

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.445/Bang/2018
Assessment Year : 2014-15

M/s. Jupiter Capital Pvt. Ltd., # 54, Richmond Road, Bangalore – 560 025. PAN: AABCJ5666R	Vs.	The Assistant Commissioner of Income Tax, Circle – 4 (1) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri S. Parthasarathi, Advocate
Revenue by	:	Shri D. Sudhakara Rao, CIT (DR)
Date of hearing	:	12.09.2018
Date of Pronouncement	:	29.11.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A)-4, Bangalore dated 14.12.2017 for Assessment Year 2014-15.

2. The grounds raised by the assessee are as under.

“1. The learned Commissioner of Income Tax (Appeals) (CIT) erred in upholding the order of the Assessing officer and not allowing the claim of capital loss incurred by the appellant due to reduction of capital by the investee company.

2. The CIT erred in holding that there is no transfer of assets in due to reduction of capital based on the order of the court.

3. The CIT ought to have appreciated the fact that there is an extinguishment and relinquishment by the appellant when the investment it had made stands reduced.

4. The CIT erred in holding that as there is no change in the shareholding of Asianet News Network P Ltd, the investee company, there is no transfer within the meaning of section 2(47) of the Act.

5. The CIT has made a gross mistake in assuming that the "word "extinguished" is mentioned in the petition or court order, it does not amount to translate the meaning of the word "extinguishment of rights" as per section 2(47) of the Act".

6. The assumption made is contrary to the provisions of law and the findings of the Apex court.

7. For these and other grounds that may be urged at the time of hearing, the appellant prays that the honorable Commissioner of Income Tax (Appeals) may kindly:

a. Allow the claim of capital loss made by the appellant amounting to Rs 164,48,55,840.

b. Any other relief that the Honorable Commissioner of Income Tax (Appeals) deem fit.

The appellant further prays that the Commissioner of Income tax (Appeals) pass necessary order to stay the collection of demand till the disposal of this appeal, based on the powers confirmed on them.”

3. The Id. AR of assessee submitted that the copy of written submissions filed before CIT(A) is available on pages 50 to 69 of paper book and out of that, the relevant portion is available on pages 64 to 69 of paper book. He further submitted that reliance has been placed by assessee on the judgment of Hon'ble Apex Court rendered in the case of Kartikeya V. Sarabhai Vs. CIT as reported in 228 ITR 163. But this judgment was not followed by CIT(A) on some invalid reasons given by him. He submitted that the issue in the present case is squarely covered in favour of the assessee by this judgment of Hon'ble Apex Court. The Id. DR of revenue supported the orders of authorities below.
4. We have considered the rival submissions. We find that on this issue, Para nos. 6 to 7.3 of the order of CIT(A) are containing entire facts, decision of the AO, submissions of the assessee before CIT(A) and the final decision of CIT(A) and therefore, these paras are reproduced herein below for the sake of ready reference.

“6. Disallowance of Capital loss of Rs. 164,48,55,840/- :-

The brief facts of the case are that, the appellant claimed an amount of Rs. 1,64,48,55,840/- as Long Term Capital loss from sale of shares. This loss was stated to accrue against the reduction in share capital of M/s Asianet News Pvt. Ltd (ANNPL) effected under a capital reduction scheme. The AO disagreed with the assessee's claim of Long Term Capital Loss, contending that, the reduction in shares of ANNPL, did not result in transfer of capital asset as envisaged u/s 2(47) of the I.T. Act. The AO came to this conclusion, in light of the finding that, even though the number of shares has reduced, the face value as well as the

shareholding pattern remained the same. The assessee on the other hand, has argued that there was real transfer of asset, as the scheme resulted in extinguishment / relinquishment of part of the Assessee's rights, in the shares of ANNPL, and therefore the transaction fell within the purview of section 2(47) of the I.T. Act, resulting in consequent claimable Long Term Capital Loss.

The observations / findings of the AO and the Assessee's detailed written submissions have been duly perused. The judicial position on the issue under consideration and the judgments highlighted by the AO as well as the appellant have been taken into due consideration, in the given factual matrix of the present case. The appraisal of the rival contentions and finding on the issue at hand is accordingly discussed as hereunder:

6.1 AO's observation:-

The AO has discussed the relevant issues and recorded her findings, in a succinct manner, in the order under consideration. The relevant portion of the AO's order on this point is reproduced as under:-

"8. The issue of contention here is whether a reduction in share capital, by reducing the number of shares, without reducing the face value, amounts to a transfer of a capital asset. Further, whether such reduction amounts to transfer of Rights? The issue is analysed as follows. An analysis of the assessee's shareholding pattern is shown as under:

Shareholding pattern as per assessee's submission:

<i>Particulars</i>	<i>No. of shares</i>	<i>Amount</i>
<i>Opening balance of investment in ANNPL</i>	<i>149544130</i>	<i>1495441300</i>
<i>Purchase of ANNPL shares from other parties</i>	<i>3806758</i>	<i>38067585</i>
<i>Loss on extinguishment of shares</i>	<i>153340900</i>	<i>1533409000</i>
<i>Closing balance as on 31.03.2014</i>	<i>9988</i>	<i>99885</i>

9. The Assessee Company invested in total equity shares of 153340900 at face value (Rs. 10) on different dates, in its subsidiary company, Asianet News Network Private Limited. The total number of shares, of Asianet News Network was 153505750 out of which the assessee's share was 99.89%. As a result of the Order of High Court of Bombay, there was a reduction in share capital of Asianet News Network from 153340900 to 10,000 and consequently the share of the assessee was reduced proportionately from 153505750 to 9988. The face value of the shares remained the same at Rs. 10 even after the reduction. It is pertinent to note that the shareholding pattern or the percentage of the shares of the

assessee did not reduce. i.e. prior to reduction the percentage of assessee's share was 99.89% and even after reduction the percentage of assessee's shares remained unchanged at 99.89%. This means that the assessee did not relinquish its voting power or extinguish its rights in the shares as the shareholding pattern remained unaffected. This proves that there was no relinquishment or extinguishment of rights that has taken place which would have eventually resulted in a transfer of a capital asset. The following table depicts the shareholding pattern of the assessee at Asianet News Network

<i>Period</i>	<i>Total Number of shares</i>	<i>Number of shares held by the Assessee</i>	<i>Value per share (Rs.)</i>	<i>% of holding</i>
<i>Prior to reduction</i>	<i>153505750</i>	<i>153340900</i>	<i>10</i>	<i>99.88%</i>
<i>After reduction</i>	<i>10000</i>	<i>9988</i>	<i>9988</i>	<i>99.88%</i>

10. The AR has himself said that the shares stands reduced and that the Company, Asia Net News Network had extinguished the number of shares held by reducing term. However, the question of extinguishment of rights with relation to the shareholders does not arise. It was only reduction of shares by way of extinguishing the number of shares and not extinguishing the rights of the shareholders. For the reason that the word "extinguished" is mentioned in the Petition or the Court Order, it does not amount to translate the meaning of the word "extinguishment of rights" as per section 2(47) of the Act. A plain reading of section 2(47) of the Act provides what amount to a transfer of a capital asset"

"transfer in relation to a capital asset includes

- (i) The sale, exchange or relinquishment of the asset; or*
- (ii) The extinguishment of any rights therein; or*
- (iii) The compulsory acquisition thereof under any law; or*
- (iv) In a case where the asset*

Extinguishment of Rights would mean that the assessee has parted with those shares or sold off those shares to a second party. Here, the assessee has not sold off any shares or has not parted with the shares as the it still holds the proportionate percentage which he initially held is still shown as an investment.

The AR has referred to the case of Kartikeya V. Sarabhai' -1997(9) TMI 2 – Supreme Court wherein it was held that, the reduction in the face value of shares amounted to 'extinguishment' within the meaning of section 2(47) and hence the amount received on such reduction was taxable as capital gain. However, with due regard, the facts of the case are contrary to this case as there was no reduction in the face value of the shares.

11. The AR also referred to the case of *DCIT v BPL Sanyo Finance Ltd 312 ITR 63 (Kar)* wherein it was held that the cancellation of allotment of shares leading to forfeiture of share application money on the taxpayers failure to deposit call money resulted into short term capital loss with due regard, the facts and circumstances of the case are different hence not applicable.

Conversely it is seen in the case of *Bennett Coleman & co. Ltd V ALIT (TS-580-ITAT-2011 (Mum))* had accepted the revenue's contention that there is no transfer and that the earlier shares were replaced by another kind of shares and that the percentage of shareholding immediately before the reduction of share capital and immediately after he reduction, remained the same.

Even in the case of *CIT V. Rasiklal Manekial (HUF)-1989 (3) TMI 3 – Supreme Court*: It was held that in case of exchange that one person transfers a property to another person in exchange of another property the property continues to be in existence.

In the light of the above, a total capital loss claimed out of the sale of shares is hereby disallowed and added back to the return of income."

6.2 Assessee's submission:-

The assessee has strongly objected to the above disallowance primarily on the ground that the duly-approved share-reduction scheme clearly resulted in transfer of asset and consequential Long Term Capital Loss. The relevant portions of the assessee's written submission dated 12.07.2017 are reproduced as under:-

"Disallowance of Capital Loss of Rs. 164,48,55,840/-

The appellant had made an investment in the shares of Asianet News P Ltd. [ANNPLJ, the company is a subsidiary company and engaged in the business of telecasting news. The appellant had invested in 12,22,44,130/- equity shares for Rs. 122,24,41,300. The company had incurred losses and the net-worth of the company was totally eroded

The company ANNPL filed a petition before the High Court of Bombay for reduction of capital to set off the loss against the paid up equity.

The court was pleased to grant approval for the scheme and the capital of the company was reduced to Rs. 99,885/- represented by 9988 equity shares of Rs. 10 each. The court also ordered for payment of Rs. 3,17,83,474 as consideration, which was duly received by the appellant company.

We give below details of the investment, sale and loss claimed

<i>No: of shares invested</i>	<i>12,22,44,130</i>
<i>Value of investment</i>	<i>122,24,41,300</i>
<i>Indexed cost</i>	<i>167,66,39,315</i>
<i>Consideration received</i>	<i>3,17,83,474</i>
<i>Loss claimed</i>	<i>164,48,55,840</i>

The AO has in Para 8 has observed that "the issue of contention here is whether a reduction of share capital by reducing the number of shares, without reducing the face value, amounts to a transfer of capital asset. Further, whether such a reduction amounts to transfer of rights?"

The AO has observed in Para 9 that the share holding pattern continues to be same and the appellant did not relinquish its voting rights or extinguish its right in the shares.

Our submission is that

Details of Share Capital of ANNPL

<i>Particulars</i>	<i>No. of shares</i>	<i>Amount</i>
<i>Opening balance of investment in ANNPL</i>	<i>149,544,130</i>	<i>1,495,441,300</i>
<i>Purchase of ANNPL Shares from other Parties</i>	<i>3,806,758</i>	<i>38,067,585</i>
<i>Loss on Extinguishment of Shares</i>	<i>153,340,900</i>	<i>1,533,409,000</i>
<i>Closing Balance as on 31-03-2014</i>	<i>9,988</i>	<i>99,885</i>

There is reduction in share capital of ANNPL under capital reduction scheme. The scheme provides for setting of losses incurred by the company against its paid up equity share capital. The courts have ruled that the number of shares shall be reduced, while the face value of the shares continue to remain at Rs. 10 each fully paid. There is no reduction of face value of the shares but only a reduction in number of outstanding equity shares. This would result in value of investment of Jupiter Capital in ANNPL, reduction in value of such assets is reflected as a loss.

Section 45 is the charging section, Under section 45(1) of the Act, profits and gains arising from the transfer of a capital asset effected in the previous year is chargeable to tax.

Section 48 outlines the methodology for computing capital gains.

Existence of a capital asset owned by the assessee

Section 2(14) defined a capital asset. As per the definition capital asset means property of any kind save certain specified exclusions. The expression property of any kind is of such wide amplitude so

as to take in tangible and intangible assets of any kind other than those comprised in the exceptions carved out in the definition itself, equity shares are covered within the definition of Capital assets.

Transfer of such assets during the year

The scheme of capital gain taxation pre supposes transfer of capital asset, the term transfer is defined in an inclusive manner u/s 2(47) of the Act. Section 2(47) of the act defines transfer to include among other relinquishment of asset or extinguishment of any rights contained therein. In the case of the assessee, its investment in Asianet News Network P Ltd stands reduced. There in an extinguishment of its shares held in that company. Consequently, the assessee has reduced its investment value and number of shares held in its financials. The loss so incurred have been claimed as a capital loss.

The Apex Court has laid down with regard to the meaning of 'transfer' and scope of Section 2(47) of the Act in Kartikeya V. Sarabhail v. CIT(1998) 288 ITR 163(SC). It has been laid down in that decision that, "Section" 2(47) of the Income Tax Act,1961, defines "transfer" in relation to a capital asset. It is an inclusive definition which, inter cilia, provides that relinquishment of an asset or extinguishment of any right there in amounts to a transfer of a capital asset. It is not necessary for a capital gain to arise, that there must be a sale of a capital asset. Sale is only one of the modes of transfer envisaged by section 2(47) of the Act.

Relinquishment of the asset or extinguishment of any right in it, which may not amount to a sale, can also be considered as a transfer and any profit or gain which arises from the transfer of a capital asset is liable to be taxed under section 45. A company, under section 100(1) (c) of the Companies Act, 1956, has a right to reduce the share capital and one of the modes which can be adopted is to reduce the share capital and one of the modes which can be adopted is to reduce the face value of the preference shares.

Section 87(2)(c) of the Companies Act, inter alia, provides that "where the holder of any preference she has a right to vote on any resolution in accordance with the provisions of this subsection, his voting right on a poll, as the holder of such share, shall, subject to the proportion of section 89 and sub section (2) of section 92 be in the same proportion as the capital paid up in respect of the preference share bears to the total paid-up equity capital of the company". Hence, when as a result of the reducing of the face value of the Share, the share capital is reduced, the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such reduction of the right in the capital asset would clearly amount to a transfer within the meaning of that expression in section 2(47) of the Income Tax Act,1961.

"Section 2(47) of the act provides that relinquishment or extinguishment of any right in the capital asset amounts to transfer of a capital asset. In the instant case, the assessee has received cash in lieu of 150 shares and on receipt of that cash, there is extinguishment of the rights of the assessee in those shares. Same is one of the modes of transfer envisaged by section 2(47) of the Act. Extinguishment of the assessee's right is a transfer and any profit Or gain which arises from such transfer is liable to be taxed, under section 45 of the Act.

AANPL has huge losses. The fair market value of the AANPL shares is less than face value. A sale consideration as determined has been paid.

The Karnataka High Court of DCIT v BPL Sanyo Finance Ltd 312 ITR 63(Kar) held that cancellation of allotment of shares leading to forfeiture of share application money on the taxpayer's failure to deposit call money resulted into short term capital loss. The court allowed a claim of Capital loss even in absence of Consideration. The transaction is treated as a transfer.

The Gujarat High Court decision in case of CIT Jayakrishana Harivallabh das (1998) 231 ITR 108 (Guj) observed that full value of consideration could be nil.

The Mumbai High Court in case of CIT v Surat Cotton Spinning & Weaving Mills Pvt. Ltd Concurred with the proposition that full value of consideration could be nil.

It is relevant to quote the observations of Gujarat High Court decision in case of CIT v Jayakrishna Harivallabha das in the Present Context.

There is, therefore, no reasons why a share holder who in distribution of assets has, even if, not received any deemed consideration in satisfaction of his rights and interests in the holding and has thereby suffered total loss, cannot claim the benefit of setoff or carry forward losses suffered by him.

Otherwise a startling and unjust situation may arise where the receipt of even one pulse would enable him claim setoff or carry forward losses as worked out under section 48, while a shareholder who is a shade worse off and gets nothing in the event of such total loss should be denied the effect of section 46(2) read with Sec 71 and 74 of the act and be put to a perpetual loss. Therefore even where receipt is nil on the date of distribution on the liquidation of the company, the case of such shareholder will fall u/s 46(2) and the deemed full value of the consideration for the purpose of sec 48 will be regarded as nil and on that basis the income chargeable under the head capital gains has to be computed u/s 48.

The Sentiments emerging from the aforesaid observations of High Court is applicable to the assessee to conclude that even a nil consideration on capital reduction cannot defeat the computation mechanism u/s 48.

We also draw your attention to the following judgments:

CIT v G. Narasimhan & other 236 ITR 327 (SC)

Anarkali Sarabhai v CIT 224 ITR 422

Shishir Kumar R Mehta v CIT 154 CTR 70

We also draw your attention to the decision of the Hon'ble Supreme Court in the case of CIT v Grace Collis & others 248 ITR 323 and Vania Silk Mills P Ltd v CIT 191 ITR 647.

The Hon'ble bench has observed that the definition of transfer clearly contemplates extinguishment of rights in a capital asset distinct and independent of such extinguishment consequent upon transfer thereof. The court further observed that the expression "extinguishment of any right there in" can be extended to mean extinguishment of right independent of or otherwise than on account of transfer. Thus, even extinguishment of right in a capital asset would amount to transfer and in the case before us since the assessee 's right got extinguished proportionately, to the reduction of capital, it would amount to transfer.

It was held that reduction of capital amount to transfer and accordingly capital loss was held to be allowable in the following decision too:

Zyma Laboratories Ltd v Addl. CIT 7 SOT 164 [Mum]

DCIT v M/s Polychem Ltd ITA No: 4212/M/07

Ginners & Presser Ltd v ITO ITA No. 398/M/07 & 4193/M/07.

Further we also wish to bring to your attention that one of the aspects considered was whether the assessee has received consideration or not. In the case of the appellant, we state that the appellant had received a consideration. This fact is conceded in the assessment order itself

We rely on the decision of the Supreme court in the case of Addl. CIT v Mohan Bhai 165 ITR 166 and Sunil Sidhrath Bhai v CIT 156 ITR 509.

We also bring to your attention to the fact that the appellant has in fact reduced the cost of investments in its books of accounts and has written down the value to the face value of shares held and owned by it.

We also draw your attention to the provisions of section 47 which provides for transaction which are not considered as a transfer and reduction of share capital is not one among them.

Based on the above facts and judicial pronouncements, we pray that the loss claimed by the appellant be allowed in the interest of justice."

6.3 The assessee has made further detailed written submission vide its letter dated 25/10/2017, placing reliance on numerous judicial pronouncements. The judicial pronouncements cited by the appellant have been duly analysed.

The observations / findings of the AO and the Assessee's detailed written submissions have been duly perused. The judicial position on the issue under consideration and the judgments highlighted by the AO as well as the appellant have been taken into due consideration, in the given factual matrix of the present case. The issue is accordingly adjudicated as under:

6.4. The appellant claimed an amount of Rs. 1,64,48,55,840/- as Long Term Capital loss from sale of shares. This loss was stated to accrue against the reduction in share capital of M/s Asianet News Pvt. Ltd (ANNPL) effected under a capital reduction scheme. The AO disagreed with the assessee's claim of Long Term Capital Loss, contending that, the reduction in shares of ANNPL, did not result in transfer of capital asset as envisaged u/s 2(47) of the I.T. Act. The AO come to this conclusion, in light of the finding that, even though the number of shares has reduced. the face value as well as the shareholding pattern remained the same. The assessee on the other hand, has argued that there was real transfer of asset. as the scheme resulted in extinguishment / relinquishment of part of the Assessee's rights, in the shares of ANNPL, and therefore the transaction fell within the purview of section 2(47) of the I.T. Act, resulting in consequent claimable Long Term Capital Loss.

6.5 The core arguments of the appellant in a nutshell are as follows:

- The Assessee has highlighted the fact that, there is reduction in share capital of ANNPL under a duly approved capital reduction scheme. The scheme provides for setting-off losses incurred by the company against its paid up equity share capital. It is contended that the number of shares stood reduced, even while the face value of the shares continued to remain at Rs. 10 each fully paid. The assessee claims that since the scheme resulted in decrease in value of investment of Jupiter Capital in ANNPL, such reduction in value of assets was accordingly claimable as a loss.*

- *The Assessee has made reference to the relevant sections of the I.T. Act. It is explained that, section 45 being the charging section, under the said section, profits and gains arising from the transfer of a capital asset affected in the previous year, was therefore chargeable to tax. It is further stated that, section 48 outlines the methodology for computing capital gains. The appellant therefore claims that, the exercise of reduction of shares between the assessee and M/s ANNPL. was exigible to section 45 as well as the section 48, involving transfer o& chargeability.*
- *The appellant states that, section 2(14) defines a capital asset. As per the said definition capital asset means property of any kind save certain specified exclusions. The appellant submits that, the expression property of any kind is of such wide amplitude so as to rake in tangible and intangible assets of any kind other than those comprised in the exceptions carved out in the definition itself. It is explained by the assessee that, equity shares are covered well within the definition of Capital Assets.*
- *The Assessee has further contended that, the impugned transactions of share-reduction constituted 'transfer' as envisaged in section 2(47) of the I.T. Act. It is explained that, the scheme of capital gain taxation pre supposes transfer of capital asset. The term transfer is defined in an inclusive manner u/s 2(47) of the Act. Section 2(47) of the Act, defines transfer to include among others, relinquishment of asset or extinguishment of any rights contained therein. In the case of the assessee, the appellant submits that, its investment in Asianet New Network P Ltd stands reduced. There is thus an extinguishment of its shares held in that company. Consequently, the assessee has reduced its investment value and number of shares held in its financials. The Assessee therefore contends that, the loss so incurred have been correctly claimed as a capital loss.*
- *Reliance has also been placed on following judicial decisions:*

*Kartikeya V. Sarabhail v. CIT (1998) 1 DTC 219 (SC); (1997) 288 ITR 163(SC);
 DCIT v BPL Sanyo Finance Ltd 312 ITR 63 (Kar);
 CIT v Surat Cotton Spinning & Weaving Mills Pvt. Ltd;
 CIT v Jayakrishna Harivallabha das (1998) 231 ITR 108 (Guj);*

6.6 Having considered the rival submissions and the judicial position in light of the factual matrix of the present case. I do not find myself in agreement with the Assessee's case in view of the following discussion and for reasons summarized as under:

(i) It is seen from the impugned order of the AO that, the contentions of the Assessee on both questions of fact as well as the judicial position have been adequately addressed. The AO after having analysed the share-reduction scheme, and the shareholding pattern (prior and subsequent) to this event, concluded that, there was no effective share-reduction, as envisaged in the section 2(47) of the I.T. Act. The cases relied upon by the appellant have also been distinguished by the AO, in her impugned-order.

(ii) The factual position and the applicability of the judicial decisions in the present case, clearly reveals that the Assessee's claim of capital loss, is not acceptable in view of certain crucial questions, emerging for consideration in the present case. The AO has analysed the Assessee's shareholding pattern, in the impugned order, which has been perused. A comparative-analysis of the opening / closing balances of ANNPL shares and the consequent reduction in numbers / face value and the percentage ratio of share-holding, reveals a clear position that, there was no effective transfer, resulting in Long Term Capital Loss. It would be appropriate in this regard, to extract the chart, from the impugned-order, which reveals the position as under:

Particulars	No. of shares	Amount
Opening balance of investment in ANNPL	149544130	1495441300
Purchase of ANNPL shares from other parties	3806758	38067585
Loss on extinguishment of shares	153340900	1533409000
Closing balance as on 31.03.2014	9988	99885

Period	Total Number of shares	Number of shares held by the Assessee	Value per share (Rs.)	% of holding
Prior to reduction	153505750	153340900	10	99.88%
After reduction	10000	9988	9988	99.88%.

(iii) From the analysis of the above charts, it clearly emerges, that there was no effective transfer, which could result in any real Long Term Capital Loss as claimed by the appellant in the present case. It transpires that the appellant company invested in total equity share of Rs. 153340900/- at face value of (Rs. 10) on

different dates, in its subsidiary company ANNPL). The total number of shares of ANNPL was 153505750 out of which the assessee's shareholding was 99.88%. Pursuant to the share reduction scheme there was a reduction in share capital of ANNPL from 153340900 to 10000 and thus the shares of the Assessee were reduced from 153505750 to 9988. The face value of the shares-reduced remained unchanged at Rs. 10, even after the reduction. The shareholding ratio of the assessee company also remained constant even after implementation of the share-reduction scheme. This percentage continued to be at the previous shareholding figures of 99.88%.

(iv) It is apparent from the aforesaid-comparative analysis that, the total shareholding of the assessee's company remaining the same, did not effectively result in any relinquishment or extinguishment of the appellant's rights in the aforesaid shares in ANNPL. In these facts & circumstances, the AO has held that there was no question of transfer of rights and that, the scheme only resulted in extinguishment of number of shares and not the relinquishment in the real degree / or quantum of the rights, of the shareholding company, as a whole. The AO has reasoned that, for a validly acceptable 'transfer' as per the letter and spirit of section 2(47), the transaction ought to invariably involve the sale, exchange or relinquishment of the asset; or the **extinguishment of any rights therein;** or the compulsory acquisition thereof under any law; / others. The assessee's does not squarely fall into any one out of these conditionalities.

- Having considered the peculiar factual position and in background of the requirements of law laid down in section 2(47), it is clear that. Any extinguishment of rights would involve parting I sale of percentage of shares to another party or the divesting of rights therein. In the present case, the appellant has neither parted with nor sold the shares, as there was no change in the overall percentage of total-shareholding which remained at 99.88% i.e. the same percentage held prior to the implementation of the share-reduction scheme. There is also no extinguishment of rights in as much as the reduction was only in the number of shares and not the face value. I am in agreement with the AO in her finding that, there is no real-transfer as envisaged under section 2(47) as there was no effective relinquishment / extinguishment of rights as claimed by the appellant.

In background of above detailed discussion and facts & circumstances of the case. I am of the considered view that the Long Term Capital Loss claimed does not fall within the purview of capital-gains provisions envisaged under the I.T. Act. The AO's action therefore cannot be interfered with, on this account.

7. The assessee in its written submission from time to time before the AO and during the current appeal-proceeding has placed

reliance on certain judicial pronouncements, which have been duly perused. With due regard to the ratio of the judgments as invoked, it is necessary to appreciate that the peculiar facts & circumstances obtaining in each case, are of paramount importance; for the applicability of the same. In this view of the matter, I find clear distinguishing factors, in the present case, which renders the said judgments inapplicable to the factual-matrix of the present case under consideration.

7.1 The assessee, in its written submission has placed reliance on the ratio of judgment in the case of Kartikeya V. Sarabhail - 1997 (9) TMI -2-(SC). The Assessee has made elaborate arguments in its written submission dated 25/10/2017 contending that, the scheme of capital reduction in shares of ANNPL (Assessee's subsidiary) fell within the purview of definition of transfer envisaged u/s 2(47) of the I.T. Act, and as laid down in the Hon'ble Apex Court judgment in Kartikeya V. Sarabhail v. CIT (1998) 1 DTC 219 (SC) (1997). The assessee holds that, as a consequence of the share-reduction scheme, the assessee has reduced its investment value and number of shares, held, resulting in a valid capital loss. The assessee has reiterated that, in the judgment (cited supra) the Hon'ble Apex Court laid down with regard to the meaning of transfer and scope of section 2(47) that, 'transfer' in relation to a capital asset, was an inclusive-definition, which inter-alia provides that 'relinquishment of an asset or extinguishment of any right there in amounts to a transfer. According to the appellant, it is not therefore necessary for a capital gain, to arise, that there must be sale of a capital asset, as sale is only one such mode of transfer.

The Assessee's contentions have been duly considered. The facts of the present case have been elaborated in the preceding paras. The distinguishing factors have been clearly brought out, by way of a comparative analysis of the share-holding pattern as extracted as para-6.6 above. In the peculiar facts & circumstances of the present case even though there was a certain reduction in 'number of shares' yet there was no effective reduction in the face value of the shares; and more importantly the overall share-holding percentage of the assessee company in M/s ANNPL remained at 99.88% being the same figure of shareholding, prior to the implementation of the impugned-scheme. In this factual background there was no effective transfer or extinguishment of rights, as envisaged in the judgment of the Hon'ble Supreme Court (cited supra). In these facts & circumstances, the said ratio does not squarely apply to the case under adjudication.

7.2 The Assessee has further drawn attention to the decisions of Gujarat High Court in the cases of CIT v Jayakrishna Harivallabha das (1998) 231 ITR 108 (Gui); and Mumbai High

Court in the case of CIT v Surat Cotton Spinning & Weaving Mills Pvt. Ltd; wherein it was observed that in a scheme of similar transfer full value of consideration could be nil. contending that the assessee's case involved real transfer u/s 2(47) of the I.T. Act. The assessee has also referred to the judgments of Vania Silk Mills P Ltd v CIT 191 ITR 647 and that of DCIT v BPL Sanyo Finance Ltd 312 ITR 63 (Kar).

The assessee's core contention raised in this regard is that irrespective of the amount of consideration involved (even if Nil) or the accrual of either positive or negative income, the capital gains / loss provision would be attracted, as certain element of transfer extinguishment of assets / rights has occurred in the process of such transfer. It is the assessee's case therefore, that as a result of the arrangement under the share-reduction scheme under consideration; the resultant capital loss has to be allowed, as the extinguishment of rights by virtue of share reduction. amounts to transfer as described and incorporated in the above stated judgments. The ratio of judgments invoked by the appellant no doubt relates to the issue of capital gains / loss and the wide-meaning of transfer ascribed to the section 2(47). There is no specific dispute with the findings and observations of the Hon'ble court on this aspect of the matter. However, the clear distinguishing factors in the present case are whether the same would squarely apply to what is essentially, in the present case, an intra-group arrangement of reduction of shares between the appellant and its own subsidiary. It is abundantly clear from the preceding discussion, that, the final share holding ratio remained unchanged after the implementation of the share of reduction scheme. The number of shares was reduced but, without tangible reduction in face value or the total-percentage of shareholding held even after such reduction in numbers. These crucial questions therefore remain unaddressed in the present situation and do not correspond to the facts & circumstances in which the above cited judgments were passed. It is therefore held that, the said judicial pronouncements do not squarely apply to the case presently, under consideration.

7.3. The AO in the impugned-order has placed reliance on the ratio of judgments in the case of Bennett Coleman & Co. Ltd V ACIT (TS-580-ITAT-2011) (Mum) and CIT vs. Rasiklal Maneklal (HUF) 1989 (3) TMI 3- (SC).

- The assessee in its written submission dated 25/10/2017 has attempted to distinguish the aforesaid case of Bennet Coleman & Co. Ltd., by relying on the observations of the dissenting member of the 3-Member Bench. Having perused the ratio of the judgment, I am agreeable to the contention of the AO that, the appellant's case under adjudication is fairly-

covered to a large extent, in view of the similarity of the facts & circumstances under consideration in the present case. The core arguments of the revenue in this case (Bennet Coleman & Co. Ltd.) was that the scheme approved by the Hon'ble High Court in that case was on account of reduction of face value of shares for Rs. 10 to Rs. 5 and later consolidating 2 of the resultant shares into 1 equity share and to issue a fresh share of Rs. 10 each. The revenue had raised a similar ground that no shares were parted-away to anyone else and that even post-conversion, the cost of acquisition of shares had to be considered with reference to the cost of original shares. This is quite akin to the present case, where even after the share-reduction, (between the group entities), the effective shareholding percentage remained the same. The assessee's primary argument or distinguishment from the present case, is that a certain consideration was passed on to M/s ANNPL, as against the case of Bennett Coleman & Co. Ltd. This argument however, does not hold ground in view of the fact that the questions of share-valuation and adequacy of consideration have not been examined by the AO, even-though, the scheme was essentially an intra-group arrangement between the subsidiary and a holding company. In this view of the matter, the AO's reliance on the judgment of Bennett Coleman & Co. Ltd. (cited supra) is found to be appropriate and tenable, in the given facts & circumstances. In the case of Bennet Coleman & Co. Ltd. (cited supra) the Hon'ble Court agreed with the revenue's contention that there was no real-transfer (in terms of section 2(47)) and that one set of shares were simply exchanged by another set of shares, while the total shareholding percentage prior / subsequent to the scheme of reduction remained the same.

- *The AO has also pointed towards the case of DT Vs. RasiklalManeklal (HUF) 1989 (3) TMI 3- (SC). In the said case of Hon'ble Apex court held that, in the event of exchange of one property against another (between two entities). the property in question continued to remain in existence.*

In background of the above detailed discussion and facts & circumstances of the present case and in light of the judicial position on the issue at hand. I am in agreement with the AO's action. The disallowance of Rs. 1,64,48,55,840/- and consequent Long Term Capital Loss is accordingly upheld. The Assessee's grounds of appeal in this regard are therefore disallowed."

5. We find that in Para 7.2 of the order of CIT(A), it is noted by CIT(A) that distinguishing factors for which the judgment of Hon'ble Apex Court rendered in the case of Kartikeya V. Sarabhai Vs. CIT (supra) is not applicable are noted in Para 6.6 of his order. In Para 6.6 of the order of CIT(A), it is noted by CIT(A) that as per scheme of reduction of share capital

approved by Hon'ble Bombay High Court, although total number of shares held by the assessee in M/s. Asianet New Network P Ltd. (ANNPL) has been reduced from 153340900 number of shares to 9988 number of shares but the percentage of holding remains unchanged which was noted to be 99.88% prior to reduction as well as after reduction. Because of this, Id. CIT (A) came to the conclusion that though there was a certain reduction in number of shares yet there was no effective reduction in the face value of the shares and more importantly, ratio of share holding of the assessee company in ANNPL remains 99.88% at the same figure of share holding prior to the implementation of the share-reduction scheme approved by Hon'ble Bombay High Court. He has held that in this factual background, there was no effective transfer or extinguishment of rights as envisaged in the judgment of Hon'ble Apex Court. On this basis, he held that this judgment is not applicable in the present case. Now we reproduce the relevant Para i.e. Para no. 5 from this judgment of Hon'ble Apex Court rendered in the case of Kartikeya V. Sarabhai Vs. CIT (supra). The same is as under.

“5. Sec. 2(47) which is an inclusive definition, inter alia, provides that relinquishment of an asset or extinguishment of any right there in amounts to a transfer of a capital asset. While, it is no doubt true that the appellant continues to remain a shareholder of the company even with the reduction of a share capital but it is not possible to accept the contention that there has been no extinguishment of any part of his right as a shareholder qua the company. It is not necessary that for a capital gain to arise that there must be a sale of a capital asset. Sale is only one of the modes of transfer envisaged by s. 2(47) of the Act. Relinquishment of the asset or the extinguishment of any right in it, which may not amount to sale, can also be considered as a transfer and any profit or gain which arises from the transfer of a capital asset is liable to be taxed under s. 45 of the Act.

When, as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Whereas the appellant had a right to dividend on a capital of Rs. 500 per share that stood reduced to his receiving dividend on Rs. 50 per share. Similarly, if the liquidation was to take place whereas he originally had a right to Rs. 500 per share, now his right stood reduced to receiving Rs. 50 per share only. Even though the appellant continues to remain a shareholder his right as a holder of those shares clearly stands

reduced with the reduction in the share capital.”

6. From this Para of this judgment of Hon'ble Apex Court, it is seen that it is held by Hon'ble Apex Court in this case that section 2(47) is containing an inclusive definition and inter alia, it provides that relinquishment of an asset or extinguishment of any right there in amounts to a transfer of a capital asset. The Hon'ble Apex Court has also noted that it is no doubt true that the assessee continues to remain a shareholder of the company even after the reduction of a share capital but it is not possible to accept the contention that there has been no extinguishment of any part of his right as a shareholder qua the company. In that case, the assessee has purchased 90 non-cumulative preference shares, each of the face value of Rs. 1,000 at a price of Rs. 420 per share and subsequently, the company paid Rs. 500 per share upon a reduction of the share capital of the company by way of reducing the face value of each share from Rs. 1,000 to Rs. 500. Under these facts, it was held that this amounts to transfer in view of the provisions of section 2(47) of IT Act. In the present case, the face value per share remains same i.e. Rs. 10 per share before reduction of share capital and after reduction of share capital but the total number of shares has been reduced from 153505750 to 10000 and out of this, the present assessee was holding prior to reduction 153340900 shares and after reduction 9988 shares. In addition to this reduction in number of shares held by the assessee company in ANNPL, the assessee received an amount of Rs. 3,17,83,474/- from ANNPL. Hence it is seen that in the facts of present case, on account of reduction in number of shares held by the assessee company in ANNPL, the assessee has extinguished its right of 153340900 shares and in lieu thereof, the assessee received 9988 shares at Rs. 10/- each along with an amount of Rs. 3,17,83,474/-. As per this judgment of Hon'ble Apex Court rendered in the case of Kartikeya V. Sarabhai Vs. CIT (supra), there is no reference to the percentage of share holding prior to reduction of share capital and after reduction of share capital and hence, in our considered opinion, the basis adopted by the CIT(A) to hold that this judgment of Hon'ble Apex Court is not applicable in the present case is not proper and in our considered opinion, this is not proper. In our considered

opinion, in the facts of present case, this judgment of Hon'ble Apex Court is squarely applicable and by respectfully following this judgment of Hon'ble Apex Court, we hold that the assessee's claim for capital loss on account of reduction in share capital in ANNPL is allowable. We hold accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 29th November, 2018.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.