

**IN THE OFFICE OF THE  
COMMISSIONER OF INCOME TAX(APPEALS) - 52;MUMBAI**

	<b>Date of Order: 28/06/2017</b>	
	<b>Appeal Number: CIT(A)-52/IT/DC-CC4(1)/306/2015-16</b>	
1.	<b>Date of institution of appeal</b>	30/03/2016
2.	<b>Assessing Officer who made the assessment order</b>	Smt. Rajni Rani Roy DCIT, Central Circle - 4(1), Mumbai
3.	<b>Assessment Year</b>	1992-93
4.	<b>Name &amp; address of the Appellant</b>	Late Shri Harshad S.Mehta 32, Madhuli, Dr. Annie Beasant Road, Worli, Mumbai - 400018
5.	<b>P.A.No.</b>	ABAPM1848F
6.	<b>Income assessed</b>	Rs. 23,46,32,06,080/-
7.	<b>Tax/Penalty/Fine/Interest demanded</b>	Rs. 91,11,13,05,271/-
8.	<b>Section under which the order appealed against was made</b>	254) r.w.s. 143(3) of the I.T.Ac , 1961
9.	<b>Date of Hearing</b>	As per order sheet
10.	<b>Present for the Appellant</b>	Shri. Sandeep Bhalla, C.A. Shri. Ashish Agrawal, C.A.
11.	<b>Present for the Department</b>	

**APPELLATE ORDER AND GROUNDS OF DECISION**

This appeal is directed against the assessment order date 15/03/2016 of the Dy. Commissioner of Income-tax, Central Circle-4(1) Mumbai (hereinafter called as the 'Assessing Officer' or simply, the 'AO' passed u/s. 254 read with Sec. 143(3) of the Income-Tax Act, 1961 (in short the Act) in the case of Late Harshad S. Mehta (hereinafter called as the appellant or the assessee) for A.Y. 1992-93.

2. The appellant Late Harshad S.Mehta belongs to Harshad Mehta



*D. Mehta*

group and is a notified person under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. It appears that the assessee did not file any return of income for the year under consideration within the time limit prescribed u/s 139(1). However later, in response to a notice u/s 142(1) of the act, the assessee filed a return much later on 29/10/1993, declaring an income of Rs. 6,84,08,000/-. However the same was held to be invalid by the AO. It is gathered that a search seizure action u/s 132(1) of the act was carried out in this case by the Directorate of Income tax (Inv.) Mumbai on 28/02/1992. During the course of search various incriminating material was found and seized including some share certificates and documents relating to investments in shares etc. Later a search seizure action in this case was also carried out by the CBI on 04/06/1992 and some documents were seized by them also. There after the assessment proceedings were taken up by the AO. In due consideration to the facts of the case, the assessment was completed u/s. 144 of the Act on 27/03/1995, on a total income of 20,14,04,65,298/-, after making the following additions/disallowances :-

Sr. No.	Particulars	Amount (in Rs.)
1.	Money Market Oversold Position	10,80,58,89,691
2.	Money Market Unexplained Stock	2,91,05,41,290
3.	Profit on sale of Shares in shortage	2,53,16,78,501
4.	Unexplained Money	2,51,80,33,835
5.	Interest on securities in Money Market	58,27,13,670
6.	Money Market difference received	35,55,51,482
7.	Declaration u/s.132(4)	25,20,16,000
8.	Share Market Trading Profit	16,02,65,407
9.	Unexplained Money-Niranjan Shah	6,85,81,200
10.	Share Market Oversold Position	5,56,19,836
11.	Share Market Speculative Profit	2,85,26,994
12.	Dividend & Interest Income	1,04,58,970



13	Unexplained Investment-Payment to M/s.Jue Inv.	62,50,000
14	Share Market Badla Income	19,71,050
15	Income from alleged HUF	76,660
16	Money Market Trading Profit	-14,77,09,288
<b>Total assessed income</b>		<b>20,14,04,65,298</b>

3. Against the above assesment order the assessee filed an appeal with my Id. Predecessor . My Id. Predecessor vide 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. On further appeal, the Hon'ble Tribunal vide its order dated 11/07/2008 in ITA No. 3664/M/08 restored the matter to the file of Hon'ble CIT(A) for determination of income on merits after taking into account the crucial evidence of books of account. In pursuance of the above directions of Hon'ble Tribunal, the then CIT(A) vide order No. CIT(A)C-V/ACIT-CC-23/59/95-96 dated 24/03/2010 after giving relief of Rs. 101,46,76,660/- and making addition of Rs. 459,44,33,442/- as under :-

Particulars		Amount (in Rs.)
Total assessed income		1988,84,49, 98
Add: Additions		
1.	Enhancement on account of Statement of Shri. Niranjan J Shah	5,14,18, 00
2.	Enhancement on account of addition of interest	11,85,00, 00
3.	Enhancement on account of differences in the balances in the books of M/s. Harshad S. Mehta, M/s. Ashwin S. Mehta and M/s. Jyoti H. Mehta	372,82,14 542



4.	Liabilities shown as other income in the Review of Unaudited a/cs. Of M/s. Harshad S. Mehta prepared by M/s. Vyas & Vyas	69,63,00,00
<b>Less: Deletions</b>		
1.	Unexplained Money	101,46,00,00
2.	Income of Alleged HUF	Rs. 76,66
<b>Total assessed income</b>		<b>2346,82,06,08</b>

4. On further appeal, the Hon'ble Tribunal, vide its order dated 29/10/2014 remanded the matter back to the AO for deciding the issue afresh after considering the books of accounts. The AO completed the assessment vide her order dated 15/03/2016 wherein the income was computed at Rs. 2346,32,06,080/- as under :-

Particulars	Amount (in R .)
<b>Total assessed income as per order u/s.144 dated 27/03/1995</b>	<b>20,14,04,65,298</b>
<b>Less: Relief allowed by CIT(A) dt.3/10/2006</b>	<b>(-)25,20,16,000</b>
Relief allowed by CIT(A) vide order 24/3/2010	
Unexplained money ... 101,46,00,000	
Income from alleged HUF ... 76,660	(-)1,01,96,76,060
Inter corporate deposit 50,00,000	
<b>Add: Enhancement made by CIT(A) vide order dtd.24/3/10</b>	
Interest receivable from family members..118500000	
On account of Mr.Niranjan Shah .. 51418800	
Difference as per Vyas & Vyas report .. 3728214642	4,59,44,33,442
Other income as per Vyas & Vyas report 696300000	
<b>Total Income</b>	<b>23,46,32,06,080</b>



The present appeal has been filed against the above order dated 15/03/2016 passed by the AO u/s. 254 read with Sec. 143(3) of the Act.

5. The appellant has raised following grounds of appeal, vide Form No. 35 filed on 30/03/2016: -

1. *The Ld. Assessing Officer has erred in law and in facts in passing order u/s. 254 r.w.s. 143(3) of the Act and determining the total income at Rs. 23,46,32,06,080/-.*
2. *The Ld. Assessing Officer has erred in law and in facts in passing order u/s.254 r.w.s. 143(3) of the Act without appreciating that the order giving effect to the said order was already passed by the Assessing Officer earlier and that the Assessing Officer did not have any jurisdiction to pass the present order.*
3. *The Ld. Assessing Officer has erred in law and in facts in passing order without complying with the principles of natural justice.*
4. *The Ld. Assessing Officer has erred in law and in facts in rejecting the books of account of the appellant.*
  - a) *The Assessing Officer has erred in law and in facts in not verifying the books of account in spite of specific directions given by the Hon'ble Tribunal to the said effect.*
  - b) *The Assessing Officer should not have merely relied upon the discrepancies noted by the Hon'ble CIT(A) at page 89 of his appellate order while confirming the rejection of the books and ought to have appreciated that the findings of the Hon'ble CIT(A) have been set aside by the Hon'ble Tribunal for examination afresh.*
  - c) *The Assessing Officer has failed to point out any specific defect or error in the books so as to reject the same.*
5. *The Ld. Assessing Officer has erred in law and in facts in not appreciating that the principles of best judgment assessment have not been complied with and that the total income determined by her*



is excessive compared to the assessment/income determined by all the government agencies.

6. The Assessing Officer has erred in law and in facts in disallowing the loss in market trading at Rs. 14,77,09,288/- without assigning any reasons thereof.
7. The Assessing Officer has erred in law and in facts in making addition on account of money market unexplained stock amounting to Rs.2,90,05,41,290/- without appreciating that the addition made by her was based on incorrect factual matrix and also that the said addition was contrary to the specific findings given in the case of DCIT v State Bank Bank of India and others [(2009) 2 SCC 451(sc)].
8. The Ld. Assessing Officer has erred in law and in facts in making addition on account of money market oversold position amounting to Rs. 10,80,58,89,691/-.
9. The Ld. Assessing Officer has erred in law and in facts in confirming the addition of Rs.35,55,51,428/- on account of money market trading profit.
10. The Ld. Assessing Officer has erred in law and in facts in making addition on account of interest on money market securities amounting to Rs. 58,27,13,670/-.
11. The Ld. Assessing Officer has erred in law and in facts in making addition of share market trading profit amounting to Rs. 16,02,65,407/-.
12. The Ld. Assessing Officer has erred in law and in facts in making addition on account of share market speculative profit amounting to Rs. 2,85,26,994/-.
13. The Ld. Assessing Officer has erred in law and in facts in making addition on account of profit on sale of shares in shortage amounting to Rs. 2,53,16,78,501/-.

*D. S. Mehta*



14. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of share market badla income amounting to Rs. 19,71,050/-.*
15. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of share market oversold position amounting to Rs. 5,56,19,836/-.*
16. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of dividend and interest income of Rs. 1,04,58,970/-.*
17. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of unexplained money of Rs. 150,34,33,835/-.*
18. *The Assessing Officer has erred in law and in facts in making addition on account of transactions with Shri Niranan J. Shah amounting to Rs. 12,00,00,000/-.*
19. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of payment to M/s. June Investments treating the same as unexplained investment amounting to Rs. 62,50,000/-.*
20. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of interest receivable from the family members amounting to Rs. 11,85,00,000/-.*
21. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of alleged difference between the balance in the books of appellant and the books of Shri Ashwin S. Mehta and Smt. Jyoti H. Mehta amounting to Rs. 3,72,82,14,642/-.*
22. *The Ld. Assessing Officer has erred in law and in facts in making addition on account of alleged liabilities shown as other income on the basis of the review of unaudited accounts prepared by M/s. Vyas & Vyas amounting to Rs. 69,63,00,000/-.*
23. *The Assessing Officer has passed the order by making additions which are not only incorrect but also legally not tenable:*



- a) The Assessing officer has passed the assessment order by invoking his powers and by using his discretionary powers for making additions u/s. 254 r.w.s. 143(3) of the Act in a manner that they are in direct conflict and defeat the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
- b) The Assessing Officer has erred in law and in facts in making additions in his assessment order in violation of and encroaching upon exclusive civil jurisdiction conferred upon Hon'ble Special Court u/s 9(A) of the Special Courts Act under which all matters relating to assets attached u/s. 3(2) of the said Act and transactions undertaken by the notified party in various capacities during the statutory period of 1.1.19891 to 6.6.1992 fall within the purview and exclusive jurisdiction only of Hon'ble Special Court.
- c) The Assessing Officer has made additions based on fictitious and got up transactions which have factually not taken place by making presumptions regarding them which will be impermissible in law.
- d) The additions made by the Assessing Officer are in direct contraventions with the judgment of Hon,ble Supreme Court dated 38.82008 titled as DCIT vs SBI reported as (2009) 2 SCC 451.
24. The Ld. Assessing Officer has erred in law and in facts in not appreciating that the appellant was following cash system of accounting and the same has been duly upheld by the Hon'ble Tribunal in the case of the appellant in other years.
25. The Ld. Assessing Officer ought to have granted set off of income against expenses/investments following telescoping theory of determining the income.

*P. J. S.*



26. *The Ld. Assessing Officer has erred in law and in facts in denying deduction on account of interest, business expenditure, business loss and depreciation.*

27. *The Ld. Assessing Officer has erred in law and in facts in not granting statutory deduction and allowances under chapter VI-A of the Act.*

28. *The Ld Assessing officer has erred in law and in facts in not granting credit of TDS and other taxes paid by the appellant:*

a) *The Assessing Officer ought to have granted credit for all the taxes paid by the appellant either as advance tax or as the regular taxes pursuant to the orders of the Hon'ble Special Court.*

b) *The Assessing ought to have granted credit for TDS as per the directions of the Hon'ble Supreme Court in its order in CA No. 1175 of 2002 and SLP No. 1922 of 2000 dated 13.02.2002.*

29. *The Ld. Assessing officer has erred in law and in facts in levying interest u/s. 234A, 234B and 234C of the Act.*

30. *The Ld. Assessing Officer has erred in law and in facts in not appreciating that the income assessed in the hands of the appellant were subjected to the provisions of TDS and hence on the said amount of tax, no interest can be computed u/s. 234A and 234B of the Act.*

31. *The Ld. Assessing Officer has erred in law and in facts in not appreciating that no interest u/s. 220(2) of the Act ought to have in the present case.*

32. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal."*

6. In response to the notice of hearing , Shri Dinesh Kanabar CA , Shri Sandeep Bhalla, CA and Shri. Ashish Agarwal CA, and Ms. Asmita D'Souza CA , the authorized representatives of the appellant, attended from time to time , filed written submissions and the case was heard and discussed with



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them.

7. Looking to the importance of matter and complexity of issues involved there in, both the AO and the Addl CIT Central Range-4 were requested to attend the hearing vide this office letter dated 02/01/17. Therefore the hearing held on 10 January 2017 was attended by the AO. Prior to that the Addl CIT range 4 was also present On 03/01/2017. In the said hearing, the appellant was directed to forward copies of the paper books filed to the AO for his consideration, verification and remand report . It is gathered that the appellant filed copies of the paper books vide letter dated 11 January 2017. Subsequently, the appellant submitted copy of the letter dated 6 February 2017 to the AO to follow up on the matter and confirm if any additional clarifications are required. Thereafter a letter dated 02/05/2017 was issued to the AO with a view to clarify the issues relating to addition of Rs. 1080 cr as money market securities oversold position and Rs. 290.05 cr as unexplained stock of securities . However no report was submitted by the AO , despite reminders on this issue and despite matter was taken up with superior officers . Later the books of accounts submitted by the assessee were forwarded to the AO vide this office letter dated 31/05/2017, in view of Hon'ble Spreme Court order dated 12/04/2017. However, the AO has not submitted any report on the grounds of appeal and the submissions made by the appellant. Accordingly, I proceed to decide this appeal on the basis of material available on record and after considering the submissions of the appellant.

8. In **Ground no. 1**, the appellant has contended that the AO erred in passing the assesment order u/s. 143(3) read with Sec. 254 of the Act, determining the total income at Rs. 2346,32,06,080/- . In **Ground no. 2**, the appellant has contended that the AO erred in passing the order u/s. 2(4) r.w.s.143(3) of the Act without appreciating that the order giving effect to the said order was already passed by the AO earlier and that the AO did not have any jurisdiction to pass the present order. In **ground no. 3** the appellant has contended that the AO erred in passing the order in gross violation of the principles of natural justice. In **ground no. 5**, the appellant



has contended that the AO has erred in not appreciating the principles of best judgement have not been complied with and that the total income determined by the AO is excessive compared to the assessment / income determined by all the government agencies. Grounds 1 , 2, 3 and 5, being similar in nature are decided together for the sake of convenience as under :

9. With respect to the compliance with the principle of natural justice, my ld. predecessor in his order dated 24/03/2010 has stated as under: -

*"In line with the foregoing, I find that the principles of natural justice as they have evolved over time stand fully complied with. As may be noted, in essence, the principles of natural justice postulate the following basic requirements:*

- a) *The opportunity to be heard should be given.*
- b) *The decision given must be a reasoned one and evidenced by a speaking order which enumerates the reasons for coming to a particular conclusion.*
- c) *The course of the procedure followed should be orderly.*

*Tested on these signature yardsticks, the appellant's reservations are found to be totally misplaced as all these requirements stand fulfilled. Accordingly, the ground of appeal is dismissed."*

10. I have considered the facts of the case . I agree with the views of my ld. predecessor that the appellant was provided ample opportunities to present his case. Hence principles of natural justice were complied with during the course of assessment and appellate proceedings. Thus, the ground of appeal is rejected.

11. The appellant has further submitted that the Hon'ble Tribunal in its order dated 29/10/2014 had set aside the order of the Hon'ble CIT(Appeals) and restored the file to the AO for fresh assessment with a direction to verify each entry in the books of accounts. The appellant further submitted that the AO assessed total income as Rs. 6,84,08,000, which is same as the



returned income of the Appellant in the order giving effect dated 30 January 2015. The AO thereafter assessed the income of the appellant at Rs. 2346,32,06,080/-and passed order dated 28/3/2016 u/s. 254 read with Sec. 143(3) of the Act. In this regard, the Appellant has placed reliance on the case of Classic Share & Stock Broking Services and submitted that once effect was given to the order of the Hon'ble Tribunal by order dated 30/01/2015, that order could have been modified or set aside only by following a procedure which is prescribed under the Act. The appellant has contended that the AO by passing order dated 28 March 2016 has conducted a substantive review of the earlier order dated 30 January 2015 which is without jurisdiction and liable to be quashed and set aside.

12. Further, it is observed that my predecessor has dealt with in detail in relation to the appellant's contention that the AO has erred in not passing the order by following the proposition in respect of best judgement assessment. My predecessor has held that the AO has eloquently explained the circumstances under which the order under section 144 of the Act is passed, thereby rejecting the ground raised by the appellant. I agree with the findings of my predecessor on the said ground.

13. I have considered the arguments of the assessee and the facts of the case. It appears that the AO had followed the directions issued by Hon'ble ITAT in the order giving effect. The AO has proceeded with the fresh assessment in compliance with the directions issued by the Hon'ble ITAT and hence, the order dated 28 March 2016 passed by the AO is held to be valid. Consequently grounds no. 1, 2, 3 and 5 are rejected.

14. In **ground no. 4**, the appellant has disputed the decision of the AO in rejecting the books of accounts. It is relevant to mention over here that the appellant has not filed any valid return of income during the course of the assessment proceedings. Further no books of account were produced before the AO during the course of the original assessment proceedings. Hence in absence of a valid return of income and completed books of account the then AO vide order dated 27.03.1995 assessed the total income of the



Appellant on the basis of information available in the seized material and seized computer data and other records and information gathered by him from various sources like from various companies, stock exchange, banks and custodian etc. . It is noticed that some kind of books of account were filed before my predecessors. However it appears that the said books of account were prepared by the appellant much later than end of the year and were examined by a panel of Chartered Accountants appointed by the Hon'ble Special Court set up under the Special Court (TORT) Act, 1992 and certain report were submitted to the effect that there were various discrepancies in the same.

15. During the course of the earlier appellate proceedings, the AO had rejected the books of account by stating that the entries were made in the books at a much later date and were not contemporary and was an afterthought and they are in nature of journal entries and it was not possible to undertake any cross verification of the same. It was stated by the AO that the books of accounts were not maintained in term of Section 44A of the IT Act which was a statutory pre-condition. It was observed by the AO that these books lacked authenticity and no verification can be made after 18 years. Accordingly, the AO observed that the books of account ought to be rejected and that no income can be determined on the basis of these books of account.

16. Based on the AO's observation my Id. predecessor made following observations, vide his order dated 30/12/2011:-

- a. That the books of accounts are not contemporaneous and inordinately belated and the same cannot be treated as reliable since they are not written on a day to day basis and the same are produced after 18 years.
- b. That the appellant was a notified person and he was subjected to various search and seizure actions by the Income Tax Department as well as other authorities when it was noticed that the appellant



was not maintaining regular books of accounts.

- c. That the appellant himself had admitted that the books of account were neither complete nor audited and therefore genuineness and correctness of these books of accounts is not ascertainable and acceptable.
- d. That the books of accounts are not maintained in terms of the prescribed rules and procedures and accordingly, the authenticity of the entries in relation to these persons is highly doubtful. That 11 years have elapsed and cross verification is practically impossible.
- e. The books of account are not backed up by primary documentary evidence and hence are found to be unreliable.

17. In addition to the above, my ld. predecessor also placed reliance on the report of the auditors appointed by the Hon'ble Special Court for rejecting the books of accounts of the appellant namely M/s Vyas and Vyas. Apart from this, my predecessor also relied upon on the series of objections raised by the AO in respect of the books of account furnished by the appellant. It was also observed that the books of account have not been audited by the chartered accountant nor any specific reason has been furnished as to why the books of account have not been audited. Accordingly, my predecessor vide his order dated 24.03.2010 in line with the defects noted, the accounting principles, the report of the Auditors Vyas & Vyas and the judicial precedents, held that the books of account submitted by the appellant cannot be accepted.

18. In view of the aforesaid order passed by my predecessor the Appellant went in appeal before the Hon'ble ITAT. The Hon'ble ITAT allowed the appeal of the Appellant for statistical purpose and directed the AO to decide the issue of the Appellate after examining the books of account. In view of the same, the AO during the third round of assessment proceedings issued a notice under section 142(1) of the Act. During the course of the assessment proceedings, the appellant submitted additional documents.



papers before the AO. However, the appellant submits that the AO did not appreciate the submissions made by him and thereby rejected the books of account of the Appellant in order to compute total income of the appellant at Rs. 2346,32,06,080, as decided as per his earlier order. Based on the AO's order dated 15.03.2016 it is observed that though the appellate submitted details no explanation was provided in relation to the same. The AO has placed reliance on my predecessor's order dated 24.03.2010 passed under Section 144 of the Act in the case of the appellant, wherein my predecessor has rejected the books of the appellant after giving a detailed reasoning. Accordingly, the AO has held that since the appellant has once again submitted only photocopies of old voluminous documents without taking any efforts to explain entry-to-entry transactions, no relief could be given to the appellant. Considering the above, the appellant is in appeal against the aforesaid order dated 15.03.2016.

19. The appellant submitted that the AO has grossly violated the directions given to him by Hon'ble ITAT and also failed to examine the books of account and other details and evidences submitted before him while computing the taxable income of the appellant. The appellant further submits that Hon'ble ITAT has already rejected various grounds deployed by my predecessors for rejecting the books of account and therefore the AO was bound to consider the books of account but he has mechanically rejected them on completely untenable grounds. The Appellant has also submitted before me that in several matters of the family members of the Appellant, the jurisdictional Hon'ble ITAT has adopted a course of action of considering the books of account owing to the difficulties faced by the various entities associated and related to late Shri Harshad S Mehta. Supporting the above contention, the Appellant placed reliance on below listed cases:

- i. Smt. Deepika A. Mehta (ITA No. 888/Mum/2016 order dated 20 July 2016)
- ii. Smt. Rasila S. Mehta (ITA No. 3890/Mum/2012 order dated 20 July 2016)



- iii. Smt. Pratima H. Mehta (ITA No. 1181/Mum/2012 order dated 15 January 2014)
- iv. Shri. Harshad Mehta (ITA No. 3699/Mum/2010 dated 29 October 2014)
- v. M/s. Fortune Holding Pvt. Ltd. (ITA No.9020/M/95)

20. The assessee has further argued that in the case of Shri Hitesh Mehta, the Hon'ble ITAT in ITA No. 8023/Mum/2011 order dated December 2013, has accepted the income as disclosed in the books of accounts for AY 1991-92 and deleted the additions made by the AO. The appellant also submitted before me the Hon'ble Supreme Court's orders dated 02.05.2017 and 08.05.2017, wherein it has directed the Tax Officer to follow the orders of the Hon'ble ITAT under which the Revenue is directed to reframe the assessment by taking into account the evidence of books of account. Relevant extract of the order dated 08.05.2017 of the Hon'ble Supreme Court is as under:

*"The orders (Ninety) which have already been passed by the ITAT directing the Revenue to re-frame the assessment by taking into account the evidence of books of accounts should be decided by the Authority within a period of 12 weeks from today".*

21. In view of the aforesaid order of the Hon'ble Supreme Court, the appellant submitted that the books of account of the Appellant ought to be considered in order to compute the total income.

22. I have gone through the submissions and contentions of the assessee as also the order of the AO in respect of the rejection of books of account. Looking to the facts of the case, one cannot disagree with the fact that no books of account were prepared till 2001 for financial year ended on 31 March 1992. Hence the observation made by my ld. predecessor that in most probability the books of account which are being produced by the Appellant were created after a long period of time, the source of which is



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either not known or considerably doubtful, cannot be denied. Further, since the books of account have not been audited by any chartered accountant, I find that the books of account are not liable to be accepted for the purpose of determining the income of the Appellant. Also the AO in his order has stated that the Appellant has once again submitted only the photocopies of old voluminous documents without taking any efforts to explain entry-to-entry transactions. Considering the lack of co-operation from the Appellant's end, the AO's decision that the books of account are not reliable is justified. It is further relevant to mention that present year is covered by a search and seizure action and lot of incriminating material has been found and seized during the course of search. Further lot of material has been gathered from the third parties like Banks, stock exchange, various companies and custodian appointed under Special Courts Act. Evidently all this information is not part of the books of the assessee and this is the reason that huge additions to the tune of Rs. 2300 cr has been made in the hands of the assessee on various accounts. In fact M/s Vyas and Vyas, the auditor appointed by the Hon'ble Special Court also did not find such books a complete and reliable and observed that the books of accounts had so many inconsistencies and infirmities and therefore could not be relied upon. So whatever books were produced, do not reflect true and complete picture. None the less there are certain incomes like interest, dividend etc., earned by the assessee for which the books of account can be considered, subject to cross verification from custodian records and bank statements. Infact the AO has accepted and adopted figures of such incomes in some cases of the group in respect of dividend income, interest income etc.

23. In view of the above facts and observations, I agree with the view taken by my predecessors and the AO time and again with respect to the rejection of books of account. **Subject to the above, the decision of the AO in rejecting the books of account, being unreliable and non-verifiable is upheld.** Consequently ground taken by the assessee is rejected.

24.1 Ground no. 6 relates to trading loss of Rs. 14,77,09,288 pertaining to money market transactions. Further the Ground no. 8 relates to addition in



account of oversold position in money market securities amounting to Rs. 1080,58,89,691/-. Looking to the facts of the case and based on the submissions made by the appellant, I am of the view that both ground no. 8 and ground no. 6 are interlinked and therefore for the sake of convenience are decided together as under.

24.2 It is relevant to mention over here that initially, the then AO vide his order dated 27.03.1995 made an addition of Rs. 1681,79,84,181/- in respect of money market transactions as oversold position. However later the AO reduced this addition and provided a relief of Rs. 601,20,94,490/- to the assessee and thereafter the net addition made on this account was Rs. 1080,58,89,691/-. During the second round of the appellate proceedings my ld. predecessor in his order dated 24.03.2010 elaborately discussed each of the securities and decrees based on which the appellant claimed relief. However, my ld. predecessor rejected all the contentions of the appellant and confirmed the said addition of Rs. 1080,58,89,691/- for the reasons mentioned in the paragraphs below. In the third round of assessment proceedings, the Assessing Officer made the addition of the same amount relying on the order of my ld. Predecessor, against which the assessee is in appeal before me. In this regard, it is worth mentioning that the Assessing Officer had collected information regarding money market transactions from various sources as under:

- i) Voucher file of the appellant as found in the seized computer data
- ii) Information called for from various banks, financial companies and brokers who have dealt with the appellant.
- iii) Deal file of the appellant upto 27.2.92 as found in the seized computer data.
- iv) Receipts and payments of money in bank accounts of the appellant as provided by the R.B.I.

24.3 Further the details of receipts and payments available were matched by the AO with the details in the deal file and the voucher file. I or



the receipts and payments not matching with the deal file and the voucher file, information was called for from the third parties like banks, financial institutions and others. The information gathered for transactions post 27.02.1992 from third parties was captured in **Annexure M-1** by the AO. Based on transactions captured in Annexure M-1 and deal file of the appellant upto 27.2.92 seized during the course of the search proceedings, the AO prepared a statement in **Annexure M-2 computing oversold position in case of money market securities at Rs. 1681.79 crores and trading loss of Rs. 14.77 crores.** The appellant has contested the above working of oversold position and pointed out the following infirmities in the working of the AO :-

- a. Purchase cost relief not provided
- b. Inclusion of non-existent transactions captured in Annexure M-1 which are not entered by the appellant
- c. Execution status of the transaction reflected as 'False' as per Assessing Officer, while it is appearing in the Bank statement
- d. Orders by Hon'ble Supreme Court and Special Court in relation to the addition made under the Money Market position ignored by the Assessing Officer / my predecessor.
- e. Security wise specific errors made by the AO like purchase leg of the transaction not considered, incorrect grouping, etc

24.4 The appellant has contended that the list of money market transactions after 27.02.1992 as mentioned in Annexure M-1 to the order are erroneous as contained transactions which were never entered by the Appellant. The appellant demonstrated the aforesaid by placing reliance on the following deals as claimed to have been entered with the ANZ Grindley bank in Annexure M-1:

Security Name	Transaction Date	Delivery Rate	Qty	P/S	Amount (in Rs.)
Unit 1964 Scheme	06.03.1992	14.5000	50.000L	P	7,25,00,000 (00)



11.5 GOI 2010	21.03.1992	96.7958	50.000C	S	59,52.02,508.67
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24.5 The appellant submitted that while , the AO had captured the aforesaid purchase and sale transaction in Annexure M-1, the same is not reflected in the letter filed by ANZ Grindlays bank before the AO, providing details of the transaction entered by the Bank with the appellant. The appellant has further mentioned that the assumption of the AO that only the transactions marked as 'T' are executed and hence considered for computing oversold position is incorrect. The appellant has argued that the transactions are marked as F have also been executed. Accordingly, the appellant submitted that the transactions even if marked as 'False' have been executed by the appellant and by not considering the transactions marked as 'False', the oversold position stands inflated to that extent. The appellant submitted that the AO has worked out the closing stock of money market securities at Rs. 1069.14 crores. At the same time, the AO has worked out the oversold position of Rs. 1681.79 crores. The appellant argued that the AO ought to have given credit of closing stock before arriving at the oversold position in money market securities. Further, it is observed that that the AO has given such set off while working out the oversold position in AY 1990-91, on the premises that the stock of one security could have been utilized for raising another security. Similarly, the set off of the above closing stock of money market securities should also be granted against the addition of Rs. 291 crores on account of assets found.

24.6 Besides the appellant argued that in case of various securities, to compute oversold position the AO has considered sale leg of a transaction but he has disregarded the corresponding purchase leg of the said transaction, thereby erroneously computing an oversold position. Supporting his contentions the appellant has illustrated security-wise the purchase transaction not considered by the AO corresponding to the sale transaction captured by the AO. Additionally, the appellant submitted that the AO has made incorrect presumption to compute oversold position in case of money market securities. The appellant submitted that one of the



method and device used by the AO to inflate the Money Market Oversold Position as well as to inflate the Money Market Positive Stock, is to exclude large number of transactions which were performed by M/s Harshad S Mehta by referring to field 'T' and 'F' and by interpreting 'T' to mean 'True' and 'F' to mean 'False'. The appellant reiterated his submissions made before the AO vide his letter dated 20.03.1995. The submissions made by the assessee are reproduced as under :-

*"15.28. Further, in this regard, the Appellant during the course of assessment and appellate proceedings has already made elaborate submissions and reiterates the same before your Honour. Copy of the letter (dated 9.01.2010) filed with your Honour's predecessor along with the annexures is enclosed in Page Nos. 9 to 20 of the Paperbook XVI.*

*15.29. Further, the Appellant submits that he had internally developed a customised software referred to as 'Foxpro software' to primarily meet the following requirement:*

*- To record all the money market deals entered either by dealers or staff of the brokerage firm of M/s. Harshad S Mehta in respect of transactions entered by the said firm for banks, financial institutions, corporate entities, Public Sector Undertakings, etc.*

*- Automate the calculation of interest amount, maturity amount, etc. in order to save time.*

*15.30. The Appellant submits that the said customised 'Foxpro software' was prepared using 'Fox Pro' an object-oriented programming language. Mr. Vishvesh Bhatt (a former employee of M/s Growmore Research & Management Limited) had developed the 'Fox Pro Software'.*

*15.31. The Appellant elaborates the mechanism followed for developing the said software. The Appellant submits that the details such as name of the security, quantity of the security, buyer party and seller party, delivery date, tenure of the transaction and interest rate pertaining to a deal are required to be entered in the software. Once all input data as required is entered in, the software would display a deal slip in the*



format that was defined while developing the software. In addition to the above, the Appellant submits that the feeding in the deal file was done on the basis of handwritten deal slips which were prepared either by dealers themselves or recorded by other staff and dealers as narrated to them while deals were being struck. Fox Pro software was developed such that the balance information such as maturity amount, interest rate and amount paid, etc. was automatically computed by the software and reflected on the deal slip. The transactions in the Fox Pro software were fed in stages. The other fields covering details of delivery, counterparty for deals with brokers etc. were fed once they were available and not concurrently.

15.32. Further, the Appellant submits that that in 'Fox Pro programming language' there exists, predefined Logical Operators which work with all the data types and return a logical value as may be defined. It enables the program developer to store either 'T' or 'F' or 'Y' or 'N' in logical field. 'T' or 'Y' for 'True' and 'F' or 'N' for 'False'. To store the information like pass/ fail, absent / present etc. logical field type is used. Only the records wherein all the commands are satisfied the logical condition 'T' or 'Y' is displayed. If not, logical condition 'F' or 'N' is displayed. These logical expressions of 'T' or 'F' or 'Y' or 'N' are predefined in the original Fox Pro software itself and cannot be altered by the developer as required. Accordingly, Mr. Vishesh Bhatt had customised the software to use 'T' or 'F' in the logical field type instead of 'F' or 'N'.

15.33. In view of the above, the Appellant submits that the circumstances under which flags of 'T' or 'F' or blank is reflected, are as under:

- a. Fox Pro software suo moto flagged a transaction as 'T' once all the components of the transaction as defined in the command were entered in the system. Thereby indicating that all the fields of the transaction are recorded in entirety.
- b. Fox Pro software suo moto flagged a transaction as 'F' where all the details pertaining to the transaction were not entered. Fox Pro programming language itself was framed in such a manner that in case all the commands defined by the developer were not filled, it would not



process the data entered, thus reflecting the 'Entry Status' as 'F'. In effect, indicating that the details of the said transaction recorded were c. 15.34. The flags 'T' and 'F' are not part of the commands required to be entered in by the data operator and 'T' or 'F' only indicate whether all the details relating to the transaction were recorded in the software and does not indicate the execution of such transaction / deal.

15.35. The Appellant submits that Fox Pro software was programmed to generate various reports, delivery order, contract notes for buyer / seller, cost memo for buyer / seller, pass journal entries in relation to the transactions, etc. As per the software, in cases where the delivery order or contract note was generated from Fox Pro software, the system automatically flagged the transaction as 'T'. These flags are not reflected on the deal slip generated, since they are meant only for the purpose of Management Information System and not otherwise. For example, at the time of generation of the report, 'T' would be reflected in the column specifying the status of delivery order wherein the same was generated in relation to a deal. The deal wherein the contract note is generated, same would be reflected in reports as 'T'. In case of transaction wherein delivery order or contract note is not generated through Fox Pro software, such deals are flagged as 'F' and accordingly appear in the reports generated.

15.36. Based on the above explanation, it becomes evident that the status 'F' did not represent false nor did it signify that such transactions were not performed. Hence the Appellant submits that the learned AO ought not to have presumed as above or interpret the data in his own way.

15.37. Besides that, the learned AO had also independently collected evidence from large number of clients of the brokerage firm of M/s Harshad S Mehta and copies of their material was provided to the Appellant in respect of some of the cases. By analyzing such material, the Appellant demonstrably established through the written submissions that even those clients of the Appellant's brokerage firm have confirmed independently performance of those transactions having 'F' status. Thus, both the Appellant as well as their clients had



placed evidence before the learned AO confirming performance of transactions where the status was 'F'.

15.38. Additionally, the Appellant reiterates its submissions made in paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** herein above. Your Honour will appreciate that the Appellant has clearly demonstrated that though the specified purchase transactions are reflected as 'F' in the Deal file they have been actually executed since payments for the said purchases have been made through the UCO Bank account. This further, implies that the contentions of the learned AO that the transaction reflected as 'False' are not executed is incorrect.

15.39. Therefore, in the light of submissions made by the Appellant and independent evidence obtained by the learned AO, the Appellant submits that the learned AO has erred in presuming that 'T' denotes deals that are executed by the Appellant and 'F' denotes deals that are not executed by the Appellant. This presumption also follows from the provisions of section 132(4A) of the Act. It is also legally submitted that such a presumption is untenable both in law and also on the ground that the same is contrary to the evidence brought on record of the assessment proceedings. Even in the present proceedings, the learned AO does not deny existence of such independent confirmations of transactions by the clients. Therefore, it is conclusively established that the aforesaid presumption of learned AO is incorrect and the computations of Money Market Oversold and Positive Stock are grossly incorrect. The learned AO has also failed to cause enquiries and verification, thus making an incorrect presumption.

15.40. The Appellant states that when such a large addition is made to the income of the Appellant and even assuming that it was best judgment assessment, the learned AO was duty bound to cause enquiry whether the transactions in the seized data were performed or not when this fact has such an enormous implication on the income that was to be determined by the learned AO. The learned AO was duty bound to cause this enquiry and establish this fact in absence of which no presumption could have been made and in any event, presumption that is made contrary to the evidence on record as stated hereto before is untenable. The Appellant therefore submits to your Honour that no



*presumption is liable to be made in respect of such a vital issue under section 132(4A) of the Act as claimed by the learned AO.*

*15.41. The Appellant prays to your Honour that in the given circumstances, the entire addition made by the learned AO to arrive at the Money Market positive stock as well as Oversold Position since in the former instance, large additions have been made on account of interest earned on such non existing securities and in the latter case, additions are made on account of Money Market Oversold Position ought to be deleted."*

24.7 The appellant has submitted before me that the money market transactions can be segregated in two baskets as under:

- (i) in cases wherein securities are not delivered (i.e. sale transaction is not complete)
- (ii) in cases wherein securities are delivered (i.e. sale transaction is complete)

24.8 The Id. AR in this regard brought to my attention that the Hon'ble Special Court in its order has held that in case of transactions wherein securities were not delivered that in view of the decrees passed by the court, atleast, the amount of principal is liable to be deducted from the taxable income of the notified party. In addition to the same the appellant placed reliance on the Hon'ble Supreme Court's order dated 03.12.200 wherein the same has been upheld. As per the said order the Hon'ble Supreme Court held that on the basis of the decrees obtained by the Banks, the Banks have an existing right on the amount and hence it cannot be ignored that the said amount could not have been assessed in the hands of the appellant as his income. Further, in case of the second type of basket, i.e. in cases wherein the securities are delivered, the Hon'ble Special Court has held that in such cases what would have been taxable income would be the difference between the purchase price and the sale price of the securities. Therefore, it held that inclusion of Rs. 1080 crores approximately as income of the appellant during the statutory period has resulted in miscarriage of justice. In case of the said matter the Hon'ble Supreme Court held that on



account of oversold securities if the delivery has been given by the appellant and the transaction is complete, only the difference between the payable and receivable will be taken and not the gross amount.

24.9 It is gathered that the appellant had submitted the above mentioned orders of the Hon'ble Special Court and Hon'ble Supreme Court before my Id. predecessor also . However, my Id. predecessor held that the securities featuring in Annexure M-2 are different from securities featuring in the various decrees passed by the Hon'ble Special Court. My predecessor also stated that in respect of the securities mentioned in the decrees, the appellant had either received the payment on the transactions made not followed by the deliveries or unauthorizably siphoned off the money from the banks and the suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of a complete transaction i.e. sale, receipt of payment and delivery had occurred. Accordingly, my predecessor in his order dated 24.03.2010 rejected appellant's contention of placing reliance on Hon'ble Special Court and Hon'ble Supreme Court's orders.

24.10 The Id. AR has submitted before me details tabulating the orders of the Hon'ble Special Court and Hon'ble Supreme Court. The summary of the Orders of the Hon'ble Special Court and the Hon'ble Supreme Court forming part of appellant's submission are reproduced below:-

<b>I. <u>If securities are not delivered (i.e. sale transaction not completed)</u></b>	<b>II. <u>If securities are delivered (i.e. sale transaction completed)</u></b>
<b>Hon'ble Special Court (Order dated 29.09.2007)</b>	
"It is, therefore, apparent that in view of the decrees passed by the	"If that is so, what would have been taxable income would be difference

*Prakash*



<p>court, atleast, the amount of principal is liable to be deducted from the taxable income of the notified party." [Para 8 Page No. 18 of Paperbook VI]</p>	<p>between the purchase price and the sale price of the securities. In my opinion, therefore, inclusion of Rs. 1080 crores approximately as income of Harshad Mehta during the statutory period has resulted in miscarriage of justice." [Para 9 Page No. 19-20 of Paperbook VI]</p>
<p><b>Hon'ble Supreme Court (Order dated 3.12.2008)</b></p>	
<p><b>"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 continue to have an existing right on the aforesaid amount which is required to be released in terms of the decree which are obtained by the banks and the non-release of the said amount would amount to miscarriage of justice." [Para 38 Page No. 50 of Paperbook VI]</b></p>	<p>"We also hold that on account of oversold securities if the delivery has been given by Harshad S. Mehta and the transaction is complete, only the difference between the payable and receivable will be taken and not the gross amount." [Para 44 Page No. 51 of Paperbook VI]</p>

24.11 It is gathered that the AO has taxed the sales transaction of the appellant as the income of the appellant. The appellant submitted that even if oversold position need to be computed on money market securities, purchase cost in relation to scrips ought to be deducted from the sale proceeds of the securities in oversold position. The appellant has urged that what ought to be taxed in the hands of the appellant is only the trading profit / loss and not the gross receipt from sale of such securities. Further, in relation to the same the Appellant placed reliance on the Hon'ble Special Court's order dated 29.09.2007 wherein it is held that the income would be



the difference between the purchase price of the securities and the sale price. The relevant extract of the said order is as under:

*"9. ... In the assessment order, it is clearly mentioned by the Assessing Officer that delivery of these securities were made by Harshad Mehta. Therefore, it is obvious that according to the Assessing Officer this over sold securities position was made good by Harshad Mehta – the notified party. If that is so, it is no where explained as to why the price of the securities sold by Harshad Mehta would be his income. Really speaking, the income would be that amount which would be the difference between the purchase price of the securities and the sale price. I repeatedly asked the learned Counsel appearing for the Income-tax Department to justify treating the entire sale price of the securities as income, when according to assessment order delivery has actually been made and also according to the assessment order on the date of the sale of these securities. It clearly means that the notified party brought securities for making good the delivery. If that is so, what would have been taxable income would be different between the purchase price and the sale price of the securities. In my opinion, therefore, inclusion of Rs. 1080 crores approximately as income of Harshad Mehta during the statutory period has resulted in miscarriage of justice."*

24.12 It appears that the Hon'ble Supreme Court vide its order dated 3.12.2008 upheld the aforesaid decision of the Hon'ble Special Court. Apart from the above , the appellant has also submitted his contentions in relation to the each of the securities (other than the one covered by decrees) in relation to which the AO has computed oversold position. The appellant has submitted that the AO has made numerous errors while computing oversold position of the security which has resulted in an ultra high pitched addition in relation to the said ground. Based on the analysis undertaken by the appellant it is observed that primarily following types of errors have been undertaken by the Assessing Officer:

*D. M. C. R.*



- i. Purchase transaction corresponding to the sale transaction, though marked as 'RT' and 'True' have not been considered by the AO in Annexure M-2.
- ii. Various banks / financial institutions have filed letters before the Tax office and / or CBI providing list of all the transactions by them entered with the appellant. Whilst certain purchase transactions which have not been considered by the AO to compute oversold position, are reflected in the said letters (third party evidences), the AO has failed to take cognizance of such letters by claiming that the transactions reflected in the letters are different.
- iii. Error in capturing the correct sale transaction pertaining to a security from the Annexure M-1 while computing oversold position in Annexure M-2
- iv. By not appreciating the fact that securities with different interest payment date are one and the same security and should be considered accordingly.
- v. Whilst the AO has claimed that only sale and purchase transactions which are marked as 'RT' and 'True' have been considered to compute oversold position, the appellant has demonstrated with appropriate supporting evidence that transactions other than 'RT' and 'True' have also been captured by the AO to compute oversold position.
- vi. That there exists no security such as 'ATBF - Non SLR' and 'Call' in which the appellant could have undertaken purchase and sale transactions.

24.13 Without prejudice to the above, the appellant has also submitted a chart containing computation of purchase cost relief to be provided against the money market oversold position for each oversold securities. In the said chart, the appellant has considered the opening rate





as on 31/03/1991 as per Annexure M2 where ever available for each of the oversold securities. In the absence of opening rate for any oversold security, the rate for the earliest purchase transaction in the AY 1992-93 captured by AO in Annexure M2 was considered for computing the purchase cost relief against the money market oversold position. All the details submitted by the assessee were forwarded to the Id. AO for his comments and remand report . However no report was submitted by the AO despite several reminders .

24.14 The appellant has submitted his specific contention for each of the securities separately. In support of his contentions the Appellant has submitted following documents, charts and information vide its paperbook V:

- i. A reconciliation chart for each security showing the transactions captured by the AO along with the transactions not captured or wrongly captured by the AO to compute oversold position .
- ii. Numerous supporting evidences such as deal slips, third party evidences in form of the letters submitted by the Bank / financial institutions before the Tax Office and / or CBI, Bank account statements confirming the payment made for the purchase transactions, etc. have been submitted by the appellant.

24.15 In this regard the assessee put forth a chart before me along with my predecessor and AO's findings, which are tabulated herein below security wise:

<i>Appellant's submission before my predecessor</i>	<i>AO's findings - during the 2nd round of appellate proceedings</i>	<i>CIT(A)'s finding in order dated 24.03.2010</i>	<i>Appellant's submission along with the supporting evidences submitted</i>
<b>1. 13% NPC Bonds - Oversold position of Rs. 25,97,16,908</b>			
<i>The A.O. has made an addition of 25.97 crores on the</i>	<i>The appellant has not made it clear how there could be no oversold</i>	<i>CIT(A) has upheld AO's finding in general.</i>	<i>The Appellant submits to set out the correct factual position as under:</i>

*Harshad Mehta*

<b>Appellant's submission before my predecessor</b>	<b>AO's findings - during the 2nd round of appellate proceedings</b>	<b>CIT(A)'s finding in order dated 24.03.2010</b>	<b>Appellant's submission along with the supporting evidences submitted</b>
<p>presumption that the appellant has not tendered any delivery in respect of these bonds and has accordingly presumed corresponding purchase of the bonds. However, these bonds were actually delivered to Canfina towards their purchase and therefore, there can be no money market oversold position. Letter dated 22.2.1996 addressed by Canara Bank to the Assessing Officer discloses under the 'mode of delivery' column that they were delivered on their own Banker's Receipt and accordingly, there is no oversold position on the basis of this confirmation given by the Canara Bank on behalf of canfina, their 100% subsidiary. [Page no. 176 of Paperbook I]</p>	<p>position of the security. The Annexure M-2 is very clear in this regard. The appellant also has not explained the letter addressed by the Canara Bank contradicts the Assessing Officer's finding. [Page no. 176 of Paperbook I]</p>		<ul style="list-style-type: none"> <li>- Purchase transaction corresponding to the sale transaction is not considered by the learned AO in Annexure M-2</li> <li>- Though the purchase transaction is 'RT' transaction as well as flagged as 'True' in deal file, the learned AO has not considered the same in Annexure M-2</li> <li>- Purchase transaction is reflected in the letter dated 11.12.1992, filed by Standard Chartered Bank with the AO (Page no. 107 of Paperbook V).</li> <li>- Revelant extract of the bank ledger of State Bank of India reflecting the purchase transaction is enclosed in Page no. 108A of the Paperbook V.</li> <li>- Reconciliation of oversold position for 13% NPC Bonds (enclosed in Page no. 73 of Paperbook V)</li> </ul>
<p><b>2. 13% NTPC Bonds - Oversold position of Rs. 25,79,34,420</b></p>			

*P. Patel*



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
<p>The addition has been made for the interest payment date for 17% NTPC Bonds and thus 17% NTPC Bonds has been incorrectly treated as 13% NTPC Bonds. [Page no. 177 of Paperbook I]</p>	<p>The oversold position has been worked out on the basis of the Deal File on the basis of information received from banks. The appellant's explanation does not prove that this transaction is wrongly recorded. Explanation is only inferential presumption. The Appellant has not brought anything on record to specifically show that there was no transaction in this security. [Page no. 177 of Paperbook I]</p>	<p>CIT(A) has upheld AO's finding in general.</p>	<p>- Deal pertaining to 17% NTPC Bonds is erroneously considered as 13% NTPC Bonds by the learned AO (Deal slip reflecting the sale transaction of 17% NTPC Bonds is enclosed in <b>Page no. 113 of Paperbook V</b>)                      - As per Annexure M-2 there exists a closing stock of 17% NTPC Bonds. The said sale transaction of 17% NTPC Bonds (which is erroneously considered as 13% NTPC Bonds) is adjusted against the closing stock of 17% NTPC Bonds.                      - As per the list of transactions with Canara Bank as captured in Annexure M-1 by the learned AO, the said sale deal pertains to 17% NTPC Bonds, which is erroneously considered by learned AO as sale of 13% NTPC Bonds (relevant extract of Annex. M-1 is enclosed in <b>Page no. 114 of Paperbook V</b>)                      - Sale transaction of the Appellant of 17% NTPC Bonds is reflected in the letter dated 22.02.1994, filed by Canara Bank with the Tax Department (refer <b>Page no. 117 of Paperbook V</b>)</p>

*P. Patel*



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
			<p>- Without prejudice to the above, the learned AO has taken negative opening balance of Rs. 3,61,58,219 cr as computed in AY 1991-92 to compute oversold position for 13% NTPC Bonds. Though the said opening balance is treated as explained in AY 1991-92, no set-off is provided in relation to the same</p> <p>- Reconciliation of oversold position for 13% NTPC Bonds (enclosed in Page no. 109 of Paperbook V)</p>
<b>3. 9% HUDCO Bonds - Oversold position Rs. 94,51,510/-</b>			
Not discussed	Not discussed	CIT(A) has upheld the oversold position computed in relation to 9% HUDCO Bonds, without any specific discussion on the same in the order	<p>- The learned AO has not considered the purchase transaction corresponding to a sale transaction captured by him to compute oversold position in Annexure M-2</p> <p>- Though the transaction is 'RT' transaction as well as flagged as 'True' in deal file, the learned AO has not considered the same</p> <p>- Contract note in relation to the purchase transaction and corresponding sale transaction is enclosed in Page No. 121 and 122 of Paperbook V respectively</p> <p>- Revelant extract of the bank ledger of State Bank of India</p>



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
			reflecting the purchase transaction is enclosed at <b>Page no. 122A of the Paperbook V.</b> - Reconciliation of oversold position is enclosed in <b>Page no. 118 of Paperbook V</b>
<b>4. 13% MTNL Bonds - Oversold position of Rs. 22,08,13,752/-</b>			
13% MTNL Bonds (18/2) and 13% MTNL Bonds (18/08) are same securities and incorrectly treated as different due to different interest dates	- Annexure M-2 clearly reveals that code of both the transactions are different. - For security 13% MTNL Bonds (18/2) the code no. is B13MT182 whereas for 13% MTNL Bonds (18/8) the code no. is B13MT188 ( <b>AO's Remand Report dated 02.07.09</b> )	CIT(A) has upheld the AO's finding in general	- The learned AO has not considered the purchase transaction corresponding to a sale transaction captured by him to compute oversold position in Annexure M-2 - 13% MTNL Bonds (18/08) and (18/02) are one and the same security with different interest payment date. - No oversold position exists when security pertaining to 13% MTNL Bonds of interest payment date (18/08) and (18/02) are considered on consolidated basis and result in a Trading profit of Rs. 1,07,58,565 (statement enclosed in <b>Page no. 124 of Paperbook V</b> ) - Though the transaction is 'RT' transaction as well as flagged as 'True' in deal file, the learned AO has not considered the same in Annexure M-2 - Enclosed is the relevant extract of the bank account statement of State



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
			<p>Bank of India (refer <b>Page no. 127 of Paperbook V</b>) along with the Bank ledger (refer <b>Page no. 136 of Paperbook V</b>) reflecting the payment made in respect of the said purchase transaction</p> <p>- Reconciliation of oversold position is enclosed in <b>Page no. 123 of Paperbook V</b></p>
<p><b>5. 9% REC Bonds - Oversold position of Rs. 49,17,315/-</b></p>			
Not discussed	Not discussed	<p>CIT(A) has upheld the oversold position computed in relation to 9% REC Bonds, without any specific discussion on the same in the order</p>	<p>- The learned AO has not considered the purchase transaction corresponding to a sale transaction captured by him to compute oversold position in Annexure M-2 (Deal slip enclosed in <b>Page no. 150 of the Paperbook V</b>)</p> <p>- Though the transaction is 'RT' transaction as well as flagged as 'True' in deal file, the learned AO has not considered the same in Annexure M-2</p> <p>- Copy of ANZ Grindlays Bank account statement along with the Bank ledger wherein the payment of Rs. 55,42,963 in relation to the said purchase transaction is reflected (Enclosed in <b>Page nos. 151 &amp; 153 of Paperbook V</b>)</p>



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
			<p>- Reconciliation of oversold position is enclosed in <b>Page no. 148 of Paperbook V</b></p>
<p><b>6. 13% NLC Bonds - Oversold position of Rs. 8,52,84,932/-</b></p>			
<p>13% NLC Bonds (27/2) and 13% NLC Bonds (27/08) are same securities and incorrectly treated as different due to different interest dates</p>	<p>For 13% NLC Bonds both the transactions are different which are B12NL272 and B13NL278 (AO's Remand Report dated 02.07.09)</p>	<p>CIT(A) has upheld the AO's finding in general</p>	<p>- 13% NLC Bonds (27/08) and (27/02) are one and the same security with different interest payment date. - No oversold position exists when security pertaining to 13% NLC Bonds of interest payment date (27/08) and (27/02) are considered - Accordingly, sale and purchase transactions captured by learned AO as transactions pertaining to 13% NLC Bonds (27/02) to compute closing stock as per Annexure M-2 (copy of the sheet shared by the learned AO enclosed in <b>Page nos. 156 &amp; 158 of Paperbook V</b>) - Reconciliation of oversold position is enclosed in <b>Page no. 155 of Paperbook V</b></p>
<p><b>7. Treasury Bills - Oversold position of Rs. 181,33,83,515/-</b></p>			
<p>The Assessing Officer has ignored the transactions of purchase of Rs. 150 crores on 25.1.92 and Rs. 40 crores on 7.3.92 as reflected in the Deal File on the</p>	<p>As already discussed, the status field 'F' means false and such transactions have not been included in the oversold position. Further, the appellant has not brought anything</p>	<p>The appellant's submission on the Treasury Bills is also not borne out by facts as the Assessing Officer has never held that there were cash transactions</p>	<p>- The learned AO has not considered the below mentioned two purchase transactions in order to compute oversold position in Annexure M-2: 1. Purchase transaction dated 25.01.1992 for Rs. 150 crores (FV) Treasury</p>



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
<p>ground that they contained the status field 'F' means false. The Assessing Officer has also ignored the following purchase transactions as reported in the Deal File.</p> <p><b>i) ANZ Grindlays Bank - Rs. 142,95,15,000/-</b></p> <p>ii) CanBank Mutual Fund- Rs. 142,91,70,000</p> <p><b>iii) SBI Caps - Rs. 38,20,40,000/-</b></p> <p>iv) SBI - Rs. 289,53,12,900/-</p> <p>v) SBI - Rs. 38,28,00,000/-</p> <p>These transactions are reflected in the books of account. The Assessing Officer has not made available the letter of Canbank Mutual Fund and has also not made any enquiries. The Assessing Office has ignored the purchases made the appellant's firm on a principal to principal basis</p>	<p>on record to substantiate that the status filed 'F' means something else and not false. The findings on the individual purchases mentioned are as under:-</p> <p><b>i) ANZ Grindlays Bank - This transaction is marked 'F' and has accordingly been excluded.</b></p> <p>ii) Canbank Mutual fund - No details have been given and only it has been argued that the Assessing Office has not caused any enquiry.</p> <p><b>iii) SBI Caps Bombay - A list received from SBI Caps has been attached by the appellant along with submission dated 7.9.2009. As per this list dated 24.1.1995, these transactions dated 21.2.92 appears as sale. In view of this, the appellant's explanation that this is a purchase transaction is incorrect.</b></p> <p>iv) SBI - The specifics of these transactions have</p>	<p>regarding the Treasury Bills . Further, Treasury Bills are also money market instruments issued by the R.B.I. This has also been acknowledged by the appellant himself. In this respect, the appellant has in his submissions dated 17.8.2009 pointed out that the same purchase transaction of Rs. 150 crores undertaken on 25.1.1992 as reported on page 609 of the Deal File and transactions of purchase of Rs.50 crores undertaken on 21.12.1992 and reported on page 61 have been ignored by the Assessing Officer. The appellant has further pointed out that these two transactions have been ignored because they are marked in the field 'F'. This submission is</p>	<p><b>Bills - Purchase transaction is reflected in the letter dated 20.11.1992 filed by ANZ Grindlays Bank with Asst. Commissioner of Income Tax providing details of all the deals entered (enclosed in Page no. 166 of Paperbook V)</b></p> <p><b>2. Purchase transaction dated 21.02.1992 for Rs. 40 crores (FV) Treasury Bills - Transaction is reflected in the letter dated 18.10.1994, filed by SBI Capital Markets Limited with Income Tax Officer providing details of all the deals entered (enclosed in Page no. 170 of Paperbook V)</b></p> <p>- Though the aforesaid purchase transactions are marked as 'RT' and 'True', the same has not been considered by the learned AO in Anneuxre M-2</p> <p>- Reconciliation of oversold position is enclosed in Page no. 159 &amp; 160 of Paperbook V</p>



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
[Page no. 174 of Paperbook I]	not been given and only a reference has been made to sale slip book extract. From perusal of this book the purchase of securities is not proved. The appellant has not been able to identify the securities stated to have been purchased. v) SBI - In the Deal File, this transaction represents sale and not purchase as mentioned by the appellant. [Page no. 174 of Paperbook I]	again obviously erroneous as already discussed above, the Assessing Officer has rightly excluded this because the entry is marked 'F' and not 'T'. [Page no. 181 of Paperbook I]	
<b>8. 9% NHPC Bonds - Oversold position of Rs. 1,86,89,071/-</b>			
Not discussed	Not discussed	CIT(A) has upheld the oversold position computed in relation to 9% NHPC Bonds, without any specific discussion on the same in the order	<ul style="list-style-type: none"> <li>- The learned AO has not considered the purchase transaction corresponding to a sale transaction captured by him to compute oversold position in Annexure M-2 (Deal slip enclosed in Page no. 150 of the Paperbook V)</li> <li>- The purchase transaction, though marked as 'RT' as well as flagged as 'True' in deal file is not considered by the learned AO in Annexure M-2</li> <li>- Copy of Bank account statement of State Bank of India along with the Bank</li> </ul>



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
			ledger wherein the payment in relation to the said purchase transaction is reflected (Enclosed in <b>Page nos. 175 &amp; 176 of Paperbook V</b> ) - Reconciliation of oversold position is enclosed in <b>Page no. 171 &amp; 172 of Paperbook V</b>
<b>9. ATBF - Non SLR - Oversold position Rs. 51,23,00,000/-</b>			
For the period post 28.2.1992, the Assessing Office has not included two transactions on 26.3.1992 and 30.3.1992 with Bank of America. Copy of letter dated 30.11.1992 from Bank of America confirms only one transaction of Rs. 19 crores in 9% NHPC Bonds and not as ATBF. Accordingly, no transaction has been undertaken with Bank of America as ATBF on 26.3.92 and 30.3.92 ( <b>Page No. 173 of the Paperbook I</b> )	The Assessing Officer has only included ATBF transactions marked 'RT' and 'True' as found in the Deal File. The ATBF so added as oversold are dated 31.5.91, 30.5.91 and 31.5.91. the ATBF's mentioned by the appellant do not form part of the oversold position and are distinct. The appellant's explanation has no link with the ATBFs in Annexure M-2 ( <b>Page no. 173 of Paperbook I</b> )	From perusal of the deal file as processed by the Assessing Officer it is found that the instrument has been subsequently fixed and this was also shown to the undersigned and the appellant's Authorized Representatives during the demonstration given by the Assessing Officer. As pointed out by the Assessing Officer in his submissions dated 19.8.2009, these two transactions are of Rs. 37.78 crores and Rs. 38.45 crores dated 31.5.91	The Appellant submits to set out the correct factual position as under: - There exists no security as ATBF - Non SLR (Asset To Be Fixed Asset - Non SLR), wherein purchase and / or sale transaction can be undertaken - At times particulars of the assets were not given by the clients, in such a scenario the transaction was parked under the category of 'ATBF - Non SLR'. Once the assets were fixed fresh deal ticket was entered or same deal ticket was overwritten with the asset details - Actual sale transactions as reflected in the deal file (marked as 'RT' and 'True') executed against the temporary ATBF-Non SLR entries made on 31.05.1991 - The fact that the sale transactions pertaining



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
		and have been taken into consideration as they are marked as 'RT' and 'T'. [Page no. 181 of Paperbook I]	to Units are executed is reflected by the payments received in the Bank ledgers - Reconciliation of oversold position is enclosed in Page no. 191 of Paperbook V. Sale transactions pertaining to Units undertaken on 31.5.1991 represent the actual security allotted in relation to the deal entered as ATBF
<b>10. Call - Oversold position Rs. 100,06,84,900/-</b>			
g	i) The transaction of call money taken in Annexure M-2 is marked as 'RT' and 'TRUE' in the Deal File maintained by the appellant herself. As already discussed, only the transactions marked 'RT' and 'TRUE' from the Deal File have been included in the Annexure M-2. The Call Money held as oversold in Annexure M-2 records only the sale with no entry on purchase. Accordingly, the appellant's explanation is not acceptable as the Call Money in Annexure M-2 is different and distinct from the	The appellant's reference is totally off the mark. As already indicated, in the oversold securities featuring in the Annexure M-2, only those entries which are simultaneously marked as 'RT' and 'T' have been taken into account. As pointed out by the appellant himself, one of these transactions is identified as 'F' and has accordingly been ignored by the Assessing Officer. This observation is	- Call is not a security in which dealing is possible by a broker (other than permissible participants) on principal to principal basis. The said transaction captured by the learned AO is not Appellant's transaction - Without prejudice to the above, the Appellant submits to set out the current factual position as under: - Though the learned AO has considered a transaction in call as sale of the Appellant, the corresponding purchase transaction is not captured by the learned AO in Annexure M-2. Deal file reflecting the purchase leg is enclosed in Page no. 197 of Paperbook V)

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Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
	<p>other transactions of Call Money. ii) The entries in the appellant's submissions are from the appellant's books of account, which as already discussed above are not reliable and credible (Page no. 172 of Paperbook I)</p>	<p>right in that as already discussed above, it is only the transactions identified as 'T' which have been include in the oversold position. In line with this entry marked 'F' has been rightly excluded by the Assessing Officer in line with the consistent method followed by him. The appellant has also argued that 'T' and 'F' do not represent "True" and "False". This is again patently wrong. As already explained in course of my discussion on the nature, source and authenticity of information, 'T' and 'F' do represent "True" and "False". This was demonstrated by the Assessing Officer to the undersigned and the appellant. This also stands</p>	<p>- Further, whilst, the learned AO has stated that transactions marked as 'RT' and 'T' have been considered to compute oversold position in Annexure M-2, the said transaction pertaining to Call is not marked as 'RT' - Reconciliation of oversold position is enclosed in Page no. 195 of Paperbook V.</p>



Appellant's submission before my predecessor	AO's findings - during the 2nd round of appellate proceedings	CIT(A)'s finding in order dated 24.03.2010	Appellant's submission along with the supporting evidences submitted
		<p>explained in the Assessing Officer's note dated 31.7.2009 submitted in course of the hearing on that day. As seen by me, the data marked 'T' and 'F' when operated in MS Excel software convert themselves into "True" and "False" (Page no. 181 of the Paperback I)</p>	
<p><b>11. 11.5% C/L 2011 - Oversold position of Rs. 103,80,05,313</b> <b>12. 12% C/L 2011</b></p>			
<p>The Assessing Officer has taken two transactions of 100 crores of F.V. of which one is purchased by SBI and sale by M/s. Harshad S. Mehta @ 99/- for a F.V. of 1000 crores for an amount of Rs. 102.412 crores. The Assessing Officer has taken the second transaction as purchase by M/s. Harshad S. Mehta on 7.3.92 @ 95.6187 an amount of Rs. 96.6409 crores. The Appellant</p>	<p>Entry against Serial No. 288 in page no. 160, document relied upon by the appellant shows that the appellant has sold 11.50 CL 2011 for the FV of Rs. 100 Crores. In the submissions the appellant has wrongly stated that this is shown as purchase in page no. 160. The sale rate for this shown in Annexure M-1. The sale stands confirmed by both Annexure M-1 / M-2 and the documents submitted by the appellant. (Page</p>	<p>CIT(A) has upheld the AO's finding in general</p>	<p>The Appellant submits to set out the correct factual position as under: - Deal pertaining to 12% C/L 2011 erroneously considered as 11.5% C/L 2011 by the learned AO in Annexure M-2 (Deal enclosed in Page no. 246 of Paperback V) - Transaction of 12% C/L 2011 is reflected in the letter dated 1.02.1993 filed by State Bank of India with CBI (refer Page no. 259 of Paperback V). It is observed therein that there exists no sale transaction of 11.50% C/L 2011 on 07.03.1992, implying</p>



<i>Appellant's submission before my predecessor</i>	<i>AO's findings - during the 2nd round of appellate proceedings</i>	<i>CIT(A)'s finding in order dated 24.03.2010</i>	<i>Appellant's submission along with the supporting evidences submitted</i>
<p>has not taken any transaction of sale of 11.5% C/L 2011 @ 99 which is incorrectly reported by AO. The Appellant relies upon the charge sheet filed in Special Case No. 4 of 1996 where SBI has given a list of transactions entered into by them with the brokerage firm of M/s. Harshad S. Mehta to CBI under cover of their letter dated 1.2.1993 Page no. 160, a running page given for the charge sheet document, only one transaction of purchase has been reported. The SBI has also furnished documents in the proceedings before the Hon'ble Special Court which also reflect only one transaction. (Page no. 176 of Paperbook I)</p>	<p>no. 176 of Paperbook I)</p>		<p>that the transaction is wrongly captured by the learned AO - By appropriately considering the sale transaction as that of 12% C/L 2011 the alleged oversold position in 11.5% C/L 2011 stands deleted - The said sale transaction of 12% C/L 2011 is reduced from the closing stock of 12% C/L 2011 as computed by the learned AO, thereby resulting in a oversold position in 12% C/L 2011 (Statement enclosed in Page no. 241 of Paperbook V) - Reconciliation of oversold position is enclosed in Page no. 240 of Paperbook V.</p>

24.16 I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO . Based on the details and the supporting documents submitted by the appellant it is

*Signature*



evident that there are some inconsistencies while preparing Annexure I (1) which has resulted in incorrect oversold position in the money market. In this regard, my findings in respect of individual securities are as under:

Sr. No.	Securities	My findings
1.	13% NPC Bonds	<p>As per the letter filed by Standard Chartered Bank before with the AO it appears that the purchase transaction dated 03/03/1992 of FV of Rs. 30 crores, amounting to Rs. 25,57,86,846.58 has not been captured by the AO. Though the corresponding sale leg of the said transaction is captured by the AO, resulting into discrepancy.</p> <p>From the relevant deal slip submitted by the appellant it appears that the transactions though marked as 'RT' and 'True' and therefore should have been considered by the AO for computation of oversold position. He may re-verify the position and recompute over sold position.</p>
2.	13% NTPC Bonds	<p>The appellant has argued that the sales transaction dated 10/03/1992 amounting to Rs. 24,80,89,041.89 pertains to 17% NTPC Bonds as per the Annexure M-1, which has been incorrectly considered as the sale of 13% NTPC Bonds, by the AO.</p> <p>Further, the appellant in this regard placed reliance on the letter filed by Canara bank with the Tax Department on 22.02.1994 wherein the said sale transaction of Rs. 24,80,89,041.89 was stated to be pertaining to 17% NTPC Bonds.</p> <p>The AO may re-verify the position and allow consequential and relief to the assessee.</p>
3.	9% HUDCO Bonds	<p>The appellant has submitted that while the sale transaction dated 23/01/1992 is considered by the AO, but corresponding purchase leg dated 07/02/1992 amounting to Rs. 1,00,45,202.97 has not been considered</p>



		<p>by the AO, resulting in to an oversold position in 9% HUDCO Bonds.</p> <p>The appellant has filed contract notes supporting the purchase leg of the transaction. The deal slip submitted by the appellant reflects that the transaction is marked as RT and True. The AO may re-verify the above and recomputed the over sold position.</p>
4.	13% MTNL Bonds	<p>The appellant has submitted that that 13% MTNL Bonds (18/08) and (18/02) are one and the same security with different interest payment dates and the same should not be considered separately to compute oversold position. Therefore the oversold position computed in case of 13% MTNL Bonds (18/08) should be adjusted against the stock position computed in case of 13% MTNL bonds (18/02). Further, it is also observed that the said purchase transaction is a marked as 'RT' and 'True' in the deal file and hence, should be considered in computing stock position in case of 13% MTNL Bonds. Accordingly, the AO is directed to re-verify and recompute the stock position in case of 13% MTNL Bonds.</p>
5.	9% REC Bonds	<p>The appellant submitted that the AO has not considered the purchase transaction dated 11.06.1991 amounting to Rs. 5542938.09 by stating the same is not executed. Supporting his contention the assessee filed a copy of the ANZ Grindlays Bank account statement reflecting the payment made in relation to said purchase hence proving that the said transaction was executed. As per the deal slip it is observed that the purchase transaction is marked as 'RT' and True and hence should be considered for computing oversold position.</p> <p>Accordingly, the AO is directed to verify and recompute the stock position by considering the aforesaid purchase position in case of 9% REC Bonds.</p>

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6.	13% NLC Bonds	The appellant has submitted that that 13% NLC Bonds (27/08) and (27/02) are one and the same security with different interest payment dates and the same is not required to be considered separately to compute oversold position and therefore the oversold position computed in case of 13% NLC Bonds (27/08) should be adjusted against the stock position computed in case of 13% NLC bonds (27/02). Accordingly, the AO is directed to re-verify and to recompute the closing stock position in case of 13% NLC Bonds .
7.	Treasury Bills	It is observed that the AO has not considered two purchase transaction dated 25/01/1992 amounting to Rs. 142,95,15,000 and dated 21/02/1992 amounting to Rs. 38,20,40,000 in computing the oversold position. In support of his contentions the appellant has submitted before me copies of the letters before the Tax Office by ANZ Grindlays Bank and SBI Capital Market Limited. In view of the above facts and the supporting documents provided, the AO is directed to re-verify the said purchase transactions and to recompute stock position of treasury bills and work out over sold position accordingly.
8.	9% NHPC Bonds	The appellant submitted that the purchase transaction dated 03/03/1992 amounting to Rs. 1,87,97,458.08 was not considered by the AO by stating that the transaction is not executed. By placing reliance on the deal file the appellant has submitted that the purchase transaction is a 'RT' and 'True' transaction. The AO may re-verify these facts and rework the over sold position.
9.	ATBF - Non SLR	The appellant submitted that 'ATBF' represents 'Assets To Be Fixed'. At times particulars of the assets were not given by the clients, in such a scenario the transaction was parked under the category of 'ATBF - Non SLR'. Once the assets were fixed fresh deal ticket was entered or same deal ticket was overwritten with the specific asset detail .

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		<p>Further, the appellant submitted that sale transactions dated 31.05.1991 captured by the AO as sale of ATBF - Non SLR pertain to sale of Units 1964 Scheme on the same date. On basis of the deal file it is seen that the said sale transactions are marked as RT and True and hence appears to be executed transaction against the temporary ATBF entries made on 31.05.1991.</p> <p>It is held by my predecessor's order that the transactions marked as RT and True should be considered to compute oversold position for various securities and this position has been accepted by the AO. Therefore aforesaid sale transaction pertaining to Units 1964 Scheme which are marked as RT and True may be considered by the AO to compute oversold position.</p>
10.	Call money	<p>The appellant submitted that 'Call' is not a security in which one can undertake purchase and sale. In my view the contention of the appellant is correct. Under 'Call' the banks undertake to borrow or lend money and not to undertake buying and selling. Hence, I state that the addition made by the AO on account of oversold position in case of 'call' is prima facie incorrect.</p> <p>Based on my predecessor's order it is observed that the transactions marked as RT and True are only considered to compute oversold position for various securities and not for call money. The appellant has submitted that though the AO claims to have considered only transactions marked as RT and True to compute oversold position, the same is incorrect. The appellant has submitted copy of the deal slip wherein it is reflected that the transaction is marked as RV and not RT as alleged by the AO.</p> <p>Further, it is also observed that the AO has erred in not considering the purchase transaction corresponding to the sale transaction captured by the AO to compute oversold position. The same may be reverified and corresponding</p>

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		oversold position is worked out accordingly.
11.	11.5% CL 2011	The appellant has submitted that the sale transaction pertaining to 12% C/L 2011 executed on 07/03/1992 of FV of Rs. 100 crores is erroneously considered as 11.5% C/L 2011 by the AO. In this regard Copy of the deal slip has been submitted before me. Further, the appellant also submitted a copy of the letter dated 1.02.1993 filed by State Bank of India with CBI wherein no sale transaction pertaining to 11.5% CL 2011 executed on 07/03/1992 is reflected. However I am of the view that sufficient evidence has not been given by the assessee in this regard and therefore no relief can be given to the assessee at this stage.

24.16 In view of the abovementioned facts and circumstances, I direct the AO to verify the above mentioned evidences submitted by the assessee in light of Hon'ble Special Court orders and orders of Hon'ble Apex Court (supra) and then recompute the position of stock as also the addition of oversold position on account of aforesaid securities. Further, I direct the AO to rework the money market trading profit or loss for the said securities in respect of the above transactions .

24.17 The appellant stated that there are various suits filed against the appellant for non-delivery of securities / recovery of amounts payable by him to Banks / Financial institutions. The list of claims and/or FIRs along with actual court proceedings and FIR's lodged were submitted before the AO during the assessment proceedings.

24.18 The AO had considered repayments made by the appellant to SBI in one such Miscellaneous Application No. 14 of 1995 (MA No. 14 of 1995) in computing the oversold position of the appellant as per Annexure M-2. It had been verified that the repayments so made under the decree were against the securities which formed part of the total oversold position.

*f-mta*



of Rs. 1681.79 crores. Hence the oversold position as worked out stood reconciled to the extent of Rs. 601.21 crores and only the balance Rs. 1080.58 crores remained unreconciled. However, for various other suits against the appellant, the AO had observed that the recovery amounts claimed in the suits could not be considered as his liability since no final decision had been given on the suit and they were pending before the Hon'ble Special Court. Once the decrees on the various suits filed were passed in favour of the Banks and Financial Institutions directing the appellant to repay money, the same was brought to the notice of my predecessor. The appellant had made various detailed submissions in this regard and prayed before my predecessor and the AO that the amounts involved in the decree ought to be reduced from the income of the appellant as the same is the appellant's liability towards Banks / Financial Institutions and not income. However, my predecessor concluded that there is no nexus between the decreed amounts and the amounts which are included in the income of the Appellant as oversold securities as per Annexure M-2.

24.19 The findings of my predecessor with respect to the issue regarding nexus between the transactions mentioned in the decrees filed by banks / financial institutions and the transactions forming part of the money market oversold position made in his order dated 24.03.2010 which is reproduced below:

"iii) The nexus between the securities covered by the decrees and the securities featuring in Annexure M-2

*In his submissions, the appellant has also taken a stand that the Assessing Officer had ignored the claims made by various parties before the Hon'ble Special Court. This was the state when the assessment was made. Subsequently, the Hon'ble Special Court has passed decrees in several suits in favour of banks and financial institutions. The issue on correlation between the securities mentioned in these decrees and the securities featuring in Annexure M-2 has also attracted the attention of the Hon'ble Supreme Court. Vide their order dt. 3.12.2008. the Hon'ble Court had the occasion to remand back the matter to the Hon'ble Special Court to give findings on two issues. These issues includes finding on the nexus between*



*Prasad*

the decretal amount and the income included in the assessment of the notified person for the statutory period and on whether the decrees are with regard to oversold securities and if so, whether there is any duplication of amount while scaling down the tax liability. This direction of the Hon'ble Supreme Court is significant in that it clearly establishes that sui generis there is no direct nexus between the securities in the decrees and in Annexure M-2 and that a conclusion on this can be drawn only after examination and analysis of the relevant facts. In this backdrop, from the perusal of the decrees, study of Annexure M-2 and the rival submissions on the issue, I find that securities mentioned in the decrees are different from the securities featuring in Annexure M-2. To this end, from perusal of the analysis of the different suits and decrees made by the Assessing Officer, I note that there is no nexus between these securities mentioned in the decrees and the securities featuring in Annexure M-2. In essence, I find that in respect of the securities mentioned in the decrees, the appellant had either received the payment on the transactions made not followed by the deliveries or unauthorizedly siphoned off the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of a complete transaction i.e. sale, receipt of payment and delivery had occurred. There is thus a clear distinction between these two categories of securities. The following illustration will further simplify this:

Suit	Why is there no nexus?
MP No. 61 of 1992	The bank had admitted that no delivery of units was made by the appellant.
MP No. 52 of 1993	Same as above
Suit No. 41 of 1995	Same as above
MP No. 14 of 1995	The decree has been awarded to the petitioner for compensating the damages in the form of interest and thus, no transaction of securities is involved.
MP No. 63 of 1992	The transaction was between SBI and NHB and not between SBI and the appellant. The Hon'ble Special Court has awarded the decree in SBI's favour only because the appellant had fraudulently withdrawn money and had utilized for his personal purpose. There was no effective transaction between the appellant and SBI. It is significant to note that the appellant was also examined on this issue under section 131 of the ITA as would be clear from page



	<i>42 of the assessment order. As may be seen, the appellant was confronted with this issue in Question No.5 to which there was no specific response by the appellant."</i>
<i>MP No. 28 of 1995</i>	<i>The transaction was between SCB and NHB and not between SCB and the appellant. The Hon'ble Special Court has awarded the decree in SCB's favour only because the appellant had fraudulently withdrawn money and had utilized for his personal purpose. There was no effective transaction between the appellant and SCB.</i>

*Clued into the foregoing analysis and the comparison, I find that there is no nexus between the securities mentioned in the decrees and the securities featuring in the oversold position.*

*. . . . The Assessing officer has given a suit-wise analysis on this chart to bring out the fact that securities mentioned in the decrees are different from the securities referred to by the Assessing Officer.*

*. . . . The individual discrepancies pointed out by the appellant have also been addressed by the Assessing Officer by pointing out how the transactions in the individual suits mentioned by the appellant are different from the transactions taken by the Assessing Officer from the Deal File. The appellant has not been able to bring on record anything to controvert these facts presented by the Assessing Officer. In light of this, I accept the version of Assessing Officer and hold that there is no nexus between the securities mentioned in the decrees and the securities forming part of the oversold position."*

24.20 During the course of the appellate proceedings before me, the appellant made elaborate submissions and provided detailed explanation with respect to the nexus between transactions covered under the decree and the transactions featuring in Annexure M-1 / Annexure M-2. The appellant submitted a chart summarizing list of transactions contained in the Annexure M-1 / Annexure M-2; which have a clear nexus under the decree as well as in the computation of money market oversold position. The chart indicating reference of the transaction in the computation of assessing officer as well as reference in the decrees is reproduced below-

*P. S. Mehta*



Sr.No.	Date of Transaction / Delivery date	Type of Security	Quantity	Amounts for A.Y. 1992-93	Reference in Annexure M-1 / M-2	Reference in Misc. Petitions / Decrees
1	<u>Suit No.28 of 95</u>	<u>Standard Chartered Bank Vs. Harshad S. Mehta, NHB &amp; Ors</u>				
	23-03-92	Units 1964 Scheme	94,00,000	14,10,00,000	Pg. 6 of Annexure M-1	Schedule A of Written Statement of NHB
	23-03-92	Units 1964 Scheme	17,87,000	2,68,00,000	Pg. 6 of Annexure M-1	
			<b>1,11,87,000</b>	<b>16,78,00,000</b>		
2	<u>M.P. 63 of 92</u>	<u>State Bank of India Vs. Harshad Mehta, NHB &amp; Custodian</u>				
	16/03/1992	Units 1964 Scheme	2,50,00,000	37,71,75,000	Pg no. 6 of Annexure M1	Exhibit B: Correspondence between SBI and NHB
	14/03/1992	Units 1964 Scheme	3,00,00,000	44,97,75,000	Pg No. 11 of Annexure M1	
	07/03/1992	11.5% C/L 2010	1,00,00,00,000	1,01,88,50,195	Pg no. 6 of Annexure M1	
	16/11/1991	Units 1964 Scheme	2,00,00,000	27,08,50,000	Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in Annexure M-2	

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	31/01/1992	Units 1964 Scheme	6,50,00,000	89,05,00,000	Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in Annexure M-2	
			1,14,00,00,000	3,00,71,50,195		
<b>3</b>	<b>M.P. 61 of 92</b>	<b>SBI Capital Market Vs. Harshad S. Mehta &amp; another</b>				
	30-03-92	Units 1964 Scheme	28,00,000	4,25,00,000	Pg No. 10 of Annexure M-1	Exhibit A - Contract Notes  Exhibit I - Original Certificates  Exhibit K - SBICAP's Foc to the Appellant dated 6 March 1992  Exhibit L - SBI Cap's Advocate Letter dated 4 June 1992
			28,00,000	4,25,00,000		
<b>4</b>	<b>MP 52 of 93</b>	<b>State Bank of Saurashtra Vs. Harshad S. Mehta, SBI &amp; Ors</b>				
	02/09/1991	Units 1964 Scheme	5,00,00,000	67,74,50,000	Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in	Exhibit C to F of the Petition dated 30.07.1993

*Harshad Mehta*



	10/09/1991	Units 1964 Scheme	2,00,00,000	26,81,80,000	Annexure M-2	
			7,00,00,000	94,56,30,000		
<b>5</b>	<b>Suit No.41 of 95</b>	<b>State Bank of India Vs. Harshad S. Mehta</b>				
	29/07/1991	Units 1964 Scheme	25,00,000	3,37,75,000	Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in Annexure M-2	Petition - (Pg No. 315,317,320 of Paper book VI) Exhibit A-1 (Pg No. 335 - 337 of PaperBook - VI)
	31/03/1992	Units 1964 Scheme	1,25,00,000	18,75,00,000	Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in Annexure M-2	Exhibit E (pg no. 350 to 355 of Paperback VI,
			1,50,00,000	22,12,75,000		
	<b>Grand Total</b>		<b>1,23,89,87,000</b>	<b>4,38,43,55,195</b>		

24.21 The appellant with the help of the above chart demonstrated that the transactions for which delivery could not be affected by him and which resulted into repayment of the monies advanced by banks / financial institution to the appellant under the decree were also erroneously included in the computation of money market oversold position i.e. in Annexure M2 / Annexure M1.

24.22 The appellant further controverted that remarks of the AO as well as the findings of my predecessor with respect to each of the above



mentioned transactions in his submissions enclosed in paperbook XVI. The same are reproduced below -

**"Nexus between transactions mentioned in the Decrees and Money Market Oversold Position**

**MP 28 of 1995 - Standard Chartered ('SCB') Formerly [ANZ Grindlays Bank] v/s Harshad Mehta, NHB & Ors**

**Table 1**

Assessment Order dated 27.03.1995	CIT(A)'s Order dated 24.03.2010	Appellant's Submission
<p><b><u>Not Discussed</u></b></p> <p>(The suit was filed by SCB at the fag end of March 1995 and was thus not specifically dealt with in the original assessment proceedings with the learned AO. The assessment proceedings were completed before filing of the MP 28 of 1995 on 21 March 1995.)</p>	<p><b>A. No nexus between the transactions mentioned in the decree and in Annexure M-2</b></p> <p>"In essence, I find that in respect of the securities mentioned in the decrees, the appellant had either received the payment on the transactions made not followed by the deliveries or unauthorizdly siphoned off the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of a complete transaction i.e. sale, receipt of payment and delivery had occurred."</p> <p>(Page No. 159-161 of Paperbook I)</p> <p><b>B. Transaction between NHB and SCB. Appellant not a party to securities transaction</b></p> <p>"The transaction was between SCB and NHB and not between SCB and the appellant. The Hon'ble Special Court has awarded the decree in SCB's favour only because</p>	<p><b>A. Appellant is the first defendant to the suit. Also, decree is passed against the Appellant.</b></p> <ul style="list-style-type: none"> <li>• NHB had agreed to purchase securities, while the Appellant had agreed to sell securities through the Appellant's bank account (routing bank maintained by SCB formerly ANZ Grindlays). These cheques were credited into the Appellant's bank account.</li> <li>• However, the Appellant was unable to deliver the Unit to NHB even though money was received in the routing bank account of the Appellant.</li> <li>• This amount was repaid to NHB by SCB as per RBI's direction due to non-delivery of securities to NHB (since money was received in SCB's bank account).</li> <li>• SCB in turn filed MP 23 of 1995 to recover the aforesaid amount from the Appellant. Since the Appellant is liable to pay this amount as per the decree awarded in MP 28 of 1995, addition on account of oversold position for these transactions should be deleted.</li> </ul>

*Harshad*



	<p>the appellant had fraudulently withdrawn money and had utilized for his personal purpose. There was no effective transaction between the appellant and SCB."</p>	
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Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
23/03/1992	<p>Transaction - <u>1</u></p> <p>Security - Units 1964 Scheme</p> <p>Value - 14,10,00,000</p> <p>Quantity - 94 Lacs</p>	<p><b>Not Discussed</b></p>		<ul style="list-style-type: none"> <li>• The Appellant had agreed to sell 94 Lakh Units Scheme 1964 @ Rs. 15 to NHB on 23.3.1992 on principal to principal basis through appellant's bank account (routing bank account maintained by SCB).</li> <li>• This transaction is reported as purchase from SCB (in the books of NHB) and is thus captured at Page No.6 in Annexure M-1 (Refer Page No. 381 of Paperbook - VI) while the same is not reported as purchase in SCB's books as the transaction was entered into by the Appellant on a principal to principal basis (and not by SCB).</li> <li>• However, Appellant was unable to deliver the units to NHB even though money was received in the routing bank account of the Appellant.</li> <li>• This amount was repaid to NHB by SCB as per RBI's direction due to non-delivery of securities to NHB.</li> <li>• The SCB in turn filed MF 28 of 1995 to recover the aforesaid amount from the</li> </ul>

*P. Anant*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				<p><b>Appellant.</b> Since the appellant is liable to pay this as per the decree awarded in MP 28 of 1995, addition on account of oversold position for this transaction should be deleted. (Refer Page No. No.268 of Paperbook VI)</p>
23/03/1992	<p><u>Transaction - 2</u> Security - Units 1964 Scheme Value - 2,68,00,000 Quantity - 17.87 Lacs</p>	<p><b>Not Discussed</b></p>		<ul style="list-style-type: none"> <li>• <b>The Appellant had agreed to sell 17,87,000 Units Scheme 1964 @ Rs.14.9972 to NHB on 23.3.1992 on principal to principal basis through Appellant's bank account (routing bank account maintained by SCB).</b></li> <li>• This transaction is reported as purchase from SCB (in the books of NHB) and is thus captured at Page No.6 in Annexure M-1 (Refer Page No. 381 of Paperbook VI) while the same is not reported as purchase in SCB's books as the transaction was entered into by the Appellant on a principal to principal basis and not by SCB.</li> <li>• However, Appellant was unable to deliver the units to NHB even though money was received in the routing bank account of the Appellant.</li> <li>• This amount was repaid to NHB by SCB as per RBI's direction due to non-delivery of securities to NHB.</li> <li>• The SCB in turn filed MP 28 of 1995 to recover the aforesaid amount from the Appellant. Since</li> </ul>



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				the Appellant is liable to pay as per the decree awarded in MP 28 of 1995, the addition on account of oversold position for this transaction should be deleted. (Refer Page No. 268 of Paperbook VI)

**MP 63 of 1992 - SBI v/s Harshad Mehta, NHB & Ors**

Assessment Order dated 27.03.1995	CIT(A)'s Order dated 24.03.2010	Appellant's Submission
"Recovery amounts claimed in the suits filed against the assessee cannot be considered as liability of the assessee for the following reasons:-	<b>A. No nexus between the transactions mentioned in the decree and in Annexure M-2</b>  "In essence, I find that in respect of the securities mentioned in the decrees, the appellant had either received the payment on the transactions made not followed by the deliveries or unauthorizedly siphoned off	<b>A. Appellant is the first defendant to the suit. Also, decree is passed against the Appellant.</b>  • NHB had agreed to purchase securities, while the Appellant had agreed to sell securities through the Appellant's bank account (routing bank maintained by SBI). These cheques were

*Praveer*



<p>1) ... No final decision has been received in respect of these suits. The matter is therefore subjudice.</p> <p>2) The assessee has not admitted the liability in clear terms either before the Hon'ble Court or before this office...He has only proposed to pay the amounts without admitting the liabilities.</p> <p>3) On examination of recovery suits (63/92) filed by the State Bank of India (SBI) following discrepancies / incriminating facts were noted..."</p> <p>(Page No. 40-47 of Paperbook I)</p>	<p>the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of a complete transaction i.e. sale, receipt of payment and delivery had occurred."</p> <p>(Page No. 159-161 of Paperbook I)</p> <p><b>B. Transaction between NHB and SBI. Appellant not a party to securities transaction</b></p> <p>"The transaction was between SBI and NHB and not between SBI and the appellant. The Hon'ble Special Court has awarded the decree in SBI's favour only because the appellant had fraudulently withdrawn money and had utilized for his personal purpose. There was no effective transaction between the appellant and SBI. It is significant to note that the appellant was also examined on this issue under section 131 of the ITA as would be clear from page 42 of the assessment order. As may be seen, the appellant was confronted with this issue in Question No.5 to which there was no specific response by the appellant."</p>	<p>credited into the Appellant's bank account and utilised by the Appellant.</p> <ul style="list-style-type: none"><li>• However, the Appellant was unable to deliver the units to NHB even though money was received in the routing bank account of the Appellant.</li><li>• Under RBI's direction on account of non delivery of securities to NHB, the said amount was repaid to NHB by SBI (since the money was received in SBI's bank account).</li><li>• SBI in turn filed MP 63 of 1992 to recover the aforesaid amount from the Appellant. Since the Appellant is liable to pay the aforesaid amount as per the decree awarded in MP 63 of 1992, addition on account of oversold position for these transactions should be deleted.</li></ul>
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*Harshad Menta*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
16/03/1992	<p><u>Transaction - 1</u></p> <p>Security - Units 1964 Scheme</p> <p>Value - 37,71,75,000</p> <p>Quantity - 2.50 crore</p>	<p>Transaction has been executed between NHB and SBI not with assessee.</p> <p>(Page No. 164 of Paperbook I)</p>	<p>No evidence has been brought on record to prove this.</p> <p>(Page No. 169 of Paperbook I)</p>	<ul style="list-style-type: none"> <li>• Your Honour's predecessor has erroneously upheld the learned AO's observations.</li> <li>• As per Page No. 6 of Annexure M-1, NHB has itself reported a payment of Rs. 37,71,75,000 is made by NHB for purchase of units. (Refer Page No. 381 of Paperbook VI)</li> <li>• No delivery of the securities was received by NHB but since it had reported this purchase, the transaction forms part of Annexure M-1 to the Assessment Order and has been added in the Appellant's money market oversold position.</li> <li>• The same transaction is the subject matter of the Petition filed by SBI, in which NHB claims that 2.5 crore Units 1964 Scheme were agreed to be purchased through the Appellant for which payment of Rs. 37,71,75,000 was made on 16.03.1992 and for which no delivery</li> </ul>

*Harshad Mehta*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				was received by it. (Refer Page Nos. 221, 240, 228 and 229 of Paperbook VI)
14/03/1992	<p><u>Transaction - 2</u></p> <p>Security - Units 1964 Scheme</p> <p>Value - 44,97,75,000</p> <p>Quantity - 3.00 crore</p>	<p>Transaction is with different party</p> <p>(Page No. 165 of Paperbook I)</p>	<p>No evidence has been produced to prove that the transaction is between NHB and the appellant. The Deal file clearly indicates that the transaction has been executed with State Bank of Patiala.</p> <p>(Page No. 169 of Paperbook I)</p>	<ul style="list-style-type: none"> <li>As per Page No. 11 of Annexure M-1, State Bank of Patiala ('SBP') has itself reported a payment of Rs. 44,97,75,000 is made by SBP for purchase of units. (Refer Page No. 383 of Paperbook VI)</li> <li>No delivery of the securities was received by SBP but since it had reported this purchase, it is forming part of Annexure M-1 to the Assessment Order and has been added in the Appellant's money market oversold position.</li> <li>The same transaction is the subject matter of the Petition filed by SBI, in which NHB claims that 3 crore Units 1964 Scheme were agreed to be purchased through the Appellant for which payment of Rs. 44,97,75,000 was made on 14.03.1992 by endorsing State Bank of Patiala's</li> </ul>

*Prasad*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				<p>cheque and for which no delivery was received by it. (Refer Page Nos. 221, 240, 228 and 229 of Paperbook VI)</p> <ul style="list-style-type: none"> <li>Here, NHB is only an intermediary while SBP is the ultimate Purchaser of the security. However, the sums towards this transaction, though paid by SBP, are recovered by NHB from the SBI.</li> <li>SBI in turn filed MP 63 of 1992 to recover the aforesaid amount from the Appellant. Since the Appellant is liable to pay this amount as per the decree awarded in MP 63 of 1992, addition on account of oversold position for these transactions should be deleted.</li> </ul>
07/03/1992	<p><u>Transaction - 3</u> Security - 11.50% C/L 2010 Value - 101,88,50,19 5 Quantity - 100</p>	<p>Transaction does not find place in deal file  (Page No. 164 of Paperbook I)</p>	<p>Even there is no transaction in loan 11.5% C/L 2010 of 100 crores in the Deal File.</p>	<ul style="list-style-type: none"> <li>Your Honour's predecessor has erroneously upheld the learned AO's observations.</li> <li>As per Annexure M-1 (Page No. 6), NHB has itself reported that a</li> </ul>

*Pranesh*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
	crore		(Page No. 169 of Paperbook I)	<p>payment of Rs. 101,88,50,195 is made by NHB for purchase of 100 crores of 11.50% C/L 2010.</p> <p>(Refer Page No. 381 of Paperbook VI)</p> <ul style="list-style-type: none"> <li>No delivery of securities was received by NHB but since it had reported this purchase, it is forming part of Annexure M-1 to the Assessment Order and has been added in the Appellant's money market oversold position.</li> <li>The same transaction is the subject matter of the Petition filed by SBI, in which NHB claims that 100 crore Units 1964 Scheme were agreed to be purchased through the Appellant for which payment of Rs. 101,88,50,195 was made on 07.03.1992 and for which no delivery was received by it.</li> </ul> <p>(Refer Page Nos. 221, 240, 228 and 229 of Paperbook VI)</p>

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Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
16/11/1991	<p><u>Transaction - 4</u></p> <p>Security - Units 1964 Scheme</p> <p>Value - 27,08,50,000</p> <p>Quantity - 2.00 crore</p>	<p>1) Neither Purchase nor sale is executed.</p> <p>2) Value of transaction is different</p> <p>(Page No. 163 of Paperbook I)</p>	<p>Upheld AO's contention as the document submitted does not mention party name. Also the transaction has been taken from the deal file maintained by appellant himself.</p> <p>(Page No. 167 of Paperbook I)</p>	<ul style="list-style-type: none"> <li>Your Honour's predecessor has erroneously upheld the learned AO's observations as the transaction value is the same in both, the Petition as well as the Deal File.</li> <li>Transaction is flagged 'RT' and 'True' in Deal File and hence is considered by learned AO in Annexure M-2 to compute oversold position.</li> <li>The Appellant had agreed to sell 2 crore Units Scheme 1964 for Rs. 27,08,50,000 to NHB on 16.11.1991 on principal to principal basis through Appellant's bank account (routing bank account maintained by SBI). (Refer Page Nos. 256B and 256E of Paperbook VI containing Bank Ledger and Bank Statements of Appellant's Account in SBI)</li> <li>However, Appellant was unable to deliver the Units to NHB even though money was received in the routing bank account of the Appellant.</li> </ul>



*Harshad Mehta*

Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
31/01/1992	<p><u>Transaction - 5</u></p> <p>Security - Units 1964 Scheme</p> <p>Value - 89,05,00,000</p> <p>Quantity - 6.50 crore</p>	<p>Transaction has been executed between NHB and SBI not with assessee.</p> <p>(Page No. 163 of Paperbook I)</p>	<p>The cheque dated 31.1.92 and Document D-200-657 clearly indicates that the transaction was between NHB and SBI. The appellant has not produced any evidence to show that he was acting as a routing agent for this transaction. The statement of Mr. B Balakrishna n, DGM, Security Services Branch of SBI endorses this as in Answer to Question No. 4, as reproduced by the assessing officer in his</p>	<ul style="list-style-type: none"> <li>• Your Honour's predecessor has erroneously upheld the learned AO's observations that the transaction value is the same in both the Petition as well as the Deal File.</li> <li>• Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in Annexure M-2 and added to the appellant's oversold position.</li> <li>• The Appellant had agreed to sell 6.5 crore Units Scheme 1964 for Rs. 89,05,00,000 to NHB on 16.11.1991 on principal to principal basis through appellant's bank account (routing bank account maintained by SBI). Since the transaction was entered into by the Appellant on principal to principal basis, SBI has claimed that it was not connected to the transactions. (Refer Page Nos.</li> </ul>

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Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
			<p>submission dated 10.8.2009. He clearly states that as per the records of SBI, the appellant was not connected with the transaction in any manner.</p> <p>(Page No. 167 of Paperbook I)</p>	<p>256E and 256G of Paperbook VI containing Bank Ledger and Bank Statements of Appellant's Account in SBI)</p> <ul style="list-style-type: none"> <li>• However, Appellant was unable to deliver the Units to NHB even though money was received in the routing bank account of the Appellant.</li> <li>• This amount was repaid to NHB by SBI as per RBI's direction due to non-delivery of securities to NHB.</li> <li>• The SBI in turn filed MP 63 of 1992 to recover the aforesaid amount from the Appellant. Since the Appellant is liable to pay as per the decree awarded in MP 63 of 1992, addition on account of oversold position for this transaction should be deleted.</li> </ul> <p>(Refer Page Nos. 221, 240, 228 and 229 of Paperbook VI)</p>

**MP 61 of 1992 - SBI Capital Market Ltd. v/s Harshad Mehta & Ors**

*Harshad*



**Table 3**

<b>Assessment Order dated 27.03.1995</b>	<b>CIT(A)'s Order dated 24.03.2010</b>
<p>"It can be seen that some amounts have been received after 31.3.1992 and as the suit is pending, hence the same cannot be considered as liability of the assessee as on 31.3.92."</p> <p>(Pg 48 of Paperbook I)</p>	<p>"That in respect of securities mentioned in the decree the Appellant had either received the payment on the transactions made and not followed by the deliveries or unauthorizedly siphoned off the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of complete transaction i.e. sale, receipt of payment and delivery had occurred."</p> <p>Why there is no nexus?</p> <p>The bank had admitted that no delivery of units was made by the appellant."</p> <p>(Page No. 160 of Paperbook I)</p>

<b>Transaction Date</b>	<b>Transaction Details</b>	<b>AO's Remarks before CIT(A)</b>	<b>CIT(A)'s Findings as per Order dated 24.03.2010</b>	<b>Appellant's Submission</b>
30.03.1992	<p>Security - Units 1964 Scheme</p> <p>Value - 4,25,00,000</p> <p>Quantity - 28 Lacs</p>	<p>1) There is no single transaction of 28 Lacs units on 31.03.1992 with SBI Capital Market.</p> <p>2) Transaction is with different party i.e. Growmore and not with</p>	<p>The AO's findings are correct as the transaction in M-2 is with Growmore and not SBI Capital Markets. The dates are also different with four</p>	<ul style="list-style-type: none"> <li>Your Honour's predecessor has erroneously upheld the learned AO's observations.</li> <li>As per Annexure M-1, there are four transactions with SBI Caps for which SBI Capital Markets has itself reported that a single payment of Rs. 4.25 crore is made by SBI Capital Markets for</li> </ul>

*Harshad Mehta*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
		<p>SBI Capital Market.</p> <p>3) Dates are different</p> <p>(Page No. 162 of Paperbook I)</p>	<p>different and independent transactions.</p> <p>(Page No. 165 of Paperbook I)</p>	<p>purchase as mentioned in Page No. 10 of Annexure M-1 to Assessment Order.</p> <p>(Refer Page No. 82 of Paperbook VI)</p> <ul style="list-style-type: none"> <li>No delivery of the securities was received by SBI Capital Markets but since it had made payment for these purchases, they are forming part of Annexure M-1 to the Assessment Order and has been added in the Appellant's money market oversold position.</li> <li>The same transaction is the subject matter of the Petition filed by SBI Capital Markets in which it claims that 28 Lacs Units 964 Scheme were agreed to be purchased through the Appellant for which payment of Rs. 4.25 crore was made on 30.03.92 and for which no delivery was received by it.</li> </ul> <p>(Refer Page Nos. 145, 157, 173, 175 and</p>

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Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				<p>177 of Paperbook T)</p> <ul style="list-style-type: none"> <li>It is to be further noted that there are no other reported transactions with the party Growmore in Annexure M-1 of the Assessment Order</li> <li>The payment for Rs. 4,25,00,000 got credited in the Appellant's Bank account on 31.3.1992 (Refer Page No. 193A and 193B of Paperbook VI containing Bank Ledger and Bank Statements of Appellant's Account in SBI)</li> </ul>

**MP 52 of 1993 - State Bank of Saurashtra ('SBS') v/s Harshad Mehta SBI & Ors**

Assessment Order dated 27.03.1995	CIT(A)'s Order dated 24.03.2010
<p>"Since the suit is pending before the Hon'ble Special Court, the liability cannot be considered."</p> <p>(Pg 48 of Paperbook I)</p>	<p>"That in respect of securities mentioned in the decree the Appellant had either received the payment on the transactions made and not followed by the deliveries or unauthorically siphoned off the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of complete transaction i.e. sale, receipt of payment and delivery had occurred. . .</p> <p>Why there is no nexus?</p> <p>The bank had admitted that no delivery of units was made by the</p>

*P. S. Mehta*



appellant."  
(Page Nos. 159 -160 of Paperbook I)

Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
02.09.1991	<p><u>Transaction - 1</u></p> <p>Security - Units 1964 Scheme</p> <p>Value - 67,74,50,000</p> <p>Quantity - 5.00 crore</p>	<p>Value of Transaction is different</p> <p>(Page Nos. 162 -165 of Paperbook I)</p>	<p>No evidence is submitted</p> <p>(Page Nos. 162 -165 of Paperbook I)</p>	<p>Your Honour's predecessor has erroneously upheld the learned AO's observations. There is no difference in the value of the transaction in the decree and the transaction in the Deal File i.e. both contain the deal value to be Rs. 67,74,50,000/-. (Refer Page Nos. 125E and 125F of Paperbook VI containing Bank Ledger and Bank Statements of Appellant's Account in SBI)</p> <ul style="list-style-type: none"> <li>Transaction is flagged 'RT' and 'True' in Deal File and is thus considered by learned AO in Annexure M-2 and added to the appellant's oversold position.</li> <li>The same transaction is the subject matter of the Petition filed by SBS, in which it claims that 5 crore Units 1964 Scheme were agreed to be purchased through the Appellant for which payment of Rs 67,74,50,000 was made (partly on 02.09.1991 and partly on 03.09.1992) and for which no delivery was received by it. (Refer Page Nos. 114 to 122 of Paperbook VI)</li> </ul>
10.09.1991	<u>Transaction - 2</u>	Transaction	The	<ul style="list-style-type: none"> <li>Your Honour's</li> </ul>



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Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
	<p>Security - Units 1964 Scheme</p> <p>Value - 26,81,80,000</p> <p>Quantity - 2.00 crore</p>	<p>is with a different party i.e. Sale is made to SBIBCRT and not to State Bank of Saurashtra</p>	<p>Assessing Officer's observations are correct in that the transaction is with SBI CBRT according to the Deal File and not with SBS as per the decree in MP 52 of 93</p>	<p>predecessor has erroneously upheld the learned AO's observation.</p> <ul style="list-style-type: none"> <li>The sale is made to State Bank of Saurashtra only i.e. Appellant's sale is SBS's Purchase. The amount is received in SBIBCRT i.e. State Bank of India Current Account at Bombay. (Refer Page Nos. 125B and 125C of Paperbook VI containing Bank Ledger and Bank Statements of Appellant's Account in SBI)</li> <li>The same transaction is the subject matter of the Petition filed by SBS, in which it claims that 2 crore Units 1964 Scheme were agreed to be purchased through the Appellant for which payment of Rs. 26,81,80,000 was made on 10.09.1991 by issuing cheque in favour of SBI.</li> <li>These cheques were credited into the Appellant's bank account (SBI RT i.e. Routing Bank account of the Appellant maintained by SBI).</li> <li>The present suit was filed by SBS because even though payment was made by it, no delivery was received. (Refer Page Nos. 114 to 122 of Paperbook VI)</li> </ul>

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**MP 41 of 1995 - State Bank of India v/s Harshad Mehta, SBI Capital Markets & Orsr**

Assessment Order dated 27.03.1995	CIT(A)'s Order dated 24.03.2010
<p><b><u>Not Discussed</u></b></p> <p>(The suit was filed by SBI in the month of April 1995 and was thus not specifically dealt with in the original assessment proceedings with the learned AO which were completed before filing of the MP 41 of 1995)</p>	<p>"That in respect of securities mentioned in the decree, the Appellant had either received the payment on the transactions made and not followed by the deliveries or unauthorizedly siphoned off the money from the banks. The suits were filed to recoup the damage caused because of this conduct of the appellant. As against this, in respect of the oversold securities featuring in Annexure M-2, the entire chain of complete transaction i.e. sale, receipt of payment and delivery had occurred. . .</p> <p>Why there is no nexus?</p> <p>The bank had admitted that no delivery of units was made by the appellant."</p> <p>(Page No. 160 of Paperbook I)</p>

Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
29/07/1991	Security - Units 1964 Scheme Value - 3,37,75,000 Quantity - 25 Lacs	Transaction is with different party.  (Page No. 163 of Paperbook I)	Upholds AO's observation that the transaction of 25 lacs units as per decree in Suit no. 41 of 95 relates to purchase of units by SBI Caps from UCO bank.  (Page No. 166 of Paperbook I)	<ul style="list-style-type: none"> <li>Your Honours predecessor has erroneously upheld the learned AO's observations.</li> <li>SBI Capital markets had agreed to purchase securities, while the Appellant had agreed to sell securities through the Appellant's bank account (routing bank maintained by SBI). As per the instructions of SBI Capital Market, its account with SBI was debited for</li> </ul>

*Procedent*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				<p>purchase consideration whereas the same amount was credited into the Appellant's bank account (routing account) and utilised by the Appellant. (Refer Page Nos. 375 and 375D of Paperbook VI containing Bank Ledger and Bank Statements of Appellant's Account in SBI)</p> <ul style="list-style-type: none"> <li>• However, the Appellant was unable to deliver the units to SBI Capital Market even though money was received in the routing bank account of the Appellant.</li> <li>• Since the securities were delivered to SEI Capital Markets, the aforesaid amount was repaid to it by SBI. SEI was legally bound to repay the money to SBI Capital Markets.</li> <li>• SBI in turn filed MP 41 of 1995 to recover the aforesaid amount from the Appellant. Since the Appellant is liable to pay this amount as per the decree awarded in MP 41 of 1995, addition on account of oversight position for this</li> </ul>

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Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				transactions should be deleted.
31/03/1992	<p>Security - Units 1964 Scheme</p> <p>Value - 18,75,00,000</p> <p>Quantity - 1.25 crore</p>	Not Discussed		<ul style="list-style-type: none"> <li>SBI Capital markets had agreed to purchase securities while the Appellant had agreed to sell securities through the Appellant's bank account (routing bank maintained by SCB formerly AN Grindlays). As per the instructions of SE Capital Markets, it account with SBI was debited for purchase consideration whereas the same amount credited into the Appellant's bank account in AN Grindlays (routing account). (Refer Page 374 of Paperbook V containing Bank Statement of AN Grindlays)</li> <li>However, the Appellant was unable to deliver the units to SBI Capital Market even though money was received in the routing bank account of the Appellant.</li> <li>Since no securities were delivered to SE Capital Markets, the aforesaid amount was repaid to it by SBI. SBI was legally bound to</li> </ul>

*Harshad Mehta*



Transaction Date	Transaction Details	AO's Remarks before CIT(A)	CIT(A)'s Findings as per Order dated 24.03.2010	Appellant's Submission
				<p>repay the money to SBI Capital Markets.</p> <ul style="list-style-type: none"> <li>SBI in turn filed MP 41 of 1995 to recover the aforesaid amount from the Appellant. Since the appellant is liable to pay this amount as per the decree awarded in MP 41 of 1995, addition on account of oversold position for this transactions should be deleted.</li> </ul>

24.22 I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO . I find that the appellant has submitted voluminous details supporting his claim that there was nexus between the transactions covered under various decrees discussed above and the transactions featuring in the computation of oversold position i.e. Annexure M2 and Annexure M1. All these details were forwarded to the AO during the course of the appellate proceedings and his comments were sought . However no report in this regard was submitted . I find that if one goes through the aforementioned Miscellaneous Petitions in detail , a clear nexus is established with respect to the transactions demonstrated by the appellant as discussed above. The same has also been held by the Hon'ble Special Court in its order dated 29.09.2007 and subsequently upheld by the Hon'ble Supreme Court in the case of **DCIT v. State Bank of India and Ors** [(2009) 2 Supreme Court Cases 451].

24.23 In light of the aforesaid orders, I agree with contention of the appellant that money market oversold position ought to be recomputed . The AO is accordingly directed to recomputed such position in light of the orders of Hon'ble Special Court and Hon'ble Apex Court in light of my observations in the foregoing paras and allow consequential relief to the assessee .

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24.24 Further the manner of computation of oversold position been specifically decided by the Hon'ble Special Court in its order dated 29.09.2007 , where in it has been held that subject to certain conditions only difference in sale price and purchase price to be considered as profits from such transaction , meaning thereby that purchase cost should be allowed to the assessee . This finding of Hon'ble Special court has been upheld by the Hon'ble Supreme Court in the case ofn**DCIT v. State Bank of India and Ors**[(2009) 2 Supreme Court Cases 451]. Therefore this aspect also may be kept in mind by the Id. AO while reworking out profits/ addition from security oversold position . The ground no 6 and 8 are decided accordingly.

**25.1 Ground No. 7** relates to addition of Rs. 290,55,41,290 made by the AO on account of money market unexplained stock. The AO vide his order dated 27.03.1995 made an addition of Rs. 291,05,41,290 on the basis the packet of securities found with NHB which belonged to the appellant (Annexure M-4 to the assesment order dated 27.03.1995 ) and relying on the securities disclosed by late Shri Harshad S Mehta in Miscellaneous Application No. 215 of 1993 filed on 26.10.1993 (M.A. No.215) before the Hon'ble Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (Annexure M-3 to the assesment order dated 27.03.1995). The M.A. No. 215 was subsequently withdrawn vide the Special Court's order for withdrawal of M.A. No. 215 dated 21.03.1995.

25.2 The appellant was in appeal before my predecessor in relation to the said ground. While dealing with the said issue, my predecessor relied upon the Hon'ble Supreme Court's order dated 1.11.2002 wherein it has been found that the securities worth Rs. 253.8 crores do not belong to the appellant. Additionally, he also relied upon the Hon'ble Special Court's order dated 29.09.2007 in Report No. 15 of 2006 filed by the Custodian for distribution of the assets referred to the aforesaid decision of the Hon'ble Supreme Court. It is gathered that in the said order the Hon'ble Special



Court held that in view of the order passed by the Hon'ble Supreme Court the amount of Rs. 253.8 crores could not have been added as the income of the appellant. My predecessor also relied upon the Hon'ble Supreme Court's order dated 3.12.2008 which has affirmed the above decision of Hon'ble Special Court. Based on the aforesaid orders, my predecessor vide his order dated 24.03.2010 held that the said addition of Rs. 291,05,41,290 would stand deleted if it is established that the securities in Annexure M-5 represent the same securities for which the Hon'ble Supreme Court by its order dated 01.11.2002 in Civil Appeal No. 4146 of 2002 has held to be not belonging to the appellant, i.e. Late Shri Harshad S. Mehta. Based on the aforesaid order, the AO vide his Order Giving Effect (dated 20.01.2011) provided only a relief of Rs. 50,00,000 in relation to addition made under the head of Money Market Unexplained Stock and upheld the balance addition of Rs. 290,55,41,290/-. The appellant is now in appeal before me in relation to the balance amount of addition amounting to Rs. 290,55,41,290/-.

25.3 The appellant submitted that the National Housing Bank ('NHB') filed a Civil Appeal No. 4146 of 2002 on 26.10.2002 before the Hon'ble Supreme Court, wherein NHB has stated that the securities worth Rs. 258 crores (listed in the Annexure R-1 colly) do not constitute as the property of the appellant. Further, the appellant submitted that the Hon'ble Supreme Court of India vide its order dated 1.11.2002 in I.A. No.4 of 2002 in Civil Appeal No.4146 of 2002 has held that the assets (mentioned in Annexure R-1 colly) are properties of NHB. Relevant extract of the said order is as under:

*"10. .... Thus, as a result of the order of the Supreme Court, now out of securities worth Rs. 291 crores approximately which have been held to be belonging to Harshad Mehta, securities worth Rs. 253.8 crores approximately have been held not to be belonging to Harshad Mehta. In this regard, the only submission that was made on behalf of the Income-tax Department was that these securities have been held to be belonging to National Housing Bank, because of the consent decree passed by the Supreme Court. However, when I asked the learned*



*Counsel appearing for the Income-tax Department whether the Income-tax Department proposes to challenge the consent decree or that it has taken any steps to do so, because that decree has been accepted by the notified party and also by the custodian, there was no answer. In my opinion therefore, in view of the order passed by the Supreme Court in litigation between National Housing Bank and State Bank of India, the amount of Rs. 253.8 crores approximately could not have been added as the income of Harshad Mehta during the statutory period."*

25.4 Moreover, the appellant also relied upon the Hon'ble Special Court's order dated 29.09.2007 in Report No. 15 of 2006 filed by the Custodian for distribution of the assets which held that in view of the order passed by the Hon'ble Supreme Court, the amount of Rs. 258 crores could not have been added as the income of the appellant. Subsequently, the Hon'ble Supreme Court vide its order dated 3.12.2008 affirmed the decision of Hon'ble Special Court (ie. Special Court's order dated 29.09.2007) confirming the scaling down of Rs. 253 crores in respect of the addition made by the AO under the head of Money Market Unexplained Stock. Further, the appellant urged before me that the AO has not considered the aforementioned orders passed by the Hon'ble Supreme Court and Hon'ble Special Court and held that the securities captured in Annexure M-5 do not form part of Annexure R- to the Hon'ble Supreme Court for Civil Appeal No. 4146 of 2002, i.e. the assets held not to be belonging to the Appellant. Thereby upholding an addition of Rs. 290,55,41,290 in relation to money market unexplained stock. In view of the same, the appellant has submitted a statement showing that the securities valuing Rs. 174,37,23,243 are part of the securities mentioned in the Supreme Court's Order as belonging to NHB which have been considered in Annexure M-5 to the learned AO's order. The relevant extract of the statement is as under:

*Harshad Mehta*



Sr. no. as per M-5	Security	Value (in Rs.) as per Annexure M-5	Securities not belonging to appellant (mapped with Annex. R-1 to Supreme Court Order)	
			Securities not belonging to the appellant	
			Annexure R-1 Colly of Supreme Court Order	Document Referencing
2	Commercial Paper (Hundi of RCFT)	16,78,738	16,78,738	Packet No.4 of Annexure R-1 Colly
3	Cheque dtd 9.8.91 drawn by SBS for Indian Bank	1,07,260	1,07,260	Packet No.4 of Annexure R-1 Colly
4	9% RFC Bonds (BR No. 3 dtd 12.3.92 - NHB)	9,46,63,078	9,46,63,078	Packet No.4 of Annexure R-1 Colly
5	9% IRFC Bonds (01/04) (BR dtd 14.3.92 stock - NHB)	9,47,42,193	9,47,42,193	Packet No.4 of Annexure R-1 Colly
	9% IRFC Bonds (MAP 215)	61,01,83,000	52,01,560	Packet No.1 of Annexure R-1 Colly
			2,10,06,300	Packet No.1 of Annexure R-1 Colly
			14,00,42,000	Packet No.2 of Annexure R-1 Colly
			50,01,500	Packet No.3 of Annexure R-1 Colly
			50,01,500	Packet No.3 of Annexure R-1 Colly
			9,00,270	Packet No.3 of Annexure R-1 Colly
			13,00,39,000	Packet No.3 of Annexure R-1 Colly
			<b>30,71,92,130</b>	
6	11.5% C/L 2008 (BR no 122 dtd 8.2.92 - NHB)	50,70,17,317	50,70,17,317	Packet No.4 of Annexure R-1 Colly
7	13% RINL	5,75,78,834	5,75,78,834	Packet No.4 of Annexure R-1 Colly

*Harshad*



10	Festival Boinaza	4,80,14,400	4,80,14,400	Packet No.2 of Annexure R-1 Colly
11	9% HUDCO (27/03)	14,85,00,000	9,90,00,000	Packet No.3 of Annexure R-1 Colly
12	17% NTPC (22/01)	48,31,12,410	42,14,83,723	Packet No.4 of Annexure R-1 Colly
13	Units	68,48,40,060	10,86,93,495	Packet No.2 of Annexure R-1 Colly
			35,52,075	Packet No.3 of Annexure R-1 Colly
			<b>11,22,45,570</b>	
17	9% IRFC (01/01)	17,51,04,000	-	
	<b>TOTAL</b>	<b>2,90,55,41,290</b>	<b>1,74,37,23,243</b>	

25.5 Further, the appellant submitted that AO determined the addition by relying on the securities disclosed by late Shri Harshad S Mehta in the M.A. No. 215 application which was filed by the Appellant as well as other notified entities. However, the appellant argued that the said M.A. No. 215 application was withdrawn vide Hon'ble Special Court's Order dated 21.03.1995 and therefore the basis on which addition was made by the AC did not sustain and the addition to that extent is liable to be deleted. Without prejudice to the above and in addition to the packet of securities found with NHB, the appellant argued that the Hon'ble Special Court vide it's Order dated 6.9.2002 (Special Court's Order along with the Petition was submitted in Paperbook IV filed with the appellant) has held that the following securities do not belong to the appellant:

Sr. No. of Annexure M-5 to AO's Order	Security Name	Value of securities covered by Hon'ble Special Court's Order dated 6.9.2002
5.	9% IRFC Bonds (01/04)	Rs 30,00,00,000
12.	17% NTPC Bonds (22/01)	Rs 20,00,00,000



25.6 I have considered the arguments of the assessee . In respect of securities valuing at Rs 66,18,18,047/- (ie. Rs 290,55,41,290 minus Rs 174,37,27,243 minus Rs 50,00,00,000),the assessee has failed to furnish any evidence or to establish any direct nexus vis a vis Hon'ble Supreme Court order. Therefore the addition to that extent is confirmed .

25.7 As regards remaining addition of Rs.174,37,27,243/-, all the paper books of the assessee alongwith the submissions of the assessee were forwarded to the AO for his comments and remand report. However no report was submitted by the AO , despite several reminders and even after taking up the matter with senior authorities . Therefore in the interest of justice the AO is directed to verify the above facts in light of Hon'ble Special Court order and Ho'nble Apex court orders as also directions of **my Id. Predecessor vide his order dated 24.03.2010 where in he held that the said addition of Rs. 291,05,41,290 would stand deleted if it is established that the securities in Annexure M-5 represent the same securities for which the Hon'ble Supreme Court by its order dated 01.11.2002 in Civil Appeal No. 4146 of 2002 has held to be not belonging to the appellant, i.e. Late Shri Harshad S. Mehta . Apparently in respect of Securities of Rs. 174,37,23,243/-+ Rs. 50,00,00,000/- ( part of annex M-5) as discussed in the tables above , the assessee has submitted reasonable details and proof . The AO however may re-verify these details and evidences in light of Hon'ble Apex Court judgment dated 01/11/2002 and Special Court judgment dated 06/09/2002 before allowing relief . This ground is decided accordingly .**

26.1 **Ground No. 9** relates to addition on account of money market trading profit of Rs. 35,55,51,482/- . It is gathered that in course of the assessment proceedings, in line with the assessment orders for the assessment years 1990-91 and assessment year 1991-92, the AO observed that the appellant had conducted two types of transactions in the money market, during the year as under:

- i) Firstly he acts as a principal and in this capacity, the



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transactions are included in the money market trading account of the appellant. These transactions have been shown by the appellant as 'RT' transactions in the deal file and .

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

26.2 In the above background, the AO has computed the amount of Rs. 35.55 crores on the following basis:

- considering the transactions other than those marked as 'RT' and where the appellant acts as a principal; and
- considering transactions where the appellant squares up the position on the same day (ie. purchase and sale of the same security on a given day)

26.3 The AO has tabulated the above in Annexure K to the assessment order dated 27.03.1995.

26.4 During the course of earlier appellate proceedings before my ld. predecessor, the appellant submitted that the AO had relied upon the Deal File which forms part of the books of account although the books of account have been rejected by him. It was further contended that in Annexure K, no correlation has been drawn as regards the various debits and credits in the statement prepared. Further, the appellant submitted that discrepancies with regard to receipt of Rs. 39,19,77,531/- and closing stock of Rs. 38,70,34,463.61 on account of CC Asset were also pointed out. Rebutting the appellant's submission, the AO submitted that he has worked out the difference where the appellant has not acted as a principal. In this context, it was argued before my ld. predecessor that the appellant has tried



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to justify his stand by correlating the transactions mentioned in Annexure M-2, where the delivery of instruments has been made, with the transactions executed where only difference has been debited or credited without effecting the delivery.

26.5 While deciding the appeal of the assessee, my Id. predecessor upheld the addition of Rs. 35,55,51,482 made by the AO vide his order dated 24.03.2010 by stating as under:

*"9.4 I have considered the assessment order and the submissions of the appellant and the Assessing Officer made during the appellate proceedings. Looking into the type of transactions taken into consideration by the Assessing Officer while making the addition, I do not find any merit in the arguments of the appellant. As I see, the transactions taken into consideration by the Assessing Officer are transactions where the appellant has not acted as a principal and he has only considered the transaction where the appellant has squared up the transaction on the same day. This being so, obviously, the correlation made by the appellant is inconsistent. As pointed out by the Assessing Officer, correlating transactions where delivery of the instrument has been made with the transactions accounted for only by debiting and crediting the difference without effecting the delivery is off the mark. The appellant has also pointed out the particular discrepancies with regard to CC Asset on the basis of incompatible references in that he has sought to match the receipts in Annexure 'K' with the closing stock as found in Annexure M-2. As may be seen, in the case of Annexure M-2, the securities in question are backed up by delivery, whereas the Assessing Officer has worked out the difference in respect of transactions where there were no deliveries as only the difference was debited or credited. Further, I also find that the figure of Rs. 38,70,34,463/- taken from Annexure M-2 is not a single transaction but the resultant figure of a series of transactions as mentioned in M-2 with reference to CC Asset. Apart from making this incompatible comparison, the appellant has not brought anything on record in support of his claim. As against, this the Assessing Officer has made the addition after eloquently articulating*

*Pradeep*



the type of transactions that is covered, working out the difference and tabulating the difference in Annexure K. I also find that Annexure K is a detailed analysis of the difference worked out as it includes all the relevant data i.e., the date, the amount received, the payment details and the description of the securities In light of the foregoing, I find the addition to be justified. It is confirmed and the ground of appeal is dismissed.”

26.6 In the present re-assessment proceedings the AO has repeated the same addition on this account . Accordingly, the appellant is now in appeal before me in relation to the said addition of Rs. 35,55,51,482/-. The appellant has submitted before me that the said addition is primarily on account of following two reasons:

- a. Incorrectly capturing the transaction which is marked as ‘RT’ and not executed on same day;
- b. Other receipts incorrectly considered by the AO

26.7 The appellant submitted that the AO has considered a receipt of Rs. 39,19,77,531 while making an addition of Rs 35,55,51,487. A break-up of Rs 39,19,77,531 is as under:

Date	Receipt Amount (in Rs.)	Narration (as per Annexure K)
22.04.1991	39,06,62,462	39 CR - C C ASSET CNO 910420-B70 (SP 2097)
	13,15,069	C C ASSET FV 150 CR CNO 910420-S6-2095
Total	39,19,77,531	

26.8 In relation to the above, the appellant claimed that receipt of Rs. 39,06,62,462 is incorrectly considered as part of addition, on the following grounds:

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- It was claimed that the transaction entered on 20.04.1991 by the appellant is on principal to principal basis and is also marked as 'RT' relying upon the deal slip dated 20.04.1991 (enclosed at pg. no. 1 of Paperbook VII)
- That the transaction was not squared-up on the same day and was executed on different dates i.e. 20.04.1991 and 22.04.1991. Reliance was placed on the UCO bank ledger and UCO bank account statement (enclosed in pg.no. 2 and 3 of Paperbook VII) wherein the payment of Rs. 39,00,00,000 made on 20.04.1991 and receipt of Rs. 39,06,62,462 on 22.04.1991 is reflected.

26.9 Accordingly, the appellant submitted that since the transaction is marked as 'RT' and not executed on the same date, the AO has incorrectly considered the said receipt of Rs. 39,06,62,454 in computing the money market difference of Rs. 35,55,51,487.

26.10 I have considered the facts of the case and the submissions of the appellant. I do not find any merit in the arguments of the appellant. Concurring with my Id. Predecessor, I see that the transactions taken into consideration by the Assessing Officer are transactions where the appellant has not acted as a principal and he has only considered the transaction where the appellant has squared up the transaction on the same day. This being so, the correlation made by the appellant is inconsistent. As mentioned by the Id. Assessing Officer, correlating transactions where delivery of the instrument has been made with the transactions accounted for only by debiting and crediting the difference without effecting the delivery is off the mark. The appellant has also pointed out the particular discrepancies with regard to CC Asset on the basis of incompatible references in that he has sought to match the receipts in Annexure 'K' with the closing stock as found in Annexure M-2. As may be seen, in the case of Annexure M-2, the securities in question are backed up by delivery, whereas the Assessing Officer has worked out the difference in

*Prasad*



respect of transactions where there were no deliveries as only the difference was debited or credited. Further, I also find that the figure of Rs. 38,70,34,463/- taken from Annexure M-2 is not a single transaction but the resultant figure of a series of transactions as mentioned in M-2 with reference to CC Asset. Apart from making this incompatible comparison, the appellant has not brought anything on record in support of his claim. As against, this the Assessing Officer has made the addition after eloquently articulating the type of transactions that is covered, working out the difference and tabulating the difference in Annexure K. I also find that Annexure K is a detailed analysis of the difference worked out as it includes all the relevant data i.e., the date, the amount received, the payment details and the description of the securities .

26.11 In view of the above facts and legal position , I hold that the addition made by the AO in this regard is fully justified. The same is therefore confirmed and this ground of appeal is dismissed.

27.1 Ground no. 10 relates to addition of interest receivable on Money Market Securities amounting to Rs. 58,27,13,670/-. It is relevant to mention that the interest amount of Rs. 55,97,13,670/- has been worked out by the AO in Annexure- I to his assessment order dated 27.03.1995 on the basis of presumed stock computed from seized documents and evidences and information gathered from external agencies. Besides, the AO also discovered that in Miscellaneous Application No. 215 of 1993 filed by the appellant before the Hon'ble Special Court, the appellant had claimed that he is entitled to receive interest of Rs. 2,30,00,000/- on the securities belonging to him but lying with the different banks. A total addition of Rs. 58,27,13,670/- was thus made by way of interest on securities and added to the income of the appellant. Accordingly, the appellant is now in appeal before me in relation to the said addition of Rs. 58,27,13,670/-

27.2 The appellant has submitted that interest should be taxed on the basis of audit report prepared by M/s. Vyas & Vyas, Chartered Accountants, which



amounts to Rs. 58,26,760/-. The relevant extract of submission is as under:

" 3. The Hon'ble Supreme Court vide its Order dated 07.08.2009 (enclosed in Page No. 20 of Paperbook XI) has directed the Special Court to consider the audit report prepared by M/s. Vyas & Vyas Chartered Accountants in relation to the accounts of the Appellant for the financial year ended 31.03.1992.

4. The Hon'ble CIT(A) vide its order dated 24.03.2010 (enclosed in Page No. 262 of Paperbook I) held that report of M/s. Vyas & Vyas Chartered Accountants is authentic and reliable.

The relevant extract of the CIT(A)'s Order is reproduced as under:

" .... Accordingly, to the extent the finding has been given in this report, the particulars and conclusions are reliable. As already discussed, the report of M/s. Vyas & Vyas may not have fully covered all relevant materials but to the extent the information has been collected, the report is authentic and reliable. As already mentioned in course of the preceding point on adequate time and opportunity, the Hon'ble Supreme Court has also directed that report of M/s. Vyas & Vyas is to be considered."

5. As per the Profit and Loss A/C for the year ended 31-03-1992 of M/s. Harshad S. Mehta prepared by M/s. Vyas & Vyas (enclosed in Page No. 21 of Paperbook XI), the interest on securities earned by the Appellant is Rs. 58,26,759.80 (Rs 58.26 lakhs). Given the above, the Appellant should be subject to tax on interest income amounting to Rs. 58.26 lakhs earned from money market securities, hence, the addition to the extent of Rs 57,68,86,910 (ie. Rs 58.27 crores less Rs 58.26 lakhs) is liable to be deleted."

27.3 The appellant has also relied on my predecessor's order dated 24.03.2010 (enclosed in Page No. 262 of Paperbook I) wherein my predecessor has held that the report of M/s. Vyas & Vyas Chartered Accountants is authentic and reliable. In relation to the aforesaid contention of the appellant, reliance is placed on the Hon'ble Special Court's order dated

*Amal*



10.06.2003 in case of MP No. 112 of 2000 has held that the reports of various chartered accountants are to be referred only to consider the background and such reports cannot be treated as a substantive piece of evidence. The relevant extract of the said order is as under:

*"The Custodian has made reference to Jankiraman Committee Report, and the reports of the Chartered Accountants. In my view it would be proper to refer to the reports of various Committees only to consider the background in which the Ordinance and the Act were passed. However, in any proceedings either before the Custodian or the Court, these reports or any part thereof cannot be treated as a substantive piece of evidence to decide upon the nature of transactions involved in the matter, reason being that if any part of the report of Jankiraman Committee, Joint Parliamentary Committee or the reports of the Chartered Accountants or IDG report are used as a piece of evidence to decide upon the nature of transaction, then the person affected has no opportunity to test either the veracity or the correctness of the statement of facts contained therein by way of cross-examination."*

27.4 During the course of present appellate proceedings, the appellant also submitted that interest to the extent of Rs. 47,43,39,667/- ought not to be taxed in the hands of the appellant. The details of the relief claimed by the appellant is tabulated herein under:

Reason provided by the appellant for non-taxability of interest	Amount (in Rs.)
Interest on account of Packets not belonging to the appellant	39,50,000
Interest on 9% Tax free securities	9,31,27,500
Interest on securities wherein delivery is executed through B.R	5,24,87,500
Interest not received	26,41,49,667
Interest on 13% NPC Bonds (acquired after 31.03.92)	71,50,000
Interest on securities wherein delivery is executed	5,34,75,000



*Harshad Mehta*

Order		
5.	9% IRFC Bonds (01/04)	Rs 30,00,00,000
12.	17% NTPC Bonds (22/01)	Rs 20,00,00,000

I have considered the arguments of the assessee . As in respect of securities valuing at Rs 66,18,18,047/- (ie. Rs 290,55,41,290 less Rs 174,37,27,243 less Rs 50,00,00,000),the assessee has failed to establish any direct nexus vis a vis Hon'ble Supreme Court order , the addition to that extent is confirmed .

As regards remaining addition, all the above paper books along with the submissions of the assessee were forwarded to the AO for his comments and remand report . However no report was submitted by the AO , despite several reminders and even after taking up the matter with senior authorities . Therefore in the interest of justice the AO is directed to verify the above facts in light of Hon'ble Special Court order and Ho'nble Apex court orders as also directions of **my Id. Predecessor vide his order dated 24.03.2010** where in he held that the said addition of Rs. 291,05,41,290 would stand deleted if it is established that the securities in Annexure M-5 represent the same securities for which the Hon'ble Supreme Court by its order dated 01.11.2002 in Civil Appeal No. 4146 of 2002 has held to be not belonging to the appellant, i.e. **Late Shri Harshad S. Mehta** . Apparently in respect of Securities of Rs. 174,37,23,243/-+ Rs. 50,00,00,000/- ( part of annex M-5) as discussed in the tables above , the assessee has submitted reasonable details and proof . The AO however may re-verify in light of Hon'ble Apex Court judgment dated 01/11/2002 and Special Court judgment dated 06/09/2002 before allowing relief . However This ground is decided accordingly .

Addition of Rs. 35,55,51,482 under the head of Money Market difference received

**Ground No. 9** relates to addition on account of money market trading profit of Rs. 35,55,51,482/- . It is gathered that in course of the assessment



interest has been shown as received in the bank account, the same was actually part of the sales consideration showing that the interest has not been received separately. It was claimed that the sale consideration has been considered separately while computing money market oversold position and hence should not be taxed under this head. However, I am not satisfied with the arguments of the assessee in this regard. Therefore no relief can be granted to the assessee at this stage.

27.8 The appellant also submitted that interest amounting to Rs. 71,50,000 on 13% NPC Bonds has been incorrectly considered in computing interest income of the appellant, as these bonds has been acquired after 31.03.1992. The same has been evidenced in Annexure M-3 to AO's order which shows that the 13% NPC Bonds has been acquired after 31.03.1992. Additionally, the Appellant has submitted that since dividend and interest income amounting to Rs. 1,04,58,970 has already been offered for tax, no additional interest on money market securities should be brought to tax. In view of these facts addition of Rs.71,50,000/- is directed to be deleted.

27.9 In light of the facts and evidences provided by the appellant, it is concluded that interest amounting to Rs 10,42,27,500/- is not chargeable to tax due to the reasons provided above (along with supporting evidences). Hence, in absence of any explanation to balance interest of Rs. 47,84,86,170/-, the same is held to be chargeable to tax in the hands of the appellant, break-up of which is provided as below:

Particulars	Amount (in Rs.)	Amount (Rs)
Tax payable on Interest on Money Market Securities determined by the learned AO		58,27,13,670
(Less) Relief on account of Packets not belonging to the appellant	(39,50,000)	
(Less) Relief on account of 9% Tax free securities	(9,31,27,500)	



(Less) Relief on account of 13% NPC (Acquired after 31.03.92)	(71,50,000)	
<b>Balance Taxable Interest on Money Market Securities</b>		<b>47,84,86,171</b>

27.10. In view of the above facts an amount of Rs.10,84,24,003/- is confirmed and balance amount is directed to be deleted . This ground is accordingly partly allowed.

28.1 **Ground no. 11** relates to addition on account of share market trading profit of Rs. 16,02,65,407/-. It is relevant to mention over here that the AO prepared scripwise trading account based on the material collected during the course of the assessment proceedings and considering the closing stock determined as on 31/03/1991 in the AO's order for A.Y. 1991-92. The AO there after computed share market trading profit of Rs. 16,02,65,407/- and added the same to the total income of the appellant, which is reflected in Annexure S-1 of the AO order dated 27/03/1995. In appeal the appellant submitted that the transactions were undertaken by him for and on behalf of his clients and the same were not his transactions . However, my ld. predecessor dismissed the contention of the assessee hence, the appellant is now in appeal before me on this issue .

28.2 During the ongoing course of appellate proceedings before me , the assessee submitted that he was a registered member of BSE, i.e. a share broker and has engaged into transactions involving trading of scrips. It was also submitted that transactions of share trading undertaken by the appellant for and on behalf of clients.. Additionally, the appellant reiterated the submissions filed by him before my predecessor. The copy of the said submissions are placed on record . In support of his claim that the share trading is undertaken for and on behalf of the clients, the appellant identified 10 largest scrips on account of which addition of Rs. 16,02,65,407/- is made. The appellant has provided a chart giving complete



particulars of date of transaction, rate, quantity, nature of transaction, and the name of the client. Further, the appellant has also placed reliance on his books of account and that of his clients. The appellant has also placed reliance on the decision in the case of ACIT vs. **M/s. Triumph International Finance Ltd.** The appellant has also placed reliance on the contract notes and or bills issued by him to his clients for each of the transactions. The issue has been examined. It is seen that in the case of M/s. Triumph International Finance Limited the decision has been given in the context of buying and selling on behalf of others. However, in the case of the appellant the buying and selling has been done on appellant's own account and not on behalf of others. Thereby distinguished the case on which the appellant placed his reliance.

28.3 Therefore considering the overall facts of the case and in absence of any additional explanation and document substantiating that the share market trading profit is for and on behalf of the client, I agree with my predecessor's opinion that the same is on account of the transactions entered into by the appellant on his own account. Accordingly, the said ground of appeal is decided against the appellant and it is held that share market trading profit of Rs. 16,02,65,407/- be taxed in the hands of the appellant.

**Ground No. 12** relates to addition of 'share market speculative profit' amounting to Rs. 2,85,26,994/-. The assessee has submitted that based on the material collected by the AO from various clients, he computed net Speculative Profit of Rs. 2,85,26,994 as described in detail in Annexure S-2 to the assesment order. The ld. AR also submitted that these amounts have been shown by AO as received by the Appellant and profit is computed accordingly. The appellant has further submitted that the material used by the AO for computation in Annexure S-2 has not been disclosed to the appellant. According to the appellant, the alleged share market speculative profit pertaining to the transactions undertaken by the appellant are for and on behalf of his clients as the appellant is only a sharebroker. The appellant submitted that the speculative profit of Rs. 2,85,26,994 ought not to be taxed in his hands.

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29.2 I have considered the arguments of the assessee and the facts of the case . With respect to this ground of appeal, I find that this issue has been elaborately looked into by my Id. Predecessor while passing order dated 24/03/2010 and I agree with the finding of my Id. predecessor. In the absence of any specific explanation and documents which substantiates the above claim, the issue is decided against the appellant. **This ground is accordingly rejected.**

30.1 **Ground No. 13** relates to profit on sale of shares in shortage amounting to Rs. 253,16,78,501/-. The Assessing Officer has computed the quantities of shares of various companies acquired by the appellant. He has worked out opening stock, purchases and sales of shares of different companies. He has taken the closing stock of shares of last assessment year as opening stock for A.Y. 1992-93. He gathered the details of purchase and sale of shares effected by the appellant during the relevant previous year and upto 08.06.1992 (date of notification) in the next year from various sources. These sources are B.S.E brokers / clients/ FIs / banks, all receipt / payment details from R.B.I, information received from other entities from the group of the appellant, and appellant himself. Based on these information, the Assessing Officer has calculated the stock position of the appellant. The Assessing Officer has arrived at the figures of purchase and sales affected by the appellant during the period from 01.04.1991 to 08.06.1992. Based on this exercise, the Assessing Officer found out the stock position of the appellant as on 08.06.1992. This may be referred to as book stock of the appellant for the sake of convenience. Thereafter, the Assessing Officer made efforts to find out the physical stock of the appellant as on 08.06.1992. The details of such physical stock have been gathered from Custodian, Court proceedings and respective companies. Thereafter, the Assessing Officer compared book stock with the physical stock and came to the conclusions that book stock is much higher than the physical stock. In other words, the appellant ought to have some more shares in his possession which are not traceable. The Assessing Officer, thereafter, took into consideration unregistered shares possessed by the appellant and also



the benami shares identified by the department as well as those declared by the appellant's related entities before the Hon'ble Special Court. According to the Assessing Officer, these unregistered and benami shares belonged to the appellant and hence the difference between the book stock and the physical stock was reduced to that extent. Since the unregistered and benami shares were acquired through the three brokerage firms of Late Shri Harshad S. Mehta, Ashwin Mehta and Jyoti Mehta, the credit for the same was given in the ratio of shortage in the respective hands before granting the credit. In spite of this there were certain shares which were physically not found with the appellant. The Assessing Officer has treated such difference in stock as having been sold by the appellant. The Assessing Officer has applied the market rate as on 31.03.1992 to arrive at the sale consideration of such shares. After reducing the cost of acquisition of such shares, the Assessing Officer arrived at the profit on sale of shortage on shares of Rs. 253,16,78,501/- in the hands of the appellant and the same was accordingly added.

30.2 It is gathered that this shortage has been worked out by the AO jointly in cases of the assessee, his brother Sri Ashwin Mehta and his wife Mrs. Jyoti Mehta and thereafter the shortage has been apportioned in three cases. Further this issue has been examined in detail by me in the case of Sri Ashwin Mehta for the A.Y. 1992-93 vide order dated 28/02/2017 and in case of Jyoti Mehta A.Y. 92-93 vide order dated 24/03/2017 some relief has been allowed in respect of some of the scrips by observing as under :-

*"With respect to the above, my ld. predecessor upheld the aforesaid addition made by the AO in the appellants' case by relying on the case of Late Mr. Harshad Mehta [CIT(A)C-V/ACIT CC-23/59/95-96 dated 24.3.2010] wherein the issue was identical. I agree with the view of my predecessor on the aforesaid issue. The AO has gathered the details and information about the transactions from various sources and tabulated in annexures to the assessment order. This exercise was necessary as the appellant had not filed a valid return of income nor submitted true and correct picture of his transactions in the form of reliable books of accounts. The AO arrived at the book stock of the*

*Prakash*



appellant in respect of each scrip and compared it with the physical stock and there after computed the shortage of shares . It cannot be said that various sources relied upon by the AO are irrelevant or unreliable.

26.7 In view of the above facts, the addition made on account of 'profit on sale of shares in shortage' is upheld in principle. However, the Ld. AR has raised certain issues in respect of availability of such shares later and submitting the same before the custodian etc., which are specific to the present appellant. The same are dealt with as under :-

**26.8 Credit for Unregistered shares disclosed in letter dated 31.1.1995 of Mr. Harshad Mehta to the Custodian**

The AO had considered the unregistered shares declared by Mr. Harshad Mehta on 26.10.1994 as shares not sold by him and accordingly credit for the same was granted by him. The appellant had raised the specific issue for credit of unregistered shares disclosed by Late Shri. Harshad Mehta before the Custodian on 31.1.1995. The appellant submitted that unregistered shares were declared by Mr. Harshad Mehta in his letter dated 31 January 1995 to the Custodian. Therefore, credit for the declaration made in letter dated 31.1.1995 is required to be given on the same line as given by the AO in respect to declaration dated 26.10.1994. The AO had erred in not giving credit for the unregistered shares disclosed by Late Shri. Harshad Mehta to the Custodian on the ground that these shares were not acquired prior to 8.6.1992. In regard to the above, the appellant made submissions before my ld. predecessor. The appellant had submitted that the aforesaid unregistered shares were in the physical possession of late sri Harshad Mehta and existed as on 31.1.1995. Thus the appellant contended that he is entitled to the credit of shares declared in letter dated 31.1.1995 on the basis of subsequent events such as handing over of these unregistered shares to the Custodian under directions of Hon'ble Special Court, Misc. Application Nos. 114 to 158 of 1995 filed by the Custodian seeking registration of these shares in the name of the clients, family members, or in the name of the Custodian, and thereafter sale of these shares as attached property under directions of the Hon'ble Special Court. The appellant contended that these subsequent events and evidences distinctly prove that these shares were acquired prior to 8.6.1992 and therefore credit for the same should be given



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while working out shortage of shares. In this regard, the Appellant made detailed submission in respect of shares of ACC Limited before my Id. predecessor, the relevant extract of which is reproduced below -

.....

26.9 With respect to the above, it has been held by the AO that during the course of assessment proceedings, Mr. Harshad Mehta was asked to produce 95,000 shares of ACC, but he failed to produce the same. Similarly, the AO further observed that the appellant has not explained as to where these shares were lying till date. In this regard, my predecessor had a similar finding that the appellant has not been able to respond to the said queries raised by the AO during the original assessment proceedings. Further, my predecessor also noticed that the identical issue was dealt in the case of Shri. Harshad Mehta in order dated 24/3/2010 in appeal no. CIT(A)C-V/ACIT CC-23/59/95-96 for AY 1992-93. The relevant findings are reproduced below -

.....

26.10 It is gathered that in this regard my Id. predecessor held that the issue is identical to the query raised in the case of Shri. Harshad Mehta. In view of the same, my predecessor relied upon the findings in the case of Mr. Harshad Mehta for AY 1992-93 in his order dated 24/3/2010, and the claim of the appellant in respect of unregistered shares was rejected. It is pertinent to note here that the findings of my predecessor primarily relate to shares of ACC Ltd. and do not discuss other shares declared by Mr. Harshad Mehta in his letter dated 31.1.1995.

26.11 During the course of the appellate proceedings, the appellant produced before me the following detailed evidences / documents (including additional evidences as per recent developments) with respect to the unregistered shares disclosed by Mr. Harshad Mehta in his letter dated 31.1.1995, to establish the existence of shares as on 31.3.1992 and prove that the shares were not sold.

- (i) Miscellaneous Petitions filed by the Custodian in respect of shares in 45 Companies declared by Late Shri. Harshad Mehta in the letter dated 31.1.1995 before the Hon'ble Special Court, being M.P. 114 of 1995 upto M.P. 158 of 1995.
- (ii) Orders passed by the Hon'ble Special Court with respect to the above Miscellaneous Petitions, being M.P. 114 of 1995 upto M.P. 158 of 1995, seeking registration and recovery of all accruals on these shares as they were paid over by companies to the registered shareholders.



(iii) The Appellant produced and explained all the miscellaneous petitions and orders of the Hon'ble Special Court in respect of 45 companies. On an example basis, I have examined the details with respect to shares of Mysore Cements. In this connection, the Appellant submitted copy of M.P. No. 138 of 1995 (Page No. 207 of the Paper book) filed by the Custodian pertaining to 1,20,000 shares of Mysore Cements Limited. In the said Miscellaneous Petition, the prayer of the Petition is reproduced below –

"a) .....

26.12 With respect to the said Miscellaneous Petition, order was passed by the Hon'ble Special Court. Relevant extract of the Order is reproduced below – "1.....

On a conjoint reading of the above Miscellaneous Petition and the order passed in that regard, the Appellant submitted that Mr. Harshad Mehta was under an obligation to physically hand over all the unregistered shares to the Custodian and to disclose the particulars of attached shares possessed by him. In compliance with the said order, the Appellant submitted that the said shares were physically handed over to the Custodian at the relevant time.

26.14 Similarly the appellant has provided the complete sequence of events for the shares of Apollo Tyres Limited. The Appellant submitted a copy of M.P. No. 123 of 1995 (Page No. 412 and 413 of the Paper book) filed by the Custodian pertaining to 39,16,000 shares of Apollo Tyres Limited. In the said petition, Mr. Harshad Mehta was ordered and directed to hand over the said shares to the Custodian (Page No. 417 of the Paper book). The relevant extract is reproduced below –

"The Petitioner, therefore prays:

a) That the Respondent No. 1 be ordered and directed by this Hon'ble Court to hand over to the Petitioner:

**39,16,000 unregistered shares of Respondent No. 2 company which are currently in the possession of the Respondent No. 1 together with all details viz. name of the Purchaser, date of purchase, folio numbers, distinctive numbers, etc. in floppies company wise alongwith the hard copies."**

26.15 The above petition (for unregistered shares) was affirmed by the combined order of the Hon'ble Special Court dated 19 November 1999 (Page No. 503 of the Paperbook) and the company i.e. Apollo Tyres Limited was

*Prakash*



directed to register 39,16,000 shares (Page no. 512 of the Paperbook). The relevant extract of the order of the Hon'ble Special Court is reproduced below

—  
“To obviate this kind of a situation, he submitted that this Court should direct respondent no. 2 – company to register the Petitioner-shares numbering 39.16 lakh. It is further submitted that similarly, the Company should be directed to forthwith take steps to register 740,000 shares seized by CBI from the notified party.”

26.16 The Appellant further submitted that 54,88,850 shares of Apollo Tyres Limited (including the aforesaid shares) were sold by Hon'ble Special Court under its orders dated 30/4/2003 and order dated 2/5/2003 (Page no. 529 of the Paperbook). This further supports the view that the shares cannot be presumed to be sold on 31/3/1992 as the same were sold subsequently as per the directions of the Hon'ble Special Court.

26.18 The Appellant also submitted a Report No. 17 of 2013 filed by the Custodian before Hon'ble Special Court (Page no. 556 of the Paperbook) pursuant to directions given to him under order dated 4 January 2013 in M.A. 13 and 14 of 2011. The said Report provides the status of registration of the aforesaid unregistered shares as disclosed in the letter dated 31 January 1995 by Mr. Harshad Mehta.

26.19 The Appellant also produced a recent Report No. 20 of 2015 filed by the Custodian before the Hon'ble Special Court for recovery of unregistered shares of Mr. Harshad Mehta Group in M.A. 13 and 14 of 2011. The said Report provides detailed status of registration of all the unregistered shares as declared in the letter dated 31.1.1995 by Mr. Harshad Mehta.

26.20 The appellant further argued that the AO himself has reduced the quantity of unregistered shares from the shortage of shares as disclosed by Mr. Harshad Mehta in his letter dated 26/10/1994 and given benefit of the same in his assessment order dated 27/03/1995. Based on the subsequent events with respect to registration of shares as detailed above, the Appellant submitted that



the unregistered shares physically existed and cannot be presumed to be sold. Accordingly, the Appellant has prayed for grant of credit for the unregistered shares disclosed in the letter of Mr. Harshad Mehta dated 31 January 1995 to the Custodian.

26.21 I have considered the arguments of the assessee. It is relevant to mention over here that while passing the original assessment order dated 31/03/1995, the then AO had worked out shortage in respect of 549 scrips, as per Annexure S3 to the assessment order. This shortage was treated as sales outside the books of accounts and consequently, total addition was worked out at Rs. 929.94 cr., by applying the rate of scrip as on 31/03/1992. This amount was apportioned in the names of Ashwin Mehta, Smt. Jyoti Mehta and Late Shri Harshad Mehta, at Rs. 367.29 cr., Rs. 309.47 cr. and Rs. 253.16 cr. respectively and additions were made accordingly . In appellate proceedings, my ld. predecessor in case of the present assessee itself vide order dated 30/12/2011, for the present year, directed the AO to allow benefit of all the shares disclosed by Shri Harshad Mehta vide his letter dated 26/10/1994, which worked out to Rs. 137.16 cr Similar relief of Rs. 125.68 cr was granted in the case of a family member Jyoti Mehta vide order dated 29/02/2012 . For clarity the relevant portion of the order of my ld. predecessor dated 30/12/2011 in the case of the assessee , for the year under consideration is reproduced as under:-

" .....

26.22 Thus, my ld. Predecessor directed the AO to allow the assessee benefit in respect of shares of various companies, which were subsequently disclosed to the custodian and the Hon'ble Special Court had taken cognizance of such shares. In doing so, he also observed that these issues did not come before his ld. predecessor while deciding the appeal in case of Harshad Mehta vide order dated 24/03/2010.

26.23 However, in respect of shares as disclosed by Shri Harshad Mehta vide his letter dated 31/01/1995, he agreed with the finding of the AO that the assessee was not able to produce these shares (95000 shares of ACC

*Pradeep*



Ltd.) before the AO and also did not explain as to where these shares were lying till the date of the order and he therefore, rejected the claim of the assessee by observing as under:-

"9.30 I gone through the findings of the AO and the submissions of the appellant. I find that late Shri Harshad S. Mehta has made a disclosure of unregistered shares before the Custodian on 2 different occasions on 26/10/1994 and 31/01/1995. I find that the AO has given the credit for the declaration made vide letter dated 26/10/1994 and not in respect of the declaration made vide letter dated 31/01/1995. It has been held by the AO that during the course of assessment proceedings, Shri Harshad Mehta was asked to produce 95000 shares of ACC Ltd., which he failed to produce. Similarly, the AO had further observed that the appellant has not explained as to where these shares were lying till date. I find that till date the appellant has not been able to respond to the said queries raised by the AO during the original assessment proceedings. Further, it is also noticed that identical issue was dealt in the case of late Shri Harshad S. Mehta in order dated 24/03/2010 for A.Y. 1992-93. The relevant findings in the said order are reproduced below:-

.....

9.31 Since, the query raised by the AO was identical in the case of Late Shri Harshad Mehta and in the case of the appellant, the said issue deserves to meet the same fate. In view of the same, respectfully following the finding given by my predecessor, in the case of Late Shri Harshad S. Mehta for A.Y. 1992-93, in his order dated 24/03/2010, the claim of the appellant for credit in respect of unregistered shares is rejected".

26.24 From the above, it is clear that firstly my ld. predecessor discussed only issues relating to ACC shares and to some extent Apollo Tyres shares and did not discuss any other scrips, out of remaining 547 shares or evidences relating thereto while rejecting the claim of the assessee. Further, there has been subsequent developments, after the appellate orders in as much as the Hon'ble Special Court has passed specific orders in respect of certain shares and subsequently, these shares have been taken over by the Custodian, and sold. In this regard, the Custodian has submitted detailed

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status reports before the Hon'ble Special Court, therefore, in the interest of justice, the specific evidences produced by the assessee in respect of shares as per letter dated 31/01/1995 are discussed as under:-

26.25 As discussed above, the Appellant has submitted all the petitions / applications filed before the Hon'ble Special Court in respect of 45 scrips wherein specific directions are given by the Hon'ble Special Court in its orders to handover the physical shares to the Custodian. Further, pursuant to the orders issued by the Hon'ble Special Court, the Custodian was directed to commence the process of registration of these shares. However, I find that the applications filed or the subsequent orders issued do not establish that the shares were in existence or were physically handed over to the Custodian. The Hon'ble Special Court passed orders and issued directions to Mr. Harshad Mehta for surrender of shares to the Custodian. However, the same cannot be considered as an evidence which confirms the existence / presence of such shares as on 31/3/1992. In this connection, the appellant has produced the following evidences -

26.26 The appellant has produced before me Report No. 17 of 2013 and Report No. 20 of 2015 filed by the Custodian before the Hon'ble Special Court during the appellate proceedings. On verification of the said Report, I understand that the Report No. 20 of 2015 is a recent report and provides status of registration of the aforesaid unregistered shares as declared in the letter dated 31 January 1995 by Mr. Harshad Mehta. For clarity, the relevant portion of the report No. 20/2015 dated 08/10/2015 is reproduced as under:

'In pursuance of Hon'ble Special Court order dated 01/02/2013 passed in Misc. application no. 13/2011, the Custodian has submitted thirteen reports on the progress made with respect of registration of the unregistered shares of Harshad Mehta and receipt of accruals thereon, as listed in Misc. Application No. 13/2011.

5. While disposing off M.A. No. 13 of 2011, and M.A. No. 14 of 2011, by an order dated Augus 1, 2014, the Hon'ble Special Court directed that the additional affidavit dated 14/03/2014 filed by applicant be treated as a fresh application and be considered alongwith replies and reports filed by



custodian.

The present report is filed in compliance of the said order, to submit updated position in the matter for consideration by this Hon'ble Court. Hereto, annexed and marked is a copy of the said order dated 1<sup>st</sup> August, 2014 as Annexure A.

6. In view of transfer of previous committee members, a fresh committee consisting of the following officers at the custodian's office has been constituted for the purpose:
7. **Misc. Application No. 13 of 2011** originally involved recovery of unregistered base shares and accruals thereto in respect of 45 companies. During the course of 13 reports filed under the above misc. application, base shares and accruals relating to 38 companies have been fully recovered except M/s. Tata Chemicals Ltd. for which 60 bonus shares are still pending and are detailed in statement enclosed marked as Annexure B. The correspondence is in progress in respect of 5 other companies for eliciting data and recovery of shares and accruals and is proposed to be reported upon after receipt of relevant information from the companies. Considerable follow-up has been made with remaining two companies ie. ACC Ltd. and Castrol India Ltd. and process is incomplete because of various complexities involved. The information available was furnished in earlier reports and is being further updated as herein below:-
8. (a) **ACC Ltd.** -The Custodia has received the 77<sup>th</sup> Final Divident for the year ended 31/12/2014 from ACC Ltd. vide letter dated 24<sup>th</sup> March 2015 for Rs. 1,65,28,290 on 8,69,910 shares forming part of MA No. 114 of 1995 to the "Custodian Account unregistered hsares Harshad S. Mehta". However, the company has not furnished the relation of the aforesaid 869910 shares with the 95000 base shares (pre sub-division). Further, it is seen that even after giving the details fo the shares allotted to the concerned notified party/entity alongwith their respective bank details in Report No. 25 of 2014 for issuing dividend in the names of entitites with Harshad S. Mehta Group, ACC Ltd. has followed the same procedure and deposited the entire dividend in one account vis. "Custodian Account Unregistered Shares Harshad S. Mehta"

*Harshad S. Mehta*



and not in the concerned Bank Account notified entity-wise. Hereto annexed and marked, is a copy of the said letter as Annexure C.

(b) the Custodian's office vide letter Nos. 13686/CUS/BOM/HMG/UNREGD./SH/95 (533-I-VI) dated March, 21, 2003 and 13358/CUS/BOM/HSG/UNREGD/SH/95 (533-I-VI) dated March 31, 2003 requested ACC Ltd., to issue the Bonus shares against the registered holding of various entities of Harshad Mehta Group and also pay the Dividend kept in abeyance immediately. In reply ACC Ltd. vide their letter No. SHR CUS DIV NP MUM 2186 dated March 28, 2003, confirmed that a consolidated share certificate in respect of the Bonus shares of the 1996 Bonus issue accrued on these unregistered shares which was kept in abeyance at their end would be issued. However, the same has not been complied till date. Further, ACC Ltd. vide their letter No. SHR CUSTODIAN REP 25 IN MA 13 OF 2011 SC INW NO. 108160 AND 108162 dated Sept. 23, 2014 clearly stated that the Bonus share Certificates of 1992 Bonus issue which accrued on the original unregistered share are with original third party holders or have undergone multiple transfers and unless the shares are recovered, company cannot transfer the Bonus Shares of 1992. Further the company informed that the Bonus shares of 1996 accruing on original Base shares are kept in abeyance with the Company. However, the Bonus shares (1996 issue) which accrued on Bonus Shares (1992 issue) can be transferred to the Custodian only after recovery and transfer of Bonus Issue of 1992. Hereto, annexed and marked are copies of the said letters as Annexures D-1 to D-4.

c) ACC Ltd. vide letter No. SHR/DW/CUST-HM/MA13 of 2011/Inw. 108145 dated 8<sup>th</sup> May, 2014 submitted details of net dividend to be paid on unregistered shares as Rs. 20,18,55,090/-. However, net dividend of Rs. 20,18,35,000 was deposited with Custodian with remark that the difference of rs. 20,090 will be looked into. ACC Ltd. may be directed to deposit the difference amount of dividend. Hereto, annexed and marked is the said statement as Annexure E.

d) Castrol India Ltd.- The Custodian had taken up the matter regarding recovery of 2,45,292 Bonus shares of Castrol India Ltd. vide letter No. 5746/CUS/BOM/MP 130/95/HMG-UR (533-17) dated Jan., 17, 2014. The

*Prakash*



Bonus shares subsequent to 1995 issue have been lost by Castrol India Ltd despite their letter dated 10th Oct., 1995 wherein it was clearly stated that all further rights, bonus and dividend on the 7750 base shares after 1995 Bonus issue will be withheld and dealt with in accordance with the directions of the Hon'ble Special Court passed in MP No. 130 of 1995. However, the company has transferred only 7750 shares and 7750 Bonus shares issued in 1999 to the Custodian A/c. as against its assurance to transfer all the accruals after 1995. Hereto, annexed and marked is a copy of the said letters as Annexure F-1 and F-2.

**7(a)** The current status of the shares/accruals received/receivable in respect of 5 companies is under correspondence, with respective companies/RTAs and information received from the companies/RTAs will be reported in the forthcoming reports only after receipt of complete data. The detailed statement thereof is furnished as Annexure G enclosing the relevant correspondence with aforesaid companies.

12. In view of the foregoing, following directions are sought from this Hon'ble court.

a) To ACC Ltd. to transfer all the remaining base shares and bonus and right shares due thereon to the custodian, as detailed in Annexure L.

b) To ACC Ltd. to furnish complete details of Dividend due on all the base shares and accruals, due since 1992 and remit the dividend remaining due and payable in receipt thereof.

c) Castrol India Ltd. to surrender to Custodian all the remaining accruals due, as detailed in Annexure F-1

d) M/s Tata Chemicals Ltd. be directed to cancel the 30 bonus shares not surrendered by the registered shareholder Ms. Simran harika and issue duplicate share certificate for 30 shares in the name of Custodian A/c Harshad Mehta and forward it to Custodian along with all accruals.

e) Shri Shirishkumar Mayachand Modi resident of Modi Kunj, Near Manek Chowk, Palanpur, North Gujarat- 385001, the Registered shareholders of M/s Tata Chemicals Ltd., who received 30 bonus shares from company/RTA



to surrender the shares or present Market Value of shares of RTA for onward transmission to Custodian.

f) The Hon'ble court may issue direction to the remaining five companies viz Hindalco, India Glycol Ltd., Indo Gulf Fertilizer, Heidelberg Cement India Ltd. and Ruchi Soya Ltd. to provide accruals / shares transfer in time bound manner including transfer of shares as per annexure 'G' of this report.

Be pleased, therefore to place this report before his lordship Hon'ble Justice V.M. Kanade for consideration and appropriate orders / direction on 9<sup>th</sup> October, 2015."

26.27 As discussed above the above report no 20/2015 and other evidences mentioned in the said report namely order dated 01.08.2014 of Hon'ble Special Court, Miscellaneous application 13 of 2011, Hon'ble special court's order dated 01.02.2013, various submissions made by the custodian before the Hon'ble special court, and communications sent by various companies to the custodian during 2012-2015 were not before my Ld. Predecessor, while deciding the appeal of the assessee earlier vide order dated 30.12.2011 and the same is therefore considered here under. From the above report of the custodian, I conclude the following :-

- i) With respect to 38 companies, as mentioned in Annexure B of the Report No. 20 of 2015 - Page Nos. 11 - 13 of the Report, entire shares were recovered by the custodian. The details of these shares is tabulated as under :-

Status of recovery of Unregistered shares as per Harshad S Mehta's letter dated 31<sup>st</sup> January 1995 for 38 companies - as per Report No. 20 of 2015 submitted before Hon'ble Special Court.

Sr. No.	Name of the Company	Base shares	Shares on sub-division / merger	Shares surrendered by Harshad Mehta	Shares handed by Custodian to HSM	Shares received with Transfer Deed from Harshad Mehta	Total shares transferred to Custodian A/c. - HSM/concerned notified parties of	Shares pending for transfer



1	2	3	4	5	6	7	HMG	
							8	9
1	Apollo Tyres Ltd	3916000	--	3916000	3916000	391600 0	3916000	0
2	Bajaj Auto Ltd	5300	--	5300	5300	4930	--	0
						300		
						1000		
3	Birla Corporation Ltd. (Birla Jute Ltd.)	5000	3100	5000	5000	3100	3100	0
4	Abbott India Ltd. (Knoll Pharma Ltd.) (Boots (India) Ltd.)	4250	--	4250	4250	4250	4250	0
5	Burroughs Welcomes (merged Oct. 2004 with Glaxo India Ltd.)	5800	--	5800	5800	5800	8120	0
6	Glaxo India Ltd.	370	--	370	370	370	370	0
7	Guj. Ambuja Cement	37650	--	37650	37650	37650	37650	0
8	G. N. F. C.	20000	--	20000	20000	20000	0	0
9	G. S. F. C.	900	--	900	900	900	900	0
10	Hero Honda Ltd.	1050	--	1050	1050	1050	1050	0
11	I.C.I.C.I	51430	514300	51430	51430	51430	514300	0
12	Indo Gulf Explosives	11900	100:1	119	11900	11900	119	--



	(Merged with Balrampur Chini Mills)							
13	I.T.C. Ltd	9400		9400	9400	9400	9400	0
14	I.T.C. Classic Fin.  (On merger with ICICI, 1903 shares of ICICI)	57600	1903	57600	57600	57600	1903	0
15	ITW Signode Ltd.	60000	--	60000	60000	60000	60000	0
16	Kerala Chemicals	7150	--	7150	7150	7100	7150	0
17	Mahavir Spinning	108000	--	108000	108000	100200	108000	0
			--			7800		
18	Moser Bear Ltd	25300	--	25300	25300	25300	25300	0
19	Nestle Ltd	3040	--	3040	3040	3040	3040	0
20	Network Ltd	181400	--	181400	181400	181400	181400	0
21	Orkay Industries Ltd	790	--	790	790	790	790	0
22	Panyam Cement Ltd.	6000	60000	6000	6000	6000	60000	0
23	Philips India Ltd	11750	--	11750	11750	11750	11750	0
24	Pfizer Ltd	1930	--	1930	1930	1930	1930	0
25	Piramal Spinning (demerged for Marathon Nextgen)	2900		2900	2900	2900	2900	0



	Reality Ltd.)							
26	Reliance Industries	86500	--	86500	86500	86500	86500	0
27	Revathi CP Ltd	206000	--	206000	206000	206000	206000	0
28	Saw Pipes Ltd	1300	--	1300	1300	1300	1300	0
29	Sesa Goa Ltd	25250	--	25250	25250	25250	25250	0
30	Sesashayee Paper Ltd	74500	--	74500	74500	74500	74500	0
31	Honda siel Power Product Ltd. (Shriram Honda Ltd)	4600	--	4600	4600	4600	4600	0
32	Shree Cement Ltd	18800	--	18800	18800	18800	18800	0
33	Tata Chemical s Ltd	400	--	400	400	400	400	0
34	TELCO	300	--	300	300	300	300	
35	Tata Tea Ltd	5350	--	5350	5350	5350	5350	0
36	United Phospero us	200	--	200	200	200	200	0
37	Vam Organic Ltd	72000	--	72000	72000	72000	72000	0
38	Zuari Industrie s Ltd. (ZuariAg ro Ltd.)	1050	--	1050	1050	1050	1050	0

ii) As mentioned in the table above, the base shares are the number of shares mentioned in the letter of Mr. Harshad Mehta dated 31/1/1995. The subsequent columns provide evidence that the shares were surrendered by Mr. Harshad Mehta and later on transferred to Custodian A/c. - HSM. The

*Harshad Mehta*



status of the shares of Apollo Tyres Limited is mentioned only on an example basis. The Annexure B provides status of 38 companies wherein no shares are pending to be transferred. This proves that the shares were in existence and cannot be presumed to be sold prior to 31/03/1992. By relying on the disclosure made in Annexure B of Report No. 20 of 2015, I find that the shares of 38 companies have been surrendered completely by Mr. Harshad Mehta to the Custodian and after verification of ownership of the said shares, these shares have been transferred to the Custodian Account. **It is gathered that relevant details and evidences in this regard were furnished by the assessee before the AO during the course of present re-assessment proceedings but the AO, simply ignored the same without examining these evidences . Later once again this evidence was produced before the AO in remand proceedings but the AO failed to pinpoint any infirmity in the same .** In this regard, I find merit in the contention of the appellant and by placing reliance on **Report No. 20 of 2015 filed by the Custodian before the Hon'ble Special Court, I am of the opinion that the shares were in existence and thus cannot be presumed to be sold prior to 31/03/1992.**

iii) With regard to shares of Castrol Limited (Annexure I of the Report No. 20 of 2015 - Page No. 42 of the Report) , it may be said that the base shares i.e 7750 shares were received by the custodian but certain accruals (like bonus, rights issue) are pending. The said annexure gives a table, the relevant columns of which is reproduced below along with the status of shares of Castrol India Limited -

Sr. No.	Name of the Company	Base shares	Shares surrendered by Harshad Mehta	Shares handed by Custodian to HSM	Shares received with Transfer Deed from Harshad Mehta	Total shares transferred to Custodian A/c. - HSM/concerned notified parties of HMG	Shares pending for transfer
1	Castrol India Ltd.	7750	7750	7750	7750	7750	0

*Harshad Mehta*



iv) Therefore it can be said that the base shares of Castrol India Limited have been surrendered completely by Mr. Harshad Mehta to the Custodian. After verification of ownership of the said shares, these shares have been transferred to the Custodian Account. Based on the above, I find that the shares of Castrol India Limited have to be treated on the same footing as the shares of 38 companies since the issue pertains to existence of base shares. Therefore my finding in the case of shares of Castrol India Limited is the same as that of the shares of 38 companies mentioned above. Therefore, I am of the opinion that the shares were in existence prior to 08/06/1992 and thus 7750 shares of Castrol India cannot be presumed to be sold.

v) With respect to shares of 5 companies (Annexure G of the Report No. 20 of 2015 – Page No. 31 of the Report) – The Annexure G shows the status of 5 companies under correspondence. The said annexure provides status of shares of certain companies wherein certain shares are pending to be transferred and correspondence with respect to the same is in process with the companies by the Custodian. The said Annexure gives a table, the relevant columns of which is reproduced below along with the status of shares of 5 companies –

vi) With respect to shares of the above companies as mentioned in the Report, it can be said that while 2,94,555 shares were handed over to custodian and were transferred ; the shares to the tune of 17,404 were yet to be transferred . Therefore in my considered view there is no confusion at least with respect to the shares of 2,94,555 of above mentioned five companies and therefore the same could not be treated as shares in shortage.

vii) However, with respect to shares of ACC Limited, the Appellant has not submitted any specific evidence or documents. Based on the explanation provided by the appellant, I understand that in respect of ACC Shares , the matter has yet not been resolved before the Hon'ble Special Court and the reconciliation of shares is still under process.

viii) In respect of remaining 504 companies , in respect of which shortage was worked out by the AO as per Annexure s3 of the .



assessment order dated 31/12/1995, no evidence has been furnished by the assessee and therefore the shortage worked out by the AO is liable to be upheld.

26.28 In view of the above facts , and also in view of specific orders of Hon'ble special court in Misc. Petition No. 114 of 1995 to Misc. application 158 of 1995 , MA no. 13 of 2011 , MA no 14 of 2011 and Hon'ble special court order dated 01/02/2013 and 01/08/2014 and based on the verification of the documentary evidence provided and observations made, in my view, these shares could not be treated differently than shares as per letter dated 26/10/1994 of Late Shri Harshad Mehta, credit of which has already been allowed by the AO and my Ld. Predecessor. The only objection of the AO in this regard was 95000 shares of ACC Ltd. were not produced before him while he completely ignored shares of other 44 companies out of the above mention list of 45 shares . further various evidences produced before me were not before my Ld. Predecessor , while deciding the appeal of the assessee vide order dated 30.12.2011 as these orders have been passed subsequently by the Hon'ble special court. Therefore considering the overall facts of the case I am of the view that credit for the above mentioned shares of 39 companies( 38 companies as per letter dated 31/01/1995 of late Sri Harshad Mehta and Castrol India as discussed above ) should be allowed to the appellant since these shares were in existence and were not sold as on 08/06/1992 . With respect to shares of above mentioned 5 companies, certain shares were pending to be transferred. In such a scenario, credit can be granted for the quantum of shares except for shares pending to be transferred. While with respect to shares of ACC Ltd., in the absence of adequate documentation or explanation, I agree with the view of the AO and my ld. predecessor and uphold that no relief can be given to the appellant for the shares of ACC Ltd. In respect of remaining 504 companies , in respect of which shortage was worked out by the AO, the assessee has not been able to furnish any credible evidence and therefore the shortage worked out by the AO is upheld .

26.29 The AO is accordingly directed to re-compute the shortage of

*Harshad*



shares after taking into account the above findings and observations with respect to credit for unregistered shares declared in the letter dated 31/1/1995. The AO is further directed to give credit in respect of the above shares( of 44 companies ) in the ratio as determined at the time of original assesment order dated 31/03/1995, in the three entities; namely Ashwin Mehta , Jyoti Mehta and Harshad Mehta for the A.Y. 1992-93 . This ground is accordingly partly allowed.

**27. Shares seized by CBI**

27.1 During the assessment proceedings, the AO had collected information from various sources regarding unregistered shares. The AO had procured information about unregistered shares from the CBI during its search and seizure operation at various premises of the appellant. The AO had considered such shares while computing the shortage of shares in Annexure S-3 of his order . However, certain shares seized by CBI were not considered by the AO while computing the above shortage. The appellant submitted that this fact was not discussed in detail before my predecessor.

27.2 With regard to the above, the appellant submitted detailed facts before me. The Appellant submitted that the CBI had seized unregistered shares from various premises in the month of June / July 1992. These seized shares were in the physical custody of CBI. With respect to such shares seized by CBI, Mr. Harshad Mehta furnished a letter to Apollo Tyres Limited and to the Custodian disclosing the particulars of such shares. The Appellant also submitted a letter from the CBI to the Custodian dated 29/8/1996 wherein the Joint Director of CBI had confirmed that shares were seized by CBI during the course of investigation and that the same may be transferred to the Custodian after obtaining the orders of the Hon'ble Special Court.

27.3 In connection with the seized shares of Apollo Tyres Ltd(ATL), the Appellant submitted a copy of M.A. 475 of 1996 (Page no. 425 of the Paper book) in respect of 7.81 lakh seized shares of Apollo Tyres Limited. The above petition (CBI seized shares) were affirmed by the combined order of the **Hon'ble Special Court dated 19 November**



1999 (Page No. 503 of the Paper book) and the company i.e. Apollo Tyres Limited was directed to register 740,000 shares seized by CBI. The relevant extract of the order of the Hon'ble Special Court is reproduced below -

"To obviate this kind of a situation, he submitted that this Court should direct respondent no. 2 - company to register the Petitioner-shares numbering 39.16 lakh. It is further submitted that similarly, the Company should be directed to forthwith take steps to register 740,000 shares seized by CBI from the notified party."

27.4 The Appellant further submitted that 54,88,850 shares of Apollo Tyres Limited (including the aforesaid shares) were sold by Hon'ble Special Court under its orders dated 30/4/2003 and order dated 2/5/2003 (Page no. 529 of the Paper book). This further supports the view that the shares cannot be presumed to be sold on 31/3/1992 as the same were sold subsequently as per the directions of the Hon'ble Special Court. The ld. AR accordingly argued that such shares could not be treated in shortage by the AO as the same were in the custody of the CBI and to that extent addition made by the AO was unjustified.

27.5 I have considered the facts of the case, submissions and the contentions of the appellant and the order of the AO. Based on the evidences produced, I am of the view that the AO did not consider the above 740,000 shares of Apollo Tyres Limited while computing the shortage of shares in Annexure S-3 and the same was not discussed in detail in the order of my ld. Predecessor either. In view of the documentary evidences submitted before me, I am of the opinion that the assessee has reasonably proved the availability of 7,40,000 shares of Apollo Tyres being in the custody of the CBI authorities and therefore the credit for 740,000 shares of Apollo Tyres Limited should be given to the appellant. Accordingly, the AO is directed to re-compute shortage and give the credit of 7,40,000 shares of Apollo Tyres.

**28. Missing / stolen / lost / misplaced / mutilated shares**



28.1 During the course of assessment proceedings, the appellant submitted to the AO that he would be entitled to credit of shares which according to him was missing, stolen, lost, misplaced, mutilated etc. It was submitted that these shares cannot be presumed to be sold by the AO. The AO rejected these submissions by holding that no FIR was filed by the appellant nor any information has been given by the appellant to the Custodian in this regard . It was observed that the value of shares ran into hundreds of crores and therefore it was not possible that the appellant had not taken due care of his valuable assets. The AO further stated that the appellant had not furnished any details of the efforts made for recovering these shares and that there was no evidence except a mere self-serving statement by the Appellant that these shares were stolen or lost or misplaced .

28.2 During the course of the appellate proceedings before my ld. predecessor, the Appellant submitted various letters to the Custodian with respect to such shares and also submitted that Miscellaneous Petition was filed by the Custodian in connection with recovery of such shares. Further the appellant also invited attention to the fact that the Custodian also addressed letters to all the companies instructing them to stop transfer of the concerned shares on the basis of particulars furnished by the three brokerage firms of the assessee group . In compliance with the directions of the Hon'ble Special Court, the appellant and other notified entities filed affidavits placing complete facts on records and supporting evidence establishing their ownership by showing the underlying transactions of purchase of shares and by adducing evidence of payment.

28.3 During the course of the appellate proceedings before me, the Appellant provided the following submissions and explanations with respect to mutilated and missing / stolen / lost shares.

#### **28.4 Mutilated shares**

With respect to mutilated shares, the appellant has provided specific details for mutilated shares of Apollo Tyres Limited ('ATL'). The Appellant submitted that certain shares of ATL existed which were



mishandled and damaged. Such shares were ignored by the AO while computing the shortage of shares. The Appellant submitted that 157,514 shares of ATL were mutilated but were in existence as on 31 March 1992. The same has been disclosed by Mr. Harshad Mehta vide letter dated 19 October 1999 to the Custodian (Page no. 905 and 906 of the Paper book). In this regard, ATL issued letter dated 3 March 2000 (Page no. 907 and 908 of the Paper book) mentioning that 138,790 shares were confirmed as mutilated and damaged. The Custodian filed Miscellaneous Petition No. 96 of 2000 before the Hon'ble Special Court with respect to the above 157,514 mutilated shares. In view of the same, the Appellant submitted that since the mutilated shares were in existence as on 31 March 1992, the same cannot be presumed to be sold.

28.4 The documentary evidence produced by the appellant for the above contention establishes that out of 157,514 shares of ATL 138790 shares were confirmed to be mutilated. The same has been affirmed by ATL in its letter dated 3/3/2000. These shares were not considered by the AO as the same were recovered later and the Custodian filed Miscellaneous Petition No. 96 of 2000 before the Hon'ble Special Court for the same. The copy of which was produced for verification before me by the appellant. In view of the evidence produced before me, the claim of the assessee in respect of 138790 shares of ATL appears to be justified and the same is directed to be allowed . In respect of balance claim I am not fully convinced by the arguments of the assessee . **Therefore he can not be given any benefit at this stage . The AO is directed to re-compute shortage accordingly.**

#### **28.5 Stolen and missing shares**

During the course of appellant proceedings before my predecessor, the Appellant submitted various letters to the Custodian with respect to such shares and also submitted a copy of Miscellaneous Petition No. 88 of 2000 which was filed by the Custodian before the Hon'ble Special Court seeking investigation and recovery of such shares. Further the appellant also invited attention to the fact that the Custodian also addressed letters to all the companies instructing them to stop transfer



of the concerned shares on the basis of particulars furnished by the three brokerage firms. In compliance with the directions of the Hon'ble Special Court, the appellant and other notified entities filed affidavits placing complete facts on records and supporting evidence establishing their ownership by showing the underlying transactions of purchase of shares and by adducing evidence of payment. The appellant also produced the order of the Hon'ble Special Court which upheld the Custodian's letter intending to stop transfer of shares. The Custodian was also advised to undertake investigation by CBI under order dated 28.4.2001. The appellant submitted that if the shares are recovered, then the shares cannot be presumed to be sold and therefore the appellant will be entitled to claim credit for the same. The appellant submitted that even if the shares are not recovered, then also the appellant is entitled to the credit, since they were not sold prior to 31.3.1992.

28.6 With regard to the above claim, my ld. predecessor held that no definite details about which particular shares have been lost, misplaced etc. were furnished by the appellant. Further the appellant admitted that the investigation into missing, lost, stolen shares is yet to be carried out and the issue is pending for adjudication. In such circumstances, my predecessor rejected the claim of the appellant.

28.7 During the course of the appellate proceedings before me, the Appellant provided the following submissions and specific explanations with respect to missing / stolen / lost shares.

28.8 The Appellant submitted that shares of 90 companies were stolen or misplaced or lost. In this regard, Mr. Harshad Mehta had furnished letters to the respective companies in connection with such stolen or missing shares. Accordingly, the Appellant submitted that such shares could not have been sold by the Appellant under any circumstance. The Appellant and his family members filed numerous complaints with the Custodian in respect of such shares (list is provided in Page no. 587 - 590 of the Paperbook). Thereafter based on the above letters in 90 companies the Custodian filed the Miscellaneous Petition No. 88 of 2000 (Page no. 584 of the Paperbook) before the Hon'ble



Special Court with respect to stolen /lost/missing shares. The Special Court directed to stop transfer of these shares if not already transferred and also directed recovery of these shares or monies as the case may be. The Custodian was directed to inform each of the aforesaid 90 companies and since then, the Custodian has filed applications / petitions for recovery of these shares with accruals thereon. Thus, the presumption of sale made by the AO is incorrect.

28.9 With respect to the above missing shares, the AO alleged that the appellant had not filed any FIR. To this the appellant submitted that the CBI had filed a chargesheet with respect to such missing / stolen shares and is in the process of recovering these shares. However, till date the said shares have not been recovered or found and the matter is pending for adjudication. In such a case, in my view there is no substantial evidence to prove that such shares were physically present or were in existence but not considered by the AO in determining the shortage of shares. **Hence the contention of the appellant for this ground is also rejected.**

**29. Purchase on behalf of third party / related entities as a broker**

29.1 The AO gathered information from various sources including the appellant, Bombay Stock Exchange ("BSE"), brokers, clients, financial institutions, banks, RBI and other entities. Based on the information collected, the AO computed the shortage of shares by considering the opening stock as on 1 April 1991, purchases and sales and the physical stock. Before my predecessor, the Appellant submitted that certain purchases were made by him on behalf of such third parties / clients. It was stated that a large number of shares which are treated as shares in shortage by the AO were actually purchased by the appellant in behalf of his clients which also included other brokers and the said shares have come to be delivered to them and against which the payments are also received, the evidence of which is in the possession of the AO. Before my predecessor, the appellant placed on record the list of transactions giving details of names of clients, names of the scrip, date, quantity and rate of purchases which have been

*Praveer*



entered into on behalf of the clients together with the supporting evidences. However, my ld. predecessor in his order dated 30/12/2011 rejected the contention of the appellant on the ground that the appellant failed to demonstrate that the details of purchases given by them are in respect of those shares which have not been considered by the AO. During the course of the present appellate proceedings also the assessee has failed to furnish any clinching evidence in this regard. Therefore I am not in a position to grant any relief to the assessee on this account.

29.2 Therefore following the order of my ld. Predecessor dated 30/12/2011 and in absence of any credible evidence, the claim of the assessee in this regard is rejected. Consequently this contention of the assessee is rejected.

**30. Computation of sale value based on adoption of rate as on 31 March 1992**

30.1 It is gathered that the AO adopted the market rate as on 31 March 1992 of the respective scrips for the purpose of arriving at sale consideration of shares in shortage presumed to have been sold during the relevant previous year. The Appellant submitted that the AO is not justified in presuming the rate of 31.3.1992 as the rate at which the shares have been sold. The appellant submitted that the AO has given the finding that the shares in shortage have come to be sold by 31.3.1992. The department had undertaken action on 28.2.1992 on which date, the concerned shares were not seized or found in possession of the appellant. In any event, all the shares in shortage cannot be deemed to have been sold on the last day of the year i.e. 31 March 1992 particularly where no corresponding sales are reported by the stock exchanges / brokers / banks/ etc. from whom all information regarding purchase and sale activity of the AO was called for by the AO and considered while framing the assessments.

30.2 In this regard, the Appellant relied on the following decisions of the Mumbai bench of the Hon'ble Income-tax Appellate Tribunal wherein it was held that the average rate (average of highest and



lowest prices) as on 1/4/1991 and 27/2/1992 (a day prior to the search) need to be taken for computing the sale value and the consequent profit on sale of shortage of shares.

- *Topaz Holding Private Limited vs. DCIT [ITA No. 2828/Mum/2001]*
- *M/s. Pallavi Holdings Pvt. Ltd. Vs DCIT [ITA No. 1912/Mum/2000]*

30.3 It is gathered that while deciding this issue earlier, my Id. predecessor relied on the case of Shri. Harshad Mehta in the order dated 24.3.2010 in appeal no. CIT(A)C-V/ACIT CC-23-59/95-96. He observed that the AO has only followed the accounting policies which make it mandatory that the price prevailing as on the end of the financial year should form the basis of all valuations. My Id. predecessor further observed that the appellant had referred to the period prior to 28/2/1992 on the ground that the search took place on this date. However, my predecessor disagreed with this contention of the appellant since even after the search and at least till 8/6/1992 (date of notification), the assessee continued his business and this being so, the so-called cut-off of 28/2/1992 does not have any meaning. Since the assessee continued his business even after the search, in terms of accounting policies, for the present assessment year under consideration, the price prevailing as on 31/3/1992 was the correct basis for working out shortage.

30.4 With respect to the above ground, the appellant has made elaborate submissions. The appellant submitted that transactions undertaken by the appellant substantially reduced after 28 February 1992 (the date of search conducted by the tax authorities). Further, substantial portion (almost 95%) of investments / transactions were undertaken by the Appellant before 28 February 1992. Thus, adoption of market rate as on 31 March 1992 for presumed sale of shortage shares is incorrect. The Appellant submitted that for computing the acquisition cost for shortage of shares, the AO adopted the average rate. On the same footing, the sale price also needs to be computed on an average basis instead of taking the closing market rate as on 31 March 1992 which rates were incidentally highest rates of the year.



The appellant submitted a chart of average monthly rate including price on 1 April 1991 to 31 March 1992. The Appellant has prayed to consider the monthly average rate from April 1991 to February 1992 for the purpose of sale price. The Appellant therefore prayed that the sale value should be considered based on monthly average rates from April 1991 to February 1992 instead of closing rate of 31 March 1992 as adopted by AO.

30.5 I have considered the facts of the case and submissions of the assessee as also the order of my Id. Predecessor on this issue . I agree with the view of my Id. predecessor, that the closing rate as on 31/3/1992 needs to be adopted on the ground that transactions were undertaken by the appellant till 31/3/1992, even if the volumes were less as compared to those undertaken before 28/2/1992. Thus, the contention of the appellant that monthly average rates between April 1991 and February 1992 needs to be taken is rejected. **Consequently this ground( 6(i)) of the assessee is rejected . "**

30.3 Therefore following my own order in case of Sri Ashwin Mehta for A.Y. 1992-93 dated 28/02/2017 and order dated 24/03/2017 in case of Mrs. Jyoti Mehta , the AO is directed to re-compute the shortage of shares after taking into account the above findings and observations with respect to credit for unregistered shares declared in the letter dated 31/1/1995 of Late Sri Harshad Mehta . The AO is further directed to give credit in respect of the above shares( of 44 companies ) in the ratio as determined at the time of original assesment order dated 31/03/1995, in the three entities; namely Ashwin Mehta , Jyoti Mehta and Harshad Mehta for the A.Y. 1992-93 . The AO is further directed to apply rates of these shares as held by me in case of Ashwin Mehta for A.Y. 1992-93 vide order dated 28/02/2017 . This ground is accordingly partly allowed.

31.1 **Ground No. 14** relates to addition of Rs. 19,71,050/- as Share Market Badla income. As regards share market badla income, the appellant has reiterated his submissions made earlier before AO my predecessor and contended that the transactions during the year were largely undertaken for



P. S. Mehta

and on behalf of clients. The appellant also contended that the share market badla income is of such clients and does not relate to him . Further, the appellant also challenged the addition made by the AO by placing reliance on the books of accounts filed by him . The appellant therefore prayed that no addition should be made in the his hands in this regard .

31.2 I have considered the arguments of the assessee and the In this regard, I agree with my Id. predecessors and find that the appellant provided several opportunities to explain the above transactions. However, the appellant had failed to provide any specific reason or submission to negate the claim of the AO. The Ld. AR has simply relied on the books of accounts. However, as held in the foregoing paragraphs, the books of accounts filed by the appellant are not reliable. **In view of the same, the addition made by the AO is upheld and this ground taken by the assessee is rejected.**

32. **Ground No. 15** relates to share market oversold position as computed in Annexure S-1 at Rs. 5,56,19,836/-. During the course of the assessment proceedings, the AO, by placing reliance on the information collected through various sources, found that in respect of certain shares, the quantity of sale effected during the year was greater than the quantity of purchase of the shares. Further, since the names of the clients in respect of these sales are not given or known to the AO, the AO has presumed that these sales are effected by the Appellant on his own behalf and the entire sale proceeds have been treated as realization of unexplained investment in shares as sold and monies realized in the bank accounts. The computation and particulars of such shares are given by the AO in Annexure S-1 to the assesment order . The computation of addition is tabulated as under : -

Particulars	Amount
Opening Stock as on 1 .4. 1991	A
Add: Purchases during the year	B
Less: Sales during the year	C
Stock of shares oversold [C > (A+B)]	D



Rate at which sale is effected	E
Addition for share market oversold position (D*E)	F

32.2 In appeal my ld. predecessor upheld the addition on account of oversold position in shares of Rs. 5,56,19,836/-. As the same addition has been repeated by the AO in reassessment proceedings, the appellant is now in appeal in relation to the addition amount of Rs. 5,56,19,836/- in relation to above addition.

32.3 During the course of the ongoing appellate proceedings, the appellant submitted that shares were purchased and sold on behalf of his clients or third parties, the information of which was not obtained by the AO. Further, the appellant also stated that the appellant would have sold shares on behalf of clients / third parties which may have been considered as sales of the appellant by the AO.

32.4 As mentioned above, the appellant has argued before me that the transactions have been undertaken on behalf of his clients and third parties, and the AO has failed to appreciate that the said transactions are undertaken on behalf of the client. Further, the Appellant submitted that the AO has erroneously concluded that the said transactions considered in oversold position are undertaken by the appellant on his own account. Having said that, the appellant submitted a copy of the letter dated 07.01.2010 filed before my predecessor the letter. Since the appellant has merely relied upon the books of account and in absence of any evidences and by placing reliance on my predecessor's observation, the appellant's argument that no shares are sold in excess of the purchases, is hereby rejected.

32.5 However alternatively, the appellant also submitted that even if profits need to be computed on shares oversold position, purchase cost in relation to scrips ought to be deducted from the sale proceeds of the shares in oversold position. The appellant has urged that what ought to be taxed in the hands of the Appellant is only the trading profit and not the gross



receipt from sale of such shares. It is gathered that this issue has been decided by me in the case of Shri Ashwin S Mehta and Smt Jyoti H Mehta for AY 1992-93, wherein the purchase cost relief has been directed to be allowed vide orders dated 28.02.2017 and 24.03.2017 respectively. Therefore in view of my own findings in the case of Shri Ashwin S Mehta and Smt Jyoti H Mehta, the alternate contention of the appellant appears to be justified as purchase cost should be allowed as deduction to the appellant, before computation of profits.

32.6 Accordingly, I direct the AO to grant deduction to the extent of purchase cost in relation to the scrips held to be oversold, **if such costs is not already allowed**, as per the Annexure S-1 to the original assessment order. In doing so the AO may take help from ANNEX. S-3 to the original order, or actual purchase costs to the Appellant if he can prove it or market rates as on 31/03/1991 as deemed fit. The purchase cost as computed on the above basis (in relation to scrips forming part of Annexure S-1) shall be reduced from the amount of share market oversold position arrived at by the AO so as to determine the profit taxable in the hands of the appellant. **Accordingly, this ground is partly allowed.**

33. **Ground No. 16** is relating to the addition of Rs. 1,04,58,970/- as dividend income and interest income. During the course of the appellate proceedings the ld. AR did not make any submissions or arguments in support of this ground. It appears that this income has been considered by the AO on the basis of assessee's own working in respect of such income and therefore there is no substance in this ground taken by the assessee. The same is therefore rejected.

34.1 **Ground No. 17** relates to addition of Rs. 150,34,33,835/- as unexplained money. It is gathered that during the course of assessment proceedings, the AO collected information from RBI regarding receipts and payments effected by the appellant through his bank accounts and compiled the transactions. Some of the entries were not adequately explained by the appellant, hence the AO made the addition of Rs. 251,80,33,835/- treating



the same as unexplained money under the provisions of section 69A of the Act. The appellant vehemently challenged the said addition made by the AO before my ld. predecessor. Based on the appellant's submissions my ld predecessor vide his order dated 24.03.2010 provided a relief of Rs 101,46,00,000/- to the assessee . The balance addition has been repeated by the AO in re-assessment proceedings . Hence, the appellant is now in appeal before me in relation to the balance amount of unexplained money of Rs. 150,34,33,835 which has been considered by the AO as taxable income of the appellant.

34.2 In respect of the above addition firstly the assessee has disputed applicability of provisions of sec 69A of the act . The appellant has submitted that the provisions of section 69A of the Act can be invoked only in case where money is not recorded in the books of accounts of the assessee . Before proceedings further I would like to reproduce the provisions of section 69A of the Act as under : -

*"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the (Assessing) Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

34.3 It is argued that on plain reading of section 69A of the Act, it is evident that addition can be made only in case where money is not recorded in the books of accounts of the assessee. The appellant submitted that primarily the nature of credits captured in Annexure- U are as under:

- a. Amount received from client for money market and share



market transactions

- b. Transfer of funds from one bank account of the appellant to another Bank account
- c. Incorrect credit entries considered by the AO

34.4 In support of the same the appellant submitted the extracts of the relevant ledger accounts as recorded in the books of the appellant, bank statements of the appellant and tried to explain the nature and purpose of the transactions underlying the credit in the bank accounts of the appellant. The appellant submitted that such deposits were made on account of amount received for sale of money market securities, sale of shares undertaken for clients, transfer of funds from one bank account to another and incorrect entries captured by the AO. The appellant in this regard produced before me a chart explaining credit entries amounting to Rs. 148,53,82,970/- , which are tabulated as under :

Sr. No.	Date	Narration	Amount	Appellant's Submission
1	28.03.1992	Received on account of sale of 17% NTPC Bonds (FV 20 Cr) to SBI Caps	20,01,47,945	- Amount received on sale of 17% NTPC Bonds of FV Rs. 20 crores to SBI Caps under Ready forward leg. - The said security was purchased by the Appellant from SBI Caps on 30.03.1992 for an amount of Rs. 20,06,96,286.58

*Harshad Mehta*



Sr. No.	Date	Narration	Amount	Appellant's Submission
2	28.03.1992	Received on account of sale of 2 cr units @ Rs. 15 to SBI Caps	30,00,00,000	- Amount received on sale of 2 crores Units 1964 Scheme to SBI Caps under Ready forward leg. - The said security was reversed (i.e. repurchased by the appellant from SBI Caps) on 30.03.1992 for an amount of Rs. 30,08,22,000.
3	28.03.1992	Received on account of sale of 1.7 cr units to V B Desai	25,07,50,000	- Amount of Rs. 25,07,50,000 was received on sale of 1.7 crores Units 1964 Scheme to M/s. V. B. Desai under Ready forward leg.
4	25.03.1992	Received for sale of 11.5% CL 2008 to ANZ Grindlays bank	47,96,68,170	- ANZ Grindlays Bank vide its letter dated 7.12.1992 addressed to the Tax Office has provided details of transactions entered by it with the Appellant. As per the given list ANZ Grindlays has purchased 11.5% C/L 2008 with FV of 50 crores from Appellant on 25.03.1992 for an amount of Rs. 47,96,68,170.11.
5	28.03.1992	Received on account of purchase of 2 lac shares of Great	2,77,50,000	- Amount of Rs. 2,77,50,000 has been received by the Appellant from Citibank on account of purchase of 2,00,000 equity shares of

*Harshad*



Sr. No.	Date	Narration	Amount	Appellant's Submission
		Eastern Shipping for Citibank		Great Eastern Shipping for Citibank on 18.03.1992.
6	31.03.1992	Received from Canara Bank paid for and on behalf of Canfina	2,00,00,000	As per Bank book and Canfina ledger, it is stated that amount is received ON ACCOUNT.
7	17.07.1991	HSM - SBI BOM 8710	82,57,542	On 13.07.1991 amount of Rs 82,56,542.56 has been paid by the Appellant to SBI Caps. The said amount has been repaid to the Appellant on 17.07. 991 (less by Rs. 1000).
8	19.10.1991	HSM, SSM Joint - Citi Bom	10,00,000	- Aggregate amount of Rs. 75,00,000 has been transferred from the Appellant's bank account no. 61180 001 maintained with Citibank, Bombay to the Appellant's bank account no. 010/BM/85377/00 held with ANZ Grindlays Bank, M.C. Road. - Copy of the ANZ Grindlays Bank account statement reflecting the credit of Rs. 75,00,000 along with the Citibank account statement reflecting the debit of Rs.
9	19.10.1991		10,00,000	
10	19.10.1991		12,00,000	
11	19.10.1991		13,00,000	
12	19.10.1991		15,00,000	
13	19.10.1991		15,00,000	



Sr. No.	Date	Narration	Amount	Appellant's Submission
				75,00,000 is enclosed. Bank ledgers of ANZ Grindlays Bank and Citibank are also enclosed.
14	11.03.1992	HSM - SBI BOM 8710	16,00,00,000	- It shall be noted that there is no credit amounting to Rs. 16,00,00,000 in SBI bank account on 11.03.1992 as mentioned by the learned AO in Annexure U - On 25.03.1992, Rs. 16,00,00,000 is transferred from the Appellant's bank account maintained with ANZ Grindlays Bank, M.G. Road, to Appellant's bank account held with Bank of India, Stock Exchange Branch. Relevant extract of Bank of India account statement and ANZ Grindlays bank account statement, reflecting the transfer of funds is enclosed along with the relevant extract of the Bank ledgers maintained in the Appellant's books of account.
15	21.03.1992	M/s HSM - SBI Bombay Main	98,61,338	Net amount is received in ANZ Grindlays Bank, MG Road Branch on account of following transactions: a. Rs. 6,06,96,986.30 received on account of sale of 13% RIN Bonds FV 6 crores to Mr. Patel



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Sr. No.	Date	Narration	Amount	Appellant's Submission
				<p>under Ready forward transaction</p> <p>b. Rs. 9,00,32,058 received on account of sale of CC Asset of FV 6 crores to National Housing Bank</p> <p>c. Rs. 10,56,49,840.60 paid on account of purchase of 13% RIN Bonds of FV 12 crores from SBI Capital Market</p> <p>d. Rs. 3,52,17,865.53 paid on account of purchase of 13% RIN Bonds of FV 4 crores</p> <p>- It is observed that all the above transactions are 'RT transactions and accordingly considered by the learned AC for computing stock position in Annexure M-2. Relevant deal slips along with the bank ledger is enclosed</p>
16	21.03.1992	HSM - SBI BOM 8710	70,00,000	There is no receipt of Rs. 70,00,000 appearing in bank account of State Bank of India at M G Road. The learned AO has erroneously considered the said amount as unexplained credit.
17	23.03.1992	M/s. HSM - ANZ MGB	1,00,00,000	- Amount of Rs. 1,00,00,000 has been paid by M/s. V B Desai (from Bank of Karnataka) to the Appellant, which is received in the ANZ Grid files

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Sr. No.	Date	Narration	Amount	Appellant's Submission
				Bank account. The said amount is paid by M/s. V. B. Desai 'ON ACCOUNT'.
18	31.03.1992	HSM JHM SSM Joint - ANZ MGB	44,47,975	There is no receipt of Rs. 44,47,975 appearing in bank account of ANZ Grindlays Bank account. The learned AO has erroneously considered the said amount as unexplained credit.
<b>Total</b>			<b>1,48,53,82,970</b>	

The appellant has also submitted copies of the client's ledger in the books of the appellant, copy of the bank statements, copy of the bank ledgers in the books of the appellant and other relevant documents and contended that transactions/credits to the tune of Rs. 1,48,53,82,970/- were explained. However in respect of balance items of Rs. 1,80,50,865/- the assessee could not furnish any explanation or evidence .

34.5 I have considered the facts of the case and have verified the submissions made by the appellant. It is gathered that the provisions of section 69A of the Act have been invoked by the AO and afore-mentioned deposits of Rs. 148.53 crores were treated as unexplained money. In relation to the above, the appellant submitted that the provisions of section 69A are not applicable to the instant case since the transactions were duly recorded in the books of the appellant. If this contention of the appellant is accepted, then the provisions of section 69A may not apply in the instant case. Having said this the onus is on the appellant to explain the nature and source of the sums credited in the books of the appellant as per the provisions of section 68 of the Act. In my view, invocation of provisions of section 69A or section 68 are academic in nature, the moot issue before the appellant is to prove the genuineness of the transaction through documentary evidences. In



the case of **Alliance Hotels vs. ACIT [2013] 142 ITD 270 (Mumbai Trib.)**, the jurisdictional ITAT has decided a similar issue wherein addition was wrongly made under section 68 of the Act, instead of section 69 of the Act. The Hon'ble ITAT held that –

*"If in assessee's view section 6 is applicable, so be it. It is trite that as long as an action is authorized or governed by a provision, mere wrong mention of provision would be to no consequence. Further, it is the correct legal position that is relevant, and is to be applied, and not the view that the parties may take of their rights in the matter."*

34.6 In view of the above judgment, I find no merit in the contention of the appellant in respect of invoking the provisions of sec 69A of the Act. The same is therefore upheld in principle , subject to the discussion hereunder

34.7 In respect of the amount of Rs. 1,48,53,82,970/-, the assessee has argued that the amounts credited in his bank account is in the nature of sale of money market securities or shares, consideration of which was credited in the bank accounts of the assessee. Further some entries were claimed on account of interbank transfers of funds, i.e. transfer from one bank account of the assessee to another bank account. Besides in respect of some of the entries the assessee claimed that though they do not appear in the bank account of the assessee but were incorrectly captured by the AO in Annexure U as unexplained money . However the above contention of the assessee is quite general in nature and sufficient evidence in this regard has not been adduced by him to support his claim . It is relevant to mention that in respect of Credits at serial no. 1 to 3 in the aforesaid table amounting to Rs. 75,08,97,945 my predecessor did not provide relief, by stating that the transaction concerned were not there in the deal file for the relevant period . I agree with the finding of my Id. Predecessor in this regard .

34.8 Similarly in respect of Credit at serial no. 4 in the aforesaid table amount to Rs. 47,96,68,170 The appellant submitted before my Id. predecessor that the entry of Rs. 47,96,68,170 dated 25.3.1992 in Annexure U to the assessment order is received from ANZ Grindlays Bank (on account

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of sale of 11.5% CL 2008) which is reflected on page no. 1 of the Annexure M-1. However, my predecessor held that the contentions of the appellant are incorrect by stating that the transaction mentioned in Annexure U and Annexure M-1 are different transaction. My predecessor held that the amount referred to by the appellant in Annexure M-1 represents purchase of the instrument 11.5% Government of India 2008 based on the letter posted against the column 'P/S' in Annexure M-1. As against this in Annexure U, the AO has referred to deposits, which obviously would not represent outgoing by way of purchase. Accordingly, my predecessor concluded that the amounts referred to in Annexure U and Annexure M-1 are different transactions. I agree with the finding of my Id. Predecessor . Therefore addition made of Rs. 75,08,97,945/- + Rs. 47,96,68,170/- = Rs. 1,23,05,66,015/- are confirmed .

34.9 In respect of the balance amount of Rs. 25,48,16,855/- the appellant has submitted voluminous detail like copies of broker notes indicating sale of shares, copies of Bank account statement showing transfer of above amount, copies of ledger accounts and other such details , which were produced before the AO earlier . From perusal of these details, it appears that the amount credited in the bank account of the appellant is in nature of sales of shares and securities, consideration of which is credited in the bank accounts of the appellant. Further, there are some entries of inter-bank transfer of funds, like transfer from one bank account of the appellant to another bank account. Therefore, these amounts could not be treated as unexplained by the AO. It appears that the said addition has been made by the AO in a summary manner , without properly examining the facts of the case. From the details submitted by the appellant, each and every entry in respect of credit amounting to Rs. 25,48,16,855/- appears to be explained and sufficient evidence has been furnished by the appellant, which should have been examined by the AO. Accordingly addition of Rs. 25,48,16,855/- is directed to be deleted.

34.10 With respect to the balance amount of Rs. 1,80,50,865/-, being miscellaneous bank credits, the appellant has failed to produce any evidence



or explanation. In absence of any details or evidence the claim of the appellant in respect of this sum of Rs. 1,80,50,865/- cannot be accepted. Therefore, addition of Rs. 1,80,50,865/- made by the AO is confirmed.

34.11 In view of the above facts, out of the total addition of Rs. 150,34,33,835/- made by the AO, a sum of Rs. 123,05,66,015/- + Rs. 1,80,50,865/- = 124,86,16,880/- is confirmed and an amount of Rs. 25,48,16,855/- is directed to be deleted. This ground of the assessee is **partly allowed.**

35.1 **Ground No. 18** relates to unexplained money with respect to the transactions with Mr. Niranjan J. Shah of Rs. 12,00,00,000/-. It is gathered that a search and seizure operation was carried out at the premises of Mr. Niranjan J. Shah in May 1992, during which a number of documents were seized as under :

- a. 5A personal (Sterling Pound) accounts
- b. 5A (UD A/c)
- c. 5A Rupee A/c and
- d. M Securities A/c.

35.2 Based on AO's analysis and confirmation from Mr. Niranjan Shah via his statement, the AO held that the accounts pertained to the appellant. Mr. Niranjan J. Shah was also examined in this respect under section 131 of the Income-tax Act, 1961. From the print outs of the data contained in the computer floppies from the premises of Mr. Niranjan J. Shah, it was found that there was transaction in the name of the appellant and his wife. Based on the above, the AO made an addition of Rs. 6,85,81,200/- in his order dated 24.03.1995.

35.3 The appellant appealed against the aforesaid addition before my predecessor, wherein the reliance was placed on the following:

- a. On the case of Straptex (India) (P) Ltd v. Dy. CIT [2003] 84 ITD 320 (Mum) wherein the Mumbai Tribunal held that the



statements of Shri. Niranjana Shah could not have been used against the appellant for the reasons mentioned.

- b. On the Hon'ble Supreme Court's order in the case of C.B.I v. V. C. Shukla and Others [AIR 1998 SCC 1406] wherein it was held that the
- The material seized in the form of diary or loose sheets cannot be adduced as an evidence or treated as books of accounts maintained in the normal course of business
  - The seized records had no probative or evidentiary value such as to bind third parties under section 34 of the Evidence Act
- c. The Hon'ble Special Court's order dated 31.08.2005 in M.A No.342 of 2000 wherein it held that the documents seized from Shri Niranjana Shah's premises cannot be relied upon since the entries were made on the basis of memory and there could have been a mistake in putting the exact date of the transaction actually entered into.

35.4 However, my ld. predecessor in his order dated 24.03.2010 held that the addition on account of statement of Shri. Niranjana Shah is liable to be enhanced to Rs. 12,00,00,000 in terms of the report of Jankirama committee report, 'the Joint Parliamentary Committee ('JPC). Thus, the total addition of Rs. 12,00,00,000/- had been determined as under:

Sr. No.	Particulars	Amount (in Rs.)	Amount (in Rs.)
1	Unexplained money in Rupees received from Shri. Niranjana Shah	3,14,35,200	6,85,81,200
2	Cash received for his proposed company "M Securities" by Shri Niranjana Shah	2,31,00,000	
3	Unexplained money equivalent to USD 468200/- @ Rs.30/- per USD	1,40,46,000	
4	Enhancement in terms of JPC report		5,15,18,800
<b>TOTAL</b>			<b>12,00,00,000</b>



35.5 Thus the addition of Rs 12 crore has been made on the following basis:

- a) On the basis of four accounts [i.e. 5A personal (Sterling Pour 1) account, 5A (USD) Account, 5A (Rupee) Account and M Securities Account] maintained in the documents seized from Shri. Niranjn Shah's premises in May 1992.
- b) On the basis of the statements dated 30 May 1992 made by Shri. Niranjan Shah during his cross examination.
- c) On the basis of the report of the JPC which reveals that some payments were made by Shri Niranjan Shah to the Appellant without clarifying the nature of such payment.

35.6 Given the above, the appellant is in appeal before me with respect to the addition made under section 69A of the Act as unexplained money of Rs. 12,00,00,000.

35.7 The appellant reiterated before me the submissions made by him before my ld. predecessor. Further, the appellant also placed reliance on the **Hon'ble Supreme Court in the case of C.B.I v. V. C. Shukla and Others** wherein the Hon'ble Supreme Court examined the evidentiary value of the documents procured during the search process and held that the material seized in the form of diary or loose sheets cannot be adduced as an evidence or treated as books of account maintained in the normal course of business and that the seized records had no probative or evidentiary value such as to bind third parties under section 34 of the Evidence Act. Further, the appellant submitted that the **Hon'ble Special Court in its order dated 31.08.2005 in M.A No.342 of 2000** stated that the documents seized from Shri Niranjan Shah's premises cannot be relied upon since the entries were made on the basis of memory and there could have been a mistake in putting the exact date of the transaction actually entered into.



35.8 Additionally, the appellant placed reliance on the decision of the Hon'ble Supreme Court dated 07.08.2009 in Civil Appeal No.25207 of 2003, wherein it was held -

*"It is an accepted fact that the reports of the Jankiraman Committee, the Joint Parliamentary Committee and the Inter Disciplinary Group (IDG) are admissible only for tracing the legal history of the Act alone. The contents of the report should not have been used by the Id. Judge of the Special Court as evidence." (Page no. 37 & 38 of the Order)*

35.9 Alternatively, the appellant also submitted that even the JPC Report is not given any conclusive findings which is evident from the relevant extract of the said report which is stated below -

*"17.127. It has been observed by the Committee that money has also been received under the Immunity Scheme by others like for example - HSM's mother, Smt Rasila Mehta, T.B.Ruia etc. The Committee feels that the scam money which may have flown out of the country have been channelized back through this Scheme. The Committee strongly urge the Enforcement Directorate that the whole matter may be thoroughly investigated.*

*17.128. The Committee have observed that the contribution of Directorate of Enforcement to scam related investigation has only been marginal. The Committee are constrained to note that Directorate has not shown the required initiative to investigate the scam related cases independently. Their helplessness and being at the mercy of the other two investigative agencies is borne out by their own submission, during the course of the oral evidence on 29.9.1993 when the representative of the Enforcement Directorate admitted that "we are largely dependent on the clues and the evidence thrown by other parties ..... whatever evidence, they could throw up, we can follow it up. We are not able to uncover any significant lead on our own."*

35.10 Based on the above, the appellant urged that the JPC Report cannot be adduced as an evidence for making addition of R.



12,00,00,000/- . Further, the appellant submitted that Shri. Niranjana Shah further retracted his statements and admitted that such transactions were not accounted by him in his books of accounts. Accordingly, addition with respect to such unaccounted transactions ought to be levied on Shri. Niranjana Shah and not on the Appellant. Besides the appellant also argued that the AO has not produced any independent evidence corroborating the reliability of seized material, apart from the statement of Shri. Niranjana Shah. The transactions referred above have not been undertaken by the appellant and consequently not recorded in his books of account. The appellant submitted that the statement of Shri. Niranjana Shah cannot be adduced as an evidence for making an addition in the hands of the appellant.

35.11 I have considered the arguments of the assessee which are selective and do not represent the facts in totality . The fact remains that during the course of search from the premises of sri Niranjana shah certain documents were found as per various annex. Mentioned in para 35.1 , which contained details of expenses in US Dollars and Pound Sterling apart from in rupees . Sri Niranjana Shah had very clearly and categorically admitted in his sworn statement that these transactions belong to the present assessee . Subsequently this issue has also been examined by Janakiraman Committee report which reached on a conclusion that total of such expenses was actually was Rs. 12,00,00,000/- . This issue has also been examined by my Id. Predecessor at great length , when he enhanced this addition to Rs. 12 cr . Therefore nothing more need to be examined or discussed on this issue. In view of the abovementioned facts and circumstances of the case , I am of the view that addition of Rs. 12 cr made on the basis of Janakiraman Committee report (JPC) is fully justified . The same is therefore upheld. Consequently this ground of appeal of the assessee is rejected .

36. Ground No. 19 relates to addition of Rs. 62,50,000/- on account of payment made to M/s. June Investment Ltd. However, from the facts of the case it appears that AO has elaborately discussed this issue and has taxed

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this income in accordance to the provision of the Act in absence of any supporting evidence or explanation . Therefore the same does not call for any interference and is upheld . Accordingly, this ground taken by the appellant is rejected.

**37. Ground No. 20** relates to addition on account of alleged interest receivable from family members amounting to Rs.11,85,00,000/- made during the course of appellate proceedings before my predecessor.

37.1 The AO sent a proposal vide his letter dated 11.8.2009 pointing out that in the Report on Review of the Unaudited Accounts of the appellant prepared by M/s Vyas & Vyas, in para 11 on Page 52, it was reported that they had studied the audit reports of family members which stated that the family members did not provide interest payable to M/s Harshad S. Mehta. Clued into this, the Assessing Officer observed that similar interest should have been credited in the books of the appellant which has not been accounted for. Since this had not been added to the appellant's income, a proposal was made to make this addition and enhance the income of the appellant to that extent. During the course of appellate proceedings before my predecessor, the appellant submitted that interest is not liable to tax since the appellant is following the cash system of accounting. Point was also made that the Auditors M/s Vyas & Vyas have only made an assumption. It was also argued that the notified family members have disputed their liability of interest payment before Hon'ble Special Court in Miscellaneous Petitions and affidavits. It was also submitted that the appellant was never granted an opportunity to cross examine M/s Vyas & Vyas. Further, it was pointed out that revenue itself had opposed the admissibility of the report of M/s Vyas & Vyas before the Hon'ble ITAT. After considering the contention of the appellant as well as the Assessing Officer, my predecessor was of the view that interest is taxable in the hands of the Appellant as the basis of auditor's observation was authentic, based on a statutory document and specifically quantified. Accordingly, the claim of the appellant in respect of interest income not being taxable was rejected by my predecessor.



37.2 During the course of the present appellate proceedings, the appellant produced before me the detailed explanations and relevant documents with respect to the assessments of family members to contend that interest receivable from family members is notional and not liable to tax.

37.3 The appellant submitted that that as per the Audit Reports of other related parties / family members, provision for interest ought to have been made in the books as under:

In the Books of	Interest for the year ended 31 March 1992
Sudhir S Mehta	1,30,00,000
Deepika S Mehta	1,25,00,000
Dr. Pratima H Mehta	1,45,00,000
Harshad S Mehta	1,10,00,000
M/s Ashwin S Mehta	6,75,00,000
<b>TOTAL</b>	<b>11,85,00,000</b>

37.4 The appellant submitted that based on the aforesaid, an addition of Rs. 11,85,00,000 has been made in the hands of the appellant. The Appellant stated that no interest income had been actually earned and there was no right to receive the same. No payment has actually been received by the Appellant. It was further submitted that M/s Vyas & Vyas have only made a comment in their Review of Unaudited Accounts.

37.5 I have considered the arguments of the assessee and the facts of the case. I am of the opinion that the decision of my Id. Predecessor in enhancing income by Rs. 11,85,00,000/- on above accounts was a well reasoned order and does not call for any interference. Otherwise also it will not be proper to review the decision taken by my Id. Predecessor. Therefore this ground of appeal of the assessee is rejected.

*P. S. Mehta*



**38.1 Ground No. 21** relates to addition on account of alleged differences in the books of the appellant and in the books of Ashwin Mehta and Jyoti Mehta amounting to Rs. 372,82,14,642/-. During the course of appellate proceedings before my predecessor, the said addition was made by my predecessor on account of alleged difference between the balances in the books of accounts of M/s. Ashwin Mehta and the books of M/s. Harshad Mehta amounting to Rs. 107,34,59,584 and between the balances in the books of accounts of M/s. Jyoti Mehta and the books of M/s. Harshad Mehta amounting to Rs. 265,47,55,058.

**Balance as on 31.03.1992**

	Particulars	Balances in the books of M/s. Harshad Mehta (in Rs.)	Balances in the books of other parties (in Rs.)	Difference
1.	M/s. Ashwin Mehta	Nil (Receivable)	107,34,59,584 (Payable)	107,34,59,584
2.	M/s. Jyoti Mehta	Nil (Receivable)	265,47,55,058 (Payable)	265,47,55,058
			<b>Total difference</b>	<b>372,82,14,642</b>

38.2 During the course of appellate proceedings before my predecessor, the AO had filed the proposal for enhancement of income of the appellant vide letter dated 11.12.2009. The AO had pointed out that from the perusal of the reports prepared by the three firms of Chartered Accountants and M/s Vyas & Vyas, the difference of huge amounts in the balances of M/s HSM & HSM vis-à-vis other notified parties of the group was found and that the aforesaid Chartered Accountants firms were not able to reconcile the differences in the balances. With respect to this issue, the appellant placed the following arguments before my predecessor, the extract of which is reproduced below from the order dated 24.03.2010-

- i) *The material on which basis, the Assessing Officer has proposed enhancement is not the primary material, but the same is secondary material i.e. piece of evidence in form of opinion of Chartered Accountants who have themselves stated that their report is not reliable nor have they vouched for the accuracy of its contents.*



- ii)
- iii) *The Assessing Officer has relied upon reports of Chartered Accountants who have examined the very books of account which the Assessing Officer has rejected.*
- iv) *The Assessing Officer has not discharged his onus of examining the veracity of the material on the basis of which enhancement has been proposed.*
- v) *The findings of M/s. Vyas & Vyas are conjectures and surmises and are not definite.*
- vi) *The Assessing Officer has not specified the provisions of the ITA which permits treating the difference in balances as taxable income in the appellant's hands.*
- vii) *The Assessing Officer has failed to explain the basis on which additions were liable to be made in the hands of only the appellant and not the other parties involved as such a difference between the books of account of two entities can arise on account of either of the parties.*
- viii) *Assuming without admitting their differences in the two books account, the same can be on account of revenue item for payment in the nature of capital item and, therefore, per se only on the basis of difference between two books of account, the same is not liable to be treated as appellant's taxable income.*
- ix) *The Assessing Officer has not carried out any exercise to ascertain the facts or calls any enquiries and has, thus, without discharging his onus shifted the burden on the appellant to explain the difference.*
- x) *The report of M/s. Vyas & Vyas is not a reliable material and M/s. Vyas & Vyas have themselves qualified their report and not taken responsibility for accuracy of its contents.*
- xi) *In terms of the rules of natural justice, the appellant ought to be granted cross examination of the author of the report of M/s. Vyas & Vyas so that it can be put to test for its veracity. This position has been endorsed the judgement of the Hon'ble Apex Court in the Bareilly Electricity Supply Co. Ltd Vs. The Workmen and Others. The report of M/s. Vyas & Vyas shows the income of M/s. Harshad S. Mehta for the Asst. Years 1992-93 & 1993-94 and Rs.123 Crs which has been contested by the revenue before the ITAT and accordingly, revenue cannot now use this report for proposing enhancement of the appellant's income.*



- xii) *The appellant has disputed the veracity of the report of M/s. Vyas & Vyas on various grounds including illegality committed by the custodian in obtaining the report. In this regard, the appellant and her related entities have already filed detailed applications being M.S.Nos. 201 to 207 of 2009 in M.P. No.41 of 1999. Two additional affidavits on 20.11.2009 and 4.12.2009 have also been filed by the appellant on a query raised by the Hon'ble Special Court to show large discrepancies existing in the report. In one of the affidavits filed by Jyoti H. Mehta, the errors committed by M/s. Vyas & Vyas in exaggerating the receivable figures from J.H. Mehta by a sum of Rs.463.32 Crs. and from M/s. Aswin Mehta by a sum of Rs. 122.68 Crs. have already been explained to the Hon'ble Special Court and these two examples have been cited by the Assessing Officer in his letter.*
- xiii) *The difference in the balances between various entities is also on account of the fact that the appellant's brokerage firm followed a cash method of accounting whereas the other entities and family members have followed the mercantile system of accounting.*
- xiv) *The Assessing Officer should be directed to issue notice or summons u/s.131 of the ITA to all the entities to explain the differences. The appellant cannot explain the differences as the books of account of the notified entities are with the custodian.*
- xv) *M/s.Vyas & Vyas have grossly erred in reading the balances from the books of account of the notified entities.*
- xvi) *The scope of the present proceedings before the CJT(A) is limited and the notice of the enhancement of the income is not liable to be entertained. The scope of the present proceedings ought to be limited only to the issue that were raised before the Hon'ble ITAT.*
- xvii) *The notice of enhancement is liable to be rejected on the ground of being vague as the ground and the year for which the enhancement is proposed has not been specified.*
- xviii) *The Assessing Officer has proposed the enhancement at the last and final stage of the proceeding and in a manner, just before a few days to deprive the appellant of any meaningful time to rebut the same.*
- xix) *The present proceedings are remanded proceedings and there is no material produced by the Assessing Officer to show that any error or lapse or omission was committed by his predecessor warranting*



issuance of notice for enhancement. On this ground alone, the enhancement notices are not maintainable.

xx) The appellant has no access to the records lying with the Custodian to rebut the proposed addition.

xxi) Section 251(2) of the ITA stipulates that income cannot be enhanced unless the assessee has had a reasonable opportunity to show cause. The appellant was deprived of a show cause and accordingly, enhancement proceedings should be dropped.

The notices issued do not disclose the provisions of the IT Act under which the proposed enhanced income is to be taxed.

The CIT(A) is not bound to follow the request of the Assessing Officer for enhancement as adequate powers are vested in him to independently examine the issue raised by the Assessing Officer and then come to a conclusion that there is a case for enhancement of income.

As per the law laid down, the power of the first appellate authority to enhance the income is confined only to existing source of income and not for any new source of income. This finds support in the cases

- a) *Narrondas Manordass v/s CIT 31 ITR 909 (Bom)*
- b) *CIT Vs. Scindia Steam Navigation Co. Ltd. 80 ITR 589 (Bom)*, *CIT Vs. Indo Aden Salt Works Co. 36 ITR 429 (Bom)* and *CIT Vs. National Co. Ltd. 199 ITR 445 (Calcutta)* and *CIT Vs. Rai Bahadur Hardtroy Motilal Chamaria 66 ITR 443 (SC)*.

Further, specific explanations were also given and extract of books of account of M/s. Harshad S. Mehta and other related entities submitted to the Chartered Accountants with the contention that the reconciliation between these accounts would explain the differences in the balances. Premised on this, it was contended that these books of account of the other entities would establish the errors committed by M/s. Vyas & Vyas in interpreting the balances in the books of account. Elaborating, it was submitted that in respect of nine entities M/s. Vyas & Vyas have considered the balances only in the books of M/s. Harshad S. Mehta and not taken the balances in the books of the other party and, therefore, the finding that there is difference in respect of these nine



entities is grossly incorrect. It was pointed out that the Chartered Accountants have given their findings about difference by taking only one version of M/s. Harshad S. Mehta without taking the other side and the difference projected by them to the extent of Rs.103.75 Crores is grossly got up. Regarding the details of Rs.51,84,30,363/-, it was submitted that M/s. Vyas & Vyas have committed the error by not taking into account balances in 3 sub-accounts in the books of the appellant being Loans and Advances under A/c. No.2008 and Loan Account under A/c. No.2010. In this respect, it was also brought to notice that the extracts of Trial Balance, Balance Sheet and Profit and Loss A/c. of other related notified entities have been extracted from the books of account of those entities and out of reports of Chartered Accountants appointed by the Hon'ble Special Court.

38.3 Based on the remand report submitted by the AO, my predecessor held that the report of M/s. Vyas & Vyas, Chartered Accountants have to be accepted since the said auditors were appointed under the orders of the Special Court for special purpose and have to be treated as experts in the field. Further, my predecessor held that the objections raised by the appellant were general and technical in nature. The appellant offered the explanation that Mr. Harshad Mehta maintained cash system of accounting whereas the appellant maintained mercantile system of accounting. Also, the appellant wishes to merge the individual account with broker's account, which according to my predecessor is highly impermissible. The only way the appellant could have explained the difference was through the explanation of each entry separately. The findings of my predecessor as mentioned in his order dated 24.03.2010 wherein are reproduced below -

*"It is the appellant's position that M/s. Vyas & Vyas has not referred to the books of account and Audit Reports of the three firms of Chartered Accountants of the other notified entities correctly. Premised on this, it was pointed out that in 9 cases, the balance is shown to be zero in the column disclosing balance in the books of other related entities. In respect of the other entities, point was made that M/ s. Vyas & Vyas has erred by not referring to balances lying*

*Prasad*



in all the accounts though under different nomenclature which has led to large differences. Certain instances were submitted. It was also pointed out that in some cases, the debit balances is read as credit balance and vice versa. A chart explaining the differences was submitted. Attention was drawn to the fact that out of 9 entities, books of account of Mazda Ind. & Leasing Limited, Growmore Power Eng. Corporation and Growmore Consultants could not be produced as the appellant does not have access to these books of accounts.

I have considered the issues on the differences as raised by the Assessing Officer, the facts of the case and the submissions of the appellant. As I see, one of the main plank of the appellant's defense is that M/s. Vyas & Vyas had not referred to the books of account and Audit Report of the three firms of Chartered Accountants of the notified parties correctly. This contention is totally misplaced. As I note, M/s. Vyas & Vyas have given their findings on the differences in the balances after collecting Information from the appellant's computers, banks, financial institutions and other parties. In this direction, I find that M/s. Vyas & Vyas had written letters to banks, financial institutions and other parties to confirm the transactions of M/s HSM recorded his book. The observations of M/s Vyas & Vyas in paras 8.1 and 13.2 of their report call for special attention in this context. In these paras, M/s. Vyas & Vyas have given the following observations:

"8.1 We have studied the liability side of Balance Sheet of M/s HSM, which was drawn by us from books of accounts and other information available with us from the computers. We have also written letters to banks, financial institutions, and other parties to confirm the transactions of M/s HSM recorded in his books. We found that there were large number of transactions not recorded by M/s HSM but banks, financial institutions and other parties have recorded them. We have also compared the balances outstanding towards HSM group from the audited accounts available in the audit reports from the balances appearing in M/s HSM books. We observed huge differences in those balances which were narrated



separately in Annexure no. 6A.

8.2 M/s HSM while recording the transactions in his books of accounts totally ignored these transactions with an intention to hide the correct picture of his state of affairs. We were surprised to note the huge differences in the outstanding balances within his 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 accounts of M/s HSM.

Significantly, I also note that the findings of the differences in the balances were not given by M/s. Vyas & Vyas on their own but as part of their Scope of Work as laid down by the Hon'ble Special Court. Scrutinizing and investigating third party liabilities stand as item 1.3.2 of the scope of work. In view of this, the findings of the differences formed part of responsibility of M/s. Vyas & Vyas. The appellant has not brought out anything specific on this process of scrutiny and investigation done by Vyas & Vyas and has only made a general observation. It is thus, seen that working out of the differences in the balances by M/s. Vyas & Vyas is premised on close scrutiny and very authentic documents. Another plank of appellant's defense is that M/ s. Vyas & Vyas has erred by not referring to balances lying in all the accounts though under different nomenclature which has led to large differences. As I understand, by this, the appellant means to explain that if the accounts of the business and individual entities of the parties and the appellant are seen together, reconciliation is possible. This premise is patently wrong both from the point of view of accounting principles and income-tax proceedings. As may be noted in normal prudence, a business entity and an individual entity are though the same, the accounting treatment of their transactions is different. This is natural as the accounting implication of a transaction undertaken as an individual and transaction undertaken for business must be different. It is precisely because of this that the entities in question are maintaining separate sets of books of account, one as an individual and the other as a business entity. This difference is also



recognized by M/s. Vyas & Vyas and three Chartered Accountants while preparing the accounts of appellant and the other entities, respectively. As may be seen, it is because of this that M/s. Vyas & Vyas have prepared separate accounts of the appellant for his individual and business entities. Same is the case with the three Chartered Accountants and the other entities. In this backdrop, I find that the appellant has tried to reconcile the difference not by matching the balances between individual to individual and business entity to business entity but by matching with individual to business entity and vice versa. This is obviously incongruous and defies basic accounting principles. Very significantly, I note that reconciliation has not been given on homogenous matching between individual to individual and business entity to business entity. Further, adjustment of accounts from one set of accounts to another set of documents cannot be accepted unless reconciliation of accounts is made. The reconciliation on this count cannot also be accepted if the dates, amounts and the narrations of the transactions between two sets of accounts do not match. In the details and reconciliation submitted by the appellant, no such matching has been done. In view of this, the reconciliation submitted by the appellant is not only between incompatible entities but also lacking in specific matching of transactions. To this end, I find that the appellant has not matched the debit and credit entries date wise in the different sets of books. In face of all the foregoing severe infirmities, the reconciliation by the appellant is not acceptable being not credible. Merely passing a journal entry of huge amounts in the books of individual entities without debiting the account of the individual entity in the books of business entities of the other related parties without proper supportings is highly flawed. This has also been noted by the three Chartered Accountants in their Report on Review of Unaudited Accounts of M/s. Jyoti H. Mehta. In this report, it has been clearly mentioned that journal entries affecting the accounts have been made without any supporting. In similar vein, in the Report on Review of Unaudited Accounts of Mrs. Jyoti H. Mehta, it has been mentioned that the differences between different accounts could not be explained despite asking explanations. The



observations are recorded in para 13.5 on page 37 of the Report. Similar observation has been made by the three Chartered Accountants in their Report on Review of Unaudited Accounts of Mr. Ashwin S Mehta. On page 32 of the report in Para 14.3, it has been categorically stated that the transactions on the accounts mentioned in the para have been recorded merely by passing journal entries. In their report, in the case of M/s/ Ashwin S Mehta on page 33, it has been categorically stated very few credit slips issued to / received by M/s. Ashwin S. Mehta were available for verification, the remaining being untraceable. Significantly, I also note that the source of passing the journal entry in the books of the appellant has not been explained. This again is a major flaw. In view of the foregoing major flaws, the concept of clarity is badly missing in the accounts of the appellant and other related parties. The differences further accentuate the flaws. As I find, the appellant has not been able to disclose how the journal entries were made in the books of account and any reconciliation based on such flawed accounting is unacceptable. Further, most importantly, I find that the reconciliation and the accounts submitted by the appellant through the several submissions only relate to the balances as on 8.6.1992 and accordingly, they relate only to the assessment year 1993-94. There is no reconciliation whatsoever of the balances as on 31.3.1992. As I note, the Assessing Officer has invited attention to the balances as on 31.3.1992 and 8.6.92 but, the appellant has not given any reconciliation on the balances as on 31.3 1992, In view of this, for the present year under consideration, no reconciliation of the balances has been given. So, for the present assessment year under consideration, there being no reconciliation, the differences stand totally unexplained. In light of the foregoing, for the present year under consideration, following balances as on 31.03.1992 remain unexplained. From the perusal of the differences, I find that in the following instances, the appellant has not disclosed the transactions recorded in the books of other parties.

*Prakash Mehta*



DIFFERENCE BETWEEN BALANCES IN THE				BOOKS OF HSM & RELATED PARTIES		
Sr.	Particulars	As on	Balances in the		Balances in the	Differences
No.	Name of Party		books of M/s. HSM		books of Party (Three CAs)	
			(Vyas & Vyas)			
1	M/s. Ashwin S Mehta	31/03/92	0.00	Dr.	1073459584.00	Cr (1073,459,584.00)
2	M/s. Jyoti H Mehta	31/03/92	0.00	Or.	2654755058.00	Cr (2,654,755,058.00)

The difference of these balances arises on account of complete non-disclosure of the transactions in the appellant's books. The credit balance also does not stand reconciled. As may be seen, whereas M/s. Ashwin s. Mehta and M/s. Jyoti H. Mehta have disclosed transactions of Rs. 107,34,59,584/- and Rs. 265,47,55,058/- respectively with M/s. Harshad s. Mehta, the latter has not shown these transactions in his books. **In view of this, I find that a sum of Rs. 372.82,14,642/- is liable to be taxed in the hands of the appellant as income from undisclosed transactions and sources. Since this amount has not been brought to tax in the assessment, I enhance the appellant's income by this amount. So far as the balance differences are concerned, I find that they are to be examined in the cases of the related parties to see whether or not the balances have been brought to tax in their hands. Accordingly, I direct the assessing officer to examine these cases and take appropriate actions in terms of the relevant provision.**

38.4 With respect to the above ground, the appellant has made elaborate submissions before me. The submissions made by the appellant before me are summarized below -

- a) Reconciliation of difference by not matching the individual to individual and business entity to business entity

*Present*



My predecessor held that the differences have been reconciled by not matching the balance between individual to individual and business entity to business entity but by matching with individual to business entity and vice versa. The Appellant submitted that the said principle is erroneous and misplaced. In the case of the Appellant, the books of accounts for personal account (Late Shri. Harshad Mehta) and proprietorship concern (M/s. Shri. Harshad Mehta) are maintained separately. The separate books of account are maintained for administrative convenience. However, for income tax purposes, the income earned by Late Shri. Harshad Mehta, on personal account and by the proprietorship concern, would be taxed on a consolidated basis. Accordingly, the consolidated income (earned in personal capacity and earned by the proprietorship concern) of Late Shri. Harshad Mehta would be assessed to tax. Thus, the Appellant submitted that for income tax purposes Late Shri. Harshad Mehta and M/s. Harshad Mehta are one and the same. Accordingly, the above contention of the Hon'ble CIT(A) could not be accepted.

- b) **Reconciliation of difference possible if the dates, amounts and narrations of the transactions between two sets of accounts match**

The appellant submitted that my predecessor in his order dated 28.03.2010 has held that reconciliation can be accepted if the dates, amounts and narrations of the transactions between two sets of accounts match. In light of the above, the Appellant has made submissions containing reconciliation of transaction in the books of Mr. and M/s. Shri. Ashwin Mehta and Mr. and M/s. Late Shri. Harshad Mehta. Similarly, reconciliation of transaction in the books of Mr. and M/s. Smt. Jyoti Mehta and Mr. and M/s. Late Shri. Harshad Mehta has been undertaken and enclosed at Page Nos. 75 to 134 of the Paperbook X.

- c) **Mere journal entries in the books of accounts not acceptable**



The appellant stated that my predecessor has further held that mere journal entry of huge amounts in the books of individual entities without debiting the account of the individual entity in the books of the business entities of the other related parties without proper supporting is flawed. The Appellant submits that the account of Mr. and M/s. Shri. Ashwin Mehta and Smt. And M/s. Jyoti Mehta in the books of the Appellant and vice versa contain transactions routed through banking channels and are not mere journal entries.

**d) Reconciliation of balances done as on 8.6.1992 and not 31.3.1992**

The appellant submitted that my predecessor in his order dated 24.03.2010 has observed that the reconciliation and the account balances submitted only relate to the balances as on 8.6.1992 and accordingly they relate to AY 1993-94. Thus, there is no reconciliation as on 31.3.1992. In this regard, the Appellant has submitted that the reconciliation of difference in the balances is done as on 31.3.1992 and not as on 8.6.1992.

- d) The Appellant further submitted that my predecessor in his order dated 28.03.2010 has erred in upholding the assessing officer's contention that the 'balances in the books of M/s Harshad S Mehta (Vyas & Vyas)' is Nil. The appellant contended that the actual balance receivable in the books of M/s Harshad S Mehta from Ashwin Mehta and Jyoti Mehta was not nil.

38.5 I have considered the facts of the case submissions and the contentions of the assessee and verified various supporting evidences / documents furnished by the appellant for this ground. The Appellant has vehemently challenged the enhancement made by my ld. predecessor in the appellate order in appeal no. CIT(A)C-V/ACIT CC-23/59/95-96 dated 24.03.2010. However, this issue of enhancement had been discussed in great detail by my ld. predecessor in the case of the appellant in order dated 24.03.2010 as also vide order dated 30/12/2011 in case of Ashwin Mehta



and also in the case of Smt. Jyoti Mehta in his order dated 29/2/2012 in appeal no. CIT(A) -40/IT/DCCC-23/99/07-08 wherein my Id. predecessor had agreed with the AO's proposal of enhancement of income , considering various infirmities in the accounts of the assessee specially in view of the audit report of M/s Vyas and Vyas as appointed by Hon'ble Special Court

38.6 In view of the above facts and respectfully following the order of my Id. Predecessor dated 30/12/2011 and my own order in case of Sri Ashwin Mehta for A.Y. 1992-93 dated 28/03/2017 ,enhancement of income made by my predecessor does not call for any interference . The same is therefore upheld and the ground taken by the assessee in this regard is rejected .

39.1 **Ground No. 22** relates to addition on account of liabilities shown as other income in the Review of unaudited accounts of M/s Harshad S. Mehta as prepared by M/s. Vyas & Vyas. During the course of the appellate proceedings before my predecessor, attention was invited by the assessing officer vide letter dated 11.08.2009 that in the report on Review of Unaudited Accounts of the Statement of Affairs ('the report') as on 08.06.1992 of M/s Harshad S. Mehta prepared by M/s Vyas & Vyas, it was observed that on the liability side, an amount of Rs. 83,51,53,713/- has been shown as other income not shown in books. On basis of the above-mentioned observation of M/s Vyas & Vyas, my predecessor in his Order dated 24.03.2010 for AY 1993-94 noted that the sum of Rs. 83,51,53,713 is assessable as Appellant's income. My predecessor further observed that the whole sum would not be attributable to the AY 1993-94. Therefore, my predecessor made an enhancement of income under s. 251 of the Act of Rs. 13,91,00,000 in AY 1993-94 whereas the balance amount of Rs. 69,63,00,000 was enhanced in the income for AY 1992-93.

39.2 It was observed by my predecessor that M/s Vyas & Vyas have calculated the income on the basis of the findings of the Janakiraman Committee report. It was held by my predecessor that the observations of Janakiraman Committee and the report of M/s Vyas & Vyas clearly indicate that the appellant had earned income as calculated by M/s Vyas & Vyas.



was argued by the appellant that since the proposed addition is being based on the report of M/s Vyas & Vyas, the appellant may be granted an opportunity to cross examine the author of this report and all connected and responsible persons who have given the finding. It was argued that the issue of enhancement was raised at the fag end of the proceedings. It was also stated that all the incomes earned are duly reflected in the books of accounts. It was also submitted that the Assessing Officer has not made any enquiry or verification after receiving material. It was further argued that appellant has been following the cash method of accounting and so the liability to pay tax arises only upon actual receipt of income. It was also argued that the incomes have been computed on the presumption that the monies received by M/s Harshad Mehta would have been deployed at an average rate of 16% per annum upto the date of notification. The appellant made submissions on each individual addition totalling to Rs. 83,51,53,713/-.

39.3 Thereafter, my predecessor held that a sum of Rs. 83,51,53,713/- was assessable as appellant's income as the working of the interest is sound and correct for the following signature facts mentioned on Page No. 63 of the Order dated 24.03.2010 for AY 1993-94 -

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

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

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

*D. S. Mehta*



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

39.4 During the course of the present appellate proceedings, the appellant reiterated its submissions made before my Id. Predecessor as also the AO that the income arrived at by M/s Vyas & Vyas, Chartered Accountants has neither been earned nor actually been received by the Appellant. It was further argued that the notional income computed by M/s Vyas & Vyas as 'Other income' is largely in the nature of interest income based on certain presumptions and conjectures of the Chartered Accountants. The appellant stated that the learned AO has not established that the appellant has either earned or received any income as computed by M/s Vyas & Vyas or that it has escaped assessment. The appellant further submitted that both Janakiraman Committee Report from which the Chartered Accountants have derived their own conclusions as well as the report of M/s Vyas & Vyas are not reliable pieces of evidence nor can they be treated as proved evidence.

39.5 I have considered the facts of the case and submissions of the assessee. At the outset I would like to mention that the above addition has been made on the basis of Janaki Raman Committee report which was constituted by the government after security scam was broke out. There after the relevant facts has been considered by the special Auditors name y M/s Vyas and Vyas, who were appointed by the Hon'ble Special Court. Besides various issues relating to this have also been looked into by my Id. Predecessor and he reached on a conclusion that such income is liable to be added in the hands of the assessee. The assessee has failed to make out a case as to why this income is not liable to be taxed in his hands.

39.6 Therefore considering the overall facts of the case I uphold the enhancement of income made on the above account. Consequently this ground of appeal is rejected.



40. **Ground no. 23** is general in nature. Further, the Hon'ble Supreme Court's order dated 03.08.2008 has been specifically dealt with in the relevant grounds above. Accordingly, this ground does not require separate adjudication.

41. In **ground no. 24** the appellant has contended that the AO has erred in not appreciating that the appellant was following cash system of accounting. **Ground no. 25** related to not granting set off of addition on account of sources against the expenses / investment / application of such source based on telescoping theory. **Ground no. 26** relates to denial by the AO in deduction on account of interest, business expenditure, business loss and depreciation. **Ground no. 27** is relating to not granting of deduction and allowances under Chapter VI-A of the Act. However, no submissions have been made by the appellant on the aforementioned grounds. In these circumstances, it is not clear as to what the specific relief and deductions the assessee is seeking by raising these grounds. I also find that my predecessor vide his order dated 24.03.2010 had the occasion to find similar non-submission of necessary details, on account of which he had the occasion to dismiss these grounds of appeal. Similarly, as no submission, arguments are made by the assessee before me in support of his claim, no relief could be granted to the assessee. **Ground nos. 24 to 27 are accordingly rejected.**

42. **Ground no 28** is relating to credit of TDS. It is gathered that the Hon'ble Supreme Court, in the case of the appellant's, has held that credit of TDS etc. should be given only, in the notified period. Evidently the present year is part of the notified period. The AO is accordingly directed to verify the claim of the assessee towards advance tax, TDS etc. and allow credit to the assessee, as per the directions of Hon'ble Supreme Court on this issue, vide order SLP NO. 1922 of 2000 dated 13.02.2002. This ground is decided accordingly.

43.1 **Ground No. 29 and 30** relate to charging of interest u/s. 234A, 234B and 234C of the Act. The appellant in this regard apart from other



things has submitted that since he is a notified person, no interest can be charged u/s.234A, 234B and 234C of the Act.

43.2 I have considered the facts of the case, submissions and contentions of the appellant and the provisions of Sec. 234A, 234B & 234C of the Act. The interest under these sections is of mandatory in nature and the AO has no discretion whatsoever, in levying such interest. If there is tax demand subsequent to assessment, the AO is expected to work out the interest under these sections, on prescribed rates, for specified time period. For clarity, the relevant provisions of Sec. 234A, 234B & 234C are reproduced as under: -

"Section 234A:

*"234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of ..... per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,-*

*(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or*

*(b) where no return has been furnished, ending on the date of completion of the assessment under section 144, on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of, -*

- (i) advance tax, if any, paid;*
- (ii) any tax deducted or collected at source;*
- (iii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;*
- (iv) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India*



referred to in that section;

- (v) any deduction, from the Indian income-taxpayable, allowed under section 91, on account of tax paid in a country outside India; and
- (vi) any tax credit allowed to be set off in accordance with the provisions of section 115JAA.

Section 234B:

"234B. (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of .... per cent for every month or part of a month comprised in the period from the 1<sup>st</sup> day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax."

Section 234C:

"234C. (1) Where in any financial year, -

- (a)
- (b) the assessee, other than a company, who is liable to pay advance tax under section 208 has failed to pay such tax or, -
  - (i) the advance tax paid by the assessee on his current income or before the 15th day of September is less than thirty per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than sixty per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of ..... per cent per month for a period of three months on the amount of the shortfall from thirty per cent or, as the case may be, sixty per cent of the tax due on the returned income;
  - (ii) the advance tax paid by the assessee on his current income or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of. ... per cent on the above amount of the shortfall from the tax due on the returned income."

43.3 From the above provisions of Sec. 234A and 234B and 234C, it is quite clear that levy of interest under these sections is mandatory in nature



and the Assessing Officer has no discretion whatsoever in levying such interest. Further, the computation of interest is directly co-relatable with the amount of taxes unpaid or income-tax demand raised consequent to assessment order. As per the provisions of the Act, the AO has to necessarily levy such interest. In this connection, I would like to place reliance on the recent judgement of the jurisdictional High Court in the case of **CIT(Central)-II, Mumbai vs. M/s. Divine Holdings Pvt. Ltd.** dated **7/3/2012**. In the said judgement, the Hon'ble Court held that interest u/ s. 234A, 234B & 234C is leviable even in respect of assessee notified under the Special Court Act.

43.4 Respectfully following the above judgement of the Hon'ble Bombay High Court, which followed the ratio of Hon'ble Supreme Court's judgements in the cases of CIT vs. Anju M.H. Ghaswala and CIT vs. A.K. Menon, I hold that interest u/ s.234A, 234B and 234C is chargeable in the case of the appellant, even if it is a notified entity. However, the appellant has submitted that the AO has computed interest under section 234C of the Act as per the current provisions of the Act and on tax due on the assessed income. While as per the provisions of section 234C mentioned above, the same needs to be computed **on tax due on returned income, which means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year.**

43.5 Accordingly, the AO is directed to recompute the amount of interest under section 234C of the Act by taking the basis as returned income and not assessed income and apply the rates prevailing for the AY 1992-93.

44.1 **Ground No. 31** relates to charging of interest u/s. 220(2) of the Act, on unpaid tax liability. The learned AR contended that no interest u/ s. 220(2) of the Act could be charged in appellant's case, as it is a notified entity and, hence, he was not able to pay taxes due to legal impossibility. The Ld. AR further relied upon Board's circular No.334 dated 3/4/1988, decision of Hon'ble Bombay High Court in the case of the **Chika Overseas Ltd.** as also decision of my learned predecessor in the cases of **Hitesh**



*Prakash*

**Mehta for A.Y. 1992-93 and Smt. Pratima Mehta for A.Y. 1992 93, where such interest was ordered to be deleted vide order dated 30/12/2011.**

44.2 I have considered the facts of the case and submissions of the appellant. The levy of interest u/ s. 220(2) of the Act was challenged on the ground that the appellant is a notified party under the provisions of Special Court's Act and all his assets have been attached under that Act w.e.f. 8/6/1992. Obviously, therefore, the appellant was not able to make the payment of assessed tax liability. Since the appellant was legally disabled to make the payment of tax liability, he cannot be visited with consequences of interest u/s. 220(2) of the Act. It was pointed out that as far as interest u/s. 220 of the Act is concerned, the liability crystallized much after the date of notification. It was pointed out that the assessment order in the present case was passed on 27/3/1995. It was submitted that in these circumstances, no interest can be charged u/s. 220(2) of the Act as the appellant was notified much prior to the above date.

44.3 It was also argued that in any case, the interest u/s. 220(2) of the Act can be charged only from the date of the fresh assessment order 22/3/2016, and not from the date of original assessment order, 27/3/1995. For this proposition, the appellant has relied upon the recent decision of Hon'ble Bombay High Court in the case of **CIT Vs. M/s. Chika Overseas P. Ltd. in ITXA. 3737 of 2010 dated 18.11.2011**, wherein it was held that since the demand itself was crystallized under the assessment order passed in 2007 and the assessee had time to pay demand within thirty days of the service of notice of demand, the assessee cannot be held liable to pay interest for the period prior to the raising of the demand. It was, therefore, contended, that the interest charged by the Assessing Officer u/s. 220 of the Act was therefore unjustified.

44.4 In the present case, I find that the interest has been charged in respect of default committed by the appellant for non-payment of the tax and interest demand raised pursuant to the order dated 27/3/1995



However, the Hon'ble Tribunal had set aside the order passed by the Assessing Officer and directed the Assessing officer to frame the assessment de novo. As regards the claim of the appellant that the interest u/s. 220(2) is akin to the interest chargeable u/s. 234A and 234B of the Act, and, therefore, no interest should be charged in view of the inability of the appellant to pay the interest, it is held that interest u/s. 234A, 234B and 234C are charged on account of default in payment of advance taxes. On the other hand, interest u/s. 220(2) is chargeable on crystallized tax demand. Interest u/s. 220(2) merely compensates revenue for the realization of tax due, and to that extent, it has no connection with the appellant's inability to pay the tax demand. Under these circumstances, the argument of the appellant about the legal disability is rejected.

44.5 However, the learned AR has relied on a recent decision of Hon'ble jurisdictional High Court in the case of **CIT v. M/s. Chika Overseas P. Ltd.** vide order in ITXA No. 3737 of 2010 dated 18/11/2011, wherein the Hon'ble Court has observed that once the assessment order pursuant to which the default was committed by the assessee stands set aside, the demand does not subsist and that the appellant cannot be held liable for interest because default in payment of the said demand. The relevant findings of the Hon'ble jurisdictional Bombay High Court are reproduced below:

*"Since the demand itself was crystallized under the assessment order dated 24/12/2006 and the assessee under section 220(1) of the Act had time to pay demand upto thirty days of the service of notice of demand notice dated 24/12/2006, the argument of the revenue that the assessee was liable to pay interest under section 220(2) of the Act, for the period prior to crystallization of the demand on 24/12/2006 cannot be sustained. ..."*

44.6 Identical issue was also dealt with in the case of **Addl. CIT v. Hindalco Industries Ltd. [4 SOT 757(Mum)]**. While deciding, the issue relating to levy of interest u/s. 220(2) of the Act, after a detailed analysis of



various decisions including that of Hon'ble Supreme Court in the case of **Vikrant Tyres Ltd. V/s. first ITO 247 ITR 821**, the Hon'ble Tribunal observed that if the assessment has been set aside by the appellate authority, no interest can be charged u/ s. 220(2) of the Act till the period when the fresh assessment is made, fresh demand notice is issued and the statutory time period for making the payment has expired. After the assessment order is set aside, there is no demand pending against the assessee. Under these circumstances, the assessee cannot be treated to be in default for non-payment of tax pursuant to the original assessment order.

44.7 This issue has also been clearly dealt with in **CBDT Circular No. 334 dated 3/4/1982**, which is reproduced hereunder:

"Levy of interest under sub-section (2) when original assessment is set aside or cancelled.

1. Doubts have been raised as to the quantum of interest chargeable under section 220(2) when the original assessment order passed by the Income-tax officer is-

- a) Cancelled by him under section 146;
  - b) Set aside/cancelled by an appellate/revisional authority and such appellate/ revisional order has become final, or
  - c) Set aside by one appellate authority but, on further appeal, the order setting aside the assessment is varied by the second appellate authority and the demand gets. finally determined.
2. These issues were comprehensively examined in consultation with the Ministry of Law and the Board has been advised:

1. Where an assessment order is cancelled under section 146 or cancelled/ set aside by an appellate/ revisional authority and the cancellation/ setting aside becomes final (i.e., it is not varied because of further appeals/ revisions), no interest under section u/ s. 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this position will be that even when the assessment is reframed, interest can be charged only after the expiry of 35 days from the date of service of demand notice pursuant to such fresh assessment order.

2. fresh assessment order.

*Pradeep*



3. Where the assessment made originally by the Income-tax Officer is either varied or even set aside by one appellate authority but on further appeal, the original order of the Income-tax Officer is restored either in part or wholly, the interest payable under section u/ s. 220(2) will be computed regarding the due date reckoned from the original demand notice and with reference to the tax finally determined. The fact that during an intervening period, there was no tax payable by the assessee under any operative order would make no difference to this position.

4. The foregoing legal position will apply mutatis mutandis to the proceedings under other direct taxes also."

44.8 Thus, there is uniformity of opinion on this issue in the decision of Hon'ble Bombay High Court as well as the decision of Hon'ble Mumbai Tribunal, as also in the CBDT's Circular No. 334 dated 3/4/1982. Accordingly, it is held that no interest u/s.220(2) can be charged based on the original demand notice, if a fresh assessment is made pursuant to the directions of appellate authority. Even in the present case, pursuant to the order of the Hon'ble Tribunal, the assessment made on 27/3/1995 was set aside and a fresh assessment order was made on 22/3/2016. Further, my learned predecessor had also allowed appeal in case of Hitesh Mehta for A.Y. 1992-93, vide order dated 30/12/2011, and other persons of the same group, through separate orders which I have followed in the case of Smt. Deepika Mehta in my order dated 19/3/2015. Similar issue has also been dealt with by me recently in the case of Shri Ashwin S Mehta and Smt Jyoti H Mehta for AY 1992-93 vide my orders dated 28/02/2017 and 24/03/2017 respectively. Since the issue is now squarely covered by the decision of Hon'ble Bombay High Court in case of CIT v. M/s. Chika Overseas P. Ltd. (supra), the AO is directed not to charge interest u/s. 220(2) from the date of original assessment, but only from the date of re-assessment. **However, I may add here that the assessee may still be liable for interest u/s 234B of the act for the period 27/03/1995 to 22/03/2016 . The AO may accordingly examine the possibility of levying interest u/s 234B of the act , in respect of the above period and take appropriate action as per law if not already taken. In fact it has been noticed that in some of the cases of this group , under identical circumstances , the AO has already taken such action . This ground is decided accordingly.**

*P. Mehta*



45. In the result this appeal is **partly allowed**.



( PRATAP SINGH )  
COMMISSIONER OF INCOME-TAX  
(APPEALS)-52, MUMBAI

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