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

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

ITA No.3330 /Mum/2016
(A.Y:2011-12)

Reliance Money Inf Ltd. 7th Floor, B Wingh, Trade World, Kamala Mills Compound, S.B. Marg, Lower Parel, Mumbai-400013 **PAN No.AADCR2730G**	Vs.	**Principal Commissioner of Income Tax** 1, Room No.330, Aayakar Bhavan, M .K. Road, Mumbai-400020
Appellant	..	**Respondent**

Assessee by	..	Shri. Arvind Sonde, AR Shri Jitendra Sanghui, AR
Revenue by	..	Shri. K.B. Shukla, CIT(A) DR

Date of hearing	..	**29-10-2016**
Date of pronouncement	..	**23-12-2016**

O R D E R

PER RAJESH KUMAR, AM:

This appeal by the assessee is arising out of the revision order of PCIT passed u/s 263 of the Income Tax Act 1961 (hereinafter 'the Act'.), Mumbai dated 28-03-2016. The Assessment was framed by ACIT Range-1(3), Mumbai for the A.Y. 2011-12 vide order dated 30-01-2014 u/s 143(3) of the Act.

2. The first jurisdictional issue raised by the assessee in this appeal is as regards to the order of PCIT revising the assessment framed by Addl. CIT u/s 143(3) of the Act as there is no specific issue before the PCIT as to how the prejudice has caused to the Revenue in as much as it is erroneous. For this assessee has raised following two grounds: -

> *"1. On the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income-Tax - 01, Mumbai ("the PCIT") erred in invoking the provisions of section 263 of the Act and directing setting aside of the assessment order passed under section 143(3) of the Act by the Additional Commissioner of Income Tax, Range -1(3), Mumbai ("the Assessing Officer") dated 30.1.2014 on the alleged ground that the said assessment order was erroneous and prejudicial to the interest of the revenue.*
>
> *2. The learned PCIT erred in invoking the provisions of section 263 of the Act without specifying as to how the prejudice is caused to the Revenue in as much as it is not pointed out as to where the order of the Assessing Officer is erroneous in law and therefore how the interest of the Revenue is affected adversely.*

The Appellant prays that it be held that the action of the Learned PCIT in invoking provisions of section 263 of the Act and directing the Assessing Officer to pass a fresh assessment order be held to be ab-initio and/or otherwise void and bad in law."

3. Briefly stated facts are that the assessee is Ltd. Company engaged in the business of marketing and distribution of insurance and mutual fund products, trading in bullion, real estate broking services, derivatives trading in commodity market, providing infrastructural facilities to its associate concerns etc. Original assessment for the relevant A.Y. 2011-12 was completed by the AO u/s 143(3) of the Act vide his order dated 30-01-2014. Subsequently, the PCIT issued show cause notice u/s 263 for revising of the assessment order passed u/s 143(3) of the Act vide show cause notice No.Pr.CIT-1/263/Show Cause Notice/2015-16 dated 07-07-2015 for the reason that the AO failed to carry out relevant and meaningful enquiries on the followings: -

" It is observed that during F.Y.2010-1 1, the Assessee Company issued 200,000,000, 10% cumulative redeemable preference shares of Rs.10/- each at a premium of Rs.20/- to Reliance Money Mail Ltd. These preference shares are redeemable at par after expiry of 15 years from date of allotment (i.e.7th September, 2010). However, the Assessing Officer failed to carry out any meaningful enquiries into this aspect.

In Schedule-16 "Significant Accounting Policies and Notes to Accounts" forming part of the financial statements it is, stated by the-, Company under the head 'Going Concern Assumption.

As the accumulated losses of the company as at March 31st, 2011 exceed its paid up capital resulting in an erosion of its capital. The accounts have been prepared on "Going Concern" basis on the understanding that finance will continue to be available to the Company for working capital requirements from its promoters.

It would be apparent from the above that prima facie, no prudent person would make such huge investment in equity & preference shares in a Company which has been making losses year after year and total losses exceed paid up capital. As stated in the Note-13 by the Company, the entire capital has been totally eroded. In this context, such huge investment in loss making Company and that too after paying premium of Rs.20/- per share does not make commercial sense and this investment ought to have been looked into closely. Prima-facie, "nature" of transaction has not been examined.

It was seen that during F.Y.2010-1 1, Reliance Money Mall Ltd. further increased its investment in the Assessee Company by acquiring additional Rs.6,20,000 equity shares for Rs.62 lakhs. This investment was in addition to 2,40,000 equity shares of the Company acquired in F.Y.2009-10. As a result of investment in F.Y.2010-111 the Assessee Company became subsidiary of Reliance Money Mall Ltd. w. e. f. July 8, 2010. Surprisingly, investment by Reliance Money Mall Ltd. in the shares of the Assessee

Company was by borrowing funds from its associate companies. Why a huge loss making company was made a subsidiary by Reliance Money Mall Ltd.? Careful analysis of facts ought to have alerted the A.O. that something was unusual and investment by Reliance Money Mall Ltd. in equity shares of assessee company to the extent of acquiring stake as "holding company" did not make any commercial sense. On top of it, the Reliance Money Mall Ltd. subscribed to the preference shares of assessee company to the tune of Rs.600 crores. This was highly intriguing. It is relevant to mention here that Reliance Money Mall Ltd. itself had not got sufficient funds to invest in preference shares of Assessee Company. It (Reliance Money Mall Ltd.) obtained funds from Reliance Capital Ltd. in the form of preference shares issued to Reliance Capital Ltd. at the premium of Rs.999/- per share. The Reliance Money Mall Ltd. also was running into losses and had not started its business operations fully. The façade of preference shares by Reliance Money Mall Ltd. at huge premium was adopted to transfer funds from Reliance Capital Ltd. to Reliance Money Infrastructure Ltd, through the conduit/medium of Reliance Money Mall Ltd. No enquiries whatsoever were carried out in this regard. The A.O. failed to verify when the actual allotment of preference shares was made and how the funds obtained through preference shares were utilised by the Assessee Company.

It is relevant to mention here that demerged Infrastructure division of the Assessee Company had 95.29% of total assets of the Assessee Company which got transferred on merger with Reliance Capital Asset Management Co.Ltd to the "amalgamated company". It can be inferred that Reliance Capital Ltd. was holding indirectly control over the Assessee Company, being the fund provider to Emerging Money Mall Ltd. (earlier known as Reliance Money Mall Ltd.), which had invested in the Assessee Company. This would be apparent from the submissions made before the Bombay High Court, in the Scheme of Arrangement for merger of Reliance Capital Asset Management Co. Ltd. that both the entities i.e. Reliance Capital Asset Management Co. Ltd. and demerged company carved out from the Assessee Company by transferring infrastructure division to the demerged company are part of the Reliance Capital Group. Therefore, continuing investment in preference shares indirectly by Reliance Capital Ltd. to the extent of Rs.600 crores when the investee company (Assessee Company) had less than 5% of the total assets with it is not understandable. No prudent business person would, believe that Assessee Company with had the capacity to pay huge interest on redeemable preference shares and discharge its obligation to redeem such preference shares when it was left with less than 5% of the total assets it earlier had. It is well-nigh impossible.

It is also pertinent to point out here that on amalgamation of Emerging Money Mall Ltd. with Reliance Capital Ltd., the assets of Emerging Money Mall Ltd. which included investment of Rs.600 crores in the preference shares of Assessee Company by its holding company, Reliance Money Mall Ltd. was assigned value of Rs.2 crore only. In this context, it appears that entire exercise of investing in preference shares by Reliance Capital Ltd., firstly in the preference shares of Emerging Money Mall Ltd. (at a premium of Rs.999/- per share) and simultaneous investment of the same amount i.e., Rs..600 crores by Emerging Money Mall Ltd. in the preference shares of Assessee Company (at a premium of Rs.20/- per share), was undertaken to book losses in the

books of Reliance Capital Ltd. pursuant to merger of the Merging Money Mall Ltd. with Reliance Capital Ltd. The Assessing Officer failed to appreciate this ploy of the Reliance Capital Ltd. Careful analysis of these facts ought to have alerted the A.O. that something was unusual and investment by Reliance Money Mall Ltd. in equity & preference shares of assessee company did not make any commercial sense. It can be inferred that actual nature of transaction has not been examined

B. It is also stated in Schedule-16 giving details of "Significant Accounting Policies and Notes to Accounts" under the captioned 'Scheme of Arrangement'. Scheme of Arrangement:

Pursuant to the Scheme of Arrangement u/s.391 to 394 of the Companies Act, 1956 sanctioned by the Hon'ble High Court of Judicature at Bombay vide its order dtd. 15th October, 2010 and, filled with the Registrar of Companies (RoC), Maharashtra on 4th February, 2011 and by the Hon'ble High Court of Gujarat at Ahmedabad vide its order dtd. 13th January, 2011 and filed with the RoC, Gujarat on 171h 2011, the Infrastructure Services division of the Company has been demerged and transferred to Reliance Capital Asset Management Ltd. (RCAM) with effect from the appointed date (Effective Date) i.e., 17th February, 2011.

Consequently, the following assets and liabilities have been transferred to RCAM.

Assets and Liabilities Transferred	*Amount in Rs.*
Fixed assets	*45,381,530*
Current assets	*704,618,470*
Liabilities (unsecured loan)	*750,000,000*

Consideration for arrangement

In respect of every 100 equity shares of Rs. 10 each fully paid up held by shareholders in the company. Preference share of Rs. 100/- each fully paid up have been issued by RCAM.

Preference shares of face value Rs. 10 lakh of RCAM have been issued and allotted by RCAM to the preference shareholders of the Company on a proportionate basis.

In view of demerger of infrastructure division of the company pursuant to Scheme of Arrangement, the figures for the current year are not comparable to those of the previous year.

It is observed that no enquiries have been carried out by the Assessing Officer in respect of this demerger of infrastructure Services undertaking of the Company and its merger with Reliance Capital Asset Management Ltd. The 'Scheme of Arrangement' and copy of the order of the High Court u/s.391 to 394 of the Companies Act, 1956, giving approval to this scheme, have also not been brought on record. There is nothing on record to indicate whether there is a 'separate undertaking' for Infrastructure Services as claimed by the assessee u/s.2(19) of the Income Tax Act (Infrastructure Services

undertaking which was demerged). What value has been assigned to the various assets of the demerged undertaking of the company at the time of merger & whether it was fair market value or not was not examined at all.

C. It is observed that the assessee in the Return of Income claimed capital loss from sale of shares by calculating the loss after adopting Sale Consideration of Rs.15,00,000/-. In the course of assessment proceedings, the assessee brought to the notice of Assessing Officer that actual sale consideration was Rs.1,50,00,000/- and not Rs. 15,00,000/- as stated in Return of Income. The Assessing Officer allowed the higher amount of capital loss even though no revised return was filed as desired by the Apex Court in Goetze India Ltd. There was no time available with the assessee to file revised return u/s.139(5) of the I.T. Act and yet higher amount of capital loss of Rs.2,75,76,240/- was allowed by the A.O. in the course of assessment. It amounts to going against the spirit provisions of Section 139(5) of the Act as such act would nullify the time limit within which revision can be made. Further, this action of the A.O. is against the ratio of the decision of Goetze India Ltd. It is admitted that some judicial pronouncements have carved out a small window for allowing claims of the assessee not made in the return filed. However, this power is available (As per the judicial pronouncement) only with the appellate authorities and A.O. still has no power to allow claim of the assessee made during the assessment proceedings which has not been made in the Return of Income filed and /or in the revised return.

D. The assessee has claimed deduction for refund of referral fee of Rs.9,60,44,600/- pursuant to Note received from Insurance Regulatory Development Authority. No details have been called for by the A,O. in respect of this Note. No enquiry as to why the payment has been made to the Assessee Company for alleged referral fee? Whether any services were rendered by the Assessee Company and if yes,, the nature thereof was not examined by the A.O. The A.O. also failed to examine whether it was only an attempt to reduce the profit of 'Associate Company' which has paid alleged referral fee.

E. The assessee has claimed the deduction for expense under the head 'Forward Brokerage Trade Settlement' to the tune of Rs.62,509,31 1/-. No details have been gathered by the A.O. whether this expense was related to the business of the assessee and whether there was any need of entering into forward contracts, whether any amount was paid for indulging in speculative transaction or genuine hedging activity. Further, it was noticed that there were "gold futures contract" outstanding to the extent of Rs.28,03,42,656/- for 99.5 kg. of gold. Any mark-to-market losses on such contracts are merely notional losses and these are not allowable expenditures. Same is true about foreign currency forward contracts.

Where these losses have been hidden has not been examined. It is not possible to believe that there was neither any income nor losses from such outstanding contracts. As per Instruction no 3 of 2010 dtd 23/3/2010, the A.O. was to closely examine such hidden losses arising from forex derivatives or from open, unsettled & outstanding positions of goods & forex. The A.O. failed to carry out relevant and meaningful enquiries in this regard.

F. The assessee has claimed Long Term Capital Loss of Rs.41,076,270/- arising from sale of shares of unlisted companies. It is observed that shares have been sold to Reliance Capital Ltd. which is the main Company controlling, the holding Company of the Assessee Company (Reliance Money Mall Ltd.) directly or indirectly. The A.O. has not examined whether the price has been charged at Arm's Length Price or the losses has been claimed by the Assessee Company in order to boost profits of Reliance Capital Ltd. It defies logic that someone would sell investment at huge loss to its "associate company" when there is no immediate requirement of funds. This issue has escaped attention of the A.O.

G. The assessee has shown deposit of Rs. 12,683,858/- has margin money with broker. Who is the broker, whether this huge amount was required or not, has not been considered at all by the A.O. What activity has been undertaken through this broker was not examined by the A.O.

H. The assessee has taken the premises by way of lease and has claimed expenses of lease rent and huge expenditure has been claimed in respect of "improvement? on the leasehold property. There is substantial sale out of these improvements but no details had been examined by the A.O. despite the fact that the information has been made available to the A.O. in the course of assessment proceedings. Only cryptic statement was made before the A.O. that "sale of leasehold improvements" and, at various stations. What were the assets sold to whom these were sold have not been examined. Sale of leasehold improvements for Rs.27,172,549/- has been accepted without carrying out any meaningfully enquiries.

There is one more issue related to leased premises and that is "payment of property taxes" to the extent of Rs. 56,41,858/- Whether it was liability of lessee or not ought to have been examined after seeing the lease contract & whether there was reimbursement from the lessor was also not examined by the A.O.

3. It is settled proposition of Law that failure of the A.O to carry out relevant and meaningful enquiries as warranted by the facts and circumstances of the case renders the assessment order erroneous and prejudicial to the interest of the revenue. This also emerges from the ratio of the decisions such as Malabar Industrial Co. Ltd. vs CIT 243 ITR 83(SC), CIT vs Max India Ltd. 295 ITR 282 (SC), CIT vs Mangal Castings 303 ITR 23 (P&H), CIT Vs. Kohinoor Tobacco Products (P) Ltd. [1998] 234 ITR 557, CIT(A) v. Mahavar Traders [1996] 220 ITR 167 (MP), Duggal & Co. V. CIT(A)[1996] 220 ITR 456, CIT vs MEPCO Industries Ltd. 294 ITR (Mad), Meerut Roller Flour Mills Ltd. vs C1T[2013] 35 Taxznau.com 14, Bharti Hexacorn Ltd. v.-CIT[2013] 33Taxman.com 210 (Delhi-TR.), CIT v. RKBK Fiscal Service (P) Ltd [2013] 32 Taxrnan.com 153 (Cal), M.I.Overseas Ltd. v. DIT (Int.Tax) (2012] 28 Taxman.com 279 (Uttarakhand), Bharat Overseas Bank Ltd. v. CIT [2012] 26 Taxman.com 330(Chennai), CIT v Harsh J. Punjabi 345 ITR 451 (Del.), v Infosys Techn. Ltd. 17 Taxman.com 203 & Sripan Land Dev.(P) Ltd v CIT[2011] Taxman.com 429(Mum ITAT].

4. 1, therefore, hold that assessment order passed by the A. 0. u/s.143(3) of the Act on 30.1.2014 is erroneous and prejudicial to the interest of the revenue on account -of- failure of the A.O. to carry out relevant and meaningful inquiries as warranted by the

facts and circumstances of the case, especially in respect of areas mentioned above. I, therefore, intend to set-aside the assessment order passed by the A.O. on 30.1.2014. If you have any objection to this proposed action, you are requested to send your objections within three weeks of receipt of this letter, failing which undersigned would be free to take appropriate action as per provisions of the Law. If you intend to avail a personal hearing, then you may attend this office on 29th July, 2015 at 11.30 A.M."

4. The PCIT in view of the above show-cause notice passed revision order u/s 263 of the Act dated 28-03-2016 on the following issues.

i. Non-examination of the issue of preference shares to Reliance Money Mall Ltd. (RMML) in respect of the issue of 20 crore preference shares of face value of 10 each on a premium of Rs. 20 totaling to Rs.600 crore.

ii. Non-examination of claim of deduction towards return of referral fee.

iii. Non-examination of claim of deduction towards loss of incurred on forward broking trade settlement of gold business.

iv. Non-examination of claim of allowance of long-term capital loss on sale of shares amounting to Rs.2,75,76,240/-.

v. Non-examination of allowance of claiming of depreciation on cost of improvement of leasehold premises u/s 32(i) of the Act.

vi. Lease rent and improvement expenditure.

On the above issues the PCIT has only recorded the fact that the AO while completing the assessment u/s 143(3) of the Act failed to carry out the relevant and meaningful enquiries. Now, we will discuss the facts and evidences produced before the AO during the assessment proceedings by the assessee on the questionnaires and replies given. The brief facts relating to the first issue are that the PCIT while deciding the issue on revision u/s 263 of the Act noted that the assessee was asked to explain the source of credit introduced in the books of accounts by way of issue of 20 lakh preferential shares, each having face value of Rs. 10 at the premium of Rs.20 each to its holding company RMML Ltd. According to PCIT no proper enquiry to verify the source of funds / credits introduced as well as genuineness of the transaction was verified while passing of the assessment order u/s 143(3) of the Act by the AO. The PCIT was of the view that no details regarding source, capacity and genuineness of such credits or share capital introduced was enquired by the

AO. The PCIT was of the view that due to demerger of the infrastructure and real-estate broking business of the assessee company i.e. Reliance Money Infrastructure Ltd (RMML) resulted into the erosion of the value of investment of Rs. 600 crores into Rs. 2 crores only. According to PCIT the entire aspects of sale and demerger of its infrastructural division as a going concern whether resulted into any capital gain due to such slump sale or was not enquired into by the AO u/s 50B r. w. s. 2(42C) of the act or u/s 2(19AA) of the Act. The PCIT further noticed that RMML is holding company of the assessee was subsequently amalgamated with Reliance Capital Ltd. (RCL) and therefore RCL has become the virtual holding of the company of the assessee as well. PCIT also noted that even no details regarding permission of authorization of RCL or its issue of preferential shares filed by the assessee but PCIT admitted the factum that the details of party RMML to whom Rs.200 crore new preferential shares were issued and the details of Reliance Capital Ltd and Reliance Securities Ltd. to whom the preferential shares are redeemed of Rs. 200 crore is found placed on record vide annexure 15 to the assessee's letter dated 17-01-2014. But he was of the view that this aspect has not at all been enquired by the AO. Another aspect of the issue was that AO failed to conduct necessary enquiries as to ascertain the source of funds introduced in its books of account by way of issue of preference shares on huge premium through circuitous route for favouring group company as well as to ascertain the genuineness of the erosion of the value of such investment and also to ascertain tax implication on demerger of the holding company. The PCIT also noted that 95.29% loss is transferred to the demerge company and therefore is withdrawn the provision of Section 2(19AA) of the Act is without any basis and accordingly the entire loss is still in the hands of the assessee company amounting to Rs. 606,78,45,352/- crore. In view of these facts the PCIT holding the assessment order as not only erroneous but also prejudicial to the interest of the Revenue.

5. Now, we have to examine detail and evidences produced by the assessee before AO during the course of the assessment proceedings. First of all, the learned Counsel for the assessee Shri Arvind Sonde referred to the notice issued by the AO u/s 142(1) of the Act vide No. DCIT 1(3)/Notice/13-14 dated 30-05-2013 and referred to question No.25 which reads as under: -

> *"25. Whether the company has issued any fresh share during the year or raised any amount by way of debenture/FD etc. If so, how the issue expenses have been dealt with in the accounts."*

This detail was submitted by the assessee vide reply dated 17-01-2014 wherein complete detail of parties to whom new preferential shares were issue and preferential shares are redeemed and enclosed as Annexure-15 & 16. The relevant Annexure are enclosed at assessee's paper book page 47 and the relevant reads as under: -

*"**Annexure-15***

Sr. No	***Name of Party***	***PAN***	***Address***	***Amount***
1.	*Emerging Money Mall Ltd.*	*AAECR3099M*	*570, Rectifier House, Naigum Cross Road, Next to Royal Industrial Estate, Wadala, Mumbai-31*	*2,000,000,000*

Annexure-16

Sr. No	***Name of Party***	***PAN***	***Address***	***Amount***
1.	*Reliance Capital*	*AAACR5054J*	*'H' Block, 1st Floor, Dhirubhai Ambani Knowledge*	*1,000,000,000*
2.	*Reliance Securities Ltd.*	*AADCR0260P*	*11th Floor, Rtech IT Park, Western Express Highway, Goregaon (E), Mumbai-63*	*1,000,000,000*

"

It was contended by the learned Counsel that during the course of assessment proceedings the AO issued notice u/s 142(1) of the Act and in the said notice vide question No.25, the AO has asked the assessee as to whether the company has issued any fresh shares during the year. The assessee submitted the details regarding the issue of shares and redemption of shares before the AO vide letter dated 17-01-2014. Further, a query was raised by the AO and assessee submitted the explanation regarding the issue of preference shares at premium of Rs. 20 per share vide letter dated 27-01-2014. The relevant reply at item No.7 dated 27-01-2014 reads as under: -

> *"7. As regards your query regarding basis of charging of share premium on allotment of 20 crore 10% Cumulative Redeemable Preference Shares (CRPS) of Rs. 10/- each, at a premium of Rs. 20/- per share our client submits that there shares are to be redeemed also at a premium of Rs.20/- paer share. The share premium of Rs. 20 received on allotment will be repaid on redemption and it is not the case that the share premium received will vest with the company. This can be verified from the copy of Board Resolution passed on 07-09-2010 along with extract from minutes of the meeting of Board of Directors enclosed as **Annexure 7**, which clarify the terms of issue of preference shares."*

6. In view of these details, the learned Counsel for the assessee stated that even entire details in regard to preferential share was given in the directors Report and the issue of demerger which reads as under: -

> *"Share Capital*
>
> *Preference Shares*
>
> *During the year under review, the company made a fresh issue of 20 crore 10% Cumulative Reedeemable Preference Shares of Rs. 10/0 each fully paid up at a premium of Rs. 20 per share aggregating to Rs. 600 crore. Out of the proceeds of this issue, the company has redeemed 20 crore (twenty Crore) 10% Cumulative Redeemable Preference shares of Rs. 10/- each fully paid up.*
>
> *Demerger*
>
> *Pursuant to the Scheme of Arrangement under section 391 to 394 of the Companies Act, 1956 Sanctioned by the Hon'ble High court of Judicature at Bombay and by the Hon'ble High Court of Gujarat at Ahmedabad, the Infrastructure Services Division of the Company has been demerged and transferred to Reliance Capital Asset Management Ltd w. e. f. the Appointed date (Effective date0 in terms of the Scheme i.e. 17th February 2011."*

In view of the above of these facts, the learned Counsel for the assessee further argued that the AO has examined everything and even the nature of transaction in regard to the issue of share and it is also a fact that this investment was made on the basis of erosion of loss of the company as on 31-03-2011, wherein, paid up capital resulting in an erosion of its capital and amounts have been paid on a going concern basis on the understanding that finance will be available with the company for work-in-capital requirement from its promoters. In view of the above, the observation of PCIT that huge investment is made in loss making company by paying a premium of Rs. 20 per share does not make commercial sense and investment ought to have looked into closely by the assessee. The learned Counsel for the assessee argued that the promoter has brought in the funds by way of preference shares as their holding was 62%. From the terms of preference shares issued it can be seen that the same was redeemable at premium of Rs. 20 per share and the premium was required to be refunded by the company on its redemption. Hence, funds were brought in by the promoters and on the terms which cannot be said to be prejudicial to the interest of the Revenue. In view of the above, huge investment in quantity and that also preferential share was a commercial decision by a businessman and the Revenue has no authority to question the same. Another observation of the PCIT that the investment by RMML in the

shares of assessee's company by borrowing funds from its associate companies that's why a huge loss making company was made as subsidiary by RMML. The learned Counsel for the assessee argued that the observation that RMML has brought funds from its associate company is not at all correct as RMML had issued preferential shares and utilized the same proceeds to make investment in the capital. The learned Counsel for the assessee contradicted this fact wherein, it is stated that the RMML obtain the funds from RCL in the form of preferential shares. It was argued that RMML acquiring stake in a holding company does or does not make any commercial sense, it is a businessman decision and same cannot be questioned now by PCIT or Revenue. It was argued that RMML is a promoter of the company and they have infused funds into the company from their survival or revival and it is a common knowledge that the promoters have to invest huge funds for managing the affairs of the company and more particularly when the investee company is making loss. It was explained that this business was growing and therefore funds were required and turnover in subsequent years went up to Rs. 785 crore in 2012 and Rs. 1356 crore in 2013. The learned Counsel for the assessee referred to the allegation of Revenue when the preferential share of RMML at huge premium was adopted to transfer the funds from RCL to RMML and then to the assessee has no tax implication. To explained this, the learned Counsel for the assessee referred to the fact that the assessee had issued preferential shares to RMML, the source of which were explained and also it is confirmed by PCIT while adjudicating the issue. The learned Counsel for the assessee argued that there is no facade or there is no conduit as alleged by the Revenue. The learned Counsel for the assessee stated that this is only conjunctures and surmises of the PCIT. He explained that the AO is required to look into the source of funds by way of share capital, which has been confirmed by the PCIT that the funds are fully explained. To confirm this the assessee explained vide letter dated 27-01-2014, whereby copy of board resolution allotting of shares of RMML was submitted which shows that the shares were allotted on 07-09-2010 and this fact was filed during the course of assessment proceedings. The assessee before the AO filed complete bank statements including the details of utilization of funds received on issued of preference shares. He referred to the utilization as under: -

Name	***Amount in Crs***	***Purpose***
Reliance Securities Ltd.	*100*	*Redemption of preference shares*
Reliance capital Ltd.	*100*	*Redemption of preference shares*
Reliance Capital Ltd	*285*	*Repayment of loan*
Reliance Securities Ltd	*112.38*	*Repayment of loan*

Name	***Amount in Crs***	***Purpose***
-	*2.62*	*Internal purposes*
Total	*600*	

7. Another allegation of the Revenue that the RCL was holding the control indirectly over the assessee being the fund provider to RMML, which has been invested by the assessee. The fund position was explained by the leaned counsel for the assessee by filing the details which are as under: -

"

Sl No.	***Name of the Company***	***As on 31.03.2010***	***As on 31.03.2011***
1.	*Reliance Securities Ltd.*	*19%*	*19%*
2.	*Reliance Composite Insurance Broking Ltd.*	*19%*	-
3.	*Reliance Spot exchange Infrastructure Ltd.*	*19%*	-
4.	*Reliance CWT India Ltd.*	*19%*	
5.	*Emerging Money Mall Ltd*	*24%*	*62%*

Equity Shareholders of EMML as on 31.03.2010 and 31.03.2011 were as under: -

Sl No.	***Name of the Company***	***As on 31.03.2010***	***As on 31.03.2011***
1.	*Reliance CWT India Ltd.*	*40%*	
2.	*Reliance Spot exchange Infrastructure Ltd.*	*41%*	
3.	*Reliance Money Express Ltd*	*19%*	
4.	*Ashadeep Properties Pvt. Ltd*		*50%*
5.	*Chlorosulf Pvt Ltd*		*50%*

..."

8. The learned Counsel for the assessee explained from the above list of shareholders that the reliance capital was never holding the shares indirectly or directly and hence the observation of the PCIT is without any basis and factually incorrect. He explained that investment in preferential shares RCL in RMML and by RMML in the assessee's company does not given control direct or indirect but the control arise only out of quantity holding it has made investment only in RMML. The learned Counsel explained that many companies may be part of group but that does not mean there is a direct or indirect control, which arises only on account of the quantity holding. The learned Counsel for the assessee stated that each and every company is independent and their existence cannot be questioned. The

learned Counsel for the assessee also explained that the balance sheet of RMML clearly shows that there is loss and erosion of wealth and the investment made have to be continued only for the reason that they are repaid in terms of the provision of its allotment. He explained that the findings of PCIT is wrong that RCL has indirectly invested in the preference shares of the company, actually RCL has invested in the preferential shares of RMML and the same cannot be constituted as indirect investment in the preference shares of the company. It was stated that the preference shares subscribed during the year, whereby majority shareholders being RMML, who was holding 62% equity shares being largest shareholder and they have infused the fund into the company by way of preferential shares, which gives them leeway to get the money back after the company starts performing well. As regards to the issue of amalgamation of RMML with RCL which took place on 31-03-2013, which is two years beyond the end of the preceding year for which the assessment was carried out by the AO but the subsequent funds i.e. as far as 2 years beyond cannot be looked upon by the Revenue authorities. It was clarified that the assessee issued shares to RMML on 07-09-2010 and RMML issued preference shares to RCL on 12-10-2010 and both the funds went during F.Y. 2010-11 relevant to this A.Y. 2011-12. However, amalgamation of RMML took place on 31-03-2013 from the date given above and hence observation of the PCIT that exercise of investment was made with a view to book loss in the RCL is prima facie incorrect as the event of amalgamation between RMML and RCL took place almost after 33 months from the issue of shares by the assessee as well as RMML. In such circumstances, the learned Counsel for the assessee submitted the details that the value of the preferential share have eroded due to huge loss incurred by the assessee and he furnished unaudited divisional balance sheet of the assessee company as on the date of merger i.e. 15-02-2011, which has been reproduced in the order of PCIT and we need not to reproduce the same again for the sake of brevity.

9. As regards to the another issue, the demerger of infrastructure division in to Reliance Capital Assessment Management Company Ltd. (RCAMCL). It was explained by the learned Counsel for the assessee that the fact regarding demerger of infrastructure division of the assessee company was explained by filing a separate note in the notes on accounts which was submitted along with return of income and also during the course of the assessment proceedings same was explained. The relevant scheme of demerger has been approved by the Hon'ble Bombay High Court and Hon'ble Gujarat High Court reads as under: -

"14. Scheme of Arrangement:

Pursuant to the scheme of arrangement ("the Scheme") under Sections 391 to 394 of the Companies Act, 1956 sanctioned by the Hon'ble High Court of Judicature at Bombay vide its Order dated 15th October 2010 and filed with the Registrar of the Companies (RoC), Maharashtra on 4th February, 2011 and by the Hon'ble High Court of Gujarat at Ahmedabad vide its order dated 13th January, 2011 and filed with the RoC, Gujarat on 17th February, 2011 the infrastructure services division of the company has been damaged and transferred to Reliance Capital Asset Management Ltd ("RCAM") with effect from the Appointed Date (Effective Date) i.e. 17th February 2011.

Consequently the following assets and liabilities have been transferred to RCAM:.

Assets and Liabilities Transferred	*Amount in Rs.*
Fixed Assets	*45,381,530*
Current assets	*704,618,470*
Liabilities (unsecured loan)	*750,000,000*

Consideration for arrangement

In respect of every 100 equity shares of Rs. 10 each fully paid up held by shareholders in the company, 1 preference share of Rs. 100 each fully shareholders in the Company, 1 Preference shares of Rs. 100 each fully paid up have been issued by RCAM.

Preference shares of face value Rs. 10 lakh of RCAM have been issued and allotted by RCAM to the preference shareholders of the Company on a proportionate basis.

In view of demerger of Infrastructure division of the company pursuant to Scheme of Arrangement, the figures for the current year are not comparable to those of the previous year. "

It was explained by the learned Counsel Shri Arvind Sondhe that the scheme of an arrangement of demerger approved by Hon'ble High Court of Bombay and Hon'ble High Court of Gujarat, looked into all the aspects before approving the schemes of demerger and now the PCIT cannot raise any question on the judgement of Hon'ble High Courts. It was explained that the scheme and orders of Hon'ble High Courts are in public domain and the same are also filed with the Registrar of companies (ROC). It was explained that the same was filed along with the return of income and this was very well noticed by the AO while framing assessment and even that authorities below cannot take any adverse view on the issue of scheme of arrangement i.e. demerger of infrastructure undertaking from the assessee company because Hon'ble High Courts have approved the same. The learned Counsel for the assessee argued that as an effect of demerger scheme the loss of the

company which were brought forward will be carry forward by the assessee company and thus available loss of the assessee's company to have been reduced for carry forward purpose and this cannot be considered as prejudicial to the interest of the Revenue or even no error has caused to the Revenue. Hon'ble High Courts have approved this scheme.

10. The next issue on which revision order is passed is as regards to the claim of deduction on refund of referral fee allowed by the AO while framing assessment u/s 143(3) of the Act without proper enquiry and without application of mind. The PCIT was of the view that the claim of assessee in this regard that assessee being a Reliance ADA Group Company, provided infrastructure and other support services to various Reliance ADA Group Companies including Reliance Composite Insurance Progress Ltd. decided to utilize the services of the assessee company for optimization and furtherance of its business. RCBIL entered into an arrangement that the assessee company will provide the infrastructure support services and data base of the assessee company and for providing such services the assessee company charged a sum of Rs.8,91,50,000/- in A.Y. 2008-09 and Rs. 5,48,99,600/- in A.Y. 2009-10. Now, the claim of the assessee that it offered its total income in the respective assessment years but it is claimed that RCIBL is a registered Insurance broker with IRDA and the IRDA inspected the books of account of RCIBL as per the regulatory powers granted to IRDA. When IRDA raised objection for the payment made by RCBIL to assessee company, the assessee refunded the referral fee charges received from its associate concern and raised a debit note qua the amount of Rs. 6,51,54,000/- for the A.Y. 2008-09 and Rs. 3,08,94,600/- for the A.Y. 2009-10. The PCIT was of the view that the income earned by assessee in earlier years is due to various type of infrastructural services provided by the assessee company as per agreement entered into with its associate concerns, which decision was mutually taken to the best of commercial interest of the assessee as well as its associate concern RCIBL therefore, according to the PCIT, the claim of deduction in this year is going to reduce the income already earned and this claim cannot be made on the objection of IRDA which is a regulatory authority for Insurance business. According to the PCIT, this income has already been accrued for and hence, the AO has not enquired into this aspect of deduction. Hence, he hold the assessment order as erroneous as well as prejudicial to the interest of the Revenue and passed revision order u/s 263 of the Act. On this aspect, the learned Counsel for the assessee detail out the evidences provided before AO during the course of assessment proceedings, wherein, assessee vide letter dated 27-01-2014, explained the issue of claim of

deduction on referral fee that was refunded to its associate concern amounting to Rs. 9,60,44,600/- pursuant to note from IRDA. The assessee submitted the following explanation before the AO vide letter dated 27-01-2014 which reads as under: -

> *"Reliance Money Infrastructure Ltd. (RML) is a Reliance ADA Group company which provides infrastructure and other support services to the Reliance ADA group companies. Reliance Composite Insurance Brokers Ltd (RCIBL) being part of Reliance ADA Group decided to utilize the services of RML for optimization for the cost and furtherance of its business. RCIBL entered into an arrangement with RMIL to avail the infrastructure support services and data base of RMIL. The leads generated were offered to select insurers depending on the requirement of the clients and the suitability for the offerings of the respective insurers to conclude the deals.*
>
> *On instructions of Insurance Regulatory Development Authority, referral charges received by RMIL Rs.96044600/- were refunded to RCIBL on 2nd July 2010. RCIBL for recovering referral charges paid to RMIL raised debit note of Rs. 6,51,50,000 for F.Y. 2008-09 and Rs. 3,08,94,600/-*

11. It was explained that on the instructions of IRDA who is the controlling authority for Insurance business, and this amount was refunded and during the year under consideration no referral fee has been received, which is part of this refunded amount. Thus there is no rendering of service during the year and services were rendered in the earlier years. Therefore, the learned Counsel for the assessee argued that if any enquiry is to be made qua this income or assessment of the income in the hands of the assessee that can only be made in A.Y. 2008-09 and 2009-10 and not in the relevant A.Y. 2011-12. The learned Counsel for the assessee also explained that the transaction of debit of referral charges during the year in the profit and loss account is nothing but writing off of income which was previously received and offered to tax. According to him, the AO has examined this issue by making a query and the same was replied by the assessee and this aspect has also been considered while framing assessment of RCIBL, wherein, the same AO has framed assessment only on 30-01-2014, which is also the same date when the assessment in the present case was framed. It was explained by the learned Counsel for the assessee that when the AO is the same and assessments were framed on the very same date, he has examined every aspect of this deduction of refund of referral charges. It is not in doubt that assessee has not refunded the amounts and which is very much available on record. Even now, the learned Counsel for the argued that the PCIT while passing revision order u/s 263 of the Act has not doubt the genuineness of transaction, only aspect examined by PCIT is that no enquiry was made by the AO, qua that the learned Counsel stated that complete

enquiry by the AO was made while raising a query and the same was answered by the assessee during the course of assessment proceedings. He stated that the AO has formed his opinion and this is one of the possible views.

12. In respect to another ground of claim of deduction towards loss incurred on forward brokering trade settlement. The assessee explained that the company is into distribution of gold coins to retail customers and to cover the risk of price fluctuation of gold, it hedged the gold position with MCX exchange on mark to market position and is accounted under the head Forward brokering Trade settlement. For this issue of hedging, it was explained that there is a considerable gap between the date of purchase and the date of sale and the company needs to hedged the same against the price movement of gold and company used gold futures at MCX to achieve this purpose. Assessee filed the details before the AO vide letter dated 17-01-2014 during the proceedings and the details are enclosed at page 49 of assessee paper book which reads as under: -

"

Scrip	*Purchase date*	*Purchase Amount*	*Indexed Factor*	*Indexed Cost*	*Sale Date*	*Sale Proceeds*	*Profit / (Loss)*
Reliance Spot Exchange India Ltd	*25-02-09*	*245,000*	*582*	*299.304*	*23.07.10*	*245,000*	*(54,304)*
Bombay Stock exchange Ltd	*24.03-09*	*15,000,000*	*582*	*18,324,742*	*24-06-10*	*15,000,000*	*(3,24,742)*
National Multi Commodity Exchange	*20-12-08*	*108,333,365*	*582*	*132,345,387*	*20-09-10*	*108,333,355*	*(24,012,032)*
Reliance Money Hong Kong Ltd	*23-03-09*	*161,783*	*582*	*197,642*	*24-02-11*	*12,480*	*(185,162)*

"

In view of the above fact is it clear that the transaction statement enclosed in assessee's paper book to support his case was field before the AO during the course of assessment proceedings. The assessee explained before the AO that the company is in distribution of gold coins to retail customers and to cover the risk of price fluctuation of gold price, it hedged the gold position with exchange on mark to market position, which is accounted for under the head of forward brokering trade settlement. After going through these details, the AO framed the assessment. But PCIT was of the view that no enquiry or investigation was made by the AO in this regard while allowing entire loss and the relevant of PCIT in para 11 reads as under: -

> *"11. ....Major sales and purchases are made to/from various private parties including to /from its associate concerns / companies. The assessment records contain the party-wise purchase and sale of gold conins exceeding Rs. 10 lacs filled by the assessee vide Annexure-1 to its letter dated 25-01-2013. The details thereof are as under: -*

List of Sales above Rs. 10 Lacs

Sr.No.	Name of the company	Amount of Sale
1	Gitanjali Lifestyle Ltd.	60,34,35,442
2	VNM Jewel Crafts Ltd.	32,24,66,335
3	**Reliance Financial Ltd.**	**32,02,99,601**
4	LG Electronics Ltd.	10,01,50,112
5	Ambuja Cement Ltd.	5,17,95,177
6	**Reliance Web Store Ltd.**	**4,71,96,517**
7	Hindustan Unilever Ltd.	2,58,01,635
8	ACC Ltd.	2,06,85,523
9	Bayer Cropscience Ltd.	1,88,70,145
10	Kerala State Financial Enterprises	1,67,00,413
11	**Reliance Communications Ltd.**	**1,3,72,926**
12	Hyderabad Industries Ltd.	1,15,70,278
13	Gigabyte Technology India Pvt. Ltd.	1,05,47,192
14	Carestream Technology India Pvt. Ltd.	75,30,687
15	J.K.Cement Works	51,02,178
16	S.K.Gold	41,66,515
17	Bennet. Coleman	36,53,625
18	Solution Integrated Mktg. Services Pvt. Ltd.	32,26,361
19	Kurakose Joseph	27,74,712
20	Suryanarayan Estates	19,67,166
21	**Reliance Capital Ltd.**	**19,01,294**
22	Rashi Peripherals Pvt. Ltd. (C.O.)	18,51,869
23	Aradhana Drinks	17,48,979
24	R P S Chauhan	15,93,039
25	Avnet India Pvt. Ltd.	15,00,042
26	Jaypee Capital Services Ltd.	14,91,090
27	Post Master Surendranagar	14,60,412
28	R.Murali	14,22,055
29	V. Venkateswaran	12,05,464
30	Arignar Anna Sugar Mills	11,73,250
31	Neon Laboratories Ltd.	11,63,120
32	**Reliancve General Insurance Co.Ltd.**	**10,46,911**
33	Perambalur Sugar Ltd.	10,23,643
34	Royal Images Marketing Pv.Ltd.	10,15,883
35.	Others	1481,539,766
36.	**Total**	**3092,488,455**

List of purchase above Rs. 25 Lacs

Sr.No.	Name of the company	Amount of Purchase
1	Gitanjali Lifestyle Ltd.	4,35,85,077
2	Quant Commodities Pvt. Ltd.	49,33,65,589
3	**Reliance Financial Ltd.**	**33,34,99,518**
4	Riddisiddhi Bullions Ltd.	3,10,59,845
5	Sidhi Vinayak Vyapar Pvt. Ltd.	3,02,58,911
6	Scotia Mokatta – The Bank of Nova	181,85,65,958
7	VNM Jewel Crafts Ltd.	21,53,24,172
8	Vat Input Credit	1,49,98,353
9.	**Total**	**2980,657,424**

"

The assessee before PCIT filed the complete details and the list of sale of gold above Rs. 10,00,000/- and list of purchase of gold above Rs.25,00,000/- before the PCIT to explain. According to PCIT, the loss claimed on this amount is speculation loss and therefore is not liable for set off against its normal business income and finally in Para 13, the PCIT holds as under: -

> *".....The loss claimed on this account is speculation loss and therefore, not to be allowed for set off against its normal business income. In any case, the AO has not made any inquiry/investigation in this regard, before completing the assessment order, hence, the same assessment order to my considered opinion is erroneous as well as prejudicial to the interest of the Revenue within the meaning of section 263 of the Act."*

13. Now, before us the learned Counsel for the assessee explained that assessee vide letter dated 25-10-2013 filed details in respect of purchase and sale of gold coins in which the payment was made by way of forward brokerage trade settlement and qua this a reply was filed before the AO in lieu of query. The assessee now explained the complete business module before us as well as before PCIT which is reads as under: -

> *".....The company was successful in the tender process of sale of gold coins through post office initiated by India post. The tender required the company to sale only Swiss minted gold coins of various denomination to be sold through the India post Offices. Accordingly, the company purchases Swiss minted golds coins from Ban of Nova Scotia and subsequently supplied and stored these god coins at the post offices as well as company's branches for sale.*
>
> *The same price of gold coins used based on daily price of gold and not fixed at the purchase price. Hence, company needs to hedge against the price movement of gold. The company used gold futures at Multi commodity exchange to achieve this purpose.*
>
> *At the time of every purchase of gold coins an equal quantity (weight) of gold coins' futures was sold on multi-Commodity Exchange (MCX) to hedge.*

Daily a report used to get generated of the quantity (weight) of gold coins sold and an equal quantity of gold futures are bought back in order to unwind the hedge.

In order to execute these, services MCX registered broker is required as per the exchange stipulation. Reliance Commodities Limited (RCL) is a MCX registered commodity broker and accordingly, the services of it was used by the company to execute the gold future traders.

In order to execute these trades, the company has to place a margin amount with RCL, as per the stipulation by the MCX, the margin requirement vary based on the outstanding number of contracts. The margin amount place with RCL at the year-end was for the outstanding contracts of gold futures open at MCX."

The assessee has filed the complete details of forward brokerage trade settlement of Rs. 6,025,9,311/-and the assessee realized loss of Rs. 6,58,66,270/-and there is unrealized profit of Rs. 33,56,959 and the net loss is at Rs. 6,025,9,311/-. The learned Counsel for the assessee also stated that this issue is as per the provisions of explanation to Section 43(5) of the Act wherein, speculative transaction is defined and he explained that in the present case the delivery of gold is taken by the assessee and hence, the transaction cannot be called as speculative in nature because Sub-Section 5 of Section 43 clearly stated that the transaction in which the contract for purchase or sale of any commodity is settled otherwise then by actual delivery or transfer of commodity or script i.e. cannot be speculation transaction. But in the present case the assessee has taken actual delivery as noted by PCIT in his order even though payment is made by cash for purchase of gold. The learned Counsel for the assessee further explained that even instruction No.3 of 2010 issued by CBDT dated 23-03-2010 is not applicable i.e. there is mark to market loss but there is a profit and he relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Woodward Governors India P. Ltd 312 ITR 254 (SC). In view of this argument the learned Counsel for the assessee stated that there is no unrealized loss and the question of applying instruction No.3 as applied by the PCIT does not arise. According to the learned Counsel the issue is covered by the decision of the Hon'ble Supreme Court in the case of Woodward Governors India P Ltd (Supra). He also stated that the complete details in respect to this loss is filed before the AO during the course of assessment proceedings in lieu of query raised and it is presumed that the AO has applied his mind to the facts of the case and passed an appropriate order.

14. The another issue in this appeal of assessee is against the order of PCIT in holding the assessment order as erroneous and prejudicial to the interest of the Revenue for the purpose of claim of long term capital loss of shares. The AO, according to the learned

Counsel, he examined the details of sale of shares of the following three companies which were sold at cost reads as under: -

"

Name of the company	***Sold to whom***	***NO of shares***	***Sale price of share***
Reliance Spot Exchange Infrastructure Ltd	*Reliance Exchange Next Ltd.*	*24,500*	*10*
Bombay Stock Exchange	*Reliance Capital Ltd*	*1,30,000*	*115*
National Multi-Commodity Exchange Ltd	*Reliance Capital Ltd*	*16,666,667*	*65*

....."

The learned Counsel for the assessee stated that the shares of the above companies are still held by RCL and Reliance Exchange Next Ltd. as evident from the schedule of investments appearing in the financial statement of Reliance Capital Ltd and Reliance Exchange Next Ltd. as on 31-03-2015. The learned Counsel for the assessee referred to the details of the assessee's paper book at page 132-137, which were filed before the AO also during the course of assessment proceedings. The learned Counsel for the assessee also drew our attention to the fact that the shares of the above companies were sold at cost on which the same were purchased and therefore, there was no profit or loss but the loss has arising only on account of the provisions of the Act requiring the assessee to adopt the indexed cost because these shares are held for long term purposes, i.e. beyond one year. The learned Counsel also explained that the assessee has recovered the entire investment and there is no impairment in respect to thereof. The learned Counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Gillander Arbuthnot and Co. 87 ITR 407 (SC) for the proposition. The learned counsel for the assessee also drew our attention to page 48 of assessee's paper book, wherein complete details of statement of long term capital loss is filed and also filed before the AO during the course of assessment proceedings. The relevant details read as under: -

SCRIP	PURCHASE DATE	PURCHASE AMOUNT	INDEXED FACTOR	INDEXED COST	SALE DATE	SALE PROCEEDS	PROFIT / (LOSS)
RELIANCE SPOT EXCHANGE INDIA LIMITED	25-02-09	245,000.00	582	299,304.00	23-07-10	245,000.00	(54,304.00)
BOMBAY STOCK EXCHANGE LIMITED	24-03-09	15,000,000.00	582	18,324,742.00	24-06-10	15,000,000.00	(3,324,742.00)
NATIONAL MULTI-COMMODITY EXCHANGE	20-12-08	108,333,355.00	582	132,345,387.00	20-09-10	108,333,355.00	(24,012,032.00)
RELIANCE MONEY HONG KONG LIMITED	23-03-09	161,783.00	582	197,642.00	24-02-11	12,480.00	(185,162.00)
				151,167,075.00		**110,090,835.00**	**(27,576,240.00)**

The learned Counsel for the assessee drew our attention to the notice issued u/s 142(1) No. DCIT 1(3)/Notice/2013-14 dated 13-05-2014, wherein vide question No.15. This particular issue was a queried by the AO, the relevant query which reads as under: -

> *""15. In case of capital gains please provide a comprehensive chart with regard to STCG/LTCG as well as Dividend received. In case of capital loss whether the loss bas been adjusted after dividends in terms of section94(7) of the Act."*

According to the Counsel, this was replied by the assessee vide Para 16 of the reply dated 17-01-2014 and the same reads as under: -

> *"16. In the return of income, our client has claimed long term capital loss of Rs. 4,10,76,240. While computing the capital gain/loss at the time of filing of return of income, erroneously the sale proceeds received on sale of shares of Bombay Stock Exchange Ltd. were taken at Rs. 15,00,000 instead of Rs. 1,50,00,000 thereby resulting in erroneous claim of loss of Rs. 1,68,24,742/-. The correct figure of loss of slae of shares of Bombay Stock Exchange Ltd. is Rs. 33,24,742/-. Our client therefore submits that long term capital loss for the year should be taken at Rs. 2,75,76,240/- instead of loss claim of Rs. 4,10,76,240/- in the return of income. The above error was purely unintentional and on realization of same, revised working along with support for sale is enclosed as Annexure 17."*

In view of the above the learned Counsel for the assessee stated that the complete details in respect of this transaction was filed before the AO and after having satisfied himself, he accepted the loss and even now according to the learned Counsel the PCIT could not point out what is the error in claiming this loss, he only wanted to revise the assessment that no inquiry is carried out, whereas complete enquiry was made by the AO before passing assessment order.

15. As regards the next issue on claim of depreciation on cost of improvement of lease hold premises u/s 32(1) of the Act. The PCIT only stated that the assessee has sold/transfer the lease hold premises during the year on account of demerger of its infrastructure division but no details, on the effect and accounting treatment given as a result of demerger, has been filed or called or verified by the AO. On this, the learned Counsel for the assessee drew our attention to the scheme of demerger of infrastructure undertaking between the assessee and Reliance Capital Asset Management Ltd. as per which various assets and liabilities were demerged and demerger was approved by Hon'ble Bombay High Court and Hon'ble Gujarat High Court. It was explained that vide note No. 14 of Schedule 16 gives broad headwise transfer of assets of such demerger and fixed asset of Rs. 4,53,81,530/-

were transferred. The assessee has filed a complete detail, which are reflected in Schedule 4 of the fixed assets and the details reads as under: -

"

Asset	*Gross Block*	*Accumulate depreciation*	*Net asset*
Leasehold Improvements	*6,13,49,097*	*2,71,72,549*	*3,41,76,548*
Furniture & Fixrures	*3,01,805*	*38,250*	*2,63,555*
	1,26,63,777	*49,49365*	*77,14,412*
	36,91,189	*4,64,174*	*32,27,015*
Total	***7,80,05,868***	***3,26,24,338***	***4,53,81,530***

"

The learned Counsel for the assessee argued that the PCIT could not appreciate the fact that the sale of lease hold premises and improvement thereon is stated to be Rs. 2,71,72,549/- is not sale value but it is accumulated depreciation which is removed from the schedule of fixed assets on account of transfer of assets and demergers. According to learned Counsel, the PCIT has not understood the issue and simply directed for the revision of order in the absence of details, whereas complete details were filed before AO which are available in assessee's paper book pages 223-227. In view of this, the learned Counsel for the assessee stated that the complete information was with the AO which was filed during the course of assessment proceedings and the PCIT has not looked into the same while passing of revision order u/s 263 of the Act.

16. As regards to the another issued of deduction of lease rent and improvement expenditure, the learned Counsel for the assessee stated that the findings of PCIT regarding claim of lease rent and improve expenditure that the details are not filed and all these aspects are not looked into/inquired upon by the AO while framing the assessment and it is without any basis. The learned Counsel for the assessee drew our attention to notice issued by the AO u/s 142(1) of the Act dated 30-05-2013, wherein vide question No.19 the AO has asked the details of merger expenses including breakup and nature. The learned Counsel for the assessee drew our attention to the complete expenses of rent rates and taxes and details of rent premises which are filed before the AO vide letter dated 17-01-2014. The learned Counsel for the assessee also informed that the assessee has debited the sum of Rs.56,41,858/- as property tax under the head rates and taxes and the details were submitted before the AO. It was further explained that premises on leave and license basis

from Uptown Properties And Leasing Properties Pvt. Ltd. vide agreement dated 12-10-2007 was taken on lease and the same was evicted on 04-06-2009. It was stated that, the complete expenditure was paid as per agreement and reimbursement of municipal taxes was on actual basis at the rate of bills. In view of the above, it was argued by the learned Counsel for the assessee that compete details were filed before the AO during the course of assessment proceedings on a query from the AO and after satisfying the AO has passed the order u/s 143(3) of the Act.

17. Finally, the learned Counsel for the assessee argued that it is not in the hand of the assessee as to how the AO will write the assessment order or what he incorporates in the assessment order and that does not tantamount to non-application of mind. For this proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of CIT VS. Gabriel India Ltd. (1993) 203 ITR 108 (Bom). He further relied on the decision of the CIT Vs Reliance Communication Ltd (2016) 240 taxman 655 (Bom), wherein the similar issue of cash credit of FCCB's was before the Hon'ble Bombay High Court and the CIT while revising the assessment by holding that the AO has not enquired into or investigated into the credit worthiness of actual subscribers or genuineness of the transaction. He stated that the Hon'ble High Court has quashed the revision order passed by CIT u/s 263 of the Act. Similarly, the learned Counsel also relied on the Hon'ble Bombay High Court decision in the case of CIT Vs. Gera developments Pvt. Ltd. (2016) 240 taxman 467 (Bom). In view of the above the learned Counsel for the assessee asked the bench to quash the revision proceedings as there is no lack of enquiry or there is no lack of evidence which were submitted before the AO during the course of assessment proceedings. According to him, the AO has properly applied mind and each having information in relation to every issue was before him. Accordingly, he urged the bench to allow the appeal of the assessee

18. On the other hand, the learned CIT DR, Shri K B Shukla heavily relied on the order of PCIT and asked the bench to confirm the order of PCIT, as there is no prejudice caused to the assessee because AO will decide these issues afresh. But, he could not rebut the facts submitted by the assessee in its paper books.

19. We have heard the rival contentions and gone through the facts and circumstances of the case. The above brought out facts are in disputed and its fact on all the issues the assessee has filed complete detail before the AO in lieu of queries raised to verify the details as noted above. The entire facts brought out in the above order are supported by the

evidences. As regards to the share application money, we find that AO has examined everything and even the nature of transaction in regard to the issue of share and it is also a fact that this investment was made on the basis of erosion of loss of the company as on 31-03-2011, wherein, paid up capital resulting in an erosion of its capital and amounts have been paid on a going concern basis on the understanding that finance will be available with the company for work-in-capital requirement from its promoters. In view of the above, we are of the view that the observations of PCIT that huge investment made in loss making company by paying a premium of Rs. 20 per share does not make commercial sense and investment ought to have looked into closely is of no consequence because the promoter has brought in the funds by way of preference shares as their holding was 62%. From the terms of preference shares issued it can be seen that the same was redeemable at premium of Rs. 20 per share and the premium was required to be refunded by the company on its redemption. Hence, funds were brought in by the promoters and on the terms which cannot be said to be prejudicial to the interest of the Revenue. In view of the above, huge investment in quantity and that also preferential share was a commercial decision by a businessman and the Revenue has no authority to question the same. Another observation of the PCIT that the investment by RMML in the shares of assessee's company by borrowing funds from its associate companies that's why a huge loss making company was made as subsidiary by RMML is also without any basis for the reason that RMML has brought funds from its associate company is not at all correct as RMML had issued preferential shares and utilized the same proceeds to make investment in the capital. We find that the RMML obtain the funds from RCL in the form of preferential shares and RMML acquiring stake in a holding company does or does not make any commercial sense, it is a businessman decision and same cannot be questioned now by PCIT or Revenue. It is also a fact that RMML is a promoter of the company and they have infused funds into the company from their survival or revival and it is a common knowledge that the promoters have to invest huge funds for managing the affairs of the company and more particularly when the investee company is making loss. The assessee proved this fact that this business was growing and therefore funds were required and turnover in subsequent years went up to Rs. 785 crore in 2012 and Rs. 1356 crore in 2013. It is also a fact that this transaction of issue of preferential shares of RMML and transfer of funds from RCL to RMML has no tax implication. This was explained before us that the assessee had issued preferential shares to RMML, the source of which were explained and also it is confirmed

by PCIT while adjudicating the issue. It is only the conjuncture of surmises of the PCIT that there is façade in respect to issue of preference shares by the RML at huge premium to transfer funds from RCL to assessee threw the conduit. We are of the view that the AO is required to look into the source of funds by way of share capital, which has been confirmed by the PCIT that the funds are fully explained. To confirm this the assessee explained vide letter dated 27-01-2014, whereby copy of board resolution allotting of shares of RMML was submitted which shows that the shares were allotted on 07-09-2010 and this fact was filed during the course of assessment proceedings. In view of these facts and details filed before the AO, we are of the view that the assessment order is neither erroneous nor prejudicial to the interest of the Revenue because the source of share is fully explained and even source of source is also explained.

20. As regards to the issue of demerger of infrastructure division into Reliance Capital Asset Management Company Ltd., we find that the scheme of an arrangement of demerger approved by Hon'ble High Court of Bombay and Hon'ble High Court of Gujarat, looked into all the aspects before approving the schemes of demerger and now the PCIT cannot raise any question on the judgment of Hon'ble High Courts. We are of the view that when the scheme and orders of Hon'ble High Courts are in public domain and the same are also filed with the Registrar of companies (ROC), the same cannot be questioned by the Revenue and moreover in the revision proceedings u/s 263 of the Act. We find that the same was filed and this was very well noticed by the AO while framing assessment and even that authorities below cannot take any adverse view on the issue of scheme of arrangement i.e. demerger of infrastructure undertaking from the assessee company because Hon'ble High Courts have approved the same. Even otherwise on merit also as an effect of demerger scheme, the loss of the company which were brought forward will be carry forward by the assessee company and thus available loss of the assessee's company to have been reduced for carry forward purpose and this cannot be considered as prejudicial to the interest of the Revenue or even no error has caused to the Revenue. Accordingly also the order AO cannot be held to be erroneous or prejudicial to the interest of the Revenue.

21. As regards to the issue of claim of deduction towards return of referral fee, we find that on the instructions of IRDA who is the controlling authority for Insurance business, this amount was refunded and during the year under consideration no referral fee has been received, which is part of this refunded amount. Thus there is no rendering of service

during the year and services were rendered in the earlier years. Therefore, we agree with the assessee that if any enquiry is to be made qua this income or assessment of the income in the hands of the assessee that can only be made in A.Y. 2008-09 and 2009-10 and not in the relevant A.Y. 2011-12. We are of the view that the transaction of debit of referral charges during the year in the profit and loss account is nothing but writing off of income which was previously received and offered to tax. We find from the facts of the case that the AO has examined this issue by making a query and the same was replied by the assessee and this aspect has also been considered while framing assessment of RCIBL, wherein, the same AO has framed assessment only on 30-01-2014, which is also the same date when the assessment in the present case was framed. We find that these amounts are not in doubt or the genuineness of the same is doubted neither by the PCIT or the AO during the course of assessment proceedings. Hence, the assessment order cannot be said to be erroneous so as to prejudicial to the interest of the Revenue. Accordingly, the revision order passed by PCIT on this issue is without any basis.

22. In respect to another ground of claim of deduction towards loss incurred on forward brokering trade settlement, we find that the assessee company is into distribution of gold coins to retail customers and to cover the risk of price fluctuation of gold, it hedged the gold position with MCX exchange on mark to market position and is accounted under the head Forward brokering Trade settlement. For this issue of hedging, it was explained that there is a considerable gap between the date of purchase and the date of sale and the company needs to hedged the same against the price movement of gold and company used gold futures at MCX to achieve this purpose. The assessee has filed the complete details of forward brokerage trade settlement of Rs. 6,025,9,311/-and the assessee realized loss of Rs. 6,58,66,270/-and there is unrealized profit of Rs. 33,56,959 and the net loss is at Rs. 6,025,9,311/-. As explained by the learned Counsel for the assessee that this issue is as per the provisions of explanation to Section 43(5) of the Act wherein, speculative transaction is defined and he explained that in the present case the delivery of gold is taken by the assessee and hence, the transaction cannot be called as speculative in nature because Sub-Section 5 of Section 43 clearly stated that the transaction in which the contract for purchase or sale of any commodity is settled otherwise then by actual delivery or transfer of commodity or script i.e. be speculation transaction. But in the present case the assessee has taken actual delivery as noted by PCIT in his order even though payment is made by cash for purchase of gold and even instruction No.3 of 2010 issued by CBDT dated 23-03-2010

is not applicable i.e. there is mark to market loss but there is a profit. We are of the view that the case law relied on by the assessee on the decision of Hon'ble Supreme Court in the case of Woodward Governors India P. Ltd. (supra), wherein the issue as regards to foreign exchange speculation loss provision is allowed on the basis of mark to market loss. We find that in the present case there is no unrealized loss and the question of applying instruction No.3 as applied by the PCIT does not arise and hence this issue is covered by the decision of the Hon'ble Supreme Court in the case of Woodward Governors India P Ltd (Supra). Even otherwise the complete details in respect to this loss is filed before the AO during the course of assessment proceedings in lieu of query raised and it is presumed that the AO has applied his mind to the facts of the case and passed an appropriate order. Hence, the assessment order cannot be said to be erroneous so as to prejudicial to the interest of Revenue on this issue.

23. As regards to the issue of claim on long term capital loss on sale of shares, we find that the shares of the above companies are still held by RCL and Reliance Exchange Next Ltd. as evident from the schedule of investments appearing in the financial statement of RC Land Reliance Exchange Next Ltd. as on 31-03-2015. We find from the details filed in the assessee's paper book at page 132-137, which were filed before the AO also during the course of assessment proceedings that the shares of the above companies were sold at cost on which the same were purchased and therefore, there was no profit or loss but the loss has arising only on account of the provisions of the Act requiring the assessee to adopt the indexed cost because these shares are held for long term purposes, i.e. beyond one year. We find that the assessee has recovered the entire investment and there is no impairment in respect to thereof and this issue is covered by the decision of the Hon'ble Supreme Court in the case of Gillander Arbuthnot and Co. (supra) for the proposition. Hence, on this issue the assessment order is neither erroneous nor prejudicial to the interest of the Revenue.

24. As regards the next issue on claim of depreciation on cost of improvement of lease hold premises u/s 32(1) of the Act, we find that the claim of the Revenue that the assessee has sold/transfer the lease hold premises during the year on account of demerger of its infrastructure division but no details, on the effect and accounting treatment given as a result of demerger, has been filed or called or verified by the AO. But, on the contrary we find that this was done as per the scheme of demerger of infrastructure undertaking between the assessee and Reliance Capital Asset Management Ltd. as per which various

assets and liabilities were demerged and demerger was approved by Hon'ble Bombay High Court and Hon'ble Gujarat High Court. It was explained that vide note No. 14 of Schedule 16 gives broad headwise transfer of assets of such demerger and fixed asset of Rs. 4,53,81,530/- were transferred. We find that the sale of lease hold premises and improvement thereon is stated to be Rs. 2,71,72,549/- is not sale value but it is accumulated depreciation which is removed from the schedule of fixed assets on account of transfer of assets and demergers. We find from the facts of the case that the assessee filed complete details before AO which are available in assessee's paper book pages 223-227. Once it is a fact that this accumulated depreciation amounting to Rs. 2,71,72,549/- is not sale value, which is removed from fixed assets on account of transfer of assets and demerger of the companies. Even otherwise the complete details were available before the AO during the course of assessment proceedings, which were filed by the assessee on query from the AO. In term of the above factual position, we are of the view that the assessment order framed under 143(3) of the Act is neither erroneous nor prejudicial to the interest of the Revenue.

25. As regards to the next issue on lease rent and improvement expenditure the AO enquired the issue by raising a query u/s 142(1) of the Act dated 30-05-2013, wherein vide question No.19 the AO has asked the details of merger expenses including breakup and nature. We find that complete expenses of rent rates and taxes and details of rent premises which are filed before the AO vide letter dated 17-01-2014, wherein, the assessee has debited the sum of Rs.56,41,858/- as property tax under the head rates and taxes and the details were submitted before the AO. It is a fact that this premise was taken on leave and license basis from Uptown Properties And Leasing Properties Pvt. Ltd. vide agreement dated 12-10-2007 and the same was evicted on 04-06-2009. We find that the assessee has incurred the expenditure as per agreement and reimbursement of municipal taxes was on actual basis at the rate of bills. In view of the above, we are of the view that the assessee has filed that compete details were filed before the AO during the course of assessment proceedings on a query from the AO and after satisfying the AO has passed the order u/s 143(3) of the Act. The order of the AO cannot be said to be erroneous so as to prejudicial to the interest to the Revenue on these facts.

26. As regards to lack of enquiry during the assessment proceedings or no discussion in the assessment order issue cited above, Hon'ble Bombay High Court in the case of Gabriel India Ltd. (Supra) has held that in case the ITO has made enquires in regard to the nature of

expenditure incurred by the assessee and assessee has given a detail explanation in that regard by replying the queries, the decision of the ITO could not to be held to be erroneous simply because his order did not make elaborate discussion in this regard. Moreover, all these documents are part of the record of the case and even the claim was allowed by the ITO on being satisfied with the explanation of the assessee. Even the CIT himself, even after initiative proceedings for revision u/s 263 of the Act and hearing the assessee could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue but was capital in nature. Another case relied on by the assessee of Hon'ble Bombay High Court in the case of Reliance Communication (supra) had considered the issue of cash credit in the nature of FCCB's i.e. Foreign Currency Convertible Bonds raised by the assessee during the year under consideration was accepted by the AO while completing the assessment and subsequently the CIT noticed that no investigation was carried out by the AO to establish the capacity and genuineness of the transaction. The CIT passed revision order and Tribunal set aside the revisional order. On further appeal Hon'ble High Court confirmed the order of Tribunal by observing that the AO has made detailed enquiries about the aforesaid facts and mere fact that he did not make any reference to the said issue in the reference order, the assessment order cannot be set to be erroneous so as to prejudicial to the interest of the revenue. Hon'ble High Court held in Para 9 to 11 as under: -

> *"9. That decision refers to the assessment year 1998-99 where the assessee filed return of income ofRs.66 1 .1 5 crore and claimed deduction in the sum of Rs. 11 .41 crore under section 80-1, Rs. 21=8.62 crore under section 80-IA and Rs.20.20 crore under section 80-HH. The Assessing Officer assessed the income under section 43(3) at Rs.8 14.66 crore and restricted the deduction claimed to the sum or figure quoted in paragraph 3 of the order. The Commissioner noticed on verification of the records that the expenditure having a bearing on the profits of the units had not been considered for allocation. The Commissioner found that in the exercise carried out by the Assessing Officer there was indeed an error and the order of the Assessing Officer, therefore, is erroneous insofar as it is prejudicial to the interest of the Revenue. The rival contentions have been noted and in dealing with them, the Division Bench found that the Tribunal has interfered with a finding by proceeding on the basis that during the course of assessment, the Assessing Officer made a specific query. This query was with reference to the deduction under the three sections, that assessee gave reply for each and every item qua this deduction which was enquired into by the Assessing Officer. That was replied one by one. It is only thereafter that the Assessing Officer accepted the claim of the assessee. According to the Division Bench, there was patent fallacy in the approach of the Tribunal inasmuch as the Assessing Officer sought explanation on why certain expenditure should not be allocated and the reply of the assessee contained virtually no*

material or details to establish that there was no direct nexus between the expenditure incurred under the heads in question and the business of the undertakings with reference to which the deduction was claimed. If there was a general explanation given that the expenditure, namely, capital on scientific research had not been incurred at the undertakings and is not directly linked to the operations of the undertakings but the facts to the knowledge of the assessee were not revealed, then, that was no explanation at all. Once that was no explanation, much less acceptable, then, the Assessing Officer should not have proceeded on the lines indicated by the Commissioner as that was a complete error. That resulted in his order being erroneous and prejudicial to the interest of the Revenue. It is in dealing with that situation so also the contention by the assessee of having supplied the relevant details and giving a point to point reply that the observations relied upon by paragraph 17 by Mr. Tejveer Singh have been made. That must be seen in the backdrop of the facts. In such circumstances, when the order in that case was found to be erroneous insofar as it is prejudicial to the interest of the Revenue that the Commissioner rightly stepped in.10. In the case before us, the concession of the assessee's authorized representative apart, what the Tribunal found and on all the three items highlighted by Mr. Tejveer Singh is that there were materials before the Assessing Officer. The Assessing Officer made enquiries about the above referred aspects and which have been noted by the Commissioner. The assessee made submissions by placing all relevant documents before the Assessing Officer. Thus the case does not fall within the parameters laid down in the decision of the Hon'ble Supreme Court and other High Courts. The mere fact that the Assessing Officer did not make any reference to these three issues in the assessment order cannot make the order erroneous when the issues were indeed looked into. The entire details were filed and the order itself indicates that it can be inferred that the Assessing Officer not only made enquiries, but satisfied himself with the assessee's replies furnished from time to time in support of its stand. When the Tribunal concludes in this manner and finally in paragraph 16 holds that the Assessing Officer took a perfectly correct or a possible view, then, the order passed by him cannot be termed as erroneous insofar as it is prejudicial to the interest of the Revenue. The Commissioner of Income Tax was not, therefore, justified in invoking section 263 of the Act.

11. We are of the view that the Tribunal's order and conclusions are essentially on facts. They cannot be termed as perverse and after it adverted to the rival contentions and all the materials on record. The Tribunal's order cannot thus be held to be vitiated by an error of law apparent on the face of record so as to call for interference in our further appellate jurisdiction. The appeal, therefore, does not raise any substantial questions of law, but the attempt of the Revenue is to have a re-appreciation and reappraisal of the same factual material. That is impermissible. The appeal is, therefore, devoid of merits and is dismissed. No order as to costs."

27. In our opinion, an order cannot be termed as erroneous unless it is not in accordance with law and if the AO acting in accordance with law frames a assessment, it cannot be branded as erroneous by the Commissioner simply because in his opinion the order should have been written more elaborately. Section 263 does not visualize a case of substitution of

the judgment of the Commissioner for that of the AO who passed the order unless the decision is held to be erroneous. Where the AO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion such a conclusion cannot be found to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. Section 263 is a section which enables the Commissioner to have a look at the orders or proceedings of the lower authorities and to effect a correction, if so needed, particularly if the order or proceeding is erroneous and prejudicial to the interest of the Revenue. The object of the provision is to raise revenue for the State and Section 263 is an enabling provision conferring jurisdiction on the Commissioner to revise the order of the authorities below in certain circumstances particularly when it is erroneous and prejudicial. The provision is intended to plug leakage to the revenue by erroneous order passed by the lower authorities where the order of assessment by the AO is erroneous and prejudicial to the interest of the Revenue. But in the present case before us the AO has passed the assessment order after examining all the details, replies and documents filed by the assessee. In view of our observations hereinabove and judicial decisions of the various High Courts, we are of the considered view that revisionary order u/s 263 of the Act is wrong and accordingly quashed.

28. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 23-12-2016.

Sd/-	Sd/-
(MAHAVIR SINGH)	(RAJESH KUMAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 23-12-2016
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

Assistant Registrar
ITAT, MUMBAI