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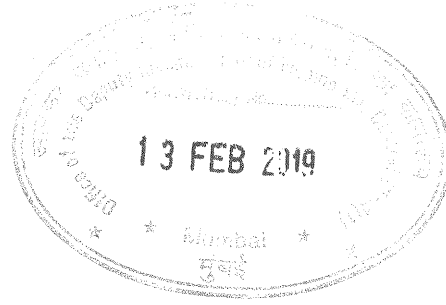
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ASHWIN S. MEHTA

32 Madhuli, Dr. Annie Besant Road, Worli, Mumbai 400 018

12 February 2019

Smt. Madhura M. Nayak,
Dy. Commissioner of Income Tax,
Central Circle 4(1),
Central Rane-4,
19th Floor, Air India Building,
Nariman Point,
Mumbai 400 021.



URGENT & IMPORTANT

Madam,

Re: Request to issue Order Giving Effect (OGE) as also refund pursuant to order of relief passed by Hon'ble ITAT on 14.01.2019 for AY 1992-93 in the case of Shri Ashwin Mehta (PAN ABAPM 2121 M).

1. I am pleased to place in your hands a copy of above Order passed by Hon'ble ITAT which is enclosed at **Annexure A**. It can be seen therefrom that the said order is a combined order in respect of 3 major notified entities covering four assessment years. That so far as I am concerned, the relevant pages of the order are from Page Nos.260 to 289 for AY 1992-93. I am now happy to inform you that in terms of Para 50.3 Page No.262 of the above Order, the Hon'ble ITAT has been pleased to grant relief to me and after hearing the revenue at length it has quashed the Assessment Order dated 28.03.2016 and therefore in terms of the above order of Hon'ble ITAT, I have received 100% relief so far as my taxable income for AY 1992-93 is concerned.

2. That in view of the above, both in terms of Sec.240 of the Income Tax Act and more importantly in terms of provisions of the Torts Act of 1992, the taxes paid by me for the relevant year in the form of advance tax and TDS as also monies released by Hon'ble Supreme Court under their Order dated 26.8.1996 in CA 5326 of 1995 and thereafter by Hon'ble Special Court from time to time under several orders have now become due and refundable to me together with interest and the particulars of the said amount of Rs.247.39 Crores released till date to your department according to me are given in an enclosed chart at **Annexure B**.

3. I am now pleased to enclose at **Annexure C** the computation of the claim of refund on the basis of the aforesaid sum of Rs.247.39 Crores being taxes paid by me and which claim is computed as on 31.01.2019 but the actual refund will include the interest upto the date of refund by the revenue. I say that since the above claim includes interest only upto 31.01.2019 the said amount will increase if the refund is not made to the Custodian so as to include further interest up-to the date of actual refund. Please note that in terms of above computation of claim of refund, the claim works out to a sum of Rs.716,85,54,707/- (Rs.716.86 Crores approx.) which was refundable by you to me as on 31.1.2019 and which amount will obviously go up to include interest upto the date of refund. Please also note that for monies released to your department under Order of Hon'ble Special Court dated 3.10.2003 in MA No.272 of 2003 and Order dated 25.2.2011 in Report No.9 of 2010, the rate of interest was kept open to be decided later and therefore I have adopted the rate of interest @ 18% p.a. as last adopted by Hon'ble Supreme Court while passing its Order on 2.5.2017 in Civil Appeal No.6326 of 2010. I state that in fact the Hon'ble Supreme Court in its first Order dated 26.8.1996 passed in CA 5326 of 1995 has stipulated the interest at the minimum 18%

p.a. and therefore I reserve my right to claim such interest at minimum of 18% p.a or more as I may be advised.

4. You are aware that the present Government has admittedly framed the policies recognising the existence of tax terrorism and issued circulars directing the department to issue refunds without any delay whenever they become due in order to avoid any hardship to the assessee. That admittedly, you and your predecessors have not followed the said circulars issued by the Government and deliberately held back refund for several years of large amounts which were earlier due to me and in case of my family members and associate corporate entities even after they became due and refundable. In the present case, even otherwise there are sufficient reasons besides the above circulars which justify immediate refund by your department to the Custodian and in the main includes the mounting liability to pay interest on refund at a much higher rate of interest than 6% p.a. as presently applicable under the Income Tax Act.
5. I say that besides above, large amounts have been paid to your department as taxes during past 27 years from 8.6.1992 onwards as and by way of Tax Deducted at Source (TDS) in terms of the combined order passed by Hon'ble Supreme Court in the appeals filed by the revenue dated 13.2.2002 in CA 7572 of 1999, a copy of which Order is enclosed at **Annexure D**. I say that even the above Order remains to be complied with by your department now for past 17 years as the excess TDS collected by your department which is refundable with interest u/s.244(1) of Income Tax Act have not been refunded thereby committing contempt of the order of Hon'ble Supreme Court.
6. Besides above, several orders have been passed till date by Hon'ble Special Court directing your department to make compliance with the

above order of Hon'ble Supreme Court and give due credit for taxes paid as TDS which orders have also not been complied with till date and therefore large amounts will further be due and refundable to me in terms of the above order of Hon'ble Supreme Court and the claim of refund in which regard can get crystallized only after your department discloses the amounts collected / received by it to the Custodian in terms of the Order as and by way of TDS and once you disclose the details to the Custodian as directed by Hon'ble Supreme Court a further claim for refund of excess TDS with interest will be made. You are therefore requested to treat this letter as my notice to refund the excess TDS with interest as directed by Hon'ble Supreme Court and also by Hon'ble ITAT.

7. I say that in terms of Sec.240 of the Income Tax Act, it is both your duty and obligation to make refund of monies even without the Assessee seeking the same and as such I am not required to make any Application to your kindself to seek any refund. However, taking into account your past track record where the refunds have not been made for several years in case of all notified persons and without prejudice to my rights and contentions in that regard, I have addressed this letter to your kindself calling upon you to make large amount of refund due and payable to me so that it is not delayed by you as done in all cases till date.
8. In support of my allegations, I am pleased to rely upon the order passed by Hon'ble CIT(A) on 28.6.2017 in the case of late Harshad Mehta for AY 1992-93 wherein 62% of his assessed income was deleted but unfortunately till date your department has not offered refund of more than Rs.2500 Crores on account of the aforesaid relief secured by him despite passage of more than 18 months since the order was passed by Hon'ble CIT(A). I say that in my own case, the

AO under an OGE dated 30.1.2015 had determined a refund of Rs.161.71 Crores as payable to me but till date the said refund was never offered. I say that besides above, in not a single case the refund has been offered by your department *suo motu* pertaining to notified persons in our family and in some cases for past 19 years and in several other cases for past 7 years even after the reliefs were granted and they attained finality, no refunds are given and the Applications filed before Hon'ble Special Court seeking the refund are opposed tooth and nail by your department. There are also instances where the department has underpaid an amount of Rs.453.84 Crores despite directions given by Hon'ble Supreme Court in their Order dated 2.5.2017 in CA 6326 of 2010 and therefore in this regard a Misc. Application No.1007 of 2017 is already filed which is presently pending hearing before Hon'ble Supreme Court. In fact, no justification is forthcoming from you in any of the cases for deliberate failures to comply with Sec.240 of the Income Tax Act or with the provisions of the Torts Acts in all the aforesaid cases and why the large amounts of refund have been denied till date even though your department is incurring a huge liability to pay interest in each case at the cost of public interest.

9. That notwithstanding the above, even under the Torts Act and in terms of law laid down by Hon'ble Supreme Court in the case of Harshad Mehta Vs. Custodian reported as **(1998) 5 SCC 1** no amounts were liable to be released to your department and in fact as per directions given in Para 39 of above judgment the monies released to your department earlier under interim order dated 26.8.1996 of Hon'ble Supreme Court were liable to be recalled with interest but these directions are not complied with by your department for past 21 years since 31.5.1998 to enjoy the large amounts released to your department under above interim order. I say that even in terms of the

undertakings executed by your department while securing release of monies and also because the falsity of numerous Applications filed before Hon'ble Courts and misrepresentations made thereunder with regard to the legality of your assessment orders is conclusively established and even therefore the large amounts are refundable immediately. It is therefore now both your duty and obligation as also your onus to refund the monies to the Custodian, which does not belong to your department but now for several years you have enjoyed these vast amounts in violation of provisions of Torts Act and the Income Tax Act as also the law laid down by Hon'ble Supreme Court in aforecited Harshad Mehta's judgment.

10. I say that besides above, your department for past 27 years has consciously violated Article 265 of the Constitution of India which reads as under:

Taxes not to be imposed save by authority of law

No tax shall be levied or collected except by authority of law.

11. I say that in case of notified entities particularly in the family of Shri Harshad Mehta after accepting a declaration of income u/s 132(4) on 2.6.1992 of the Income Tax Act of Rs.100 crores, your department using the same seized material has foisted upon all of us demands for the same years running into several thousands of crores. These high-pitched but patently illegal demands were consciously foisted on us to take advantage of the priority accorded to revenue u/s 11(2)(a) of the Torts Act and to take advantage of the adverse circumstances prevailing with us at the relevant time by abusing the discretionary powers u/s 144 of the Income Tax Act governing the best judgment assessment. That after raising patently illegal demands in gross

violation of the law laid down by Hon'ble Supreme Court in aforesaid Harshad Mehta's judgment and by making misrepresentations and suppressing material facts, your department has illegally secured till date release of vast amounts of Rs.3251.77 Crores from several notified persons in the family of late Shri Harshad Mehta to which it was not entitled to both in fact or in law.

12. I say that the illegality and falsity of your demands have since then been conclusively established by the orders of relief passed by Appellate authorities in all cases and the present order of relief is only adding to the long list of such cases. Thus, Article 265 of the Constitution of India has been consciously violated by your department on both the counts i.e. by illegal levy of taxes and thereafter by illegal collection of the same. I say that even in view of the above, you are called upon to take immediate steps to refund the above amounts due to me to the Custodian, under advice to me. That further claim of refund will be made upon your disclosing the details of taxes collected / received as and by way of TDS as explained earlier.
13. I hope that you will redress my serious grievance by taking into account the entirety of the facts and circumstances and the fact that your department for past several years have unduly and by unjust means and by colluding with the Custodian enjoyed the monies to which it was not entitled to and because of which the objects of the Torts Act have already been defeated and even the functioning of the Hon'ble Special Court has got deeply affected. I say that I have already suffered huge losses running into hundreds of crores on account of aforesaid illegal levy and collection of taxes which losses were caused by Custodian by prematurely selling all my appreciating assets which losses are irreparable. I say that losses have also been caused by diversion of monies to revenue instead of making payments to my

genuine creditors. I say that besides above, the Custodian vigorously pursued with the above support of revenue MP No.41 of 1999 to sell the only residential premises belonging to late Shri Harshad Mehta and his family members including me to meet the false claims raised by the revenue and but for strong efforts made by the Mehta family members and reliefs granted by Hon'ble Supreme Court by 2 judgments and an order, all the family members would have been uprooted from their residential premises under the high-handed acts of the Custodian and the revenue. I state that therefore you are called upon to act promptly and refund the monies to the Custodian without any further loss of time failing which I will be constrained to seek payment of penal interest and also lodge claim for damages from the department for causing both the delay as also irreparable harm and damage to me as briefly explained above.

14. Please note that I am forwarding a copy of this letter to the Custodian with a request to him to promptly secure the monies from your department without any further loss of time.
15. Awaiting a quick response.

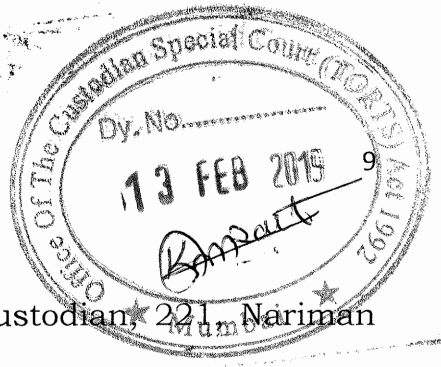
Yours truly,



(Ashwin Mehta)

Encl: As above

CC: Shri Jayanti Prasad, Custodian, Office of the Custodian, Bank of Baroda Bhawan, Parliament Street, Delhi-110 001.



CC: Ms Molly Sengupta, Director, Office of the Custodian, 221, Nariman Bhavan, Nariman Point, Mumbai 400 021.

- This letter is marked to you since the Custodian acting in collusion with the revenue have consciously violated the law laid down by Hon'ble Supreme Court in Shri Harshad Mehta's case and illegally sought, supported and also secured release of vast sums of monies in favour of revenue against patently illegal and high pitched demands to which they were not entitled to by over-ruling the objections of the notified entities as well as SBI urging that the assessments are patently illegal and high-pitched so much so that large amounts of appreciating assets belonging to late Harshad Mehta and his relatives including me have been sold by the Custodian only to favour the revenue with release of aforesaid large amounts. I state that seeing the past conduct of revenue where monies are not being refunded for years even where they are due, the above large amount now due and refundable to me is unsafe in the hands of revenue and needs to be recalled from the department without any further loss of time. I therefore call upon you to show the same degree of promptness if not more in securing the above refund from the revenue which was shown by your office at the time of release of monies to revenue. This would also be in public interest and meet the objects of the Torts Act.

Check on www.indiapost.gov.in भारतीय डाक



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SP MUMBI S.O (400018)
Counter No:1.14/02/2019.11:05
To:SHRI JAYANTI FRASAD.CUSTODIAN
PIN:110001. New Delhi GPO
From:ASHWIN S MENTA.32. MADHULI
Wt:450gms
Amt:41.30(Cash)Tax:6.30

sarakesht@gmail.com

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**Particulars of Taxes released to Revenue by Hon'ble
Supreme Court and Hon'ble Special Court for Shri
Ashwin S. Mehta for A.Y.1992-93**

Sr. No.	Particulars of Orders	Date of Amount Released	Amount Released
1	Advance Tax	01-04-1992	1,12,50,000
2	T.D.S. (Paid During the Previous Year)	01-04-1992	16,26,801
3	T.D.S. (Paid after F.Y.2002 till Date)	01-04-2002	2,70,94,197
4	Supreme Court Order dated 26/08/1996 in Civil Appeal No.5326 of 1996 with C.A.NO.5147 of 1995.	14-10-1996	10,24,00,000
5	Special Court order dated 22/03/2000 in 150 to 156 of 1999	29-03-2000	4,91,40,000
6	Spl. Court Order dated 16/03/2002 in M.A.Nos.342 to 348 of 2001.	26-03-2002	9,00,00,000
7	Spl. Court order dated 16/01/2003 & 28/01/2003 in MA 469 to 489 of 2002	24-02-2003	29,50,15,162
8	TDS released as per Civil Appeal No. 7572 of 1999 with CA No. 1175 of 2002 Supreme Court order dated 13/02/2002.	13-02-2002	94,52,159
9	Income Tax released as per Special Court order in M. A. No. 272 of 2003 dt. 03/10/2003	10-11-2003	62,73,56,751
10	Income Tax released as per Special Court order dated 25.02.2011 in Report No.9 of 2010.	11-03-2011	1,35,11,82,359
11		17-06-2011	33,12,137
			2,56,78,29,566
	<u>LESS : Particulars of Amount Refunded</u>		
1	Deposit of Rs.10,07,81,279/- refunded by Income Tax dept.as per Special Court order dated 06.10.2005 in M.A.(Lodg.No.359) of 2005 to make the payment to Canbank Financial Services	19-10-2005	7,63,47,068
2	Deposit of Rs.20,89,2161/- refunded by Income Tax dept.as per Special Court order dated 30.11.2005 in M.A.504 of 2005 to make the payment to Chartered Accountants	30-12-2005	20,89,216
3	Deposit refunded by Income Tax dept.as per Special Court order dated 17.01.2006 in M.A.No.510 of 2005 to make the payment to Allbank Financial Services Ltd.	13-03-2006	1,55,25,000
			9,39,61,284
	Total Tax Released		2,47,38,68,282

Computation of Claim of Refund by Ashwin Mehta on Revenue for A.Y.1992-93 as on 31.01.2019

