

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 460/Mum/2012  
(निर्धारण वर्ष / Assessment Year : 2008-09)

Gharse Online Services Pvt. Ltd., A-21, 1st floor, Ghanshyam Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai - 400 053	<b>बनाम/</b> v.	I.T.O. 8(1)(4), Room No. 207, 2 <sup>nd</sup> floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400 020.
स्थायी लेखा सं./PAN :AABCG8546P		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	None
Revenue by :	Shri Rajesh Ojha

सुनवाई की तारीख / **Date of Hearing** : 04-11-2015  
घोषणा की तारीख / **Date of Pronouncement** : 30-11-2015

आदेश / ORDER

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER :**

This appeal, filed by the assessee company, being ITA No. 460/Mum/2012, is directed against the order dated 24-10-2011 passed by the learned Commissioner of Income Tax(Appeals)- 16, Mumbai (Hereinafter called "the CIT(A)"), for the assessment year 2008-09.

2. The Grounds of appeal raised by the assessee company in the memo of appeal filed read as under:-

“1) On the facts & circumstances of the case the assessment order passed u/s.143(3) for the aforesaid assessment year by the Learned Assessing Officer should be annulled as the same is illegal & void abinitio.

2) On the facts & circumstances of the case the and in law, the Learned Assessing Officer erred in disallowing Short term capital loss of Rs.36,78,000/-.

3) On the facts & circumstances of the case the and in law, the Learned Assessing Officer erred in adding Short term capital gain of Rs.3,22,000/-.

4) On the facts & circumstances of the case and in law the Learned Assessing Officer misled himself on various counts and failed to appreciate the facts of the case in their proper & judicial perspective.

5) Your appellant therefore prays that:

a) The Learned Assessing Officer for the Assessment year 2008-09 assessment order passed u/s.143(3) be annulled as the same is illegal & void ab-initio.

b) Disallowance of Short Term Capital loss of Rs.36,78,000/- be deleted, and the said loss be allowed as claimed by the appellant firm.

c) Addition of Short Term capital gain of Rs.3,22,000/- be deleted.”

3. The Brief facts of the case are that during the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Income Tax Act, 1961(Hereinafter called the “the Act”), it was observed by the learned assessing officer (Hereinafter called “the A.O.”) that the assessee company has claimed to have incurred short term capital loss of Rs. 36,78,000/-. The assessee company was asked to explain the same and the assessee company submitted the following details:

Name of company	Date of acquisition	Quantity	Acq Cost	Sale date	Sales consideration	Capital gain
Broadband Pacenet	18.07.07	3200	32,000	23.07.07	32,640	640

-do-	18.07.07	3,200	32,000	23.07.07	32640	640
-do-	18.07.07	3,300	33,000	23.07.07	33660	660
-do-	18.07.07	100	1,000	23.07.07	1020	20
-do-	18.07.07	100	1,000	23.07.07	1020	20
-do-	18.07.07	100	1,000	23.07.07	1020	20
-do-	18.07.07	400000	50,00000	07.08.07	40,80,000	-9,20,0000
-do-	18.07.07	1200000	1,50,00,000	07.08.07	1,22,40,000	-27,60,000
			2,01,00,000		1,64,22,000	-36,78,000

The A.O. observed that the assessee company has purchased 10,000 shares of Broadband Pacenet India Pvt. Ltd.(Hereinafter called "BPIPL") on 18-07-2007 @ Rs. 10/- per share and on the same day, the assessee BPIPL @ Rs. 12.50 per share. It was also observed by the A.O. that the assessee company had sold part of these shares of BPIPL i.e. 10,000 shares on 23.07.2007 @ Rs. 10.20 per share and on 07.08.07 it had sold 16,00,000 shares of BPIPL @ Rs. 10.20 per share. Thus, as per the AO,it is clear that the assessee company had purchased 10,000 shares of BPIPL on 18.07.07 @ Rs. 10/- per share and on the same day it had purchased 16,00,000 shares of BPIPL @ Rs. 12.50 per share which reflected inflation of acquisition cost by 25% on the same day. It was further observed by the AO that the assessee company had purchased shares of BPIPL on 18.07.2007 @ Rs. 12.50 per share and it had sold those shares at a loss i.e @ 10.20 per share on 07.08.2007 within a span of 20 days. The assessee company was asked to explain the basis of price differential on the same date as well as on 07.08.2007 resulting in losses i.e. selling the shares of BPIPL @ Rs. 10.20 which were purchased just before 20 days @ Rs. 12.50 per share with the basis of valuation of shares and other supporting documentary evidences to substantiate the reasons of price differential . In reply, the assessee company submitted that it had invested Rs. 14.59 crores in BPIPL and was almost holding 90% shareholdings of BPIPL and balance shares of BPIPL were held by Churu Trading Co. Pvt. Ltd.(Hereinafter called "CHURU") . It was submitted by the assessee company

that BPIPL was in financial crunch with accumulated loss of Rs. 13.88 crores, hence, the assessee company negotiated with a foreign company namely Boastful Holdings Limited (Hereinafter called "Boastful") to invest in BPIPL. The assessee company submitted that it had sold its entire 90% shareholding in BPIPL to Steller Interactive Media Pvt. Ltd.(Hereinafter called "Stellar") – a sister concern in which its 99% shareholder Jasvinderkaur Kohli is holding 35% shares and Boastful, which had promised for financial investment of Rs.41.40 crores in BPIPL. It was further stated by the assessee company that the value of shares of BPIPL dealt was Rs. 3.84 per share which the assessee company had sold @ Rs. 10.20 per share to Boastful and its sister concern Stellar. The A.O. did not accept the explanation of the assessee company due to the following reasons:-

- The assessee had stated that the value of the share was only Rs.3.84 and it had purchased @12.50 and sold @ 10.20 per share. There appears no reason for this transaction.
- Except the above letters, the assessee had not furnished any documentary evidence with regard to purchasing the shares at this much very high cost.
- The assessee had stated that it had entered into agreements for these transactions. No prudent businessman will knowingly enter into any transaction resulting into loss.
- Nowhere the assessee has proved the genuineness of transaction, registration of shares, payment details, etc.
- The assessee had dealt with the shares of M/s. BPIPL (reference is made to para 3 of letter dt.22.12.2010) of which the promoters of the assessee and BPIPL are same. It had sold shares to SIMPL, which is also a sister concern in which 99% shareholder Jasvinderkaur Kohli is holding 35% shares.
- The transactions are not supported with the market situation and conditions.

- The assessee was aware that it will earn good quantum of Capital Gain, hence, it had prepared the above explanation, as well as the explanation produced by the assessee is totally baseless and appears to be prepared just to evade the Long Term Capital Gain.
- Perusal of details revealed that the assessee had incurred the Long Term Capital Gain amounting to Rs.24,96,000/- on sale of shares However, to evade the tax payment, it had arranged the fictitious short term capital loss through its sister concern.

Accordingly, the A.O. took the value of purchase price of the 16,00,000 shares purchased by the assessee company on 18.07.2007 at Rs. 10/- per share instead of acquisition cost of Rs.12.50 per share of BPIPL and recomputed the short term capital gain of the assessee company amounting to Rs.3,22,000/- instead of short term capital loss of Rs.36,78,000/- claimed by the assessee company as under:-

Name of company	Dt.of acquisition	Quantity	Rate of purchase	Acq Cost	Sale date	Quantity sold	Rate of sale	Sales Considrn	Capital gain
Broadband Pacenet	18.07.07	10,000	10.00	1,00,000	23.7.07	10,000	10.20	1,02,000	2,000
-do-	18.07.07	16,00,000	10.00	1,60,00,000	07.08.07	16,00,000	10.20	1,63,20,000	3,20,000
	Total	16,10,000		1,61,00,000		16,10,000		1,64,22,000	3,22,000

Similarly, it was observed by the AO that the assessee company has claimed long term capital gain of Rs. 24,96,000/- (to be taxed @ 10%) and long term capital gain of Rs. Nil (to be taxed @ 20% )as per the following details:-

**Long term Capital Gain (to be taxed @10%)**

Name of company	Dt.of acquisition	Quantity	Rate of purchase	Acq Cost	Sale date	Quantity sold	Rate of sale	Sales Considrn	Capital gain
Broadband Pacenet	24.03.06	71,01,000	10.00	7,10,10,000	07.8.07	71,01,000	10.20	7,24,30,200	14,20,200
-do-	13.09.04	53,79,000	10.00	5,37,90,000	07.08.07	53,79,000	10.20	5,48,65,800	10,75,800
	Total	1,24,80,000		12,48,00,000		1,24,80,000		12,72,96,000	24,96,000

**Long term Capital Gain (to be taxed @ 20%)**

Name of company	Dt.of acquisition	Quantity	Rate of purchase	Acq Cost	Sale date	Quantity sold	Rate of sale	Sales Considrn	Capital gain
Broadband Pacenet	13.09.04	21,10,000	10.00	2,11,00,000	23.07.07	21,10,000	10.00	2,11,00,000	nil
	Total	21,10,000		2,11,00,000		21,10,000		2,11,00,000	nil

The A.O. further observed that the assessee company has sold 21,10,000 shares of the BPIPL on 23<sup>rd</sup> July, 2007 @ Rs. 10/- per share while on the same day the assessee company had also sold the same shares of the BPIPL @ Rs. 10.20 per share while computing the short term capital gain. The assessee company submitted the details of movement of shares along with copy of bank account statement reflecting the sale proceeds. However, the contention of the assessee company was rejected by the A.O. on the ground that the assessee company sold the shares of BPIPL @ Rs. 10.20 per share as well it is also showing sale of shares of BPIPL @ Rs. 10.00 per share on the same day i.e. 23.07.2007. It was held that the assessee company had deliberately manipulated the cost of shares as well as sale consideration of shares of BPIPL in such a way that it should evade the payment of taxes and the transaction is not a genuine transaction . It was held by the AO that the assessee company had produced various agreements as a colorable device to evade the payment of tax. Accordingly the A.O. computed the long term capital gain of Rs.4,22,000/- chargeable to tax @ 20% against NIL long term capital gain(chargeable to tax @20%) declared by the assessee company by adopting the deemed sale price w.r.t 21,10,000 shares of BPIPL at Rs.10.20 per share as against the actual sale price of Rs.10/- per share of BPIPL under:-

**Long term Capital Gain (to be taxed @ 20%)**

Name of company	Dt.of acquisition	Quantity	Rate of purchase	Acq Cost	Sale date	Quantity sold	Rate of sale	Sales Considrn	Capital gain
Broadband	13.09.04	21,10,000	10.00	2,11,00,000	23.7.07	21,10,000	10.20	2,15,22,000	4,22,000

Pacenet									
	Total	21,10,000		2,11,00,000		21,10,000		2,15,22,000	4,22,000

3. Aggrieved by the orders dated 27.12.2010 of the AO passed u/s 143(3) of the Act , the assessee company carried the matter in appeal before the CIT(A) and reiterated the submissions before the CIT(A) as made before the A.O. The assessee company submitted that the assessee company had invested Rs. 14.59 crores in BPIPL which was in the business of a Internet Service Provider (ISP in short) and the assessee company was holding 90% of shareholding of BPIPL. The balance 10% of BPIPL shares was held by CHURU, a third party investor at an acquisition cost of Rs. 2,00,00,000/- i.e. @ 12.50 per share. BPIPL was in a financial crunch and had cash loss of Rs. 13.88 crores and needed cash infusion to carry on business as a going concern. The assessee company submitted that it successfully negotiated with a Cyprus based company Boastful to invest Rs.41.40 crores in BPIPL as a financial investor. The assessee company further submitted that it entered into an Share Purchase Agreement (SPA in short) dated 20.7.2007 with Boastful to sell 21,10,000 shares of BPIPL at Rs. 10/- per share to Boastful. The assessee company submitted that Share Subscription Agreement (SSA in short) dated 20.7.2007 was also entered into between BPIPL, Boastful, Steller and the assessee company enabling Boastful to invest Rs. 41.40 crores in BPIPL, as the BPIPL was badly in need of funds to carry on its business operations of ISP. Thus, the assessee company contended that as per the SPA, it was agreed that the assessee company shall sell its entire shareholding in BPIPL to Steller and in order to fulfill the conditions of the SPA the assessee company transferred its entire shareholding in BPIPL constituting 1,40,90,000 shares to Steller @ 10.20 per share. The assessee company submitted that as per SSA , there were three conditions precedent (in short 'CP' )for the investment of Rs. 41.40 crores by Boastful in BPIPL

which are stipulated in clause(s) 3.1(b) , 3.1(c) and 6.1(b) of the SSA. As CP , the assessee company was to acquire 16,00,000 shares of BPIPL from CHURU and the assessee company had to sell 21,10,000 shares of BPIPL to Boastful @ Rs. 10/- per share. As CP, The assessee company had transferred its balance shareholding in BPIPL constituting 1,40,90,000 shares to Steller . The assessee company submitted that this transaction was approved by a resolution passed by the Board of Directors of the assessee company dated 19<sup>th</sup> July,2007 which categorically states the above stated conditions precedent(CP) of the SSA as under:-

“The Board was briefed on the proposed strategic investments by Boastful Holding Limited in the equity capital of Broadband Pacenet India Pvt. Ltd. which is a subsidiary of the company. It was informed that Boastful Holding Limited has prescribed one of the conditions for making the investments under which the company was required to acquire 16,00,000 equity shares of Broadband Pacenet Trading Company Pvt. Ltd. from Churu Trading Company Pvt. Ltd. and sell 21,10,000 equity shares to Boastful Holding Limited. In this connection, a draft of agreement called “Subscription Agreement” proposed to be entered into with Boastful Holding Limited, Stellar Interactive Media Pvt. Ltd. and Gharse Online services Pvt. Ltd. was placed before the Board.”

The assessee company further submitted that pursuant to clause 3.1(c) of the SSA, the assessee company acquired 16,00,000 shares of BPIPL from CHURU @ Rs. 12.50 per share which was the acquisition price of CHURU of shares of BPIPL and pursuant to clause 6.1(b) of the SSA, the assessee company transferred its balance shareholding in BPIPL constituting 1,40,90,000 shares to Steller as it was a condition precedent to the investment of Rs. 41.40 crores by Boastful into BPIPL. The assessee company further submitted that to fulfill the conditions of clause 6.1(b) of the SSA, the assessee company acquired 10,000 shares of BPIPL from the promoters of BPIPL. Pursuant to clause 3.1 (b) of the SSA, the assessee company sold 21,10,000 shares at par to Boastful as a condition precedent to the investment of Rs. 41.40 crores by Boastful to BPIPL. Thus, it was submitted that the A.O. has wrongfully

disallowed the claim of the assessee company based on surmises and in complete violation of the provision of section 48 of the Act by substituting the actual cost of acquisition of shares from CHURU @Rs 12.50 per shares to the deemed cost of acquisition @Rs10 per share based on the reasoning that the assessee company acquired 10000 shares of BPIPL from promoter on the same day @Rs 10 per share of BPIPL. Similarly, the assessee company contended that the AO has substituted the selling price of the shares of BPIPL to Boastful at deemed selling price of Rs.10.20 instead of actual selling price of BPIPL shares of Rs 10 per share based on reasoning that the shares of BPIPL were sold on the same date to Stellar @Rs10.20 per share.

4. The CIT(A) after going through the submissions made and the terms and conditions of the SPA and SSA entered into by the assessee company held that the entire agreements are between the closely knit associated companies and that the entire agreement is worded in such a fashion that the assessee company had to sell its entire shareholding to Steller ,which is a sister concern of the assessee company. The CIT(A) also held that the assessee company admitted that the net worth of BPIPL who had incurred a heavy loss was Rs. 3.84 per share, therefore, the entire agreement is between the closely knit associated companies of the assessee company and it was in the knowledge of the assessee company that the actual net worth of the shares of its subsidiary company BPIPL is much less than both the cost price as well as the selling price of the shares of BPIPL in question and hence, the entire transactions falls within the ambit of a colorable device to evade payment of taxes. It was held by the CIT(A) that it is not possible for any prudent business to purchase the shares @ Rs. 12.50 per share and sell the same at Rs. 10.20 per share on the same day of the same company until and unless it is for some ulterior motives more so when the transaction taking place within the same group of companies entirely for the purposes of showing a capital loss. It was also held by the CIT(A) that the assessee

company sold the shares on 23.07.07 @ Rs. 10/- per share and on the same day the assessee company sold the shares to the same company @ Rs. 10.20 per share. The rate adopted by the assessee has no logic except stating that they were under legal obligation to do so as per the SSA. It was held by the CIT(A) that the A.O. is justified in taking uniform value of the share @Rs. 10.20 per share as uniformity is required in both the values which the AO has adopted and there is no infirmity in the order of the A.O. Hence, the appeal of the assessee company was dismissed.

5. Aggrieved by the above decision of the ld. CIT(A) vide orders dated 24.10.2011, the assessee company preferred an appeal before the Tribunal.

6. At the time of hearing before us, none appeared on behalf of the assessee company. As per the order sheet, the appeal was adjourned several times earlier since 2013 as the assessee company was not appearing despite several notices issued to the assessee company and also adjournment was sought by the assessee company during the course of last hearing on 21-4-2015 when it first appeared. Therefore, we proceed to dispose of the appeal after hearing the ld. D.R.

7. The ld. D.R. relied upon the orders of authorities below and submitted that the A.O. is quite right in making the addition which was rightly confirmed by the CIT(A).

8. We have heard the ld. D.R. and perused the material placed on record.

9. We have observed from the details as emerging from the orders of the authorities below that the assessee company submitted before the authorities below that the assessee company had invested Rs. 14.59 crores in BPIPL which was in the business of a Internet Service Provider (ISP in short) and the

assessee company was holding 90% of shareholding of BPIPL. The balance 10% of BPIPL shares was held by CHURU, a third party investor at an acquisition cost of Rs. 2,00,00,000/- i.e. @ 12.50 per share. BPIPL was in a financial crunch and had cash loss of Rs. 13.88 crores and needed cash infusion to carry on business as a going concern. The assessee company submitted before the authorities below that it successfully negotiated with a Cyprus based company Boastful to invest Rs.41.40 crores in BPIPL as a financial investor. The assessee company further submitted before the authorities below that it entered into an Share Purchase Agreement (SPA in short) dated 20.7.2007 with Boastful to sell 21,10,000 shares of BPIPL at Rs. 10/- per share to Boastful. The assessee company submitted before the authorities below that Share Subscription Agreement (SSA in short) dated 20.7.2007 was also entered into between BPIPL, Boastful, Steller and the assessee company enabling Boastful to invest Rs. 41.40 crores in BPIPL, as the BPIPL was badly in need of funds to carry on its business operations of ISP. Thus, the assessee company contended before the authorities below that as per the SPA, it was agreed that the assessee company shall sell its entire shareholding in BPIPL to Steller and in order to fulfill the conditions of the SPA the assessee company transferred its entire shareholding in BPIPL constituting 1,40,90,000 shares to Steller @ 10.20 per share. The assessee company submitted before the authorities below that as per SSA, there were three conditions precedent (in short 'CP') for the investment of Rs. 41.40 crores by Boastful in BPIPL which are stipulated in clause(s) 3.1(b), 3.1(c) and 6.1(b) of the SSA. As CP, the assessee company was to acquire 16,00,000 shares of BPIPL from CHURU and the assessee company had to sell 21,10,000 shares of BPIPL to Boastful @ Rs. 10/- per share. As CP, The assessee company had transferred its balance shareholding in BPIPL constituting 1,40,90,000 shares to Steller. The assessee company submitted before the authorities below that this transaction was approved by a resolution passed by the Board of Directors of the assessee company dated

19<sup>th</sup> July,2007 which categorically states the above stated conditions precedent(CP) of the SSA as under:-

“The Board was briefed on the proposed strategic investments by Boastful Holding Limited in the equity capital of Broadband Pacenet India Pvt. Ltd. which is a subsidiary of the company. It was informed that Boastful Holding Limited has prescribed one of the conditions for making the investments under which the company was required to acquire 16,00,000 equity shares of Broadband Pacenet Trading Company Pvt. Ltd. from Churu Trading Company Pvt. Ltd. and sell 21,10,000 equity shares to Boastful Holding Limited. In this connection, a draft of agreement called “Subscription Agreement” proposed to be entered into with Boastful Holding Limited, Stellar Interactive Media Pvt. Ltd. and Gharse Online services Pvt. Ltd. was placed before the Board.”

The assessee company further submitted before the authorities below that pursuant to clause 3.1(c) of the SSA, the assessee company acquired 16,00,000 shares of BPIPL from CHURU @ Rs. 12.50 per share which was the acquisition price of CHURU of shares of BPIPL and pursuant to clause 6.1(b) of the SSA, the assessee company transferred its balance shareholding in BPIPL constituting 1,40,90,000 shares to Steller as it was a condition precedent to the investment of Rs. 41.40 crores by Boastful into BPIPL. The assessee company further submitted before the authorities below that to fulfill the conditions of clause 6.1(b) of the SSA, the assessee company acquired 10,000 shares of BPIPL from the promoters of BPIPL. Pursuant to clause 3.1 (b) of the SSA, the assessee company sold 21,10,000 shares at par to Boastful as a condition precedent to the investment of Rs. 41.40 crores by Boastful to BPIPL. Thus, it was submitted before the CIT(A) by the assessee company that the A.O. has wrongfully disallowed the claim of the assessee company based on surmises and in complete violation of the provision of section 48 of the Act by substituting the actual cost of acquisition of shares from CHURU @Rs 12.50 per shares to the deemed cost of acquisition @Rs10 per share based on the reasoning that the assessee company acquired 10000 shares of BPIPL from promoter on the same day @Rs 10 per share of BPIPL.

Similarly, the assessee company contended before the CIT(A) that the AO has substituted the selling price of the shares of BPIPL to Boastful at deemed selling price of Rs.10.20 instead of actual selling price of BPIPL shares of Rs 10 per share based on reasoning that the shares of BPIPL were sold on the same date to Stellar @Rs10.20 per share. We have observed that the authorities below has rejected the above stated contentions of the assessee company by treating these agreements being SSA and SPA as non-genuine being colorable device to evade payment of taxes as the same were entered into between the closely knit companies and it was well with in knowledge of the assessee company about the precarious financial position of the BPIPL and that the net worth of the said company is Rs 3.84 per share and still the shares were acquired by the assessee company at Rs.12.50 per share from CHURU.

We have observed that there is SPA and SSA both dated 20-7-2007 entered into by the assessee company with Boastful with an objective that Boastful will infuse funds to the tune of Rs.41.40 crores into BPIPL to enable it to continue operations of ISP. There were in all four parties who are signatories to SPA or SSA dated 20.07.2007 for revival of BPIPL out of which three are closely knit associated concerns/enterprises namely BPIPL, Stellar and the assessee company having common shareholding while Boastful, the fourth signatory being incoming financial investor was willing to invest fresh funds of Rs.41.40 crores in BPIPL to enable it to continue operations of ISP. Now, since three parties are closely knit associated concerns/enterprises having common ownership , the heavy onus and burden falls on the assessee company to substantiate with cogent evidences/explanations that the entire transaction is a genuine transaction and is not a colorable device to evade taxes . So far as proposition that business decisions and transactions based on commercial expediency is to be decided by the taxpayer and the revenue cannot put itself into the arm chair of the business man , we are fully

agreeable with the proposition but it is incumbent on the taxpayer to justify and substantiate that the decisions and transactions are based on commercial expediency and are not colorable devices entered into with an intent to evade taxes. The assessee company vide these agreements dated 20-07-2007 had successfully arranged the financial investor Boastful who will bring Rs.41.40 crores in BPIPL to enable it to continue its operation of ISP and on the other hand the assessee company at the same time is exiting from the BPIPL completely and selling the entire shareholding in BPIPL to its sister concern Stellar whereby the sister concern Stellar will prima-facie reap the fruits of success of BPIPL along with Baostful as now sufficient funds are being pumped into BPIPL by Baostful to carry on its operation of ISP to revive ISP. The burden was on the assessee company to justify and substantiate the genuineness of reasons and also valuation of the shares to offload its entire stake in BPIPL to Stellar at this point of time when the new financial investor is coming to revive BPIPL. Although the assessee company is exiting the business of BPIPL vide SPA and SSA agreements both dated 20.07.2007 but the assessee company is on the other hand made obligated and burdened to purchase shares from CHURU @Rs 12.50 per share vide these same agreements and by these same agreements the assessee company is compelled to sell 21,10,000 shares to Boastful @ Rs 10.00 per share within a short span of 20 days leading to capital loss in the fresh acquisition of shares of BPIPL from CHURU in the hands of assessee company knowingly well that it is exiting from BPIPL. The net worth of the BPIPL is Rs.3.84 per share which is admittedly in the knowledge of the assessee company and still it agreed to undertake the said transaction of acquisition of shares of BPIPL @Rs 12.50 per shares with CHURU knowingly also well that within short span of time, it is obligated to sell the same shares to Boastful at Rs 10 per share leading to capital loss. It is also not brought on record by the assessee company why it bought the shares from CHURU @ Rs.12.5 per share although present net worth of BPIPL is Rs. 3.84 per share and what

negotiations / efforts are made by the assessee company to acquire the shares from CHURU at or around the price based on net worth of BPIPL shares being Rs.3.84 per share and what compelled it to acquire the shares of BPIPL @Rs 12.50 per share from CHURU which is also the acquisition price of shares of BPIPL by CHURU. Similarly, with respect to price differential on sale of shares on the same day i.e price Rs.10.0 and Rs.10.2 per share of BPIPL sold on 23.07.2007, the heavy onus was on the assessee company to bring on record cogent material and explanations to substantiate how the valuation of the shares have been arrived at and the reasons for price differential on sale value on the same day of the shares of the same company. Thus, under these circumstances , heavy onus and burden was on the assessee company to substantiate and justify with cogent material and evidences that these agreements namely SPA and SHA both dated 20-07-2007 are genuine agreements and are not colorable devices and more so when three parties out of four including assessee company were associated concerns/enterprises .In our considered view , the assessee company failed to discharge the burden cast on it as stated above and rather it was merely stating that there were agreements namely SHA and SPA both dated 20-07-2007 and the transaction were carried as per these agreements . We do not find any infirmity in the orders passed by the Id. CIT(A) and accordingly we uphold the same. We order accordingly.

10. In the result, the appeal filed by the assessee company is dismissed.

Order pronounced in the open court on 30<sup>th</sup> November, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30-11-2015. को की गई ।

Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 30-11-2015

sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

व.नि.स./ R.K., Ex. Sr. PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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