IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "I", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri Vikram Singh Yadav, Hon'ble Accountant Member

ITA No. 5159/Mum/2025
(Assessment Year : 2022-23)

Zarah Rafique Malik B/1703, Vivarea Condominium, Sane Guruji Marg, Jacob Circle, Mahalaxmi East Mumbai – 400 011 PAN : ADCPM8960G	Vs.	Income Tax Officer, (INT.TAX) Ward- 3(2)(1), Mumbai
(Appellant)		(Respondent)

Appellant By : Shri K Gopal, Adv. & Shri Oom Kandalkar
Respondent By : Shri Krishna Kumar, Sr. DR

Date of Hearing : 21.01.2026		Date of Pronouncement: 10.03.2026

O R D E R

PER VIKRAM SINGH YADAV, A.M :

By this appeal, appellant-assessee challenged the order dated 15.07.2025 passed by the ITO (IT) Ward 3(2)(1), Mumbai ('AO' for short) u/s.143(3) r.w.s. 144C(13) of the Income Tax Act ('Act' for short) thereby making disallowance of Rs. 3,66,14,854/- of the proportionate Initial Public Offer (IPO) expenses and Portfolio Management Services (PMS) expenses. The appeal relates to A.Y.2022-23.

2. The brief facts are that the appellant filed Return of Income on 30.12.2022 declaring total income at Rs.139,39,53,300/-. The case was selected for scrutiny and draft assessment order was passed on 29.03.2024 assessing the total income at Rs.143,06,59,410/- making the disallowance as aforesaid. Being aggrieved by the variation, the appellant filed objections before the Dispute Resolution Panel-II ('DRP' for short). The AO in pursuance of the direction issued, passed an assessment order dated 20.05.2024 which was challenged by the appellant in Writ Petition before the Hon'ble Bombay High Court. The Hon'ble High Court disposed off the petition on

03.03.2025 remitting the matter back to the DRP for deciding it afresh in accordance with law. The DRP subsequently passed an order dated 30.06.2025 making the disallowance as aforesaid in pursuance of which AO has passed the impugned order on 15.07.2025 which is the subject matter of challenge in this appeal.

3. We have heard Shri K. Gopal, ld. Counsel for the appellant and Shri Krishna Kumar, ld. Sr. DR. With the assistance of the parties, we have gone through the record.

4. At the outset, it is necessary to note that the appeal was filed on certain grounds as set out in Form 36. Subsequently, additional grounds of appeal have been raised as under:-

> *"A. The assessment order u/s 143(3) r.w.s. 144C(13) of the Act is without any valid jurisdiction:*
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> *1. The Ld. Income Tax Officer (International Taxation) Ward-3(2)(1), Mumbai (hereinafter referred to as 'L.d.A.O.') had no jurisdiction to pass the impugned assessment order in absence of any authorization u/s. 120(4)(b) of the Act or transfer order u/s. 127 of the Act. Hence, the impugned assessment order passed u/s. 143(3) of the Act is without valid jurisdiction and therefore, deserves to be set aside.*
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> *B. The notice u/s 143(2) of the Act has not been issued by the Faceless Assessing Officer and therefore, the same is unlawful:*
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> *2. The assessment proceedings were initiated by way of notice dated 31.05.2023 u/s. 143(2) of the Act issued by the Ld. Assistant/Deputy Commissioner of Income Tax (International Taxation), Circle -1(1)(1), Delhi. Thus, as the assessment proceedings were conducted in violation of provisions of section 144B of the Act which mandates that assessments be conducted in a faceless manner, the said assessment proceedings are unlawful and void ab initio.*
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> *C. The final assessment order dated 15.07.2025 passed u/s 143(3) r.w.s. 144C(13) of the Act is time barred:*
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> *3. The Ld. A.O. has passed the final assessment order dated 15.07.2025 u/s 143(3) r.w.s. 144C(13) of the Act beyond the time limit specified under section 153(1) of the Act. Hence, the said assessment order is time barred and therefore, bad in law.*
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> *4. The final assessment order dated 15.07.2025 passed under section 143(3) r.w.s. 144C(13) of the Act is unlawful and without jurisdiction as the same is in contravention of the law laid down by the Hon'ble Madras High Court in CIT v. Roca Bathroom Products (P.) Ltd. [2022] 445 ITR 537 (Madras) as well as the Hon'ble Bombay High Court in Shelf Drilling Ron Tappmeyer Ltd. v. ACIT [2023] 457 ITR 161*

(Bombay). Hence, the said assessment order is invalid, unsustainable and deserves to be quashed."

