

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No. 2453/Del/2022

निर्धारणवर्ष/Assessment Year: 2017-18

ACIT, Circle-46(1), Room No.106, Drum Shape Building, I.P. Estate, New Delhi.	<u>बनाम</u> Vs.	Dabur Invest Corp., 4 th Floor, Punjab Bhawan, New Delhi.
		PAN No.AADFD2529D
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

ITA No. 2454/Del/2022

निर्धारणवर्ष/Assessment Year: 2018-19

ACIT, Circle-46(1), Room No.106, Drum Shape Building, I.P. Estate, New Delhi.	<u>बनाम</u> Vs.	Dabur Invest Corp., 4 th Floor, Punjab Bhawan, New Delhi.
		PAN No.AADFD2529D
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

ITA No. 2447/Del/2022

निर्धारणवर्ष/Assessment Year: 2017-18

Dabur Invest Corp., 4 th Floor, Punjab Bhawan, New Delhi.	<u>बनाम</u> Vs.	JCIT, Range-46, New Delhi.
PAN No.AADFD2529D		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

ITA No. 2448/Del/2022
निर्धारणवर्ष/Assessment Year: 2018-19

Dabur Invest Corp., 4 th Floor, Punjab Bhawan, New Delhi.	बनाम Vs.	JCIT, Range-46, New Delhi.
PAN No.AADFD2529D		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri M.P. Rastogi, Adv. Shri Shivam Malik, Adv. & Shri Ajay Marwah, CA
Revenue by	Ms. Monika Dhami, CIT DR

सुनवाईकीतारीख/ Date of hearing:	03.04.2025
उद्घोषणाकीतारीख/Pronouncement on	04.06.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

All these appeals are filed by the Revenue and Assessee against different orders of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi dated 04.08.2022 for the assessment years 2017-18 & 2018-19.

2. The first common issue in both the Revenue appeals for the assessment years 2017-18 and 2018-19 is relating to taxation of option price received by the assessee as per terms of the joint venture agreement with M/s Commercial Union International Holding Ltd. (CUIH) as capital receipt or revenue receipt.

3. The Ld. Counsel for the assessee, at the outset, submitted that the issue in appeal is decided by the Tribunal for the assessment years 2013-14, 2014-15 and 2015-16, wherein the Tribunal held that the option money received by the assessee is capital receipt which requires an adjustment only at the time of transfer of shares by the assessee to CUIH while working out resultant capital gain thereon. Ld. Counsel for the assessee submits that order of the Tribunal dated 11.03.2019 in ITA No.1763 and 1764/Del/2018 for the assessment years 2013-14 & 2014-15 is placed at pages 1 to 51 of the citation paper book. Similarly the order of the Tribunal for the AY 2015-16 is placed at pages 54 to 130 of the citation paper book.

4. The Ld. Counsel further submitted that against the order of the Tribunal for the assessment years 2013-14 & 2014-15 the Revenue had preferred appeals before the Hon'ble Delhi High Court in ITA No.483/2019 and 482/2019 respectively and the Hon'ble Delhi High Court vide its order dated 10.03.2025 dismissed the Revenue's appeals on the principle of consistency because in various years right from assessment years 2002-03 to 2023-24 the issue attained finality. Ld. Counsel submitted that the order of the High Court has

been placed at page 157 of citation paper book. Ld. Counsel for the assessee further made detailed submissions as under: -

“1. As explained in department appeal having ITA No. 2453/Del/2022, to co-promote a company for the purpose of insurance business, the assessee had entered into a joint venture agreement (JV Agreement) dated 7th August 2001 with CUIH, a company incorporated in England and Wales (later on the name changed to Aviva International Holdings Ltd.) (Aviva) for the purpose to regulate their relationship inter-se in respect of the company proposed to be floated. As per the agreement, the appellant had to subscribe 74% of the total paid up capital of the company and the CUIH had to subscribe 26% of the total paid up capital of the company as per the then existing norms of FPI. After executing the agreement, necessary permissions from Insurance Regulatory & Development Authority (IRDA) as well as the Reserve Bank of India and the FIPB were obtained after filing the JV agreement.

2. At the time of incorporation, as per the FIPB guidelines for insurance sector, the foreign entity cannot hold more than 26% in the company but because Aviva was interested to acquire the shareholding at a higher percentage, hence agreement has been arrived at in between the assessee and CUIH that Dabur will not sell the shares to third party subject to the payment of option price by CUIH on the rates prescribed in JV agreement. The option price so received by Dabur will be appropriated at the time when the shares would be transferred in favour of CUIH on account of change in policy by FIPB allowing the holding of shares by foreign entity at a higher percentage. The quantum of option price which was to be appropriated by Dabur was to be determined on the date of transfer of shares depending upon the market value of the shares so transferred. In case the option price received by the assessee was more than the formula given in the JV agreement, then the excess amount of the option price in relation to the shares transferred would be refunded by the assessee. As per the definition of net sale proceeds given in Schedule 1 of JV agreement, it consists of gross

sale proceeds per Dabur share and option price retained as per formula.

3. *During the year under consideration, i.e. Assessment Year 2017-18, the assessee had transferred 23% of its shareholding in favour of CUIH on account of change in policy by FIPB allowing the holding by a foreign entity at a higher percentage. For this purpose, necessary permission was sought for not only from FIPB but also from IRDA as well as RBI - copy of FIPB approval dated 18th March 2016 placed at page 200 of the paper book and IRDA approval dated 28th March 2016 at page 205 of paper book.*

3.1 *As per permission granted by FIPB, the market value of the shares was determined by competent commercial valuers at Rs.940 crore and as per FIPB guidelines it has to be received from foreign remittances and accordingly CUIH, in order to acquire 23% shareholding in the joint venture company had remitted the same from foreign sources.*

4. *However, the proportionate option money of 23% shareholding which was cumulatively received by the assessee in various years was at Rs. 1003.16 crore, out of which as per the formula given in the JV agreement, only an amount of Rs.524.29 crore was appropriated and retained by Dabur and the proportionate excess amount of option money Rs.478 crore was refunded to CUIH as per JV agreement which was approved by RBI and over which there is no dispute.*

4.1 *Accordingly, the assessee offered the capital gain on sale of such shares, i.e. 23% shareholding in Assessment Year 2017-18 and sale consideration was disclosed at Rs. 1464.29 crore (Rs.940 crore received through foreign remittances plus Rs. 524.29 crore being the amount appropriated and retained out of option money).*

5. *Investment in acquisition of the shares of joint venture company was 'made by the assessee from time to time as and when the shares were subscribed. The investment in shares was made by the assessee out of the borrowed funds raised from time to time from standard*

chartered banks and other financial companies, which are available on record.

5.1 In earlier years, since the inception of the assessee-firm, the assessee has not only disclosed the investment made in the joint venture company in its balance sheet but also had disclosed about the receipts of option money and the borrowing cost. In the notes attached with balance sheet of respective years, it was stated that the interest on borrowing cost has been capitalized and the option money will be adjusted against the reduction of shareholding at a price to be determined at the time of transfer of shares.

6. Some of the earlier assessment years were completed as a scrutiny assessment, as judicially noticed by ITAT in appeals for Assessment Years 2013-14, 2014-15 and also 2015-16 and the then Assessing Officer, after examining the terms of JV agreement, had accepted the assessee's stand and interest and other expenses were allowed to be capitalized. However, in Assessment Year 2015-16, the succeeding Assessing Officer was of the view that the option money, received year after year, has no concern with the sale of shares but the receipts are revenue in nature and is business income. Accordingly, whatever the option money was received in Assessment Year 2015-16, the Assessing Officer taxed the same as business income and based on such conclusion the Pr. CIT also initiated the proceedings u/s 263 of the Act for Assessment Years 2013-14 and 2014-15. The Assessing Officer also took action u/s 147 of the Act based on the findings in Assessment Years 2013-14, 2014-15 and 2015-16 for the Assessment Years 2011-12, 2012-13 and 2016-17.

7. The ITAT, while considering the appeals against order u/s 263 of the Act for Assessment Years 2013-14 and 2014-15 in ITA No. 1763/Del/ 2018 and ITA No. 1764/Del/2018 has quashed the order u/s 263 of the Act vide order dated 11th March 2019. The ITAT, while passing the order, observed that the option money is a capital receipt and is an advance against the sale of shares and would be taken into consideration in the year in which the shares would be transferred in the Assessment Year 2017-18.

7.1 Similarly, in Assessment Year 2015-16, the Honble ITAT in ITA No. 8058/Del/2018 has also deleted the addition made by the AO and after analyzing the various clauses of the Joint Venture Agreement held that the option money so received by the assessee from CUIH in various years is a capital receipt against the capital investment made by the assessee in the form of shares in the joint venture company M/s Aviva Life Insurance Co. Ltd. and is in the nature of advance against sale of shares which would be ascertainable as per the terms of the agreement in the year of sale of shares and if any excess money received, that would be refunded to CUIH and has been actually refunded in Assessment Year 2017-18 when CUIH has further acquired 23% stakes in the company, as permitted by Government and accordingly not liable to tax in the year of its receipt.

7.2 In Assessment Year 2015-16, because the Department was treating the option money as revenue in nature and taxing the same as business receipts and based on that, various actions in relation to various years were taken by the Department, hence as an abundant precaution the assessee raised an additional ground before the ITAT and claimed that the interest paid on the borrowed funds amounting to Rs.73.22 crore pertaining to that year and capitalized on investment, should be allowed as a revenue expenditure. The ITAT, while holding the option money as a capital receipt, observed that in view of the fact that that the option money is a capital receipt and is in the nature of advance as sale of shares, hence the additional ground becomes redundant which is very much clear from para 73 of the ITAT order dated 11th February 2021 for Assessment Year 2015-16. In other words, the ITAT did not disturb the capitalization of interest paid on borrowed funds.

8. Against the order of ITAT in Assessment Years 2013-14 and 2014-15, the Revenue preferred an appeal before the Hon'ble Delhi High Court having ITA Nos. 482 and 483 of 2019 and 902 and 903 of 2019 and the High Court vide order dated 10th March 2025 dismissed the appeal of Revenue on the ground of consistency after judicially noticing that since 2002 to 2023 the option price is

considered as a capital receipt towards advance against sale of shares.

9. In Assessment Years 2011-12, 2012-13 and 2016-17, as stated hereinabove, the actions were taken u/s 147 of the Act based on the conclusion arrived at by the Assessing Officer and Pr. CIT for taxing the option money, but the Hon hie ITAT, after judicially noticing about the fate of 2013-14, 2014-15 and 2015-16, has quashed the initiation of reassessment proceedings.

9.1 Apart from it, even in subsequent years in Assessment Years 2019-20, 2020-21 and 2021-22, the return was accepted u/s 143(1) of the Act and the issue attained finality.

9.2 In Assessment Years 2022-23, even the Assessing Officer, while framing assessment u/s 143(3) of the Act, vide order dated 23rd March 2024, accepted the issue after following the order of ITAT in Assessment Year 2015-16.

10. In Assessment Year 2017-18 (the impugned assessment year), the assessee had offered the capital gain on sale of 23% equity stakes the computation whereof has been reproduced by CIT (Appeals) at page 41-42 of the order, as under:

	(Rupees in crore)
Sale consideration on sale of 23% stakes as per FIPB order	940.00
<u>Option money received</u>	
From 2002 to 2007 in respect of 23% shareholding	1003.16
Less: Option money refunded as per formula, i.e. para No.16A of JV agreement and approved by RBI	<u>478.87</u>
	<u>524.29</u>
Net sale consideration of 23% stakes	1464.29
<u>Less cost</u>	
Subscription price	461.12

Interest cost + other expenses (capitalized)	<u>209.36</u> 670.49
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Index Cost	1465.85
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10.1 However, the Assessing Officer, while framing the assessment, disregarded the capital gain disclosed by the assessee in view of the stand of the Revenue taken in Assessment Years 2013-14 and 2015-16 and proceeded in his own way on the lines of earlier years. The Assessing Officer treated the option money actually received in the year under consideration as revenue receipt and also treated the sale price of Rs.940 crore as received by the assessee from CUIH as per the order of FIPB. While treating the receipts as revenue receipts, the Assessing Officer also disregarded the claim of capitalization of current interest and also observed that because the assessee has not claimed the deduction in respect of interest paid in its return, hence the same is also not allowable in view of the judgment of the Honhble Supreme Court in the case of Goetze (India) Ltd. vs. CIT in 284 ITR 323. In other words, the Assessing Officer, while framing assessment did not compute the income as capital gain as he proceeded in a different way which was found not sustainable, hence now he has to proceed with capital gain disclosed by the assessee on sale of its 23% stake in JV company.

11. However, as far as the interest capitalized by the assessee, the Assessing Officer observed that the interest paid on borrowed fund after the acquisition of shares cannot be capitalized. It is submitted that it is a settled proposition of law as held by Delhi High Court in the case of CIT vs. Mithlesh Kumari in 92 ITR 9 that if an asset has been acquired with the help of borrowed capital, then the interest on the borrowed capital paid year after year till the date of sale of assets has to be capitalized.

Similar principle has also been reiterated in the following cases:

- 215 CTR 96 (Madras) CIT vs. Trishul Capital Ltd.

- 315 ITR 136 (KAR) CIT vs. Sri Hari Ram Hotels Pvt. Ltd.
- 215 TTJ 515 (Delhi Trib) Zuari Investment Ltd. vs. ITO

11.1 Now as far as the claim of deduction, while computing capital gain in respect of the capitalized interest and other expenses is concerned, as stated hereinabove, that prior to Assessment Year 2017-18, all the assessments now have attained finality where the claim of capitalization of interest has been allowed and accepted. Once the claim of capitalization of interest in various earlier years has been accepted and also attained finality and was in accordance with the principle as enunciated by the Jurisdictional Delhi High Court in the case of Mithlesh Kumari (supra), the claim of deduction of proportionate capitalized interest as claimed deserves to be allowed while working out the capital gain on sale of shares and the Assessing Officer be directed accordingly.

12. Similarly the amount of Rs.478 crore out of the gross option money received in relation to the sale of 23% equity stakes, the same has actually be refunded to CUIH in terms of JV agreement which was duly approved by RBI. Hence, for the purpose of computation of capital gain in relation to the 23% stake, only the actual option money appropriated by the assessee has to be taken into account. As already submitted above, out of total gross option money relating to 23% stake, which was at Rs. 1003.16 crore, the assessee was eligible for only Rs.524.29 crore and the balance amount Rs.478.87 crore was actually refunded to CUIH. The Assessing Officer be directed accordingly.