Sr. No.	Particulars of Orders	Date of Amount Released	Amount Released	Rate of Interest on deposit	No. of days till 31/01/2019	Interest Amount	Total Amount
1	Advance Tax	01-04-1992	1,12,50,000	8%	9801	2,41,66,849	
2	T.D.S. (Paid During the Previous Year)	01-04-1992	16,26,801	8%	9801	34,94,636	
3	T.D.S. (Paid after F.Y.2002 till Date)	01-04-2002	2,70,94,197	6%	6149	2,73,86,666	
4	Supreme Court Order dated 26/08/1996 in Civil Appeal No.5326 of 1996 with C.A.NO.5147 of 1995.	14-10-1996	10,24,00,000	18%	8,144	41,12,60,844	
5	Special Court order dated 22/03/2000 in 150 to 156 of 1999	29-03-2000	4,91,40,000	18%	6,882	16,67,74,428	
6	Spl. Court Order dated 16/03/2002 in M.A.Nos.342 to 348 of 2001.	26-03-2002	9,00,00,000	9%	6,155	13,65,90,411	
7	Spl. Court order dated 16/01/2003 & 28/01/2003 in MA 469 to 489 of 2002	24-02-2003	29,50,15,162	8%	5,820	37,63,26,190	
8	TDS released as per Civil Appeal No. 7572 of 1999 with CA No. 1175 of 2002 Supreme Court order dated 13/02/2002.	13-02-2002	94,52,159	9%	6,196	1,44,40,827	
9	Income Tax released as per Special Court order in M. A. No. 272 of 2003 dt. 03/10/2003	10-11-2003	62,73,56,751	(*) 18%	5,561	1,72,04,70,029	
10	Income Tax released as per Special Court order dated 25.02.2011 in Report No.9 of 2010.	11-03-2011	1,35,11,82,359	(*) 18%	2,883	1,92,10,48,146	
11		17-06-2011	33,12,137	(*) 18%	2,785	45,48,971	
			2,56,78,29,566			4,80,65,07,998	7,37,43,37,564
LESS : Particulars of Amount Refunded							
1	Deposit of Rs.10,07,81,279/- refunded by Income Tax dept.as per Special Court order dated 06.10.2005 in M.A.(Lodg.No.359) of 2005 to make the payment to Canbank Financial Services	19-10-2005	7,63,47,068	9%	4,852	9,13,40,377	
2	Deposit of Rs.20,89,2161/- refunded by Income Tax dept.as per Special Court order dated 30.11.2005 in M.A.504 of 2005 to make the payment to Chartered Accountants	30-12-2005	20,89,216	9%	4,780	24,62,413	
3	Deposit refunded by Income Tax dept.as per Special Court order dated 17.01.2006 in M.A.No.510 of 2005 to make the payment to Allbank Financial Services Ltd.	13-03-2006	1,55,25,000	9%	4,707	1,80,18,783	
			9,39,61,284			11,18,21,573	20,57,82,857
	TOTAL AMOUNT		2,47,38,68,282			4,69,46,86,425	7,16,85,54,707

(*) a) For computation of above claim where interest rate has been kept open to be decided, for the present, I have adopted the same@ 18% p.a.

b) I reserve my rights to claim interest and at higher rate, and also for claiming damages caused to Shri. Ashwin S. Mehta

c) The above claim covers the interest only upto 31.01.2019 but actual liability to pay interest would be upto the date of refund to the Custodian

754-A-CA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION.

(B)
Annex-D

CIVIL APPEAL NO. 7572 OF 1999

567029

Chief Commissioner of Income Tax, Bombay

Appellant

Versus

The Custodian

Respondent

WITH
CIVIL APPEAL NO. 1175 OF 2002
ARISING OUT OF S.L.P. (C) NO. 1922 OF 2000

Verified to be true copy
S. J. ...
Assistant Registrar (Judicial)
Supreme Court of India

O R D E R

Leave granted in SLP(C) No. 1922 of 2000.

After hearing the counsel for the parties, We dispose of the appeals by making the following order:-

(i) Persons making payments to Notified parties and otherwise, eligible for tax deduction at source shall deduct such tax even though such payments are made after 6.6.1992. Such amounts of tax deducted at source (TDS) shall be paid to the Income Tax Department by the concerned person or the Custodian as the case may be.

(ii) The Income Tax Department shall be entitled to appropriate the said amounts of TDS received by it only towards the tax liability of the Notified Party in respect of the period 1.4.1991 to 6.6.1992. The I.T.

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: 2 :

Department shall be liable to refund the balance or excess amount to the Custodian alongwith interest till the date of refund as provided in Section 244(1).

(iii) The Income Tax Department shall periodically and also on request furnish to the Custodian statements of account regarding the amounts of TDS received by the Department in respect of each Notified Party and the amounts appropriated out of the same.

SM
.....J
(B.N. KIRPAL)

SM
.....J
(SHIVARAJ V. PATIL)

New Delhi,
February 13, 2002.

SM
.....J
(BISHESHVAR PRASAD SINGH)