"The I.T. department filed identical Affidavits in the Application of Mehtas dated 20.07.2006 denying that monies released to it together with interest accrued on them can be included in the assets of Mehtas as claimed."

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATED TO TRANSACTION IN SECURITIES) ACT, 1992 AT BOMBAY

MISC. APPLICATION NO. 154 OF 2006

IN

MISCELLANEOUS PETITION NO. 41 OF 1999.

Smt. PRATIMA MEHTA)
Residing at Madhuli,)
Dr. A.B.Road,) Applicant
Worli,)
Mumbai – 400 018.)

Vs.

1. The Asst./Dy. Commissioner of Income-Tax,)
Central Circle-23,)
Room No. 464, 4th Floor,)
Aayakar Bhavan, Maharshi Karve Road,)
Mumbai 400 020.)

2. The Custodian)
Appointed under Section 3 of the)
The Special Courts (Trial of offence)
Relating to Transactions in Securities)
Act, 1992 and having its office at 10th)
Floor, Nariman Bhavan, Nariman Point,)
Bombay 400 021.) Respondents

I, Pitambar Das, Dy. Commissioner of Income Tax, Central Circle –23, Mumbai, do hereby solemnly affirm and sincerely state on the basis of records available and legal advise given to me as follows:

1. I am the Dy. Commissioner of Income Tax, Central Circle-23, Mumbai and as such I am well acquainted with the facts of the case and competent to swear to this affidavit on the basis of papers and proceedings and the legal advice given to me.

2. I have carefully perused the affidavit filed by Shri Pratima Mehta dated 21.07.2006. On the basis of the records including various proceedings before the judicial and quasi-judicial authorities and based on legal advise, I am filing this reply affidavit. I however reiterate the averments that are contained in my affidavits dated 28.02.2006,05.04.06 & 21.06.06 and deny the statements made on behalf of the applicant which is in any way inconsistent thereto.

3. The entire edifice of the affidavit on behalf of the applicant is based on an erroneous presumption that the monies which have been disbursed to the revenue towards income tax liabilities should be treated as deposits as stated in paras 2,4 & 5 of the said affidavit. This supposition is fundamentally erroneous. The amounts were directed to be paid to the Income tax department by orders of this Hon'ble Court in accordance with the provisions of the Special Courts (Torts) Act, 1992 and in accordance with the principles laid down by the Hon'ble Supreme Court interpreting the provisions of the said Act in the case of Harshad Shanthilal Mehta Vs Custodian and others **(1998) 5 SCC 1 towards the income tax liabilities of the notified parties**. The applicant has also misconstrued the judgment of the Hon'ble Supreme Court in the case of Aswin S Mehta Vs Custodian **(2006) 2 SCC 385** to make submissions that the amounts released towards tax liabilities should be treated as refundable deposits contrary to the spirit and intent of the judgment of this Hon'ble Court.

4. At this juncture, it is relevant to point out that even the Hon'ble Supreme Court in the recent judgment in **(2006) 2 SCC 385** referred to above has taken note of the fact that the question with regard to the mode and manner of disbursement of the amount so far as the tax liabilities. The Hon'ble Supreme Court has duly taken note of the fact that there were instances of transactions resorted to by the applicant herein which disclosed the modus operandi to the effect that the monies were diverted from

banks and financial institutions by late Harshad Mehta which were in turn diverted to his family concerns and family members. These monies were used for speculative transactions and securities and the proceeds generated were used for acquiring assets. After taking note of the above submissions, the Hon'ble Supreme Court wanted this Hon'ble Court to go into these aspects. However, it is relevant to point out that the notified parties are now seeking to project themselves as innocent persons and as though public authorities including the Income tax department which acts in public interest seeking to victimize the applicant herein. But however, a perusal of the **Janakiraman Committee report as well as the report of the Joint Parliamentary Committee would expose the entire scheme including the conduct and role of Shri Harshad Mehta and his family members** and therefore, the statement projecting the applicant herein that they have always been law abiding citizens appears to be self serving and without any basis. The present application itself is wholly misconceived and is liable to be dismissed in the light of various orders that have been passed by this Hon'ble Court from time to time and the judgment of the Hon'ble Supreme Court coupled with the provisions of the Special Courts (Torts) Act and the conduct of the applicant apart from larger public interest. I think it is making clear the attitude of notified party who has no respect for Crown debts and amusing the words like vested interest of revenue. The revenue will always do what it ought to do to protect the interest of revenue and would not allow the people like notified party to get away with the legitimate dues of the government. I deny the

assessments are high pitched. I deny that interim disbursement has led to any distortion of asset/liability picture. The notified parties conspired with the banks to cause biggest ever scam and deserve no sympathy whatsoever. Already stated in previous affidavit that setting aside demand does not extinguish the demand. I further state that the monies so released does not tantamount to any kind of deposits issued in favour of the assessee. The amounts released were not in the nature of deposits but against the tax liability of the said notified person. **Hon'ble Justice Kapadia in his order dated 22.3.2000 stated :**

> *"The notified party was assessed under the Income Tax Act for AY 92-93 falling within the statutory period as defined by the Supreme Court by its order dated 13.5.1998 in the case of Harshad Mehta Vs. The Custodian (Civil Appeal 5326/95 and Others). The priority demand for the A.Y. 92-93 (for the period relevant to 1.4.91 to 6.6.92) was the demand of income tax excluding interest and penalty. The particulars of the demand notices are given in each of the above matters. The regular assessment for A.Y. 92-93 was made on 27.3.1995. Hence, the amount demanded constitutes an ascertained liability for payment of tax which is quantified under the Act. The department has also relied upon the order passed by the Supreme Court on 26.8.1996 under which amounts were ordered to be released by the Custodian from the moneys held on fixed deposits subject to the Department giving an undertaking which, in the present case also, the Department has tendered.*
>
> *The application has been opposed by the notified party contending that in terms of the above judgement of*

the Supreme Court, the demand of the Department does not constitute an ascertained liability as the matters are pending in Appeal before the Appellate Authorities under the I.T. Act. It is also contended that till the demands are finally decided upon by the Appellate Authorities, no amount should be allowed to be withdrawn. It is further contended that the asset/liability position of the notified party is not clear, particularly in view of the fact that large number of creditors of the notified party are also required to be paid from the attached accounts. It is also urged that wrong parties have been notified and in the circumstances, till this Court examines the above position regarding the asset/liability of the notified parties and till this Court decides the applications relating to notification of wrong parties as alleged, no amount should be permitted to be withdrawn. It is further contended that the assessment in question are ex-parte assessments made by the department. It is further contended that prior payments have been made from the attached accounts which do not fall within the priority period and that in any event, the amount paid by the notified party to the department is more than the taxes payable by the notified party.

I do not find any merit in any of the contentions raised on behalf of the notified party. In terms of judgment of the Supreme Court in the case of Harshad Mehta, it is clear that the words 'taxes due' in Sec. 11(2)(a) refer to and ascertained liability for payment of taxes quantified in accordance with law. In the present matter, the demands of the I.T. Department run into several crores. They are based on the assessment orders passed by the A.O. These assessment orders may be subject matter of appeal before the Appellate Authorities. Nonetheless, they would certainly

constitute an ascertained liability for payment of taxes. As regards the asset/liability position of the notified party, it may be mentioned that even according to the learned counsel appearing for the notified parties, the assessee is not in a position to state the amount of assessable income which according to the assessee, has accrued during the relevant period on the ground that his accounts have not been drawn up till today. If that is the position, then under no circumstances the Department would be in a position to recover the taxes particularly when the assessee claims that his accounts have not been drawn up and therefore, the asset/liability position is not clear. Moreover, the assessee has not disclosed the names of the creditors. The assessee himself has withdrawn applicati[redacted]n which it was alleged that wrong parties have been notified under the Act. ***The I.T. Act also permits best judgment assessments and, therefore, it cannot be said that ex-parte assessment orders are bad in law. Under the above circumstances, I do not find any merit in the contentions advanced on behalf of the notified parties.*** *It is claimed that amount paid by the assessee is much more than the taxes payable under the Act and that prior payments which do not fall within the priority period have also been received by the Department. In this connection, it may be mentioned that vide order dated 26.8.96, the Supreme Court permitted the Department to withdraw certain amounts from moneys held on Fixed Deposits, subject to the department giving an undertaking to bring back to Court at a later stage with interest at 18% p.a. The department has, in its application, given a similar undertaking which is hereby accepted by this Court."*

The Hon'ble Justice Shri D.K. Deshmukh in his order dated 03.10.2003 stated:

"It is further stated that pursuant to the interim order dated 26.8.96 passed by the Supreme Court, certain payments have been made to the Income tax Authorities. As per order dated 26.8.96 of the Supreme Court passed in Civil Appeal Nos. 5147, 5226, 5325 and 6080 of 1995 and ***an amount of Rs.34,39,00,000/- was adjusted towards the Income tax for the year 92-93 in the case of Late Shri Harshad S. Mehta.*** *In this application, such adjustment made and figures of the amounts adjusted in relation to the notified parties are also given. It is stated that against the orders passed by the Income Tax Authority, in certain cases, appeals have been filed which are pending. In short, the application of the Income tax department is that as large amounts are lying in the attached account under the control of the Custodian, which have been invested in fixed deposit, same amount should be released in favour of the income tax department on ad-hoc basis till the Court decides about disbursement either while declaring interim dividend or final dividend under section 11 of the Special Court Act. So far as Custodian is concerned, the custodian has filed a chart giving relevant details. That chart is taken on record and marked as 'X' for identification. In the chart the amounts which can be released in favour of the applicant on adhoc basis have been indicated. The learned counsel appearing for the applicant submits that this Court has passed orders from time to time releasing the amounts in favour of the Income Tax department from the attached accounts subject to the conditions which have been imposed by the Court. The learned counsel further points out that the*

Supreme Court by order dated 26.8.96 has released certain amounts on ad-hoc basis to the income tax department on certain conditions imposed by the Court.

The objection raised on behalf of the notified party is that the amounts should not be released in favour of the income tax department because the liability of the notified party towards the income tax department is not yet crystallized as the appeals are pending. It was also submitted that if the amounts are released to the income tax department and if this court ultimately directs the income tax department to bring back the amounts, it will be difficult for this Court to get the amounts back from the income tax department.

So far as objection of the notified party and the SBI that in case amounts are released in favour of the income tax department, it will be difficult for this Court to bring back the same is concerned, in my opinion, as the amounts are to be released on undertaking to be given by the Government of India there will be no difficulty in getting the amounts back, if the Court so directs. One more aspect that is to be considered is that releasing these amounts, in favour of the income tax department on ad-hoc basis which are presently lying with the Custodian, is in the interest of the notified parties. ***If the payment of the tax which is assessed is delayed, under the I.T. Act, the notified parties will be liable to pay interest, but if the amounts are released in favour of the income tax department even on ad-hoc basis, the computation of interest on the amounts of tax will immediately stop. In this***

view of the matter, therefore, in my opinion, the notified parties are not justified in opposing the application. *It is further to be seen here that all these amounts are presently lying unutilized in the attached account controlled by the Custodian. If the amounts are released in favour of the income tax department with an undertaking from the Government of India to bring back the amount on such terms and conditions including payment of interest as may be directed by this Court, the amounts can be utilized by the Government of India for welfare activities of the state. In my opinion, therefore, keeping the amount in the attached account will not serve any public interest."*

5. I submit that notified party is again trying to confuse the issue. I submit that the Department never accepts money from any assessee u/s.240. After the assessment order is passed and demand notice under section 156 is given the demand becomes crystallized and that is how the department takes money against the demand or by way of advance tax or TDS. I submit that Section 240 is the provisions in the case of setting aside of assessment orders by any appellate authorities under the I.T. Act. I further state that it is duty bound to bring back the money if ordered so, by the Hon'ble Special Court and in past the department has brought back the money(ies) as and when this Hon'ble court has ordered within the stipulated time and therefore, the apprehension of notified party has no basis.

6. I state that there is no provisions in the I.T. Act, 1961 to take deposits. The I.T. dept. has accepted the money against

the tax liability of the notified party(ies) and issued necessary challans thereof and the money has gone into the revenue account of the Govt. of India (consolidated fund of India). **Further, interest u/s.220(2) has not been charged to the extent of monies appropriated towards tax dues of notified party(ies).** Even the Hon'ble Special court has confirmed that the amounts are to be adjusted towards the tax liabilities.

7. The claim by the applicant that in view of the assessment order now having been set aside by the Hon'ble Income Tax Appellate Tribunal on procedural infirmities viz., on the ground of natural justice cannot change the basis of the disbursements made by judicial order and does not automatically warrant refunding the said sums collected or invest the said sums with some other authorities in interest bearing deposits. There is no direction by the Income Tax Appellate Tribunal to refund the tax collected and there could not have been such direction in the very nature of the facts and circumstances in which the order was passed by the Income Tax Appellate Tribunal which accepted the plea of the applicant to give one more chance.

8. I respectfully submit that the amounts were released to the Income Tax department only after ascertainment of liabilities and that be so when at the point of time and even now the amounts were disbursed cannot be construed to be deposits as projected by the applicant. Merely by reason of the Hon'ble Income Tax Appellate Tribunal setting aside the assessment orders not on merits but on a procedural basis would not warrant the

consequences presumed by the applicant. The judgment of the Hon'ble Supreme Court have to be understood in the context in which it was given and it is not subject to the above amount which was collected in the past after ascertainment of liability. The Hon'ble Supreme Court was only adverting the well settled legal position with regard to future payments as would be evident from the express language of the judgment. The judgment of the Hon'ble Supreme Court should be read in the context of other observations made with regard to the conduct of the applicant and qua the tax liabilities. It could have never been the intention of the Hon'ble Supreme Court to whittle down or negate the effect of Proviso (a) to section 240 of the Income Tax Act and on a careful reading of the judgment of the Hon'ble Supreme Court, there is no contrary direction by the Hon'ble Supreme Court than the one stipulated as per the proviso (a) to section 240 of the Income Tax Act which reads as follows:

> *"S. 240 – Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:*
>
> *Provided that where, by the order aforesaid,-*
>
> *(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be*

made, the refund, if any, shall become due only on the making of such fresh assessment;"

9. In reply to the allegations made as per para 6, I submit that Setting aside does not tantamount to vindication of the notified party in any manner. Best judgment orders has been set-aside only on the ground of natural justice even though there were acts off non-compliance and non-cooperation by the notified parties as discussed in detail in the affidavit of sale of property dated 28.02.2006. I once again reiterate that the judgment of the Hon'ble Income Tax Appellate Tribunal is not on merits nor have the assessments been set aside on merits and is a result of the conduct of the applicant failing to appear which was only due to the non-cooperation of the applicant.

10. I state that it is not the case of the ITAT that the opportunities were not given to the notified party(ies) for passing best judgment. I submit that sufficient opportunities were given to notified party(ies) to give true and correct affairs which the notified party did not avail. The ITAT has given just one more opportunity to notified party to give their true and correct picture of their affairs. In fact it was on the behest of the notified party that the assessment order be set aside as he was notified party and could not represent himself properly to the statutory notices which is clear from the appellate order.

11. As regards to the assessment oders which are set aside to the CIT(A), the demand raised by the Assessing Officer does not

get disturbed at all and hence, the demand subsits. I further state that the department have only made the position of law clear that setting aside an assessment order does not automatically make department liable to refund the taxes paid. However, this department is bound by the undertaking given to this Hon'ble Court by Secretary (Revenue) that as and when any amount is ordered to be brought back shall be brought back within the stipulated period. This has nothing to do with the position of law. I submit that the notified party is unnecessary trying to create confusion between the position of law and undertaking. I state that the paragraph of the Supreme Court's order quoted by the notified party income tax department is not making any fresh claim in respect of the demand relating to the said assessment orders. However, if any amount is paid under the said asstt. order they don't become automatically refundable in view of provisions of section 240 of the I.T. Act, 1961.

12. There is no question of brushing the doctrine of merger since the Hon'ble Income Tax Appellate Tribunal has not disposed of the appeal on merits. This is a case where the Hon'ble Income Tax Appellate Tribunal has remanded the matter for fresh adjudication mainly to give an opportunity of being heard to the applicant. I state that no deletion of demand has taken place due to set aside proceedings. The demand is kept in abeyance till the finality of the reassessment proceedings. I further state that the set aside proceedings are only on the ground of natural justice.

13. I emphatically deny the allegations contained in para 7 that the Income tax department had made any high pitched demands.The assessment orders were passed on merits after considering all materials on record and after proper enquiry/allowing ample opportunities to the notified parties (persons/entities). I submit that Assessment orders have been confirmed by the first appellate authority. I further state that lately the ITAT also has not set-aside the orders on the grounds of facts/merits. The only reasons for setting aside has been that the scam had taken place and notified parties could not have generally put up the case in front of the department. There is no fault on the part of the department, statutory or procedural lapses, while passing the best judgment order. The Hon'ble ITAT has not adversely commented on this aspect of the assessment order.

14. The best judgment assessments were passed only in accordance with the well settled principles and materials available on record in view of non-cooperation by the applicant. The applicant were not bonafide in their approach and appears to have adopted 'wait and watch' policy as held by this Hon'ble Court. It would be relevant to point out that any order on Miscellaneous Application 41 of 1995, this Hon'ble Court has held as follows:

> *"It is clear to the court that the reason why estimate was not filed before the Income Tax Authorities or before this Court, is because the applicant or any of them do not want to commit anything on oath or*

disclose all their assets. The idea appears to be to stay quiet and let the Income Tax Authorities or C.B.I. or the Custodian discover whatever they can. The idea appears to be wait and see what is discovered and then not disclose anything else. This could not be permitted. The court sees no difficulties in proper accounts being taken or prepared under/or estimates being filled. This is purposely not being done. Under the I.T. Act, penalties might be imposed. At this prima facie stage the submission that there would be Nil income is not acceptable".

I further state that the assessment orders have been framed in accordance with law and are not arbitrary as stated by the applicant. I further submit that the Income Tax Act, provides for the Best Judgement Assessment. The Assessing Officer has been vested with power and authority to make an Assessment to the Best of his Judgement under section 144 of the Income Tax Act, 1961, when an assessee commits one of the defaults mentioned therein. The section enjoins that on any one or more of these defaults happening, the Assessing Officer after taking into account all relevant material, which he might have gathered, shall, after giving the assessee an opportunity of being heard, make a best judgment assessment. In case of Harshad Mehta and other scam related cases, wherever the circumstances warranted, the Departmental Assessing Officers, while framing the best judgment assessment, have kept the above legal provisions and judicial

pronouncements on the subject, as their guiding factors. In the specific case of late Harshad Mehta, the assessee had failed to comply with the requirement of law as provided in Section 144 of the Act and thus leaving no choice to the Assessing Officer but to pass an assessment order after conducting extensive enquiries, gathering relevant information from all possible sources, intensive analysis of seized material, and after giving adequate opportunities to the assessee to represent his case. Thus, the assessments done are logical, sound and valid under the law. I am also obliged to bring to the notice of the Hon'ble Special Court that the assessment in (Late) Harshad Mehta's case for the Asst. Year 1992-93 has since been upheld by the CIT (Appeals), being the first appellate authority.

15. As regards further allegations made in para 7, the opinion of the Chartered Accountants are only opinions and the power to pass assessment order would still lie with the quasi judicial authorities under the Income Tax Act in accordance with the provisions of the Act and based on the materials available. It is wrong to allege that the demands made by the revenue are preposterous.

The applicant has only relied those portions of the report which is in its favour. **Hon'ble Mr. Justice S. N. Variava also observed similarly in his judgement dated 2.7.1993.**

M/s. Vyas & Vyas, Chartered Accountants appointed by this Hon'ble Court to prepare and audit the accounts of Shri

Harshad S. Mehta and other notified parties for the priority period has indicated several discrepancies which are asunder.

(a) Para 1.7 (Page 5) of the report clearly demonstrates that a consolidated P&L Account of Shri HSM & M/s. HSM indicating profit of Rs.123.13 crores for the entire notified period is not true and correct profit, as all the information, documents and explanations required from the legal heirs of late Shri HSM and other parties having transaction with the HSM were not furnished or made available to the auditors which has imposed great limitation on the scope and object of the report. **[Refer to Annexures 3A, 3B & 3C (Page 13, 14, 15 & 16)].**

(b) In Para 7.2.5 (Page 37), it is reported that all purchase/sale transactions in the bank statements are not tallying with transactions entered in M/s. HSM books. Untallied transactions are marked in Annexure 4A (Pages 17 to 32). In addition tallied transactions are matching only with the amount of face value and not with the book value.

(c) In Para 7.2.13 (Page 41) security-wise transactions entered on different dates did not appear in M/s. HSM books (See Annexure 4B).

(d) In Para 7.3 (Page 43) the auditors has categorically stated that from the above details it would be

evident that there were number of transactions which had not been booked in the books of M/s. HSM. It would, therefore, appear that books of M/s. HSM were manipulate by HSM for his personal gains.

(e) The auditors have in Para 8.1 (Page 43) observed huge differences in the balances which are indicated in Annexure 6A. In Para 8.2 they have recorded a finding that M/s.HSM while recording the transactions in his books of accounts totally ignored those transactions with an intention to hide the correct picture of his state of affairs. They have noted 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.

(f) In Para 8.3 (Page 44) the auditors have categorically stated that "it would therefore, reasonable and rational to conclude that the figures of liability towards banks, financial institutions and other parties shown in the balance sheet had to be ignored since it would be difficult to rely upon those figures which were at variance with those recorded by his clients/customers".

(g) Para 11.2 (Page 53) – Similar interest should have been credited in the books of M/s. HSM, which had not been accounted for. In fact HSM had not segregated

transactions of his family members in strict sense. Here it may be stated that all group transactions of HSM were not accounted for in the individual hands to which it pertained. Therefore, in our opinion the figures drawn from the books of HSM were not reliable. Further almost all PSUs, Banks and financial institutions provided details of transactions with HSM. The scrutiny of those details revealed major variance in the transactions. HSM had not recorded those transactions in his books of accounts and therefore, income/expenses on **those transactions were also not recorded in profit and loss account and therefore, true results cannot be arrived at.**

(h) **The notes on consolidated statement of affairs, below the statement of affairs as on 8.6.1992 of HSM states that "the above consolidated statement of affairs have been drawn by us after gathering the information from different sources. The books of accounts prepared by HSM are manipulated and complete transactions are not recorded.**

(i) I further submit that the auditors have noted summary of important findings as discussed in Jankiraman Committee and JPC Report on Page 7 of the report. The important findings were :

a) Late HSM entered into criminal conspiracy with the officials of banks, financial institutions, PSUs etc. and manipulate their funds.

b) Late HSM diverted and siphoned of funds mainly to his family members and Associate Companies for purchase of movables (shares) and immovable properties in benami names.

16. Even the in the Charge Sheet filed by CBI,as per Para 5.1 HSM entered into criminal conspiracy along with officials of various banks and financial institutions indicated in the report and had earned on these deposits rate of interest ranging from 17.5% to 31% whereas rate of interest paid to PFC range from 14% to 18%. Thus he has earned huge amount on rate of interest differential (Page 24).

17. Although the applicant has relied on the books of account now prepared to contend that the demand determined by the department is excessive and high pitched assessments are framed which demonstrates total violation of wednesbury principle of proportionality, yet it failed to take into account the observation of the auditors appointed by this Hon'ble Court. The auditors observed that *"we scrutinized each head of profit and loss account and observed that no supporting evidence was available for expenses as well as receipts. Non-cooperation was given by JHM,*

the legal heir of HSM. In the books of accounts also complete narrations were not available."

18. From the above, it is quite evident that the books of accounts now prepared in the case of notified parties for the notified period **is not true and correct.** In fact no reliance factually as well as legally can be placed on the said books of accounts prepared by the auditors.

19. I respectfully submit that, under the Income Tax Act, 1961 the AO is legally not bound to accept and assess the income reflected in profit and loss account prepared by an assessee and audited by an auditor unless he is satisfied that true and correct state of affairs are declared by the person and all the transactions entered, and expenses incurred and expended for wholly and exclusively for the purposes of business for deriving income offered for taxation by an assessee are supported by evidence and reflected in the books of accounts maintained regularly during the course of business and is in accordance with the method of accounting regularly employed and followed by an assessee.

The Income Tax Act, 1961 provides various deeming provisions under which some transactions which are not income in ordinary sense, but treated as "deemed income" for the purposes assessing income under the Income Tax Act, 1961 which are specifically provided u/s.68, under sections 69A to 69D of the I.T. Act, 1961.

20. From the above, it is quite evident that the contention raised by the applicant in the affidavit and his reliance on the audit report in question to prove that the assessments framed by the department for the notified period of HSM are high pitched and demand raised are excessive is baseless and devoid of merit. The applicant has miserable failed to prove that the assessed income by the AO for the notified period (AY 92-93 & 93-94) are high pitched and the assessment framed by the AO are not based on proper material. They failed to conclusively prove that the assessment framed were in violation of settled principles of natural justice. The very fact that major addition were confirmed by the first appellate authority go to show that there is no fraud, collusion or miscarriage of justice in framing the assessment orders for the notified period.

21. Para 8 needs no further comments as already discussed.

22. Para 9 needs no further comments as already discussed.

23. As regards the allegation made as para 10, I respectfully differ as the appellant trys to misguide & confuse the Hon'ble court by producing selectively from the judgement to its benefit contrary to the spirit and intent of the judgement of the Hon'ble court. In connection to the issue , I respectfully place my reliance on the decision of Hon'ble Supreme Court in the case of **CIT Vs Chittoor Electric Supply Corporation And**

Another.(212 ITR 404) where in it has been decided by the Hon'ble Supreme Court that,

"Where an assessment is set aside and a fresh assessment is directed to be made,the assessment must deemed to be still pending,which has to be completed.In such a case, therefore,the question of the amount becoming refundable does not arise.It arises only when fresh assessment is made and the amount properly chageable under the Act is ascertained."

24. I strongly deny the allegation made by the appellant as per para 11 as the appellant has misconceived the fact that there is no tax liabilities on the ground that certain assessments are set aside to AO/CIT(A) .In fact there exists a huge tax liabilities in his case as shown in **Exhibit-A .** The appellant who is a notified party conspired with the banks to cause biggest ever scam and deserves no sympathy whatsoever.

25. As regards to the content of para 12, I deny the allegation made by the appellant that the Department is unreasonable. At this juncture, it is relevant to point out that the notified parties are now seeking to project themselves as innocent persons and as though public authorities including the Income tax department which acts in public interest seeking to victimize the applicant herein. But however, a perusal of the **Janakiraman Committee report as well as the report of the Joint Parliamentary Committee would expose the entire scheme**

including the conduct and role of Shri Harshad Mehta and his family members and therefore the statement projecting the applicant herein that they have always been law abiding citizens appears to be self serving and without any basis. The present application itself is wholly misconceived and is liable to be dismissed in the light of various orders that have been passed by this Hon'ble Court from time to time and the judgment of the Hon'ble Supreme Court coupled with the provisions of the Special Courts (Torts) Act and the conduct of the applicant apart from larger public interest. The revenue will always do what it ought to do to protect the interest of revenue and would not allow the people like notified party to get away with the legitimate dues of the government.

26. Para 13 needs no comments as already discussed.

27. It is respectfully submitted that pursuant to the judgment of this Hon'ble Court on 2.7.1993 by Hon'ble Mr. Justice S. N. Variava, all the principles have been laid down in the lead judgment in Harshad Mehta Vs Custodian (1998) 5 SCC 1. The notified party applicant is seeking to selectively quote from the judgment and the judgment has to be read as a whole and it is reiterated that the revenue has been fully complying with the judgment of the Hon'ble Supreme Court under the principles laid down thereunder. There is no question of appointing any independent Chartered Accountant. The revenue justified the basis of the calculations. I would only reiterate that the revenue does

not have any grudge or prejudice against any individual and it is not only seeking to act as per law but also in public interest.

28. I state that after the judgment of Justice Variava, Supreme Court has deliberated upon the issues of income tax and other creditors in great detail in Harshad Mehta Vs. Custodian (1998) 5 SCC 1 and the revenue is adhering to the said judgment. I state that the notified party is reproducing the paragraphs selectively in order to twist the same in their (he and she) favour. The judgment has to be read in whole and to be contextually followed.

29. I state that there is no relevance in relying on the books of account made by the assessee as alleged in para 12. It is the assessing officer who does the assessment in any case. The AO could not have waited for years to see the books of accounts in view of the provision u/s. 153 of the Income Tax Act, 1961 which stipulates limitation for completion of assessment. There is no use of preparing these books of accounts for the purpose of assessment now. I submit that under the income tax act it is the assessing officer who is competent to determine real correct income. There is no subsistence in the contention of the notified person/entity that the income reflected in his/her books of accounts prepared after the lapse of so many years reflects real and true income. I submit that the books of accounts so prepared now cannot be the books of accounts for the purpose of determining any income as per the provisions of IT Act.

30. I respectfully submit that the applicant is trying to mislead this Hon'ble Court by raising the already settled issues with regard to the merits of the Assessment orders. The Hon'ble Apex Court in the case of **ACIT Vs. A.K. Menon and Others, 215 ITR 364 (SC)** has held that (on page No. 368)

> *"The Special Court has no jurisdiction to sit in appeal over the assessment of the Tax liability of a notified person by the authority or Tribunal or Court authorized to perform that function by the Statute under which the tax is levied. The Special Court has, therefore, no jurisdiction to determine whether or not any assessment of the tax liability of a notified person by the appropriate authority is bonafide for reasonable or justified or enforceable."*

The Hon'ble Supreme Court in the case of Harshad **Shantilal Mehta Vs. Custodian and others (1998) 5 SCC 1** agreed to the findings of the above said decision. In view of the above, the present application of the applicant deserves to be rejected.

Solemnly affirmed at Mumbai.

On this 21st day of August, 2006

(BENI CHATTERJI)

Advocate for the Respondent

Before me

21/8/06

VERIFICATION

I, Pitambar Das, Deputy Commissioner of Income Tax), Central circle-23, Mumbai do solemnly declare and state that the statements made in paras of the above application are based on information available from the records of the case and I believe the same to be true and para are based on legal advise and I believe the same to be true.

Solemnly declared at Mumbai)
this 21st day of Aug , 2006)

Deponent

(BENI CHATTERJI)
Advocate for the Applicant

Before me,

21/8/06

ASSOCIATE,
Special Court, Mumbai
Office of the Special Court,
Bombay.

21/8/06

DETAILS OF DEMAND AS ON 1.8.2006 INVOLVED IN CASES WHERE ASSESSMENT ORDERS ARE SET ASIDE TO AO.

2. PRATIMA H. MEHTA

A.Y	I.T.	INTEREST	PENALTY	TOTAL	Remarks
1991-92	29642698	148969380	0	178612078	Restored to AO vide order No. 4590/M/03 dated
1992-93	**0**	**799096929**	**0**	**799096929**	Restored to AO vide order No. 4117/M/03 dated 23.2.05
	29642698	**948066309**	**0**	**977709007**	

True copy

(Dy. CIT, CC-23)

DETAILS OF OUTSTANDING DEMAND AS ON 1.8.2006 WHERE THE ASSESSMENT ORDERS ARE NOT SET ASIDE.

21/8

4. PRATIMA H. MEHTA

A.Y	TAX	INTEREST	PENALTY	TOTAL	Remarks
1988-89	0	6087	16788	22875	No appeal
1989-90	0	127989	0	127989	
1990-91	0	156416	329412	485828	
1993-94	**0**	**56111987**	**0**	**56111987**	Rectification application filed before CIT(A) by Department.
1994-95	3573009	16716421	0	20289430	Pending with CIT(A)
1995-96	2182528	15294572	0	17477100	
1996-97	0	11512864	7470029	18982893	Restore to CIT(A) vide order No.ITA 6108/M/02/dtd.23.12.05
1997-98	0	8600486	7118382	15718868	Restore to CIT(A)vide order No.ITA 6109/M/02 dtd. 23.12.05
1998-99	2195336	7178722	0	9374058	Pending with CIT(A)
1999-2000	2357386	3745284	0	6102670	Pending with CIT(A)
2000-01	1672462	3474198	0	5146660	Pending with CIT(A)
2001-02	2682189	3360311	0	6042500	Pending with CIT(A)
2002-03	9358766	5499420	0	14858186	Pending with CIT(A)
2003-04	46323708	24655529	0	70979237	
2004-05	3269730	1386729	0	4656459	
TOTAL	**73615114**	**157827015**	**14934611**	**246376740**	

True Copy
(Dy. CIT, CC-23)

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATED TO TRANSACTION IN SECURITIES) ACT, 1992 AT BOMBAY

MISC. APPLICATION NO. 154 OF 2006

IN

MISCELLANEOUS PETITION NO. 41 OF 1999.

Smt. PRATIMA MEHTA
Residing at Madhuli,
Dr. A.B.Road,
Worli,
Mumbai - 400 018.

Vs.

The Dy. Commissioner of Income-Tax,
Central Circle-23

AFFIDAVIT OF PITAMBAR DAS,
DY.C.I.T., CC-23

Dated this 21st day of August, 2006

(BENI CHATTERJI)
Advocate for the Respondent