12.1 In view of such situation, when the assessee had disclosed the capital gain on sale of shares after taking into consideration the actual sale price received as per FIPB plus the eligible amount of option money appropriated as per the formula given in JV agreement and claimed the deduction in respect of the cost which includes the capitalization of expenses, but has been disregarded by the Assessing Officer due to the stand taken by him in Assessment Years 2013-14, 2014-15 and

2015-16 and proceeded accordingly. Now the issue has attained finality in relation to the option money and capitalization of interest and expenses claimed in earlier years.

In such circumstances, the Assessing Officer be directed to compute the capital gain on sale of 23% stakes in accordance with law, thereby considering the net sale consideration and allow the deduction permissible in law, more particularly the interest and other expenses which have been allowed to have been capitalized in earlier years.

13. Out of total capitalized interest and other expenses amounting to Rs.760.19 crore, the assessee had claimed the proportionate amount to the 23% stake at Rs.209.36 crore leaving behind a balance of Rs.550.82 crore remained capitalized to the balance stake. The Assessing Officer, though did not make any disallowance/addition on this count on account of not debited in the profit & loss account etc. but commented the same as was made in respect of amount of Rs.209.36 crore. Such observation made by the Assessing Officer is also incorrect and not in accordance with law and deserves to be expunged.”

5. The Ld. Counsel for the assessee further inviting our attention to the assessment order passed for the AY 2022-23 u/s 143(3) r.w.s. 144B of the Act dated 23.03.2024 which is placed at pages 159 to 165, submitted that the Assessing Officer while completing the assessment following the order of the Tribunal dated 11.02.2021 for the AY 2015-16 accepted the stand of the assessee that the option money received by it is a capital receipt and accordingly no addition/disallowance was made. Therefore, the Ld. Counsel submits that in the circumstances the Assessing Officer be directed

to compute the capital gain on sale of 23% stake in accordance with law thereby considering the net sale consideration and allow the deduction permissible in law more particularly the interest and other expenses which have been allowed to have been capitalized in earlier years.

6. On the other hand, the Ld. DR fairly submitted that for the AY 2015-16 the Tribunal decided that the option money received by the assessee is capital receipt. The Assessee during the AY 2017-18 sold its 23% of stake through the joint venture agreement and disclosed capital gains. The Ld. DR submits that in view of the decision of the Tribunal for AY 2015-16 holding that the option money is capital receipt the issue may be sent back to the AO for computing the capital gains on sale of 23% stake.

7. Heard rival submissions, perused the orders of the authorities below and the submissions placed on record. On going through the order of the Tribunal for the AY 2015-16 in ITA No.8058/Del/2018 dated 11.02.2021 we observed that the Tribunal in its detailed judgment held that that option money received by the assessee is capital receipt which requires an adjustment only at the time of transfer of the shares by the assessee to CUIH while working out

resultant capital gain thereon. The relevant observations of the Tribunal are as under: -

“54. On careful consideration of above all clauses it is quite clear that option price received by Dabur from CUIH is subject to the determination of market value per share held by Dabur. This is evident from the reading of clause number 16 and 16 A of the agreement. Option price received by the assessee is directly linked with the transfer of Dabur shares. Dabur shares are to be transferred always at the market rate and if the Dabur incurs certain losses , then same shall be to an extent be recouped by CUIH. If there is upside in the market value of share , such defined gain on transfer of Dabur share is to be retained by Dabur. The learned CIT - A has dealt with this issue at page number 26 - 29 of her order. As we have already held that option price received by the assessee, though received on a regular basis and generating constant cash flow in the hands of the assessee, however, there is a liability on the assessee to repay such option price when such shares are sold in certain events. Therefore, though it is received on a regular basis and used to generate an income regularly in the hands of the assessee, it cannot be said that it is an income.

55. The shares held by Dabur is a capital asset of the assessee. The shares are locked in for the reason that the right of first refusal to buy the shares of Dabur rests with CUIH. In return, CUIH has paid Dabur option price, which is merely an advance against the purchase of the shares by CUIH at a later point of time. Thus option price, is required to be adjusted in all the transactions wherever the shares of Dabur would be transferred either to CUIH, or its nominee, or to a third party in all the events. Therefore, even otherwise the option price received by the assessee is merely a liability of repayment in the event the market value of the shares of the company is determined. It may happen that in certain circumstances the assessee may retain the option price and in certain circumstances the assessee may have to repay the option price back to CUIH. However, the triggering event would be the transfer of shares of Dabur in the company.

56. It is the contention of the revenue that joint-venture agreement is not about accessing shared resources pool or intellectual rights and it does not chalk out the business model for sharing of common pool of resources like intellectual rights, facilities, equipments et cetera and only a passing mention is made of new insurance entity. Looking at the agreement clause number [3] which is a conditions precedent to initial subscription specifically refers to the business plan for five years based on which the counter guarantees of the parties are to be worked out. The first such five year business plan is placed at page number 53 of the agreement which gives business plan for year 2001 to 2006. It also simulates premium income and investment income as well as the total expenditure of the company. Further the required solvency margins are also computed therein. The capital requirement of an Indian entity as well as foreign entity is also planned. Further on looking at clause number 6, wherein the provisions of further financing are incorporated. It is provided that in case the company requires further financing it would be in terms of the five year business plan and annual business plan presented to and approved by the board of directors. Further if the solvency ratio of the company falls below 120% of the statutory minimum solvency ratio, then also further financing is required. The board of the company may also decide on its own that further financing is required. All these are based on the business plan and annual business plan presented to the board. In the board of directors both the shareholders have a right to appoint the directors in proportion to their shareholdings. In the impugned year before us the Dabur was holding 74% of equity and thus was a majority partner.

57. It is also stated by the learned CIT - A that the joint-venture agreement is merely a financial agreement where Dabur confers exclusive rights upon CUIH for purchase of its shares. Thus it is only an agreement when CUIH guarantees payment of 20% as option price to Dabur by 31st January every year in return for exclusive right to purchase shares by CUIH in the event of change of foreign direct investment rules. On careful reading of the complete agreement, it is apparent that it is a shareholders' agreement for making investment in a company which is also incorporated in the

articles of association of the company. There are Tag along and Drag along rights of both the shareholders enshrined therein. Further as per clause number 16 option price is to be refunded by the assessee in certain events to CUIH. In fact option price is refunded when FDI rules were relaxed and foreign party was entitled to hold 49% equity. At that moment 23% of Dabur shares were transferred in favour of CUIH in terms of provisions of clause 16 of the agreement and option price was refunded proportionately. Therefore, it cannot be said that the 20% return on subscription price has been paid by CUIH to the assessee as a return on its investment and hence it is income.

58. The revenue vehemently argued that assessee is receiving payments annually i.e. year to year, therefore it is an income of the assessee accruing year to year. On the basis of several judicial precedents, the principal emerges that the receipt of a periodic nature or a single receipt is immaterial for the purpose of determining its nature. There is no magic in the distinction between a lump sum and a periodical sum which determines the nature of receipt. Income receipt is not necessarily recurring and not a capital receipt single. A single occasional receipt may be an item of an income whereas an annual receipt recurring over a number of years also cannot be an income. Therefore the question always is what is the real character of payment not what the rival parties call it. Further the disclosure by assessee in its books of account as liabilities, also do not determine the character of that receipt as a capital receipt. The way in which receipt is dealt with in the accounts of the assessee is not always conclusively against or in favour of assessee, whether the receipt of money is taxable or not has to be decided according to the principles of Income tax Act and not in the manner in which a particular item is dealt with in its books. However the principle of accrual of income is not different in accounting theory and taxation principal. Therefore, on reading of the comprehensive agreement of joint venture between the shareholders i.e. shareholders agreement, it is apparent that option price received by the assessee annually is merely an advance receipt of sale consideration of shares to be transferred by assessee in favour of CUIH, its nominee or to 3rd party.

59. *Even such Option price received is always a liability of the assessee , as there are relevant clauses of the agreement where assess needs to refund the same to CUIH based on market value of shares. Undeniably, there are circumstances where the Option price is to be retained by the assessee , but all these depends on the triggering even of sale of Dabur shares , not before that. Further the option price is also to be adjusted in “full value of consideration of shares” as when those are transferred. Thus, Option price is capital receipt, received in advance by the assessee.*

60. *One more reason to say so is that when assessee has subscribed to the shares of the company, according to clause number 10 which describes the dividend policy amongst the shareholders, any dividend received by the assessee if at all, is not adjustable against option price. Thus Dabur shares are also entitled to Dividend, If any.*

61. *It is also argued by the revenue that Dabur does not have any right of management of the business and the business will only grow because of AVIVA. The reference was specifically made to a provision in the agreement clause number 11.4 that the Chief Executive officer of the company shall be nominated by CUIH from one of the four directors nominated by it in consultation with Dabur and shall be appointed by the board. Looking at clause number 11 which provides for the composition of the board of directors, the total number of the directors of the company shall be 10 and Dabur shall be entitled to nominate maximum of 6 of the 10 directors and CUIH shall nominate maximum of 4 directors. The chairman shall be nominated by the annual rotation between the shareholders and shall not have a casting Vote. The Dabur will nominate the chairman in the first year. The Chief Executive Officer of the company is required to be nominated by CUIH out of its four directors. However such Chief Executive Officer would be appointed in consultation with Dabur. As the investment is made by the assessee in a private limited company, it will function as per the decision of the board of directors of that company. Even the appointment of chief executive officer of the company is also required to be nominated in consultation with Dabur. The agreement does not provide that Dabur will not have any say in the management and*

the day-to-day affairs of the company. In fact the Chief Executive officer shall also report to the board of directors and will act and function Under the direction of the board of directors and would be responsible to them. Further on looking at clause number 13 which provides certain reserved matters between shareholders. There are more than 24 items which are listed therein which cannot be carried out by the company otherwise without the prior unanimous approval in writing of both the shareholders. Therefore, it is apparent that Dabur has a veto right in all these 24 matters. Merely the appointment of chief executive officer of the company who is a nominee of CUIH, it cannot be said that the Dabur does not have any management rights in the company. Further, the argument that there is not a single instance, where Dabur has used its veto, is also devoid of any merit, because there was no such resolution placed is shown to us. In view of this, it cannot be said that Dabur does not have a right of management in the new entity.

62. It has been also held by revenue that the joint-venture agreement is an ironclad financial agreement where CUIH, holding guarantee of 20% of option price on the rights of CUIH for buying further stake of the assessee due to change in the foreign direct investment percentage and therefore the option price received by the assessee is income of the assessee. We have already stated that the joint-venture agreement is in the nature of a shareholders' agreement. It may be possible that one shareholder may put in investment in the company and other party may put in investment as well as expertise for the business of the company. But both are investors in the company. Even otherwise any acquisition of a stake in a company is always a financial arrangement. The right of first refusal to buy the stake of another party is always enshrined in case of closely held companies for smooth conduct and efficient running of the business. Whenever the shareholders enters into a shareholder agreement with respect to a particular company where both of them have invested and give a right of purchase of stake of one another, issues counter guarantees to each other for their obligations, it makes their investment in the company somewhat illiquid and nonmarketable. And for that if another shareholder pays

some advance money to be adjusted later on, when actual transfer of stake happens, such advance money received is a capital receipt and required to be adjusted only against the sale consideration received. It is not the case of the revenue that at the time of investment Dabur has not looked into the viability of business of insurance, government policies of foreign direct investment in insurance sector and continuity of CUIH in the business of insurance. After considering all these facts the Dabur has invested into the insurance business by assuming the risk as a business man. Thus, the treatment of the joint-venture agreement by the revenue and its interpretation that option price received by Dabur is a revenue receipt and is chargeable to tax as income is devoid of any merit.

63. One more reason assigned by the revenue to treat the option price as income is that the option price so received by the Dabur has been invested in income earning securities and therefore it cannot be considered as a capital receipt. It is also argued that that option price payment or its user has not been restricted by any clause in the joint venture agreement. In fact option price is invested by assessee in unsecured loan with sister concerns and mutual funds. Further, the revenue says that the recurring annual income is also not restrained and not put in any escrow account. We do not find any reason that utilization of the money received by the assessee can determine the character of the receipt in the hands of the assessee. There may also not be any requirement between the parties to put the above money in escrow account otherwise, why in first instance the money is paid to Dabur as an option price. In any way, whether Dabur utilizes the option money for its further investment elsewhere or it puts it into an escrow account, it is always the liability of the Dabur to pay back option price in certain event, which in fact it has done when 23% equity is transferred from Dabur to another shareholder. Therefore, we do not find any reason to hold that utilization of Dabur of option money by assessee makes any difference in determining the character of option price received whether capital receipt or income.

64. The learned lower authorities have also held that at the time of receipt of option price by the assessee there is no underlying asset transferred by the assessee and

therefore it is an income in the hands of the assessee. Naturally, the option price received by the assessee is an advance towards the sale price of the shares at a future date therefore the transfer of the underlying asset will happen at a future date on happening of the certain events. Thus it cannot be said that as there is no transfer of an asset at the time of receipt of option price and therefore, , the option price becomes an income of the assessee. If, this argument of the revenue is accepted then any advance received for the sale of a capital asset, where the sale will happen in the later time, Will become income of the assessee even if the transfer of such capital asset takes place in later years. This will tantamount to changing the character of a capital receipt (sale consideration for a capital asset) received in advance as income without there being any transfer of an asset. It is not the case of the revenue that ultimately the assessee did not transfer the assets and adjusted the option price against the sale consideration. Further whatever income is earned by the assessee in utilizing option money has already been offered to tax. In fact assessee has refunded the option price received in terms of the clauses of the agreement when subsequently the shares were transferred by the assessee to CUIH.

