IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "B"

Before Shri R.S.Syal (AM) & Shri N.V. Vasudevan (JM)

I.T.A.No.7604/Mum/07 (Assessment Year: 2004-2005)

Jt.Commissioner of Income-Tax (OSD), Range-3(3), Mumbai.	Shri Mukesh D.Ambani, Sea Wind, 39, Cuffe Parade, Colaba, Mumbai-400 005.
Vs.	
APPELLANT	RESPONDENT

PAN/GIR No. : AADPA3705D

Assessee by : Shri Arvind Sonde, Jain, Devesh Vasavada

Department by : Shri.Bishwajit Bhattacharyya

Additional Solicitor General of India.(ASG)

ORDER

PER N.V. VASUDEVAN, JM :-

This is an appeal by the Revenue against the order dated 31.10.2007 of CIT(A)-III, Mumbai, relating to A.Y. 04-05.

2. The Assessee is an individual. He is the chairman and Managing Director of M/s.Reliance Industries Ltd. He was appointed Managing Director of a company by name M/S.Reliance Communication and Infrastructure Ltd. (RCIL) w.e.f. 11.3.2004. RCIL held fully paid equity share of face value of Re.1/- per share of another company by name Reliance Infocom Ltd. (RIC).

3. As already stated the Assessee became Managing Director of RCIL w.e.f. 11.3.2004. On 13.3.2004 the Board of Directors of RCIL resolved that the company do borrow funds not exceeding Rs.50 Crores from its managing Director, viz., the Assessee, in the form of an interest free loan. The resolution further provides that three of RCILs directors and the Dy. Company secretary of RCIL are authorized to negotiate, finalise and settle the terms and conditions of the borrowing including offering of security of the equity shares held by RCIL in RIC and to sign all documents/agreements/writing/papers as may be necessary with regard to the above loan. The Assessee did not participate in the said meeting as he was a person concerned and/or interested in the resolution.

4. On 13.3.2004, RCIL addressed a letter to the Assessee requesting for a loan of Rs.50 crores. On 15.3.2004, the Assessee expressed his willingness to provide interest free loan of Rs.50 crores for a temporary period.

5. On 17.3.2004, RCIL informed the Assessee that it was willing to pledge 50 crores equity shares of Re.1/-each of RIC owned by it as security for the loan to be advanced by the Assesee.

6. On 23.3.2004 and 24.3.2004, the Assessee disbursed a sum of Rs.50 crores to RCIL.

7. RCIL held shares of RIC in physical form. On 25.3.2004, RCIL dematerialized the shares held by it in physical form through a depository participant Reliance Capital Ltd. The client ID of RCIL with the Depository Participant Reliance Capital Ltd., was ID No. 10011366.

8. On 31.3.2004, the Assessee informed RCIL that 50 crores equity shares of Re.1/-each of RIC offered as security by way of pledge for the loan given by the Assessee to RCIL be transferred to the Demat Account of the Assessee held with the Depository Participant, HDFC Bank Ltd., the Client's ID of the Assessee being 42646206 and Depository IDNo. being IN300476. The letter further mentions that the transfer of shares to the above account of the Assessee is by way of pledge and as a security for the loan given by the Assessee to RCIL.

9. On 31.3.2004, the demat account of the Assessee with HDFC Bank Ltd. was credited with 50 Crores shares of face value of Re.1/- of RIC from the Demat account of RCIL with Reliance Capital Ltd.

10. As per section 187C of the Companies Act, 1956, a person, whose name is entered, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form (Form No.I) as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share. Similarly the person who holds beneficial interest in shares has to make a declaration to the company (Form No.II) specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed. The Assessee as well as RCIL made such a declaration informing RIC on 31.3.2004. As per sec.187C(4) where any such declaration is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, file a return in the prescribed form (Form No.III) with the Registrar of Companies with regard to such declaration. In the present case RIC had to file such a return within 30 days from 31.3.2004. RIC did file such a return but the same was filed on 28.12.2004. In Form No.III, filed with the Registrar of Companies, RIC has mentioned that the nature of the beneficial interest was that the shares were held in trust towards the pledge of secured loan by the Assessee.

11. On 7.5.2004, RCIL by its letter proposed to repay the aforesaid loan on 14.5.2004. On 12.5.2004, the Assessee gave a delivery instruction slip to its depository participant HDFC Bank Ltd. for transferring 50 crores equity shares of RIC to RCIL. Accordingly on 12.5.2004, the shares in question were retransferred to the account of RCIL with its depository participant Reliance Capital Ltd. The loan was also discharged by RCIL.

12. The fact that the Assessee gave loan to RCIL on the security of pledge of shares of RIC and the fact that the said loan was discharged by payment was duly recorded in the books of accounts/Annual Accounts of RCIL.

13. According to the AO there was a transfer by way of sale of 50 crores shares of RIC of the face value of Re.1/- by RCIL to the Assessee on 31.3.2004 when the Demat Account of the Assessee held with the Depository Participant, HDFC Bank Ltd., the Client's ID of the Assessee being 42646206 and Depository IDNo. being IN300476 was credited with 50 Crores shares of face value of Re.1/- of RIC from the Demat account of RCIL bearing ID No. 10011366 with the Depository Participant Reliance Capital Ltd. According to the AO there was a necessity for the Assessee to acquire 50 crores shares of RIC because of the struggle to have control and management of RIC. The Assessee therefore acquired 50 crores shares of RIC of the face value of Re.1/- at its face value of Re.1/- although the market value as on the date of the transfer of shares were Rs.53.71 Ps. per share. Thus shares of the value of Rs.2685 crores were acquired by the Assessee for just Rs.50 crores. According to the AO in view of the provisions of Sec.2(24(iv) of the Act, the difference between the value of the shares and the value at the which the Assessee purchased the shares, have to be assessed as deemed income in the hands of the Assessee. Sec. 2(24) is as follows:

> Sec.2(24): Income includes
>
> (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any such paid by any such company in respect of any obligation which, but for such payment, would have been payable by the Director or other person aforesaid.

According to the AO, there was a transfer of ownership in shares by way of sale when the Assessee was recognized as beneficial owner by the Depository participant. The legal consequence of the Assessee being recognized as the beneficial owner of 50 crores shares of RIC by the depository participant was that he was to be considered as owner for all purposes. Thus there was a benefit obtained by the Assessee from RCIL in which he was a director. The benefit was acquiring 50 crores shares of RIC at the face value of Re.1/- per share as against the market price of Rs.53.71 ps. Per share. The difference between the market price and the price at which the Assessee acquired those shares was liable to be assessed as deemed income u/s.2(24) (iv) of the Act. According to the AO, the Assessee realized the tax implications of the above transaction and accordingly put forth a case as if the transaction of sale of 50 crores of shares of RIC of face value of Re.1/- was in fact a transaction of pledge whereby 50 crores shares were offered as security for due repayment of a loan of Rs.50 crores availed by RCIL from the Assessee. According to the AO the façade of loan transaction was put forth by the Assessee to justify the transfer by way of sale of 50 Crores shares of RIC to the Assessee at a price of Re.1/- per share although their market value was Rs.53.71 per share on the date of transfer to enable the Assessee to increase his equity share holding in RIC.

14. In the course of assessment proceedings the AO called upon the Assessee to show cause as to why the difference between the value of the shares and the value at the which the Assessee purchased the shares of RIC should not be assessed as deemed income u/s.2(24)(iv) of the Act.

The Assessee put forth a plea before the AO that the transaction in question was a pledge of shares by RCIL to the Assessee as security for a loan of Rs.50 crores that the Assessee had given to RCIL. The Assessee narrated the above sequence of events which we have set forth in the earlier paras 2 to 12 of this order.

15. The Assessing Officer called for information u/s.133(6) of the Act, from Reliance Capital Ltd., the depository participant with whom RCIL held shares of RIC in demat form, prior to the Assessee being recognized as the beneficial owner of 50 crores shares of RIC as to whether RCIL had applied for creation of pledge of 50 crores shares, whether it had recorded any such pledge in its records and procedure if any for creation of pledge of shares and how the transaction of pledge is recorded in the holding statement of the client.

16. M/s.Reliance Capital Ltd., vide its reply dated 20.11.06, informed the AO that

1. RCIL applied for dematerilization of 506731900 shares of RIC on 25.3.2004 and on 31.3.2004, 50 crores shares of RIC were transferred to the account of the Assessee.

2. No pledge request in the account of RCIL was received and therefore there was no transaction or report of pledge.

3. The procedure for creating a pledge is laid down by National Securities Depositories Ltd. in bye-law 12.9.1 to 3 of the bye laws and the said procedure was required to be followed by all depository participants.

The relevant extract of the bye laws was also given which is as follows:

> "9.9.1. If a Client intends to create a pledge on a security owned by him, he shall make an application in this regard in the form specified in the Business Rules to the Depository through the Participant, who has his account in respect of such securities.
>
> 9.9.2. The pledgor and the pledgee must have an account in the Depository to create a pledge. However, the pledgor and the pledgee may hold an account with two different Participants.
>
> 9.9.3. The Participant after satisfaction that the securities are available for pledge shall make a note in its records, of the notice of pledge, and forward the application to the Depository."

17. The AO, after receipt of the above reply from Reliance Capital Ltd., issued a show cause notice to the Assessee dated 7.12.2006 calling upon the Assessee to show cause as to why the transaction of transfer of 50 crores shares of RIC should not be treated as sale of shares by RCIL to the Assessee because of the following circumstances:

1. The disbursement of the loan by the Assessee was on 23rd and 24th march, 2004 whereas the alleged pledge of shares by way of security for repayment of the said loan was on 31.3.2004, which was against the normal practice in the trade where security is given prior to disbursement of the loan.

2. The Depository Participant of RCIL viz., Reliance Capital Ltd. had informed that there was no request for recognizing any pledge. Even the NSDL had not been informed about the pledge.

3. The purported transaction of loan of Rs.50 crores is not supported by any contemporaneous third party evidence nor is it grounded on commercial reality. In this regard the AO pointed out that the Registrar of Companies was informed only on 28.12.2004 about the fact that RCIL was the beneficial owner of 50 crores shares of RIC though the Assessee was shown as the beneficial owner in the register of Depository Participant. RIC had to file such a return within 30 days from 31.3.2004 the date of the pledge but had filed the return only on 28.12.2004.

4. It was unusual for a borrower to offer shares worth Rs.2685 crores as security for a paltry loan of Rs.50 crores.

18. The Assessee by its reply dated 20.12.2006 pointed out that

1. The order of performance of a contract is not relevant as long as the same is performed by both the parties to be transaction. The Assessee pointed out that there was nothing wrong in first giving the loan and then taking security for the loan. The Assessee also pointed out that when the loan was given, the shares were in physical form and had to be dematerialized and hence after dematerialization the same was given as security.

2. With regard to the NSDL bye-laws prescribing a particular mode of creating pledge of shares, the Assessee submitted that those regulations are not mandatory. The Assessee took a stand that the parties to the contract can device a particular method by which pledge of shares had to be done. The Assessee took a stand that u/s.172 of the Contract Act, 1872, a pledge is bailment of goods as security for payment of debt or performance of a promise. The bailor being the pawnor and the bailee being the pawnee. The Assessee submitted that u/s.148 of the Contract Act, 1872, a bailment is delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee". According to the Assessee the delivery of possession could be actual or constructive. The mode referred to by the AO prescribed in the NSDL bye-laws is constructive delivery and the mode by which the Assessee took delivery was actual delivery. Thus the Assessee submitted that the mode of creation of pledge as claimed by the Assessee was in accordance with law.

