

"The Hon'ble ITAT passed an order in case of late Shri Harshad Mehta for AY 1992-93 and rejected the 7 grounds on which the CIT(A) had rejected the evidence of books of account without even examining them for their veracity. These books of account were earlier admitted in additional evidence by Hon'ble ITAT on 11.07.2008. It held that merely because the books were drawn later or that they were not audited or because they were not complete or because they were suffering from some infirmities they cannot be rejected since they were not examined at all. The conclusion reached that the books were not supported by primary documentary evidence was also rejected and the AO was directed to examine the books entry by entry and establish defect if any. The adverse observations made against Smt Jyoti Mehta by the Chartered Accountants were also found to be untenable."

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एच' मुंबई।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3699/Mum/2010

(निर्धारण वर्ष / Assessment Year : 199~~2~~-9~~3~~³)

Late Shri Harshad S. Mehta Through L/H Smt. Jyoti H. Mehta, 32, Madhuli, Dr. Annie Besant Road, Worli, Mumbai-400 026	बनाम/ Vs.	The DCIT, Central. Cir.23, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : N.A.		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Vijay Mehta Shri Dharmesh Shah
प्रत्यर्थी की ओर से/Respondent by:		Shri G.C. Srivastav, Special Counsel

सुनवाई की तारीख / Date of Hearing : 07.10.2014

घोषणा की तारीख /Date of Pronouncement : 29.10.2014

आदेश / O R D E R

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Ld. CIT(A)-40, Mumbai dt.24.3.2010 pertaining to A.Y.1992-93.

2. The assessee has raised as many as 27 grounds of appeal. At the outset, the Ld. Counsel for the assessee stated that the entire issue revolves around the fact that the books of accounts have been rejected by

the Revenue authorities. It is the say of the Ld. Counsel that if the books of accounts have been properly examined, the picture would have been different.

3. Rebutting to this, the Ld. Departmental Representative strongly submitted that the books of accounts have been properly examined and thereafter rejected by the lower authorities.

4. The assessment in this case was originally completed on 27.3.1995 at a total income of Rs. 214 crores. The First Appellate authority passed his order on 28.2.2003 upholding the assessment order. The matter travelled upto the Tribunal. The main contention before the Tribunal was in respect of the admission of additional evidence in the form of books of accounts. The Tribunal vide its order dt. 11.7.2008 in ITA No. 3664/M/03 and C.O. No. 211/M/03 set aside the appeal and the cross objection to the files of the Ld. CIT(A) for adjudicating the issues afresh after considering the books of accounts of the assessee. Admittedly, the Tribunal was pleased to admit the additional evidence in the form of books of accounts and restore the matter to the files of the Ld. CIT(A) to examine the same.

4.1. In terms of the directions of the Tribunal, the books of accounts were submitted by the assessee which were forwarded to the AO by the Ld. CIT(A). It would be pertinent to mention here that pursuant to the order of the Hon'ble Special Court dt. 16.10.2003 on the Custodian's Report dt. 1st October, 2003, the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 appointed M/s. Vyas & Vyas, Chartered Accountants for preparing and auditing the accounts for Mr. Harshad S. Mehta and M/s. Harshad S. Mehta who were notified

entities under the Special Court (TORTS) Act, 1992 for the financial year ended 31.3.1991, 31.3.1992 and for the period ending 8.6.1992.

5. The Ld. CIT(A) considered the report of the Special Auditors and the observations of the AO and formed a belief that –

- 1) The books of accounts are not contemporaneous and inordinately belated
- 2) The books of accounts are unaudited.
- 3) The books of accounts are not complete.
- 4) The books of accounts of the transacting parties also suffer from several infirmities.
- 5) The books of accounts are not backed by primary documentary evidence.
- 6) The books of account show improbable entries
- 7) The books of account are also rejected by M/s. Vyas and Vyas, Chartered Accountants appointed by the Hon'ble Special Court.

6. The Ld. DR strongly submitted that the Ld. CIT(A) has not accepted the books of accounts after giving cogent reasons based on the examination of the Special Auditors as well as the AO.

7. The Ld. Counsel for the assessee vehemently submitted that the books were not even looked upon by the lower authorities and therefore rejection of the same is not proper in the eyes of law.

8. The Ld. DR continued to submit that the reasons given for rejecting the books of accounts are only after thorough examination of the books and therefore the rejection of the books deserves to be upheld.

9. We have given a thoughtful consideration to the rival submissions. We have also carefully perused the orders of the lower authorities, the earlier order of the Tribunal and the relevant related documents brought on record before us. It is not in dispute that in the first round of litigation, the Tribunal has admitted the books of accounts as additional evidence and the matter was restored to the files of the Ld. CIT(A) for proper examination of the books.