65. Another issue raised by the revenue is that the market value of the shares does not change the amount of return receivable by the assessee. It was stated that whether the market value of the share is zero or Rs.26.72 per share or Rs.20.38 per share the return remains the same i.e. it is equal to option price plus subscription price. The learned authorised representative submitted a table A along with his written submission placed at page number 12 of the submission. In that chart which has been reproduced by us earlier, the calculation is submitted according to clause number 16.8.3.4, 16.8.3.3, 16.8.3.2 and 16.8.3.1. of the agreement. The conclusion drawn by the revenue was that that whatever may be the market value of shares, entire option price is retained, because amount in column number 10 of that chart above is always higher or equal to amount in column number seven. Further stated that a sum of Rs.2941.60 crore is minimum guaranteed return on assessee's investment even when market value of shares is

zero. We have carefully perused the above submission and find that clause number 16 of the agreement deals with the transfer of Dabur shares and share option. According to clause number 16.6 the sale consideration received by Dabur pursuant to the exercise of CUIH option, the consideration to be received by the Dabur is always the market value for each share sold by the Dabur. However the above transaction is further to be adjusted in terms of clause number 16.6.1, 16.6.2 and 16.6.3. Clause number 16.6.1 deals with the situation where the market Value is lower than the subscription Price, option number 6.6.3 deals with where the market value is equivalent to the subscription Price. However clause number 16.6.2 provides that if the market Value is higher than the subscription Price, the Dabur shall repay the option price to CUIH. However the repayment of option price shall be restricted to the amount if the net sale proceeds is less than the subscription Price. The net sale proceed is stated to be the difference between the gross sale receipts per Dabur share and option price received by the assessee. Thus it is clear that when the market Value is higher than the total of subscription Price plus option price received by Dabur, in that circumstances the Dabur is entitled to retained such excess price. Thus it is clear that if market value of the share is higher than the total of subscription price plus option price, such higher value is to be retained by Dabur and not to be refunded. In view of this the argument of the revenue that in all circumstances the assessee gets only the option price or the option price is always to be retained is a fallacy. It is true that in such circumstances of the option price received by the assessee is always to be retained however, the assessee is also getting much more than option price if the market Value is higher than the subscription Price plus option price. The option price is a minimum guarantee given by CUIH as the minimum exit value of the investment made by assessee. Which is in general is found in many of the investment made by private equity funds. In this case the only differences that assessee is periodically receiving the minimum guarantee over a period of time as advance against sale of shares till such shares are transferred. But that does not make the sale consideration received in advance in part for transfer of shares as revenue receipt and thus income of the assessee

chargeable to tax in the year of receipt of such option price as advance sale consideration. Further the clause number 16.8 referred to by the revenue is related to the divestments during the 10 year period ignoring clause number 16.6 which is with respect to the transfer of Dabur shares to another shareholder of the company.

66. Next argument of the revenue is that the terms of the joint-venture agreement clearly shows that it is a pure financial transaction and therefore the option price received by the assessee is chargeable to tax as income and not a capital receipt. The first point of distinction drawn by the revenue is that in case of a share deal assessee is entitled to get only dividend income and in the case before the AO the assessee was provided a fixed 20% annual return on subscription price. On careful consideration of the above argument it is evident that assessee is also entitled to the dividend income and further the option price received in advance is required to be adjusted at the time of the transfer of Dabur shares. Thus, it cannot be said that assessee is not entitled to dividend, It is also over and above option Price. The further reason of the revenue is that there is no surety of getting any return if the transaction is for the sale of the shares and its investment whereas in case of the assessee it is on the date of signing of the agreement itself is assured of basic return. No doubt in certain share transaction the exit price by the investor may be determined at the time of entering into a shareholders" agreement, further the option price is merely an advance against such exit price. On careful analysis of the Value of consideration to be received by the assessee, the assessee is assured of not incurring any losses but also getting the full reward of the increase in the prices. Another argument is that the real owner of the share has right to sell shares whereas in case of the assessee it has no right to sale its shares except to the other shareholder. We do not find any abnormality in the above condition because at certain times according to the companies act in case of closely held companies the shareholders are not authorised to sell the shares to the third parties without giving an option first to the existing shareholders. Further in case of the winding up of the company the liability of the shareholders are only

restricted to the extent of the subscription amount, none of the shareholders can be asked to pay to the creditors beyond the net worth of the company except in case where the individual shareholders have guaranteed such payment to the creditors separately.

67. The Id CIT (A) has held that the agreement is an eyewash and is to hoodwink the revenue. On careful reading of the orders, nowhere the lower authorities have doubted the content of the agreement. It is merely an issue of interpretation of an item of receipt, which is required to be determined whether it is capital receipt or revenue receipt. The Context of the agreement s stated is before several authorities such as IRDA, RBI, and FDI Committee and even before AO for eight long years without expressing any doubt by any of the authorities.

68. Lastly the revenue has relied heavily on the decision of coordinate bench in case of Mahindra Telecommunications Investment Private Limited (2016) 69 taxmann.com 431 stating that issue is squarely covered by the decision in favour of the revenue. Revenue says that facts in both the cases are similar wherein the foreign company agreed to certain consideration to be paid to the Indian Investor for extending the facility of holding the shares of an Indian Investor entity by an Indian party for subsequent sale to foreign party when there is a relaxation in foreign direct investment sectoral limits. It is also the contention that when the vital factual metrics of the issue decided by the coordinate bench and the issue before us remaining the same, the decision of the coordinate bench applies with all force in this case. In view of this argument, it is necessary to examine the facts and issue before the coordinate bench. In facts of case before that coordinate bench, assessee and Indian company entered into a shareholders' agreement with a foreign party to set up telecommunication business in India in terms of the foreign direct investment sectoral limits with respect to telecommunication industry. The Indian company invested 26% of the shares of an Indian company whereas the foreign investor invested 74% according to the sectoral caps. The foreign entity under an agreement had an irrevocable call option to increase its investment in the Indian entity as per the permissible limits of foreign direct investment

requiring the Indian investor company to sell its shares to the foreign investor at an option price. The option price was defined as an equity contribution plus return at the rate of 11% per annum compounded annually on the said contribution over the period of holding and the Indian party was entitled to over and above the option price, a call option fee at the rate of 5.5% of its equity contribution. The issue before the coordinate bench was whether the income by way of return on equity accrued to the assessee from day-to-day i.e. on the basis of the holding period, for each previous year comprising the holding period or would accrue only at the time of sale of shares when Indian entity transfer its holding in Indian company to foreign investor. As per assessee, the income did not accrue till the transfer of shares by an Indian entity to foreign investor. The stand of the revenue was that such income being defined to arise on the basis of the time it accrues to the assessee on time basis and accordingly is taxable in the year of receipt. Para number [3] of that decision succinctly brings out the issue before the bench as Under:-

“The respective cases

3. The issue arising for determination is whether the income by way of return on 'equity' accrues to the assessee from day to day, i.e., on the basis of the holding period, for each previous year comprising the holding period, or shall accrue only on the sale of shares, i.e., on the exercise of the put option or, equivalently, call option by AT & T Global. As per the assessee, the income had not accrued in-as-much as the option had not been exercised, i.e., accrued and shall only be so on the (sale) transfer of shares. Reliance stands placed by it on E. D. Sassoon & Co. Ltd. v. CIT [1954] 26 ITR 27 (SC) and CIT v. Canara Bank [1992] 195 ITR 66/61 Taxman 79 (Kar.). In view of the Revenue, the income being defined to arise on the basis of time, i.e., as a linear function of and by elapse of time, accrues to the assessee on time basis and, accordingly, working out that accrued for the current year, reflected by an increase in the option price during the year, brought it to tax. Reliance is

placed by it on Madras Industrial Investment Corpn. Ltd. v. CIT [1997] 225 ITR 802/91 Taxman 340 (SC); State Bank of Travancore v. CIT [1986] 158 ITR 102/24 Taxman 337 (SC); and CIT v. A. Gajapathy Naidu [1964] 53 ITR 114 (SC).”

[Underline supplied by us]

69. Therefore, only issue before the Coordinate bench in that case was in which year the income accrues. It was not the issue before the coordinate bench that whether the money received by the assessee as an option price is a revenue receipt or a capital receipt. In the facts of case relied up on before us, both the parties agreed that the option price received in that particular case is an income of the assessee and only dispute was about the year of taxability of such income. In the facts of that case, the coordinate bench decided that it is income of the assessee in the year in which it is received. The coordinate bench also considered the accounting standard issued u/s 145 (2) of The Income Tax Act as well as the Accounting Standard AS -9 issued by ICAI on Revenue Recognition. In that particular case, the income was received by the assessee without any uncertainty involved about the quantification or refund of such sum. Further as mentioned in para number 4.4 of the decision where the relevant provisions of that agreement were considered. Agreement clause number 7.3 before the coordinate bench considered the affirmative vote of a foreign party in the board resolution as well as in general meeting. Therefore, there was a veto available only to one shareholder i.e. foreign party in that agreement. In the agreement before us, both the parties are required to pass resolution unanimously. Further in that agreement Mahindra (assessee wherein) agreed to vote all its shares in conformity with foreign parties votes on all matters presented to the shareholders by the board. Further as per clause number 9 of agreement before the coordinate bench, with respect to the buyback of shares, the buyback of Mahindra shares shall be equal to the option price. That means whatever is the option price already received by the assessee in that case was final sale consideration of the shares. Sale of such shares was never linked with the market value of shares. There is no mechanism for deriving any market value at the time of transfer of those shares. In case before us, the price at

which the shares are to be transferred by Dabur to the other shareholder is at market value and Dabur is also entitled to increase in market value of those shares above total of option price and subscription price. Further, according to clause number 7.4 of that agreement, the failure of Mahindra to support AT & T shall constitute a breach under that agreement. In Case before us, Dabur has right of veto and there is no clause that failure of Dabur to support CUIH constitutes a breach of the agreement. Further on termination of the agreement by foreign party, in that case the Mahindra was required to sale all its shares at their par value and in case of termination of agreement by Mahindra, Mahindra was to offer all its shares to AT & T at the option price. Thus, the shares were to be transferred by Mahindra in that decision to AT&T at option price only and any increase therein is only with respect to a predefined rate. Whereas in case before us it is linked to the market value of those shares. Coordinate bench further made a definite observation that shareholding of Mahindra or the rights of the shareholder of AT&T were qualitatively different, such case is missing in case before us and, the shareholder agreement says that both have right according to their subscription value in the company. Further there was no doubt or uncertainty with regard to the realization or the ultimate collection of option price on transfer of shares in that case, in the present case before us the option price was to be refunded back to CUIH in certain circumstances. In fact, it has been refunded by assessee when 23 % shareholding was transferred from Dabur to CUIH. In view of above distinguishing feature between the decision of the coordinate bench cited before us in case of Mahindra Telecommunications Investment Private Limited (supra) and issue before us, we do not find any similarity for determination of the option price received by the assessee whether income or a capital receipt. Therefore, that decision does not cover the issue before us.

70. It is also interesting to note in the case before us is that assessee is receiving the option price since financial year 2002 - 03. The assessment for the assessment year 2005 - 06, 2006 - 07, 2008 - 09, 2011 - 12, 2013 - 14 and 2014 - 15 were completed as a scrutiny assessment u/s 143 (3) of The Act, wherein during the course of assessment

proceedings the queries relating to the joint-venture agreement were raised. Along with the return, the copies of the annual accounts were also available wherein the notes on account also appear. In the notes on accounts, the appellant had duly disclosed about the joint-venture agreement and had disclosed that the interest paid on borrowed funds for acquisition of shares had been capitalized and included in the cost of investment. In the notes on account the disclosure was also made about the receipt of option money from CUIH and its adjustment would be made at the time of reduction of shareholding in Aviva life insurance Co Ltd by Dabur in favour of CUIH and the adjustment would be made and accounted for in the year of the transfer of shares. The learned assessing officer for all those years, after verifying the terms and conditions of the agreement as well as notes on accounts, have never taxed the option money so received as income of the assessee. Thus, revenue has accepted stand of assessee about considering option price to be taxed under the head capital gains at the time of transfer of Dabur shares. Such assessment orders are placed before us at page number 212 onwards of the paper book. The assessment for assessment year 2013 - 14 and 2014 - 15 were subjected to revision by The Principal Commissioner of Income Tax - 16, New Delhi. On appeal before the coordinate bench against that order, the coordinate bench as per order dated 11 March 2019 has quashed assumption of jurisdiction by CIT u/s 263 of The Income Tax Act. Further, for assessment year 2011 - 12 and 2012 - 13 the action u/s 147/148 of the income tax act has been initiated by reopening of the assessment. The appeals of those years are pending before the CIT - A. However, up to assessment year 2011 - 12 i.e. For eight assessment years, consistently this position is maintained by assessee as well as the income tax authorities. Now revenue has changed its stand. Principles of Estoppel and Resjudicata do not apply to the tax matters is an established principle, but principle of consistency does. The principle of consistency is also cardinal principle of taxation as held by the honourable Supreme Court in Radhasoami Satsang v. Commissioner of Income-tax 193 ITR 321 and 358 ITR 295. Further, saying that there was an error in earlier acceptance of the order/stand of the assessee, therefore revenue's stand is changed stating that there is no heroism

in perpetuating an error, there is no quarrel with that principle but the revenue must point out what is the error in the consistently adopted methodology acceptable to revenue and the assessee for such a long time. In the present case the only pillar on which changed stand of revenue stands is the decision of the coordinate bench in case of Mahindra Telecommunications Investment Private Limited (2016) 69 taxmann.com 431 (Mum) which we have already held to be on different facts and different issue. In view of principle of consistency, also appeal of the assessee deserves to succeed.

71. In view of this, ground number 1 and 2 of the appeal of the assessee is allowed holding that the option money received by the assessee is capital receipt which requires an adjustment only at the time of transfer of the shares by Dabur to CUIH while working out resultant capital gain thereon.”

8. We further observed that the Hon'ble High Court also affirmed this position by order dated 10.03.2025 in ITA Nos.482, 483, 902 & 903/2019 by dismissing the appeals of the Revenue. He further noticed that the very same issue was considered by the Assessing Officer while completing the scrutiny assessment u/s 143(3) r.w.s. 144B of the Act for the AY 2022-23, wherein the Assessing Officer accepted the position by following the order of the Tribunal for the AY 2015-16 the relevant observations of the Assessing Officer are as under: -

“The main issue in this case is that the assessee was in receipt of Rs.163.59 crores as option money during the FY 2020-21 relevant to the AY 2022-23 and the same was shown in the Balance Sheet under Liabilities at Rs.163,59,98,400/-.

On examination of assessee's previous year accounts, it is clearly established that the assessee was in receipt of option money on all the years since AY 2002-03. Since the money received as option money is a revenue in nature the same should be treated as revenue receipt instead of capital liability as claimed by the assessee and the same should be taxed under the head income from business or profession.

In this connection the assessee has submitted that ITAT Delhi Bench dated 11.03.2021 has decided the case in favour of the assessee on the same issue for the Ay 2015-16 which was reproduced as under:

“holding that the option money received by the assessee is capital receipt which requires an adjustment only at the time of transfer of the shares by Dabur to CUIH while working out resultant capital gain thereon” and also stated that for the earlier years CIT(A) has also allowed the appeal of the assessee which was reproduced as under:

ITAT	11.03.2019			taxable as Capital Gains in year of sale of shares.
4) 2014-15 (263)/ 143(3)/ ITAT	09/03/18, 11.03.2019	NIL	High Court	ITAT held that 263 jurisdiction is invalid and that Option Price taxable as Capital Gains in year of sale of shares.
5) 2015-16 (143(3)/ ITAT	31/12/17, 11.02.2021	111.62 (Appeal effect is pending, demand will be NIL after appeal effect)	ITAT (has passed an order in favour of the assessee)	Hon ITAT, Held that Option Price is taxable as Capital Gains in year of sale of shares
6) 2016-17 (148)	20/02/19	115.55	ITAT	CIT (A) allowed issue related to option money
7) 2017-18 143(3)	19/2/19	469.91	ITAT	CIT (A) allowed issue related to option money
8) 2018-19 143(3)	23/03/21	77.12	ITAT	CIT (A) allowed issue related to option money

Therefore, respectfully following the decision of the Hon'ble ITAT Delhi Bench in assessee's own case, no adverse inference is drawn on this issue."

9. Now during the assessment year under consideration, the assessee as per the joint venture agreement after obtaining various necessary approvals from FIPB, ARDI and RBI sold its 23% stake to CUIH and in this process the assessee received 940 crores as market price from CUIH. The assessee offered 940 crores while working out the capital gain on sale of 23% stake but the AO treated the same at par with option money and taxed the same as business income as was the stand taken by the Revenue in assessment years 2013-14, 2014-15 and 2015-16. Now that the Tribunal held that the option money received by the assessee is a capital receipt as a natural corollary the option money received by the assessee has to be taxed under the head "capital gains". Thus, we direct the AO to compute the capital gains on the option money received by the assessee on the sale of 23% stake during the assessment year under consideration. This common issue in both the appeals of the Revenue for assessment years 2017-18 and 2018-19 is decided against the Revenue and in favour of the assessee. The grounds of appeal of the Revenue in both these appeals are rejected.

10. Coming to appeal of the assessee for the AY 2017-18 the assessee raised the following grounds: -

1. *“That the CIT(Appeals) has erred in confirming the action of AO who had not allowed accumulated proportionate interest and professional expenses of Rs.209.36 crores and its indexation (available u/s 48 of the Income-tax Act, 1961) as part of cost of sale of long term equity shares. The AO has also ignored the fact that these expenses were incurred and capitalized for purchase of shares of Aviva Life Insurance Company India Limited by the appellant.*
2. *That the CIT(Appeals) has erred in confirming the action of AO who had erred in treating the remaining accumulated interest and professional expenses of Rs.550.83 crore as revenue expenses and has wrongly rejected the capitalization of such expense incurred for purchase of shares of Aviva Life Insurance Company India Limited by the appellant.*
3. *That without prejudice to ground no.2 above, the AO ought to have allowed the deduction of Rs.550.83 crore being the interest and professional charges, not allowed to be capitalized, as business expense.”*

11. With respect to ground no. 1 the Ld. Counsel for the assessee submitted that During the year under consideration, the assessee had sold its 23% stake to CUIG and had disclosed the capital gain on sale of such shares in its return but the assessing officer instead of computing the capital gain on sale of shares, proceeded to tax the option price and sale proceeds as revenue receipts. In the assessment year 2017-18, on account of change in policy by FIPB thereby allowing the holding of stakes by a foreign entity in the

insurance sector to the extent of 49% and the assessee after seeking necessary permissions from FIPB, IRDAI and RBI, had sold its 23% stake to CUIH for a consideration of Rs. 940 crores being the market value determined by the commercial valuers and approved by FIPB which was to be remitted from a foreign source. However, out of cumulative proportionate option price of Rs. 1003 crores received in earlier years; the assessee had retained Rs. 524.29 crores as per clause 16A of the Joint Venture Agreement and had refunded the excess amount to the tune of Rs. 478 crores to CUIH. In the income tax return, the assessee had disclosed the capital gain on sale of its 23% stake in the Joint Venture company wherein the net sale proceeds were taken at Rs. 940 crores being the market value of shares received out of foreign sources plus the option money appropriated and retained by assessee at Rs. 524.29 crores, totaling to Rs. 1464.29 crores and out of that the assessee claimed deduction under section 48 of the Act being the proportionate subscription price of shares and proportionate interest and other expenses capitalized in earlier years at Rs. 209.36 crores. Ld. Counsel submitted that, however, the assessing officer instead of computing the capital gain on sale of shares as disclosed by the assessee proceeded to frame assessment as under:

- (i) *Rs. 940 crores being the market price received from foreign sources as revenue receipts*
- (ii) *Taxed the option money actually received in the current year amounting to Rs. 163.59 crores as a revenue receipt*
- (iii) *As far as the claim of refund of option price of Rs. 478.64 crores out of the accumulated proportionate option price is concerned, the assessing officer observed that because the option price is being considered as a revenue receipt, hence, the refund of Rs. 478.64 crores would also be a revenue expenditure but because the assessee has not made any claim of such refund in return of income, hence, cannot allow the same following Goetze India Ltd. v. CIT[284 ITR 323]-See last lines of para 11.3 at page 112 of the assessment order.*
- (iv) *The interest paid on borrowed funds applied towards AVIVA shares were revenue in nature because investment in AVIVA is a financial transaction, hence, the interest paid borrowed funds claimed to have been capitalized amounting to Rs. 550.82 crores is to be disallowed, but no addition was made because the same was not debited to the profit and loss account.*
- (v) *The professional charges paid amounting to Rs. 22.4 crores in assessment year 2014- 15 and capitalized is unrelated to business.*

12. Ld. Counsel submitted that, now once the nature of option price received by the assessee has attained finality from the Tribunal and High Court wherein the option price received as per the terms of the JV Agreement is considered as a capital receipt as advance against sale of shares, hence, the assessing officer has to

compute the capital gain on sale of 23% stake by the assessee, as disclosed in return, in accordance with law.

13. Ld. Counsel further submitted that since the earlier assessments have attained finality wherein the interest paid on borrowed funds and professional charges have been capitalized year after year, the proportionate interest capitalized to the extent of 23% holding amounting to Rs. 209.36 crores deserves to be allowed as deduction under section 48 of the Act while computing the capital gain. Ld. Counsel submitted that in the following cases, it has been held by the jurisdictional and other High Courts that the interest paid on borrowed funds utilized in acquisition of assets has to be capitalized till the date of sale of assets:

- *92 ITR 9 (Delhi), CIT v. Mithlesh Kumari*
- *215 CTR 96 (Madras), CIT v. Trishul Capital Limited*
- *315 ITR 136 (Karnataka), CIT v. Shri Hari Ram Hotels Private Limited*
- *215 TTJ 515 (Delhi Tribunal), Zuari Investments Limited v. ITO”*

14. On the other hand, Ld. DR supported the orders of the authorities below.

15. Heard rival submissions, perused the orders of the authorities below. The issue in assessee’s appeal relates to deduction claimed

by it in respect of interest paid on borrowed capital as well as professional expenses capitalized u/s 48 of IT Act while computing the capital gain on sale of 23% stakes in the joint venture company to Commercial Union International Holdings Ltd. (CUIH). From Assessment Year 2003-04 onwards, the assessee in its return claimed by way of notes attached to the balance sheet that the option price received from CUIH would be adjusted against the reduction in shares in future and also stated in the notes that interest paid on borrowed capital utilized for acquisition of shares as well as the professional expenses incurred from time to time have also been capitalized towards the cost of shares. The assessee explained that the receipt of option price against its own investment in joint venture company from CUIH as capital receipt now has attained finality by way of acceptance of the issue by the Department in various earlier years as well as in subsequent years and over and above that the appeals for Assessment Years 2013-14 and 2014-15 where the actions were taken u/s 263 of the Act based on the subjective opinion made by the succeeding AO in Assessment Year 2015- 16 has now attained finality where after the dismissal of Revenue appeal by Delhi High Court as well as ITAT in Assessment Year 2015-16 even on merits have held that the option price received by the assessee against its own investment in joint venture

company from CUIH would be a capital receipt being an advance against sale of shares and even the AO, while framing the assessment for Assessment Year 2022-23 has accepted the issue after following the order of ITAT in Assessment Year 2015-16.

16. The Ld. Counsel further stated that in the year under appeal, the assessee had sold its 23% stakes in the joint venture company and had disclosed the capital gain on sale of its 23% stake in the joint venture company in its return wherein the market value being Rs.940 crore plus the proportionate option money appropriated by the assessee amounting to Rs.524.29 crore had been disclosed as the net sale consideration and deducted there from the subscription price and the proportionate interest and other professional expenses capitalized in earlier years amounting to Rs.209.36 crore u/s 48 of IT Act. The Ld. Counsel stated that such capitalization of interest and other expenses is in accordance with law.

17. The Jurisdictional Delhi High Court in the case of CIT vs. Mithlesh Kumari in 92 ITR 9 held that the interest paid on borrowed fund utilized for acquisition of capital asset has to be capitalized from the date of acquisition till the date of sale. Similar principle has also been reiterated in the following cases:

- *215 CTR 96 (Mad) CIT vs. Trishul Capital Ltd.*
- *315 ITR 136 (Kar) CIT vs. Hari Ram Hotels Pvt. Ltd.*
- *215 TTJ 515 (Delhi Trib) Zuari Investment Ltd. vs. ITO*

18. On perusal of the facts and circumstances of the case, in the instant case because the AO had taken a view in Assessment Years 2013-14 and 2014-15 as well as in 2015-16 that the option price received by the assessee year after year is in the nature of revenue receipt and taxed the same as business income and based on this view in the year under consideration also, the AO disregarded the claim of capital gain disclosed by the assessee in its return on sale of 23% stakes in the joint venture company and taxed whatever the option money actually received by the assessee in the year under appeal as well as the market price of 23% stakes received amounting to Rs.940 crore as revenue receipt and disregarded the capital gain as disclosed by the assessee in its return. Now that the Tribunal held that the option price received by the assessee against its own investment in joint venture company from CUIH is capital in nature being advance against sale of shares as per the terms of the joint venture agreement and as approved by RBI, the quantum of such option money has to be ascertained in terms of joint venture agreement on date of sale of shares and the excess amount would

be refunded to CUIH. Considering the fact that the nature of option money has now attained finality by treating the same as capital in nature, the AO has to now proceed with the computation of capital gain on sale of its 23% stakes as disclosed by the assessee in its return. However, in view of the decision of the Hon'ble Delhi High Court and other High Courts referred to above, while computing such capital gain, the AO, apart from reduction of the subscription price of such shares, also has to allow deduction of the proportionate interest capitalized and other professional expenses as capitalized by the assessee towards the cost of shares which has been accepted by the Revenue in earlier years. However, before allowing the same, the AO shall verify the quantum of interest capitalized and professional expenses as claimed by the appellant. Subject to verification by the AO this claim of the Assessee is allowed.

19. Coming to ground no.2 & 3 the Ld. Counsel for the assessee submits that the amount of Rs. 550.82 crores basically represents the amount remained balanced out of the total expenses capitalized after claiming the amount of Rs. 209.36 crores being proportionate to the extent of 23% stake claimed as deduction under section 48 of the Act while disclosing the capital gain on sale of shares. The fact

of the case is the capitalization of expenses consisted of the interest paid by the assessee on borrowed funds meant and utilized in acquisition of shares in the joint venture company from time to time plus professional expenses as and when incurred in earlier years. In the earlier years, whatever the interest has been incurred by the assessee on borrowed funds and the expenses, the same had been claimed as capitalized, accepted by the Revenue in various years and now attained finality after appeal in disputed years. The total interest and expenses capitalized was Rs. 760.19 crores in the books of accounts. Out of the same, the assessee had claimed the proportionate interest capitalized and professional expenses at Rs. 209.36 crores being the 23% proportionate stake sold during the year under section 48 of the Act and the balance amount of capitalization of interest and expenses remains stand at Rs. 550.82 crores pertaining to the balance stake. The assessing officer stated that the capitalization of such expenses cannot be allowed because the same is also revenue in nature on account of treatment of option money as business receipts. However, the assessing officer did not make addition in respect of Rs. 550.82 crores on account of the fact that the same was not debited to the profit and loss account but his observation regarding the nature of expenses is misplaced due to the fact that the issue relating to the option

money and capitalization of interest and other expenses in earlier years has attained finality wherein the Tribunal/High Court held that option price is a capital receipt and basically an advance against sale of shares. Hence, in such circumstances the very observation of the Assessing Officer are premature for the assessment year under consideration since the Assessee did not make any claim by debiting to P&L account and therefore these observations are reversed.

20. Coming to appeal of the assessee for the AY 2018-19 the assessee agitated the order of the Ld. CIT(Appeals) in sustaining the business promotion expenses amounting to Rs.9,81,139/-. During the year under consideration, the assessee had claimed business promotion expenses to the tune of Rs.9,81,139/- as against Rs.5,79,774/- claimed in the immediately preceding assessment year. The AO disallowed the said expenses on the ground that the assessee did not carry on any business which was also affirmed by the Ld.CIT(A). The Ld. Counsel for the assessee submitted that assessee carried out business of Insurance through a joint venture company namely Aviva Life Insurance Company Pvt. Ltd. and also derived business income from investment in financial instruments. It is submitted that in the earlier years no disallowance was made

by the AO out of business promotion expenses. The Id. Counsel submits that since the business promotion expenses were incurred for business purposes the same may be allowed as deduction.

21. Ld. DR supported the orders of the authorities below.

22. Heard rival submissions, perused the orders of the authorities below. On perusal of the order of the Ld. CIT(A) it is noticed that the assessee debited Rs.9,81,139/- under the head “business promotion” and these expenses were incurred to obtain foreign exchange for Mr. Mohit Burman. All these expenses were paid to S.D. Securities Ltd. for obtaining foreign exchange and disallowance of these expenses were sustained by the Ld. CIT(A) observing that expenses cannot have direct nexus with business of the assessee. However, these expenses appear to have been incurred in the form of commission in obtaining foreign exchange for one Mr. Mohit Burman. The assessee also did not furnish complete details and filed justification for claiming these expenses as business expenses. Therefore, we sustain the order of the Ld. CIT(A) and reject the grounds raised by the assessee.

23. In the result, appeals of the Revenue are dismissed and appeal of the assessee for the AY 2017-18 is partly allowed as indicated above and appeal of the assessee for the AY 2018-19 is dismissed.

Order pronounced in the open court on 04/06/2025

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 04.06.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI