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आयकर अपीलीय अधिकरण"H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

श्रीमहावीर सिंह, न्यायिक सदस्यएवंश्री जी. मंजुनाथलेखा सदस्य केसमक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 5702/Mum/2017

(निर्धारण वर्ष / Assessment Year 1992-93)

Late Shri Harshad S. Mehta
(Legal Heir Jyoti H.Mehta)
32, Madhuli, Dr. A.B. Road,
Worli, Mumbai-400 018 ...... **(अपीलार्थी / Appellant)**

Vs.

Dy. Commissioner of Income Tax,
Central Circle-4(1), Air India Building,
Nariman Point, Mumbai-400 021 ...... **(प्रत्यर्थी/ Respondent)**

स्थायीलेखासं./**PAN No. ABAPM1848F**

आयकर अपील सं./ ITA No. 6028/Mum/2017

(निर्धारण वर्ष / Assessment Year 1992-93)

Dy. Commissioner of Income Tax,
Central Circle-4(1), Room No. 1916, 19th
Floor, Air India Building, Nariman Point,
Mumbai-400 021 ...... **(अपीलार्थी / Appellant)**

Vs.

Late Shri Harshad S. Mehta
(Legal Heir Jyoti H.Mehta)
32, Madhuli, Dr. A.B. Road,
Worli, Mumbai-400 018 ...... **(प्रत्यर्थी/ Respondent)**

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आयकर अपील सं./ ITA No. 3427/Mum/2017
(निर्धारण वर्ष / Assessment Year 1992-93)

आयकर अपील सं./ ITA No. 6120/Mum/2017
(निर्धारण वर्ष / Assessment Year 1993-94)

Shri Ashwin S. Mehta 32, Madhuli, Dr. A.B. Road, Worli, Mumbai-400 018	……	**(अपीलार्थी / Appellant)**
Vs.		
Dy. Commissioner of Income Tax, Central Circle-4(1), Air India Building, Nariman Point, Mumbai-400 021	……	**(प्रत्यर्थी/ Respondent)**

स्थायीलेखासं./**PAN No. ABAPM2121M**

आयकर अपील सं./ ITA No. 3386/Mum/2017
(निर्धारण वर्ष / Assessment Year 1992-93)

Dy. Commissioner of Income Tax, Central Circle-4(1), Air India Building, Nariman Point, Mumbai-400 021	……	**(अपीलार्थी / Appellant)**
Vs.		
Shri Ashwin S. Mehta 32, Madhuli, Dr. A.B. Road, Worli, Mumbai-400 018	……	**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं./ ITA No. 4204/Mum/2017
(निर्धारण वर्ष / Assessment Year 1992-93)

Smt. Jyoti H. Mehta 32, Madhuli, Dr. A.B. Road, Worli, Mumbai-400 018	……	**(अपीलार्थी / Appellant)**
Vs.		
Dy. Commissioner of Income Tax, Central Circle-4(1), Air India Building, Nariman Point, Mumbai-400 021	……	**(प्रत्यर्थी/ Respondent)**

स्थायीलेखासं./**PAN No. ABNPM8233B**

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आयकर अपील सं./ ITA No. 4310/Mum/2017
(निर्धारण वर्ष / Assessment Year 1992-93)

Dy. Commissioner of Income Tax, Central Circle-4(1), R.No. 1916, Air India Building, Nariman Point, Mumbai-400 021	......	**(अपीलार्थी / Appellant)**
Vs.		
Smt. Jyoti H. Mehta 32, Madhuli, Dr. A.B. Road, Worli, Mumbai-400 018	......	**(प्रत्यर्थी/ Respondent)**

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Vijay Mehta, AR
प्रत्यर्थीकीओरसे/ **Respondent by**	:	Shri P. Daniel, Shri Sandeep Kumar Shri Pankaj Mehta, Miss Anu Krishna Aggarwal Shri Manpreet Singh Duggal, DRs'

सुनवाई की तारीख/ **Date of hearing:**	15-10-2018
घोषणा की तारीख/ **Date of pronouncement :**	14-01-2019

आदेश/ O R D E R

PER MAHAVIR SINGH, JM:

These cross appeals are arising out of the different orders of Commissioner of Income Tax (Appeals)-52, Mumbai [in short CIT(A)], in appeal Nos. CIT(A)-52/IT/DC-CC4(1)/50/2016-17, CIT(A) 52/DCIT-CC-4(1)/432/2007-08, CIT(A)-52/IT/DC-CC4(1)/305,306/2015-16, dated 28.02.2017, 04.07.2017, 24-03-2017,2 28-06-2017. The Assessments were framed by the Dy. Commissioner of Income Tax, Central Circle 4(1), 23 Mumbai (in short 'DCIT'/ AO) for the A.Ys. 1992-93, 1993-94 vide orders dated 28.03.2016, 17.12.2007, 22.03.2016, 15.03.2016 under section 254 read with section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

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In ITA No. 5702 & 6028/Mum/2017

2. First we shall deal with the appeals of Late Harshad S. Mehta through Legal Heir Smt. Jyoti H.S. Mehta for AY 1992-93 in ITA No.5702/Mum/2017 of assessee appeal and ITA No.6028/Mum/2017 of Revenue appeal.

3. Before dealing with these appeals, we want to narrate the brief background of the case. Brief history of all these appeals facts, events, chronology of dates and events & circumstances are identical. Hence we need not to repeat the same in each appeal but in this one only. Hence, these para 3 to 5 are dedicated to history and background of this group of cases. The assessee, late Shri Harshad S. Mehta belonged to Harshad S. Mehta Group of Cases engaged in the business of brokerage as a member of Bombay Stock Exchange (BSE), a notified person under the special court (Trial of Offences Relating to Transactions in Securities) Act, 1992. There was a search and seizure operation u/s 132 of the Act conducted on the assessee group of cases on 28.02.1992. During the course of search, various incriminating material was found and seized including share certificates and documents relating to investments in shares etc. Later a search action was carried out in this group of cases by CBI on 04.06.1992 and similar documents were seized by them also. The assessee filed original return of income on 29-10-1993 for the relevant AY 1992-93 but the same was later rejected as defective by the AO under section 139(9) of the Act. In the belated return of income filed in response to notice under section 142(1) of the Act, the assessee declared total income of ₹ 6,84,08,000/-. The original assessment was framed by the AO under section 144 of the Act vide order dated 22.02.1995 determining total income of ₹ 2014,04,65,298/- after making following additions and disallowances: -

Sr.	*Particulars*	*Amount (In ₹)*

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No.		
1.	*Money Market Oversold Position*	*1080,58,89,691*
2.	*Money market unexplained stock*	*291,05,41,290*
3.	*Profit on sale of shares in shortage*	*253,16,78,501*
4.	*Unexplained money*	*251,80,33,835*
5.	*Interest on securities in Money Market*	*58,27,13,670*
6.	*Money Market difference received*	*35,55,51,482*
7.	*Declaration under section 132(4)*	*25,20,15,000*
8.	*Share Market Trading Profit*	*16,02,65,407*
9.	*Unexplained Money-Niranjan Shah*	*6,85,81,200*
10.	*Share Market Oversold Position*	*5,56,19,836*
11.	*Share Market Speculative Profit*	*2,85,26,994*
12.	*Dividend & Interest Income*	*14,58,970*
13.	*Unexplained Investment payment to M/s Jue Inv.*	*62,50,000*
14.	*Share Market Badla Income*	*19,71,050*
15.	*Income from alleged HUF*	*76,60*
16.	*Money Market Trading Profit*	*-14,77,09,288*
Total assessed income		*20,14,04,65,298*

4. Against the assessment framed by the AO dated 27.03.1995, the assessee filed an appeal with the CIT(A), who vide order dated 28.02.2003 confirmed the assessment. The assessee preferred an appeal before ITAT and ITAT set aside the assessment back to the file of the CIT(A) vide order dated 31.03.2006 directing the CIT(A) to admit and consider the books of account of the assessee, which was refused by the CIT(A) as additional evidence. In the second round of litigation, the CIT(A) passed the appellate order on 24.03.2010, wherein certain relief has been granted in respect of certain additions made by the AO but at the same time, the CIT(A) accepted the request of enhancements of the AO during the course of appellate proceedings and enhanced the income of the assessee at ₹ 2,346.82 crores. The assessee preferred appeal again and ITAT again set

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aside the matter to the file of the AO vide order dated 29.10.2014. The AO subsequently, passed an order giving effect to the order of ITAT on 30.11.2015 determining the total income at ₹ 6,84,08,000/-. Thereafter, the AO again passed an order giving effect to the order of the ITAT on 15.03.2016 determining total income at ₹ 2341,69,29,080/-. The assessee preferred appeal against the order of CIT(A), who passed the impugned order dated 28.06.2017, against which the assessee as well as Revenue both have preferred the present appeals. We find from the facts of the case that apart from the additions made in original assessment, which was subsequently confirmed, the CIT(A) in pursuance to the directions of ITAT finally computed the income vide order dated 15.03.2016 as under: -

Particulars	*Amount (in ₹)*
Total assessed income as per order under section 144 dated 27.03.1995	*20,14,04,65,298*
Less: Relief allowed by CIT(A) dt. 03/10/2006	*(-) 25,20,16,000*
Relief allowed by CIT(A) vide order 24.03.2010	
Unexplained money….101,46,00,000 *Income from alleged HUF…76,660* *Inter corporate deposit …50,00,000*	*(-) 1,01,86,76,660*
Add. Enhancement made by CIT(A) vide order dtd.24.03.2010	
Interest receivable from family members 118500000 *On account of Mr. Niranjan Shah.. 51418800* *Other income as per Vyas & Vyas report 696300000*	*5,49,44,33,442*
Total Income	*2346,32,06,080*

5. The history of hearings of these appeals needs to be narrated**.** The chronology of events are as under: -

Order sheet entries

04.01.2018

By order of the Vice-President on consolidation form, this appeal consolidated with ITA 5702 & 4204/Mum/2017, ITA 3386/Mum/2017, ITA 6028/Mum2017, ITA 4310/Mum/2017, ITA 6120/Mum/2017, ITA 1222/Mum/2017 & fixed before 'H' Bench on 10.01.2018. Parties informed.

10.01.2018

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Hearing is adjourned to 24.01.2018 as part-heard at 2.30 PM along with ITA 3386/Mum/2017, ITA 6120/Mum/2017, 5702 & 6025/Mum/2017, 4204 & 4310/Mum/2017, 1222/Mum/2017 parties informed.

24.01.2018

Hearing is adjourned to 01.02.2018 as part-heard along with ITA Nos. 3386/Mum/2017, 6120/Mum/2017, 5702,6028/Mum/2017, 4204, 4310/Mum/2017, 1222/Mum/2017 both parties informed.

01.02.2018

Hearing is adjourned to 12.02.2018 as part heard along with ITA Nos. 3386/Mum/2017, 6120/Mum/2017, 5702,6028/Mum/2017, 4204, 4310/Mum/2017, 1222/Mum/2017 both parties informed.

12.02.2018

Ld. Counsel for assessee and department called to the chamber and informed senior member is on leave therefore the case may be adjourned to suitable date convenient to both the parties. Counsel presents stated that the 26.02.2018 is convenient to both the parties. Case is adjourned to 26.02.2018 at 2.30 PM. Both parties informed.

26.02.2018

The Revenue has filed petition seeking time for two months vide letter dated 12-02-2018 vide DCIT-CC-4(1)/Report/2017-18 in these cases. The letter states as under: -

> *'2. During the course of hearing before your Hon'ble Bench in the cases of Harsand Mehta Group, direction was given to submit a report on the acceptance or rejection of books with specific instances within two weeks.*
>
> *3. It is mandatory for every Income Tax Department building to have Aayakar Seva kendra being on the Hon'ble PM initiatives, the Air India Building which has become functional two years back did not hove ASK and hence, the Hon'ble Pr. CCIT, Mumbai directed to start the said office from 8' floor. Air India Building and unfortunately the entire records of various sections working in the said building are lying on 8thfloor only. In this regard, it is to mention here that this*

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office has been busy in shifting the entire records from 8thfloor to 20thfloor of Air India Building. As the matter was of top priority, the entire case records are packed in gunny bags and process of shifting the case records to 20thfloor of same building is in progress. Due to this shifting process, to locate the case records of above referred assessee has become very difficult. Further, the undersigned is attending the Hon'ble Special Court (TORTS) Act. 1992, two days i.e. Thursday and Friday on every week with regard to Harshad Mehta cases. There is impetus on recovery surveys apart from regular heavy workload. Furthermore, the undersigned is holding two charges which do have very heavy workload. The Charge i.e. DCIT-Central Circle-4(1) has been held by me only with effect from 24.01.2018. Further it is an additional charge. It will take to be conversant with the charge and especially the facts in the Harshad Mehta group. Considering the above facts and circumstances, it is requested that further time of two more months may kindly be granted considering the above facts.'

2. At the outset, we want to narrate the brief facts relating to litigation in these matters that these assessees belongs to Harshad Mehta group of cases and are notified persons under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. A search & seizure action u/s 132 of the Act was carried out in this case by the Directorate of Income Tax (Inv.) Mumbai on 28/02/1992. During the course of search various incriminating material was found and seized including some share certificates and documents relating to investments in shares etc. Later a search seizure action in this case was carried out by the CBI on 04.06.1992 and some documents were seized by them also. Thereafter the assessment proceedings were taken up by the AO. In due consideration to the facts of the case, the assessments were completed u/s. 144 of the Act on 27.03.1995 after making various additions/ disallowances.

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3. Against the above assessment orders the assessee filed appeals before CIT(A) and in the first appeal, the addition on account of declaration made by late Shri Harshad S. Mehta was directed to be deleted, and in other cases the additions and disallowances were altered in orders passed by CIT(A). On further appeal, the ITAT Mumbai directed the AO to decide the matter afresh on the basis of guidelines given by the Tribunal in its order dated 31.03.2006 in ITA No. 7926/Mum/03 and 4995/M/03 in the case of Shri Ashwin S Mehta for AY 1992-93 and similarly in other cases. In pursuance of the above directions of Tribunal, the AO initiated fresh assessment proceedings, but completed the assessment at the same income more or less, as determined earlier. Subsequently the matter were taken up in appeal before the CIT(A), who by different orders directed to delete the additions and also enhanced some income on account of difference in the accounts of the Shri Ashwin S Mehta and others.

4. On further appeal, the Tribunal, vide order dated 10.11.2014 remanded the matter back to the AO for deciding the issue afresh after considering the books of accounts of the assessee. Subsequently, the assessment proceedings were taken up by the AO and in due consideration to the facts of the case, he completed the assessments wherein he repeated the additions made earlier and rejected various contentions of the assessee. The present appeals are filed against the orders passed by CIT(A) confirming or deleting the additions made by the AO u/s 143(3) of the Act.

5. Now, the assessee requested for fixation of these appeals, by filing early hearing petitions on the basis and in compliance with the order passed by the Hon'ble Supreme Court in Civil Appeal No. 6326 of 2010 dated 02.05.2017 and also on 08.05.2017. Finally, the Hon'ble Supreme Court vide order dated 08.05.2017 in Civil No. 6326 of 2010 has modified the order dated 02.05.2017 as under: -

> *"in view of the submissions made, the order dated 02.05.2017 passed by us in paras 3 and 5 are modified and a new para (9A) is incorporated as under:*

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3) Therefore, we direct the Income Tax Authorities to pay the said amount of Rs. 192.54 crores to the Custodian with interest at the rate of 18% p.a. from the date of passing of the refund order within a period of 12 weeks from today.

5) The orders (Ninety) which have already been passed by the ITAT directing the Revenue to re-frame the assessment by taking into account the evidence of books of accounts should be decided by the Authority within a period of 2 weeks from today.

9A) The custodian is directed to take appropriate steps to recover the assets of the appellants."

In entirety of facts and circumstances as mentioned above, we are of the view that the hearing, despite the fact that the hearing is going on day to day basis asking remand report from the AO, the AO requested for adjournment of 2 months vide letter dated 2.02.208, which cannot be acceded to. The reason for the same is that this hearing is going on from 10.01.2018 on day to day basis as per the convenience of the parties and moreover, there is direction of Hon'ble Supreme Court to decide the matter expeditiously as early as possible. In such circumstances, we direct the AO to confront the seized/relied on material to the assessee and give the remand report on urgent basis because we have to decide these appeals on time bound manner and it cannot be kept for long.

6. Today, when the matter was called for hearing, the learned Special Counsel for the Revenue informed that father of Shri Pankaj Mehta, the AO, in the designation of Dy. Commissioner of Income Tax, Central Circle 4(1), Range-4, expired today morning at 9.30 AM and he could not present for hearing. But when a query was put to the learned Special Counsel, what is the progress in the case and he was also apprised of the situation that the AO has already asked for adjournment in the matter for two months. The Bench is sorry for the said demise of the father of the AO and for that consideration we can adjourn the mater for atleast 10 days, but he informed that he has no information about the progress of remand report or verification of proceedings in pursuance to the direction of the Tribunal. On

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the other hand, Shri Vijay Mehta, the learned Sr. Counsel for the assessee informed the Bench that the assessee presented before the AO on 02.02.2018 and requested copies of documents and other materials relied on by the AO during the assessments. The AO stated that he will look into the matter and AR will be informed accordingly. The learned Counsel filed copy of letter dated 08.02.2018 addressed to the AO in compliance to the direction of the Tribunal for hearing in these matters seeking co-operation in respect to relied on material. The assessee is awaiting reply from the AO. From the entire circumstances it seems that the Revenue is not serious in early disposal of these appeals. Hence, in the above facts that now AO's father is expired, we are giving last adjournment and that will be strictly last adjournment before the Revenue could show some progress. Accordingly, the matter is adjourned to 15.03.2018. The CCIT Central-2 and Pr. CIT, Central-2 may be informed.

15.03.2018

During the hearing, the Department filed a letter dated 12.03.2018 vide No. DCIT-CC4(1)/Remand Report/2017-18, received on 13.03.2018 containing certain Annexures. Ongoing through the annexures, it is noticed that these are old correspondence between the assessee and the Department including some information that some documents were provided to the assessee. This information is kept on record. The learned Sr. Standing Counsel Mr. P Daniel along with Addl. CIT Miss Annu Krishna Agarwal appeared for Revenue. When they were confronted regarding one item of addition i.e. shares of Reliance Industries of 24,41,679 shares, the learned Departmental Representative was asked what is the basis for putting allegation on the assessee that these shares belongs Shri Ashwin S. Mehta, the assessee. The learned Addl. CIT Miss. Annu Krishna Agarwal stated that she requires time to find out the evidences regarding this addition. The learned Addl. CIT is also directed to bring evidences regarding each itemized addition on the next date of hearing, so that hearing can be concluded at the earliest. Accordingly, the matter is adjourned to 22.03.2018.

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22.03.2018

Let the AO be present in Bench, during the course of hearing. Matter adjourned to 27.03.2018 as part heard along with ITA 3386/M/17, ITA 6120/M/7, ITA 5702/M/17, ITA 6028/M/17, ITA 4204 & 4310/M/17, ITA 1222/M/17. Parties informed.

27.03.2018

The Assessing Officer, Shri Manpreet Singh Duggal, Deputy Commissioner of Income Tax, Central Circle has made a statement at bar that as on date, he could not lay his hand on the material relied upon by the assessing officer in his assessment order, but in a month he will produce whatever material relied on by the assessing officer in the case of all these three assessees, viz. for AYs 1992-93 and in case of Shri Ashwin Mehta for AY 1993-94 as. The Ld. AO undertook to file all co-relating evidence relating to these assessments in a month's time. Accordingly, the matter is adjourned to 02.05.2018.

02.05.2018

Today, Revenue has filed a petition for adjournment letter vide No. DCIT-CC-4(1)/Mum/HSM Group/ 2018-19 dated 02.05.2018 stating various reasons. Revenue ask for three-month time to gather the entire seized material/ third party information. This matter came up for hearing first time as on 10.01.2018 and since then Revenue on one pretext or the another is asking for adjournment as is evident from various letters written by Revenue. In such circumstances, we are under constrained to grant the adjournment in such a liberal manner. However, the learned Senior Counsel is present before us for Revenue and we are starting hearing the cases from assessee's side. Let the assessee's Counsel finished the argument and he has today finished the arguments in the case of Ashwin S Mehta in ITA No. 3427/Mum/2017. For other appeals the matters are being adjourned to 14.05.2018. These are very old matters and fixation is done by the order of the Hon'ble Vice-President as per the order of Hon'ble Supreme Court to decide these matters expeditiously. In such circumstances, we are continuing the hearing but also in the interest of

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> *justice to the Revenue, we are allowing the time. Accordingly, the matters are fixed for further hearing on 14.05.2018 as part heard matters.*
>
> ***14.05.2018***
>
> *Hearing for A's and Dept. appeals of Ashwin Mehta case is completed today. ITA 5702 & 6028/Mum/207 for Harshad Mehta L/h Jyoti Mehta, ITA 4204 & 4310/M/17 for Jyoti Mehta and ITA 1222/M/17 for Harsh Estate Pvt. Ltd. Is continue for hearing on 17.05.2018 (Thursday). Both parties informed.*

Accordingly, these appeals were heard finally on 19.06.2018 but since during the course of dictation of these orders, we required certain clarifications and therefore, the appeals were fixed for hearing on 25.09.2018. For this the following order sheet entry was recorded on 25.09.2018: -

> *"Ld. Counsel asked for the adjournment as he could not prepare the case and clarification asked by the bench has received today. In view of the Ld. Counsel hearing is adjourned to 15.10.2018 alw ITA 3386 & 6120/M/17 (Ashwin Mehta), ITA 4204 & 4310/M/17 (Jyoti Mehta), ITA 5702/ & 6028/M/17 (Harshad Mehta) & ITA 1222/M/17 (Harsh Estate P. Ltd.) Both parties informed."*

Ultimately, the hearing of these appeals was finally concluded on 15.10.2018.

6. The first issue raised by assessee is that the assessment framed by AO dated 15.03.2016 (The impugned assessment order) in consequence to ITAT's directions is bad in law. For this assessee has raised following ground No. 1 and 2: -

> *"1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that the assessment order*

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dated 15.03.2016 passed by the Deputy Commissioner of Income-tax, Central Circle 4(I), Mumbai ('AO') is bad in law and ought to be quashed.

The Appellant prays that the order of the AO be quashed as it is bad in law.

2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in rejecting the Appellant's contention that the order under section 143(3) r.w. section 254 of the Act dated 15.03.2016 passed by the AO is void ab-initio as having already passed order dated 30.01.2015 giving effect to the directions of the Hon'ble Tribunal, the AO had no jurisdiction to conduct substantive review of the earlier order.

The Appellant prays that the order of the AO dated 15.03.2016 passed under section143(3) r.w. section 254 of the Act is bad in law and ought to be quashed..”

6.1. Before us, the learned Counsel for the assessee reiterated the facts that the ITAT during the second round of appellate proceedings has set aside the matter to the file of the AO vide its order dated 29.10.2014 and pursuant to this order, the AO passed the order giving effect dated 30.01.2015. The AO passed the said order as, “*order giving effect to ITAT’s order*”. According to the learned Counsel for the assessee as per said order the assessed income was revised and tax demand was calculated and interest under section 234A, 234B and 234C of the Act was charged. The AO has also issued notice under section 156 of the Act determining a refund of ₹ 1,243.93 crores along with Income Tax computation form attached, which states that the assessment order was passed vide impugned order dated 15.03.2014,

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purportedly to give effect to the Tribunal's order dated 29.10.2014. The learned Counsel for the assessee referred to the order giving effect to ITAT's order of the AO dated 29.10.2014, and the demand notice under section 156 of the Act determining refund are enclosed at pages 381-385 of Assessee's Paper Book(APB) 1. In term of the above, the learned Counsel for the assessee argued that the AO after passing the first order on 30.01.2015, has become functus officio and therefore the assessment order passed giving effect to the ITAT's order dated 15.03.2016 is null and void and hence, without jurisdiction. The learned Counsel for the assessee relied on the decision of Hon'ble Bombay High Court, for this proposition, in the case of Classic Share & Stock Broking Services Ltd Vs. ACIT [2013] 216 Taxman 238 (Bombay). The learned Counsel for the assessee referred this decision which was followed by CIT(A) in the case of DCIT vs. Heena N. Kanakia in ITA No. 3718/Mum/2015 and the said order of CIT(A) has been upheld by ITAT for AY 2003-04 in ITA No. 3718/Mum/2015 dated 23.09.2015. This order of ITAT is enclosed at pages 681 to 686 of (APB).

6.2. On the other hand, the learned special Counsel for the Income Tax department Shri P Daniel, first of all drew our attention to the provisions of the 254(1) of the Act and he read out the same as, *"The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit"* and argued that the AO has statistically reduced the demand and summarily passed an order giving effect without allowing opportunity of being heard to the assessee and in such circumstances, when ITAT thought fit for giving directions then any order of the AO which is not given effect to the directions cannot be said to be an order. Shri Daniel argued that the law established by the judgment of the Hon'ble Bombay High Court in the case of Classic Share & Stock Broking Services Ltd. (supra) is

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clearly distinguishable on the facts of case as to that of the facts of the case of late Shri Harshad S. Mehta for AY 1992-93. He explained that the distinction of facts need to be understood from the bare reading of the orders and the order under claim of similarity of facts of the assessee is the first order passed by the AO dated 30.01.2015, which is containing three paras only for reducing the demand to the returned income till regular assessment under section 254 of the Act is made. Hence, Shri Daniel stated that direction of the Tribunal were not acted upon in that order and he referred to the directions of order of ITAT, which reads as under: -

> *"1. The Hon'ble ITAT H-Bench Mumbai vide order dated 29.10.2014 in ITAT non 3699/Mum/210 has passed the order. In this order, the assessee raised several ground of appeal which revolves around the facts that the books of accounts have been rejected by revenue authorities.*
>
> *2. Hon'ble ITAT in the said order restored / set aside the issue to the file of AO directed to verify / examine each entry in the books of accounts and to decide the issue after examining the books of accounts of the assessee.*
>
> *3. Revise assessed income accordingly. Compute the tax demand as per income of ₹ 6,84,08,000/- declared by the assessee as against the assessee income of ₹ 2014,04,65,298/- determined by assessment order passed under section 144 dated 27.03.1995. Charge interest under section 234A, 234B and 234C of the Act. Issue revised demand notice under section 156 and challan."*

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6.3. He further referred to the first order of the AO giving effect to the order in the case of Classic Share & Stock Broking Services Ltd. (supra) wherein complete order was passed after allowing opportunity to the assessee and after application of mind. The learned Special Counsel argued that the order enclosed as annexure-1, which has been reproduced in the first paragraph contains clear finding that issue has been set aside. It does not contain basically the number of directions given by order of ITAT. Those directions have been followed in the order passed by the AO dated 15.03.2016 in the case of late Harshad S Mehta. The directions of ITAT order are clearly compiled by this order. Therefore, the first question raised in the preceding para is clearly answered in negative that annexure-1 does not give any effect to directions to ITAT order as enclosed as Annexure-3.The second question raised in Para 2 is clearly proven by order of classic shares& stocks (Supra) that it was giving effect to directions of ITAT whereas order enclosed as Annexure-1 in this case is not giving effect to directions. Therefore, the question number 2 is answered in positive. Then, it is clearly inferred from both the questions that Annexure 2 and Annexure 1 are clearly distinct. The directions of ITAT are supreme as ITAT has thought it fit to give directions under section 254 of the Act.

6.4. In view of the above submissions, the learned Senior Counsel for the Revenue stated that the case law cited by assessee of Hon'ble Bombay High Court in the case of Classic Share & Stock Broking Services Ltd. (supra) is distinguishable and hence, has no application to the facts of the present case.

6.5. We have heard the rival contentions and gone through the facts and circumstances of the case, the material placed on record by both sides as well as brought to our knowledge. We have also gone through the decisions of jurisdiction High Court in the case of Classic

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Share and Stock Broking Services Ltd. (supra) as well as the decision of this Tribunal in the case of Heena N Kanakia (Supra). We have gone through the case of Classic Share and Stock Broking services Ltd.(Supra) delivered by Mumbai Tribunal, wherein it is noted in Para 6, in which Tribunal while restoring the issue to the file of the AO held as under: -

> *"6. Considering the voluminous details filed before the us supporting the assessee's claim and on perusal of the orders of the A.O. and the CIT(A), we are of the opinion that the A.O. has disallowed the claims(sic) on certain general principles about the Ketan Parekh group cases and observations of the JPC and SEBI without examining the individual details of the assess company for the impugned year. In view of this, we are of the opinion that the matter requires re-examination by the A.O. It is also noticed that in the case of Sai Mangal Investrade Ltd. relied upon by the CIT(A) in the order, the coordinate Bench vide order dated 25.11.2009 has accepted that the transactions are genuine and the loss claimed pertains to valuation of stock at cost or net realisable value and accordingly the grounds of the assessee were allowed. In view of this finding of fact in another group concern, we are of the opinion that the A.O. should examine the nature of the transaction undertaken by the assessee without getting affected/persuaded by the observations of the SEBI and JPC, unless they are applicable to the facts in assessee case. It is also brought to our notice that there was special audit co ducted of assessee's transactions and the report was not placed on record. The A.O. is directed to consider the issues afresh in*

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the light of the facts on record and needless to say that the assessee should be given opportunity before deciding the issues. For this purposes the orders of the A.O. and CIT(A) on this issues are set aside and the assessment is restored back to the A.O. to consider it afresh after examining the facts and according to the law."

6.6. We noted that after the said directions of Tribunal, one particular issue was remitted to the AO for re-examination of the matter after giving opportunity to the assessee and decide the issue afresh and for this limited issue the order was set aside and assessment was restored back to AO. The AO giving effect to the order of the Tribunal passed an order dated 27.12.2010 and revised the total loss at Rs 16,82,20,357/-. Subsequently, the AO passed another order on 27.12.2011 purported to be an order u/s 143(3) r.w.s 254 of the Act reducing the loss to Rs 3,18,86,540/- withdrawing the relief which were earlier allowed vide order dated 27.12.2010 mentioning in that order *'relief allowed by ITAT'.* On these facts, Hon'ble High Court quashed the order passed by the AO dated 27.12.2011 by holding as under: -

"The Tribunal by its order dt. 17th December 2010 restored the proceedings back to the Assessing Officer. The Assessing Officer gave effect to the order of the Tribunal by passing an order dated 27 December 2010 which states that it has been made u/s 254. The Assessing Officer re-computed the loss at Rs 16.82 crores. In this view of the matter, once the AO had given effect to the order of the Tribunal, his successor in office had no jurisdiction to pass a fresh order dt 27 December 2011. The impugned order dt 27 December 2011 in fact reflects an awareness of the

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AO of the earlier order which was passed in order to give effect to the order of the Tribunal. The AO in the table which has been extracted earlier has in his computation commenced with a total income as computed in the order of the AO dt. 27 December 2010 (viz. a loss of Rs 16.82 crores). The AO has not purported to exercise the jurisdiction u/s 154. Once effect was given to the order of the Tribunal by the passing of an order u/s 254 on 27 December 2010, that order could have been modified or set aside only by following a procedure which is known to the Income-tax Act, 1961. What the AO has done by the impugned order is to conduct a substantive review of the earlier order dt 27 December 2010 which was clearly impermissible. Since the order dt 27 December 2011 is clearly without jurisdiction, we see no reason or justification to relegate the Petitioner to the remedy of an appeal. Since the order has been passed without jurisdiction, it is well-settled that recourse can be taken to the jurisdiction under Article 226 of the Constitution."

6.7. Similarly, we noted that this Tribunal in the case of Heena N Kanakia (Supra) following the decision of Bombay High Court quashed the second order passed by the AO u/s 143(3) r.w.s 254 of the Act dated 18.02.2014 as the AO has already passed the order dated 16.09.2013 giving effect to the Tribunal's order. When we compared the facts involved in the order of the jurisdictional High Court and that of the present case, we noted that the AO passed the first order dated 27.12.2010 giving relief to the assessee as per ITAT order passed u/s 254 of the Act on the issue for which the matter was restored to the AO for fresh examination but subsequently the AO passed another order dated 27.12.2011 purporting to be the order u/s 143(3) rws 254 of the

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Act withdrawing the relief on the issue which has been set aside and restored to the AO by ITAT for which relief was given vide order dated 27.12.2010 mentioning in that order *"relief allowed by ITAT".* We noted in that case also Tribunal has not set aside the assessment to be made de novo as contented by the Special Senior Counsel for the revenue. Therefore no question of making a fresh assessment u/s 143(3) read with section 254 of the Act and giving the effect to the order of Tribunal by passing another order. In the present case before us, we noted that the AO vide order dated 30.01.2015 passed the following order giving effect to this Tribunal order dated 29.10.2014:-

> *"2) The Hon'ble ITAT, H-Bench, Mumbai vide order dated 29-10-2014, in ITA no. 3699/Mum/2010 has passed the order. In this order, the assessee raised several grounds of appeal, which revolves around the facts that the books of accounts have been rejected by the Revenue authorities.*
>
> *2) Hon'ble ITAT in the said order restored/set aside the issue to the file of AO directed to verify/examine each entry in the books of accounts and to decide the issue afresh after examining the books of accounts of the assessee.*
>
> *4) Revise assessed income accordingly. Compute the tax demand as per income of Rs 6,84,08,000/- declared by the assessee as against the assessed income of Rs 2014,04,65,298/- determined vide assessment order passed u/s 144 dated 27.03.1995. Charge interest under section 234A, 234B and 234C of the Act. Issue revised Demand Notice u/s 156 and challan."*

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6.8. After going through the order of this Tribunal dated 29.10.2014 in the present case, we noted that this Tribunal has not set aside assessment and has also not directed the AO to make a fresh assessment but as observed by the AO himself in his order giving effect to the order of the Tribunal dated 30.01.15 restored/set aside the issue to the file of AO and directed the AO to verify /examine each entry in the books of accounts and to decide the issue afresh after examining the books of accounts of the assessee. Consequently, we noted, that the AO, passed the order dated 30.01.2015 determining the income of the assessee at Rs.6,84,08,000/- as declared by the assessee against the income of Rs.2014,04,65,298/- determined vide assessment order passed u/s 144 dated 27.3.1995. The AO without resorting to the provisions of section 154 of the Act, passed another order giving effect to the order of the Tribunal dated 15.3.2016 purporting to be an order u/s 254 r.w.s 143(3) of the Act assessing the total income u/s 254 rws 143(3) of the Act which order is under challenge before us. Sh. Denial even though vehemently argued and tried to justify the action of the AO and the impugned order passed by the AO to be a valid order, he also contended that the facts involved in this case are different as to the facts involved in the case of Classic Share & Stock Broking Services Ltd(Supra) but we do not agree with his contention. The AO while passing the first order giving effect to the order of this Tribunal dated 20.09.2014 clearly mentioned that ITAT restored/ set aside the issue to the file of the AO to verify/examine each entry in the books of account and to decide the issue afresh after examining the books of account of the assessee and ultimately revised the assessed income accordingly, if there was a mistake in the order of the AO dated 30.01.2015, the only course of action available to the AO was to take an action u/s 154 of the Act but not to initiate the proceedings for passing a second order i.e. the impugned order. The AO having once passed an order giving effect to

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the order of ITAT, becomes functus officio. The AO does not have any jurisdiction to pass second order giving effect to the order of the Tribunal. We do not find any such provision under the Act and even Sh. Denial could not bring to our knowledge or attention any such provision. It is an undisputed fact that the AO has not taken any action u/s 154 of the Act in respect of the first order dated 30.01.2015 giving effect to the order of Tribunal dated 29.10.2014. Even no contrary decision was brought to our knowledge which has taken a view that the AO has the power to pass a second order giving effect to ITAT order. We are bound to follow the decision of the jurisdictional High Court as well of the co-ordinate Bench. We therefore quash and set aside the assessment order dated 15.03.2016 passed u/s 144 rws 253 of the Act as invalid. Thus the ground no. 1 & 2 taken by the assessee are allowed.

7. The next issue raised vide ground Nos. 3 and 4 in this appeal of assessee is against the order of CIT(A) in regard to violation of principle of natural justice and not applied principles of best judgment assessment. For this assessee has raised following ground Nos. 3 and 4: -

> *"3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that principles of natural justice were not complied with during the course of assessment.*
>
> *The Appellant prays that the order of the AO be quashed as it is bad in law.*
>
> *4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A)has erred in not upholding that the principles of best judgment assessment have not been complied with and that the*

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> *total income determined by the AO is excessive compared to the assessment / income determined by all the government agencies.*
>
> *The appellant prays that the order of the AO be quashed as the AO did not follow principles of best judgment."*

7.1. At the time of hearing, the learned Counsel for the assessee has not argued these grounds but he stated that for these grounds arguments will be taken up at the time of argument of each of the issues on merits. Hence, these grounds have become infructuous and therefore, stands dismissed as such.

7.2. Although, we have quashed the order passed by the AO dated 15.3.2016 which is under appeal before us and we need not decide other grounds taken by both the parties. Since both the parties argued at length and exhaustively on other grounds on merits and for which we have given long hearing by having several sittings as mentioned above. We, therefore, in the interest of justice and fair play to both the parties decided to dispose of all the grounds taken by both the parties and vehemently contended and exhaustively argued before us in their respective appeals filed before us in the subsequent paragraphs.

8. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in rejecting the books of account. For this assessee has raised the following ground No. 5:-

> *"5. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in ignoring the specific directions of the Hon'ble ITAT and in rejecting the books of account of the Appellant.*

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The Appellant prays that as held in the ITAT order, the books of account be accepted and the income be assessed as per the books of account."

8.1. Briefly stated facts relating to this issue are that original assessment was completed by the AO under section 144 of the Act vide order dated 28.03.1995 as the assessee could not produce the books of accounts. Against this assessment framed under section 144 of the Act, appeal was preferred before CIT(A), who also confirmed the addition and upheld the action of the AO rejecting the books of account. The assessee carried the matter before Tribunal and books of account were produced before the Tribunal for the first time. The Tribunal set aside the matter to the file of the AO and directed him to consider the books of account. The CIT(A) in second round of litigation upheld the order of the AO rejecting the books of account. The Tribunal in ITA No 3699/Mum/2010 vide order dated 29.10.2014 has disapproved the reasoning given by the CIT(A) in his order dated 24.03.2010 and held that the books of account cannot be rejected on the grounds stated in the appellate order. The Tribunal set aside the matter to the file of the AO and directed him to consider each and every entry noted in the books of account. It was claimed that this issue of books of account had attained finality and it was for the department to make compliance with the order of the Tribunal. But the AO rejected the books of account and CIT(A) confirmed the action of the AO by observing in Para 22 and 23 as under: -

"22. I have gone through the submissions and contentions of the assessee as also the order of the AO in respect of the rejection of books of account. Looking to the facts of the case, one cannot disagree with the fact that no books of account were prepared

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till 2001 for financial year ended 31 March 1992. Hence, the observation made by my ld. predecessor that in most probability the books of account which are being produced by the Appellant were ***created after a long period of time, the source of which is either not known or considerably doubtful****, cannot be defined. Further, since the* ***books of account have not been audited by any chartered accountant****, I find that the books of account are not liable to be accepted for the purpose of determining the income of the Appellant. Also the* ***AO in his order has stated that the appellant has once again submitted only the photocopies of old voluminous documents without taking any efforts to explain entry-to-entry transactions****. Considering the lack of co-operation from the appellant's end, the AO's decision that the books of account are not reliable is justified. It is further relevant to mention that present year is covered by a search and seizure action and lot of incriminating material has been found and seized during the course of search. Further lot of material has been gathered from the third parties like Banks, Stock Exchange, various companies and custodian appointed under Special Courts Act. Evidently all this information is not part of the booksof the assessee and this is the reason that huge additions to the tune of ₹ 2300 crores has been made in the hands of the assessee on various accounts. In fact M/s Vyas and Vyas, the auditors appointed by the Hon'ble Special Court also did not find such books as* ***complete and reliable and observed that the books of accounts had so many inconsistencies and infirmities and therefore could***

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> ***not be relied upon. So whatever books were produced, do not reflect true and complete picture****. None the less* ***there are certain incomes like interest, dividend etc. earned by the assessee for which the books of accounts can be considered,*** *subject to cross verification from custodian records and bank statements. In fact the AO has accepted and adopted figures of such incomes in some case of the group in respect of dividend income, interest income etc.*
>
> *23. In view of the above facts and observations, I agree with the view taken by my predecessor and the AO time and again with respect to the rejection of books of accounts. Subject to the above, the decision of the AO in rejecting the books of account* ***being unreliable and non-verifiable*** *is upheld. Consequently, ground taken by the assessee is rejected."*

Aggrieved, now assessee came in appeal before tribunal.

8.2. Before us, the learned Counsel for the assessee relied on detailed submissions filed before AO, which are as under (in summarized manner): -

> *"a. Vide letter dated 21.01.2016 (page Nos. 397 and 398 of APB No. 1), the assessee furnished supporting documents such as vallan / settlement records of B.S.E. to the books of account evidencing transactions undertaken for and on behalf of clients.*
>
> *b. Vide letter dated 27.01.2016 (page No. 400 to 402of APB No. 1), the assessee furnished cheque*

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counter folios, contract notes and bills evidencing transactions undertaken for and on behalf of clients.

c. Vide letter dated 28.01.2016 (page Nos. 403 of APB No. 1), the assessee furnished copies of bank statements of several bank accounts etc to the Assessing Officer.

d. Vide letter dated 9.02.2016 (page Nos. 408 and 409 of APB No. 1), the assessee furnished further contract notes and bills evidencing transactions undertaken for and on behalf of clients.

e. Vide letter dated 16.02.2016 (page No. 411 of APB No. 1), the assessee furnished the complete books of account to the Assessing Officer.

f. Vide two letters dated 19.02.2016 (page Nos. 412 and 415 of APB No. 1), the assessee furnished contract notes and bills evidencing transactions undertaken for and on behalf of clients.

g. Vide two letters dated 29.02.2016 (page Nos. 418 to 419 and 421 of APB No. 1), the assessee furnished contract notes and copies of the accounts etc along with the copies of the vallan / settlement records of B.S.E. to the Assessing Officer.

h. Vide letter dated 21.03.2016 (page No. 424 of APB No. 1), the assessee requested the Assessing Officer to inform as to whether any further details were required."

8.3. In view of the above, the learned Counsel for the assessee stated that the books of account were maintained on computers but

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unfortunately, due to virus there was a breakdown and back up was created, because of which, the books of account were incomplete and hence, could not be produced. The learned Counsel for the assessee claimed that the complete books of account are easily retrievable and accordingly, was drawn on the basis of contemporary records as well as seized material. He explained that bulk of the transactions were undertaken by the assessee thorough brokerage firms on behalf of the family members and corporate entities promoted by them, all of whom have been assessed by the same AO. It was explained that these entities have placed copies of contract note, bills and other materials during the course of assessment/appellate proceedings, all of which, records were available with the AO to undertake verification but the same was not carried out by the AO. The learned Counsel stated that the revenue has collected the substantial materials from third parties but could not point out: (a). not a single defect has been found in the books. (b). not a single enquiry has been made in relation to any of the entry in the books. (c). No cross checking or matching has been done with the material in the possession of the Income Tax Department.

8.4. On the other hand, the learned special Counsel Shri Daniel supported the orders of the lower authorities for rejection of books of account.

8.5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the Tribunal has considered this issue in ITA No. 3699/Mum/2010 vide order dated 29.10.2014, wherein it was noted by the Tribunal that the books of account are not contemporaneous as the books of account are prepared much after closing of accounting year. This fact is also mentioned in the findings of Special Court, Jankiraman Committee, Joint Parliamentary Committee and also admitted by the assessee

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before us. The Tribunal has recorded the reasons in Para 9.2 to Para 16.2 citing various conditions for acceptance of the books of account or the assessment should have been completed after going through these books of account. The Tribunal finally in Para 16.3 to 18 has directed to confront the assessee in respect of any specific entry, which in his opinion is impossible and if it is found that the same is not tallying with the related party transactions then it is expected from the AO to confront to the assessee the relevant transaction with books of account and allow him opportunity to reconcile the difference. For this Tribunal observed asunder: -

> *"16.3. Having said all that, in our considered opinion and in our understanding of the facts, the books of accounts have been rejected on flimsy grounds without thoroughly examining each and every entry and without confronting specific discrepancy, if any, to the assessee. In our considered opinion, we have to restore this issue to the file of the AO. The AO is directed to verify/examine each entry in the books of accounts without getting prejudice by the fact that books of accounts are not contemporaneous. The AO is further directed to confront the assessee in respect of any specific entry which in his opinion is improbable, if it is found that certain balances are not tallying with related party transactions, then it is expected that the AO would confront those account balances to the assessee giving him an opportunity to reconcile the difference.*
>
> *17. Before parting, we have to reiterate that the books of account have been prepared after the date of search but from the seized documents should not have*

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been rejected without going through/examining each and every entry. The AO is therefore directed to examine each and every entry. The assessee is directed to explain each and every entry with demonstrative evidence. The AO is further directed to allow the assessee an opportunity to reconcile each and every account where in his opinion the balances do not tally with the third party balances. The assessee is directed to reconcile each and every such entry as brought to his notice. The AO is further directed to explain specifically which entries according to him appear to be improbable and allow the assessee an opportunity to explain the same. The assessee is directed to co operate with the Revenue in getting his accounts examined and furnish necessary details as and when called for. The assessee is also directed to give a complete reconciliation statement wherever differences in third party accounts are brought to his notice.

18. As we have restored the matter relating to the books of account to the file of the AO, we do not find it necessary to decide other grievances of the assessee as they are all inter related with the books of accounts. The AO is directed to decide the issue afresh after examining the books of accounts of the assessee."

8.6. From the above, we noted that the assessee could not produce the books of accounts before the AO during the original assessment proceedings and AO completed the assessment under section 144 of the Act. Again and again in various rounds of assessment, as the facts noted above, the AO framed assessment under section 144 of the Act

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by rejecting the books of account. Finally, the AO rejected the books of account and the relevant finding of the AO is noted in the Para 7.15 of this order, wherein the CIT(A) confirmed the action of AO in Para 22 and 23 by noting the factual position. We find that the assessee himself admitted that the assessee created these books of account after considerable lapse of period of time, based on the documents available after the search. The CIT(A) also confirmed the action of the AO by noting that the assessee has once again submitted only the photocopies of old voluminous documents without taking any effort to explain entry to entry transactions. Even the auditor M/s Vyas and Vyas and Hon'ble Special Court also did not find such books of account as complete and reliable and observed that the books of account had so many inconsistencies and infirmity and therefore could not relied upon. It was also noted that whatsoever books were produced do not reflect true and complete picture. The assessee before us also admitted that the books of account were maintained on computers but unfortunately, due to virus there was a breakdown and back up was created, because of which, the books of account were incomplete and hence, could not be produced. But he claimed that the complete books of account are easily retrievable and accordingly, was drawn on the basis of contemporary records as well as seized material. He explained that bulk of the transactions were undertaken by the assessee through brokerage firms on behalf of the family members and corporate entities promoted by them, all of whom have been assessed by the same AO. It was explained that these entities have placed copies of contract note, bills and others materials during the course of assessment/ appellate proceedings, all of which, records were available with the AO to undertake verification but the same was not carried out by the AO. In view of the above factual and available position, we are of the view that it is coming out that the books of account are not maintained in regular

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course of business and assessee itself admit that these are incomplete and does not possible to reconcile each and every entry. Hence, we are of the view that the AO has rightly rejected the books of account and which CIT(A) also confirmed. In view of the above position, we dismiss this ground of assessee's appeal.

9. The next common issue in these cross appeals is against the order of CIT(A) in regards to confirming the action of the AO in making addition of ₹ 1080,58,89,691/- on account of Money Market Oversold Position (MMOP) including addition of ₹ 103,80,05,313/- on account of 11.5% central loan 2011. The Revenue is in appeal against deletion of addition of ₹ 418.32 crores in relation to money market oversold position. For this assessee has raised the following grounds No 6 and 7: -

> *"6. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) I has erred in not allowing entire relief sought by the Appellant in relation to the Money Market oversold position.*
>
> *The Appellant prays that the AO be directed to delete the entire addition on account of Money Market oversold position.*
>
> *7. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A)I has erred in arbitrarily rejecting the evidences submitted by the Appellant in relation to Money Market oversold position in case of 11.5% Central Loan 2011.*
>
> *The Appellant prays that the AO be directed to accept the evidences produced by the Appellant and to delete the addition on account of Money Market oversold position."*

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The Revenue has raised the following ground Nos. 1:-

> *"1. Whether on the facts and in the circumstances of the case and in law, while disposing of ground of appeal nos. 6 & 8 of the assessee the CIT(A) was justified in directing the AO to recompute the oversold position of scrips wherein assessee failed to explain the details properly."*

9.1. Brief facts relating to this common issue are that during AY 1992-93 the assessee was acting as a broker and dealer in the securities market/ money market. M/s Harshad Mehta through Prop Harshad S Mehta was a registered member of Bombay Stock Exchange governed by Securities Contract Regulations Act (SCRA), 1956 and Rules, Regulations and Bye-laws framed by the Bombay Stock Exchange, in 1957. In terms of the Bye laws, he could undertake transactions both for brokerage as well as principal. Under SCRA it was obligatory for any person or entity to undertake transactions other than the spot delivery only through a registered member of the Stock Exchange and therefore for all transactions undertaken by the market participants like Banks, Financial Institutions, PSUs and Corporate it was obligatory to undertake their transactions only through the members of the Stock Exchange. Instruments that were dealt with in this market are Government Securities, Bonds of Public Sector Undertakings (PSU's) and Units of Unit Trust of India. As a statutory requirement, Banks and Financial Institutions were required to invest a certain percentage of their demand and time liabilities in Government securities as Statutory Liquidity Ratio (SLR). There was market for this business between Banks, PSU's and Corporate for lending and borrowing of monies for temporary periods. Lending and borrowing of funds used to be undertaken through the mechanism of Ready Forward

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(R/F) transactions. Under such transactions, funds were lent by showing purchase of securities by the lender and sale thereof by the borrower under the Ready Leg. On the same day, sale of such securities by the lender and purchase thereof by the borrower used to be shown to be undertaken on the pre-determined date and rate under the Forward Leg. Bulk of transactions was R/F transactions. In such transactions, the intention of the participants was never to hold securities as their investments for the period covered under the R/F transaction. Since under such R/F transactions, the same securities were intended to be sold back, normally the securities were not delivered in physical form. Instead an instrument was devised called Bankers Receipt (BRs) by all member Banks of Indian Banks Association (IBA). On the Ready Leg, borrowers used to issue BRs acknowledging receipt of funds from the lenders mentioning certain securities therein. On the Forward Leg, the same BRs (duly discharged) were returned by lenders to borrowers on repayment by them. IBA had framed rules regarding such BRs. The contents of a typical BR are as under:

> *"RECIVED from <<Name of the lender>> the sum of Rs. XXX/- (Rupees XXX only) being the cost of <<Name of the security>> of the face value of Rs. XXX/- at <<rate of each security>> with interest from <<date>> to date.*
>
> *The <<Name of the security>> face value of Rs. XXX/- are delivered herewith and <<Name of the security>> of the face value of Rs. XXX/- will be delivered when ready in exchange for this receipt duly discharged and in the mean time the same will be held on account of <<Name of the lender>>.*

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Please arrange to have the receipt exchanged for bonds within three months.

IBA recommended validity of such BRs as three months which is further extendable by mutual understanding between the parties to the BR. In fact, on many occasions fresh BRs used to be issued against the return of original BRs. There was a widely prevalent market practice wherein several banks were extending to the brokerage firms a facility called the routing facility where under the banks would issue BRs on behalf of the customers like M/s Harshad Mehta and receive monies there against and give credit for the same in the account of the customers by charging certain commissions.

Routing banks were also maintaining Securities General Ledger account on behalf of their customers with RBI."

9.2. The Assessing Officer vide original assessment order made addition on account of MMOP and also determined loss on trading of securities (page Nos. 12 to 47 of APB No. 1) on the basis of following: -

"a) Deal File for transactions up to 27.02.1992 forming part of the books of account of the Appellant seized from the computers during the course of search proceedings; and

b) Information gathered for transactions post 27.02.1992 from banks and financial institutions is captured in Annexure M-1 (page Nos. 433 to 444 of APB No. 2) by the Assessing Officer.

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The list of various transactions captured in Annexure M-1 is from Banks perspective. Accordingly, the transaction marked as P in the Annexure M-1 is a purchase from the Banks perspective, and the same transaction is a sale transaction from assessee's perspective. Likewise, transaction marked as S is a sale from Bank's view point and the same transaction is a purchase from assessee's view point The instances of the same have been demonstrated before Your Honour's during the course of the hearing, along with the evidences in the form of letters obtained from the Banks."

9.3. On the basis of information collected as stated above, the AO prepared a security-wise trading account in Annexure M-2 (page Nos. 445 to 448 of APB No. 2) containing the quantity and value of opening stock, closing stock and trading loss in money market securities. As per Annexure M-2, the AO has computed a loss of Rs. 14,77,09,288/- on account of trading in Money Market securities and an aggregate closing stock of Rs. 1220,21,93,241/- in respect of money market securities (page No 448 of the APB No. 2). According to the AO, in respect of certain securities, sale quantity during the year was in excess of the quantity available with the assessee(i.e. in excess of Opening Stock + Purchases), Hence, for such securities, the AO has computed the oversold position aggregating to Rs. 1681,79,84,180/- in Annexure M-2 (page No. 448 of the APB No. 2).However, taking into account the liabilities of M/s Harshad Mehta towards State Bank of India (SBI) and payments made for such liabilities after the year under consideration, the AO reduced an amount of Rs. 601,20,94489/- and added an amount of Rs. 1080,58,89,691/- (i.e. Rs. 1691.79 crores minus ₹ 601.21 crores) as money market oversold position to the total income of the assessee.

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9.4. The AO, during the third round of assessment proceedings, vide her order dated 15.03.2016 considered the income of Rs. 1080.58 crores on account of MMOP. Subsequently, in appeal filed before the CIT(A) on the said matter, the following reliefs and directions have been given to the AO vide his order dated 28.06.2017 -

> *"a. In Para No. 24.16 on page Nos. 44 to 48 of the impugned order dated 28.06.2017, the CIT(A) has tabulated his findings in relation to each of the securities and directed the AO to re-verify and re-compute the oversold position after rectifying the computational errors and inconsistencies pointed out by the assessee. Further, the AO was directed to re-compute the consequential money market trading profit or loss for the said securities.*
>
> *b. In para No. 24.22 on page No. 75 of the impugned order dated 28.06.2017, the CIT(A) has held that the assessee has established a clear nexus between the transactions covered under various decrees and the transactions featuring in the computation of oversold position i.e. in Annexure M-1 and Annexure M-2. Accordingly, the CIT(A) has directed the AO to re-compute the money market oversold position in light of the directions of the Hon'ble Special Court order dated 29.09.2007 (page No 580 of APB No. 2) and Hon'ble Supreme Court order dated 03.12.2008 (page No. 609 of MB No. 2).*
>
> *C. In para No. 24.24 on page No 76 of the impugned order dated 28.06.2017 the CIT(A) has placed reliance on the Hon'ble Special Court's order dated 29.09.2007 which is subsequently upheld by the Hon'ble Supreme*

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Court vide its order dated 3.12.2008 in (2009) 2 SCC 451 (page No. 611 of MB No. 2) wherein the manner of computation of oversold position has been specifically decided. The Assessing Officer has been directed to rework oversold position / trading and profits & loss after allowing the purchase cost i.e. only the difference in sale price and purchase price is to be considered and accordingly only the profit or loss is to be added as the income of the assessee."

The balance position in oversold securities surviving after order giving effect dated 02.05.2018 (page No. 474 to 476 of APR No. 2) to the CIT(A)'s order dated 28.06.2017 is Rs. 223,83,58,173/- and is tabulated on page No. 473 of APB No. 2.

9.5. Before us, the learned Counsel for the assessee Shri. Vijay Mehta made arguments and explained the money market transactions and according to him these were actually transactions for borrowing and lending of funds. Therefore, there cannot be any oversold position in money market securities. Accordingly, it is submitted that the addition made on account of MMOP is conceptually incorrect based on an incorrect understanding that in all such transactions deliveries were made by the assessee. The AO has arrived at the conclusion that in money market activities there was an oversold position i.e. negative stock of securities and made an addition of Rs. 1080.58 crores. The said contention of the AO that all the securities have been delivered by the assessee is contrary to the findings of various investigating agencies i.e. Janakiraman Committee, Joint Parliamentary Committee and Hon'ble Special Court. In a nut shell, if the AO's version that deliveries were made in all such transactions was to be accepted then there is no alleged scam at all.

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9.6. To substantiate the above explanation, the learned Counsel firstly explained that the AO presumed that all the securities in money market position are delivered by incorrectly interpreting the statement of Shri Pankaj Shah. During re-examination and cross-examination undertaken on 14.01.2010 (statements are enclosed at page Nos 531 to 541 of DPB No 3) Shri Pankaj Shah stated that his statement of 1992 was in respect of the practice that was followed by M/s Harshad Mehta in respect of client's stock in custody of M/s Harshad S Mehta which is related to completed accounts of 1989-90. Further, he has also clarified that he was not aware about the status of delivery with the clients since few relationships were maintained by assessee himself.

9.7. Secondly, the AO himself vide the original assessment order dated 27.03.1995 granted relief to the extent of Rs. 601,20,94,489/- on account of the assessee’s liabilities towards SRL for non-delivery of transaction as per Miscellaneous Petition No. 14 of 1995. The said liability of Rs. 601.20 crores have been deducted from the oversold position computed in relation to 11.5% Central Loan-2010 and 11.5% Central Loan-2007. From the said relief granted by the AO, it is evident that while preparing Annexure M-1 and M-2 to compute MMOP the transactions wherein no delivery is made have been considered. Such other transactions have resulted in decrees against the assessee. In support of his contention, Ld Counsel relied on Hon'ble Special Court, wherein vide its order dated 29.09.2007 (page Nos. 563 to 594 of the APB No. 2) has also held that in view of the decrees passed by the court, at least, the amount of principal is liable to be deducted from the taxable income of the notified party. Subsequently, the Hon’ble Supreme Court in para Nos. 38 and 39 of their order in case of DOT vs. SBI [(2009) 2 SCC 4511 (page Nos. 595 to 612 of the APB No. 2) has also given a similar finding. He explained that assessee was never

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furnished with the itemized break-up of all the transactions considered by AO before passing of the original assessment order dated 27.03.1995 under each head of securities resulting in addition of Rs 1080,58.89,691/- on account of MMOP. However, only after 15 years, during the course of the second round of appellate proceedings before the CIT(A) such itemized details were made available for the first time. He pointed out several errors and inconsistencies in the itemized break-up provided. Additionally, the assessee was also able to show that MMOP included decretal transactions which constituted liability of M/s. Harshad Mehta. However, all the contentions of the assessee were rejected by the then CIT(A) (during second round of proceedings) vide order dated 24.03.2010. Subsequently, the assessee again contended (in respect of the inconsistencies in preparation of Annexure M-1 and M-2 and inclusion of decretal transactions in Annexure M-1 and M-2) before the CIT(A) during the third round of litigation.

9.8. Ld. Counsel invited our attention to para No. 7 of the impugned order dated 28.06.2017 wherein the CIT(A) has mentioned as follows:

> *"7. Looking to the importance of matter and complexity of issues involved there in, both the AO and the Addl. CIT Range-4 were requested to attend the hearing vide this office letter dated 021.01.17 Therefore the hearing held on 10 January 2017 was attended by the AO. Prior to that, the Addl. CIT range 4 was also present on 03/01/2017. In the said hearing, the appellant was directed to forward copies of the paper books filed to the AO for his consideration, verification and remand report. It is gathered that the appellant filed copies of the paper books vide letter dated 11 January 2017 Subsequently, the appellant submitted copy of the letter dated 6 February 2017 to the*

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Assessing Officer to follow up on the matter and confirm if any additional clarifications are required. Thereafter a letter dated 02/05/2017 was issued to the AD with a view to clarify the issues relating to addition of Rs. 1080 cr as money market securities oversold position and Rs. 290.05 cr as unexplained stock of securities. However, no report was submitted by the Assessing Officer, despite reminders on this issue and despite matter was taken up with superior officers. Later the books of accounts submitted by the assessee were forwarded to the AD vide this office letter dated 3110512017 in view of Hon'ble Supreme Court order dated 12/04/2017. However, the AD has not submitted any report on the grounds of appeal and the submissions made by the Appellant. Accordingly, I proceed to decide this appeal on the basis of material available on record and after considering the submissions of the appellant."

9.9. Further, attention was invited to para Nos. 24.22 on page No. 75 of the impugned order dated 28.06.2017 providing specific finding of the CIT(A) in relation to inclusion of decretal transactions in Annexure M-1 and M-2. Relevant extract is as under: -

"24.22 I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO, I find that the appellant has submitted voluminous details supporting his claim that there was nexus between the transactions covered under various decrees discussed above and the transactions featuring in the computation of oversold position i.e. Annexure Wand Annexure Ml. All these details were forwarded to the A0 during the course of

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the appellate proceedings and his comments were sought. However, no report in this regard was submitted. I find that if one goes through the aforementioned Miscellaneous Petitions in, detail, a clear nexus is established with respect to the transactions demonstrated by the appellant as discussed above. The same has also been held by the Hon'ble Special Court in its order dated 29.0.9.2007 and subsequently uphold by the Hon'ble Supreme court in the case of CIT v. State Sank of India and Ors. (2009) 2 Supreme Court Cases 451."

9.10. In view of the above, Ld Counsel argued that the Income-tax Department was given ample opportunity to look into the submissions made by the assessee, however, the Department has not been able to controvert the submissions and the evidences submitted by the assessee during the course of the appellate proceedings and therefore the CIT(A) himself carried out the verification and passed the impugned order dated 28.06.17. Ld Counsel referred para No. 24.22 on page No. 75 of the impugned order dated 28.06.2017 passed by CIT(A) and argued that the transactions captured in Annexure M-1 and M-2 include decretal transactions i.e. transactions wherein the delivery was not made by the assessee to the banks/institutions after receipt of amounts from them and therefore decrees have been awarded in the favour of the Banks/Financial Institutions in that regard. The CIT(A) in the impugned order has also given his findings in respect of each and every security wherein the assessee has pointed out inconsistencies and errors made by the AO in preparing Annexure M-1 and M-2 (para No. 24.16 on page Nos. 43 to 48 of the impugned order dated 28.06.2017).

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9.11. The learned Counsel further explained that the fact has also been verified by the AO at the time of passing an order giving effect dated 02.05.2018. However, even after having passed an order giving effect, AO has filed a letter dated 30.05.2018 before the Bench with regard to limited issue of MMOP specifically in relation to additions with respect to decretal transactions (amounting to Rs. 438,43,55,195/-) and inconsistencies in Annexure M-2 (amounting to Rs. 418,31,76,323/-). In the aforesaid letter the Department's findings stating that no relief is required to be given to the assessee in relation to various transactions tabulated. In relation to the items tabulated under Decree transactions on account of MMOP on page Nos. 2 to 8 of the letter dated 30.05.2018 the assessee submitted as under: -

> *"The Assessing Officer has himself agreed to the contention of the Appellant by stating that the…. sale transaction never got completed because only payment was received by HSM but no delivery of securities was made. The Appellant has filed paper books No. 6 & 7 containing certain Petitions and relevant extract of the Report of Janakiraman Committee demonstrating to the satisfaction of the Hon'ble Bench how each of the transactions forming part of the decrees as mentioned in the table have indeed been considered by the Assessing Officer in Annexure MI & M-2 for computing MMOP. The ld. DR was neither able to controvert or negate the Appellant's submissions nor able to demonstrate his contention that the transactions mentioned in the decrees are different from the transactions considered by the Assessing Officer in Annexure M-1 & M-2 for computing money market oversold position."*

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9.12. As regards to the contention of Ld CIT-DR that the decrees passed by the Hon'ble Special Court on the basis of which relief has been granted to the assessee by the CIT(A) have been challenged by the assessee. In relation to the same, Ld Counsel stated the fact that no such appeal is filed in relation to the decree passed in case of Miscellaneous Petition No. 52 of 1993. Hence, the contention of the Ld. CIT-DR in relation to relief provided in respect of the M.P. 52 of 1993 is incorrect. In respect to other decrees, it was stated that against the said decrees, Civil Appeals have been filed before the Hon'ble Supreme Court only because they were passed ex parte i.e. denying the assessee right to fair representation and in violation of principles of natural justice. In this context, he stated that the said decrees were obtained by the Banks in collusion with the Custodian and by misrepresentation. It may be noted that the Department is also one of the Respondent party to the said Civil Appeals. In fact, the AO has filed affidavits supporting the case of the assessee being aware that the Civil Appeal is not filed for the fact of the non-delivery of securities. In relation to the transactions tabulated for 'Inconsistencies in Annexure M-2 on account of MMOP' on page Nos. 9 to 12 of the letter dated 30.05.2018, the assessee submitted as under: -

> *"The Assessing Officer has simply reiterated the submissions made during the second round of litigation before the ld. CIT(A) whose order dated 24.03.2010 has already been set-aside by the Hon'ble Tribunal vide its order dated 29.10.2014. The Assessing Officer has not been able to controvert the any of the specific findings of the ld. CIT(A) in the impugned order dated 28.06 2017 (para No 24.16 on page Nos. 43 to 48) which clearly prove that the*

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MMOP would not sustain if such inconsistencies and errors are rectified."

9.13. In view of the above, it was urged that the additions amounting to ₹ 438,43,55,195/- with respect to transactions forming part of several decrees be deleted and also delete additions amounting to Rs. 418,31,76,323/- due to inconsistencies in Annexure M-1 & M-2.

9.14. The learned Counsel, in view of the above, argued that instead of taking note of all the above, the AO has presumed that every transaction undertaken by Harshad Mehta, as found in his deal file seized from his computers were all completed transactions and that in each and every case, the securities were delivered by his firm and wherever there was negative balance in any security, the entire sale consideration constituted his income. The said presumptions were made completely contrary to the findings given by the Reports of Janakiraman Committee, the Joint Parliamentary Committee Reports, several orders of Hon'ble Special Court constituted under the Torts Act, 1992, several FIRs filed by CBI as well as claims lodged by the Banks on M/s. Harshad Mehta alleging that they were not delivered securities purchased by them from M/s. Harshad Mehta even though they had made payments for the same.

9.15. As regards to the CIT-DR placing reliance on the provisions of section 292C of the Act to assert that the presumption of the Department that the transactions captured in Annexure M-1and M-2 are only those wherein delivery has been made. Ld Counsel for the assessee explained that presumptions arising under section 292C of the Act which uses the words 'it may be presumed' are rebuttable and not conclusive. In respect of the same, reliance was placed on the decision of the Hon'ble Tribunal in the case of ACIT vs. Buldana Urban Co-

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operative Credit Society Ltd. [2013] 153 TTJ 728 (Nagpur - Trib.) and on the decision of the Hon'ble Supreme Court in the case of P. R. Metrani vs. CIT [2006] 287 ITR 209 (SC).

9.16. Secondly, the Id. Counsel explained that the securities in the money market are interchangeable as the money market transactions of purchase and sale of securities were in substance largely financial transactions of borrowing and lending. Hence, in case, at the time of execution of the transaction there was a shortage in the security fixed, the transaction would still be executed and funds would be transferred on the basis of another security. In support of the same, reliance is placed on Tribunal order in assessee's own case in ITA No. 8025/M/1994 dated 25.09.2018 (page Nos. 559 to 561 of APB No. 2) for AY 1990-91 wherein an addition on account of oversold securities was deleted based on similar facts and circumstances. The relevant paras of the said order are reproduced below:-

> *"102 The fact that the shortage in one security may be represented by the excess in other securities has been accepted by the Assessing Officer himself in the order of the assessment It is on this basis that the Assessing Officer has worked out the peak oversold position by taking all the securities together Once, this principle is accepted, there is no reason as to why the securities worth Ps. 107 crores which were sold by the assessee without stock of securities in books of account should not be considered while working out the peak oversold position (net).*
>
> *103. There are certain other circumstances, which indicate that there was a practice of sale of securities without existence of physical securities. In fact this was*

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the main thrust of the proceedings before the Special Court in which, the assessee was prosecuted and ultimately even found guilty In fact the banks, which had purchased securities from the assessee had made claim before the Special Court against the assessee on the ground that monies are payable without delivery of securities. The charge against the assessee was that in the garb of sale of securities, he had siphoned funds from various banks and used the same in the stock market. Factum of non -delivery of securities is also confirmed by the outside agencies like Report of Joint Parliamentary Committee, lank, Raman committee, findings of the Special Court etc.

104 The other circumstances are that there was no evidence of delivery found either in course of search or on inquiry by the Assessing Officer in course of assessment proceedings. In fact the Assessing Officer even in the order of the assessment has stated that because there was sale of securities and realization of money by the assessee there ought to have been delivery of securities.

105. The presumption of the Assessing Officer in the present assessment year regarding delivery of securities is contrary to Assessing Officer's stand in A. Y 1991-92 In A.Y 1991-92 the Assessing Officer himself has given set-off for non-delivery transaction. The following were the observations of the Assessing Officer on this aspect-

> *During the course of appellate proceedings for the A.Y. 1990-91, in his case, the assessee's*

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representative argued that BRs (Bankers receipts) were issued in case of oversold position by the routing bank but till date no details of any BPs which were outstanding on the last day of the previous year and were discharged later on have been furnished. No evidence also has been provided by the assessee in support of his contention. However, as discussed in para No. 82 above, independent inquiries were conducted from the banks. It revealed that the UCO bank, Hamam Street Branch, Bombay has issued two BPs. to MIs. Power Finance Corporation of these transactions was Rs. 1,07,01,43,070/- as mentioned in Annexure-J. Hence, oversold position of securities to the extent of Rs.107 01,43,0701- is treated as explained."

106. Apart from the all above circumstances, another important circumstance is fact that no cash transactions are possible in money market nor there were cash purchases found in course of search by the Income Tax Department as well as by CBI Taking into consideration all the above circumstances, we are of the view that addition of Rs. 119.20 crores sustained by CIT(A) is not correct on both on facts and in law. For the reasons stated above, we direct that the addition sustained be deleted Ground No 21 of the assessee is allowed."

9.17. In view of the above, the learned Counsel stated that the AO ought to have granted set-off of securities held in oversold position amounting to Rs.1080.58 crores against closing stock of other securities

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of Rs. 1220.21 crores as these could be used interchangeably by the assessee. Here it is pertinent to note that as per the Annexure M-2 titled by the revenue in page No 26 of Departments paper book (DPB) No 1, the value of closing stock has been considered as Rs 1069.14 crores. However, the same is incorrect as it is noted that in the Annexure M-2 provided by the revenue, the opening stock of the certain securities has not been considered. In absence of any purchase and sale transactions the opening stock of the relevant security is considered as its closing stock. This is evident from the fact that in the assessment order of the subsequent year i.e. AY 1993-94 dated 29.03.1996, the value of opening stock has been considered at Rs. 1220.21 crores.

9.18. The Ld. Counsel rejected the contention of ld. CIT-DR that the oversold position being the unexplained stock cannot be set off against closing stock being the explained stock and the aforementioned order of Tribunal for AY 1990-91 is on different facts and the said case relief has been obtained on different grounds. The ld. Counsel stated that the contention of the Ld. CIT-DR is erroneous. In fact, in AY 1990-91 the AO himself granted set-off of securities held in oversold position against the closing stock and accordingly taxed only the peak oversold position (page Nos. 547 - para No. 87, page No. 559- para No. 102 of APB No. 2). It was explained that the facts in the case of assessee for AY 1990-91 are exactly similar to the given case of the assessee.

9.19. Further, the ld. Counsel for the assessee explained that in present case the presumption in relation to validity of seized documents/deal file is rebuttable as under: -

> *"a) mistakes pointed out in Annexure M-1 and M-2, there are various inconsistencies observed in the Annexure M-1 and M-2 are tabulated by the C!T(A) in*

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Para No. 24.16 on page Nos. 44 to 48 of the impugned order dated 28.06.2018.

b) consistent stand taken by assessee regarding the inaccuracy of seized material during the course of the original assessment proceedings the assessee submitted that the deal file contained operational data and was subject to correction, addition and change (page No. 14 of APB No. 1).

c) Several decrees awarded by the Hon'ble Special Court against the assessee and in favour of the Banks/Financial Institutions establishing absence of delivery in respect of transactions in money market

d) Tribunal's order for AY 1990-91 (page nos. 539 to 561 of APB No, 2)

e) If the presumption of the AO in relation to delivery of securities is upheld, it leads to absurd consequences since the so called 'securities' mentioned in Annexure M-1 and M-2 are not actual securities. For instance, Call Money is not a security in which one can undertake purchase and sale. Under 'Call' the banks undertake to borrow or lend money. Likewise, CC Asset and ATBF (Asset To Be Fixed) are also not securities but temporary accounts under which the transactions are parked in cases particulars of the securities are not given by the clients. Thus, additions made by AO in respect of such non-existent securities are false."

9.20. In any case, even the presumption of delivery is made under section 292C of the Act, the said presumption does not follow from the

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facts disclosed by the deal file. The deal file does not record the factum of delivery but only the intended date of delivery is recorded. Further, CIT(A) has also given his findings in para Nos. 24.4 and 24.5 on page Nos. 19 and 20 of the impugned order dated 28.06.2017 that the deal file (i.e. seized document) is not free from errors. In view of the above, Ld Counsel argued that revenue has not controverted any of the arguments made by the assessee nor has they brought anything contrary on record before the Bench. The Department has argued that during the time of the original assessment proceedings in 1995, while the inspection was provided, the data was converted into soft copy with the mutual consent of the assessee for corrections/modifications and after making appropriate corrections/changes as suggested final figures were arrived at which formed the part of the assessment order. In regard to the same, Ld Counsel drew our attention to original assessment order dated 27.3.1995 (page Nos. 9 and 10 of APB No. 1) wherein it is clearly mentioned that the assessee was provided the data in the form of computer print outs after all the information that was collected and fed into the computer and thereafter examined and analysed. But Ld Counsel stated the fact that no consent was obtained from him and assessee has all along been asking for itemized breakup on the basis of which the additions have been made. Accordingly, it was urged that the entire addition on account of money market oversold position amounting to Rs. 1080,58,89,691/- be deleted.

9.21. On the other hand, the learned CIT Departmental Representative, Shri Sandeep Kumar argued for the Revenue. He referred to the Ground No. 6 of assessee and Ground No. 1 of Revenue's appeal in relation to Money Market Oversold Position. After discussing the various aspects of the issue such as delivery of securities, difference in transactions as shown in Annexure M-1

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compared with the letter of ANZ Grindlays Bank in respect of two transactions dated 06.03.1992 and 21.03.1992, giving the credit of Closing Stock before arriving at Oversold Position, the status of nomenclatures of 'True' and 'False' against each entry, reliance on the order dated 03.12.2008 of Hon'ble Supreme Court, the CIT(A) vide Para 24.12 to 24.16, drew his conclusion that there are some inconsistencies while preparing Annexure M-2 which has resulted incorrect Oversold Position in the Money Market transactions. Ld CIT-DR stated that the CIT(A) gave his remarks in respect of some transactions as mentioned in Para 24.16 and concluded in next Para by giving directions to AO to verify the evidence submitted by assessee in the light of the orders dated 29.09.2007 and 03.12.2008 of Hon'ble Special Court and Hon'ble Supreme Court respectively and then re-compute the position of stock and also the addition of Oversold Position on account of securities discussed by him. He also directed the AO to rework the money market trading, profit/loss for the said securities in respect of the above transactions.

9.22. After mentioning the aforesaid facts and conclusion drawn by CIT(A) in the present appellate order, it was argued by CIT-DR that the CIT(A) has failed to understand the issue involved in the aforesaid orders of Hon'ble Special Court and Hon'ble Supreme Court on the basis of which, he has provided relief to the assessee in respect of aforesaid transactions. In both the orders, the basic issue was whether there is any nexus between the transactions for which decrees have been awarded to banks and the transactions on the basis of which Oversold Position as per Annexure M-2 has been arrived. Thus, both the orders were limited to the transactions of decrees and the transactions of Annexure M-2 and thus, they have nothing to do with other transactions as mentioned by CIT(A). Both the orders have

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nowhere mentioned or indicated anything about the transactions as discussed by CIT(A) vide Para 24.15 to 24.16 to which he has directed the AO to consider in the light of aforesaid Court Orders. Thus, the basic premise of CIT(A) is misplaced and based on wrong appreciation of facts and incorrect interpretation of judgments of Hon'ble Courts while deciding the issue and giving relief to assessee. It was also pointed out by Ld CIT-DR that as mentioned above in earlier arguments, while giving the inspection of documents/papers seized during the search proceedings and information collected from various agencies/parties, the data was converted into soft form during the year 1995 with the mutual consent and this data was made available to the ARs of assessee for corrections/modifications and after making appropriate corrections/modifications as suggested, final figures were arrived which formed the part of assessment order. Now, the assessee is challenging the same data by referring the physical records selectively and randomly which contradicts his own stand. At one hand, the data in soft form was finalized with his consent only and the same data is continuing till date as it was without any change/modification. On the other hand, he is challenging the same data by questioning its authenticity. Such contradictory stand taken by assessee cannot be accepted.

9.23. The Ld CIT-DR further argued that while giving his remarks and deciding the issue in favour of assessee, the CIT(A) has directed the AO to re-verify the facts in respect of each entry and re-compute the Oversold Position of securities. Ld CIT-DR argued that CIT (A) exceeded his jurisdiction in directing the AO to decide the issue on merit after verification of records, which amounts to setting aside the assessment. He should himself have decided the issues on merit in respect of each transaction to give directions to AO to either delete it or confirm it. On the contrary, he has directed the AO to re-verify the facts

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in the light of decision of Hon'ble Special Court and Hon'ble Supreme Court and decide the issue. Thus, on both the counts, it was argued by the CIT-DR that the relief provided by CIT(A) is unjustified and, therefore, the Oversold Position computed by AO deserves to be sustained. Ld CIT-DR stated the fact that while deciding the issue, CIT(A) mentioned the findings of his predecessor wherein similar objections were raised by assessee in respect of identical transactions and CIT(A) has discussed these entries in his order dated 24.03.2010 from pages no. 84 to 89 which may be considered while deciding the issue. He further submitted a chart on 30.05.2018 in the Bench distinguishing the facts of each transaction and establishing that AO has correctly understood the nature of transactions before including these in Annexure M-2 of assessment order. A chart has been submitted for deciding the issue.

9.24. As regards to the Oversold Position of securities as per Annexure M-2 CIT(A) has discussed that as per the chart given by assessee there are many transactions featuring in AnnexureM-1/M-2 which have clear nexus with the transactions of various decrees awarded to Banks against the assessee and therefore, the amounts of those transactions have to be excluded from Oversold Position of securities. He stated that CIT(A) has reproduced the chart given by assessee in his order and concluded that a clear nexus was established with respect to the transactions demonstrated by him as per the chart and therefore, to be reduced from the addition in view of the orders dated 29.09.2007 of Hon'ble Special Court which was subsequently upheld by Hon'ble Supreme Court vide their order dated 03.12.2008. He further stated that in view of these orders, only the difference in sale price and purchase price should be considered for computing the Profit/Loss or Oversold Position meaning thereby that purchases should

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be allowed to assessee against the Oversold Securities. The CIT(A) has reproduced the findings of his predecessor on the issue before arriving at his conclusion and giving relief of Rs. 438.44 crores to assessee.

9.25. The learned CIT-DR argued that the facts discussed and conclusion drawn by CIT(A) on the aforesaid issue are misplaced and understood wrongly. Firstly, the CIT(A) has stated that the order dated 29.09.2007 of Hon'ble Special Court has been upheld by Hon'ble Supreme Court vide their order dated 03.08.2008,which is patently wrong. Hon'ble Special Court, in their order, without going in to the specific transactions, has decided that the decrees have been awarded to respective banks and have become final, therefore, the decretal amounts aggregating to Rs. 1688 crore should be reduced from the income of assessee as assessed by AO. Hon'ble Court didn't try to correlate or establish the nexus between alleged transactions of decrees with the transactions of oversold securities, rather, observed that the decretal amounts do not belong to assessee but belonged to the banks, therefore, same should be reduced from the income of assessee. On the contrary, Hon'ble Supreme Court has decided the issue in their concluding paragraphs with the observations that if there is nexus between the amounts for which decrees have been obtained by banks and the amounts of transactions of Oversold securities, then, on account of duplication, those amounts should to be excluded from the Oversold Position and if there is no nexus between these two sets of transactions, no amount was to be reduced. Hon'ble Supreme Court has directed the Hon'ble Special Court to decide this issue afresh in view of the facts brought on record. Thus, the decision of Hon'ble Special Court was not accepted or upheld by Hon'ble Supreme Court rather appropriate directions were given to verify the facts and establish the nexus before deciding the issue. He narrated that the assessee has

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taken support of the transactions contained in the decrees to correlate the transactions of Annexure M-2, but he himself has challenged all the decrees by filing the Misc. Petitions as under:-

S. N	MP No.	Date	Reference made in MP
1.	MP No. 5 of 2009 Mrs Jyoti Mehta Vs. Standard Chartered bank & Others	12.06.2009	Order dated 25.07.2003 in Suit No. 28 of 1995
2.	MP No. 65 of 2009	11.06.2009	Order dated 14.08.2003 in MP 14 of 1995
3.	MP No. 7 of 2009 Mrs Jyoti Mehta vs. SBI Capital market & Others	12.06.2009	Order dated 25.06.2003 in MP No. 61 of 1992
4.	MP No. 8 of 2009 Mrs. Jyoti Mehta Vs. State Bank of India & Others	11.06.2009	Order dated 22.04.2003 in MP No. 63 of 1992
5.	MP No. 9 of 2009 Mrs. Jyoti Mehta Vs. State Bank of India & Others	11.06.2009	Order dated 06.09.2002 in Suit No. 88 of 1998
6.	MP No. 10 of 2009 Mrs. Jyoti Mehta Vs. State Bank of India & Others	11.06.2009	Order dated 03.03.2003 in Suit No. 41 of 1995

Thus, on one hand, assessee himself has challenged the aforesaid decrees in the Court and on the other hand he is taking basis of the same decrees for correlation of transactions which is clearly a contradictory stand, which may be taken into consideration while deciding the issue.

9.26. He, on factual aspects stated that assessee on 01.06.2018 filed Paper Book No. 06 containing the decree order against the Suit No. 28 of 1995 and mentioned that the transactions of the decree/petition are same which have been included in Annexure M-2 for computing the Oversold Position. Replying to the claim of the assessee, attention was drawn of the Bench about the misleading statements made by assessee. It was stated that in the decree order, not a single

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transaction as claimed by assessee, has been mentioned and the decree has been awarded on the sole ground that money was siphoned off by assessee on account of 9 RBI cheques issued by bank. These 9 cheques were issued by bank in favour of Harshad S. Mehta. Here also, there is no mention of any transaction in respect of securities mentioned by assessee. He stated that in respect of another decree awarded against the Suit No. 63 filed by SBI/NHB also, Hon'ble Special Court has concluded that the money was siphoned off by Harshad S. Mehta from the bank. In this order also, none of the transactions in respect of securities as mentioned by assessee find place but the transactions in the aforesaid two decrees/petitions as claimed by assessee are specifically mentioned in Janakiraman Committee report wherein it has been held that no delivery was made against the sale transactions by HSM and money was merely siphoned off by him from the bank. Similarly, decrees awarded against Suit No. 52 and Suit No. 61 in the cases of State Bank of Saurashtra and SBI Caps wherein the specific transactions have been mentioned but these transactions also find place in the second report of Janakiraman Committee wherein it was found that no delivery of security has been made against these transactions and only the money was siphoned off by HSM. The relevant pages of the report of Janakiraman Committee are enclosed in Assessee Paper Book No. 3 from page nos. 542 to 561. Accordingly, it was mentioned that the data of Annexure M-2 was prepared with the consent of assessee only and now he is objecting to the same data by challenging its authenticity. Further, a chart has been submitted on 30.05.2018 by distinguishing the facts of each transaction and establishing that the transactions of decrees are altogether different from the transactions of Annexure M-2, therefore, not included while computing the Oversold Position of securities. He also referred to the

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order of CIT(A) dated 24.03.2010 which starts from page no. 71 and goes up to page no. 84, for consideration before deciding the issue.

9.27. As regards to the difference in sale price and purchase price should be considered as profit from such transactions, Ld CIT-DR argued that the Trading Accounts in respect of each security as per Annexure M-2 have been prepared by taking difference of sale price and purchase price only. It was explained that while working out the transactions of journal entries derived from Deal Files that only the completed transactions marked as 'True' and 'RT' have been taken into account to prepare the Trading Account and accordingly, Profit/Loss, Closing Stock and Oversold Position have been computed. In this regard, the workings of such transactions in respect of 09 securities were also provided which form part of Revenue's Paper Book No.2 (from page no. 347 to page no. 356). It was also mentioned that CIT(A), in his order dated 24.03.2010 vide page no. 91 & 92 has discussed this issue and gave example of transactions of a security named Treasury Bills, wherein total 35 completed transactions comprising 17 transactions of purchases and 18 transactions of sales have been identified and difference of both the transactions amounting to Rs.181,33,83,515/- was taken to the Oversold Position. This working of AO is in confirmation with the decision of Hon'ble Supreme Court as per their order dated 08.12.2008 also wherein it was observed that on account of Oversold Securities if the delivery has been given by Harshad S. Mehta and the transaction is completed, only the difference between payable and receivable will be taken and not the gross amount. Thus, while computing the Oversold Position of securities, only the difference between sales and purchases has been taken into account by AO.

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9.28. The Ld. CIT-DR drew our attention to several other issues were raised by assessee during the proceedings which are summarized as under: -

> *"i. Delivery has not been executed in respect of all the transactions included in Annexure M-2.*
>
> *ii. Set off of Closing Stock should be given against the Oversold Position of securities and only the peak balance should be taken for the purpose of making additions.*
>
> *iii. Negative opening balances in respect of two securities have wrongly been taken for the purpose of making additions during the year.*
>
> *iv. ATBF and Call money are not securities, therefore, Oversold Position against these has wrongly been worked out.*
>
> *v. Securities are interchangeable and set off of negative/positive stock should be given with each other and only net amount should be added to the income."*

9.29. Further, Ld. CIT-DR argued as regards to delivery of securities in respect of 'completed transactions' (as observed by Hon'ble Supreme Court), the statements of assessee Harshad S. Mehta and his close confidant Mr. Pankaj Shah were read out wherein they had admitted that against most of the money market transactions, delivery of securities had been made and there was exchange of cheques with money market instruments. It was further mentioned that in the Deal Files for both the periods i.e. 01.04.1991 to 27.02.1992 and 28.02.1992 to 31.03.1992, against each completed transaction on Principal to

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Principal basis. Similarly, the reports of Janakiraman Committee, Joint Parliamentary Committee and audit report of Vyas & Vyas were also referred wherein they have quantified the total exposure of Rs. 4024.45 crores (Janakiraman Committee report page no. 278 to 280) which was the scam amount. It has been further mentioned in the reports that in respect of transactions of the amount of problem exposure of Rs. 4024.45 crores only, banks did not hold any securities, SGL, transfer forms or bank receipts, meaning thereby all the remaining transactions were executed by the brokers, including Harshad S. Mehta, with the support and backing of delivery of securities. It was further mentioned from the reports that there are the specific transactions wherein no delivery has taken place. In respect of assessee, the reports of Janakiraman Committee has identified such transactions as detailed in Second Report of the Committee which contained the transactions of Rs.1271.20 crores (with NHB), Rs. 174.93 crore (with State Bank of Saurashtra) and Rs.121.36 crores (with SBI Capital Markets Ltd). The copies of relevant part of report of the Janakiraman Committee have been submitted in the Revenue's Paper Book No. 3 (from page no. 542 to page no.561). It was further explained that though the CIT(A) has reproduced findings of his predecessor selectively and incomplete, but the predecessor CIT (A) vide page no. 59 to 71 of the order dated 24.03.2010 has discussed in detail the issue of delivery of securities.

9.30. He then narrated the issue of giving set off of the stock against the Oversold Position and working the peak balance for making addition as per Annexure M-2 in view of the decision of ITAT for AY 1990-91, it was argued that contrary to the position in AY 1990-91 wherein the AO had set off the unexplained investments comprising purchases against the unexplained investments comprising sales, in the year under consideration the closing stock of Rs. 1069.14 crores have been

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considered as explained stock since they are backed by purchases on record and being so, Oversold Position, being based on unexplained sales/investment, the set off of explained purchases with unexplained sales will be inconsistent and illogical and therefore, the AO has rightly gone by this logic, while computing the Oversold Position. On the basis of this logic only, the AO has worked out the position of closing stock and no addition has been made on this amount and against it, the additions have been made in respect of only those transactions where the negative closing balances existed and the source of this unexplained stock or negative balance could not be explained by assessee. Similarly, it was argued that the plea taken by assessee, regarding the peak amount and deletion of 107 crores by ITAT during AY 1990-91, was inconsistent as during that year, the AO, while working out the peak balance, had taken the minimum of three options, which he had considered as unexplained investments whereas the facts in the present year are totally different as no such situation existed during this year. The deletion of Rs. 107 crores also has not been done by ITAT on the ground of genuineness or otherwise of the working of the Oversold Position but as pointed out by ITAT in Para 102 on page 160 of its order, on a completely different ground of the AO having omitted to consider securities worth Rs. 107 crores while working out the peak position. Thus, the assessee's case is clearly different and distinguishable from the case of present assessment year.

9.31. As regards to negative opening balance, the assessee has mentioned that negative balances of Rs. 103.75 crores and Rs. 100 crores have been wrongly included in the Oversold Position. It was argued from perusal of the assessment order for the AY 1991-92 that it was in order as it can be seen from the assessment for that assessment year, these amounts were not made the subject matter of income for

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that year and accordingly, they were rightly carried forward as negative balances for the present assessment year. Since the amounts were not subject to tax in AY 1991-92, they have been rightly brought to tax during the year under consideration. However, ITAT has in its powers to give the directions to CIT(A) to make the addition of the aforesaid amounts in the relevant year, if they hold that the addition has not been made in the correct assessment year. As regards the ATBF (Asset To Be Fixed) and Call, it was contended by assessee that in the case of ATBF, assets have not been fixed and the Call is not a security to be traded in Money Market, rather, it is a loan and therefore, AO has wrongly computed the Oversold Position under these heads. He argued that in the case of ATBF, as reflected from the Deal File, assets have been fixed subsequently to complete the transactions and Call is a financial asset as per Circular No. FMD.MSRG No. 36/02.08.003/2009-10 dated 01.07.2009 of RBI which could be traded in the Money Market. It was further mentioned that the Revenue's stand has been explained in the chart submitted in the Court vide letter dated 30.05.2018.

9.32. In regards to the claim of assessee on the basis of remarks of AO in AY 1990-91, Ld Counsel in reply stated that the securities are interchangeable in the money market transactions and it was argued that the assessee has relied on a bald statement given by AO during the assessment proceedings of AY 1990-91 regarding interchangeability of securities. Neither the AO nor the assessee could give a single instance to establish that one security has been changed with other security to complete the transaction. Since the rates, interest amount, time, period and many other factors of any security are different to other security, the same cannot be interchanged with each other. The AO also is not sure about this interchangeability as he has used the words 'there is possibility that unexplained investment of one point of time in one scrip

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may change to unexplained investment in other scrip at other point of time', which clearly shows that he also is not certain rather presuming that one scrip may change to other scrip at any point of time. Further, during the year under consideration trading accounts in respect of each security has been re-cast and Profit/Loss, Closing Stock and Oversold Position has been computed and while doing so there was no possibility of interchanging of scrip with each other as every security has its own distinct characteristics while dealing in the money market.

9.33. Another alternative contention made by Ld Counsel for the assessee is as regards to the addition on account of oversold position in units 1964- scheme amounting to Rs.80,64,44,495/-. This contention is without prejudice to the above. Ld Counsel stated that the assessee has not been provided with the detailed break up of purchases and sales transactions considered by the AO in arriving at the oversold position in case of the security - 'Units 1964 Scheme'. The Annexure M-2 provides consolidated figures of the opening stock and oversold position of securities. During the course of assessments, appellate and set-aside proceedings, submissions were made requesting the AO to furnish the break-up of transactions considered for computing money market oversold position in Annexure M-2. As stated herein above, though itemized break-up of purchases and sales of certain securities in oversold position was provided to the assessee during the second round of litigation before the CIT(A), the itemized break-up of transactions considered in the case of 'Units 1964 Scheme' was never provided to the assessee. The same is evident from the letter dated 10.04.2017 filed by the assessee (page Nos. 497 and 498 of APB No. 2). In the absence of detailed break-up of transactions considered by the AO for computing oversold position in relation to Units 1964 scheme, the assessee is unable to contest the aforesaid addition.

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Accordingly, it was prayed that the additions of Rs 80,64,44,495/- made on account of oversold position in Units-1964 Scheme ought to be deleted as no relevant material is brought by the AO on record.

9.34. Without prejudice to the above, Ld Counsel also stated that the CIT(A) in a detailed chart in Para No. 24.16 on page No. 44 to 48 of the impugned order dated 28.06.2017, has incorrectly set aside the matter for re-verification by the AO. He argued that during the course of the appellate proceedings before the CIT(A) the AO was furnished with the copies of the paper books filed by the assessee and asked to clarify the issue relating to addition of Rs. 1080 crores on account of money market oversold position. However, despite several reminders and even after taking up the matter with the superior officers no report was submitted by the AO (para No. 7 on page No. 10 of the impugned order). Further, it is observed that though the CIT(A) has himself verified the various evidences placed on record before him and given a detailed finding in case of each of the security he has directed the AO to re-verify the same and recomputed the oversold position. Ld Counsel stated that the AO has carried out detailed verification by taking almost a year before passing the order u/s 154 of the Act dated 02.05.2018 in respect of the order giving effect dated 28.09.2017. Vide order u/s 154 of the Act the AO has granted relief to the extent of Rs. 856.75 crores in relation to money market oversold position. No contrary fact was brought before us by revenue.

9.35. The next issue is regarding Gr. No. 7 - Addition on account of oversold position in 11.5% Central Loan 2011 - Rs. 103,80,05,313/-& addition on account of oversold position in 11.5% Central Loan 2010 - Rs. 29,70,53,629/-. For this assessee has raised the following ground No. 7: -

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> *"7. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in arbitrarily rejecting the evidences submitted by the Appellant in relation to Money Market oversold position in case of 11.5% Central Loan 2011."*
>
> *The Appellant prays that the AO be directed to accept the evidences produced by the Appellant and to delete the addition on account of Money Market oversold position."*

9.36. Before us, the Ld. Counsel stated that the CIT(A) has erred in arbitrarily rejecting the evidences submitted by the assessee in relation to money market oversold position computed in case of the security 11.5% Central Loan 2011 (page No. 48 of the impugned order dated 28.06.2017). It was claimed that the sale transaction pertaining to 12% Central Loan 2011 executed on 07.03.1992 of face value of Rs 100 crores is erroneously considered as the sale transaction of 11.5% Central Loan 2011 by the AO while computing the oversold position. He relies on letter dated 01.02.1993 written by the SBI to CBI disclosing details of transactions of SBI with the assessee for the period 01.04.1991 to 30.04.1992. The transaction at serial No. 289 (page No 490 of APB No. 2) contains details of assessee's sale transaction (i.e. bank's purchase transaction) of 12% Central Loan 2011 executed on 07.03.1992 of face value of Rs. 100 crores. It is this transaction which is erroneously recorded as sale transaction of 11.5% Central Loan 2011 instead of 12% Central Loan 2011 in Annexure M-1 (page No. 440 of APB No, 2) and ultimately considered in the list of purchase and sale transactions in security - 11.5% Central Loan 2011 (page No. 478 of APB No. 2) for computing the oversold position. He clarified that there exists no sale transaction of 11.5% Central Loan 2011 on 07.03.1992 as

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per letter dated 01.02.1993, clearly implying the mistake committed by the AO in computing the oversold position in case of 11.5% Central Loan 2011.Accordingly, it was explained that by appropriately considering the sale transaction at Serial No. 289 of letter dated 01.02.1993 as that of 12% Central Loan 2011 the alleged oversold position of Rs. 103,80,05,313/- be deleted.

9.37. As regards to the oversold position in the security 11.5% Central Loan 2010 is computed at Rs. 537.07 crores as per Annexure M-2 (page No. 445 of APB No. 2). The assessee's liability towards Rs. 441.48 crores were reduced from the oversold position of Rs. 573.07 crores and thereby Rs. 131.59 crores (Rs. 573.07 crores - Rs. 441.48 crores) in relation to 11.5% Central Loan 2010 was added to the total income in the original assessment order (page Nos. 45 to 47 of APB No. 1). Further, during the third round of proceedings, relief of Rs. 101.88 crores was granted by the CIT(A) (page Nos. 63& 75 of the impugned order dated 28.06.2017) due to the assessee's liability in Miscellaneous Petition 63 of 1992 in favour of SBI. Therefore, the surviving balance after giving effect to the directions of the CIT(A) is Rs. 29.71 crores in relation to oversold position in 11.5% Central Loan 2010. Ld Counsel also argued that the AO has erroneously included the negative opening balance of Rs. 103,3984.851/ in computing the oversold position as on 31.03.1992 in Annexure M-2 (page No. 445 of APB No. 2) in relation to the security 11.5% Central Loan 2010'. The current year negative closing balance (i.e. oversold position) computed in Annexure M-2 at Rs. 573.07 crores include the negative opening balance of Rs. 103.39 crores and hence, the opening balance for computation of 11.5% Central Loan 2010 should be considered as NIL as against the negative opening balance of Rs. 103.39 crores. It was stated that the oversold position arising out of negative opening balance cannot be added to the

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total income of the current year i.e. AY 1992-93. Hence, it was urged that the AO be directed to remove the negative opening balance from the computation of oversold position for the current year and thereby delete the surviving addition of Rs. 29,70,53.629/- on account of oversold position in 11.5% Central Loan 2010.

9.38. Another aspect argued by Ld Counsel in regards to purchase cost relief in relation to MMOP was that at one hand the AO has taxed the sales transaction as income of the assessee, he has not provided relief pertaining to purchase cost for the said securities alleged to be sold by the assessee. In support of the aforesaid, he relied on the Hon'ble Special Courts order dated 29 09.2007 (page Nos. 563 to 594 of the APB No 2) wherein it held that the income would be the difference between the purchase price of the securities and the sale price. The relevant extract of the said order is as under:

> *"9. ... In the assessment order, it is clearly mentioned by the Assessing Officer that delivery of these securities were made by Harshad Mehta. Therefore, it is obvious that according to the Assessing Officer this over sold securities position was made good by Harshad Mehta – the notified party. If that is so, it is nowhere explained as to why the price of the securities sold by Harshad Mehta would be his income. Really speaking, the income would be that amount which would be the difference between the purchase price of the securities and the sale price. I repeatedly asked the learned Counsel appearing for the Income-tax Department to justify treating the entire sale price of the securities as income, when according to assessment order delivery has actually been made and also according to the assessment order on the*

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> *date of the sale of these securities. It clearly means that the notified party brought securities for making good the delivery. If that is so, what would have been taxable income would be different between the purchase price and the sale price of the securities. In my opinion, therefore, inclusion of Rs. 1080 crores approximately as income of Harshad Mehta during the statutory period has resulted in miscarriage of justice."*

9.39. Subsequently, vide order dated 03.12.2008 (page Nos. 595 to 612 of the APB No. 2) the Hon'ble Supreme Court upheld the aforesaid decision of the Special Court. The CIT(A) in para No. 24.24 on page No. 76 of the impugned order dated 28.06.2017 has granted relief on account of purchase cost. Accordingly, assessee urged that the AO be directed to grant deduction in relation to the purchase cost incurred by the assessee.

9.40. On the other hand, the Ld. CIT-DR argued that oversold position worked out by AO in respect of security namely 11.5 central loan-2011. though the independent ground was not taken by assessee on this account during the appellate proceedings but CIT(A) vide his remarks at Sr. No. 11 of the chart (page no. 48) has rejected the contention of assessee by saying that sufficient evidence was not given by assessee in this regard, therefore, no relief would be given to him. His predecessor also rejected the claim of assessee (Page no. 87 of his order) by stating that it was a sale transaction routed through SBI and since it was a complete transaction, it was included in Annexure M-1&M-2 also, contrary to the claim of assessee that it was a purchased transaction. While deciding the issue, the remarks given by CIT(A) in both the appellate orders may be taken into consideration by bench.

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9.41. We heard the rival submissions and carefully considered the same along with the orders of the tax authorities below as well as documents submitted to us and referred to during the course of hearing in the paper book. The uncontroverted fact which we gather from the submission and the material available at the court are that the AO in the assessment order dated 29.03.1995 made an addition of Rs 1080,58,89,691/- on account of MMOP. This includes an addition of Rs 103,80,05,313/- 11.5% Central Loan-2011. Initially the AO has computed the oversold position aggregating to Rs 1681,79,84,180/- as given in Annexure M-2 enclosed at page 448 of APB No 2. Out of this amount, the AO vide order dated 29-03-1995 reduced a sum of Rs 601.21 crores which consist of Rs 441,48,92,433/- in respect of 11.5% Central Loan-2010 and Rs 159,72,02,057/- Central Loan-2007 11.5% which is apparent from page 50 of APB No 1 consisting of said assessment order. When the assessee went in appeal, the CIT(A) during the course of 3rd round of appeal vide its order dated 28.06.2017, vide para 24.16 of his order directed the AO to verify the evidences submitted by the assessee during the course of the hearing before him and allow the necessary relief to the assessee out of the said addition on account of MMOP. The AO, consequently after giving the appeal effect passed an order dated02.05.2018 during the course of pendency of the appeal before this Tribunal. The AO vide its order dated02.05.2018 giving effect to the order of the CIT(A) dated 28.06.2017 gave the following relief out of the said addition of Rs. 1080.58 cr:-

A. (As per para 24.22 of CIT(A)'s order dt 28.6.2017)

Addition on account of money market oversold position

– relief due to decree transactions   438,43,55,195

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B. (As per para 24.22 of CIT(A)'s order dt 28.6.2017)

Addition on account of money market oversold position

– relief due to inconsistencies in Annexure M-2 418,31,76,323

9.42. Both, assessee as well as revenue, came in appeal against finding given by CIT(A) in respect of the addition amounting to Rs 1080,58,89,691/-. Since the AO has already allowed relief to the assessee by passing an order dated02.05.2018 for a sum of Rs 856,75,31,518/-, the dispute in the ground taken by the assessee remains only to Rs 223,83,58,173/- which is apparent from page 473 of APB No.2.While the Revenue has challenged the action of the CIT(A) directing the AO to re-compute the oversold position of his scripts, wherein assessee failed to explain the details properly. Coming to the ground of the Revenue, we are of the view that the ground taken by the Revenue being ground no 1 does not have any leg to stand. We noted from the order of the CIT(A) that he has given a detailed finding on this issue. He has categorically mentioned in his order that the assessee has filed ample evidences for explaining the nature of the transaction in respect of which the additions were made. The relevant finding of the CIT(A) starts from para 24.14 of his order. Para 24.14 clearly demonstrates that the assessee has explained the details of each of the scripts added by the AO as MMOP which is apparent from the following:

> *"24.14 The appellant has submitted his specific contention for each of the securities separately. In support of his contentions the appellant has submitted following documents, charts and information vide its paper book V:*

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> *i. A reconciliation chart for each security showing the transactions captured by the AO alongwith the transactions not captured or wrongly captured by the AO to compute oversold position.*
>
> *ii. Numerous supporting evidences such as deal slips, third party evidences in form of the letters submitted by the Bank/ financial institutions before the Tax Office and / or CBI, Bank account statements confirming the payment made for the purchase transactions, etc. have been submitted by the appellant."*

9.43. In para 24.15, the CIT(A) has reproduced the chart as has been submitted by the assessee and ultimately the CIT(A) under para 24.16 noted on the basis of details and supporting documents submitted by the assessee that there are some inconsistencies in Annexure M-2 which has resulted in incorrect oversold positions in the money market and ultimately he was satisfied about the inconsistencies in the statement being Annexure M-2. The CIT(A) directed the AO to verify these evidences and then re-compute the position of the stock as also the addition of oversold position on account of aforesaid securities. We further noted that the CIT(A) before giving his finding and passing the order had given plenty of opportunity to the AO even forwarded copies of the APBs filed before him to the AO for his consideration, verification and remand report which is apparent from following para of the CIT(A):

> *"7. Looking to the importance of matter and complexity of issues involved therein, both the AO and the Addl. CIT Range-4 were requested to attend the hearing vide this office letter dated 02/01/2017. Therefore the hearing held on 10 January 2017 was attended by the AO. Prior to that the Addl. CIT range 4 was also*

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present on 03/01/2017. In the said hearing, the appellant was directed to forward copies of the paper books filed to the AO for his consideration, verification and remand report. It is gathered that the appellant filed copies of the paper books vide letter dated 11 January 2017. Subsequently, the appellant submitted copy of the letter dated 6 February 2017 to the Assessing Officer to follow up on the matter and confirm if any additional clarifications are required. Thereafter a letter dated 02/05/2017 was issued to the AO with a view to clarify the issues relating to addition of Rs 1080 cr as money market securities oversold position and Rs 290.05 cr as unexplained stock of securities. However no report was submitted by the Assessing Officer, despite reminders on this issue and despite matter was taken up with superior officers. Later the books of accounts submitted by the assessee were forwarded to the AO vide this office letter dated 31/05/2017, in view of Hon'ble Supreme Court order dated 12/04/2017. However, the AO has not submitted any report on the grounds of appeal and the submissions made by the Appellant. Accordingly, I proceed to decide this appeal on the basis of material available on record and after considering the submissions of the appellant."

9.44. This proves that the CIT(A) has given sufficient opportunity to the AO to counter or rebut the evidences and the material filed by the assessee in support of deletion of addition of Rs 1080,58,89,691/- crores. Since the AO did not submit any material contrary to it, the CIT(A) even though should have deleted the said addition but he in the interest of the justice and taking care of the interest of the Revenue

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under para 24.16 gave the direction to the AO to verify these evidences submitted by the assessee in the light of the special court orders and Hon'ble Apex Court and then recompute the position of the stock as also the addition of oversold position on account of aforesaid securities. He further directed the AO to rework the money market trading profit or loss for the said securities relating to these transactions. Following the directions of the CIT(A), the AO passed an order dated02.05.2018 after verifying all the evidences and the material which were filed before the CIT(A) and resubmitted by the assessee before the AO. The Ld CIT-DR before us taken a contention that this will tantamount to setting aside the assessment or refer back to the AO for making fresh assessment. As CIT(A) cannot set aside the assessment in view of said power being withdrawn by finance Act 2001, this contention of the Ld CIT-DR is misconceived. It is not a case where CIT(A) has set aside the assessment or directed the AO to make a fresh assessment. It is a case where the CIT(A) although accepted the contention of the assessee but subject to the verification to be carried out by the AO. The CIT(A) has not set aside the assessment. Direction given by this appellate authority to the lower authority for verification will not tantamount, in our opinion, to setting aside the assessment. It is a case where the CIT(A) gave the relief and allowed the ground of the assessee but subject to the verification by the AO. Such direction in our opinion falls within the power of the CIT(A) u/s 251 of the tax Act. In our opinion, what the CIT(A) has done is that he has directed the AO to do what he has not done while making an assessment. We, therefore, are of the view that once the AO after verification of the evidences and the material filed by the assessee, gave relief to the assessee. This proves that the AO was satisfied with the explanation of the assessee with regard to MMOP and to the extent he found explanation given by the assessee to be proper, he allowed the relief to the assessee. It is the

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satisfaction of the AO which matters not the satisfaction of the Ld CIT-DR. If the AO is satisfied with the explanation of the assessee and allowed the relief to the assessee while giving effect to the order of the CIT(A). In our view, the ground taken by the revenue does not have any merits. We, therefore, dismiss the ground No 1 taken by the Revenue.

9.45. Now we will take up ground No 6 & 7 taken by the assessee. We have already held in the preceding paragraph that the issue in the ground No 6 & 7 taken by the assessee remains only sustenance of the addition of Rs 223,83,58,173/- which includes the addition of Rs 103,80,05,313/- for which assessee has taken ground No 7 separately. After passing the order dated 02.05.2018 by the AO in consequence of the order of the CIT(A) dated 28.06.2017, the sum of Rs 223,83,58,173/- includes the following balance oversold position:

i.	*11.5% C/L 2011*	*Rs 1038005313*
ii.	*11.5% C/L 2012*	*Rs 136072871*
iii.	*9% IRFC (01/04)*	*Rs (39218136)*
iv.	*11.5% C/L 2010*	*Rs 297053629*
v.	*Units 1964 Scheme*	*Rs 806444495*
	Total	*Rs 2238358173*

9.46. First we will deal with the addition of Rs 103,80,05,313/-. We noted that the AO has made this addition on the basis of the working given at APB page 477 working out the difference of purchase and sales in respect of 11.5%Central Loan-2011. AO took the sales of 200 crores 11.5% Central Loan-2011 & noted purchase against this only of 100 crores on face value basis and worked out on the basis of the market value difference of sales and purchase at Rs 100,94,49,222/- &added thereon net amount of the transactions amounting to RS

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2,85,60,091/- totaling to 103,80,05,313 & reflected it in Annexure M-2 appearing at page 445. The Ld. AR before us has drawn our attention towards the submission before the CIT(A) as well as page 490 of the APBNo.2 and on that basis contended that factually this represents 12% Central Loan-2011 and not 11.5% Central Loan-2011 and for this attention was drawn to the letter of State Bank of India dated 1st February 1993 appearing at page 479 of the APB written to CBI giving all the details of the securities taken from the assessee. But the AO incorrectly counted it as 11.5% Central Loan-2011 sales and came to the conclusion that the assessee has oversold 11.5% Central Loan-2011.

9.47. We further noted the letter of State Bank of India and M-2 appearing at page 445 as well as working of the AO at page 445 of APBNo.2 for the sum of Rs 103,80,05,313/- found that the AO has incorrectly taken oversold stock in M-2 at page 445 of APB No.2 for 11.5%Central Loan-2011 and made the addition. We further noted that correspondingly in M-2 Page 445 APB 12% Central Loan-2011 shown in stock at cost price of Rs 99 crores. These figures in our view are apparently reconciled. The Ld. CIT-DR has not controverted this fact. We therefore delete the addition of Rs 103,80,05,313/- and accordingly ground No 7 is allowed. So far the sum of Rs 13,60,72,871/- out of the sum of Rs 223,83,58,173/- is concerned, the Ld AR even though vehemently contended but could not convince us by reconciling the figures on the basis of the evidences filed by him. We, therefore, sustain the addition of Rs 13,60,72,871/-.

9.48. The next sum of Rs 29,70,53,629/- included in Rs 223,83,58,173/-relates to the 11.5% Central Loan-2010. We heard the rival submission and carefully considered the same. We noted that the AO in Annexure M-2 page 445 of APB No. 2 computed the oversold

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position of 11.5% Central Loan-2010 at Rs 573.07 crores which has been arrived at by including opening negative balance of Rs 103,39,84,851/- in the negative value of the stock Rs 595,61,00,000/-. The AO vide his order dated 27.03.1995 has already allowed a relief to the assessee to the extent of Rs. 441.48 crores included in the sum of Rs. 601.21 crores towards the assessee's liability from the oversold position of Rs. 573.07 crores and thereby computed the oversold said security at Rs. 131.59 crores, out of which the AO while giving effect to the order of the CIT (A) dated 28.06.2017 reduced a sum of Rs. 101.88 crores and thereby the addition to the extent of Rs. 29,70,53,629/- remains sustained. The learned AR drawn our attention to M-2 at page 445 APB No.2 and from which we noted that the AO while computing the negative closing balance at Rs. 573.07 crores included negative opening balance of Rs. 103.39 crores. If the said negative opening balance is excluded and taken as nil, the oversold stock balance will get reduced. The Ld. CIT-DR even though vehemently contended but could not draw our attention towards the evidence or the material from which the negative opening balance of Rs. 103.39 crores is taken. Since the addition has been made on the basis of the M-2 made by the AO, therefore the onus lies on the AO to prove how this figure had been arrived at or taken. The contention of the Ld Counsel is that it should be taken as 'Nil'. In the absence of any cogent material or evidence to support the said negative balance, we are of the view that the addition of Rs. 29,70,53,629/- cannot be survived. It is a settled law if the revenue wants to tax any income; the onus is on the revenue to prove that the assessee has earned income. Even otherwise, for the negative opening balance, addition cannot be made as per the provisions of Section 69 of the Act in the impugned assessment year. If an addition has to be made that has to be made in the earlier assessment year from which negative opening balance has been brought forward. We,

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accordingly, delete the addition of Rs. 29,70,53,629/- out of the sum of Rs. 223,83,58,173/-.

9.49. The next issue in Ground No. 6 relate to the sum of Rs. 80,64,44,495/-included in the sum of Rs. 223,83,58,173/-. After hearing the rival submissions and going through the orders of the authorities below, we noted that the AO made the said addition as per Annexure M-2 Page 445 of APB No.2. The assessee has asked for the details of such oversold units but no such details were provided to the assessee so that the assessee can contradict the same. Before us also the Ld Counsel taken the said contention but the Ld. CIT-DR even though relied on the order of the AO and brought voluminous record but could not bring to our knowledge any specific record or evidence which may prove that the assessee has sold such Units 64. In the absence of any evidence, which may prove that the assessee has oversold Units 64, we cannot sustain this addition and we are bound to delete the same. No addition can be made or sustained merely on the basis of the suspicion, howsoever strong it may be. Thus, the addition of Rs. 80,64,44,495/- stands deleted. In the result, Ground No. 6 is partly allowed while Ground No. 7 is allowed.

10. The next common issue in these appeals of assessee and Revenue is as regards to the order of CIT(A) restricting the addition on account of Money market unexplained stock of Rs. 66,18,18,047/-. For this assessee raised the following ground no.8: -

> *"8. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not granting the entire relief in relation to the addition of Money Market unexplained stock.*

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The Appellant prays that the AO be directed to delete the addition on account Money Market unexplained stock."

For these, Revenue has raised following ground No. 2: -

"2. Whether on the facts and in the circumstances of the case and in law, the CIT(A), while deciding on the addition of ₹ 290,55,41,290/- on account of money market unexplained stock, was justified in directing the AO to grant deduction to the extent of purchase cost in relation to the AO to grant deduction to the extent of purchase cost in relation to the scrip held to be oversold despite holding that the assessee has not produced any specific evidence to support his contention that the transactions have been undertaken on behalf of his clients and third parties and has merely relied upon the books of accounts which have already been rejected by the CIT(A)."

10.1. Brief facts relating to this issue are that as per Annexure M-5 to the original assessment order dated 27.03.1995, the addition of Rs. 291,05,41,290/-has been made on account of unexplained stock of money market. The AO has determined the addition of Rs. 291.05 crores on the following basis:

"a) on the basis that the packet of securities found with National Housing Bank ('NHB') belonged to the Appellant (the same formed part of Annexure M-4 to the Assessing Officer's Order dated 27.03.1995 - enclosed in page Nos. 450 to 467 of APB No. 2); and

b) relying on the securities disclosed by late Shri Harshad S Mehta in Miscellaneous Application

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No. 215 of 1993 filed on 26.10.1993 (M.A. No.215) before the Hon'ble Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (the same formed part of Annexure M-3 to the Assessing Officer's Order dated 27.03.1995 - enclosed in page No. 449 of APB No. 2)."

10.2. The explained stock in the relevant money market securities, (as computed by the AO in Annexure M-2) is reduced from the stock holding obtained from the above sources and the excess quantity in case of certain securities has been assessed as unexplained stock in the hands of the assessee. The CIT(A), in the second round of appellate proceedings, directed the AO to identify the securities in Annexure M-5 which do not belong to assessee as per the Hon'ble Supreme Court order dated 01.11.2002. Subsequently, the AO vide order giving effect dated 20.01.2011 deleted the addition on account of Inter-corporate Deposits amounting to Rs. 50,00,000/-. The assessee preferred further appeal before the Tribunal (second round), wherein the Tribunal set aside the matter to the file of AO vide its order dated 29.10.2014. Subsequently, the AO (third round of appellate proceedings) vide her order dated 15.03.2016 assessed money market unexplained stock at Rs. 290,55,41,290/- (Rs. 291,05,41,290/- less Rs. 50,00,00,000). The assessee preferred further appeal before the CIT(A), who vide impugned order dated 28.06.2017, directed the AO to re-verify the securities amounting Rs. 174,37,23,243/- included in Annexure M-5 which do not belong to the assessee in light of the order passed by the Hon'ble Special Court dated 29.09.2007 and the order by the Hon'ble Supreme Court dated 01.11.2002 and accordingly deleted such addition. Similarly, relief was also granted for securities amounting to Rs. 50,00, 00,000/- in light of M.P. No 88 of 1998. Accordingly, the AO

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vide order giving effect dated 02.05.2018 of CIT(A)'s order dated 28.06.2017, verified the relevant documents and granted relief of Rs. 224.37 crores (Rs. 174.37 crores + Rs. 50 crores) to the assessee and confirmed the balance addition of Rs. 66.18 crores (Rs. 290.55 crores – Rs. 224.37 crores). Aggrieved assessee came in second appeal before Tribunal.

10.3. Before us, the learned counsel for the assessee Sh. Vijay Mehta argued that the M.A. No. 215 was filed by the assessee as well as other notified entities providing a repayment plan as per page Nos. 984, 985 and 986 of the APB No. 4. In the said Application, the assessee chalked out a detailed repayment plan by quantifying various money market assets which could be utilized to discharge the liabilities of various Financial Institutions. It is to be noted that the money market assets stated in the said Application to be utilized for disbursement towards the assessee's liabilities were merely his claim and not his asset. However, the AO determined the addition by relying on the securities disclosed by the assessee in the M.A. No. 215 and by holding them to be the assets of the assessee. The securities included in the said Application are captured in Annexure M-3 to the original assessment order (at page No. 449 of the APB No. 2). Subsequently, a petition was filed to withdraw M.A. 215. Accordingly, vide Hon'ble Special Court's Order dated 21.03.1995 (page No. 1004 of APB No. 4) the said Application stands withdrawn. Accordingly, the addition to that extent is liable to be deleted. He explained that the said Application which stands withdrawn cannot be considered as the sole evidence for making such a huge addition of Rs. 290.55 crores. Therefore, the addition amounting to Rs. 290.55 crores is liable to be deleted.

10.4. He further refereed to the M.A. 215 regarding '9% HUDCO Bonds' of Face Value of Rs. 5 crores are untraceable. However, the AO

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has erroneously considered the same as the unexplained stock belonging to the assessee. Since the said Bonds / securities have neither been traceable till date nor have been received by the Custodian or the assessee, the same cannot be presumed to be an unexplained stock belonging to the assessee. Hence, it was claimed that the unexplained stock of 9% HUDCO Bonds to the extent of Rs. 5 crores, as per Annexure M-5 (page No. 469 of APB No. 2) read with Annexure M-3 (page No. 449 of APB No. 2), ought to be deleted.Further without prejudice to the above, as per Annexure M-5, the AO has considered 4.82 crores of Unit-1964 Scheme as the unexplained stock of the assessee and accordingly taxed the same. Since, as per Annexure M-2 there exists no closing stock in case of Units-1964 Scheme but the entire stock of Units-1964 Scheme is considered as unexplained stock of the assessee. He has not been provided with the details of various transactions considered by the AO to compute the negative closing stock of Units 1964 Scheme. Hence, the assessee is not able to rebut whether the computation of the closing stock prepared by the AO in Annexure M-2 is correct. In the absence of such details of transactions, the addition made in respect of the said securities is not sustainable. Ld Counsel also explained that the CIT(A) in para No. 25.7 of the impugned order dated 28.06.2017, has incorrectly set aside the matter for re-verification by the AO. It was stated that during the course of the appellate proceedings before the CIT(A) the AO was furnished with the copies of the paper books filed and asked to clarify the issue relating to addition of Rs. 290.05 crores on account of unexplained stock. However, despite several reminders and even after taking up the matter with the superior officers no report was submitted by the AO (para No. 7 on page No. 10 and para No. 25.7 of page No. 81 of the impugned order). Accordingly, CIT (A) has directed the AO to re-verify the same. Further, it may be noted that on 28.09.2017 the AO passed an order

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giving effect to CIT(A)'s order dated 28.06.2017 without granting any relief stating that the same was subject to verification. However, on 02.05.2018 post undertaking detailed verification, the AO passed an order under section 154 of the Act rectifying the order giving effect dated 28.09.2017 and granting relief to the extent of Rs. 224.37 crores in relation to money market unexplained stock. In view of the above, it was urged that the entire addition is unsustainable.

10.5. On the other hand, the Ld. CIT-DR argued as regards to the issue of Money Market Unexplained Stock amounting toRs.290,55,41,290/- (as given in ground 2 of revenue's appeal) and stated that the CIT(A) has confirmed the addition of Rs.66,18,18,047/- out of the aforesaid amount on the ground that assessee has failed to furnish any evidence or establish any direct nexus viz-a-viz Hon'ble Supreme Court Order. For the remaining amount of Rs.224,37,23,243/-, directions were given by him to AO to re-verify the details and evidence submitted by assessee in the light of Hon'ble Special Court judgment dated 06.09.2002 and Hon'ble Apex Court judgment dated 01.11.2002 before allowing the relief. Now he stated that again the CIT(A) has not decided the issue on merit, rather, gave directions to AO to verify the details on merit and decide the issues accordingly and this direction tantamount to nothing but setting aside of assessment which is beyond the jurisdiction of CIT(A). However, without prejudice to that, AO has again verified the relevant entries and found that transactions amounting to Rs.106,11,93,552/- out of the total amount of Rs. 224,37,23,243/- matched with the transactions mentioned in the aforesaid order of Hon'ble Supreme Court and accordingly, the AO has reduced the said amount from the total addition made by him. In this respect, as mentioned before Bench, transaction wise chart has been enclosed herewith as per Annexure - B.

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10.6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that in this case, the assessing officer sustained the addition after giving the appeal affect to the extent of Rs.66,18,18,047/- vide order dated02.05.2018. The Ld. Counsel drawn our attention to MA No 215 filed by the assessee as well as other notified entities providing a repayment plan (page nos. 984 to 986 of APB No. 4) which was subsequently withdrawn. The AO taken it to be the sole evidence for making this addition but when the matter went before CIT(A), he vide order dated 28.06.2017 directed the AO to re-verify the securities amounting to Rs.174,37,23,243/- for which the AO gave the relief to the assessee by passing a consequential order. Out of the balance addition, the Ld Counsel vehemently contended that 9%Hudco bonds are not traceable and similarly in respect of units having a value of 68,48,40,060/-, it was contended that the units having a face value of 37crores were claimed by SBI for which attention was drawn to page 1005 to 1062 of APB No 4 which contains the Misc. petition no. 41 of 1995, Hon'ble special court passed an order on 03.03.2003 holding that these units belong to SBI and accordingly it was claimed that no addition in respect of unit be made in the hand of the assessee. We perused in this regard Page 1063 to 1066 containing the order of the Special Court in Suit No. 41 of 1995 and find force in the submission of the assessee. We, therefore, set aside this issue and restore it to the file of the AO with the direction that the AO shall re-verify the evidences in respect of claim of the assessee for 9% HUDCO Bonds as well as Units 64 whether they belong to the assessee or not in case if he finds these assets do not belong to the assessee, the amount included in the addition of Rs. 66,18,18,047 in respect of these assets would stand deleted out of the said addition. Thus, this Ground 8 of assessee's appeal is partly &statistically allowed and ground No. 2 of Revenue's appeal is dismissed.

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11. The next issue in this appeal of assessee is as regards to addition on account of Money Market Trading Profit (i.e. Money Market Difference received) of Rs. 35,55,51,428/-. For this assessee raised the following ground No. 9: -

> *"9. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition of Rs. 35,55,51,428 on account of Money Market trading profit."*

11.1. Brief facts are that the AO vide his original assessment order dated 27.03.1995 made an addition of Rs. 35.55 crores on account of difference between various receipts from and payments to the parties in money market transactions, which he has computed in Annexure K to his Order (page No. 613 to 616 of APB No. 2).As per the original assessment order the AO has computed the amount of Rs. 35.55 crores on the following basis:

> *"a) considering the transactions other than those marked as 'RT' and where the assessee acts as a principal; and*
>
> *b) considering transactions where the assessee squares-up the position on the same day (i.e. purchase and sale of the same security on a given day)."*

11.2. Further, the CIT(A) vide the impugned order dated 28.06.2017 has upheld the said addition made by the AO. Aggrieved, assessee came in second appeal before Tribunal.

11.3. Before us, Ld. Counsel for the assessee explained the issue that out of various receipt and payment entries reflected in Annexure K,

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one of the receipt entry considered by the AO while making addition of Rs. 35.55 crores amount to Rs. 39,19,77,531/- received on 22.04.1991. A break-up of Rs 39,19,77,531/- is as under:

Date	*Receipt Amount (in Rs.)*	*Narration (as per Annexure K)*
22.04.1991	*39,06,62,462*	*39 CR-CC Asset CNO 910420-B70 (SP 2097)*
	13,15,069	*CC Asset FV 150 Cr CNO 910420-S6-2095*
Total	*39,19,77,531*	

11.4. He stated that out of the total receipt of Rs 39,19,77,531/-on 22.04.1991, the AO has incorrectly considered a receipt of Rs. 39,06,62,462/-in respect of the sale of 'CC Asset' of 39 crores quantity. Based on the deal slip which forms part of the seized data, it can be observed that the abovementioned transaction amounting to Rs. 39,06,62,462/- entered on 20.04.1991 is on principal to principal basis and is also marked as 'RT' (page No. 620 of APB No. 2). Hence, it was argued that the said transaction was not squared-up on the same day as the transaction was executed on two different dates i.e. purchase transaction was undertaken on 20.04.1991 and sale transaction was undertaken on 22.04.1991 (deal file forming part of seized data is enclosed in page No. 620 of the APB No. 2). He explained that the withdrawal of Rs. 39,00,00,000/- on 20.04.1991, in relation to the corresponding purchase transaction is reflected in the UCO Bank account statement for Account No. 001028 (page No. 629 of the APB No. 2). Similarly, the deposit of Rs. 39,19,77,531/- on 22.04.1991, in the same UCO Bank account is inclusive of the sale consideration of Rs. 39,06,62,462/- pertaining to the above mentioned sale transaction of CC Asset (page No. 630 of the APB No. 2).

11.5. In view of the above facts, Ld Counsel stated that the said transaction of CC Asset amounting to Rs. 39,06,62,462/- is entered into

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by the assessee on principal to principal basis and is executed on two different dates i.e. not squared-up on same day. However, while on one hand the AO claims that only those transactions that are not entered on principal to principal basis and are squared-up on the same day are considered in Annexure K, on the other hand the receipt on account of sale transaction of Rs. 39,06,62,462/- entered on principal to principal basis and executed on two different dates is considered in Annexure K by the AO. Accordingly, the AO has erroneously considered the said receipt of Rs. 39,06,62,454/- in computing the money market difference of Rs. 35.55/- crores and hence, the addition/receipt to that extent is liable to be deleted. Further, the said sale transaction of Rs. 39,06,62,454/- along with the corresponding purchase transaction of Rs. 39,00,00,000/- is already considered by the AO while computing closing stock and trading profit of CC Asset in Annexure M-2. Both the entries pertaining to receipt (sale) and payment (purchase) are reflected in the break-up of the CC Asset given by the Assessing Officer (page No. 621 of the APB No. 2).In view of the above, assessee argued to delete the addition of Rs. 35,55,51,428/- on account of Money Market Trading Profit / Money Market Difference Received.

11.6. On the other hand, Ld CIT-DR argued that trading profit of Rs.35,55,51,428/- on account of money market added by AO and confirmed by CIT(A), is concurred with findings of his Predecessor CIT(A) in his order dated 24.03.2010 wherein this issue is discussed in detail from Para 9.1 to Para 9.4 (page no. 97 to page no. 99 of the order). It was explained that the transactions taken into consideration by the AO are those transactions only where the assessee has not acted as a Principal rather has squared up the transactions on the same day. This being so, the correlation made by the assessee is inconsistent. As it was mentioned, correlating transactions where delivery of the

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instrument has been made with the transactions accounted for only by debiting and crediting the difference without affecting the delivery is not justified. The assessee also pointed out the particular discrepancies with regard to CC Asset on the basis of incompatible references and 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 AO has worked out the difference in respect of transactions where there were no deliveries as only the difference was debited or credited. Further, it was found 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 assessee has not brought anything on record in support of his claim. As against this, the AO has made the addition after clearly explaining in detail the type of transaction that is covered, working out the difference and tabulating the difference in Annexure-K. Annexure-K in entirety 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.

11.7. We have heard rival contentions on this issue and gone through facts and circumstances of the case. We have gone through the Annexure ‘K’ as well as Page 621of APB No.2. We noted that since the transaction is not executed on the same day, it has been marked as RT upon the deal slip dated 20.04.1991. The transaction was not squared up on the same date as it was executed on two different dates i.e. 20.04.1991 and 22.04.1991 which is apparent from UCO Bank Ledger and UCO Bank Account Statement at Pages629 and 630 of APB No.2, wherein the payment of Rs. 39 crores made on 20.04.1991 and receipt

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of Rs. 39,06,62,462/- on 22.04.1991 is reflected. In Annexure K also at Page 613 of APB No.2, we noted that on 22.04.1991, a sum of Rs. 39,19,77,531/- was shown as receipt. From this, it is apparent that the assessee has sold CC Asset for Rs. 39,19,77,531/- and purchased the same for Rs. 39,06,62,462/-. The AO while making the addition under the head money market difference has not considered the sum of Rs. 39,19,17,531/- which was paid by the assessee as is apparent from Annexure K and received by UCO Bank on account of SBI Mutual Fund, which we verified during the course of hearing. We, therefore, delete the said addition. Thus, the Ground No. 9 is allowed.

12. The next common issue in these cross appeals of assessee and revenue is as regards to the addition of Rs. 58,27,13,670/- on account of Interest on Money Market Securities. For this assessee raised the following ground No. 10: -

> *"10. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition on account of interest on Money Market securities.*
>
> *The Appellant prays that the AO be directed to delete the addition on account of / interest on Money Market securities."*

Revenue raised the following ground No. 3:-

> *"3. On the facts and in the circumstances of the case and in law, the CIT(A) while deciding the addition of interest receivable on Money market securities amounting to ₹ 58,27,13,670/-, erred in linking the same with the money market unexplained stock*

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realization of ₹ 2,90,55,41,290/- which is related to ground No. 7 of assessee's grounds of appeal."

12.1. Brief facts relating to this issue are that the AO has made an addition of Rs. 58.27 crores on account of interest on money market securities in the original assessment order (page Nos. 48 to 49 of APB No. 1) based on stock of securities worked out by him as per Annexure M-1 and M-2 to the original assessment order dated 27.03.1995. The AO has determined the aforesaid addition of Rs. 58.27 crores on the following basis:

> *"a) As per the working tabulated in Annexure-I (page No. 631 of APB No. 2) interest of Rs. 55.97 crores is computed on the presumed stock computed basis the seized documents and information gathered from external agencies; and*
>
> *b) Interest amount of Rs. 2.30 crores is computed on the securities disclosed by the Appellant in M.A. No. 215 of 1993 (enclosed on page Nos. 965 to 1003 of APB No. 4)."*

12.2. The CIT(A) in para 27.9 on page No. 90 of the impugned order dated 28.06.2017 has granted relief amounting to Rs. 10,42,27,500/- on account of following: -

> *a) Relief of Rs. 39,50,000/- on account ofpacket of securities not belonging to the assessee;*
>
> *b) Relief of Rs. 9,31,27,500/- on account of presumed holding of 9% Tax-free securities; and*

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c) Relief of Rs. 71,50,000/- on account of 13% NPC acquired after 31.03.1992

Aggrieved, the assessee is in appeal in relation to the balance amount of addition of Rs. 47.84 crores (Rs. 58.27 crores – Rs. 10.42 crores) and revenue is for restricting the addition.

12.3. Before us, the learned Counsel explained that the interest on money market securities has been computed on the presumed stock as worked out by the AO in Annexure M-1 and M-2. As discussed in Ground of Appeal Nos. 6 and 7 above, it is observed that there exist various inconsistencies in preparation of Annexure M-1 and M-2 and hence Annexure M-1 and M-2 is the very basis based on which the interest on money market securities is computed has itself crumbled. In view of the same, the Ld Counsel stated that since the Annexure M-1 and M-2 itself consist of gross computational errors and hence completely unreliable, interest computed based on the said annexure is incorrect and non-sustainable. Further, the assessee placed reliance on the order of the Tribunal in ITA No. 3169/M/2002 dated 02.12.2005 in the case of a sister concern Aatur Holdings Pvt. Ltd. for AY 1994-95 (page Nos. 661 to 663 of APB No. 2) wherein it has been held that the dividends cannot be charged in the hands of the assessee based on presumed holding of the shares until those shares are transferred and registered in the name of the assessee and that he is a legal owner of the same. The same principle is applicable in the case of interest received from money market securities as well i.e. the assessee is not entitled to receive interest until the securities are registered in his name and accordingly the same is not liable to tax. Further, the order of Tribunal was upheld by the Hon'ble Bombay High Court in ITA No. 2214 of 2016 wherein by placing reliance on the provisions of the Companies Act, 1956 as well as on the Securities Contract (Regulation) Act, 1956, it

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is held that the person in whose name the securities appears in the books of the company issuing the said securities, is entitled to receive and retain any dividend / interest. Accordingly, the appeal of the revenue was dismissed by the Hon'ble Bombay High Court vide its order dated 12.03.2008 (page Nos. 672 to 675 of APB No. 2). In term of this, Ld Counsel argued that as per the Securities Contract (Regulation) Act, 1956 the definition of 'securities' is wide and includes any marketable securities which shall also include money market securities. Hence, the contention of the Department that the said decisions are applicable to dividend income only and not interest income is incorrect. In the present case the securities were not registered in the name of the assessee and hence, the presumption that the interest of the said securities was earned by the assessee is not sustainable.

12.4. Further, it was claimed that Interest on securities not received by assessee and deals have been executed through Bankers Receipts (BR) and Subsidiary General Ledgers (SGL). Ld Counsel stated that as per the bank statements for the period ended 31.03.1992, out of the total interest addition of Rs. 58.27 crores, interest aggregating to Rs. 26,41,49,667/- has not been received in any of the bank accounts by the assessee and assessee once follow cash system of accounting, such interest income admittedly not received by the assessee cannot be treated as income. Furthermore, it is also submitted that these securities are issued by large Public Sector Undertakings and Government of India. It is inconceivable to even think that interest on such securities could have been received in cash by the assessee and hence, interest which has not been received by the assessee ought to be deleted.

12.5. The learned Counsel also stated that in certain transactions the deals have been executed through BRs and SGLs, wherein the securities have not been transferred. In relation to purchases executed

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through BRs and SGLs, the underlying securities would not get registered in the name of the assessee. Accordingly, interest would not be paid by the issuer of securities to the assessee and therefore it would be erroneous to presume receipt of interest on the aforesaid securities. Relevant Deal slips (forming part of seized documents) showing purchases executed through BRs on which interest income of Rs. 5,24,87,500/- is presumed to be earned in Annexure I is enclosed at page Nos. 638 to 642 of APB No. 2. Relevant deal slips (forming part of seized documents) showing securities executed through SGLs on which interest income of Rs. 5,92,25,000/- is presumed to be earned in Annexure I is enclosed at page Nos. 643 to 660 of APB No. 2. Hence, in view of the above, Ld. Counsel urged that the interest amounting to Rs. 11,17,12,500/- (Rs. 5,24,87,500/- + Rs. 5,92,25,000/-) computed on the purchase transactions executed through BRs and SGLs ought to be deleted.

12.6. On the other hand, the learned CIT-DR stated that the addition of Rs. 58,27,13,680/- on account of interest on money market securities, the CIT(A) has confirmed the addition of Rs.47,84,86,170/- and has given a relief of Rs.10,42,27,500/- on three different counts. However, the CIT(A) has not given any independent finding as regards how the relief has been arrived at and how it becomes due as no supporting details has been mentioned in the appellate order. He has mixed the facts of this ground with the facts of the ground no. 08 related to unexplained stock in money market and gave an absurd finding which has no relation with the facts of the grounds raised by assessee as well as Revenue. It was urged that in absence of any cogent explanation and findings, the relief granted may kindly be withdrawn. It was further mentioned that the CIT(A) has provided relief by relying on the decision of his predecessor. In this regard, the facts discussed by his

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predecessor CIT(A) vide Para 10.1 to 10.4.4 (page no. 99 to page no. 107) of the order were refereed wherein the CIT(A) has distinguished the facts and ratios of the decisions in the case of assessee as well as other group entities relied upon by assessee, order sheet noting of AY 1993-94, wherein assessee himself has admitted that he was following accrual method of accounting, the decision of ITAT in the case of assessee for AY 1988-89, legal provisions as per section 145 (second proviso) wherein it was mentioned that 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 previous year in which such income is due to assessee.

12.7. We have heard rival contention and gone through facts and circumstances of the case. We have perused the material submitted and referred before us. The uncontroverted facts relating to this issue are that the AO in his assessment order dated 27.03.95 worked out the interest amount at Rs 55,97,13,670/- on the basis of presumed stock computed from seized document and information gathered from external agencies. The AO also noted from misc application 215 of 1993 filed by the assessee before special court and claim of receivable interest of Rs 2.30 crores on the securities claimed belonging to him lying with the different banks and accordingly an addition of Rs 58.27 crores was made. The assessee went in appeal before the CIT(A) and claimed that the interest amounting to Rs 58,26,760/- should be taxed on the basis of report of M/s Vyas & Vyas, chartered accountants and also relied on special court's order dated 10-6-2003 in case of MP No. 112 of 2000. The CIT(A) in the first appellate proceeding sustained this addition. When the matter again travelled to the CIT(A) in subsequent proceedings, the assessee claimed that the interest to the extent of Rs 47,43,39,667/- should have not been assessed in his hands. The CIT(A)

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vide his order dated 28.06.2017 partly allowed relief to the assessee and held interest amounting to Rs 10,42,27,500/- is not chargeable to tax and deleted the addition to that extent. The Ld CIT-DR was fair enough to concede that except a sum of Rs 26,41,49,667/-, the rest of the interest has been received by the assessee in his bank account. The sum of Rs 26,41,49,667/- has not been received in any of the bank accounts of the assessee. In our view, to the extent interest has duly been received by the assessee has to be taxed during the impugned assessment year in view of the fact that the assessee is consistently following the cash system of accounting. This fact has not been denied by the Ld Counsel for the assessee.

12.8. We have gone through the order of this Tribunal in the case of the assessee for the AY 89-90 in which this Tribunal in ITA no. 637/Mum/2007 vide order dated 2nd January 2008 under para 5.27 has held as under-:

> *"5.27 . . . Even otherwise, we find that in a case where the books of account are not maintained or rejected by the Assessing Authority, and income is determined on the basis of best judgement, still, the assessee's choice regarding the method of accounting cannot be ignored. The books of account is not the only crucial point to be considered on this issue. The consistent practice followed by the assessee has also to be looked into. Whether assessee has maintained books of account or not, if the assessee follows cash system to recognize income from interest and realize interest income only on actual receipts, the said system should be accepted and the interest should be considered only for actual receipts. Therefore, we find that the*

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> *emphasis on the rejection of books of account, are overplayed by the authority.*
>
> *5.28 The assessee is consistently following the cash system of accounting in respect of interest income. That is, he is recognizing interest income only on actual basis. This consistent position should not be overlooked on the ground that the other relatives of the assessee are recognizing interest income on mercantile basis. Therefore, in the facts and circumstances of the case, we find that the lower authorities were not justified in assuming interest income in the hands of the assessee on mercantile basis."*

12.9. On this basis itself, the Ground taken by the assessee could not be fully allowed but since the assessee has not received the interest to the extent of Rs. 26,41,49,667/- in any of the bank account, the interest to that extent cannot be added in the income of the assessee. We, therefore, delete the addition of Rs. 26,41,49,667/-. Thus, this issue of assessee's appeal and that of Revenue's appeal is partly allowed.

13. The next issue in this appeal of assessee is regarding addition of Share Market Trading Profit amounting to Rs. 16,02,65,407/-. For this assessee has raised the following ground No.11: -

> *"11. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the addition made by the AO on account of Share Market trading profit amounting to Rs. 16,02,65,407."*

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13.1. Brief facts relating to this issue are that the assessee is a registered member of B.S.E. (i.e. a share broker) and is engaged into transactions involving trading and investment in shares. The assessee undertakes purchase and sale transactions for and on behalf of his clients through his brokerage firm. The AO vide order dated 27.03.1995 has made addition of Rs. 16,02,65,407/- on account of share market trading profit as computed in Annexure S-1 of the original assessment order (Page Nos. 687 to 695 of APB No. 3). The AO has collected the information from various sources including brokers, B.S.E through whom the transactions are claimed to have been undertaken by the assessee. The AO subsequently vide her order dated 15.03.2016 (third round of litigation) assessed share market trading profit as assessed in the original assessment order at Rs. 16,02,65,407/-. The assessee preferred further appeal before the CIT(A), who also confirmed the order of AO. The methodology of computing share market trading profit and for the same the illustration for scrip 'Andhra Valley' is reproduced below:

Particulars		Quantity	Amount (In Rs.)
Opening Stock as on 01.04.1991	A	610	5,91,700
Add: Purchases from 01.04.1991 to 31.03.1992 (custodian Information, company information, etc.)	B	0	0
Less: Sales from 01.04.1991 to 31.03.1992 (Custodian information, company information etc.)	C	(100)	(1,06,000)
Closing Stock shares (Qty)	A+B-C	510	4,94,700
Profit per share sold			90
Share market trading profit			9,000

Aggrieved, assessee preferred appeal before Tribunal.

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13.2. Before us, Ld. Counsel for the assessee argued that the addition on account of share market trading profit is not sustainable in law since the relevant material relied upon by the AO for computing the additions has never been brought on record till date. In this regard, he reiterates his submissions made in respect of Grounds of Appeal Nos. 13 to 16, pertaining to the profit on sale of shares in shortage. Further, in addition to the above, he stated that shares were purchased and sold on behalf of clients or third parties, the information of which was not obtained by the AO. Further, it was argued that the assessee would have sold shares on behalf of third parties which may have been considered as sales of the assessee by the AO. In the absence of such information pertaining to third party purchases/sales and the basis for computing sale of shares, the assessee urged that share market trading profit ought not to be taxed in his hands.

13.3. Furthermore, the learned Counsel stated that all transactions pertaining to purchase and/or sale are through the normal banking channels i.e. in accordance with the Rules and Regulations and Bye laws framed by the stock exchange and further recognized by Securities Contract (Regulation) Act, 1956 and duly recorded in his books of account. All the transactions were reported to stock exchange on a daily basis. Without prejudice to the above, he argued that even where the data has been provided by the Income-tax Department now lot of discrepancy has been pointed evidencing that the basis of addition is incorrect. Hence the Annexure S-1 through which the addition of share market trading profit is made cannot be relied upon to uphold the addition. In view of the above submissions, it was argued that the decision of the CIT(A), for sustaining the addition on account of shares market trading profit is without any valid basis and, hence, cannot be

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upheld. Ultimate effect of the same will be that there cannot be any profit in this regard.

13.4. On the other hand, the learned Ld CIT–DR argued that addition made by AO on account of Share Market trading profit of Rs. 16,02,65,407/- and confirmed by CIT(A) is relied upon the order of his Predecessor dated 24.03.2010, wherein this issue is discussed in detail from Para 11.1 to 11.3.2 (page no. 107 to page no. 126) of the order along with other issues. It was argued that in absence of any additional explanation and document substantiating that the share market trading profit is for and on behalf of the client, it is held that the same is on account of the transactions entered into by the assessee on his own account. It was also mentioned that the share market trading profit has been worked out by applying the similar method as applied in money market transactions. In this regard, as mentioned in earlier paragraphs, demonstration was given before Hon'ble Bench about the working of Annexure S-1 and in respect of three shares namely ACC, Apollo Tyres and Castrol India, Trading Accounts were prepared also.

13.5. We have heard rival contentions and gone through facts and orders of the authorities below as well as the material and the evidences submitted and brought to our knowledge during the course of hearing and referred to from the paper book filed. It is not denied before us that the assessee is a registered member of the Mumbai Stock Exchange and is engaged in the business of purchase and sale of the shares on behalf of his clients and as well as on his account. We noted that the AO in the in the ex-parte assessment order 27.03.1995 made an addition of Rs 16,02,65,407/- on account of share market trading profit computed on the basis of Annexure S-1 which is appearing at page 687 of APB No.3 as has been referred to before us. This annexure has been compiled by the AO at the back of the assessee on the basis of the

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information collected from the stock exchange and various brokers. In the subsequent appellate proceedings also, the addition was sustained. Even, in the third round of appellate proceedings, the CIT(A) vide his order dated 28.06.17 confirmed the addition. We note that the CIT(A) while confirming the addition took the view that the assessee has purchased and sold the securities on his own account and not on behalf of others even though the assessee has provided a chart giving complete particulars of the date of transaction, rate, quantity, nature of transaction and the name of the client, as is apparent from para 28.2 of the order of the CIT(A). We find force in the submission made by the Ld. Counsel that the addition of Rs 16,02,65,407/- has been made and sustained on the basis of material collected by the AO as is available in Annexure S-1, which we have looked into. We further noted that CIT(A) while confirming the addition relied on the said annexure even though the AO has observed in the assessment order while dealing with the addition that the assessee was involved in share trading not only on his behalf but also on behalf of his clients. Before us, neither the assessee nor the Ld CIT-DR could bring the evidence to what extent the assessee has traded in the shares on own account and on behalf of his client. The appeal relates to the AY 1992-93 and already more than 26 years have passed and this issue has been restored again and again to the file of the authorities below. We, therefore, in the interest of the justice and fair play to both the parties and to end the litigation direct the AO to treat 50% of such profit on share trading belonging to the third party on whose behalf the assessee might have carried out the share trading. Thus the addition is reduced to 50% of Rs 16,02,65,407/-. Thus, the assessee gets a relief of Rs 8,01,32,703/-. Thus, this ground in assessee’s appeal is partly allowed.

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14. The next issue in this appeal of assessee is as regards to addition of Rs. 2,85,26,994/- on account of share market speculative profit. For this assessee has raised following ground No.12:-

> *"12. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making an addition of Rs. 2,85,26,994 on account of Share Market speculative profit.*
>
> *The Appellant prays that the AC be directed to delete the addition of Rs. 2,85,26,994 on account of Share Market speculative profit."*

14.1. Brief facts relating to this issue are that as per Annexure S-2 to the original assessment order dated 27.03.1995, addition of Rs. 2,85,26,994/- was made on account share market speculative profit. According to AO, revenue collected information from various sources including the brokers, B.S.E. through whom the transactions are claimed to have been undertaken by the assessee. The assessee preferred an appeal before the CIT(A), who upheld the addition made by the AO and the Tribunal set aside the matter to the file of CIT(A). The CIT(A), during the second round of litigation, again upheld the addition. The assessee preferred further appeal before the Tribunal (second round), wherein the Tribunal set aside the matter to the file of AO vide its order dated 29.10.2014. Subsequently, the AO (third round of litigation) vide her order dated 15.03.2016, assessed share market speculative profit as assessed in the original assessment order at Rs. 2,85,26,994/-. The assessee preferred further appeal before CIT(A), who vide impugned order dated 28.06.2017, upheld the addition. Aggrieved assessee came in second appeal before Tribunal.

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14.2. Before us, Ld. Counsel for the assessee stated that the facts in the given case of the assessee are similar to that of Ground of Appeal No. 5 in case of Shri Ashwin S Mehta for AY 1992-93 (Assessee's appeal No. 3427/Mum/2017). He placed reliance on the submissions made therein. Further, in this case also he stated that the AO till date has not provided the details and basis of preparation of Annexure S-2 wherein the speculative profit has been assessed. The assessee has not been granted any inspection of the material on which basis the speculative profit has been computed nor copy of the same have been provided. He also reiterated his submissions made in relation to the Ground of Appeal Nos. 13 to 16 in the case of the assessee. Further, the Department has not been able to rebut the submissions made before the Bench by the assessee. In view of the above, it was urged that the order of CIT(A) for sustaining the addition on account of share market speculative profit in absence of any details and information basis which the addition is made, cannot be upheld.

14.3. On the other hand, the Ld. CIT-DR stated that the facts for making addition on account of share market speculative profit by the AO and confirmation of addition by CIT(A), both relied upon the order of his Predecessor dated 24.03.2010, wherein this issue is discussed in detail in para 11.1 to 11.3.2 of the order. He stated that the assessee has alleged that the computation of Annexure S-2 on the basis of which this addition has been made, was not disclosed to him. However, during the course of hearing, the copies of order sheet noting were produced and submitted wherein it was clearly established that all the information received from third parties have been shared with the representative of the assessee including the working on the basis of which said figures of speculative profit have been arrived at.

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14.4. Ld CIT-DR also made various comment in his written submissions as under (which are for ground No. 11 to 15): -

> *"In the aforesaid case, arguments on behalf of Revenue were started on 23.05.2018 by the undersigned by giving reference of my earlier postings/assignment during the period 2008-09 to 2010-11 as Addl. CIT, Central Range-7, Mumbai when I had dealt with the Harshad Mehta Scam matters. On the earlier dates in the present hearings before Hon'ble Bench, the AR of appellant had argued that he was not provided relevant documents/papers, break-ups and working of annexures forming part of assessment order in respect of money market transactions as well as share market transactions. In response to that, the Hon'ble Bench was apprised that during my earlier tenure, during the second round of appellate proceedings, all the relevant data such as Deal Files, Annexures, security-wise break-ups, relevant software to run the said files were given to appellant in respect of money market transactions and share market transactions. It was further appraised that the xerox copies of documents running approximately 18000 pages were handed over to appellant and that the inspection of seized/collected material was provided on various dates starting from 27.01.2009 to 12.05.2009. It was also brought on record that on 31.07.2009, a demonstration was given by the undersigned before the Ld. CIT(A) as well as ARs of appellant explaining the Deal File and its working and to substantiate it, a write up was also submitted on that date. All these facts were mentioned*

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to the Hon'ble Bench on the basis of findings given by predecessor Ld. CIT(A) vide his order dated 24.03.2010 from page 4 (para 3.0) to page 17 (para 3.4.3). On the basis of same appellate order and the order sheet notings (as enclosed vide page -378 to 527 of Revenue's Paper-Book-2), it was further brought in the knowledge of Hon'ble Bench that earlier also during the period 18.05.93 to 13.08.93, inspection of seized material was provided to appellant and after that, at the directions of Hon'ble Special Court, one more time during the year 1995, the inspection of seized material as well as information and material gathered from outside agencies such as BSE, RBI, CBI, ED, various companies, brokers, banks etc. with whom transactions were made by appellant, were provided to appellant. It was further apprised that during this period, all the data available in seized material, information received from various agencies/parties was converted into soft form in computers with the consent of appellant and was provided to AR of appellant to verify whether any corrections or modifications are required and after making corrections/modifications as suggested, final figures were arrived at for the purpose of preparing the annexure forming part of assessment order. All these details were brought in knowledge of Hon'ble Bench from the specific instances given in order sheet noting which are part of the paper book. It was also brought in the knowledge of Hon'ble Bench that one more time the inspection of the documents were provided to appellant by the Custodian at the directions of Hon'ble Supreme Court during the year 2008. Thus, as

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apprised, the inspection of relevant documents/evidence and their copies were provided to appellant four times and it was also brought on record that as mentioned by AO in the original assessment order, the main computers of appellant seized during the search proceedings, were released within 3 days of the search. Thus, the claim of appellant that he was not provided the relevant documents/evidence and the basis of additions made in his case, is baseless, unfounded and deserves to be rejected

1.1 After apprising the Hon'ble Bench about inspection/copies of documents provided to appellant several times, attention was drawn towards the original documents/records relied upon by the AO for arriving at figures mentioned in annexures of the assessment orders, which were brought in 9 gunny bags containing 280 files/folders and shown to Hon'ble Bench as well as appellant in the Court Room. It was mentioned that the original data containing in those files/folders were converted into soft copies and after processing and merging that digitized data through software, annexure were prepared and accordingly the additions were made while framing the assessment order. It was further mentioned that the process to collect, collate and analyse the data/information from various sources was completed through computer programming and data management process and this entire process was delineated by the erstwhile ACIT(OSD) in his letter dated 22.05.1995, which is part of the Revenue's PaperBook-1 (from page 1 t ii). It was also apprised that the copy of this letter was furnished to Ld. CIT(A)

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as well as appellant on 31.07.2009, as mentioned by the Ld. CIT(A) from page 57 to page 59 (para 8.4) in his order dated 24.03.2010 wherein he has discussed in details about the method of processing the data, bunching them in independent categories of transactions and running through software to arrive at the desired results. The demonstration of the process as per this letter was done before Hon'ble Bench also as it was earlier given before the Ld. 01(A) as well as appellant as on 31.07.2009.

1.2 As mentioned above, the information contained in documents seized during the search proceedings and as collected from BSE, RBI and other third parties was converted into soft form with the consent of appellant during the inspection in the year 1995 and stored in magnetic tapes named Tape 'A' and Tape 'B' and subsequently transferred to Compact Disk (CD). This process was brought on record during the second round of appellate proceedings vide letterdated 31.07,2009, as above. However, as desired by Hon'ble Bench, a certificate in this regard that the data stored in Tape Cartridges and uploaded on the computer system during the year 1995 has been transferred to CD in original form , is being submitted separately as per Annexure-A. However, on the query raised in regards to data received from BSE and RBI, It was apprised to Hon'ble Bench, by mentioning the order sheet entries of inspection, that the said data was received by the AO in soft form (in magnetic tapes) only which was copied in his computer and provided to appellant. Similarly, in respect of deal file also, it was

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contended that originally, it was in soft form in the computer of appellant which was seized during the search proceedings and subsequently, copied and stored in the computer of AO for further analysis. As it is evident from the order sheet notings and as mentioned above, all the data received and converted into soft files was submitted to the ARs of assessee who noticed some discrepancies and duplicities which were corrected/modified and final figures were arrived for the purpose of assessment proceedings.

2. Demonstration before Hon'ble Bench: -

After apprising to Hon'ble Bench about the inspection of material used for the purpose of assessment proceedings and providing the copies of the said material and conversion of data contained in documents/papers into soft form, a demonstration was given in the Court by installing projector and running the CD on laptop to explain that how the original data was captured in the Deal File-I and Deal File-II (Annexure M-1) and by applying simple method of calculation, final figures were arrived. The Deal File-1 (from 01.04.1991 to 27.02.1992) namely DL9.DBF in the CD was opened and 1st and 2nd rows of the Deal File were explained for each column. The columns are as follows in the numbered list as shown in Table No.1 in respect of one transaction of security namely Units 1964 Scheme, taken for the purpose of demonstration.

Table No. 1 Structure of Deal File

S. NO	Columns in 1st Row	2nd Row
1.	SEC_CODE	U01964

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2.	SEC-SHORT	UNITS 1964 SCHEME
3.	SEC-NAME	UNITS 1964 SCHEME
4.	IPDATE	
5.	DELY-DATE	02.05.1991
6.	DELY-QTY	2.00
7.	LAC_CROR	C
8.	DELY_RATE	1517000
9.	S_SHORT_TM	BOAM
10.	S_DATE	20.08.1990
11.	S_C_NO	5
12.	S_RATE	15.17000
13.	S_TRANS	RV
14.	S_STAT	
15.	ACT_BR_SGL	A
16.	BR_SGL_NO.	
17.	S_BROK	0.00
18.	S_PO_AMT	0.00
19.	S_PAYM_DT	
20.	S_ PO_NO	
21.	S_RF_DATE	
22.	S_RF_PERCE	0.000
23.	S_RF_RATE	0,00000
24.	S_CC_NO	9008202
25.	B_SHORT_NM	SETAVGD
26.	B-DATE	20.08.1990
27.	B_C_NO	25
28.	B_RATE	15.17000
29.	B_TRANS	RT
30.	B_STAT	
31.	B_BROK	0.00
32.	B_PO_AMT	0.00
33.	B_PAYM_DT	
34.	B_PO_NO	
35.	B_RF_DATE	
36.	B-RF_PERCE	0.000
37.	B_RF_RATE	0.000
38.	B_CC_NO	
39.	CONT_NARR	
40.	NARR_1	
41.	NARR_2	GRAM>SETAVGD
42.	ENTRY_STAT	FALSE
43.	ENTERED_BY	
44.	JRL_TRF	FALSE
45.	STK_TRF	FALSE

2.1 In respect of Deal File Part-11 (Annexure M-1) also, it was shown that the data has been stored in

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identical columns for the period 28.02.1992 to 31.03.1992 in the file namely DMONY1.DBF,

2.2 It was further demonstrated that the data contained in the aforesaid files was again processed by filtering the transactions showing the 'T' (True) and 'RI' (Routed Through) status in their respective columns no. 42 (Entry Status), no. 13 (Sale Transaction), no. 29 (Buy/Purchase Transaction) of Deal Files and two new journal files namely DL91JR.DBF (for the period 01.04.1991 to 27.02.1992) & DMONY11R.DBF (for the period 28.02.1992 to 31.03.1992) were created. The structure of journal flies is shown in the following table by taking example of one transaction of security namely 11.50% C/L 2008.

TABLE NO. 2 STRUCTURE OF DMONV1JR.DBF

S.No	First row	First entry
1.	Vchdat	920307
2.	Quantity	250000000.00
3.	Debit_amt	255127006.56
4.	Credit_amt	
5.	Sec_short	11.50% C/L 2008
6.	Sec_code	CO8115

It was further demonstrated that after processing the data as per abovecharts, trading accounts were prepared in respect of each security and Profit/Loss, Closing Stock or Oversold Position was arrived. The following chart shows that how it was worked out.

TABLE NO. 3 FORMULA FOR ARRIVING AT OVERSOLD POSITION

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	Opening stock		
	opening stock value		
1.	Total sale value		
2.	Total purchase value		
3.	Total sale qty		
4.	Total purchase qty		
5.	Avg purchase rate per security		B/D
6.	Closing stock		(D-C)
7.	Closing stock value		(E*F)
8.	Avg Purchase Value		(C*E)
9.	Profit/ Loss		(A-H)
10.	Oversold [(Opening stock + purchases) – Sales]		

2.4 The Table No. 1, Table No. 2 and Table No, 3 were lively used and the working of Profit/Loss, Closing Stock and Oversold Position was explained and shown to Hon'ble Bench and ARs of assessee in respect of following 9 securities which cover all the situations of oversold position with the use of the files contained in the CD.

1) ATBF NON SLR

2) CPBL

3) BOI NANZA
4) CALL
5) CANPREMIUM
6) ACC
7) 13% MTNL (01/03)
8) 11.50% GIL 2007 CENTRAL LOAN

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9) 9% NHPC BONDS (27/03).

2.5 The Journal Files and Trading Accounts prepared in respect of aforesaid securities have been submitted as per Revenue's Paper - Book - 2 (From page nos.347 to page nos. 356) for ready reference.

2.6 Similarly, the working of the file of Annexure S-1 was also demonstrated before Hon'ble Bench in respect of share market transactions. This annexure was prepared from the file namely FIN1.DBF in CD. This file was opened live on projector and explained. The file structure of the same is shown in Table No. 4 of this submission. It was explained that this DBF file is prepared after merging SHR1.DBF, STOCKEXCHANGE TRANSACTIONS, OPENING STOCK DATA AND BONUS SHARES. SHR1.DBF has been prepared by merging SHR (information obtained from various parties), H300-STX [clearing house auction/HSM (broker replies and transactions extracted from seized voucher files)], ASM3001 [Ashwin (broker replies and transactions extracted from seized voucher files)], JHM3001Jyoti (broker replies and transactions extracted from seized voucher files)] and CONTR data files [contracts between the group concerns]. Stock Exchange Transactions data as obtained from Bombay Stock Exchange through various files is stored in the file named STOCK.DBF in CD.

TABLE NO. 4:- STRUCTURE OF FIN 1.DBF

S.NO	HEADER	FIRST ENTRY
1.	SECNAME	A.C.C.

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2.	CODE	410
3.	OPST 65300	
4.	OPVAL	141701000.00
5.	PURCH	208120
6.	PURVAL	616290210.00
7.	SAL	125170
8.	SALVAL	359315981.00
9.	DIFF	12312251.37
10.	CLSSTK	148250
11.	CLSVAL	410987480.37
12.	RATE	
13.	ENTITY	ASM
14.	SQRUP	34859
15.	SQRAV	96638869.33
16.	SQR31	348592428.28
17.	BENAMI	92133
18.	UNREG	4529
19.	TAG	

The Table Number 4 was lively demonstrated before Hon'ble Bench and ARs of assessee for preparation of Trading Account of scrips of ACC, Apollo Tyres and Castrol India. The same are shown in form of Table No. 5, 6 and 7 below.

TABLE No. 5:- TRADIG ACCOUNT (ACC)			
Dr.		*Cr.*	
Opening stock	*120510950*	*Sales*	*463641799*
Purchases	*522183865*	*Closign stock*	*303413204*
Total	*642694815*	*Total*	*767054983*
Profit	*124360167*		

TABLE No. 6:- TRADIG ACCOUNT (Apollo Tyres)			
Dr.		*Cr.*	
Opening stock	*79828420.00*	*Sales*	*20542515.00*
Purchases	*3262455762.75*	*Closign stock*	*391855359.72*
Total	*406074182.75*	*Total*	*412397874.72*

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Profit	6323691.97		

TABLE No. 7:- TRADIG ACCOUNT of Castrol India			
Dr.		*Cr.*	
Opening stock	*12392725.00*	*Sales*	*52896325.00*
Purchases	*10388600.00*	*Closign stock*	*643687.69*
Total	*22781325.00*	*Total*	*53540012.69*
Profit	*30758687.69*		

2.7 It was further apprised to the Hon'ble Bench why the transactions marked as 'I' (True) and 'RT' (Routed Through) only have been taken into consideration while working out the Profit/Loss, Closing Stock and Oversold Position of securities as per Annexure M-2 of the assessment order. It was explained that the entry status 'T' or 'F' reflect if the data of Deal File is run through the software 'Fox Pro' which was originally used by appellant while preparing the Deal File. This coded status of entries automatically gets decoded into the status 'True' and 'False', if the different software, such as Microsoft Excel in the present case, is used to analyse the data. Thus, the entries status 'F' or 'T' actually represent the entry status 'True' or 'False'. This fact was confirmed by Mr. Pankaj Shah, the close confidant of appellant Shri Harshad Mehta, also as read out from his statements as reproduced by Ld. CIT(A)in his order dated 24.03.2010. Similarly, the different nomenclatures such as RT, RE, RV, OR, etc. used against each transaction was also explained to Hon'ble Bench that only those transactions with entry status 'RT' (Routed Through) have been taken into

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consideration while computing the Oversold Position as per Annexure M-2 for the reason that only these transactions have been executed by appellant on Principal to Principal basis to earn Profit/Loss from the sale/purchase of securities and status of these nomenclatures has been defined in the diary seized from the premises of assessee during the search proceedings, as discussed by AO in the assessment order of A.Y. 1990-91. it was further apprised that the said seized document also explains that the assessee was operating in money market in three capacities viz., Principal to Principal basis, as an Intermediary and as a Broker. It was further mentioned that the aforesaid process of filtering the data from the original source and working of Annexures has been discussed in details by Ld. CIT(A) vide his order dated 24.03.2010 from page no. 36 to page no. 63. It has to mention that in the appeal order, which is subject matter of present appellate proceeding before Hon'ble ITAT, Ld. CIT(A) has relied on the order dated 24.03.2010 of his predecessor on the aforesaid subject but only selectively and partially. Therefore, the undersigned mentioned before Hon'ble Bench about the complete facts and findings of Ld.CIT(A) in his order dated 24.03.2010."

14.5. We have heard rival contentions and gone through the facts and the material available on record as well as the relevant documents and the paper book referred to during the course of hearing before us. We noted that the said addition of Rs.2,85,26,994/- on account of speculative profit has been made by the AO on the basis of Annexure S-2 compiled by him on the basis of the material and information

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collected from various person at the back of the assessee which we perused. From the said statement, we noted that not only the name of the script but the name of the party are also given. This annexure is available at pg 696-702 of APB No. 3. It is not denied that the assessee was engaged in the business of dealing in shares on behalf of his clients. From this statement, it is not clear which transaction belonged to the assessee or to the client of the assessee. In our view when the Revenue is adding an income and treating it to be the income earned by the assessee specially when the search has taken place at the premises of the assessee and all his books of account and documents were seized, the onus lies on the revenue to prove that the assessee has actually earned this income on his account. It is an undisputed fact that the assessee is a registered member of Bombay Stock Exchange and used to carry transaction in the Stock Exchange not only on his behalf but also on behalf of his clients. Therefore under this fact until and unless specific evidence is brought on record it cannot be said that all of the speculative profit earned by the assessee belonged to the assessee and has not been earned by the assessee on behalf of his clients. Section 4 & 5 of the Act, imposes liability to tax upon all income but the Act, does not provide whatever is received by a person must be his own income liable to tax. Hon'ble Supreme Court in the case Perimisetti Seetharamana vs CIT 57 ITR 532 has taken the view that in all cases in which a receipt is shown to be taxed as income, the burden lies upon the department to prove that it is the income of the assessee within the taxing provision. Although in our opinion, the initial onus lies on the Revenue to prove that the said income has been earned by the assessee on his own account, but the assessee could not bring any evidence that he has not earned any income on his own account and the issue has come before this Tribunal third time. In the absence of burden being discharged by the Revenue, we cannot shift the burden of

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proving otherwise on the assessee. This matter, we noted, relate to the AY 1992-93 and is pending for the last over 25 years by that time at least one generation would have changed. Since, the revenue could not discharge its onus and addition in our view is based just on surmises and conjectures. We, therefore, delete the addition. Thus, this ground of assessee's appeal is allowed.

15. The next common issue in these appeals of assessee and revenue is as regards to the addition on account of profit on sale of shares in shortage of Rs. 253,16,78,501/- and for this assessee has raised the following ground Nos. 13,14,15 &16:-

> *"13. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition of profit on account sale of shares in shortage based on assumptions and surmises.*
>
> *The Appellant prays that the AC be directed to delete the addition of profit on sale of shares in shortage.*
>
> *14. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in computing the profit on sale of shares in shortage without granting credit in respect of missing/stolen/ lost/ misplaced, mutilated shares, benami shares, shares seized by CBI and shares purchased on behalf of related and third parties.*
>
> *The Appellant prays that the AO be directed to recompute the profit on sale of shares in shortage after granting appropriate credit.*

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15. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not granting credit for additional benami shares disclosed in Miscellaneous Petition No.99 of 1998 before the Hon'ble Special Court.

The Appellant prays that the AO be directed to recompute the profit on sale of shares in shortage after granting appropriate credit.

16. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO in adopting the closing rate as on 31.03.1992 for the purpose of computing the profit on sale of shortage of shares.

The Appellant prays that the AO be directed to recompute the profit on sale of shares in shortage by adopting the monthly average rate or the average rate as on 27.2.1992."

The Revenue has also raised the following grounds on this issue:-

"4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in giving partial relief to the assessee by directing the AO to re-compute the shortage of shares by giving credit in respect of shares of 44 companies in the ratio as determined at the time of original assessment order in the three entities, viz. Ashwin Mehta, Jyoti Mehta and Harshad Mehta despite the fact that, the assessee was not able to produce these shares before the AO and also could not explain as to where these shares were lying till the date of order.

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> *5. On the facts and circumstances of the case and in law, the CIT(A) erred in holding that the assessee has proved the availability of 7,40,000 shares of Apollo Tyres being in the custody of CBI authorities and 1,38,790 shares of the company being mutilated and therefore credit of the same should be given to the assessee.*

15.1. The brief facts relating to the issue arising out of ground no. 13 to 16 of the assessee's appeal and ground No. 4 & 5 of Revenue's appeal are that the AO in his original assessment order dated 27.03.1995 made an addition of Rs. 253.16 crores on account of profit on sale of shares in shortage [page Nos. 52 to 63 of APB No. 1 r.w Annexure S-1 (page Nos. 687 to 695 of APB No. 3) and Annexure S-3 (page Nos. 703 to 813 of APB No. 3)]. The CIT(A) upheld the addition made by the AO. Subsequently, on further appeal by the assessee, the Tribunal set aside the matter to the file of AO and directed him to admit the books of account. The AO, once again determined the profit on sale of shares at Rs. 253.16 crores. Subsequently, the CIT (A) also upheld the order of the AO. The Tribunal set aside the matter to the file of the AO vide its order dated 29.10.2014 (page No. 368 of APB No. 1). The AO subsequently vide order dated 15.03.2016 (third round of litigation) assessed profit on sale of shares in shortage at Rs. 253.16 crores as assessed in the original assessment order. The assessee preferred further appeal before CIT(A), who vide impugned order dated 28.06.2017, granted following relief to the assessee:

> *"a) Credit of certain unregistered shares disclosed in letter dated 31.01.1995 of Shri Harshad S. Mehta to the Custodian (page Nos. 105 to 112 of impugned order dated 28.06.2017 in the appeal file);*

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> *b) Credit of shares of Apollo Tyres Limited seized by CBI and lying in the custody of the CBI authorities (page Nos. 112 to 113 of the of impugned order dated 28.06.2017 in the appeal file); and*
>
> *c) Credit on account of mutilated shares of Apollo Tyres Limited (page No. 113 and 115 of the impugned order dated 28.06.2017 in the appeal file)."*

The methodology of computing profit on sale of shares in shortage adopted by AO is as under: -

> *"The AO has computed the closing stock of shares of various companies acquired by the assessee on the basis of opening stock, purchases and sale of shares in Annexure S-1 (page Nos. 687 to 695 of APB No. 2). In doing so, he has taken closing stock of shares of last Assessment Year (i.e. AY 1991-92) as opening stock for AY 1992-93. Thereafter, he has gathered the details of purchases and sale of shares affected by the assessee from various sources during the period 01.04.1991 to 31.03.1992 and for the period 01.04.1992 to 08.06.1992. These sources are B.S.E. brokers, clients, financial institutions, companies, banks, receipt and payment details from RBI, information received from other entities from the group of the assessee etc. Based on the purchase and sale data gathered for the period 01.04.1991 to 31.03.1992, the AO computed stock position of the assessee as on 31.03.1992. Subsequently, in Annexure S-3, the AO computed stock as on 08.06.1992 [i.e. the date of notification under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992*

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('TORT Act')] by adjusting the purchases and/ or sales transactions undertaken during the period 01.04.1992 to 08.06.1992, details of which were also obtained from various sources as mentioned above."

Further, the AO computed physical stock of the assessee as on 08.06.1992 which comprised of the following: -

"a) registered holdings with the companies,
b) other Benami shares declared by the assessee and
c) unregistered shares held by the assessee."

15.2. The AO thereafter, compared the physical stock (computed as on 08.06.1992) with the stock as on 08.06.1992 and computed shortage in shares in the hands of the assessee in Annexure S-3 (page Nos. 703 to 813 of APB No. 3) for AY 1992-93. The AO has treated shortage of shares as having been sold by the assessee as on 31.03.1992 and accordingly has applied the market rate of these shares as on 31.03.1992 to arrive at sale consideration of such shares. After reducing the cost of acquisition of such shares, the AO has arrived at the profit on sale of shares in shortage at Rs. 253.16 crores and the same has been added as income in the hands of the assessee. In case of excess of the physical stock of shares vis-à-vis the stock computed by the AO, no shortage has been computed. The above working as adopted by the AO to arrive at profit on sale of shares in shortage of Rs. 253.16 crores as on 31.03.1992 is illustrated through a few sample scripts from Annexure S-3 (page No. 703 to 813 of APB No. 3). Illustration for scripts 'Ashok Leyland' is reproduced below:

Particulars		**Shri Harshad S. Mehta**		**Total (ASM + HSM + JHM)**
		Quantity	**Amount (in Rs.)**	

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Annexure S-1				
Opening stock as on 01.04.1991 (As per Assessment order of A.Y. 1991-92)		20,850	27,36,563	
Add: Purchases from 01.04.1991 to 31.03.1992 (Custodian information, Company information, etc.)		1,19,036	1,06,07,201	
Less: Sales from 01.04.1991 to 31.03.1992 (Custodian information, Company information, etc.)		(6,300)	(10,86,200)	
Add: Trading profit / (Loss)			4,85,241	
Closing stock as on 31.03.1992 (Balancing figure - Quantity)		**1,33,586**	**1,27,42,805**	
Annexure S-3				
Stock as on 31.03.1992 (As per Annexure S-1) [31M]	A	1,33,586		1,53,601
Add/ Less: Adjustments (i.e. Purchase and sales for the period 01.04.1992 to 08.06.1992) [ADJ]	B	-		24,050
Position of stock as on 08.06.1992 [POS]	C=A-B	1,33,586		1,77,651
Less: Registered shares [REG]	D	-		-
Less: Benami shares [BEN]	E	-		-

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Less: Unregistered shares [UNR]	F	1,654		2,200
No. of shares in Shortage [SHT]	G=C-D-E-F	1,31,932		1,75,451
VAL	H = G*Average rate	1,25,85,000		
Average Purchase cost (as per Annexure S-1) (in Rs.) [AVERAGE RATE]		95.39		
Sales Consideration (in Rs.) [SQR]	I=G*Market rate as on 31.03.1992	2,63,86,339		
Profit on sale of shares in shortage (in Rs.) [DIFF]	I-H	**1,38,01,339**		

15.3. Before us, the Ld. Counsel for the assessee stated that the facts in the given case of the assessee are similar to that of Ground of Appeal Nos. 6 to 8 in case of Shri Ashwin S Mehta, AY 1992-93 (Assessee's appeal No. 3427/Mum/2017). He placed reliance on the submissions made therein also. He further submitted that the addition on account of profit on sale of shares in shortage is not sustainable in law due to the following:-

"i) The relevant material relied upon by the AO for computing the additions has never been brought on record till date.

ii) Various infirmities in the computation of profit on sale of shares in shortage have been found.

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iii) Relief in relation to addition on account of benami shares, pertaining to which relief is already granted in the case of Shri Ashwin S Mehta and Smt Jyoti H Mehta"

15.4. Ld Counsel submitted that the revenue has claimed that the Income-tax Department had collected information from various sources and all the input had been fed into the computer. The said input fed into the computer was processed by the Income-tax Department. Thereafter, the assessee was provided only with the summary of output in form of Annexure S-1 and Annexure S-3. Further, complete particulars of the information obtained by the AO from outside sources was not provided to the assessee, no inspection or cross-examination was granted to the assessee in spite of the same being repeatedly asked for by the assessee during various rounds of assessment and appellate proceedings. These documents form basis of various annexure (i.e. Annexure S-1 and S-3) to the assessment order passed by the AO and the additions made by him. In the original assessment order (page Nos. 10 and 50 of APB No. 1), the AO himself has stated that the assessee has requested for inspection of original documents. Subsequently, during the later round of litigations as well, detailed submissions were made from time to time by the assessee in relation to the above. The list of several letters filed since 1994 till date to the Income-tax Department for furnishing and granting inspection and copies of documents collected by the AO and cross examination of the parties from whom the relevant documents were obtained are as under: -

Sr. No.	Letter date	Letter addressed to	Particulars
1.	10.12.1994	ACIT C.C. 23	Request made to furnish copies of the accounts and

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			transaction statements furnished by the brokers, individuals or organizations.
2.	06.03.1995	ACIT C.C. 23	Request made for granting opportunity to inspect documents / data relied upon by the Assessing Officer,to grant opportunity to cross-examination and to furnish copies of the material relied upon by the Assessing Officer.
3.	13.03.1995	ACIT C.C. 23	Request for furnishing copies of the material relied upon by the Assessing Officer, to cross-examine each person and source of information relied upon by the Assessing Officer.
4.	14.03.1995	ACIT C.C. 23	Request to provide data relied upon by the Assessing Officer
5.	15.03.1995	ACIT C.C. 23	Request made to furnish copies of the material relied upon by the Assessing Officer and to grant opportunity to cross-examine.
6.	22.03.1995	ACIT C.C. 23	Request made for granting opportunity to inspect documents / data relied upon by the Assessing Officer, to cross-examine and to furnish copies of the material relied upon by the Assessing Officer.
7.	24.03.1995	ACIT C.C. 23	Grievance made that inspection or copies of material relied by Assessing Officer not provided.
8.	31.05.1995	ACIT C.C. 23	Grievance made that inspection of documents and material relied upon not given. Further, grievance made in relation to the false allegations that such opportunity has been granted.
9.	29.09.1995	CIT(A) - Central V	Grievance made that inspection of documents and opportunity of cross examination not given. Request made to issue directions to the Assessing Officer to grant opportunity to inspect documents /

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			data relied upon by Assessing Officer, to cross-examine and to furnish copies of the material relied upon by the Assessing Officer.
10.	07.10.1995	ACIT C.C. 23	Request to grant opportunity to inspect documents / data relied upon by Assessing Officer and to make an inventory regarding the same to avoid disputed later.
11.	16.10.1995	ACIT C.C. 23	Grievance made that inspection as decided vide letter dated October 9, 1995 and October 7, 1995 not given.
12.	22.01.1996	ACIT C.C. 23	Grievance made that inspection not given.
13.	01.02.1996	CIT(A) - Central V	Grievance made before the Assessing Officer that no opportunity has been provided for cross examination Request made by the Appellant for granting opportunity to inspect documents / data relied upon by the Assessing Officer, to cross-examine each and every party and sources and to furnish copies of the material relied upon by the Assessing Officer.
14.	19.08.2009	CIT(A) - Central V	Grievance made before the Assessing Officer that no opportunity has been provided for cross examination of authors of M/s. Vyas and Vyas's report even though requested.
15.	22.08.2009	CIT(A) - Central V	Grievance made that inspection of material relied upon by the Assessing Officer not given. Request made to grant opportunity to cross examine of persons examined by the Assessing Officer.
16.	22.01.2010	CIT(A) - Central V	Grievance made before the Assessing Officer that no opportunity has been provided for cross examination of authors of M/s. Vyas and Vyas's report even though requested.
17.	25.01.2010	CIT(A) -	Grievance order for providing opportunity for cross-

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		Central V	examination of persons and inspection of materials relied upon not been granted by the Assessing Officer despite orders to do so.
18.	11.01.2016	DCIT C.C. 4(1)	Grievance made before the Assessing Officer that no opportunity has been provided for cross examination of authors of M/s. Vyas and Vyas's report even though requested.
19.	21.03.2016	DCIT C.C. 4(1)	Grievance made that no material has been disclosed or copies or inspection has been provided by the Assessing Officer. Request made by the Appellant for providing opportunity of cross examination of the persons who have furnished the material.
20.	22.03.2016	DCIT C.C. 4(1)	Grievance made that no inspection was given and that the assessment order was passed without any inspection. Further, request was made to disclose precisely the material used and manner in which it was used in arriving at the additions and also furnish itemized break up and computation regarding additions wherever the consolidated figures were used in assessment order. Request was also made to provide opportunity to cross examine Assessing Officer concerned who made computations basis the third party documents

15.5. The ld. Counsel made statement at bar that in spite of the above, the Income-tax Department never gave any break-up or supporting evidences based on which the huge additions are made. As

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discussed above, in ground No. 6 and 7 it is amply clear that the itemized break-up of various transactions considered by the AO in case of most of the money market securities were provided during the second round of litigation before CIT(A) in relation to addition on account of MMOP. On the basis of these details, the assessee has been able to substantiate his claims and point out the mistakes/errors made by the AO. However, in absence of such details/itemized break-up in case of addition on account of share market activities, the assessee has not been able to provide his rebuttals.

15.6. Without prejudice to the above, he argued that the basis for computation of profit on sale of shares in shortage is incorrect. This is demonstrated by the discrepancies that exists in the quantity of registered shares mentioned in Annexure S-3 vis-à-vis those mentioned in the Custodian's letter dated 29.10.1993 (chart showing the discrepancies is enclosed on page No. 894 of APB No. 3). He submits that considering the quantum of additions made and in compliance with the principles of natural justice, the assessee ought to have been granted a full and proper opportunity to rebut such large additions. The assessee placed reliance on the co-ordinate Bench's decision in the case of Smt. Jyoti H Mehta ITA No.3211/mum/2012 and the decision of Hitesh S. Mehta (in ITA No. 538/M/2012), wherein the AO has been directed to provide copies of all the information on the basis of which addition was made in the hands of the assessee. Relevant extract of the said order is as under:

> *" The Assessing Officer has to bring on record specific evidence or defect to prove falsity of books of account as no falsity has been proved in the assessment order passed by the AO. Besides this the department has to provide all*

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the details and material on which basis the addition have been made earlier. If such material is disputed by the assessee then in our view correctness of such material has to be examined as per provision of law. We are not convinced with the argument of ld.DR that assessee can collect information from parties from where Assessing Officer has obtained the copies on which basis the addition have been made. Therefore, Assessing Officer is directed to provide the copies of all information on which basis, the AO wanted to made additions in the hands of the assessee. If the AO does not provide the material, then in our view addition cannot be made. In view of above facts and circumstances, we set aside order of the authorities below and restore the issues to the file of the Assessing Officer to pass assessment de novo after affording reasonable opportunity of being heard to the assessee and as per observations of ours made in the order as above. We order accordingly."

6. …

7. ...

8. We have considered the rival submissions and carefully perused the orders of the lower authorities and the decisions brought to our notice which are placed in the paper book before us. We find force in the contention of the Ld. Counsel, following the judicial decisions, findings of the Tribunal in the case of Hitesh

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Mehta mentioned hereinabove deserves to be followed. Respectfully following the findings of the Tribunal, we set aside the order of the authorities below and restore the issue to the files of the AO to pass assessment denovo in the line of the directions given by the Tribunal in the case of Hitesh S. Mehta vide ITA No. 538/M/2012. The AO is further directed to decide the issue in the light of the following lines.

> *"(i) The Assessing Authority has to strictly follow the earlier orders of the Tribunal on respective subjects.*
>
> *(ii) Wherever the additions are proposed on the basis of seized material or materials collected from third parties, the copies thereof need to be provided to the assessee. If requested for, the assessee must be given an opportunity to cross-examine the concerned parties.*
>
> *(iii) Additions should not be repeated on the basis of the presumptions and inferences. Additions must be made only on the basis of materials and evidences available on record.*
>
> *(iv) Books of account should not be rejected on flimsy grounds and should be acted upon.*
>
> *(v) The AO has to accept the request of the assessee for obtaining materials from the Custodian, Banks and Companies etc. For that matter, wherever necessary, the AO may issue summons u/s. 131 and the inquiries must be made effective and fruitful."*

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This ground of the assessee is allowed for statistical purpose."

15.7. Ld Counsel referred to the hearing of 01.02.2018, wherein bench directed to the AO to provide details, break-up and the evidence along with the basis of preparation of various Annexure including Annexure S-1 and S-3 to the assessment order. Ld Counsel narrated that subsequently, the assessee vide her letter dated 02.02.2018 listed the directions of the Bench to provide details, break-up and evidence along with the basis of preparation of various annexure to the assessment order (primarily in case of Annexure S1 and Annexure S3). However, it was stated that till date, the Income-tax Department has neither provided the detailed break-up nor pointed out the exact material used by the AO in arriving at the consolidated figures as reflected in the Annexure to the original Assessment Order dated 27.03.1995. This is in spite direction of the Bench qua specific figure and script. The Department has merely repeated their general arguments that all material has been given. Accordingly, in absence of the itemized break up of such consolidated figures the assessee has never been put in a position to rebut the same. He contended that instead of bringing on record the relevant material relied upon by the AO, the AO submitted a Remand Report dated 12.03.2018 before the Bench mainly containing copies of certain order sheets. The Income-tax Department wants to contend that the relevant material has already been given to the assessee and hence the same is not required to be given again to the assessee. The Income-tax Department is also of the opinion that the same is not required to be given to Tribunal. Ld Counsel filed page-wise comments on the material provided by the AO annexed to the said Remand Report as under:-

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Page No	Appellant's Comments
1 to 13	*These pages do not pertain to the assessee [and for that matter do not also pertain to Shri Ashwin S Mehta (ASM) and Smt. Jyoti H. Mehta (JHM)]*
14 – 15	*On these pages it is mentioned that the RBI information is loaded on the computer and two files containing large number of data were created. It has been further mentioned that only those fields that were required for additions based on data received from the RBI were relevant. This information is in respect of the receipts and payments and do not have any relevance with any entry in Annexure S-1 and S-3. This does not explain the manner of working out purchase / sale of shares.*
	Page no. 15 of the continuous order sheet is missing
16	*On this page it is mentioned that inspection of data received from the RBI is provided. This information is in respect of the receipts and payments and do not have any relevance with any entry in Annexure S-1 and S-3. This does not explain the manner of working out purchase / sale of shares.*
17	*On this page it is mentioned that inspection of data received from the RBI is provided. This information is in respect of the receipts and payments and do not have any relevance with any entry in Annexure S-1 and S-3. This does not explain the manner of working out purchase / sale of shares. It is also relevant to note that against several entries notings have been made to the effect that data are not available (Name of the entity is unclear in the chart prepared).*
18 – 19	*These pages are pertaining to inspection of share transaction with broker / parties vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry of Annexure S-1 and S-3 and also do not explain the manner of working out purchase / sale of shares.*
20	*This page is pertaining to inspection of share transaction with broker / parties vis-à-vis figures appearing in the computer of Assessing Officer. Relevant extract of the order sheet is as under:* *"Shri Vishwanth requested for recording atleast 'big' mistakes found should be made on day to day basis. The request is not acceded to at this stage because the verification / inspection is not vis-a-vis the annexures to the assessment order. The mistakes noticed now will be corrected in the computer file and then the corrected computer file will*

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	be verified vis-a-vis the annexures and only those mistakes which have crept in to the annexures will be recorded." *From the above noting it is evident that inspection was in respect to data generated by Assessing Officer and lying in his computer and not with respect to Annexure S-1 and S-3. The mistakes have been merely noted down and no corrections have been carried out in Annexure S-1 and S-3 till today.*
21 – 26	*These pages are in continuation of page 20 and therefore the same comments.*
27	*This page does not pertain to the assessee (and for that matter does not also pertain to ASM and JHM).*
28 – 29	*These pages are in continuation of page 20 and therefore the same comments.*
30	*This page does not pertain to the assessee.*
31 – 33	*These pages are in continuation of page 20 and therefore the same comments.*
34 – 36	*These papers pertain to inspection for AY 1991-92 and not the relevant assessment year.*
37 – 38	*It is being mentioned that no inspection provided since the Assessing Officer was busy / non availability of files.*
39	*This page is pertaining to procedure of inspection of computer data of the Assessing Officer and do not have any relevance with any entry in Annexure S-1 and S-3.*
40 – 45	*These pages are pertaining to inspection of custodian / company information vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry in Annexure S-1 and S-3.*
46 – 47	*These pages do not pertain to the assessee (and for that matter do not also pertain to ASM and JHM).*
48 – 49	*These pages do not pertain to the assessee.*
50 – 52	*These pages are pertaining to inspection of share transaction with broker / parties vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry in Annexure S-1 and S-3 and also do not explain the manner of working out purchase / sale of shares. No corrections have been carried out in Annexure S-1 and S-3 till today.*

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53 – 59	*These pages are pertaining to inspection of BSE data. This information does not have any relevance with any entry of Annexure S-1 and S-3 and also does not explain the manner of working out purchase / sale of shares.*
	Page no. 60 as per the continuous order sheet is missing
60 – 65	*These pages are pertaining to inspection of company information vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry in Annexure S-1 and S-3 and also does not explain the manner of working out purchase / sale of shares. Mistakes have been merely noted down and no corrections have been carried out in Annexure S-1 and S-3 till today.*
66	*This page is pertaining to inspection of company information vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry in Annexure S-1 and S-3 and also does not explain the manner of working out purchase / sale of shares. Mistakes have been merely noted down and no corrections have been carried out in Annexure S-1 and S-3 till today.*
67 – 69	*These pages are pertaining to inspection of share transaction with broker / parties vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry of Annexure S-1 and S-3 and also do not explain the manner of working out purchase / sale of shares.*
70	*This page does not pertain to assessee (and for that matter does not pertain to ASM and JHM)*
71	*Relevant extract of this page is as under:-* *The proceedings were initiated with Assessee asking for details of working in any two cases. While the work is in progress it is pointed out by assessee that unless the following copies of data is given, the exercise is of no use.* *a) Copy of whole BSE data (earlier only summary was given)* *b) Copy of up-country transactions (earlier only summary was given)* *c) Contract notes submitted by assessee at the time of assessment – how they were taken into account* *d) How closing stock figure is arrived at* *e) Summary of up-country transactions before corrections at the time of inspection and as originally used in order* *f) Details of seizure of shares as shown in the order* *g) How badla income is arrived at annexure S-5* *h) In Annexure S-4 meaning of 'ADJ', and full explanation of benami shares - how the figures arrived*

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	In seizure figure explanation for "clea house", "scam notify", "sent Regn" date of IT seizure/CBI seizure and location and "IT Delhi". *The above noting are selfexplanatory and the assessee strongly relies on it.*
72	*This page does not pertain to the assessee (and for that matter does not pertain to ASM and JHM).*
73	*This page pertains to inspection of share transactions with brokers / parties vis-à-vis figures appearing in the computer of Assessing Officer. This information does not have any relevance with any entry in Annexure S-1 and S-3 and also does not explain the manner of working out purchase / sale of shares.*
74 – 79	*These pages are pertaining to money market activities in case of assessee.*
80 – 83	*These pages contain inspection proceedings prior to assessment order and it is in respect of seized data and not relied upon documents. This information does not have any relevance with any entry in Annexure S-1 and S-3 and also does not explain the manner of working out purchase / sale of shares. A significant amount of details do not pertain to the assessee.*
84 – 111	*These pages are pertaining to inspection of seized data / documents furnished by the assessee. How this information is captured in Annexure S-1 and S-3 is not known.*
112 – 119	*As per the order sheet, photocopies of the seized data and registered share holding in case of few scrips provided in case of HSM. This information does not have any relevance with any entry in Annexure S-1 and S-3 and also does not explain the manner of working out purchase / sale of shares. A significant amount of details does not pertain to the assessee.*
120 – 121	*These pages are not pertaining to the assessee.*
1	*Letter written by the assesee to Assessing Officer asking for inspection of documents.*
2 -5	*Not relevant. Photocopy of the order of the Hon'ble Special Court dated 24.08.1993 in Miscellaneous Application 41 of 1993 in relation to release of money towards advance tax is provided.*
6 – 7	*These pages are not readable. However, it appears that it pertains to inspection of seized documents.*
8 -22	*These pages are not readable. However, it appears to be pertaining to the order sheets noted during the course of the assessment proceedings. This information does not explain the manner of working out purchase / sale or even whether and how seized data was*

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	ultimately adopted by the Assessing Officer to arrive at the various additions in relation to share market activities.
23 – 24	*These pages do not pertain to assessee (and for that matter do not also pertain to ASM and JHM).*
25 – 29	*These pages are not readable. However, it appears that only a list of books / documents seized by the Income-tax Department is provided. This information does not explain the manner of working out purchase / sale or even whether and how seized data was ultimately adopted by the Assessing Officer to arrive at the various additions in relation to share market activities.*
1	*Letter written by the assessee to the Assessing Officer asking for inspection of documents.*
2 – 3	*These are merely Mazharnama*

Further, the assessee also summarized its observations in respect of the various enclosures as per the Remand Report dated 12.03.2018 as under:

Sr. No.	*Enclosure as per the Covering letter*	*Appellant's observation*
a)	*Copies of order sheets (1 to 121 pages)*	*Several pages are not readable. Also certain pages are missing.*
b)	*Remand Report*	*Enclosure is missing*
c)	*Letter of assessee's name (1 to 3 pages)*	*Page no. 1 is assessee's letter asking for inspection. Page no. 2 to 5 is the photocopy of the order of the Hon'ble Special Court dated 24.08.1993 in Miscellaneous Application 41 of 1993 in relation to release of money towards advance tax is provided (photocopies are not readable).*
d)	*Dot matrix paper table (25 to 29 pages)*	*These pages are not readable*
e)	*Mahzernama*	*Page no. 1 specifies the name of the persons who shall take inspection. No further details are provided. Page Nos. 2 and 3 are Mahzernama and not assessee's letter.*

15.8. In view of the above, Ld Counsel stated that subsequent to the above mentioned Remand Report dated 12.03.2018, the AO vide his letter dated 21.03.2018 sought further time of three weeks to bring on record the material relied upon during the assessment i.e. details, break-up and evidence along with the basis of preparation of various

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annexure to the assessment order (primarily in case of Annexure S-1 and S-3). In para 4 of the said letter, the AO mentiond that he has been able to trace list of shares held by the Stock Exchange Clearing House on behalf of the assessee in relation to the scripts of TISCO and TATA STEEL. He explained that credit for the shares held by Stock Exchange Clearing House for shares of TISCO and TATA STEEL, although referred to as two companies in the letter is only one and the same company, (listed in Annexure S-4 to the original assessment order – refer page No. 823 of APB No. 3) has already been given by the AO in computing the shortage of shares in the original assessment order. According to him, the AO was unable to explain how the details traced by him correlate with Annexure S-1 and S-3. Accordingly, the said details do not explain or provide itemized break-up of the additions made by the AO under the head 'Profit on sale of shares in shortage'. Further, in spite of the specific direction to file those details before the Bench in the form of paper book, no documents have been filed.

15.9. The learned Counsel stated that in various cases pertaining to the assessee and / or his family members, the Income-tax Department has expressed a number of difficulties, through its letters addressed to Tribunal, in producing the records on basis of which the additions are made and provide its itemized break-up. However, the assessee has time and again been asked to substantiate its claims/contentions on the basis of the evidences and supporting documents. The assessee has always been expected to have all the records of past 25 years even post the drastic consequences suffered by him and he mentioned the following consequences: -

> *"a) The assessee is a notified person on and from 08.06.1992 because of which all his assets are under*

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attachment. The assessee has not had any business nor he had any normalcy.

b) All the staff members who were carrying on the business of the assessee and having firsthand knowledge have been dismissed from service by the Hon'ble Special Court.

c) The Hon'ble Supreme Court directed the assessee and his family to vacate all their offices at 48 hours' notice without giving any space to the assessee to house and store the records. Due to this the assessee was left with no choice but to abandon some of the records or put them in gunny bags losing complete control over them."

15.10. At this stage, Ld Counsel stated that it would be imperative to examine the facts and sequence of events leading to the present proceedings. It is submitted that in the proceedings before Hon'ble Supreme Court in Civil Appeal No.6326 of 2010 where the only residential premises of Shri Harshad S Mehta and his family members and the corporate entity was proposed to be sold because of huge demands of Income-tax Department, the assessee in the said appeal made a grievance before Hon'ble Supreme Court that for twelve years starting from 2005 onwards, the Hon'ble Tribunal had passed 90 orders of granting relief to the notified entities by setting aside the old assessment order and by directing the AO to reframe the same by taking into consideration the evidence of books of accounts. A grievance was made before Hon'ble Supreme Court that the Revenue had deliberately failed to make compliance with the aforesaid 90 orders of Tribunal without obtaining any stay on them, but yet the AO mechanically rejecting the books of account without even examining

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them. The Hon'ble Supreme Court thereupon passed two orders granting the relief to the assessee on 02.05.2017 duly corrected on 08.05.2017. The order of sale of residential premises was set aside and the Revenue Authorities which would include the Tribunal was directed to give effect to the said 90 orders. The Income-tax Department was asked time to make compliance with the above order where upon it sought a period of twelve weeks from the date of the order. During the said 12 weeks, the Income-tax Department has not complied with the order and in fact, once again rejected the books of account on the same ground without even examining them. Further, the Income-tax Department has also not sought extension of time from the Hon'ble Supreme Court to make compliance with its orders and therefore effectively the present proceedings for Income-tax Department has started from 02.05.2017 when the Hon'ble Supreme Court passed the orders against it directing it to make compliance.

15.11. He, then narrated that the conduct of the Income-tax Department in the present proceedings in aforesaid background is to be seen. On 10.01.2018, during the course of the hearing and pursuant to the Hon'ble Supreme Court's order dated 02.05.2017 and 08.05.2017, bench directed the AO to produce all the records i.e. the details, break-up and evidence along with the basis of preparation of various annexure to the assessment order. Thereafter, on the requests made by the AO, the matter was adjourned from time to time to enable the Income-tax Department to correlate various details. The matter was adjourned over various days i.e. 24.01.2018, 01.02.2018, 12.02.2018, 26.02.2018, 15.03.2018, 22.03.2018, 27.03.2018, 02.05.2018 and 14.05.2018. On 26.02.2018, the Hon'ble Bench observed that the Income-tax Department is not serious in early disposal of these appeals. Whilst, on the said date the Hon'ble Bench adjourned the matter to 15.03.2018

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and stated it to be strictly the last adjournment but it granted further time to the Income-tax Department. Subsequently, the AO located certain details in relation to TISCO (refer to Department's letter dated 21.03.2018). Though, the AO was asked to file the said details before the Bench, but no such details have been filed till date.

15.12. Further, the AO instead of bringing the evidences on record has vide his letter dated 20.04.2018, asked the assessee to provide details. This shows the Department's approach towards the said appeals. Subsequently, on 22.05.2018, the Income-tax Department requested the Bench to grant permission for use of projector to furnish the details of documents and calculations. Accordingly, on 24.05.2018 the Income-tax Department via a projector showed certain excel files containing so called data that was utilized to prepare Annexure S-1 and S-3. But, it is to be noted that at the time of original assessment proceedings in 1993 to 1995, the data was collected, gathered and analysed by the Department in 'DOS' system with FOXBASE utility and not in MS EXCEL. However, now the Department has shown certain data which is claimed to have been imported by the Department in MS EXCEL from its original source. Hence, the authenticity and correctness of the data in MS EXCEL is not free from doubt. Further, the Department has still not demonstrated as to how total purchases and sales pertaining to the security have been computed by the Income-tax Department in Annexure S-1.It is to be noted that on the same day the Department also filed a paper book furnishing on sample basis the details of certain transactions undertaken with one broker 'Auro Mira' (page Nos. 336 to 340 of Department's paper book (DPB) No. 2). It is submitted that the Department has furnished details on sample basis and only in respect of one of the many brokers with whom the assessee undertook transactions in the stock market. During the course of the

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hearing, it was demonstrated that the AO has wrongly considered several transactions executed in the previous year i.e. AY 1991-92 as that of the current year i.e. AY 1992-93 by citing instances in the case of a few scripts like 'ACC', 'Ashok Leyland' and 'Tea Estate'. The contract notes issued by M/s Auro Mira wherein it is clearly reflected that the transactions pertain to AY 1991-92 (page Nos. 1224 to 1241 of APB No. 8) have been erroneously considered in AY 1992-93 by the AO. Apart from many other errors shown by the assessee, this clearly shows that the Annexure S-1 prepared for computing various additions in relation to share market activities is not free from errors and infirmities.

15.13. Further, during the course of the hearing on 24.05.2018, the Department by placing reliance on the selective order sheets such as page Nos. 397 and 420 of the DPB No. 2, argued that the inspection was provided by the Department and the mistakes were pointed out by the representative of the assessee. In relation to the same, attention was drawn to the fact that the said inspection was given only after passing the original assessment order dated 27.03.1995 and since then no revised Annexure rectifying the mistakes pointed have been provided. Further, in the aforementioned order sheet (on page Nos. 397 and 420), the Department has stated that the mistakes will be rectified. In none of the order sheets, it is mentioned that the mistakes have been rectified. Further, during the hearing on 24.05.2018, the Department also brought 9 -10 gunny bags and claimed that the files contained therein had the original data which was converted into soft copies and after processing the annexure were prepared. However, did the Department demonstrate any such working for any of the script and the so called original data brought by them. No other relevant details have been furnished by the Department before the Bench during the course of the appellate proceedings.

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15.14. In terms of the above facts, it was argued that what will be the consequence of not giving details/evidences on record? The ld. Counsel placed reliance on the Order dated 17.11.2017 of Tribunal in the case of M/s. Growmore Leasing & Investment Ltd. vs. DCIT in ITA no. 1219/Mum/2017 vide its order dated 27.12.2017, wherein it was held that if the information on the basis of which addition is made was never made available to the assessee, the addition is liable to be deleted (page no. 840 and 841 of APB No. 3). The relevant paragraph of the said order is reproduced below:-

> *"Para10. We have heard the rival contentions and gone through the facts and circumstances of the case.... We find that the assessee has not paid any consideration on account of purchase of these bonds and these are standing as credit in the firm Harshad S. Mehta. It means that holding of the assessee in NTPC bond is to the tune of Rs. 4.40 crores only and not more than that. Even now before us, the learned Counsel claimed that Revenue could not show to the assessee that it is holding NTPC bond of Rs. 4.50 crores as alleged by the Revenue and this information was never made available to the assessee and unless said evidence is placed at the disposal of the assessee, the same cannot be explained. In view of the above facts, we delete the addition and allow this issue in assessee's appeal."*

15.15. Further, reliance was placed on the order dated 05.09.2014 of Tribunal in the case of ACIT v Smt. Pratima H. Mehta in ITA No. 4288/Mum/2012 for AY 1993-94 vide order dated 05.09.2014, wherein the Tribunal upheld the CIT(A)'s decision to delete the addition since the basis of the addition made by the AO are not available on record.

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Relevant extract of the order is as under (page Nos. 858 to 860 of APB No. 3):

> *"19. The first grievance of the Revenue is that the ld. CIT(A) erred in deleting the addition of Rs. 3,31,20,180/- made on account of profit on sale of shares.*
>
> *20. The ld. CIT(A) has considered this issue at para 6(C) of his order. During the course of assessment proceedings, on the basis of several information obtained from RBI, Custodian, BSE companies and third parties about the share holding of the assessee, the data were analysed and the holding in share of the assessee was determined as on 31-3-1992. The same was taken as opening stock for the year under consideration. The closing stock of the assessee was determined for the year under consideration and on comparing the opening stock and closing stock, whenever there was a difference where opening stock was higher than the closing stock, it was treated as sale and wherever the closing stock was higher than the opening stock, the difference was treated as unexplained purchase. The purchases were determined at Rs.8,85,75,861/- and the sales were determined at Rs. 15,55,67,482/-. The profit on sale of shares was determined at Rs. 3,31,20,180/-. The A.O. added this amount. Before the ld. CIT(A), it was contended that the information relied upon by the A.O. were either given to the assessee during the proceedings of A.Y. 1992-93 or during the proceedings for A.Y. 1993-94. It was further contended that the A.O. has computed the holding of shares from the*

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information collected from different sources. It was further submitted that the working of opening stock is borrowed from the working given in A.Y. 1992-93 without any break-up and without any basis. After considering the facts and the submissions, the ld. CIT(A) at para 9.7 of his order observed that the A.O. did not give any breakup and the basis as to how the figures of sales and purchases were derived by him which fact was also admitted by the A.O. in the remand proceedings. At para 9.8, the ld. CIT(A) held "I find that during the course of present proceedings also, the things have not improved. The A.O. has still not been able to provide any break up or the details and information as to how the figure of profit on sale of shares have been derived by him in the assessment order. Thus, I find that the very basis details germane to the addition made by the A.O. are not available on record". Thereafter the ld. CIT(A) followed the findings given in the case of Shri Hitesh Mehta for A.Y. 1993-94 and deleted the addition. Aggrieved by this, the Revenue is in appeal before us.

21. The ld. D.R. strongly supported the findings of the A.O. Per contra, the ld. Counsel for the assessee reiterated what has been submitted before the lower authorities.

22. We have carefully perused the orders of the authorities below. We have also gone through the order of the first appellate authority in the case of Shri Hitesh Mehta dtd. 29-3-2012. We find that the entire addition has been made by the A.O. on the basis of information gathered from different sources. We find

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> *that the A.O. has merely picked up figure from the Annexure and arrived at the figure of addition without making enquiry or bringing any evidence on record. We find that on identical facts in the case of Shri Hitesh Mehta, the additions were deleted. The said order was challenged before the Tribunal in ITA No. 5138/Mum/2003 but this issue was not raised before the Tribunal. The facts and circumstances are being similar, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. is accordingly dismissed."*

15.16. The Ld. Counsel stated that subsequently, the Department preferred an appeal before the Hon'ble Bombay High Court in Income Tax Appeal No.521 of 2016 and Hon'ble High Court upheld the decision of the Hon'ble Tribunal (page No. 863 of APB No. 3) vide order dated 26.09.2017 by stating that Tribunal has not committed any error in refusing to interfere with the CIT(A)'s order and such an exercise does not raise any substantial question of law. In view of the above submissions, the Ld Counsel urged that the decision of CIT(A) sustaining the addition on account of profit on sale of shares in shortage is without any basis and hence, cannot be upheld.

15.17. The learned Counsel further stated that, without prejudice to the above, the Income-tax Department ought to have provided details / information on the basis of which such additions are made even if the same have been provided earlier. Reliance is placed upon the decision of Tribunal 'K' Bench, Mumbai in the case of assessee (ITA No. 5518/Mum/2007for A.Y. 1988-89) wherein the following was held (page No. 872 of APB No. 3):-

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"5.15 Even though the Revenue has vehemently stated that copies of seized materials were made available to the assessee, no evidence is available on record. In these circumstances, we see no error in setting aside the issue to the file of the Assessing Officer to give similar directions as already given in paragraphs above in respect of ground number 6 and 7. We are of the view that no prejudice would be caused to the Revenue if copies of the seized materials are provided to the assessee even though it might have been provided in the past. Therefore, we direct the Assessing Officer to furnish the copies of the details used by him in making an addition of Rs. 7,67,131/-."

15.18. Even on merits, the learned Counsel for the assessee stated that addition is not sustainable due to various infirmities in the working adopted by the AO for computing profit on sale of shares in shortage. He, stated that in order to compute shortage of shares multiple assumptions were made by the AO as under: -

"a) All transactions pertain to assessee himself and are not pertaining to his clients

b) There are no missing / mutilated / stolen shares

c) All the shares in shortage have been sold by the assessee

d) All the shares are sold in AY 1992-93 although shortage in shares is computed as on 08.06.1992

e) All shares are sold on 31.03.1992

f) All shares are sold in cash."

15.19. Ld. Counsel argued that before proceeding to deal with all the above mentioned presumptions made by the AO, it is a fact that the

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assessee at the relevant time was a registered Member of the B.S.E. The business of the registered broker was heavily regulated under Securities Contracts Regulation Act (SCRA) of 1956 and Rules, Regulations, and Bye-laws of the B.S.E framed there under in 1957. According to him, all the transactions undertaken by the brokers were required to be reported to the Stock Exchange on a daily basis and the contract notes were also liable to be issued to the clients on the same day. Further, each and every transaction was settled through the Stock Exchange under a Clearing House set up by it and through the Bank of India's Stock Exchange Branch. That it was not possible to undertake any business in cash or outside the books of accounts and without reporting to the B.S.E.

15.20. According to Ld Counsel, therefore the presumptions made by the AO are liable to be examined in the aforesaid background that all transactions pertain to assessee and not clients and this fact was brought before AO (During third round of litigation) as under: -

> *"a) Vide letter dated 21.01.2016 (page Nos. 397 and 398 of APB No. 1), the assessee furnished supporting documents such as vallan/ settlement records of B.S.E. to the books of account evidencing transactions undertaken for and on behalf of clients.*
>
> *b) Vide letter dated 27.01.2016 (page No. 400 to 402 of APB No. 1), the assessee furnished cheque counter folios, contract notes and bills evidencing transactions undertaken for and on behalf of clients.*
>
> *c) Vide letter dated 9.02.2016 (page Nos. 408 and 409 of APB No. 1), the assessee furnished further*

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contract notes and bills evidencing transactions undertaken for and on behalf of clients.

d) Vide two letters dated 19.02.2016 (page Nos. 412 and 415 of APB No. 1), the assessee furnished contract notes and bills evidencing transactions undertaken for and on behalf of clients.

e) Vide two letters dated 29.02.2016 (page Nos. 418 to 419 and 421 of APB No. 1), the assessee furnished contract notes and copies of the accounts etc along with the copies of the vallan / settlement records of B.S.E. to the Assessing Officer."

15.21. In view of the above, he stated that CIT (A) order dated 24.03.2010 (second round of litigation), observed that details of transactions with outside clients that was placed before him by the assessee during the course of the proceedings could not be correlated with the working of the AO. Further, the CIT (A) vide his order dated 28.06.2017 (third round of litigation - page No. 118 of the impugned order), by placing reliance on his predecessor's order dated 29.02.2012 has not granted any relief. In this context, it was submitted that in absence of detailed working/itemized break-up of the amounts mentioned in Annexure S-1/S-3, the assessee could not correlate his submissions with the working of the AO. Hence, relief on account of purchases made on behalf of related parties and /or outside clients has not been granted till date. It was also explained that the transactions were undertaken for the family members and corporate entities, who are assessed by the same AO and under the same jurisdiction. These clients have reported all the transactions undertaken by them through the assessee and incomes earned thereon have already been brought to tax in their hands. Thus, the presumption that the assessee has

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undertaken transactions for himself and not for his family members and corporate entities could not have been made by the AO. Besides, the above, for the previous years in the case of the assessee, the AO assessed him as a brokerage firm and taxed him for the brokerage incomes earned from clients, and even because of which he could not have made the said presumption. Further, the Assessment Orders / appeal orders / Order Giving Effect in case of family members and corporate entities also substantiate that shares were purchased by the assessee on behalf of family members.

15.22. Another presumption of the AO that there are no missing / mutilated / stolen shares and for this Ld Counsel stated that the AO and the Appellate Authorities have ignored subsequent developments in relation to missing / mutilated / stolen shares and assumed that no shares are missing / mutilated / stolen. That the submissions made by the assessee in the original assessment proceedings that the shares could be lost / stolen / missing was rejected by the AO by giving a finding that the assessee has not lodged any F.I.R in that regard. Since then, the assessee and other family members have filed 90 letters with the Custodian reporting details of all the missing shares where after the matters were placed before Hon'ble Special Court, and some of the missing shares are still being traced and recovered. Thus, the subsequent event and the orders of Hon'ble Special Court are bound to be taken into account and for genuine losses suffered by the assessee, he is entitled to claim losses instead of being penalized with huge additions by making a presumption of sale. To prove this fact Ld Counsel filed various letters and Miscellaneous Petition no. 88 of 2000 filed before Hon'ble Special Court seeking investigation and recovery of stolen and missing shares. The credits for such shares have not been given by the AO while computing shortage in shares as per Annexure S-

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3.That since the time of the original assessment, facts have emerged during past 23 years and in numerous proceedings and Hon'ble Special Court has passed orders which are binding upon the revenue. That whatever justification that existed in the original assessment proceedings for making presumptions, the same are not liable to be made today by taking into account the aforesaid subsequent developments, emergence of facts, and the binding orders passed by Hon'ble Special Court.

15.23. Another presumption that all the shares in shortage have been sold by the assessee is without any basis. Ld Counsel in relation to the aforesaid assumption, refers to the following decisions of this Bench with facts similar to the case of the assessee: -

> *"(i) Topaz Holding Private Limited vs. DCIT [ITA No. 2828/Mum/2001] (page Nos. 954 to 964 of APB No. 3)*
>
> *(ii) Pallavi Holdings Pvt. Ltd. vs DCIT [ITA No. 1912/Mum/2000] (page Nos. 942 to 953 of APB No. 3)"*

15.24. In the above cases, it is observed that the AO found purchase entries of certain shares in the books of the assessee, but did not find physical share certificates of the same. Accordingly, the AO alleged that the said shares were sold by the assessee. In view of the searches and inspections made in the business premises of the assessee, the assessee expressed its inability to produce the said shares since the same were not in its custody but the Tribunal held that: –

> *"20. Now if the assessing officer wanted to proceed further and make out a positive case, that those shares were sold by the assessee company, the Rule of*

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Prudence calls for some piece of evidence either direct or indirect in the hands of the assessing officer to allege that the shares were in fact sold by the assessee company in the open market for a higher price. Either the buyers of shares should have been identified of the time of the sale should have been reasonably ascertained or the pattern of sales should have been known or any matter relating to the case of alleged sale should have been known to the assessing officer. When we go through the orders passed by the lower authorities in detail we are constrained to see that no piece of direct or indirect evidence is available on record to come to even a distant conclusion that those ACC shares were sold by the assessee company in the open market for a higher price. In fact, as per the records of the case, the fate of those shares is still unknown.

21. When the fate of the shares is still unknown there could be a number of presumptions regarding the consequences, assessee might have sold the shares or the shares must have been misplaced or the shares must have been irretrievably lost or the shares must have been held by the others authorizedly or unauthorizedly. There are so many possibilities. How could it be justified to pick and choose only one possibility out of so many others available that the shares were sold by the assessee company in the open market? That pick and choose is only arbitrary.

22. Therefore, we find that all the grounds stated by the assessing authority to allege a case of unaccounted sale of shares are based on subjective

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> *propositions and pre-conceived notions. They do not have the support of any direct or indirect evidence or even a plausible explanation. Therefore, as a matter of fact, it is very hard to hold that those shares have been sold by the assessee company in the open market outside the books of account."*

15.25. It was claimed that orders of Tribunal have been accepted by Department and no appeal before Hon'ble Bombay High Court was filed. And the facts in the case of the assessee are identical to the above-mentioned cases. The AO in the case of the assessee also presumed that the said shares have been sold. However, the AO failed to appreciate the fact that the shares were either in physical possession of the assessee or were stolen or seized or were found to be registered in the names of third parties. The presumption that the shares have been sold without any piece of direct or indirect evidence or explanation is bad in law and needs to be reconsidered and accordingly the entire addition deserves to be deleted.

15.26. The next aspect on issue is that all shares are sold in AY 1992-93 although shortage in shares is computed as on 08.6.1992. Ld Counsel stated that though the shortage in shares was computed as on 08.06.1992, the AO assumed that the shares were sold during the AY 1992-93 and accordingly, the addition was made in AY 1992-93.The AO himself has observed on page No. 4 of original assessment order dated 27.03.1995 that assessee has continued the business post 28.02.1992 (page No. 4 of APB No. 1).Further, CIT (A) in third round litigation has also observed, by placing reliance on the order dated 28.02.2017 in case of Shri Ashwin S Mehta for AY 1992-93,in para 30.2 on page No. 62 of his order (impugned order) that the assessee has continued the business upto 08.06.1992. It was contended that it is erroneous on

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the part of AO to compute shortage in shares, if any on 31.03.1992 as against on 08.06.1992.

15.27. The next aspect on this issue is that all shares are sold on 31.03.1992. The AO presumed that all the shares have been sold by the assessee as on 31.03.1992, wherein the rates were highest in comparison to any other day during the year and accordingly applied the market rate of the shares for computing sales consideration. He contended that the Department has undertaken investigation very extensively based on which despite several Application / Petitions before Hon'ble Special Court on oath stating that the vast quantity of unregistered shares were not found during its action but investigations have revealed that during the year 1992-93, these shares came to be registered in names of several individual and corporate entities who had not purchased the shares and therefore such shares may be declared as the attached property of Harshad S Mehta and his family. The aforesaid contentions of the revenue were accepted by the Hon'ble Special Court and number of order have been passed divesting the title of such third parties and declaring such shares as attached properties of the notified entities. The revenue and Custodian were directed to further trace and recover such shares and such an action is continuing even till date. In view of the above, it clearly emerges that the shares were not sold but in fact, registered in names of third parties. Ld Counsel stated that the transactions undertaken by the assessee substantially reduced after 28.02.1992 (i.e. the date of search conducted by the tax authorities) and substantial portion (almost 95%) of investments/ transactions were undertaken before 28.02.1992. Thus, adoption of market rate as on 31.03.1992 for presumed sale of shares in shortage is wrong and erroneous.

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15.28. Further on this aspect, for the purpose of computing the cost of acquisition for shares in shortage, the AO has adopted an average rate for the period 01.04.1991 to 31.03.1992. On the same footing, the sale price also needs to be computed on an average basis for the period 01.04.1991 to 31.03.1992 instead of taking the closing market rate as on 31.3.1992 which rates were incidentally the highest rates of the year. He countered the argument that the Department has contended that following the normal accounting principles, the closing rate as on 31.03.1992 has been considered to compute the sale value. In relation to the same, he argued that under the accounting principles the method of determining value of the 'closing stock' is mentioned. No accounting principles state that the presumed sales are to be valued at the closing rate as on the last date of the financial year. Even referring to the decision of Hon'ble Supreme Court in the case of Chainrup Sampatram vs. CIT [1953] 24 ITR 481 (SC), it was contended that the assessee is entitled to value the closing stock either at cost or market value whichever is lower. Valuation of stock cannot be a source of profit.

15.29. Another aspect of this issue is that all shares are sold in cash as the AO has assumed that all the shares are sold in cash. Ld Counsel stated that the assumption that the shares are sold in 'Cash' is incorrect. The AO has assumed that shares worth Rs. 1416 crores (total in case of Shri Ashwin S Mehta, Shri Harshad S Mehta and Smt. Jyoti H Mehta for AY 1992-93) were sold in 'Cash' that too on a single day i.e. 31.03.1992. This assumption has been made, even when not a single rupee was found in cash during the search operations conducted by the Income-tax Department or CBI. He argued that the presumption of sale of shares in cash is contrary to the Rules, Regulations, and Bye-laws governing the functioning of the brokerage firm of the assessee as already explained earlier. Additionally, it was argued that in case books

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of account are accepted, the addition on account of profit on sale of shares in shortage made on the basis of estimation cannot be sustained. In view of the above submissions, Ld Counsel finally argued that the decision of CIT (A), for sustaining the addition on account of profit on sale of shares in shortage is without any basis and, hence, cannot be upheld. Further the Department has not been able to rebut the submissions made before the Bench. Hence, it was urged that the entire addition of Rs. 183,78,97,341/- made on account of profit on sale of shares in shortage be deleted.

15.30. Alternatively, the learned Counsel, on another issue on merits states that no relief has been given in relation to the additional benami shares pertaining to Shri Harshad S Mehta though similar relief is granted in the case of Shri Ashwin S Mehta and Smt. Jyoti H Mehta. He argued that based on investigation into the financial affairs of Harshad Mehta and his family members, the AO found that a large number of shares belonging to Harshad Mehta and his family members were registered in the names of several benami individuals and companies after the date of notification. In this regard, Miscellaneous Applications No. 194 of 1993, 53 of 1994 and 424 of 1994 were filed before the Hon'ble Special Court. The assessee also filed affidavits in this regard before the courts stating that the shares registered in benami names but belonging to his family members were lying with him and were subsequently handed over to the Custodian. The AO had given credit for the shares disclosed as benami while computing shortage on sale of shares in Annexure S-3. He narrated that certain additional shares were identified as benami shares and declared by the Hon'ble Special Court. These additional benami shares were disclosed in Miscellaneous Petition No. 99 of 1998 filed before the Hon'ble Special Court. He stated that the order dated 08.04.2003 of the Hon'ble Special Court with

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respect to additional benami shares recovered and registered subsequent to the order of the AO dated 27.03.1995. The assessee only requested for credit with respect to such additional benami shares and shortage of shares needs to be recomputed accordingly.

15.31. He further stated that CIT(A) (during the second round of litigation) had granted credit for such additional benami shares in the case of Shri. Ashwin Mehta and Smt. Jyoti Mehta for AY 1992-93. The assessee furnished relevant extract of the order of the CIT(A) in the case of Shri Ashwin S Mehta (page No. 922 to 927 of APB No. 2) along with the order giving effect (page No. 928 to 930 of APB No. 2) and relevant extract of the order of the CIT(A) in the case of Smt. Jyoti Mehta (page No. 931 to 934 of APB No. 3) along with the order giving effect (page No. 935 to 937 of APB No. 3). Therefore, it was urged that the additional benami shares belongs to the assessee and his family members and accordingly credit is required to be given. In this regard, the assessee submitted a chart with respect to additional benami shares for which credit ought to be given to the assessee on the same footing as in the case of Shri. Ashwin S Mehta and Smt. Jyoti H Mehta for AY 1992-93 (page Nos. 938 to 942 of APB No. 3).

15.32. On the other hand, Ld CIT-DR argued in regards to Profit on account of sale of shares in shortage of Rs. 253,16,78,501/-. He stated that the CIT(A) has directed the AO to re-compute the shortage of shares, relying upon his own order passed in the case of Ashwin Mehta (A.Y. 1992-93 dated 28.02.2017) and Jyoti Mehta (A.Y. 1992-93 dated 24.03.2017) by reducing the shortage on account of shares found, discovered and detected subsequently and giving credit of same. It was argued that the directions of the CIT(A) amounts to setting aside of the assessment and therefore, the said directions on the issue are bad in law. Further, the CIT(A) has relied upon his Predecessor's order dated

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24.03.2010 wherein this issue has been discussed in detail at Para 11.1.3 to 11.3.1 (from page no. 109 to 126) of the said order. The undersigned relied on the findings given by predecessor CIT(A) with the request to Bench to consider it while deciding the issue. In addition to above, it was further argued that in the light of decisions dated 29.03.1996 & 17.07.1996 of Hon'ble Special Court, findings of Auditors M/s Vyas and Vyas and various reports of Custodian, the ownership of shares found subsequent to the present assessment year, is not established. The Custodian in his various reports, including latest Report no. 20/2015, concluded that it could not be ascertained as to which particular notified entity/entities the said shares belonged. It has been further mentioned by Custodian that the notified entities also expressed their inability to identify such entities to whom said shares belonged. In view of these facts, Hon'ble Special Court had directed the Custodian that wherever the names of owners are not disclosed, such shares should be registered by opening the account in the name of 'The Custodian, Special Court'. In view of said directions, all the shares detected/found or received by Custodian subsequently have been registered in the name of aforesaid account. It was further mentioned that the Harshad Mehta Group consists of many entities named below and the shares related to any of these entities, found or received subsequently were registered in one name i.e. 'The Custodian, Special Court', not in the name of assessee or any other entity individually. The entities of the group, are as under:-

1. Harshad Mehta
2. Ashwin Mehta
3. Jyoti Mehta
4. Hitesh Mehta
5. Sudhir Mehta

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6. Deepika Mehta
7. Rasila Mebta
8. Rina Mehta
9. Pratima Mehta

10 Zest Holdings Pvt. Ltd.
11 Treasure Holdings Pvt. Ltd.
12 Velvet Holdings
13 Topaz Holdings
14 Pallavi Holdings
15 Harsh Estates Pvt. Ltd.
16 Growmore Leasing
17 Growmore Asset Management
18 Growmore Exports
19 Fortune Holdings
20 Eminent Holdings
21 Divine Holdings
22 Cascade Holdings
23 Aatur Holdings
24 Orion Travels Pvt. Ltd.

In the light of aforesaid facts, it was argued by Ld CIT-DR that unless the shares found subsequently are correlated with the specific entity/entities by matching the name of the share, date of transaction, distinctive number of share, details of payment, etc., it cannot be held that the said shares belong to assessee only. To establish the ownership of these shares, the assessee is required to match the entries/transactions of each share as it has been done in the case of money market transactions. Contrary to this, only a presumption has been drawn by assessee that all the shares found subsequently belong to the assessee and pertain to the year under consideration,

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without giving any proof to support his claim. Further, as regards the next issue of computation of sale value based on adoption of rate as on 31.03.1992, it was argued that, following the normal accounting principles, the closing rate as on 31.03.1992 needs to be adopted on the ground that transactions were undertaken by the assessee till 31.03.1992 and after that, till 08.06.1992, even if the volumes were less as compared to those undertaken before 28.02.1992. Thus, the contention of the assessee that monthly average rates between April 1991 and February 1992 should be taken is incorrect. The Ld CIT-DR heavily relied upon the findings given by CIT(A) vide his order dated 24.03.2010 on page no. 122 on this issue. He also referred to the submissions made by him in respect of earlier grounds also reproduced by us while disposing of preceding grounds.

15.33. We have heard rival contentions and gone through facts and circumstances of the case, along with the documents and papers referred to during the course of hearing before us. We have also gone through the case laws cited before us. The undisputed facts in this regard are that the assessing officer in the original assessment vide order dt. 27.3.1995 passed under section 144 made an addition of Rs.253,16,78,501/- on account of profit estimated on sale of shares in shortage by holding as under:-

> "*5.4.10. The contention of the assessee are not acceptable for the following reasons:-*
>
> *a) Though the matter is subjudice, the assessment cannot be kept pending after 31.3.95 i.e. time barring date. As the evidence submitted by the I.T. Department in various applications to the court, such shares have been acquired mainly by the three broking firms. Bifurcation amongst*

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the three broking firms is required to be made in order to reconcile physical stock of all the three brokers. By doing so, no hardship is caused to the assessee instead of not considering any share out of such benami shares as belonging to the assessee. In considering the above facts, benami shares and unregistered shares identified by the department are divided among the three broking firms in proportion to the shortage of shares (i.e. stock as on 8.6.92-shares registered in each name) of each broking firms.

b) *It can be seen that main activity of the assessee in the share market was that of trading and not as a broker to earn brokerage. The assessee has used his own funds in the trading activity. The funds of the clients are very small as compared to his own funds. Moreover, in the absence of saudha book it cannot be said as to which transaction is for his own trading and which is for the clients.*

c) *In working out the shortage all sales details through his bank accounts as available in this office and as provided by the assessee has been considered up to 8.6.92. Moreover, the assessee was requested to give complete details in respect of sales /lending of vast quantity of shares. But no details were furnished by the assessee.*

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d) *No specific details have been furnished by the assessee as to how many shares have not been delivered by which broker. No claim has been filed by the assessee against any broker in this regard.*

e) *The contention of the assessee that a vast quantity of shares are stock misplaced etc. Is only an excuse for the following reasons:-*

   i. *Till date no FIR has been filed by the assessee nor any such information has been given by the assessee to the custodian in which all the properties of the assessee vests.*

   ii. *Value of the shares in shortage is worth hundreds of crores. It is not realistic that the assessee has not taken care of his assets.*

   iii. *No details of any efforts made by the assessee for recovering of alleged lost shares have been provided by the assessee.*

   iv. *There is no evidence except a mere self serving statement made by the assessee.*

f) There is no doubt that the assessee had acquired the shares in shortage using his own funds before 8.6.92. Now after lapse of about 3 years the assessee has not got these shares registered in his name nor he has surrendered to the custodian. Such shares were also not found during the *course* of searches conducted by Income Tax department and CBI on various

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dates. The inevitable conclusion that follows is that the assessee would have sold such shares by 31.3.92. Hence , the profit of the assessee against sale of such shares has been worked out as per annexure-S-4 considering the sales at the prices as on 31.3.92. For instance it shows that :-

A. *In the case of HSM, ASM and JHM stock as on 31.3.92 should be 37,39,745/- ,14,41,575/-,3565,719/- of shares of Apollo tyres respectively (shown against '31M').*

B. *The net sales of Apollo Tyre of the HSM, ASM and JHM during the period 1.4.92 to 8.6.92 was of 474700/-,50150/- and 218900/- respectively (shown against ADJ).*

C. *The position of the HSM, ASM, JHM as on 8.6.92 was 3265045/-,1391425/- and 3346819/- (A-B).*

D. *The registered shares of Apollo Tyres in the name of HSM, ASM and JHM were 664375/- ,104050/-,200600/- respectively.*

E. *The benami shares of Apollo Tyres have been bifurcated among HSM, ASM & JHM in proportion of shortage (C-D) as 297374/- ,147205/-359755/-respectively.*

F. *The unregistered shares of Apollo Tyres have been bifurcated among HSM, ASM & JHM in proportion of shortage (C-D) as 423305,209543/-, 512102/-respectively.*

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G. Net shortage of shares as on 8.6.92 in the cases of HSM, ASM,JHM works out to be at 1879991/-,930627/-,2274361/- respectively.

H. The value of shortage of shares at cost price as on 31.3.92 in the case of HSM,ASM and JHM was 196987899/-,109682437/-,381394300/- respectively.

I. The value of shortage at the price as on 31.3.92 in the case of HSM,ASM and JHM is 902395633/-,446700880/-,1091693405/- respectively.

J. The profit on sale of such shortage in the case of HSM, ASM and JHM works out as equal to (I)-(J).

Thus the profit on squaring up of shortage as by 31.3.92 in the share of Apollo Tyres in HSM, ASM and JHM was Rs902395633/-,446700880/-,1091693405/- respectively. Similarly the profit has been worked out in other scrips. The total profit in the case of the assessee, thus works out at Rs.2531678501/- It is added to the total income of the assessee."

15.34. We noted that CIT(A) in the first round of appeal upheld the said addition. When the matter travelled to the tribunal, the tribunal vide its order dated 11th July, 2008 restored the matter to the file of the CIT(A) by holding as under:-

"14. We have considered the rival submissions. In our view the facts and circumstances explained above clearly warrant that the matter should be decided by

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the CIT(A) afresh. In this regard, we have already noticed that late Harshad Mehta expired during the pendency of the proceedings before the CIT(A). There was also considerable delay, for about six years in disposal of the appeal before the CIT(A). There was no representation on behalf of the assessee before the CIT(A). Several developments had taken place in the case of the assessee in the interregnum period which all will have a bearing on the assessment of the correct total income of the assessee for the assessment year 1992-93. The benefit of the report of auditors Vyas & Vyas appointed by the Special Court was also not available when the proceedings concluded before the CIT(A). In the fitness of things the best course of action would be to set aside the order of the CIT(A), and remand the various issues arising in the cross objection for a fresh consideration by the CIT(A) with opportunity to the assessee to put forth his case.

15. The request for admission of the books of account as additional evidence, in our view should be accepted. The tribunal in several matters to which we have already made a reference, have adopted such a course of action of considering the books of account owing to the difficulties faced by the various entities belong to Harshad S. Mehta group."

15.35. The CIT(A) in the second round confirmed the aid addition under para 11.3.2 of its order dated 24.3.2010. Again, the matter reached to the tribunal, and the tribunal vide its order dt.29.10.2014 restored this issue to the file of the assessing officer along with the matter relating to the books of account by holding as under:-

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> *"18. As we have restored the matter relating to the books of account to the file of the AO, we do not find it necessary to decide other grievances of the assessee as they are all inter related with the books of accounts. The AO is directed to decide the issue afresh after examining the books of accounts of the assessee."*

15.36. The assessing officer in consequence of the tribunal order dt. 29.10.2014 passed an order giving effect to the ITAT's order and did not make any addition. Subsequently, an order u/s 254 r.w.s 143(3) dt.15.03.2016 was passed making this addition on the basis of the original assessment order passed under section 144. The assessee went in appeal before the CIT(A) and CIT(A) vide its order dt. 28.6.17 partly allowed the ground relating to this issue by granting following relief to the assessee:-

> a) *Credit of certain unregistered shares disclosed in letter dt.31.01.1995 of Shri Harshad Mehta to the custodian.*
>
> b) *Credit of shares of Apollo tyres limited seized by CBI and lying in the custody of the CBI and lying in the custody of the CBI authorities; and*
>
> c) *Credit on account of mutilated shares of Apollo Tyres Limited.*

15.37. We noted from the original order passed u/s 144 by the assessing officer and referred to before us during the course of hearing that the AO has computed the closing stock of shares of various companies acquired by the assessee on the basis of opening stock, purchases and sale of shares compiled by him on basis of information received from various sources as submitted by ld DR. In doing so, he

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has taken closing stock of shares of last Assessment Year (i.e. AY 1991-92) as opening stock for AY 1992-93. Thereafter, he has gathered the details of purchases and sale of shares affected by the assessee from various sources such as B.S.E. brokers, clients, financial institutions, companies, banks, receipt and payment details from RBI, information received from other entities from the group of the assessee etc. during the period 01.04.1991 to 31.03.1992 and for the period 01.04.1992 to 08.06.1992 without providing the copies of these information to the assessee for his rebuttal and without affording cross examination of the parties from where these information has been received even though the assessee made several request for the same before the revenue authorities. We have specifically directed the D.R. to provided all these information to the assessee but no such information was provided and ultimately revenue simply produced computerized compilation along with gunny bags but could not brought any cogent material or evidence before us supporting the source of the information on the basis of which the details of purchases and sales are compiled with. The assessing officer, based on the purchase and sale data so gathered for the period 01.04.1991 to 31.03.1992, determined stock held by the assessee as on 31.03.1992. Subsequently, the AO computed stock as on 08.06.1992 by adjusting the purchases and/ or sales transactions undertaken during the period 01.04.1992 to 08.06.1992, details of which were also obtained from these sources as mentioned above but without bringing any supporting evidence before us. The AO also computed physical stock of the assessee as on 08.06.1992 comprising of: -

a) registered holdings with the companies,

b) other Benami shares declared by the assessee and

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c) unregistered shares held by the assessee.

15.38. The AO thereafter, compared the physical stock (computed as on 08.06.1992) with the stock as on 08.06.1992 and worked out shortage in shares in the hands of the assessee for AY 1992-93. The AO has treated the shortage of shares so worked out as having been sold by the assessee on 31.03.1992 and accordingly the AO has applied the market rate of these shares as on 31.03.1992 to arrive at total sale consideration of such shares which the assessee would have received. After reducing the cost of acquisition of such shares on the basis of average cost of purchase, the AO has estimated the profit on sale of shares in shortage at Rs. 253.16 crores and the same has been added as income in the hands of the assessee. In case of excess of the physical stock of shares vis-à-vis the stock computed by the AO, no shortage has been computed. The main contention of the assessee is that Revenue has collected information from various sources and fed it into the computer at the back of the assessee which was processed by the AO and the assessee was provided only the summary of the output. Complete information was not provided. Even inspection or cross examination was not granted in spite of the same being repeatedly asked for. We noted from page 10 para 3 of the original assessment order that the assessing officer himself observed "*The assessee has insisted on inspection of the original copies of the data/information gathered*". We also noted that the assessee has furnished several letters since 10.12.1994 till 22.3.2016 before Assessing officer, CIT(A) and DCIT asking for the inspection and copies of the material as well as cross examination of the parties, the details of which were filed before us as listed hereinabove but not denied by the Ld DR. We do agree that onus is on the revenue to adduce main and supporting evidence on the basis of which the huge additions are made. Until these evidences and

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details are not provided, the assessee cannot rebut the same. Even a number of discrepancies were demonstrated in the quantity of registered shares mentioned in the Annexure S-3 to the AO when compared with the custodian's letter dt. 29.10.1993. Even a chart showing such discrepancies which we pursued was filed before us, the copy of which was given to revenue which was not contradicted by the ld DR. Under these facts and circumstances, we are of the firm view that natural justice demands that the assessee must be provided with the copies of all the relevant material, information and evidence collected by the AO at the back of the assessee for his rebuttal. Our aforesaid view is duly supported by the decision of co-ordinate Bench in the case of Hitesh S. Mehta (ITA No.538/M/2012), in which case also the bench has directed the AO to provide copies of all the information on the basis of which additions were made in the hand of the assessee. The relevant finding of the Tribunal are as under:-

> *"…………… (ii) Wherever the additions are proposed on the basis of seized material or materials collected from third parties, the copies thereof need to be provided to the assessee. If requested for, the assessee must be given an opportunity to cross-examine the concerned parties.*
>
> *(iii) Additions should not be repeated on the basis of the presumptions and inferences. Additions must be made only on the basis of materials and evidences available on record.*
>
> *(iv)………………………………*
>
> (i) *The AO has to accept the request of the assessee for obtaining materials from the*

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Custodian, Banks and Companies etc. For that matter, wherever necessary, the AO may issue summons u/s. 131 and the inquiries must be made effective and fruitful."

15.39. The Id. DR even though vehemently contended that the seized material was made available to the assessee which was denied by the AR, even no cogent material or evidence was brought or produced before us. We, therefore, in the interest of justice and fair play to both the parties, directed the assessing officer to provide details, break up and evidences relied on to support the addition along with the basis of preparation of various annexure including annexure S-1 and S-3 to the assessment order to the assessee but ,the Ld. AR categorically stated that as per the directions of the tribunal the revenue has neither provided the detailed break up nor pointed out the exact material used by the assessing officer in arriving at the consolidated figures as given in the annexure to the original assessment order dt. 27.3.1995 on the basis of which the said additions were made till date. Subsequently, the AO submitted a remand report dt. 2.3.2018 before us mainly containing the copies of the order sheets and tried to submit that the relevant material has already been given to the assessee and the same is not required to be given again to the assessee, even before the tribunal. The assessee submitted para wise reply to the said remand report before us. The assessee ultimately summarized its observations in respect of various enclosures of the remand report dt.2.3.2018:-

Sr. No.	*Enclosure as per the Covering letter*	*Appellant's observation*
a)	*Copies of order sheets (1 to 121 pages)*	*Several pages are not readable. Also certain pages are missing.*

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b)	*Remand Report*	*Enclosure is missing*
c)	*Letter of assessee's name (1 to 3 pages)*	*Page no. 1 is assessee's letter asking for inspection. Page no. 2 to 5 is the photocopy of the order of the Hon'ble Special Court dated 24.08.1993 in Miscellaneous Application 41 of 1993 in relation to release of money towards advance tax is provided (photocopies are not readable).*
d)	*Dot matrix paper table (25 to 29 pages)*	*These pages are not readable*
e)	*Mahzernama*	*Page no. 1 specifies the name of the persons who shall take inspection. No further details are provided. Page Nos. 2 and 3 are Mahzernama and not assessee's letter.*

15.40. On going through the annexure, we noticed that these are old correspondence between the assessee and the Department including some information that some document were provided to the assessee. When we confronted Ld DR regarding one item of addition i.e. **shares of Reliance Industries of 24,41,679 shares, the learned Departmental Representative was asked what is the basis for putting allegation on the assessee that these shares belongs Shri Ashwin S.** Mehta, one of the assessee of assessee group. The learned Addl. CIT Miss. Annu Krishna Agarwal stated that she requires time to find out the evidences regarding this addition. The learned Addl. CIT is also directed to bring evidences regarding each itemized addition on the next date of hearing, so that hearing can be concluded at the earliest, we , therefore adjourned matter to 22.3.2018, on that date also matter adjourned to 27.3.2018 to give full opportunity to the revenue to adduce the evidence to support the addition. On 27.3.2018, the Assessing Officer, Shri Manpreet Singh Duggal, Deputy Commissioner of Income Tax, Central Circle has made a statement at bar that as on date, he could not lay his hand on the material relied upon by the assessing officer in his assessment order, but in a month he will produce whatever

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material relied on by the assessing officer in the case of all these three assessee, viz. for AYs 1992-93 and in case of Shri Ashwin Mehta for AY 1993-94. As the AO undertook to file all co-relating evidence relating to these assessments in a month's time, we therefore adjourned the appeals to 02.05.2018. On 2.5.2018 instead of producing the relevant material as desired, Revenue has filed a petition for adjournment letter vide No. DCIT-CC-4()/Mum/HSM Group/ 2018-19 dated 02.05.2018 stating various reasons. The Revenue asked for three-month time to gather the entire seized material/ third party information, therefore appeal adjourned to 14.05.2018 further adjourned to 17.5.18 and ultimately heard on 19.6.18. On 22.5.18, the Revenue requested us to grant permission for use of projector to furnish the details of documents and calculations and accordingly on 24.5.2018, the revenue via projector showed certain excel files containing so called data that was utilized to prepare annexure S-1 and S-3 in MS Excel and claimed to have been collected from its original source but did not file copies of evidences supporting these files. In the absence of onus being discharged by the revenue even though we have given sufficient opportunity to the revenue to adduce the relevant material on the basis of the figures of purchases and sales of the shares have been computed and we noted earlier also this issue has been restored by the tribunal three times to the authorities below but instead of bringing any clinching evidence on record, additions are being made as were made in the original assessment passed u/s 144 of the Income Tax act. The original assessment was made in the case of the assessee on 27.3.1995 and the matter is being hanging since then i.e. more than 25 years have passed but the revenue could not discharge its onus. The shortage so computed in our view is just based on estimate and surmises. The onus is on the revenue to prove that the assessee has earned the income. Even we noted that the assessing officer by

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working out the shortage on 8.6.92, assumed as if the assessee has sold all the shares as on 31.3.1992 i.e. in a single day and that too in cash although no such material or evidence being brought on record. If the shortage has been computed as on 8.6.92, how the sales can be assumed to take place as on 31.3.1992 and at the rate prevailing as on that date. There had been search and seizure action against the assessee and assessee group on 28.2.1992, the evidences regarding sales outside the books must have been found if the assessee made any sales. No such evidence being found in respect of unaccounted sales being made as otherwise such evidence would have been produced or brought before us by the revenue. This is the settled law that Suspicion whatever strong it may be, it cannot take the place of actuality. We agree with the submission of the Ld A R that when the purchases have been estimated on average cost, how the sales have been estimated merely on the basis of the rate prevailing as on 31.3.1992 and how these shortage computed as on 8.6.92 will relate to this assessment year 1992-93. Even no material or evidence has been brought before us working out the shortage of shares as on 31.3.1992 so that the addition could be co-related to this assessment year if it has to be sustained on the basis of material if brought on record. In view of aforesaid discussion, we are of the firm view that the additions have been made by the assessing officer merely on estimate basis without bringing the evidences in this regard. Therefore, we delete the addition and allow the ground no. 13 to 16 taken by the assessee.

16. The next issue in this appeal of assessee is as regards to the addition of Rs. 19,71,050/- on account of Badla Income. For this assessee has raised the following Ground No.17: -

> *"17. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in*

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upholding the action of the AO in making an addition of Rs. 19,71,050 on account of Share Market badla income.

The Appellant prays that the AO be directed to delete the addition of Rs. 19,71,050 on account of Share Market badla income."

16.1. Brief facts relating to this issue are that as per Annexure S-5 (page Nos. 827 to 828 of APB No. 3) to the original assessment order dated 27.03.1995, the AO has made addition of Rs. 19,71,050/- on account of badla income (page No. 63 of APB No. 1). The AO has mentioned that the details of badla transactions carried out by the assessee on the floor of the exchange were obtained from BSE. The AO has taxed the net profit of Rs. 19,71,050/- arising out of badla transactions. Subsequent to Tribunal's order dated 29.10.2014 (second round of litigation), AO vide her order dated 15.03.2016 considered badla income of Rs. 19,71,050/-. Further, the CIT(A) vide the impugned order upheld the addition. Aggrieved, assessee came in second appeal before Tribunal.

16.2. Before us, Ld Counsel for the assessee stated that the AO has not provided any break-up or basis or information for preparation of Annexure S-5 in which addition on account of share market badla income was made. Accordingly, the assessee reiterated her submissions made before the Bench in relation to Ground of Appeal Nos. 13 to 16 pertaining to Profit on sale of shares in shortage. Therefore, it was prayed for decision of the impugned addition of Rs. 19,71,050/-on account of share market badla income.

16.3. On the other hand, Ld. CIT-DR argued that the addition pertains to Share Market badla income of Rs. 19,71,050/- confirmed by

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CIT(A) and he has discussed the issue in detail in Para 31.1. He argued that the assessee has not made any submission to negate this addition made by the AO. The CIT(A) relied upon the order of his Predecessor dated 24.03.2010 wherein this issue is discussed in detail in Para 11 of the order. It was argued that the assessee, despite being given multiple opportunities, has failed to explain the said transactions and has simply relied upon his unaudited books of account.

16.4. We have heard rival contention on this issue and gone through facts and circumstances of the case. We also perused the annexure S-5, the copy of which is available at page 827-828 of paper Book 3. We noted that in this annexure the assessing officer merely mentioned the number of shares and value with the name of the company as well as difference of the transaction and this difference is totalled up to Rs.19,71,050/- which was added to the income of the assessee as badla charges. We asked the ld. DR the basis and the supporting evidence on the basis of which this compilation has been made and also provide it to the ld. AR but no such evidences and the material were placed before us or provided to the assessee as contended by ld. A.R. We pursued the remand report also as has been relied by ld. DR and had been referred to by us in the preceding paragraph. We, therefore, respectfully following our finding given in the preceding paras while disposing of grounds no. 13 to 16, delete this addition and accordingly, ground no.17 of assessee's appeal is allowed.

17. The next common issue in these cross appeals, of assessee and revenue is as regards to the addition on account of share market oversold position of Rs. 5,56,19,836/-. For this, assessee has raised following ground No. 18: -

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"18. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of Share Market oversold position.

The Appellant prays that the AO be directed to delete the addition on account of Share Market oversold position."

Revenue has raised following ground No. 6 :-

"6. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the AO to grant deduction to the extent of purchase cost in relation to the scrips held to be oversold at ₹ 5,56,19,836/- despite holding that the assessee has not produced any specified evidence that the transactions have been undertaken on behalf of his clients and third parties to support his contention and has merely relied upon the books of accounts which have already been rejected by the CIT(A)".

17.1. Brief facts relating to this common issue are that based on the information collected from various sources, the AO found shares wherein according to the AO, the sale quantity is in excess of the quantity available with the assessee (i.e. opening stock plus purchases). The AO alleged that there is no purchase of shares against such sales. Thus, according to the AO, it represents sale of unexplained stock of shares and accordingly addition is made to the tune of Rs. 5,56,19,836/- . The same is computed in Annexure S-1 (page Nos. 687 to 695 of APB No. 3) to the assessment order dated 27.03.1995. The CIT(A), during the first round of litigation upheld the addition made by the AO, however, the Tribunal set aside the matter to the file of AO vide its order

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dated 11.07.2008. Consequently, the CIT(A) in his order dated 24.03.2010 (second round of litigation) computed share market oversold position same as in the original assessment order at Rs. 5,56,19,836/-. The assessee preferred an appeal before the Tribunal against the net addition that survived after the second round of litigation. The Tribunal set aside the matter to the file of the AO vide its order dated 29.10.2014 (page No. 368 of APB No. 1). The AO, subsequently vide her order dated 15.03.2016 (third round of litigation) assessed profit on sale of shares in shortage as assessed in the original assessment order after considering the relief granted by the CIT(A) in the second round of litigation at Rs. 5,56,19,836/-. The assessee preferred further appeal before CIT(A). Vide impugned order dated 15.03.2017, CIT (A) has granted relief on account of purchase cost without quantifying the purchase cost, but merely has given direction to the AO to recompute the oversold position (para No. 32.6 on page No. 123 of the impugned order). Aggrieved, now assessee as well as revenue came in appeal before Tribunal.

17.2. Before us, the ld. Counsel explained methodology of computing share market oversold position. The above working as adopted by the AO to arrive at share market oversold position of Rs. 5.56 crores as on 31.03.1992 is illustrated through sample scrip from Annexure S-1. Illustration for scrip 'G.E. Shipping' is reproduced below: -

Particulars		**Quantity**	**Amount (In Rs.)**
Opening Stock as on 01.04.1991	A	48,600	19,31,850
Add: Purchases from 01.04.1991 to 31.03.1992 (Custodian information, Company information, etc.)	B	35,420	24,13,325

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Less: Sales from 01.04.1991 to 31.03.1992 (Custodian information, Company information, etc.)	C	(2,25,000)	(3,00,85,800)
Stock of shares oversold (Qty) [C > (A+B)]	**D = C-(A+B)**	(1,40,980)	
Rate per share at which sale is effected	E		133.72
Share market oversold position	**F = D*E**	(1,40,980)	(1,88,51,094)

In view of this, the ld. Counsel explained that it is evident from the above calculation that the AO has not considered the purchase cost of such oversold shares.

17.3. Before us, the ld. Counsel stated that the Income-tax Department has not provided details, break-up and evidence along with the basis of preparation of Annexure S-1, through which the addition on account of share market oversold position is made. Even after the numerous opportunities provided by the Bench during the proceedings, the Income-tax Department has failed to provide such details. Hence, the Ld Counsel stated that the addition on account of share market oversold position is not sustainable in law since the relevant material relied upon by the AO for computing the additions has never been brought on record till date. He also relied on detailed submissions made in respect of Ground Nos. 13 to 16 pertaining to the profit on sale of shares in shortage.

17.4. Further, the learned Counsel stated that shares were purchased and sold on behalf of clients or third parties, the information of which was not obtained by the AO. Further, the assessee would have sold shares on behalf of third parties which may have been erroneously considered as sales of the assessee by the AO. In the absence of such information pertaining to third party purchases / sales and the basis for computing the oversold position, the addition made is erroneous.

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Further it was clarified that all the transactions pertaining to purchase and / or sale are through the normal banking channels i.e. in accordance with the Rules and Regulations and Bye laws framed by the stock exchange and further recognized by Securities Contract (Regulation) Act, 1956 and duly recorded in his books of account. All the transactions were reported to stock exchange on a daily basis. In view of the above submissions, the decision of the CIT(A) cannot be upheld.

17.5. On the other hand, Ld CIT-DR argued on the addition relating to Share Market oversold position of Rs. 5,56,19,836/-. He stated that CIT(A) in his order has not given any independent finding on this ground and in para no.32.6 of his order, has simply directed the AO to grant deduction to the extent of purchase cost in relation to the scrips held to be oversold, if such cost is not already allowed as per the Annexure S-1 to the original assessment order. In a very unclear manner, the CIT(A) has stated that the AO may take help of Annexure S-3 to the original order or actual purchase cost to the assessee, if he can prove it or market rates as on 31.03.1991 as deemed fit. Hence, the CIT(A) has basically not taken any decision on this ground and has set aside this matter to the AO for adjudication. This direction of CIT(A) is bad in law as it tantamount to setting aside the AO's order on this issue. In para 32.2, the CIT(A) has made a reference to his Predecessor who has upheld the addition on this account. His predecessor has discussed this issue in detail as per Para 11 of his order dated 24.03.2010. Hence, it was requested that reference may be made to the CIT(A)'s order dated 24.03.2010 and the same may be considered while deciding the issue. It was further argued that as in the Money Market Transactions, wherein purchase cost is allowed while computing the oversold position, in the matter of shares also, oversold position has been worked out after

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deducting the purchase cost of the shares. The Trading accounts of the shares have been recasted after taking into consideration the(Opening Stock + Purchases) - (Sates + Closing Stock) and Oversold Position has been worked out in respect of only those shares where the sale of shares is in excess to the purchase plus opening stock.

17.6. We have heard rival contentions and gone through facts and circumstances of the case. We have also gone through the Annexure S-1 to the assessment order, the copy of which is available at Paper book 3 pages 695. From this annexure, we noted that the assessing officer has mentioned on the top of it "Share market position as on 31.3.92 for –HSM". He has made 7 columns giving name of the scripts, difference, opening stock, closing stock, purchase, sales and over sold. The columns relating to opening stock, closing stock, purchase, sale and oversold had been divided into sub-columns consisting of 'Qty and value'. The quantity and value as oversold has been worked out in respect of each scrip by reducing out of sales (opening stock+ purchase)-closing stock and multiplying the quantity so arrived by the value prevailing as on 31.3.1992. In this case also, the Ld. AR categorically stated that the evidences from which this annexure has been prepared not been provided to the assessee even though the assessee has asked for the same from time to time. We have also directed the Ld. DR to provide copy of the evidences and the material on the basis of which the figures in the annexure are taken but we noted the revenue has not provided any such evidence and the material neither to the assessee nor before us. The Ld. DR taken the similar arguments in this regard as has been taken in respect of ground no. 13 to 16 by submitting the remand report and bringing the gunny bags but without referring or producing material relevant to the information compiled in annexure S-1 prepared for working out the addition made

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for oversold scripts. In our view, if the revenue is making any addition, onus is on the revenue to prove that the assessee has earned the income. The revenue since has not produced any material or evidence to prove that the assessee has earned this income during the year, the addition so made cannot survive. We, therefore, delete the said addition. Thus, the ground no.18 of assessee's appeal is allowed and that of the revenue is dismissed.

18. The next issue raised by the assessee in his appeal is as regards to the addition of Rs.1,04,58,970/- on account of Dividend and Interest income. Ld counsel for the assessee as discussed during the course of the hearing, this ground was not pressed. As this Ground No.19 is not pressed, the same is dismissed.

19. The next common issue raised by the assessee and revenue in these appeals is as regards to the order of CIT(A) restricted the addition of ₹ 124,86,16,980/- as against the addition made by AO of ₹ 150,34,33,835/-. on the ground of Unexplained Money under section 69A of the Act. For this, assessee has raised the following ground No. 20: -

> *"20. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making an addition of Rs. 124,86,16,980 as unexplained money under section 69A of the Act.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 124,86,16,980 as unexplained money."*

Revenue has raised the following ground No. 7: -

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> *"7. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made to the extent of ₹ 15,96,33,663/- on account of unexplained money u/s 69 of the Act."*

19.1. The brief facts relating to this issue are that as per Annexure U (page Nos. 1070 and 1071 of APB No. 4) to original assessment order dated 27.03.1995, an addition of Rs. 251,80,33,835/- was made u/s. 69A of the Act, on account of unexplained deposits in the bank account. Relief to the extent of Rs. 101,46,00,000/- has been granted by CIT(A) vide order dated 23.04.2012, in the second round of litigation. The assessee was in appeal before the Tribunal in relation to the net addition of Rs. 150,34,33,835/-. The Tribunal vide its order dated 29.10.2014 set aside the matter to the file of AO. The AO vide her order dated 15.03.2016 considered the net addition of Rs. 150,34,33,835/- as unexplained money. Relief to the extent of Rs. 25,48,16,855/- has been granted by CIT(A), vide para No. 34.9 on page No. 132 of the impugned order dated 28.06.2017. The assessee is in appeal before the Tribunal in relation to the balance amount of addition of Rs. 124,86,16,980/.

19.2. Before us, the ld. Counsel for the assessee stated the facts that in respect of addition of Rs.124,86,16,980/-, submissions are given in two parts, "A" and "B". First he explained in respect to addition of Rs. 123,05,66115/-. It was explained that the amount of Rs. 123,05,66,115/- is in respect of the proceeds received on account of sale of money market securities as vide para No. 34.7 on page No. 131 of the impugned order dated 28.06.2017, the addition to the extent of Rs. 75,08,97,945/- is confirmed by the CIT (A), by placing reliance on the CIT(A)'s order dated 24.03.2010 (second round of litigation) without giving any independent finding on the submission made and evidence filed and brought to the knowledge of CIT(A), wherein it is incorrectly

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held that the transactions concerned were not there in the deal file for the relevant period (page No. 132 of APB No. 1). He stated that the total deposit of Rs. 75,08,97,945/- on 28.03.1992 pertains to three transactions amounting to Rs. 20,01,47,945/-; Rs. 30,00,00,000/-and Rs. 25,07,50,000/-.

19.3. Similarly, in para No. 34.8 on page No. 131 of the impugned order dated 28.06.2017, the CIT(A) has confirmed the addition to the extent of Rs. 47,96,68,170/- by placing reliance on CIT(A)'s order dated 24.03.2010 (second round of litigation), wherein it is incorrectly held that the said transaction referred to in the Annexure U (page No. 1071 of APB No. 4) and that in Annexure M-1 are different (page No. 433 of APB No. 2). In view of the above, he submitted a detailed chart explaining the nature of the aforesaid deposits amounting to Rs. 123,05,66,115/- which have been captured in Annexure U by the AO as unexplained income.

Sr. No.	*Date*	*Amount (in Rs.)*	*Our Submissions*
1	*28.03.1992*	*20,01,47,945*	*Amount received on sale of 17% NTPC Bonds of FV Rs. 20 crores to SBI Caps under Ready Forward leg(Relevant deal slip is enclosed in page No. 1075 of APB No. 4). The said security was purchased by the Appellant from SBI Caps on 30.03.1992 for an amount of Rs. 20,06,96,286.58 (Relevant deal slip is enclosed in page No. 1075 of APB No. 4).* *The relevant extract of the 'Blue Deal Diary' for 28.03.1992 (page No. 1078 of APB No. 4) maintained by SBI Caps states that SBI Caps has purchased 17% NTPC Bonds of FV 20 Crores for a consideration of Rs. 20,01,47,945/- from the Appellant. The relevant page of the 'Blue Deal Diary' is Document No. 2 of the list of documents forming part of the Charge-sheet for Special Case No. 4 of 1993.* *- Further, the Appellant submits that the deal has been executed in the month of March 1992 and hence does not form part of the deal file*

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			seized by the Income-tax Department.
2	28.03.1992	30,00,00,000	*The said amount is received on sale of 2 crores Units 1964 Scheme to SBI Caps under Ready Forward leg. (Relevant deal slip is enclosed in page No. 1076 of APB No. 4). The said security was reversed (i.e. repurchased by the Appellant from SBI Caps) on 30.03.1992 for an amount of Rs. 30,08,22,000 (Relevant deal slip is enclosed in page No. 1076 of APB No. 4).* *The relevant extract of the 'Blue Deal Diary' for 28.03.1992 (page No. 1078 of APB No. 4) maintained by SBI Caps states that SBI Caps has purchased 2 crores Units 1964 Scheme for a consideration of Rs. 30,00,00,000/- from the Appellant. The relevant page of the 'Blue Deal Diary' is Document No. 2 of the list of documents forming part of the Charge-sheet for Special Case No. 4 of 1993.* *- Further, the Appellant submits that the deal has been executed in the month of March 1992 and hence does not form part of the deal file seized by the Income-tax Department.*
3	28.03.1992	25,07,50,000	*The said amount of Rs. 25,07,50,000 was received on sale of 1.7 crores Units 1964 Scheme to M/s. V. B. Desai under Ready forward leg. (Relevant deal slip is enclosed in page No. 1077 of APB No. 4).* *The relevant extract of the 'Blue Deal Diary' for 28.03.1992 (page No. 1078 of APB No. 4) maintained by SBI Caps states that SBI Caps has purchased 2 crores Units 1964 Scheme for a consideration of Rs. 25,07,50,000/- from the Appellant. The relevant page of the 'Blue Deal Diary' is Document No. 2 of the list of documents forming part of the Charge-sheet for Special Case No. 4 of 1993.* *- Further, the Appellant submits that the deal has been executed in the month of March 1992 and hence does not form part of the deal file seized by the Income-tax Department.*

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4	*25.03.1992*	*47,96,68,170*	*ANZ Grindlays Bank vide its letter dated 7.12.1992 (page No. 1080 of APB No. 4) addressed to the Income-tax Office has provided details of transactions entered by it with the Appellant. As per the given list ANZ Grindlays Bank has purchased 11.5% Central Loan 2008 with FV of 50 crores from Appellant on 25.03.1992 for an amount of Rs. 47,96,68,170/- (transaction listed on page No. 1082 of APB No. 4).* *It is to be noted that the list of transaction is provided from ANZ Grindlays Bank's perspective. Accordingly, the transaction marked as 'P' in the letter is a purchase from the Bank's perspective, and the same transaction is a sale transaction from Appellant's perspective (page No. 1082 of APB No. 4). The Appellant also places reliance on the Annexure M-1 wherein the said transaction is captured as purchase transaction from the point of view of ANZ Grindlays Bank and not from the view point of the Appellant (page No. 433 of APB No. 2).* *- Relevant deal slip of the said sale transaction is reflected in Page No. 1079 of APB No. 4.*

19.4. In view of this, he stated that the CIT(A) has confirmed the addition of Rs. 123,05,66,015/- merely by placing reliance on his predecessor's order dated 24.03.2010. In view of the above, it was requested that the addition to the extent of Rs. 123,05,66,015/- be deleted.

19.5. In relation to balance addition of Rs. 1,80,50,965/- (forming part of annexure U – page No. 500 to 503 of APB No. 2) it was argued that the said deposits were made on account amount transferred from one bank account of the assessee to another, deposits received from related entities and refund proceeds on allotment of right shares. These transactions are normal business transactions and routed through regular and disclosed bank accounts of the assessee. Accordingly, it was requested to delete the addition of Rs. 1,80,50,965/-.

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19.6. On the other hand, the ld. CIT DR argued on the issue of addition made by AO on account of unexplained money u/s 69A of the Act, of Rs. 150,34,33,835/-. He stated that the CIT(A) has confirmed the addition to the tune of Rs. 124,86,16,880/- on account of first three entries of the table amounting to Rs. 75,08,97,945/- plus fourth entry which amounted to Rs. 47,96,68,171/-, aggregating to Ps. 123,05,66,015/-. The addition of Rs. 1,80,50,865/- has also been confirmed being miscellaneous bank credits for which assessee has failed to produce any evidence or explanation. However, the balance amount of Rs. 25,48,16,855/- was deleted on the basis of details filed by assessee. However, it was argued that as can be seen from the Annexure -U, there are total 98 entries of deposits which have been treated unexplained by the AO. Out of these entries of deposits, CIT(A) could identify only first four entries as mentioned in the chart and for the remaining 94 deposits, he has failed to give any specific remarks. Which deposit is explained and in what manner, which is not, nothing has been mentioned by CIT(A) in this regard. He has, in a summary manner, decided the issue and provided relief to assessee. He has relied upon the self- serving evidence of assessee and allowed relief in respect of all unexplained deposits. It was, therefore, argued that from where these figures have been obtained, on what account this relief has been granted, is not decided by the CIT(A). There are several entries in the bank account of the assessee which are not explained by him to the satisfaction of the Revenue. From the details of the bank accounts of assessee 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 assessee. The AO had prepared the accounts of all the parties from whom money was received/paid and provided them to the assessee in the form of computer print outs requiring him to explain the source and nature of the funds of the mismatched entries.

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The assessee preferred to give only partial details. In this backdrop, Annexure-U was prepared by the AO specifying the entries on which the assessee did not furnish the details. The assessee was not able to explain the source and nature of fund of Rs.251,18,33,835/- deposited in his bank accounts and therefore, it was requested to sustain the addition made by AO.

19.7. We have heard the rival submissions and perused various documents and the material brought to our knowledge and available in the paper book. We noted that in the original assessment order passed u/s 144 dt. 27.3.1995, the assessing officer made an addition of Rs.251,80,33,835/- as unexplained money, but when the matter went before the CIT appeal, in second round of appeal, the CIT(A) allowed a relief of Rs.101,46,00,000/- vide order dt. 24.3.2010. The assessing officer in the impugned assessment order under appeal dt 15.3.16, made the addition of Rs.150,34,33,835/- only, and out of this addition, the CIT(A) vide order dt. 28.6.17 allowed a relief of Rs.25,48,16,955/- and sustained the addition to the extent of Rs.124,86,16,880/-, therefore the issues before us relate only to the addition of Rs.150,34,33,835/- in both the appeals filed by the revenue as well as by the assessee. The ld. DR is not correct requesting us to sustain the addition to the extent of Rs.251,18,33,835/- made by the assessing officer in the original ex-parte order dt.27.3.1995. The ground taken by the revenue relate only against the sum of Rs.25,48,16,955/- while the ground taken by the assessee is against the sustenance of the addition of Rs.124,86,16,880/- by the CIT(A). We noted that the sum of Rs.124,86,16880/- consists of 5 amounts of Rs.20,01,47,945/- +30,00,00,000/-+25,07,50,000/-+47,96,68,170/- and Rs.1,80,50,865/-. The first four items has been captured by the assessing officer from Annexure U as contended by ld. AR but not denied by the ld. DR. In

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respect of each amount the assessee has given the explanation as under:-

28.03.1992	*20,01,47,945*	*Amount received on sale of 17% NTPC Bonds of FV Rs. 20 crores to SBI Caps under Ready Forward leg(Relevant deal slip is enclosed in page No. 1075 of APB No. 4). The said security was purchased by the Appellant from SBI Caps on 30.03.1992 for an amount of Rs. 20,06,96,286.58 (Relevant deal slip is enclosed in page No. 1075 of APB No. 4).* *The relevant extract of the 'Blue Deal Diary' for 28.03.1992 (page No. 1078 of APB No. 4) maintained by SBI Caps states that SBI Caps has purchased 17% NTPC Bonds of FV 20 Crores for a consideration of Rs. 20,01,47,945/- from the Appellant. The relevant page of the 'Blue Deal Diary' is Document No. 2 of the list of documents forming part of the Charge-sheet for Special Case No. 4 of 1993.* *- Further, the Appellant submits that the deal has been executed in the month of March 1992 and hence does not form part of the deal file seized by the Income-tax Department.*
28.03.1992	*30,00,00,000*	*The said amount is received on sale of 2 crores Units 1964 Scheme to SBI Caps under Ready Forward leg. (Relevant deal slip is enclosed in page No. 1076 of APB No. 4). The said security was reversed (i.e. repurchased by the Appellant from SBI Caps) on 30.03.1992 for an amount of Rs. 30,08,22,000 (Relevant deal slip is enclosed in page No. 1076 of APB No. 4).* *The relevant extract of the 'Blue Deal Diary' for 28.03.1992 (page No. 1078 of APB No. 4) maintained by SBI Caps states that SBI Caps has purchased 2 crores Units 1964 Scheme for a consideration of Rs. 30,00,00,000/- from the Appellant. The relevant page of the 'Blue Deal Diary' is Document No. 2 of the list of documents forming part of the Charge-sheet for Special Case No. 4 of 1993.* *- Further, the Appellant submits that the deal has been executed in the month of March 1992 and hence does not form part of the deal file seized by the Income-tax Department.*

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28.03.1992	*25,07,50,000*	*The said amount of Rs. 25,07,50,000 was received on sale of 1.7 crores Units 1964 Scheme to M/s. V. B. Desai under Ready forward leg. (Relevant deal slip is enclosed in page No. 1077 of APB No. 4).* *The relevant extract of the 'Blue Deal Diary' for 28.03.1992 (page No. 1078 of APB No. 4) maintained by SBI Caps states that SBI Caps has purchased 2 crores Units 1964 Scheme for a consideration of Rs. 25,07,50,000/- from the Appellant. The relevant page of the 'Blue Deal Diary' is Document No. 2 of the list of documents forming part of the Charge-sheet for Special Case No. 4 of 1993.* *- Further, the Appellant submits that the deal has been executed in the month of March 1992 and hence does not form part of the deal file seized by the Income-tax Department.*
25.03.1992	*47,96,68,170*	*ANZ Grindlays Bank vide its letter dated 7.12.1992 (page No. 1080 of APB No. 4) addressed to the Income-tax Office has provided details of transactions entered by it with the Appellant. As per the given list ANZ Grindlays Bank has purchased 11.5% Central Loan 2008 with FV of 50 crores from Appellant on 25.03.1992 for an amount of Rs. 47,96,68,170/- (transaction listed on page No. 1082 of APB No. 4).* *It is to be noted that the list of transaction is provided from ANZ Grindlays Bank's perspective. Accordingly, the transaction marked as 'P' in the letter is a purchase from the Bank's perspective, and the same transaction is a sale transaction from Appellant's perspective (page No. 1082 of APB No. 4). The Appellant also places reliance on the Annexure M-1 wherein the said transaction is captured as purchase transaction from the point of view of ANZ Grindlays Bank and not from the view point of the Appellant (page No. 433 of APB No. 2).* *- Relevant deal slip of the said sale transaction is reflected in Page No. 1079 of APB No. 4.*

19.8. We have duly verified all the relevant pages from 1075 to 1082 of additional paper book 4 as well as page 433 of additional paper book and found the contention of the Ld. A R to be correct. The ld DR although relied on the order of the CIT(A) but could not adduce any cogent material or evidence to contradict the evidence filed by the

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assessee. These evidences clearly prove that these four amounts totaling to Rs.123,05,66,015/- cannot be regarded to be unexplained amount. We, therefore, delete the said addition.

19.9. For the sum of Rs.1,80,50,965/-, we perused the explanation given by the ld. AR to which we could not be satisfied. In our view, once the assessee has deposited the money in his bank account, the onus lies on the assessee to explain the nature and source of such deposit consisting of each and every entry. In the absence of onus being discharged by the assessee, we sustain the addition of Rs.1,80,50,965/-.

19.10. So far the deletion of the addition by the CIT(A) amounting to Rs.25,48,16,855/- is concerned, we do not find illegality or infirmity in the order of the CIT(A) in deleting the said addition and this amount also in our view cannot be regarded to be the unexplained money. Thus, the ground taken by the revenue is dismissed while the ground taken by the assessee is partly allowed.

20. The next issue raised by the assessee is as regards to the addition of Rs. 12,00,00,000/- on account of transactions with Mr. Niranjan J. Shah. For this, assessee has raised the following ground No.21: -

> *"21. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of transactions with Shri Niranjan J. Shah amounting to Rs. 12,00,00,000.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 12,00,00,000 on account of transactions with Shri Niranjan J. Shah."*

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20.1. The brief facts relating to this issue are that the AO made an addition of Rs. 6.86 crores on account of unexplained money with respect to transactions with Mr. Niranjan Shah in the original assessment order (Page nos. 65 to 76 of APBK No. 1). Thereafter the aforesaid addition was enhanced by Rs. 5.14 crores by the CIT(A) in the second round of appellate proceedings vide his order dated 24.03.2010 by placing reliance on the report of the Joint Parliamentary Committee ('JPC').

Sr. No.	*Particulars*	*Amount (in Rs.)*	*Amount (in Rs.)*
1	*Unexplained money in Rupees received from Shri. Niranjan Shah*	*3,14,35,200*	
2	*Cash received for his proposed company "M Securities" by Shri Niranjan Shah*	*2,31,00,000*	
3	*Unexplained money equivalent to USD 468200/- @ Rs.30/- per USD*	*1,40,46,000*	*6,85,81,200*
4	*Enhancement in terms of JPC report*		*5,15,18,800*
	TOTAL		*12,00,00,000*

The additions have been made on the following basis:

> *a) On the basis of four accounts [ie. 5A personal (Sterling Pound) account, 5A (USD) Account, 5A (Rupee) Account and M Securities Account] maintained in the documents seized from Shri. Niranjan Shah's premises in May 1992.*
>
> *b) On the basis of the statements of Shri. Niranjan Shah dated 30.05.1992.*

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c) On the basis of the report of the JPC which reveals that some payments were made by Mr. Niranjan Shah to the Appellant (without clarifying the nature of such payment).

20.2. Before us, the ld. Counsel for the assessee stated the facts that the alleged transactions referred above have not been undertaken by the assessee and consequently have not been recorded in the books of account. The AO has not produced any independent evidence corroborating the reliability of seized material, apart from the statement of Mr. Niranjan Shah which has been subsequently retracted. Further, the contents of reports of various Committees cannot be used as incriminating evidence against the assessee by AO. The AO as well as CIT(A) have also failed to offer an opportunity of cross examination of Mr. Niranjan Shah in spite of requesting for the same time and again. The same is evident from para (ix) of the letter dated 13.01.2010 addressed to the CIT(A) (enclosed on page nos. 1083 to 1089 of APB No. 4) requesting cross examination of Mr. Niranjan Shah. The assessee relied on the decision of the Tribunal in the case of Straptex (India) (p) Ltd. vs. DCIT (2003) 84 ITD 0320 (Bom. Trib.), wherein Tribunal while referring to the search conducted in May 1992 at the residence of Shri. Niranjan Shah has held that the statements and material given by him could not have been used against the assessee for the following reasons: -

a) The assessee was not given an opportunity to cross-examine Mr. Niranjan Shah

b) Mr. Niranjan Shah had retracted his statement vide his declaration dated 23.09.1994 before the Notary Public.

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20.3. It was argued that CIT(A) has adjudicated the issue by simply relying on the order of his predecessor & hence, prayed to delete the addition of Rs. 12 crores on account of the alleged transactions with Mr. Niranjan Shah.

20.4. On the other hand, the ld. CIT-DR stated that addition on account of transactions with Shri Niranjan Shah amounting to Rs. 12 crores is confirmed by the CIT(A) relying on the order of his predecessor. The enhancement was made by his predecessor on this issue on the basis of JPC report wherein the said amount was mentioned. How, this issue is related to the year under consideration was argued by referring to page no. 142 of CIT(A) order dated 24.03.2010 wherein the transaction has been discussed in detail along with the reasons for addition. This addition has been made on the following basis: -

> *"1. On the basis of documents seized from Niranjan Shah's premises in May 1992.*
>
> *2. On the basis of statement of Niranjan Shah recorded u/s 131 of IT Act.*
>
> *3. On the basis of JPC report wherein it was observed that Shri Shah was a Hawala Dealer with narcotics links and he was maintaining foreign currency account of HSM and his family members and had used Rs. 12 crores of HSM from undisclosed sources."*

20.5. In view of the fact that there was enough evidence before CIT(A) which was not controverted by the assessee Ld. CIT(A)-DR urged that addition be sustained.

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20.6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessing officer in the original assessment order passed u/s 144 dt. 27.3.1995 made the addition of Rs.6.86 Crores. The said addition was enhanced by the CIT(A) in the second round of appellate proceedings vide order dt. 24.3.10 by Rs.5.14 Crores, and thus the additions on this account become 12 Crores and the same has been upheld by the subsequent assessment and appellate proceedings before CIT(A). The CIT(A) vide impugned order confirmed the said addition relying on the finding given by his predecessor in earlier appellate proceedings by holding as under: -

> "*I have considered the arguments of the assessee which are selective and do not represent the facts in totality. The facts remains that during the course of search from the premises of sri Niranjan Shah certain documents were found as per various annex. Mentioned in para 35.1., which contained details of expesnes in US Dollars and Pound Sterling apart from in rupees. Sri Niranjan Shah had very clearly and categorically admitted in his sworn statement that these transactions belong to the present assessee. Subsequently this issue has also been examined by Janakiraman committee report which reached on a conclusion that total of such expenses was actually was Rs.12,00,00,000/-. This issue has also been examined by my ld predecessor at great length, when he enhanced this addition to Rs.12 Cr. Therefore nothing more need to be examined or discussed on this issue. In view of the above mentioned facts and circumstances of the case, I am of the view that addition on Rs.12 Cr made on the basis of Janakiraman committee report (JPC) is fully justified. The same is therefore upheld. Consequently this ground of appeal of the assessee is rejected.*"

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20.7. It is not denied by the Ld. DR that the addition has been made and sustained on the basis of documents seized from the premises of the third party, the statement of the third party as well as the report of JPC. We, therefore noted that the assessee has asked before assessing officer and CIT(A) the cross examination of the Niranjan Shah, third party from time to time but the opportunity was not given to the assessee. This fact is also apparent from page 1083 to 1089 of the paper book no.4 which was referred to us during the course of the hearing. On this basis itself, since Niranjan Shah is the third party and witness of the revenue, the addition made is bound to be deleted following the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise (2015) 281 CTR 0241 (SC). We also found that this tribunal in the case of Straptex (India) (p) Ltd. vs. DCIT (2003) 84 ITD 0320 (Bom. Trib.) as referred to by Ld. DR during the course of hearing from page 1090 to 1098 PB No.4, while referring to the search conducted in May, 1992 at the residence of Shri Niranjan Shah has held that the statements and material given by him could not have been used against the assessee for the following reasons: -

> a) *The assessee was not given an opportunity to cross examine Mr. Niranjan Shah.*
>
> b) *Mr. Niranjan Shah had retracted his statement vide his declaration dt. 23.9.1994 before the Notary Public.*

20.8. We also found that no independent evidence corroborating the statement of Niranjan shah has been brought on record. The report of JPC, in our view cannot be regarded to be the incriminating material to

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be used against the assessee. In view of this, we are bound to delete the said addition. Thus, ground no.21 of assessee's appeal is allowed.

21. The next issue raised by the assessee in his appeal is as regards to the addition on account of alleged payment to June Investments Pvt. Ltd. amounting to Rs. 62,50,000/-. For this, assessee has raised the following ground22: -

> *"22. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of payment to M/s June Investments treating the same as unexplained investment amounting to Rs.6250000/-.*
>
> *The appellant prays that AO be directed to delete the addition of Rs.6250000 as unexplained money.*

21.1. The brief facts relating to this issue are that the AO made an addition of Rs. 62,50,000/- on account of unexplained investment in the original assessment order (page nos. 76 to 77 of APB No. 1). The allegation was made on the basis of a document seized during the course of survey at the premises of a share broker Shri Deep Trivedi (third party). The document showed that on 31.12.1991 "Harshad Mehta" had paid a sum of Rs. 62,50,000/- to June Investment Pvt. Ltd. against purchase of shares of Lan Steel. However, the assessee denied having made any such payment to any such party called June Investment Pvt. Ltd. The AO has neither produced any independent evidence corroborating the reliability of the seized document nor examined whether the "Harshad Mehta" referred to in the seized document was assessee or some other individual named "Harshad Mehta". The AO has failed to discharge his onus of examining how the

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aforesaid amounts constitute the income of the assessee. The CIT(A) also confirmed the addition. Aggrieved, assessee came in second appeal before Tribunal.

21.2. Before us, it was contended that the assessee had requested the AO vide his letter dated 20.02.1995 to provide a clear copy of the seized document as the one provided to him was illegible. However, the AO did not provide the same and showed his inability because he himself was not having a legible copy. Accordingly, in the absence of a clear copy of the seized document, no reply could be filed by the assessee to explain the same. Further, the Income-tax Department was not able to controvert the submissions and the evidences submitted by the assessee during the course of the appellate proceedings. In view of the above, it was prayed that the addition of Rs. 62,50,000/- on account of alleged payment to June Investments Pvt. Ltd. being not sustainable in law and is liable to be deleted.

21.3. On the other hand, the ld. CIT DR argued that this addition pertains to payment to June Investments as unexplained investment of Rs. 62,50,000/-. This addition is confirmed by CIT(A). Survey was conducted and during the survey, the evidence regarding this transaction was found. It was mentioned that assessee had not given any reply or had not filed any reply to negate the claim regarding the addition, therefore, addition may be sustained.

21.4. We have heard the rival submissions along with the order of the authorities below and perused the same. We noted that this addition has been made on the basis of the survey being conducted at the premises of one Shri Deep Trivedi (third Party) which shows as per assessing officer that on 31.12.1991, the “Harshad Mehta” had paid a sum of Rs.62,50,000/- to M/s June Investments P Ltd against the

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purchase of shares of M/s Lan Steel. We noted that assessee vide his letter dt. 20.2.1995 requested the assessing officer to provide a clear copy of the seized document as the one provided to him was illegible, but the assessing officer did not provide. The addition has been made merely on the basis of the document found from the possession of third party, no collaborative evidence is being brought on record by way of statement on behalf of June Investments P Ltd or by way of any evidence being found or seized during the course of search being carried out at the premises of the assessee showing that actually the assessee hold or purchased the shares of M/s Lan Steel. Onus is on the revenue to prove that the assessee has actually paid the money to third party during the impugned assessment year and for which the assessee is not able to explain the source. No addition can be sustained merely on the basis of assumption and presumption without given the opportunity to the assessee to controvert the same. We, therefore delete the said addition. Thus, this ground of assessee's appeal is allowed.

22. The next issue raised by the assessee in his appeal is as regards to the addition on account enhancement of Rs. 11,85,00,000/- on account of Interest receivable from related parties. For this, assessee raised the following ground no.23:-

> *"23. On the facts and in the circumstances of the case the in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of interest receivable from the family members amounting to Rs.11,8500000/-.*
>
> *The appellant prays that the AO be directed to delete the addition of Rs.118500000/- on account of interest receivable from the family members."*

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22.1. The brief facts relating to this issue are that during the course of second round of proceedings before the CIT(A), enhancement was made on the basis of Review of Unaudited Accounts by M/s Vyas &Vyas Chartered Accountants, wherein it was observed that 'interest should have been credited in the books of Harshad S Mehta, which had not been accounted for'. The aforesaid observation was made by M/s Vyas & Vyas Chartered Accountants after studying the Audit Reports of Harshad Mehta's family members. On the basis of the above-mentioned observation of M/s Vyas & Vyas, the CIT(A) made an enhancement under section 251 of the Act for an amount of Rs. 11,85,00,000/- as Interest Income from related parties vide his order dated 24.03.2010 (page nos. 341 to 344 of APB No.1). The CIT(A) in subsequent appellate proceedings also confirmed the said addition on the basis of the order dt.24.3.10. Aggrieved assessee is in second appeal before Tribunal.

22.2. Before us, assessee reiterated the submissions made before CIT(A) that no payment has been actually received by the assessee. Since the assessee follows cash system of accounting, interest receivable from related parties cannot be taxed on the basis of mercantile system until the same is actually received. It was argued that M/s Vyas & Vyas Chartered Accountants have only made a comment in their Review of Unaudited Accounts in relation to interest receivable from related parties. The review report does not suggest that the assessee has received interest. He also placed reliance on the order of the Tribunal dated 2.01.2008 in ITA No. 5773/M/1998 for A.Y. 1989-90 (page Nos. 1104 to 1114 of APBK No. 4) in assessee's own case wherein Tribunal held that whether the assessee has maintained books of account or not, if the assessee regularly follows cash system of accounting, the said system should be accepted and the interest should

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be considered only for actual receipts. The relevant paras of the said order is reproduced below:

> *"5.27 . . . Even otherwise, we find that in a case where the books of account are not maintained or rejected by the Assessing Authority, and income is determined on the basis of best judgement, still, the assessee's choice regarding the method of accounting cannot be ignored. The books of account is not the only crucial point to be considered on this issue. The consistent practice followed by the assessee has also to be looked into. Whether assessee has maintained books of account or not, if the assessee follows cash system to recognize income from interest and realize interest income only on actual receipts, the said system should be accepted and the interest should be considered only for actual receipts. Therefore, we find that the emphasis on the rejection of books of account, are overplayed by the authority.*
>
> *5.28 The assessee is consistently following the cash system of accounting in respect of interest income. That is, he is recognizing interest income only on actual basis. This consistent position should not be overlooked on the ground that the other relatives of the assessee are recognizing interest income on mercantile basis. Therefore, in the facts and circumstances of the case, we find that the lower authorities were not justified in assuming interest income in the hands of the assessee on mercantile basis."*

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22.3. In view of the above it was stated that even the ld. CIT DR has stated that in the assessee's own case for AY 1988-89, Tribunal has rejected assessee's claim for cash basis of accounting. In relation to the same, the assessee stated that the aforesaid order for AY 1988-89 has already been dealt with by the Tribunal in the appeal for AY 1989-90 in para No. 5.27 on page No. 1112 to 1113 of APB No. 4 wherein cash basis of accounting has been upheld irrespective of whether the books of account are maintained or not. In view of the above, it was requested to delete the addition of Rs. 11,85,00,000/- on account of the alleged interest income receivable from related parties.

22.4. On the other hand, the ld. CIT-DR stated that this pertains to addition on account of interest receivable from the family members amounting to Rs. 11,85,00,000/- .This addition has been made regarding interest accrued to the assessee's family members. The contention of the assessee that he was following cash system of accounting was incorrect, as no books were maintained by him and even ITAT in earlier years had not accepted the argument of assessee regarding cash system of accounting. The issue is discussed at page 138 and 139 at para 37.1 to 37.5 of CIT(A) and the addition has been confirmed by him after relying on the decision of predecessor who has discussed this issue in Para 25.1 from page no. 155 to page no. 158 of his order. In respect of method of accounting that it was on accrual basis, not the cash basis, the issue has already been discussed by CIT(A) vide his order dated 24.03.2010 from Para 10.3 to 10.4.4 (page no. 100 to 107) which was requested to take into consideration while deciding the issue.

22.5. We have heard rival contentions and carefully considered the same along with the order of the tax authorities. We noted that a similar issue regarding the addition on account of interest receivable from the

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family members has arisen in the case of the assessee in the AY 1989-90 in ITA/637/Mum/2007 wherein vide order dt. 2nd January 2008 this Tribunal duly considered the order of this Tribunal in the case of the assessee for AY 1988-89 on which the ld. DR has vehemently relied and came to the conclusion under para 5.27 that the order of the Tribunal for that AY would not apply in the present case (during AY 89-90). It was, further held that in a case where the books of accounts are not maintained or rejected by the assessing authority and income is determined on the basis of best judgement, still assessee choice regarding the method of accounting cannot be ignored. The books of account is not the only crucial point to be considered on this issue. The consistent practice followed by the assessee has also to be looked into whether assessee has maintained books of accounts or not, if the assessee follows cash system of accounting to recognize income from interest and realizes interest income only on actual receipt basis, such system should be accepted and interest should be considered only for actual receipts. The assessee has consistently followed cash system of accounting in respect of interest income. This consistent position cannot be overlooked on the ground that other relatives of assessee are recognizing interest income on mercantile basis. Tribunal, thus in AY 89-90 deleted the addition before us even though the Ld. DR vehemently relied on the order of the authorities below but could not bring to our knowledge any decision contrary to the decision of the Tribunal for the AY 89-90. In assessee's own case holding that interest income has to be recognized in the case of the assessee on actual receipt basis. The ld. DR even did not deny that the assessee was following the cash system of accounting in respect of interest income. We, therefore following the decision of this Tribunal in the case of the assessee for AY 89-90 in ITA no. 637/Mum/2007 set aside the order of

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the AO on this issue and delete the addition of Rs. 11,85,00,000/-. Thus, the ground no 23 of assessee's appeal is allowed.

23. The next issue relates to the enhancement of Rs. 372,82,14,642/- on account of alleged differences in the books of account. For this, assessee raised the following ground No. 24: -

> *"24. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making an addition of Rs.3728214642/- on account of alleged difference in the books of the appellant and in the books of Shri Ashwin S. Mehta and Smt. Jyoti H Mehta by ignoring the reconciliation of accounts and various submissions of the appellant. The appellant prays that the AO be directed to delete the addition of Rs 3728214642/-.*

23.1. The brief facts relating to this issue are that during the course of second round of proceedings the CIT(A) vide order dated 24.03.2010 made an enhancement amounting to Rs. 372,82,14,642/- by invoking the provisions u/s 251(2) of the Act. The addition was made by CIT(A) on account of alleged difference between the balances in the books of accounts of M/s. Ashwin S. Mehta and the books of M/s. Harshad S Mehta amounting to Rs. 107.35 crores and between the balances in the books of account of M/s. Jyoti H. Mehta and the books of M/s. Harshad S. Mehta amounting to Rs. 265.47 crores. The CIT(A), in the third round of appellate proceedings, vide the impugned order dated 28.06.2017 has upheld the findings of his predecessor. Aggrieved, assessee is in second appeal before Tribunal.

23.2. Before us, the ld. Counsel for the assessee argued that the facts in relation to the aforesaid ground of appeal are similar to ground

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of appeal No. 13 in case of Shri Ashwin S Mehta (Assessee's appeal No. 3427/Mum/2017). In term of this, he stated that the addition on account of difference in the books of account between Shri Ashwin S Mehta and Shri Harshad S Mehta is already explained to the Bench during the course of hearings in the case of Shri Ashwin S Mehta for AY 1992-93 (Assessee's Appeal No. 3427/Mum/2017). Further, in case of addition on account of difference in the books of account between Smt. Jyoti H Mehta and Shri Harshad S Mehta is also explained in the detailed submissions filed in case of Smt Jyoti H Mehta for AY 1992-93 (Assessee's Appeal No. 4204/Mum/2017). He submitted as under: -

> *"i) The CIT(A) has made error of omission by not considering all the relevant ledger accounts in computing the alleged difference of Rs. 372.82 crores.*
>
> *ii) The books of account of Shri Harshad S Mehta (personal account) and M/s. Harshad S Mehta (proprietorship concerns) needs to be considered on a consolidated basis.*
>
> *iii) Reconciliation of Ledger account balances between Ashwin S. Mehta and Harshad S. Mehta as well as between Jyoti H. Mehta and Harshad S. Mehta is submitted before the Assessing Officer as well as the ld. CIT(A) - Each and every entry is explained by providing one to one correlation."*

23.3. In term of the above, Ld Counsel argued that CIT(A) has erred in not considering all the relevant ledger accounts in the books of Shri Ashwin S. Mehta (personal and proprietary concern), Smt Jyoti H. Mehta (personal and proprietary concern) and Shri Harshad S. Mehta (personal and proprietary concern). All the above details were already

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submitted to the AO and CIT (A) during the third round of litigation. No discrepancies were found by the AO or the CIT(A) in the said reconciliation. Further, it was submitted that all the above transactions are undertaken through banking channels and there is no involvement of cash. During the course of hearing on 01.02.2018, the bench once again directed the AO to verify Ledger Accounts in the books of Shri Ashwin S. Mehta, Smt. Jyoti H. Mehta and Shri Harshad S. Mehta during the course of the proceedings itself. Admittedly, no discrepancies have been found by the AO till date. Further, the Income-tax Department was not able to controvert the submissions and the evidences submitted during the course of the appellate proceedings. Without prejudice to the above, a conceptual argument is made that the AO and CIT(A) have always held that the books of account are unreliable and hence not considered for computing income of the assessee. However, at the same time in order to make a high pitched addition, the sole basis of this addition is the books of account. The Income-tax Department cannot be allowed to pick and choose a few aspects from the books of account after rejecting the same in totality.In view of the above, it was requested to delete the addition of Rs. 372,82,14,642/-on account of alleged difference in the books of account.

23.4. On the other hand, Ld. CIT-DR stated that this issue pertains to addition on account of differences in the books of the assessee and in the books of Shri Ashwin Mehta and Smt. Jyoti Mehta amounting to Rs. 372,82,14,642/-. It was mentioned that the Auditors Vyas & Vyas, as appointed by Hon'ble Special Court, had pointed out various infirmities in the account of assessee. There were differences in the balances arising on account of complete non-disclosure of the transactions in the assessee's books. The credit balances also do not stand reconciled.

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Whereas M/s.Ashwin Mehta and M/s.Jyoti Mehta have disclosed transactions of Rs. 107,34,59,584/- and Rs.265,47,55,058/- respectively with M/s.Harshad Mehta, the latter has not shown these transactions in his books. In view of this, the sum of Rs.372,82,14,642/- was assessed in the hands of the assessee as undisclosed transactions. This addition is confirmed by the CIT(A) after discussing that as to how the addition made by the AO is correct. While confirming the addition, CIT (A) has relied on the order of his predecessor as well as his own order in the case of Ashwin Mehta for A.Y. 1992-93. The undersigned relied upon the orders of CIT(A) and his predecessor on the issue with a request that the same may be considered before arriving at any conclusion on the issue.

23.5. We have heard the rival submission and carefully considered the same. We noted that during the course of third round of assessment proceedings in the case of the assessee and Jyoti H Mehta, the AO worked out the difference while making assessment in the case of Jyoti H Mehta after considering personal as well as proprietary concern and loan account of both the parties at Rs 28,14,319/- which was originally taken at Rs 265.47 crores. But in the case of Ashwin Mehta, the CIT(A) took the difference at Rs 164,60,46,992/- by considering only the personal accounts of both the parties i.e. the assessee and Ashwin Mehta ignoring their proprietorship concern and other account in the books. The assessee's counsel while taking ground no 3 in the case of Ashwin Mehta in respect of similar issue filed detailed reconciliation considering personal as well as proprietorship account in both the cases and worked out the difference only at Rs 3,86,66,780/- for which the chart is available at page 793 to 797 of the APB in the case of Ashwin Mehta. The assessee has also submitted complete reconciliation in these cases and ultimate difference unreconciled of their inter account

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considering their proprietorship concern also came to Rs 2,18,397/- only. In the case of Jyoti Mehta also, while making detailed submission in respect of ground no 15 it was worked out that ultimately there was no difference and the difference unreconciled remains between Ashwin Mehta and Harshad Mehta to the extent of Rs 2,80,397/-. We therefore reduce the addition to Rs 218397/-. Thus, the ground no 24 of assessee's appeal is partly allowed.

24. The next issue raised by the assessee in his appeal is as regards to addition on account of alleged liabilities shown as other income amounting to Rs. 69,63,00,000/-. For this, assessee has raised the following ground No 25:

> *"25. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of alleged liabilities shown as other income on the basis of the review of unaudited accounts prepared by M/s. Vyas & Vyas amounting to Rs. 69,63,00,000.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 69,63,00,000."*

24.1. The brief facts relating to this issue are that during the course of the second round of proceedings before CIT(A), attention was invited by the AO to the report on Review of Unaudited Accounts of the Statement of Affairs ('the report') as on 08.06.1992 of M/s Harshad S. Mehta prepared by M/s Vyas & Vyas, wherein it was observed that on the liability side, an amount of Rs. 83,51,53,713/- has been mentioned as 'other income not shown in the books'. The point no.4 in Notes on Consolidated Statement of Affairs in the report states that 'Other income has been calculated as per findings given by JPC Report'. The

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aforesaid amount had been arrived at on the presumption that if the monies received by M/s Harshad S. Mehta would have been deployed at an average rate of 16% p.a. upto the date of notification, the assessee would have earned notional interest on the same. On the basis of the above-mentioned comment of M/s Vyas & Vyas, the CIT(A) in assessee's own case in his order dated 24.03.2010 for AY 1993-94 noted that the sum of Rs. 83.52 crores are assessable as income. The CIT(A) further observed that the entire sum would not be attributable to the AY 1993-94. Accordingly, on the basis of the periods as mentioned in reply of M/s. Vyas & Vyas, CIT(A) made an enhancement of Rs. 13.91 crores in AY 1993-94 and the balance amount of Rs. 69.63 crores were enhanced in the income for AY 1992-93. The CIT(A) in the third round of appellate proceedings, has upheld the findings of his predecessor (page Nos. 152 to 154 of the impugned order dated 28.06.2017).

24.2. Before us, the Ld. Counsel for the assessee argued that as per the original assessment order dated 27.03.1995 and the appellate order dated 24.03.2010 it is clearly evident that the Income-tax Department has estimated the income of the assessee based on the information received and collated from various sources in order to make a high pitched assessment. Accordingly, it is submitted that conceptually the addition made by the Assessing Officer on account of alleged liabilities shown as other income amounting to Rs. 69,63,00,000/-for A.Y. 1992-93 is incorrect. He stated that the so called income computed by M/s Vyas & Vyas as 'Other income' is largely in the nature of notional interest income based on certain presumptions and conjectures of M/s. Vyas & Vyas, Chartered Accountants. The income arrived at by Chartered Accountants has neither been earned nor actually received and the AO has not established that the assessee has either earned or

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received any income as computed by M/s Vyas & Vyas. There is no effort made to establish actual utilization of monies by M/s Harshad S Mehta and the income generated thereon, if any, nor has the AO carried out such an exercise.

24.3. Even factually, the letter dated 30.11.2009 addressed by M/s Vyas & Vyas, Chartered Accountants to the AO (page Nos. 1162 to 1173 of APB No. 5) wherein the Chartered Accountants have themselves admitted that the material received by them was not 100% correct (page No 1162 of APB No. 5). Relevant extract of the letter is reproduced below:

> *"5. We wrote letters to banks, financial institutions and other related parties. Some of the banks etc. responded in limited words, saying "Degrees (Decrees) have been passed" some have not responded at all.*
>
> *6. Under the circumstances whatever material was available with us we prepared our report which was not 100% correct …"*

24.4. Additionally, in the chart prepared by them, they have admitted that their estimates are based on 'Probable Effect of the Findings of Janakiraman Committee' (page No. 1164 of APB No. 5). Further, the effects of the findings of Janakiraman Committee were made without the basis of complete information and details available before them (page Nos. 1162 and 1172 of APB No. 5). For instance, in respect of the addition to the extent of Rs. 34.76 crores (para No. 7.5 of the letter on page No. 1172 of APB No. 5), M/s. Vyas & Vyas have specifically stated that as on the date (of the letter) they wait for a response from Canara Bank in relation to enquiry made whether there are any pending Suits/

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liability towards the assessee. Even on sample basis, item-wise explanation in respect of an amount of Rs. 67,17,00,000/- out of total addition of Rs. 69,63,00,000/- (page No. 1174 of APB No. 5) wherein it is wrongly assumed that the said payments have been unauthorized credit into the account of M/s Harshad S. Mehta. The Income-tax Department was not able to controvert the submissions and the evidences submitted by the assessee during the course of the appellate proceedings. In view of the above, it is prayed that the entire amount of Rs. 69,63,00,000/- being addition on account of alleged liabilities shown as other income in the report prepared by M/s Vyas & Vyas Chartered Accountants be deleted.

24.5. On the other hand, the ld. CIT-DR argued that the issue pertains to addition on account of liabilities shown as other income on the basis of the review of unaudited accounts prepared by Vyas & Vyas amounting to Rs. 69,63,00,000/-. The Auditors Vyas & Vyas as appointed by Hon'ble Special Court had pointed out various infirmities in the accounts of assessee and the findings on the above issue were considered for addition. This addition is confirmed by the CIT(A) after relying on the findings of his predecessor who vide Para 17 (from page 57 to page 64) of the appellate order for AY 1993-94 has discussed the issue in details and additions (enhancements) have been made in both the years.

24.6. We have heard rival contentions and carefully considered the same along with the orders of the authorities below. We noted that the said addition has been made mainly on estimate basis on account of liabilities which were shown as other income in the review of the unaudited accounts of the assessee prepared by M/s Vyas & Vyas as on 8.6.1992 when the search has taken place. It was noted that the liabilities were to the extent of Rs 83,51,53,713/-. In the 2nd ground of

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the appeal before the CIT(A), the CIT(A) on the basis of the order of his predecessor dt. 24.3.2010 made an enhancement out of the said sum for Rs 13,91,00,000/- in AY 93-94 and the balance amount of Rs 69,63,00,000/- in the impugned assessment year. The ld. AR therefore contended that this income is simply based on certain presumption of M/s Vyas & Vyas, chartered accountants, and there is no evidence whatsoever that the assessee has earned or received any such income. During the course of hearing, we specifically asked the ld. DR the basis of this income. From page 1163 of the APB no 5, we noted that M/s Vyas & Vyas, chartered accountants, vide para 9 of his letter dt. 30.11.2009 computed the figure of 83.51 crores taking the interest rate at 16% on the funds illegally utilised by the assessee belonging to banks. The relevant para of the report of Vyas & Vyas how this income of 83.51 crores were estimated and taken in the statement of affairs as on 8-6-92 are reproduced as under:

> *"7. accordingly while qualifying the report we prepared consolidated statement of affairs as at 8.6.1992 alongwith notes. The notes under the consolidated statement of affairs are self explanatory.*
>
> *8. as regards other income not shown in books, it is submitted that the same have been calculated on estimate as per our finding from Jankiraman committee report, HSM illegally utilized funds belonging to banks etc. which he was not authorised to use. HSM got the benefit of the use of funds without paying interest. We have calculated interest which was saved by HSM as interest income wherever it was possible. In absence of complete details we could not ascertain the extent of benefit received by HSM in*

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some of the cases reported in the Jankiraman Committee Report.

9. we calculated tentative figure of Rs 83.51 crore while taking interest rate of 16% p.a. (lower side) which is outcome of the findings of the Jankiraman Committee report – refer page no. 18 to 24 of our report of M/s HSM. (Annexure A)"

24.7. From the above paras of the report of M/s Vyas & Vyas, chartered accountants, it is apparent that the income of Rs 83.51 crore was estimated by estimating the interest @16% on the funds illegally utilised by the assessee belonging to banks out of which a sum of Rs 69.63 cr was added during the impugned assessment year. This report proved that the said income had neither accrued nor received by the assessee. The addition has been made on the presumption that the assessee would have been benefited by this amount. This is the settled law that no addition can be made until and unless the income is accrued or received by the assessee. No iota of evidence was brought to our knowledge which may prove that an income had accrued to or received by the assessee. Income tax is leviable on the income which is chargeable as per the provision of section 5 of the Act. Section 5 of the Act nowhere makes any nominal income to be chargeable to tax. We, therefore, in the absence of any evidence being placed before us about the accrual or receipt of the income by the assessee, delete the addition so made. Thus, the ground no. 25 of assessee's appeal stand allowed.

25. The next ground No. 26 of assessee's appeal was not argued and dismissed being general ground and need no specific adjudication.

26. The next ground No. 27 of assessee's appeal is regarding rejection of Cash System of Accounting followed by the assessee. We find that this

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ground has been discussed in detail while dealing with the Ground of Appeal No. 23 in relation to enhancement of income on account of interest receivable from family members on mercantile basis. Accordingly, the findings given there stands. No specific adjudication is required.

27. The next ground No. 28 of assessee's appeal is as regards to set-off of addition made on account of sources of income against the expenses/ investment/application of such source based on telescoping theory. We find that this ground of appeal is similar to ground of appeal No. 14 in case of Shri Ashwin S Mehta (Assessee's appeal No. 3427/Mum/2017). We, therefore, direct the AO that in case any addition is survived in the preceding paragraphs on account of unexplained receipts or profit on trading in shares and also on account of unexplained investments or expenditures, to allow set off and telescoped of these additions and such unexplained investments or unexplained expenditures should be deemed to have been made or incurred out of such receipts or profit on trading in shares etc. The AO will compute the income after giving effect to this order after considering these directions and after confronting the assessee. Thus, this ground is allowed accordingly.

28. The next two ground Nos. 29 & 30 relating to deduction on account of Interest, business expenditure, business loss and depreciation& deduction and allowances under chapter VIA of the Act, are not pressed and hence dismissed.

29. The next common issues in these appeals of assessee and revenue are regarding levy of interest u/s 234A, 234B and 234C of the Act. For this, the assessee has raised the following ground nos. 31 to 33: -

> *"31. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding*

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the action of the AO in levying interest under section 234A,234B, and 234C of the Act.

The appellant prays that the AO be directed to delete the interest under section 234A,234B and 234C of the Act.

32. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not appreciating that the income assessed in the hands of the appellant were subject to the provisions of TDS and hence on the said amount of tax, no interest can be computed under section 234A and 234B of the Act.

The Appellant prays that the AO be directed to consider the provisions of TDS and accordingly delete interest under section 234A and 234B of the Act.

33. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not holding that the AO has erroneously computed interest under section 234A of the Act upto the date of assessment order dt.27.3.1995 instead of the date of filing of return of income i.e.29.10.1993.

The appellant prays that the learned AO be directed to recompute the interest u/s 234A of the Act."

The revenue, on the other hand in respect of the interest raised the following grounds of appeal no 8 to 12:-

Ground 8. 'whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in directing the AO to compute the interest u/s 234C in case of the assessee as per the returned

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income despite the fact that no valid return was filed by the assessee for the year under consideration."

"9. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the AO not to charge interest u/s 220(2) of the Act from the date of original assessment, but only from the date of re-assessment in the case of the assessee without appreciating the fact that demand becomes due from the date of original assessment."

"10. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not considering the decision of Hon'ble Bombay High Court in the case of Girnar has held that assessee is liable to pay interest u/s 220(2) from the date of original orfder u/s 143(3) dated 7.10.1997 till the date of final payment."

11. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not considering provisions of section 240(a) of IT Act, wherein demand does not cease to exist when the order is set aside by an appellate authority until a consequential assessment is made by the assessing officer".

12. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating the CBDT's circular no. 334 dt. 3.4.1982 wherein it has been clarified that where assessment made originally by the assessing officer is either varied or set aside by one appellate authority but, on further appeal, the original order of the assessing officer is restored either in part or wholly, the interest payable u/s 220(2) will be computed from the due date reckoned from the original

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demand notice and with reference to tax finally determined."

29.1. The Ld. Counsel argued that the issue of levy of interest u/s 234A and 234B is covered by the decision of this Tribunal in the case of M/s. Growmore Leasing & Investment Ltd. vs. DCIT in ITA no. 1219/Mum/2017 vide its order dated 27.12.2017. He stated that as per the order, the Tribunal has held that the provisions of section 234A, 234B and 234C being mandatory in nature, is chargeable even to a person notified under the TORTS Act. As per the order, it was further held interest u/s 234A, 234B and 234C should be recomputed after considering the amount of tax deductible at source on the income assessed. In view of the above, it is prayed that the AO be directed to re-compute the interest u/s 234A and 234B accordingly.

29.2. Further, as per the provisions of section 234C of the Act, interest on deferment of advance tax is required to be computed on the tax due on the income declared in the return of income furnished by the assessee. Relevant extract of section 234C of the Act as applicable during the AY 1992-93 is reproduced herein below:

"(1) Where in any financial year, [the assessee who is liable to pay advance tax under section 208 has failed to pay such tax or], the advance tax paid by the assessee on his current income on or before the 15th day of September is less than twenty per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than fifty per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent per month of the shortfall from for a period of

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three months on the amount of the shortfall from twenty per cent or, as the case may be, fifty per cent of the tax due on the returned income:

…

Explanation : In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid, as reduced by [the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection] and which is taken into account in computing such total income."

29.3. However, in the given case no valid effective return of income has been filed for the year under consideration. Accordingly, in absence of any return of income for AY 1992-93, the provisions of section 234C of the Act are not attracted and thus no interest ought to be levied.

30. The next issue in this appeal of assessee is regarding levy of interest under section 234B of the Act and is chargeable only upto the date of original assessment order. For this, assessee has raised the following ground No. 34 & 35 as under: -

34. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in assuming jurisdiction while directing the AO to consider charging interest under section 234B of the Act from the date of the original assessment

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order upto the date of the fresh assessment order (i.e. from 27.03.11995 to 22.03.2016), even when the AO himself h as correctly computed interested upto the date of the original assessment order i.e. 27.03.1995, which is in accordance with the law as settled by the Hon'ble Supreme Court in the case of Modi Industries Ltd. vs. CIT (1995) (216 ITR 759)

The appellant prays that the direction of the Hon'ble CIT(A) is without any jurisdiction and be quashed as it bad in law.

35. on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in issuing the aforesaid direction on charging interest under section 234B without granting any opportunity to the appellant of showing cause against such direction thereby violating the statutory provisions of the Act and the principles of natural justice.

The appellant prays that the direction of the Hon'ble CIT(A) be quashed as it is bad in law."

30.1. The ld. Counsel drew our attention to para no. 44.8 on page No. 162 of the impugned order dated 28.06.2017, where the CIT(A) has held as under-

"…. However I may add here that the assessee may still be liable for interest u/s 243B of the act for the period 27/03/1995 to 22/03/2016. The AO may

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> *accordingly examine the possibility of levying interest u/s 234B of the act, in respect of the above period and take appropriate action as per law if not already taken. In fact it has been noticed that in some of the cases of this group, under identical circumstances, the AO has already taken such action. This ground is decided accordingly"*

30.2. The Ld. Counsel in view of the above stated that the position taken by CIT(A) is contrary to the law as settled by the Hon'ble Supreme Court in case of Modi Industries Ltd. vs CIT [1995] 216 ITR 759 (SC). Further, CIT(A) has not granted any opportunity to the assessee of showing cause against such direction thereby violating the statutory provisions of the Act and the principles of natural justice. Further, the interest under 234B is calculated by the AO from the date of default till 22.03.2016 i.e. till the end of the month in which fresh assessment was made by the AO pursuant to the directions of Tribunal. However, considering the language of 234B of the Act, interest can be calculated only up to the date of original assessment passed on 27.03.1996. The period of default for which interest runs starts from the first day of April following the financial year to the date of determination of total income under regular assessment. The same is reproduced below:

> *"234B. (1) Subject to the other provisions of this section, where in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month*

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comprised in the period from the 1st day of April next following such financial year [to the date of determination of total income under sub-section (1) of section 143 or regular assessment], on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax."

30.3. In case, where it is intended by the legislature that interest u/s 234B should be computed up to any date other than the regular assessment, specific exception has been inserted u/s 234B by way of sub-section (2A) u/s 234B of the Act to cover cases where application has been made to the Settlement Commission. Therefore, it is imperative that interest u/s 234B in other cases like that of the assessee, the period up to which interest u/s 234B can be considered is only up to the date of regular assessment as mentioned above.

30.4. It is therefore submitted that the period of interest cannot run beyond the date of regular assessment. As per section 2(40) of the Act, the word 'regular assessment' means the assessment made under section 143 or 144 of the Act. The regular assessment in the present case would only mean assessment completed on 27.03.1995, since the assessment completed on 22.03.2016 was u/s 254 of the Act and not regular assessment. In support of this contention, following decisions were relied on:

Modi Industries Ltd. And others v. CIT and another [216 ITR 759 (SC)]

Freight Consultants P. Ltd. v. ITO [110 ITD 377 (Del)]

Principal CIT v. Applitech Solution Ltd. [2016] 236 Taxman 602 (Gujarat)

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30.5. The Hon'ble Supreme Court in the case of Modi Industries (supra) had considered all the relevant judgments and was aware of the opposing points of view in relation to section 215 of the erstwhile Income-tax Act, 1922 which is peri-materia to section 234B of the Act while delivering the judgment in the favour of the assessee. The relevant findings of the Hon'ble Supreme Court are reproduced below:

> *"If the assessment order is set aside by a higher authority in its entirety and a direction is given to pass a fresh assessment order, the position will remain the same. The amount of advance tax paid by the assessee loses its character by virtue of section 199 as soon as the first assessment order is made and the advance tax is set off against the demand raised in the assessment order. If the assessment order is set aside, the adjusted amount of tax or the amount of tax refunded or refundable does not regain its character of advance tax once again. The argument made on behalf of the revenue that in such a case a fresh assessment may be treated as 'regular assessment' is misconceived and is not in consonance with the scheme of the Act and the language of various sections dealing with regular assessment.*
>
> *. . . If the first order of assessment is set aside and the ITO is directed to pass a fresh order of assessment, the position will be the same. The fresh assessment order will not be an order passed under section 143 or section 144 simpliciter. The time limit laid down under section 153(1) for passing an order under section 143 or section 144 will not apply. Although, on behalf of the revenue, it was not disputed that such fresh*

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assessment orders may be treated as regular assessment, having regard to the scheme of the Act, we are of the view that this contention is misconceived. The language of the various sections of the statute and the underlying principle which we have explained in this judgment militate against such construction.

. . .(A) Section 214 contains unmistakable and irrefutable indications that 'regular assessment' therein means the original assessment alone. They are : (i) sub-section (1A) as substituted by Taxation Laws (Amendment) Act, 1984 with effect from 1-4-1985 says that "where as a result of an order under section 250... the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be... "the interest shall also be increased or decreased correspondingly. Now, if regular assessment means the final assessment made after and pursuant to the appellate order under section 250, then the sub-section becomes meaningless. . ."*

30.6. Thus, the Hon'ble Supreme Court has held that while deciding the meaning of the term 'regular assessment' the unmistakable conclusion is that the said term cannot mean and said to include the fresh assessment made pursuant to the directions of the appellate authorities. Under these circumstances, and following the ratio laid down by Hon'ble Supreme Court, it is prayed that the interest u/s 234B of the act should be charged only till the passing of the assessment order dated 27.03.1995. The ld. Counsel also relied on another direct decision on section 234B by the Hon'ble Gujarat High Court in the case of PCIT vs. Applitech Solution Ltd [2016] 236 Taxman 602 (Gujarat),

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which has relied on the judgment of Modi Industries Ltd.(supra) and held as follows:

> *"4. It can thus be seen that the interest liability flowing from sub-section (1) of Section 234B has two parameters. One is the principal on which such interest would be computed and the other is the period, during which, such interest liability would arise. Two terminal points of the liability are the 1st of April next following the financial year in question and the date of determination of total income under Section 143(1) assessment or the date of regular assessment as the case may be. Sub-section (4) of Section 234B, however, further provides that where, as a result of an order under rectification or revision etc., the amount on which interest is payable under sub-section (1) is increased or decreased, the interest will also correspondingly increased or decreased. Sub-section (4) of Section 234B of the Act thus only pertains to the adjustment of the principal on the basis of any change in the principal liability of the tax of the assessee and has no reference to the two terminal points of time for which the interest liability would arise under sub-section (1). Here, the liability would end on the date of determination of total income under Sub-section (1) of Section 143 of the Act or, in case of regular assessment, the date of such assessment. In view of such clear language of sub-section (1) of Section 234B of the Act, there is no scope for extending such liability to a later date and relate it to a revisional appellate or a rectification order as is desired by the revenue."*

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30.7. In view of the above, it is prayed to direct the AO to re-compute interest u/s 234B up to the date of the original assessment i.e. 27.03.1995. The ld. DR on the other hand held that the interest leviable under section 234A, 234B and 234C is mandatory and assessing officer has rightly computed interest under these provisions.

30.8. We heard the rival submissions and considered the same carefully. These grounds relate to the levy and computation of interest under section 234A, 234B and 234C of the Act. Levy of interest is mandatory. We, therefore, dismiss ground no 31 regarding levy of interest, but direct the AO in respect of ground no.32 and 33 that the interest levied under section 234A,234B and 234C be recomputed after excluding the income which is subject to TDS. So far as the issue relating to the levy of interest u/s 234B till the date of original assessment or upto the date of the assessment subsequently made after it being set aside by the appellate authorities is concerned, we have gone through the decision of the Hon'ble Supreme Court in the case of Modi Industries Ltd. vs CIT [1995] 216 ITR 759 (SC) as well as the provisions of s. 234B. Section 234B(1) clearly states that the assessee shall be liable to pay simple interest @ 2% for every month or part of the month comprised in the period from 1stApril next following such financial year to the date of determination of total income u/s 143(1) or regular assessment under section 143(3) or section 144 of the Act. Regular assessment has been defined u/s 2(40). According to this section, regular assessment means the assessment made u/s 143(3) or section 144 of the Act. In the case of the assessee, we noted that the first assessment was made u/s 144 on 27.3.1995 and therefore that was the regular assessment. The subsequent assessments have been framed in consequence of the order of the Tribunal passed u/s 254 and those cannot be regarded to be the regular assessments. Similar view,

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we noted has been taken by the Hon'ble Supreme Court in the case of Modi Industries Ltd. vs. CIT [1995] 128 CTR 361 (SC). Had there been any intention of the legislator that the interest u/s 234B be charged upto the date of the assessment order passed in consequence of the order of the appellate authorities passed u/s 250/254, this should have been specifically mentioned u/s 234B by inserting sub-section as has been mentioned of sub section (2A) of 234B in respect of order passed as a result of an order of settlement commission. No contrary decision was brought to our notice by the DR that the interest can be charged u/s 234B upto the date of passing the order in consequence of the order of the appellate authority. We, therefore, direct the AO to recompute the interest u/s 234B upto the date of original assessment passed u/s 144 dt 27.3.1995.

30.9. The next issue relates to the computation of interest u/s 234C. We noted that the CIT(A) has given the direction to the AO to compute the interest u/s 234C till the date of filing of the return. The revenue before us challenged this direction, but in view of the specific provision u/s 234C, we found that the interest u/s 234C has to be levied in case advance tax paid by the assessee on different dates is less than the specified percentage of returned income. The assessee has challenged the levy of the interest and its computation as such. The returned income will always mean the income which the assessee has shown in his income tax return filed u/s 139 or 142(1) or 148 of the Act. If the assessee has not filed any valid return, in our view levy of interest being a charging provision cannot be computed. Due to the incapability of computation of the interest u/s 234C in such a situation, the provision to levy the interest will fail and will become ineffective in view of the decision of Hon'ble SC in the case of CIT vs B.C. Srinivasa Setty (1981) [1981] 128 ITR 294 (SC). In this case it was held that the charging

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section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. In this case before us, there is a failure of computation of interest provision due to non-filing of valid return by the assessee, interest u/s 234C cannot be levied and we accordingly direct the AO not to charge interest u/s 234C.

30.10. Now, coming to the various grounds taken by the Revenue being ground no. 9 to 12 regarding the levy of interest u/s 220(2) of the Act. We have heard the rival submissions and carefully considered the same. We noted that this Tribunal vide its order dt. 20.01.2017 in the case of M/s Orion Travels Pvt. Ltd. vs ACIT (ITA 939/MUM/2009) in which the Tribunal directed the AO to charge interest u/s 220(2) under Income Tax Act after 30 days of serving of demand notice from the fresh assessment order. We, therefore, noted that in the case of CIT vs. Chika Overseas Pvt. Ltd [2012] 247 CTR 134 (Bombay), has taken the similar view. The decision Hon'ble Delhi High court in the case of Girnar Investment Ltd. vs. CIT [2012] 340 ITR 529 (Delhi) dt. 5.01.2012 as relied by the Ld. DR and not of Bombay High Court. The Jurisdictional High Court decision is binding on us. We noted the CIT(A) while holding that the interest u/s 220(2) is to be levied only from the due date of issuance of fresh notice of demand, considered these binding case laws as well as CBDT circular no 334 (F no 400/3/81-ITCC) dated 3-4-1982 issued by CBDT, which we perused and in our view the case of the assessee falls within paragraph 2 (i) of the said circular. In view of this legal position, we do not find any illegality or infirmity in the order of the CIT(A) directing the AO to charge interest u/s 220(2) from the date of default of the fresh demand notice issued after the fresh assessment made in consequence of the order of the appellate authorities. Thus, the

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ground no 8 to 12 of the Revenue stands dismissed, while ground no 32 to 35 of the assessee are allowed to the extent stated above.

31. The additional Ground No.36 raised by the assessee on addition on account of share market oversold position of Rs. 5,56,19,836/-. At the outset, it is to be clarified that this additional ground of appeal is related to the ground of appeal No. 8 in the given case of the assessee. Accordingly, the facts and circumstances for the said addition is the same as in the case of Ground of Appeal No. 18 herein above and hence stand taken there will apply here in this ground. This ground needs no specific adjudication and hence, dismissed as academic.

<u>In ITAs' No. 4204 & 4310/Mum/2017</u>

32. Now, we shall deal with the appeals of Smt. Jyoti H. Mehta for AY 1992-93 in ITA No. 4204/Mum/2017 of assessee appeal and ITA No. 4310/Mum/2017 of Revenue appeal.

33. The first and second ground of assessee's appeal are in regards to assessment as bad in law and in violation of principles of natural justice. For this, assessee has raised the following grounds 1 & 2: -

> *"1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that the assessment order dated 22.03.2016 passed by the Deputy Commissioner of Income-tax, Central Circle 4(1), Mumbai ('AO') is bad in law and ought to be quashed.*
>
> *The Appellant prays that the order of the AO be quashed as it is bad in law."*

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"2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that principles of natural justice were not complied with during the course of assessment.

The Appellant prays that the order of the AO be quashed as it is bad in law."

33.1. The above ground deals with the issue of assessment as bad in law & violation of principles of natural justice. The assessee has not made any specific argument, but sated that same would be dealt with along with the other grounds of appeal concerning specific additions made by the Assessing Officer. Hence, the same are dismissed as not argued.

34. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in rejecting the books of account. For this, assessee has raised the following ground No. 3: -

"3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in ignoring the specific directions of the Hon'ble ITAT and in rejecting the books of account of the Appellant.

The Appellant prays that as held in the ITAT order, the books of accounts be accepted and the income be assessed as per the books of account."

34.1. The facts and circumstances are identical as to what are in the case of Late Harshad S Mehta, decided above. The assessee explained

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that in the first assessment order passed u/s. 144 of the Act, the books of account could not be produced. The Assessee preferred an appeal before the CIT(A) against the said assessment order. Subsequently, assessee preferred appeal before the Tribunal. The books of account were produced before the Tribunal. The Tribunal set aside the matter to the file of the AO directing him to consider the books of account. The AO, in the second round of litigation, considered the books of account, but rejected them on various grounds. The specific reasoning of the AO is recorded on page No. 77 to 83 of APB No 1. According to the AO, the books were drawn belatedly, not audited by the auditors and could not be verified after lapse of many years. In an appeal preferred against the above order, the CIT(A) upheld the order of AO of rejecting the books of account. Further, the Tribunal, while following the co-ordinate Bench's decision in the case of Hitesh S. Mehta (page No. 334 of APB No. 1), had disapproved each and every reasoning of the AO, and held that the books of account could not be rejected on the grounds stated by him. The Tribunal set aside the matter to the file of the AO and directed him to consider each and every entry of the books of account of the assessee. In the third round of litigation before the AO detailed submissions were made from time to time. But the AO has not accepted the Books of Account and rejected the same. The CIT(A) also confirmed the action of AO. Aggrieved, the assessee preferred appeal before the Tribunal.

34.2. The assessee contended that the facts in the given case of the assessee are similar to that of Ground of Appeal Nos. 5 in case of Late Shri Harshad S Mehta in AY 1992-93 and assessee placed reliance on the submissions made therein. The assessee stated that the AO has given her finding about the rejection of books of account on page No 8 of assessment order dated 22.03.2016. The CIT (A) also repeated the

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reasoning given in the earlier round of litigation (page Nos. 12 and 13; paras 17 and 18) which is reproduced as under: -

> *17. I have gone through the submissions and contentions of the assessee as also the order of the AO in respect of the rejection of books of account Looking to the facts of the case, one cannot disagree with the fact that no books of account were prepared till 2001 for financial year ended on 31 March 1992. Hence the observation made by my Id predecessor that in most probability the books of account which are being produced by the Appellant were created after a long period of time, the source, of which is either not known or considerably doubtful cannot be denied Further, since the books of account have not been audited by the chartered accountant I find that the books of account are not liable to be accepted for the purpose of determining the income of the Appellant Also the AO in his order has stated that the Appellant has once again submitted only the photocopies of old voluminous documents without taking any efforts to explain entry-to-entry transactions. Considering the lack of cooperation from the Appellant's end the AC'S decision that the books of account are not reliable it justified*
>
> *18 In view of the above facts and observations, I agree with the view take, by my predecessors and the AO time and again with respect to the rejection of books of account Hence, the decision of the AO in rejecting the books of account being unreliable and non - verifiable is upheld –*

34.3. We find that this issue of rejection of the books of account of the assessee is covered in the case of Late Harshad S Mehta in this

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order vide Para No. 8.5 and 8.6. Hence, we are of the view that the AO has rightly rejected the books of account on the same reasoning's and which CIT(A) also confirmed. In view of the above position, we dismiss this ground of assessee's appeal.

35. The next common issue in these appeals of assessee and revenue is as regards to the addition on account of profit on sale of shares in shortage of Rs. 183,78,97,341/- and for this assessee has raised the following ground Nos. 4, 5 & 6:-

> *"4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AC in making addition of profit on account of sale of shares in shortage based on assumptions and surmises.*
>
> *The Appellant prays that the AO be directed to delete the addition of profit on sale of shares in shortage.*
>
> *5. On the facts and in the circumstances of the case, the Hon'ble CIT(A) erred in upholding the action of the AO in computing the profit on sale of shares in shortage without granting credit in respect of missing, stolen, lost, misplaced shares, shares seized by CBI, shares given on collateral and shares purchased on behalf of related and third parties.*
>
> *The Appellant prays that the AO be directed to recompute the profit on sale of shares in shortage after granting appropriate credit.*

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6. On the facts and in the circumstances of the case, the Hon'ble CIT(A) erred in upholding the action of the AO in adopting the closing rate as on 31.03.1992 for the purpose of computing the profit on sale of shortage of shares.

The Appellant prays that the AO be directed to recompute the profit on sale of shares in shortage by adopting the monthly average rate or the average rate as on 27.2.1992."

Similarly, the revenue also raised the ground Nos. 1 & 2 as under: -

"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in giving partial relief of Rs. 73.06 crore to the assessee by directing the AO to re-compute the shortage of shares by giving credit in respect of the shares of 44 companies in the ratio as determined at the time of original assessment order in the three entities viz. Ashwin Mehta, Jyoti Mehta and Harshad Mehta despite the fact that, the assessee was not able to produce these shares before the AO and also could not explain as to where these shares were lying till the date of the order.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the assessee has proved the availability of 7,40,000 shares of Apollo Tyres being in the custody of CBI authorities and 1,38,790 shares of

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the company being mutilated and therefore credit for the same should be given to the assessee."

35.1. Brief facts are that the AO in his original assessment order dated 27.03.199S made an addition of Rs. 309.47 crores on account of profit on sale of shares in shortage (page Nos. 10 to 77 of APB No. 1 r. w. Annexure S-1 (page Nos. 340 to 347 of APB No. 2) and Annexure S-3 (page Nos. 357 to 467 of APB No. 2)] The CIT(A) upheld the said addition made by the AO. Subsequently, Tribunal set aside the matter to the file of AO. The AO once again determined the profit on sale of shares at Rs. 309.47 crores Subsequently, the CIT (A) vide his order dated 29.02.2012 in the second round of litigation granted relief aggregating to Rs. 125.68 crores to the assessee on account of following:

a. Shares purchased in the subsequent years included in AV 1992-93 (page Nos. 111 and 112 of APB No. 1):

b. Credit for additional benami shares disclosed by the Custodian before Hon'ble Special Court (page Nos. 114 to 115 of APB No. 1); and

c. Profit on sale of shares in shortage in respect of shares of ACC by adopting correct market rates of Rs. 8,800/- (page Not 119 to 120 of the APB No. 1).

35.2. The AO, subsequently vide order dated 22.03.2016 (third round of litigation) assessed profit on sale of shares in shortage at Rs. 183.78 crores as assessed in the Original assessment order after considering the relief granted by the CIT(A) in the second round of litigation (Rs. 309.47 crores less Rs. 125.68 crores). The assessee preferred further appeal before C1T(A), who Vide order dated 24.03.2017 granted following relief:

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a. Credit of certain unregistered shares disclosed in letter dated 31.01.1995 of Shri Harshad S. Mehta to the Custodian (page Nos. 47 to 54 of impugned order dated 28.02 2017 in the appeal file):

b. Credit of shares of Apollo Tyres limited seized by CS1 and lying in the custody of the CBI authorities (page Nos. 54 to 56 of the of impugned order dated 24.03.2017 in the appeal file): and

c. Credit on account of mutilated shares of Apollo Tyres limited (page No. 56 and 57 of the of impugned order dated 24.03.2017 in the appeal file).

35.3. The AO computed the closing stock of shares of various companies acquired by the assessee on the basis of opening stock, purchases and sale of shares in Annexure S-1 (page Nos. 340 to 347 of APB No. 2). In doing so, he has taken closing stock of shares of last Assessment Year (i.e. AY 1991-92) as opening stock for AY 1992-93. Thereafter, he has gathered the details of purchases and sale of shares effected by the assessee from various sources during the period 01.041991 to 31.031992 and for the period 01.04.1992 to 08.06.1992. These sources are B.S.E. brokers, clients, financial institutions, companies, banks, receipts and payment details from RBI, information received from other entities from the group of the assessee etc. Based on the purchase and sale data gathered for the period 01.04.1991 to 31.03.1992 the AO computed stock position of the assessee as on 31.03.1992. Subsequently, in Annexure S-3, the AO computed stock as on 08.06 1992 i.e. the date of notification under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ('TORT Act')) by adjusting the purchases and / or sales transactions undertaken during the period 01.04.1992 to 08.06.1992. Further, the AO computed

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physical stock of the assessee as on 08.06.1992, which comprised of the: -

a) registered holdings with the companies

b) other Benami shares declared by the assessee and

c) unregistered shares held by the assessee.

35.4. Thereafter, the AO compared the physical stock with the stock as on 08.06.1992 and computed shortage in shares in the hands of the assessee in Annexure S-3 (page Nos. 357 to 467 of APB No. 2) for AY 1992-93.

35.5. The AO treated the shortage of shares as having been sold by the assessee on 31.03.1992 and accordingly has applied the market rate of these shares as on 31.03.1992 to arrive at sale consideration of such shares. After reducing the cost of acquisition of such shares, the AO has arrived at the profit on sale of shares in shortage at Rs. 309.47 crores and the same has been added as income. In case of excess of the physical stock of shares vis-â-vis the stock computed by the AO, no shortage has been computed. Illustration for explaining the position of scrip Reliance Industries Limited is reproduced below: -

Illustration for scrip 'Reliance Industries Limited' is reproduced below:

Particulars		SmtJyoti Mehta		Total (ASM +HSM + JHM)
		Quantity	Amount (In ₹)	
Annexure S-1				
Opening stock as on 01.041991 (As per Assessment order of A.Y. 1991-92)		87,796	87,59,407	

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Add: Purchases from - 01.041991 to 31.03.1992 (Custodian information, Company information. etc.) Less: Sales from 01.04.1991 to 31.031992 (Custodian information. Company information, etc.)		5468250	1,14,04,26,780	
Less Sales from 01.041991 to 31.03.1992 (Custodian information, Company information, etc.)		3704600	77,08,30,025	
Add: Trading profit / (Loss)			45,88,142	
Closing stock as on 31.03.1992 (Balancing figure - Quantity)		1851,446	38,29,44,304	
Annexure S-3				
Stock as on 31,031992 (As per Annexure S-1) [31M]	A	1851,446		42,04,940
Add/ Less: Adjustments (i.e. Purchase and sales for the period 01.04.1992 to 08.06.1992) [AD))	B	15,800		33,60,780
Position of stock as on 08.06.1992 (POS)	C=A-B	18,35,646		8,44,160
Less :Registered shares	D	1,00,294		6,34,512
Less: Benami Shares (BEN)	E	4,15,227		7,62,647
Less: Unregistered shares (UNR)	F	1,61,180		2,96,040
No. of shares in shortage (SHT)	G=C-D-E-F	11,58,944		21,28,632
VAL	H = G* Average rate		23,97,10,578	
Average purchase cost (as per Annexure S-1) (in ₹) (Average Rate)			206.84	
Sale Consideration (In ₹)	I=G*Market rate as on 31.03.1992		50,70,38,215	
Profit on sale of shares in shortage (In ₹) [DIFF]	I-H		26,73,27,637	

35.6. The assessee explained that the addition on account of profit on sale of shares in shortage is not sustainable in law due to the reason that the relevant material relied upon by the AO for computing the additions has never been brought on record till date. Further, various infirmities in the computation of profit on sale of shares in shortage have been found.

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35.7. We find that this common issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order in paras 15.33 to 15.40 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeals on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The order of CIT(A) is confirmed to the extent it has deleted the addition. The ground of Revenue's appeal is dismissed and that of the assessee's appeal is allowed.

36. The next issue in this appeal of assessee is as regards to the addition of Rs. 3,12,74,722/- on account of Badla income. For this assessee has raised the following Ground No. 7: -

> *"7. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making an addition of Rs. 3,12,74,722 on account of share market badla income.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 3,12,74,722 on account of share market badla income."*

36.1. The AO made addition of Rs. 3,12,74,722/ on account of badla income as per Annexure S-5 (page Nos. 480 to 499 of APB No. 2) attached to the original assessment order dated 27.03.1995 (page No. 27 and 28 of APB No 1). The AO mentioned that the details of badla transactions carried out by the assessee on the floor of the exchange were obtained from BSE. The AO has taxed the net profit of Rs.

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3,12,74,722/- arising out of badla transactions. Subsequent to the Tribunals order dated 21.03.2014 (second round of litigation) the AO vide his order dated 22.03.2016 considered badla income of Rs. 3,12,74,722/-. Further, the CIT(A) vide the impugned order upheld the said addition.

36.2. We find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide paras 16.4 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The issue of the assessee's appeal is allowed.

37. The next common issue in these cross appeals, of assessee and revenue is as regards to the addition on account of share market oversold position of Rs. 22,50,04,640/-. For this, assessee has raised following ground No. 8: -

> *"8. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of share market oversold position.*
>
> *The Appellant prays that the learned AO be directed to delete the addition on account of share market oversold position."*

The assessee also raised additional Ground No. 19 on account of share market oversold position of Rs. 11,89,82,424/- as under: -

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> *"19. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not giving specific directions to the learned AO for determination of definite purchase price to be reduced from the addition on account of share market oversold position."*

Further, revenue also raised ground No. 3 as under: -

> *"3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the AO to grant deduction to the extent of purchase cost in relation to the scrips held to be oversold despite holding that the assessee has not produced any specific evidence that the transactions have been undertaken on behalf of his clients and third parties to support his contention and has merely relied upon the books of accounts which has already been rejected by the CIT(A)."*

37.1. We find that the said ground as per the Departments Appeal is connected to the ground No. 8 and additional ground no. 19 of the Assessee's Appeal. The above mentioned additional ground of appeals are related to the ground of appeal No. 8 and hence, the facts and circumstances for the said addition is the same as in the case of Ground of Appeal No. 8 herein above. As explained earlier it is evident that in Annexure S-1, the AO has not considered the purchase cost and made addition of the entire sales value of the such shares held to be oversold. The assessee contended that what ought to be taxed in the hands of the assessee is only the trading profit and not the gross receipt from

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sale of such shares. The CIT(A) in para No. 32 on page No 66 of the impugned order agreed to the assessee's contention that the purchase cost be allowed as deduction before computation of profits. Accordingly, the CIT(A) has directed the AO to grant deduction to the extent of purchase cost in relation to the scrips held to be oversold, if such cost is not already allowed as per Annexure S-1 to the original assessment order. The assessee urged that the AO has not deducted the purchase cost from the oversold shares and hence the direction of the CIT(A) to deduct cost by using the phrase 'if such cost is not allowed' is misconceived and results in ambiguity. In view of the above, it is prayed that the direction given by the CIT(A) on para No 32 on page No 67 of the impugned order dated 24.03.2017 be modified by removing the words 'if such costs is not already allowed' and direct the AO to reduce the average purchase cost of these scrips sold for earning profit.

37.2. We have to understand the facts in the present appeal and that is the AO alleged that there is no purchase of shares against such sales. Thus, according to the AO, it represents sale of unexplained stock of shares and accordingly addition is made to the tune of Rs. 22,50,04,640/-. The same is computed in Annexure S-1 (page Nos. 340 to 347 of APB No. 2) to the assessment order dated 27.03.1995. The CIT(A) during the first round of litigation upheld the addition made by the AO, however, the Tribunal set aside the matter to the file of AO dated 23.05.2006. Further, the AO vide his order dated 18.12.2007 made an addition of Rs. 22,50,04,640/-. Subsequently, the CIT(A) in his order dated 29.02.2012 (second round of litigation) granted relief amounting to Rs. 10,60,22,216/- in respect to certain scrips in the oversold position. Consequently, share trading profit was increased by an amount of Rs. 2,33,14,130/- on the said scrips which were reduced from the share market oversold position. However, as per the order giving

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effect dated 12.10.2012 to the CIT(A) the AO reduced a net amount of Rs. 8,27,08,086 (i.e. Rs. 10,60,22,216 less Rs. 2,33,14,130) under the head share market oversold. Hence, it is noted that income under the head of share market oversold position has been wrongly taken at Rs. 8,27,08,086 instead of Rs. 11,89,82,426. The Tribunal again set aside the matter to the file of the AO vide its order dated 21.03.2014 (page No. 152 of APB No. 1). The AO, subsequently, vide her order dated 22.03.2016 (third round of litigation) assessed profit on sale of shares in shortage as assessed in the original assessment order after considering the relief granted by the CIT(A) in the second round of litigation at Rs. 11,89,82,424/- (Rs. 22,50,04,640 less Rs. 10,60,22,216). The assessee preferred further appeal before the CIT(A), who Vide impugned order dated 24.03.2017, granted relief on account of purchase cost without quantifying the purchase cost, but merely has given direction to the AO to recompute the oversold position (page No. 66 to 67 of the impugned order).

37.3. The contention of assessee was that the Income-tax Department has not provided details, break-up and evidence along with the basis of preparation of Annexure S-1, through which the addition on account of share market oversold position is made. We also noted from records that numerous opportunities were provided by the Bench during the proceedings but the Department failed to provide such details. Hence, we agree with the contention of the assessee that the addition on account of share market oversold position is not sustainable in law since the relevant material relied upon by the AO for computing the additions has never been brought on record till date.

37.4. In view of the above, it can be presumed that that shares were purchased and sold on behalf of clients or third parties, the information of which was not obtained by the AO. Further, the assessee would have

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sold shares on behalf of third parties which may have been erroneously considered as sales of the assessee by the AO. In the absence of such information pertaining to third party purchases / sales and the basis for computing the oversold position, the addition made is erroneous. We also noted that the claim of assessee seems correct that all her transactions pertaining to purchase and / or sale are through the normal banking channels i.e. in accordance with the Rules and Regulations and Bye laws framed by the stock exchange and further recognized by Securities Contract (Regulation) Act 1956 and duly recorded in his books of account. All the transactions were reported to stock exchange on a daily basis. Hence, we delete the entire addition of Rs. 11,89,82,424/- on account of share market oversold position. We also find that this common issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide para 17.6 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeals on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The order of CIT(A) is confirmed to the extent it has deleted the addition. The issue of revenue's appeal is dismissed and that of the assessee's appeal is allowed. Accordingly, we allow this issue of assessee's appeals and dismiss the appeal of revenue on this issue.

38. The next issue in this appeal of assessee is regarding addition of Share Market Trading Profit amounting to Rs. 12,34,59,337/-. For this, assessee has raised the following ground No.9: -

> *"9. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in*

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upholding the action of the AO in making addition on account of share market trading profit.

The Appellant prays that the AO be directed to delete the addition on account of share market trading profit."

38.1. The brief facts are that the assessee is a registered member of B.S.E. and has engaged into transactions involving trading and investment in shares and also undertakes purchase and sale transactions for and on behalf of her clients through her brokerage firm. The AO vide order dated 27.03.1995 has made addition of Rs. 10,01,45,207/- on account of share market trading profit as computed in Annexure S-1 of the original assessment order (Page Nos. 340 to 347 of APB No. 2). The AO has claimed to have collected the information from various sources including brokers, BSE through whom the transactions are claimed to have been undertaken by the assessee. The assessee contented that consequent to the relief provided in relation to the profit on account of shares oversold during the second round of litigation, the share trading profit was increased by an amount of Rs. 2,33,14,130/-. Hence, the share market trading profit post considering the addition by the CIT(A) stands at Rs. 12,34,59,337/- instead of Rs. 10,01,45,207/-. The AO subsequently vide her order dated 22.03.2016 (third round of litigation) assessed share market trading profit as assessed in the original assessment order after considering the relief granted by the CIT(A) in the second round of litigation at Rs. 12,34,59.337/-. The assessee preferred further appeal before the CIT(A).

Methodology of computing share market trading profit			
Illustration for Scrip 'ABS Plastics' is reproduced below:			
Particulars		Quantity	Amount

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			(In Rs.)
Opening Stock as on 01.04.1991	A	0	0
Add: Purchase from 01.04.1991 to 31.03.1992 (Custom information, company information etc.)	B	7,800	4,84,450
Less: Sales from 01.04.1991 to 31.03.1992 (Custodian information, Company information, etc.)	C	4,300	3,59,375
Closing stock of shares (Qty)	A+B-C	3,500	2,17,381
Profit per share sold			21,47
Share market trading profit			92,306

38.2. The assessee contention was the same that the addition on account of share market trading profit is not sustainable in law since the relevant material relied upon by the AO for computing the additions has never been brought on record till date. In this regard, the assessee reiterates its submissions made in respect of Grounds of Appeal Nos. 4, 5 and 6, pertaining to the profit on sale of shares in shortage. Further, in addition to the above, the assessee submits that shares were purchased and sold on behalf of clients or third parties, the information of which was not obtained by the AO. Further, the assessee would have sold shares on behalf of third parties which may have been considered as sales of the assessee by AO. In the absence of such information pertaining to third party purchases/ sales and the basis for computing the sale of shares, the assessee submits that share market trading profit ought not to be taxed in her hands.

38.3. We noted that all her transactions pertaining to purchase and / or sale are through the normal banking channels i.e. in accordance with the Rules and Regulations and Bye laws framed by the stock exchange and further recognized by Securities Contract (Regulation) Act, 1956 and duly recorded in his books of account. All the transactions were reported to stock exchange on a daily basis. We find that even where the data has been provided by the Income-tax Department now lot of discrepancies has been pointed evidencing that the basis of addition is

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incorrect. Hence the Annexure S-1 through which the said addition of share market trading profit is made cannot be relied upon to uphold the addition completely.

38.4. We further noted that CIT(A) while confirming the addition relied on the said annexure even though the AO has observed in the assessment order while dealing with the addition that the assessee was involved in share trading not only on his behalf but also on behalf of his clients. Before us, neither the assessee nor the Ld. CIT-DR could bring the evidence to what extent the assessee has traded in the shares on own account and on behalf of his client. The appeal relates to the AY 1992-93 and already more than 26 years have passed and this issue has been restored again and again to the file of the authorities below. We, therefore, in the interest of the justice and fair play to both the parties and to end the litigation direct the AO to treat 50% of such profit on share trading belonging to the third party on whose behalf the assessee might have carried out the share trading. Thus the addition is reduced to 50% of Rs 12,34,59,337/-. Thus the assessee gets a relief of Rs 6,17,29,668/-. Thus, this ground in assessee's appeal is partly allowed.

38.5. We also find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta of this order vide para 13.5 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are identical. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we partly confirm the addition.

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39. The next issue in regard to Ground No.10 and an addition of Rs. 1,28,62,433/- on account of Dividend and Interest income. For this assessee has raised the following ground: -

> *“10. On the facts and in the circumstances of the case and in law, the Hon’ble CIT(A) has erred in upholding the action of the AO in making an addition of Rs. 1,28,62,433 on account of dividend and interest.*
>
> *The Appellant prays that the learned AO be directed to delete the addition of Rs. 1,28,62,433 on account of dividend and interest income.”*

39.1. As discussed during the course of the hearing this ground is not pressed by the assessee and hence, this issue is dismissed.

40. The next common issue raised by the assessee and revenue in these appeals is as regards to the order of CIT(A) restricted the addition of ₹25,86,22,375/- as against the addition made by AO of ₹ 41,82,56,037/-. on the ground of Unexplained Money under section 69A of the Act. For this, assessee has raised the following ground No. 11: -

> *“11. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO in making an addition of Rs. 25,86,22,375 as unexplained money under section 69A of the Act.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 25,86,22,375 as unexplained money.”*

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Similarly, the revenue also raised the following ground No. 4:-

> *4. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made to the extent of Rs. 15,96,33,663/- on account of unexplained money u/s 69A of the I.T. Act.*

40.1. Brief facts are that as per the original assessment order dated 27.03.1995, an addition of Rs. 52.33,48,237/- was made u/s. 69A of the Act on account of unexplained deposits in the bank account. Relief to the extent of Rs. 10,50,92.200/- has been granted by CIT(A) vide order dated 29.02 2012, during the second round of litigation. The assessee was in appeal before the Tribunal in relation to the net addition of Rs. 41,82,56,037/-. The Tribunal vide its order dated 21.03.2014 set aside the matter to the file of AO. The AO vide her order dated 22.03.2016 considered the net addition of 41,82,56,037/- as unexplained money in the hands of the assessee. Relief to the extent of Rs. 15,96,33663/- has been granted by CIT(A), during the third round of litigation vide the impugned order. The assessee is in appeal before the Tribunal in relation to the balance amount of addition of Rs. 25,86,22,375/- and revenue is in appeal against deletion.

40.2. We find that the assessee furnished various documents evidencing the said bank deposits of Rs. 15,96,33,663/-. After verifying the said supporting documents, the CIT(A) has granted relief in para no. 33.8 on page No. 77 at his impugned order dated 24.03.2017. Hence, we are of the view that the relief of Rs. 15,96,33,663/- has been granted by the CIT(A) post verification of all the supporting documents / information and examination of the facts involved. We also find that Vide para 33.7 page Nos. 76 to 77 of the impugned appellate order dated

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24.03.2017, addition to the extent of Rs. 25 crores is confirmed by the CIT (A), for the following reasons:

> *-that the copy of the confirmations received from Mr. TusharSarda on behalf of the Reliance Group Companies from which short term loan was taken, was a very old copy and therefore much credence could not be given to the same: and*
>
> *-that the fresh confirmations dated 28022017 received from the concerned Reliance Group Companies are neither on the letter head of the company nor have been stamped and hence not satisfying the genuineness."*

The details of loans of Rs. 25 crores and interest paid thereon of Rs. 49.45 lakhs is as under: -

Sr. NO.	Party name	Date of receipt	Principal amount (In Rs.)	Interest Amount (In Rs.)
1.	Bindi Chemicals Agencies & Trading Pvt. Ltd.	28.03.1992	2,30,00,000	4,53,699
2.	Chikki Fert. Trading & Agencies Pvt. Ltd.	28.03.1992	2,55,00,000	5,03,014
3.	Clarion Investments & Trading Co. Pvt. Ltd.	28.03.1992	4,85,00,000	9,56,712
4.	Dadhichi Texfab Ltd.	28.03.1992	3,05,00,000	6,01,644
5.	Hansdhwani Trading Co.	28.03.1992	3,30,00,000	6,50,959
6.	Kunjvan Texfab Ltd.	28.03.1992	3,30,00,000	6,50,959
7.	Orator Trading Enterprises Ltd.	28.03.1992	3,55,00,000	7,00,274
8.	Avaran Textiles Ltd.	28.03.1992	1,75,00,000	3,45,205
9.	Saki Agencies Pvt. Ltd.	30.03.1992	35,00,000	82,849
	Total		25,00,00,000	49,45,315

40.3. In relation to the said addition of Rs. 25 crores, reliance is placed on the notices dated 11.03.1996 issued u/s 133(6) of the Act by the AO to the assessee along with enclosures (refer page Nos. 652 to 661 of APB No. 3) which confirm that these transactions took place between the assessee and these companies. We are of the view that

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despite of relevant evidence being on record, the Income-tax Department did not carry out any verification. Further, the assessee submits that as directed by the CIT(A) fresh loan confirmations for the aforesaid transactions were also obtained on the letter head of the respective Reliance Group Companies and filed before the CIT(A) (page Nos 629 to 647 of APB No. 3). However, the CIT(A) did not accept the same by stating that the confirmation letters filed are not on the letter head of the concerned companies and duly signed by the authorized person. Further, during the course of proceedings on 01.02.2018, the Bench directed the AO to verify the assessee's explanation in respect of the said addition of Rs. 25 crores. However, till date the AO has not complied with such directions, even though the assessee has discharged her primary onus in respect of the said addition. Reliance was placed in this regard on the decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC). Further, the Department has not been able to rebut submissions made before the Bench by the assessee.

40.4. In relation to addition of Rs 86,22,337/- on account of deposits were made of amount received for sale of shares undertaken for clients, refund proceeds on allotment of debentures, refund of margin money, part repayment of loan given and amount received for purchase of shares from clients, the assessee could not explain the amounts properly, hence, sustained.

40.5. In view of the above factual position, we are of the view that the addition to the extent of Rs. 25 crores are to be deleted. Hence, we delete the addition and partly allow this issue of assessee appeal and dismiss this issue of Revenue's appeal.

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41. The next issue in this appeal of assessee is regarding deduction on account of interest expenditure & other expenditure and for this assessee has raised the following ground no. 12 &13: -

> *"12. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in disallowing the deduction on account of interest expenditure claimed by the Appellant.*
>
> *The Appellant prays that the AO be directed to grant deduction in relation of interest expenditure.*
>
> *13. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in disallowing the claim of other expenses of the Appellant as per the books of account.*
>
> *The Appellant prays that the AO be directed to grant deduction in relation of other expenses incurred by the Appellant."*

41.1. These two ground Nos. 12&13 relating to deduction on account of Interest, business expenditure, business loss and depreciation & deduction and allowances under chapter VIA of the Act, are not pressed and hence dismissed.

42. The next issue raised by the assessee is as regards to the addition of Rs. 2,50,000/- on account of transactions with Mr. Niranjan J. Shah. For this, assessee has raised the following ground No.14: -

> *"14. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AC) in making an*

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addition of Rs. 2,50,000 on account of transactions with Shri Niranan J. Shah.

The Appellant prays that the AO be directed to delete the addition of o account of transactions with Shri Niranan J. Shah amounting to Rs. 2,50,000.

42.1. Brief facts are that the AO vide his Order dated 27.03.1995 made an addition of Rs. 2,50,000/- on account of unexplained money with respect to transactions with Shri Niranjan Shah. The CIT(A) confirmed the said addition of Rs. 2,50,000/-. The additions have been made on the following basis:

"On the basis of account i.e. 5B Rs. A/c maintained in the documents obtained during the search operations at Shri. Niranjan Shah's premises.

On the basis of the statements made by Shri. Niranjan Shah during his search."

42.2. We find that the facts are that the alleged transactions referred above have not been undertaken by the assessee and consequently have not been recorded in the books of account. The AO has not produced any independent evidence corroborating the reliability of seized material, apart from the statement of Mr. Niranjan Shah which has been subsequently retracted including seized material, apart from the statement of Mr. Niranjan Shah which has been subsequently retracted. The assessee contended that the said addition is non-sustainable in law as the same is made basis the search undertaken on the premises of the third party and moreover the AO failed to discharge his onus of examining how the aforesaid amounts constitute the income.

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The AO as well as CIT(A) have also failed to provide copies of the evidences based on which the addition has been made and also offer an opportunity of cross examination of Shri Niranjan Shah in spite of requesting for the same time and again. The assessee also filed letters dated 2002.1995. 08.06.2009 and 06.11.2015 requesting AO and CIT(A) to provide copies of the material basis which the addition is made (page Nos. 707,712 and 718 of APB No. 3). The assessee relies on the decision of the Tribunal in the case of Straptex (India) (P) Ltd v Dy. CIT (supra) (filed before the Bench during the course of the hearing) wherein the Tribunal while referring to the search conducted in May 1992 at the residence of Shri. Niranjan Shah has held that the statements given by him could not have been used against the assessee for the following reasons:

> *a) The assessee was not given an opportunity to cross-examine Mr. Niranjan Shah.*
>
> *b) Mr. Niranjan Shah had retracted his statement vide his declaration dated 2309.1994 before the Notary Public.*

42.3. We find that recently the Hon'ble Supreme Court has upheld the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Sunita Dhadda (Income Tax Appeal No. 197/2012), wherein it was held that as per the principles of natural justice, the AO has to provide the evidence to the assessee and grant opportunity of cross-examination. Failure to grant opportunity of cross examination to the assessee shall render the assessment void. In view of the above, we are deleting the addition of Rs. 2,50,000/- on account of the alleged transactions with Shri Niranjan Shah.

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42.4. Even the similar transaction in the case Late Harshad S Mehta is deleted by us in this order on similar facts vide para 20.6 to 20.8. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we delete this addition. This issue of assessee's appeal is allowed.

43. The next issue relating to the enhancement of Rs. 28,14,319/- on account of alleged differences in the books of account. For this, assessee raised the following ground No. 15: -

> *"15. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of alleged differences in the books of the appellant and in the books of the late Shri Harshad S. Mehta and in ignoring the reconciliation of accounts and various submissions of the Appellant.*
>
> *The appellant prays that the AO be directed to delete the addition of ₹ 28,14,319/-."*

43.1. Brief facts are that the CIT (A) vide order dated 29.02.2012, in the second round, has relied on the order of CIT(A) in the case of late Shri. Harshad S. Mehta for AY 1992-93 and made an addition amounting to Rs. 28,14.319/- by invoking the provisions of enhancement of income u/s 251(2) of the Act. The said addition was made by the CIT(A) on account of alleged difference between the year end balances in the books of account of Smt. Jyoti H Mehta and the books of Late Shri. Harshad S. Mehta. The CIT(A) in the third round of appellate proceedings, vide the impugned order dated 24.03.2017 has

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upheld the findings of his predecessor. The alleged difference of Rs.28,14,319/- arrived at by the CIT(A) is mentioned below -

Particulars	*Amount (In Rs.)*
In the Books of Smt. .Jyoti H Mehta	
M/s. Late Shri. Harshad Mehta (A)	*17,58,16,468 (Payable)*
In the Books of MIs. Late Shri. Harshad Mehta	
Smt. Jyoti H Mehta (B)	*17,86,30,787 (Receivable)*
Alleged Difference in balances (B-A)	*28,14,319 (Receivable)*

43.2. It was contended by the assessee that the facts in relation to the aforesaid ground of appeal is similar to ground of appeal No. 24 in the case of Shri Harshad S Mehta decided above vide para no.23.5 of this order. The assessee contended that: -

> *"a. The Id. CIT(A) has made an error of omission by not considering the relevantledger accounts wherein the corresponding entries are reflected in computing the alleged difference of Rs. 28,14,319/-.Reconciliation of ledger account balances between Jyoti N. Mehta and Harshad S. Mehta is submitted before the Assessing Officer as well as the Id. CIT(A) - Each and every entry is explained by providing one to one correlation*
>
> *b. Addition made by relying on the Id. CIT(A) order dated 24.03.2010 in the case of Shri.Harshad S Mehta for AY 1992-93 although the same is set aside by the Hon'ble Tribunal (order dated 10.11.2014)."*

43.3. assessee contended that the CIT(A) has made an error of omission by not considered the relevant ledger accounts wherein the corresponding entries are reflected in computing the alleged difference

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of Rs. 28,14,319/-/. A chart detailing the ledger account balances showing ledger accounts considered by the AO which calculating the difference is filed before Tribunal (page No. 719 of APB No. 3). The same is reproduced below-

Ledger accounts balances in the books of Harshad S. Mehta

1) in the books of M/s Harshad S Mehta

Sr. NO.	Account NO.	Name of the Account	Receivable/ Receivable /Payable
a)	3001 (13035)	Jyoti H. Mehta	17,51,96,007
b)	3001 (27292)	M/s Jyoti H Mehta	
C)	2036	Mrs. JHM Loan A/c	35,75,000
d)	2095(272)	Jyoti H Mehta	1,40,220
		Total	17,86,30,787

Ledger Accounts balances in the books of Jyoti Mehta

2) In the books of Mrs. Jyoti Mehta

Sr. NO.	Account NO.	Name of the Account	Receivable/ Receivable /Payable
a)	1012	Mr. Harshad S. Mehta	
b)	4011	M/s Harshad S. Mehta	17,58,16,468
		Total	17,58,16,468

Difference as per as per Assessing Officer 28,14,319

43.4. The assessee explained that the CIT (A) has made error by not considering corresponding entries in following ledger accounts in computing the difference of Rs. 28,14,319/-(page Nos. 730 to 735 of APR No 3)'

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- Ledger Account No. 3001 (sub ledger account No. 13045) in the books of M/s. Jyoti H Mehta;

- Ledger Account No. 1012 in the books of Mrs. Jyoti H Mehta; and

-Ledger account No. 2008 and 2010 in the books of Mr. Harshad S Mehta

43.5. It was further explained that out of the total difference of Rs. 28,14,319/-, on amount of Rs. 23,21,712/- is on account of difference in the opening balances in case of ledger account No. 13053 in the books of M/s. Harshad S Mehta and ledger account No. 4011 in the books of Mrs. Jyoti H Mehta. It is submitted that since the said difference is on account of the opening balances and pertaining to the previous year (i.e. AY 1991-92) no addition ought to be made in the year under consideration. Further, it is submitted that out of the total difference of Rs. 28,14,319/-, difference of Ps. 4,75,000/- is on account of a timing difference in recording an entry in the books of M/s. Harshad S. Mehta and that in the books of Mrs. Jyoti H. Mehta. It shall he noted whilst in the books of MIs Harshad S Mehta the entry is recorded in the year under consideration the corresponding entry is recorded in the previous year in the books of Mrs. Jyoti H Mehta. The balance difference of Rs 17,576 is on account of revalidation entries passed on 01.04 1993 which pertain to the next year. A chart explaining the above is annexed herewith which is referable at page 730 of APB No. 3. A chart reconciling the said difference of Rs. 28,14,298/- is furnished on page Nos. 730 to 735 of APB No. 3, thereby explaining the entire alleged difference in the books of account. The assessee also submitted transaction by transaction reconciliation of the relevant books of account on page Nos. 731 to 735 of APR No. 3. This difference is mainly on

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account of a timing difference in recording a few entries in the books of Shri Harshad S. Mehta (on account of cash basis of accounting), etc. which is apparent from page 730 of APB No. 2. The difference has been duly reconciled and is self-explanatory. Further, it is submitted that all the above transactions are undertaken through banking channels and there is no involvement of cash. Further, the entire calculation no discrepancies have been pointed out by the Income-tax Department.

43.6. In view of the above explanation and the fact that the issue is covered in the case of Harshad S Mehta in the above para 23.5 of this order. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we delete this addition. This issue of assessee's appeal is allowed.

44. The next issue in this appeal of assessee is raised by ground No. 16 regarding Long term capital gain taxed at higher rate as under: -

> *"16. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the learned AO in taxing Long Term Capital Gains of ₹ 43,29,014/- at higher tax rate."*

44.1. As discussed during the course of the hearing this ground is not pressed by assessee and hence the same is dismissed as not pressed.

45. The next issue in this appeal of assessee is for set off of addition made on account of sources of income against the expenses/ investment / application of such sources based on telescoping theory. For this, the assessee raised the following ground No.17: -

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"17. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in rejecting the plea of sources of income against the expenses/ investment/ application of such source based on telescoping theory.

The Appellant prays that appropriates set off be allowed."

45.1. The assessee urged that in case there are surviving additions on account of unexplained receipts or profit on trading of shares and also additions on account of unexplained investments or unexplained expenditures, then both should be telescoped. It must be treated that unexplained investments or unexplained expenditures have been made out of unexplained receipts

45.2. We also find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta in this order vide para 27 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we direct the AO accordingly.

46. The common issues are regarding charging of interest u/s 234A, 234B, 234C &220(2) of the Act in the appeals of the assessee as in the appeal of the revenue. For this, assessee raised the following ground No. 18 & Revenue raised the following grounds No. 6 to 10: -

"Assessee's Ground

18. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in

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upholding the action of the AO in levying interest under section 234A, 234B and 234C of the Act.

The appellant prays that the AO be directed to delete the interest under section 234A, 234B and 234C of the Act.

Revenue's Ground

6. On the facts and in the circumstances of the case and in law, the CIT(A) justified in directing the AO to compute the interest under section 234Cin case of the assessee as per the returned income as against assessed income, despite the fact that no valid return was filed by the assessee for the year under consideration.

7. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO not to charge interest u/s 220(2) from the date of original assessment, but only from the date of reassessment in case of assessee without appreciating the fact that demand becomes due from the date of original assessment.

8. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not considering the decision of Hon'ble Bombay High Court in case of M/s.Girnar Investment Ltd. WP(C) No.5750/2010 dated 05.01.2012, wherein the Hon'ble Court held that assesse is liable to pay interest u/s 220(2) from the date of original order u/s 143(3) dated 07.10.1997 till the final payment.

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9. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not considering provisions of section 240(a) of IT Act wherein demand does not cease to exist when the order is set- aside by an Appellate Authority until a consequential assessment is made by the Assessing Officer.

10. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the CBDT's Circular No.334 dated 03.04.1982 wherein it was very clearly held that assessment made originally by the Assessing Officer is either varied or even set aside by one Appellate Authority but on further appeal, the original order of the Assessing Officer is restored either in part or wholly, the interest payable u/s 220(2) will be computed regarding the due date reckoned from the original demand notice and with reference to the tax finally determined.

46.1. We have already adjudicated the issues of charging interest under section 234A, 234B, 234C & 220(2) of the Act vide this order in the case of Late Harshad S Mehta vide paras no. 29 to 30.10 above. Here also, we direct the AO to follow the order in the case of Harshad S Mehta above and charge interest accordingly. These grounds are decided accordingly.

47. The additional Ground No.20 raised by assessee is in respect of assessed Income incorrectly presented by the Assessing Officer. For this assessee has raised the following ground No. 20: -

"20. On the facts and in the circumstances of the case and in law, that the Hon'ble CIT(A) ought to

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> *have held that the learned AO has erred in not considering and granting relief in respect of the income of ₹ 255,50,97,320/- (for which relief has been granted by the Hon'ble CIT(A) in second round of litigation vide his order dated 29.02.2012)."*

47.1. The assessee, at the time of hearing has not argued this additional ground and hence, the same is dismissed as not pressed.

48. The next issue in this appeal of revenue is raised by ground No.5 on account of treatment of speculative loss as normal business loss and allowing adjustment of the said loss against other heads of income. Following Ground No.5:-

> *"5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in treating the speculative loss incurred by the assessee of Rs. 15,96,02,370/- as normal business loss to be adjusted against other heads of income of the assessee. "*

48.1. We have heard rival contentions and gone through facts and circumstances of the case. We find from Annexure S-2 of the original assessment order dated 27.03.1995 that the AO has computed speculative loss of Rs. 15,96,02,370/-. Further, the AO held that since the said loss is speculative in nature, it cannot be adjusted against other profits determined under various heads of income. The CIT(A) in para No. 34.17 on page No. 83 of his impugned order has held that the said loss of Rs. 15,96,02,370/- is on account of purchase and sale of shares undertaken by the assessee is not speculative in nature. Accordingly,

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CIT(A) has directed the AO to adjust the said loss against the share trading profit and other normal business income. We find that CIT(A) in the para No. 34 to 34 19 on page Nos. 77 to 84 of the impugned order dated 24.03.2017 has dealt with the issue. It is thereby observed that the CIT(A) has passed an elaborate and speaking order on the said ground of appeal The conclusion drawn by the CIT(A) is very sound under the law. Further, the Income-tax Department has not provided relevant details, break-up and the evidence along with the basis of preparation of Annexure S-2 to the assessment order. Department has neither been able to rebut the submissions made before the CIT(A) and basis which relief has been granted in the impugned order. Hence, we find no infirmity in the order of CIT(A) and the same is confirmed.

In ITAs No. 3427& 3386/Mum/2017

49. Now, we shall deal with the appeals of Ashwin S. Mehta for AY 1992-93 in ITA No. 3427/Mum/2017 of assessee's appeal and ITA No.3386/Mum/2017 of Revenue appeal.

50. The first issue raised by assessee is that the assessment framed by AO dated 28.03.2016 (The impugned assessment order) in consequence to ITAT's directions is bad in law. For this, assessee has raised following ground No. 1 and 2: -

> *"1. On the facts and in the circumstances of the case and in the Hon'ble CIT(A) erred in rejecting the Appellant's contention that the assessment order dated 28.03.2016 passed by the Deputy Commissioner of Income-tax Central Circle 4(1) ('AO') is bad in law and ought to be quashed.*

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The Appellant prays that the order of the AO be quashed as it is bad in law.

2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in rejecting the Appellant's contention that the order under section 143(3) r.w.s. section 254 of the Act dated 28.03.2016 passed by the AO is void ab-initio as having already passed order dated 30.01.2015 giving effect to the directions of the Hon'ble Tribunal, the learned AO had no jurisdiction to conduct substantive review of the earlier order.

The Appellant prays that the order of the learned AO dated 28.03.2016 passed under section 143(3) r,w.s. section 254 of the Act is bad in law and ought to be quashed."

50.1. Brief facts are that the ITAT, during the second round of litigation, has set aside the matter to the file of the AO vide its order dated 10.11.2014 (page No. 145 of paper book).Pursuant to the above order, the AO passed the order giving effect dated 30.01.2015 (page No. 165 of paper book). The AO has passed the said order as 'order giving effect to ITAT's order'. As per the said order, the assessed income was revised, the tax demand was calculated and interest u/s. 234A, 234B and 234C of the Act were charged (page No. 165 of paper book).The AO has also issued notice u/s. 156 of the Act determining a refund of' 161.71 crores (page No. 166 of paper book) along with a detailed income-tax computation form attached, which states that the order was passed for giving effect to ITAT's order dated 10.11.2014

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(page No. 167 and 168 of paper book).Surprisingly, the AO thereafter passed the impugned order on 28.03.2016 purportedly to give effect to the Tribunal's order dated 10.11.2014.

50.2. Before us, it was claimed that after passing the first order on 30.01.2015, the AO became functuous officio. Therefore, the order dated 28.03.2016 is null and void, and without jurisdiction. Reliance is placed upon decision of the Bombay High Cowl in the case of Classic Share & Stock Broking Services Ltd. v. ACIT [2013] 32 taxmann.com 273 (Bombay). The above referred decision was followed by the CIT (A) in the case of DCIT v Heena N. Kanakia (supra). The said order of the CIT (A) has been upheld by the Tribunal for A.Y 2003-04 in ITA No. 3718/Mum/2015 dated 23.09.2015. In light of the above, it is submitted that the assessment order (dated 22.03.2016) may kindly be declared to be null and void.

50.3. We have already taken a view in the case of Late Harshad S Mehta above in this order vide para no.6.5 to 6.8, wherein the assessment on identical facts has been quashed. Hence, respectfully following the same, we quash this assessment also.

51. The next ground of assessee's appeal is as regards to assessment as bad in law and in violation of principles of natural justice. For this, assessee has raised the following ground 3:-

> *"3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that principles of natural justice were not complied with during the course of assessment.*

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The Appellant prays that the order of the AO he quashed as it is bad in law."

51.1. The above ground deals with the issue of assessment as bad in law & violation of principles of natural justice. The assessee has not made any specific argument, but stated that same would be dealt with along with the other grounds of appeal concerning specific additions made by the Assessing Officer. Hence, the same are dismissed as not argued.

52. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in rejecting the books of account. For this, assessee has raised the following ground No. 4: -

> *"4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in ignoring the specific directions of the Hon'ble ITAT and in rejecting the books of account of the Appellant.*
>
> *The Appellant prays that as held in the ITAT order, the books of accounts be accepted and the income be assessed as per the books of accounts."*

52.1. We have noted that the assessment order was passed u/s. 144 of the Act, as books of account could not be produced The same were produced before CIT (A) in the first round of litigation, but the CIT (A) did not accept it being the additional evidence. Subsequently, the Tribunal set aside the matter to the file of the CIT (A) directing him to consider the books of account. The CIT (A) in the second round of litigation considered the books of account but rejected them on various

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grounds. The specific reasoning of the CIT (A) are recorded on page No. 101 of paper book. According to the CIT (A), the books were drawn belatedly, not audited by the auditors and could not be verified after lapse of many years. In an appeal preferred against the above order, the Tribunal considered the specific reasoning given by the CIT (A) in great detail. The Tribunal, while following the co-ordinate Hon'ble Bench's decision in the case of late Harshad S Mehta, had disapproved each and every reasoning of the CIT (A), and held that the books of account could not be rejected on the grounds stated by him. The Tribunal set aside the matter to the file of the Assessing Officer and directed him to consider each and every entry of the books of account of the assessee. In the third round of litigation before the Assessing Officer, detailed submissions were made from time to time.

52.2. We find that this issue of rejection of the books of account of the assessee is covered in the case of Late Harshad S Mehta, in this order vide Para No. 8.5 and 8.6. Hence, we are of the view that the AO has rightly rejected the books of account on the same reasoning's and which CIT(A) also confirmed. In view of the above position, we dismiss this ground of assessee's appeal.

53. The next issue in this appeal of assessee is as regards to addition of Rs. 56,35,451/- on account of share market speculative profit. For this, assessee has raised following ground No.5:-

> *"5. On the facts and in the circumstances of the ease and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making all of Rs. 53,35,451/-on account of share market speculative profit.*

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The Appellant prays that the AO be directed to delete the addition of Rs.56,35,451/- on account of share market speculative profit."

53.1. Brief facts relating to this issue are that as per Annexure S-2 to the original assessment order dated 22.02.1995 an addition of Rs. 56,35,451/- was made on account share market speculative profit. The AO collected the information from various sources including the brokers, B.S.E. through whom the transactions are claimed to have been undertaken by the assessee. The assessee preferred an appeal before the CIT(A), who confirmed the addition made by the AO. The Tribunal set aside the matter to the file of CIT(A), who during the second round of litigation again upheld the addition. The assessee preferred further appeal before the Tribunal (second round), wherein Tribunal set aside the matter to the file of AO vide its order dated 10.11.2014. Subsequently, the AO (third round of litigation) vide her order dated 28.03.2016 assessed share market speculative profit as assessed in the original assessment order at Rs. 56.35.451/-. The assessee preferred further appeal before the CIT(A), who again Vide impugned order dated 28.02.2017 upheld the addition.

53.2. Before us, it was claimed that the AO till date has not provided the details and basis of preparation of Annexure S-2 wherein the speculative profit has been assessed and moreover assessee has not been granted any inspection of the material on which basis the speculative profit has been computed nor copies of the same have been provided. In view of the above, the decision of CIT(A) for sustaining the addition on account of share market speculative profit in absence of any details and information basis which the addition is made, cannot be upheld.

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53.3. We note that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide paras 14.5 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The issue of the assessee's appeal is allowed.

54. The next common issue in these appeals of assessee and revenue is as regards to the addition on account of profit on sale of shares in shortage of Rs. 230.13 Crores and for this assessee has raised the following ground Nos. 6, 7 & 8:-

> *"6. On the facts and in the circumstances of the case and in lac the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition of profit on account of sale of shares in shortage based on assumptions and surmises.*
>
> *The Appellant prays that the AO be directed to delete the addition of profit on sale of shares in shortage.*
>
> *7. On the facts and in the circumstances of the ease, the Hon'ble CIT(A) erred in upholding the action of the AO in computing the profit on sale of shares in shortage without granting credit in respect of missing. stolen, lost, misplaced shares, shares seized by CBI and shares purchased on behalf of related and third parties.*

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The Appellant prays that the AO be directed to recompute the profit on sale of shares in shortage after granting appropriate credit.

8. On the facts and ill circumstances of the case, the Hon'ble CIT(A) erred in upholding the action of the AO in adopting the closing rate as on 31.03.1992 for the purpose of computing the profit on sale of shortage of shares.

The Appellant prays that the AO be directed to recompute the profit on sale 0T shares in shortage by adopting the monthly average rate or the average rate as on 27.2.1992."

Revenue also raised the following grounds No. 1 & 2:-

"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in giving partial relief to the assessee by directing the AO to recompute the shortage of shares by giving credit in respect of the shares of 44 companies in the ratio as determined at the time of original assessment order in the three entities viz. Ashwin Mehta, Jyoti Mehta and Harshad Mehta fact that, the assessee was not able to produce these shares before the AO and also could not explain as to where these shares-" were lying till the date of the order."

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that

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the assessee has proved the availability of 7,40,000 shares of Apollo Tyres being in the custody of CBI authorities and 1,38,790 shares of the company being mutilated and therefore credit for the same should be given to the assessee."

54.1. Brief facts are that the AO in his original assessment order dated 22.02.1995 made an addition of Rs.367 crores on account of profit on sale of shares in shortage. The CIT(A) upheld the said addition. Subsequently, on further appeal the Tribunal set aside the matter to the file of CIT(A) and directed him to admit the books of account, who vide his order dated 30.12.2011 in the second round of litigation granted relief of Rs. 137.16 crores to the assessee on account of following:

"a. Shares purchased in the subsequent years included in AY 1992-93 (page No. 109 of paper book);

b. 1,60,000 shares of Mazda Industries purchased on behalf of related parties (page No. 109 of paper book); and

c. Credit for additional benami shares disclosed by the Custodian before Hon'ble Special Court (page No. 112 of paper book)."

54.2. The assessee preferred an appeal before the Tribunal against the net addition of Rs.230.13 crores that survived after the second round of litigation. The Tribunal again set aside the matter to the file of the AO vide their order dated 10. 11.2014.The AO subsequently vide her order dated 28.03.2016 (third round of litigation) assessed profit on sale of shares in shortage as assessed in the original assessment order after considering the reliefs granted by the CIT(A) in the second round of litigation at Rs.230.13 crores [Rs.367 crores less Rs.137 crores]. The

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assessee preferred further appeal before the CIT(A) who Vide impugned order dated 28.02.2017 granted following reliefs to the assessee:

> *"a. Credit of certain unregistered shares disclosed in letter dated 31.01.1995 of Shri Harshad S. Mehta to the Custodian (page Nos. 21 to 54 of impugned order dated 28.02.2017 in the appeal file).*
>
> *b. Credit of shares of Apollo Tyres Limited seized by CBI and lying in the custody of the CBI authorities (page Nos. 55 and 56 of the of impugned order dated 28.02.2017 in the appeal file), and*
>
> *c. Credit on account of mutilated shares of Apollo Tyres Limited (page No. 58 of the of impugned order dated 28.02.2017 in the appeal file)."*

54.3. The AO computed the quantities of shares of various companies acquired by the assessee on the basis of Opening Stock, purchases and sale of shares in Annexure S-1. In doing so, he has taken closing stock of shares of last Assessment Year (i.e. AY 1991-92) as opening stock for AY 1992-93. Thereafter, he has gathered the details of purchases and sale of shares effected by the assessee from various sources during the period 01.04.1991 to 31.03.1992 and for the period 01.04.1992 to 08.06.1992. These sources are B.S.E. brokers, clients, Financial Institutions, Companies, Banks, receipt and payment details from RBI, information received from other entities from the group of the assessee etc. Based on the purchase and sale data gathered for the period 01.04.1991 to 31.03.1992, the AO computed stock position of the assessee as on 3103.1992. Subsequently, in Annexure 5-3, the AO computed stock as on 08.06.1992 (i.e. the date of notification under the

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Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (TORT Act)] by adjusting the purchases and / or sales transactions undertaken during the period 01.04.1992 to 08.06.1992 details of which were also obtained from various sources as mentioned above. Further, the AO computed physical stock of the assessee as on 08.061992 which comprised of the registered holdings with the companies, other Benami shares declared by the assessee and unregistered shares held by the assessee. Thereafter, the AO compared the stock (computed as on 08.06 1992) with the physical stock as on 08.06.1992 and computed shortage in shares in the hands of the assessee in Annexure S-3 (page Nos. 350 to 469 of paper book).The AO has treated the shortage of shares as having been sold by the assessee on 31.03.1992 and accordingly has applied the market rate of these shares as on 31.03.1992 to arrive at sale consideration of such shares. After reducing the cost of acquisition of such shares, the Assessing Officer has arrived at the profit on sale of shares in shortage at Rs.367 crores and the same has been added as income in the hands of the assessee. Excess of the physical stock of shares vis-a-vis the stock computed by the AO has resulted in closing stock of the shares. The above working as adopted by the AO to arrive at profit on sale of shares in shortage of Rs.367 crores as on 31 .03.1992 is illustrated through a few sample scrips from Annexure S-3 (page No. 617 to 621 of paper book).

<u>Illustration for scrip Reliance Industries Limited is reproduced below;</u>

Particulars		*Shri S Mehta*		*Total (ASM +HSM + JHM)*
		Quantity	*Amount (in Rs.)*	
Annexure S-1				
Opening stock as on 01 .04.1991(As per Assessmentorder of A.Y. 1991-92)		*1,40,545*	*1,68,65,400*	
Add: Purchases from 01.04.1991		*24,41,679*	*36,61,87,938*	

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Particulars		Shri S Mehta		Total (ASM +HSM + JHM)
		Quantity	Amount (in Rs.)	
to 31 .03.1992 (Custodian information, Company information, etc.)				
Less. Sales from 01.04 1991 to 31 .03.1992 (Custodian information, Company information, etc.)		9,04,575	14,04,58,074	
Add: Trading profit / (Loss)			62,71,236	
Closing stock as on 31.03.1992 (Balancing figure - Quantity)		16,77,649	24,88,66,500	
Annexure S-3				
Stock as on 31 .03.1992 (As per Annexure S-1)(31M]	A	16,77,649		42,04,940
Add/ Less: Adjustments (i.e. Purchase and sales for the period 01 .04.1992 to 08.06.1992)[ADJ]	B	75,000		33,60,780
Position of stock as on 08.06.1992 [POS]	C=A +B	16,02,649		8,44,160
Less: Registered shares [REG]	D	1,50,682		6,34,512
Less: Benami Shares (BEN)	E	3,47,420		7,62,647
Less: Unregistered shares (UNR)	F	1,34,860		2,96,040
No. of shares in shortage (SHT)	G= C-D-E-F	9,69,688		21,28,631
VAL	H= G* Average rate		14,38,45,784	
Avearge purchase cost (as per annexure S-1) (in Rs.) AVERAGE RATE			148.34	
Sales Consideration (In Rs.) (SQR)	I=G *Market rate as on 31.03.1992		42,42,38,285	
Profit on sale of shares in shortage (In Rs.) (DIFF)	I-H		28,03,92,501	

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54.4. The assessee, before us contended that the addition on account of profit on sale of shares in shortage is illegal and not sustainable in law due to the following: -

> *"I. The relevant material relied upon by the Assessing Officer for computing the additions has never been brought on record till date.*
>
> *II. Various infirmities in the computation of profit on sale of shares in shortage have been found."*

54.5. We find that this common issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide paras 15.33 to 15.40 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeals on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The order of CIT(A) is confirmed to the extent it has deleted the addition. The issue of revenue's appeal is dismissed and that of the assessee's appeal is allowed.

55. The next issue in this appeal of assessee is as regards to the addition of Rs. 60,99,584/- on account of Badla income. For this, assessee has raised the following Ground No. 9: -

> *"9. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making an addition of Rs. 60,99,584/- on account of share market badla income.*

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The Appellant prays that the AO be directed to delete the addition of , Rs. 60,99,584/- on account of share market badla income."

55.1. We noted that as per Annexure S-5 to the original assessment order dated 22.03.1995, the AO has made addition of Rs.60,99,584/- on account of badla income. The AO has mentioned that the details of badla transactions carried out by the assessee on the floor of the exchange were obtained from BSE. The AO has taxed the net profit of Rs. 60,99,584/- arising out of badla transactions. Subsequent to the Tribunal's order dated 10.11.2014 (in second round of litigation) the AO vide his order dated 28.03.2016 considered badla income of Rs. 60,99,584/-. Further, the CIT(A) vide the impugned order upheld the said addition.

55.2. The assessee contended that the AO has not provided any basis or information for addition on account of share market badla income. Hence, it is not possible for the assessee to rebut the said addition. Further, the assessee contends that the transactions during the year were largely undertaken for and on behalf of clients. Thus, the share market badla income is of such clients and does not relate to the assessee. Further, the assessee submits that the addition made by the AO is not in accordance with the books of account.

55.3. We find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide para 16.4. The ld. Counsel for the assessee as well the ld. Special Counsel & the ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent

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view, we delete the addition confirmed by the CIT(A). The issue of the assessee's appeal is allowed.

56. The next common issue in these cross appeals, of assessee and revenue is as regards to the addition on account of share market oversold position of Rs. 35,51,54,354/-. For this, assessee has raised following ground No. 10: -

> *"10. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making addition on account of share market oversold position.*
>
> *The Appellant prays that the learned AO he directed to delete the addition on account of share market oversold position."*

Revenue also raised the cross ground No.3 as under: -

> *"3. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the AO to grant deduction to the extent of purchase cost in relation to the scrips held to be oversold despite holding that the assessee has not produced any specific evidence that the transactions have been undertaken on behalf of his clients and third parties to support his contention and has merely relied upon the books of accounts which has already been rejected by the CIT(A)."*

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56.1. Brief facts are that the AO based on the information collected from various sources, found scrips/shares wherein the sale quantity is in excess of the quantity available with the assessee (i.e. opening stock plus purchases). The AO alleged that there is no purchase of shares against such sales. Thus, according to the AO, it represents sale of unexplained stock of shares and accordingly made addition to the tune of Rs. 49,01,92,114/-. The same is computed in Annexure S-1 to the assessment order dated 22.03.1995. The CIT(A) during the first round of litigation upheld the addition made by the AO, however, the Tribunal set aside the matter to the file of CIT(A) vide its order dated 31 .03.2006. Subsequently, the CIT(A) in his order dated 30.12.2011 (second round of Litigation) granted relief to the assessee amounting to Rs. 13,50,37,760/- in respect to certain scrips in the oversold position. The assessee preferred an appeal before the Tribunal against the net addition that survived after the second round of litigation. The Tribunal set aside the matter to the file of the AO vide their order dated 10.11.2014 (page No. 145 of paper book).The AO subsequently vide her order dated 28.03.2016 (third round of litigation) assessed profit on sale of shares in shortage as assessed in the original assessment order after considering the reliefs granted by the CIT(A) in the second round of litigation at Rs. 35,51,54,354/- [Rs. 49,01,92,114 less Rs. 13,50,37,760). The assessee preferred further appeal before the CIT(A), who Vide impugned order dated 28.02 2017 granted relief on account of purchase cost to the assessee.

56.2. The assessee narrated the above working as adopted by the AO to arrive at shares market oversold position of Rs. 49.01 crores as on 31.03.1992 as illustrated through a sample scrip from Annexure S-1

Illustration for Scrip ‘Bajaj Electric’ is reproduced below:			
Particulars		Quantity	Amount

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			(In Rs.)
Opening Stock as on 01.04.1991	A	285	2,39,400
Add: Purchase from 01.04.1991 to 31.03.1992 (Custom information, company information etc.)	B	100	4,600
Less: Sales from 01.04.1991 to 31.03.1992 (Custodian information, Company information, etc.)	C	605	8,50,900
Stock of Shares oversold (Qty) (C>(A+B)]	D=C-(A+B)	220	
Rate per share at which sale is effected	E		1406.45
Share market oversold position	F=D*E		3,09,418

Thus, it is evident from the above calculation that the Assessing Officer has not considered the purchase cost of such oversold shares.

56.3. The assessee contended that shares were purchased and sold on behalf of clients or third parties, the information of which was not obtained by the AO. Further, the assessee would have sold shares on behalf of third parties which may have been considered as sales of the assessee by the AO. In the absence of such information pertaining to third party purchases/ sales and the basis for computing the oversold position, the addition made is erroneous. Further, all transactions pertaining to purchase and/or sale are through the normal banking channels i.e. in accordance with the Rules and Regulations and Bye laws framed by the stock exchange and further recognized by Securities Contract (Regulation) Act, 1956 and duly recorded in his books of account. All the transactions were reported to stock exchange on a daily basis. In view of the above, we are of the view that the decision of the CIT(A), for sustaining the addition on account of shares market oversold position is without any valid basis and, hence, cannot be upheld.

56.4. We also find that this common issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide para 17.6 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeals on this issue, hence, taking

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a consistent view, we delete the addition confirmed by the CIT(A). The order of CIT(A) is confirmed to the extent it has deleted the addition. The issue of revenue's appeal is dismissed and that of the assessee's appeal is allowed. Accordingly, we allow this issue of assessee's appeal and dismiss the appeal of revenue on this issue.

57. The next issue in regard to Ground No.11 and an addition of Rs. 55,33,841/- on account of Dividend and Interest income. For this assessee has raised the following ground: -

> *"11. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in making all of Rs. 55,33,841 on account of dividend and interest.*
>
> *The Appellant prays that the learned AO be directed to delete the addition of Rs. 55,33,841/- dividend and interest income."*

57.1. As discussed during the course of the hearing this ground is not pressed by the assessee and hence, this issue is dismissed.

58. The next common issue raised by the assessee and revenue in these appeals is as regards to the order of CIT(A) restricted the addition of ₹24,62,86,718/- as against the addition made by AO of ₹ 24,76,36,718/- on the ground of Unexplained Money under section 69A of the Act. For this, assessee has raised the following ground No. 12: -

> *"12. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO in making an*

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> *addition of Rs. 24,62,86,718 as unexplained money under section 69A of the Act.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 24,62,86,718 as unexplained money."*

For this revenue also raised the following ground No. 4:-

> *4. On the facts and in the circumstances of the ease and in law, the CIT(A) erred in deleting the addition made to the extent of Rs. 13,50,000/- on account of unexplained money u/s 69A of the I.T. Act.*

58.1. We noted the facts that as per the original assessment order dated 22.02.1995 an addition of Rs. 24,76,36,718/- was made u/s. 69A of the Act on account of unexplained deposits in the bank account. The CIT(A) during third round deleted the addition to the extent of Rs.13,50,000/-. The assessee is in appeal before the Bench in relation to the balance amount of addition of Rs.24,62,86,718/- and revenue is against deletion.

58.2. The facts are that the CIT(A) confirmed the addition to the extent of Rs.23.40 crores for the reason that the assessee failed to furnish any clinching evidence in respect of short term loans taken from Reliance Group companies, etc. The details of loans of Rs. 23.40 crores and interest paid thereon of Rs. 41.42 lakhs have been given on page Nos. 73 and 74 of the impugned order of the CIT(A). We find that the assessee in relation to the said addition of Rs. 23.40 crores, placed reliance on the notices dated 11.03.1996 issued u/s 133(6) of the Act by the AO to the assessee along with enclosures (refer page Nos. 666 to

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674 of paper book). We also find that the loan confirmation for the aforesaid transactions were already on record before the AO as well as the CIT(A) (page Nos. 662 to 665 of paper book). We noted that inspite of relevant evidence being on record, the Income-tax Department did not carry out any verification. Even before us also assessee filed the additional evidence in the form of latest loan confirmations from group entities of Reliance Industries Ltd. in respect of addition amounting to Rs. 23.40 crores, which we accepted (filed on 24.01 2018 and 27 03,2018.). Similar loan confirmations were submitted before CIT(A) during the third round of litigation in the case of Smt. Jyoti H Mehta for AY 1992-93, however the same were not relied upon by the CIT(A) for granting relief by stating that they were neither stamped nor on the companies' letter head. The assessee contended that the confirmation letters filed in case of Smt. Jyoti H Mehta are on the letter head of the relevant companies and duly signed by the authorized person and likewise, in the given case of the assessee additional evidence in the form of latest loan confirmation are on the companies' letter head and stamped and signed by the authorized signatories. It was the contention of the assessee that the said additional evidence should be accepted and relied upon to grant relief to the extent of Rs. 23.40 crores.

58.3. As regards to the addition of Rs. 1,05,79,352/- (included in Rs. 24.63 crores), the relevant ledger accounts as recorded in the books of the assessee explaining in detail the nature and purpose of the transactions underlying the credit in the bank accounts of the assessee are submitted before the Bench (page Nos. 675 to 693 of paper book).It was emphasized that the deposits were made on account of amount received for sale of shares undertaken for clients, refund proceeds on allotment of debentures, refund of margin money, part repayment of loan given and amount received for purchase of shares from clients.

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These transactions are normal business transactions and routed through regular and disclosed bank accounts of the assessee. The assessee contended that CIT (A), in third round of litigation, has granted relief of Rs. 13,50,000/- (included in Rs.1,05,79,352/-) pertaining to an erroneous entry made by Bank of India (Stock Exchange Branch) which was reversed on the same date by the Bank. However, we noted that the Department is in appeal against the said relief granted.

58.4. As regards to the deposits amounting to Rs.12,15,981/- made in the bank account of the assessee, it was claimed that these are duly recorded in the books of account and thus cannot be regarded as unexplained deposits and primarily the said deposits pertain to amount received on account of sale of shares undertaken for clients, refund proceeds on allotment of debentures, refund of margin money, part repayment of loan given and amount received for purchase of shares from clients.

58.5. As regards to the addition of Rs. 18,41,385, the addition is made as per Annexure U-2 (page No. 510 of the paper book). The assessee claimed that the said deposit entries captured by the AO in Annexure U-2 do not pertain to the assessee. None of the said entries are reflected in any of the Bank accounts held by the assessee.

58.6. From the above facts and contents, it is clear that these amounts need verification at the level of the AO in term of the additional evidences filed by assessee. As regards to other additions, we restore to the matter to the file of the AO for verification and accordingly deciding the issue. Accordingly, this issue of assessee’s appeal is set aside to the file of AO, who will decide after verification of documents and other additional evidences.

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58.7. As regards to the ground of revenue's appeal, we noted that the Department is in appeal in relation to relief of Rs. 13,50,000/- granted by the CIT(A) vide the impugned order dated 2803.2016. In relation to the said relief, we noted that the credit entry of Rs. 13,50,000/- shown by the AO as deposit in Bank of India - Stock Exchange Branch on 30.3.1992 was erroneous and the same was reversed on the same date by the bank. The said fact has been verified by the CIT(A), subsequent to which relief has been granted in relation to the same. We find no infirmity in the same because this finding was not controverted by the revenue. Hence, we confirm the finding of CIT(A) and this issue of Revenue's appeal is dismissed.

59. The next issue relates to the addition of Rs. 164,60,46,992/- on account of alleged differences in the books of account. For this, assessee raised the following ground No. 13: -

> *"13. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO in making an addition of Rs. 164,60,46,992 on account of alleged differences in the books of the appellant and in the books of the late Shri Harshad S. Mehta and in ignoring the reconciliation of accounts and various submissions of the Appellant.*
>
> *The Appellant prays that the AU be directed to delete the addition of Rs. 164,60,46,992."*

59.1. Brief facts are that in the second round of litigation the CIT (A) vide order dated 30.12.2011 has relied on the order of CIT(A) in the case of Late Shri. Harshad S. Mehta for AY 1992-93 and made an

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addition amounting to Rs.164,60,46,992/- by invoking the provisions of enhancement of income u/s 251(2) of the Act. The said addition was made by the CIT(A) on account of difference between the year end balances in the books of account of Shri Ashwin S Mehta and the books of Late Shri Harshad S Mehta. The CIT(A) further in the third round, vide order dated 28.02.2017 upheld the addition. The difference of Rs.164,60,46,992/- was arrived at by CIT(A) as under: -

Particulars	Amount (In Rs.)
In the books of Shri. Ashwin Mehta	
M/s Late Shri. Harshad Mehta (A)	17,26,12,668 (Payable)
In the Books of M/s. Late Shri. Harshad Mehta	
Shri. Ashwin Mehta (B)	181,86,59,660 (Receivable)
Alleged Difference in balances (B-A)	164,60,46,992 (Receivable)

59.2. The assessee before us narrated in brief as under: -

a. The Id. CIT(A) has made error of omission by not considering all the relevant ledger accounts in computing the alleged difference of Rs. 164,60,46,992/-.

b. The books of account of Shri Ashwin S Mehta (personal account) and M/s. Ashwin S Mehta (proprietorship concern) needs to be considered on a consolidated basis.

c. Reconciliation of Ledger account balances between Ashwin S. Mehta and Harshad S. Mehta is submitted before the Assessing Officer as well as the Ld. CIT(A) - Each and every entry is explained by providing one to one correlation

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d. Addition made by relying on the Ld. CIT(A) order dated 24.03.2010 in thecase of Shri Harshad S. Mehta for AY 1992-93 although the same is set asideby the Hon'ble Tribunal (order dated 10.11.2014).

59.3. The assessee contended in respect to the addition that the revenue has omitted many evidences like not considering all the relevant ledger accounts in computing the alleged difference of Rs. 164,60,46,992/-. It was explained that the whole issue and its resolution lies in the calculation of the year end closing balances of various ledger accounts in the books of Shri Ashwin S. Mehta and Shri Harshad S. Mehta. Whilst some account balances were considered by AO a few were also ignored while tallying both the books of account of the assessee. A chart detailing the ledger account balances showing ledger accounts considered by the AO as well as those not considered, while calculating the alleged difference was filed before us (page No. 694 of paper book). The same is reproduced below-

Ledger accounts balance in the books of Harshad S. Mehta					
1) In the books of M/s Harshad S. Mehta					
Sr. NO.	Account NO.	Name of the Account	Receivable/ Payable	Considered by AO	Not considered by AO
a)	3001 (13038)	Ashwin S. Mehta	20,85,00,536	20.85,00,536	-
b)	3001 (27012)	M/s Ashwin Mehta	1,61,23,95,124	1,61,23,95,124	-
C)	2095 (207)	Ashwin S. Mehta	(22,36,000)	(22,36,000)	
		Total	1,81,86,59,660	1,81,86,59,660	
2) In the Books of Mr. Harshad S. Mehta					
-	No.	Account	Payable	By AO	By AO
a)	4016	M/s Ashwin Mehta	(53,96,86,688)	-	(53,96,86,688)
b)	2008	Sundry Advances (ASM)	75,000	-	(75,000)

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c)	1005	Long Term Loan	7,40,000		7,40,000
		Total	17,33,82,444	17,26,12,668	7,69,776
Net Balance			1,23,92,31,192	17,26,12,668	1,06,66,18,524
Difference as per books of account			3,86,66,780	1,64,46,992	(1,60,73,80,212)

59.4. As can be seen above, we noted that in case all the relevant accounts were considered by the CIT(A) there would be a book difference of only Rs. 3,86,66,780/-. This difference is mainly on account of a timing difference in recording a few entries in the books of Shri Harshad S. Mehta (on account of cash basis of accounting) etc. A chart reconciling the said difference of Rs. 3,86,66,780/- is furnished on page Nos. 793 to 797 of paper book, thereby explaining the entire alleged difference in the books of account. It was further claimed that all the above transactions are undertaken through banking channels and there is no involvement of cash.

59.5. The books of account for personal account and proprietorship concern needs to be considered on a consolidated basis. We further noted that in the case of the assessee, the books of account for personal account (Shri. Ashwin S. Mehta) and proprietorship concern (M/s. Ashwin S. Mehta) are maintained separately. The separate books of account are maintained for administrative convenience. However, for income tax purposes, the income earned by Shri Ashwin S. Mehta, on personal account and by the proprietorship concern, would be taxed on a consolidated basis. Accordingly, the consolidated income of Shri Ashwin S. Mehta would be assessed to tax. It was claimed that for income tax purposes Shri. Ashwin S. Mehta and M/s. Ashwin S. Mehta are one and the same. Similarly, in the case of Shri Harshad S. Mehta too, whilst the books of account on personal account (Shri Harshad S Mehta) and for the proprietary concern (M/s. Harshad S Mehta) are

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maintained separately, the consolidated income would be assessed to tax.

59.6. In view of the above, it was claimed that once the accounts maintained by the assessee, it is that all the entries in the below mentioned ledger accounts should be considered on holistic basis:

> *i. Ledger accountof Shri Harshad S Mehta in the books of Shri Ashwin S Mehta and M/s. Ashwin S Mehta*
>
> *ii. Ledger accounts M/s. Harshad S Mehta in the books of Shri Ashwin S Mehta and M/s. Ashwin S Mehta*

It was accordingly claimed that the books of account of Shri Ashwin S Mehta (personal books) and M/s. Ashwin S Mehta (proprietary concern's books) be consolidated for the purpose of reconciliation of accounts.

59.7. Reconciliation of Ledger account balances between Ashwin S. Mehta and Harshad S. Mehta. The assessee contended that the CIT(A) has erred in not considering all the relevant ledger accounts in the books of Shri Ashwin S. Mehta (personal and proprietary concern) and Shri Harshad S. Mehta (personal and proprietary concern) and filed transaction by transaction reconciliation of the two books of account on Page nos. 755 to 791 of paper book as follows: -

> *a. Chart I - Ledger A/c 3001 (27241) in the books of MIs Ashwin S Mehta corresponding with Ledger A/c 3001 (27012) in the books of MIs Harshad S Mehta*
>
> *b. Chart II - Ledger A/c 3001 (13045) in the books of MIs Ashwin S Mehta corresponding with Ledger A/c 4016 in the books of Mr. Harshad S. Mehta*

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c. Chart III - Ledger A/c 4011 in the books of Mr. Ashwin S Mehta corresponding with Ledger A/c 3001 (13038) in the books of MIs Harshad S. Mehta

d. Chart IV - Ledger A/c 3020 in the books of MIs Ashwin S. Mehta and Ledger Ales 1014 /1005 in the books of Mr. Ashwin S Mehta corresponding with Ledger A/c 2095 (307) in the books of MIs Harshad S. Mehta and Ledger Ncs 2008 / 2010 in the books of Mr. Harshad S. Mehta

59.8. We noted that the assessee submitted each and every entry and explained by providing one to one correlation in the above charts. All the above details were already submitted to the AO and CIT (A) during the third round of litigation but no discrepancies were found in the said reconciliation. Even during the course of hearing on 01.02.2018, we, once again directed the AO to verify Ledger Accounts in the books of Shri Ashwin S. Mehta and Shri Harshad S. Mehta (page Nos. 695 to 754 of paper book) during the course of the proceedings itself. Admittedly, no discrepancies have been found by the AO till date.

59.9. In view of the above explanation and the fact that the issue is covered in the case of Harshad S Mehta in the above para 23.5 of this order, we delete this addition.

60. The next issue in this appeal of assessee is regarding set-off of addition made on account of sources of income against the expenses, investment, application of such source based on telescoping theory and for this, assessee has raised the following ground no. 14:-

"14. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in rejecting the plea of the Appellant with respect to

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set oft of addition made on account of sources of income against the expenses/investment application of such source based on telescoping theory.

The Appellant prays that appropriate set off be allowed."

60.1. The assessee urged that in case there are surviving additions on account of unexplained receipts or profit on trading of shares and also additions on account of unexplained investments or unexplained expenditures, then both should be telescoped. It must be treated that unexplained investments or unexplained expenditures have been made out of unexplained receipts

60.2. We also find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide para 27 above. Ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we direct the AO accordingly.

61. The common issues are regarding charging of interest u/s 234A, 234B, 234C & 220(2) of the Act in the appeals of the assessee as in the appeal of the revenue. For this, assessee raised the following ground No. 15 & revenue raised the following ground Nos. 5 to 9:-

Assessee's Ground

"15. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in

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upholding the action of the AO in levying interest under section 234A, 234B and 234C of the Act.

The Appellant prays that the AO be directed to delete the interest tinder Section 234A, 23411 and 234C of the Act."

Revenue's Ground

5. On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the AO to compute the interest u/s 234C in case of the assessee as per the returned income despite the fact that no valid return was filed by the assessee for the year under consideration.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO not to charge interest u/s 220(2) from the date of original assessment, but only from the date of re-assessment in case of assessee without appreciating the fact that demand becomes due from the date of original assessment.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the decision of Hon'ble Bombay High Court in case of M/s Girnar Investment Ltd. WP(C) No.5750/2010 dated 05.01.2012, wherein the Hon'ble Court held that assessee is liable to pay interest under section 220(2) from the date of

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original order under section 143(3) dated 07.10.1997 till the final payment.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering provisions of section 240(a) of IT Act wherein demand does not cease to exist when the order is set aside by an Appellate Authority until a consequential assessment is made by the Assessing Officer.

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the CBDT's Circular No. 334 dated 03.04.1982 wherein it was very clearly held that assessment made originally by the Assessing officer is either varied or even set aside by one Appellate Authority but on further appeal, the original order of the Assessing Officer is restored either in part or wholly, the interest payable under section 220(2) will be computed regarding the due date reckoned from the original demand notice and with reference to the tax finally determined.

61.1. We have already adjudicated the issues of charging interest u/s 234A, 234B, 234C & 220(2) of the Act vide this order in the case of Late Harshad S Mehta vide paras nos. 29 to 30.10. Here also we direct the AO to follow the order in the case of Harshad S Mehta above and charge interest accordingly. These grounds are decided accordingly.

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In ITA No. 6120/Mum/2017

62. Now, we shall deal with the appeals of Ashwin S. Mehta for AY 1993-94 in ITA No. 6120/Mum/2017 of assessee's appeal.

63. The first and second ground of assessee's appeal are in regards to assessment as bad in law and in violation of principles of natural justice. For this, assessee has raised the following grounds 1 & 2:-

> *"1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that the assessment order dated 17.12.2007 passed by the Deputy Commissioner of Income-tax Central Circle-23 (AO') is bad in law and ought to be quashed.*
>
> *The Appellant prays that the order of the AO be quashed as it is bad in law.*
>
> *2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in rejecting the Appellant's contention that principles of natural justice were not complied with during the course of assessment.*
>
> *The Appellant prays that the order of the AO be quashed as it is bad in law."*

63.1. The above ground deals with the issue of assessment as bad in law & violation of principles of natural justice. The assessee has not made any specific argument but sated that same would be dealt with along with the other grounds of appeal concerning specific additions

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made by the Assessing Officer. Hence, the same are dismissed as not argued.

64. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in rejecting the books of account. For this, assessee has raised the following ground No. 3:-

> *"3. On the facts and in the circumstances of the case and in law, the Hon'ble CLT(A) has erred in upholding the action of the AO in ignoring the specific directions of the Hon'ble ITAT and in rejecting the books of account of the Appellant.*
>
> *The Appellant prays that as held in the ITAT order, the books of accounts be accepted and the income be assessed as per the books of accounts."*

64.1. We find that this issue of rejection of the books of account of the assessee is covered in the case of Late Harshad S Mehta, in this order vide Para No. 8.5 & 8.6. Similarly, in assessee's own case in AY 1992-93 vide Para 52.1 and 52.2 we have also been taken same view in identical facts. Hence, we are of the view that the AO has rightly rejected the books of account on the same reasoning's and which CIT(A) also confirmed. In view of the above position, we dismiss this ground of assessee's appeal.

65. The next issue in this appeal of assessee is regarding addition of Share Market Trading Profit amounting to Rs. 11,13,28,475/-. For this, assessee has raised the following ground No.4:-

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> *4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not allowing entire relief sought by the Appellant in relation to Share Market trading profit.*
>
> *The Appellant prays that the AO be directed to delete the entire addition on account of Share Market trading profit.*

65.1. We also find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta of this order vide para 13.5. The ld. Counsel for the assessee as well Ld. Special Counsel & Ld. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeal on this issue, hence, taking a consistent view, we partly confirm the addition.

66. The next common issue in these cross appeals, of assessee and revenue is as regards to the addition on account of share market oversold position of Rs. 3,48,74,591/-. For this, assessee has raised following ground No. 5: -

> *"5. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not allowing entire relief sought by the Appellant in relation to Share Market oversold position.*
>
> *The Appellant prays that the learned AO be directed to delete the entire addition on account of Share Market oversold position."*

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66.1. We also find that this common issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide para 17.6. The Id. Counsel for the assessee as well Id. Special Counsel & Id. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly identical in the present appeals on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The order of CIT(A) is confirmed to the extent it has deleted the addition. The issue of revenue's appeal is dismissed and that of the assessee's appeal is allowed. Accordingly, we allow this issue of assessee's appeal and dismiss the appeal of revenue on this issue.

67. The next issue in this appeal of assessee is as regards to the addition of Rs. 25,825/- on account of Badla income. For this, assessee has raised the following Ground No. 6: -

> *"6. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO in making an addition of Rs. 25,825 on account of Share Market badla income.*
>
> *The Appellant prays that the AO be directed to delete the addition of Rs. 25,825 on account of Share Market badla income.*

67.1. We find that this issue is fully covered by the decision taken in the case of Late Harshad S Mehta vide this order only vide para 16.4. The Id. Counsel for the assessee as well Id. Special Counsel & the Id. CIT-DR also not argued because the issue is the same and facts and circumstances are same. The facts and circumstances are exactly

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identical in the present appeal on this issue, hence, taking a consistent view, we delete the addition confirmed by the CIT(A). The issue of the assessee's appeal is allowed.

68. The next issue in this appeal of assessee is regarding deduction on account of interest expenditure & other expenditure and for this, assessee has raised the following ground no. 7 & 8:-

> *"7. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the AO in not allowing deduction of Rs. 19,54,00,000 on account of interest expenditure incurred by the Appellant.*
>
> *The Appellant prays that the AO be directed to allow a deduction of Rs. 19,54,00,000 on account of interest expenditure incurred by the Appellant.*
>
> *8. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in not allowing deduction on account of various expenses incurred by the Appellant.*
>
> *The Appellant prays that the AO be directed to allow deduction of various expenses incurred by the Appellant."*

68.1. These two ground Nos. 7&8 relating to deduction on account of Interest, business expenditure, business loss and depreciation& deduction and allowances under chapter VIA of the Act are not pressed and hence dismissed.

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69. The next issue in this appeal of assessee is against the order of CIT(A) enhancing income on account of relief provided in AY 1992-93 for purchases of subsequent years while computing profit on sale of shortage of shares. For this, assessee has raised the following ground No. 9:-

> *"9. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in enhancing income on account of relief provided in AY 1992-93 for purchases of subsequent years while computing profit on sale of shortage of shares without appreciating that the same is not sustainable.*
>
> *The Appellant prays that the aforesaid enhancement be deleted."*

69.1. We have noted the plea of the assessee and are of the view that we have already decided the issue relating to shortage of shares in assessment year 1992-93 above in para 54.1 to 54.5 above of this order. Hence, in this year also the issue is decided accordingly.

70. The common issues are regarding charging of interest u/s 234A, 234B, & 234C of the Act, in the appeals of the assessee as in the appeal of the revenue. For this, assessee raised the following ground No. 10 to13:-

> *"10. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the AO in levying interest under section 234A and 234B of the Act.*
>
> *The Appellant prays that the AO be directed to delete the interest under section 234A and 234B of the Act.*
>
> *11. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not*

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holding that the AO has erroneously computed interest under section 234A of the Act upto the date of assessment order dated 29.03.1996 instead of the date of the filing of the return of income i.e. 11.11.1993.

The appellant prays that the learned AO be directed to recompute interest under section 234A of the Act.

12. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in assuming jurisdiction while directing the AO to consider charging interest under section 234B of the Act from the date of original assessment order upto the date of fresh assessment order (i.e. from 29.03.1996 to 17.12.2007), even when the AO himself has correctly computed interest upto the date of the original assessment order i.e. 27.03.1995, which is in accordance with the law, as settled by the Hon'ble Supreme Court in case of Modi Industries Ltd. vs. CIT [1995] (216 FIR 759).

The Appellant prays that the direction of the Hon'ble CIT(A) is without any jurisdiction and be quashed as it is bad in law.

13. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in issuing the aforesaid direction on charging interest under section 234B without granting any opportunity to the Appellant of showing cause against such direction thereby violating the statutory provisions of the Act and the principles of natural justice.

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The Appellant prays that the direction of the Hon'ble CIT(A) be quashed as it is bad in law."

70.1. We have already adjudicated the issues of charging interest u/s 234A, 234B, 234C & 220(2) of the Act vide this order in the case of Late Harshad S Mehta vide paras nos. 29 to 30.10 and in the case of Jyoti Mehta vide Para No. 46.1 and in assessee's own case for AY 1992-93 vide para No. 61.1 above. Here, also we direct the AO to follow the order in the case of Harshad S Mehta above and charge interest accordingly. These grounds are decided accordingly.

71. **In the result, these three appeals of Revenue and four appeals of assessee are partly allowed for statistical purposes, as indicated against each of the issues and grounds.**

Order pronounced in the open court on 14-01-2019.
आदेश की घोषणा खुले मे दिनांक 14-01-2019 को की गई ।

Sd/-	Sd/-
(जी. मंजुनाथ /G MANJUNATHA)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 14-01-2019
Sudip Sarkar /Sr.PS

<u>Copy of the Order forwarded to</u>:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI