

“The AO passed a re-assessment order in case of HSM for AY 1992-93 resurrecting the old additions by determining the income at Rs.2346.32 Crores without examining the books of account as directed by ITAT or any of the submissions of HSM. The high-pitched order was passed to avoid any refund to HSM by prolonging the litigation as all the subsequent events and orders of Hon’ble Special Court and Hon’ble Supreme Court were ignored.”

आयकर अधिनियम, 1961 की धारा के साथ पढ़ी गई धारा 274 के अधीन सूचना
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE
INCOME TAX ACT, 1961

PAN -ABNPM1848F Shri -Late-Harshad Mehta L/H.Jyoti Mehta 32, Madhuli, A B Road, Worli, Mumbai-400018	आयकर कार्यालय / Office of the Deputy Com. of Income tax, CC-4(1) Room No. 1916, 19 th Floor, Air India Building, Nariman Point, Mumbai- 400020\1 Date : 15.03.2016
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Pen 271(1)(c) / 23 / 15-16

PENALTY U/S 271(1)(c)

क्योंकि कर निर्धारण वर्ष के संबंध में मेरे यहां होने वाले कार्रवाई के दौरान मुझे प्रतीत होता है कि आपने :-

Whereas in the course of proceedings before me for the assessment year... **1992-93** ... - appears that you:-

* बिना उचित कारण के वह आय विवरणी नहीं दी है जो आपको भारतीय आयकर अधिनियम, 1922 की 22(1), 22(2)/34 के अधीन दी गई सूचना के अनुसार देनी थी या जो आपको धारा 139(1) के अधीन या आयकर अधिनियम, 1961 को धारा 139(2)/ 148 के अधीन दी गई सूचना सं..... ता. अनुसार दाखिल करनी ठीक अथवा उचित कारण के बिना आपने दिए गए समय के अंदर और उक्त धारा 139(1) या इस प्रकार की सूचना द्वारा अपेक्षित नीति से विवरणी नहीं दी गई है।

* Have without reasonable cause failed to furnish me return of income which you were required to furnish you a notice given under Section 22(1), 22(2)/ 34 of the Indian Income Tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2) / 148 of the Income -Tax Act, 1961 No..... Dated Or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by Such Notice.

* बिना उचित कारण के आपने भारतीय आयकर अधिनियम, 1922 की धारा 22(4)/23(2) या आयकर अधिनियम, 1961 की धारा 142(1)/143(2) के अधीन दी गई सूचना सं..... ता..... का अनुपालन नहीं किया है।

* have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-Tax Act, 1922 or under Section 142(1)/ 143(2) of the Income-Tax Act, 1961, No..... Dated

* अपनी आय के ब्योरे छिपा लिए हैं या इस प्रकार की आय के ब्योरे गलत दिए हैं।

* Have concealed the particulars of your income or furnish inaccurate particulars of such income

आपको एतद्वारा सूचित किया जात है कि ता. 200 ... को बजे अ.म./ पू.म. में आप मेरे कार्यालय में उपस्थित हो और कारण बताएं कि आयकर अधिनियम, 1961 की धारा 271 के अधीन आप पर दण्ड लगाने का आदेश क्यों न दिया जाए। यदि आप स्वयं उपस्थित होकर या प्राधिकृत प्रतिनिधि द्वारा सुनवाई के लिये दिये गए अवसर का लाभ नहीं उठाना चाहते तो उक्त तारीख को या उससे पूर्व लिख कर इसका कारण बताएं जिस पर धार 271(1)(c) के अधीन कोई ऐसा आदेश देने के पूर्व विचार किया जाएगा .

You are here by requested to appear before me at **11.00 A.M. /.** on **31.03.2016** And show cause why an order imposing a penalty on you should not be made under Section 271 of the Income -tax Act, 1961 If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section **271(1)(c)**

(मोहर)

(Seal)



Rajni Rani Roy
 आयकर उपायुक्त (Asstt. Com. of Income Tax)
 केन्द्रीय मंडल 4 (1) मुंबई / Central Circle- 4 (1) Mumbai

जो शब्द या पैरे अनावश्यक हों, उन्हें काट दीजिए .

Notice of Demand Under Section 156 of the Income-tax Act, 1961

To
Late. Shri- Harshad Mehta
L/H. Jyoti Mehta
32, Maduli, A B Road,
Worli, Mumbai-400018

Status: Indl
PAN No-ABAPM1848F

3/11/39/19823/15-16

1 This is to give you notice that for assessment year **1992-93** a sum of Rs. **9111,13,05,271/-** details of which are given on the reverse has been date mentioned to be payable/ refundable sum by you.

2. The amount should be paid to the Manager, authorized bank / State Bank of India/ ReseBank of India at MUMBAI Within 30 days/ days of the service of this notice. The previous approval of the Deputy Commissioner of Income -tax has been obtained for allowing a period of less than 30 days for the payment of the above Sum. A challis is enclosed for the purpose of Payment.

3. If you do not pay the amount within the period specified above you shall be liable to pay simple Interest at One and one-half percent for every month or part of month from the date commencing after the end of the period aforred in accordance with 220(2) of the Income-tax Act, 1961.

4. If you do not pay the amount of tax within the period specified above. Penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with Section 221.

5. If you do not pay the amount within the period specified above, proceeding for the Recovery there of will be taken in accordance with Section 222 to 229, 231 and 232 of the Income -tax Act, 1961.

6. If you intend to appeal against the Assessment/ fine / penalty you may present an appeal under Part A of Chapter XX of the Income -tax Act, 1961, to the Deputy Commissioner of Income-tax/ Commissioner of Income-tax (Appeals) -52 within thirty days of the receipts of Notice, in form No. 35, duly stamped and verified as laid down in that form.

7. The amount has become due as a result of the order of the Deputy Commissioner (Appeals) of Income -tax / the Deputy Commissioner of Income-tax / Commissioner of Income-tax (Appeals) / Chief Commissioner of Income-tax XXXX..... Under section..... Of the Income-tax Act, 1961. If you intend to appeal against aforesaid order, you may present an appeal under Part B of Chapter XX of the said Act to the Income-tax Appellate Tribunal within sixty days of the receipts of that order, in Form No. 36, duly stamped and verified as laid down in that form.

Place: MUMBAI

Date.: 15.03.2016



Assessing Officer

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

Notes:

- (1) Delete the Inappropriate words
- (2) If you wish to pay the amount by cheque should be drawn in favor of the Treasury Officer/ Sub-treasury Officer/ Agent, State Bank of India / Reserve Bank of India.

If you intend to seek extension of time for payment of the amount or purpose to make the payment by installments, the application for such extension, of as the se ay be, pre to pay by installments, should be made to the Assessing Officer for the expiry of the period specified in paragraph 2. Any request received after the expiry of the said period will not be entertained in view of the specific provisions of Section 220(3).

आयकर संगणना फार्म
INCOME TAX COMPUTATION FORM

आई.टी.एन.एस-150
I.T.N.S.-150

मूल/संशोधित
ORIGINAL/REVISED
यदि संशोधित है, तो अन्तिम
संगणना की तारीख लिखें
If revised, mention date
of last computation

- | | |
|---|--|
| 1. स्थायी लेखा सं./सू.सं. <u>Late Harshad Mehta</u>
P.A.N./G.I.R. No. _____ | 6. हैमियत <u>Indi</u>
Status _____ |
| 2. निर्धारित कर नाम व पता <u>L/H Jyoti Mehta</u>
Name and Address of the Assessee <u>ABAPM 1848F</u> | 6.क यदि हि. अ. कु. है तो क्या कर की उच्चतर दर लागू होती है?
If H.U.F. is higher rate of tax applicable? _____ |
| 3. निर्धारण वर्ष <u>1992-93</u>
Assessment year _____ | 7. आदेश की भाग <u>143(2) एवं 254</u>
Order Passed U/s. _____ |
| 4. समाप्त गत वर्ष _____
Previous year ended _____ | 8. आदेश की तारीख <u>15/03/2016</u>
Date of Order _____ |
| 5. क्या निवासी/साधारण निवासी नहीं/अनिवासी <u>R</u>
Whether Resident/NOR/NR _____ | |

9. कुल आय 23463206080
Total Income

(रकम रुपये में)
(FIGURES IN RUPEES)

	आयकर I.T.	अधिभार S.C.	जोड़ Total
10. शुद्ध कृषी आय Net Agricultural Income			
11. जोड़ (९+१०) Total (9+10)			
12. उपर्युक्त (11) पर सकल कर Gross tax on (11) above	<u>11731530640</u>	<u>1407783677</u>	<u>13139314317</u>
13. (10**) पर सकल कर (*राहत सीमा लिखें) Gross tax on (10**) (*mention exemption limit)			
14. कुल आय पर प्रभार्य सकल कर (12-13) Gross tax chargeable on total income (12-13)			
कर राहत TAX RELIEF			<u>13139314317</u>
15. धारा 86 के अधीन अ.प.पु/व्यक्तियों के संगम/व्याप्तियों के निकास से प्राप्त अंश आय पर राहत Tax relief in respect of share of income in URF/ AOP/BOI U/s 86			
16. धारा 90 तथा 91 के अधीन दोहरा आयकर राहत (देश का नाम लिखें) DIT relief U/s 90 & 91 (Specify Country)			
17. अन्य Others			
18. कुल कर राहत (15+16+17) Total Tax Relief (15+16+17)			
19. प्रभार्य शुद्ध कर (14-18) Tax Chargeable (14-18)			<u>13139314317</u>
पूर्व संदत कर PRE-PAID TAXES			
20. टि.डी.एस. T.D.S.			<u>1725766</u>
21. अग्रिम कर Advance-tax			<u>97500000</u>
22. स्वतः निर्धारण कर Self-assessment tax			

आयकर I.T.	अधिभार S.C.	जोड़ Total
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**मूल निर्धारण/पुनः निर्धारण पूर्व/अपील प्रभाव पूर्व आदि के बाद संदत्त कर

13108088557

** Tax paid after original assessment/prior re-assessment/prior appeal effect etc.

जोड़ (20 से 23) Special Court payment

3533567171

Total (20 to 23)

संदेह/प्रतिदेय शुद्ध कर (19-24)

9566521380

Net tax payable/refundable (19-24)

घात के अधीन U/a.	रकम Amount	घात के अधीन U/a.	रकम Amount
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- 3. निर्णीयता द्वारा/को संदेय ब्याज
Interest payable by/payable to the assessee
- 7. **मूल निर्धारण / पुनः निर्धारण पूर्व/अपील प्रभाव पूर्व आदि के बाद संदत्त / अनुज्ञात ब्याज
** Interest already paid/allowed after original assessment/prior re-assessment/prior appeal effect etc.
- 28. निर्णीयता द्वारा संदेय/प्रतिदेय शुद्ध ब्याज (27 द्वारा समायोजित 28)
Net interest payable by/refundable to the assessee (26 as adjusted by 27)
- 29. संदेय/प्रतिदेय शुद्ध रकम (28 द्वारा समायोजित 25)
Net amount payable/refundable (25 as adjusted by 28)
- 30. **अंतिम निर्धारण/मूल निर्धारण/अपील प्रभाव पूर्व पहले दिया गया प्रतिदाय
** Amount already refunded as per provisional assessment/original assessment/prior appeal effect etc.
- 31. संदेय/प्रतिदेय शेष रकम (30 द्वारा समायोजित 29)
Balance amount payable/refundable (29 as adjusted by 30)
- 32. संदेय सी.डी.एच.
CDS Payable
- 33. संदत्त सी.डी.एच.
CDS paid

234A - 7598051360 234B - 9432063757

228(2) 6451466877H

① 9111395271

(शब्दों में) रुपये
(in words) Rupees ...
आ.क.जी.सी.ओ. (सी.डी.एच.) RAJNI RANI ROY
I.T.O./A.C. (CDS)
आयकर (उपायुक्त-1) By. Commissioner of Income Tax
विशेष/संकेन्द्रित-4(1) मुंबई / Central Circle-4 (1) Mumbai
Dist./ Circle

सिर्फ संशोधित आई.टी.एन.एच.-150 के मामले में प्रयोग करें।
To be used in case of revised ITNS-150 only

मॉड और संशोधन सं
D & CR No.

