

JYOTI H. MEHTA

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

3rd April 2021

Shri Jitendra Yadav,
Dy. Commissioner of Income Tax,
Central Circle 4(1),
Air India Building,
Nariman Point,
Mumbai 400021.

Email id : mumbai.dcit.cen4.1@incometax.gov.in

Dear Sir,

Re: PAN/GIR No.ABAPM1848F

- (i) Request for issue of Order Giving Effect (OGE) in respect of order of Hon'ble ITAT dated 26.03.2021 in ITA No.1159/Mum/2020 in case of Smt Jyoti Harshad Mehta, legal heir of late Harshad S. Mehta for AY 1992-93.**
 - (ii) Request for issue of OGE in respect of order of Hon'ble ITAT dated 14.01.2019 in ITA No.5702/Mum/2017 and ITA No.6028/Mum/2017 in case of late Shri Harshad Mehta Vs DCIT and in case of DCIT Vs late Shri Harshad Mehta for AY 1992-93.**
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1. I am in receipt of order of Hon'ble ITAT dated 26.03.2021 in respect of appeal preferred by me to challenge the order of Ld. Principal Commissioner of Income Tax- (C) -2 **(PCIT)** u/s 263 of the Income Tax Act dated 22.01.2020 **(impugned order)** passed against the estate of my late husband Shri Harshad Mehta for AY 1992-93, a copy of which order dated

26.03.2021 is enclosed at **Annexure A** for ease of your reference.

2. That earlier the Hon'ble CIT(A) had passed an order on 28.06.2007 granting substantial reliefs to late Shri Harshad Mehta by deleting the assessed income by about 62% but your predecessor failed to give effect to the said reliefs and passed an OGE on 28.09.2017 admittedly without giving effect to the reliefs granted by Hon'ble CIT(A), a copy of which OGE is enclosed at **Annexure B**.
3. That thereafter under directions given by Hon'ble Special Court as also undertaking recorded by your predecessor through your Advocate in proceedings in MA 205 of 2003 that a proper OGE would be passed, a second OGE came to be passed by your predecessor on 02.05.2018, a copy of which OGE is also enclosed at **Annexure C**. It can be seen from the above OGE that as per your predecessor a refund of Rs.1011.40 Crores was due before levy of interest under Sections 234A, 234B, 234C, 234D and 220(2) of the Income Tax Act but the refund of the said amount was not offered as required under the provisions of the Torts Act and in terms of monies that were released to the revenue by Hon'ble Supreme Court and Hon'ble Special Court.
4. Being aggrieved by the above, I was constrained to file a claim of refund by addressing a letter to your predecessor on 18.09.2018, a copy of which is enclosed at **Annexure D**. It can be seen from the claim of refund that it amounted to a huge sum of Rs.2861.96 Crores which was not offered by your predecessor to the Custodian nor any explanation was

given in that regard. Instead a fresh demand notice was issued for payment of Rs.2324.55 Crores u/s 156 of the Income Tax Act. Thus, your predecessor violated the provisions of the Torts Act and Sec.240 of the Income Tax Act and also the orders of release of monies and undertakings executed thereunder before Hon'ble Special Court while securing release of such large amounts in its favour.

5. That in terms of law laid down by the Hon'ble Supreme Court in the case of Harshad Shantilal Mehta Vs Custodian reported as **(1998) 5 SCC 1** no amounts were liable to be released to your department as per definition of "**Taxes Due**" and since the time to make distribution had not arrived but yet a large sum of Rs.3285.46 Crores have been released to your department, out of which a large amount of Rs.2389,95,27,826/- (Rs.2389.95 Crores) are released from the account of late Shri Harshad Mehta, the particulars of which are given in an enclosed chart at **Annexure E**. Now having illegally secured release of such vast amounts, your department have been illegally retaining the amounts which have become refundable. In fact, your predecessor did not even give reply to my letters and thereby harassed me, being a widow and a housewife and a notified person by denying me the benefit of the law laid down by Hon'ble Supreme Court in the above judgment and illegally retaining and enjoying the monies to which your department is not entitled to.
6. It may be noted that besides above, the amount which became refundable pursuant to order of Hon'ble CIT(A) dated 28.06.2017 constituted attached property u/s 3(3) of the

Torts Act which could not have been dealt with by your predecessor but yet in violation of Sec.3(4) of the Torts Act the said large amount of refund due to late Shri Harshad Mehta have been illegally retained and enjoyed by your department. The Custodian was also requested to secure the above refund under my aforesaid letter dated 28.09.2017 but he also deliberately failed to secure it in violation of his statutory duties under the Torts Act.

7. That in the meanwhile and while the above large refund was pending, both the assessee and the department challenged the order of Hon'ble CIT(A) dated 28.06.2017 before the Hon'ble ITAT and both these appeals together with other appeals came to be heard along with appeals filed by Shri Ashwin Mehta and Smt Jyoti Mehta. That after fully hearing your department on every issue, both on law and the merits of the additions the Hon'ble ITAT was pleased to pass a combined judgment on 14.01.2019, a copy of which was placed on record of your predecessor. The Hon'ble ITAT was pleased to quash and set aside the assessment order passed by the AO on 15.03.2016 for AY 1992-93.
8. That upon receipt of above order of Hon'ble ITAT dated 14.01.2019 I addressed a letter to your predecessor on 12.02.2019 making a claim of refund of Rs.3803.90 Crores and also to pass an OGE and a copy of the above letter is enclosed at **Annexure F**. However, this letter was not replied to nor the OGE was passed and neither the refund has been made by yourselves now for more than 2 years. In fact, several reminder letters have been addressed to you for issue

of OGE and refund but even these subsequent letters have not been replied to nor the refund has been made till date.

9. From the above facts, it becomes evident that you wish to harass me being a widow and a housewife as also a notified person by denying the benefit of orders passed in my favour by the appellate authorities. That earlier release of large amounts have been secured by your predecessors making false representations before Hon'ble Special Court that they have framed the assessment order in accordance with law and raised a valid and legal demand under the same but now the assessment order has been found to be illegal by the Hon'ble ITAT under their order dated 14.01.2019 for the reasons and on the grounds duly set out in the said order. That even after receipt of the order dated 14.01.2019 from Hon'ble Tribunal I have once again requested the Custodian to secure the OGE and the refund from your department but he has failed to take any steps acting in collusion with your department and to hurt the interest of the estate of late Shri Harshad Mehta.
10. That instead to avoid making refund and in order to replace and resurrect your previous illegal demand raised under assessment order dated 15.03.2016, your predecessor by a note dated 30.05.2018 illegally requested the PCIT to invoke his powers u/s 263 of the Income Tax Act in respect of the order passed by him on 02.05.2018 though the appeal filed by your department against the order of Hon'ble CIT(A) dated 28.06.2017 was already under adjudication before Hon'ble ITAT.

11. That at the behest of your predecessor, the PCIT invoked his powers u/s 263 and passed an order on 22.01.2020 resurrecting the 5 additions in respect of which the relief was already granted by Hon'ble CIT(A) under order dated 28.6.2017 and which was thereafter duly confirmed and re-affirmed by the Hon'ble ITAT under their order dated 14.01.2019.
12. That since the Hon'ble ITAT had granted reliefs under order dated 14.01.2019, propriety demanded that you would have passed the order of OGE first in point of time particularly since the assessment order was already quashed entailing 100% relief but acting in violation of the provisions of the Torts Act as also Sec.240 of the Income Tax Act and several CBDT circulars, you have not passed the said OGE but instead in order to harass me, promptly passed within less than 2 months OGE dated 11.03.2020 to give effect to the subsequent order of PCIT dated 22.01.2020 and raised a patently illegal demand of Rs.6357,12,04,533 (Rs.6357.12 Crores) in respect of an order which was passed 2 years after the Hon'ble ITAT passed the order dated 14.01.2019. The copy of the said OGE dated 11.03.2020 together with the fresh demand notice u/s 156 of the Income Tax Act is enclosed at **Annexure G**.
13. However, now the Hon'ble ITAT has passed the order dated 26.03.2021 in respect of Appeal filed by me to challenge the above order of PCIT under which it has been pleased to quash the revision order passed by the Ld. PCTI u/s 263 of the Income Tax Act on a number of grounds which are duly set

out in the order itself, copy of which is already enclosed above. Your attention is also drawn to the adverse observations made and the findings given by the Hon'ble ITAT against the order of PCIT, particularly in Para 3.19 (Page 33 of the order). It is held by Hon'ble ITAT that ***“The entire action of the Ld. PCIT goes to prove that the entire issue has been addressed with a pre-conceived notion in order to reach a pre-conceived destination by forgetting the legal tenets, factual verifications, verification of documents carried out by the Ld. AO, improperly applying provisions of Explanation – to Section 263, not respecting the judicial hierarchy by ignoring the order of this Tribunal dated 14.01.2019 wherein the Tribunal has already quashed the assessment order dated 15.03.2016 but also granting relief to the assessee on merits on each of the five issues that were subject matter of revision proceedings, thereby proving his highhandedness.”***

14. In view of the above, you are called upon to pass 2 OGEs viz. the OGE to order of Hon'ble ITAT dated 14.01.2019 and OGE to the fresh order of Hon'ble ITAT dated 26.03.2021. You are also called upon to immediately arrange to issue refund to the Custodian as per claim filed by me on 12.02.2019 with further interest on it till the date of actual refund at the minimum of 18% p.a. which claim as on 31.03.2021 amounting to Rs.4193,56,08,301/- (Rs.4193.56 Crores) is enclosed at **Annexure H**.

15. Please note that I am forwarding a copy of this letter to the Office of the Custodian with a request to secure the above 2 OGEs and also the vast amount of refunds as above which is already overdue by about 2 years. In fact, the CBDT has already directed your predecessor in 2019 itself to make refund and save on liability to pay interest but even such directions of superior authorities have been consciously violated to unduly harass me.
16. Your attention is once again drawn to the representation made by your Advocate before Hon'ble Special Court on 11.10.2019 wherein he has given assurance to Hon'ble Special Court that refunds even in large cases will be made in accordance with law which statement is duly recorded by Hon'ble Special Court under its order dated 11.10.2019 passed in MA 81 of 2013, a copy of which is enclosed at **Annexure I**. That even in view of the above assurance given by your Advocate to Hon'ble Special Court, you are called upon to offer refund to the estate of late Shri Harshad Mehta in respect of AY 1992-93 and thereby make compliance with the order of Hon'ble ITAT dated 14.01.2019.

Yours truly,

(Jyoti H. Mehta)
Legal heir of late Shri Harshad Mehta

Encl: As above

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

Email: custodian.mumbai@yahoo.com

- As you are aware, since more than 25 years all the Mehtas (individual family members and corporate entities promoted by them) have repeatedly stated on oath that the revenue has abused its powers and authority and taken full advantage of the priority accorded to it u/s 11(2)(a) of the Torts Act. Exploiting the above priority it has raised demands which are preposterous on the very face of it and even Hon'ble Special Court has examined the assessment orders and come to the conclusion that there was gross miscarriage of justice in framing the same and accordingly on that basis scaled down the demands by 92% from Rs.3400 Crores to Rs.278 Crores. The Hon'ble Special Court has determined the liability to pay tax only at Rs.140 Crores and directed revenue to refund Rs.546.22 Crores so as to use the amounts to pay to the banks.
- That the Hon'ble Supreme Court has resolved the conflict between the competing demands of revenue and banks on the attached assets by laying down the law in favour of banks through the aforesaid Harshad Mehta's judgment. However, acting contrary to it and in gross violation of the said law the Custodian has colluded with the revenue and got released vast amount of Rs.2389.95 Crores from the account of Shri Harshad Mehta to revenue for its demands for AY 1992-93 and AY 1993-94.
- That in the above circumstances, you are called upon to discharge your statutory duties and secure the OGE and refunds from the revenue without any further loss of time as the revenue has illegally enjoyed vast amounts even though not being entitled to them in terms of law laid down by Hon'ble Supreme Court in Harshad Mehta's judgment.

Cc: M/s. Dave & Girish & Co., Solicitors & Advocates for Standard Chartered Bank, 318, Dr. Cawasji Hormusji St, Dhuswadi, Sonapur, Marine Lines, Mumbai 400 002.

Email: mona@davegirish.com

Cc: M/s. Little & Co., Solicitors & Advocates for SBI and SBI Capital Markets Ltd., 3rd Floor, Central Bank Building, M.G. Road, Mumbai 400 001.

Email: morris@littlecompany.com

Cc: M/s. Leena Adhvaryu & Associates, Advocates & Legal Consultants, 3rd Floor, Behramji Mansion, 4, Homji Street, Sir. P.M. Road, Fort, Mumbai 400 001.

Email: leena.adhvaryu@gmail.com

Cc: Shri Ranit Basu, **C/o. Mr. B.M. Chatterjee**, Advocates for Income Tax, Sonawala Building, 2nd Floor, 19, Bank Street, Fort, Mumbai-400 023.

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