9.1. Let us now examine the reasons given for rejecting the books of accounts. The first reason is that the books of accounts are not contemporaneous. In our understanding of the facts of the case in hand there is no denial that the books of accounts are not contemporaneous. It is an undisputed fact that the books of accounts have been prepared much after the close of the accounting year. This fact is also admitted by the Special Court, Jankiraman Committee, Joint Parliamentary Committee and also by the assessee. Merely because the books are not contemporary cannot be a reason to reject the books. All that has to be seen is whether the books have been prepared on the basis of the contemporaneous documents. At this stage, it is pertinent to mention that the books have been prepared from the documents/details which are in possession of the custodian/Revenue authorities. The Ld. CIT(A) has also mentioned that no books of accounts were found during the course of the searches in 1990 or in 1992 which means that the assessee was never maintaining contemporary proper books of accounts. This observations of the Ld. CIT(A) is against the facts of the case because the AO at para 3.4 on page-5 of his assessment order has observed as under:

“During the course of search at various premises of the assessee in 1990 and 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 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 the 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.”

Therefore, rejecting the books of accounts on this ground is not justified because the books have actually been prepared much after the close of the accounting year. What has to be kept in mind is that the books of accounts have been prepared on the basis of the documents which are still in the possession of the authorities.

10. The second reason is that the books of accounts are unaudited. At the outset, we have to say that the books cannot be rejected merely because they are unaudited. All that has to be seen is that whether the books of accounts give a true and fair view or not. There are separate provisions in the Income tax Act to penalize the assessee for not getting its books of accounts audited, merely because the audit report is not there, the books cannot be rejected.

11. The third reason is that the books of accounts are not complete. If the books of accounts have never been examined how can the revenue authorities say that the books are not complete. The revenue authorities should have specifically pointed out which part of the books is not

complete. Without pointing out any specific/direct mistake, a general statement stating that the books are not complete would not do any justice. The Ld. CIT(A) has observed that all the bank accounts have not been considered in the books of accounts. It is the say of the Ld. Counsel that all the bank accounts have been considered which can be verified with the information from the custodian as all the bank accounts of the assessee are attached under the orders of the Special Court. We find that the observation of the Ld. CIT(A) is very general. The Ld. CIT(A) should have pointed out which bank account is not incorporated in the books of accounts. This reason is also not acceptable.

12. The fourth reason given is that the books of accounts of the transacting parties also suffered from several infirmities. The Ld. CIT(A) observed that most of the entries in the books of accounts are in the form of journal entries in the names of related person. We failed to understand how can this be a reason for rejecting the books of accounts. When a person is maintaining books of accounts on mercantile system of accounting, obviously, most of the entries would be in the form of journal entries. Further, we find that in the cases of other members of the Harshad Mehta group, the Tribunal has restored the matter to the files of the Ld. CIT(A) for verification of the books of accounts.

12.1. The Ld. DR has not brought on record the rejection of books of accounts by the Tribunal in any of the cases of the family members. Therefore, this reason is also not acceptable.

13. The fifth reason is that the books of accounts are not backed by primary documentary evidence. Once again, the Ld. CIT(A) observed that the books of accounts are not audited and are self certified therefore the accounts cannot be held as authentic . As mentioned elsewhere, the

books of accounts have been prepared on the basis of the evidences which are seized by the authorities which mean that they are still in the possession of the department/custodian. There is no specific instance pointed out which is not backed by any primary documentary evidence. It is also not clear whether the assessee was ever called for to explain any of the transactions recorded in the books of accounts. In the absence of the verification of primary document vis-à-vis entries in the books, assessee's accounts cannot be treated as unreliable.

14. The sixth reason is that the books of account show improbable entries. The Ld. CIT(A) has observed that the assessee has shown uniform withdrawal of Rs. 10,000/- at every month end which is highly improbable . Now again this cannot be a reason for rejecting the books because it is a common practice to debit the capital account for personal drawings every month. The revenue authorities should have been more specific in elaborating the entries which were improbable in their eyes.

15. The last reason is that the books of account are also rejected by M/s. Vyas & Vyas, Chartered Accountants appointed by the Special Court. We have also perused the Special Auditors report. The special auditors have given two reports (1) report on review of unaudited accounts of M/s. Harshad S. Mehta and (2) report on review of unaudited account of Late Shri Harshad S. Mehta. Without going into much detail, let us see the concluding remarks of the auditors.

(i) In respect of Mr. Harshad Mehta

We were appointed to audit of the accounts of HSM & M/s. HSM by the order of the Hon'ble Special Court dt. 16.10.2003. Immediately after getting the appointment letter we tried to contact JHM/ASM the concerned person:of HSM but we failed to contact

them. We wrote several letters to JHM but they responded not a single letter. We were left with no other alternative except to prepare accounts from the information available in the computers handed over to us by Custodian, which were lying in the office premises of HSM. We contacted computer experts and retrieved data from computers, which were checked by us. We also prepared books in relation to share transaction entered by M/s. HSM. We further wrote letters to all concerned banks, and financial institution, most of them responded. We found huge differences in the transaction reported by parties and records available pertaining to HSM, which has been reported by us in our report.

We have studied JPC report, Janki Raman Committee Report and charge sheets filed by CBI. The facts reported in JPC and Janki Raman Committee reports were further verified with the books of accounts, which were not fully tallied. We have also written letters to the concerned parties, which were responded by some parties/banks and some parties/banks have not responded. The banks who responded have confirmed the contents of said reports. We have reported the responses of concerned parties in our report. As regards charge sheet filed by CBI. We have tried to verify facts and figures in the books provided in the computers but not offered any comments, as the matter is subjudice before the Hon'ble Special Court.

We have also checked in detail the transactions of money market entered into by HSM but could not verify the total transactions due to lack of information. The response given by concerned parties showed huge differences in transaction in HSM's books. Therefore, the correctness in such accounts cannot be ascertained.

We have also studied the third party liabilities towards banks, financial institution and other notified parties etc. As per books/records made

available to us and other information gathered as reported in our report, the liabilities appear in the Balance sheet as 8^l June 1992 are not verifiable. Therefore the liability appearing in the Balance Sheet cannot be relied upon and has to be ignored. The Bank and financial institution have lodged claims and also filed suits, which have been decreed against HSM. The liability against income tax has to be considered. In our opinion there are two major liability of HSM i.e. Income tax liability and claims decreed against HSM.

19.5 We have commented upon huge payments made by HSM to his family members and associate concerns. We are of strong opinion that all movable and immovable assets acquired by family members and associates companies through funds provided by HSM, belonged to HSM/ M/s. HSM only.

Due to the compelling nature of limitations on our work and unreliable nature of the books of accounts we are not unable to accept responsibility for the accuracy and completeness of the information/particulars provided to us nor do we accept such responsibility.

Therefore, we are unable to comment about the true and fair state of affairs of HSM and M/s HSM for the ended 31" March 1991 31st March, 1992 and for the period ended as on 8th June 1992:

(ii) In respect of Late Shri Harshad S. Mehta

We were appointed to prepare and Audit the accounts of Mr. HSM and M/s. HSM for the year ended 31.3.1991, 31.3.1992 and also for the period ended as on 8.6.1992 by the order of the Hon'ble Special Court dt. 16.10.2003.

Immediately after getting the order of appointment we

tried to contact Mrs JHM, the Legal leir of Mr HSM for getting information and explanations but she didn't responded any of our letters and telephone calls. We also requested to provide soft copy of the accounts but nothing was provided to us. Thereafter, we wrote several letters to JHM but not a single letter was responded. Annexure No.3A is enclosed herewith in the report regarding list of letters written to JHM & its purpose.

For the purpose of our review of the accounts of Mr. HSM, we have relied on the unaudited computer printed books of account. In certain areas, wherever possible we have independently verified the information gathered from the third parties as contained in this report. Our review has been carried out with the objective of covering the specific areas mentioned in this report and does not constitute the statutory audit or otherwise any audit of the accounts of Mr. HSM.

We tried hard and took the help of experts to retrieve the data from some of the computers, which were provided by the custodian pertaining to HSM. We were also provided hard copies and some files relating to shares and securities transactions of HSM. We compared the hard data with the data retrieved from computers and found huge differences in figures. Thereafter we thoroughly checked both the data and corrected the figures wherever it was possible. We have also done accounting work relating to shares, which was major activity of HSM and found major variations which is reported as under:

<i>Period Ending</i>	<i>As per HSM Book (Trading of Investment a/c)</i>	<i>As per Annexure No. 4A, 4B, 4C (compiled out Vallan and DBP Files)</i>	<i>As per Annexure No. 40, 4P, 4Q (Trading) and 4R, 4S, 4T(Investment as compiled by us from HSM Books.</i>
	*(1)	*(2)	*(3)

<i>31.3.91</i>	<i>1,04,73,245</i>	<i>8,04,52,271</i>	<i>-1,88,63,819</i>
<i>31.3.92</i>	<i>-84,45,42,966</i>	<i>12,76,82,935</i>	<i>7,05,83,523</i>
<i>8.6.92</i>	<i>10,56,29,006</i>	<i>3,93,78,662</i>	<i>34,44,46,907</i>
<i>Total</i>	<i>-72,84,40,715</i>	<i>24,75,13,868</i>	<i>39,61,66,611</i>

*

- (1) Profit calculated by HSM in his books.
- (2) Profit compiled out of Vallan and DBF Files
- (3) Profit compiled by us from Books of HSM

Our report is based on the information made available to us and is subject to matters for which responses have not been received by us till date. Our report is based on the information reviewed/presented to us on or before 31 October 2005, and reflects matters as they existed during the period of our review of accounts for the year ended 31^t March 1991, 31 March 1992 and for the period ended 8" June 1992.

As on 1/4/1990 Mr. HSM was having capital of Rs. 9,37,03,54,391/- which was increased to Ps.48,98,70,15,550/- on 8/6/1992 based on our calculation of profit in point no. 8.16 (column No. 3).From the books of accounts, which were produced before us and as per other information, we can conclude that Mr. HSM withdraw funds without providing any supporting document from Public Sector Banks and Financial Institutions were used by HSM for purchase of shares in the name of his family members and also for purchase of immovable properties. The Modes Operandi adopted by HSM was to transfer funds to his family members and associate companies immediately after receiving funds fraudulently from PSU Banks and Financial Institutions. This was probably done by HSM to avoid taxes and in case he gets exposed than his family members may be escaped.

We have studied Jankiraman Committee Report with reference to HSM and accordingly made correspondence with the concerned parties. Most of the parties have responded and we have reported the same in our report. We have studied Jankiraman Committee and JPC Report.

We have also gone through the charge sheet filed by the CBI against HSM and in this respect no comments are offered by us as the same is sub juristic before the Hon'ble Special Court.

As regards the total liability of Mr. HSM the same is reported in our audit report of M/s. HSM.

Our scope of work does not enable us to accept responsibility for the accuracy and completeness of the information/particulars provided to us nor do we accept such responsibility.

Therefore, we are unable to comment about the true and fair state of affairs of HSM"

16. A perusal of the orders brought to our notice shows that the auditors were appointed on 5.11.2003 about two years after the death of Shri Harshad S. Mehta who expired on 30.12.2001. The widow Smt. Jyoti Mehta had already informed the custodian and the Special Court that she had no knowledge of the business of her deceased husband therefore will not be able to meet any queries. The auditor's commented that there was non-cooperation on the part of the assessee for the purpose of audit and that due to lack of verification, the reliabilities of these books could not be verified does not have any force for the simple reason that in a case of such huge magnitude expecting the widow to answer each and every query was not possible.

16.1. If the report of the Special Auditors was so sacrosanct to the revenue authorities, then we find that while drawing the statement of affairs of M/s. Harshad Mehta, the auditors have determined the net profit earned during 1.4.1990 to 8.6.1992 at Rs. 1235321902 or say Rs.

123.53 crores, the assessment should have been made by bifurcating this income for the financial year under consideration.

16.2. Another reason for rejecting the books of account is that the balances in the account of the assessee and the balances in the books of related entities do not tally. A Perusal of the orders of the authorities below do not show any specific entry/balance which is not tallied. Moreover, if the Revenue authorities were of the opinion that certain account balances are not getting tallied, then they should have confronted those specific balances to the assessee seeking his explanation/asking the assessee to get the accounts reconciled. Without doing this exercise, the books could not have been rejected.

16.3. Having said all that, in our considered opinion and in our understanding of the facts, the books of accounts have been rejected on flimsy grounds without thoroughly examining each and every entry and without confronting specific discrepancy, if any, to the assessee. In our considered opinion, we have to restore this issue to the file of the AO. The AO is directed to verify/examine each entry in the books of accounts without getting prejudice by the fact that books of accounts 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 him an opportunity to reconcile the difference.

17. Before parting, we have to reiterate that the books of account have been prepared after the date of search but from the seized documents should not have been rejected without going through/examining each and

every entry. The AO is therefore directed to examine each and every entry. The assessee is directed to explain each and every entry with demonstrative evidence. The AO is further directed to allow the assessee an opportunity to reconcile each and every account where in his opinion the balances do not tally with the third party balances. The assessee is directed to reconcile each and every such entry as brought to his notice. The AO is further directed to explain specifically which entries according to him appear to be improbable and allow the assessee an opportunity to explain the same. The assessee is directed to co operate with the Revenue in getting his accounts examined and furnish necessary details as and when called for. The assessee is also directed to give a complete reconciliation statement wherever differences in third party accounts are brought to his notice.

18. As we have restored the matter relating to the books of account to the file of the AO, we do not find it necessary to decide other grievances of the assessee as they are all inter related with the books of accounts. The AO is directed to decide the issue afresh after examining the books of accounts of the assessee.

19. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 29th Oct.2014

Sd/-

(JOGINDER SINGH)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29/10/2014

व.नि.स./ RJ , Sr. PS

Sd/-

(N.K. BILLAIYA)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई¹
/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai