010, the appellant was asked to submit his versions on the issue. In response, inter alia, following submissions were made :

i) *The Assessing Officer has not explained under what provisions of IT Act, he is proposing to make the addition. There is no provision in the IT Act which permits the addition to the income on this ground.*

ii) *Both M/s. Vyas & Vyas and the Assessing Officer have not caused any enquiry which could have been caused with the office of the Custodian.*

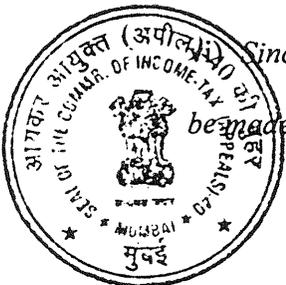
iii) *With regard to the source of the loans and advances by the appellant, the practice that was followed for generating the monies has already been explained.*

It has also been explained how the appellant's brokerage firm used to enjoy on an ongoing basis, a large pool of funds in the name of temporary liabilities. The appellant had also his own capital and had earned taxable income during the relevant year.

iv) *The records of brokerage firm of the appellant are with the Custodian.*

v) *The bank book and the books of account submitted reflect the inflow and outflow of funds. The inflow of funds may be treated as explanation of the appellant for the source of the funds.*

Since the source is explained in the books of account, no addition is liable to be made.



vii) *Particulars of various decrees show that the appellant had a large sum both during the assessment year 1992-93 and 1993-94 which was paid by way of advance by the clients of the appellant's brokerage firm. These sums ought to be treated as source of all the assets acquired by the appellant including Rs. 4.45 crores of loans and advances.*

I have considered the rival submissions and the facts on the issue. As I find, the appellant has not given any specific substantiation on the source of the loans and advances to the outside parties. As I see, the appellant has given the same explanation which he has given for the source of the payments of Rs.622.52 crores. In essence, the appellant's case is that the funds disputed in the decrees were at the appellant's disposal and accordingly, they constituted the source of the appellant's assets including the loans and advances in question here. This stand of the appellant is contradictory as the appellant has himself contested the decrees. This would signify that the appellant did not have the benefit of the funds as mentioned by the banks in the decrees. Further, to explain the source of the payments of Rs. 622.52 crores, as may be noted, the appellant has attributed the source of the funds to the deposits reflected in the ledger of the bank appearing in the appellant's books. In course of my discussion on the enhancement in connection with these payments of Rs. 622.52 crores, I have already given a finding that the deposits cannot constitute the source of all the payments covered in Rs. 622.52 crores. To avoid repetition, I am not reproducing my discussion here. As may be noted, while giving my finding, I have held that the securities relating to the deposits were not executed. The appellant has also not given any details on these loans. In view of the foregoing, I find that the sum of Rs. 4,45,10,514/- constitutes unexplained investment. Accordingly, the sum is taxable in the appellant's hands under section 69 of the ITA. As may be seen, in respect of these investments, all the conditions of the section 69 stand satisfied. In the first place, the appellant has been found to have made investments which are not recorded in the books of account and for which, the appellant has not given any satisfactory explanation about the nature and source of the investments. As the Assessing Officer has not brought these investments to tax, the appellant's income is taxable to be enhanced by Rs. 4,45,10,514/-. Accordingly, the income is enhanced by this



To sum up, the following enhancements are made :

- i) Rs. 13.91 crores as other income in view of the statement of affairs prepared by M/s. Vyas & Vyas, Chartered Accountants.
- ii) Rs. 7,40,00,000/- on account of interest.
- iii) Rs. 159,72,02,056/- to be included in the working of the total oversold securities for the year.
- iv) Rs. 524,53,68,500/- as unexplained money.
- v) Rs. 4,45,10,514/- as unexplained investment.

In the result, the appeal is dismissed and enhanced.



(KUNTAL KUMAR SEN)
CIT(A) - 40 ,Mumbai

- CC: 1. The CCIT, Central-II, Mumbai
2. The CIT, Central-II, Mumbai
3. The AO.
4. The Appellant.
5. Master File

Kuntal Kumar Sen
(KUNTAL KUMAR SEN)
CIT(A) - 40 ,Mumbai