

“Mehtas filed identical Applications in MP 41 of 1999 seeking the relief of a direction on the I.T. department to refund the amounts with interest since the original assessment orders were set aside. Mehtas sought a declaration that monies released to the I.T. department till the demands become final and binding together with accrued interest thereon ought to be included in their assets while drawing their assets and liabilities picture.”

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING

TO

TRANSACTIONS IN SECURITIES) ACT, 1992 AT MUMBAI

MISC.APPLICATION NO. 154 OF 2006

IN

MISC PETITION NO.41 OF 1999

Pratima H Mehta)
Indian Inhabitant, Residing at 32)
Madhuli, Dr Annie Beasant Road,)
Worli, Mumbai 400 018.) .. Applicant

V/s

1. **The Asst Commissioner of Income Tax,**)
Central Circle 23,)
Room No.464, 4th Floor,)
Ayakar 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

Humble Application of the Applicant
above named

MOST RESPECTFULLY SHEWETH

1. The applicant is a notified person notified under the provisions of Trial of Offences Relating to Transactions in Securities Act, 1992. The Respondent No.1 is the Asst. Commissioner of Income Tax and in-charge of the assessments of the applicant. The Respondent No.1 has also been filing applications before this Hon'ble Court for release of monies as well as has been filing his affidavits in the Main Petition No.41 of 1999.

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Therefore, the Respondent No.1 is a relevant and proper party. The Respondent No.2 is the Custodian appointed under the provisions of the said Act to take care of the attached assets of the applicant.

2. The applicant has made the present application to secure relief from this Hon'ble Court of recalling the monies placed with the Respondent No.1 as and by way of deposit under various orders of this Hon'ble Court and the Hon'ble Supreme Court of India.
3. The present application has been occasioned as Respondent No.2 has filed a petition before this Hon'ble Court being Misc. Petition No.41 of 1999 where under he has sought the relief of selling the only residential premises of the applicant. This application has been supported by the Respondent No.1. The applicant states that Respondent No.2 as and by way of justification has submitted to this Hon'ble Court that the residential premises of the applicant are required to be sold on the ground that the applicants liabilities are greater than the assets and that the proceeds from the sale of the house is required to meet the liabilities towards creditors which also includes Respondent No.1.
4. The applicant states that from time to time, the liquid balances of the applicant have been placed as and by way of interest bearing deposits with the Respondent No.1 under the orders of this Hon'ble Court and in one instance under the order of the Hon'ble Supreme Court of India. The applicant states that an amount of Rs.24,33,06,006/- stands so deposited with the Respondent No.1. The applicant is pleased to give complete particulars of the monies disbursed to the Respondent No.1 under various orders and the rate of interest stipulated thereon at **Exhibit-A**, which is enclosed herewith. The applicant craves leave to refer to and rely upon the above cited orders governing the terms of placement. The applicant states that as of today, these monies are recallable by this Hon'ble Court together with interest thereon and the applicant is pleased to furnish the computation of claim against the Respondent No.1 on account of such deposits computed as on 31.05.2006 at **Exhibit-B**. This claim amount of Rs.36,88,50,833/- would stand enhanced by further accrual of interest until the date when these deposits are actually repaid.
5. The applicant is aggrieved that she is not being given credit for the above amounts placed with the Respondent No.1 as well as for the interest amount due on it in computation of assets of the applicant. The contentions of the applicant are being disputed by the Respondent No.1

who has appropriated the monies towards the tax dues and the Respondent No.2 has also supported this view of the Respondent No.1.

- 6. The applicant states that since then however there has been change of circumstance in as much as the assessment order for the priority period of A.Y 1992-93 and A.Y 1993-94 have been set aside by the Income Tax Appellate Tribunal. The applicant states that for the A.Y 1993-94, the order has been set aside to C.I.T (Appeals) who in turn have remanded the matter to the Assessing Officer. The applicant submits that even in case where the assessment order is set aside to C.I.T (Appeals), the demand is not enforceable. The applicant is pleased to enclose the orders of ITAT at Exhibit-C colly. The applicant states that therefore as at present, no liabilities exist on account of tax for the above year. The applicant states that the Respondent No1. has been directed by the Income Tax Appellate Tribunal to draw fresh assessment order after giving full opportunity to the applicant and allowing the applicant to place her books of accounts with other supporting evidences and detailed submissions in that regard. The Applicant states that earlier assessment order has been set aside on the ground that it is in violation of principles of natural justice.

- 7. The applicant states the Respondent No.1 had made grossly high pitched assessments against the applicant which had no legal or factual basis nor it was supported by any cogent reason or evidence and thereby foisted upon the applicant untenable liabilities. The applicant states that at that time when the assessment orders were made, the books of accounts of the applicant were not ready and the applicant was facing insurmountable problems. However, under the orders of this Hon'ble Court the books of accounts have since been drawn and have also been examined by the three firms of Chartered Accountants appointed by this Hon'ble Court. The applicant states that the difference between the taxable income according to the applicant and according to the Respondent No.1 under the erstwhile orders was enormous which is explained by the applicant in the affidavits filed in the main proceedings

- 8. Thus according to the applicant, under the new assessment order, the liability of the applicant would not arise. The applicant states that as against this, Respondent No.1 has appropriated monies disbursed as deposits with them towards the likely tax liabilities which do not exist and are therefore advocating retaining the monies under Section 240 of the Income Tax Act. The applicant states that the deposit amount of Rs.24,33,06,006/- and the interest amount on the same of

Rs.12,55,44,827/- should form a part of her asset base. The applicant states that the liabilities for the Applicant for A.Y 1992-93 should be treated as Nil and the above deposit and interest should be taken as her receivables. The applicant states that by giving a proper treatment the asset and liability of the applicant would stand so altered that the applicant will become surplus in the assets. The applicant states that the difference between the applicant's computation and Respondent's computation of above incorrect demand has been explained in her affidavit dated 07.04.2006 filed in Misc. Petition No.41 of 1999. The applicant craves leave to refer to and rely upon the same as and when produced. The applicant is thus getting deprived of treating the deposit and the interest accrued thereon as part of her asset base and the same is completely distorting the applicant's asset and liability picture as being presented before this Hon'ble Court by the Respondents.

9. The applicant is therefore moving the present application to recall these deposits together with interest thereon so that the monies are deposited in the applicant's bank account or kept as fixed deposits which would then become a part of the asset base of the applicant. The applicant has been constrained to file this application of recalling the monies only as appropriate credit is not being given to the applicant as explained hereto before.
10. The applicant's view is fully supported by what has been held by the Hon'ble Supreme Court of India in their Judgment dated 03.01.006 in Civil Appeal No.667-671 of 2004 and the relevant portion of the Judgment reads as under :-

Quote

" But in this case, the orders of assessment have been set aside. If the orders of assessment have been set aside, the liabilities of the Appellants have to be worked out on the basis of the new orders of assessment. So long such orders of assessment are not passed by the competent assessing authorities, it cannot be said that the Appellants are liable to pay a huge amount by way of income tax dues on the basis of such orders of assessment which have since been set aside."

Unquote

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11. The applicant is filing the present application separately in order to secure the relief which could not have been secured in the Misc. Petition No.41 of 1999 though the relief obtained through this application will have substantial bearing on the issues involved in the main petition. The applicant states that if the relief sought for in the present application is not granted, then gross injustice would be caused to the applicant in as much as her only residential premises would come to get sold without existence of any liabilities against the applicant and only due to credit not being given to her of her assets.
 12. The applicant states that even at the time when these monies were being disbursed to the revenue, the applicant had strongly opposed the same on the grounds that the demands made by Respondent No.1 were patently illegal and that any release of monies would create a vested interest in their favour such that after receiving the monies, Respondent No.1 would oppose tooth and nail every legitimate relief that the applicant may be entitled to in law. The applicant had also opposed on the ground that there would be no safety of the funds. The applicant's opposition was over ruled on the ground that the Secretary, Govt. of India, Ministry of Finance is giving an undertaking to bring back the monies as and when it is called upon. The applicant is already facing protracted litigation with the Respondent No.1 who is presently opposing acceptance of books of account and unreasonably contesting each and every legitimate relief that the applicant is entitled to.
 13. The applicant states that the applicant require the monies to discharge her liabilities towards other creditors being notified persons in her family. The applicant prays that the present application may be disposed of before the hearing is undertaken in the main matter as the outcome in the present application will have substantial bearing in the main matter. The applicant prays to this Hon'ble Court that in the interest of justice, the present application may be granted by this Hon'ble Court. The applicant at length has pleaded on the consequences that will befall on the applicant if her only residential premises are sold out in the pleading made in the main matter. The applicant craves leave of this Hon'ble Court to refer to and rely upon the proceedings in Misc. Petition No.41 of 1999 and more particularly her affidavits in the matter.
 14. In the circumstances, the applicant humbly prays to this Hon'ble Court that :-

- a) The Respondent No.1 may be directed to return the monies disbursed as deposits to it as described in Exhibit "A" to the application together with interest upto the date of repayment.
- b) That this Hon'ble Court may declare that the monies lying with the revenue are interest bearing deposits recallable at any time together with interest at the sole discretion of this Hon'ble Court and that these deposits together with accrued interest thereon may be included in the assets of the applicant.
- c) That this Hon'ble Court may be pleased to decide the present application before hearing Misc. Petition No.41 of 1999 in view of the bearing of the present application on the asset and liability computation of the applicant.
- d) Any other just and equitable orders are passed in the interest of justice.

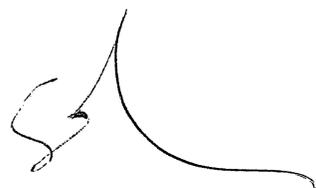
And for this act of kindness, the applicant shall duty bound ever pray.

Solemnly affirmed at Mumbai

Dated this 20th day of July 2006

Pratima H. Mehta

Before me



(P G Sabnis)
Adv.for Applicant

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VERIFICATION

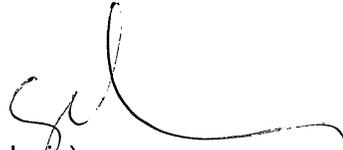
I Pratima Hitesh Mehta, Adult, Indian Inhabitant, residing at 32, Madhuli, Dr. Annie Besant Road, Worli, Mumbai, 400 018 do hereby solemnly declare that what is stated in the foregoing Application is true to my own knowledge and belief.

Solemnly declared at Mumbai

Dated this 20th day of July 2006

Pratima H. Mehta

Before me



(P G Sabnis)
Adv.for Applicant