

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

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 3906/MUM/2019  
(Assessment Year: 2014-15)

Shapoorji Pallonji Infrastructure –  
Capital Company Private Limited,  
41/44, S P Centre, Minoo Desai Marg,  
Colaba, Mumbai - 400005  
[PAN: AABCS4370B]

..... Appellant

Deputy Commissioner of Income Tax –  
3(3)(1), Mumbai,  
Aayakar Bhavan, Mumbai - 400020

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri C.S. Ananthan  
For the Respondent/Department : Shri Mahita Nair

Date of conclusion of hearing : 07.10.2022  
Date of pronouncement of order : 27.12.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant has challenged the order, dated 26.03.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 29.12.2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised the following ground of appeal:
  - "1. *On the facts and circumstances of the case and in law the Commissioner of Income tax (Appeals) erred in upholding the disallowance made by the Assessing*

*Officer in respect of Rs. 26,10,06,157 arising on account of reduction in share capital."*

3. The solitary ground raised in the present appeal pertains to the order of CIT(A) upholding that the disallowance of Long Term Capital Loss of INR 26,13,40,440/- made by the Assessing Officer claimed by the Appellant on account of reduction of share capital.
4. During the assessment proceedings the Assessing Officer noted that the Appellant had claimed Long Term Capital Loss (after indexation) of INR 26,13,40,440/- on account of reduction of capital and the Appellant was asked to provide details of the same. In response, the appellant submitted the order, dated 10.07.2014 passed by the Hon'ble High Court of Gujarat approving scheme of amalgamation of Simar Energy (Gujarat) Private Limited with Samalpatti Power Company Pvt. Ltd. (SPCPL). As per the scheme of amalgamation shares of SPCPL held by the Appellant as investment were cancelled on account of reduction of share capital. The assessing officer, following the decision of the special bench of the Tribunal in the case of Bennett Coleman & Co. Ltd Vs. Additional Commissioner of Income Tax, Range 1(1), Mumbai: 12 ITR(T) 97 (Mumbai) disallowed the claim of Long Term Capital Loss of INR 26,13,40,440/-.
5. Being aggrieved, the Appellant preferred appeal before the CIT(A) against the Assessment Order, dated 29.12.2016, which was dismissed vide, order dated 26.03.2019.
6. The Appellant is now in appeal before us against the order passed by CIT(A) confirming the disallowance of the above said Long Term Capital Loss.

7. The learned Authorised Representative for the Appellant submitted that reduction of capital results in extinguishment of rights held in shares and therefore, qualifies as 'transfer' in terms of Section 2(47) of the Act. The reduction of capital has the effect of reducing the liability of the company to the shareholders on one hand and depriving the right of the shareholders to receive a part of the share capital on the other hand. He further submitted that in the case of Carestream Health Inc Vs. Deputy Commissioner of Income Tax, Range (1)(1) [ITA No. 826/MUM/2016, Assessment Year 2011-12, dated 6.02.2020], the Mumbai Bench of the Tribunal has, by relying upon the judgement of the Hon'ble Supreme Court in the case Kartikeya V Sarabhai and Anr Vs. CIT: 228 ITR 163 (SC), CIT vs G Narasimhan: 236 ITR 327 (SC) and CIT vs Mrs Grace Collis: 248 ITR 323 (SC), allowed the claim for Long Term Capital Loss by holding that the extinguishment of rights of the shareholders as a result of reduction of share capital results in 'transfer'.
8. Per Contra, the Learned Departmental Representative relied upon the order passed by the Assessing Officer and the CIT(A) and submitted that the issue stands decided in favour of the Revenue by the decision of Special Bench of the Tribunal in the case of Bennett Coleman & Co. Ltd (supra) which has been followed by the Assessing Officer and the CIT(A). Therefore, the appeal preferred by the Appellant is liable to be dismissed.
9. We have considered the rival submissions and perused the matter on record. On perusal of the decision of the Tribunal in the case of Bennett Coleman & Co. Ltd (supra), we find that the

special bench of the Tribunal has clearly held that capital loss on reduction of share capital cannot be allowed, and while doing so the Special Bench of Tribunal had taken into consideration all the decisions of the Supreme Court relied upon by the Mumbai bench of the Tribunal in the case of Carestream Health Inc (supra). On perusal of paragraph 7.7 of the decision of the Mumbai bench of the Tribunal in the case of case Carestream Health Inc (supra) it can be seen that the Tribunal has given its reasoning for not applying the decision of Special Bench of the Tribunal which reads as under:

*“7.7. It is not in dispute that in the instant case, the assessee had indeed received consideration of Rs.39.99 Crores towards reduction of capital and whereas in the facts of the case before the Mumbai Special bench reported in 133 ITD 1 relied upon by the Id. DR there was no receipt of consideration at all. Out of the total consideration of Rs.39.99 Crores arrived @Rs.13.73 per share cancelled in accordance with the valuation report obtained separately, a sum of Rs.10.31 Crores has been considered by the assessee as dividend to the extent of accumulated profits possessed by CHIPL as per the provisions of Section 2(22)(d) of the Act and the same has been duly subjected to dividend distribution tax. The remaining sum of Rs.29.67 Crores has been considered as sale consideration for the purpose of computing capital gain / loss pursuant to reduction of capital.” (Emphasis Supplied)*

10. Thus, consideration was received by the shareholders on reduction of capital in the above case. However, in the case before us now consideration has been received by the shareholders on account of reduction of share capital. Paragraph 7 of the scheme of amalgamation approved by the Hon'ble Gujarat High Court clearly provides that capital reduction would take place without any payment to the holders of shares. Therefore, the decision of the Mumbai Bench of the

Tribunal in the case Carestream Health Inc (supra) would not advance the case of the Appellant.

11. We note that before CIT(A) reliance was also placed on behalf of the Appellant on the decision of Bangalore Bench of the Tribunal in the case of Jupiter Capital Private Limited versus ACIT, 4(1)(1) [ITA No. 445/Bang/2018, dated 29.11.2018]. In this regard it would be pertinent to refer to the following observations made by the Mumbai bench of the Tribunal in the case of Mahindra and Mahindra Ltd Vs DCIT: [2020] 117 taxmann.com 518 (Mumbai - Trib.)(19-06-2020):

*“24.3 From the aforesaid facts before the Hon'ble Supreme Court and the decision rendered thereon, it could be seen and there was payment of cash consideration to the existing shareholder pursuant to reduction of share capital, whereas in the instant case, there is absolutely no dispute that the assessee company i.e. Mahindra and Mahindra Ltd., received no consideration on reduction of capital. Hence, the decision relied on the Hon'ble Supreme Court in Kartikeya Sarabhai (supra) by the Coordinate Bench of Bangalore Tribunal in the case of Jupiter Capital (supra) is factually distinguishable with that of the assessee herein. We find that in the facts before the Hon'ble Special Bench of Mumbai Tribunal referred supra, there was no receipt of consideration. Needless to mention that the Special Bench decision would have binding precedent over the Division Bench decision. We find that the Id. DRP had followed the aforesaid Special Bench decision which are applicable to the facts of the instant case as narrated hereinabove, on which we do not find any infirmity. No arguments were advanced before us to distinguish the said Special Bench decision either on facts or on law. Hence, we do not deem it fit to interfere in the order of the Id. DRP in this regard. Accordingly, the concise ground No. 10 raised by the assessee is dismissed.”*

Since in the present case no consideration has been received by the Appellant, the decision of the Bangalore Bench of the Tribunal in the case of Jupiter Capital Private Limited (supra) would also not be of aid to the Appellant.

12. The Assessing Officer and CIT(A) have denied the Long Term Capital Loss arising on reduction of capital by following the decision of Special Bench of the Tribunal in the case of Bennett Coleman & Co. Ltd (supra). The contentions raised by the Appellant resonate in the minority view expressed in the case of Bennett Coleman & Co. Ltd (supra). However, we are bound by the majority view taken by the Special Bench of the Tribunal and accordingly, decline to interfere with the order passed by the CIT(A). Ground No. 1 raised by the Appellant in present appeal is dismissed.

In result, the present appeal is dismissed.

Order pronounced on 27.12.2022.

*Sd/-*  
(Prashant Maharishi)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.12.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai