

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.1205/M/2019  
Assessment Year: 2012-13**

DCIT 4(3)(2), Room No.649, 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai - 400020	Vs.	M/s. Shinano Retail Pvt. Ltd., 4 <sup>th</sup> Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai - 400 002 <b>PAN: AALCS 4572R</b>
(Appellant)		(Respondent)

**CO No.257/M/2019  
(Arising out of ITA No.1205/M/2019  
Assessment Year: 2012-13**

M/s. Shinano Retail Pvt. Ltd., 4 <sup>th</sup> Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai - 400 002 <b>PAN: AALCS 4572R</b>	Vs.	DCIT 4(3)(2), Room No.649, 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vijay Mehta, A.R.  
Revenue by : Shri Sandeep Raj, D.R.

Date of Hearing : 03.12.2020

Date of Pronouncement : 08.01.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal by the Revenue and the cross objection by the assessee have been preferred against the order dated 24.12.2018 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The Revenue has filed the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) is right in directing to delete the addition made on account of LTCG of Rs. 190.47 Cr. arising in the hands of M/s ATPL taxable in the hands of assessee Co. on merger ignoring the fact that M/sATPL failed to filed the ROI for any of the assessment years declaring the investment in the shares sold which remained undisclosed to the department and hence unverified.

2. Whether on the facts and in the circumstances of the case and in law Id. CIT(A) is right in directing to delete the addition made on account of LTCG of Rs. 190.47 Cr. arising in the hands of M/s ATPL taxable in the hands of assessee Co. on merger without appreciating the fact that the assessee failed to prove the genuineness of transactions of purchase and sale of shares by M/s ATPL.

3. Whether on the facts and in the circumstances of the case and in law Id. CIT(A) is right in directing to delete the addition made on account of LTCG of Rs. 190.47 Cr. arising in the hands of M/s ATPL taxable in the hands of assessee Co. on merger ignoring the fact that the assessee failed to produce any authentic documentary evidences either during the course the assessment proceeding or before Id. CIT(A) to show the investment in the shares sold by M/s ATPL giving rise to LTCG of Rs. 190.47 Crs.

4. Whether on the facts and in the circumstances of the case and in law Id. CIT(A) is right in directing to delete the addition made on account of LTCG of Rs. 190.47 Cr. arising in the hands of M/s ATPL taxable in the hands of assessee Co. on merger ignoring the fact that the assessee failed to show either at the time of Assessment Proceedings or even before the Id. CIT(A) the correctness of set off of LTCG of ATPL against the LTC loss of the assessee Co.

5. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) is right in directing to restrict the disallowance of short term capital loss of Rs. 353,85,00,000/- to Rs. 260,89,28,374/- without appreciating the fact that the transaction of purchase and sale of debentures of M/s VPCL is not a genuine transaction.

6 Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) is right in directing to restrict the disallowance of short term capital loss of Rs. 353,85,00,000/- to Rs. 260,89,28,374/- without appreciating the fact that the assessee failed to give cogent reasons and adduce authentic documentary evidences for fall in price of debentures from Rs. 403.85 Cr. to Rs. 50 Cr.

7. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) is right in directing to restrict the disallowance of short term capital loss of Rs.

353,85,00,000/- to Rs. 260,89,28,374/- without appreciating the fact that the fluctuation in the price of shares of M/s NDTV shall not affect the value of debentures of M/s VPCL since the loan advanced by the assessee company to M/s VPCL have no connection with share price of M/s NDTV and hence will not impact price of debentures held by assessee company.

8. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) is right in directing to restrict the disallowance of short term capital loss of Rs. 353,85,00,000/- to Rs. 260,89,28,374/- without appreciating the fact that the fluctuation in the price of shares of M/s NDTV shall not affect the value of debentures of M/s VPCL since the assessee is concerned only with the repayment of loan advanced by it to M/s VPCL and have no business with utilisation of loan fund by M/s VPCL .

9. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

The assessee has raised following grounds of appeal in its cross objection:

"1. On the facts and circumstance of law, the learned Commissioner of Income-tax (Appeal) ['CIT(A)-9'] erred in confirming the disallowance of short-term capital loss of Rs.92,95,71,626 (353,85,00,000-260,89,28,374) by ignoring the premium on purchase price and discount on sale price to calculate the purchase price and sale price of securities.

2. The respondent craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit."

3. The Revenue has raised two effective issues in all the grounds of appeal. In ground No.1 & 2 the Revenue has challenged the deletion of addition of Rs.190.47 crores by Ld. CIT(A) as made by the AO on account of long term capital gain on sale of shares of M/s. Eenadu Television Pvt. Ltd. which has been merged with the assessee.

4. The facts in brief are that the assessee filed the return of income on 29.09.2012 claiming loss of Rs.354,98,73,866/-. Thereafter, 8 companies were merged and amalgamated with the assessee company w.e.f. 01.04.2011 pursuant to scheme of

amalgamation as approved by the three Hon'ble High Courts of Bombay , Karnataka and Madhya Pradesh and consequently the assessee revised its return of income on 29.08.2013 declaring a loss of Rs.271,26,13,913/- after incorporating the entries of the merged companies as necessitated by the amalgamation. The said revised return of income was processed under section 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The details of entities which are merged with assessee are extracted below for the sake of ready reference:

Sr. No.	Name of Company	Date of order	High Court
1	Aarthik Commercials Pvt Ltd.	28.09.2012	Mumbai.
2	Altitude Mercantile Pvt. Ltd.	28.09.2012	Mumbai.
3	Devaki Commercials Pvt. Ltd.	28.09.2012	Mumbai.
4	Kavindra Commercials Pvt. Ltd.	28.09.2012	Mumbai.
5	Longitude Mercantile Pvt. Ltd.	28.09.2012	Mumbai.
6	Sharanya Trading Pvt. Ltd.	28.09.2012	Mumbai.
7	Shyam Equities Pvt. Ltd.	21.09.2012	Karnataka
8	Anu Trading Pvt. Ltd.	27.02.2013	Madhya Pradesh

5. A survey under section 133A of the Act was conducted on 30.08.2012 on M/s. Anu Trading Pvt. Ltd. which has also been merged with assessee w.e.f. 01.04.2011. During the course of survey it was found that M/s. Anu Trading Pvt. Ltd. has realised a profit of Rs.190.00 crores for the year ended 31.03.2012. A

merger petition was filed by M/s. Anu Trading Pvt. Ltd. before the High Court on 18.06.2012 requesting for its merger with the assessee i.e. M/s. Shinano Retail Pvt. Ltd., Mumbai to be effective from 01.04.2011. The Revenue intervened into this scheme of merger by filing a petition against it in the High court. However, the scheme of amalgamation of M/s. Anu Trading Pvt. Ltd. with the assessee was approved by the Hon'ble Bombay High Court subject to the approval of Hon'ble Madhya Pradesh High Court and ultimately the amalgamation was approved and became effective from 10.04.2011. Consequently M/s. Anu Trading Pvt. Ltd. was merged with the assessee. The AO of M/s. Anu Trading Pvt. Ltd. informed the AO of M/S. Shinano Retail Pvt. Ltd., Mumbai that the jurisdiction now vested with the AO of the assessee after amalgamation. The AO during the assessment proceedings found from the letter of the AO of M/s. Anu Trading Pvt. Ltd. that the said company has realised a profit of Rs.190.00 crores for the year ended 31.03.2012. Accordingly the AO called upon the assessee vide letter dated 16.03.2015 to explain the said transactions with detail along with the manner of accounting thereof after merger of 8 companies with the assessee which was replied by the assessee vide letter dated 24.03.2015 which is extracted by the AO in para 6.3 at page No.4, 5 & 6. The AO noted that M/s. Anu Trading Pvt. Ltd. came into existence from 10.12.2007 and thereafter filed no return of income with the department till date. It is only upon survey under section 133A of the Act on the business premises of M/S Anu Trading Pvt Ltd at 582, Labhgana, LG Road, Indore by the department on 30.08.2012 resulting into seizure of several documents. It was also found

that Mr. Vijay Chhajlani was the director of M/S Anu Trading Pvt Ltd . It was also found that M/s. Anu Trading Pvt. Ltd. by merging with the assessee company has no intention to pay the taxes on Rs.190.47 crores the amount of gain realized during the year ended on 31.3.2012. In the assessment framed by the AO, he noted that the assessee has not filed any documentary evidences in respect of purchase and sale of shares and also with respect to indexation claimed on cost of purchase of shares. The AO also mentioned in para 6.6 that assessee vide letter dated 24.03.2015 calculated the capital gain at Rs.55,24,14,213/- by taking the initial date of purchase as 25.08.2008 and thereafter revised the capital gain figure to Rs.79,40,59,074/- by taking the actual date of purchase on 30.03.2009. The AO added the entire amount of capital gain of Rs.190,47,51,600/- to the income of the assessee for the want of documentary evidences and proper explanation by the assessee in the assessment framed under section 143(3) of the Act vide order dated 31.03.2015.

6. In the appellate proceedings the Ld. CIT(A) allowed the appeal of the assessee on this issue after taking into consideration the contentions and submissions of the assessee by observing and holding as under:

“4.6 In order to decide the above ground in appeal, I have gone through the assessment order of the AO as well as detailed written submission and paper book filed by the Appellant. I have also considered the remand report submitted by the AO. The moot question which is required to be decided here is that whether taxable income has to be computed as per the entries passed in the books of accounts or as per the provisions of the Income Tax Law! To my understanding, the above question has already been answered by the Hon'ble Supreme Court and jurisdictional High Court time and again wherein they have categorically held that the entries passed in the books of account are not decisive in nature and the income has to be computed as per the provisions of the Income Tax law only. The recent judgment on this issue is rendered by the Hon'ble Supreme Court in the case of **Taparia Tools**

**Limited vs JCIT [372 ITR 605 SC]** wherein at paragraph 19 of the judgment, after referring to many other decisions of Hon'ble Supreme Court, the Apex Court held as under:

*"9. In the instant case, as noticed above, the assessee did not want spread over of this expenditure over a period of five years as in the return filed by it, it had claimed the entire interest paid upfront as deductible expenditure in the same year. In such a situation, when this course of action was permissible in law to the assessee as it was in consonance with the provisions of the Act which permit the assessee to claim the expenditure in the year in which it was incurred, merely because a different treatment was given in the books of accounts cannot be a factor which would deprive the assessee from claiming the entire expenditure as a deduction. It has been held repeatedly by this Court that entries in the books of accounts are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act [See Kedarnath Jute Manufacturing Co. Ltd. vs. CIT (1972) 3 SCC 252; Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT (1997) 141 CTR (SC) 387 : (1997) 6 SCC 117, Sulej Cotton Mills Ltd. vs. CIT 1978 CTR (SC) 155 : (1978) 4 SCC 358 and United Commercial Bank vs. CIT (1999) 156 CTR (SC) 380 : (1999) 8 SCC338]."*

4.7 Thus, the settled position is that the income has to be computed as per the Income Tax Law and the entries passed in the books of account have no final role to play for computing the taxable income. Therefore, the entry passed for Rs. 190 Crore being profit on sale of shares in the case of ATPL in the computer-generated P&L Account, has nothing to do with taxable income of the Appellant on this account. The long term capital gain has to be computed as per section 48 of the Act read with proviso thereto and section 49 of the Act. As per the provisions of section 48 and 49 of the Act, the long term capital gain on sale of share of ETPL has been worked to Rs. 79.40 Crores as under:

Particulars	Particulars	Amount
Sales consideration		508,91,01,600
Less: Indexed Cost of acquisition	Cost Rs. 318,43,50,000 X Rs.785 % Rs. 582	429,50,42,528
Long Term Capital Gain		79,40,59,074

4.8 Now, I find that the AO has not found any defect in the above working. The only issue was the legal one which has already been discussed above. Therefore, I am of the belief that as far as the working of capital gain is concerned, the ATPL has correctly worked out the above long term capital gain and declared the same in the return filed prior to merger. What is more the above capital gain working has also been accepted by the AO of the ATPL in the assessment order dated 06/03/2014 passed u/s 143(3) r.w.s. 147 of the Act. Therefore, it is held here that the long term capital gain of Rs. 79.40 Crores has been correctly offered by the ATPL.

4.9 Moving further, it is found that, however, subsequent to merger of ATPL as well as other companies with the Appellant, the long term capital loss has been worked out to Rs. 229,33,27,559/- which has been carried forward to the subsequent years for set off against the income. I am of the view that as specifically prescribed in section 2[1B] of the Act, in the amalgamation, all the assets and liability of the amalgamating companies become the property of the amalgamated company. Therefore, in order to give effect to the amalgamation, the Appellant is duty bound to compute the income including the income/losses of the amalgamating companies also. Hence, the Appellant was correct when he computed the long term capital loss considering the long term capital income earned by the ATPL and long term capital loss incurred by the other amalgamating companies. Thus, I am of the view that the Appellant has correctly declared the long term capital loss of Rs. 229.33 Crores considering the indexed cost of acquisition and the losses incurred by other amalgamating companies. The AO has totally ignored the fact that the taxable income of an assessee has to be computed as per provisions of the passed in the books. Therefore, the AO was grossly unjustified in making the addition of Rs. 190 Crores. Hence, the addition of Rs. 190 Crores made by the AO is hereby deleted.

4.10 The AO has another observation also for making the addition wherein he has stated that it is not understood as to why the petitioner wants merger from 01.04.2011 when the petition of merger was filed in July, 2012. The facts of the case are that the merger petition has been filed on 18/06/2012 with a request to make the merger effective from 01/04/2011. I understand that the Income Tax department had indeed intervened into scheme and filed a petition before the Hon'ble Madhya Pradesh High Court against the merger application. However, still, the Hon'ble Madhya Pradesh High Court vide order dated 27-02-13, has approved the amalgamation w.e.f. 01/04/2011. After the passing of an order by no less than a High Court on a particular matter, it shall not be proper at this level or forum to go into this issue again or even consider doing that. Therefore, respectfully following the order of Hon'ble MP High Court, I refrain from doing so and consider this as a closed chapter. Therefore, I am of the view that the once the High Court has approved the scheme w.e.f. 01/04/2011, then, the AO and the department have to accept the same as fate-accompli.”

7. The Ld. D.R. vehemently submitted before the Bench that Ld. CIT(A) has wrongly deleted the addition made by the AO on account of long term capital gain of Rs.190.47 crores by overlooking the fact that the route of merger amalgamation was resorted to evade tax on the long term capital gain of Rs. 190.47. The Ld. D.R. pointed out that the merger and amalgamation of M/s. Anu Trading Pvt. Ltd. and several other entities with the assessee w.e.f. 01.04.2011 is nothing but a scheme planned by the assessee to avoid the tax on the long term capital gain earned by M/s. Anu Trading Pvt. Ltd. The Ld Dr submitted that mere approval of merger by the respective

High Court would not absolve the assessee from its obligation towards the taxes to be paid on the income earned by the entity being merged with the other entity pursuant to the merger. The Id Dr argued that at the level of Hon'ble High Court, the broader issues impacting the various stakeholders are examined by the High Court and the issue of taxability of the income earned by the assessee the merging entity. Thus, Ld. D.R. relied heavily on the order of AO and prayed before the Bench that the order of Ld. CIT(A) may kindly be reversed on this issue.

8. The Ld. A.R., on the other hand, strongly controverted the arguments of the Id Dr and submitted before us that the capital gain has arisen due to sale of shares of M/s. Eenadu Television Pvt. Ltd. by M/s. Anu Trading Pvt. Ltd. The Ld. A.R. submitted that since the M/s. Anu Trading Pvt. Ltd. was merged with assessee company along with 7 other companies w.e.f. 01.04.2011 as per the scheme of amalgamation duly approved by the Hon'ble Madhya Pradesh High Court and Hon'ble Bombay High Court. The Ld. A.R. submitted that consequent to the approval of scheme of amalgamation of 8 companies with the assessee, the assessee filed revised return of income after incorporating the necessary entries in its books of accounts as necessitated by the amalgamation and duly offered the long term capital gain earned by M/s. Anu Trading Pvt. Ltd. as well as long term capital loss suffered by other merged entities. The Id AR submitted that the computation of losses are not in dispute and have been accepted by the AO in the assessment framed. The Ld. A.R. also pointed out that the scheme of amalgamation was approved by the Hon'ble Madhya Pradesh High Court after considering the objections filed by the department and the SLP

filed by the department against the said order of the Hon'ble Madhya Pradesh High Court was dismissed by the Hon'ble Supreme Court copies whereof are filed at page No.22 to 35 and page No.36 respectively. The Ld. A.R. also submitted that once the scheme of amalgamation is approved by the High Court then it is presumed that the same has been approved after exercising due diligence and considering the representations from various stakeholders and therefore the AO can not allege that amalgamation was done with a view to evade the taxes. The Ld. A.R. submitted that the amalgamation scheme was approved by the Hon'ble High Court after considering the objections filed by the department and consequently AO can not allege the amalgamation of M/s. Anu Trading Pvt. Ltd. with the assessee was a scheme to avoid the tax on long term capital gain. The Ld. A.R. also invited our attention to the page No.4 to 21 of the paper book where the audited financial statements of M/s. Anu Trading Pvt. Ltd. from 2007-08 to 2011-12 were attached which have also been filed before the AO. The Ld. A.R. pointed out that balance sheet of F.Y. 2008-09 showed that the M/s. Anu Trading Pvt. Ltd. had made an investment in shares of M/s. Ushodaya Enterprises Pvt. Ltd. for Rs.1150.00 crores and the said investment continued to appear in balance sheet till 31.03.2010. In F.Y. 2010-11 due to demerger of M/s. Ushodaya Enterprises Pvt. Ltd., M/s. Anu Trading Pvt. Ltd. received shares of another three companies including M/s. Eenadu Television Pvt. Ltd. and cost was apportioned over 4 companies. The Ld. A.R. submitted that the said cost was apportioned on the basis of communication received from M/s. Ushodaya Enterprises Pvt. Ltd. on its demerger. Thereafter, shares of M/s. Eenadu

Television Pvt. Ltd. were sold by M/s. Anu Trading Pvt. Ltd. in F.Y. 2011-12 and accordingly same were not being reflected in the investment schedule in the financial statement as on 31.03.2012. Further a gain/profit of Rs.190.47 crores on sale of shares was credited to P&L account. The Ld. A.R. submitted that the fact of these investments having been held by M/s. Anu Trading Pvt. Ltd. are not in dispute as can be seen from the assessment orders framed under section 143(3) of the Act for AY 2009-10 & 2010-11 the copies of which are filed at page No.37 to 40 of the paper book and all these facts are recorded by the AO in the impugned order in a table on page No.7 to 8 in para No.6.5. The Ld. A.R. also pointed out that there was an error in calculation of long term capital gain on sale of shares of M/s. Eenadu Television Pvt. Ltd. at Rs.55.24 crores and hence it recalculated the profit on sale of shares Rs.79.40 crores. This error has occurred due to a punching on account of incorrect indexation which is also duly noted by the AO in para 6.6 of the assessment order. Finally, the Ld. A.R. submitted that keeping in view of these facts and circumstances and the fact that assessee has duly offered the long term capital gain on sale of shares of M/s. Eenadu Television Pvt. Ltd. after setting it off against the other capital losses suffered by the other amalgamating companies have not been disputed by the AO. The Ld. A.R. submitted that these losses have been returned by the assessee company considering the capital gain and capital losses only after the scheme of amalgamation was approved by the High Court by filing a revised return of income. Therefore, the AO has wrongly erred in adding an amount of Rs. 190.47 Cr by citing that assessee has not filed the evidences in support of

the said sale and purchase of shares. The ld AR submitted that once the merger is approved by the High Court, the tax authorities have no jurisdiction to interfere in the matter. The ld Counsel of the assessee relied on the following decisions namely (i) Reliance Money Inf Ltd vs PCIT (2017) 88 taxmann.com 871 {Mumbai Trib} ,(ii) Electrocast Sales India Ltd vs DOT (2018) 170 ITD0507 (KolkataTrib) and iii. DCITvs Indus Fila Ltd (2013)32taxmann.com 382 (Bangalore Trib) Finally, the Ld. A.R. submitted that the order of Ld. CIT(A) may kindly be affirmed considering all the facts and circumstances of the case as all these aspects were duly considered by the ld CIT(A) while passing the appellate order.

9. We have heard the rival submissions of both the parties and perused the material on record including the impugned appellate order under challenge before us. We find that in this case the assessee has filed a revised return after taking into account the capital gain/losses of the amalgamating companies after approval of merger/amalgamation of 8 companies with the assessee company. We note that the Hon'ble Madhya Pradesh High Court and Hon'ble Bombay High Court have duly approved the amalgamation of these 8 entities with the assessee company which became effective from 1.4.2011. Consequently, the assessee filed the revised return of income offering to tax the net position resulting from amalgamation of 8 entities with the assessee and in the process the long term capital gain of Rs.190.47 crores earned by M/S Anu Trading Pvt Ltd. got set off against the losses incurred by other merging entities, therefore we do not find any merit in the arguments of the Ld. D.R. that M/s. Anu Trading Pvt. Ltd. has been merged with the assessee

in order to avoid the tax liability on the long term capital gain made by it on sale of shares of M/s. Eenadu Television Pvt. Ltd. In this case we also note that the revenue has filed objections to the amalgamation of M/S Anu Trading Pvt Ltd in the Hon'ble High Court and the amalgamation was approved dismissing the said petition by the revenue. The ld. A.R., therefore, submitted that the finding of the Ld. PCIT that the amalgamations and formations of the various companies is for securing tax advantage is incorrect. The Ld. A.R. also submitted that each of the amalgamations have been court approved and therefore the AO has no jurisdiction to question them. The assessee's case is supported by the decisions i) Reliance Money Inf Ltd vs PCIT (supra),(ii). Electrocast Sales India Ltd vs DOT (supra) and (iii) DCITvs Indus Fila Ltd (supra). We do not find any infirmity in the order of first appellate authority which appears to be correct and well - reasoned and therefore the findings of the ld CIT(A) on this issue are upheld. Accordingly, ground No.1 to 4 raised by the Revenue are dismissed.

10. The issue raised in ground No.5 to 8 by the Revenue is against the deletion of disallowance of long term capital loss of Rs.260.89 crores on sale of debentures by Ld. CIT(A) as against the loss of Rs.353.85 crores disallowed by the AO for the want of documentary evidences and proper explanation by the assessee. The assessee has also filed cross objection challenging the order of Ld. CIT(A) in confirming the disallowance of long term capital loss to the tune of Rs.92.95 lakh by ignoring the premium on purchase price and discount on sale price to calculate the purchase price and sale price of the securities. Therefore, the ground no.5 to 8 in the Revenue's appeal and issue raised by the

assessee in cross objection are arising from the same findings of ld CIT(A) on the very same issue of loss on sale of debentures and therefore is being decided together.

11. The facts in brief are that the AO had received a letter dated 26.03.2015 from 8(1) Delhi mentioning transactions between M/s. Eminent Networks Pvt. Ltd. and M/s. Shinono Retail Pvt. Ltd., Mumbai the assessee relating to sale of Zero Coupon Unsecured Optionally fully Convertible Redeemable Debenture (hereinafter referred to as OFCDs) of M/s. Vishwapradhan Commercial Pvt. Ltd. for a sum of Rs.50 crore having a face value of Rs.403.85 crores. Accordingly, the AO vide order sheet noting dated 26.03.2015 called upon the assessee to furnish the details of the said transaction with the reasons for incurring huge losses along with documentary evidences which was replied by the assessee vide letter dated 30.03.2015 admitting therein that OFCDs of M/s. Vishwapradhan Commercial Pvt. Ltd. were sold to M/s. Eminent Networks Pvt. Ltd. at an intrinsic value of Rs.50 crores whereas the face value of these convertible debentures was Rs.403.85 crores. The assessee also furnished background and history of the transactions before the AO which he extracted in the assessment order as under :

"3. A brief history of the aforesaid transaction is as follows :

(i) Upto 31.03.2011, we had provided convertible loan of Rs. 403.85 crores to VCPL. On 24.11.2011, VCPL converted zero coupon optionally convertible loan of Rs. 403.85 crores into 403,85,000 zero-coupon optionally convertible debentures of Rs. 100 each. Note in the printed accounts is as follows :

"Conversion at the option of the holder, into such number of equity shares, based on higher of fair value to be determined by independent valuer or face value of equity shares."

(ii) VCPL had utilized the loan given by us for granting loan to RRPR Holdings as per loan agreement dt. 21.07.2009 entered into between VCPL and RRPR Holdings.

(iii) RRPR Holdings was holding 29% stake in NDTV and accordingly had utilized this loan for the purpose of retiring its debts and offering controlling interest to VCPL. The price of NDTV shares including premium for controlling interest at the time of transaction was Rs 214.65 per share. However, on closure in November, 2011, there was substantial erosion in the value of NDTV shares from Rs. 214.65 to Rs. 26.58. Accordingly the value of the convertible debentures had also fallen substantially and recoverability of money from such debentures reduced substantially. Accordingly, these debentures were sold for commercial reasons to a third party at their intrinsic value of Rs. 50 crores, resulting in a loss of Rs.353.85 crores.”

12. The assessee furnished before the AO the basis for selling these OFCDs at Rs. 50 Cr. The assessee submitted before the AO that the price of the shares of NDTV including premium at the time of entering into transaction was Rs.214.65 per share which fell substantially in November 2007 close to 226.58 per share. The AO, however, observed that price of NDTV share in November 2011 was 37.75 per share whereas in February 2012 it was Rs.42.60 per share and accordingly called upon the assessee to justify the claim of loss on sale of these debentures to M/s. Eminent Networks Pvt. Ltd. which was replied by the assessee vide letter dated 31.03.2015 which is reproduced as under:

“Regarding the loss on sale of debentures of VCPL, details of which have been vide letter no. Aspro/2012-13/11/fl dt. 30.03.2015, you have raised a query to the fact that there is no substantial decrease in the shares of NDTV from the date of allotment of debentures of VCPL in November 2011 to the date of sale of aforesaid debentures in February 2012. In this connection, we would like to submit that:

This transaction had taken place on 21.07.2009 and at that point of time, the weighted average price in last 60 days of NDTV shares was Rs. 143.32 per share and since RRPR Holding was holding 29% shares of NDTV, controlling premium of Rs.71.33 was worked out and accordingly the valuation placed on NDTV shares as held by RRPR Holding was Rs. 214.65 per share.

In February 2012, when the decision to close the transaction was made, the weighted average price of NDTV shares in last 60 days was Rs.35.55 per share and

since RRPR Holding was holding 29% shares of NDTV, making provision for bulk discount, the price of NDTV shares was worked out at Rs. 26.58 per share.”

13. The AO finally noted that assessee has not submitted documentary evidences in respect of sale and purchase of debentures despite the same being specifically asked vide letter dated 26.03.2015, 30.03.2015 and also not furnished any justification for selling OFCDs for Rs.50 crore which has resulted into loss of Rs.353.85 crores. Finally, the AO disallowed the loss of Rs.353.85 crores in respect of sale of debentures of M/s. Vishwapradhan Commercial Pvt. Ltd. for the want of documentary evidences and proper explanation by the assessee.

14. In the appellate proceedings the Ld. CIT(A) partly allowed the appeal of the assessee, after calling for a report from the AO on the additional evidences filed by the assessee before the Ld. CIT(A) in respect of purchase and sale of these OFCDs evidencing the various transactions, by directing the AO to restrict the long term capital loss to Rs.260.89 crores thereby disallowing the loss to the extent of Rs.92.95 crores by observing and holding as under:

“5.4 I have perused the assessment order wherein the above disallowance is discussed at paragraph 7.1 to 7.7 on page 9 to 17 of the assessment order. I have also perused the detailed written submissions and paper book filed by the Appellant. The facts of the case are that the Appellant has sold the Zero Coupon Unsecured Optionally Fully Convertible Redeemable Debentures (OFCD) invested in M/s, Vishwapradhan Commercial Private Limited (VCPL) to Eminent Network Private Limited (ENPL) for an amount of Rs. 50 Crores whose face value was Rs. 403.85 Crores resulting into a Short Term Capital Loss (STCL). The said STCL has been disallowed by the AO on the ground that the Appellant has not filed the documentary evidences pertaining to the above transaction as well as on the ground that the transaction has been done between the parties to accommodate each other. During the appellate proceedings, the Appellant has filed additional evidences containing all the documents pertaining to the transactions between the Appellant and ENPL. The said documents have been sent to the AO for submitting the remand report. The AO has not commented on the documentary evidences

filed by the Appellant per se. However, I find that the whole thrust of the AO was on the prices of shares of NDTV claimed by the Appellant on the date of purchase of OFCD as well as on the date of sale of OFCD. The same are dealt in detail in subsequent paragraphs.

5.5 The facts emerging from the assessment order, written submissions and paper books are that the Appellant Company has given loan of Rs. 403.85 Crores to VCPL during the financial year 2009-10 on 22.06.2009 as per Facility Agreement dated 10.03.2010 wherein it was agreed that the Appellant shall lend an amount not exceeding Rs. 500 Crores to VCPL as Zero Coupon Optionally Convertible Loan (ZCOCL). The loan shall, at the option of the lender (i.e. Appellant), be fully convertible into equity shares of the company at par. On 24.11.2011, as mutually agreed between the Appellant and VCPL, the Appellant was allotted 4,03,85,000 numbers of Zero Coupon Optionally Fully Convertible Redeemable Debentures (OFCD) at face value of Rs. 100 each aggregating to Rs. 403.85 Crores. The OFCD was allotted with an understanding that the Appellant shall have an option to convert each debenture into such number of equity shares of face value of Rs. 10 each arrived at, based on fair value of the equity share to be determined by an independent valuer as on the date of notice of conversion or face value of equity shares, whichever is higher. During the year under consideration, the above debentures have been sold to a company namely ENPL, for an amount of Rs. 50 Crores resulting into STCL of Rs. 353.85 Crores.

5.6 I have perused various documents filed by the Appellant before me. The said papers have been sent to the AO for his comments. The AO has not adversely commented on various documents filed by the Appellant proving the genuineness of transaction. Therefore, I presume that the AO has no comments on the documents submitted by the Appellant. The Appellant has filed agreement between it and VCPL wherein it was agreed that the Appellant shall give ZCOCL to VCPL. Such ZCOCL has been utilized by the VCPL for repaying the loan taken by it from ICICI Bank which loan has been used for the purposes of acquiring the shares of RRPR and RRPL ultimately hold the shares of NDTV. Similarly, the agreement entered into between the VCPL and RRPR has also been filed where it was agreed that the RRPR shall be holding the shares of NDTV. It is no body's case that all the money has not been routed through Banking channel.

5.7 The important aspect to be considered here is that the ENPL is un-related party of the Appellant. Thus, looking at the facts and circumstances of the case in the light of documentary evidences, I am of the view that the transactions entered into between the Appellant and ENPL are genuine transactions. The reason stated in the assessment order for making the addition was that the documentary evidence pertaining to above transactions have not been filed before him. However, when all the documents pertaining to the transaction have been filed before him during the remand proceeding, he has not pointed out any adverse inference from the documents filed before him which can even remotely suggest that the transaction was not a genuine one. Thus, as far as genuineness of the transaction is concerned, it is presumed that the AO has no comment to offer in the light of documents filed by the Appellant during the appellate proceeding. Thus, the transactions are held as genuine.

5.8 However, I hastily add here that in the remand report, the AO's contention has been that the prices of equity shares of NDTV (which is underlying asset for valuation of debentures) on the date of purchase as well as on the date of sale as claimed by the Appellant are not correct as per his own research. The AO has submitted that the price of shares of NDTV on purchase date was claimed to be at Rs. 214.65 (i.e. sixty days average price of Rs. 143.32 + premium for controlling stake of Rs. 71.33) and the prices on the date of sale was claimed at Rs. 26.58 (i.e. sixty days average price of Rs. 35.55 - premium for controlling stake of Rs. 8.97); these prices according to the AO were not correct. According to AO's research, the prices of shares of NDTV on the date on purchase was Rs. 126.70 and as on the date of sale was Rs. 44.85/-. Thus, in the remand proceeding, the AO has emphasized that the price of shares of NDTV quoted by the Appellant resulting into losses are not correct. For quoting the prices of shares of NDTV, the source of the AO is listed price of the shares on stock exchange as on 21/07/2009 (i.e. purchase date) and 24.11.2011 (i.e. sale date).

5.9 As against the above, the Appellant has stated that it has taken prices of the shares considering the average price of last 60 days. The Appellant further submitted that after considering the average price of the shares of NDTV on the date of purchase and sale, the same have been charged with premium (at the time of purchase) and discounted (at the time of sale). The above contentions of the Appellant have been considered. However, the Appellant could not justify the reason behind taking the average price of last 60 days as well as justification for charging the premium on the purchase price and discount the price at the time of sale. Therefore, the contention of the Appellant for charging the premium or discounting share prices without there being any justification for the same is not accepted. After holding that the premium charged on purchase price and discount on sale price of the shares of NDTV are not justified by the Appellant, the only option left for determining the share prices on the date of purchase and sale shall be as per the prices indicated by the AO in the remand report. Accordingly, on the issue of pricing of shares of NDTV on the date of purchase and sale, the contention of the Assessing Officer as made in his remand report, is accepted. Considering the above prices, the Short Term Capital Loss works out to Rs. 260,89,28,374/- as against the loss claimed by the Appellant at Rs. 353,85,00,000/- which are tabulated as under:

Working of loss on sale of debentures considering the price of shares of NDTV on the date of purchase and sales as per AO		
No of debentures issued		40,385,000
Number of debentures converted into enquiry shares (as agreed)	[No of debentures 403,85,00,000 /Value of equity shares Rs. 126.70]	31,874,507

Total cost	4,038,500,000
Less: sales consideration	142,95,71,626
considering the price of shares of NDTV on the date of sale [i.e. Rs. 44.85 per share]	w
Short Term Capital Loss allowable to the Appellant	260,89,28,374 <sup>^</sup>

5.10 Therefore, considering the prices quoted by the AO, the Short Term Capital Loss works out to Rs. 260,89,28,374/- as against the loss claimed by the Appellant at Rs.353,85,00,000/-. Thus, the excess loss claimed by the appellant of Rs. 92,95,71,626/- is hereby disallowed. Thus, the Short Term Capital Loss claimed by the Appellant is restricted to Rs. 260,89,28,374/-.

5.11 While on the subject, on the identical facts and circumstances of the case, in the following cases, the Hon'ble Mumbai ITAT has held that loss on transfer of loan is a short term capital loss.

**1) Siemens Nixdorf Informationssysteme GmbH vs DDIT (2016) 158 ITD 0480 (Mumbai)**

**Facts of the case:**

The assessee is a non-resident company given loan to Indian Company Siemens Nixdorf Information Systems Limited (SNISL, in short). SNISL ran into serious financial troubles Therefore, the assessee assigned this debt to Siemens AG for a consideration lesser than the amount of debt and claimed short term capital loss. However, the Assessing Officer declined the deduction on the basis of the reasoning that (a) debts not a capital asset under section 2(14); (b) that the assignment of this debt, or the right to recover the money from SNISL, was not a transfer under section 2(47). CIT (A) confirmed the action of the AO which has been challenged by the assessee before the ITAT. The Hon'ble ITAT has explained in detail the meaning of capital asset as per section 2(14) of the Act as well as meaning of transfer as per section 2(47) of the Act and held as under after considering the decision of Hon'ble Bombay High Court in the case of CWT vs Vidur V Patel [215 ITR 30]:

*"9. The next thing that we need to decide is whether or not there was a transfer under section 2(47) or not. Section 2(47) (i) provides that "transfer, in relation to a capital asset, includes (i) the sale, exchange or relinquishment of the asset". There is no dispute that the rights to recover*

***the money from the Indian entity, which is what the capital asset is in this case, was sold to Siemens for a consideration of Euro 7,31,000. All these rights, under the arrangements with Siemens, belonged thereafter only to Siemens Limited. The sale of trade debts, or even loans, is a part of day to day trade and commerce. Learned CIT (A) has not even raised on any issues on this aspect of the matter; all that he has to say in this regard is that since an advance given by the assessee did not give rise to any capital asset, the transfer of the advance, or the right to recover the advance so given, did not result in any transfer of capital asset As we have held it to be in the nature of capital asset, the objection raised by the CIT (A) ceases to be relevant anyway.***

***10. We have noted that the right to recover the money from the Indian entity, in the light of the financial difficulties that the Indian entity was traversing through, was valued at Euro 7,31,000. There is no dispute about bona fides of this valuation. As for the vague allegations about the tax evasion motive, nothing cogent has been brought on record at aft. The authorities below were in error in fighting shy of the tax corollaries of a legally valid commercial transaction, without bringing »H record any material to disprove its bona fides or to show that it's a sham transaction, just because of their apprehensions about tax motives of the transaction. Just because a transaction results in a tax benefit, unless it is a sham transaction, it cannot be ignored. The fact remains that the recoverable from the Indian entity is transferred by the assessee and that it was transferred for an amount lesser than the cost at which it is acquired. There is also no dispute that if the capital loss is to be allowed, the loss has to be short term capital loss. In these circumstances, in our considered view, there is no justification in declining the short term capital loss claimed by the assessee.***

***11. In view of the above discussions, as also bearing in mind entirety of the case, we uphold the grievance of the assessee, and direct the Assessing Officer to allow the short term capital loss, subject to normal verifications, as claimed by the assessee.***

***12. In the result, the appeal is allowed. [Bold is emphasis supplied us"***

2) Reliance Natural Resources Limited [ITA 847/Mum/2011]:

"14.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The issue for consideration before us, as argued by both the parties, is whether or not the learned CIT (A) was justified in deleting the disallowance of STCL of Rs.17, 75, 67,418/- claimed by the assessee. The facts of the matter that emanate from the record are that the assessee had advanced/loaned an amount of Rs.17,84,67,418/- to M/s. Reliance Patalganga Power Ltd. According to the assessee due to difficulties faced, it was decided that the said advance/loan be assigned in order to recover whatever was possible and accordingly, the same was assigned to Western Power Alliance Ltd. for a consideration of

Rs.9,00,000/~. The assessee claimed a STCL on this transaction of sale of a book debt.

14.3.2 In assessment proceedings, the AO disallowed the assessee's claim on the ground that capital expenditure is not allowable unless specifically provided for in the Act though he accepted the fact that it is a capital loss. On appeal, the learned CIT (A) deleted the disallowance made by the AO and allowed the assessee's claim by holding as under at paras 4.3 and 4.4 of the impugned order:

.....  
14.3.3 Taking into consideration the facts and circumstances of the case, we are of the view that the issue for consideration, i.e. whether the learned CIT(A) is justified in allowing the assessee's claim for STCL on assignment of loan to M/s. Western Power Alliance Ltd. is squarely covered in favour of the assessee by the decision of the Coordinate Bench of this Tribunal in the case of Nixdorf Informationssysteme GmbH (supra).....

14.3.4 Following the decision of the Coordinate Bench of this Tribunal in the case of Siemens Nixdorf Informationssysteme GmbH (2016) 68 taxmann.com 113 (Mumbai-Trib), we uphold the order of the learned CIT(A) in allowing the assessee's claim for STCL on assignment of loan to M/s. Western Power Alliance Ltd. Consequently, ground No. 4 of Revenue's appeal is dismissed"

5.11. Respectfully following the decisions of Hon'ble jurisdictional ITAT, I am of the view that the right to receive the loan given or debt constitutes a capital asset within the meaning of section 2(14) of the Act and the assignment of such right to another person constitutes transfer within the meaning of section 2(47) of the Act. Therefore, the Appellant has rightly offered the loss on assignment of debt as short term capital loss.

5.12 I have also considered the case laws relied upon by the AO in the assessment order passed u/s 143(3) of the Act. However, those cases are distinguishable on facts of the case as already done by the appellant in the written submissions; hence, they are not applicable to the present case of the Appellant. Therefore, this ground of appeal of the assessee is partly allowed."

15. Thus the Ld. CIT(A) recomputed the loss from transaction at Rs.260.89 crores thereby partly uphold the disallowance at Rs.92.95 crores. The Ld. CIT(A) computed the said loss of Rs.260.89 crores on the basis of prices of shares of NDTV on the date of purchase and sale of debentures. The revenue has challenged the order of Ld. CIT(A) on this reduction in disallowance by the AO while assessee has also filed cross

objection against the sustaining of disallowance of STCL of Rs.92.95 crores.

16. The Ld. D.R. while relying heavily on the order of AO accepted that in the remand report called for during the appellate proceedings by Ld. CIT(A) on the additional evidences filed qua sale and purchase of transactions, the ld CIT(A) has deleted the disallowance of short term capital loss of Rs.260.89 crores, however, relied heavily on the grounds of appeal and order of AO. However strongly supported and relied on the order of ld CIT(A) in respect of partly sustaining of disallowance on account of STCL as raised by the assessee by way of cross objection challenging the part confirmation of disallowance of loss of Rs.92.95 crores by Ld. CIT(A). The Ld. D.R. submitted that Ld. CIT(A) after considering the remand report has sustained the said loss while the Ld. A.R., on the other hand, submitted that assessee has sold the debentures to M/s. Eminent Networks Pvt. Ltd. which is a third party and even in the original assessment proceedings and also in the remand proceedings, the AO has not doubted the genuineness of the transactions when these additional evidences were sent to the AO by the Ld. CIT(A). The Ld. A.R. submitted that once the transaction was held to be genuine, the sale consideration received from third party through banking channel could not be interfered with or tinkered pursuant to the provisions of section 48 of the Act unless the Revenue is able to bring on record the substantive material or auduce the evidences to prove that declared consideration is not real one and the actual consideration is different from what has been stated in the

documents. In defence of his arguments the Ld. A.R. relied on a series of decisions which are as under:

1. Arjun Malhotra vs. CIT (2018) 92 taxman.com 338 (Delhi)
2. CIT vs. M/s. B. Arun Kumar & Co. ITA No.2337 of 2017 order dated 08.03.2016
3. CIT vs. Smt. Nilofer I. Singh (2009) 176 taxmann 252 (Delhi)
4. CIT vs. Shivakami Co. (P.) Ltd.(1986) 25 taxmann 80K (SC)

17. The Ld. A.R. submitted that in the present case the purchase consideration is as per the agreement and is paid through banking channels. Besides the sale of debenture is between the two independent parties and consideration is duly agreed upon as per the agreement which needs to be accepted by the Revenue as the Revenue has failed to bring on record any substantive evidence that consideration accrued to the assessee is not the real consideration. The Ld. A.R. therefore humbly prayed before the Bench that order of Ld. CIT(A) to the extent of deleting the disallowance of STCL of Rs.260.89 crore may kindly be upheld however strongly argued the sustaining of part disallowance to the tune of Rs. 92.95 Cr as the same contrary to the facts on records and also contrary to ratio laid down by the judicial pronouncements as stated above. The ld AR argued that once the transaction is held to be genuine, the department has no power to substitute the value of transaction without bringing any substantive and objective material on record or prove the transaction to be not genuine. In view of these facts and circumstances the Ld. A.R. prayed that the part disallowance of STCG of Rs.92.95 Cr as upheld by the Ld. CIT(A) may also be deleted.

18. We have heard the rival submissions and perused the material on record. We find that in this case the AO has rejected the STCL of Rs.353.85 crore resulting from sale of OFCDs of M/s. Vishwapradhan Commercial Private Ltd to Eminent Network Pvt Ltd which is a third party for Rs.50 crores. The face value of these debentures was Rs.403.85 crores. We note that this transaction has taken place between two parties who are not connected at all. The AO has made the addition on the ground that assessee has not filed any evidences/explanations with regards to purchase and sale of these OFCDs and therefore the entire loss resulting from this transaction was disallowed. In the appellate proceedings, the Ld. CIT(A) after calling for the remand report from the AO on the additional evidences filed by the Ld. Counsel of the assessee, restricted the disallowance at Rs.92.95 crore thereby deleting the STCL to the extent of Rs.260.89 crore. The Ld CIT(A) deleted the disallowance to the tune of Rs. 260.89 Cr on the basis of AO's comments on the market price of shares of NDTV on the date of purchase and sale respectively. The Ld CIT(A) while sustaining the part disallowance also referred to comments of the AO in the remand report to the effect that purchase price of the shares were inflated and sale prices were deflated artificially to declare higher STCL. The Ld. CIT(A) after considering the remand report allowed the loss to the extent of Rs.260.89 crores which was based upon the market price of shares of NDTV and thus rejected the loss to the extent of Rs.92.95 crores. After perusing the orders of authorities including remand report, we note that genuineness of the transaction was not doubted by the authorities below. We also note that these debentures were sold by the assessee to

third party M/s. Eminent Network Pvt. Ltd. on agreed terms and the consideration was also received through banking channels. Under these circumstances to tinker with the consideration or to substitute a higher consideration in place of the agreed consideration, the Revenue has to bring on record some substantive and concrete evidences that actual consideration is not the real consideration and only in that event the agreed consideration can be changed to real consideration . In the present case the consideration on which these debentures were sold was agreed between two parties and there is no evidence on record to prove to the contrary that assessee has received consideration over and above the consideration as per the sale agreement. Considering these facts in totality , we are of the view that the capital gain under section 48 of the Act can not be altered unless the evidences are there to prove that assessee has received more consideration than the declared consideration. The case of the assessee's case find support from the following decisions:

- In the case of Arjun Malhotra vs. CIT (supra) the Hon'ble Delhi High Court has held that for the purpose of computing capital gain under section 48 the actual consideration shall be considered and not the market price.
- Similarly in the case of CIT vs. B. Arun Kumar and Co. (supra) the Hon'ble Bombay High Court has held that where computation of market gain is governed by section 48 of the Act but only full value of the consideration received/accrued to the assessee shall be considered and there is no question of substituting the same unless

Revenue proves that amount disclosed by the assessee was less than but has been received by it or what had accrued to it on sale of shares.

- In the case of CIT vs. Smt. Nilofer I. Singh (supra) it has been held that full value of consideration that has been used in section 48 does not have any reference to the market value but only to the consideration referred to any sale deed as per the sale price of the assets which have been transferred.
- In the case of CIT vs. Shivakami Co. (P.) Ltd. (supra) the Hon'ble Supreme Court has held as under:

“The first proviso to section 12B(2) provides 'full value of the consideration for which the sale, exchange, relinquishment or transfer is made' to be taken as the basis for the computation of the capital gains. Therefore, unless there is evidence that more than what was stated was received, no higher price can be taken to be the basis for computation of capital gains. The onus is on the revenue the inference might be drawn in certain cases but to come to a conclusion that a particular higher amount was in fact received must be based on such material from which such an irresistible conclusion follows. The proviso helps or enables the department by providing a way to determine the market value. But the proviso is applicable only where the full value for the consideration has not been stated. In K.P. Varghese v. ITO [1981] 131 ITR 597, the Supreme Court has held that the second ingredient that is to say that the word 'declared' in sub-section (2) of section 52 is very eloquent and revealing. It clearly indicates that the focus of sub-section (2) is on the consideration declared or disclosed by the assessee as distinguished from the consideration actually received by him and it contemplates a case where the consideration received by the assessee in respect of transaction is not truly declared or disclosed by him but is shown at a different figure. Capital gains is intended to tax the gains of an assessee, not what an assessee might have gained.”

19. Considering the facts of the assessee's case in the light of the ratio laid down in the above decisions, we are of the view that the Ld. CIT(A) is not justified in upholding the disallowance to the extent of Rs.92.95 crores. We are therefore inclined to modify the findings of Ld. CIT(A) on this issue and direct the AO to allow the full short term capital loss of Rs.353.95 crores.

Consequently the ground No. 5 to 8 of the Revenue are dismissed and cross objection of the assessee is allowed.

20. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is allowed.

**Order pronounced in the open court on 08.01.2021.**

**Sd/-**  
**(Ram Lal Negi)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 08.01.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.