3. With regard to the disproportionate quantum of value of security vis-à-vis the loan amount, the Assessee submitted that the same is as per mutual agreement of parties.

4. With regard to the absence of any contemporaneous third party evidence to show that the transaction was in reality a loan, the Assessee relied on all the documentation and filing of the necessary returns with the registrar of companies.

5. The Assessee relied on the circumstance that the loan was duly repaid and the shares were again retransferred to RCIL, which would not have happened had it been a case of only a sale of shares.

19. The AO however for the reasons given in the show cause notice 7.12.2006, was of the view that, the transaction of transfer of 50 crores shares of RIC by RCIL to the Assessee, was by way of sale by RCIL to the Assessee and not by way of pledge. Apart from those reasons, the AO also referred to Regulation 58 of the SEBI(Depositories & Participants) Regulations 1996, which provides as follows:

> 58. (1) If a beneficial owner intends to create a pledge on a security owned by him, he shall make an application to the depository through the participant who has his account in respect of such securities.
>
> (2) The participant after satisfaction that the securities are available for pledge shall make a note in its records of the notice of pledge and forward the application to the depository.
>
> (3) The depository after confirmation from the pledgee that the securities are available for pledge with the pledgor shall within fifteen days of the receipt of the application create and record the pledge and send an intimation of the same to the participants of the pledgor and the pledgees.
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> (4) On receipt of the intimation under sub-regulation (3) the participants of both the pledgor and the pledgee shall inform the pledgor and the pledgee respectively of the entry of creation of the pledge.

20. The above regulations are framed pursuant to Sec.30 of the Securities and Exchange Board of India Act, 1992 (Act 15 of 1992) read with Sec.25 of the Depositories Act, 1996 (DPA). Sec.12 of the Depositories Act, 1996 (DPA) provides as follows:

> 12. Pledge or hypothecation of securities held in a depository
> (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.
> (2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.
> (3) Any entry in the records of a depository under sub- section (2) shall be evidence of a pledge or hypothecation.

21. Sec.25 of the Depositories Act, 1996 gives power to SEBI to frame rules to carry out the puroses of the DPA

> 25. Power of Board to make regulations
> (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Board may, by notification in the Official Gazette, make regulations consistent with the provision of this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for -

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

22. Similarly the Depositories have power to make bye-laws and this is provided in Sec.26 of the DPA:

26. Power of depositories to make bye-laws

(1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for -

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

23. Thus the bye-laws of NSDL as well as the SEBI(Depositories & Participants) Regulations 1996, referred to by the AO in his order are duly framed pursuant to power conferred by DPA. The question whether they are mandatory or directory will be dealt with a little later.

24. For the above reasons, the AO held there was a transfer of ownership in shares of RIC by way of sale by RCIL to the Assessee at a price of Re.1/- per share as against the market price of Rs.53.71Ps. per share. There was therefore a benefit or perquisite to the extent of difference between the market price and the price at which shares were allotted to the Assessee viz., Rs.2635 crores (2685 crores Less 50 crores) and the same was brought to tax as income of Assessee u/s.2(24(iv) of the Act. The AO relied on the decision of the Hon'ble Bombay High Court in the case of D.M.Neterwalla Vs. CIT 122 ITR 880 (Bom) wherein it was held benefit or perquisite received by a director from the company has to be taxed as income in the hands of the director.

25. On appeal by the Assessee, the CIT(A) held that the transaction in question was a pledge and not sale of shares. In coming to the above conclusion, the CIT(A) was of the view that the compliance by the Assessee under the Companies Act, 1956 and the return of the shares by the Assessee to RCIL on discharge of the loan, could not be ignored by the AO. On the applicability of the bye-laws of NSDL and regulations of SEBI referred by the AO in the order of Assessment, the CIT(A) held that the regulations referred to by the AO were not mandatory. He held that parties are at liberty to enter into transaction of pledge in a mode other than the one prescribed in the rules and there is no bar in the rules or regulations referred to by the AO prohibiting parties from carrying out a transaction of pledge in a mode different from those regulations.

26. Aggrieved by the order of the CIT(A), the revenue is in appeal before the Tribunal. The following are the grounds raised by the revenue.

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the acquisition of 50 crore shares of Reliance Infocomm Ltd. from

Reliance Communication Infrastructure Ltd. by the Assessee as pledge and loan transaction."

2. "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the Assessee did not benefit by acquiring the shares of Reliance Infocomm Ltd. from Reliance Communication Infrastructure Ltd. as the transaction of 50 crores shares of Reliance Infocomm Ltd. was a loan and pledge transaction."

3. " On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in directing the assessing officer not to treat Rs. 2635/- crore as income of the Assessee u/s. 2(24)(iv) of the Income-tax Act, 1961."

4. "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in directing the assessing officer not to treat loan transaction as a façade created only to justify the transfer of 50 crore shares of Reliance Infocomm Ltd. to the assessee at a price of Rs. 1/- per share although the market value thereof was Rs.53.71 per share and in further not holding that this exercise was carried out in order to increase the equity share holding of the assessee in Reliance Infocomm Ltd."

5. " On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the assessing officer has erred technically in valuing the shares of Reliance Infocomm at Rs.53.71 per share."

6. " On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in admitting Demat account transaction pertaining to A.Y. 2005-06 in respect of transfer of shares of Reliance Infocomm Ltd. to the account of Reliance Communication Infrastructure Ltd."

7. " The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

27. We have heard the submissions of the learned Additional Solicitor General Mr.Bishwajit Bhattacharyya,(ASG) who appeared on behalf of the department and Mr.Arvind Sonde, who appeared on behalf of the Assessee.

28. The learned ASG submitted that there was a transfer of 50 crores shares of RIC of the face value of Re.1/- by RCIL to the Assessee on 31.3.2004 when the Demat Account of the Assessee held with the Depository Participant, HDFC Bank Ltd., the Client's ID of the Assessee being 42646206 and Depository IDNo. being IN300476 was credited with 50 Crores shares of face value of Re.1/- of RIC from the Demat account of RCIL bearing ID No. 10011366 with the Depository Participant Reliance Capital Ltd. Since there was a transfer of ownership in shares by way of sale, the Assessee was recognized as beneficial owner by the Depository participant. The legal consequence of the Assessee being recognized as the beneficial owner of 50 crores shares of RIC by the depository participant was that he was to be considered as owner for all

purposes. In this regard he submitted that the letter of Reliance Capital Ltd., the depository participant, with whom RCIL held shares in Dematerialized form had clearly mentioned in the letter addressed to the AO that there was no pledge of shares recognized and that the transfer of 50 crores shares of RIC from the Account of RCIL to that of the Assessee was by way of sale. He also emphasized that Reliance Capital Ltd., in the said letter has clearly brought out that the procedure for pledge of shares was mandatory and that the same had not been complied with by the Assessee. According to him even assuming for the purpose of argument that the Board resolution regarding availing of loan from the Assessee by RCIL and offering shares as security by way of pledge, the form of declaration filed by the Assessee and RCIL in view of provisions of Sec.187C of the Companies Act, 1956, with RIC, the return filed by RIC with the registrar of Companies in view of the provisions of Sec.187C of the Companies Act, 1956, the return of loan by RCIL and transfer of shares again by the Assessee to RCIL, are all genuine, the legal consequence of the Assessee being recognized as the beneficial owner of 50 crores shares of RIC by the depository participant was that he was to be considered as owner for all purposes. Since there was a transfer of ownership in shares on the Assessee being entered as a beneficial owner by the depository participant, the transaction had to be considered as a sale and not as pledge as contended by the Assessee. He submitted that the CIT(A) erred in totally ignoring the binding nature of the regulations of SEBI pointed out by the AO in the order of Assessment. In this regard, he submitted that the regulations and bye-laws pointed out by the AO in the order of assessment are mandatory and the only mode in which a pledge of shares could be effected was to have followed those procedures. It was his contention that after the introduction of the system of dematerialization of shares there was no possibility of making a pledge of shares except in the manner laid down by the regulations referred to by the AO in the order of assessment. The procedure followed by the Assessee to have him recognized as beneficial owner of the shares with the depository participant and still claiming that he was holding the shares as a pledgee is contrary to the provisions of the DPA. According to him the provisions of Sec.172 of the Contract Act, 1872, have to be harmonious construed with the later legislation DPA and to the extent the later law prescribes a particular mode of creation of pledge, the same should prevail. In this regard he referred to the provisions of Sec.172 of the Contract Act, 1879, which defines Pledge to mean, a bailment of goods as security for payment of debt or performance of a promise. The bailor being the pawnor and the bailee being the pawnee. Under 148 of the Contract Act, 1872, a bailment is delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor”. The person to whom they are delivered is called the “bailee”. The delivery of possession could be actual or constructive. It was submitted by him that in the case of shares which are held in dematerialized form actual delivery is not possible because the shares do not exist physically and therefore the only mode of delivery in such cases will be constructive delivery as laid down in the SEBI procedures referred to in the order of the AO.

29. The learned counsel for the Assessee submitted that as far as the provisions of the Contract Act, 1872 is concerned, a pledge could be created by either having actual delivery or constructive delivery. It is his submission that the procedure laid down by SEBI is only when the parties choose to have constructive delivery. It was his submission that the DPA does not lay down in negative terms that a pledge cannot be created in any other manner. In this regard he drew our attention to the Sec.28 of the DPA which reads as follows:

28. Application of other laws not barred

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

30. It was his submission that the above provisions clearly bring out that the mode of delivery of shares by way of bailment as security viz., by recognizing the pledgee as beneficial owner, after complying with the other procedure under the Companies Act, 1956 is still permissible. According to him the parties to a contract are at liberty to adopt any manner permissible in law. According to him, the intention of the parties cannot be ignored and importance attached to the form or manner in which a transaction has been carried out. It was submitted by him that the transfer of shares in the name of the Assessee as beneficial owner with the depository participant was physical delivery of shares taken by the Assessee as pledgee and not as owner of shares and this fact would be clear if other circumstances viz., the Board resolution regarding availing of loan from the Assessee by RCIL and offering shares as security by way of pledge, the form of declaration filed by the Assessee and RCIL in view of provisions of Sec.187C of the Companies Act, 1956, with RIC, the return filed by RIC with the registrar of Companies in view of the provisions of Sec.187C of the Companies Act, 1956, the return of loan by RCIL and transfer of shares again by the Assessee to RCIL., are seen together. It was his further contention that the entry with a depository participant recognizing the Assessee as a beneficial owner is not conclusive and the parties are liberty to show that the Assessee in fact is not the beneficial owner.

31. He made a reference to the provisions of Sec.19 of the Sale of Goods Act, 1930 which says that transfer of ownership in goods will take place when parties intend that transfer should take place. He submitted that in ascertaining the intention of the parties regard should be had to the terms of the contract, the conduct of the parties and the circumstances of the case. He pointed out that those provisions will apply only when there is a contract of sale. According to him there was no contract for sale of shares and therefore those provisions will not apply. Without prejudice it was submitted that the terms of the contract viz., loan of Rs.50 crores on the promise of pledge of shares as security, conduct of parties in declaring that the Assessee though recognized as beneficial owner of shares, is in fact not beneficial owner and other circumstances of the case, viz., the shares were retransferred on repayment of the loan, clearly show that there was no transfer of ownership in goods.

32. It was further submitted that the veracity of the documents filed by the Assessee has been doubted as a façade to create a situation as if there was a loan and the shares were given as security for the loan. The conclusions arrived at by the AO for coming to such conclusions are purely on surmises and contrary to presumption regarding genuineness of minutes of meetings as laid down by the Companies Act, 1956, statutory forms filed by the Assessee, RCIL and RIC as required under the Companies Act, 1956, which has been accepted by the authorities under the Companies Act, 1956.

33. We have considered the rival submissions. The main question that arise for our consideration is as to whether there was a transfer by way of sale of 50 crores shares of RIC of the face value of Re.1/- by RCIL to the Assessee on 31.3.2004 when the Demat Account of the

Assessee held with the Depository Participant, HDFC Bank Ltd., the Client's ID of the Assessee being 42646206 was credited with 50 Crores shares of face value of Re.1/- of RIC from the Demat account of RCIL bearing ID No. 10011366 with the Depository Participant Reliance Capital Ltd. or whether the said transfer was only by way of delivery of possession of shares as security for repayment of a loan availed by RCIL from the Assessee.? In deciding the above question, we have to delve on the following aspects.

a) What is the mode of creating pledge of shares prior to the DPA? How sale of shares is effected?

b) With the introduction of the concept of dematerialization of share certificate and holding them in dematerialized form, whether the only mode in which a pledge can be created is in accordance with the provisions of Sec.12 of the DPA and the rules and regulations made under the DPA? How sale of goods Act, 1930 would apply in the light of the DPA to shares held in dematerialized form?

c) Whether the parties are liberty to show, notwithstanding the fact that a person is shown as beneficial owner in the register of a depository participant, that he is not the beneficial owner of shares but only holds the shares as a pawnee and as security for repayment of debts due by the real beneficial owner? If yes, whether on the facts and the circumstances of the present case can it be said that the Assessee held shares not as beneficial owner but as Pawnee as security for repayment of debts? What is the veracity of the claim of the Assessee regarding existence of a pledge, especially in the light of the allegation of the AO that the purported transaction of loan of Rs.50 crores is not supported by any contemporaneous third party evidence nor is it grounded on commercial reality and the further allegation that the parties to the transaction were group companies whose control was management was in the hands of the Assessee. The only third party evidence of filing the return u/s.187C of the Companies Act, 1956 with the ROC which was filed late by about 8 months.

d) To create a pledge of shares is it still possible to have physical delivery of shares after the introduction of the concept of dematerialization of shares and whether to this extent do the provisions of Sec.172 of the Contract Act, 1872 stand modified? If yes, what is the effect of the provisions of Sec.28 of DPA?

I. Mode of creating Pledge of shares prior to DPA and Mode of making a sale of shares prior to DPA:

34. Sec.2(46) of Companies Act, 1956 defines "Share" as a share in the share capital of the company. Sec.82 of the Companies Act, 1956 lays down that shares or other interest of any member in a company shall be movable property, transferrable in the manner provided by the Articles of the company. Sec.2 (7) of the Sale of Goods Act, 1930 defines "Goods" to mean every kind of movable property other than actionable claims and money **and includes stock and shares**, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Since shares are movable property and goods within the meaning of Sale of Goods Act, 1930, the transfer of ownership by sale of shares

by one person to other person will be governed by the Sale of Goods Act, 1930. What is Sale and Agreement to sell of goods is laid down by Sec.4 of the SGA, which is as follows:

> **4. Sale and agreement to sell**
> (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
>
> (2) A contract of sale may be absolute or conditional.
>
> (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
>
> (4) An agreement to sell becomes a sale when when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

35. The expression Contract of sale is a generic term comprising both executory and executed contracts of sale. When the contract is executory it is called "Agreement to sell". A sale is effected only when in pursuance of contract of sale the transfer of property in the goods takes place on payment of the price. Thus it is only when there is transfer of ownership in goods from the seller to the buyer that a sale is complete. Sec.19 of the Sale of Goods Act, 1930 lays down that Property passes when intended to pass. It lays down

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Section 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

36. Generally a sale of shares would be complete when the seller delivers the original share certificate together with the instrument of transfer duly signed by the seller in favour of the purchaser or in blank, to the purchaser and the consideration for the transfer is paid by the purchaser to the seller. This will be the position where the intention of the parties was to enter into a contract of sale/sale.

37. A Pledge is defined in Sec.172 of the Contract Act, 1872, as follows:

> 172: The Bailment of goods as secutiry for payment of debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The Bailee is called the 'pawnee'.

Sec.148 of the Contract Act, defines "Bailment" "bailor",and "bailee".

A " bailment " is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".
Explanation.-If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Sec.149.Delivery to bailee how made: The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

38. Thus delivery of shares by way of security for payment of a debt can be either physical or symbolic. Generally a pledge of shares is created by delivery of share certificates, with or without instrument of transfer duly signed by the owner of the shares either in blank or in favour of the pawnee, as security for repayment of a debt availed or to be availed.

II. The Depositories Participants Act, 1996: (DPA)

39. With a view to regulate depositories in securities and for matters connected therewith or incidental thereto, the Parliament passed DPA, which came into force on 20/9/1995. The DPA introduced the concept of holding securities/shares in dematerialized form rather than in physical or material form. Dematerialization is the process by which holding of physical share certificate is converted into an electronic record. Just as a bank holds ones money in a savings account, the record of ones share holdings is held by an institution called a depository. Since demat shares are an electronic record, they cannot be fake as was the case when shares were held in physical form. There is no question of bad delivery. One need bother about the safe custody of shares because there do not exist physically. Because they are in electronic form, there is nothing like the concept of marketable lot-even one share can be bought or sold as against the old system where shares can be traded only in marketable lot. Bonus/rights shares allotted are immediately credited to beneficiaries account. The beneficiary can receive the statement of account of transactions/holdings periodically, just like a bank statement. Transaction fees charged by brokers are less because of the reduced risks that they take when the shares were in physical form like shares turning out to be objectionable, fake, forged. The system of depository is just like operating a bank account where shares, instead of money, are kept. A depository should be a company formed under the Company Act, 1956 and should have been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992. Presently, there are two depositories registered with SEBI, namely:

National Securities Depository Limited (NSDL), and
Central Depository Service Limited (CDSL)

40. The depositories can provide their services to investors through their agents called depository participants. These agents are appointed subject to the conditions prescribed under Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and other applicable conditions. Thus the Participant is the intermediary between the depository and the owner of the security/share. A holder of shares can surrender his certificate in physical form to the depository through the Participant. On receipt of such a request the issuer (the company whose shares are sought to be held in dematerialized form), will cancel the certificate and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly. A depository shall, on receipt of information under from the issuer that its name has been recorded as registered owner enter the name of the person holder of the shares who surrender them for dematerialized as the beneficial owner of such shares in its records. In the depository system, the ownership of securities dematerialized is bifurcated between Registered Owner and Beneficial Owner. According to the Depositories Act, 'Registered Owner' means a depository whose name is entered as such in the register of the issuer. A 'Beneficial Owner' means a person whose name is recorded as such with the depository. Though the securities are registered in the name of the depository actually holding them, the rights, benefits and liabilities in respect of the securities held by the depository remain with the beneficial owner. For the securities dematerialized, NSDL/CDSL is the Registered Owner in the books of the issuer; but ownership rights and liabilities rest with Beneficial Owner. All the rights, duties and liabilities underlying the security are on the beneficial owner of the security. Every depository shall maintain a register and an index of beneficial owners in the manner provided in sections 150, 151 and 152 of the Companies Act, 1956. The DPA does not make dematerialization of shares mandatory. A beneficial owner of shares held in dematerialized form can opt for having physical form of shares and vice versa. But if one wants to sell the shares through the stock market, then they have to dematerialize their holding into electronic form.

41. In our case, the "registered owner" of the shares in question is NSDL. The "issuer" is RIC. HDFC Bank Ltd., and Reliance Capital Ltd., are the "depository participants". The beneficial owner is the Assessee or RCIL respectively.

42. Under the DPA shares are not held in physical form. DPA has made provisions if the beneficial owner wants to pledge the shares. Sec.12 of the DPA provides as follows:

> 12. Pledge or hypothecation of securities held in a depository
>
> (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.
>
> (2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.
>
> (3) Any entry in the records of a depository under sub- section (2) shall be evidence of a pledge or hypothecation.

43. We have already seen the regulations framed regarding procedure to be followed in case of pledge of shares and how security is enforced by the creditor and how the security is discharged on due repayment and incidental matters. Hence, the same is not being repeated.

III. Whether after the introduction of dematerialization of shares, whether a pledge of shares can take place only in the manner laid down in those regulations.

44. With the introduction of the system of holding shares in dematerialized form, corresponding changes were made in the Companies Act, 1956. Some of those changes which may be material for a decision in the present case are:

> **"Sec.41. Definition of "member"**
>
> (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of a company, and on its registration, shall be entered as members in its register of members.
>
> (2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.
>
> **(3) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.**

Sec.41(3) of the Companies Act, 1956 recognises the person whose name is entered in the records of a depository as a beneficial owner to be a member of the company.

> Sec.83. Each share in a company having a share capital shall be distinguished by its appropriate number.
>
> Provided that nothing in this section shall apply to the shares held with a depository."

Under the Depository system, shares are in fungible form and therefore there is no distinctive numbers and therefore a proviso to Sec.83 was introduced to highlight this aspect.

> In section 111A the Companies Act, for sub-section (3), the following sub-section was substituted, namely:-
>
> > "(3) The Company Law Board may, on a application made by a depository, company, participant or investor or the Securities Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992, or regulations made thereunder or the Sick Industrial Companies (Special Provisions)Act, 1985, or any other law for the time being in force, within two months form the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records."

The entry of a name in the register of depository is also subject to rectification by the Company Law Board under the provisions of Sec.111A(3) of the Companies Act, 1956 and hence the rectification of register of depository has also been included in those provisions.

Sec. 152A of the Companies Act, 1956 provides that the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of the Companies Act, 1956.

45. Sec. 28 of the DPA provides that the provisions of the DPA shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities. Therefore, application of all other laws dealt with by the DPA which were in force as on the date on which the DPA came into force are not affected. In view of the provisions of Sec.28 of the DPA can it be said that a pledge of shares has to be created only in the manner contemplated by Sec.12 of the DPA. The Provisions of Sec.12 of the DPA or any other provision of DPA do not provide that a pledge created otherwise than in the manner contemplated by DPA is null and void. Thus the provisions of Sec.12 of the DPA are directory and not mandatory. In our view it cannot be said to be the only manner in which a pledge of shares has to be created is as laid down by Sec.12 of the DPA. It may the most desirable way of creating a pledge so that a third party who deals with securities on the basis of entry in the records of a depository without knowledge of any underlying pledge of those securities are put on notice about existence of any prior interest/encumbrance on the securities. DPA is a special law. It does not abrogate the application of the general law as contained in the Companies Act, 1956, Contract Act, 1872, The Sale of Goods Act, 1930. Sec.28 of DPA is explicit and clear in this regard.

46. We have already seen that to create a valid pledge it is necessary that the security should be delivered to the pawnee either physically or constructively. Once, shares are dematerialized they are no longer in physical form. In such an event, how does one effect delivery of shares. The mode suggested by the DPA is constructive delivery, viz., the Participant acknowledging in its register of beneficial owners the fact that the securities are also held as security for due repayment of debt by the beneficial owner to the pawnee. In the present case, it is the claim of the Assessee that it has taken physical possession by having his name registered as beneficial owner but in law he holds the securities/share only as pawnee and that RCIL is the beneficial owner of the security. Whether this claim of the Assessee can be accepted and if yes, whether legally it is permissible?

47. The claim of the Assessee in this regard, we must hold is in accordance with the Companies Act, 1956 wherein the formalities regarding the declaration to be made u/s.187C have been duly complied with. The claim of the revenue is that that there is absence of contemporaneous third party evidence because Form No.I and II required to be filed by the person (Assessee) who has been shown as holding beneficial ownership and the person who is the beneficial owner but who is not shown so in the register of members (RCIL) were to be given to the RIC and all were group companies in which Assessee was Director/Manging Director. RIC had to file Form No.III within 30 days of receipt of Form No.I and II with the registrar of companies and this had been done after a delay of more than 8 months. Though the Assessee, RCIL and RIC are part of

the same group, yet the fact remains that RIC is an independent entity in law and delay on its part to file Form No.III with the ROC cannot lead to an adverse inference being drawn against the Assessee. These are circumstances which might throw doubts on the claim made by the Assessee but that by itself cannot be conclusive to come to a conclusion that the Assessee held shares as beneficial owner and not as a pawnee. There is no material brought on record to show that the claim of the Assessee in this regard is not true. The revenue has further relied on the fact that the transaction of pledge is not grounded on commercial reality because the pledge was taken after disbursement of the alleged loan and the value of security were disproportionate to the amount of loan. These are matters lying with the realm of consent of parties to an agreement and cannot be the basis to conclude that there was in fact sale of shares by RCIL to the Assessee. In this regard, the fact that RCIL was again recognized as beneficial owner of the shares after due repayment of the loan cannot be ignored. In this regard we are also of the view that the AO in the order of assessment has made a vague reference to queries regarding transfer of shares at a grossly undervalued rate and consequent inquiries conducted by the Department into the transaction in dispute in this appeal. There is also a reference to the fact that the Assessee needed to buy shares to have control over RIC and the transaction in question was in fact a sale and not a pledge. There is also an allegation that the parties realized the tax implication and therefore decided to create a façade of loan transaction. There is also a reference that the Assessee acquired control over RIC by acquiring shares of RIC through M/S.Macronet Pvt. Ltd. These are vague allegations with no further details. These allegations in our view cannot form the basis to conclude that there was in fact a sale of shares in favour of the Assesee by RCIL and not a pledge. In this regard, we also observe that the documents on which the Assessee has placed reliance were collected in the course of Investigation by the Investigation Wing of the IT Department in Mumbai on its own. It cannot therefore be said that the transaction of pledge were after thought just to get over the tax implications in case the transaction were treated as a transaction of sale. Under Sec.195 of the Companies Act, 1956 minutes of a meeting of Board of Directors are presumed to be true until the contrary is proved and it shall be presumed that the meeting has been duly called and held and all proceedings thereat to have duly taken place. The meeting of the Board of Directors of RCIL and resolution passed on 13.3.2004 as recorded therein authorizing the borrowing of monies by RCIL from the Assessee have therefore to be presumed to be true and there is no material brought on record to show that they were not true.

48. This takes us to the question as to whether the entry of the Assessee as beneficial owner of shares in the Depository/Participants register is conclusive that the transaction in question was a sale. Under Sec.84 of the Companies Act, 1956, a certificate, under the common seal of the company, held by any member, shall be prima facie evidence of the title of the member to such shares. There is no provision in the DPA about an entry in the register of a depository as beneficiary owner of shares. Sec. 10 of the DPA provides regarding Rights of depositories and beneficial owner. It lays down as follows:

> (1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.
>
> (2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

49. A perusal of Sec.10(1) shows that it begins with a non obstante clause. Sec.10(3) which is relevant to the present case, does not have any non-obstante clause. Thus entry as a beneficial owner confers only all rights and benefits to such person in respect of those shares. It is similar to the presumption of prima facie evidence of title to the shares as contained in Sec.84 of the Companies Act, 1956 regarding certificate of shares and name of the person found on such certificate. It can by no stretch of imagination be said that entry as a beneficial owner is conclusive proof of title to the shares of the person whose name is found as beneficial owner in the register of a depository. It is at best prima facie evidence of title to the shares of the person whose name is recorded as beneficial owner of the shares. Such entry is only for the purpose of adjustment of rights and obligations as between the company and share holder. When a question arises as to who is the real owner of shares, it can always be shown and it is necessary to go into the question as to who is the true owner. It is now well settled that the question as to whether the title from the vendor to the vendee passed entirely depends upon the intention of the parties. Such intention of the parties has to be gathered from the various factors. Only because the Assessee was recognized as beneficial owner of shares in the register of the depository/participant, the same is not decisive. It was open to a judicial or quasi-judicial authority concerned to take into consideration the various factors and circumstances existing at the relevant time for the purpose of determining the intention of the parties. In fact provisions of Sec.111A (3) of the Companies Act, 1956 contemplate rectification of register of a depository by entering therein the name of the person who is actually entitled to rights over the shares. Such questions are decided in summary proceedings under the Companies Act, 1956 and if complicated questions of facts/ law arise the parties are relegated to a civil suit. These provisions only show that entry as beneficial owner in the register of depositories is not conclusive regarding ownership of the securities. As regards third parties, who act bona fide on the basis of entry in the depository as beneficial owner, then the real owner cannot claim rights over the securities as against them. As between the real owner and the beneficial owner of the securities entry in the register of depository is not conclusive.

50. In the present case, the parties to the transaction viz., the Assessee and RCIL both of them agree that the shares were given as security by way of pledge for loan given by the Assessee to RCIL and not by way of sale. The revenue however wants to treat the transaction as a sale and a very important circumstance on which it relies is the fact that the Assessee's name is found as a beneficial owner of the shares in the register of beneficiaries with the depository. Even assuming that the legal consequence of the name of a person being entered as beneficial owner in the register of the depositories is that he is to be considered as owner for all purposes, yet it was open to the parties to the transaction in question to show that though the transaction in form is a contract of sale (executed or executory) it in fact was intended to operate as a pledge. It can still be shown that no property was intended to pass and that the transaction was really a pledge/bailment. In this regard, we find that there is a statutory recognition of such right found in Sec.66(3) of the SG Act, 1930 which provides that the Provisions of the SG Act, 1930 relating to contract of sale do not apply to any transaction in the form a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

51. In the light of the above discussion, we would revert back to the question raised in para-33 of this order and answer them in the following manner:

a) What is the mode of creating pledge of shares prior to the DPA? How sale of shares is effected?

This has been answered in para-34 to 38 of this order.

b) With the introduction of the concept of dematerialization of share certificate and holding them in dematerialized form, whether the only mode in which a pledge can be created is in accordance with the provisions of Sec.12 of the DPA and the rules and regulations made under the DPA? How sale of goods Act, 1930 would apply in the light of the DPA to shares held in dematerialized form?

The answer to the first part of the above question is in the negative. The answer to the second part of the question is that even if shares are held in dematerialized form, they are still goods as laid down by the Companies Act, 1956 as well as the Sale of Goods Act, 1930 and would be governed by those legislations in the matter of deciding whether sale of shares had taken place and if so at what point of time and all other matters as laid down in those legislation.

c) Whether the parties are liberty to show, notwithstanding the fact that a person is shown as beneficial owner in the register of a depository participant, that he is not the beneficial owner of shares but only holds the shares as a pawnee and as security for repayment of debts due by the real beneficial owner? If yes, whether on the facts and the circumstances of the present case can it be said that the Assessee held shares not as beneficial owner but as Pawnee as security for repayment of debts? What is the veracity of the claim of the Assessee regarding existence of a pledge, especially in the light of the allegation of the AO that the purported transaction of loan of Rs.50 crores is not supported by any contemporaneous third party evidence nor is it grounded on commercial reality and the further allegation that the parties to the transaction were group companies whose control was management was in the hands of the Assessee. The only third party evidence of filing the return u/s.187C of the Companies Act, 1956 with the ROC which was filed late by about 8 months.

The answer to this question is contained in the discussion in paras-47 to 50 of this order.

d) To create a pledge of shares is it still possible to have physical delivery of shares after the introduction of the concept of dematerialization of shares and whether to this extent do the provisions of Sec.172 of the Contract Act, 1872 stand modified?

The answer to the first part of the above question is that it is not possible to have physical delivery of shares after the DPA but parties are at liberty to show that the delivery of shares by the pawnor to the pawnee by treating the pawnee as beneficial owner in the register of the depository was only by way of a pledge and as security

and not to constitute such beneficiary as the real owner of the shares. The provisions of Sec.172 of the Contract Act, 1872 would therefore have to be applied as it is.

52. We therefore hold that there was no transfer of 50 crores shares of RIC of the face value of Re.1/- by RCIL to the Assessee on 31.3.2004 when the Demat Account of the Assessee held with the Depository Participant, HDFC Bank Ltd., the Client's ID of the Assessee being 42646206 and Depository ID No. being IN300476 was credited with 50 Crores shares of face value of Re.1/- of RIC from the Demat account of RCIL bearing ID No. 10011366 with the Depository Participant Reliance Capital Ltd. by way of sale and that the said transfer was only by way of delivery of possession of shares as security for repayment of a loan availed by RCIL from the Assessee.

53. As a pawnee/pledgee, the Assessee does not have absolute rights over the shares. He can sell the security in a manner contemplated by law. In case the proceeds are greater than the amount due to him, he has to pay the surplus to the pawnor. Consequently, the Assessee would derive no benefit or perquisite, the value of which could be brought to tax u/s.2(24)(iv) of the Act. In that of the matter, we find no grounds to interfere with the order of the CIT(A). Consequently, the appeal by the revenue is dismissed.

54. Before parting with the appeal, we place on record our appreciation for the enlightening arguments put forth by both the sides, which have assisted us in the disposal of the issues raised in the appeal.

55. In result, the appeal by the Revenue is dismissed.

Order was pronounced in open Court on 19TH Day of November, 2010.

Sd/-	Sd/-
(R.S.SYAL)	(N.V. VASUDEVAN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated : 19th November, 2010

Copy to : 1. The Assessee 2. The Respondent 3. The CIT(A)-concerned.

4. The CIT(A), concerned. 5. The DR concerned, Mumbai

6. Guard File

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BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI

Vm.

		Date	Initials	
1.	Draft dictated on:	8.11..2010		Sr. PS/PS
2.	Draft placed before author:	12.11.2010		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:	.2010		Sr. PS/PS
7.	Order come back to Sr.PS/PS			
8.	File sent to the Bench Clerk:			Sr. PS/PS
9.	Date on which file goes to the Head Clerk:			
10.	Date of dispatch of Order:			