"The CIT(A) passed an order in case of late Shri Harshad Mehta for AY 1992-93 upholding the additions made in the assessment order and further enhancing the income by Rs.454.82 Crores by relying upon the Report of Chartered Accountants, M/s. Vyas & Vyas."

HARSHAD S. MEHTA

A.Y.1992-93

CIT(A) ORDER DT.24.03.2010

I. T. N. S. 55

In the Office of the Commissioner of Income Tax (Appeals)-40, Mumbai

Date of Order :- 24 / 03 / 2010
Appeal No :- CIT(A)C-V / ACIT CC-23 / 59 / 95 - 96

1. Date of Institution of appeal	26 / 04 / 1995
2. Name & Designation of the officer who made the assessment order	Shri. Sunil Gupta ACIT, Central Circle - 23, Mumbai
3. Assessment Year	1992 - 93
4. Name of Appellant	Late Shri. Harshad S. Mehta Through L/H Smt. Jyoti H. Mehta
5. Income assessed	Rs. 2014,04,65,298/-
6. Tax/Penalty/Fine/Interest demanded	Rs. 2585,06,42,322/-
7. Section under which the order appealed against was made.	U/s. 144 of the I.T. Act, 1961
8. Date of hearing :	As per order sheet
9. Present for the Appellant :	Mr. Vijay Mehta, CA, Mr. K.A. Shetty, CA Mr. Dharmesh Shah, CA
10. Present for the Department :	Additional C.I.T. Central Range-7,Mumbai DCIT,Central Circle 23, Mumbai

APPELLATE ORDER AND GROUNDS OF DECISION

This appeal arises from the assessment order dated 27.3.1995 passed u/s 144 of the IT Act, 1961(ITA). The case was represented by Mr. Vijay Mehta, CA, Mr. K.A.Shetty, CA and Mr. Dharmesh Shah, CA on behalf of the appellant. The Department was represented by the Additional CIT, Central Range-7, Mumbai and the DCIT, Central Circle - 23, Mumbai.

2. **Background**

In this case, the return of income was not filed by the appellant within the due date 31.10.92. Consequently, notice u/s 142(1) was issued on 4.1.93 calling upon the appellant to file the return of income on or before 18.1.93. The return of income was filed on 29.10.93 declaring total income of Rs. 6,84,08,000/-. The return was found to be defective as it was not accompanied by bifurcation of income under different heads, report of Auditors u/s 44AB of the ITA, profit & loss account and balance sheet and

personal account of the proprietor for his proprietary business.. The appellant was informed of the defects vide Assessing Officer's letter dt. 29.10.93 requiring him to remove the defects within 15 days. In response, although the reply was given vide letter dt. 9.11.93, the defects were not removed. In these circumstances, vide Assessing Officer's letter dt. 16.11.93, the appellant was informed that the return filed by him has been treated as invalid return within the meaning of section 139(9) of the ITA. No return was filed subsequently.

2.1 A search and seizure action was carried out at the premises of the appellant and its group on 27.9.90. In course of the search, valuables worth Rs. 4.79 crores and a number of documents were seized. The valuables were retained in the order u/s 132(5) of the ITA. In course of the search, the appellant disclosed an additional income of Rs. 4.25 crores for various assessment years upto assessment year 1991-92. A second search and seizure operation was carried out on the appellant and his group on 28.2.92. In course of this search also, valuables worth crores of rupees and a large number of documents were seized. Like in the case of the first search and seizure operation, in the case of this operation also, the seized valuables were retained as per order u/s 132(5) of the ITA. The appellant made a disclosure of Rs. 100 crores for the assessment years 1991-92 and 1992-93 u/s 132(4) of the ITA in course of the operation. There was also a search operation at the various premises of the appellant and his group by the Central Bureau of Investigation (CBI) on 4.6.92. Subsequently, the appellant was notified under the Special Courts (TORTS) Act, 1992 on 8.6.92.

2.2 The assessment order dt. 27.3.1995 was passed u/s 144 of the ITA. The total income of the appellant was determined at Rs. 2014,04,65,298/-. Following this, on appeal by the assessee, the appeal order was passed by my the then predecessor vide his order dt. 28.2.2003 in appeal No. CIT(A)C-V/ACCC 23/59/95-96. Subsequently, the Hon'ble ITAT 'K' Bench, Mumbai vide its order dt. 11.7.2008 had the occasion to set aside this order. Following specific directions were given by the Hon'ble ITAT in para 16 of the order while remanding the appeal to the CIT(A) :

Pg. 610 of Pg. 2

" *Having regard to the economic ramifactions of the scam of 1993 as also keeping in view the interest of the Revenue and of the banking system of the country, we direct, as a special case, the learned CIT(A) to take up disposal of the appeal of the*

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

2.3 Pursuant to the order of the Hon'ble ITAT, appeal proceedings were initiated. Submissions and request for copies of documents relied upon were made on behalf of the appellant, which were forwarded to the Assessing Officer vide this office letter dt. 18.9.2008 for her report and comments after necessary verification / enquiry / investigation. In response, the report was forwarded by Addl. CIT Central Range 7, Mumbai vide his letter dt. 30.1.2009. Since the time available for disposal of the appeal in terms of the order dt. 11.7.2008 of the Hon'ble ITAT was inadequate after the receipt of the remand report, a Miscellaneous Application was filed before the Hon'ble ITAT 'K' Bench, Mumbai by me requesting the Hon'ble ITAT to extend the stipulated time period of 6 months to at least 30.4.2009. Meanwhile, during the pendency of the Miscellaneous Application, vide his letter dt. 8.5.2009, the DCIT(HQ)Judicial, Central-II, Mumbai had the occasion to forward the Hon'ble Supreme Court's order dt. 24.4.2009 in Interlocutory Application Nos. 9-11 and 12-14 of 2009 in Civil Appeal Nos. 7269-7271 of 2008 in the case DCIT V/s. State Bank of India and Others. In this order, the Hon'ble Supreme Court had the occasion to pass the following order:

" Interlocutory Applications seeking extension of time are partly allowed, in terms of signed order placed on the file, and the concerned Commissioner of Income Tax is directed to dispose of the appeals pending before him within a period of four months from this date, without granting unnecessary adjournment to either of the parties. "

Subsequent to this, vide another order dated 25.8.2005 in Civil Appeal No. 2672 of 2009, the Hon'ble Supreme Court directed me to dispose of the appeal within 6 months from August 25,2009. Subsequently,vide order dated 4.1.2010, the Hon'ble Supreme Court extended the time to dispose of the appeals by another month.

2.4 The present appeal order is being passed in the foregoing background. Before I go into the grounds of appeal, I would like to deal with two very important issues which have a significant bearing in the case. These are, i) inspection and supply of copies of documents and seized materials and ii) the books of account submitted by the appellant during the appellate proceedings. These key issues emerge from the order of the Hon'ble ITAT. I would first deal with these issues.

3. **Inspection and supply of copies of documents and seized materials**

This has been a key issue right from the beginning of the statutory proceedings in the case. The appellant had raised this issue from time to time during the assessment proceedings. The issue was also raised by him during the appellate proceedings before my the then predecessor. Subsequently, the matter was also raised by the appellant before the Hon'ble ITAT. In this light, as reproduced in para 2.2. above, the Hon'ble ITAT, while remanding the matter back to the CIT(A) had the occasion to direct the Revenue to comply with the appellant's request for supply of copies of documents on which the Assessing Officer has relied upon while making the assessment. In terms of these directions, vide my letter dt. 18.9.2008, the appellant's submission dt. 16.9.2008 along with his request for supply of copies of the requisite documents was forwarded to the Assessing Officer. Considering the magnitude of the case and the volume of records and data involved, the process of inspection and supply of the requisite documents went on for a considerable length of time during which both the appellant and the Assessing Officer had the occasion to engage in mutual disputes on the quality and extent of the process. Several letters were submitted by both the parties to emphasize and underline their respective positions. In order to comprehensively evaluate the positions of two

parties in the context of these letters and the submissions made before me on the issue during the appellate proceedings, I asked the appellant to give his consolidated response on the quality and extent of the process of the inspection and supply of documents. The Assessing Officer was asked to respond to this. I now give my findings on the issue in line with the foregoing facts and circumstances.

3.1 Vide his letter dt. 31.7.2009, the appellant ,inter alia, brought to my notice the following :

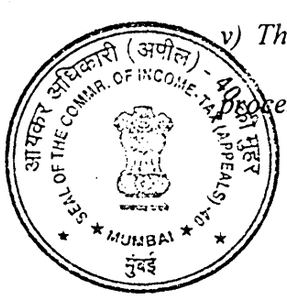
i)The assessee states that copies of some of the documents have been received and for other documents, the Assessee had been promised that in a short period of time, these documents would be made available. The assessee's representative has been now informed on 17.07.2009 that no further documents will be supplied. Earlier, the Assessee was called upon to point out and give a list of documents required by the Assessee from amongst the documents for which inspection has been given and accordingly the Assessee has already given a list of documents under cover of his letter dated 23.05.2009. Unfortunately after initially consenting to give these documents, for reasons best known to the A.O., some of the documents are now with-held and copies not made available.

ii)The assessee states that the department has granted inspection of large number of documents but failed to show as to which documents from amongst them has been used against the Assessee while drawing the assessment order and in what manner, the same has been used.

iii) The assessee states that even for availing this right of cross examination, it would be imperative that the Assessee is informed of which material has been used so that the Assessee confines the cross examination only to those persons or banks whose material has actually came to be used against the assessee.

iv)The assessee humbly submits that mere inspection or furnishing copies of all kinds of documents should not be construed as granting of an opportunity to the Assessee unless the material used against the Assessee is pointed out very clearly.

v) The assessee submits that a period of ten months has elapsed and yet this process of inspection is not over.



vi) The assessee's apprehension will be appreciated by your Honour as for the first time ever, after passing of the assessment order on 27.03.1995, some documents are now being shown to the Assessee only after your Honour directed the AO. The Assessee states that no make believe opportunity should be given to the assessee but a real and purposeful opportunity may be given since the proceedings are time bound.

vi) The assessee states that even her requests for making available to her the itemized details of each and every consolidated figure arrived at by the A.O. and shown in the assessment order in form of various enclosures have yet not been met despite passage of a considerable period of time.

3.2 In response to the appellant's submission, the Assessing Officer gave his version in the matter vide his letter dt. 10.8.2009. In his letter he gave the following details of the inspection and supply of copies :-

i) Inspection of seized material as well as material gathered from external agencies was granted as and when required by him on 27/01/2009, 30/01/2009, 25/02/2009, 03/03/2009, 04/03/2009, 05/03/2009, 12/03/2009, 17/03/2009, 04/05/2009, 05/05/2009, 06/05/2009, 07/05/2009, 11/05/2009, 12/05/2009.

ii) The list of documents inspected by the appellant has already been given to him. Copies of order sheet notings containing the details of the inspection running into 33 pages has also been submitted.

iii) The appellant was provided the zerox copies of the documents as identified by him on 12.6.2009, 15.6.2009, 16.6.2009, 22.6.2009. The chart containing the xerox copies has also been submitted to the appellant and the undersigned.

iv) In addition to the above, copies of the following documents were also handed over to the appellant on 30.6.2009 and 7.7.2009 although he had not specifically asked for the same :

आयकर अधिकारी (अपील) - 40 की मुहर SEAL OF THE COMM. OF INCOME-TAX (APPEALS) - 40 MUMBAI मुंबई

i) HSM share plastic folder with details of share transaction of ASM & HSM. (P)

ii) List of Benami share holders. Annx – 'C'. prepared on 01/10/1994 (b) List of names Sl. No. – 1 to 487.

iii) Duplicate statement of HSM.

iv) Statement of HSM, NHB, SBI.

v) HSM Money market ANZ grindleys Bank.

vi) Data of BOI (File No. 338)

vii) Details from BSE received from M R Mayya.

viii) HSM Miscl. File – reference received from BSE.

ix) Can Bank Mutual Fund. (File No. 294).

x) Journal 6(viii) (a) R. No. 1206 Vol 1 page 84. A/c. 91-92 HSM.

xi) ASM, BSE 1-2 statement.

xii) RBI Bank (File No. 272).

xiii) Deutsche Bank. Inspected copies as required (File No. 186).

xiv) Canara Bank. (File No. 114).

xv) ANZ Grindlays (File No. 143).

v. In the following items, Xerox copies of documents were prepared nd kept ready but the assessee refused to receive.

1. *HSM – Cash withdrawal Basic Documents.*
2. *Harshad S. Mehta – Saving A/c. No. 752300*
3. *BSE info tainted shares.*

vi. The total Xerox copies of the above documents run approximately 18 thousand pages. As submitted in earlier dated submissions that the Xeroxing of the bigger sheets took long time because each and every sheet had to be scaled down in size on the machine and then the Xerox was taken. The bigger sheets are the major part of the copies provided to the assessee.

vii. From the above it is clear that the assessee was provided almost all the documents/records containing combined data again for both the assessment years i.e. 1992-93 & 1993-94. First time it was given during the assessment proceedings.

JHM

CERTIFIED TRUE COPY

viii. In addition to the above, the assessee was also provided the following documents / details:

i. a)Deal File (Part I) – From 01/04/1991 to 27/02/1992 (total pages 656)

b)Deal File (Part II) – From 28/02/1992 to 31/03/1992 (total pages 28)

c) Deal File of A.Y. 1993-94 (total pages 16)

ii. Security-wise break-up of Deal Files of A.Y. 1992-93 & 1993-94

iii. Software of Deal File

ix. Demonstration was given on 31/07/2009 by the undersigned explaining the Deal File. A write up was also submitted on that day.

x. Break-up of share market transactions covering 2265 transactions of different shares as mentioned in different annexures to the assessment orders was given.

xi. Break-up of sale transactions forming part of Annexue S-3 was given.

In the backdrop of the above details, it was pointed out that the data of Deal File was copied from the computer of the appellant seized during the search and returned to him within 3 days of the search. It was further pointed out that appellant's contention that itemized break-up of the details has not been given is incorrect. In this context, it was pointed out that the itemized details finding place in Annexure M-1and M-2,S-1,S-2 , S-5 were submitted for the assessment years 1992-93 and 1993-94 as applicable. Further, attention was also drawn to the fact that the basis of these itemwise details also have been provided. Referring to the appellant's complaint that some documents and their copies were not provided, it was pointed out that this was so because these documents did not have any relevance in the assessment proceedings under consideration. Regarding the appellant's objections on not being given opportunity to cross examine Mr. B. Balakrishnan, DGM, SBI and Mr. M.K.Rakshit, DGM, NHB, attention was drawn to the fact that the former has passed away while the latter has retired 15 years back. It was also emphasized that the statements are in the context of suit No. 63 and now, the appellant has himself challenged the decree against the suit as a result, the cross examination has no relevance. Point was also made that the method of processing and

working of money market transactions has already been explained to the appellant vide submissions dated 17.7.2009. Referring to the shortcomings pointed out by the appellant on the Deal File given to him, it was pointed out that the print-out of the Deal File given contains all the original data which was stored in the computer seized during the search and that no change was made in the original data. The appellant's objection that he was not given opportunity to explain the source of the investments in the securities, it was argued that the Assessing Officer had given sufficient opportunity to explain the source. It was pointed out that during the earlier appellate proceedings, the appellant did not explain the source even before the CIT(A) who had given specific queries on the individual items.

3.3 The appellant submitted rejoinder dated 17.8.2009 to the Assessing Officer's comments made by his letter dated 10.8.2009. After acknowledging receipt of items listed 1 to 15 in the Assessing Officer's letter dated 10.8.2009, the appellant has recorded some more objections in this letter. In essence, it was pointed out that the Assessing Officer has not discharged his obligation of pointing out the materials used by him along with the manner in which they have been used. It was also pointed out that during the course of assessment proceedings also no material was offered. With regard to the Deal File, it was mentioned that the appellant does not have copy of the Deal File and as a result, is not in a position to verify and confirm that the Deal File handed over by the Assessing Officer is the same Deal File which was there in the appellant's computer. It was further mentioned that the demonstration given on 31.7.2009 was never asked for and the same was voluntarily given by the Assessing Officer without any prior notice. It was also pointed out that the Chartered Accountants representing the appellant clarified that they are not experts and that a few thousand transactions can never be examined in an online demonstration. Clued into this, it was argued that the demonstration given by the Assessing Officer was only with a view to create some record that the appellant is being given every opportunity. On the issue of returning of the seized computer data within a period of three days, it was mentioned that all the records of the appellant are with the Custodian. A list of documents was also submitted where these documents are not given despite appellant's specific request. Referring to the Annexure M-2, it was pointed out that securitywise, datewise, partywise break-up were not given. On the

cross-examination of the executives of SBI and NHB, it was mentioned that the disclosure about their current status was made only at the fag end of the proceedings. It was also argued that cross examination of any person competent to depose on behalf of any of these two organizations may be given. The Assessing Officer's observation that the appellant has adopted delaying tactics was also contested. Reference was made to the numerous instances of errors pointed out in the Annexures on Money Market oversold position to argue that the position worked out is grossly erroneous. It was also pointed out that the hard copy print out was parted with by the Assessing Officer only after considerable resistance and due to direction given by me. Further, it was also contended that the data given is jumbled up and on this premise, it was argued that the data has been so given to make the task of the appellant onerous. Subsequently, in course of the submission on the individual addition also some of these points made were reiterated.

3.4 I have considered the above rival submissions. As I see, right from the stage of the initiation of the assessment proceedings through to the earlier appellate proceedings and the current proceedings before me, the issue of inspection and supply of documents has occupied the centrestage in the dispute between the two parties. Looking into the process and developments on this issue through the assessment proceedings, the earlier appeal proceedings and the present proceedings before me, I fail to find any substance in the various objections the appellant harbours. I come to this finding clued into the answers to the following questions :

i) *What is the quality and extent of inspection and supply of documents during the assessment proceedings, the earlier appellate proceedings and the present proceedings before me ?*

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

As I find, answers to these questions make it very clear that the quality and extent of inspection has been adequate and satisfactory and the Assessing Officer has been substantially responsive in making available to the appellant the necessary information and copies of documents and most significantly, the process has fully conformed to the principles of natural justice. I will now take these questions one by one.

i) What is the quality and extent of inspection and supply of documents during the assessment proceedings, the earlier appellate proceedings and the present proceedings before me ?

Looking into this aspect, I find that right from the assessment proceedings till the present appeal, relevant documents, details, workings and explanations have been consistently made available to the appellant from time to time. As I see, during the assessment proceedings, as mentioned in para 3.3 of the order under the caption **'Inspection of Seized Material'** the appellant was given inspection of the relevant documents on several dates starting from 18.5.93 to 13.8.93 i.e. almost through a period of 3 months. I also find that the appellant was allowed to take photocopies of all the seized materials as required by him on 30.1.92 for which, as mentioned by the Assessing Officer, the acknowledgement is on record. The computer of the appellant was also released within 3 days of the search. Besides, from the Assessing Officer's discussion on the different additions, I note that the appellant was made fully aware of the documents, details and the context based on which the additions were called for. As I see, this was ensured by the Assessing Officer through detailed letters, analysis of the entries in different documents and intimation of the likely implication of the contents in the letters in the determination of the appellant's income. In face of this extensive and elaborate access to the relevant documents and opportunity of being heard given to the appellant, his grievance has no ground. Before me, the appellant has repeatedly stated that the Assessing Officer has not failed to show as to which documents among those inspected have been used against the appellant while drawing the assessment order. As I see, the appellant has not backed up this with anything specific on record. As against this, I note, the Assessing Officer has given full details of the inspection and other opportunities given in his assessment order, which has not been specifically controverted by the appellant. Instead, only general allegations have been made. Regarding the computer seized and returned within three days, the appellant has mentioned that it was seized by the Custodian. This is misleading in that the computer was returned only after three days and the appellant had access to the computer between the date of the release and the date of the notification dated 8.6.92 when he was declared a notified party. The foregoing facts and circumstances make it abundantly clear that at the stage of the

assessment proceedings, the appellant displayed clear reluctance to make use of the documents, details, workings and opportunities consistently provided to him. Not only this, very significantly, I see that the same conduct continued during the earlier appeal proceedings. As may be seen from the order of my the then predecessor, during the course of the proceedings before him, the appellant was given several opportunities which he did not avail of. As may be noted, right through his order, my the then predecessor had repeatedly referred to evasive attitude adopted by the appellant in submission of details and explanation for the present assessment year under consideration and assessment year 1993-94.

3.4.1 Any way, much water has flown through since the assessment proceedings and the earlier appellate proceedings and presently before me, there was the direction of the Hon'ble ITAT and the inherent call of adherence to the principles of natural justice to provide maximum inspection and supply of documents to the appellant in the best possible manner. To this end, I find that the appellant should not have any grievance on this count. As may be noted, the appellant has been granted extensive inspection and supply of copies of documents during the present proceedings before me. In this respect, the Assessing Officer has submitted order sheet proceedings of inspection running into 33 pages which eloquently indicate that exhaustive inspection of the relevant documents has been granted. On the perusal of these proceedings, I find that the process started on 27.1.09 and continued till 7.7.09. From the proceedings, I also find that photocopies of many of the documents were also given. From the order sheet notings, I also find that the notings are very specific and the documents inspected have also been very specifically described and identified. I further note that as mentioned by the Assessing Officer, photocopies of documents running into 18000 pages have been given to the appellant. Apart from mentioning that instead of 18000 pages, 13137 pages have been given, the appellant has not been able to bring anything specific against the entries in the order sheet notings. Instead, the appellant has only made general submissions. Since the documents have been very specifically mentioned in the order sheet notings, there was nothing to prevent the appellant from backing his allegations with specific reference to these order sheet notings. In this respect, one of the main grievances of the appellant is that in the process of inspection, the Assessing Officer has failed to show as to which documents

amongst the documents inspected has been used against the appellant and the manner in which they have been used. I fail to find any material substance in this submission. As I see, the assessment order is very clear in how and on what basis the additions have been made. To this end, I find that the basis of the additions has been made clear through the different Annexures on the additions concerned. The basis of the information and the workings in the Annexures has also been substantiated through the furnishing of itemized break-up of the securities and the shares. I also note that photocopies of the documents on the basis of which these Annexures and itemized break-ups were prepared, have also been provided. Consequently, it should be obviously in the knowledge of the appellant how and in what manner the additions have been made. Further, during the appeal proceedings, several steps were taken to ensure maximum opportunity to the appellant not only to have inspection and copies of documents but also to understand the implication of documents and data used by the Assessing Officer. To illustrate, the appellant was asked to specify the documents he wanted to inspect and obtain copies of. The inspection and supply of copies of documents was organized with reference to these specific requisitions made by the appellant. Surely, making this specific requisitions would not have been possible if the appellant was not able to correlate these requisitions with the addition made. Further, from perusal of the 33 pages of the order sheet notings submitted by the Assessing Officer, I also note that the appellant was granted inspection / copies of almost all the relevant documents and materials on the additions, particularly the major additions on account of money market , share market and banking transactions. As I see, the appellant has not brought out anything specific before me to show that this was not done. In face of this, I find this submission of the appellant merely an attempt at nitpicking to somehow dilute the quality and extent of the inspection and supply of copies of documents. This tendency of the appellant further gets underlined in his hair-splitting that from amongst such a large number of documents stated to have been given, a few copies were not given. This also stands explained by the Assessing Officer in that as pointed out by the Assessing Officer, on occasions, the appellant did not take delivery of copies of certain documents. Very significantly, the Deal File was made available to the appellant in both hard copy and on pen drive. Besides, a demonstration of the process of reading the Deal File as recorded in the CD was also

given to explain to the Authorized Representatives of the appellant how the data was captured in the CD, how it was classified, how it was bunched and how the results were arrived at. The appellant has raised some objections on the Deal File and the demonstration given. I fail to understand how making available the Deal File and the demonstration given has aggrieved the appellant. The Deal File and the process by which it has been used has been explained by me in my discussions on the Deal File while dealing with the Money Market oversold position. I will not repeat them here and instead look at the issue from the point of view of principles of natural justice. Regarding the demonstration, I fail to see any reason how can one feel aggrieved by it. In fact, the demonstration was an attempt at giving the appellant an opportunity of being fully apprised of the process by which the data was stored and used by the Assessing Officer. The demonstration was also important for my understanding of the process. As may be noted, the demonstration was made in the most transparent manner and I had also the occasion to do random checking of the entries in the Deal File and in Annexure M-2. This was also explained to the appellant. I do not see, how this process can prejudice the appellant's case. In fact, the demonstration has made it possible for the appellant to understand the working of the Annexure M-2 and has facilitated the submissions made by him subsequently. The process of the demonstration has been discussed by me in detail in my discussion on the Deal File and from this, it may be noted that the demonstration was a simple and basic process and not rocket science that a person with ordinary intelligence will not follow. The process of the demonstration has also been articulated by the Assessing Officer in his note dated 31.7.2009. Taking all these into consideration, the appellant's submission that his Authorized Representatives were not experts or that thousands of transactions cannot be understood in an online demonstration is again escaping the substance. Further, I also note that print-outs of the money market transactions were also made available to the appellant. The print-outs supplied contained particulars on the types of securities, whether purchased or sold, the quantity, the value and other unique particulars which have been discussed in course of decision on addition on account of oversold securities. This was followed by supply of itemised break-up of the money market transactions. Further, itemized break-up of the share transactions was also given. This included particulars viz. name of the company, period, names of the

date? transactions clubed?

transacting parties and all other relevant particulars. The appellant has also raised the issue of cross examination of the executives of SBI and NHB. Looking into the fact that otherwise all the necessary details and facts were made available to the appellant, it was possible for the appellant to explain his position even without the cross examination. Moreover, as pointed out by the Assessing Officer, one of the executives passed away and the other had retired. As may be seen from the foregoing, during the present appellate proceedings, the appellant was granted comprehensive and exhaustive inspection and in this view of the matter, whatever gaps had remained during the assessment proceedings were adequately covered during the present appellate proceedings. In line with the foregoing, the objections of the appellant on the issue do not have any merit.

3.4.2 ***ii) What has been the historical responsiveness of the two parties to this process ?***

From perusal and observation of the proceedings regarding inspection and supply of copies of documents during the assessment proceedings and the present appellate proceedings, I note that the Assessing Officer had never hesitated to confront the appellant with the necessary documents and issues. This is very clear from the assessment order and the proceedings of inspection and supply of copies of documents during the present appellate proceedings. I have already discussed in preceding paragraphs in detail how and to what extent the Assessing Officer granted inspection of copies of documents during the two proceedings. I have also discussed this at relevant points in course of my discussion on the individual additions. As against this, as may be noted in my discussion in the preceding paragraph, during my discussion on the succeeding paragraphs on the books of account and in course of my discussion on individual additions, the appellant has been unresponsive to the opportunities given to him. The appellant displayed similar conduct in course of the appellate proceedings before my the then predecessor. In his order, my predecessor has discussed in detail how the appellant has been evasive in the matter during the appellate proceedings before him. During the present appellate proceedings also, from the many of the superficial objections discussed above, I note that the appellate has been on a denial mode so far as acknowledging of the adequacy and comprehensiveness of the process of granting of inspection and supply of copies of documents is concerned. As I see and as principles of

natural justice demand, a very challenging process of inspection and supply of copies of documents in a case of such a high magnitude as in the appellant's case, it is a two way process in which the party being granted inspection and copies of documents has to be ready to utilize the opportunities given to him to the maximum possible extent. As may be deducted from my discussion in the preceding paragraphs, I have found the appellant to be lacking in this. As I note, despite being granted inspection and copies of thousands of documents spread over a period of more than six months, the appellant has only to focus on minor and totally immaterial issues like not being computer experts or disputing the number of copies supplied at the cost of ignoring the substance that inspection and supply of copies of documents was granted in a mammoth proportion at his own request and of the documents requisitioned by him. The appellant has also showed dissatisfaction with the demonstration when actually it was organized to help him understand the requisite process. This response of the appellant only goes on to indicate that the appellant was trying to use the principles of natural justice not as a facilitator but as a tool to make the proceedings cumbersome and complex. The observations of Lord Denning in the decision R.V. Secretary of State (1973) 3 All ER 796 bears special mention here. In this decision, Lord Denning had the occasion to observe as under :

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

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

"(vi) We direct the Custodian to permit the appellants to have inspection of all the documents in his power or possession in the premises of the Special Court in the presence of an officer of the court. Such documents must be placed for inspection for one week continuously upon giving due notice therefore to the appellants jointly. As the appellants have been represented in all the proceedings

jointly, only one of them would be nominated by them to have the inspection thereof. The appellants shall be entitled to take the help of a Chartered or Cost Accountant and may make notes therefrom for their use in the pending proceeding. "

Referring to these directions, the Hon'ble Supreme Court has observed that the Custodian had already complied with these directions and allowed for the necessary inspection. The Hon'ble Supreme Court has further observed that the Hon'ble Special Court had noted that there were no complaints made before it that the said directions had not been complied with. This order of the Hon'ble Supreme Court would clearly reveal that the appellant had the benefit of inspection of the necessary documents with the Custodian. This would make it clear that either the appellant's submissions are misleading or that the opportunity was not availed of.

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

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

4. <u>Books of Account</u>

In terms of the directions of the Hon'ble ITAT, the books of account submitted by the appellant vide his letter dt. 16.9.2008 were forwarded to the Assessing Officer vide my letter dt. 18.9.2008. The books of account consisted of Volumes I, II and III. In response, the report of the Assessing Officer was submitted by her letter dt. 30.1.2009. In her report, at the outset, it was mentioned that in terms of the observation of the Hon'ble ITAT, the first issue to be decided is whether the report of the Auditors Vyas & Vyas appointed by the Special Court has any bearing on the assessment of the correct total income of the appellant for the assessment year 1992-93. In this perspective, in her report, the following discrepancies noted by the Auditors in the books of account and details maintained or provided by the appellant and his group concerns were reproduced :

8.2 M/s. HSM while recording the transactions in its books of account totally ignored those transactions with an intention to hide the correct picture of its state of

affairs. We were surprised to note the huge differences in the outstanding balances within its own group. This would clearly show beyond doubt his fraudulent intentions and it was a clear case of manipulation and misappropriation of the books of account of M/s. HSM.

8.3 It would therefore be reasonable and rational to conclude that the figure of liability towards banks, financial institutions and other parties shown in the balance sheet had to be ignored since it would be difficult to rely upon those figures which were at variance with those recorded by his clients / customers.

10.14 .....The fraudulent transactions were routed in such a manner and way that it was difficult to connect the chain of the transactions, therefore, there was no authenticity of this account and could not be relied upon. However, in no case the details of this account could be retrieved as full information of the transactions were not available.

10.2.5 .....From the above statement, it would be clear that books of M/s. HSM had not shown full amount, which has been accounted for by family members. There were huge differences in the account and books of HSM, which cannot be relied upon.

11.1 We scrutinized each head of Profit & Loss A/c and observed that no supporting evidence was available for expenses as well as receipts .....in the books of accounts also complete narrations were not available.

11.2 ..... Here it may be stated that all group transactions of HSM were not accounted for in the individual hands to which it pertained. Therefore, in our opinion, the figures drawn from the books of HSM were not reliable. Further, almost all PSU, Banks and Financial Institutions provided details of transactions with HSM. The scrutiny of those details revealed major variance in the transactions. HSM had not recorded those transactions in his books of accounts and therefore income / expenses on those transactions were also not recorded in Profit & Loss A/c. and therefore true results cannot be arrived at.

13.1 ..... We have scrutinized the books of accounts and also written letters to the concerned parties and concluded that whatever liabilities shown in the books are not supported by sufficient evidence."

And finally the report of the auditors concludes with the following comment.

*13.6 ..... **In our opinion books of accounts provided by HSM were not reliable and in the eye of law these deserved to be rejected."***

Attention was also invited to the following notes given by the Auditors in the process of preparing the statement of affairs of the appellant :

"1. .....The books of accounts prepared by HSM are manipulated and complete transactions are not recorded.

3. Net profit has been shown as per books of accounts which are not reliable.

5. Suspense account represents shortfall in the asset side of consolidated statement of affairs. Shortfall is due to huge debits in the name of banks and financial institutions under client control and client constituent account which are found fake on confirmation with these parties. After confirmation of accounts, it may only be concluded that these debits are nothing but unexplained investment."

4.1 Clued into the above, it was argued that the foregoing remarks of the Auditors appointed by the Special Court indicate that reliability of the accounts of the appellant is doubtful. Attention was also invited to the following observation made by the Hon'ble Special Court while deciding Miscellaneous Application No. 41 of 1993 :

".....It is clear to Court that the reason why estimate was not filed before the Income Tax Authorities or before this Court, is because the Respondents or any of them, do not want to commit anything on oath or disclose all their assets. The idea appears to be to stay quiet and let the Income Tax Authorities or CBI or the Custodian discover whatever they can. The idea appears to be to wait and see what is discovered and then not disclose anything else. This could not be permitted. The court sees no difficulty in proper accounts being taken or prepared and / or estimates being filed. This is purposely not being done....."

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

i)The printouts of the trial balance, capital account , profit & loss account, balance sheet, account ledger, part of bank book and journal book etc. are self-

certified and do not accompany any audit certificate. They bear the signature of Smt. Jyoti Mehta L/h of Late Shri Harshad Mehta.

ii)From the books of account, it is not clear on which date they were prepared. Whatever may be the date of writing of the books, it is clear that these were written much after the relevant financial year and most probably in the recent past. The decision of the Hon'ble Madhya Pradesh High Court in the case Ladha Traders Vs. CIT 140 Taxman 104 on the sanctity of the books of account bears special mention in this respect.

iii)The regular books of account were not maintained in the manner as it ought to have been maintained as prescribed u/s 44AA of the ITA and IT Rules, 1962.

iv)Even the ordinary audit has not been done on these books of account.

v)The books of account do not accompany any supporting documentary evidence. The transactions in the book lack the support of any primary evidence which is the prime condition of testing the sanctity of any books of account.

vi)The books are not complete set of accounting books. No complete cash book has been submitted and the bank book is also not complete as all the bank accounts have not been taken into account.

vii)A number of entries in the books submitted appear to be afterthought. For example, drawing account shows uniform withdrawal of Rs. 10,000/- for personal expenses at the end of every month, which is not possible in real life as there is no such rigidly fixed pattern.

viii)Majority of the entries in the books of account, specially those pertaining to trading and investment are in the form of journal entries in the name of persons closely related to the appellant who like the appellant had also not been maintaining their books of account in a regular manner and had written their books as late as the appellant. This would make any cross verification meaningless.

ix)Even in respect of large number of entries involving outside parties, 16 years having elapsed, any cross verification is practically impossible as a person is not statutorily required to retain books of account for more than 6 years.

4.3 Based on the above observations, the appellant's claim that the books of account were genuine as they had been drawn on the basis of contemporary documents was not accepted by the Assessing Officer. It was the view of the Assessing Officer that the time of drawing of books of account is a very relevant fact and that books of account maintained on day to day or at least regular basis are less prone to manipulation. In support, reference was made to Rule 6F of the IT Rules, 1962 which though does not cover the appellant's trade, illustrates the basic principle that reliability of the books depends on their being drawn on regular basis during the relevant accounting period. In this respect, it was particularly emphasized that the belated drawing of the books after several years from the end of the relevant accounting year is more damaging in the appellant's case because most of the important connected journal entries are in respect of closely connected persons whose books were also not drawn in time and by so, suffer from similar short comings. In light of the foregoing, it was argued that self certified copies of computer print outs of incomplete set of unaudited account can hardly be accepted as regular books of account, much less as reliable ones. Based on this, it was argued that correct and true income cannot be deduced from the books of account submitted by the appellant. Dissatisfaction about the correctness and completeness of the books of account submitted by the appellant was also conveyed.

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

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

ii) *However, the said reliance is also misplaced since the Assessing Officer has not attempted to open the books and verify any transaction to find out whether the same represents real or correct picture of sale transactions.*

iii) *The Assessing Officer has also placed reliance on the books required to be maintained as per section 44AA of the Act. However, the provisions of section 44AA prescribes the nature of books of accounts and not the timing of the books of accounts.*

iv) *The Assessing Officer has further stated that the books of accounts are not audited. However, merely because the books of accounts are not audited would itself not make the books unreliable.*

v) *The Assessing Officer's inference out of the fixed amount of drawing of Rs.10,000/- is also baseless.*

vi) *The legal difficulty of the Assessing Officer cannot be the reason for rejecting the books of accounts now once the same are admitted by the Hon'ble Income- tax Appellate Tribunal as well as Your Honour. "*

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

4.6 As may be noted, the key issue here is how far the report of the Auditors Vyas and Vyas and the books of account submitted in three volumes go on to reflect the completeness and truthfulness of the books of account submitted by the appellant. To this end, I find that the matter has to be first analyzed on the established touchstones of qualitative characteristics of financial statements laid down by the relevant statutes and the accounting standards. These would include the Companies Act, 1956, section 145 of the Income Tax Act, 1961, the 'Generally Accepted Accounting Principles' (GAAP), the International Accounting Standards (IAS) and the Institute of Chartered Accountants of India (ICAI). Looking into the qualitative characteristics enumerated by these different statutes and standards, I find that the quality of financial statements are judged by the tests of the degree of their reliability, truthfulness, fairness and completeness .

Sub sections (1) and (2) of section 211 of the Companies Act, 1956 state that *every Balance Sheet should give a true and fair view of the statement of affairs of the company at the end of the financial year and every Profit and Loss account should give true and fair view of the Profit and Loss of the company for the financial year.* Thus, it may be seen that for the Company Law 'truth and fairness' is a fundamental qualitative characteristic of financial statements. Similar view is echoed in the Accounting Standards prescribed in section 145 of the ITA. The Notification No. SO69(E) dt. 21.5.1996 made under section 145(2) of the ITA lays down the spirit of the correct method of accounting by stating that *accounting policies adopted by an assessee should be such so as to represent a true and fair view of the state of affairs of the business, profession or vocation in the financial statements prepared and presented on the basis of such accounting policies.* The IAS requires *fair representation* in preparation of financial statements. GAAP includes the principles of *sincerity and full disclosure and materiality* as key to authenticity of financial accounting. In similar vein, para 46 of the ICAI framework enumerates that *application of the principal qualitative characteristics and appropriate accounting standards normally results in financial statements that convey what is generally understood as a true and fair view of such information.* Similarly, the ICAI has also identified *understandability and reliability* as two of the four principal qualitative characteristics of financial statements. *Reliability* in this respect is sought to free a piece of information from *material error and bias* and is stated to depend on, amongst other attributes, *faithful representation and completeness.* When examined against the foregoing fundamental tests, the books of account submitted by the appellant are found by me to be suffering from several infirmities and as a result, the appellant's books fail to pass the tests of truthfulness, fairness, reliability and completeness as enumerated in the above statutes and standards. I will now discuss these infirmities as under :-

i) ***The books of account are not contemporaneous and inordinately belated***

As pointed out by the Assessing Officer in her report dt. 30.1.2009, from the books of account, it is not clear on which date they have been prepared. In fact, the Assessing Officer also could not ascertain the dates and timings of the writing of the books of account in course of discussion with the appellant's

representative. In this backdrop, the Assessing Officer has deduced that the books of account were written much after the relevant financial year and most probably in the recent past. Looking into the past history, the appellant's conduct, his response to the requisitions made by the Special Auditors Vyas & Vyas and other attending facts and circumstances, I agree with the Assessing Officer. As I find, the accounts having been written long after the actual transactions do not inspire confidence, especially when the inordinate delay is seen alongside the other infirmities in the accounts. Transactions if not recorded on day to day basis or at least reasonably regularly cannot be correctly reflected in the accounts. The decision of the Hon'ble Allahabad High Court in the case Bharat Milk Products Vs. CIT 128 ITR 682 underlines this proposition. In this case, the Hon'ble High Court has categorically held that if no day-to-day account books are maintained by the assessee, it cannot be said that the accounts are complete and accurate. In similar vain, in its decision in the case Ratanlal Omprakash Vs. CIT 132 ITR 640, the Hon'ble Orissa High Court has justified rejection of books by the Assessing Officer on the ground that the appellant was not maintaining the books of account specially day-to-day stock particulars. This view has again been echoed by the Hon'ble Allahabad High Court in the case Omax Shoe Factory Vs. CIT 281 ITR 268. In this decision, the Hon'ble High Court held that the assessee, having not maintained day-to-day production register and consumption register of raw materials as also proper accounts relating to payment of wages, rejection of books was justified. The appellant's accounts being not contemporaneous suffer from this infirmity and are thus, not reliable. On this, the appellant has submitted that the books of account have been written belatedly only because the appellant was not granted copies of the documents, seized materials and other records from the Custodian and from the Income-tax Department. This submission is misplaced. In this respect, most significantly, I note the Assessing Officer's observation in the assessment order that no books of account were produced even during the course of the searches in 1990 and 1992. This would make it very clear that the appellant was never maintaining contemporaneous proper books of account. This omission makes the appellant's

submission sound hollow as before the searches, the appellant was not faced with the so-called difficulties to which he has attributed the delay. Coming to the post-search period, from perusal of the assessment order and attending records, I find that the appellant was given copies of relevant documents and was also asked to inspect them. As I note in para 3.3 of the assessment order, the appellant was allowed to take the xerox copies of all the seized material as required by him on 30.1.1992. Similarly, the appellant was also specifically suo motu requested by the Assessing Officer through several letters to take inspection of all the seized materials. In response, inspection was taken. Further, very importantly, I also find that the main computers of the appellant were released within 3 days of the search. Para 3.3 of the assessment order gives full details including the dates on which the appellant was allowed to inspect the documents and take xerox copies of the materials seized during the course of search in 1990 and 1992. As I find, the appellant was also provided with copies of all seized computer data. The appellant has not brought anything on record to controvert these details of inspections and supply of copies of seized materials and computer data as brought on record by the Assessing Officer. As I find, without being specific, the appellant has simply maintained that the documents have not been provided. As against this, as I see, the Assessing Officer has specifically mentioned full details of the inspections and supply of copies of seized materials and computer data. As may be noted, the appellant had in possession all the primary data, copies of relevant documents and also the option and right to requisition documents from Government Agencies as found required by him. Despite this, the appellant did not prepare the books of account in time indicating thereby, he had no intention of preparing the books of account in time. This intention further comes into focus against the backdrop of the fact that even during the searches, the appellant did not produce the books of account. The non submission of the books of account during the searches also underlines the inevitable inference that the books of account now submitted are not based on credible and reliable primary contemporary documents. Looking into the report of Vyas & Vyas also, I see similar pattern in appellant's conduct while responding to the request of the

Auditors for furnishing of necessary information and documents. As I note, in para 1.6 of their report under the caption `Sources Utilized for The Audit', the Auditors have observed as under :

" .....*Non-furnishing of information, documents and explanations by JHM, legal heir of HSM has imposed great limitation on scope and objective of the report. An annexrue No. 3A enclosed to the report is regarding list of letters written to JHM and its purpose, which were not responded.....*"

In this regard, the following observations of the Hon'ble Special Court in Miscellanous Application No. 41 of 1993 on non filing of the estimate also bear special mention :

" *It is clear to court that the reason why estimate was not filed before the Income-tax Authorities or before this Court, is because the Respondents or any of them, do not want to commit anything on oath or disclose all their assets. The idea appears to be to stay quite and let the Income Tax Authorities or C.B.I. or the Custodian discover whatever they can. The idea appears to be to wait and see what is discovered and then not disclose anything else. This could not be permitted. The Court sees no difficulty in proper accounts being taken or prepared under / or estimates being filed. This is purposely not being done. Under the Income-tax Act penalties might be imposed. At this prima facie stage the submission that there would be nil income is not acceptable.* "

The above experiences of different authorities and the Hon'ble Court underline a pattern in appellant's conduct while complying with statutes, rules and regulations. This would also give a clear indication of the period during which the books of accounts were actually drawn . As I find , the books of accounts were not produced during the searches , the assessment proceedings , to the appellate authorities , to the three auditors appointed by the Special courts & as late as also to Special Auditors, Vyas & Vyas . Significantly , I also note that the Janakiraman Committee & the Joint Parliamentary Committee have also not mentioned anything about the appellant's books of account signifying thereby the fact that the books of account were not produced even before these high powered Committees . Taking into reckoning the foregoing, I find that the books of

account of the appellant are not contemporaneous and more importantly that there was no justifiable reason for this. Accordingly, they are not found to be reliable.

ii) ***The books of account are unaudited***

As I find, no audit as prescribed u/s 44AA or 44AB has been done. The books of account are, therefore, without any authentic certification from an impartial party. In these circumstances, the accounts cannot be held as reliable or capable of projecting the true and fair picture of the financial statements. On this, the appellant's defence is that merely because the books of account are not audited would itself not make the books unreliable. This argument is misplaced. As I note, audit is mandatory if the conditions prescribed in section 44AA are satisfied. The purpose of the audit is to authenticate the accounts of a person and without this, the accounts remain unreliable particularly when the accounts suffer from other infirmities also. In this respect, I find that the appellant has not specifically mentioned why the accounts were not audited. As already pointed out during discussion on foregoing point no. 1 above, there has always been a reluctance on the part of the appellant to discharge statutory and procedural regulations. This is noted not only during the contemporaneous period but also subsequently. The appellant has been attributing delay in discharge of his statutory and procedural obligations to the difficulties faced by him following the action of the different enforcement and regulatory agencies. In this context, I note that the appellant was always in possession of the primary documents and as already discussed above, it was open to him to ask for the relevant documents in possession of the different Government Agencies. As already pointed out, the appellant never used these documents or his right. In these circumstances, the appellant cannot take the plea that his difficulties prevented him from getting the accounts audited. I particularly note the appellant's conduct even long after the period of searches and when the appellant got the opportunity to get his accounts compiled or audited. To illustrate, I note that the Hon'ble Special Court had appointed three firms of Chartered Accountants for auditing and compiling the appellant's accounts and the appellant did not co-operate with these firms. In this respect, the Custodian appointed by the Special Court had filed a M.A. 47 of

1996 enclosing a copy of the status report dt. 24.1.1996 by the three firms of Chartered Accountants. In this status report, the Chartered Accountants had the occasion to make the following observations :-

"As regards the compilation of the nine notified entities, the three firms of Chartered Accountants appointed for this purpose have not been able to make substantial progress in the absence of all the particulars asked for being made available. Moreover, whatever particulars have been furnished are not complete as is evident from the correspondence on record. Further, it was mentioned in one of meetings by Mr. Ashwin Mehta in the office of the Custodian that the Harshad Mehta group had undertaken considerable efforts to complete the work of these entities and therefore, it would be better that they furnish complied accounts which can be subjected to scrutiny of the three firms of Chartered Accountants. In spite of reminders such complied data has not been furnished to date. Further, because of the time lag involved in furnishing the piecemeal particulars, the three firms of Chartered Accountants have found it difficult to keep on hold their assistance till such time the particulars / records are furnished by the HSM Group."

Then subsequent to this, as already discussed, the Special Auditors Vyas & Vyas also did not get appellant's co-operation. This pattern of the appellant's conduct would indicate that there was no justifiable reason for not getting the accounts audited not only when it was due but also subsequently when the appellant was given an opportunity to do so. In these circumstances, the unaudited accounts accompanied with several other infirmities cannot be held as reliable.

iii) ***<u>The books of accounts are not complete</u>***

As pointed out by the Assessing Officer, the books submitted are incomplete. In this respect, I find that complete cash book has not been submitted. Further, I also note that all the bank accounts have also not been taken into account. In these circumstances, the appellant's books do not pass the fundamental test of reliability on the ground of their being incomplete. I have already discussed above how completeness of accounts is a necessary ingredient of reliability of books of account. This derives support from the decision of the Hon'ble Delhi High Court in the case Smt. Krishna Babbar Vs. CIT &

Another 117 CTR 302. As may be noted, in this case, the books of account were not found complete till the date of the search and on account of this infirmity, the rejection of the books of account was upheld by the Hon'ble High Court.

iv) ***The books of account of the transacting parties also suffer from several infirmities***

As I note, most of the entries in the books of account are in the form of journal entries in the names of closely related persons. These persons are either close relations of the appellant or intimate business associates. As I note, the accounts of these persons also have not been maintained in terms of the prescribed rules and procedures. Accordingly, the authenticity of the entries in relation to these persons is highly doubtful.

v) ***The books of account are not backed up by primary documentary evidence***

The books of account submitted by the appellant are not backed up by authentic primary documentary evidence. I particularly note that the accounts are in the first place unaudited and self certified. In these circumstances, the accounts cannot be held as authentic. In this respect, the decision of the Hon'ble Kerala High Court in the case Mani & Company Vs. CIT 256 ITR 373 bears special mention. As may be noted, in this case, the rejection of books of account on the ground of non production of books of original entry was upheld by the Hon'ble High Court. Accordingly, in absence of the original primary documentary evidence, the appellant's accounts are found to be unreliable.

vi) ***The books of account show improbable entries***

As I see, the drawing account of the appellant shows uniform withdrawal of Rs. 10,000/- for every month end. This is highly improbable. The appellant has not been able to justify this with any specific evidence. This would indicate to the possibility of existence of pre-decided entries particularly when the accounts have been substantially belatedly drawn.

4.7 In this respect, going through the submissions of the appellant, I find that the appellant has not brought out any specific or positive evidence to controvert the issues raised by the Assessing Officer. As I find, the tenor of the appellant's submission is restricted to pinpointing what the Assessing Officer could have done. To this end, the

appellant has inter alia, mentioned that no specific defect has been pointed out and that the Assessing Officer has not attempted to open the books and verify the transactions. These arguments are misplaced. So far as the defects are concerned, they have been listed above. As may be noted, these defects and infirmities are too fundamental to make any books of account authentic or reliable. Besides, the appellant has also only made a guess that the Assessing Officer has not opened the books. This is not borne out by the facts. As I see, in her report, the Assessing Officer has pointed out several specific lacunae in the appellant's books which could not have been done without examination of the books. I also find that the Assessing Officer has gone through the trial balance, capital account, profit & loss account, account ledger, bank accounts and journal entries and has raised pertinent points on several of these statements. In these circumstances, the appellant's submission on this score only remains an unsubstantiated allegation. Accordingly, in light of the foregoing, I do not find any merit in the appellant's submissions on the issue.

4.8 I now come to the report of the Auditors Vyas & Vyas. As directed by the Hon'ble ITAT, I have gone through this report. The most vital aspect that has struck me while going through this report is the extent and degree of non-cooperation by the appellant in making available the necessary information and documents to the Auditors. I have already quoted their comments as made in para 1.6 of the report in this respect. I next find that the Auditors have held the books of account prepared by the appellant highly unreliable. In this respect, the Assessing Officer has listed some crucial observation made by the Auditors. I have also gone through these observations and find them particularly incriminating. These observations have been listed by the Assessing Officer in the report . As may be seen, the discrepancies noted by the Auditors Vyas and Vyas are similar to the infirmities and discrepancies brought to my notice by the Assessing Officer. A combined reading of these two sets of observations will bring to light identical infirmities noted by the Auditors and the Assessing Officer. As may be noted, both have observed that the books of account are unreliable, incomplete and not backed up by any supporting evidence. This is obvious because the books of account examined by the Auditors and the Assessing Officer must be the same. It may also be noted that both have also observed that the appellant's group transactions are not

accounted for in the hands of the individuals properly and as a result, the figures drawn from the appellant's books are not reliable. In this respect, the Auditor's notes while preparing the Statement of Affairs of the appellant bear particular mention. These notes have been reproduced in the preceding discussion. The notes clearly spell out that the appellant's accounts are manipulated and not reliable. Similar is the finding of the Assessing Officer with which I completely agree. These common observations by the Auditors and the Assessing Officer and me are obvious as the books of account under examination by the Auditors, the Assessing Officer and me must be the same. Clued into this, I find that the report of the Auditors Vyas & Vyas only endorse the findings of the Assessing Officer with respect to the appellant's books of account. In para 13.6 of their report, the Auditors have opined that the books of account provided by the appellant were not reliable and deserved to be rejected in the eye of law. In similar vein, looking into the established standards of accounting as enumerated by relevant statutes and appropriate bodies, the glaring infirmities noticed in the appellant's books of account, the report of the Auditors Vyas & Vyas and the specific deficiencies brought to notice by the Assessing Officer as well as the Auditors Vyas & Vyas, I find that the books of account submitted by the appellant cannot be accepted. As I note, it is the established position of law that when the books of account suffer from a series of defects and infirmities, they cannot be accepted. This is also the firm and categorical view of the Apex Court. As may be noted, in the decision in the case Kachwala Gems Vs. JCIT 288 ITR 10, the Hon'ble Supreme Court has categorically held that when IT Authorities have rejected assessee's books of account citing several defects, there is no reason to take a different view. In line with the foregoing defects noted, the accounting principles, the report of the Auditors Vyas & Vyas and the judicial decisions cited, I find that the books of account submitted by the appellant cannot be accepted.

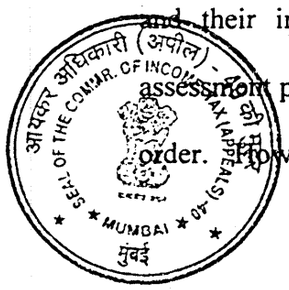
5. **Grounds of Appeal**

The appeal filed contained several grounds of appeal under the broad caption I to XII. In course of the present appeal proceedings, the appellant in its written submissions and Paper Book No. 2 submitted a synopsis of the grounds of appeal. In course of the hearing on 18.2.2009, it was decided that disposal of the appeal will be done with

reference to this synopsis. Accordingly, the appeal is being disposed off with reference to the grounds of appeal as sequenced by the appellant in his submissions.

6. **In the first ground of appeal, the appellant has contended that the Assessing Officer has erred in not complying with the principles of natural justice.**

In this respect, the appellant's main reservations have already been covered in my discussion under the caption `**Inspection and Supply of copies of documents and seized materials'.** For the sake of brevity, I am not repeating them here. I am also not repeating my discussion on the matter here. Both these should be taken as part of my discussion on this ground. In this background, premised on my detailed discussion, as recorded under the caption `**Inspection and Supply of copies of documents and seized materials',** the principles of natural justice as they have evolved over time, the peculiar circumstances of the case, particularly, the sheer magnitude and the process followed during the present appellate proceedings, I do not find any merit in these grounds. To this end, as already discussed, the appellant has been given elaborate, comprehensive, intelligible and highly methodical access to inspection and copies of documents and seized materials. As already noted, during the appellate proceedings, the process of inspection and supply of documents went on from 27.1.09 to 7.7.09. During the process, photocopies of documents running into 18000 pages have been given. Besides, most significantly, during the present appellate proceedings, starting from 16.9.2008 till the last date of hearing as scheduled by the Hon'ble Supreme Court i.e. 25.1.2010, the case was heard on about more than 50 occasions. During these hearings, both the appellant and the Assessing Officer were given all possible opportunities to submit their submissions and explain their stand-points. The mutual submissions were also made available to the two parties to enable them to argue their cases. I have considered these several submissions. Not only this, during the assessment proceedings also, the appellant was given several opportunities to furnish the documents called for and to give explanations on the issues raised. Further, as may be noted, the assessment order is a reasoned document in which, the Assessing Officer has brought all information, evidence and their implication on record while first, confronting the appellant during the assessment proceedings, and secondly, while coming to his conclusions in the assessment order. How this has been ensured by the Assessing Officer has been discussed by me at



relevant junctures in course of my discussion on the individual grounds. In course of my decision on the individual grounds, I have also recorded how the Assessing Officer has made available the information and documents used by him. Whatever was not possible to be given for various constraints and circumstances during the assessment proceedings, was also exhaustively made available during the present proceedings. In face of this comprehensive and exhaustive opportunity, the appellant's reservation on the compliance of the principles of natural justice is lame. This is particularly so, as the appellant has not been responsive to the opportunities made available to him to collect the relevant documents and produce them as and when necessary. I have discussed this during my discussion on the caption ` **Inspection and Supply of copies of documents and seized materials'** and `**Books of Account'.** As may be noted from my discussion, the extent and quality of inspection and supply of documents has been adequate and satisfactory. Further, I have also invited attention to this during my discussion on individual grounds, where this was an issue. The appellant has also given submissions on the issues raised by the Assessing Officer on the books of account submitted . I have already considered them in course of my discussion under the caption '***Books of Account*** '. As may be noted, I did not find any merit in these submissions. 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.

7. **In the second ground of appeal, it has been contended that the propositions in respect of best judgement assessment have not been followed.**

7.1 In this respect, it was submitted that under best judgment assessment, the estimate of income has to be reasonable and based on relevant parameters. Clued into this, it was

submitted that in the appellant's case, the Assessing Officer has made very wild and unrealistic assumptions. Point was made that the Chartered Accountants appointed by the Hon'ble Special Court have estimated the total income of the appellant for the period from 1.4.90 to 8.6.92 at Rs. 123.53 crores and as against this, the appellant's income assessed is very high. Reliance was placed on the decision of the Hon'ble Supreme Court in the case State of Kerala Vs. C. Velukutty and of the Hon'ble Karnataka High Court in the case Shri. Shankar Khandasai Sugar Mills Vs.CIT.

7.2 I have considered the submissions of the appellant. Looking into the grounds of the additions, the procedure followed during the assessment proceedings, the observance of the principles of natural justice and other attending facts and circumstances, I do not find any merit in the submissions of the appellant. To this end, I find that all the additions in the assessment have been made after thorough investigation and on the basis of documents seized during the search and seizure operation and information collected from various investigating agencies and statutory authorities. As already discussed, the information so collected and used was made known to the appellant along with the implications arising out of the information. This will be clear from my discussion on the individual additions. As may be noted in my discussion on the individual additions, the incomes assessed were quantified on the basis of specific documents and detailed analysis of information received from very authentic sources. In this light, the appellant's argument that estimates of income are wild and that principles of best judgement assessment have not been followed are found to be off the mark. In this respect, the provisions of section 144 mention that the assessment under the section is to be made after taking into account all relevant material which the Assessing Officer has gathered and after giving the assessee an opportunity of being heard. As may be seen, these conditions stand fully satisfied. All the additions in the assessment have been made on the basis of materials gathered by the Assessing Officer from different authentic sources and further, as already discussed in course of my discussion on the caption ` **`Inspection and Supply of copies of documents and seized materials'** and individual additions, the appellant was given adequate opportunity of being heard. The requisite notices as stipulated in the Income-tax Act were also issued. Accordingly, I do not find any merit in the contentions raised by the appellant. The appellant's reference to the

incomes computed by the Chartered Accountants is also misplaced. As already discussed subsequently in this order, the report of the Chartered Accountants is based only on the materials they could obtain in face of the reluctance on the appellant's part to provide them with the relevant documents and information and the report is not the only basis of the income assessed in the assessment. Further, it also does not mean that whatever conclusions have been arrived at by the Chartered Accountants are wrong as to the extent the information was available, they have been rightly examined. The income assessed in the assessment is based on the materials gathered by the Assessing Officer in course of the assessment proceedings and before that, during the investigation of the case following the several searches. The appellant's reliance on the decisions quoted by him is also misplaced. In its decision in the case, the State of Kerala Vs. C. Velukutty, the Hon'ble Supreme Court has laid down the following tests to judge a best judgement assessment :

" *Judgement is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess work in a " best judgement assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case.* "

It is in the context of these tests laid out by it that the the Hon'ble Supreme Court found that in the case before it, the Assessing Authority's order did not pass these tests. As against this, as already discussed and as discussed in course of decisions on the individual additions in the appellant's case, the Assessing Officer's decisions in the appellant's case does have a direct and close nexus to the *`available material and circumstances'*. And accordingly, the assessment in this case eloquently passes the above tests outlined by the Hon'ble Supreme Court. In similar vein, the decision in the case Sri Shankar Khandsari Sugar Mills v. CIT is also not applicable as in this case also, the Hon'ble Karataka High Court has echoed the observations of the Hon'ble Supreme Court discussed above. The appellant's case passes the tests laid out by the Hon'ble Karnatka High Court also. In fact, the two decisions only underline that the principles of best judgment assessment stand eloquently followed in the appellant's case. The Assessing Officer has also eloquently explained the circumstances under which he passed the order

u/s 144 of the ITA. His reasoning has been given in para 3.5.2 on page 12 of the assessment order and I find them logical and reasoned. In line with the foregoing facts and circumstances, I do not find merit in the appellant's arguments. Accordingly, this ground of appeal is dismissed.

8. The appellant has given consolidated submissions on 3rd, 4th and 5th grounds of appeal. Accordingly, these three grounds of appeal are being taken up together. The grounds are as under:-

3rd ground - The Assessing Officer has erred in law and in facts in disallowing the loss of Rs.14,77,09,288/- suffered by the appellant in money market trading.

4th ground - The Assessing Officer has erred in law and in facts in making the addition of Rs. 291,05,41,290/- on account of money market unexplained stock.

5th ground - The Assessing Officer has erred in law and in facts in making the addition of Rs. 1080,58,89,691/- on account of unexplained investment in oversold position of money market securities.

8.1 In light of the fact that the appellant had played an active role in the money market, in course of the assessment proceedings, the details of appellant's transactions in the money market was obtained from the following sources.

i) Deal file of the appellant upto 27.2.92 as found in the seized computer data.

ii) Information called for from various banks, financial institutions, companies and brokers who have dealt with the appellant. .

iii) Receipts and payments of money in bank accounts of the appellant as provided by the R.B.I.

iv) Voucher file of the appellant as found in the seized computer data.

The details of receipts and payments were matched by the Assessing Officer with the details in the deal file and the voucher file. For 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. Information gathered was fed into the computer. The resultant partywise

account obtained was provided to the appellant requesting him vide letter dt. 16.2.95 to give details on entries of receipts and payments for which no details were available with the Assessing Officer. In response, vide letter dt. 14.3.95, the appellant forwarded a brief print out of cases where narrations were incorrect and which were replaced by the appellant by appropriate narration. In the letter, regarding money market and other transactions carried at appellant's account maintained with SBI and UCO Bank, it was pointed out that the appellant has not been furnished securitywise balance nor break-up of individual payments. The Assessing Officer found that no chart was furnished by the appellant with narrations as mentioned by him. He also observed that no specific instances of wrong details had been pointed out by the appellant in the computer print out. The specific details furnished by the appellant vide his letters dt. 14.3.95 and 20.3.95 were accounted for by the Assessing Officer. The Assessing Officer in his order also pointed out that the deal file in the seized computer data showed all transactions of the appellant in the money market upto 27.2.92 i.e. a day prior to the date of the search. In this respect, the appellant was examined u/s 131 of the ITA. In course of the recording of his statement, vide question no. 2, the appellant was confronted with the deal file and asked to specify whether any correction / addition / change is required to be made in the deal file. Vide question no. 3 of the statement, the appellant was asked to explain the meaning of the entry status `F' shown against a number of transactions in the deal file. In response, it was stated by the appellant that this can be done only after verification of the file. Subsequently, vide his letter dt. 20.3.95, it was submitted by the appellant that the deal file contained operational data which were subject to correction, addition and change. However, no specific details were submitted. On the entry `F' in the deal file, it was explained by the appellant that it shows the status of the contract which is changed to `T' when all the particulars were verified and deals were executed. In this backdrop, in the absence of specific details filed by the appellant, the data with status `T' in the deal file was taken as the deals executed by the appellant. The Assessing Officer made this presumption on the basis of the provisions of section 132(4A) of the ITA. While taking this

as the basis, the Assessing Officer observed that the net fund flow for the period 1.4.91 to 27.2.92 in the bank accounts of the appellant almost matches the net sales of the appellant as reflected in the deal file. On the basis of the foregoing information, the securitywise trading account of the appellant was prepared on the basis of the deal file upto 27.2.92 and deals obtained from third parties for the period after 27.2.92. The deals upto 27.2.92 captured in the computer data was provided to the appellant and the deals considered after 27.2.92 were presented as annexure M-1 in the assessment order. In preparing the trading account, the opening stock was taken as the stock of the money market assets as determined in the assessment order for the assessment year 1991-92 in the appellant's case. The summary of this trading account has been presented as annexure M-2 in the assessment order. It shows the following results :

i) The assessee has made a loss of Rs. 14,77,09,288/- in trading in money market instruments.

ii) The assessee had stock of money market instruments of the cost price of Rs. 1069,14,68,544/-.

iii) The assessee had sold the securities in excess of the quantity purchased by him. The sale value of such securities is Rs. 1681,79,84,180/-."

8.1.1. In terms of the above analysis, Rs. 14,77,09,288/- was considered as loss of the appellant by the Assessing Officer. With regard to the stock of money market instruments of Rs. 1069,14,68,544/-, the Assessing Officer found that this was the stock with the appellant as on 31.3.92. On this, the Assessing Officer observed that this working has been done on the basis of letters written by the appellant to the Custodian and his application made to the Special Court to bring to their notice the appellant's assets lying with various banks and financial institutions. The Assessing Officer has given details of the different Miscellaneous Applications and assets with different banks and financial institutions in para 4.5 on pages 16 to 20 of his assessment order under the caption 'Money Market Assets (Physically Found / Admitted) '. The Assessing Officer tallied the physical stock of each security as per annexure M-1 and these details with the stock as per annexure M-2 being the closing stock as on 31.3.92. The excess stock worked out has been presented as per annexure M-5 which shows that the appellant

had excess stock of Rs. 291,05,41,290/- in the Money Market as on 31.3.92. This was treated as appellant's unexplained investment which has been challenged in the 4th ground of appellant's appeal.

8.1.2 With regard to Rs. 1681,79,84,180/-, the Assessing Officer found that this represented oversold securities. It was his finding that the appellant had sold securities of this amount in excess of the quantity purchased by him. The issue was examined in the assessment in the context of the question wherefrom and how the appellant got the securities which were sold in the market and for which the money was credited into his account. Reference was made by the Assessing Officer to the detailed discussion on this issue in the appellant's assessment for the assessment years 1990-91 and 1991-92. The Assessing Officer recalled that during the course of the search in 1992, statement of one Mr. Pankaj Shah, main confidante employee of the appellant, was recorded. The relevant portions of the statement have been reproduced by the Assessing Officer along with the questions as under:

" *Q.12 In any transaction in Money Market, is it necessary that the money is paid or received on the basis of delivery of money market instruments?*

Ans. Normally Yes. However in exceptions, with mutual agreement the deliveries need not be performed , for receipt / payment of money, for e.g. in case of many corporate client we are requested to keep the deliveries in trust to facilitate smoother operation in the near future.

Q.13 It is clear from your statement that these securities as mentioned in the previous answer are to be kept till the end of the contracted period. Is there any clause in the original contract which enable you to hold on to the securities beyond the period covered by the original contract?

Ans. No

Q.14 What treatment you give to the securities held on behalf of others beyond the period covered by the original contract?

Ans. There is no specific treatment given to such kind of transaction, however if finances have been raised on the strength of such instrument and they are outstanding / uncleared at the end of accounting period then necessary

entries for creation of liabilities are passed to correctly reflect the account which is known as "assets in custody".

Q.15 Do you maintain any specific records of assets in custody held by you on behalf of others?

Ans. No. We are not keeping any specific records other than those feeded in the computer.

Q.27 I am showing you page 9 of General Ledger 2098 of M/s. HSM for 1989-90 which shows the credit balance of 1Cr. 24 lakhs 90 thousands in respect of stock control account as on 31.7.89. Does this reflect the difference between the purchase and sale made on 31.7.1989?

Ans. Yes, it does.

Q.28 On reconciliating the abovementioned entries it is found that there is a difference of 1,24,90,000/- between the Purchase and Sale in Units 1964 Scheme, the sale being more than purchase. Is this statement correct ?

Ans. Yes.

Q.29 Are the deliveries in case of sales made in aforementioned account dated 31.7.89 made to all the parties whose names are featuring in the same?

Ans. Yes.

Q.30 From where did M/s. HSM get the units in excess of what was purchased?

Ans. In this connection, I invite your attention to the answer given by me on 8th April, 1992 for Question No. 12. Thus it could be that payments are exchanged on the basis of Bank receipts issued against physical instruments kept with the concerned Bank which has issued bank receipts. These physical instruments could be received under the Asset Management system."

Mr. Pankaj Shah's statement was shown to the appellant and he was asked to explain the oversold position of the securities. In this respect, the appellant's statements were also recorded on 18.5.1992 and 26.5.1992 wherein the appellant agreed with Mr. Pankaj Shah's answers on oversold position. As mentioned in the assessment order, the appellant's attention was specifically drawn to Mr. Pankaj Shah's answer to question no.

30. The appellant's statement has been reproduced by the Assessing Officer in the assessment order as under :

Q.1 *Please go through the statement recorded on 8.4.92 and 20.4.92 from Shri. Pankaj Shah and state whether the answers contained therein truly reflect the money market transactions of your group?*

Ans. *Generally the statement made by Mr. Pankaj Shah on our business practices is right but that is not covering the total business transactions.*

Q.8 *I am showing you page 9 of General Ledger 2098 of M/s. HSM for 89-90, which shows the credit balance of Rs.1,24,90,000/- in respect of Stock Control Account as on 31.7.1989. Does this reflect the difference between the purchase and sale made on 31.7.1989?*

Ans. *Yes. It reflects the quantitative difference.*

Q.9 *Are the deliveries in case of shares made in aforementioned account dated 31.7.89 made to all the parties whose names are featuring in the Sheet?*

Ans. *Most of the deliveries must have been made as mentioned by Mr. Pankaj Shah in his earlier statement.*

Q.10 *Do you mean to say that some of the deliveries of Money Market Instruments as mentioned above were not made even though M/s. HSM has received sale proceeds of the same from various parties?*

Ans. *As already Mr. Pankaj Shah has stated in his statement that the most of the deliveries have been executed. If there was any balance which delivered later on, if any, we will furnish the details later on.*

Q.11 *How do you effect the delivery of Money Market instrument?*

Ans. *Most of the time, there are exchanges of the cheques with Money market Instruments. But there are even different of execution when dealt with Corporate and some outstation clients, where deliveries are not made simultaneously on exchange of payments.*

Q.12 *Do you keep record of such instruments to be delivered to parties from whom you have already collected the sale proceeds?*

Ans. *As there short term gaps and also very occasional situation, we have not built-up any system to keep the records.*

Q.13 I am showing you the answer to Questions No. 30 given by Shri. Pankaj Shah in his statement dated 20.4.92 when it is stated that Bank Receipts are issued against physical instruments kept with concerned bank which has issued Bank Receipt. These physical instruments could be received under the Asset Management system. Do you agree with this statements?

Ans. We would like to check with the Banks whether the Banker Receipts were delivered or physical deliveries which we had delivered to the bank in turn to deliver to the other parties.

Q.14 Do you mean to say that physical delivery of all the instruments stated by you as reflected in 2098 Stock Control Account has been given by you to the Banks?

Ans. The difference between Sale and Purchase, being excess of Sales over Purchases has been made by either physical delivery of instrument made by me or Bank receipt earlier issued by the same banks to our various corporate customers viz. Apollo Tyres, Hero Honda, Bindal Agro etc.

Q.16 Do you agree with Shri. Pankaj Shah's statement (Question No. 30 dated 20.4.92) that the aforementioned physical instruments could have been received under the Asset Management System.

Ans. The asset delivered in excess of purchase must have been there with us as a margin for future commitments or pending deliveries or assets left with us for facilitating future transactions of a client etc.

From the facts emerging out of the statements, attention was drawn by the Assessing Officer to the appellant's statement that he had made delivery against every sale. Further, attention was also drawn to the appellant's statement that he had received the securities from his clients under portfolio management. The appellant, however, did not identify any client in this regard. Reference was in this connection made by the Assessing Officer to the order of the CIT(A) confirming the additions in this regard for the assessment years 1990-91 and 1991-92. In particular, it was pointed out that the appellant could not produce any significant evidence on this before the CIT(A) to explain the issue.

8.1.3 The issue was also examined by the Assessing Officer against the background of various suits filed by some banks against the appellant for recovery of their money from the appellant. On this, the Assessing Officer observed that no claim had been made by the appellant before him on deduction of his liabilities and further that, the appellant had also not admitted his liabilities in the suits filed against him. The Assessing Officer has given his elaborate findings on these suits and other FIRs filed against the appellant in para 4.6.2 on pages 26 to 46 of his assessment order. To avoid repetition, I am not reproducing the details of the Assessing Officer's findings in my order. As I find, the Assessing Officer has examined the liabilities claimed in the suits in great detail by making inquiries with the banks and other institutions, recording statements of senior executives of these banks and institutions and detailed analysis of the transactions in question. Clued into the results of these inquiries and analyses, the Assessing Officer came to the fundamental finding that the recovery amounts claimed in the suits filed against the appellant cannot be considered as his liability. The essence of the Assessing Officer's findings on the different suits is as under :

Liabilities of Rs. 706,97,73,179.68 towards State Bank of India (SBI)

i) No final decision has been given on the suit and they were sub-judice when the assessment was completed.

ii) The appellant has not admitted the liabilities in clear terms either before the Hon'ble Court or before the Assessing Officer.

iii) The appellant could not specify his liabilities on year to year basis and could not also produce details of any admitted liabilities.

iv) Discrepancies as listed on pages 37 to 42 were noted by the Assessing Officer on examination of the recovery suits filed by SBI. Discrepancies noted were incriminating and included mismatch between the figures quoted in the applications and those quoted in details submitted to the Assessing Officer.

v) Illustration given in item 3(d) of the list of discrepancies on page 38 shows that by no stretch of imagination can there be liability towards NHB (National Housing Bank) as pointed out in the illustration.

vi) In respect of most of the claims NHB was only a conduit.

vii) In respect of many claims, there was no question of liability towards NHB by SBI or the appellant.

The appellant was confronted with the results of the above examination and his statement on the liabilities was recorded u/s 131 of the ITA. This has been reproduced by the Assessing Officer as under :

"Q.5 It is seen from Misc. Application No. 63 of 1992 filed by the SBI before the Special Court and copy provided to this office by you that, 13 cheques of Rs. 707,56,38,633.19 were credited into your account / utilized at your instructions received from NHB. This amount has been claimed as a liability against you by SBI. Kindly specify the following.

i) Whether do you agree that the amount received in SBI were against your transactions in money market or not.

ii) If yes, whether did you give any delivery to NHB for acquiring the above mentioned fund.

Ans. As criminal case is filed against me in the matter, I will like to refer this with my lawyer and report back immediately.

Q.6 A packet containing money market assets were found at the premises of NHB. Growmore Research and Assets Management Limited vide its letter dt. 27.12.94 stated that the packet was delivered by you to NHB. Kindly specify under what circumstances the assets worth about Rs. 250 crores were delivered to NHB and who is the owner of these assets ?

Ans. I will require to verify the exact details and submit the details after verification. "

From the above inquiries, the Assessing Officer found that no credit can be given to the appellant for the claim filed by SBI against him. To this end, he pointed out that the Deputy General Manager of the NHB had specifically stated that the appellant was in no way connected with the NHB for the transactions in question. He further pointed out that NHB did not carry out any verification of the stock. Further, the Assessing Officer reiterated that the appellant had not admitted any liability either before him or before the Hon'ble Court.

Suit No. 52 / 1993 filed by State Bank of Saurashtra

The liability cannot be considered since the suit was pending at the time of assessment.

Suit No. 61 / 1992 by SBICAP

From the analysis of the money received by the appellant, it was seen that some amounts have been received after 31.3.92. This and the matter being sub-judice at the time of the assessment indicate that the amount cannot be considered as the appellant's liability as on 31.3.92.

Suit No. 79 / 94 filed by State Bank of Saurashtra

The suit is against NHB and no money has been claimed by State Bank of Saurashtra from the appellant and hence, it has no relevance.

Miscellaneous Petition No. 14 of 1995 filed by SBI before the Hon'ble Special Court stating that the appellant has fraudulently withdrawn SGL from SBI in collusion with bank employee

There was shortage in securities in SGL account of the SBI and RBI. The observations of the Auditors of the SBI as reproduced on page 45 of the assessment order and the details of the funds provided by General Manager (T&IM), SBI show that the appellant had unauthorizedly withdrawn SGL from the SBI, sold the same as his stock and had used the money. Subsequently, he had paid the money instead of returning the securities to the SBI.

8.1.4 Clued into the foregoing detailed analysis and the detailed examination, the Assessing Officer found that the oversold position of Rs. 1080,58,89,691(Rs. 1681,79,84,180 - Rs. 601,20,94,489) remains unexplained and is to be considered as unexplained investment of the appellant forming part of his income for the assessment year 1992-93.

8.2 In appeal, through several submission, inter-alia following points were made to argue why the additions made are incorrect :

i) The funds were received by the appellant as advance against the sale of securities, which were not delivered.

ii) The entire addition on account of the oversold position of stock is based on the assumption that the appellant has received the sale proceeds and delivered the securities, which ought to have been purchased through unexplained sources. As against

this, various banks, financial institutions and government agencies have alleged that the appellant had not delivered the securities.

iii) It is important to note that the appellant had repaid an aggregate amount of Rs.601.20 crores during the subsequent period. This is on footing that there were no deliveries in respect of the sale transactions to that extent.

iv) The Hon'ble Special Court has subsequently passed the decrees in favour of the banks and institutions directing the return of funds. The reduction from the total addition on this account would be Rs. 997,70,83,485/-.

v) The auditors appointed by Hon'ble Special Court has quantified the said amounts at Rs. 2,645.05 crores. This also establishes beyond any doubt that the funds received by the appellant did not represent delivery of securities. Further, the fact that no delivery was taken by the appellant is confirmed not only by the report of the auditors appointed by the Hon'ble Special Court, M/s. Vyas and Vyas, Chartered Accountants, but also by Jankiraman Committee, JPC, CBI, Custodian and other investigative agencies.

vi) The cash transactions are not possible in dealing with the banking institutions.

vii) In respect of transactions after 27.02.1992, the Assessing Officer has not given any positive finding as to execution of delivery.

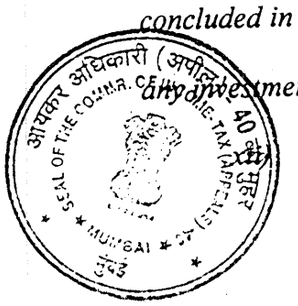
viii) The fact that no such evidence supporting the assumption of the Assessing Officer has been found, in spite of such extensive inquiries, establishes that the assumption is baseless.

ix) It is not known as to whether while inquiring about appellant's transactions in money market with the counter parties, the Assessing Officer had sought to know about the status of delivery of securities.

x) There cannot be oversold position in call money as it is not against sale of an asset.

xi) The term ATBF means "Asset to be Fixed". The transactions were concluded in advance and assets to be delivered were yet to be decided. There cannot be any investment in asset, which is yet to be fixed.

xii) The Treasury bills cannot be bought by paying cash.



xiii) 10 to 16 and 18 of Annexure M-5 are held not be the property of the appellant as per order dated 1.11.2002 of Hon'ble Supreme Court. This has been accepted by Hon'ble Special Court in its order dated 29.09.2007.

xiv) When the appellant was granted inspection of the materials relied upon by the Assessing Officer for framing the assessment in the present case, it was noticed that the calculation made by the Assessing Officer for preparing Annexures contains several errors.

xv) The Assessing Officer ought not to have made the addition in the assessment year 1992-93 and that too after treating the same as explained in A.Y.1991-92.

xvi) If the appellant would have unaccounted purchase transactions, as assumed by the Assessing Officer, the details of the same would have been certainly available in the seized material found during the course of search which took place towards the end of the previous year i.e. 28.02.1992.

xvii) The fact that transaction of sale in money market is not backed by delivery of any security has also been accepted by the Assessing Officer in the impugned order. In this regard, attention is invited towards the assessment order at page 33 (first 2 lines). Similarly, when the enquiry was made with National Housing Bank, it transpired that no delivery was made by the appellant in respect of sale transactions.

xviii) In all fairness, the assessing officer ought to have given credit of closing stock before arriving at the oversold position. It may be noted that the Assessing Officer has given such set off while working out the oversold position in A.Y.1990-91.

xix) Further, the fact that the appellant can purchase and / or sell money market securities without delivery has been judicially recognized in the case of Growmore Exports Ltd. V. ACIT by the Hon'ble Mumbai Bench of the Tribunal reported at 78 ITD 95.

xx) The Hon'ble Supreme Court has observed in the case of Harshad Shantilal Mehta v. Custodian (231 ITR 871) at page 889-B that a notified party may not explain the transactions before the Income-tax authorities in case his position is prejudicially affected in defending criminal charges.

xxi) As regards addition of Rs.291 crores, the Hon'ble Special Court has held that securities of a value of Rs.253.80 crores have been held to be belonging to National Housing Bank/State Bank of India in terms of judgment of the Hon'ble Supreme Court dt.1.11.2002. Further, the Hon'ble Special Court in its judgement dated 29.9.2007 in Report No. 15 of 2006 has also held that since these securities are not treated as belonging to M/s. Harshad S. Mehta, there is no question of the same now being treated as unexplained investment to the extent of this amount.

xxii) The Assessing Officer ought to have appreciated that considering the nature of business and margin in the business carried on by the appellant, the appellant cannot be said to have earned such a huge amount and that such a large magnitude of amount cannot be said to have earned by the appellant in cash.

xxiii) The Assessing Officer has relied upon the deal file prepared by the appellant and forming part of the books of accounts found during the course of search proceedings in order to determine the stock and profit from money market transactions although the said books of account are disregarded and rejected by him.

xxiv) No co-relation has been drawn by the Assessing Officer as regards the various debits and credits in the statement prepared.

xxv) *The Assessing Officer has incorrectly arrived at the Money Market Oversold Position by excluding some of the transactions on the specious logic that the transactions in which the status field discloses "F" means False and therefore they are liable to be excluded though the Assessee has never given such a statement nor Shri Pankaj Shah then working for assessee deposed to that effect. This is demonstrably established herein after in the three cases of Call Money, A.T.B.F. and Treasury Bills totaling to an amount of Rs. 332.64 crores added to the income of the Assessee.*

xxvi) The debate and issue is not with regard to "F" and "T" but the real issue before the AO is whether such transactions were undertaken and if those transactions are found to be undertaken, then they ought to be included in the computation of Money Market Oversold Position irrespective of what status is shown in the Deal File of the Assessee or how the same is interpreted by the A.O.

xxvii) Evidence collected by AO is ignored while computing Money Market Oversold Position

xxviii) Rather than getting to the bottom of the facts and only in order to distort and inflate the Money Market Oversold Position of the Assessee, the AO has conveniently ignored even substantial independent material, to come to the conclusion by making a presumption that the status filed "F" meant the transactions were not undertaken by the Assessee's brokerage firm.

xxix) The assessee is aggrieved that despite the binding order of Hon'ble ITAT dated 25.09.2008 for A.Y. 1990-91 and the fact that the assessee's cases in respect of aforesaid two assessment years are squarely covered by the Judgement of Hon'ble ITAT, the AO is now taking a false stand before your Honour and denying the assessee the relief.

xxx) Notwithstanding the foregoing, in respect of A.Y.1991-92, the A.O. had himself caused an enquiry in respect of securities transacted by the Assessee's brokerage firm for an amount of Rs.107.01 crores.

xxxi) The A.O. has not made out any ground whatsoever to justify any deviation as to why the assessee should not be denied the relief accrued to him from the binding judgement of Hon'ble ITAT.

xxxii) Your Honour has been pleased to offer cross examination of Shri. Pankaj Shah who has been duly examined by the Assessee and thereafter by the A.O. Shri. Pankaj Shah had earlier filed an affidavit on 31.07.2008 through the assessee. If the evidence of Shri. Pankaj Shah is examined, it emerges that all the transactions were regularly entered into the computers which came to be seized by the revenue on 28.02.1992. Thus, the stand taken by the AO that decreetal transactions are not forming part of Annexure M1 and M2, and the Money Market Oversold Position is grossly incorrect.

xxxiii) That the assumption made by the A.O. to make the addition that securities have been delivered in all the cases based on the statement of Shri. Pankaj Shah also has no basis as he has clearly stated that there were number of transactions where securities were not delivered and the monies received by M/s. Harshad S. Mehta constituted the liability of Shri. Harshad S. Mehta.

xxxiv) The A.O. has erred in bringing forward negative balance of Rs.(-)103.75 crores comprising of Government Securities and N.T.P.C. Bonds for A.Y. 1992-93 and Rs.(-)24.00 crores in Government Securities for A.Y. 1993-94.

xxxv) The assessee states that so far as the aforesaid additions made on account of brought forward negative balances are concerned, no addition is liable to be made on account of unexplained investments whether or not the provisions of section 69 are invoked solely on the ground that those opening balances of securities are brought forward from the previous year and they do not pertain to the relevant year.

xxxvi) The AO in his rejoinders has taken a stand that so far as the decree awarded for a sum of approx. Rs. 707 crores of State Bank of India (S.B.I.) is concerned in M.P. No.63 of 1992, it is the contention of National Housing Bank (NHB) that the transactions were undertaken with SBI and not M/s.Harshad S. Mehta whereas the assessee has contended that the transactions were undertaken by the Assessee on a principal to principal basis with NHB and SBI had merely acted as a routing bank.

xxxvii) The assessee's seized data discloses that the word "RT" has been used in such transactions which confirms that the transaction is a routing transaction where the Assessee's brokerage firm had acted as a principal.

xxxviii) In response to what is stated in Para 2 about the addition made for transactions in Treasury Bills undertaken on 21.02.1992 for a sum of Rs. 47.98 crores, from the data given by the A.O. himself, the said transactions are reflected and forming part of Page no.621 of the Deal File which has been enclosed by the Assessee along with letter dated 18.08.2009. The addition is made to the income of the assessee on account of Treasury Bill transactions and yet the AO has now stated that the same is not forming part of Annexure M-2. The assessee has also led conclusive evidence in the form of Exhibit B enclosed with assessee's letter dated 17.08.2009 which has been placed on record and which is part of the charge sheet of CBI showing the amount paid to SBI by NHB and forming part of their claim of Rs. 707.75 crores. It may be noted from this Exhibit B made available by CBI on the basis of records of NHB that two cheques bearing No. 212156 for Rs. 47.95 crores and No. 212157 for Rs. 2.50 lacs are shown to have been paid towards transaction of Treasury Bills and the Security Column duly records this fact.

xxxix) So far as the addition of Rs. 90.46 crores on 30.03.1992 is concerned, the A.O. has not given itemized break up of what is included in the Money Market Oversold Position. Be that as it may, from the evidence adduced by the assessee in the aforesaid

Exhibit B, it may be seen that on 30.03.1992, NHB made payment by cheque No. 212666 for an amount of Rs. 90,45,53,603.20 and the security mentioned is 17% NTPC. This establishes the contention of the assessee that the decrees are awarded for the transactions undertaken between NHB and M/s.Harshad S. Mehta and the amounts received from NHB is claimed to have been credited to the account of M/s. Harshad S. Metha.

8.3 The Assessing Officer responded to the appellant's argument through several submissions. In the submissions, it was asserted that the appellant was executing the transactions as a broker as well as principal and in the case of oversold securities as a principal. It was further pointed out that the transactions marked 'RT' i.e., the ones routed through, represented purchase and sale made by the appellant with actual delivery. Clued into this, it was mentioned that position of oversold securities has been worked out for the year under consideration on the same basis as for the assessment year 1990-91. In this background, inter alia, following submissions were made vis-à-vis the arguments put forward by the appellant :

i) *Main thrust of the appellant's stand is that there is no delivery of securities. In terms of discussions in the assessment order and the statements recorded during the search, it is clear that the appellant had completed the sale transactions by selling the securities, receiving the money and delivering the instruments.*

ii) The further contention of the assessee that no such evidence to support the assumption of assessing officer, in spite of extensive enquiries, was found during the assessment proceedings is also baseless as the assessee himself had admitted during the statements that he had not maintained any records whatsoever in respect of delivery of securities to his clients. Therefore, no question arises of finding any evidence in respect of delivery of securities.

iii) ***Oversold Securities vis-à-vis decrees***

The assessee has also taken a stand that the assessing officer had not taken into account the claims made by various parties on the ground that the Hon'ble Special Court had not passed any decree, but, the Hon'ble Special Court has subsequently passed the decrees in favour of the banks and institutions directing the

return of funds. Therefore, the same has to be reduced from the income of assessee as the same is the liability of banks and not the income of assessee.

iv) As claimed by the assessee as well as Banks the following decrees and amounts mentioned therein are related with the above addition therefore the same should be excluded from the total liability of the assessee.

Misc. Petition / Application / suit No.	*Filed by*	*Amount claimed (Rs. In crs.)*
M.P.No. 63 of 1992	*SBI*	*706.98*
Suit No. 41 of 1995	*SBI*	*137.12*
M.P.No.14 of 1995	*SBI*	*222.04*
M.P.No.52 of 1993	*SBS*	*99.11*
M.P. No.61 of 1992	*SBI Capital Markets Ltd.*	*16.25*
M.P.No.28 of 1995	*SCB*	*506.53*
	Total :-	*1688.03*

Examination of the above would reveal that there is no nexus between the decreed amount and the amount which is included in the income of the assessee as oversold securities as per Annexure `M-2'.

The summary of Annexure `M-2' is given as under:-

Sr. No.	*Name of the Security*	*Amount (Rs. In crore)*
1	*ATBF – Non SLR*	*51.23*
2	*Call – Call*	*100.06*
3.	*11.50% C/L 2007 – Central Loan*	*173.32*
4.	*11.50% C/L 2010 – Central Loan*	*573.07*
5.	*11.50% C/L 2011 – Central Loan*	*103.80*
6.	*9% HUDCO (23/02) – UDCO Bonds*	*0.945*
7.	*9% IRFC Bonds*	*(-)3.92*
8.	*13% MTNL(18/08) – MTNL Bonds*	*22.08*
9.	*9% NHPC (27/03) – NHPC Bonds*	*1.87*
10.	*13% NLC (04/04) – NPC Bonds*	*8.53*
11.	*13% NPC (04/04) – NPC Bonds*	*25.97*

12.	*13% NTPC (12/01) – NTPC Bonds*	*25.79*
13.	*9% REC (27/03) – REC Bonds*	*0.49*
14.	*Treasury bills*	*181.34*
15.	*Units 1964 Scheme*	*417.19*
	Total	*1681.76*

The above summary is computed on the basis of the record of delivery of money market transactions as on 31.03.1992 wherever he found that the securities though delivered, but, purchases are not recorded in the regular books of accounts. The Assessing Officer has discussed the Money Market Transactions vide Para 4 of the Assessment order on the basis of which Annexure M-2 has been prepared.

8.3.1 Clued into the foregoing analysis, it was explained how the securities in the respective suits were different from the securities mentioned in M-2. The suit-wise explanation is summed up as under :

M. P. No. 61 of 1992 (Amount involved Rs. 16.25 crores)

It is admitted by the bank itself that in respect of above transactions, no delivery of units was made to the bank by Late Shri Harshad Mehta whereas the oversold position as per Annexure `M-2' is computed by the Assessing Officer in respect of only those securities where the actual deliveries have been made. Thus, the securities mentioned herein are not the same securities for which the oversold position has been computed.

M.P.No. 52 of 1993 (Amount involved Rs. 99.11 crore)

It has been mentioned by the petitioner in the petition that in the regular course of funds management / securities investment business, the petitioner bank engaged Late Shri. Harshad Mehta for making purchases of the following securities and arranging to sell the same on higher rate thereby managing the profit to the bank.

Securities	***Amount (Rs.)***
5 crore units of UTI, 1964 scheme	*67,74,50,000/-*
2 crore units of UTI, 1964 scheme	*26,81,80,000/-*
3% NLC Bonds	*4,54,68,287/-*
Total :-	*99,10,98,287/-*

It has been further submitted by the petitioner vide para 14, 19 & 23 of the petition that despite of making the above payments to Late Harshad Mehta, the delivery of the said units / bonds were not effected or made to the petitioner nor the petitioner received any bank receipts or any contract notes in respect of the said transactions from him. On the basis of above facts, the petitioner approached the Hon'ble Special Court and the decree for the above amount was awarded to it.

Here again, the transactions are in respect of those securities which were not actually delivered to the bank as admitted by themselves. But, as mentioned in the earlier paragraphs, the oversold position of securities as on 31/03/92 has been computed by the assessing officer in respect of only those securities where actual deliveries have been made.

Suit No. 41 of 1995 (Amount involved Rs. 104.66 crs.)

Here again, in respect of the securities involved, it has been admitted by the petitioner vide para 10 of the petition as under.

It is further mentioned by the petitioner bank that after the `security scam' broke out, the petitioner bank could know that Late Shri. Harshad Mehta had diverted the aforesaid money paid to him for the transactions in the aforesaid securities, fraudulently and illegally diverted the funds for his own use and neither securities were delivered to the petitioner bank nor money was refunded back.

In this petition also, it is seen that the securities were not diverted by Late Shri. Harshad Mehta to the petitioner bank. As already discussed, the securities mentioned in Annexure `M-2' of the assessment order are only those securities where actual delivery has been made.

M.P. No. 63 of 1992 (Amount involved Rs. 707.56 Crs)

This petition involves Rs. 706,97,73,179/- for which decree was awarded to the State Bank of India. In the application the SBI had stated that the following cheques were received from/on behalf of NHB (National Housing Bank) :

Sr. No.	Cheque Date	Cheque No.	Amount in Rs.
A. Drawn by National Housing Bank			
1	31.01.1992	173921	89,05,00,000.00
2	16.03.1992	212521	25,41,40,170.21

3	*24.03.1992*	*212587*	*14,62,12,000.00*
4	*21.01.1992*	*212156*	*47,95,00,000.00*
5	*21.02.1992*	*212157*	*2,50,000.00*
6	*22.02.1992*	*212166*	*152,12,22,734.00*
7	*07.03.1992*	*212282*	*101,88,50,194.50*
8	*30.03.1992*	*212666*	*90,45,53,603.20*
9	*25.10.1991*	*173364*	*76,03,07,123.00*
10	*16.11.1991*	*173483*	*27,08,50,000.00*
11	*13.03.1992*	*212506*	*12,28,27,805.00*
12	*07.03.1992*	*212279*	*25,66,50,000.00*
B. Drawn by State Bank of Patiala			
13.	*14.03.1992*		*44,97,75,000.00*
		Total :-	***707,56,38,633.10***

The Hon'ble Special Court awarded decree of the aforesaid amount in favour of SBI in view of its claim that the aforesaid money was withdrawn by the appellant fraudulently and utilized for his own purposes. The decree was thus awarded to the SBI to compensate it in lieu of the money withdrawn by the appellant from the funds of SBI. There was no transaction between SBI and the appellant. Thus, it is apparent that none of the securities mentioned in Annexure M-2 is involved between the transactions of SBI and the appellant and accordingly, no delivery of such securities was also made.

M.P. No. 14 of 1995 (Amount involved Rs. 222.04 crores)

Here also, the decree has been awarded to the petitioner for compensating the damages in the form of interest and no transaction of any securities involved.

M.P. No. 28 of 1995 (Amount involved Rs. 506.54 crores)

This was a decree in favour of Standard Chartered Bank (SCB). The decree was awarded in favour of SCB because cheques worth Rs. 506.54 crores had been withdrawn by the appellant and utilized for its own purposes. The decree was awarded for this amount in lieu of the funds withdrawn by the appellant from the accounts of SCB. It is thus clear that in respect of this decree also, no transactions of securities were entered into between the appellant and the SCB. It is also clear that no delivery of any

securities mentioned in Annexure M-2 have been made in these transactions and accordingly, the transactions in this petition are different from the transactions mentioned in Annexure M-2.

iv. The appellant's contention that no evidence of delivery was found during the assessment proceedings is baseless as it has been admitted by the appellant himself that he had not maintained any records in respect of delivery of securities to his clients.

v. The amount of Rs. 601,20,94,489 has been reduced from the working of the oversold position not because there was no delivery executed but because the securities purchased for this amount co-related with the securities of oversold position worked out in Annexure M-2.

vi. The appellant's contention that cash transactions are not possible in dealing with banks is not relevant as the Assessing Officer has never mentioned in the assessment order that there was any cash transaction in relation to any of the securities.

Vii. The appellant's claim for the set off of closing stock amounting to Rs. 1069.14 crs from the oversold position of Rs. 1681.79 crores based on the assessment order for the assessment year 1990-91 is misplaced as in the assessment year 1990-91, the Assessing Officer had only worked out the peak oversold position. As against this, in the assessment order for the A.Y. 1992-93, the Assessing Officer has not made any addition on account of closing stock as it was considered by him as explained and accordingly, set off of explained purchases (stock) cannot be given against unexplained sales. Similarly, the Hon'ble ITAT's conclusion for the A.Y. 1990-91 to the effect that the oversold position of Rs. 94 crores does not survive, is also on a different footing as the Hon'ble ITAT has never questioned the genuineness of the oversold position. Thus, the facts for the A.Y. 1990-91 and 1992-93 are different and clearly distinguishable.

8.3.1 During the appeal proceedings, the appellant gave further submissions vide letter from time to time. Apart from arguing that some specific transactions mentioned in the Annexure M-2 do not deserve to be added, the substance of the submissions was repetitive in nature. These submissions were forwarded to the Assessing Officer for his comments. In essence, I see that in these submissions, the appellant has sought to show linkages between the decreetal transactions and money market oversold position. I will deal with these at the appropriate places. I have also considered the Assessing Officer's

submissions for the A.Y.1993-94 because in these submissions, the Assessing Officer has brought out matters which are relevant for the present assessment year under consideration also.

8.4 I have considered the assessment order and the submissions made by the appellant as well as the Assessing Officer in course of the appeal. Looking into the different relevant aspects of the matter, I find the following to be the key to the answer to the question at hand :

i) The nature, source and authenticity of the information on the basis of which Annexure M-2 have been prepared.

ii) Whether or not there was delivery of securities.

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

I will now discuss these issues as under :

i) The nature, source and authenticity of the information on the basis of which Annexure M-2 have been prepared.

The addition on account of the money market oversold position is based on the information and its analysis tabulated in Annexure M-2. The information in M-2, in turn, has been sourced from following :

i) The Deal File of the appellant upto 27.2.1992 as found in the computer data seized from the appellant

ii) Information called for from various banks, financial institutions, companies and brokers.

iii) Information provided by the RBI on the transactions reflected in the bank accounts of the appellant.

iv) Voucher file of the appellant as found in the computer data seized from the appellant

As I note, the Assessing Officer handling the appellant's case had the occasion to collect, collate and analyze the information collected from the above sources through computer programming and data management process. This entire process has been delineated by the then ACIT (OSD) in his letter dt. 22.5.1995 to the JT(Central)23, Bombay. The copy of this letter was furnished to me and the

appellant by the Assessing Officer during the appeal proceedings. As elaborately mentioned in this letter, the working data and the program was kept in tape cartridges operated in 'DOS' system with FOXBASE Utility. The data of money market and share market for both the assessment years i.e. 1992-93 and 1993-94 was kept in the following sub-directories .

1) MATCH

2) SHARE

3) MONY

4) ACCOUNT

The details of information collected from external agencies and the data copied from the computer of the appellant were stored in the sub directories MATCH and ACCOUNT. In similar vein, the processed data and the software used to process the data were operated in the sub directories SHARE and MONY. The method of processing and different files created through this mechanism have been discussed in detail by the ACIT (OSD) in his letter dated 22.5.1995. In essence, it may be noted that the data collected and stored by the above method was bunched on the basis of independent categories of transactions and then run through the software to derive the results. In the present case, the results by this processing stand reflected in Annexure M-2. During the appeal proceedings, the Assessing Officer also had the occasion to give demonstration of the process to the appellant's Authorized Representatives. A note dated 31.7.2009 was submitted by him in this respect. From this note and the documentation given, I gather that two compact disks dt. 8.9.98 were created in which all the data contained in the two tape cartridges were transferred. As I understand, these disks were then processed in the MS-EXCEL software to take print outs of the data of the Deal file. The print outs were submitted to the appellant as well as to me. From the foregoing, I find that the information has been collected from relevant and authentic sources. I also find that they have been processed in the most scientific, accurate and credible manner to arrive at the desired results. Significantly, the software used is a simple process identifying and bunching of identical transactions and instruments. Significantly and as noted by the

Assessing Officer, the Deal File is the seized computer data which is appellant's own record and accordingly, presumption u/s 132(4A) follows directly and inevitably. In this light, I find the information on the basis of which Annexure M-2 has been prepared to be correct, relevant, authentic and reliable.

ii) Whether or not there was delivery of securities

As I note, one of the main planks of the appellant's defense is that the securities in question are not backed up by deliveries and as a result, they cannot be made the subject matter of oversold position. The Assessing Officer has countered this by seeking to bring to light the fact that the securities featuring in Annexure M-2 stand delivered. Looking into the rival submissions and the documents and facts brought on record by them, I am inclined to agree with the Assessing Officer. To this end, in the first place, I find that the appellant has in his statement recorded by the Assessing Officer categorically confirmed that deliveries had been made in most of the cases. This is reflected in his answer to Question No. 9 which is reproduced as under :-

Q.9 *Are the deliveries in case of shares made in aforementioned account dated 31.7.89 made to all the parties whose names are featuring in the Sheet?*

Ans. *Most of the deliveries must have been made as mentioned by Mr. Pankaj Shah in his earlier statement.*

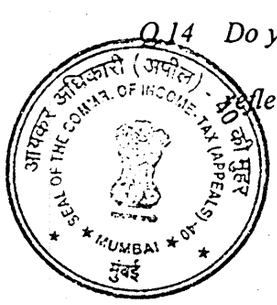
Not only this, in answer to Question No. 11 of the statement, the appellant has also gone on to explain the process of the delivery. His reply to this question is again reproduced :

Q.11 *How do you effect the delivery of Money Market instrument ?*

Ans. *Most of the time, there are exchanges of the cheques with Money Market Instruments. But there are even different of execution when dealt with Corporate and some outstation clients, where deliveries are not made simultaneously on exchange of payments.*

The appellant has further elaborated this in his answer to question No. 14 :-

Q.14 *Do you mean to say that physical delivery of all the instruments stated by you as reflected in 2098 Stock Control Account has been given by you to the Banks?*



Ans. *The difference between Sale and Purchase, being excess of Sales over purchases has been made by either physical delivery of instrument made by me or Bank receipt earlier issued by the same banks to our various corporate customers viz. Apollo Tyres, Hero Honda, Bindal Agro etc.*

The above line of answers given by the appellant himself would clearly indicate that the appellant had taken the sale transactions to its logical end by first, selling the securities, second, receiving the money and finally, by delivering the instruments. The appellant's current stand is a clear shifting from the facts admitted by him in his statement. The shifting of stand defies the clear facts that exist on the issue and which was before the appellant when the statement was given. The appellant has not brought anything on record to justify his changed stand and accordingly, the facts admitted in the statement remain the basis to arrive at the right conclusion on the issue. The decision in the case Mahindra Chiman Lal Shah Vs. ACIT 49 TTJ (Ahd.) 677 bears special mention here. In this case, during the course of search, money deposited in banks was surrendered in a statement made u/s.132(4) and was not shown as income while filing the return. Subsequently, the appellant came out with the story that the bank deposits were out of the withdrawals from the same bank a few months ago. In this decision, in view of these shifting stands taken by the assessee, it was held that the Department was justified in relying upon the statement recorded u/s.132(4) in preference to subsequent statement. In similar vein, in the case Smt. Vasanti Sethi Vs. ACIT 45 TTJ (Del.) 503, the subsequent retraction after admission of unexplained deposits in course of the search and its disclosure in the return was held to be inconsequential. In this case, the initial admission was held as an evidence in the proceedings for assessment. The facts stated by the appellant in his statement and the stand taken now fall on identical lines as in these cases and accordingly, the facts stated by the appellant in his statement before the Assessing Officer will remain as the more formidable evidence. These facts also stand endorsed by Mr. Pankaj Shah, a close confidante employee of the appellant in his statement before the Assessing Officer and his subsequent cross-examination by the appellant. Significantly, in his statement, the appellant has also confirmed

Mr. Pankaj Shah's statement on delivery. In course of the appellate proceedings, the appellant submitted an affidavit by Mr. Pankaj Shah. The appellant had requested for cross examination of Mr. Pankaj Shah, which was accepted by me. However, the appellant could not produce Mr. Pankaj Shah. According to the appellant, he had met with an accident on 23.7.2009 and was hospitalized. Looking into the affidavit, I find that Mr. Pankaj Shah has maintained that he had answered the questions in his statement u/s 131 of the ITA pertaining to the transactions for the financial year 1989-90. Mr. Pankaj Shah has also stated that several transactions undertaken were strictly inter bank transactions and brokerage was earned by the appellant. Further, in the affidavit, apart from this, Mr. Pankaj Shah has only explained the transaction model followed by the appellant. He has also stated that the transactions marked `F' do not necessarily mean that transactions have not been undertaken. The affidavit along with the appellant's letter dt. 31.7.2009 forwarding the affidavit was given to the Assessing Officer for his comments. The Assessing Officer vide his letter dt. 4.8.2009 had the occasion to observe that the affidavit only echoes the submissions of the appellant and is a self-serving document. Referring to the averments in the affidavit, it was argued by the Assessing Officer that call money transactions have been treated as any other securities. Reference was particularly made to para 5,6 and 7 of the affidavit to demonstrate that the averment of Mr. Pankaj Shah supports the stand of the Assessing Officer. On the contention of Mr. Pankaj Shah that the transactions marked `F' do not necessarily mean non-execution of the transactions, it was pointed out that Mr. Pankaj Shah has not given any evidence to substantiate this. The Assessing Officer also wanted Mr. Pankaj Shah to be produced to enable him to examine Mr. Pankaj Shah. I have gone through the affidavit and the submission of the Assessing Officer. In the first place, I do not find any statement in the affidavit in which Mr. Pankaj Shah stated that the transactions mentioned in Annexure M-2 were not backed up by deliveries. Accordingly, the affidavit does not specifically contradict Mr. Pankaj Shah's statement on delivery given in course of the search. Further, on the issue of appellant acting both as an agent as well as a principal and the banks lodging

their claims in respect of transactions where delivery of security has not been made, Mr. Pankaj Shah only endorses the Assessing Officer's stand. I also find Mr. Pankaj Shah's averment on the transactions marked `F' unsubstantiated. In this light, the affidavit of Mr. Pankaj Shah does not advance the appellant's arguments on the issue. The appellant was also allowed to cross examination of Mr. Pankaj Shah on 14.1.2010. This was allowed because the Assessing Officer had relied on the statement of Mr. Pankaj Shah while coming to his finding. Because of this reliance of the Assessing Officer, in the interest of justice, the cross examination was allowed. The cross examination was done before the Additional CIT, Central Range 7, Mumbai followed by re-examination by him. From the proceedings of the cross-examination and re-examination, I do not find anything which can support the appellant's stand on the issue. To this end, in the first place, I find that most of the questions in cross examination are factual and already brought on record. On the crucial issues of delivery and the entries in the Deal File, there is nothing in the response of Mr. Pankaj Shah which contradicts the Assessing Officer's findings. For example, in response to answer to question no. 10 of the cross examination, Mr. Pankaj Shah only mentions that in a number of transactions, the deliveries of securities were not made. He does not specifically contradict that there were securities which were delivered. This becomes particularly clear from his response to question no. 9 of his re-examination by the Additional CIT, Central Range-7. In this question, when asked to state the ratio of the total transaction executed by the appellant where delivery of securities was not made, Mr. Pankaj Shah had the occasion to reply that he would not like to hazard a guess. Regarding the entries marked `F / T', Mr. Pankaj Shah, in response to Question No. 16 of the cross examination, had the occasion to state that the status `F' signifies that some particulars were required to be fed into the computers. He, however, never states that the transactions marked `T' are not backed up by delivery. In this respect, his responses to Question No. 17 to Question No. 22 of the re-examination calls for special attention. As may be noted, in the responses to these questions, in essence, Mr. Pankaj Shah confirms that the deals where `T' appeared, were

transferred to financial ledger account. In particular, in response to Question No. 22, he specifically answers as under :

" *All completed transactions where delivery was made and status 'T' was fed, were transferred to Financial Ledger.'*

Significantly, in answer to Question No. 17 of re-examination, he acknowledges that the fields of 'T' and 'F' were devised by computer programmer. This only underlines the fact that the Deal File was maintained by the appellant and that the Assessing Officer's detection of the different fields in the Deal File is correct. The appellant in his submissions also relied upon the report of the Auditor's Vyas & Vyas, Janakiraman Committee and JPC. Clued into these reports, the appellant has sought to project that the securities were not backed up by delivery by quoting instances from these reports. On the basis of the findings of the report, the appellant has sought to argue that the funds received by him did not represent delivery of securities. The appellant has further pointed out that this proposition is also supported by the CBI, Custodian and other investigating agencies. In particular, attention has been drawn to the observations of M/s. Vyas & Vyas at pages 8, 13, 16, 17, 20, 24 and 25 to 32. On this, the Assessing Officer had the occasion to argue that the instances quoted by the appellant from these various reports are general in nature. Looking into the reports and the particular instances brought to notice in the respect of the report of M/s. Vyas & Vyas, I agree with the Assessing Officer. There is nothing in these reports to indicate that these reports refer to the securities featuring in Annexure M-2. In this respect, I find that the appellant's emphasis on the problem exposure of the transactions mentioned in the Jankiraman Committee or the report of M/s. Vyas & Vyas is totally misplaced. To this end, as pointed out by the Assessing Officer in her report dated 2.7.2009, I find that the exposure worked out by M/s. Vyas & Vyas is in respect of transactions in which neither any delivery was made nor the funds were returned to the banks or financial institutions. Similar is the case with the observations of Janakiraman Committee and the JPC. This premise of these reports is very significant because a comparison of the volume of the problem exposure worked out in these reports with the volume of the transactions

reflected in Annexure M-2 would reveal that the problem exposure worked out in these reports is only restricted to the securities where there was no delivery and that this working does not cover the full gamut of the appellant's transactions in the money market. From this, it can be easily noted that there is no correlation between the securities in respect of which the problem exposure has been worked out and the securities forming part of Annexure M-2. In this background, I find that the total problem exposure worked out in these reports in respect of transactions executed by the appellant is too meager when placed against the volume of the total transactions executed by the appellant during the relevant period. As I note, the gross problem exposure worked out by the Janakiraman Committee is Rs. 4024 crores (Page 278 to 280) and that by the JPC also at Rs.4024 crores (Page 14 to 16). This gross problem exposure is not only on the appellant but also on other players in the scam. The appellant's share would thus be less than the total figure. To be specific, the transactions where delivery was not executed has significantly been identified in the report of the above Committees and M/s. Vyas & Vyas as under :

REPORT OF JANAKIRAMAN COMMITTEE (Page no. 278 to 280)

"The findings detailed in the earlier reports of the Committee have now established that the gross problem exposure of banks can be placed at Rs.4,024.45 crores made up as under :

(Rs. In crores)

1.	Total value of investments made by banks for which they do not hold any securities, SGL, transfer forms or BRs	
(a)	National Housing bank (as detailed in the second Report of the Committee)	1271.20
(b)	State Bank of Saurashtra (as detailed in the second Report of the Committee)	174.93
(c)	SBI Capital Markets ltd. (as detailed in the	

	second Report of the Committee)	121.36
(d)	Standard Chartered Bank (as detailed in the fourth Report of the Committee)	506.61
(e)	Canbank Financial Services Ltd. (as detailed in the fourth Report of the Committee)	188.47
		2262.57
2.	Total exposure against BRs/SGL transfer forms issued by Bank of Karad Ltd. Or Metropolitan Cooperative Bank Ltd. (for which there appears to be no security backing)	
(a)	Canbank Financial Services Ltd. (as detailed in the fourth Report of the Committee)	438.66
(b)	Canbank Mutual Fund (as detailed in the second Report of the Committee)	102.97
(c)	Standard Chartered Bank (as detailed in the fourth Report of the Committee)	931.84
		1473.47
3.	Other items :	
(a)	Standard Chartered Bank (as detailed in items (d), (e) and (f) of pargraph 7 of chapter II of the fourth Report of the Committee)	43.69
(b)	Canbank Financial Services Ltd (as detailed in item 4 of paragraph 2.1 of chapter III of the Fourth Report of the Committee)	39.60
(c)	Andhra Bank Financial Services ltd., in respect of securities found to be forged / fabricated (as detailed in paragraph 13(b) of chapter-V of the fourth Report of the Committee)	205.12
		288.41
	Gross problem exposure	

(Total of items 1 + 2 + 3 above) 4024.45

Against this gross problem exposure, the following have to be considered :

(a) Stanchart had reportedly received from broker HPD Securities at which a value of Rs.350 crores was initially placed. This includes Cantriple units on which alone the depreciation in value is estimated at around Rs.150 crores.

(b) In respect of forged / fabricated securities lodged by FGFSL with ABFSL, ABFSL had received from FGFSL securities valued at Rs.101.59 crores before FGFSL was notified under the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and securities of Rs.112.29 crores after the notification.

(c) In respect of some of the brokers, in whose accounts monies for the above transactions have been credited, certain securities have been found lying with other banks.

(d) The above gross problem exposure does not include the depreciation / loss suffered by several banks by reason of the fact that ready forward transactions in securities (including on account of PMS and similar schemes) could not be reversed and the banks were left holding securities which had depreciated value, as also losses which may occur in the settlement of matters which are in dispute."

The above facts have been confirmed by the JPC also. The observation of the JPC are reproduced as under :

JOINT PARLIAMENTARY COMMITTEE REPORT : (Page no. 4 to 16)

According to the Janakiraman Committee the total problem exposure of various banks/financial companies was as much as Rs.4024.45 crores. This was mainly due to the reason that they were either not holding any securities or holding forged securities etc., for investment made by them or were having only BRs / SGL transfer forms issued by two small banks namely, BOK and Metropolitan Cooperative Bank Ltd., which were of no intrinsic value. The banks and financial companies which have mainly suffered losses are NHB, SBS, SCB, SBI Caps, CANFINA, ABFSL, CMF. The details are given below :

Sr.No.	Bank	Amount (Rs. In crores)
1	National Housing Bank	1,271.20
2.	State bank of Saurashtra	174.93
3.	SBI Capital Markets Ltd.	121.36
4.	Standard Chartered Bank	1,482.14
5.	Canbank Financial Services Ltd.	666.73
6.	Canbank Mutual Fund	102.97
7.	Andhra bank Financial Services Ltd.	205.12
		4,024.45

A more detailed analysis of the exposure is given below :

(Rs. In crores)

(A)	Total Value of investments made by banks and Institutions for which they do not hold any Securities, SGL transfer forms or BRs.			
	(i)	National Housing Bank		1,271.20
	(ii)	State Bank of Saurashtra		174.93
	(iii)	SBI Capital Markets Ltd.		121.36
	(iv)	Standard Chartered Bank	510.61	
		Less : Recovery	4.00	506.61
	(v)	Canbank Financial Services Ltd.		188.47
				2,262,.57
(B)	Total exposure against BRs / SGL Transfer forms Issued by BOK Ltd., or Metropolitan Cooperative Bank Ltd.			
	(i)	Canbank Financial Services Ltd.		438.66
	(ii)	Canbank Mutual Fund		102.97
	(iii)	Standard Chartered Bank		931.84
				1473.47
(C)	Other items :			
	Standard Chartered Bank			
	(non-receipt of securities agains BRs etc.)			43.69

(ii)	Canfina; (Securities held in the name of other Organizations)	39.60
(iii)	Andhra Bank Financial Services Ltd. (Securities found to be forged / fabricated)	205.12
		288.41
	Gross problem exposure	4024.45

The gross problem exposure mentioned above represent banks investments which are difficult to recover because, as against the money already paid out by them, either they do not hold any security or they hold BRs/SGL transfer forms of doubtful value and because of imperfect contracts / documents they may not be in a position to enforce the contracts and recover the money.

While in the case of NHB, SBI and SBI Caps the ultimate exposures will be on Shri Harshad S. Mehta (HSM), in the case of Stanchart, Canfina and CMF it will be mostly on Shri Hiten P Dalal (HPD) / Shri A.D.Narottam (AND) and in the case of ABFSL, it will be on Fairgrowth Financial Services Ltd. (FFSL)."

Similarly, the Special Auditors,Vyas & Vyas appointed by the Hon'ble Special Court have also narrowed down the scope of transactions, where the securities were not delivered while executing the transactions by the assessee. The observation of the Special Auditors is reproduced as under :

VYAS & VYAS : (Page no. 16)

"The total value of investment made by banks and institutions for which they do not hold either securities, SGL transfer forms or BRs are as under :

(Rs. In crores)

Sr.No.	Bank / Institution	Acquisition Cost	Bank / Institution to whom Payment was made		Account to which amount received was credited
			Bank	Amount	
1	National Housing	1271.20	i) SBI	707.56	HSM

	Bank		ii) ANZ Grindlays	506.55	HSM
			iii) Stand. Chartered	55.18	GRAM
			iv)Canfina	01.91	
				1271.20	
2	State Bank of Saurashtra	174.93	i) SBI	99.11	HSM
			ii) NHB	75.82	HSM
				174.93	
3	SBI CAPS	121.36	SBI	121.36	HSM
4	Stanchart	506.61		506.61	
5.	Canfina	188.47		188.47	
		2262.57		*816.44*	

As may be noted from the above three reports, the scale of the problem exposure has been determined at identical level in all the three reports. From out of this total problem exposure, the transactions executed by the appellant has been worked out as under by the M/s. Vyas & Vyas on page 16 of the Audit report :

(Rs. In crores)

Sr.No.	Bank / Institution	Bank / Institution to whom Payment was made		Account to which amount received was credited
		Bank	Amount	
1	National Housing Bank	i) SBI	707.56	HSM
		ii) ANZ Grindlays	506.55	HSM
2	State Bank of Saurashtra	i) SBI	99.11	HSM
		ii) NHB	75.82	HSM
3	SBI CAPS	SBI	121.36	HSM

The above table would indicate that there is a wide difference between the total aggregate face value of the transactions of Rs. 68,839.24 crores (para 4 on page 280 of the report under the caption 'Statistical Analysis' of the Janakiraman Committee) executed by the appellant and the quantum of problem exposure worked out above in respect of the appellant. This difference would clearly indicate that the reports relied upon by the appellant do not cover the total aggregate face value of the transactions as they have only confined their findings to the securities where no delivery was made. It is thus clear, the problem exposure touches upon only a small portion of the full gamut of the appellant's transactions in the money market. This would, in turn, mean that the appellant had transacted in a host of other securities and since the reports referred to above were only analyzing the securities not backed up by deliveries, these other securities did not form subject matter of the problem exposure. Most significantly, this would also make it obvious that since the securities mentioned in the Annexure M-2 do not find a place in the working of the problem exposure in these reports, they are definitely backed up by corresponding deliveries. It is also clinching to note that the amount of problem exposure worked out by M/s. Vyas & Vyas and reports of the two Commitees matches with the amount of the decrees awarded to the banks. In this light, I find that there cannot be any correlation between the securities forming part of the reports of the Janakiraman Committee, JPC and Vyas & Vyas and the securities featuring in Annexure M-2. This would also be clear from a comparative study of the securities covered by the several decrees and the securities featuring in Annexure M-2. The appellant has also made several other assertions in support of his position that there was no delivery of the securities involved. The assertions made include reference to allegations made by financial institutions that there were no deliveries of securities, non-production of any positive evidence by the Assessing Officer and reliance on judicial decisions. In light of my foregoing findings, I do not find any merit in these assertions also. As I would discuss next, the decrees on suits filed by different banks and financial institutions were on securities not featuring in the oversold position. Further, in face of very specific statements given by the appellant and his close confidante, Mr. Pankaj Shah as well as the comprehensive processing and analysis of information in Annexure M-2, it would be highly incorrect to hold that the addition is not based on positive evidence.

Similarly, the appellant's reliance on the decision of the Hon'ble ITAT in the case Growmore Exports Limited Vs. ACIT is also misplaced. The decision is in the context of the dividends. As against this, in the appellant's case, the issue is working out of oversold position in money market instruments. Further, in that case, the addition was made because the purchase of the shares were reflected in the accounts and as a result, it was held that dividends will be due. As may be noted, the premise of the addition in the appellant's case is totally different as the addition here is on account of unexplained investments. The appellant's reliance on the decision of the Hon'ble Supreme Court in the case Harshad Shantilal Mehta Vs. Custodian is also out of context. As may be noted, the addition in the appellant's case is based on concrete evidences and not on inferences. In this case, the Hon'ble Supreme Court has held that the inability of the appellant to produce the evidence need not automatically result into adverse conclusions. In this perspective, it may be noted that the addition in the appellant's case being based on several positive and concrete findings and not on mere consequential adverse conclusions, the appellant's case is totally distinguishable. I now come to the third issue posed above.

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 include finding on the nexus between 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 the 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 amplify this :

Suit	Why is there no nexus ?
MP No. 61 of 1992	The bank itself 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 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.
MP No. 28 of 1995	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.

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. This would be further clear from the study of the specific securities in these two categories. Summary of securities tabulated in Annexure M-2 is as under :-

Sr. No.	*Name of the Security*	*Amount (Rs. In crore)*
1	*ATBF – Non SLR*	*51.23*
2	*Call – Call*	*100.06*
3.	*11.50% C/L 2007 – Central Loan*	*173.32*
4.	*11.50% C/L 2010 – Central Loan*	*573.07*
5	*11.50% C/L 2011 – Central Loan*	*103.80*
6.	*9% HUDCO (23/02) – UDCO Bonds*	*0.945*
7.	*9% IRFC Bonds*	*(-)3.92*

8.	*13% MTNL(18/08) – MTNL Bonds*	*22.08*
9.	*9% NHPC (27/03) – NHPC Bonds*	*1.87*
10.	*13% NLC (04/04) – NPC Bonds*	*8.53*
11.	*13% NPC (04/04) – NPC Bonds*	*25.97*
12.	*13% NTPC (12/01) – NTPC Bonds*	*25.79*
13.	*9% REC (27/03) – REC Bonds*	*0.49*
14.	*Treasury bills*	*181.34*
15.	*Units 1964 Scheme*	*417.19*
	Total	*1681.76*

During the appellate proceedings, the appellant had submitted a chart to establish a correlation between the transactions mentioned in the decrees and the transactions taken by the Assessing Officer from the Deal File. 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. I am reproducing the appellant's chart along with the gist of the Assessing Officer's remarks:

Suit No. 61 of 92	SBI Capital market Vs. Harshad S. Mehta				AO's remarks
Date of Transaction	Type of Security as mentioned by appellant	Amounts	Ref. Page in Deal File	Year	1) No single transaction of 28 lac units in Deal File. 2) Transaction is with different party i.e. with Growmore and not with SBI Capital Market. 3) Dates are different.
31/03/1992	28 Lacs Units	42500000	Page No. 21 and 25	1992-93	
TOTAL		42500000			

MP 52 of 93	State Bank of Saurashtra Vs. Harshad S Mehta				
Date of Transaction	Type of Security	Amounts	Ref. Page in Deal File	Year	AO's remarks
02/09/1991	5 cr. Units	677500000	Page No. 413	1992-93	1)Value of transaction is different.

10/09/2001	2 Crs. Units	26818000	Page No. 425	1992-93	1)Transaction is with different party 2) Value of transaction is different
01/10/1991	13% NLC Bonds 5 Crs.	45468287	Page No. 441	1992-93	Neither the purchase nor the sale is executed.
		749786287			

Suit No. 41 of 95	State Bank of India Vs. Harshad S Mehta				
Date of Transaction	Type of Security	Amounts	Ref. Page in Deal File	Year	AO's remarks
29/07/1991	25 Lacs Units	33775000	Page No. 209	1992-93	1)Transaction is with different party
02/09/1991	5 Crs. Units	678260000	Page No. 413	1992-93	Neither the purchase nor the sale is executed.
		712035000			

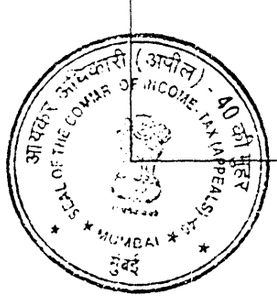
Suit No. 63 of 92	State Bank of India NHB Vs. Jyoti H Mehta & Custodian				
Date of Transaction	Type of Security	Amounts	Ref. Page in Deal File	Year	AO's remarks
25/10/1991	CC Assets	760307123	Page No. 485	1992-93	1)Quantity and value of transactions are different
16/11/1991	2 Crs. Units	270900000	Page No. 505	1992-93	1)Neither purchase nor sale is executed 2) Value of transaction is different
31/01/1992	6.5 Crs. Units	890500000	Page No. 613	1992-93	1) Transaction has been executed between NHB and SBI not with

					assessee.
22/02/1992	11.5% CGL 2008 100 Cr.	1521222734	Page No. 645	1992-93	1) Value of transaction is different.
22/02/1992	11.5% CGL 2007 50 Cr.		Page No. 645	1992-93	1) Value of transaction is not mentioned.
07/03/1992	11.5% CGL 2007 100 Cr.	1018850195	Page No. 9	1992-93	1) Transaction does not find place in Deal file.
07/03/1992	1.77 Crs. Units	256650000	Page No. 9	1992-93	1) Transaction does not find place in the decree.
13/03/1992	13% RIN Bonds 13 Crs.	122027808	Page No. 9	1992-93	1) Transaction does not find place in decree. 2) Value of transaction is different.
16/03/1992	2.5 Crs. Units	377175000	Page No. 9	1992-93	1) Transaction has been executed between NHB and SBI not with assessee.
24/03/1992	9% IRFC Bonds 30 Crs.	404593060	Page No. 13	1992-93	1) Transaction does not find place in decree. 2) Value of transaction is different.
24/03/1992	1.77 Crs. Units		Page No. 13	1992-93	1) Value of transaction is not mentioned. 2) Transaction is with different party.
24/03/1992	17% NTPC Bonds 1.79 Crs.		Page No. 13	1992-93	1) Value of transaction is not mentioned. 2) Transaction is with different party.
24/03/1992	9% IRFC Bonds 9.4 Crs.		Page No. 13	1992-93	1) Value of transaction is not mentioned. 2) Transaction is with different party.

24/03/1992	9% IRFC Bonds 6.6 Crs.		Page No. 13	1992-93	1) Value of transactior not mentioned. 2) Transaction is w different party.
24/03/1992	1 Cr. Units		Page No. 21	1992-93	1) Value of transactior not mentioned. 2) Transaction is w different party.
14/03/1992	3 Crs. Units	449775000	Page No. 25	1992-93	1) Transaction is w different party.
		6072000920			

From the rival submissions, as illustrated in the above table, I find that the Assessing Officer has brought out specific facts to distinguish the securities mentioned in the decrees from those featuring in the oversold position. The appellant has responded to the AO's observations on these decreetal amounts. The appellant's response and his finding are as under :

Security	Appellant's response	Findings
28 lacs units with SBI Capital Markets	The transaction is thus the same as in the decree in MP No.61 of 1992.	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 different and independent transactions.
5 crore units of Rs.67,75,00,000/-	The difference of Rs.50,000/- between Rs. 67,75,00,000/- and Rs. 67,74,50,000/- is explained by the fact that Rs. 50,000/- has been paid to State Bank of Saurashtra for routing	No evidence is submitted.



	the transaction.	
2 crore units of Rs.26,81,80,000/-	The transaction matches with the Deal File. The amount was erroneously mentioned as Rs. 2,68,18,000/- in the earlier submissions.	The Assessing Officer's observations are correct in that the transaction is with SBI CBRT according to the Deal File and not with the State Bank of Saurashtra as per the decree in MP 52 of 93.
13% NLC Bonds of 5 crore F.V.	The transaction is executed in terms of voucher of State Bank of Saurashtra.	The Assessing Officer's observation is correct that neither purchase nor sale is executed as per the Deal File. Secondly, as per the voucher enclosed by the appellant, transaction is between State Bank of Saurashtra and SBI.
25 lacs units and 5 crore units dated 29.7.91 and 2.9.91	Both the transactions are executed in terms of Deal Diary of SBI Caps.	The security in the Deal File is different. The Assessing Officer has rightly observed that the transaction of 25 lacs units as per the Decree in Suit No.41 of 95 relates to purchase of the units by SBI Caps from Uco Bank. With regard to 5 crore units, the transaction being categorized as 'F' was found to be not executed. The Deal Diary of SBI Caps relied upon by the appellant mentions a completely different figure of Rs. 67,83,00,000/- and not Rs.

		67,82,60,000/-. In this diary, the units are 50 crores and not 5 crores and further the transaction is with NHB.
CC Assets	There is no other transaction between Mr. Harshad S.Mehta and NHB on the day concerned.	The Assessing Officer's findings have not been rebutted. I agree with his findings that the rates and quantity of the CC Assets are different in the Suit and the Deal File.
2 crore units	The difference of Rs.50,000/- has occurred because of marginal rate difference recorded. However, on the basis of Document No.D220 -677 and D221-678 of NHB in Special Case No.2 of 1994 the transaction is the same.	The document does not mention the party with which the transaction has been made. Accordingly, it cannot be taken as a transaction with the appellant. Further, the transaction has been taken from the Deal File maintained by the appellant himself.
6.5 crore units	There is only one transaction between NHB and the appellant and SBI has only acted as a routing bank. There is nothing to indicate that the transaction was between NHB and SBI as it is between NHB and the appellant's brokerage firm. This would be clear from cheque no. 173921 dated 31.1.92 issued by	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. Balakrishnan, DGM, Security Services Branch of SBI endorses this as in Answer to Question No. 4, as reproduced

	NHB in favour of SBI and Document No. D200/657.	by the Assessing Officer in his submissions dated 10.8.2009. He clearly states that as per the records of the SBI, the appellant was not connected with the transaction in any manner.
11.5% CGL 2007	The Assessing Officer has not properly examined the statement furnished by the appellant where two transactions have been reported together for a combined amount of Rs. 152,12,22,734/-. Document No. D212-669 from NHB is the evidence for this. Further, Document D146-275 has also been relied upon. The Assessing Officer has wrongly reproduced the nomenclature of the securities.	Document D212-669 shows that the transaction was between NHB and SBI. Document D146-275 shows that the transaction was with Grindlays Bank. The securities in these two documents are also different. The appellant has not produced any evidence to prove that these were routing transactions. Further, from the Deal File, I find that the Assessing Officer has rightly reproduced the nomenclature of the securities. The Deal File also shows that the securities fall into one of the following categories : i) Neither purchased nor sold ii) Marked 'F' iii) Blank From the rates of the securities, as recorded in the Deal File, I find that in no way, the transaction in the securities can

		total up to Rs. 152,12,22,734/-.
11.5% CGL 2007 100 crores for an amount of Rs. 101,88,50,195/-	The Assessing Officer's observation that there is no such transaction in the Deal File is correct as factually the loan is 11.5% CGL 2010. The error was inadvertently committed.	Even there is no transaction in loan 11.5% CGL 2010 of 100 crores in the Deal File.
13% RIN Bonds 13 crores	The entry is to be ignored as the appellant has wrongly mentioned the security in the earlier submission.	No comments required as the appellant has admitted that the security was wrongly mentioned.
2.5 crore units	The transaction is between the appellant and NHB and not with SBI.	No evidence has been brought on record to prove this.
9% IRFC Bonds 30 crores, 1.77 crore Units, 17% NTPC Bonds 1.79 crores, 9% IRFC Bonds 9.4 crores and 1 crore units.	The Chart enclosed with submissions will explain the transactions.	The chart enclosed does not give any specific explanation. The documents referred to also are not found. It is not clear how the appellant maintains that these securities are also part of decreetal transactions.
3 crore units	The transaction is between NHB and the appellant and the cheque was received from State Bank of Patiala	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.

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 the 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. In this respect, as pointed out by the Assessing Officer in his submissions dated 17.8.2009, I also find that the appellant has challenged the decrees by filing Miscellaneous Petitions against them. This conduct of the appellant again contradicts his own position. As I see, after having challenged the decrees, the appellant cannot simultaneously claim that there is a correlation between the transactions referred to in the decrees and the transactions forming part of Annexure M-2. Through other submissions submitted from time to time, the appellant has also invited attention to some more transactions to show linkages between decreetal transactions and money market oversold position. The Assessing Officer has also given his comments on them. The appellant's submissions and the Assessing Officer's comments on them are reproduced below:-

Transaction	Discrepancy pointed out by the Appellant	Comments of the Assessing Officer
Rs. 47.98 crores of 21.2.92	Decree has been awarded in favour of SBI in MP No. 63 of 1992 which includes the sum.	The transaction does not find place in the Deal File as executed transaction marked 'RT' and 'T'. In Annexure M-2 only executed transactions have been included.
Rs. 90.16 crores	A decree has been awarded in favour of S.B.I. in M.P. No. 63 of 1992 for	The transaction does not find place in the Deal File

	the aforesaid sum claimed to have been deposited in the Assessee's account on 30.03.92. N.H.B. has shown the aforesaid transaction as purchase of 17% N.T.P.C.Bonds as Deal No. 262.	and therefore, no correlation can be established with the transactions of the Annexure M - 2.

On these two securities, the appellant has further submitted that the transaction of Rs. 47.98 crores represents transactions in Treasury Bills and accordingly, although the addition has been made to the appellant's income on this count, the Assessing Officer has stated that the transaction is not forming part of Annexure M-2. Point was made that for this reason only, itemized break-up was called for. Further, with regard to the transaction of Rs. 90.46 crores also, it was mentioned that the itemized break-up was not given. Referring to the cheque payment of Rs. 90,45,53,603.20 by NHB, it was argued that decrees had been awarded for the transactions undertaken between NHB and M/s. Harshad S. Mehta. In the backdrop of these facts, point was made that the Annexure M-2 is not reliable since these two transactions have actually taken place and therefore, ought to have been included in M-2. The appellant's contentions are totally misplaced. As may be seen, the Deal File is the appellant's own document and accordingly, the appellant is to explain why a particular entry is there in the Deal File or not. In this case, the Assessing Officer has referring to the Deal File specifically established that the transactions are not in the Deal File. Accordingly, they are not in the frame of the case. This is found to be correct. From perusal of the Deal File and the itemized break-up, I find that the transaction of the sum of Rs. 47.98 crores in Treasury Bills is neither in the Deal File nor in the itemized break-up. This is so, because the four transactions in Treasury Bills undertaken on 21.2.92 are either marked `RV` or `F`. Accordingly, they do not find place in the Annexure M-2. The appellant has thus wrongly mentioned that these transactions find place in the Deal File. The appellant has also not been able to prove how these transactions are in the Deal File. With regard to the transaction of Rs. 90.46 crores also, I find that no transactions in 17% NTPC Bonds dated 30.3.92 are there in the Deal File and in the itemized break-up. In this respect, I may also mention that the

itemized break-up was made available to the appellant. Clued into these transactions, the appellant has also referred to the fact that two cheques for Rs. 47.95 crore and 2.50 lacs have been shown to have been paid towards the transaction of Treasury Bills in terms of documents made available by CBI on the basis of records of NHB. Premised on this, it was argued that this would show that the amount paid to SBI by NHB forms part of their claim of Rs. 707.75 crores. This argument is totally off the mark. As already stated, the transaction in Treasury Bills in this case, does not form part of the Deal File and Annexure M-2 precisely because the transaction forms part of decreetal transactions. This only underlines the basic premise of the Assessing Officer that the transactions in the Decrees do not form part of the oversold position.

The appellant has also given clarification on some other individual securities. The position in respect of these securities is as under :-

Securities / instruments	Appellant's Submissions	Findings
Rs. 100 Crores Call Money	On 2.5.1991 an amount of Rs. 100 crores was paid from UCO bank account of M/s. Harshad S. Mehta to SBI Mutual Fund. In the second leg of transaction, on 3.5.91 SBI Mutual Fund returned the sum of Rs. 100 crores with the interest of Rs. 6, 84,900/-. This sum has been deposited by M/s. Harshad S. Mehta back into its account at UCO Bank. These transactions are reflected in the appellant's books of account.	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 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.
Rs. 51.23 crores – ATBF	For the period post 28.2.1992, the Assessing Officer 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.	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 ATBFs 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.
Rs. 181.34 Crs on account of Treasury Bills	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 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. i) ANZ Grindlays Bank - Rs. 142,95,15,000/- ii) CanBank Mutual Fund– Rs. 142,91,70,000 iii) SBI Caps – Rs. 38,20,40,000/- iv) SBI – Rs. 289,53,12,900/- v) SBI - Rs. 38,28,00,000/- 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 Officer has ignored the purchases made by the appellant's firm on a principal to principal basis.	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 on record to substantiate that the status field `F' means something else and not false. The findings on the individual purchases mentioned are as under:- i) ANZ Grindlays Bank - This transaction is marked `F' and has accordingly been excluded. ii) CanbankMutual Fund- No details have been given and only it has been argued that the Assessing Officer has not caused any enquiry. 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. iv) SBI – The specifics of these transactions have 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.
11.50% C/L 2011 of Rs. 102.80 Crs	The Assessing Officer has taken two transactions of 100 crores of F.V of which one is purchase by SBI and sale by M/s. Harshad S. Mehta @99/- for a F.V of 100 crores for an amount of Rs. 102.412 crores. The Assessing	Entry against Serial No. 288 in page no. 160, document relied upon by the appellant shows that the appellant has sold

	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 has not taken any transaction of sale of 11.5% CL 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.	11.50 CL 2011 for the F.V of Rs.100crores. In the submissions the appellant has wrongly stated that this is shown as purchase in page no.160. The sale rate for this is shown at 95.6187, which is also the value shown in Annexure M-1. The sale stands confirmed by both Annexure M-1 / M-2 and the documents submitted by the appellant.
13% NPC (04/04) NPC Bonds of Rs. 25.97 Crs	The A.O. has made an addition of 25.97 crores on the 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	The appellant has not made it clear how there could be no oversold 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.

	behalf of Canfina, their 100% subsidiary.	
13% NTPC Bonds of Rs. 25.79 crores	The addition has been made for the interest date of 12/01 which is the interest payment date for 17% NTPC Bonds and thus 17% NTPC Bonds has been incorrectly treated as 13% NTPC Bonds.	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.

From the above illustration, it may be seen that the explanations provided by the appellant are misplaced and incorrect. To sum up, it may be noted that the appellant has not been able to controvert the findings of the Assessing Officer given on the appellant's explanation on specific securities. From perusal of the Assessing Officer's comments vis-à-vis the individual discrepancies pointed out by the appellant, the foregoing discussion reveals that the appellant has failed to substantiate his explanation on the individual securities for, inter alia, the following findings :

i) In many cases, transactions of purchase have been shown as sale by the appellant.

ii) In many cases, it was sale executed and not the purchase.

iii) In some cases, there is no transaction at the rate and quantity mentioned by the appellant.

iv) In many cases, the documents relied upon do not substantiate the appellant's point.

v) In many cases, the transactions are marked as 'RV', 'RO', 'OR' etc. and not 'RT'.

vi) In many cases, the transactions are marked 'F' and not 'T'.

vii) In many cases, the dates of transactions are different.

viii) In many cases, the securities are different.

ix) In many cases, the transacting parties are different.

x) In some cases, the securities mentioned do not form part of 'M-2'.

The appellant has also argued that negative balances of Rs. 103.75 crores and Rs. 100 crores have been included in the oversold position. From perusal of the assessment order for the assessment year 1991-92, I find this to be in order. As I see, from the assessment for that assessment year, these amounts were not made the subject matter of income for that year and accordingly, they were rightly carried forward as negative balances for the present assessment year. Since the amounts were not subjected to tax in the assessment year 1991-92, they have been rightly brought to tax during the present assessment year. In line with the above, I do not find any substance in these discrepancies pointed out by the appellant.

8.4.1 On the addition of the oversold position, the appellant has also placed a number of other arguments in support of his contentions. It is his argument that the funds received by the appellant as advance against sale of securities which were not delivered represent his liabilities and not income on account of sale of securities. This argument is misplaced since as discussed in detail in the preceding paragraph, the securities forming part of the oversold position are backed up by deliveries. The appellant has also argued that cash transactions are not possible in dealing with the banking institutions. This is again not material since it is not the case of the Assessing Officer that there were cash transactions in any of the securities. In his submissions, the appellant has also objected to the fact that the Assessing Officer has not given set off of closing stock of Rs. 1069.14 crores while working out the oversold position of Rs. 1681.79 crores. Reference in this

context has been made to the fact that while dealing with the same issue for the assessment year 1990-91, set off had been given. Looking into the assessment order for the assessment year 1990-91, I find this drawing of parallel misplaced. As I note for the assessment year 1990-91, the Assessing Officer has only worked out the peak oversold position as enumerated by him in the assessment order. I further note that the Assessing Officer, while working out the peak, has taken the minimum of three options, which he has considered as unexplained investment. It is clear from this treatment, for the assessment year 1990-91 , the Assessing Officer has set off unexplained investments comprising purchases against unexplained investments comprising sales. As distinct from this, for the assessment year 1992-93, the closing stock of Rs. 1069.14 crores has been considered as explained since they are backed up by purchases on record and this being so, the oversold position being based on unexplained purchases, the set off of explained purchases with unexplained stock will be inconsistent and illogical, and the Assessing Officer has rightly gone by this logic in his assessment order for the assessment year 1992-93. The appellant has also referred to deletion of Rs. 107 crores out of the total amount by the Hon'ble ITAT for the assessment year 1990-91. This reference is also inconsistent. As rightly pointed out by the Assessing Officer, the Hon'ble ITAT did not delete the amount on the ground of genuineness or otherwise of the working of the oversold position but as pointed out by the Hon'ble ITAT in para 102 on page 61 of its order, on a completely different ground of the Assessing Officer having omitted to consider securities worth Rs. 107 crores while working out the peak oversold position. The appellant's case is clearly different and distinguishable. Another argument taken by the appellant is that only the difference of the value of the transactions backed up by delivery should be taken as the oversold position. This argument is misplaced as the position of law on this is very clear. As may be seen, in terms of the various provisions of Chater VI as stipulated in various sections starting from 69 to 69D, the whole of the investments/unexplained money are added as income. In these sections, it has been specifically laid out that the entire investments / money not recorded in the books of account and not explained or unsatisfactorily explained will be treated as income without any set off of any amount of any character. As I see, the appellant has not appreciated the real import of the additions on account of investments, which are in

view of the provisions of the Income-tax Act are also treated as income in their entirety. This apart, from perusal of the Deal File, I find that in a very fair manner, the Assessing Officer has taken only the net of the transactions in the securities of a particular category to the oversold position. To illustrate, in respect of Treasury Bills, there are 35 completed transactions comprising 17 transactions of purchase and 18 transactions of sale. Out of this, the difference of Rs. 181,33,83,515/- between the sales and purchase was only taken to the oversold position. It will be thus clear that the oversold position is the result of the net position of purchase and sale of the securities. The appellant has also drawn attention to its argument that Call Money, ATBF and Treasury Bills cannot be part of oversold position. Regarding Call Money, it has been pointed out that it is an inter-bank transaction not possible to be sold as an asset. As regards ATBF, it has been argued that investment in an unfixed asset is not possible. For Treasury Bills, it has been pointed out that there cannot be any cash transaction in their respect. Looking into the nature and character of these instruments and the ground of addition, I do not find any merit in these assertions. As is well known, Call Money and ATBF are like any other financial assets. As defined by the RBI in its Master Circular No. FMD.MSRG No. 36/02.08.003/2009-10 dt. 1.7.2009 Call Money means deals in overnight funds. Further, in this Circular, the Call Money has been recognized as a money market instrument being a financial asset. The appellant has also enclosed the Circular vide his submissions dated 17.8.2009 but has not specifically pointed out how this Circular is relevant to drive home his point. In this respect, the appellant has referred to the addition of Rs.100,06,84,900/- on account of call money and correlating to the Deal File pointed out that the transaction was undertaken on 2.5.1991 and was reversed on 3.5.1991. 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 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, the 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 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". So far as the ATBF is concerned, 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 and have been taken into consideration as they are marked as `RT' and `T'. 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 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 again obviously erroneous as already discussed above, the Assessing Officer has rightly excluded this because the entry is marked 'F' and not 'T'. The appellant has also argued that he was never made aware of the manner in which the income is determined by the Assessing Officer and the correctness of the information so compiled by him. This argument has also no merit. As already discussed by me on the issue captioned `***The nature, source and authenticity of the information on the basis of which Annexure M-2 have been prepared'***, the appellant was fully made aware of the information on the basis of which Annexure M-2 was prepared, the process by which the relevant data was tabulated and the method by which the results were obtained. The

appellant was also given the full print-out of the deal file and break-up of the transactions and, a demonstration was also made by the Assessing Officer to explain to the appellant's Authorized Representatives and me how the data captured was stored and processed. A CD containing the relevant data was also given to the appellant's Authorized Representatives. As already discussed in relevant para, a note dated 31.7.2009 was also given to the appellant's Authorized Representatives. I further find that the Assessing Officer has also given a detailed note on the working of Annexure M-2 vide his letter dated 17.7.2009. In this note, the Assessing Officer has referred to the two tape cartridges in which the relevant data was stored, the copy of handing over note dated 22.5.1995 signed by the then ACIT(OSD) handed over to ACIT, Central Circle 23 and the method and process already elaborated in the assessment orders for the assessment years 1992-93 and 1993-94. Clued into these, it has been elaborately explained how entries were identified for working out the oversold position. In this respect, attention was invited to the fact that out of the several categories of entries, entries marked `RT' and `T' were sorted out to work out oversold position. Referring to these, it has been pointed out the transactions marked `RT' represent the appellant's own purchases and sales on principal to principal basis routed through the banks and that the transactions marked `T' represent actual execution of the transactions. From perusal of the Annexure M-2, I find that it is these two categories of transactions i.e., transactions marked simultaneously both `RT' and `T' that have been taken into reckoning in Annexure M-2. The appellant has not brought out any specific fault or gap in this process of supply of information to him. In the face of such an extensive and methodical supply and apprisal of information to the appellant, his grievance does not have any legs to stand upon. The appellant's other argument that there is no evidence of unaccounted purchase in the seized material is again off the mark. As already pointed out, the oversold position has been worked out on the basis of seized materials including data captured from computer seized from the appellant's premises. Further, information was also obtained from other external sources which were also used along with the information gathered from the seized materials. The appellant's other arguments on non-delivery of the shares are also found to be misplaced in view of my findings given under the caption `***Whether or not there was delivery of securities***'. The appellant has also argued that the Assessing

Officer has taken a 'U' turn and now wants to take shelter u/s 69 of the ITA. I find this off the mark. I do not see any stated change of position in the Assessing Officer's stand during the assessment proceedings and during the appellate proceedings before me. As is clear in the assessment order, the sum of Rs. 1080,58,89,691/- was assessed as unexplained investment since this much worth of security in regard to money market transactions of the appellant remain unexplained. During the present appellate proceedings, the Assessing Officer has only reiterated this position by bringing in facts and analysis on the several submissions of the appellant. In this respect, the appellant's stand that the pre-conditions and rigours of section 69 of the ITA have not been met by the Assessing Officer is totally misplaced. The Assessing Officer while holding that the oversold position was appellant's unexplained investment has clearly brought out that the oversold position worked out could not be explained by the appellant and accordingly, the addition has been rightly made as unexplained investments. As may be noted, in this case, the conditions specified in section 69 for bringing to tax the amount stood satisfied. The conditions in section 69 are as under :

i) '*The assessee has made investments,*

ii) Which are not recorded in the books of account,

iii) *The assessee ' offers no explanation about the nature and source of investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfacoty.... '.*

Tested on the above conditions, I find that the facts and evidences clearly reveal that the appellant was found to have made the investments . These were are also not recorded in the books of accounts and the appellant has also not been able to satisfactory explain the source of the monies involved in these transactions. Accordingly, all the necessary conditions for application of section 69 in taxing the amount as unexplained money are cumulatively and collectively satisfied. On the stated change in stand of the Assessing Officer, the appellant has further submitted that now the Assessing Officer has taken a stand that the appellant had not delivered the securities to those banks who had lodged their claim. This is again totally misplaced in that this is a matter of obvious fact which the appellant has not been able to controvert. Being a matter of fact, there cannot be a change of stand on the issue. The appellant has also made a point that the entire M-

2 is liable to be rejected. This is again totally lame. I have already discussed the authenticity and accuracy of the information in Annexure M-2. To reiterate, it has been prepared on the basis of very authentic information collected from the Deal File, various financial institutions and other external agencies. Further, as already explained in detail, the information so collected has been very methodically and scientifically processed to arrive at the outcomes.

8.4.2 Regarding the addition of Rs. 291,05,41,290/-, it has been pointed out that out of securities forming part of the addition, securities worth Rs. 253.8 crores have been found to be not belonging to the appellant in terms of the order dated 1.11.2002 of the Hon'ble Supreme Court. In this respect, as pointed out by the appellant, I also find that the Hon'ble Special Court has also vide its order dated 29.9.2007 in Report No. 15 of 2006 filed by the Custodian for distribution of assets referred to this decision by the Hon'ble Supreme Court and 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 appellant's income. This has been further endorsed by the Hon'ble Supreme Court in its judgement in Civil Appeal D.No. 32945 of 2007. In this decision dated 3.12.2008 in the case between DCIT Vs. State Bank of India and others, while remitting two issues to the Special Court in terms of para 30 of its order, the Hon'ble Supreme Court has clarified that the amount of Rs. 253 crores would not be included in the income of the appellant and to this extent, the Hon'ble Supreme Court has upheld the scaling down of the addition. In this respect, on perusal of the order of the Hon'ble Special Court, I find that in para 10 on page 21 of the order, the Hon'ble Special Court has listed serial number of the securities and in this list, certain serial numbers of the securities in Annexure M-5 are not mentioned. This being so, it needs verification to what extent the securities in Annexure M-5 can be stated to be covered by the order of the Hon'ble Supreme Court. The appellant has also argued that some of the securities in question stand assessed in the hands of Growmore Research & Asset Management Private Limited (GRAM). In this backdrop, I find that the securities mentioned in the order of the Hon'ble Supreme Court and the securities stated to have been assessed in the hands of GRAM need to be identified and matched with the securities in Annexure M-5. As the submissions of the appellant is not very clear on this, I direct the Assessing Officer to identify the securities in these two categories and

match them with the securities in Annexure M-5. The addition on account of the securities in Annexure M-5 would stand deleted / confirmed to the extent they are found / not found as either part of the securities mentioned in the order of the Hon'ble Supreme Court or the securities assessed in the hands of GRAM.

8.4.3 In view of the foregoing discussion, I find the addition of Rs. 1080,58,89,691/- justified. It is confirmed. The addition on account of money market unexplained stock of Rs. 291,05,41,290/- is disposed of in terms of my above directions.

9. **In the sixth ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs. 35,55,51,482/-.**

9.1 In course of the assessment proceedings, in line with the assessment orders for the assessment years 1990-91 and assessment year 1991-92, the Assessing Officer observed that the appellant conducts two types of transactions in the money market as under:

i) He acts as a principal and in this capacity, the 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.

ii) The appellant also is 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 security to the other person. The difference so earned / lost by the appellant is received by him from one of the parties.

In the above background, the Assessing Officer found that in respect of the transactions at (ii) above, the differences received / paid by the appellant show that he had earned a sum of Rs. 35,55,51,482/- on this count. This was tabulated in Annexure K to the assessment order.

9.2 In appeal, it was submitted that the Assessing Officer has 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. Particular discrepancies with regard to receipts of Rs. 39,19,77,531/- and closing stock of Rs. 38,70,34,463/- on account of CC Assets were also pointed out.

9.3 Rebutting the appellant's submission, it was submitted by the Assessing Officer that he has worked out the difference where the appellant has not acted as a principal. In this context, it was argued that the appellant has tried 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. With regard to the particular discrepancy referred to by the appellant in respect of CC assets, it was pointed out that the very fact that the appellant has used the word 'possibly' in his submissions would indicate that the appellant was himself not sure of the point he was making.

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 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.

10. **In the seventh ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs. 58,27,13,670/- on account of interest on securities in money market.**

10.1 This addition relates to interest receivable by the appellant in respect of securities held by him on the specified dates when the interest is payable every year on money market instruments. The Assessing Officer found that the appellant possessed stock of these types of securities on the specified dates. The interest receivable by the appellant on this count has been worked out by the Assessing Officer in Annexure `I'. The total interest receivable has been shown at Rs. 55,97,13,670/- on this score. Besides, the Assessing Officer also discovered that in his Miscellaneous Application No. 215 of 1993 filed by the appellant before the Special Court, the appellant had claimed that he is entitled to receive interest on the securities belonging to him but lying with the different banks. On this basis, the claim of the receivable interest / dividend made by the appellant has been tabulated by the Assessing Officer on pages 48 and 49 of the assessment order. The working shows the interest includible at Rs. 2,30,00,000/-. 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.

10.2 In appeal, it was argued that the interest has been added on presumed stock without any evidence. In this context, point was made that the onus to prove that no interest is earned cannot be thrust upon the appellant. Reference was in this connection made to the fact that interest on money market securities cannot be earned in cash and clued into this, point was made that in terms of the principles of real income theory, no income can be taxed when the same is not received. In this respect, attention was invited to the decisions Zest Holdings Pvt. Ltd. for A.Y. 1995-96, Orion Travels Pvt. Ltd. for A.Y. 1995-96 and 1998-99 and M/s. Growmore Exports Ltd. & Ors. V. DCIT (6104-05/Mum/2007) dt. 12.12.2007. It was also pointed out that in any case, the appellant is

following the cash system of accounting in respect of interest income and the same has been upheld by the Hon'ble Tribunal in A.Y. 1989-90 in ITA No. 5773/Mum/98. It was further pointed out that the right to receive interest arises only if the concerned money market security are duly registered. Reference was made to the decision of the Hon'ble ITAT dt. 11.7.2008 in the appellant's case in which the addition made on account of money market interest was deleted. It was contended that the Assessing Officer has not caused any enquiry with Custodian or made any effort to establish the appellant's stock by verifying with RBI or concerned public sector undertakings. It was also argued that the addition suffers from non application of mind. The Assessing Officer's contention that the appellant had himself admitted that accrual method of accounting is followed was denied. Attention was also invited to letter dated 27.3.95 submitted by the appellant during the appellate proceedings informing the Assessing Officer of the fact that interest income is accounted for on receipt basis. It was also contended that the stock of securities pointed out by the Assessing Officer is imaginary stock and no evidence has been adduced to show that these assets stood in the appellant's name on the interest payment dates. Point was also made that no evidence has been shown of payment of tax at source for any securities standing registered in the appellant's name. On the basis of the foregoing, it was argued that addition cannot be sustained.

10.3 The Assessing Officer submitted his submissions on the appellant's contentions during the appellate proceedings. Referring to the appellant's argument that the interest has been worked out on presumed stock, it was pointed out by the Assessing Officer that position of the stock of securities has been worked out on the basis of seized documents and evidences and information gathered from external agencies. Referring to the appellant's argument that he was following the cash system with regard to recognizing interest income, the point was made that the appellant's stand is self contradictory. Attention was in this respect invited to the fact that the appellant has been following the mercantile system of accounting for all his other business transactions to highlight the fact that only in respect of the interest income that the cash system was being followed. On the decision of the Hon'ble ITAT for the assessment year 1989-90, attention was drawn to the fact that in that year, the appellant had maintained the books of account in which cash system of accounting was followed. Clued into this, it was further pointed

out that in these facts and circumstances, the Hon'ble ITAT held that the mercantile system of accounting applied by the Assessing Officer. In this context, it was also emphasized that for the assessment year under consideration, books of account have not been maintained and accordingly, the method of accounting adopted by the appellant is not certain. Further, attention was invited to the fact that interest has been calculated on every single security specifically. Referring to Annexure I, it was also pointed out that whatever interest was charged on the first interest date on a particular stock, the same amount has been charged on the second interest date on the same stock. On the charging of interest on accrual basis, attention was drawn to the fact that the appellant has himself admitted that vide notings dt. 25.3.1996 during the assessment proceedings for the assessment year 1993-94 that he was following the accrual method of accounting. These notings have been reproduced in the submissions dt. 27.7.2009 for the assessment year 1993-94 and they read as under:-

" *25.03.96* *i)Narration of sources of income & transactions*

ii)Money market and sources of fund

iii)Accrual method of accounting followed

iv)Claim for credit of TDS

v)Submission on non- leviability of interest"

On the basis of the foregoing, it was argued that the appellant's contentions are not tenable.

10.4 I have considered the assessment order and the submissions of the appellant and the Assessing Officer submitted during the appellate proceedings. Looking into the contentions of the appellant and the Assessing Officer's submissions, I find that the following are the key issues in the matter :

i)The basis of the stock found and calculation of the interest

ii)The method of accounting followed by the appellant

iii)The decisions relied upon by the appellant

On the issue at i) above, the appellant has contended that the interest has been worked out on presumed stock. Looking into Annexure I to the assessment order, I find this proposition misplaced. As I find, the Assessing Officer has tabulated the interest in this Annexure after giving all the relevant details and on sound logic. The details include

the code, the names of securities, the value of the stock, the first interest date, the second interest date and the amount of interest charged. Further, the details of the securities are also exhaustively mentioned in Annexure M-2 as part of closing stock. The method of charging the interest is also transparent. As I see, the Annexure makes it clear that in respect of the same stocks, the interest charged on the respective 1st and 2nd interest dates is identical and it is proportionate in respect of the stocks where the value is not the same. In the face of these specific details and clear method of calculation, it cannot be said that interest has been worked out on presumed stock. I also note that the appellant has not brought out any specific flaw in the working of interest as tabulated in Annexure I and has only forwarded general arguments without any specific reference to the details in Annexure I. Further, as discussed above, the documents and information on the basis of which the stocks have been identified and interest has been calculated are authentic and credible. As I see, for the collection of information on securities, the Assessing Officer has also gone by the appellant's submissions in Miscellaneous Application No. 215 of 1993 filed before the Special Court. The details of these interest have been given by the Assessing Officer on page 48 and 49 of his assessment order. As I find, the Assessing Officer has done the calculation of interest in a very fair and transparent manner in that while working out the total interest, he has excluded interest of Rs. 71,50,000/- on the securities mentioned by the appellant in the Miscellaneous Application as these securities were also part of the appellant's stock worked out by the Assessing Officer. Importantly, it is obvious, once the appellant is found to be in possession of the securities, which in this case is very clear from the Annexure I, in terms of the relevant guidelines on securities , interest will stand accrued on the specified dates. There is no way, this will not happen. On this matter, the decision of the Hon'ble Delhi High Court in the case Saraswati Insurance Company Limited Vs. CIT 252 ITR 430 bears special mention. In this decision, the Hon'ble High Court has categorically held as under :-

" *Income accrues when it falls due, that is to say when it becomes legally recoverable, irrespective of whether it is actually received or not and accrued income is that income which the assessee has a legal right to receive.* "

Significantly, while coming to this decision, the Hon'ble Delhi High Court had the occasion to place reliance on the following decisions of the Hon'ble Supreme Court :

i) CIT Vs. Shiv Prakash Janak Raj & Co. (P) Ltd. 222 ITR 583 (SC)

ii) CIT Vs. K.R.M.T.T. Thiagaraja Chetty & Co. 24 ITR 525 (SC)

iii) Morvi Industries Ltd. Vs. CIT 82 ITR 835 (SC)

The appellant's case is squarely covered by this decision as the interest on security being procedurally and legally due on specified dates is legally recoverable whether it is actually received or not. This is also the established position of law in terms of section 145 of the ITA as it existed during the relevant period. The second proviso to the section as it existed then, unambiguously stipulates as under :-

'..... *where no method of accounting is regularly employed by the assessee, any income by way of interest on securities shall be chargeable to tax as the income of the previous year in which such interest is due to the assessee.* '

What is the meaning of 'regularly employed by the assessee' has been made clear by the Hon'ble Punjab and Haryana High Court in the case, CIT Vs. Punjab State Industrial Development Corporation Limited 255 ITR 351. In this decision, defining this term, the Hon'ble Court has said that 'regular' does not mean 'permanent' for system of accounting and that, it should mean regularly employed during the period under consideration. In this context, the next issue is how to know whether or not an assessee has employed regular method of accounting. As I see, this can be only known from his books of account and the return of income through which he has to show that he has employed regular method of accounting. This is amplified by the Hon'ble Supreme Court in the case CIT Vs. McMillan & Company 33 ITR 182, in which the Hon'ble Apex Court has said that the choice of method of accounting lies with the assessee; but the assessee must show that he has followed the method regularly for his own purposes. Tested on the foregoing touchstones, I see that during the year, as already discussed, no contemporaneous regular accounts were maintained. Further, the return of income was also not filed and accordingly, the method of accounting followed by the appellant was also not made known. This will indicate that, as mentioned in the above proviso, no method of accounting was regularly employed by the appellant during the present previous year under consideration. In view of this, the chargeability of interest in this case will be squarely hit by the proviso and will be taxed immediately on getting due. Accordingly, I find the working of the interest sound and correct.

JHM

CERTIFIED TRUE COPY

10.4.1 Coming to the issue at ii) above, the appellant has sought to project that he was following the cash system of accounting. Looking into the conduct of the appellant, the method of accounting generally followed by him and non-maintenance of books of account, I do not find this as acceptable. To this end, I find that following of the so called cash method of accounting is incongruous in case of securities as in case of securities and money market instruments, there is no uncertainty either with the periodicity of the receipt of the interest or with its amount as the holder mandatorily gets the interest on specified dates every year. Normally, in terms of accounting principles, cash system of accounting is followed, amongst others, for receipts which are not certain both from the point of view of period of receipt and the amount to be received. Since, this is not the case with money market instruments, it defies accounting sense why the appellant will follow the cash method of accounting for this receipt. This seems more unlikely when for the assessment year 1993-94, the immediately succeeding year, by appellant's own admission, mercantile method was being followed. As I note, in course of the assessment proceedings for the assessment year 1993-94 vide notings dt. 25.3.96, the appellant has himself admitted that he follows the accrual method of accounting. The Assessing Officer has brought this out clearly on page 12 of the assessment order for the assessment year 1993-94 in which he has reproduced the notings dt. 25.3.96. Item (ii) of the notings clearly record that accrual method of accounting is followed by the appellant. Since by his own admission, the appellant was following the accrual method of accounting for the assessment year 1993-94, it would be improbable that for the immediately preceding year he would be following the cash system of accounting particularly in respect of interest income from securities against accounting principles. It is also to be particularly noted that the appellant did not maintain proper books of accounts and as a result, his contentions on the method of accounting followed can never be reliable and thus, judged only on the relevant facts and circumstances. The decision of the Hon'ble Supreme Court in the case CIT V/s. British Paints India Ltd. 188 ITR 44 bears special mention here. In this decision, the Hon'ble Supreme Court has categorically stated that the Assessing Officer is not bound to accept an incorrect system of accounting merely because it was accepted in earlier years. Tested on this, I find the action of the Assessing Officer in taxing the interest income on accrual basis befitting the

facts and circumstances discussed above. In this respect, the appellant has given a reconciliation of the interest added (Rs.58,27,13,679/-) and interest income earned by the appellant (Rs.58,26,759/-). This reconciliation has been given on the basis of ledger on Interest on Securities. As this reconciliation is based on appellant's accounts which, as already discussed above, are unreliable, the reconciliation is not credible. In absence of any authentic primary documents, non-cooperation with the appointed Auditors and highly incongruous policy of the claim of following cash method of accounting only for the interest income, this reconciliation is highly deficient,more so, when it is seen against the very specific and uncontroverted particulars of Annexure I.

10.4.2 I now come to the decisions relied upon by the appellant. Looking into these decisions against the backdrop of the facts and circumstances existing in the appellant's case, I find his reliance on these decisions misplaced. As pointed out by the Assessing Officer, in the decision of the Hon'ble ITAT in appellant's case for the assessment year 1989-90, the Assessing Officer's action in following the mercantile system of accounting was found incorrect because the appellant was for that year maintaining books of account in which he was following the cash system of accounting. As may be noted, for the current year under consideration, proper books of account have not been maintained and as a result, the decision for the assessment year 1989-90 would not be applicable. In this context, it is significant to note that for the assessment year 1988-89, the Hon'ble ITAT had the occasion to confirm the order of the CIT(A) upholding the Assessing Officer's finding that following of cash system of accounting by the appellant is not in order. I also find the appellant's reliance on other decisions off the mark. In the case M/s. Zest Holdings Pvt. Ltd., the subject matter was provisions of section 206 of the Companies Act and in this case, the dividend was not found taxable because the shares had not been registered in the assessee's name. As may be noted, the method of accounting, the subject matter in the appellant's case was not an issue in the case M/s. Zest Holdings Pvt. Ltd. The decision in the case M/s. Orion Travels Pvt. Ltd. is also on the same footing as the decision in the case M/s. Zest Holdings Pvt. Ltd. The decision in the case M/s. Growmore Exports Ltd. is also on different facts. The subject matter of the decision in the case was taxability of dividend income in the context of delivery or non delivery of shares, which obviously stands on a completely different footing from the

issue in question in the appellant's case. The decision in the case Aatur Holdings Pvt. Ltd. is also in the context of presumed dividend whereas, in the appellant's case the subject matter is interest and not dividend. Significantly, it is to be noted that interest on securities mandatorily accrues on the specified dates unlike dividends which are declared depending on many variables. Interest on securities and dividend on shares are thus poles apart in their genesis. The decision dated 11.7.2008 of the Hon'ble ITAT in the appellant's own case is in a totally different context. This was a block assessment for the block period ending 22.2.96 in which the Hon'ble ITAT had the occasion to hold that in a block assessment, estimation of income would not be proper in view of the fact that there was no material detected as a result of search which warranted making an estimation. As may be noted, the context of this order is totally different from the present assessment order under consideration, which is not governed by the established principles of a block assessment. Besides, in the appellant's case, the interest income being added cannot be held as an estimate as it is based on clear identification of stock and calculation of interest on specified dates. As may be noted, in case of money market instruments, the interest has to arise mandatorily on the specified dates and accordingly, once the stock of money market instruments stand identified and quantified, calculation of interest is very specific and self explanatory. In view of this, it would be incorrect to hold that the sum of Rs. 58,27,13,670/- is an estimate.

10.4.3 Regarding the other arguments made by the appellant, I find that the appellant has made a point that right to receive interest arises only if the concerned security is duly registered. On this, I observe that the appellant's case is an offshoot of the scam which was, in turn, result of severe irregularities committed by the players of the scam. Accordingly, when rules and procedures were not followed, taxability of income arising out of infringements had to be considered in terms of the attending facts and circumstances and not necessarily on the basis of rules and procedures. In view of this, the appellant's argument on non-deduction of tax at source is also out of place as during the period the securities scam was in full swing, laws and procedures were indiscriminately violated and accordingly, non-perfomance of a statutory liability cannot be taken as a plea to prove non-existence of a business transaction in respect of which performance of that statutory liability was necessary. In the instant case, as brought out

by the Assessing Officer in his order, the interest clearly accrued to the appellant. The appellant is also in denial when he says that the Assessing Officer did not cause any enquiry before making the assessment. As is writ large, not only this addition, but all the additions in the case had been made by the Assessing Officer after collecting necessary information from financial institutions and other enforcement agencies, from the Deal File and from the stock position. In view of this, it would be totally misplaced to hold that the addition was made without any enquiry. For the reasons stated above, the appellant's argument that the assessment suffers from non application of mind is also totally off the mark. It needs no repetition, the addition was made after collection of information, analysis of the information and opportunity of being heard given to the appellant.

10.4.4 In light of the foregoing, I find the action of the Assessing Officer justified. The addition is confirmed and the ground of appeal is dismissed.

11. **Grounds of appeal 8 to 12 have been covered by the appellant in common submissions. Accordingly, they are taken up together. In these grounds, following additions have been contested :**

8th –Addition of Rs.16,02,65,407/- on account of share market trading profit

9th- Addition of Rs. 2,85,26,994/- on account of speculative profit.

10th-Addition of Rs.253,16,78,501/- on account of profit on sale of shares in shortage.

11th-Addition of Rs.19,71,050/- on account of share market badla income

12th – Addition of Rs.5,56,19,836/- on account of share market oversold position

11.1 In course of the assessment proceedings, the Assessing Officer collected information on appellant's share market transactions from the various sources. The sources and the nature of information collected from them were as under :-

i) Bombay Stock Exchange – Details of all the transaction carried out by the appellant as a broker in the Exchange.

ii) Brokers/Clients/ Financial - Details of all the transactions in share market institutions / banks etc. who

had dealt with the appellant

iii) RBI - Details of all receipts and payments made through the bank accounts of the assessee

iv) Other entities of the group of the appellant - Contract notes for the transactions with the appellant

v) The appellant - Some details were furnished by the appellant in the form of contract notes, share / debenture application, money account narration to certain receipts / payments etc.

The information collected from the third parties at (ii) above, was fed into the computer and the appellant was provided with the print outs of the transactions vide Assessing Officer's letters dated 24.11.94 and 15.2.95. The appellant was asked to verify the correctness of the information from his records and point out the discrepancies, if any. In response vide his letter dt. 10.12.94, it was stated by the appellant that the data provided is incorrect. As mentioned in the assessment order, no specific instances were given in support. In these circumstances, the Assessing Officer took the data as correct. On the basis of the information available from the above sources and taking into account the opening stock of the appellant as flowing from the closing stock as on 31.3.1991 determined in the assessment order for the assessment year 1991-92, scripwise trading account was prepared. The summary of the same has been enclosed in the assessment order as Annexure S-1. The individual additions contested in the ground were made in the above backdrop.

11.1.1. **Share Trading Profit**

On the basis of the information collected as above, the Assessing Officer found that the profit from trading in shares earned by the appellant during the year was of Rs. 16,02,65,407/-. This was added to the appellant's total income.

11.1.2. **Speculative Profit**

From the details obtained from a number of clients of the appellant, the Assessing Officer found that the appellant had carried out speculative transactions in shares on a large scale. From these details, he found that the appellant had earned a net speculative profit of Rs. 2,85,26,994/-. The details of the profits have been enclosed as Annexure S-2 to the assessment order.

11.1.3 **Shortage of shares**

On 8.6.92, the appellant was notified and all his properties were attached by the Custodian. The Assessing Officer found that the appellant had the following categories of physical stock as on 8.6.92 :

i) Registered Shares in appellant's names (excluding bonus shares received after 8.6.92)

ii) Unregistered Shares

iii) Registered Shares

iv) Shares seized by the Income-tax Department

v) Shares seized from other premises by the Income-tax Department

vi) Shares seized by the CBI

vii) Shares seized by the Bombay Stock Exchange

viii) Benami shares

ix) Unregistered shares lying with the appellant

The details of these different categories of shares have been given by the Assessing Officer against each category from pages 52 to 58 of the assessment order. From the analysis of the above shareholdings, the Assessing Officer found that the appellant has made substantial shareholdings in the following categories :

i) Benami shares held in different companies as per information forwarded by these companies

ii) Benami shares surrendered by the appellant before the Special Court as per two affidavits filed by him.

iii) Shares seized by the Income-tax Department and the CBI in course of the searches conducted

From the analysis of the bank accounts of the appellant, the Assessing Officer found that the appellant acquired shares over and above benami shares identified, shares seized and

shares surrendered. He further identified all the payments made for the purchases of shares from the bank accounts. Enquiries were also made with Bombay Stock Exchange, stock brokers and other parties from whom shares had been purchased by making payments through the bank accounts. From this exercise, the Assessing Officer found that the appellant had made a total acquisition of shares to the extent of Rs. 198,46,16,133/-. He further found that as against this figure, if the shares already detected or seized as benami shares are excluded, it could be found that the appellant had acquired shares worth Rs. 105,88,24,381/-, which represents the actual payments made as per bank accounts, being the cost price of such shares. The appellant did not come forth with any satisfactory explanation for these investments. In this light and in absence of any evidence detected to show that any such shares had been sold after 31.3.1992, the Assessing Officer came to the conclusion that the appellant would have actually sold these shares and earned profits on such sales during the financial year 1991-92 itself. The appellant was asked to explain his position on these findings of the Assessing Officer. In response, regarding the ownership of the benami shares, it was stated by the appellant that the matter was subjudice before the Special Court. It was also contended by the appellant that he had acquired shares for his clients as a brokerage firm and accordingly, the shares in question cannot be treated as his assets. It was also contended that presumption of sale cannot be made without evidence. It was also pointed out that in several instances, the brokers did not deliver the shares though paid for and further that in several other instances, vast quantities of shares had been offered as security under borrowing transactions. Reference was also made to shares having been stolen, misplaced, mutilated or lost. The appellant's contentions were not accepted by the Assessing Officer. His reasoning on this has been enumerated in para 5.4.10 from pages 59 to 63 of the order. As I find, in essence, the Assessing Officer has emphasized the following.

i) *With regard to subjudice shares, the evidence submitted by the Income-tax Deparment in various applications to the Court will indicate that the shares had been acquired mainly by three broking firms and bifurcation amongst the three broking firms is necessary to reconcile the physical stock available with the three brokers. On this basis, the benami shares*

and unregistered shares identified have been divided among the three broking firms in proportion to the shortage of shares of each broking firm.

ii) The appellant's main activity in the share market was that of trading and not as a broker to earn brokerage. The appellant has used his own funds and the funds of the clients is very small as compared to his own funds.

iii) In absence of the 'SOUDA BOOK', the transactions for trading and client cannot be identified separately.

iv) All sales details as reflected in the bank accounts available with the Income-tax Department and as provided by the appellant have been considered while working out the shortage.

v) The appellant's contention that a vast quantity of shares are misplaced is not acceptable as,

a) No FIR had been filed, nor had any information been given to the Custodian. .

b) Value of the shares in shortage being in hundreds of crores, it would be improbable that the appellant would not take care of his assets.

c) No efforts had been made to recover alleged lost shares.

d) There is no evidence except a mere self serving statement by the appellant.

vi) The shares have not been found during the course of searches conducted by the IT Department and the CBI on various dates indicating that the appellant had sold the shares by 31.3.1992.

Clued into the above, the Assessing Officer worked out the profit of the appellant against the sale of above shares as per Annexure S-4 considering the sales at the prices as on 31.3.1992. The detailed working has been given by him on pages 62 and 63 of the assessment order. The total profit was worked out at Rs. 253,16,78,501/-. This was added to the total income.

11.1.4 **Badla Income**

From the details of the appellant's Badla transactions obtained from the Bombay Stock Exchange, the Assessing Officer found that the appellant had earned a net profit of

Rs.19,71,050/- from these transactions. The details of the transactions have been given by the Assessing Officer in Annexure S-5 to the assessment order.

11.1.5 **Addition on account of share market oversold position**

In course of the assessment proceedings, the Assessing Officer found that the appellant had sold shares in certain scrips in excess of the shares purchased by him. The details of these shares have been given by the Assessing Officer in Annexure S-1 to the assessment order. The value of these shares was worked out at Rs. 5,56,19,836/-. The Assessing Officer found that there is no indication of any purchase of these shares against the sales through the disclosed bank accounts of the appellant. In this light, the sum was added as unexplained investment in shares which have been sold by the appellant and the consideration for which has been received in his bank accounts.

11.2 In appeal, vide several submissions, inter alia, following arguments were put forth :-

"i) The Assessing Officer has considered the purchases and sale transactions as entirely belonging to the appellant without appreciating that they pertain to his clients, family members and related concerns.

ii) The Assessing Officer has not considered the sale of shares during the A.Y. 1993-94. He has assumed that the stock details gathered by him, which is pertaining to the period of around 31.3.1993 would be the same as stock as on 31.3.1992.

iii) While determining the stock position, credit on account of unregistered shares submitted to the Custodian vide letter dt. 26.10.94 and 31.3.95 has not been granted. The Hon'ble Special court has since passed several orders directing registration of these shares in the appellant's names.

iv) The Assessing Officer has assumed the sale of shares without there being any evidence in this regard. The issue stands settled by the decision of the Hon'ble ITAT in the cases Pallavi Holdings Pvt. Ltd. for A.Y. 1992-93, Topaz Holdings Pvt. Ltd. A.Y. 1992-93 and M/s. Triumph International Finance Limited. Reliance was also placed on the following decisions :

Dhanlakshmi Pictures v. CIT 144 ITR 452 (Mad)

T.C.N. Menon v. ITO 96 ITR 148 (Kerala)

ITO v. Jitender Mehra (53 ITD 396 Del)

CIT v. Ranicherra Tea Co. Ltd. 207 ITR 979 (Cal).

v) While treating all the purchases made by the appellant from the market as his own purchases, the Assessing Officer has ignored the factual position that huge quantity of shares have been purchased by family members and other related entities through the appellant from the market. This presumption has led to shortage of shares of Rs. 105 crores in the hands of the appellant and has resulted into addition on account of unexplained investments in the hands of these entities to the tune of Rs. 220 crores.

vi) The bifurcation amongst the brokerage firms has been made arbitrarily.

vii) The Assessing Officer's assumption of the date of sale as on 31.3.1992 does not have any base.

viii) The Assessing Officer has made the addition on a presumed profit on sale of shares without any evidence.

ix) Sufficient opportunity was not given by the Assessing Officer during the assessment proceedings.

x) The proposal of the Assessing Officer for ad-hoc allocation of the ownership of shares is completely illegal and contrary to averments made before the Special Court. Only the Special Court has been entrusted with exclusive jurisdiction to adjudicate and determine the issue of ownership of any attached asset.

xi) Vide affidavits before the Special Court and letters, it has been made clear that the shares in question belong to the appellant's clients.

xii) The Special Court has directed that the unregistered shares may be registered in the appellant's account.

xiii) The appellant has acted only as a broker.

xiv) *Copies of letters addressed by companies disclosing shareholdings and payment of benefits to various family members indicate that the shares belong to these companies and other entities.*

xv) *The Assessing Officer has not caused any enquiries or ignored whatever evidence has come on record which is contrary to his finding.*

xvi) *Disclosure of purchases made on appellant's behalf clearly distinguishes the purchases made on behalf of clients.*

xvii) *A large quantum of shares were offered as security under borrowing transactions.*

xviii) *Copies of letters dt. 26.10.94 and 31.1.95 to the Custodian and the Chartered Accountants appointed by the Hon'ble Special Court indicate that the shares were subsequently handed over to the Custodian under the directions of the Special Court.*

xix) *The unregistered shares sold and tendered for delivery after 31.3.92 ought to be excluded.*

xx) *The books of accounts already admitted by the Hon'ble Tribunal have to be considered while determining the appellant's income.*

xxi) *A large number of shares have been misplaced / lost.*

xxii) *The Assessing Officer ought to have adopted any rate prior to 28.2.92 while determining the price of sale.*

xxiii) *While determining the profit on the alleged sale of shares in shortage, the Assessing Officer has not given full particulars .*

xxiv) *The appellant's books of account are not liable to be rejected and in any case, their genuineness is easily verifiable by checking the computer sheets and sauda sheets filed by the appellant with the Bombay Stock Exchange.*

xxv) *The clients of the appellant being family members have also disclosed the transactions to the three firms of Chartered Accountants appointed by the Hon'ble Special Court with copies of contract notes and particulars of transactions undertaken by them. These have been ignored by the Assessing Officer.*

xxvi) *After purchase of the shares by the family members, a large part of the same have come to be registered in their respective names. The Assessing Officer has collected the independent evidence even from the Custodian and this evidence has been ignored by him.*

xxvii) *The transactions undertaken by the family members and corporate entities promoted by them have been treated in the hands of these respective entities in their assessments and now, those very transactions cannot be treated as transactions of the appellant. There is no power vested in the Assessing Officer under any provisions of the*

Income-tax Act, 1961 where income of one entity can be brought to tax in the hands of another entity.

xxviii) *Without prejudice, the appellant is entitled to deduction on account of physical shares disclosed of a value of Rs. 28 crores and Rs. 132.04 crores under covers of two letters dated 19.1.95 and 15.2.95. The appellant is also entitled to deduction on account of misplaced, mutilated and lost shares.*

xxix) *In respect of additions of Rs. 16,02,65,407/- and Rs.5,56,19,836/-, following particular submissions were made:*

a) For the addition of Rs. 16,02,65,407/-, the appellant has analyzed the 10 largest scrips to establish that a profit of Rs. 19,27,83,660/- under these scrips belongs to the clients and only some transactions are for self. Similar is the position for the addition of Rs. 5,56,19,836/- on account of oversold position based on the analysis of 10 largest additions covered under the 10 scrips. This can also be verified from the books of account of the appellant as well as the clients of the appellant.

b) Confirmations from the associate entities and the family members of the appellant have already been obtained and produced in the present proceedings.

11.2.1 The Assessing Officer gave his submissions on the appellant's arguments vide his letter dt. 17.8.2009. In his submissions, it was particularly emphasized that during the assessment proceedings, satisfactory explanation was not given by the appellant on the issues raised. In this context, it was particularly argued that profit has been worked out on the basis of evidence and documents available. Reference was also made to the fact that during the remand proceedings in connection with the present appeal, the appellant was granted inspection and copies of all these relevant documents and records to explain the entries related to the shortage of shares. Clued into this, it was pointed out that the appellant has not brought to light any defect in these documents and records. On the other submissions made by the appellant, it was pointed out that a substantial part of the submissions is general in nature in that they only talk about non-observance of natural justice. In this, it was particularly emphasized that vide letter dt. 7.3.1995 all the relevant details were asked for by the Assessing Officer but were not given by the appellant. Reference was also made to the order dt. 10.2.2003 of my predecessor in which he had

the occasion to observe that no evidence or details had been produced before him on the addition. It was also pointed out that the books of account relied upon by the appellant are defective and unreliable and hence, appellant's reliance on them is untenable. Regarding the letters submitted by the family members and corporate entities, it was argued that these are self serving documents without any evidentiary value. Questions were raised why these letters were not produced before my predecessor or the Special Auditors. Regarding the other arguments, it was pointed out that these have been addressed by the Assessing Officer in his assessment order. Attention was particularly drawn to the report of the Special Auditor Vyas & Vyas in which the Auditors have worked out the shortfall to the extent of 17030707 shares. Clued into this, argument was put forth that the fact of shortage of shares has also been confirmed by the Special Auditors. Referring to the decision relied upon by the appellant, it was pointed out that these decisions do not apply to the appellant's case. On the appellant's argument that the Assessing Officer could have verified the transaction by asking the details from the Stock Exchange, it was pointed out that the Assessing Officer had called for information from Stock Exchange and only after verifying the same, conclusions have been drawn. In course of the appeal proceedings, itemized break-up of the shares was also given to the appellant by the Assessing Officer.

11.3 I have considered the assessment order and the rival submissions submitted in course of the appellate proceedings. In the first place, I find that the appellant has contested the addition on the ground that inspection and copies of relevant documents were not provided. In terms of my discussion on the extent and quality of inspection and supply of documents in course of the appeal proceedings, I do not find any merit in this. As I see, adequate and substantial documents were made available to the appellant and if the appellant was really interested in using the documents in his defence, he was adequately equipped to do so in view of the extensive inspection and supply of documents. In particular, I note that vide letter dt. 7.3.95, the Assessing Officer had drawn the appellant's attention to all aspects of the issue. This included the details of contract notes for purchase / sale of shares by various entities of the appellant's group and the deficiencies and infirmities noticed by the Assessing Officer in connection with the contract notes and other necessary documents. I also note that the Assessing Officer

through this letter had also invited attention of the appellant to the fact that no bifurcation had been furnished on the ownership of the shares in the different categories. The appellant's explanation was sought in light of this very comprehensive letter. Further, the itemized break-up was also made available during the present proceedings. In view of this, the appellant's grievance was that the principles of natural justice were not followed does not have legs to stand upon. I also note that the appellant did not also respond to the show cause letter dt. 10.2.2003 issued by my predecessor in course of the earlier appellate proceedings. In similar vein, as already discussed, details were also not given to the Auditors Vyas & Vyas. This consistent reluctance on the appellant's part will indicate that the appellant was not in a position to give any satisfactory explanation in the matter. The appellant has also raised the issue that the Assessing Officer did not have the authority to decide the ownership of shares in view of the orders of the Hon'ble Special Court as mentioned by the appellant in his submissions. This submission is misplaced. In this context, I find that the Hon'ble Special Court has from to time passed orders delivered on 17.7.96 and 29.3.96 in three petitions immediately after submission of the list by the appellant. In these orders, the Hon'ble Special Court has directed that wherever the appellant had failed to disclose the names of the owners, such shares may be registered in the name of ` The Custodian, Special Court'. As may be noted, the Hon'ble Special Court while giving this direction has not given any finding that the shares in question do not belong to the appellant. Subsequently, the Custodian had the occasion to make an application dated 23.7.2003 made by the Custodian in paras 11 and 12 of the application, before the Hon'ble Special Court seeking directions / orders for transfer of shares belonging to the Harshad Mehta Group of Entities in the name of the Custodian. While making this application, attention of the Special Court was invited to the fact that the Custodian had convened a meeting of the Harshad Mehta Group Entities on 18.1.2003 for ascertaining the names of the entities to whom the shares belong. This meeting did not take place and was again reconvened on 23.1.2003. In this respect, following particular observations were made by the Custodian.

" *Para 11 - However, even after detailed discussions and enquiry, it could not be ascertained as to which particular notified entities the said shares belonged. The notified entities expressed their inability to identify the entities to whom the said shares*

belong. Accordingly, the Harshad Mehta Group entities unanimously requested the Custodian to transfer the said shares in the name of the notified entities and / or the Custodian in a manner deemed fit by the Custodian. ……

Para 12 - Thus, the Harshad Mehta Group entities have failed to disclose the names of the entities to whom the said shares belong and also to carry out the correlation exercise. Further, they have left the discretion to the Custodian to have the shares transferred in a manner deemed fit by him. In view of this, it is the most humble prayer of the Custodian that in the petitions / applications in which there is no order for automatic transfer since the Harshad Mehta Group entities have failed to disclose the names of entities to whom the shares belong, this Hon'ble Court may pass orders for automatic transfer of the said shares in the name of the Custodian. "

On this application, vide order dated 12.11.2003, the Hon'ble Special Court had the occasion to order that the companies shall transfer the shares in the favour of the Custodian and importantly, the company shall also transfer to the Custodian any accruals on those shares. In similar vein, vide its order dated 8.4.2003, the Hon'ble Special Court had the occasion to pass similar orders in respect of benami shares. While passing this order, the Hon'ble Special Court had the occasion to observe that despite repeated reminders, the appellant did not name the entities in whose favour, the benami shares were to be transferred. The Hon'ble Special Court in this order, had the occasion to direct that the shares are to be dematerialized into the Depository Account of the Custodian. As I find, the appellant has not been able to give the names of the owners of these shares despite being given several opportunities by the Custodian. Before the Assessing Officer also and subsequently before me during the present appellate proceedings too, the appellant has also not been able to bring anything credible on record to prove that the shares do not belong to him. As I note, the appellant has not been able to correlate the shares referred to by the Assessing Officer with the shares registered and notified subsequent to the assessment year 1993-94. In essence, the appellant has not been able to establish that the shares registered and notified after the period under consideration in this appeal and the appeal for the assessment year 1993-94 are the same shares which have been considered for working the shortage in this case. Further, while denying the ownership of shares, the appellant has referred to the books of

account, copies of letters addressed by the companies disclosing shareholding and payment of benefits to various family members and corporate entities, extracts of dividend accounts of some associated entities, copies of confirmation of family members and corporate entities and some such documents. As I note, the books of account, as already discussed in detail, are not reliable and accordingly cannot be accepted as credible evidences. Similarly, the other documents relied upon by the appellant while denying the ownership of the shares are notably from appellant's family members and other group entities and thus, suffer from lack of objectivity and credibility. They are basically self serving documents which by themselves cannot be held as reliable. As against this, I note that the Assessing Officer has based his findings hinged on seizure of shares by the Income-tax Department, CBI and from the Bombay Stock Exchange. The Assessing Officer also had the occasion to collect information from various statutory and government agencies. He also had the occasion to analyze the bank accounts and then, give his findings. Weighing these two sets of evidences, one by the appellant to establish that he was not the owner of the shares and two by the Assessing officer to give his findings, it is obvious, whereas the evidences relied upon by the appellant being self serving suffer from lack of credibility, the evidences relied upon by the Assessing Officer having been collected from statutory and government agencies are reliable and credible particularly when juxtaposed to the other attending facts and circumstances of the case. The appellant has also questioned the way the Assessing Officer has effected the allocation between the appellant and the other two broking firms. Looking into the method followed by the Assessing Officer in making the allocation, I do not find any merit in this apprehension of the appellant. As I note, on page 62 and 63 of the assessment order, the Assessing Officer after full details of the shares held by the appellant and other broking firms has worked out the profit on the sale of shortage. The appellant has not brought out any specific fault with this working. Moreover, the logic applied by the Assessing Officer in making the allocation is also found to be sound by me as in a very just and fair manner he has divided the benami and unregistered shares identified by the Department among the three broking firms in proportion to the shortage of shares in each broking firm. This means, he has made the allocation in proportion to the stock of the registered shares with the broking firms as on 8.6.92. The basis of the

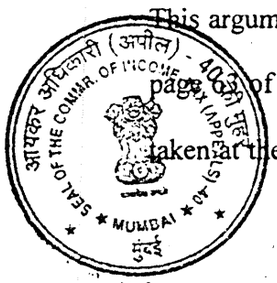
allocation was also made known to the appellant vide para 2 of his letter dated 7.3.95 to the appellant sent during the assessment proceedings. At that point in time also, the appellant did not reply to the Assessing Officer's plan of the bifurcation. The appellant's inability to bring out any specific fault with this bifurcation both at the assessment and the two appellate proceedings would clearly indicate that he is not in a position to rebut the method of bifurcation with specific facts and evidences. The appellant has taken another line of argument that most of the transactions had been done on behalf of his clients. In this respect, as I see, the appellant has not brought out any specific facts or evidence in support of this argument. If, as the appellant claims, the transactions had been done on behalf of his clients, there is nothing to prevent the appellant from listing of such transactions from out of the shares and transactions mentioned in Annexures S-3 and S-4. As against this, the Assessing Officer has come to his conclusion on the basis of logical finding. To this end, he has very articulately brought out the fact that the appellant had used his own funds in trading activity and further that the funds of the clients were very small compared to the funds of the appellant. The appellant has not brought out anything specific to controvert this finding of the Assessing Officer. He has only referred to the contract notes in his defence. On this, I find that in his letter dt.7.3.95, vide para 1, the Assessing Officer has asked for the requisite details in connection with the contract notes, simultaneously show causing the appellant why the contract notes should not be rejected for the reasons stated in the letter. Looking into this letter, I find the reasons cited by the Assessing Officer very pertinent and material. I particularly note that no payments had been made by the entities to the appellant against the stated purchases. I also observe that the appellant did not produce the Sauda Book or the books of account during the assessment proceedings. Further, very significantly, I also note that the contract notes were not found during the search operations and had surfaced after a lapse of long period of 3 years from the end of the search. Although the appellant has mentioned that the Sauda Book was lying in the appellant's computer, the same was not seized, it is not borne out by facts. In this respect, I observe that the Income-tax Department had captured all the necessary data and documents stored in the appellant's computer in tape cartridges and the Sauda Book was not found in the process of capturing of the data and the documents. This apart, since the computer seized had

been returned to the appellant, there was nothing to prevent him from producing the Sauda Book before the Assessing Officer during the assessment proceedings. In this context, I find the appellant's argument that the Department should have verified the data and the documents including the sauda sheets available with the Bombay Stock Exchange totally off the mark. As I see, these are data and documents which belong to the appellant and accordingly, after having failed to produce them despite several opportunities, shifting the onus to the Assessing Officer is totally misleading as the Assessing Officer has collected his information from Government Agencies and also from the Bombay Stock Exchange. As I see, the appellant was confronted with information collected from these agencies and accordingly, in defense, it was incumbent upon the appellant to produce whatever documents he wanted to. That this was not done would only indicate that the appellant was not in a position to defend his stand on the basis of credible and authentic evidence. The general proposition of law is that the law relating to burden of proof becomes relevant only in case where there is no evidence on either side or the evidence is equally balanced. This is not so in a case like the appellant's where facts and evidences have been brought on record after full investigation and as a result, a case like the appellant's is to be tested principally on the premises of facts and not only on the proposition of burden of proof. As may be seen, in the appellant's case, whereas the Assessing Officer has brought out all facts and evidences on record, the appellant, on the other hand, has not been able to produce anything in support and accordingly, after having failed to produce anything, shelter under the theory of burden of proof cannot be taken, particularly when the other side, i.e. the Assessing Officer in this case, has brought out all facts on board before the appellant. As is clear, the balance of evidence in this case is totally tilted in the Assessing Officer's favour and as a result, the theory of burden of proof, if at all applicable, does not come into play. In the light of this and the very clinching infirmities on the contract notes, I find the appellant's reliance on them misplaced. The appellant has sought credit for Rs. 28 crores and Rs. 132 crores respectively being shares lying in his possession as unregistered shares. Looking into the proceedings before the Assessing Officer, I do not find this claim justified. As I see, when the appellant raised this issue before the

Assessing Officer during the assessment proceedings, vide his letter dt. 15.3.95 the Assessing Officer asked the appellant to give the following information / document:

> "*1) Computer printout showing the details such unregistered shares along with their origin and purchase as stated by him in his letter dtd. 31.1.95 addressed to the Custodian.*
>
> *2) All the shares of ACC, 95000 in number as mentioned in the letter alongwith transfer deeds for verification.*

In this context, I observe that the appellant did not produce the above details and documents before the Assessing Officer and as a result, I find the Assessing Officer justified in his conclusion that the appellant has not been able to satisfactorily support his claim. Importantly, I also find that the appellant has not been able to give these details during the two subsequent appellate proceedings and has made the claim solely on the basis of his letters before the Assessing Officer. The appellant has further objected to the Assessing Officer's adoption of the price prevailing as on 31.3.92 as the basis of his working. It is the appellant's case that the Assessing Officer should have adopted any rate prior to 28.2.92 while determining the price of sale. This argument is totally misplaced. As I see, the accounting policies make it mandatory that the price prevailing as on the end of the financial year should form the basis of all valuations. The Assessing Officer has only followed this. The appellant has referred to the period pre 28.2.92 on the ground that the search took place on this date. This is no ground for disturbing the date adopted by the Assessing Officer. In this context, it is to be noted that even after the search and at least till 8.6.92 when the appellant was notified, the appellant continued his business and this being so, the so-called cut-off of 28.2.92 does not have any meaning. Since the appellant continued his business even after the search, in terms of accounting policies, for the present assessment year under consideration, the price prevailing as on 31.3.92 was the only correct basis for working out the shortage. The appellant has further submitted that while determining the profit on the sale of shares, the Assessing Officer has not given full particulars about deduction on account of purchase cost of those shares. This argument is misplaced in that the Assessing Officer in clause 'H' of para 5.4.10 on page 63 of the order has clearly mentioned that the value of shortage of shares has been taken at the cost price as on 31.3.92. This having been mentioned, the basis of the cost



was made clear to the appellant and accordingly, his contention made falls flat. The appellant has also contended that in case of shares of Apollo Tyres, no addition is liable on account of at least 39.16 lakhs shares because the appellant had disclosed that these shares had been subsequently sold. The submission is not acceptable. As I note, in the first place, the appellant has not been able to correlate 39.16 lakhs of shares with the shortage of shares of Apollo Tyres mentioned in Annexure – S-4. From perusal of Annexure – S-4, I also note that the total of the shares of Apollo Tyres as on 31.3.92 was 87,47,039 signifying thereby that the total availability of the shares of Apollo Tyres was more than 39.16 lakhs. Further, the ownership of the shares is also not ascertained. In this light, the appellant's claim for deduction does not have any merit. The appellant's argument that the Assessing Officer has not specified the provisions of the Income Tax Act under which the addition has been made is not material in the context of the addition made. As I see, the Assessing Officer found that the physical availability of shares of the appellant was less than the shares reflected in the appellant's bank transactions and in the light of this finding, he held that the appellant had sold the shares found to be in shortage. What was thus taxed was simple profit as part of appellant's trading activity. In this view of the matter, the profit having been taxed as 'business income', it is obvious that the amount was taxed only as such. Looking into the foregoing facts and circumstances, I find the Assessing Officer's finding that the shares found to be in shortage have been sold as sound, logical and in conformity with the relevant provisions of the Income Tax Act. To this end, I observe that the appellant has brought nothing on record excepting some general references to prove that the shares found to be in shortage were either lost, destroyed, stolen or misplaced. As pointed out by the Assessing Officer in clause (e) on page 61 of the order, the appellant did not take any of the steps or produce evidence to trace and identify the shares found to be in shortage. In the face of this failure, the inevitable conclusion that follows is that the shares had been sold. In his submissions, the appellant has contested the Assessing Officer's findings given in clause (e) referred to above. I find the submissions feeble. The appellant has stated that FIR was not filed because the relevant particulars were not available. This is not credible because even without the requisite details, there was no law which barred the appellant from filing the FIR. It is inconceivable that, (i) the appellant will not bring to the notice

of the police the loss of such valuable assets at the earliest instance; and (ii) that it would not have relevant particulars. This is all the more improbable considering that the appellant was a major player in the share market. In course of the appellate proceedings, the appellant was offered the opportunity to file a complete and comprehensive reconciliation of the shares found by the Assessing Officer with the shares stated to have been lost, mutilated, misplaced, registered in the name of the family members and corporate entities promoted by them etc. This opportunity was not availed of. As I see, there was nothing to prevent the appellant from submitting this reconciliation. This inability of the appellant also makes the appellant's argument that income tax in the hands of one entity cannot be taxed in the hands of another entity also appear lame. As may be seen, while coming to his conclusion in the matter, the Assessing Officer has analyzed the bank accounts of the appellant, identified the shares in different categories, further identified all the payments made for the purchases of the shares from the bank accounts and made enquiries with the Bombay Stock Exchange, stock brokers and other parties from whom shares had been purchased by making payments through the bank accounts. It was only after this comprehensive and exhaustive investigation that the Assessing Officer gave his finding. When confronted with this, the appellant could not give any satisfactory explanation. As already discussed, the contract notes were also found to be suffering from severe infirmities and accordingly, they also cannot be taken as credible and authentic. In view of this comprehensive investigation and severe infirmities in the contract notes, the taxing of the incomes in question in the appellant's hands is an inevitable logical conclusion. Regarding the analysis of the 10 largest scrips on the addition of Rs. 16,02,65,407/- and Rs. 5,56,19,836/- , I find that the basis of the appellant's analysis is not credible. In the first place, the appellant has again relied on his books of account and of the clients. As already discussed, the books of account of the appellant are not reliable and accordingly, cannot be taken as an authentic basis of verification. Further, the appellant has not been able to produce any authentic evidence in support of the submissions put forth in this matter. For these additions also, the appellant has argued that there was violation of principles of natural justice. As already discussed, this repeated plea of the appellant is misplaced in that the Assessing Officer

had brought all facts on record before the appellant while dealing with the issue. This has already been discussed in this para above.

11.3.1 The appellant has placed reliance on some decisions in support of his claim. Looking into these decisions in the context of the facts in the appellant's case, I find the appellant's reliance on the decisions misplaced. In the case ACIT and M/s. Triumph International Finance Ltd., the decision has been given in the context of buying and selling on behalf of others. As may be noted, in the appellant's case buying and selling has been done on appellant's own account and not on behalf of others. Accordingly, this decision relied upon by the appellant is on a completely different premise. In similar vein, the facts in the cases M/s. Topaz Holdings Pvt. Ltd. and M/s. Pallavi Holdings Pvt. Ltd. are also different. As distinct from the facts in these cases, in the appellant's case, the Assessing Officer has explored all possible avenues as enumerate by him in clause (e) on page 61 to ascertain the probability of the physical availability of the shares. As already discussed, the conduct of the appellant and the facts brought on record in this respect clearly point to the fact that the shares were sold. As against this, in the two cases cited by the appellant the fate of the shares was still unknown and it is in these circumstances that the Hon'ble ITAT held that the Assessing Officer cannot pick and choose selectively on one or some of the possibilities out of many other available. On the issue of the basis of pricing of the shares, the appellant has relied on the decisions dated 28.1.2002 and 28.2.2002 in the cases M/s. Pallavi Holdings Pvt. Ltd. and M/s. Topaz Holdings Pvt. Ltd. as given by CIT(A). These decisions are not applicable to the appellant's case, since as already discussed, in the appellant's case, the Assessing Officer has gone by established accounting principles and taken the prevalent price as on 31.3.2002 clued into the fact that the appellant had continued to carry on his business even after the search on 28.2.1992. The appellant has also placed reliance on four other decisions which have been listed while discussing the appellant's submissions. The appellant has ,however, not spelt out how these decisions advance his case. In any case, the appellant's case, as discussed, is unique and different being based on the facts and findings peculiar to it. Accordingly, it is clearly distinguishable and stand on a completely different footing on account of the unique facts and sheer scale and magnitude of the findings.

11.3.2 In light of the foregoing facts and circumstances, the addition of Rs.253,16,78,501/- is confirmed. For the reasons discussed above, the other additions namely addition of Rs. 16,02,65,407/- and Rs.5,56,19,836/- are also confirmed. Additions of Rs. 2,85,26,994/- on account of speculative profit and Rs. 19,71,050/- on account of share market Badla income are also being confirmed in line with the foregoing discussions. I also note that the additions covered in these grounds are covered under common submissions by both the appellant and the Assessing Officer. In view of this, wherever the submissions of the appellant and the Assessing Officer happen to be common to the additions, the discussion in respect of these grounds will be equally applicable to them. Accordingly, all the above additions are confirmed and the grounds of appeal are dismissed.

12. **In the thirteenth ground of appeal, it has been contended that the Assessing Officer has erred in making the addition of Rs. 1,04,58,970/- on account of dividend and interest income.**

12.1 In course of the assessment proceedings, vide his letter dt. 14.3.95, the appellant submitted copies of accounts as mentioned in para 6 on page 64 of the assessment order. These included two debenture interest accounts and two dividend income accounts. The accounts showed that the appellant had earned an income of Rs. 1,04,58,970/- by way of dividend and interest. This was added to the total income.

12.2 In appeal, it was submitted that the incomes have been assessed on the basis of information submitted by the appellant based on bank statements and books of account. In this context, it was submitted that the appellant does not have any grievance against this as the addition has been made on the basis of documents filed by the appellant. A note of objection was however struck by pointing out that unlike in case of other additions, the Assessing Officer has accepted the books figures of the appellant.

12.3 I have considered the assessment order and the submissions of the appellant. As I find, the addition has been made on the basis of information submitted by the appellant based on the accounts produced by him to the Assessing Officer. The appellant has also accepted the addition since it is based on documents submitted by him. The appellant has, however, pointed out that unlike in the case of other additions, for this, the Assessing Officer has accepted the book figures of the appellant. This argument does

not have any bearing on the nature and correctness of the addition. Further, in respect of other additions, it is never the case of the Assessing Officer that just because the books of account have not been accepted, the information either gathered by the Assessing Officer or supplied by the appellant on the basis of authentic, credible and relevant documents is not to be taken into account. In this backdrop, I find that the Assessing Officer has gone by the information contained in the four accounts submitted by the appellant. Accordingly, in light of the fact that the addition has been made on the basis of authentic, credible and relevant documents supplied by the appellant himself and further fact that the appellant has not disputed the documents and the information, the addition is confirmed and the ground of appeal is dismissed.

13. In the fourteenth ground of appeal, it has been contended that the Assessing Officer has erred in making the addition of Rs.251,80,33,835/- on account of unexplained money.

13.1 In course of the assessment proceedings, from the details of various bank accounts of the appellant provided by the RBI, the receipts and payments mentioned in the accounts were matched with the `voucher file' available in the seized computer data of the appellant. The Assessing Officer prepared the accounts of all the parties from whom money was received / paid and provided them to the appellant in the form of computer print outs vide his letter dated 16.02.1995 requiring him to explain the source and nature of the funds of the mismatched entries. The appellant only gave partial details. In this backdrop, Annexure U was prepared by the Assessing Officer specifying the entries on which the appellant did not furnish the details. From this, the Assessing Officer found that the appellant had not been able to explain the source and nature of the fund of Rs. 251,18,33,835/- deposited in his bank accounts. The sum was added as unexplained money u/s 69A of the ITA.

13.2 In appeal, inter alia, following arguments were put forth :

i) The additions made by the Assessing Officer largely represents transactions on behalf of the appellant's clients.

ii) The transactions taken into account being reflected in the disclosed bank accounts cannot be treated as unexplained money of the appellant.

iii) Two amounts, viz., Rs. 17.77 and Rs. 64.94 crores were not deposited in the account as per affidavit of SBI and accordingly, this cannot be treated as unexplained.

iv) Another amount i.e., Rs. 18.75 crores cannot be treated as unexplained as it is refundable to SBI as per their affidavit.

v) Transactions to the tune of Rs. 142.85 crores have been explained before the Assessing Officer which have been ignored. Similarly, no cognizance has been taken in respect of further explanation of the transactions to the tune of Rs. 41.81 crores given before the CIT(A).

vi) An accounted income of Rs. 47.96 crores has been considered as unaccounted by the Assessing Officer.

vii) No enquiries have been made to any of the parties making the payment. Separate addition u/s 69A of the ITA is uncalled for since the Assessing Officer has determined the appellant's income from all the sources. Support was drawn from the decision in the case CIT Vs. Aggarwal Engineering Co. 156 Taxman 40 (P&H). Conditions stipulated in section 69A are not satisfied. The appellant did not become owner of the money as he is holding them on behalf of others. The money in question is not such that it is not recorded in the books of accounts. Further, the appellant was not confronted by the Assessing Officer before invoking the provisions of section 69A. Reliance was placed on the decisions in several cases in support.

viii) Considering the nature and margin available in the appellant's business, such a huge amount cannot be said to have been earned in cash. The proposition is supported by the decision in the case CIT Vs. P.K.Noorjehan 237 ITR 570 (SC).

Further, attention was invited to the following entries with the claim that the addition is not called for in their respect :

Addition	Claim
Rs.75,08,97,945.20 dated 28.3.92	Cheque No. 553290 represents 3 transactions undertaken by the appellant's brokerage firm on principal to principal basis viz. 17% NTPC Bonds of FV Rs. 20 Crores, sale of 2 crore units to SBI CAPs @ Rs. 15 and sale 1.7 crore units to M/s.

	V.B.Desai.
Rs. 64,94,19,836/- dt. 21.3.92	No separate amount in the sum of Rs.64,94,19,837.88 is credited in the appellant's bank account and it is a sum total of 4 transactions
Rs. 47,96,68,170.11 dt.25.3.92	This amount is transfer of funds on behalf of appellant's brokerage firm from SBI to ANZ Grindlays bank on principal to principal basis wherein ANZ Grindlays bank purchased 11.5% CGL 2008 of FV Rs. 50 crores.
Rs. 18,75,00,000/- dt.31.3.92	This sum represents sale proceeds of sale of 1.25 core units made by the appellant's brokerage firm to SBI Caps on a principal to principal basis @ Rs. 15 unit.
Rs.17,77,28,385/- dt.20.9.91	This amount has been received by the appellant from Standard Chartered Bank as part payment for a transaction entered into by appellant's brokerage firm M/s. Bindal Agro Limited where this firm has purchased 9% IRFC Bonds of FV Rs.30 crores.
Rs. 2,77,50,000/- dt. 28.3.92	This amount represents consideration for purchase of 200000 shares of Great Eastern Shipping Company Limited effected by Citibank on 18.3.92 @138.75 per share through the brokerage firm of the appellant.
Rs. 2,00,00,000/- dt. 31.3.92	This amount has been received by the appellant from Canara Bank which has been paid for and on behalf of appellant's client Canfina.

In this respect, it was also submitted that the Custodian may be summoned as he is having the books of accounts and other data and records of M/s. Harshad S. Mehta. Request for cross examination of all the parties who have handled the credits to the appellant's accounts or with whom the appellant's brokerage firm have transacted.

13.3 In appeal, vide letter dt. 2.7.2009, following comments were given by the Assessing Officer on the arguments put forth by the appellant :

" The assessee has contended that out of the above sum, Rs. 101 crore has been treated as the money of SBI, therefore, the same should not be treated as income of the assessee.

The second objection of the assessee that entry of Rs. 47,96,68,170/- dated 25.03.1992 is actually amount received from ANZ Grindlays Bank towards sale of 11.5% Government of India, 2008 security which reflect at Page No. 1 of Annexure `M-1' also, therefore, this amount cannot be treated as unexplained. The contention of the assessee is based on patently wrong facts. The entry mentioned in Annexure `M-1' shows the purchase of security of the aforesaid amount for which the assessee had to make payment whereas in the Annexure V only those transactions have been taken which are received / deposited in the accounts of the assessee. Therefore, both are different transactions.

The last objection of the assessee is that such a huge amount cannot be earned by the assessee in cash. Such type of objection has been dealt with in the earlier paragraphs also. Similarly, while making addition under this head also the Assessing Officer no where mentioned that any such deposit / receipt has been received by the assessee in cash. He has only concluded that since the source of these deposits / receipts were not explained, therefore, the same has been treated as unexplained."

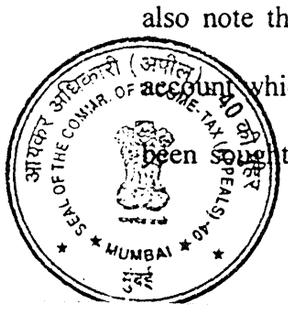
In course of the hearing, further submissions were given vide letter dt. 17.8.2009. In essence, in this letter, the submissions already given were repeated. Point was also made that inspection of the relevant material has not been granted. Further, referring to the addition u/s 69A of the Act, arguments were put forth why the addition cannot be made under this section.

13.4 I have considered the assessment order, the appellant's submissions and the submission dt. 2.7.2009 of the Assessing Officer on the appellant's submissions. As I find, the appellant has pointed out that the amounts of Rs. 17.77 crores, Rs. 64.94 crores and Rs. 18.75 crores stand covered by the order of the Hon'ble Special Court dt.

29.9.2007 in MA No. 210 of 2003. The Assessing Officer has also in his report dt. 2.7.2009 brought to my notice that the sum of Rs. 101 crores has been treated as money of SBI and that the same should not be treated as appellant's income. In this context, going through the order dt. 29.9.2007 of the Hon'ble Special Court in MA No. 210 of 2003, I find that in para 11 on pages 22 and 23 of the order, the Hon'ble Special Court has held that the sums of Rs. 18.75 crores, Rs. 17.77 crores and Rs. 64.97 crores could not have been taken as appellant's income since these amounts were never deposited in his accounts. The Hon'ble Supreme Court have also vide their order dt. 3.12.2008 confirmed this. In view of these finding s by the Hon'ble Courts, the addition does not hold in the appellant's hands. Accordingly, it is deleted.

13.4.1 Regarding out of the balance amount, the appellant has pointed out that explanation was given to the Assessing Officer on receipts of Rs. 142.86 crores. Out of this, it has been pointed out that an entry of Rs. 47,96,68,170/- dt. 25.3.1992 in Annexure V to the assessment order is in fact amount received from ANZ Grindlays Bank which is duly reflected on page no. 1 of Annexure M-1. Clued into this, it has been argued that an accounted income has been shown as unaccounted by the Assessing Officer. Looking into the facts brought on record by the Assessing Officer on this, I find the appellant's submissions misplaced. As I find and as pointed out by the Assessing Officer, the amount referred to by the appellant in Annexure M-1 represents purchase of the instrument 11.5% Government of India 2008 Security as is clear from the letter 'P' posted against the column 'P/S' in Annexure M-1. As against this in Annexure V, the Assessing Officer is referring to deposits, which obviously would not represent outgoing by way of purchase. In this light, I find that the amounts referred to in Annexure V and Annexure M-1 are different transactions. The appellant's comparisons and references are thus based on incompatible transactions. In view of this obvious mismatch, the appellant's submissions on this are totally lame. Interestingly, for the same transaction as illustrated in the table above, the appellant has given a different explanation to the effect that the sum of Rs. 47,96,68,170.11 represents transfer of funds from the appellant's brokerage firm from SBI to ANZ Grindlays Bank. It has been further explained that this transaction was executed with ANZ Grindlays Bank on principal to principal basis. In support, letter from SBI dated 13.3.95, transaction list given by ANZ Grindlays bank to

CBI and extract from appellant's books of accounts have been given. I have examined the appellant's explanation. As I see, when matched with deal file, I find that as recorded in the appellant's account, there is no transaction dated 25.3.1992 of 11.5% C/L 2008 securities in the Deal File. Further, there is also no transaction of 50 crore unit in the deal file of these securities. As may be noted, there is only one transaction of sale dated 28.3.92 and that too executed with the SBI. Besides, I find that there is no transaction of the nature mentioned by the appellant with ANZ Grindlays Bank in the Deal File. In this backdrop, I find that since this transaction is not recorded in the Deal File, the appellant's explanation is not credible. To this end, I find that the appellant is principally relying on his own books of account, which as already discussed several times, is not reliable, credible and authentic. Otherwise, this transaction would have definitely been recorded in the Deal File. In these circumstances, the appellant's reliance on the letter dated 13.3.95 from SBI is also irrelevant as in the Deal File the transaction with SBI is 28.3.92 whereas in the in the instant case, the transaction is dated 25.3.92. Further, as already noted above, there is no transaction of this volume and nature in the Deal File. In view of the foregoing, both the explanations of the appellant are not acceptable. Besides, the very fact that the appellant has chosen to give multiple and different explanation for the same transaction underlines the very clear fact that the explanation is not at all tenable and that the appellant has nothing concrete to rebut the Assessing Officer's findings. Regarding the appellant's explanation on Rs. 75,08,97,945/-, I find that this is also not tenable as the transactions concerned are again not in the Deal File for the relevant period. The appellant has relied on letter dated 4.7.94 from ANZ Grindlays Bank to CBI. However, as I note, item no. 13 of this letter on page 3 only talks about the photocopy of cheque deposit slip and nothing of the source of the deposit. As it is, it is this fact of the deposit that has been made the subject matter of the addition in absence of any explanation on the source. Accordingly, the letter not mentioning anything about the source of the deposit does not advance the appellant's case. Similarly, the Deal Diary of the SBI Caps referred to by the appellant also does not throw any light on the source of the deposit. Further, I also note that for these entries also, the basic reliance is on the appellant's books of account which are again not reliable and authentic. The addition of Rs. 2,77,50,000/- has been sought to be explained through appellant's books of account without any other



corroborating evidence. Accordingly, the books of account being unauthentic and unreliable, the appellant's explanation does not stand substantiated. Similar in the case with the addition of Rs. 2,00,00,000/-. In view of this, the appellant's reliance on the documents namely Deal Diary of SBI Caps, letter dated 4.7.94 by ANZ Grindlays Bank to SBI is also not material as being based only on appellant's accounts which are not reliable, these documents only refer to the transactions and not to the source. Regarding the balance amounts in the above table, I find them to be part of Rs. 101 crores for which, as already discussed above, no addition is called for as in terms of the order of the Hon'ble Supreme Court, these amounts do not form part of the appellant's income.

13.4.2 Excepting for the above specific references , the appellant has also argued that earning of income of such a high magnitude is not possible to be made in cash. This argument is off the mark. As I see, it is not the Assessing Officer's case that the income has never been earned in cash. Accordingly, the appellant's argument remains only a presumption. I further find that Annexure V on the basis of which the Assessing Officer has tabulated the addition is very detailed and contains all the necessary data. The appellant has not been able to find any fault with these details excepting for the transactions covered by the aforesaid decisions of the Hon'ble Special Court and Hon'ble Supreme Court. The appellant has also argued that inspection of the relevant material was not granted and he was not confronted with the case or material. In this respect, so far as the issue of inspection is concerned, I have already discussed in detail how the process of inspection has been adequate and satisfactory. My observations while discussing this issue holds good for the present addition also. Besides, I also find that in this respect, I particularly hold that all the relevant information had been provided to the appellant in the form of computer print-outs by the Assessing Officer to his letter dt. 16.2.95. Further, very significantly, I also note that the entries in the details provided by the RBI do not match with his voucher file. In these circumstances, the appellant's complaint that he was not confronted with the relevant materials and issues arising out of them is totally misplaced. The appellant's arguments on the applicability of section 69A are also off the mark. As may be noted, contrary to what the appellant has argued all the necessary conditions of section 69A stand applicable in the appellant's case. In the first place, the information was received from RBI. In this view of the matter, it cannot be

argued that the appellant was not the owner of the monies in question. Further, as already discussed, the books of account submitted by the appellant have been found to be unreliable and in this backdrop, it cannot be held that the transactions were recorded in appellant's books. In this respect, the several infirmities I have pointed out in my discussion on the acceptability of appellant's books of account bear special mention. I also find that the appellant has not been able to offer any explanation despite the fact that the Assessing Officer had given him the opportunity to explain his position. As already discussed, while asking for the appellant's explanation, the necessary data was also provided to the appellant by way of computer print-outs and the appellant was also made aware of the context of the explanation in that it was specified to him that the details of the transactions provided by the RBI do not match with the appellant's voucher file. In the face of this extensive and elaborate opportunity given to the appellant, his submission that no explanation was sought by the Assessing Officer for invoking the provisions of section 69A is totally off the mark. As may be noted, the way the Assessing Officer explained the context of the mismatch to the appellant clearly indicated that he was seeking to make the addition as unexplained money. It is important to note that the full context and background of the addition finally was fully made known to the appellant. The mere omission of the specific provision cannot vitiate the merit of the addition if it is otherwise justified. The appellant has also sought to cross examine the various parties concerned along with the Custodian. This prayer is totally misplaced as the addition is based on facts and not on examination of the third parties and Custodian. As may be noted, the Assessing Officer has given his findings based on elaborate records which have been made available to the appellant. Accordingly, I do not see any justifiable reason from the point of the principles of natural justice how the cross examination of the parties mentioned would help the appellant. I also note that the documents and particulars relied upon by the Assessing Officer are speaking documents and self-explanatory and accordingly, they do not call for any further scrutiny either from the point of view of genuineness or authenticity or correctness of the information. In this light, request of the appellant for cross examination appears to me to be redundant and an attempt at prolonging the proceedings. In light of the foregoing, I find that except for

Rs. 101.46 crores, the remaining additions are based on credible, authentic and reliable information and documents and accordingly, they are confirmed.

13.4.3 In light of the foregoing discussion, this ground of appeal is partly allowed.

14. **In the fifteenth ground of appeal, it has been contended that the Assessing Officer has erred in making the addition of Rs.6,85,81,200/- on account of unexplained money with respect to the transactions with Mr. Niranjan J. Shah.**

14.1 The facts are, a search and seizure operation was carried out at the premises of Mr. Niranjan J. Shah in May 1992. During the course of the search, a number of documents were seized. These documents included four accounts viz. i) 5A personal (Sterling Pound) accounts, ii) 5A (UD A/c), iii) 5A Rupee A/c and iv) M Securities A/c. Copies of these accounts were made available to the appellant. From the analysis of the seized documents, the Assessing Officer found that the first three accounts pertained to the appellant. This was also confirmed by Mr. Niranjan J. Shah in his statement. It was further stated by him that the last named account also belonged to the appellant. These statements were confirmed by Mr. Niranjan J. Shah during his cross examination also. The Assessing Officer has given his findings from these accounts on pages 66 and 67 of his order. The appellant was confronted with these findings vide the Assessing Officer's letter dt. 6.2.95. There was no response from the appellant. The appellant's statement u/s 131 of the ITA was also recorded. The relevant portions of the statement have been reproduced in para 8.1 on pages 67 to 72 of the assessment order. Mr. Niranjan J. Shah was also examined in this respect u/s 131 of the ITA. 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. The Assessing Officer has given the details of his findings emanating from the seized documents and the floppies on pages 74 and 75 of his order. Based on his findings, the Assessing Officer held as under:-

i)The appellant had unexplained money of Rs. 1,40,46,000/- equivalent to 4,68,200 US$.

ii)The appellant also had unexplained money of Rs. 3,14,35,200/- in Rupees as received from Mr. Niranjan J. Shah.

iii)The appellant had a further unexplained money of Rs. 2,31,00,000/- as cash received for his proposed company M-Securities by Mr. Niranjan J. Shah on his behalf.

Additions were accordingly made.

14.2 In course of appeal proceedings, vide letter dated 11.8.2009, it was brought to my notice by the Assessing Officer that the addition on account of statement of Mr. Niranjan J. Shah is liable to be enhanced to Rs.12 crores in terms of the report of the JPC. Looking into the Assessing Officer's letter in this point, the report of the JPC and on examination of these facts, I found that there is prima facie case for enhancement and accordingly a notice dated 12.8.2009 was issued to the appellant asking for his version in the matter.

14.3 In course of the appellate proceedings, several submissions were given. It was submitted that the seized documents do not represent the transactions carried on by the appellant and Mr. Niranjan J. Shah. Point was also made that the appellant was not granted the opportunity to cross-examine Mr. Niranjan J. Shah. In response to the notice for enhancement, it was submitted that the Assessing Officer has merely relied upon the report of JPC. It was further pointed out that there is no evidence that the transaction had actually taken place. It was further submitted that the observation of the JPC merely reveals that some payment was made by Mr. Niranjan J. Shah and it is not clarified as to what is the nature of such payment. It was also alternatively argued that if at all any payments are considered to be made by the appellant, the same can be considered to be made out of the income of the appellant and the appellant cannot be subject to addition of the same payment again. Reliance was placed on the decision in the case Straptex (India) P. Ltd. v/s DCIT 84 ITD 320 (Mum). While placing reliance on this case, point was made that the material seized from Mr. Niranjan J. Shah is not reliable and that the appellant ought to be provided an opportunity for cross examination of Shri. Niranjan J. Shah. Further, reference was made to the proceedings of the Hon'ble Special Court in MA. No. 369 of 2000 which is an application filed by the Custodian against M/s. Romil Exports for recovery of an amount of Rs. 1.75 crores paid by the appellant to this firm where Mr. Niranjan J. Shah is a partner. As mentioned, in these proceedings, the Custodian had prayed that M/s.Romil Exports and the partners ought to be directed to repay the sum of Rs.1.75 crores together with interest @ 24% per annum. It was further pointed out that the partners of M/s. Romil Exports had filed an affidavit in defense

stating that Rs.1.75 crores was paid by the appellant only in repayment of loans taken in cash from time to time from Mr. Niranjan J. Shah. Referring to this, attention was drawn to the fact that the Hon'ble Special Court had the occasion to adjudicate on the application and make an order where the Hon'ble Special Court negatived the contentions of the partners of Mr. Niranjan J. Shah and pass a decree for Rs. 1.75 crores together with interest @ 50% per annum. Premised on this, it was argued that material seized from Mr. Niranjan J. Shah is not reliable. Point was further made that Mr. Niranjan J. Shah has also not appealed against this order. Reference was also made to Hon'ble Special Court Judgement in MA No. 342 of 2000, MA No. 139 of 2001 and of the Hon'ble Supreme Court in the case CBI Vs. V.C.Shukla and others AIR 1998 1406. Argument was also put forth that the statements of Mr. Niranjan J. Shah have been believed by the Assessing Officer knowing fully well that Mr. Niranjan J. Shah had made retraction in the case of Straptex India Pvt. Ltd. and that it would be natural for Mr. Niranjan J. Shah to implicate the appellant because he owed large sums of money borrowed from the appellant. It was further argued that AO has not brought on record all the statements of Mr. Niranjan J. Shah as recorded by the Revenue when they carried an action against Mr. Niranjan J. Shah. Attention was also drawn to the fact that the Hon'ble Special Court has laid down that the Jankiraman Committee, the JPC reports and reports of the Chartered Accountants can at best be used as reference material and cannot be treated as true evidence. Argument was put forth that the Assessing Officer has not specified how the amount of Rs. 5,14,18,800/- constitutes the appellant's income and how the same pertains to the Assessment Year 1992-93. Point was also made that the addition could not have been made u/s 69A of the ITA.

14.4 I have considered the assessment order and the submissions of the appellant, the letter dt. 11.8.2009 from the Assessing Officer proposing enhancement and the various submissions of the appellant . Looking into the different accounts found during the search operation at the premises of Mr. Niranjan J. Shah, the statements of the appellant and Mr. Niranjan J. Shah, the facts brought on record by the Assessing Officer and relevant portions of the report of the Joint Committee To Enquire Into Irregularities In Securities And Banking Transactions (JPC) presented to the Loksabha on 21.12.1993 and laid on the table of Rajyasabha on 21.12.1993, I find the addition and the enhancement

proposal to be in order. To this end, in the first place, I find that the addition in the assessment is based on documents and floppies seized from the premises of Mr. Niranjan J. Shah. As I note, these documents clearly indicate that transactions in question had been undertaken either by the appellant or on his behalf. As I see, Mr. Niranjan J. Shah has given credit for several transactions in the accounts of the appellant. I further find that these are confirmed by the statements of Mr. Niranjan J. Shah. Mr. Shah's statement also clearly indicates that the Sterling Pound Account, the US Dollar Account and the Rupees Account also pertain to the appellant. Most significantly, I find that the JPC in coming to its findings had the occasion to analyze the appellant's transactions vis-à-vis Mr. Niranjan J. Shah. As I note, in this part of the report, the JPC has given a categorical finding that Mr. Niranjan J. Shah had undertaken transactions on behalf of the appellant both in India as well as abroad. In the Chapter on " Investigation of Foreign Accounts" on pages 228 and 229 of the report, inter alia, JPC has given the following crucial observations in this regard :

On the antecedents and background of Mr. Niranjan J. Shah and his transactions with the appellant

" As regards the outcome of investigations abroad, CBI have reported that the investigation has revealed that Shri. Niranjan J. Shah a hawala dealer with narcotics links was an associate of HSM. After the Income-tax authorities raided the residential and office premises of Shri. Niranjan J. Shah at Bombay on the 30th and 31st May, 1992. Shri. Shah fled to Nepal and then on to Dubai. " (Para 17.18) "

On maintaining of US$ account of the appellant

"Floppies seized during this raid indicated that he was maintaining foreign currency accounts in the name of HSM and his family members and many others." (Para 17.18)

On transfer of money belonging to the appellant to foreign destinations by Mr. Niranjan J. Shah

" Shri. Niranjan Shah's interrogations disclosed that an amount of Rs. 6.41 crores belonging to accused Shri. Harshad S. Mehta had been transferred to foreign destinations by him. The beneficiaries of these remittances to foreign countries have

been found to be Shri. Harshad S. Mehta and his close relatives. Further investigations into these foreign links are stated to be still continuing. " (Para 17.23)

On maintaining a black money account for the appellant by Mr. Niranjan J. Shah

"Shri. Niranjan Shah has also revealed to the CBI that he was maintaining a black money account for HSM in India and that whenever Shri. Mehta needed some money for which he did not want to account for he used to take the money from him. Rs. 6.10 crores are suspected to have been used for payment to public servants etc. He had at the request of Shri. Mehta also sent money abroad. The total transactions by Shri. Niranjan Shah in India as well as abroad on the request of Shri. Metha were of the order of about Rs. 12 crores, out of which about Rs. 6 crores had been sent abroad and Rs. 6 crores had been given in India." (Para 17.24)

As may be seen, the findings of the JPC on the transactions of Mr. Niranjan J. Shah vis-à-vis the appellant are very specific and detailed. Further, they are also based on very clinching documents and investigation by CBI, the Central Board of Direct Taxes and the Enforcement Directorates. As reported by the JPC in para 17.16 of its discussion on `Investigation of Foreign Accounts', clue regarding the foreign bank accounts in the name of the appellant was found in one of the seized pocket diaries of Mr. Niranjan J. Shah. From these telling observations and findings of the JPC coupled with the documents and computer data relied upon by the Assessing Officer, I find that not only the addition is justified, enhancement is also called for. As may be noted, the JPC has clearly held that the total transactions by Mr. Niranjan J. Shah in India as well as abroad on the request of the appellant were of the order of Rs. 12 crores. Significantly, as mentioned in the report of JPC, this was revealed to the CBI by Mr. Niranjan J. Shah. It is important to note here that the total volume of the transactions in the case has come to light following statement by Mr. Niranjan J. Shah to an enforcement agency and this being so, the evidentiary value of the statement is beyond any doubt. As against the overwhelming evidence endorsing the addition and the enhancement, the submissions of the appellant on the issue are off the mark and not borne out by facts. The appellant's argument that the seized documents do not represent his transactions stands very articulately negated by the specific statement of Mr. Niranjan J. Shah not only before the

Income-tax authorities but also before the CBI. Further, this argument also falls flat in view of the findings and observations of the JPC discussed above. As may be noted, the transactions in question came to light not only on the basis of the statement of Mr. Niranjan J. Shah, but also on the basis of seized documents, computer data, pocket diaries of Mr. Niranjan J. Shah and multi-disciplinary investigation by the Income-tax Department, the CBI and the Enforcement Directoratee. The appellant's objection to not being granted the opportunity to cross examine is misleading in that the appellant was squarely confronted with the facts revealed by Mr. Niranjan J. Shah in course of his statement recorded under section 131 of the ITA. As already mentioned, the relevant questions and answers covered in this statement have been reproduced in para 8.1 of the assessment order. As I note from the various answers given, the appellant and Mr. Niranjan J. Shah were known to each other so much so that the appellant performed `Kanyadan' ceremony on the marriage of Mr. Niranjan J. Shah's sister. The statement also reveals that the appellant and Mr. Niranjan J. Shah traveled together. The close interactions and the intimacy between the appellant and Mr. Niranjan J. Shah give credence to the fact that Mr. Niranjan J. Shah had carried on transactions on the appellant's behalf. Further, Question No. 81 of the statement, I also find that the records maintained by Mr. Niranjan J. Shah and seized by the Income-tax Department had been shown to the appellant. From the tenor and flow of the appellant's answer to other questions, it will also become clear that the appellant has not been able to bring any credible evidence or facts on record to controvert the documents relied upon by the Assessing Officer and the statement given by Mr. Niranjan J. Shah. In this respect, I particularly note that when confronted with the seized documents and the emanating facts, instead of relying on evidence and facts, the appellant has shown a consistent tendency of being evasive throughout the statement. In face of this, the appellant's insistence on cross-examination of Mr. Niranjan J. Shah is totally misplaced. As may be noted, all the facts brought on record by Mr. Niranjan J. Shah have been made available to the appellant at various stages of the investigation following the search as well as the assessment and the present appellate proceedings. Accordingly, to still insist on cross examination without being able to bring anything on record is only an attempt to make the present proceedings cumbersome. When all materials and facts have been made

available to the appellant, I do not see how cross examination would be still necessary, particularly, the addition and the enhancement are also based on other documents and the findings of the JPC. As may be noted, the statements of Mr. Niranjan J. Shah are not the only grounds of addition and the enhancement. Further, I also find that the appellant has only argued that the materials seized from Mr. Niranjan J. Shah and his statements are unreliable. He has, however, not substantiated this by bringing anything on record which could controvert the very specific findings emerging out of these seized materials and statements. As I note, the appellant has not been able to substantiate with evidence and record that he had no association with Mr. Niranjan J. Shah, that he did not have foreign bank accounts, that the credits in the accounts mentioned in the assessment order are wrong, that the statements given by him during the proceedings u/s 131 are not true and that findings of the investigating agencies and the JPC are incorrect. Instead, the appellant has only made inferential presumption casting doubts on the documents and statements relied upon by the Assessing Officer. Specifics should be met with specifics and the appellant has failed to do so and has met specifics only with generalities. The balance of onus not discharged is thus totally tilted towards the appellant. The appellant has also argued that reports of Jankiraman Committee, JPC and Chartered Accountants have been held by the Hon'ble Special Court at best a reference material and not as proved evidence. This argument does not advance the appellant's cause as the report of the JPC in the case has been taken as one of the many sources of information while coming to a finding in the matter. As already discussed, the addition and the enhancement in the case are prompted not by only a single source of information / material but they are based on conclusions arrived at on the basis of a series of documents, statements and information which cumulatively strewn together lead to the conclusion in the matter. In fact, the very fact that the Hon'ble Special Court has accepted the reports of the Jankiraman Committee, the JPC and the Chartered Accountants as a reference material only strengthens the credibility and value of the observations and information recorded in these reports. The appellant's arguments against the enhancement are also misplaced. As I see, the appellant has basically reiterated his submissions made earlier. He has additionally in this submission argued that nature of the payments has not been made clear. This is totally off the mark, as

already discussed above, the nature of the payments stands unambiguously explained in the report of the JPC, seized documents and the statement of Mr. Niranjan J. Shah. The appellant's argument that the payments are from appellant's income and hence cannot again be added is again misplaced. As I observe, the appellant has not been able to explain the source of these payments. The payments were also not reflected in the appellant's record. Accordingly, the appellant's claim cannot be accepted. Further, the appellant has also not mentioned the particular head of income under which the payments can be, if at all, set off. In view of this, the appellant's claim has no merit. The appellant has also argued that the Assessing Officer has not specified how Rs. 5,14,18,800/- constitutes appellant's income for the assessment year 1992-93. This argument is misplaced in that the enhancement flows out of the findings of the addition of Rs.6,85,81,200/- made by the Assessing Officer. To this end, I find that, the evidences on the issue revealed that a bulk of the transactions with the appellant related to the financial year 1991-92. In this respect, the report of the JPC also indicates these remittances falling within the financial year 1991-92. From paras 17.19, 17.21 and 17.22 of the JPC report, it may be seen that the transactions were in the financial year 1991-92. To illustrate, in para 17.19, the JPC clearly mentions that Mr. Niranjan J. Shah was maintaining US$ account of HSM, indicating payments to him and his family members on foreign currencies during 1991-92. In para 17.21, it is clearly mentioned that in January 1992, appellant's mother and brother received US $. Similar information is given by the JPC in para 17.22 in which it has been mentioned that payments of US$ 65,000/- and 1,95,000/- received by the persons mentioned in the report in January, 1992 had been arranged by the appellant. These facts will reveal that the sum which is the subject matter of enhancement is also most definitely part of transactions in the financial year 1991-92. Accordingly, for the reasons for which the Assessing Officer has made the addition of Rs. 6,85,81,200/-, facts and evidences remaining the same, enhancement of the addition to Rs. 12,00,00,000/- is called for. In view of the fact that the addition and the enhancement are based on concrete evidences, the appellant's reliance on the decision in the case Straptex (India) P. Ltd. v/s DCIT is totally inappropriate. As I note, this case is only confined to the facts related to the case and there is no reference of Mr. Niranjan J. Shah transactions with the appellant in this case. As I note, in this case, the Hon'ble

Tribunal was only adjudicating upon the payments made to / for Straptex India Pvt. Ltd. only. The question, as reproduced by the appellant, in this case was only with reference to the entries in account head `12A(Rs.A/c)' and Mr. Niranjan J. Shah's answer was also with reference to this account head only. A statement given in the context of one particular case cannot be imported in another case without any corroborative facts and evidence. Significantly, it may be noted that in this case, the additions are with reference to specific transactions namely in the accounts specified and Mr. Niranjan J. Shah's statement with regard to the `M Securities'. The appellant has not brought out any specific on record to indicate that Mr. Niranjan J. Shah has given any statement specific to these accounts substantiating that the Assessing Officer's findings with reference to these specific evidences are wrong. The appellant's reliance on the decision of the Hon'ble Special Court in MA No. 369 of 2000 is also not relevant as the subject matter of the suit in this case is recovery of an amount paid by the appellant to M/s. Romil Exports. As may be noted, the matter here was a dispute between two parties, as against which, the issue at hand in the present ground and the enhancement is the result of facts emerging out of seized documents and materials, extensive investigation by several investigating agencies and report from the high powered JPC. The genesis of the issues in the two cases is, therefore, totally different. In similar vein, the appellant's reliance on the Hon'ble Special Court Judgement in MA No. 139 of 2001 is also misplaced. As I see, in this case the Hon'ble Court had ordered return of Fixed Deposit receipts because there was no material on record to show any connection of amount with the Notified Party. As observed by the Hon'ble Court, in this case, *`there is absolutely no material placed on record by the Custodian in support of the apprehension stated in the application...'*. As against this, in the appellant's case, as already elaborately discussed, the addition and the enhancement are clued into several documents and findings by investigating agencies and JPC. The appellant's reliance on the decision of the Hon'ble Supreme Court in the case CBI Vs. V.C.Shukla is also out of place. This decision is in the context of offences under the 120b IPC and various sections of the Prevention of Corruption Act, 1988. As may be noted, offences under these sections and an assessment under the Income-tax Act, 1961 are guided by different statutes and standards of proof and accordingly, the decision of the Hon'ble Supreme Court cannot be the parameter for the findings in the appellant's

case. Further, as may be noted, in this decision, the Hon'ble Supreme Court has examined whether or not the seized materials in the case could be termed as books of account. As against this, in the appellant's case, the issue is taxability of income on the basis of documents seized, investigation made, statements given and report of JPC. In the appellant's case, the findings in the matter are the cumulative result of the facts and evidences emerging out of these several documents and processes and not only from the books of account. Accordingly, the appellant's case is clearly distinguishable. The appellant has also repeatedly referred to the subsequent retractions of statements given by Mr. Niranjan J. Shah to various agencies. However, the appellant has not been able to bring on record any statement where Mr. Niranjan J. Shah has withdrawn his statement on the present transactions under consideration. In fact, apart from the retraction in the case of Straptex India Pvt. Ltd., the appellant has not been able to mention any other case or party in respect of which Mr. Nirajan J. Shah has withdrawn his statements given earlier. This would indicate that Straptex India Pvt. Ltd. is a stand-alone case. The appellant has also argued that many of the statements recorded by Mr. Niranjan J. Shah have not been made available. The appellant has ,however, not specified how these statements are relevant to the issue at hand particularly when the statement relevant to the issue at hand has been made known to him. The appellant has brought to notice certain facts mainly receipts and payments of cheques by Mr. Niranjan J. Shah, borrowing of money by Mr. Niranjan J. Shah from the appellant, Mr. Niranjan J. Shah's motives and similar other some facts which have no bearing on the issue at hand. In sum, I find that the main plank of appellant's defense is that Mr. Niranjan J. Shah's statements and the documents seized from him are not reliable. However, as discussed above, the basis on which, the appellant has sought to substantiate this defense is not tenable and in case of judicial decisions cited by the appellant, these decisions are not applicable to the appellant's case. The appellant has also argued that the Assessing Officer has not specifically mentioned how the amount in question constitutes appellant's income and also how they are assessable for the present assessment year under consideration. As I find, while advancing this argument, the appellant has totally ignored the Assessing Officer's finding that the additions are called for as unexplained money. As I note in para 8 of the assessment order, the Assessing Officer has clearly specified how the

amounts in question constitute appellant's income. The appellant has not advanced any specific argument against the specific reasons for which the Assessing Officer came to his conclusion in the matter. The appellant has also expressed reservations on taxability of the amount u/s 69 of the ITA. This is again misplaced as the facts and evidences in the matter clearly revealed that the appellant had unexplained money. As may be noted, in this case, the conditions specified in section 69A for bringing to tax amount under unexplained money clearly stood satisfied. The conditions in section 69A are as under :

i) *The assessee should be found to be `owner of any money, bullion, jewellery or other valuable article ... '.;*

ii) *` such money, bullion, jewellery or valuable article is not recorded in the books of account maintained by him for any source of income';*

iii) *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, satisfacoty.... '.*

Tested on the above conditions, I find that the facts and evidences clearly revealed that the appellant was found to be the owner of the unexplained money by way of transactions with Mr. Niranjan J. Shah. The transactions are also not recorded in the books of accounts and the appellant has also not been able to explain the source of the monies involved in these transactions. Accordingly, all the necessary conditions for application of section 69A in taxing the amount as unexplained money are cumulatively and collectively satisfied.

14.4.1 In light of the foregoing, I find the addition to be justified. Further, for the reasons discussed above, I also find that the addition is required to be enhanced to Rs. 12 crores. The ground of appeal is accordingly dismissed and the addition is enhanced to Rs. 12 crores.

15. **In the sixteenth ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs.62,50,000/- on account of unexplained investment in respect of payment made to M/s. June Investments.**

15.1 In course of a survey operation at the premises, a share broker Mr. Deep Trivedi, Director of M/s. Coverage & Consultants Pvt. Ltd. Indore, a paper was found which

showed details of Rs. 4,23,72,500/- given in payment from Indore against purchase of shares of M/s. Lan Steel to M/s. June Investements Pvt. Ltd. The appellant was provided with the copy of paper which showed that the appellant had paid a sum of Rs. 62,50,000/- on 31.12.91. The appellant was asked to explain this vide letter dt. 6.2.95. In response, vide letter dt. 20.2.95, it was pointed out by the appellant that the paper provided to him was not eligible. Considering the fact that the paper showed that the appellant had paid a sum of Rs. 62,50,000/- on 31.12.91, the appellant was asked to specifically confirm or deny the transactions. No reply was submitted in response. In light of the foregoing, the Assessing Officer held that the appellant had unexplained investment of Rs. 62,50,000/- in the shares of M/s. Lan Steel and the sum was accordingly added to the appellant's income.

15.2 In appeal, it was submitted that the addition has been made without there being any evidence to the effect that the payments reflected on the seized papers was received by the appellant. It was further argued that the Assessing Officer has presumed that the payment was made to the appellant and that there could be many persons with the name Harshad Mehta.

15.3 I have considered the assessment order and the submissions of the appellant. As I find, the addition in the case is clued into a very specific document found during the survey at the premises of Mr. Deep Trivedi. I further find that the document is a speaking document in that it clearly showed that on 31.12.91, the appellant had paid a sum of Rs.62,50,000/-. At his end, the appellant could not prove that the person Harshad Mehta mentioned in the document is not the appellant but someone else. The appellant was given a number of opportunities during the assessment proceedings to explain his position. The appellant did not avail of this. There was nothing to prevent the appellant from coming out with his version in the matter. Non-availing of the opportunities would clearly reveal that the appellant was not in a position to disprove the findings of the Assessing Officer. In light of the foregoing, I find that the Assessing Officer has rightly held that the appellant had unexplained investments of Rs. 62,50,000/-. The addition is confirmed and the ground of appeal is dismissed.

16. **In the seventeenth ground of appeal, it has been contended that the Assessing Officer has erred in making addition of Rs.25,20,16,000/- on account of declaration u/s 132(4) of the ITA.**

16.1 After the search at different premises of the appellant in February, 1992, the appellant had vide his letter dt. 2.6.92 addressed to DDIT(Investigation), Mumbai given the following submissions :

" *On a preliminary estimate made by me without the aid of computers and my accounts the income for the assessment years 91-92 and 92-93 of myself, all my family members and the group entities may work out to roughly Rs.100 crores in excess of what has been the income equivalent to the advance tax of Rs.14.87 crores paid for assessment years 91-92 and 92-93. I would therefore like to give your department Rs. 100 crore as estimation of additional income of group entities based on the estimates and offer that income for taxation u/s 132(4). The above income has been earned by us from Stock market, Money market operations, Interest, Dividends, etcetera and capital gains on long term investments.*"

Since the appellant did not give any basis or break-up of the disclosure, the Assessing Officer made the allocation on the basis of payment of advance tax. In line with this, a sum of Rs. 25,20,16,000/- was allocated to the appellant out of the declaration of Rs. 100 crores as additional income offered by the appellant. This was added to the appellant's total income.

16.2 In appeal, it was submitted that the issue stands covered by the decision of the Hon'ble ITAT in the case of the appellant for the assessment year 1989-90 in ITA No. 5773/Mum/1998 vide order dt. 2.1.2008. It was also pointed out that the disclosure made by the appellant was in respect of overall estimate of total income. Further, point was also made that the Assessing Officer has determined the total income from various sources and made further addition on account of disclosure which is not correct.

16.3 I have considered the assessment order and the submissions of the appellant. As I find, my the then predecessor in his appeal order dt. 28.2.2003 for the present assessment year under consideration had the occasion to look into this addition. In terms of his discussion in para 22 of his order on pages 81 to 85, my predecessor deleted the addition as it was his view that the concealed income offered by the appellant u/s 132(4) of the

ITA is included in the determination of income made in the assessment order for the present assessment year. His final observations made on this addition were as under:-

> *" However, in my considered view this addition is not required to be made for the simple reason that additions other than this addition made vide the assessment order which is subject matter of this appeal is held to include the amount offered by the appellant in the statement under section 132(4). Accordingly, it is held that concealed income offered by the appellant in the case of appellant under section 132(4) is included in the determination of income made vide assessment order for A.Y.92-93 and no separate addition is required in this regard. Accordingly, addition of Rs. 25,20,16,000/-, which is made on the basis of statement under 132(4) is deleted.*

I have gone through the order of my predecessor and facts remaining the same, I am in agreement with him. Accordingly, this addition is deleted as I find, the amount declared is embedded in the total income determined in the assessment order. The ground of appeal is accordingly allowed. However, this decision has to be read along with the decision of the Hon'ble ITAT in its order dated 11.8.2008 in which para 5 on page 5 of the order, the Hon'ble Tribunal has directed that in case the additions made by the Assessing Officer are ultimately deleted in subsequent appellate proceedings, the total income of the appellant together with the additions sustained cannot be lower than the proportions of income out of the surrender of Rs. 100 crore as determined by the Assessing Officer.

17. **In the eighteen ground of appeal, it has been contended that the Assessing Officer has erred in clubbing the income of Rs. 76,660/- of Harshad S. Mehta (HUF) with the appellant's total income.**

17.1 In course of the assessment proceedings, it was found that the appellant had filed the return of income for the assessment year 1992-93 in the name of Shri Harshad S. Mehta (HUF) in the capacity of Karta of the HUF. The appellant was asked to explain why the HUF created by a gift from mother should not be treated as non-existent. In response, it was submitted that challenging the validity of the HUF already in existence clearly falls outside the jurisdiction of the Assessing Officer. Point was also made HUF is a feature of law and cannot be created by gift. The appellant's contentions were

rejected by the Assessing Officer. It was his view that in the present case, there was no principal HUF and accordingly, it cannot be said that the HUF was formed on partition as a small HUF of a principal HUF. Clued into this, it was held by the Assessing Officer for the purpose of Income-tax Act, there is no HUF existing and accordingly, the income and wealth declared by the HUF was clubbed with the income / wealth of the appellant in his individual capacity. On protective basis, the income/wealth declared by the HUF was also assessed in the case of the HUF as per the returns filed by the HUF.

17.2 In appeal, it was pointed out that the issued is settled by the order dt. 15.7.99 passed by the Hon'ble ITAT in the case of Harshad S. Mehta (HUF) for the assessment year 1990-91. It was further pointed out that in this order, it has been held that there was valid HUF in existence and hence, the income of the HUF cannot be assessed in the appellant's hands.

17.3 I have considered the assessment order and the submissions of the appellant. As I find and as pointed out by the appellant, the issued is covered in appellant's favour by the order dt. 15.7.99 of the Hon'ble ITAT in the appellant's own case. In this order, the Hon'ble ITAT has given its decision in para 6 of the order. From the perusal of the order, I find that for the assessment year 1990-91 also the AO has taken his decision on the same ground on which he has taken his decision for the present assessment year under consideration. On this, the Hon'ble ITAT had the occasion to hold as under :-

"In the circumstances, in the light of the case law cited by the learned counsel for the assessee and the CIT(A), we have to hold that the said gift of Rs.25,001/- constitutes a nucleus for the said HUF and the HUF has to be assessed separately on the income rising from this nucleus. Accordingly, we uphold the findings of the CIT(A). "

As I note and as mentioned in the order of the Hon'ble ITAT, my the then predecessor while coming to his decision had the occasion to rely on the decision of the Hon'ble Madras High Court in the case CIT Vs. M.Balasubramanian 182 ITR 117 and of the Hon'ble Supreme Court in the case Surjitlal Chchabra Vs. CIT 101 ITR 776. In the light of the foregoing, respectfully following the decision of the ITAT referred to the above, I delete the addition. This ground of appeal is accordingly allowed.

18. **In the nineteenth ground of appeal, it has been contended that the Assessing Officer has erred in rejecting the cash system of accounting followed by the appellant for the purposes of accounting of interest income.**

18.1 This issue has already been dealt with by me in my discussion on the addition of interest on securities in money market and on other grounds where the issue has been raised . In terms of these discussions, the ground of appeal is dismissed.

19. **In the twentieth ground of appeal, it has been contended that the Assessing Officer has erred in denying the interest and other business expenditure of the appellant.**

19.1 In appeal, it was submitted that the Assessing Officer has not considered the deduction on account of interest expenses and other business expenditure and the income has been determined without any discussion on the allowability of discussion.

19.2 I have considered the assessment order and the submissions of the appellant. As I find, the appellant's claim is in a void. To this end, as already discussed in detail, the appellant was not maintaining complete and proper books of accounts. The appellant has also not given the details of the expenditure during the assessment proceedings. In this respect, the decision of the Hon'ble Supreme Court in the case Goetze (India) Ltd vs CIT (2006) 284 ITR 323 bears special mention. In this decision, the Hon'ble Supreme Court has held that a relief if omitted to be sought has to be claimed only by filing a revised return and that this requirement cannot be circumvented by claiming the relief in any other form. In this context, I find that during the appellate proceedings before me also, the details of the expenditure, the sections under which they can be allowed, the nexus between the stated expenditure and the head of income under which the expenditure can be allowed and like relevant details have not been produced. In this respect, the books of accounts also have been found to be unreliable by me in terms of my discussion above on the issue. I also find that my predecessor in his order dated 28.2.2003 had the occasion to find similar non-submission of necessary details, on account of which, he had the occasion to dismiss this ground of appeal. Considering all these facts and circumstances, I do not find any merit in this ground. It is accordingly dismissed.

20. **In the twenty first ground of appeal, it has been contended that the Assessing Officer has erred in not allowing business losses, liabilities and depreciation while determining the income of the appellant.**

20.1 In appeal, it was submitted that the submissions for this ground are the same as submissions for ground no. 20.

20.2 The logic and context of the issue on this ground and the submissions being the same for ground no. 20, for the reasons discussed in detail by me while dismissing ground of appeal no. 20, I dismiss this ground of appeal also.

21. **In the twenty second ground of appeal, it has been contended that the Assessing Officer has erred in not allowing statutory deductions and allowances under Chapter VI-A of the Act.**

21.1 In appeal, it was submitted that the submissions for this ground are the same as submissions for ground no. 20.

21.2 The logic and context of the issue on this ground and the submissions being the same for ground no. 20, for the reasons discussed in detail by me while dismissing ground of appeal no. 20, I dismiss this ground of appeal also.

22. In the twenty third ground of appeal, it has been contended that the Assessing Officer has erred in denying the benefit of tax deducted at source.

22.1 In appeal, the Assessing Officer has noted that credit of TDS will be given subject to filing the details as well as the TDS certificates. In this light, I direct the appellant to give these details and the TDS certificates. The Assessing Officer is directed to verify the details and the certificates submitted and give / disallow credit depending on the results of his verification.

23. In the twenty fourth ground of appeal, it has been contended that the Assessing officer has erred in levying interest u/s 234A and 234B of the Act.

23.1 In appeal, it was submitted that the interest charged under these sections is illegal. It was argued that interest under the section 234B is chargeable where the advance tax is not paid till 31.3.93. Point was made that interest under this section is leviable only when the assessee is liable to pay advance tax and has not paid. Clued into this, it was submitted that advance tax payment could not be paid because the appellant was notified and the accounts were attached under the orders of the Hon'ble Special

Court. It was also pointed out that the appellant was prevented by law to operate his bank account and would operate it only under the directions of the Hon'ble Special Court. It was also mentioned that apart from this, interest u/s 234A also cannot be levied as the appellant was suffering numerous insurmountable difficulties. Point was also made that incomes which are liable to TDS cannot be subjected to levy of interest in terms of the case Motorola Inc. Vs. DCIT 95 ITD 269 (SB)(Delhi).

23.2 The Assessing Officer had the occasion to refer to para 1.1 to 3.0 on pages 41 to 43 of the assessment order to point out that the appellant's objections already stand replied by the Assessing Officer. In this respect, it was pointed out that in the later proceedings also, it has been held by different courts as well as Tribunals that charging of interest under these sections is mandatory. It was also mentioned that Special Bench, in the case of Motorola has opined that charging of interest on the additional income computed by the Assessing Officer is mandatory.

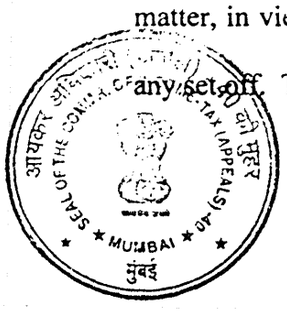
23.3 I have considered the submissions of the appellant and the assessment order. As I find, charging of interest u/s 234A, 234B and 234C of the ITA is mandatory for the Assessing Officer. This will be clear from the term 'shall' used in the sections while bestowing the power of levying interest to the Assessing Officer. The sections do not provide any exception to this power given to the Assessing Officer. Further, interest once levied cannot be waived by any authority apart from the Chief Commissioner of Income Tax. It is the established position of law that interest is mandatory and whatever may be the reason for default in payment of advance tax, interest under these sections has to be levied. This was the decision given by the Hon'ble Kerala High Court in the case Kuttukaran Machine Tools Vs. CIT 264 ITR 320. This was also the decision of the Hon'ble Supreme Court in the case Anjum M.H. Ghaswala and Ors. 252 ITR 1. In the decision in the case Motorola Inc. Vs. DCIT also the Hon'ble Special Bench, Delhi has held similar view. The position is that if the interest is leviable in terms of these sections, it has to be levied. The Assessing Officer has not been given power in these sections to go into the difficulties in payment of advance tax. Accordingly, the levy of interest u/s 234A, 234B and 234C of the ITA is confirmed and the ground of appeal is dismissed.

24. The appellant has also made a prayer – without prejudice, requesting for benefit of telescoping on account of the various additions made by the Assessing Officer. Reliance was placed on the decision of the Hon'ble Bombay High Court in the case CIT Vs. Jawanmal Gemaji Gandhi 151 ITR 353.

24.1 The Assessing Officer had occasion to observe that since the additions made by the Assessing Officer are based on working done at the last day of the financial year i.e. 31.3.1992, there is no overlapping of transactions between two heads of income and amongst different heads of income. Point was also made that it is not the appellant's case that any transaction in the mid of the year has been added as income. It was pointed out that the decision in the case relied upon by the appellant is distinguishable as the Assessing Officer has worked out the additions at the end of the financial year and not somewhere in between. In this context, it was pointed out that in the case before the Bombay High Court, set off of investment in the Gold was given against total turnover / income estimated at the end of the year as the total undisclosed income earned in that year constituted the fund from which the said asset was acquired.

24.2 I have considered the assessment order and the rival submissions. Looking into the nature of the additions in terms of the Income-tax Act, the facts in the case relied upon by the appellant and attending facts and circumstances, I find the appellant's prayer totally misplaced. As I see, the appellant has asked for set off of additions made as investments against additions made as income. This premise of the prayer does not hold good in the appellant's case. As may be seen, in terms of the various provisions of Chater VI as stipulated in various sections starting from 69 to 69D, even the investments/purchases are added only as income. In these sections, it has been specifically laid out that the entire investments / money not recorded in the books of account and not explained or unsatisfactorily explained will be treated as income without any set off of any amount of any character. Accordingly, in the appellant's case, addition of Rs. 1636,49,15,852/- as either unexplained stock or unexplained investment or unexplained money having been treated as income in terms of the relevant provisions in Chapter VI, cannot be set off against the additions of Rs. 564,53,26,237/- treated as income. Income cannot be set off against income. As I see, the appellant has not appreciated the real import of the additions on account of investments, which in view of

the provisions of the Income-tax Act are treated as income in their entirety. In this light, I also agree with the observations of the Assessing Officer. As I see, the AO has rightly mentioned that the additions have been worked out at the end of the financial year and not somewhere in between and, very importantly, that the net figure for the whole of the year on the last date has been taken. Further, as rightly pointed out by the Assessing Officer, in the individual heads of income, the transactions and the securities / shares are different and accordingly, it naturally follows that the income earned from one transaction has not been utilized in making investment in any other transactions. The decision relied upon by the appellant is also distinguishable. As I see, in this decision, the Hon'ble Bombay High Court does not lay down any general principle that income earned in an earlier year can constitute funds for the future transactions. In the decision, the Hon'ble Court has allowed the set off only on the peculiar facts before it. As may be noted and as pointed out by the Assessing Officer, the Hon'ble High Court only gave set off of investment against the total turnover as the total undisclosed income earned in that year constituted the funds from which the asset was acquired. Further, the Hon'ble High Court was guided to its decision by the fact that the Revenue was able to refer to only one circumstance i.e., the matter not having been contended before the Assessing Officer and the AAC. It is in this context and circumstance only that the decision was given in this case. The decision is thus not applicable to the appellant's case. As already discussed, in the appellant's case, the investment was also added only as income and accordingly, there was no scope of set off. That the issue of set off is to be decided on the facts of the individual cases has been clearly laid down by the Hon'ble Supreme Court. In its decision in the case, Anantharam Veerasinghaiah & Co. vs. Commissioner of Income Tax 123 ITR 457, the Hon'ble Supreme Court has specifically held that intangible additions made cannot necessarily be regarded as the source of cash credit and it is a matter of consideration in each case whether the cash credit can be reasonably attributed to a pre-existing fund of concealed profits. Accordingly, it may be seen that the issue of set off is to be decided on the merits of each case and in this view of the matter, in view of the foregoing discussion, in the appellant's case, there is no scope for any set off. The prayer of the appellant is thus not granted.



25. **Enhancement**

In course of the appeal proceedings, it was found that enhancement is called for on the following issues :

i) Enhancement of Rs. 5,14,18,800/- on the addition on account of statement of Mr. Niranjan J. Shah

ii) Enhancement of Rs. 11,85,00,000/- on account of addition of interest

iii) Enhancement outlined and proposed in notice dated 14.1.2010 issued u/s 251(2) of the ITA.

iv) Enhancement of Rs. 69.63 crores (part of Rs. 83.52 crores) being liabilities shown as other income in the Review of unaudited accounts of M/s. Harshad S. Mehta prepared by M/s. Vyas & Vyas and as pointed out by the Assessing Officer in his letter dated 11.8.2009.

The enhancement of Rs. 5,14,18,800/- has already been discussed by me in course of my decision on ground no. 15 in respect of addition on account of unexplained money in connection with appellant's transaction with Mr. Niranjan J. Shah. In view of this, I am not separately taking this here.

25.1 On the enhancement of Rs. 11,85,00,000/-, the Assessing Officer sent a proposal vide his letter dated 11.8.2009. In this letter, it was pointed out by the Assessing Officer 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 appellant's family members to obtain additional useful information. Elaborating, the Assessing Officer pointed out that in these audit reports, it was stated that the family members did not provide interest payable to M/s. HSM. Clued into this, the Assessing Officer observed that similar interest should have been credited for in the books of M/s. HSM which has not been accounted for. The interest was worked out at Rs. 11,85,00,000/- as on 31.3.1992. 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. On perusal of the letter, prima facie, I found that there could be a case of enhancement. Vide my letter dated 12.8.2009, I requested the appellant to give his version on the matter. In response, the appellant gave his version vide two letters dated 17.8.2009 and 19.8.2009.

25.2 It was the appellant's submission that interest is not liable to tax since the appellant is following the cash system of accounting. Further, it was pointed out that the issue is covered by the decision of the Hon'ble ITAT in appellant's own case for the assessment year 1989-90, in which the Hon'ble ITAT has approved the cash system of accounting followed by the appellant. In this respect, it was submitted that although the Assessing Officer has not followed the decision of the Hon'ble ITAT on the ground that the appellant has not maintained the books of account, subsequently, the books of account had been maintained as they have been submitted during the appeal proceedings. It was also pointed out that the books of account had been partially returned and also found at the time of search and that they are lying in the custody of the Income-tax Department and the Custodian. Point was also made that the Auditors M/s. Vyas & Vyas have only made an assumption. It was also argued that explanation of the entities who have not provided for the interest should have been asked for by the Assessing Officer. In this context, it was argued that these entities follow the mercantile system of accounting as against the cash system. It was also argued that the notified family members have disputed their liability of payment in Miscellaneous Petition and affidavits have also been filed by them. It was also pointed out that the Income-tax Department has been opposing the claim of the appellant's family members that the interest may be reduced as an expense. It was also submitted that the appellant may be granted an opportunity to cross examine M/s. Vyas & Vyas. Further, point was also made that the Revenue has opposed the admissibility of the report of M/s. Vyas & Vyas before the Hon'ble ITAT. In light of the foregoing, it was prayed that the proposal of the Assessing Officer may be rejected.

25.3 I have considered the Assessing Officer's proposal and the submissions of the appellant. Looking into the report of the Auditors M/s. Vyas & Vyas, the specific findings of the Auditors, the unreliability of the books of account submitted by the appellant and other attending facts and circumstances, I agree with the Assessing Officer. To this end, in the first place, I find that M/s. Vyas & Vyas in their report have made specific observation on the interest not accounted for as payable by the family members. Very significantly, I note that the Auditors made these observations after study of the Audit Report in the case of the appellant's family members. The

information leading to the working of interest by M/s. Vyas & Vyas was thus sourced from a very authentic and statutory document i.e., the Audit Report in case of the appellant's family members. I further find that this interest stands quantified by the Auditors. In this light, I find the interest taxable in the appellant's hands in terms of the principles of accounting and relevant provisions of the Income-tax Act. The basis of the Auditor's observation being authentic, based on statutory document and specific disproves the appellant's contention that the Auditors M/s Vyas & Vyas have only made a presumption. The appellant has argued that the interest is not taxable because he is following the cash system of accounting. This is misplaced. I have already discussed how this argument of the appellant is not acceptable in my discussion on the issue in connection with the seventh ground of appeal on addition of Rs. 58,27,13,670/- on account of interest on securities in money market. The point raised here had also been raised by the appellant in support of his position on this ground. I have given my decision on this issue in connection with the seventh ground of appeal. The arguments being the same, for the same reasons, I find the appellant's arguments not acceptable here also. On the books of account, the appellant has argued that they had been partially produced during the search and that they were lying with the Custodian. This is not borne out by facts as the books of account were not produced during the search. Further, if the books were lying with the Custodian, the appellant has brought nothing on record to indicate that he had made efforts to obtain them from the Custodian. These omissions would clearly prove that no books of account were being maintained by the appellant. The appellant has referred to the fact that his assets stand attached and accordingly, the addition is not legally tenable. This reference is misplaced in that the appellant has not produced anything before me to show that income from the attached properties cannot be included in determination of income under the Income-tax Act. Besides, it also bears mention that attachment of an asset does not restrict its income bearing capacity and accordingly, the interest here will continue to accrue. The appellant's claim of cross examining the Chartered Accountants M/s. Vyas & Vyas is also inconsistent in that the appellant must have the occasion to interact in several ways with the firm and its employees in course of the review of its audited accounts. In face of this, I find the appellant's claim devoid of any merit. My succeeding

discussion on this request of cross examination in connection with enhancement on account of differences in the balances of the books of M/s. HSM and related parties may also be referred to. The appellant's contention that the Revenue has contested the report of M/s. Vyas & Vyas before the Hon'ble ITAT has been made out of context in that the Revenue's position is in the context of the fact that the appellant had pointed out that according to M/s. Vyas & Vyas the appellant had earned an income of Rs. 123.53 crores during the three assessment years. As I find, the Revenue's position on the report of M/s. Vyas & Vyas is that it is based on incomplete sets of records and documents, which has been reported by the Auditors themselves. It has never been the Revenue's position that the information in possession of M/s. Vyas & Vyas is incorrect. That the report of M/s. Vyas & Vyas is based on incomplete sets of records and documents would not mean that whatever information has been given in the report is wrong. It would only mean that the report would have given additional facts if complete sets of records and documents had been submitted. Further, it is significant to note that the observation of M/s. Vyas & Vyas is based on Audit Reports in case of the family members of the appellant. In light of the foregoing, I find that the interest of Rs. 11,85,00,000/- is to be added to the appellant's income. My discussion and decision on the seventh ground of appeal also may be referred to on issues common to this enhancement and that ground. Accordingly, the interest income is enhanced by this amount.

25.4 On the enhancements outlined in letter dated 14.1.2010, it is to be noted that in course of the appeal proceedings vide letter dated 11.12.2009, the DCIT, Central Circle-23, Mumbai invited my attention to the following issues of enhancement of appellant's income for the present assessment year under consideration :

i) **Shortfall in Securities**

Attention was invited to the fact that out of the oversold position of securities at Rs. 1681,79,84,180/- in Annexure M-2, deduction of Rs. 601,20,94,489/- was given on the ground that shortfall on account of oversold securities in respect of the following two securities have been covered by issuing cheques by the appellant to the SBI:

Sl. No.	Security	Shortfall covered up by the assessee	Oversold position of the securities

		(Rs. In Crores)	(Rs. In Crores)
1.	C/L 2010, 11.5%	454	595.61
2.	C/L 2007, 11.5%	170	174

It was further pointed out that the shortfall in the above two securities has been made good by purchase of securities by the cheques received by SBI from the appellant. The details of the cheques were given by the Assessing Officer as under :

Date	Cheque No.	Bank	Amount (Rs.)
13/04/1992	311415	Grindlays Bank	2431868500.00
18/04/1992	301454	Grindlays Bank	979866961.44
18/04/1992	301453	Grindlays Bank	350000000.00
18/04/1992	301455	Grindlays Bank	90000000.00
20/04/1992	311473	Grindlays Bank	1250000000.00
20/04/1992	311475	Grindlays Bank	350000000.00
21/04/1992	311489	Grindlays Bank	210000000.00
21/04/1992	321128	Syndicate Bank	477644931.51
21/04/1992	311496	Grindlays Bank	22355068.49
24/04/1992	049049	Grindlays Bank (Cheque drawn by HSM on his Current A/c. with Grindlays)	63500000.00
			622,52,35,461.44

In the above backdrop, the Assessing Officer observed that the cheques had been issued to help the SBI to cover up the shortfall in securities in their SGL Account and are illustrated in Annexure L-3 of the assessment order. It was the Assessing Officer's observation that the appellant did not explain the source of the funds released through these 10 cheques.

ii) **<u>Differences between balances in the books of the appellant and related parties.</u>**

On this issue, it was pointed out that three firms of Chartered Accountants viz. M/s. Kapadia Damani & Co., M/s.Natwarlal Vepari & Co. and M/s. Kalyaniwalla and Mistry of

Mumbai had been appointed by the Special Court to prepare and audit the accounts of M/s.Harshad S. Mehta and the appellant along with the other notified parties. These three auditors prepared and audited the accounts of the notified parties except M/s.Harshad S. Mehta and the appellant. This was before the appointment of M/s.Vyas & Vyas. In this backdrop, from the perusal of the reports prepared by the three firms of C.As. and M/s. Vyas & Vyas, the Assessing Officer invited my attention to the substantial differences in the balances of M/s.Harshad S. Mehta and the appellant vis-à-vis the other parties of the group. Attention was invited to the following differences in respect of the accounts of the related parties :-

DIFFERENCE BETWEEN BALANCES IN THE BOOKS OF HSM & RELATED PARTIES							
Sr. No.	**Particulars Name of Party**	**As on**	**Balances in the books of M/s. HSM *(Vyas & Vyas)***		**Balances in the books of Party *(Three CAs)***		**Differences**
1	Aatur	31/03/92	26104054.12	Dr.	20864554.00	Cr.	5,239,500.12
		08/06/92	28126976.82	Dr.	22881977.00	Cr.	5,244,999.82
2	Fortune	31/03/92	276942786.01	Dr.	24940532.00	Cr.	27,522,254.01
		08/06/92	269942786.01	Dr.	242420532.00	Cr.	27,522,254.01
3	Harsh Estate Pvt. Ltd.	31/03/92	54542208.66	Dr.	49299008.00	Cr.	5,243,200.66
		08/06/92	73123928.70	Dr.	0.00	Cr.	73,123,928.70
4	GRAM	31/03/92	1502261966.26	Dr.	1437933322.00	Cr.	64,328,644.26
		08/06/92	1506172472.21	Dr.	1450957391.00	Cr.	55,215,081.21
5	Ashwin Mehta	31/03/92	1818659660.10	Dr.	172612668.00	Cr.	1,646,046,992.10
		08/06/92	1401426659.05	Dr.	164148625.00	Cr.	1,237,278,034.05
6	Dr. Hitesh S Mehta	31/03/92	123362840.75	Dr.	120706645.00	Cr.	2,656,195.75
		08/06/92	101604636.75	Dr.	98927199.00	Cr.	2,677,437.75
7	Mrs. Deepika Mehta	31/03/92	105229645.36	Dr.	100980379.00	Cr.	4,249,266.36
		08/06/92	90852628.36	Dr.	86603416.00	Cr.	4,249,212.36
8	Hitesh S Mehta (HUF)	31/03/92	147034.50	Dr.	0.0	Cr.	147,034.50
		08/06/92	147034.50	Dr.	48533.00	Cr.	98,501.50
9	Mrs. Pratima H Mehta	31/03/92	109549425.15	Dr.	106189924.00	Cr.	3,359,501.15
		08/06/92	78146140.15	Dr.	74755547.00	Cr.	3,390,593.15
10	Reena S Mehta	31/03/92	63335834.69	Dr.	0.0	Cr.	63,335,834.69
		08/06/92	63335834.69	Dr.	0.0	Cr.	63,335,834.69
11	Rashi S Mehta	31/03/92	124513915.74	Dr.	0.0	Cr.	124,513,915.74
		08/06/92	108265860.74	Dr.	0.0	Cr.	108,265,860.74

12	Cascade	31/03/92	103361883.06	Dr.	0.0	Cr.	103,361,883.06
		08/06/92	103370913.11	Dr.	0.0	Cr.	103,370,913.11
13	Mazda Industries & Leasing Ltd.	31/03/92	399776524.52	Dr.	0.0	Cr.	399,776,524.52
		08/06/92	38297072.47	Dr.	0.0	Cr.	38297072.47
14	Sudhir S Mehta	31/03/92	122576779.56	Dr.	119215389.56	Cr.	3,361,390.00
		08/06/92	119982656.56	Dr.	116621266.56	Cr.	3,361,390.00
15	Sunrise	31/03/92	1266092.00	Dr.	0.0	Cr.	1,266,092.00
		08/06/92	1266092.00	Dr.	55,000.00	Cr.	1,211,092.00
16	Orion	31/03/92	27417707.52	Dr.	0.0	Cr.	27,417,707.52
		08/06/92	14534647.79	Dr.	0.0	Cr.	14,534,647.79
17	GLIL	31/03/92	612672696.89	Dr.	0.0	Cr.	612,672,696.89
		08/06/92	627772739.04	Dr.	0.0	Cr.	627,772,739.04
18	Growmore Power Eng Corporation	31/03/92	4191350.00	Dr.	0.0	Cr.	4,191,350.00
		08/06/92	8800283.11	Dr.	0.0	Cr.	8,800,283.11
19	M/s. Ashwin S Mehta	31/03/92	0.00	Dr.	1073459584.00	Cr.	(1,073,459,584.00)
		08/06/92	0.00	Dr.	661494589.00	Cr.	(661,494,589.00)
20	Jyoti H Mehta	31/03/92	5497662432.82	Dr.	175816468.00	Cr.	5,321,845,964.82
		08/06/92	5478833664.37	Dr.	165733052.00	Cr.	5,313,100,612.37
21	M/s. Jyoti H Mehta	31/03/92	0.00	Dr.	2654755058.00	Cr.	(2,654,755,058.00)
		08/06/92	0.00	Dr.	2071429932.00	Cr.	(2,071,429,932.00)

Premised on these differences, request was made to ask the appellant to explain the differences.

iii) <u>Loans and advances to outside parties:</u>

It was pointed out that M/s. Vyas & Vyas, the Special Auditor had the occasion to observe that the appellant had given the following loans and advances to parties other than his family members and group concerns. As stated, this came to light during the examination of the books of account and other relevant records of the appellant by the Special Auditor.

Code No.	Particulars	Amount (Rs.)
262	Calestian Assets &	2500000
257	Matador Investment Pvt. Ltd.	1200000
267	Scopisecs Securities Holding Pvt. Ltd.	1000000
1185	T B Kaul	10000
2179	Rarjit Bhatia	3000

18034	Romil	17500000
19443	Harsha D Shah	1000000
245	Prime Securities Ltd.	849589.05
11001	K J Investment	3274000
19504	Space Builders Pvt. Ltd.	13500000
11197	Kalpana D Vadhani	2500000
19503	S J Jhaveri	3000000
5001	E. Ferri	380000
4	Shri Shyam	10000000
10082	JHB Construction Co. Pvt. Ltd.	4051000
13001	A Miran	197000
2001	B Blean	217000
1001	A Aruna	186000
16001	Premier	128925
11001	KPV Rao	191000
11002	K Venka	204000
13002	M Ferna	205000
34	M/s. V B Desai	(19600000)
		42496514.05
	Add: Details not available	2014000
		44510514.05

Clued into the above, it was pointed out that the Special Auditors have reported that full names and addresses of these parties were not available. In this background, request was made to ask the appellant to give full details about these amounts including the source thereof. The Assessing Officer also sent a copy of his letter dated 11.12.2009 to the appellant. In response, the appellant had the occasion to submit preliminary submissions vide letter dated 07.01.2010.

25.5 I had the occasion to examine the issues raised by DCIT, Central Circle-23 Mumbai in his letter dated 11.12.2009. On examination, I found that there was a case for enhancement of the appellant's income in case of the source of the payments, differences

in the balances and the loans given remained unexplained. Accordingly, in terms of provisions of section 251(2) of the ITA, vide letter dt. 14.1.2010, the appellant's version was sought on the issues raised and the appellant's response dated 7.01.2010. In response, from time to time submissions were made. Inter-alia, in these several submissions, following points were made :-

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) *The Assessing Officer has relied upon reports of Chartered Accountants who have examined the very books of account which the Assessing Officer has rejected.*

iii) *The Assessing Officer has not discharged his onus of examining the veracity of the material on the basis of which enhancement has been proposed.*

iv) *The findings of M/s. Vyas & Vyas are conjectures and surmises and are not definite.*

v) *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.*

vi) *The Assessing Officer has failed to explain the basis on which the 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.*

vii) *Assuming without admitting their differences in the two books of 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.*

viii) *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.*

ix) *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.*

x) *In terms of the rules of natural justice, the appellant ought to be granted cross examination of the author of the report of Ms.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 case Barelly 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.*

xi) *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 very two examples have been cited by the Assessing Officer in this letter.*

xii) 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.

xiii) 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.

xiv) M/s.Vyas & Vyas have grossly erred in reading the balances from the books of account of the notified entities.

xv) The scope of the present proceedings before the CIT(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.

xvi) 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.

xvii) 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.

xviii) 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.

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

xx) 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.

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

xxii) 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.

xxiii) 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 Hardutroy 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.

25.6 I have considered the Assessing Officer's proposal, the facts brought to my notice and several submissions of the appellant. As I find, in the several submissions, the appellant has mainly brought out the following in his defense :

i) The scope of the present proceedings does not allow the CIT(A) to go beyond the order of the Hon'ble ITAT and to enhance income for a new source of income.

ii) Adequate opportunity and time was not given.

iii) The Assessing Officer has not discharged his onus.

iv) The report of M/s.Vyas & Vyas is not a reliable material.

v) Specific explanation on the entries in question indicate that the enhancements are not called for.

I will take up these issues one by one.

The scope of the present proceedings does not allow the CIT(A) to go beyond the order of the Hon'ble ITAT and to enhance income for a new source of income.

The appellant has argued that I am required to confine myself to the issues remanded by the Hon'ble ITAT in its order for the assessment year 1992-93. This is misplaced. From the perusal of the order dated 11.7.2008 of the Hon'ble ITAT, I find that the order of my predecessor has been set aside and not remanded on specific issues. This is very clear from the directions given by Hon'ble ITAT in para 16 of its order. As may be noted, the Hon'ble ITAT in para 16 has specifically directed the CIT(A) to take up disposal of the appeal within a period of six months from the date of service of the Hon'ble ITAT's order to the CIT(A). As I find, in this order, the Hon'ble ITAT has only set aside the order. In this respect, in para 14 of its order, the Hon'ble ITAT has specifically mentioned that `In our view, the facts and circumstances explained above clearly warrant that the matter should be decided by CIT(A) afresh'. This apart, as may be noted, the subject matters of the enhancements are not something which can be said to be beyond the scope of the issues raised before the Hon'ble ITAT. As may be seen, in

its order the Hon'ble ITAT has specifically directed the CIT(A) to consider the report of the Auditors Vyas & Vyas appointed by the Special Court as this was not with my predecessor when he concluded the proceedings at his end. Further, the Hon'ble ITAT in its order has also directed that the request for the admission of books of account as additional evidence should also be accepted. This apart, in its order, the Hon'ble ITAT has also referred to the reports of the Auditors appointed by the Hon'ble Special Court, the various decrees, the reports of the Janakiraman Committee and the various orders of the Hon'ble Special Court. This will be clear from para 10 of the order of the Hon'ble ITAT. Referring to these various documents and decrees, the Hon'ble ITAT has observed that all these will have a bearing on this decision to be rendered on the several issues raised by the appellant in its cross objections. In fact, as recorded by the Hon'ble ITAT in the order, this was acknowledged by the learned counsel of the appellant in course of the appeal before the Hon'ble ITAT. In view of this, the issues in the enhancements arising out of the information from some of these very reports, accounts and documents cannot be held to be unrelated to the issues raised before the Hon'ble ITAT and in the appellant's cross objections. The issues of enhancements have been identified after close consideration, examination and analysis of information and data contained in some of these very reports, accounts and documents and accordingly, they cannot be held as alien to appellant's cross objections before the Hon'ble ITAT. Accordingly, this defense of the argument does not have any legs to stand upon. The appellant's argument that the power of the first appellate authority is confined only to the existing source of income and not for any new source of income is also misplaced. In this direction, looking into the provisions of section 251 of the ITA, the grounds of the enhancements, the scale and magnitude of the assessment, the grounds and facts on other additions and the attending facts and circumstances, I find that the appellant's arguments misplaced. To this end, in the first place, I find that section 251(1)(a) of the ITA gives unqualified authority to the CIT(A) to enhance an assessment in addition to the power to confirm / reduce or annul it . As may be seen, while bestowing the power to CIT(A), the Legislature has not put any restriction on the powers of the CIT(A) to enhance an assessment. The only restriction mentioned is in section 251(2), which is only procedural in nature and only makes it necessary for the CIT(A) to give a reasonable opportunity to

the appellant of showing cause against the enhancement. This being so, the appellant's argument that enhancement cannot be made on a new source of income does not have any legislative support . This proposition and the resultant conclusion that CIT(A) has wide powers to enhance including the power to deal with issues suo motu has profound judicial support. In this respect, the classical decision of the Hon'ble Supreme Court in the case CIT Vs. Kanpur Coal Syndicate 53 ITR 225 bears special mention. In this decision, as is well known, the Hon'ble Supreme Court has held that the power of the CIT(A) is co-terminus with that of the Income-tax Officer and that he can do what the Income-tax Officer can do and further that he can also direct the Income-tax Officer to do what he has failed to do. This proposition was endorsed in another decision of the Hon'ble Supreme Court in the case Jute Corporation of India Limited Vs. CIT 187 ITR 688. In this decision, referring to the earlier decision of the Hon'ble Supreme Court in the case CIT Vs. Kanpur Coal Syndicate, the Hon'ble Supreme Court has very clearly held as under :

" *The above observations are squarely applicable in the interpretation of section 251(1)(a) of the Act. The declaration of law is clear that the power of the AAC is coterminous with that of the ITO, and if that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power.* "

The proposition was further strengthened by the Hon'ble Supreme Court in the case CIT Vs. Nirbheram Daluram 224 ITR 610. I further find that the Hon'ble Allahabad High Court has also in its decision in the case CIT Vs. Kashi Nath Chandiwawla 280 ITR 318 held that since the power to enhancement is specifically conferred on him, the CIT(A) can suo motu deal with the issues which were not the subject matter of appeal. In line with the foregoing later decisions particularly of the Supreme Court, the appellant's reliance on the decisions quoted by him is misplaced and obsolete. Besides, the facts in the decisions relied upon by the appellant are also different and in fact in the case of Narrondas Manordass, Bombay Vs. CIT, Central Bombay, the decision endorses the aforesaid decisions cited by me. As may be noted, in the case Narrondas Manordass, Bombay Vs. CIT, Central Bombay, the Hon'ble Bombay High court has categorically

held that the power of AAC were confined not only to the aspect of agitated by the assessee but they extended to the whole assessment. Further, in this decision, the Hon'ble High Court finally held that since the AAC had only remanded the matter to the Assessing Officer, it was not correct to say that the AAC had enhanced the assessment. In similar vein, in the decision in the case CIT Bombay City-1 Vs. Scindia Steam Navigation Company Limited also, the Hon'ble Bombay High Court only held that in that case, it was competent for the AAC to pass the order setting aside the assessment with a direction to make a fresh assessment according to law. The facts in the cases CIT Vs. National Company Limited and CIT v. Rai Bahadur Hardutroy Motilal Chamaria are different in that unlike in these cases, in the case of the appellant, the source of income on the enhancements cannot be held to be a new source of income alien to the assessment. As may be noted, in the appellant's case, there are many additions on account of unexplained money / investment / interest etc. Accordingly, the issues in the enhancements being mainly relatable to these sources cannot be held to be a new source of income. Further, as may be noted, in the appellant's case, the transactions involved are interwoven and stand revealed by, in many cases, the same sets of documents, accounts and audit reports. Accordingly, the issues and sources of income involving the additions in the appellant's case are not mutually exclusive and are universally applicable. Many of the additions are, therefore, intertwined and in view of this, it cannot be said that the enhancements are on new sources of income. This apart, as already discussed, the overwhelming current and contemporary judicial position is that the CIT(A) has wide powers to go into any issue whether or not part of the assessment order. The latest decisions on the issue clearly justify the power of the CIT(A) to go beyond the issues in the assessment appealed against and accordingly, there is no reason why the wide power of the CIT(A) would also not allow him go into a new source of income. The appellant's reliance on the decisions in the case CIT Bombay City-1 Vs. Indo-Aden Salt Works Company is also misplaced. As may be noted, in this decision, the only issue before the Hon'ble ITAT was relief in respect of super-tax. As against this, as already discussed, in the appellant's case, the whole assessment was before the Hon'ble ITAT and it is in this context that the Hon'ble ITAT set aside the matter to me for a decision in light of the various reports, documents and accounts referred to by the Hon'ble ITAT in

its order. As is clear, in the appellant's case, the matter before the Hon'ble ITAT was not a solitary ground as was the case in the decision of the Hon'ble Bombay High Court in the case CIT Bombay City-1 Vs. Indo-Aden Salt works Company. Besides, the scale and magnitude of the appellant's case is too obvious to be stated and accordingly, the appellant's case cannot be equated with a single ground appeal. In line with the foregoing, I fail to find any merit or force in the appellant's reservations on the scope of the present proceedings before me.

Adequate opportunity and time was not given.

The appellant has repeatedly argued that adequate time and opportunity was given. This is misplaced. As may be noted, the Assessing Officer had the occasion to post the appellant with his proposal for enhancement vide his letter dated 11.12.2009 i.e., one and a half month before the conclusion of hearing in the matter. The appellant thus, had a full one and a half month to present his say in the matter. By any count, this cannot be considered as inadequate. In fact, as I find, the appellant gave the first response to the Assessing Officer's letter on 7.1.2010 i.e., 25 days after the receipt of the Assessing Officer's letter. An issue raised one and a half month before conclusion of hearing cannot be held as an attempt, as alleged by the appellant, as a proposal sent at the final stage of proceedings to deprive the appellant of meaningful time to rebut the proposal. This apart, during the appellate proceedings, the appellant was given all opportunities and hearings on the issue. This will also be clear from the fact that starting from the appellant's first submission on the issue from 7.1.2010 to the final date of hearing on 25.1.2010, several submissions were submitted by the appellant. After examining the Assessing Officer's proposal dated 11.12.2009 and the appellant's response dated 7.1.2010 to the proposal, I also gave my notice u/s 251(2) of the ITA on 14.1.2010. Significantly, it may also be noted that in my notice dated 14.1.2010, I had laid bare the full context, the particulars and implications of the findings. I also find that the Assessing Officer had also given all particulars (dates, cheque numbers, banks, amounts) of the transactions, the sources of the information, the full details of the differences between the balances in the books of the parties including the particulars of the parties, the dates of the balances, the amounts of the balances in the books of M/s. HSM as indicated in the report of M/s. Vyas & Vyas and balances in the books of the

parties as indicated in the report of the three Chartered Accountants. In view of this, it may be seen that the appellant was apprised of all relevant facts and sources and accordingly, the appellant's stand that adequate opportunity of being heard was not given is totally misplaced. As may be seen, adequate opportunity was not only given in terms of time but also in terms of contents of the issues concerned. In these circumstances, the appellant is not fair in arguing that adequate time and opportunity was not given. The appellant had also asked for cross examination of the author of the report of M/s.Vyas & Vyas. Looking into the fact that the report of M/s.Vyas & Vyas has been relied upon as a document only, I find this insistence misplaced. As may be seen, the report of M/s.Vyas & Vyas is self-explanatory and is also based on particulars and information submitted by the appellant only. In view of this, the insistence for cross examination of the author of the report is totally off the mark and out of sync with the established principles of natural justice. As I find, the appellant has failed to make a distinction between report of an Auditor and the Auditor as an individual. In this case, reliance has been placed on the report of the Auditor and not the Auditor as an individual. Accordingly, when the report is there before the appellant along with all necessary clarifications and comments, cross examination of the author of the report is a redundant process. As already discussed, the principles of natural justice cannot be stretched to an extent where instead of facilitating justice, they become impediments to fair and prompt discharge of justice. An issue totally based on facts has to be decided on the basis of those facts only and the appellant has failed to appreciate this. When an issue is based on facts and the facts are clear, in the name of principles of natural justice, opportunity of being heard cannot be stretched to include formalities not relevant to the grounds on which issue has been raised. The useless formality theory bears special mention here. Besides, it is well known that an Auditor submits a report not in his individual capacity but as a Chartered Accountant under relevant law. He is thus, accountable on the basis of the facts brought on record by him. Seen against this well established role of an Auditor, I find that the appellant has not justified how despite all the facts of the report being available with him, these facts were not enough to defend his case. In this respect, it is significant to note that in R.V. Secretary of State (1973) 3 All ER 796, Lord Denning, MR observed as under :

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

Similarly, in the case Union Carbide Corporation Vs. Union of India AIR 1992 (SC) 248, the Hon'ble Supreme Court has said that natural justice does not degenerate into a set of hard and fast rules. In similar vein, in the case, A Ibrahim Kunju Vs. State of Kerala AIR 1970 Ker 65, the Hon'ble Kerala High Court, has expressed the view that natural justice cannot be perverted into anything unnatural or unjust and cannot ,therefore, be treated as a set of dogmatic prescription applicable without reference to the circumstances of the case. Going by the appellant's request, a situation may arise where it may also be open to ask for cross-examination of authors of statutory orders and judicial decisions. This will be highly incongruous. Further, as may be noted, the author of the report has not been subjected to Examination and accordingly, the appellant's insistence on cross examination is totally out of place. Cross examination, as the very term shows, follows examination-in-chief, and accordingly, without there being any examination-in-chief, cross examination is neither called for, nor is it necessary. The decision dated 8.1.2010 of the Hon'ble Special Court in Miscellaneous Application No. 201 of 2009 and the other Miscellaneous Applications mentioned in the order calls for special attention here. In these Miscellaneous Applications, prayer was made by entities and individuals relating to the appellant's group for not considering the report of the Chartered Accountants M/s. Vyas & Vyas as proved evidence and in the alternative, for calling the authors of the report of M/s. Vyas & Vyas as witness for examination by the applicants. Significantly, the Hon'ble Special Court in its order did not allow these prayers. While rejecting these prayers, the Hon'ble Special Court had the occasion to observe that there was substance in the submission made on behalf of the Custodian that the Supreme Court by its judgement in Jyoti Mehta's case had directed the Hon'ble Special Court to consider the Auditor's Report while deciding Miscellaneous Petition No. 41 of 1999. The rejection of the prayers and these observations will underline the reliability of the reports of M/s. Vyas & Vyas and the three Chartered Accountants and also the unreasonability of the appellant's request for cross examination of the author of M/s Vyas & Vyas. In this respect, the appellant has relied on the decision of the

Hon'ble Apex Court in the case Bareilly Electricity Supply Co.Limited Vs. the Workmen and Others dated 16.8.71. As may be noted, the facts in this case are totally different. In the first place, this case is on industrial dispute , the proceedings for which are governed by completely different rules and procedures. Further, it may be noted that in this decision, the Hon'ble Supreme Court's observations is on witnesses as individuals. As against this, in the appellant's case, the author of the report of M/s. Vyas & Vyas has not been relied upon as a witness and only the report has been made the subject matter of findings. Significantly, in the appellant's case, the author as an individual has never been examined in Examination-in-Chief and he has also never been used as a witness. Accordingly, the appellant's case is totally distinguishable. In line with the foregoing, I find that appellant cannot take the plea that opportunity and time made available was inadequate.

The Assessing Officer has not discharged his onus.

The appellant has time and again raised this issue in course of the several submissions submitted. I do not find any merit in this. As already discussed above, while raising the issues, the Assessing Officer has made available to the appellant all the relevant facts and sources of the information gathered by him in his letter dated 11.12.2009. He has placed all relevant particulars and facts on the issues concerned i.e. for the shortfall in securities, the differences between the balances in the books of M/s. Harshad Mehta and the related parties and loans and advances to the outside parties. As may be noted, in respect of shortfall in the securities, the particulars of the securities, the shortfall covered up by the appellant, the details of the cheques, the names of the banks and the amounts of the indivual cheques have all been intimated. Similarly, for the differences in the balances, the names of the parties, the dates, the balances in the two sets of books and the differences have been unambiguously recorded and made known to the appellant. With regard to the loans and advances to the outside parties also, the code numbers, the particulars of the parties and the amounts have also been made known. Not only this, I also find that the Assessing officer has also clearly disclosed the sources from which he has collected the information made available to the appellant. In this light, I do not find any substance in the appellant's reservations that the Assessing Officer has not discharged his onus. As I find, the Assessing Officer has brought the facts on record

after close examination of the reports of M/s. Vyas & Vyas, the three Chartered Accountants, the appellant's transactions in securities and other relevant records. In view of the foregoing, I do not find any merit on this stand of the appellant.

The report of M/s.Vyas & Vyas is not a reliable material.

This assertion is also misplaced. The report of M/s. Vyas & Vyas has been made on the basis of the records and particulars given by the appellant. Further, this report has been considered by the many authorities and no deficiency has been pointed out by any of the authorities on the report. 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.

Specific explanation on the entries in question indicate that the enhancements are not called for.

a) **Shortfall in Securities**

On the issues raised by the Assessing Officer under this caption, referring to earlier letter dated 18.8.2009 of the Assessing Officer, it was submitted that the deduction of Rs. 601.22 crores given against 1681.79 crores in the assessment ought to have been given as the transaction which led to the oversold position with SBI pertained to assessment year 1992-93 only. Further, it was mentioned that the deduction could not have been given in the subsequent year as the payments made between 13.4.1992 and 24.4.1992 had no bearing in the year in which the deduction was liable to be given. It was further argued that with regard to the securities amounting to Rs.573,07,96,267.59 and Rs. 173,32,74,928.01, the Assessing Officer's observation that the funds provided by the appellant in the later period does not explain the source of the securities is wrong. It was further pointed out that the source of the funds stands explained by the deposits in the bank in respect of the two securities.

I have considered the points raised by the Assessing Officer and the submissions of the appellant. I had also sought appellant's version in the matter vide para 3 of my

notice dated 14.1.2010. After considering the two versions and the facts of the case, I find that the appellant has misunderstood the ground on which the deduction against Rs. 1681.79 crores was given. As I note, the Assessing Officer has given the reasons for this in his assessment order for the assessment year 1993-94. In para 6.2 and para 6.3 of his order for the assessment year 1993-94, he has discussed this issue and has given his finding that the appellant has not explained the source of acquisition of securities made good to the SBI. As I see, this issue specifically relates to the assessment year 1993-94 and accordingly, has been discussed in my order for that year. So far as the present assessment year is concerned, the issue has no impact.

b) Difference between balances of HSM and related parties

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 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 in his book. The

observations of M/s. Vyas & Vyas in paras 8.1 and 8.2 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 those 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 has to 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 differences 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 datewise 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 supportings. 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 for 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. Ashiwn S. Mehta. On page 32 of the report in para 14.3, it has been categorically stated that the transactions in 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 stands totally unexplained. In light of the foregoing, for the present year under consideration, following balances as on 31.3.1992 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.

DIFFERENCE BETWEEN BALANCES IN THE BOOKS OF HSM & RELATED PARTIES							
Sr. No	Particulars Name of Party	As on	Balances in the books of M/s.		Balances in the books of Party		Differences

.			HSM (Vyas & Vyas)		(Three CAs)		
1	M/s. Ashwin S Mehta	31/03/92	0.00	Dr.	1073459584.00	Cr.	(1,073,459,584.00)
2	M/s. Jyoti H Mehta	31/03/92	0.00	Dr.	2654755058.00	Cr.	(2,654,755,058.00)

The difference of these balances arise 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 provisions.

c) **Loans and advances to outside parties:**

The transactions in question here relate to the assessment year 1993-94 and the issue has been discussed in my order for that year.

d) **Enhancement of Rs. 69.63 crores being liabilities shown as other income in the Review of unaudited accounts of M/s. Harshad S. Mehta prepared by M/s. Vyas & Vyas and as pointed out by the Assessing Officer in his letter dated 11.8.2009.**

The enhancement on this issue has been discussed in detail in my order for the assessment year 1993-94 in connection with enhancement of Rs. 83,51,53,713/-. To avoid repetition, I am not reproducing my discussion here. In terms of my discussion for the assessment year 1993-94 on this issue, for the reasons discussed in my order for the assessment year 1993-94, I find that Rs. 69.63 crores is assessable as appellant's income for the present assessment year. Since the

income has not been assessed in the assessment, the appellant's income is enhanced by this amount.

To sum up, following enhancements are made :

i) Rs. 5,14,18,800/- on the addition on account of statement of Mr. Niranjan J. Shah

ii) Rs. 11,85,00,000/- on account of interest

iii) Rs.372,82,14,642/- as income from undisclosed transactions and sources on account of differences in the balances in the books of M/s. Harshad S. Mehta and M/s. Ashiwn S. Mehta and M/s. Jyoti H. Mehta.

iv) Rs. 69.63 crores being liabilities shown as other income in the Review of unaudited accounts of M/s. Harshad S. Mehta prepared by M/s. Vyas & Vyas.

In the result, the appeal is partly allowed and enhanced.

(KUNTAL KUMAR SEN)
CIT(A)-40,Mumbai

CC: 1. The CCIT, Central-II,Mumbai
2.The CIT, Central-II, Mumbai
3. The AO.
4. The Appellant.
5. Master File

(KUNTAL KUMAR SEN)
CIT(A)-40,Mumbai