तैयारकर्ता Prepared by	जांचकर्ता Checked by	जांचकर्ता Checked by
हस्ताक्षर Signature		
नाम Name		
पदनाम Designation		
तारीख Date		

प्रतिदायो का अभिलेख
RECORD OF REFUNDS

प्रतिदाय वारंटपर की सं. और तारीख
No and date of refund voucher
प्रतिदाय की रकम (रुपये में)
Amount of Refund (in Rupees)
प्रतिदाय के कारण
Reason of Refund
अधिकारी के हस्ताक्षर
Signature of Officer



Office of the
DEPUTY COMMISSIONER OF INCOME TAX,
Central Circle-4(1),

Air India Building 19th floor, Nariman Point, Mumbai 400021

1.	Name of the Assessee	: LATE SHRI. HARSHAD S. MEHTA (THROUGH L/H SMT. JYOTI H. MEHTA)
2.	Address	: 32, MADHULI, DR. A. B. ROAD, WORLI, MUMBAI - 400 026
3.	PAN	: ABAPM1848F
4.	District/Ward/Circle	: DCIT.CEN.CIR.4(1), MUMBAI
5.	Status	: INDIVIDUAL
6.	Assessment Year	: 1992-93
7.	Whether Resident/Resident but not Ordinarily Resident/Non-Resident	: RESIDENT
8.	Method of Accounting	: MERCANTILE
9.	Previous Year ended on	: 31 ST MARCH, 1992
10.	Nature of business	: SHARE BROKER & INCOME FROM OTHER SOURCES.
11.	Date of Hearing	: AS PER ORDER SHEET NOTING.
12.	Date of Order	: 15.03.2016
13.	Section and sub-section under which order is made.	: 254 RWS 143(3) OF THE I. T. ACT, 1961.

ASSESSMENT ORDER

The return of income was not filed by the assessee with the due date i.e. 31.10.1992. Hence, notice under sec. 142(1) of the Act was issued on 04.01.1993 calling upon the assessee to file return of income on or before 18.01.1993. The assessee filed his return on 29.10.1993 declaring total income of Rs. 6,84,08,000/-. Subsequently, the assessment was completed under sec. 144 of the I. T. Act, 1961 on 27.03.1995 on a total income of Rs. 2,014,04,65,298/- and tax payable thereon of Rs. 2,585,06,42,322/-.

2. During the course of assessment proceedings the AO noted that the assessee was a stock broker of Bombay Stock Exchange. During the relevant period the assessee had dealt in a big way in money market and share market. His activities were not confined to Bombay Stock Exchange alone but he had operated through a large number of brokers all over the country. The AO has



further noted that the assessee had shown his income on 'estimated basis' and that there were some defects in the return of income filed. Therefore, the assessee was asked to remove the defects vide letter dated 29.10.1993. In response, the assessee vide his letter dated 09.11.1993 submitted a reply but did not remove the defects. Hence, vide letter dated 16.11.1993 the assessee was informed that the said return has been treated as invalid return within the meaning of sec. 139(9) of the I. T. Act, 1961. Thereafter, the assessee has not filed any return of income. The defects pointed out in the order is reproduced hereunder:

1. No bifurcation of income under various heads was given.
2. No report of Auditors as required in sec. 44AB was accompanied with the return.
3. No profit & loss account and balance sheet was filed alongwith the return.
4. Personal account of proprietor in the case of proprietary business was not filed."

3. The AO had further noted that a search and seizure operation was carried out at the premises of assessee group on 27.09.1990. During the course of search valuables worth Rs. 4.79 crores and a large number of documents were seized. In the order u/s. 132(5) all the valuables were retained. In the course of search, the assessee disclosed an additional income of Rs. 4.27 crore for various assessment years upto AY 1991-92. A second search and seizure operation was carried out at the premises of assessee group on 28.02.1992. During the course of search also valuables worth crores of rupees and a large number of documents were seized. All the seized valuables were retained as per order u/s. 132(5) of the Act. The disclosure of Rs. 100-crore u/s. 132(4) during this search pertains to AY 1991-92 and 92-93. However, the assessee has not furnished any bifurcation of the disclosed income in the hands of various persons of the group.

4. It is also noted by the AO that there was a search at various premises of this group by the C.B.I. on 04.06.1992. They have also seized some documents and valuables. Subsequently, the assessee was notified under the Special Courts (TORTS) Act, 1992 on 08.06.1992.

5. In view of the above search and seizure the assessee on 30.01.1992 requested for permission to take xerox of material seized during the course of search on 1990. The same was allowed and necessary copies were taken by the assessee on 30.01.1992. Regarding the material seized in 1992 search, though the assessee did not asked for inspection, the assessee was asked by the AO vide letters dated 16.12.1992, 14.01.1993 and 08.02.1993 to take inspection of all seized material. In response, Shri. K. A. Shetye, C.A. and Shri. Pankaj Shah on behalf of assessee attended on 5.01.1993 and took inspection of about 8 registers seized from Cama building on 28.09.1990. Subsequently, in pursuance of the directions issued by the Hon.'ble Special Court, the assessee took inspection of seized material on various dates. He was also provided with copies of all seized computer data. It was also noted that the assessee had carried out his business even after the search i.e. on 28.02.92). (pl. ref. page 4 para 2 of order dtd. 27.03.95).

The AO further noted at page No. 5 of order dated 27.03.95 that 'during the course of search at various premises of the group in year 1990 & 1992 no books of accounts were produced by him. It was found that most of the details of transactions were maintained by the assessee on



Handwritten signature or initials.

a number of computers. Hence the data from the computers were copied and seized. One copy of such seized data has been provided to the assessee. The seized data was analysed but it was found that complete share market transactions were not available in the seized data. Moreover, the data after the date of search was not there. Hence, complete books of accounts could not be generated from the seized data. In the absence of complete books of account and valid return of income, the total income of the assessee is computed u/s. 144 of the I.T. Act on the basis of information available in the seized computer data and other records and information gathered from various sources.' Accordingly, the AO had computed the total income (para 12 at page 83 of order dated 27.3.95) of the assessee as under:

7. The AO has also initiated penalty proceedings under sec. 271(1)(b), 271(1)(c), 271A & 271B of the I. T. Act.

8. Aggrieved by the order of A.O. the assessee went in appeal before the CIT(A). The Id. v his order dated 28.02.2003 upheld the assessment order. The matter was taken up before the Tribunal. The main contention of the assessee was in respect of admission of additional evidence in the form of books of accounts. The Hon.'ble vide order dated 11.7.2008 in ITA No. 3364/M/2003 & CO No. 211/M/03 set aside the appeal and the cross objection to the file of CIT(A) for adjudicating the issue afresh after considering the books of account of the assessee with the following directions:

"Having regard to the economic ramifications of the scam of 1993 as also keeping in view the interest of the Revenue and of the banking system of the country, we direct, as a special case, the learned CIT(A) to take up disposal of the appeal of the assessee within a period of six months from the date of service of this order to the learned CIT(A). The assessee as well as the Assessing Officer should extend their full co-operation in the set aside appellate proceedings so that the learned CIT(A) ensures completion of the proceedings as also the directions of this order within the stipulated period. In the light of this direction, we accept the commitment made by the learned Special counsel as well as the Assessing Officer in the course of proceeding before us not to enforce any recovery of tax for the assessment year 1992-93 till the disposal of the appeal by the learned CIT(A). In this regard we place our appreciation for the co-operation that were extended to the Bench by the Standing Counsel. We also place on record the assistance rendered by the Assessing Officer in the course of appellate proceedings before the Tribunal. The Revenue is further directed to comply with the request made by the assessee for supply of copies of documents on which the Assessing Officer has relied upon while making the impugned assessment. Accordingly, the order of the learned CIT(A) is set aside and the matter is remanded to the learned CIT(A) on the terms referred to above. The cross objection of the assessee is allowed for statistical purposes."

Pursuant to the order of the Hon.'ble Tribunal, appeal proceedings were initiated by the Id. CIT(A)-40, Mumbai. During the course of appellate proceedings, the matter was remanded to the AO and a report in this connection was forwarded by the Addl.CIT., Cen.Range-7, Mumbai on 30.01.2009. Considering the inadequacy of time available, the Id. CIT(A) moved a Miscellaneous Application before the Hon.'ble ITAT seeking time for disposal of appeal upto 30.04.2009. It was



stated that during the pendency of M.A., Hon.'ble Supreme Court vide order dated 24.04.2009 in Interlocutory Application Nos. 9-11 & 12-14 of 2009 in Civil Appeal Nos. 7269-7271 of 2008 in the case of State Bank of India & Others, granted time upto 25.08.2009 and vide order dated 04.01.2009 by further one month, for disposal of appeal.

9. The Id. CIT(A)-40, Mumbai, while disposing the appeal vide his order in Appeal No. CIT(A)C-V/ACIT.CC-23/59/95-96 dated 24.03.2010 has partly allowed and also enhanced certain additions made by the AO. The Id. CIT(A) stated therein that *'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. I would first deal with these issues.'* A gist of the decision of the Id. CIT(A) on these two issues (on page No. 4 to 31 of order dated 24.03.2010) are as under:

a) **Inspection and supply of copies of documents and seized material:**

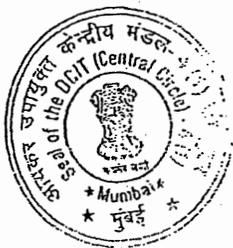
This has been a key issue right from the beginning of the statutory proceedings in t case. The assessee has raised this issue from time to time during the course of assessment, before the CIT(A) and later before the Hon.'ble ITAT. Hence, the Hon.'ble ITAT while remanding the matter had the occasion to direct the Revenue to comply with the request of assessee to supply the copies of documents on which the AO had relied upon during the course of assessment proceedings. The Id. CIT(A) after taking into account the argument of the Id. AR of the assessee and that of the A.O. has held as under:

"... 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, 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, earlier appeal proceedings and the current proceedings before me, I fail to find any substance in the various objections the appellant harbours. I come to this findings clued into the answers to the follow. 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?*
- ii) *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 has been adequate and satisfactory and the A.O 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. I will now take these questions one by one.

- i. *What is the quality*



Looking into this aspect I find that right from the assessment proceedings till the present appeal, relevant documents, details, workings and explanations have been consistently made available to the appellant from time to time. As I see, during the assessment proceedings, as mentioned in para 3.3. of the order under caption 'Inspection of seized material' the appellant was given inspection of the relevant documents on several dates starting from 18.5.93 to 13.8.93 i.e. almost through a period of 3 months. I also find that the appellant was allowed to take photocopies of all the seized material as required by him on 30.1.92 for which as mentioned by the Assessing Officer, the acknowledgment is on record. The computer of the appellant was also released within 3 days of the search. Besides, from the Assessing Officer's discussion on the different additions, I note that the appellant was made fully aware of the documents, details and the context based on which the additions were called for..... I note that the Assessing Officer has given full details of the inspection and other opportunities given in his assessment, which has not been specifically controverted by the appellant. Instead only general allegations have been made. Regarding the computer seized and returned within three days, the appellant has mentioned that it was seized by the Custodian. This is misleading in that the computer was returned only after three days and the appellant had access to the computer between the date of release and the date of notification dated 8.6.92 when he was declared a notified party. The foregoing facts and circumstances make it abundantly clear that at the stage of assessment proceedings, the appellant displayed clear reluctance to make use of the documents, details, workings and opportunities consistently provided to him. Not only this, very significantly, I see that the same conduct continued during the earlier appeal proceedings. As may be seen from the order of my the then predecessor, during the course of the proceedings before him, the appellant was given several opportunities which he did not avail of. As may be noted, right through his order, my the then predecessor had repeatedly referred to evasive attitude adopted by the appellant in submission of details and explanation for the present assessment year under consideration ai assessment year 1993-94.

..... As may be seen from the foregoing, during the present appellate proceedings, the appellant was granted comprehensive and exhaustive inspection and in this view of the matter, whatever gaps had remained during the assessment proceedings were adequately covered during the present appellate proceedings. In line with the foregoing, the objections of the appellant on the issue do not have any merit.

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



From perusal and observation of the proceedings regarding inspection and supply of copies of documents during the assessment proceedings and the present appellate proceedings, I note that the Assessing Officer had never hesitated to confront the appellant with the necessary documents and issues..... I note that the appellant has been on a denial mode so far as acknowledging of the adequacy and comprehensiveness of the process of granting of inspection and supply of copies of documents are concerned. As I see and as principles of natural justice demand, a very challenging process of inspection and supply of copies of documents in a case of such a high magnitude as in the appellant's case, it is a two way process in which the party being granted inspection and copies of documents has to be ready to utilize the opportunities given to him to maximum possible extent. As may be deduced from my discussion in the preceding paragraphs, I have found the appellant to be lacking in this. As I note, despite being granted inspection and copies of thousands of document spread over a period of more than six months, the appellant has only focused on minor and totally immaterial issues like not being computer exports or disputing the number of copies supplied at the cost of ignoring the substance that inspect and supply of copies of documents was granted in a mammoth proportion at his own request and of the documents requisitioned by him. This response of the appellant only goes on to indicate that the appellant was trying to use the principles of natural justice not as a facilitator but as a tool to make the proceedings cumbersome and complex. The observations of Lord Denning in the decision *R. V. Secretary of State (1973) 3 All ER 796* bears special mention here. In this decision, Lord Denning had the occasion to observe as under:

"The rule of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke the rule of natural justice so as to avoid the consequences."

The appellant has also not brought anything on record to show that he had made efforts to requisition the required documents from the Custodian or other authorities. In this respect, the decision of the Hon.'ble Supreme Court in Civil Appeal No. 5176 of 2009 and D-25207 of 2008 in the case of *Mrs. Jyoti Harshad Metha and others vs. the Custodian & Others* bears special mention. In this order, the Hon.'ble Supreme Court has referred to the following directions given by it.

"we direct the Custodian to permit the appellants to have inspection of all the documents in his power or possession in the premises of the Special Court in the presence of an officer of the Court. Such documents must be placed for inspection for one week continuously upon giving due notice therefore to the appellants jointly. As the appellants have been represented in all the proceedings jointly, only one of them would be nominated by them to have the inspection thereof. The appellants shall be entitled to take the help of a Chartered or Cost Accountant and may make notes there from for their use on the pending proceeding."



Referring to these directions, the Hon.'ble Supreme Court has observed that the Custodian had already complied with these directions and allowed for the necessary inspection.....

In line with the foregoing, I find that whereas the Assessing Officer has ensured adequate and satisfactory inspection and supply of documents, the appellant on his part has been on a denial mode.

Taking into reckoning, the foregoing facts and circumstance, I find that the process of inspection and supply of copies of documents has been adequate and satisfactory.

b) **Books of Account:**

In terms of the directions of the Hon.'ble ITAT, the books of account submitted by the appellant vide his letter dated 16.09.2008 were forwarded to the Assessing Officer by my letter dt. 18.9.2008. The books of account consisted of Volumes I, II and III. In response, the report of the Assessing Officer was submitted her letter dated 30.1.2009. In her report, at the outset, it was mentioned that in terms of the observation of the Hon.'ble ITAT, the first issue to be decided is whether the report of the Auditors Vyas Vyas appointed by the Special Court has any bearing on the assessment of the correct total income of the appellant for the assessment year 1992-93. In this perspective, in her report, the following discrepancies noted by the Auditors in the books of account and details maintained or provided by the appellant and his group concerns were reproduced (ref. page 17 to 19 of order).

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 the figures which were at variance with those recoded by his clients / customers.

10.14 The fraudulent transactions were routed in such 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.



(Through L/H Smt. Jyoti H. Mehta)

- 10.2.5 From 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 account and observed that no supporting evidence was available for expenses as well as receipts in 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 account 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 eyes of law these deserves to be rejected."

Attention was also invited to the following note 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 comp. 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 confirmations with these parties. After confirmations of accounts, it may only be concluded that these debits are nothing but unexplained investment.

- 4.1 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 a 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...."

4.2 In the above backdrop, the Assessing Officer made the following observations after going through the books of account in Volumes I, II and III submitted by appellant.

- i. "The printouts of the trial balance, capital account, profit and 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 of 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. 4 numbers of entries in the books submitted appear to be afterthought. For example, drawing account shows uniform withdrawal of Rs. 10,000/- for personal



expenses at the end of every month, which is not possible in real life as there are no such rigidly fixed patterns.

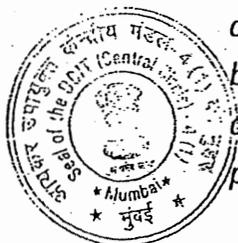
viii. Majority of the entries in the books of account, especially those pertaining to trading and investment are in the form of journal entries in the names of persons closely related to the appellant who like the appellant had also not been maintaining their books of account in a regular manner and 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 summarily required to retain books of account for more than 6 years.

4.3 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 of the view of the Assessing Officer 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 to Rule 6F of I.T. Rules which though does not cover the appellant's trade, illustrates the basic principle that reliability of the books depends on their being drawn on a regular basis during the relevant accounting period. In this respect it was particularly emphasized that 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 shortcomings. In light of the foregoing, it was argued that self-certified copies of computer printouts of incomplete set of unaudited account can hardly be accepted as regular books of account, much less as reliable ones.....

4.4 The Assessing officer's report and comments on the books of account were forwarded to the appellant for his comment. In response, vide submission filed on 11.2.2009 and 18.2.2009 in course of hearing, following comments were made on the Assessing Officer's observations on the books of account submitted by the appellant.

- i. 'The Assessing Officer has stated that from the said books, it is not clear as to when did the appellant write these books of accounts. The printouts are self-certified do not accompany any audit certificate. In this regard, we state that the books of accounts are written belatedly only because the appellant was not granted copies of the documents, seized materials and other records. No such defect is pointed out.



- ii. However, the said reliance is also misplaced since the Assessing Officer has not attempted to open the books and verify any transaction to find out whether the same represents real or correct picture of sale transaction.
- iii. The Assessing Officer has also placed reliance on the books required to be maintained as per sec. 44AA of the Act. However, the provisions of section 44AA prescribe the nature of books of accounts and not the time of books of accounts.
- iv. The Assessing Officer has further stated that the books of accounts are not audited. However, merely because the books of accounts are not audited would itself not make the books unreliable.
- v. The Assessing Officer's inference out of the fixed amount of drawing of Rs. 10,000/- is also baseless.
- vi. The legal difficulty of the Assessing Officer cannot be the reason for rejecting books of accounts now once the same are admitted by the Hon.'ble Income Tax Appellate Tribunal as well as Your Honour.'

4.5 I have considered the submissions. As I note, the first issue to emerge from order dtd. 11.7.2008 of the Hon.'ble ITAT is to consider the report of the Auditors Vyas & Vyas appointed by the Special Court, which was not available when the proceedings were concluded by my the then predecessor. I have gone through and considered the report by the Auditors Vyas & Vyas. The Hon.'ble ITAT in their order have also directed me to accept the appellant's request for admission of the books of account as additional evidence. Since these two sets of documents have a close bearing on each other, I would prefer to give a consolidated adjudication on them.

4.6 As may be noted, 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 books of account submitted by the appellant..... When examined against the foregoing fundamental tests, the books of account submitted by 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. 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. 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 of **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 of **Ratanlal**



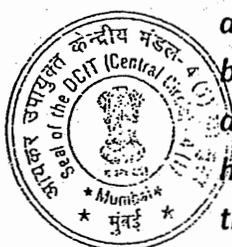
Omprakash vs. CIT 132 ITR 640, the Hon.'ble Orissa High Court has justified rejection of books by the Assessing Officer on the ground that the appellant was not maintaining the books of account specially day-to-day stock particulars. This view has again been echoed by the Hon.'ble Allahabad High Court in the case of **Omax Shoe Factory vs. CIT 281 ITR 268**. On this the appellant has submitted that the books have been written belatedly only because the appellant was not granted copies of the documents, seized material 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 searches in 1990 and 1992. This would make it very clear that the appellant was not maintaining contemporaneous proper books of accounting..... 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 as 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 MA 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 file before the Income Tax Authorities or before this Court is because the respondents or nay 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 a 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. 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 underlines a pattern in appellant's conduct while complying with statutes, rules and regulations.As I find, the books of accounts were not produced during the searches, assessment proceedings, to the appellate authorities, the three auditors appointed by Special Courts and of late as also to Special Auditors Vyas&Vyas. Significantly, I also note that the Janakiraman Committee and the Joint Parliamentary Committee have also not mentioned anything about the appellants books of account signifying thereby the fact that the books of account were not produce even before these high powered committee. 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 defense 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 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 respects, I find that the appellant has not specifically mentioned why the accounts were not audited. As already pointed out above, there has always been reluctance on the part of the appellant to discharge statutory and procedural regulations. ... 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 ever used these documents on his right. In these circumstances, the appellant cannot take the plea that his difficulties prevented him from getting the accounts audited. .. To illustrate I note that the Hon.'ble Special Court had appointed three firm of Chartered Accounts for auditing and compiling the appellant's account 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. No. 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 particular asked for being made available. Moreover, whatever particulars have been furnished is not complete as is evident from the correspondence on record. Moreover, it was mentioned in one meeting 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 compiled accounts which can be subjected to scrutiny of the these firms of Chartered Accountants. In spite of reminders such compiled data has not been furnished to date. Further, because of the time lag involved in furnishing the piecemeal particulars, the 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 account 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 account is necessary ingredient of reliability of books of account. This derives support from the decision of the Hon.'ble Delhi High Court in the case of 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 search and on account this infirmity, rejection of books of account was upheld by the Hon.'ble High Court.

iv. **The books of account of 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 relation of 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 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 account is in the first place unaudited and self-certified. In these circumstances, the accounts cannot be held authentic. In this respect, the decision of the Hon.'ble Kerala High Court in the case of Man & Company vs. CIT 256 ITR 373 bears special mention. As may be noted, in this case, 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 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 uniform withdrawal of Rs. 10,000/- for every month end. This is highly improbable. 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.



4.7 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 end this, 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 dates 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 and 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 this issue.

4.8 I now come to the report of the Auditors Vyas & Vyas. As directed by the Hon. 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-co-operation 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 & Vyas are similar to the infirmities 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 Auditors note while preparing the Statement of Affairs of the appellant bear particular mention. These notes have been mentioned 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, Assessing Officer and me must be the same. Clued into this, I find that the report



5th ground : The Assessing Officer has erred in law and in facts in making the addition of Rs. 1,080,58,89,691/- on account of unexplained investment in oversold position of money market securities.

The above grounds are elaborately discussed by the Id. CIT(A) in page 36 to 97 of his order. It was held that out of securities forming part of addition of Rs. 291.05 crore, securities worth Rs. 253.8 crore have been found to be not belonging to the appellant in terms of the order dtd. 1.11.2002 of the Hon.'ble Supreme Court. However, the Id. CIT(A) noted that "on perusal of the order of the Hon.'ble Special Court I find that in para 10 on page 21 of the order, the Hon.'ble Special Court has listed serial number of the securities and in this list, certain serial numbers of the securities in Annexure M-5 are not mentioned. This being so, it needs verification to what extent the securities in Annexure M-5 can be stated to be covered by the order of the Hon.'ble Supreme Court. The appellant has also argued that some of the securities in question stand assessed in the hands of Growmore Research & Asset Management P. Ltd. (GRAM). In this backdrop, I find that the securities mentioned in the order of the Hon.'ble Supreme Court and the securities stated to have been assessed in the hands of GRAM need to be identified and matched with the securities in Annexure M-5. As the submissions of the appellant are not very clear on this, I direct the Assessing Officer to identify the securities in these two categories and match them with the securities in Annexure M-5. The addition on account of the securities in Annexure M-5 would stand deleted / confirmed to the extent they are found / not found as either part of the securities mentioned in the order of the Hon.'ble Supreme Court or the securities assessed in hands of GRAM." As regards addition of Rs. 1,080.58 crore, the same is confirmed.

In the sixth ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs. 35.55 crore. This addition made by the AO is confirmed by the Id. CIT(A) and appeal is dismissed.

In the seventh ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs. 58.27 crore. This addition made by the AO is confirmed by the Id. CIT(A) and appeal is dismissed.

Grounds of appeal 8 to 12 have been covered in common submissions. Hence, the same was taken up together. The grounds raised by the assessee is as under:

- 8th ground : Addition of Rs. 16.02 crore on account of share market trading profit.
 9th ground : Addition of Rs. 2.85 crore on account of speculative profit.
 10th ground : Addition of Rs. 253.16 crore on a/c. of profit on sale of shares in shortage.
 11th ground : Addition of Rs. 19.71 lakh on account of share market badla income.
 12th ground : Addition of Rs. 5.56 crore on account of share market oversold position.



The Id. CIT(A) after giving a detailed reasoning, dismissed all the grounds of appeal raised by the assessee.

In the thirteenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in making the addition of Rs. 1.04 crore on account of dividend and interest income. This addition made by the AO is confirmed by the Id. CIT(A) and appeal is dismissed.

In the fourteenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in making the addition of Rs. 251.80 crore on account of unexplained money. This addition made by the AO is partly allowed. The Id. CIT(A) has observed that the assessee has stated in his submission that the amount of Rs. 17.77 crore, Rs. 64.94 crore and Rs. 18.75 crore stand covered by the order of Hon.ble Special Court dated 29.09.2007 in MA No. 210 of 2003. The AO has also in his report dtd. 2.7.2009 stated that a sum of Rs. 101.46 crore has been treated as money of SBI and should not be treated as income of assessee. Hence, the same is deleted. As regards the balance amount of Rs. 150.34 crore the same was confirmed.

In the fifteenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in making the addition of Rs. 6.85 crore on account of unexplained money with respect to the transaction with Mr. Niranjana J. Shah. This addition made by the AO was confirmed and also based on the report of JPC and the proposal submitted by AO for enhancement, the CIT(A) enhanced the addition by an amount of Rs. 12 crore.

In the sixteenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in making the addition of Rs.62.50 lakhs on account of unexplained investment in respect of payment made to M/s. June Investments. This addition made by the AO is confirmed by the Id. CIT(A) and appeal is dismissed.

In the Seventeenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in making the addition of Rs.25.20 crore on account of declaration u/s.132(4) of the Act. The Id. CIT(A) deleted the addition on the ground that the same was embedded in the total income determined while completing the assessment for the year under consideration and hence, no separate addition is called for. He has further held that 'however, this decision has to be read alongwith the decision of the Hon.'ble ITAT in its order dtd. 11.8.2008 in which para 5 page 5 of the order the Hon.'ble Tribunal has directed that in case the addition made by the AO are ultimately deleted in subsequent appellate proceedings, the total income of the assessee together with the addition sustained cannot be lower than the proportions of income out of the surrender of Rs. 100 crore as determined by the Assessing Officer.'

In the eighteenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in clubbing the income of Rs. 76,660 of Harshad S. Mehta (HUF) with the assessee's income. This ground is allowed by the CIT(A).

In the nineteenth ground of appeal, it has been contended before the Id. CIT(A) that the AO has erred in rejecting the cash system of accounting followed by the assessee for the purpose of accounting of interest income. This ground of appeal is dismissed.



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Counsel for the assessee contended that the books were not even looked upon by the lower authorities.

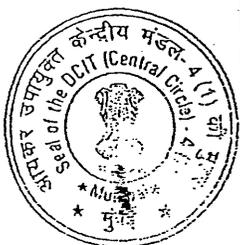
In any case, after examination of the reasons cited for rejection of books, the Hon.'ble ITAT held that the same was made on flimsy grounds without thoroughly examining each and every entry and without confronting specific discrepancy to the assessee. Hence, restored the issued back to the file of A.O with a direction to "verify / examine each entry in the books of account without getting prejudiced by the fact that the books of account are not contemporaneous. The AO is further directed to confront the assessee in respect of any specific entry which in his opinion is improbable. If it is found that certain balances are not tallying with related party transactions then it is expected that the AO would confront those account balances to the assessee giving his an opportunity to reconcile the difference."The assessee was also directed to explain each and every entry with demonstrative evidences. The assessee was further directed to co-operate with the Revenue authorities in getting his accounts examined and furnish necessary details as and when called for.

12. In view of the above, statutory notice under sec. 142(1) of the Act was issued alongwith detailed questionnaire on 03.08.2015. The same is reproduced hereunder:

'Please refer to Hon'ble ITAT order dated 29.10.2014 for AY 1992-93 received in this office, it may please be noted that ITAT has set aside the entire assessment proceedings to the file of AO to do de-nova. In this regard, you are requested to provide the following details;

i) *Please refer to assessment order u/s.144 dated 27.03.1995, as per which addition on following grounds have been made;*

Sr. No.	Particulars	Amount (Rs.)
1.	Money market trading profit	(-) 14,77,09,288
2.	Money market unexplained stock	291,05,41,290
3.	Money market oversold position	1080,58,89,691
4.	Money market difference received	35,55,51,482
5.	Interest on securities in money market	58,27,13,670
6.	Share market trading profit	16,02,65,407
7.	Share market speculative profit	2,85,26,994
8.	Profit on sale of shares in shortage	253,16,78,501
9.	Share market Badla income	19,71,050
10.	Share market oversold shares	5,56,19,836
11.	Dividend & interest income	1,04,58,970
12.	Unexplained money	251,80,33,835
13.	Transaction with Niranjan J. Shah unexplained money	6,85,81,200
14.	Payment to M/s. Jue Investment-unexplained investment	62,50,000
15.	Declaration u/s.132(4)	25,20,16,000
16.	Income of alleged HUF	76,600
	Total Income	2,014,04,65,298



In this context, you are requested to file your submission, with documentary evidences and all papers available with you to support your plea that the additions made earlier are on wrong footing.

On perusal of case records of previous assessment proceedings and appellate orders, it is learnt that several opportunities of personal hearing and inspection of seized documents and other materials available with this office were provided to you and availed by you, before final order was passed. It is also noticed that review of unaudited accounts were done by Kapadia Damania & Co., Natwarlal Vepari & Co., Kalyaniwalla & Mistry and Vyas & Vyas. Further, Jankiraman Committee was constituted by the Government to find out real facts in this securities scam. In light of the findings of the above, you are requested to submit all documentary evidences present with you, in order to support your claim.

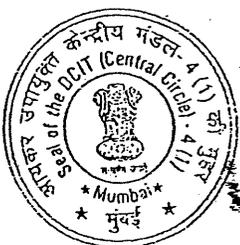
- ii) Kindly explain each and every credit entry shown in your bank account/accounts and also produce documentary evidences to prove your claim.
- iii) Furnish detail of all bank accounts maintained by you and also furnish certified Copy of Bank Accounts for F.Y. 1990-91 & 1991-92 for all bank accounts.
- iv) Produce bank books and Cash Book of F.Y. 1990-91 and 1991-92 for examination.
- v) In particular, documentary evidence regarding delivery of shares and debenture showing distributor Nos., purchased by you and sold by you.
- vi) Evidence regarding payments made towards purchase of shares and debentures. Documentary evidence of receipt of sale proceeds on account of sales of shares.
- vii) Documentary evidence regarding delivery of shares and debentures purchased by you and sold by you.
- viii) Evidence regarding payments made towards purchase of shares and debentures.
- ix) Copy of trading of stock account and investment of shares/debentures accounts.
- x) Copy of account of interest payable for F. Y. 1990-91 and 1991-92.
- xi) Documentary evidence of receipt of sale proceeds on account of sales of shares.
- xii) Documentary evidence of interest and dividend warrants claimed to have been received by you.
- xiii) Furnish details regarding loan given and loan taken from your family members, firms in which you or your family members were partners and other entities, along with documentary evidences.
- xiv) Detail of deductions claimed by you in computation of income filed by you in previous instances of assessment.
- xv) Provide details of your taxable and exempt income under various heads of income.



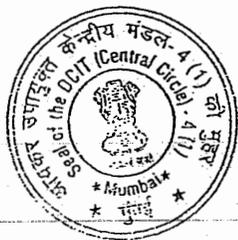
The compliance in respect of the above notice was sought on 13.08.2015 at 2.30 p.m. On the appointed date and time neither anybody attended nor furnished the details as called for. However, on 28.08.2015 Smt. Jyoti H. Mehta – legal heir.

13. The relevant portion of the compliance is reproduced hereunder:

- "2. I state that I am aggrieved by the approach adopted by your kindself in asking me to file submissions and adduce evidence to contest the additions that were made by your predecessor through his assessment order dated 27.03.1995 the following grounds which are stated without prejudice to each other as under:
- a. At the outside I strongly deny your contentions that proper opportunity was granted by your predecessor to Shri. Harshad Mehta and principles of natural justice were complied with by him in the assessment proceedings for AY 1992-93. Infact they were only observed in breach despite the fact that repeated requests were made by Harshad Mehta seeking inspection of the material proposed to be used against him, which requests were never granted before the assessment order was passed. Harshad Mehta had also requested to grant opportunity of cross examination of authors of material used against him and even these requests were never granted. He also requested to furnish him itemized particulars of several consolidated figures used by AO in form of queries which were raised on Shri. Harshad Mehta during assessment proceedings for seeking his reply but his request was also never granted. That therefore the said assessment order was liable to be set aside on the ground that principles of natural justice were not complied with in the framing of this order.
 - b. In further support of my contentions I am pleased to enclose a chart at Annexure-A giving particulars regarding requests made by Shri. Harshad Mehta to AO to grant inspection of material, to grant opportunity of cross examination and to furnish itemized breakup of consolidated figures presented to him by AO all of which legitimate requests were denied....
 - c. I say that it is also an admitted position of your predecessor that during assessment proceedings the AO responded by a letter dtd. 15.2.1995 clearly stating that he would give the inspection only after the replies were given by the assessee though the inspection was liable to be granted before seeking his reply and a copy of above letter of AO is enclosed at Annexure-B....
 - d. I state that principles of natural justice were grossly violated....
 - e. I state that even where inspection has been given in the past or material disclosed, your kindself is requested to once again offer the same and to make the copies of documents available to me due to the fact that 20 years have elapsed from the time of original assessment was made and due to the fact that Harshad Mehta has expired and all his offices have been sold without the Custodian making any arrangement for storing his records many of which are already lost....



- f. I humbly submit that even if inspection of any material was offered in the past or copies made available to me and if itemized breakup of additions made was given, the same may be made available once again for the aforesaid reasons. That the figures disclosed for breakup were incorrect and strongly disputed by me.....
- g. In fact it has got conclusively established by the orders of reliefs by all notified entities in our family including Shri. Harshad Metha that your department has earlier deliberately drawn illegal and high pitched assessment orders against all of us to exploit the priority accorded to your department u/s. 11(2)(a) of Special Courts Act.....
- h. I say that in fact in the appellate proceedings it was the revenue which was granted full opportunity by Hon.'ble CIT(A) to cure all the above fatal defects that existed in the assessment order regarding violation of principles of natural justice and in not following a fair and legal procedure in arriving at the income in as much as for the first time ever revenue after 1 year disclosed certain material facts, and offered inspection of material used to make additions only at the belated stage and that the time of hearing before the Hon.'ble CIT(A) because of the directions issued by him.....
- i. In further support of my contentions, I am please to enclose a chart.....
- j. I say that in the past your predecessors have defied the directions given by the Hon.'ble ITAT in a number of matters when old assessment orders were set aside and de-novo assessments were ordered in the case of my family members as well as in my own case.....
- k. I say that in order to resurrect the old additions, the books of accounts were rejected by your predecessor on flimsy grounds and once again principles of natural justice were not complied with in the reassessment proceedings.....
- l. I state that however, thereafter in the 2nd round of appeal before the Hon.'ble CIT(A) large reliefs were granted in all the 5 cases as above as 0% to 90% of the addition were deleted by the Hon.'ble CIT(A) after soliciting replies from your predecessor. I state that taking into account the above facts and history I humbly request your kindness not to adopt the same method as adopted by your predecessors as it will only prolong the litigation and eventually create a huge financial burden on your department to pay interest on the refunds that will become due to me as has already happened in all the above cases....
- m. I submit that after Hon.'ble CIT(A) granted the reliefs as above your department has not challenged the same before the Hon.'ble ITAT and therefore to that extent the litigation came to finality and reliefs granted to the 5 entities have become permanent.....it is your department is now saddled with liability to pay large amounts of interest besides the losses caused on account of prolonged litigation, which path is completely avoidable in the present case if the assessment is done judiciously and in accordance with law.



- n. I state that your kindness will also appreciate the fact that the present assessment is now being carried out after 21 year and after a prolonged litigation and even therefore, I request your kindness to refrain from adopting the method adopted by your predecessors to harass HarshadMetha and his family members by deliberately not complying with the orders of Hon.'ble ITAT as the same has imposed on your department a huge liability to pay interest....
- o. I submit that it is now the stated policy of the new Government that the Revenue should not unduly harass the assessee and act as an adversary of the Assessee and should minimize litigation. That admittedly HarshadMetha and his family members and associate entities have suffered great injustice at the hands of your department for the past 23 years because of high pitched and illegal assessments made on them and monies taken away against such false demands by selling of all their appreciating assets.....
- p. I state that even in view of the above facts as well as the policy of the new Govt. your kindness may kindly give up the methods deployed by your predecessors for making patently false and illegal assessments and break clean with the past which can be done only if the assessment is done de-novo and with an open mind.
- q. I state that the present assessment proceedings are de-novo proceedings and therefore your kindness cannot seek to salvage the old assessment order and additions made thereunder, as the earlier order has already been set aside by the Hon,'ble Tribunal by an order dtd. 29.10.2014. By your query letter your kindness is now seeking to resurrect the old and set aside order and in this manner your kindness is seeking to deprive me of the relief already granted to me by Hon.'ble ITAT...
- r. I say that notwithstanding above, the Hon.'ble ITAT has issued express direction to your kindness to take into account and examine the crucial evidence of books of accounts which were admittedly drawn several years after your predecessor had drawn the original order on 27.03.1995. That obviously your kindness has been directed to take into account this subsequent even and evidence which got prepared only after the passing of original assessment order. That your predecessor made large additions by finding fault with the compliance made by HarshadMehta, that he did not present his books of accounts about the queries, etc. and therefore now that the books of accounts are being presented with supporting evidence your kindness should take note of the compliance being made by overcoming all the difficulties. That therefore, your approach of resurrecting the old order and additions made therein without making compliance with the above express directions and examining the books of accounts only amounts to defiance with the order of Hon.'ble ITAT. I therefore, request your kindness to reassess the income after considering the crucial evidence of books of accounts.....
- s. I state that your kindness is required to consider this proceeding as de-novo proceeding also because the slate has been wiped clean by Hon.'ble ITAT by



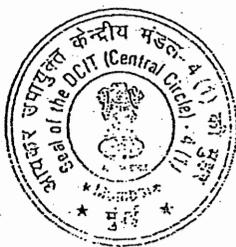
setting aside the old order and the baggage of old assessment order is therefore not required to be brought forward in the present proceedings. It is submitted that because of reliefs granted to me I should now not be asked to contest all over again the additions that were made by your predecessor in the old but set aside order and your kindself may initiate the present assessment proceedings afresh.

- t. I state that it may also be noted by your kindself that Hon.'ble ITAT has expressly directed your kindself to consider the evidence of books of accounts furnished by me after taking into account all the grounds of its rejection by Hon.'ble CIT(A) and in fact rejected all the grounds on which these books of accounts were rejected by Hon.'ble CIT(A) in his order dated 24.03.2010. Thus, this has been conclusively decided in my favour.....
- u. I state that in fact the Hon.'ble ITAT in several cases of my family members for AY 1991-92 have been pleased to accept the income disclosed in the books of accounts where the AAO similarly failed to comply with its directions to examine and consider the evidences of books of account.
- v. **Without prejudice** to the above, I state that so far as the additions that were made by your predecessor are concerned, they have now become completely obsolete due to the reason that since then substantial new facts have emerged and several binding orders have been passed by Hon.'ble Special Court, Hon.'ble Supreme Court, Hon.'ble ITAT, Hon.'ble High Court of Bombay and Hon.'ble CIT(A) as also substantial evidence has emerged which negates the additions made earlier and therefore all of the above liable to be taken into account in the reassessment more so as a period of 20 years have elapsed since the original assessment order was passed. I state that all the above binding orders and judgments are now bound to be followed by your kindself.
- w. I say that your predecessor had made several assumptions and presumptions while making large additions under the old order but now facts have emerged which will obviate the need of making those presumptions and several grounds are available to me to establish that the presumptions are no longer tenable since all the facts are now fully available on record... ..
- x. I state that in fact before the Hon.'ble ITAT your department itself had urged that the matter be remanded to Hon.'ble CIT(A) to consider the fresh evidence of report of chartered accountants. M/s. Vyas & Vyas drawn in the year 2005 and this prayer was granted by Hon.'ble ITAT in their order dtd. 11.7.2008 a copy of which is enclosed as Annexure-G. Thus even according to the stand taken by your department the subsequent facts are bound to be taken into account for which purpose your department prayed to remand the proceedings to CIT(A) and for the same reasons your kindself is now bound to consider all the subsequent acts, events and orders while reframing the present assessment order and thus your kindself may draw a fresh query list after taking into account the facts and orders as they exist today....



y.

- z. I also draw your attention to the judgement in the case of Harshad Mehta vs. Custodian (1998) 5SCC 1 wherein para 36 your department has itself conceded before the HON.'ble Court that the demands made under high pitched assessments may be ignored applying the wednesbury principles....
- aa. I state that your kindself would be aware that since the original assessment proceedings were undertaken in the year 1995 a number of binding orders have come to be passed by the Hon.'ble Special Court and Hon.'ble Supreme Court of India, Hon.'ble ITAT, Hon.'ble High Court of Bombay and Hon.'ble ITAT which has a material bearing on the income which is now liable to be assessed by your kindself. To cite an example for (MMOP) where the largest addition was made by your predecessor being an amount of RS. 1080.59 crore both Hon.'ble Special Court and Hon.'ble Supreme Court of India have passed orders to be effect that the entire sale proceeds cannot be treated as income of Shri. Harshad Mehta as done by your predecessor but only the difference between the sale price and purchase cost can be brought to tax and I am pleased to enclose copies of the order of Hon.'ble Special court dtd. 29.09.2007 in report No. 15 of 206 in the scaling down proceedings at Annexure I. I am also enclosing herewith the copy of judgement of Hon.'ble Supreme Court on 3.12.2008 as Annexure-J reported as (2009) 2 SCC 451 both of which are binding upon your kindself and which when taken into account would not justify any addition made to the income of Shri. Harshad Mehta. ...
- bb. I state that the old assessment order and additions made therein came to be challenged by the banks under the provisions of special Court as the Hon.'ble special Court has powers to examine the validity of the income assessed by your department in terms of law laid down by Hon.'ble Supreme Court of India in the case of Harshad Mehta vs. Custodian (5 SCC 1) copy enclosed. The Hon.'ble Court held that entire sale proceeds cannot be treated as income of Mr. Mehta and credit will be liable to be given in respect of purchase cost....
- cc. I say that thereafter upon challenge by your department and by the banks to the above order of Hon.'ble Special Court dated 29.9.2007 the Hon.'ble Supreme Court of India delivered their judgement on 3.12.2008 titled as DCIT vs. SBI (2009) 2 SCC 451. The Hon.'ble Supreme Court upheld the above order of Hon.'ble Special Court save and except that it remanded the matter to the Hon.'ble Court to examine two issues of facts are duly set out in the said judgement. It may be seen therefrom that the Hon.'ble Supreme Court has held in the para 38 of its judgement as under:



There could be no disagreement with regard to the fact that if any amount is found due and payable by the banks towards amount advanced by them as loan to Mr. Harshad Mehta, in that event the right of the bank to the extent of the said amount, but be held to be the existing right of the bank on the priority which is attached. It also cannot be ignored that the said amount could not have been assessed in the hands of Harshad S. Mehta as his income, for the banks continued to have an existing right on the aforesaid amount which is required to be released in terms of the decrees which are obtained by the

banks and the non-release of the aid mount would amount to miscarriage of justice.

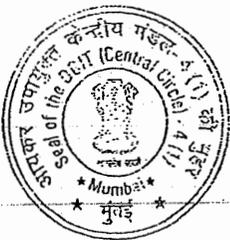
dd. **Without prejudice** to the above, I state that in the above judgement Hon.'ble Supreme Court directed Hon.'ble Special Court to examine whether the transactions for which the decree were awarded to banks are also forming part of the income assessed by revenue under MMOP. That therefore, in the proceedings before Hon.'ble CIT(A) I have conclusively established that the transactions for which decrees have been awarded to banks are included in the addition made under the head of MMOP to the extent of Rs. 980.41 crores for AY 92-93 and Rs. 420.81 crore for AY 93-94. That detailed letters addressed in this regard are already forming part of the record and copies have been served upon your department.

ee. I state that during the course of appellate proceedings before Hon.'ble CIT(A) your predecessor has not properly verified the submission made by me and has falsely disputed my contentions.... I state that your kindself is therefore liable to exclude the above amount of Rs. 980.41 crores from MMOP to comply with the affirmed judgment of Hon.'ble.

ff. I say that in view of the aforesaid judgement of Hon.'ble Supreme Court your kindself is required to separate those transactions undertaken by banks and financial institutions with Harshad Mehta where securities remained pending to be delivered by him to the clients viz. banks and financial institutions. It is submitted that monies received under such transactions would constitute liabilities of Harshad Mehta to his clients until the time the securities are actually delivered, pending which such monies received are only an advance received towards a contract or an agreement to delivery securities. Your predecessor has made several false presumptions and made additions even taking into consideration such transactions by treating the entire sale proceeds as the income of Harshad Mehta...

gg. I state that in your aforesaid notice your kindself is seeking to rely upon the Janakiraman Committee Reports, JPC report and Report of Chartered Accountants M/s. Vyas & Vyas. In these reports there are clear findings regarding non-delivery of securities by Harshad Mehta against receipt of consideration for it. However, it is very evident that multiple presumptions were made by your predecessor for making large additions even against the findings given in above reports and these presumptions are therefore patently false and contrary to all evidence on record including the above reports.

hh. I state that on this issue even the appellate authorities viz. Hon.'ble CIT(A) and Hon.'ble ITAT have given their findings for large additions which were made in the hands of Harshad Mehta for earlier assessment of AY 1990-91 and what is held therein would be binding upon your kindself for this subsequent period assessment. I rely upon the order of Hon.'ble CIT(A) dtd. 28.10.94 where he was pleased to reduce the additions made on Harshad Mehta including for such short sale of securities from Rs. 190.67 crore to Rs. 143.96 crores. That thereafter Hon.'ble ITAT upon appeal of Harshad Mehta was pleased to grant



(Through L/H Smt. Jyoti H. Mehta

further reliefs to him under an order dtd. 25.8.08, wherein residual additions of Rs. 130.75 crore were deleted and some issues have been remanded to the file CIT(A) and A.O...

- ii. I state that your kindself is now duty bound to follow the aforesaid bindings order of Hon.'ble ITAT dtd. 25.08.2008 for AY 90-91 for the following reasons:
- i) That a clear findings is given by Hon.'ble ITAT that AO cannot treat the sale proceeds of securities as income of the assessee by making the presumptions that these existed unaccounted stock with the assessee in respect of oversold securities.
 - ii) That in fact the AO is required to ascertain facts and find out whether delivery of securities was made as according to Hon.'ble ITAT it would otherwise amount to a loan to Harashd Mehta by his clients.
 - iii) That it is an admitted position that so far as the source of investment is concerned the oversold position of securities at one point of time will become the source of investment for eh subsequent oversold positions following the principles of teeming and lading and that therefore the AO has himself worked out the figure of peak oversold-position and not taken each and every sale of securities in the alleged oversold position.
 - iv) That credit of positive stock and position of securities is required to be given against the oversold position.
- jj. I say that all the above principles have not been followed by your predecessor....
- kk. I say that in the limited time that was granted by Hon.'ble CIT(A) and particularly very limited time that actually became available because of the delay of revenue in furnishing computation of MMOP, I did not get adequate time to file a proper reply,.....
- ll. I state that admittedly during the course of original assessment proceedings Shri. Harshad Mehta had explained the source of investments by placing on record of proceedings claims filed on him by the banks and he sought credit for these amounts against the proposed addition to that extent to explain the source of investment explaining the alleged unexplained investment. These facts are duly recorded in para 4.6.2 of the original assessment order from page 26 onwards under the headings of liabilities of the assessee in money market..... However, since then the Ho.ble Special Court has been pleased to pas decrees in respect of these claims and I am pleased to enclose a chart giving complete particulars of decrees passed against Harshad Mehta in the sum of Rs. 1688.17 crores and monies released there against as per chart which is enclosed as annexure. N.
- mm. It is submitted that for the grounds for which the credit for above claims were not allowed then but now since the decrees have been awarded by Hon.'ble



Special Court in favour of banks and the additions made on account of unexplained investments to that extent are liable to be deleted as the source of investment stands explained by the decretal amounts and all addition made on the ground of unexplained investment will not survive any longer.

- nn. Please note that I have placed copies of all decrees passed by Hon.'ble Special Court before the Hon.'ble CIT(A) and copies of which have been placed on your record and therefore they may be taken into account by your kindself.
- oo. I say that not only the above decrees have come to be passed but the Hon.'ble Special Court has also been pleased to release a sum of Rs. 1074.07 crore against the said decrees to SBI and the details in which regard are also furnished in the above decree chart. ... That before the Hon.'ble Special Court your department has not opposed the release of above monies to SBI and even therefore your kindself is now liable to give full credit in respect of the aforesaid discretal amount of Rs. 1688.17 crore against all the addition made on account of unexplained investment.
- pp. I say that admittedly your predecessor in his assessment order has given credit in respect of Rs. 601.21 crore paid to SBI as recorded on page 46 and 47 assessment order. I state that applying the same principles above credit of Rs. 1688.17 crore is also liable to be give against any addition made under the head unexplained investment.
- qq. That your kindself is aware that your predecessor had adopted an illegal method of assessment by doing a combined assessment of three brokerage firms of M/s. Harshad Mehta , M/s.Ashwin Mehta & M/s. J.H.Mehta for making several additions under the heads falling under capital market....
- rr. That your predecessor had made a very large addition of Rs. 253.17 cores on account of profit on sale of shares in shortage and similarly made additions in the hands of Ashwin Mehta for an amount of Rs. 367.30 crore and Rs. 309.48 crore in the hands of J. H. Mehta....
- ss. I state that besides above, facts and conclusive evidence have since emerged that the shares which have been presumed to be sold by your predecessor have factually not been sold and many of the shares aft being disclosed by Harshad Mehta under his letter dtd. 26.10.94 and 31.10.94 are actually forming part of numerous proceedings before Hon.'ble Special Court and in fact the Hon.'ble Court has issued order that these shares be registered....
- tt. I state that the shares which were presumed to be sold by your predecessor were factually never sold and a large part of it were in fact handed over by Harshad Mehta to Custodian from 1995 onwards and thereafter they were registered in the names of the notified entities in my family and corporate entities who had purchased these shares and to whom they acutely belong....That purchase of these shares have already been assessed by your predecessor in their respective hands.....



- uu. I state that a large quantity of shares were disclosed by Harshad Mehta in his letter dated 31.1.95 a copy of which is enclosed. But were not considered by your predecessor and they are also presumed sold on 31.3.92 as recorded in para 54.7 page 56 onwards of assessment order on flimsy grounds just to make very high pitched assessments as above....
- vv. I state that your predecessor also failed to give credit of the shares which were lost and reported to be missing though Hon.'ble Special Court in petition No. 88 of 2000 have been pleased to pass an order on 5.05.01 directing 90 companies not to transfer those missing shares which have not been transferred after 6th June 1992.
- ww. I say that to cite an example Shri. Ashwin Mehta has now filed before the Hon.'ble Special Court an application being MA No. 8 of 2013 for recovery of 2.50 lakh shares of Shir. Vallabh Glass Ltd. forming part of above 90 companies for which large additions was made by your predecessor to his income for AY 92-93...
- xx. I state that similarly the shares in respect of all the above 90 companies are also being recovered both by the notified entities and custodian and therefore for every shares reported to be missing by the notified entities for which a compliant is already lodged with the Custodian with a request to recover such shares no addition is liable to be made on the ground of their presumed sale....
- yy. I say that beside the above, facts have also emerged that the computations made by your predecessor about the shares in shortage is found to be incorrect as several shares which were existing and not sold or which were liable to be recovered from third parties have been presumed to be sold by your predecessor....
- zz. I say that as stated above your predecessor has not taken into account several shares which were existing but were presumed by him to be sold to make large additions. I have in fact been pursuing recovery of all such shares and I am pleased to enclose the orders of recovery passed by Hon.'ble Special Court in the following proceedings.....
- aaa. I say that admittedly your predecessor has made one more false presumption which was and is completely contrary to evidence on record i.e. my brokerage firm has undertaken all the transactions for and on my behalf and not on behalf of my clients. I say that factually this is untrue as Harshad Mehta as well as the clients of his brokerage firm have already adduced evidence of contract note and bills for their transaction before your predecessor and they have been brought to tax on such transactions....
- bbb. I say that since then, Hon.'ble Special Court have passed several orders in respect of these transactions undertaken by his brokerage firm and even allowed completion of contracts as well as transfer of shares in the name of the clients of his brokerage firm largely being the family members and



corporate entities promoted by them on 'the evidence of contract notes and declarations made by Harshad Mehta and his clients.

ccc. **Without prejudice** to the above, I state that in a number of proceedings before the appellate authorities all the transactions undertaken by the brokerage firm of Harshad Mehta for their clients have come to be accepted and taxed in the hand of these clients which was done on the evidence of contract notes and on the basis of list of transactions disclosed by the clients in appellate proceedings. In fact the Hon.'ble CIT(A) has deleted several additions made in the hands of my family members under the head of unexplained investment...

ddd. I say that ths not only the transactions of my clients stand admitted and reliefs have been granted on that basis but even your department has thereafter not challenged the above relief so granted to my family members and corporate entities....

eee. It is also seen that the same AO had undertaken assessment of Harshad Mehta for earlier years prior to the relevant year where the assessment is carried out on the basis of breakage income earned by Harshad Mehta in capital market for transactions undertaken for an on behalf of clients. The entire accounting system and manner of determination of income has been duly explained by AO and therefore for AY 1992-93 he could not have departed from the method of assessment followed by him....

fff. I say that in fact I have filed my books of accounts wherein complete particulars of the transactions undertaken by my brokerage firm for and on behalf of the clients are disclosed and the brokerage income earned by me on such transactions is already offered for taxation....

ggg. I hope the above submission will persuade your kindness to adopt a fair procedure for reassessment which is in accordance with law and the method adopted by your kindness by issue of above notice is given up. Kindly treat the above submissions only as my preliminary submission and grant me liberty to make further submission on this issue in view of the enormity of stake involved.

hhh. I state that your kindness will appreciate that all the above events have taken place after 27.3.1995 when the original assessment order was passed and a number of binding orders have been passed by Hon.'ble CIT(A), Hon.'ble ITAT and Hon.'ble Special Court from time to time in proceedings where your department is party and therefore these binding orders are now bound to be followed by your kindness.



iii. That admittedly during the course of original assessment proceedings your predecessor had not given any breakup for itemized particulars in the manner in which he had arrived at MMOP figure of Rs. 1681.80 crore and thereby deprived Shri. Harshad Mehta of any opportunity to contest the said figure of MMOP....

(Through L/H Smt. Jyoti H. Mehta)

jjj. That similar additions had been made by your predecessor on account of money market unexplained stocks, money market difference and interest on securities based on some calculations made by him which were not provided and they may be provide now though according to me they are no longer valid. Therefore, your kindness is required to taken into account all the subsequent facts and events before issuing above notice.

kkk. Kindly note that a large part of my records have come to be seized by the Custodian alongwith records of my family members and therefore we preferred an application before the Hon.;be Special Court being MA no. 31 to 2013 wherein the Hon'ble Special Court on 18.7.2014 have been pleased to grant relief and ordered release of records and a copy of order is enclosed as annexure-BB. The above order is still remain pending to be complied by the Custodian and all the records have not been released and handed over to me and therefore I humbly seek liberty to adduce further evidence in support of all the above contentions made in the present reply once the seized records are made available to me.

3. I hope that all the above facts will be noted by your kindness and taken in considering while undertaking the present assessment on a de-novo basis.
4. I say that so far as the specific queries raised by your kindness in your letter from para (ii) onwards, I am addressing separate letters and organizing to furnish my explanations to your kindness very soon in a phased manner since the volume of evidence called for by your kindness is substantial and since records of Harshad Mehta are yet not fully released by Custodian. Your kindness is aware that Shri. Dharmesh Shah my Chartered Accountant had appeared before your kindness on the appointed date to make compliance with your aforesaid notice. I also request your kindness that in case your kindness has any query in respect of hat is submitted above, kindly let me know so that I can meet the same."

14 In response to the above, another letter was issued on 28.10.2015, which is reproduced hereunder:

"This office has received your submission vide letter dated 25.08.2015 on 28.08.2015 in reply to notice u/s. 142(1) dated 03.08.2015. From the submission it is observed that you have not replied to even a single point on merit and in-spite of replying on merit, you cited several reasons for not providing the details asked for.

3. It is stated that the Hon'ble ITAT vide its order dated 29.10.2014 in ITA.No. 3699/Mum/2010 has directed the AO for fresh assessment after examining the books of accounts of the assessee. In the said order, the ITAT has directed the assessee to co-operate the AO and to explain each and every entry.

4. From available records in this office, it is seen that, in earlier scrutiny assessment also you have not co-operated in assessment proceedings. It is seen from records that various opportunities were provided to you and further, inspection of documents were also done in HSM group on various dates by number of person appointed by you.



5. Further, the Hon'ble Supreme Court in Civil Appeal No. 5176 of 2009 and D-25207 of 2008, in the case of Jyoti Harshad Mehta & ors Vs. Custodian & ors directed the Custodian to permit the assessee for inspection of all the documents in possession. In this regards, Hon'ble Supreme Court observed that the Custodian had complied with directions given to him and that the appellants had benefit of inspection of the necessary documents with the Custodians.

6. Further, the Hon'ble Special Court in MA No. 41 of 1993 stated that;

"It is clear to court that the reason why estimate of income was not filed before Income Tax authority or before this court, is because the respondent 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 authority 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 under/or estimates being filed. This is purposely not being done."

Very surprisingly, even the basic details have also not been provided by you like bank statements, computation of head wise income, documents regarding shares purchased/sold, details regarding exempt income, detail of source of investment, total investments made in shares, interest earned, interest given to others, cash book, various deductions claimed etc.

7. From available records in this office, it is found that in HSM group cases, you consistently have even not filed return of income in most of the cases in various assessment years and each and every time causing hindrance in concluding total income by not complied the statutory notices sent to you.

8. In view of the above and findings of the Hon'ble Supreme Court/Special Court, it is seen that you purposefully not want to submit details on merits. In this regards, as per direction of the ITAT, you are again requested to provide detail on merits in connection with our earlier notice/notices issued u/s. 142(1). It is to be noted that assessment is to be done de-novo/afresh and you are again provided with opportunities to present your points on merits and submit submission in this regards.

9. You are required to attend this office or file your submissions at the above stated address, on **03.11.2015, at 02:30 PM**, either in person or through your duly and properly authorized representative in terms of section 288 of the I.T. Act, 1961, along with your submission on query raised vide our letter dated **03.08.2015**. Please note that in absence of any details on merits, the assessment will be concluded u/s.144, on the basis of materials available on records.



15. Further, perusal of record shows that on 16.11.2015 Shri. Darmesh Shah C.A. and Shri.Nilesh Mehta C.A. attended. They were asked to file all relevant documents relating to points on which additions were made. The case was adjourned to 23.11.2015. However, nobody attended on the date and time fixed.

16. Again on 14.12.2015 another letter was issued and served on the assessee. The same is reproduced hereunder:

"From available records in this office, it is found that, in earlier scrutiny assessment proceedings, you were provided opportunities for inspection of seized materials in the assessee's case and other cases of HSM group on various dates by number of person appointed by you. More than 18000 pages of seized materials were provided to you, which included information received from third parties. Even after receiving more than 18,000 pages of seized material and other documents, you had opted for general replies instead of replied on merit. In the current proceeding also, you are asking for same material, which is already in your possession.

3. Further, the CIT(A) enhanced your income of Rs.5,14,18,800/- on the addition made on account of statement of Mr. Niranjana Shah, amount of Rs.11,85,00,000/- on account of interest, amount of Rs.372,82,14,642/- as income from undisclosed transactions and amount of Rs.69.63 crores being liabilities shown as other income in the review of unaudited account of M/s. Harshad S. Mehta prepared by Vyas & Vyas. You are therefore requested to submit your reply regarding enhancement made by the CIT(A) vide his order dated 24/03/2010.

4. You are also requested to provide your reply on point wise additions made earlier by the AO/enhancement of income by the CIT(A) as directed by the ITAT. You are again requested to provide detail on merits in connection with our earlier notice/notices issued u/s.142(1). It is to be noted that assessment is to be done de-novo/afresh and you are again provided with opportunities to present your points on merits and submit submission in this regards.

5. If at all, you require yet another inspection of the material available, the same can be arranged on an appointed date. So please specify on which point of additions made, the details were not provided earlier, inspection of the same may be granted.

6. You are required to attend this office or file your submissions at the above stated address on 18/12/2015 at 02.30 pm., either in person or through your duly and properly authorized representative in terms of section 288 of the I.T. Act, 1961, along with pending details called for vide earlier notices. Please note that in absence of any details on merits, the assessment will be concluded u/s.144 on the basis of materials available on records."

17. Another letter dtd. 15.01.2016 was issued and served on assessee, which reads as under:

'In this regards, the Hon'ble ITAT has set aside the assessment proceedings for the A.Y. 1992-93 to the file of the Assessing Officer vide order dated Nil. Subsequently, the undersigned had issued notices u/s.142(1) / reminders on dated 03/08/2015, 28/10/2015 & 14/12/2015 to submit details called for in the said notices. From available records in this office, it is found that details called for are still pending from your side. On most of the queries raised, it is also found that you have filed submissions only w.r.t. certain queries. And there is no new evidence or explanation to justify your contentions. The details filed by you only repetitive that were filed during earlier proceedings before AO & appellate authorities.



3. You are again requested to provide your reply on point wise additions made earlier by the Assessing Officer/enhancement of income by the CIT(A). You are again requested to provide detail on merits in connection with our earlier notice/notices issued u/s.142(1). It is to be noted that assessment is to be done de-novo/fresh and you are again provided with opportunities to present your points on merits and submit submission in this regards.

4. It is found that around 18000 pages were provided to you of seized materials and other information gathered by the department from other agencies/third parties mere provided to you in earlier years. It is believed that copy of all the seized materials and other information were already with you. If at all, you require yet another inspection of the material available, the same can be arranged on an appointed date. So please specify on which point of additions made, the details were not provided earlier, inspection of the same may be granted.

5. You are required to attend this office or file your submissions at the above stated address on 22/01/2016 at 02.30 p.m., either in person or through your duly and properly authorized representative in terms of section 288 of the I.T. Act, 1961, along with pending details called for vide earlier notices. Please note that in absence of any details on merits, the assessment will be concluded u/s.144, on the basis of materials available on records.'

18. On 21.01.2016 the assessee furnished a letter in response to notice issued on 03.08.2015. The same is reproduced hereunder:

1....

2. I am now pleased to forward the following supporting documents to my books of accounts as also the documents as sought for by your kindness in above notice to enable your kindness to match and verify the entries recorded in my books of accounts and the same will also enable you to determine my taxable income on that basis. I am pleased to forward the copies of documents / papers, the particulars and description of which is as under:

a. That I am pleased to also enclose 2 spring files containing copies of vellan / settlement records of 'A' group of Bombay Stock Exchange (BSE) in respect of transactions undertaken by my brokerage firm, and the particulars of settlement periods are also described in an enclosed chart. Please note that records of some more settlements are in the process of being located and will be forwarded as soon as they become available. These records are primary records in respect of transactions undertaken by my brokerage firm on the floor of the stock exchange which have been duly reported to the stock exchange on a daily basis and thereafter they have been captured in my books of accounts. That corresponding to these transactions contract notes have come to be issued in favour of the clients to the extent the transactions are undertaken by my brokerage firm for and on behalf of these clients for a consideration of brokerage income. I also clarify that for the transactions undertaken by me for my ownself, the same are reflected in the book under my own investment / trading account. That the brokerage income earned by me on the transactions undertaken for our clients have been duly offered for tax as reflected in the books of account.



3. Kindly note that with the filing of above I am not only making compliance with the orders of Hon.'ble ITAT dated 29.10.2014 but also with the notice issued by your kindself to me u/s. 142(1) of the Act.'

19. The submission made by the assessee is considered and the same is not acceptable in view of the following reasons:

- i. The assessee (legal heir) vide her letter 28.08.2015 stated that she is aggrieved by the approach adopted by the undersigned by asking to file submissions and adduce evidence to contest the additions that were made by my predecessor.

The sentiment expressed by the assessee is ignoring the argument made by her own AR before the Hon.'ble Tribunal. It was stated before the Tribunal that books of accounts were not considered. If it was considered the picture would have been different. (pls ref. para 11 above) In order to verify the books, the same should have been produced before the undersigned. It can be seen from the above that except unwarranted arguments no pains were taken to produce the same. The assessee had repeatedly stated that the books are with the Custodian. If that is the case, there is no logic in her claim that the books were not considered by the A.O.

Secondly, verification of books can be done only on the basis of material or evidences produced in support of a claim. The onus is on the assessee to produce such evidences and explain the posting of each transaction / corresponding entry made in the books. The assessee has failed to do so. This is also against the direction issued by the Hon.'ble Tribunal. It is pertinent to note that the books were prepared at a later stage and not audited. The same was rejected by AOs and appellate authorities citing one reason or the other. Even then, the Hon.'ble Tribunal was kind enough to direct the AO to ignore these inadequacies in the interest of natural justice and allowed the assessee a fresh opportunity of hearing by restoring the case. The assessee has miserably once again failed to avail the opportunity granted.

- ii. The next grievance is that 'proper opportunity was not granted and hence, principle of natural justice was denied'.

The undersigned, after going through all the documents (cited supra) placed on record i.e. from the assessment stage till date (the time taken is more than 20 years), failed to understand how much one can stretch the 'natural justice' for ones benefit. If it is measured in years, in the instant case it is not less than 20 years, and it is still continuing. It is not surprising that even today the only *mantra* on the lips of the assessee and all those who are associated with the assessee is 'denial of natural justice'. The undersigned is also failed to understand as to whether the Revenue, who is the respondent, is not aggrieved by the denial of justice? In this context, the undersigned once again draw attention to the observation made by Lord Denning (cited supra). Reliance is also placed on the following decisions:

MD, ECIL v. B Karunakar (AIR) 1994 SC 1074):

Natural justice cannot be extended to illogical & exasperating limits.



State Bank of Patiala v. S K Sharma (1996) 3 SCC 364 : Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end.

- iii. The next grievance is that the assessee was denied cross examination of the authors of material used against him.

This argument of the assessee holds no water. The assessee has never co-operated with the Special Auditors i.e. M/s. Vyas & Vyas or anybody either it is A.Os. or appellate authorities. The plea for cross examination is also a device used to delay the proceedings. The intention on the part of the assessee is very well explained in the order of the Hon.'ble Special Court in MA No. 41 of 1993 (pls. ref. Sr. No. 6 of letter dtd. 28.10.2015). In simple terms the idea is to 'wait and watch', which is not acceptable. In order to avail any deduction or relief, the onus is on the assessee to establish with supporting evidence upto the satisfaction of A.O that the same was incurred wholly and exclusively for the purpose of business.

- iv. In the submission made by the assessee vide letter dated 25.08.2015 it can be seen that except submissions, there were allegations of wrong doings, allegation of assumptions and presumptions while deciding issues, denial of justice by AO, apprehension of loss of Revenue on account of interest payable to assessee, advices and even directions to the undersigned to follow the orders of appellate authority. At one stage it was stated that the additions made by my predecessors have become obsolete due to new facts and binding orders. In another occasion, the assessee state that the undersigned required "to separate those transactions undertaken by banks and financial institutions with Harshad Mehta where securities remain pending to be delivered by him to the clients viz. banks and financial institutions." Is not for the assessee to carry out this exercise and explain the same with supporting evidences?

- v. In the above cited reply (sr. No. 4) the assessee voluntarily offered to make compliance with regard to query raised by the undersigned vide letter dated 03.08.2015 from Sr. No. (ii) on wards. However, no compliance was made till date in respect of these queries, except the issue of reconciliation of unexplained stock and inter-corporate loan (Mysore Petro). The details furnished were reconciled and placed on record.

- a. As regards matching of securities as appearing in the orders of Hon.'ble Supreme Court with the securities as appearing in annexure M-5, I have carefully considered the submission made by the assessee as the details available on record. During the entire proceedings, no such direct matching / reconciliation could be found / made produced, other than what was produced earlier. It is observed that no security could be matched in terms of the directions of the appellate authority. Hence, no security could be deleted.

- b. As regards inter-corporate loan of Rs. 50,00,000, it is noticed that this amount has been clearly discussed in the text of the order of GRAM and as such, an addition to this extent needs to be deleted in terms of the deletion of the appellate order.



- vi. So far as the rejection of books of account is concerned, the same was rightly done by my predecessors and appellate authorities. The following are some of the discrepancies noted by the Id. CIT(A) at page No. 89 in his order:

In many cases –

- i. the transactions of purchase have been shown as sale by the assessee;
- ii. it was sale executed and not the purchase;
- iii. there is no transaction at the rate and quantity mentioned by the assessee;
- iv. the documents relied upon do not substantiate the assessee's point;
- v. the transactions are marked as 'RV', 'RO', 'OR' etc. and not 'RT';
- vi. the transactions are market 'F' and not 'T';
- vii. the date of transactions are different;
- viii. the securities are different;
- ix. the transacting parties are different; and
- x. in many cases the securities mentioned do not form part of 'M-2'.

In addition to the above, attention is also drawn to page No. 75 of the order of the Id. CIT(A) where he has made an illustration of various transactions showing discrepancies in quantity, value and scrip.

- vii. The assessee has failed to produce the books of account and also furnish supporting evidences and explain the same, as per the direction issued by the Hon.'ble Tribunal. Reliance is also placed on the decision of the Hon.;ble Apex Court in the case of *Kachwala Gems (cited supra)*.

19. In view of the above stated facts and circumstances of the case and the decisions of my predecessors and also the decision of Hon.'ble CIT(A) Mumbai vide order dated 24.03.2010, subject to the finalization of appeal of Revenue pending before higher authorities, filed against the order of CIT(A), no relief could be given to the assessee except as stated above. Penalty proceedings initiated in the order u/s. 144 27.03.1995 shall remain in force.

20. Subject to the above remarks, the total income of the assessee is computed as under:

	Particulars		Amount in ₹
	Total income as per order u/s. 144 dtd. 27.03.1995 ...		2,014,04,65,298
1.	Less: Relief allowed by CIT(A) vide order dtd. 3.10.2006	-25,20,16,000	
2.	Less: Relief allowed by CIT(A) vide order dtd. 24.03.2010		
	-unexplained money .. 101,46,00,000		
	-income from alleged HUF .. 76,660		
	-Inter-corporate deposit – Mysore Petro .. 50,00,000	-101,96,76,660	
	Add: Enhancement made by CIT(A) vide order dtd. 24.3.10		
	Interest receivable from family members .. 118500000		
	On account of Mr. Niranjana Shah .. 51418800		
	Difference as per Vyas & Vyas report ... 3728214642		
	Other income as per Vyas & Vyas report .. 696300000	459,44,33,442	332,27,40,782
	Total income	2,346,32,06,080



21. Assessed under sec. 254 r.w.s. 143(3) of the I. T. Act, 1961 on a total income of Rs. 2,346,32,06,080/-. Credit for prepaid taxes allowed, after due verification, as per ITNS-150A, which forms part of this order. Penalty proceedings initiated vide order u/s. 144 shall remain in force. Issue demand notice accordingly.



(RAJNI RANI ROY)
Dy. Commissioner of Income Tax,
Central Circle-4(1), Mumbai

Copy to assessee.

Dy.C.I.T.,Cen.Cir.4(1),Mumbai