5. Out of the above additional grounds, ld. Counsel for the appellant, on instructions, has submitted that the appellant is not desirous of pressing grounds No. (b)&(c), namely the final assessment order being time barred; and being passed by JAO and not FAO. These grounds are thus dismissed as not pressed. We are confining determination to the rest of the grounds.

6. Ld. Counsel for the appellant submitted that the IPO was for both issue of fresh shares by the company i.e. Metro Brands Limited as well as Offer For Sale (OFS) by the existing promoters/shareholders. It is pointed that apart from the appellant, there were other promoter shareholders who have offered their shares as part of OFS. It is submitted that the proportionate IPO expenses ought to have been allowed as the said expenses were incurred wholly and exclusively towards the sale / transfer of shares. It is pointed out that AO was not justified in making the disallowance as the appellant was entitled to the deduction of the expenses u/s.48 of the Act as there was clear nexus of the said expenditure being incurred in relation to the long term capital gains arising on account of sale / transfer of shares. The ld. Counsel pointed that proportionate expenses has been allowed in respect of the other promoter shareholders which are similarly situated to the appellant. Further, our reference was drawn to the written submissions filed before the ld DRP and the contents thereof read as under:

"3. <u>Disallowance of IPO expense claimed against Long Term Capital Gain - Rs. 3,64,30,158/</u>

The appellant has claimed IPO Expenses of Rs. 3,64,30,158/- against the long-term capital gain of Rs. 140,45,00,000/- offered to tax. The Ld. A.O. has disallowed IPO Expenses of Rs. 3,64,30,158/- on account of non-corroboration of expenses claimed against the capital gain earned.

During the impugned assessment year, the appellant (here the selling shareholder) has participated in the Offer for Sale (OFS) in IPO of Metro Brands

limited (the company) and the entire process of IPO was carried out by the company. The appellant offered 28,09,000 Equity Shares in the OFS which is duly reflected in the consent from selling shareholder provided to the Ld. A.O. To give effect to the IPO, the company has incurred various expenses on behalf of the selling shareholders totalling to Rs. 30,14,94,292/-. Such expenses incurred were necessary for successful IPO and were wholly and exclusively in connection to the sale of shares in IPO. These expenses were, then, apportioned to the selling shareholders in proportion to the shares offered under Offer for Sale by them. Thus. these expenses are claimed as expenses against the LTCG on sale of shares of the company. Further, after completion of the IPO, the amounts transferred to the respective selling shareholders were net of apportioned IPO expenses and STT on sale of such shares. These facts are also mentioned in the prospectus of such IPO. The relevant portion of the prospectus is attached here with at Annexure-2. The details of the apportionment of the expenses among the selling shareholders are enclosed at Annexure-2A for your reference.

Further, the L.d. A.O., in the final show cause notice dated 28.03.2024, has asked why the expenses claimed to the tune of Rs. 3,64,30,158/- should not be disallowed and added back to the total income of the appellant. The appellant has provided a detailed breakup of these IPO expenses, tax invoice raised by the company of Rs. 3,64,30,158/-, consent of the selling shareholder reflecting the no. of shares offered for sale is attached at annexure 2B, working of capital gain earned, bank statements reflecting the payments received by the appellant after TDS and IPO expenses is enclosed at Annexure-2C from the company and an extract of the prospectus reflecting the fact that the selling shareholders will be entitled to the proceeds after deducting Offer related expenses and relevant taxes thereon on a proportionate basis. The appellant has claimed these expenses being incidental to the sale of shares, they are allowed to be deducted u/s 48 of the Act. The A.O has mentioned the invoice and detailed breakup of the expenses in the draft assessment order itself.

The detailed submission made by the appellant to the A.O vide letter dated 29.03.2024 is enclosed at annexure-2D for your reference.

The A.O has disallowed the expenses only on the contention that the expenses are not supported by the documentary evidence of the company. It is to submit that the contention of the A.O has no merit as the expenses are incurred by the company and copy of the invoice has already been filed. Further the appellant has also given the breakup of the expenses and could not file the supporting due to paucity of time. This information was asked by the A.O giving one day time. It is to submit further that the volume of the expenses is so huge that it is very difficult to upload the same. However, as directed in the hearing dated 06.05.25, the supporting of the expenses are enclosed in a pen drive for your verification. The details of the IPO along with expenses and the full prospectus is enclosed at Annexure B (pen drive). The detailed breakup of the IPO along with shareholding is enclosed at Annexure-C. from this annexure your honours can observe that the expenditure incurred by the company towards the IPO is 35.57 cr against the total capital raised by the company of Rs. 1371 Cr. These expenses are proportionately shared based on the numbers of shares offered by the selling shareholders and also the company. The details are enclosed at Annexure 2A. The appellant has no option but to rely on the invoice given by the company for the recovery of the expenses. Further it is submit, from the details of the expenses the A. O has not asked any specific query about any expense. The A.O could have asked the information from the company itself directly using his authority. Further the A.O has asked the information one day prior to the assessment order date. As the appellant has filed all the relevant information which is in her possession. Therefore, the appellant has discharged her onus to substantiate the claim.

In this regard the appellant would like to submit as under:

The appellant has claimed the expenses incurred in OFS in IPO under section 48(i) of the act. The section reads as under:

The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

(i) expenditure incurred wholly and exclusively in connection with such transfer,

(ii) the cost of acquisition of the asset and the cost of any improvement thereto.

It is to submit that the term "expenditure incurred wholly and exclusively in connection with such transfer" is wider than the term "for the transfer". Any amount the payment of which is absolutely necessary to effect the transfer will be an expenditure covered under this clause. It may be noted that the appellant has agreed for the sharing of the IPO expenses proportionate to her OFS of shares (i.c. 28,09,000 shares) is allowable expenditure. Further the appellant has given various consents which are submitted elsewhere at the time of IPO. A proper mention of the share of expenditure by the selling shareholders is also made in the IPO prospectus of the company. Copy of the relevant portion of the Prospectus is enclosed elsewhere.

Some of the propositions laid down by the judiciary are as under:

CIT Vs Shakuntala Kantilal 190 ITR 56 (Bom HC) The Bombay High court has held as under:

"It could not be disputed that unless the assessee had settled the dispute with R Ltd. the sale transaction with the society would not, or could not, have materialized. If this transaction had not materialized there would have perhaps been no question of capital gains. One way of looking at the problem could be to say that the full value of consideration in this case was not the apparent consideration, Le, Rs. 2,58,672 but Rs. 2,24,168 (Rs. 2,58,672 minus Rx 35,504). The Legislature while using the expression 'full value of consideration has contemplated both additions to as well as deductions from the apparent value. What it means is the real and effective consideration.

That apart, so far as clause (1) of section 48 is concerned, the expression used by the Legislature in its wisdom is wider than the expression 'for the transfer The expression used is the 'expenditure incurred wholly and exclusively in connection with such transfer The expression 'in connection with such transfer is certainly wider than the expression 'for the transfer Here again any amount the payment of which is absolutely necessary to effect the transfer will be expenditure covered by this clause. Accordingly, the sale consideration is required to be reduced by the amount of compensation

Regarding the cost of acquisition, section 55(2)(1) clearly envisages the exercise of option by an assessee to put for the market value of an asset as on 1-1-1954 Section 48, which provides the method for computation of the capital gains, does not directly or indirectly prohibit disallowance of any expenditure which can be claimed under that section in case a person has exercised option under section 55(2)(). Even otherwise, there is no reason why after an assessee exercises the 'option and in case any expenditure has been incurred after that notional date, the said expenditure could not be taken into account.

Having regard to the above position, the assessee was rightly allowed by the Tribunal to exercise the option of substituting the fair market value of the plot of land as on 1-1-1954 for the actual cost thereof ax contemplated under section 55(2) in computing the capital gains arising on the sale of the plot under section 45."

The Bombay High court decisions was followed in number of cases viz CIT Vs Abrar Alvi (2001) 247 ITR 312 (Bom) the SLP of the revenue is dismissed 253 ITR (st) 80, and in case of CIT Vs Piroja C patel (2000) 242 ITR 582 (Bom).

The Madras Court in CIT Vs Bradford Trading Co. (P) Ltd 261 ITR 222, was concerned with the allowability of an amount paid to get over difficulties in the sale of the property. The court holds that unless such amount was paid, the transfer of property could not have taken place and hence such payment has an intimate connection to the transfer of the asset. Payment of the amount to end

the litigation in respect of the property concerned was purely in the interests of the assessee. Hence such expenses are allowable under section 48 of the act. Relied on the 190 ITR 56 (Bom) mentioned above

Kaushalya Devi v. CIT [2018] 92 taxmann.com 335/255 Taxman 417/404 ITR 136 (Delhi): The expression "expenditure" used in clause (1) in section 48 should be given the same meaning as used in section 37 of the Act, except that expenditure may be also capital in nature. Expenditure would primarily connote and has the meaning of spending or paying out. In a given case, it may also cover the amount of loss, which has gone out of the assessee's pocket. Settlement of a claim and payment made can amount to expenditure. Again, the words "wholly and exclusively" used in section 48 are also to be found in section 37 of the Act and relate to the nature and character of the expenditure, which in the case of section 48 must have connection i.e., proximate and perceptible nexus and link with the transfer resulting in income by way of capital gain.

Honda Motor Co. Ltd., In re (2018) 90 taxmann.com 180/253 Taxman 402/401 ITR 382/301 CTR 159 (AAR-New Delhi): The provision contained in section 48 shows that the words "wholly and exclusively" do not connote "necessarily". If the expenses have been incurred in connection with the transfer, they are to be allowed. The words "in connection with" are of wide import and if such expenses have an intimate connection with the transfer, they have to be allowed under section.

The expression 'in connection with such transfer' is wider than the expression 'for the transfer Gopee Nath Paul & Sons v. Dy. CIT [2005] 147 Taxman 629/278 ITR 240/198 CTR 116 (Cal.)

On similar facts that of the appellant, in the following ITAT cases have upheld contention of the appellant.

Further, the appellant to support its contention relied on the decision of ITAT in case of Mrs. Usharani Raghunathan, Shri Raghunathan, Smt. Amudha

Rajendran v. CIT [I.T.Λ. Nos. 493,494 and 495/Mds/12/ wherein the Tribunal held as under:

"Assessees could take advantage of clause (1) of Section 48 of the Act. Assessees had produced evidence in the form of Escrow Account to show that it had received only net amount after incurring the expenses. Assessees also produced Prospectus of IPO which clearly shows that they were obliged to meet pro rata share of IPO expenses. There is no case for the Revenue that any of the assessees claimed more than their share of expenses based on the ratio of shares sold. We are, therefore, of the opinion that the deduction claimed by the assessees for expenses incurred was unjustly disallowed. This disallowance is deleted."

The copy of the above ITAT order is enclosed at Annexure-3

A similar view has been taken by the Delhi ITAT in case of Pallav Pandey Vs ACIT (ITA no 7387/Del/2019) vide order dated 13.12.2022. The copy of the ITAT order is enclosed at Annexure-4.

Further, the appellant also submitted the copies of assessment orders passed in cases of other co-selling shareholders having capital gain from shares offered for sale in IPO. In all these cases, no disallowance made towards IPO expenses or for PMS expenses. The copies of the assessment orders are enclosed herewith for your reference at Annexure-2E.

Considering the above facts, it is clear that the IPO expense amounting to Rs. 3,64,30,158/-is wholly and exclusively towards LTCG earned by the appellant and it is an eligible deduction. Hence, the appellant objects to this disallowance made by the Ld. A.O. and your honours are requested to delete the same."

7. Ld. DR supported the impugned order. It was submitted that necessary nexus with the incurring of expenses for sale / transfer of shares and the consequent capital gains is not established. Further, reference was drawn to the discussion and the findings of the ld DRP which read as under:

"6.3. Discussion of the Issue by DRP:

Assessee has claimed expenses incurred towards IPO of the company in which her portion of expenses comes to Rs. 3,64,30,158/- AO has raised the issue that such expenses are not wholly and exclusively incurred towards the transfer of the asset. It is noted that expenses incurred are part of IPO process towards listing of M/s Metro Brands Limited in which assessee is a shareholder. It is also noted that apart from IPO, shares were also Offered For Sale (OFS) by the existing share holder and assessee is one of them.

Assessee has argued her case that amount incurred in process of IPO has been bifurcated as per prospectus of IPO. We have gone through the said document as mentioned as Annexure 2 of submission dated 09.05.2025. It is a very generic mention of apportionment of expenses without any details of actual payments made for each and every expense.

As a matter of fact, the process of going public through IPO, is peculiar to a company. Individual shareholders are not bound by the same process for selling their holding. Since, this process is regulated through SEBI and mandatory for the company to follow the process in order to raise capital from the market, hence the incidental expenses are bound to happen. In this case also, OFS route is just one of many ways available to sell their stake but for company only way to raise money from public is through IPO and process has to be followed.

The Panel has examined the claims of the Applicant assessee and has following opinion regarding the Applicant's claim for deduction of IPO-related expenses from the sale of shares:

1. Expenses Not Allowable (in hands of the COMPANY) as per Supreme Court Precedents: The Supreme Court in Brooke Bond India Ltd. v. CIT [1997] 91Taxman 26 (SC) and Punjab State Industrial Development Corpn. Ltd. v. CIT [1997] 93 Taxman 5 (SC) held that expenses incurred for increasing share capital (including IPO expenses) are capital in nature and hence not deductible under the Income Tax Act.

Panel notes that the Applicant's attempt to claim these expenses is a colourable device to circumvent this settled legal position. The company, being the actual beneficiary of the IPO (as it raises capital), cannot pass on the deduction claim to shareholders indirectly.

2. No Actual Payment by the Assessee: The Assessee (shareholder) has not incurred these expenses-Expenses were borne by the company. Deductions under the Income Tax Act require actual expenditure by the taxpayer Since the Applicant did not pay for these expenses, the claim is legally untenable.

3. Self-Serving, Colourable Agreement Between Company and Shareholders: The so-called agreement between the company and shareholders is not an arm's length transaction but a sham arrangement to artificially shift the deduction claim. The Hon'ble Supreme Court in McDowell & Co. Ltd. v. CTO (1985) 154 ITR 148 (SC) held that tax avoidance via artificial arrangements must be struck down. Here, the agreement is a facade to claim a deduction that the company itself cannot claim directly.

4. Lack of Proper Evidence for Expenses: The Ld. A.O. has observed that the Applicant has failed to provide cogent evidence proving

1. The actual incurrence of these expenses by the shareholder (not the company).

2. The commercial justification for the shareholder (rather than the company) claiming the deduction.

3. Without proper documentation submitted before the Assessing Officer, the claim is contingent and unsubstantiated.

5. Company is the True Beneficiary, Not the Assessee: The IPO and other related expenses are incurred for the benefit of the company's capital structure, not for shareholders.

Decision:

Panel thus, rejects the Colourable Arrangement undertaken by the Applicant and the Company.

The Hon'ble Supreme Court has repeatedly held that what cannot be done directly cannot be permitted indirectly (Union of India v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC)). The present arrangement is a tax-avoidance scheme designed to bypass the prohibition on deducting capital-related expenses.

Therefore, the Panel:

1. Rejects the self-serving agreement as an avoidance arrangement.

2. Upholds the disallowance of the deduction claim since IPO expenses are capital in nature and not incurred by the Assessee.

3. Follows the principles laid down by the Supreme Court in Brooke Bond and Punjab State Industrial Development Corpn., ensuring that tax laws are not circumvented via artificial devices. Maxim is Quando aliquidprohibetur ex directo, prohibetur et per obliquum: "When anything is prohibited directly (In hands of the COMPANY), it is also prohibited indirectly (to the shareholder)."

6.4. Directions of the DRP:

In view of above discussion, Panel is of considered view that no adjustment is required in AO's order on this account."

8. In his rejoinder, regarding the findings of the Ld.DRP that the company, being the actual beneficiary of the IPO and it cannot pass on the deduction towards IPO expenses to the shareholders and the arrangement between the assessee and the company is a colourful tax avoidance arrangement, the ld AR submitted that as part of the initial public offering, the offer comprises of fresh issue of 59,00,000 equity shares and offer for sale of 2,14,50,100 equity shares by the existing promoters/shareholders. Therefore, basis final allotment post IPO, 59,73,136 fresh shares were issued by the company and remaining 2,14,50,100 shares were sold and transferred by the existing

shareholders. In other words, only 21.79% shares have been freshly issued by the company and the remaining 78.21% shares were sold and transferred by the existing shareholders and net proceeds in respect of OFS were transferred to the existing shareholders and therefore, it is wrong to hold that the company is the sole beneficiary of IPO proceeds. Regarding decisions of the Hon'ble Supreme Court in the cases of Brooke Bond India Ltd. vs. CIT [1997] 91 Taxman 26 (SC) and Punjab State Industrial Development Corp. Ltd. vs. CIT [1997] 93 Taxman 5 (SC), it was submitted that in relation to those cases, the assessee had issued fresh shares to increase its share company and claimed expenses which were disallowed by the Revenue authorities and in that background, the Hon'ble Supreme Court has held that though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and may also help in the profit making, the expenses incurred in that connection still retains the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company. It was submitted that in the instant case, there is an increase in the capital base of the company only to an extent of issue of fresh shares amounting to Rs. 59,73,136/- and proportionate to these shares, the company has retained and not passed on the expenses to the respective shareholders. It was accordingly submitted that the Ld.DRP has failed to appreciate the same and has wrongly held that the company is the sole beneficiary of the IPO proceeds. Regarding the findings of the DRP that the assessee has not incurred these expenses, it was submitted that though the expenses were initially incurred by the company, however, the assessee has consented to the incurrence and picking up her liability proportionate to her shares offered as part of the offer for sale, the company has issued invoices on the assessee and the assessee has received the net proceeds, after deducting the expenses on proportionate basis. It was submitted that the assessee has given her consent vide letter dated 25-11-2021 (APB Page 273) to the inclusion of 28,09,000 equity shares held by her as part of offer for sale subject to the terms of the issue as mentioned in the prospectus and other agreements executed in relation to issue and approval of SEBI and other regulatory authorities and has also authorized the company

to deliver a copy of her consent to the Registrar of Companies, pursuant to Section 26 and Section 32 of the Companies Act and the rules and regulations there under as amended, the stock exchanges and any other regulatory authority as may be required and as part of the offer for sale, it has been clearly provided in the prospectus and our reference was drawn to the relevant extract thereof which is contained at pg. 236 of the assessee's Paper Book, which reads as under:

> *"Each of the Selling Shareholders will be entitled to the proceeds of the Offer for Sale after deducting its portion of the offer related expenses and relevant taxes thereon. Our Company will not receive any proceeds from the offer for Sale and the proceeds received from the Offer for Sale will not form part of the Net Proceeds. Other than the listing fees for the Offer, which will be borne by our Company, and the fees and expenses of the legal counsel and the chartered accountants to the Selling Shareholders, which will be borne by the Selling Shareholders, all cost, fees and expenses in respect of the Offer will be shared amongst our Company and the Selling Shareholders on a pro-rata basis, in proportion to the Equity Shares issued and allotted by our Company in the Fresh Issue and the Offered Shares sold by the Selling Shareholders in the Offer for Sale, upon successful completion of the Offer."*

9. It was accordingly submitted that it is only the proportionate expenses (other than the listing fees) which has been shared among the company and the shareholders on pro-rate basis in proportion to the equity shares issued and allotted by the company by way of fresh issue and offered shares sold by the selling shareholders in the offer for sale. It was submitted that necessary documentary evidences in terms of invoices and the details of the expenses were duly submitted before the DRP and, therefore, the findings of the Ld.DRP that no proper documentation has been submitted is factually incorrect. It was further submitted that the matter was examined in detail in case of other promoter shareholders similarly situated to the appellant and in this regard, our reference was drawn to the assessment order passed in the case of Zia Malik Lalji, vide order u/s. 143(3) of the Act, dt. 26-03-2024, wherein the said assessee had also offered her shares as part of IPO and has claimed proportionate shares of expenses and during the course of assessment proceedings, the AO has issued notice u/s. 133(6) of the Act, dt. 12-03-2024, seeking necessary information and documentation from Metro Brand Ltd., in terms of prospectus, the details of selling shareholders, copy of debit notes for the invoices, details of the promoter shareholding, summary of the IPO expenses and copy of the sample invoices

and it was submitted that after due examination, the claim of the proportionate IPO expenses were allowed by the AO.

10. We have heard the rival contentions and perused the material available on record. We find that an identical issue had come up for consideration before the Coordinate Chennai Benches in case of Usharani Raghunathan & others *(supra)* wherein as part of IPO, the assessees therein have sold their shares by way of OFS and had claimed proportionate IPO expenses and in that factual background, the Coordinate Bench has held that where the expenses having been incurred for the IPO through which assessees were also able to sell their shares, the expenses necessarily were, in their opinion, in connection with sale of such shares and eligible for deduction u/s 48 of the Act and the relevant findings of the Coordinate Bench read as under:

> *"6. We have perused the orders and heard the rival submissions. Mode of computation of capital gains is given under Section 48 of the Act and this is reproduced hereunder:-*
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> *"48. The chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-*
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> *(i) Expenditure incurred wholly and exclusively in connection with such transfer;*
>
> *(ii) The cost of acquisition of the asset and the cost of any improvement thereto"*
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> *It is clear that from the full value of consideration received, expenditure incurred wholly and exclusively in connection with such transfer has to be deducted. The terminology used is "in connection with" such transfer. There is no dispute that the expenditure claimed by the assessees was for effecting the sale of their shares. It is clearly mentioned in the Prospectus of M/s Raj Television Network Limited that the issue expenses were to be borne proportionately by the company and selling shareholders. A.O. himself has acknowledged the IPO was for 35,68,250 equity shares which consisted of fresh*

issue of 22,70,700 equity shares and offer for sale of 12,97,550 equity shares by the assessees. No doubt, as noted by CIT(Appeals), a company while making an IPO had to abide by the strict norms laid down under the Companies Act, and for complying with such norms it might be necessary to incur more expenditure than an ordinary shareholder effecting a sale of his/her shares. But, in our opinion, assessees here had an opportunity to sell their holdings in one block through the IPO. This convenience received by the assessees if weighed against the extra expenditure incurred for IPO gets more or less balanced. There is no dispute that pro rata expenditure alone was claimed by the assessees under Section 48 of the Act. There is also no dispute that such expenditure was wholly incurred for the purpose of IPO. A look at the Escrow Account, clearly shows that concerned assessees were transferred funds only to the extent of net amounts after meeting expenses. CIT(Appeals) analyzed the expenses incurred and came to an opinion that the legal obligation for incurring such expenses was with M/s Raj Television Network Limited. No doubt, this might be true. Just because the expenditure was incurred based on a legal obligation would not render such expenditure as something not incurred wholly and exclusively in connection with the sale of shares. Expenses having been incurred for the IPO through which assessees were also able to sell their shares, the expenses necessarily were, in our opinion, in connection with sale of such shares. Assessees could take advantage of clause (1) of Section 48 of the Act. Assessees had produced evidence in the form of Escrow Account to show that it had received only net amount after incurring the expenses. Assessees also produced Prospectus of IPO which clearly shows that they were obliged to meet pro rata share of IPO expenses. There is no case for the Revenue that any of the assessees claimed more than their share of expenses based on the ratio of shares sold. We are, therefore, of the opinion that the deduction claimed by the assessees for expenses incurred was unjustly disallowed. This disallowance is deleted."

11. In the instant case, the assessee has admittedly given her consent to offer a part of her shareholding as part of IPO by the company, Metro Brand limited and to bear proportionate share of IPO expenses. The OFS as part of IPO was undertaken by the company as per the extant SEBI, company law rules and regulations and necessary filings have been undertaken by the company with the regulatory authorities. OFS is an accepted mechanism available to the existing shareholders to realize fair market price for their shareholding. No doubt, the whole process is run and monitored by the company, however, the fact that the assessee has given her consent, the assessee is equally a beneficiary of the ultimate price realization through the book building process and activities so carried out in terms of IPO. In the instant case, the IPO was for 2,73,50,100 equity shares which consisted of 59,00,000 fresh issue of equity shares and offer for sale of 2,14,50,100 equity shares by the promoters/shareholders including the assessee wherein the assessee has offered her 28,09,000 shares which was subsequently sold and transferred and the sale proceeds net of proportionate share of expenses have been claimed as transferred into the account of the assessee. The company has incurred IPO expenses of Rs 30,14,94,292/- and out of which, Rs 3,08,73,016/- plus GST proportionate to 10.24% shareholding of the assessee has been netted off against the sale proceeds and only the net amount have been claimed as transferred to the assessee's account. These expenses are clearly expenditure incurred by the assessee wholly and exclusively in connection with transfer of shareholding in the company. The fact that the company has initially incurred these expenses and later on, recovered from the assessee, the same cannot be held against the assessee as the whole IPO exercise has to be necessarily done by the company instead of by and at the level of the individual shareholders. What is relevant is the expenditure so claimed by the assessee is proportionate to her shareholding and which has been duly demonstrated by the assessee. The necessary nexus has been duly established between the incurrence of the expenditure and transfer of the shareholding. The OFS is an accepted mechanism to transfer bulk shareholding as part of IPO and where the assessee has decided to follow the same and has incurred certain expenditure and in a process has realized a fair market value for her shareholding, the Revenue cannot take

a position where it accept the sale proceeds so realized and bring it to tax, but the expenditure incurred to realize the sale proceeds is not allowed to the assessee. Further, we note that in case of other promoter shareholders, who have offered their shares as part of IPO, the matter relating to claim of proportionate IPO expenses has been examined by the AO and the same has been accepted after due verification. On this count as well, the Revenue cannot bring contrary position in case of similar situated assessees.

12. The findings of the ld DRP are clearly on a week footing as we find that there is no increase in the capital base of the company except for fresh issue of 59,73,136 shares and to that extent, the company has not passed on the expenditure to the selling promoter shareholders. The selling promoter shareholders have clearly benefitted by realization of fair market value of their shares and the whole process was undertaken as per extant SEBI regulations and necessary filings have been done by the company and there is no material on record to hold that there are any violations or any adverse findings by the authorities and therefore, in absence of the same, the assessee having agreed to participate in IPO and offering her shares and in the process, agreeing to bear the expenditure proportionate to the her shares being sold cannot be held to be an arrangement which is impermissible in law or for that matter, a colourable avoidance agreement.

13. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, we hold that the assessee is eligible for claim of IPO expenses proportionate to her shareholding and which has been rightly claimed by the assessee in terms of clause (i) of section 48 of the Act. The AO is directed to verify whether sale proceeds net of assessee's share of expenses have been credited into assessee's account and where the same is found to be in order, allow the expenses so found netted off from the sale consideration while computing capital gains in the hands of the assessee. The ground of appeal so taken by the assessee is thus allowed for statistical purposes.

14. Regarding disallowance of the Portfolio Management Service (PMS) expenses the ld AR submitted that the expenses amounting to Rs.1,84,696/- have been claimed

against long term capital gains on sale of shares of Rs 7,72,883/- and Rs 23,694/- has been claimed against short term capital gains. It was submitted that these shares are other than shares sold as part of IPO and the same were held under the PMS portfolio handed by Marcellus Investment Managers Limited. It was submitted that the AO has allowed Rs 23,693/- and at the same time, has not allowed Rs 1,84,696/- and that too, without issuing any show-cause to the assessee. It was submitted that the assessee has availed the services of Marcellus Investment Managers Limited for purchasing and selling the shares at best possible price and as part of the agreement, PMS expenses are deducted and net sale proceeds have only been remitted in the assessee's bank account and these expenses are thus incurred wholly and exclusively towards the sale / transfer of shares and eligible for allowance. The ld DR has been heard who has relied on the order of the AO and the directions of the ld DRP. We find that where part of the PMS expenses have been allowed while computing short term capital gains, on parity of reasoning, the remaining part of expenses where claimed while computing long term capital gains deserve to be allowed to the assessee and in any case, admittedly, no show-cause was issued before disallowing these expenses. The AO is directed to allow the claim of these expenses and the ground of appeal is thus allowed.

15. In light of aforesaid discussion, the other grounds of appeal have become academic in nature and are dismissed as infructuous.

16. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 10, March 2026

Sd/-	Sd/-
(JUSTICE (RETD.) C.V. BHADANG)	(VIKRAM SINGH YADAV)
PRESIDENT	ACCOUNTANT MEMBER

Mumbai, Dated : 10 March, 2026

SSL & TNMM

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'G' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai