

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

ITA No.2712/Mum/2015

(A.Y:2008-09)

Mukesh Ramanlal Gandhi Blossoms, 6 th Floor, Opp. T.B. Zaveri, Near Asha Parekh Hospital, S.V. Road, Santacruz (W) Mumbai-400 054 PAN No.AAFPG8133R	Vs.	Addl. Comm. Of Income Tax, Range-19(2), Parimal Chambers, Lal Baug, Mumbai-400 012
Appellant	..	Respondent

Assessee by	..	Shri Sunil Moti Lala, AR
Revenue by	..	Shri Rajat Mittal, DR

Date of hearing	..	15-11-2017
Date of pronouncement	..	06-12-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by assessee is arising out of the order of Commissioner of Income Tax (A)-31, Mumbai, (in short 'CIT(A)') in appeal No. CIT(A)-34/Addl.CIT-19(2)/IT-195/10-11 dated 16-03-2015. The Assessment was framed by Additional Commissioner of Income Tax Range 19(2), Mumbai (in short 'Addl. CIT') for the A.Y. 2008-09 vide order dated 28-12-2010 u/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of the assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of long term capital gain by enhancing amount of ₹ 5,19,19,136/- on account of surrendering of shares of Angel Broking Limited (in short 'ABL') and Angel Capital and Debt Market Limited (in short 'ACDL') on account of restructuring/ swap of shares . For this assessee has raised following grounds: -



“1) The Learned Commissioner of Income Tax Appeals-34 erred in confirming the Computation of Capital gain in case of Your Appellant as worked out by the Addl. Comm. Of Income Tax, Range 19(2). Mumbai at Rs. 7,80,82,391/- as against returned capital gain of Rs. 2,61,63,255/- and thereby confirming the addition of Its. 5,19,19,136/- made by the Addl. Commissioner of Income Tax, Range 19(2). Mumbai.

1.1 The Learned Commissioner of Income Tax Appeals-34 erred in holding that the capita) gain in case of Your Appellant arising out of transfer of shares of M/s Angel Broking Ltd. and M/s Angel Capital and Debt Market Ltd. should be worked out on the basis of value of shares of M/s Angel Infin Pvt. Ltd., which is in his opinion was s. 65/- per share as against ₹ 32.42 as offered by M/s Angel Infin Pvt. Ltd., based on value determined by the approved valuer M/s Bhandari Dastur Gupta & Associates, Chartered Accountants appointed by Angel Group of companies to carry out Enterprise valuation for the purpose of restructuring.”

3. Briefly stated facts are that the assessee is one of the directors of the Angel Group of Companies. The assessee held 13,01,000/- shares of ABL and 3,00,000/- shares of ACDL. During the year under consideration Angel Infin Pvt. Limited (in short 'AIPL) made an offer to the shareholders of the following five group companies to swap shares of these individual companies for the shares of AIPL (i) Angel Broking Limited (ii) Angel



Capital and Debt Market Limited (iii) Angel Commodities Broking Private Limited (iv) Angel Securities Limited (v) Mimansa Software System Private Limited. The ratio of the exchange of the shareholders of the above five companies for the shares of AIPL were fixed in term of the offer letter issued by AIPL and also valuation of shares of respective companies as under: -

Sr. No	Name of the company	Valuation per share	Exchange ratio	Net asset value ₹
1.	Angel Broking Limited	35.15	1.0844	35.15
2.	Angel Capital and Debt Market Limited	19.78	0.6101	16.16
3.	Angel Commodities Broking Private Limited	26.25	0.8907	19.78
4.	Angel Securities Limited	16.16	0.4984	26.25
5.	Mimansa Software System Private Limited	10.00	0.3804	32.42

4. The aforesaid exchange/ swap ratio was arrived on the basis of valuation report prepared by Bhandari Dastur Gupta & Associate's dated 31-08-2007, who have arrived at/determined the exchange price/swap ratio of shares of each of the aforesaid five companies in lieu of shares of AIPL based on the value of the shares of the aforesaid five companies as on 31-03-2007. Subsequent to the valuation of Angel Group of Companies, AIPL issued an offer letter to the existing shareholders of the group of companies proposing to acquire shares of the group of companies and to offer shares of AIPL in lieu of share swap arrangements. As the assessee was holding 13,01,000 shares of ABL and 3,00,000 shares of ACDL and consequent to restructuring/ swap of shares of Angel Group of Companies, the assessee has been allotted 14,10,554 shares of AIPL in lieu of the 13,01,000 shares of ABL and 1,83,035 in lieu of shares of ACDL. The assessee has shown a long term capital gain arising out of transfer of shares of ABL and ACDL and allotment of shares of AIPL. The assessee worked out the long term capital gain as under: -



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Scripts	Date of purchases	Qty	Amount	Index	Indexed cost
Angel Broking	1996-97	1,301,000	13,010,000	1.81	23,503,311
Angel Capital	1997-98	300,000	1,200,000	1.66	1,997,583
Date of sales	Qty	Amount	Capital gain as per books	Capital gain taxable	
07-08	1410344	45730150	32720150	22226839	
07-08	183035	5934000	4734000	3936417	
		51664150	37454150	26163255	

Similarly, the assessee also computed the short term capital gain out of 15,93,589 shares of AIPL allotted in lieu of shares of ABL and ACDL, as the assessee has transferred 4,92,917 shares of AIPL to one of the directors of AIPL Shri Ashok Shah on 20-10-2007 at price of ₹65 per share. The working of short term capital gain of this transfer has been worked out by the assessee as under: -

List of short term capital gain for the year 2007-08

Scripts	Date of purchases	Qty	Amount
Angel Infin Pvt. Ltd.	23-04-2007	492917	15,980,369
Date of sales	Qty	Amount	Capital gain as per books
20-10-2007	492917	32,039,785	16059416

5. The assessee has taken the date of purchase of AIPL shares as on 23-04-2007 and price taken is at ₹. 32.42 per share for the purposes of computation of long term capital gains. But according to AO, the value of shares of AIPL is at ₹. 65 per share as against adopted by assessee has at ₹. 32.42 per share. According to AO, the assessee cannot adopt the acquisition date of shares as 23-04-2007, whereas, the shares of AIPL can be allotted after record date i.e. 16-10-2007 and on that date the



share was priced at ₹ 65 per share. Accordingly, the AO reworked the long term capital gain vide Para 4.6.4, 4.6.5 as under:-

4.6.4 *In this submission the assessee AR is trying to justify valuation for shares as on 20.10.2007. I am full agreement with the contention of the assessee regarding valuation of shares as on 20-10-2007 i.e. after 3 days of the Record Date from the balance sheet of M.s Angel Infin Pvt. Ltd. and that of the group companies it is seen that during the year under consideration net profits have jumped substantially and so the earning per share. From the details submitted during the course of assessment proceedings it is seen the AIPL had loss of ₹ 1.16 crores in the FY 2006-07; however, in FY 2007-08 AIPL has earned profit of ₹ 5.71 crores. Thus there is]phenomenal rise in the profit of the company. Pursuant to the reorganization of Angel Group of companies, AIPL was converted into a holding company with ABL, ACDL. ACBPL. ASL. AFAPL and MSSPL as its 100% subsidiaries. In his submission dated 20.12.2010 the assessee AR has also pointed out that during FY 2007-08, the financial performance of Angel Group of companies improved substantially in line with the favorable capital market conditions prevailing in the economy. The above restructuring also led to enhancement in value of the shares of AIPL by virtue of it coming to hold controlling stake in Equity and commodity broking business,*



besides the commencement of its own Margin Financing Business. This therefore led to enhancement in the overall business valuation of the holding company. During the full FY, Angel Group achieved a profit before tax (PBT) figure of approx. Rs.58 crores on a consolidated basis in comparison to approx. Rs.6.70 crores achieved during the previous financial year i.e. FY 2006-07. Thus considering the issue in totality it becomes crystal clear that value of each share of AIPL was Rs.5/- during the period of 17th to 20th of Oct. 2007. This also apparent from the fact that during the year under consideration 16,59,624 equity shares of AIPL of Rs. 10 each were issued at a premium of Rs. 893.81 per share for cash.

Thus findings can be summarized as under:

- (a) The Enterprise Valuation Report has only significance for determining swap ratio;*
- (b) The RECORD DATE for drawing list of shareholders of Group companies was 16.10.2007;*
- (C) The assessee held 13,01,000 shares of M/s Angel Broking Ltd. and 3,00,000 shares of M/s Angel Capital & Debt Market Ltd. till the RECORD DATE;*
- (d) After RECORD DATE the assessee got 15,93,589 shares of AIPL as per the predetermined swap ratio on transfer of shares*



of MIs Angel Broking Ltd, and that of MIs Angel Capital & Debt Market Ltd.:

(e) There is no merit in the contention of the assessee regarding transfer of shares of MIs Angel Broking Ltd. & MIs Angel Capital & Debt Market Ltd. and allotment of shares of AIPL on any date prior to RECORD DATE:

(1) At the time of transfer of shares of MIs Angel Broking Ltd. & MIs Angel Capital & Debt Market Ltd. and allotment of shares of AIPL, shares of AIPL were valued, at least, at Rs.651- per shares.

4.6.5 In view of the factual matrix of the case as discussed above Long Term Capital Gain of the assessee on Transfer of the Shares of angel Group of Companies is worked out as under:

Scrups	Date of purchases	Qty	Amount	Index	Indexed cost
Angel Infin Pvt. Ltd.	1996-97	1301000	13010000	1.81	23.503,311
Angel Capital	1997-98	300000	1200000	1.66	1997583
					25500894
Date of Transfer (next day after record date)	Qty(shares of AIPL)	Rate shares (of AIPL)	Amount	Capital gain taxable	
17.10.2007	1410554	65	91686010	68182699	
17.10.2007	183035	65	11897275	9899692	
			103583285	78082391	



5. Aggrieved, now assessee preferred appeal before CIT(A), who after considering the submissions of the assessee confirmed the action of the AO vide Para 9.1 and 9.2 as under:-

“9.1 I have duly considered the report of the AO and submission of the appellant and find that the AO's contention is that and the allotment of shares of APL, pursuant to re-organization, did not take place on any date prior to the "RECORD DATE" and further, at the time of transfer of shares of ABL and ACDL and allotment of shares of AIPL, the shares of AJPL were valued at minimum of Rs. 65/- per share, whereas, during the period 17th to 20th Oct 2007, value of each share was higher than Rs. 65/-, because shares of AIPL were issued at a premium Rs. 893.81 per share for cash later on during the year under consideration and the details furnished by the Bombay Stock Exchange also establish this fact. The appellant's contention on the other hand is that he was allotted 15,93,593/- shares of AIPL in Lieu of his share holding in ABL and ACDL on 28.11.2007, and, after obtaining the requisite approval of BSE, NSE, SEBI and other regulatory authorities, as required for the restructuring by the AIPL, the ABL filed an application for change in share holding with the BSE vide letter dated 13.09.2007, whereas, the AO in his report dated 26.11.2007; has stated that the ABL has filed an application dated 29.11.2007 to the BSE for change in share holding. The appellant has further stated



that approval from the ESE, was also received by the ABL vide letter dated 27.11.2007 hence, it is evident from the above that the AC has completely misunderstood the facts of the case. The appellant's further contention is that the AO has completely ignored the additional evidence, which clearly states the fact that the share value of each of the individual group companies and the share swap ratio mentioned in the offer letter was based on the draft valuation report of the independent valuer, M/s Bhandari Dastur Gupta and reiterated the fact that Rs. 65/- per share is the price at which the shares of AWL after restructuring of the group companies were sold by him to Mr. Denesh Thakkar and Mr. Ashok Shah, whereas, Rs. 32.42 per share is the value of shares of AWL prior to restructuring and the consideration for share swap and share exchange executed was predetermined on the basis of an offer letter dated 17.04.2000, which could not be tampered with. The appellant has also relied upon certain decisions of the Courts to state that it now a settled law that for the purposes of computing capital gains what is to be considered as sales consideration is the 'consideration received' on the transfer of capital asset and not the market value, which the asset wW fetch in the open market.

9.2 Upon due consideration of the facts gathered by the AO, as discussed in the order,



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as well as submissions of the appellant, I hold the view that what is to 'be considered in the case of the appellant is the time when the swapping Of the shares of ABL and ACDL with AWL took place, which was after 16.1th2007 and minimum price each share of AWL was to fetch after the "RECORD DATE", i.e. 16.10.2007 was Rs. 65/- and effective date of group recognition is 28.11.2007, and therefore, full value of shares of M/s AIPL has to be valued @ Rs. 65/- share. I, accordingly, confirm the finding of the AO on the above issue and also confirm the computation of long term capital at ₹ 7,80,82,391/- and dismiss the first ground of appeal."

Aggrieved, now assessee is in appeal before Tribunal.

6. Before us the learned Counsel for the assessee first of all drew our attention to the mischief created by the AO as far as reproduction of the schedule A of the balance sheet regarding issued, subscribed and paid up capital, which is reproduced by AO in Para 4.3.4 as under: -

"Schedule 'A' and Notes to account 2(d) of Sch. 'R' of schedules forming part of Balance Sheet of M/s Angel Infin Pvt. Ltd as at march 31, 2008 describe in brief the scheme and gives 28th November 2007 as the effective date of reorganization of the group companies. The said notes are reproduced as under:



Schedule-'A' of the Balance sheet
regarding issued, subscribed and paid
up capital

During the year the company has issued and allotted 9,051,747 equity shares of ₹10 each. Of the above, 1,659,624 Equity shares of ₹ 10 each were issued at a premium of ₹ 893.81 per share for cash and 6,776,921 equity shares of ₹ 10 each were issued for consideration other than cash.

The shares issued for consideration other than cash were issued to various shareholders of subsidiary companies acquired during the year base on an agreed swap ratio adopted by the Board of Directors of the Company with the respective shareholders. (Refer Note No.2(3) of Schedule 'R').

Notes to account 2(d) of Sch. 'R'.

“Pursuant to the scheme of Restructuring of Angel Group of Companies comprising of Angel Broking Limited, Angel Capital & Debt Market Limited, Angel Financial Advisors Private Limited and Angel securities Limited, Mimansa Software Sytems Private Limited, Angel Financial Advisors Private Limited and



Angel Securities Limited, the company issued and allotted 6,776,921 equity shares of ₹ 10 each to various persons/ entities (being shareholders of Angel Group of companies), for consideration being equity shares respective Angel Group of Companies as per the Scheme of share Swap duly approved and agreed upon by the concerned parties. Accordingly, on issue of shares referred to above, the aforesaid companies became wholly owned subsidiaries of the company effective November 28,2017.”

7. Further, the learned Counsel for the assessee also read out notes on accounts 2(d) of schedule R of the balance sheet filed in assessee's paper book (which is original text) and the same reads as under: -

“Pursuant to the scheme of Restructuring of Angel Group of Companies comprising of Angel Broking Limited, Angel Capital & Debt Market Limited, Angel Financial Advisors Private Limited and Angel securities Limited, Mimansa Software Sytems Private Limited, Angel Financial Advisors Private Limited and Angel Securities Limited, the company issued and allotted 6,776,921 equity shares of ₹ 10 each to various persons/ entities (being shareholders of Angel Group of companies), for consideration being equity shares



*respective Angel Group of Companies as per the Scheme of share Swap duly approved and agreed upon by the concerned parties. **Additionally as per restructuring exercise, the company issued 615,202 equity shaers of ₹ 10 each at a premium of ₹ 22.42 per equity share for consideration received in cash.** Accordingly, on issue of shares referred to above, the aforesaid companies became wholly owned subsidiaries of the company effective November 28,2017.”*

8. The learned Counsel for the assessee took us through the issue of allotment of equity shares for cash consideration to 19 persons and allotment of equity shares for consideration other than cash to 28 persons as illustration given in the offer letter. As per the offer letter dated 17-04-2007 and acceptance letter of the shareholders dated 23-04-2007, the swap ratio is worked out on the following valuation carried out by the Firm of chartered accountant, and the relevant clauses of the offer letter reads as under: -

“The offer is made by the Angel Infin Private Limited ("AWL"), a company incorporated and registered under the Companies Act, 1956 and having its registered office at [3. AWL is a part of the Angel Group of Companies; the other companies in the group being Angel Broking Limited, a member of the Bombay Stock Exchange Limited ("BSE") and a stock broker registered with SEBI, Angel Capital & Debt Market Limited a member of the National Stock



Exchange of India Limited ("NSE") and a stock broker registered with SF81, Angel Commodities Broking Private Limited, a member of the National Commodities and Derivatives Exchange Limited ("NCDEX") & Multi Commodities Exchange of India Limited (MCX"), Angel Securities Limited, a member of the SSE, Futures & Options segment, and Mimansa Software System Private Limited a company dealing in software development and management. The companies other than AWL are hereinafter collectively referred to as "Operating Companies". The Angel group offers various services such as Equity Broking & Advisory services, Commodity Broking & Advisory services, Depository Services, Portfolio Management Services and distribution of Mutual Funds and Initial Public Offerings. All the above companies are independent of each other and none of them is either a holding company or a subsidiary of the other. The above companies were formed at the time when most of the broking houses were closely held family owned business outfits.

It is now proposed to restructure the Angel Group into a holding company structure wherein AIPL would be the holding company for the Operating Companies. The objective of the proposed restructuring is to achieve better control over the operation and client service, to project the true valuation & net worth of the group's business to the potential investor, expand customer base and improve geographical presence by setting up branches, franchises, joint venture, associate



network all over India and abroad, explore the possibility of mergers and to ensure true optimal valuation on listing on the stock exchanges.

A IPL proposes to acquire shares of the Operating Companies from the existing shareholders of the Operating Companies and to offer shares of AIPL as a consideration to the shareholders of the Operating Companies under a share swap arrangement and cash for fractional shareholdings. Accordingly, the Board of AIPL has proposed the following share swap arrangement (hereinafter known as "Scheme or Shares Swap"):- Based on the valuation carried by a firm of Chartered Accountants, the shares of AWL are proposed to be allotted to the offering shareholders of the Operating Companies in the following swap ratio:-

<i>Company</i>	<i>Against one share of face value of ₹ 10. Fully paid up each held by the existing share holder on the record date</i>	<i>Proposed allotment of share in AIPL of Face Value of ₹ 10 each. Under the scheme of swap</i>
<i>Angel Broking Limited</i>	<i>1</i>	<i>1.0844</i>
<i>Angel Capital & Debt Market Limited</i>	<i>1</i>	<i>0.6101</i>
<i>Angel Commodities Broking Private Limited</i>	<i>1</i>	<i>0.8097</i>
<i>Angel Securities Limited</i>	<i>1</i>	<i>0.4984</i>
<i>Mimansa Software System Pvt. Ltd</i>	<i>1.</i>	<i>0.3084</i>

Procedure for acceptance and settlement

Shareholder of operating companies who wish to avail this offer should forward the following documents by hand delivery or by registered post to



the registered office of AIPL at the address give below on or before close of business hours on the date of closure of offer i.e. 16th May 2007.

a) Form of acceptance duly completed and signed in accordance with the instruction contained therein, by sole/ first shareholders whose names appear on the share certificates (in case of joint holding) in the same order in which their names appear in the Registrar of Members.

b) Original share certificates

C) Valid share transfer deed(s) duly signed by transferors by all shareholders (in case of joint holding) in the order and as per specimen signature lodged with the respective companies and duly attested by witness at the appropriate places.

d) In case of non-receipt of the Letter of Offer, shareholders may send their acceptance of the Offer to the Registrar to the Offer, on a plain paper stating the Name, Address, Number of equity shares held, Distinctive Number., Folio Number, Number of equity shares offered, along with documents as mentioned above, so as to reach the AIPL on or before the date of closure of the Offer (i.e. 16' May 2007).

C) In case of physical shares, to the extent the equity shares are not accepted under the Offer, the rejected Share Certificates, transfer deeds and other documents, if any, will be returned by registered post by the AIPL to the shareholders /unregistered owners.”



9. The learned Counsel for the assessee argued that the AO has simply misplaced reliance by making mischief and not relying on the actual facts. He stated that pursuant to the scheme of restructuring of Angel Group of Companies, the AIPL issued and allotted 67,76,921 equity shares of ₹. 10 each to various persons/entities being shareholder of Angel Group of Companies for the consideration being the equity shares of respective Angel Group of Companies as per the claim of shares swap duly approved and agreed upon by the concern parties. As per the restructuring exercise, the company issued 6,15,202 equity shares of ₹. 10 each at premium of ₹. 22.42 per equity shares for consideration received in cash. This offer was made on 17-04-2007 and acceptance of the shareholders was received on 24-04-2007. It means that the transaction for swap was completed in the month of April itself, i.e. on 24-04-2017. The AO has placed reliance on the record date i.e. 16.10.2007, which is nothing but the closing of scheme of restructuring/ swap of shares. The AO has totally misplaced reliance on the record date and also taken the consideration at ₹ 65 per share while computing long term capital gain as against adopted by the assessee at ₹. 32.42 per share.

10. We are of the view that there is solitary transaction for adopting the value of ₹ 65 per share that also on 20-10-2007 just 4 days after the record date of 16-10-2007. Now, the question arises when the date of acquisition of shares in exchange/swap in pursuant to scheme of restructuring/ swap of shares is to be adopted? The date will be 24.04 2007 i.e. the last date of closer of transaction of swap of shares or 16.10.2007 i.e. the record date. The details of exchange/swap in pursuant to scheme of restructuring/ swap of shares of Angel Group of Companies is as under:-



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Class of shares(in Rs).	Equity
Number of shares allotted	615202
Nominal amount per share	10.00
Total nominal amount	6152020
Amount paid per share on application	10.00
Total amount on application	6152020
Amount due and payable per share on allotment (excluding premium)	
Total amount paid on allotment (excluding premium)	
Premium amount per share due and payable (if any)	22.42
Total premium amount due and payable (if any)	13792829
Premium amount paid per share	22.42
Total amount paid (if any)	13792829
Amount of discount per share (if any)	0.00
Total discount amount (if any)	

11. Even the accounts of the assessee i.e. audited balance sheet clearly depict schedule 'A' of share capital tell the price of equity share at 10 each at a premium of ₹ 22.42 per share for cash were issued. The details cited by the learned Counsel read as under:-

SCHEDULE 'A': SHARE CAPITAL
Authorised Equity shares:

	AS at march 31,2008 Amount (Rs.)	As at March 31,2007 Amount (Rs.)
15,000,000 Equity Shares of Rs. 10 each (Previous year 5,000 Equity Shares of Rs. 10 each) (Refer Note 2(b) of Schedule "R")	150,000,000	50,000,000
Total	<u>150,000,000</u>	<u>50,000,000</u>
 Issued Subscribed and paid Up 13,438,247 Equity Shares of Rs. 10 each, fully paid up (previous year 4,386,500 Equity Shares of Rs. 10 each)	 134,382,470	 43,865,000

During the year the company has issued and allotted 9,051,747 equity shares of Rs. 10 each. Of the above, 1659,624 Equity Shares of Rs. 10 each were issued at a premium of Rs. 22.42 per share for cash and 6,776,921 Equity Shares of Rs. 10 each were issued for consideration other than cash.

The shares issued for consideration other than cash were issued to various shareholders of subsidiary companies acquired during the year base on an agreed swap ratio adopted by the Board of Director of the company with the respective shareholders.



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(Refer Note No.2 (d) of Schedule "R")

Total 134,382,470 43,865,000

12. From the above facts, it is clear that the AIPL made offer to the share holders of the five companies to exchange shares of these individual companies for the share of AIPL and qua that the shares of AIPL were fixed under the terms of offer letter issued by AIPL including valuation per share and exchange/swap ratio arrived at on the basis of a valuation report of an independent valuer dated 31-08-2007. The assessee accepted the offer of exchange of his holding of 13,01,000 shares of ABL and 3,00,000 shares of ACDL in lieu of which he received 14,10,554 shares of AIPL. Admittedly, the shares swap/exchange offered was made by AIPL on 16-04-2007 and was accepted by the assessee on 24-04-2007 and not on 20-10-2007 as alleged by AO taking the share price of AIPL at ₹ 65. The assessee has rightly returned the swap value of ₹ 32.42 as return by the assessee while calculating long term capital gains which was determined by the independent valuer. No doubt the assessee sold his part of holding in AIPL of 4,92,917 shares at ₹ 65 per share on 20-10-2007 and returned short term capital gain thereon, but the AO wrongly assumed this price as the price of swap / exchange ratio of AIPL shares because the reason for getting the higher value of shares of AIPL by the assessee on 20-10-2007 was at that point of time the value of AIPL includes the value of investment in all five companies and the consolidated strength of the company increased. The AO instead of appreciating the facts, ignore all the facts and has held the full value of consideration received by the assessee on exchange of shares of ABL and ACDL at ₹ 65 per share and not at ₹ 32.42 per share. According to us, the price per share of AIPL on 20-10-2007 cannot be compared with the value received by the assessee on swap / exchange of shares of ABL and ACDL because the shares of ABL and ACDL were exchanged for shares of AIPL on standalone basis and not on the basis of the sixth companies put together.



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13. For this, the learned counsel for the assessee placed reliance on provisions of section 50C of the Act and relied on the decision of co-ordinate Bench of this Tribunal of ITAT Delhi Bench in the case of ITO vs. Modipon Ltd. (2015) 154 ITD 369 (Delhi Trib.) wherein it is held that the consideration for sale of land was to be worked out on the basis of circle rate prevailing on the date of registration of agreement to sell and not by applying circle rates on the date of execution of sale deed. Similarly, in the present case before us also, the exchange / swap of shares of AIPL with that of ABL and ACDL, were exchanged on 23-04-2007 when offer was accepted by the assessee. The price on that date has to be accepted as true price, which is based on independent valuers' report. Further the learned counsel also relied on the order of Delhi Tribunal in the case of Venus Financial Services Ltd. vs. ACIT in ITA No. 5335/Del/2012 for AY 2009-10 dated 28-09-2015, wherein Tribunal has approached the exactly similar issue as under:-

16. Considering the above submission, we find that during the year, the assessee has furnished following computation of capital gains/loss:"

Name of Co.	Date of Purchase	No. of shares	Amount	Indexed cost	Date of sale	Sale consideration	Profit/(loss)
The Pioneer Ltd.	30.03.2007	10,00,000	4,00,00,000	4,48,55,491	07.02.09	1,00,000	(4,47,55,491)
Ultima	01.12.2005	7,50,000	75,00,000	87,82,696	07.02.09	75,00,000	(12,82,696)
Solaris Holding Ltd.	16.01.2007	5,00,000	5,00,000	5,62,09,538	72.02.09	5,01,25,000	(60,84,538)

17. The Assessing Officer accepted the claimed loss regarding the shares transaction of Ultima and Solaris Holdings Ltd. but did not accept the claimed loss on sale of shares of the Pioneer Ltd. The Assessing Officer doubted the genuineness of the claim on the basis that the assessee could not produce the complete balance sheet of Pioneer Ltd., the papers submitted were not signed by the



auditors or by the directors of the company, the book value of the shares as shown by Pioneer Ltd. is Rs.3.50 per share and hence the price claimed to have been received by the assessee is not acceptable. In its submissions before the Learned CIT(Appeals) and the ITAT, the assessee has tried to meet out these objections of the Assessing Officer by the submissions that the Assessing Officer had disallowed the loss ignoring the documents filed by the assessee during the course of assessment proceedings and the valuation report of independent valuer who had determined the value of shares by applying NAV Method, which is well accepted method under the provisions of Income-tax Act, 1961. It has been contended that the authorities below have overlooked that the shares were duly transferred in the name of other party and the consideration was received by cheque. Besides the contention of the assessee also remained that the long term capital gain or loss is to be computed in the manner laid down in section 48 of the Act wherein expression used is "full value of consideration received or accrued". The main thrust behind this contention of the assessee was that there is no scope of any fair market value or estimation and in case of sale of shares, the Assessing Officer has no power to replace the value of the consideration agreed between the parties. The further contention of the assessee remained that the authorities below have completely discarded the valuation report of the valuer in respect of the value of shares, which report was prepared by the valuer applying NAV method.



18. We find substance in the above contention of the assessee that it is settled position of law that in the case of sale, the Assessing Officer has no power to replace the value of the consideration agreed between the parties. In this regard, we find strength from the above cited decision of Hon'ble Delhi High Court in the case of Nilofar Singh (supra) holding that the expression "full value of consideration" used in section 48 of the Act does not have any reference to market value. Similar view has been expressed in other decision, cited hereinabove, by the Learned AR. We also agree with the contention of the learned that a report of a valuer is an important piece of evidence and the same cannot be discarded without there being any cogent material on record showing that the report of the valuer is not correct. It is well supported by the decisions cited of Hon'ble Delhi High Court in the case of S.K. Construction & Co. (supra). In the present case, the assessee had shown sale of 10 lacs shares of Pioneer Ltd. for a total consideration of Rs.1 lac only i.e. @ Rs.0.10 per share. The cost of such shares had been shown at Rs.4 crores i.e. Rs.40 per share. The summarized position of value per share computed by the assessee, auditors and valuer is as under:

Value per share as computed by appellant company	Value per share as per auditor certificate	Value per share as per independent valuer
(0.17)	(0.21)	0.10

19. The shares were sold to A.S.A. Agencies Pvt. Ltd. @ Rs.0.10 per share on 31.3.2009. The loss



incurred on the sale of shares was Rs.4,47,75,491.

20. In view of the above cited decisions that the expression “full value of consideration” used in section 48 of the Income-tax Act, 1961 does not have any reference to market value, we are of the view that the Assessing Officer was having no power to replace the value of the consideration agreed between the parties with any fair market value or estimation. Only because the Pioneer Ltd. had shown the book value of shares at the rate of Rs.3.50 per share, the Assessing Officer was not justified to ignore the price agreed between the parties and to doubt the genuineness of the claimed loss, even ignoring the valuation report. We thus while setting aside orders of the authorities below direct the Assessing Officer to delete the disallowance of Rs.4,47,55,491 incurred on the sale of shares of the Pioneer Ltd. The issue is thus decided in favour of the assessee. The related grounds are accordingly allowed.”

14. From the above facts of the case and the precedent cited above, we are of the view that the AO should have adopted the swap/ exchange value at ₹ 32.42 per share of AIPL in exchange of shares of ABL and ACDL and that also taking date of swap/exchange as 24-04-2007. The AO is directed to compute the long term capital gain accordingly. We direct the AO accordingly. The orders of the lower authorities are reversed and this issue of assessee appeal is allowed

15. The next issue in this appeal of assessee is against the order of CIT(A) confirming the addition of low household withdrawals at ₹ 3.78 lacs.



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16. At the outset, the learned Counsel for the assessee stated that the AO has estimated the low household withdrawals without any evidence but due to smallness of the amount, he is not pressing this ground. As the learned Counsel for the assessee has not pressed this ground due to smallness of the amount, we dismiss the same.

17. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 06-12-2017.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 06-12-2017
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.
- //True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI