

# Gic Housing Finance Ltd, Mumbai vs Addl Cit Rg 2(1), Mumbai on 21 August, 2018

"G"

IN THE INCOME TAX APPELLATE TRIBUNAL "G"

BENCH,

MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

./I.T.A. No.22/Mum/2016

( / Assessment Year : 2011-12)

GIC Housing Finance Ltd.  
Royal Insurance Building,  
6 t h floor, J. Tata Road,  
Churchgate,

/

Addl. CIT RG 2(1)  
R.No. 561, 5 t h Floor,  
Aayakar Bhavan,

v.

New Marine Lines,

Mumbai-400020

Mumbai-400020

./ PAN : AAACG2755R

( /Appellant)

..

( / Respondent)

Assessee by:

Shri. Nitesh Joshi & Amit Kirve

Revenue by :

Shri A.M. Mittal, DR

/Date of Hearing

: 23.07.2018

/Date of Pronouncement :

21.08.2018

/ O R D E R

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 22/Mum/2016, is directed against appellate order dated 21.10.2015 passed by learned Commissioner of Income Tax (Appeals)-4, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2011-12, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 22.10.2013 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2011-12.

I.T.A. No.22/Mum/2016

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

" 1) On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) -4, Mumbai has erred in confirming the additions made by

the Assessing Officer on account of expenditure amounting to Rs.

43,47,723/- incurred in connection with the sale of shares of M/s LIC Mutual Fund Asset Management Co. Limited and M/s LIC Mutual Fund Trustee Co. Limited, without appreciating the facts of the case and the submissions made during the course of the assessment /remand/appeal proceedings.

2) On the facts and circumstances of the case and in law, the learned Commissioner of Income -tax - (Appeal) -4, Mumbai erred in not giving direction to the Assessing Officer to set off and adjust the unabsorbed carry forward long term capital loss for assessment year 2009-10 against the long term capital gains earned on the sale of shares of LIC Asset Management Company Ltd., and LIC Mutual Fund Trustee Company Limited.

3) The appellant craves leave to add to, modify or delete the above grounds of appeal each of which are independent of the other."

3. The brief facts of the case are that the assessee derives income from housing finance business. The assessee is a listed company having its shares listed on Stock Exchanges. During the course of assessment proceedings conducted by the AO u/s. 143(3) r.w.s. 143(2) of the 1961 Act, it was observed by the AO that the assessee has shown long term capital gains of Rs. 85,79,09,196/- on account of sale of 1120 shares of LIC Mutual Fund Asset Management Company Ltd. of face value of Rs. 10,000/- each and on sale of 300 shares of LIC Mutual Fund Trustee Co. Private Ltd. of face value of Rs. 10 each ( for short such shareholding of the assessee in these two entities collectively referred to as "LICMF-AMC") , held by the assessee in said two entities . The AO observed while computing long term capital gains on sale of LICMF-AMC shares, the assessee had claimed legal cost for transfer of these afore-stated shares of LICMF-AMC to the tune of Rs 96,73,108/- which was claimed as deduction while I.T.A. No.22/Mum/2016 computing long term capital gains on sale of shares of LICMF-AMC held by assessee. The assessee on being asked by the AO submitted that it shared legal cost, professional advisors cost, financial advisors costs with respect to transfer of these LICMF-AMC shares with other parties to the sale transaction of the shares held by them in LICMF-AMC . The AO observed that total legal cost, professional advisors, financial advisors costs incurred in connection with the transaction of sale was Rs. 3,31,79,629/- and the share of the assessee towards these costs came to Rs. 96,73,108/- which was paid by the assessee. The details of these expenses was detailed by the assessee which is reproduced hereunder:-

i. Legal Consultant (Amarchand Mangaldas Rs.1,91,49,387/- Suresh A Shroff & Co.)

ii. Consultant and advisor (Price Waterhouse Rs.136,42,460/- Coopers P Ltd.

iii. Scrutinizer to the postal ballot obtained Rs.282,996/- From unitholders (Rathi & Associates) iv. Valuation AMC (Chaturvedi & Co.) Rs.46,878/-

v. Valuation Trustee Co. (Shah Gupta & Co.) Rs 57,908/- \_\_\_\_ Rs.331,79,629/-

The AO observed that as per Provision of Section 48 of the 1961 Act , only the expenditure incurred wholly and exclusively in connection with transfer of capital assets is allowed as deduction while computing capital gains. The AO observed that in the instant case , the expenses incurred of Rs. 96,73,108/- were in the form of fee paid towards legal consultancy, professional advisors and financial advisors costs which are not incurred wholly and exclusively in connection with transfer of shares of LICMF-AMC. The AO disallowed the claim of expenses of Rs. 96,73,108/- as the same cannot be allowed as deduction u/s 48 of the 1961 Act being not incurred wholly and exclusively in connection with transfer of shares of LICMF-AMC, which was consequently added I.T.A. No.22/Mum/2016 by the AO to the income of assessee , vide assessment order dated 22.10.2013 passed by the AO u/s 143(3) of the 1961 Act.

4. Aggrieved by the assessment order dated 22.10.2013 passed by the AO u/s 143(3) of the 1961 Act , the assessee filed first appeal with Ld. CIT(A) . The assessee made detailed submissions before Ld. CIT(A).

The assessee submitted additional evidences before learned CIT(A) vide submissions dated 30.08.2014(pb/page 235) and prayed for its admission vide Rule 46A(1)(d) of Income-tax Rules, 1962 as these additional evidences in the opinion of the assessee goes to the root of the matter. The Ld. CIT(A) admitted these additional evidences and called for remand report from AO . The AO submitted remand report dated 24.07.2015 and relevant extracts thereof are reproduced as under:-

"14.1. Legal Consultant (Amarchand Mangaldas Suresh A Shroff & CO.)- Rs. 1,91,49,387/-

a. The assessee has submitted letter of the party Amarchand Mangaldas dt. 06.08.2008 addressed to LIC AMC. The same is a proposed mandate of the firm Amarchand Mangaldas for appointment by LiC AMC as legal counsels for the proposed investment by Nomura Holdings inc in the company. The said letter specifies the scope of work as negotiating, drafting, advising the client as well as proposed fee chargeable by them.

b. The assessee has submitted letter dt 1.11.2011 of Amarchand Mangaldas addressed to LIC AMC.GIC MFC, LIC MFC and Nomura( the purchaser). The same specifies that Amarchand Mangaldas have acted as legal advisers to LIC AMC and pursuant to instructions from LIC AMC they have also acted as legal advisers for and on behalf of LiC, LICHFL and GIC HFL in relation to investment by Nomura. The said document pertains to the legal opinion given by Amarchand Mangaldas w.r.t the same.

c. The invoices/bills enclosed as additional evidence are as under:

No	S Reference	Amount	Remarks
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1	Letter of LIC AMC dt 14.8.2008 w.r.t. advance payment amount. It specifies that the	8,42,700	Only letter mentioned.
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letter of acceptance of mandate dt 8.8.2008. services rendered and purpose are not specified I.T.A. No.22/Mum/2016 2 Letter of LIC AMC received on 20.4.2009 21,57,300 The said letter mentions w.r.t payment vide cheque no -1876 dt that the payment is fees 17.4.2009 towards net payment(after TDS for legal counseling for deduction) of Rs 19,12,878. Project Life which as per the letter of the party is the name given to the said transaction 3 Invoice raised for Project Life dt 2.4.2009 Amt same as - As above-

above 4 Invoice raised for Project Life dt 13.9.2010 78,54,827 - As above-

5 Invoice raised for Project Life dt 25.1.2011 82,94,560 - As above-

TOTAL 1,91,49,387 d. As specified above, the invoices raised as specified in S No 2 to 5 appear to be in order. However, for the invoice specified at S No 1 it cannot be established that the same was payment was related to the relevant transaction of long term capital gain.

14.2. Consultant and advisor (Price Waterhouse Coopers P Ltd) Rs 1,36,42,460 a. The assessee has submitted a letter dt 21.1.2008 of Price Waterhouse Coopers. The same specifies the scope of work which covers matters relating to the completion of the envisaged transaction i.e. induction of a strategic investor through either a divestment of a minority stake or issuance of fresh shares in LIC AMC.

b. The invoices/bills enclosed as additional evidence are as under:

SNo	Reference	Amount	Remarks
	addressed to L/C AMC regarding		Cash 1 185421
1	Letter of raised invoices PwC dt 31.3.2008 addressed to LIC AMC regarding invoices raised	11,23,600	The said letter payment is toward to the purpose f were rendered is
3	Letter of PwC dt 24.9.2008 addressed L/C AMC regarding invoices raised	to 6,66,235	-As Above- that mentioned
4	Letter of PwC dt 11.9.2009 addressed to Letter L/C AMC of PwC regarding of 2008( invoices raised the Xerox)	1,17,01,727	-As Above -
2		dt is not clear in 5,61,800	-As Above-. In th mentioned as Proj

5	Letter of PwC dt 24.2.2011 addressed to 1,50,898	-As Above-
c	L/C AMC regarding invoices raised	
.		
T	TOTAL	1,42,04,260
c		

Thus as is clear from the above discussion, that the bills /invoices do not specify the purpose for which the said professional fee payment was made, and as such it cannot be held that the said expenditure was incurred by the assessee wholly and exclusively towards earning of income shown under the head long term capital gain by it.

d. It can also be seen that the total invoices submitted amount to Rs 1,42,04,260 whereas the claim of the expense is only Rs 1,36,42,460/-. A careful examination reveals I.T.A. No.22/Mum/2016 that the same is due to the exclusion of invoice amounting to Rs 5,61,800/- specified in the table above. However even the other invoices do not establish that the expenditure was incurred for the relevant transaction and the expenditure claim is therefore not allowable.

14.3. Scrutinizer to the postal ballot obtained from unit holders (Rathi & Associates) Rs 2.82.996 a. In this regard the assessee has submitted copies of bills/invoices raised by Rathi and Associates which are analyzed as under:

S No	Reference	Amount	Remarks
1	Letter of Rathi and Associates dt 6.9.2010 addressed to LIC AMC regarding invoices raised	2,20,600	The said letter mentions that the invoice is w.r.t professional charges received with respect to postal ballot process unitholders. However the same is regarding proposed amendment of Trust deed dt 20.4.1989, alongwith deed of modification dt 25.3.1004 and 6.10.2003 entered between LIC and LIC MF Trustee Co and is unrelated to the capital gain transaction under consideration
2	Letter of Rathi and Associates dt 7.9.2010 addressed to L/C AMC regarding invoices raised	62,396	The same are invoices raised for reimbursement of air travel expenses by Rathi and Associates. It only mentions the name and amount of persons. There is no reference of the purpose for which the said air travel was made, how it is related to the transaction under consideration, details of travel etc. and it cannot be established that the same was incurred for

the capital gains transaction under consideration. Without prejudice to the same no supporting bills/invoices ,ticket boarding passes etc are enclosed to support the genuineness of the said expenditure.

b. It is clear from the above discussion, the bills/invoices do not specify the purpose for which said payments were made and as such it cannot be held that the said expenditure was incurred the assessee wholly and exclusively towards earning of income shown under the head long term capital gains by it.

14. 4. Valuation AMC( Chaturvedi & Co.) Rs 46.878 a. Assessee has furnished valuation note of Chaturvedi and Co dt 24.7.2010 of shares of LIC AMC as on 31.3.2010. The same specifies that the purpose of valuation is to determine the fair value of shares of LIC AMC for the proposed acquisition of shares by Nomura in LIC AMC.

I.T.A. No.22/Mum/2016 b. The invoices/bills enclosed as additional evidence are as under:

SNo	Reference	Amount	Remarks
1	Letter of Chaturvedi & Co dt 25.8.2009 addressed to LIC AMC regarding invoices raised	2,758	The said letter mentions that the towards ascertaining the net worth 09 and is clearly not relatable to under consideration
2	Letter of Chaturvedi & Co dt 5.9.2009 addressed to LIC AMC regarding invoices raised	22,060	The said letter mentions that the towards valuation of shares as on is clearly not relatable to the tr

consideration which involved valuation of shares as on 31.3.2010 as stated in Para 11.4(aj) above.

3 Letter of Chaturvedi & Co dt 22.06.2010 The said letter mentions that the payment is 30.7.2010 addressed to LIC towards valuation of shares as on 31.3.2010.

AMC regarding invoices raised .

14.5. Valuation Trustee co(Shah Gupta & Co.)Rs57.908 In this regard the assessee has only submitted copies of bills/invoices raised by Rath and Associates which are analyzed as under:

SNo	Reference	Amount	Remarks
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1	Letter of Shah Gupta & Co dt 28,954 1.10,2009 addressed to LIC AMC regarding invoices raised	The said letter mentions that the valuation analysis as on 11.7,2009 the discussion in Para 11.4 above to the transaction under considera
2	Letter of Shah Gupta & Co dt 28,954	The said letter mentions that the

6.9.2010 addressed to UC AMC valuation analysis as on 11.7.2010. No details regarding invoices raised such as share valuation note are furnished to establish if the same was done in regular course of business or for the specific purpose of earning income under the head capital gains and as such the said document cannot be treated as proof that the expenditure was incurred wholly and exclusively for earning of income under the head capital gains 14.6. Authorised dealer(ICI) charges for FC-TRS Documentation as per RBI requirement for AMC and Trustee Co. Rs 33,090 Assesses has furnished letter of RBI dt 24.5.2010, stating that there is no objection to the acquisition by Nomura of shares of LIC AMC from GIC HFL, UC HF and Care homes. No proof of payment has been submitted by the assessee in this regard.

14,7. Other evidence furnished by the assessee The assessee has furnished letter dt 28.4.2011 of Nomura addressed to the assessee regarding the sharing of costs relating to the JV with selling shareholders which gives a break up of costs incurred w.r.t this transaction which is to be shared by it. The I.T.A. No.22/Mum/2016 figures are the same as specified in the column giving the total expenses incurred in Table 1, Para 7 above.

15. This report is submitted after due examination of additional evidence furnished by the assessee. The lacunae in the assessee's submissions are clearly pointed out. Other than the invoices as discussed in Para 14.1(d) above, which appear to be in order, the assessee has not been able to establish that the remaining expenditure claimed as deduction has been incurred wholly and exclusively for earning the income taxed under the head long term capital gain, and therefore its claim remains unsubstantiated."

The copy of remand report of the AO was furnished by Ld. CIT(A) to the assessee for rejoinder. The assessee in rejoinder submitted following reply which is reproduced hereunder:-

" On the basis of the remand report received and subsequent to the examination of the additional evidence submitted, the Appellant requests you to consider the claim of Rs.96,73,108/- being expenses included by the Appellant on sale of shares, the break up of which is as under:-

SI.No. Particulars Total Amount (Rs.) Expenditure borne by GIC and claim disallowed (Rs.) i. Legal Consultant (Amarchand Mangaldas 1,91,49,387 96,51,417 Suresh A. Shroff & Co.) a. Consultant and Advisor (Price Waterhouse 1,36,42,460 Coopers Private Ltd.) Hi. Scrutinizer to Postal Ballot (Rathi & 2,82,996 Associates) A detailed response pertaining to the genuineness of the claim of each item of

expenditure s iv. Valuation of AMC (Chaturvedi & Co.) 46,878 13,637 L V. e Valuation Trustee Co. (Shah Gupta & Co.) 57,908 4,964 g a vi. l Authorised Dealer Charges for FC-TRS NIL 33,090 documentation as per RBI requirement for C AMC and Trustee Co, (ICICI Bank) o n s Total 3,31,79,629 96,73,108 u l A detailed response pertaining to the genuineness of the claim of each item of expenditure specified in (i-vi) above is made hereunder:

i) Legal Consultant (Amarchand Mangaldas Suresh A Shroff & Co)-R\$, 1,91.49,387 (out of which an amount of Rs. 8,42,700 is disallowed):

Sr Assessing Officer's Finding Appellant's Response No. I.T.A. No.22/Mum/2016

1. Amount of Rs. 8,42,700 for It may be noted that a mandate was given by the invoice 1 towards advance parties (named as 'Project Life') to the transaction {for payment not allowed as it sale of shares in LIC Mutual Fund Asset cannot be established that the Management Company and LIC Mutual Fund same was payment related to Trustee Co. Ltd. to Nomura Mutual Fund) to the relevant transaction of long term leading law firm, Amarchand Mangaldas. The scope of capital gain. Also details of service work to be carried out by the Legal consultant a long rendered has not been specified with the terms of payment were communicated vide letter no. 7647 dated August 6, 2008 which letter has been confirmed by the Assessing Officer in the remand report. Page 2 of the said mandate clearly specifies the requirement of making an advance payment (of Rs. 7,50,000 add service tax at 12.36% amounting to Rs. 92,700 and the aggregate is Rs.

8,42,700/-) on the acceptance of the mandate in order to enable them to start providing the advisory and legal services. Accordingly, UC Mutual Fund Asset Management Company made the advance payment of Rs. 8,42,700/- under the cover of the letter dated August 14, 2008- the subject of the letter was 'Project Life-Advance Payment'. This makes it abundantly clear that the payment is towards the advance due for the mandate given for 'Project Life'.

ii) Consultant and advisor\_(\_Price Waterhouse Coopers Private Limited)- Rs. 1,36,42,460 Sr Assessing Officer's Finding Appellant's Response No.

1. An amount of Rs. 5,61,800/- has Para 1 of Page 5 of the engagement letter dated been excluded from the total 21.01.2008 with Price Waterhouse Coopers Private amount of Rs. 1,42,04,260/-with Limited states that "an amount of Rs. 5,00,000 is respect to the invoices submitted payable on acceptance of non-binding priced proposal from the investor." The said amount was excluded on account of the reimbursement of same being receivable from the investor (in this case Nomura Mutual Fund-Purchaser). Therefore, the same was excluded from the claim of expenses as the cost pertaining to the same was required to be borne by the investor.

2. With respect to the balance The engagement letter dated 21.08.2008 with Price invoices amounting to Rs. Waterhouse Coopers Private Limited clearly specifies 1,36,42,460/- , the letter



contains the advisory services to be provided for divestment of a general remark of payment minority stake in LIC Asset Management Company, towards professional fees and in Therefore, raising of invoices and its payment thereon the subject it is mentioned as was merely a formality ,based on the milestones as Project Cash agreed in the engagement letter. Hence, fees paid towards invoices were only in adherence to the terms of engagement. It may be noted that, the Assessing officer has not raised any question as to the authenticity or genuineness of payment to Price Waterhouse Coopers Private Limited. However, the conclusion drawn by Assessing Officer questioning the nature of services rendered by Price Waterhouse Cooper Private Limited is based on the fact that the services are not clarified nor are the invoices in any way linked to the mandate given for the said transaction. Accordingly, the Appellant confirms that the said expenditure was incurred wholly and exclusively towards earning of income shown under the head long term capital gain by it.

iii) Scrutinizer to the postal ballot from unit holders (Rathi & Associates)- Rs. 2,821996\_ I.T.A. No.22/Mum/2016 Sr Assessing Officer's Finding Appellant's Response No.

1. The expenses incurred in relation The Appellant states that the Assessing Officer has to the capital gain transaction taken a narrow view and contends that merely pertains to the amendment of trust because the deed pertains to year 1989 and 2004, deed dated 20.04.1989, along with subsequent amendment to the same was the deed of modification dated requirement for carrying out the said transaction of 25.03.2004 and 06.10.2003 sale of shares and hence approval from unit holders entered between LIC and LIC was a prerequisite. Thus payment made to M/s Rathi& Mutual Fund Trustee Company. Associates for scrutinizing the postal ballot was thus Accordingly it was contended that an expenditure incurred wholly and exclusively for the it is unrelated to the transaction purpose of business.

2. Only invoices pertaining to The Appellant contends that the claim for reimbursement of expenses reimbursement of expenses is supported by the provided without explaining the invoice of M/s Rathi& Associates and as agreed purpose for which travel was between them as regards the services rendered by the made and how it is related to the professionals of the said firm. Also the Appellant capital gain transaction under cannot be made liable for disallowance of expenditure consideration. Further, no on account of the invoices, tickets and boarding supporting bills/ invoices, tickets, passes being not provided by the said firm for each boarding passes etc were and every trip incurred by the said company with enclosed to support genuineness respect to the services provided. of said expenditure

iv) Valuation AMC (Chaturvedi & Co.)-Rs. 46,878/~ Sr No. Assessing Officer's Findings Appellant's Response

1. Invoice include payment The Appellant specifies that it had made towards entered into arrangement with the ascertaining net worth LIC Housing Finance Limited, LIC for F.Y 2008-09 and Asset Manangement Company in is not relatable to financial year 2008-09 itself. A the transaction under valuation of the net worth and consideration the shares was required considering the strategic nature of

2. The invoice includes investment, although the sale of valuation of shares as shares was carried out only in on 31.03.2009 and is financial year 2010-11. Also the not relatable to valuation of shares has been carried transaction under out as per guidelines of Reserve consideration Bank of India Thus, the expenditure incurred by the Appellant is wholly and exclusively for the purpose of carrying out the transaction pertaining to the sale of shares- The Appellant further draws your attention to section 48 of the Act which is as under:

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

I.T.A. No.22/Mum/2016

i) Expenditure incurred wholly and exclusively in connection with such transfer

ii) .....

Thus, the word "expenditure" used in section mandates it should be distinctly related and integrally connected with the transfer of shares. It does not specify that the expenditure incurred will be eligible for deduction if it is made during the year in which the sale of shares is carried out.

Also, the Bombay High Court in the case of CIT vs. ShakuntalaKantilal (190 ITR 56,59), has held that the expression 'in connection with such transfer' is wider and more liberal in meaning than the phraseology 'for the transfer.' By reason of employing such a wide expression i.e. 'in connection with', something more than what is attributable to the final act of transfer of shares is also admissible for deduction provided the intimate connection between the expenditure and the act of transferring shares is established.

For instance, if the services of legal or other professional services extended to the process of valuation of shares or the participation in the deliberations that led to the settlement concerning the transfer of shares, the legal charges on that account will also be allowable as deduction.

3. The invoices specified The Assessing Officer has merely the payments is made stated that the payment is made towards valuation of towards the valuation of shares as shares as on on 31.03.2010 through invoice dated 31.03.2010 30.07.2010. The share valuation note issued by Chaturvedi & Co.

clearly specifies that the valuation was carried out in relation to the sale I.T.A. No.22/Mum/2016 transaction under consideration and accordingly no disallowance of expenditure can be made since the expenditure is wholly and exclusively incurred in connection with such transfer.

v.) Valuation Trustee Co.(Shah Gupto & Co)-Rs. 57,908/-

Sr	Assessing Officer's	Appellant's Response
No.	Findings	

1.	Invoice mentions	The Appellant specifies that it had
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valuation analysis on  
11.07.2009 and  
accordingly it is  
unrelatable to the  
transaction

entered into arrangement with the  
concerned parties in financial year  
2008-09 itself. Thus valuation of  
shares was required considering the  
strategic nature of investment,  
although the sale of shares was  
carried out only in financial year  
2010-11 Also the valuation of shares  
has been carried out as per the  
guidelines of Reserve Bank of India.  
Thus, the expenditure incurred by  
the Appellant is wholly and  
exclusively for the purpose of  
carrying out the transaction  
pertaining to the sale of shares.  
Similarly, discussion for eligibility of  
claim of expense is already  
supported by the judgement as  
discussed above.

2. The invoice is with  
respect to valuation  
analysis as on  
11.07.2010. No details  
including the share  
valuation note is  
furnished to establish  
the fact that the  
expenditure was  
incurred wholly and  
exclusively for earning  
income under the head  
capital gains

The Appellant contends that the  
invoice specifies the valuation  
analysis carried out on 11.07.2010,  
the Assessing Officer cannot take a  
stand that since no share valuation  
note is furnished the expenditure has  
not been incurred wholly and  
exclusively for earning of income  
under the head capital gains. Your  
attention is highlighted to clause  
3.2(k) of page 48 of the share  
purchase agreement wherein it has  
been agreed by the parties to the  
valuation certificate to be issued by a  
registered Chartered Accountant as  
per the Reserve Bank of India  
guidelines. Thus the opinion formed  
by the Assessing Officer that the

I.T.A. No.22/Mum/2016

expenditure is not wholly and  
exclusively for carrying out the sale  
transaction is incorrect..

vi) Authorised Dealer (ICICI) charges for EC TRS documentation as per RBI requirement for AMC  
and Trustee CO. Rs. 33,090/-

Sr Assessing Officer's  
No. Findings

Appellant's Response

1. Assessee has only furnished no objection certificate from Reserve Bank of India dated 24.05.2010. No proof of payment has been submitted by the assessee in this regard. The Appellant states that the Reserve Bank of India is the statutory authority responsible for management of foreign exchange transactions in India. The Appellant has furnished the no objection certificate received from Reserve Bank of India for which it had appointed ICICI Bank for carrying out the FC-TRS documentation. Thus, merely rejecting the claim of assessee on account of not furnishing the proof of payment would be prejudicial to the Appellant since the expenditure is wholly and exclusively related to the capital gain transaction.

vii) Other Evidences:-

The Appellant has furnished the letter from LIC Nomura Mutual Fund dated 28.04,2011 wherein all the above fees being paid to the professionals engaged by the selling shareholders (including the Appellant) have been agreed to be shared on pro-rata basis. Furthermore, the Assessing Officer has already acknowledged the submission regarding the sharing of cost with respect to the transaction with LIC AMC vide letter dated 05.09.2013 and the Share Acquisition Terms Agreement dated 11.07.2009. This letter further satisfies the claim made by the Appellant that the cost incurred by the selling shareholders relates to the capital gain transaction under consideration and is wholly and exclusively connected with the sale of shares and hence eligible for deduction under section 48(i) of the Act."

5. The Ld. CIT(A) after considering the submissions of the assessee partly granted relief to the assessee vide appellate orders dated 21.10.2015, by holding as under:-

I.T.A. No.22/Mum/2016 " I have considered the findings of the Assessing Officer as well as rival submission of the appellant and also Remand Report & counter representation of the Ld. Authorised Representative. I find that during the year appellant has sold out 1120 shares of LIC Asset Management Co. Ltd. and 300 shares of LIC Mutual Funds Trustee Co. Ltd.. These shares were sold in a consortium of arrangement made by Life Insurance Corporation of India and were sold out to M/s. LIC Nomura Mutual Assets Management Co. Ltd. at the agreed price by all the members of the consortium. Because of sale of investment, there is a Capital Gain of Rs.85,79,09,196/-. Against this Capital Gains, appellant has shown expenditure of Rs.96,73,108/- u/s.48 of the Income-tax Act. The Assessing Officer has disallowed the expenditure on the ground that during the course of assessment proceeding, the assessee has not explained the expenditure related to sale of investments. By letter dated 05.09,2013, appellant has only given information related to sharing of cost, total legal cost comprises Legal Consultancy Charge, Advisory Charge, Fees of Scrutinizer and Valuation AMC Charge, totaling to Rs.3,31,79,629/-. The appellant

proportionately claimed the expenditure to the extent of Rs.96,73,108/-However, the Assessing Officer has held that appellant has failed to establish that the legal cost claimed to be expenditure incurred in connection with transfer of shares, hence he has disallowed entire expenditure claimed by the appellant. During the course of appellate proceedings, appellant has submitted various details and evidences, hence matter was remanded to the Assessing Officer by letter dated 08.09.2014. In compliance the Assessing Officer has submitted a Remand Report dated 24.07.2015 which has been reproduced earlier. The copy of Remand Report was given to the appellant and appellant has given rejoinder by letter dated 08.09.2015. A careful perusal of Remand Report as well as counter representation reveals that findings of the Assessing Officer in the Assessment Order is not fully approvable. The Ld. Assessing Officer has mentioned in Remand Report para 14.1. d that SI.No.2 to 5 appear to be in order which means an amount of Rs.8,42,700/- out of Rs.1,91,49,387/- is not at all related to transaction. As regards receipt of the expenditure shown in the name of "Price Waterhouse Coopers P. Ltd. & Other Expenditure", the stand of the Assessing Officer is found to be convincing one. It can be seen from the rejoinder that Ld. Authorised Representative has objected the disallowable expenditure but it is very evident from the report of Ld. Assessing Officer that this expenditure of Rs. 1,36,42,460/- is not directly related to the "transfer of assets". The invoices/bills possesses general information like payments towards Professional Fees. It means there is no specific reference to the Here, is not the question related to authenticity of the bill, is not relevant. It does not explain the connection of expenditure with transfer of shares. This may be business I.T.A. No.22/Mum/2016 expenditure but certainly not related to transfer of shares. Similarly, the expenditure shown in the name of Rathie & Associates of Rs.2,82,996/-does not pertain to the transfer of shares. Further in rejoinder, it has been mentioned that such expenditure is incurred for business purposes which means, appellant admits that these expenditure is not at all related to transfer of shares. If approval from shareholders was pre- requisite that does not means that such bill raised by Rathie & Associates is necessarily related to transfer of investments. Thus, I find no convincing reason or verifiable evidence to support the contention of the appellant The contention that appellant cannot be made liable for disallowance of expenditure on account of invoices, tickets and boarding passes being not provided by Rathie & Associates, it is pertinent to mention that if any expenditure is claimed, it is the responsibility of the claimant to furnish all the reliable evidence. Apparently, appellant has not substantiated the contention with necessary evidences, hence the stand of the Assessing Officer deserves approval. Similarly, expenditure of Rs.46,878/- claimed to be valuation of AMC is not at all related to transfer of shares. If any valuation is done, an expenditure incurred, same may be related to the business activities and definitely is not related to transfer of shares, hence such expenditure cannot be allowed u/s.48 of the Income-Tax Act. Similar is the fact in respect of expenditure of Rs.57,908/- related to Valuation Trustee Co. As regards Authorised dealer (ICICI) charges for FC-TRS, no proof has been submitted by the appellant before the Assessing Officer, hence such expenditure also cannot be

allowed. Now, actual expenditure related to such transfer is to be worked out for allowance.

5.6. During the course of appellate proceeding, it was reviewed and found that all the expenditure claimed by the appellant totalling to Rs.96,73,108/- is not allowable, hence as discussed hereinabove, disallowable expenditure has to be worked out. The working of disallowable expenditure is as under:-

Head	Amount (Rs.)	Expenditure to be borne by GIG HFL
Legal Consultant (Amarchand Mangaldas Suresh A. Shroff & Co.)	1,91,49,387	96,21,417
Consultant and Advisor (Price Waterhouse Coopers P. Ltd.)	1,36,42,460	
Scrutinizer to the postal ballot obtained from unit holders (Rathi & Associates)	2,82,996	
Valuation AMC (Chaturvedi & Co.)	46,878	13,637
I.T.A. No.22/Mum/2016		
Valuation Trustee Co. (Shah Gupta & Co.)	57,908	4,964
Authorised dealer (ICICI) charges for FC-TRS Documentation as per RBI requirement for AMC and Trustee Co.	---	33,090
TOTAL	3,31,79,629	96,73,108
.		
Total Sale Consideration	(A) = 3,08,01,61,151	
Assessee's share of sale consideration	(B) = 89,60,13,813	
Ratio (B/A) =	0.290898	

Out of total cost of Rs.3,30,74,843 [1,91,49,387 + 1,36,42,460 + 2,82,996] Assessee's share of cost = Rs.3,30,74,843 X ( B/A ) = Rs.3,30,74,843 X 0.290898 = 96,21,417  
 \_\_\_\_\_ (i) Out of total cost of Rs.3,30,74,843, the assessee has not been able to establish its claim w.r.t. Rs.1,47,68,156 [8,42,700+1,36,42,460 + 2,82,906]\_\_\_\_(ii) Assessee's Share of Cost which is to be disallowed = (ii) X (B/A) = 1,47,68,156 X 0.290898 = 42,96,032 Further balance sums as per the table above have also found to be disallowable.

Hence Total disallowance amounts to = 42,96,032 + 13,637 + 4,964 + 33,090 = 43,47,723/-

5.7. The above working is based on same proportion as adopted by the appellant file submitted letter dated 13.04.2011 to the Assessing Officer that covering letter dated 06.06.2011. Thus the total disallowable expenditure is restricted to Rs.43,47,723/-. Thus, appellant gets relief of Rs.53,25,385/-."

6. The assessee has filed second appeal before tribunal being aggrieved by appellate order dated 21.10.2015 passed by learned CIT(A) in partly upholding the additions as were made by the AO by rejecting claim of the assessee w.r.t. sharing of costs incurred towards transfer of shares of LICMF-AMC albeit claimed by the I.T.A. No.22/Mum/2016 assessee to be incurred wholly and exclusively in connection with transfer of shares of LICMF-AMC .

The assessee has also come before tribunal by filing appeal being aggrieved by decision of learned CIT(A) in not allowing assessee to carry forward and set off of long term capital loss of Rs. 75,83,082/- incurred in earlier assessment year 2009-10 against long term capital gains earned by the assessee during the previous year relevant to impugned assessment year under consideration. The Ld. CIT(A) vide appellate order dated 21.01.2015 observed that the AO has not denied set off of carried forwards of long term capital loss and the grievance of the assessee is not genuine and no prejudice is caused to the assessee which requires adjudication by learned CIT(A). It was observed by Ld. CIT(A) that if the claim of the assessee is correct and long term capital loss was there of Rs. 75,83,082/- incurred by the assessee in AY 2009-10, then the AO is duty bound to allow set off of said loss against long term capital gains earned by the assessee during this year. It was observed by learned CIT(A) in his appellate orders dated 21.01.2015 that no plain administrative directions can be given to the AO under these circumstances unless there is a denial of genuine claim.

7. The Ld. Counsel for the assessee opened argument before the Bench by submitting that there was sale of shares of LICMF-AMC by assessee to Nomura Assets Management Strategic Investment Pte. Limited, Singapore( in short „Nomurai ) ( „Nomurai is wholly owned subsidiary of Nomura Asset Management Co., Ltd which in turn is wholly owned subsidiary of Nomura Holding Inc.), on which long capital gains were earned by the assessee and the dispute has arisen between rival parties as to the incurring of certain costs in connection with the transfer/sale of said shares of LICMF-AMC to Nomura. It was submitted that shares of LICMF-AMC were also held by other entities such as LIC Housing Finance Limited(in short "LICHFL") and LICHFL Care Homes Limited , who were also simultaneously selling I.T.A. No.22/Mum/2016 the shares in LICMF-AMC in consortium with assessee to Nomura as described in share acquisition term agreements(SATA) and share purchase agreement(SPA) respectively, both dated 11.07.2009 . The said agreements are placed in paper book/page 42-166 filed with tribunal. It was submitted that the assessee took complete exit from its shareholding in LICMF-AMC while LICHFL continued with its part holding in LICMF-AMC which remained unsold even after offloading part of its holding in favour of Nomura . Our attention was drawn to various clauses of these agreements placed in paper book . It was submitted that the assessee along with other consortium parties jointly appointed professionals to avoid duplication of work and costs in connection with the advises for induction of strategic investor in LICMF-AMC through divestment / issuance of shares of minority stake in LICMF-AMC , due diligence of

LICMF-AMC, documentation with respect to transaction of divestment and induction of strategic investor in LICMF-AMC , valuation of the shares of LICMF-AMC and also seeking necessary regulatory approvals/clearances from relevant authorities for successfully completing the aforesaid transaction of sale of shares of LICMF-AMC to Nomura by assessee and consortium parties . It was submitted that the said expenses for hiring professionals for induction of strategic investor in LICMF-AMC, valuation of shares of LICMF-AMC , documentation related to the transaction for sale of shares, due diligence and for seeking regulatory approvals/clearances for the transaction were shared by all consortium parties in ratio of sale proceeds received by each of these consortium parties of respective shares of LICMF-AMC sold by them to Nomura . It was submitted that so far as distribution share ratio amongst consortium parties is concerned , the matter related to distribution share ratio is not in dispute as learned CIT(A) has accepted said ratio of distribution of costs amongst consortium parties as adopted by assessee and Revenue is not in appeal before the tribunal against such adoption of ratio of share of distribution of expenses nor any Cross Objections are filed by Revenue against the I.T.A. No.22/Mum/2016 appeal filed by the assessee. Our attention was drawn to page 170/pb wherein letter dated 06-06-2011 was written by assessee to LIC Nomura Mutual Fund enclosing its share of cheque of Rs. 96,73,108/- towards expenses relating to costs incurred in connection with sale of share of LICMF-AMC. Our attention was also drawn to letter dated 13.04.2011 written by LIC Nomura Mutual Fund Asset Management Co. Limited to assessee relating to sharing of costs with selling shareholders, wherein total sale consideration of the entire transaction of sale of shares of LICMF-AMC by all three consortium parties of their respective shares sold is stated to be Rs. 308.01 crores and the total assessee's share of cost incurred towards legal/professional fees/expenses was stated to be Rs. 96,73,108/- based on ratio of sale proceeds received by assessee vis-a-vis total sale consideration. The said letter dated 13.04.2011 is placed in paper book/page 171-173 . The other letter dated 28.04.2011 written by LIC Nomura Mutual Fund Asset Management Co. Limited to assessee is also placed in paper book/page 174-175 wherein details of billing done by these professionals is mentioned and invoices of these professionals are enclosed . The itemised invoices issued by Amarchand & Mangaldas & Suresh A. Shroff & Co., Price Waterhouse Coopers Private Limited (hereinafter called "PWC") , Rathi & Associates, Chaturvedi & Co. and Shah Gupta & Co. are all placed in paper book / page 176-192. The said invoices are all issued by these professionals in favour of „LIC Mutual Fund Asset Management Co. Limitedi . The agreements with PWC , Amarchand & Mangaldas & Suresh A. Shroff & Co. & Chaturvedi & Co. are also placed in paper book/page 193-232. These agreements are entered into by these professionals with „LIC Mutual Fund Asset Management Company Limitedi . The AO vide assessment order dated 22.10.2013 has disallowed the entire expenses incurred by the assessee which was in the form of share of cost borne by the assessee along with consortium parties towards fees/expenses paid to these professionals for advises in connection with induction of strategic investor in I.T.A. No.22/Mum/2016 LICMF-AMC, due diligence of LICMF-AMC, documentation , valuation of shares of LICMF-AMC, regulatory clearances/approvals towards transfer/sale of shares of LICMF-AMC , wherein the AO held that these expenses were not incurred wholly and exclusively in connection with transfer of shares of LICMF-AMC by assessee . While in Remand Report , the learned AO accepted that partly these costs were incurred wholly and exclusively in connection with transfer of shares and accordingly part relief was granted by Ld. CIT(A) which was mainly towards share of assessee in payments made to „Amarchand & Mangaldas and Suresh A Shroffi to the tune of Rs. 1.83 crores out of total payment of Rs. 1.91 crores made to said professional firm. Thus, so far as



„Amarchand & Mangaldas and Suresh A Shroffi is concerned , the dispute which now remains is with respect to share of assessee in the payment to the tune of Rs. 8,42,700/- made to said concern. The learned counsel for the assessee submitted that to the best to their knowledge no appeal was filed by the department against the part relief granted by the Ld. CIT(A). The learned DR also could not place on record any evidence to substantiate that Revenue has filed any appeal against part relief granted by learned CIT(A). Our attention was drawn to the order of authorities below. Our attention was also drawn to various agreements entered into in connection with professionals engaged by assessee through LIC Asset Management Company for induction of strategic investor in LICMF-AMC , undertaking valuation of the shares of LICMF-AMC, due diligence of LICMF-AMC, documentation of the transaction and for seeking necessary regulatory approval/clearances in connection with the sale of shares by consortium parties in favour of Nomura. Our attention was drawn to various invoices raised by these professional w.r.t. agreements entered into in connection with induction of strategic investor in LICMF-AMC, valuation of shares of LICMF-AMC and for obtaining regulatory approval/clearances in connection with the sale of shares of LICMF-AMC by consortium parties in favour of Nomura. The said agreements and invoices are I.T.A. No.22/Mum/2016 placed in paper book filed by assessee with tribunal. It was submitted that all the consortium parties who transferred/sold their shares in LICMF-AMC to Nomura specified in SATA and SPA decided to jointly appoint professionals to do necessary job in order to induct strategic investor namely Nomura in LICMF-AMC by divesting of their shareholding as specified in SATA and SPA in order to successfully conclude transfer/sale of shares held by them in LICMF-AMC to Nomura in compliance with various applicable laws , rules and regulations and to get best valuation for the shares which they proposed to sell instead of appointing separate professionals to avoid duplication of work and increased costs. The learned counsel for the assessee took us through the order of learned CIT(A) and explained part relief granted by learned CIT(A) based on remand report of the AO. It was submitted that so far as fees/expenses paid to „Amarchand & Mangaldas & Suresh A.Shroff Coi is concerned, the only dispute is with respect to the share of assessee's cost in payment of Rs. 8,42,700/- to said concern while assessee's share in rest of payment of Rs.1,83,06,607/- to „Amarchand & Mangaldas & Suresh A.Shroff Coi stood allowed by learned CIT(A) based on remand report submitted by the AO. It was submitted that Revenue is not in appeal before the tribunal against part relief granted by learned CIT(A). It was submitted that said concern namely „Amarchand & Mangaldas & Suresh A.Shroff Coi codenamed this assignment as „Project Lifei and they were instrumental in documentation of the entire transaction for sale/transfer of shares held in LICMF-AMC by consortium parties to Nomura and advising that the said transaction is legally compliant of all applicable laws. With respect to assessee's share in payment of Rs. 1,36,42,460/- made to PWC, it was submitted that the entire share of the assessee costs by way of fees/expenses paid to PWC stood disallowed by learned CIT(A). It was submitted that project was codenamed „Project Cash Ii by PWC and they were lead advisor to transaction of induction of strategic investor in LICMF-AMC through a divestment/issuance of minority stake in LICMF-AMC in favour of I.T.A. No.22/Mum/2016 strategic investor, assisting in due diligence of LICMF-AMC and valuation. It was also submitted that assessee's share in payment of fees/expenses of Rs. 2,82,996/- paid to Rathi and Associates also stood disallowed by learned CIT(A).It was submitted that Rathi and Associates were undertaking professional work of organising postal ballots for seeking shareholders approval for transaction under consideration which is necessary before sale/transfer of shares as per requirements of law. The learned CIT(A) upheld disallowance of the

expenses paid to Rathi and Associates on grounds of being not being incurred wholly and exclusively in connection with transfer of shares. Similarly , the assessee's share in payments towards fees/expenses of Rs. 57,908/- paid to Shah Gupta and Company and Rs. 46,878/- paid to Chaturvedi and Company stood disallowed by learned CIT(A) on the grounds that these are not expenses incurred wholly and exclusively in connection with transfer of shares. Our attention was drawn to two RBI approvals both dated 24-05-2010 vide approval number FE.CO.FID.CO.No. 29155/10.21.176(Vol.II)/2009-10 and approval number FE.CO.FID.CO.No.29169/ 10.21.176 (Vol.II)/2009- 10 which were obtained in connection with the transaction of sale of shares of LICMF-AMC held by the assessee as well by consortium parties as specified in SATA and SPA in favour of Nomura. Both the aforesaid RBI approvals dated 24-05-2010 are placed in paper book/page 233-234. It was also submitted that shareholder approvals through postal ballots were obtained from shareholders of selling companies as required under the provisions of The Companies Act, 1956 and compliances of other securities laws were also undertaken. Our attention was also drawn to valuation report dated 24-07-2010 (pb /page 227-232) issued by Chaturvedu & Co. Chartered Accountants, Mumbai valuing shares of LICMF-AMC which is placed in paper book filed by the assessee with the tribunal. Our attention was also drawn to assessment order dated 29-01-2014 passed by Addl. CIT, Range(2)(2), Mumbai u/s 143(3) of the 1961 Act in the case of LIC Housing Finance Limited for AY 2011-12 who also offloaded I.T.A. No.22/Mum/2016 part of their shareholding in LICMF-AMC in favour of Nomura in the same transaction , wherein it was highlighted that no additions were made by the assessing officer with respect to the expenses incurred in connection with sale of shares of LICMF-AMC by LIC HFL. The assessee relied upon decision of Honi ble Bombay High Court in the case of CIT v. Smt. Shakuntala KantiLal reported in (1991) 58 Taxman 106(Bom.): (1991) 190 ITR 56(Bom.).

With respect to the Second issue related to non allowability of long term capital loss suffered by assessee of Rs. 75,83,082/- in earlier years which was not allowed to be set off by AO against long term capital gain earned by the assessee during the previous year under consideration , our attention was drawn to appellate order of the Ld. CIT(A) , wherein Ld. CIT(A) has refused to give administrative directions to the AO to allow the said loss and rather held that if the loss is genuine, the AO is duty bound to allow set off of the said long term capital loss of the earlier years against long term capital gains of this year. On being asked by the Bench about the back ground of this long term capital loss of Rs. 75,83,082/- incurred by the assessee in earlier assessment years , the Ld. counsel for the assessee submitted that said loss was duly claimed to be set off against the long term capital gain earned by the assessee during the impugned assessment year. Our attention was drawn to page no. 1 of the paper book wherein computation of income for the impugned assessment year under consideration before us is placed wherein the assessee has sought to set off said carried forward long term capital loss of Rs.75,83,082/- against long term capital gains earned by the assessee for relevant previous year under consideration before us.

The Ld. DR on the other hand relied upon the orders of the authorities below .Our attention was drawn to the assessment order passed by the AO, remand report submitted by the AO and finally the appellate order passed by learned CIT(A) and prayer was made to confirm the appellate order passed by learned CIT(A).The Ld. DR submitted that I.T.A. No.22/Mum/2016 learned CIT(A) has rightly disallowed the expenses being fees/expenses paid to professionals as these expenses were not

incurred wholly and exclusively in connection with transfer of shares of LICMF-AMC by the assessee. Our attention was drawn to page no. 210 of the paper book wherein letter dated 06.08.2008 written by „Amarchand & Mangadas and Suresh A Shroffi is placed which is in favour of LIC Mutual Fund Asset Management Company wherein they have referred to work related to some „Project Lifei and there is reference to proposed investment by Nomura in LIC MF. The learned DR relied upon the appellate order passed by learned CIT(A).

8. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee derives income from Housing Finance business. It is pertinent to mention that the assessee is a listed company having its shares listed on Stock Exchanges. It all happened that the assessee was holding shares as investments in LICMF-AMC. The assessee sold its shareholding in LICMF-AMC to Nomura and earned long term capital gains on sale of such shares . The assessee took complete exit by selling entire shareholding held by it in LICMF-AMC to Nomura. The assessee has shown long term capital gains of Rs. 85,79,09,196/- on account of sale of 1120 shares of LIC Mutual Fund Asset Management Company Ltd. of face value of Rs. 10,000/- each and on sale of 300 shares of LIC Mutual Fund Trustee Co. Private Ltd. of face value of Rs. 10 each of LICMF-AMC held by assessee in these two entities , which were sold by assessee to Nomura. Apart from assessee, there were other selling shareholders of LICMF-AMC namely LICHFL and LIC Care Homes Limited who also sold their shareholding in LICMF-AMC to Nomura under a consortium arrangement entered into with assessee and Nomura. LICHFL sold part of its shareholding in LICMF-AMC to Nomura while on the other hand LICHFL Care Homes Limited sold its entire shareholding in LICMF-AMC to Nomura by taking complete exit from LICMF-AMC. LIC through its seven I.T.A. No.22/Mum/2016 nominees was major shareholder of LICMF-AMC who continued in LICMF-AMC along with LICHFL and incoming strategic investor Nomura. Nomura now came in as a new strategic investor in LICMF- AMC wherein it took minority stake in LICMF-AMC by buying stake from existing shareholders namely assessee, LICHFL and LICHFL Care Homes Limited as well along side new shares were allotted to Nomura by LICMF-AMC. The assessee earned long term capital gains of Rs. 85,79,09,196/- on sale of shares of LICMF-AMC . So far so good as there is no dispute between rival parties till this point. The dispute arose between rival parties when assessee sought to adjust certain legal and professional costs incurred by it from long term capital gains earned by assessee from sale of shares of LICMF-AMC to Nomura wherein assessee invoked provisions of Section 48 of the 1961 Act to claim adjustment of such costs against long term capital gains earned by it. The background of this legal and professional costs so claimed to be incurred by the assessee and sought to be adjusted against long term capital gains earned on sale of shares of LICMF-AMC to Nomura is with respect to payments made towards fees/expenses to certain legal and financial professionals/advisors who were appointed in connection with the completion of transaction of induction of strategic investor in LICMF-AMC through divestment of minority stake or by way of issuance of fresh shares in LICMF-AMC to Nomura . These legal and financial professionals were engaged to assist and advise consortium parties to the agreement in due diligence as well ensuring that the transaction for induction of strategic partner in LICMF-AMC and consequently divestment of shares of LICMF-AMC by existing shareholders including assessee in favour of Nomura complies with various applicable laws, rules and regulations concerning securities law, taxation law, foreign exchange regulations, company law etc. and assist in obtaining all necessary regulatory and legal clearances/approvals in connection

with the aforesaid transaction of induction of new strategic investor in LICMF-AMC and consequential sale of shares of LICMF-AMC by selling shareholders including I.T.A. No.22/Mum/2016 assessee to Nomura. It was decided by all the selling shareholders of LICMF-AMC to jointly appoint these legal and financial professionals/advisors in connection with induction of new strategic investor to hold minority stake by divestment or by way of issue of fresh shares in LICMF-AMC , to conclude the aforesaid transaction through a synchronised collective decision and action amongst existing shareholders of LICMF-AMC and also in order to avoid duplication of work and costs . All the selling shareholders entered into share acquisition terms agreement(SATA) as well share purchase agreement(SPA) , both dated 11-07-2009 along with Nomura to give effect to the said induction of Nomura as a new strategic investor in LICMF-AMC and consequent sale of stake by existing shareholders including assessee in favour of Nomura, wherein these selling shareholders agreed to share legal and professional costs by way of fees/expenses paid to these professionals and advisors in connection with the aforesaid sale/transfer of shares of LICMF-AMC to Nomura. Para 10.3 of SATA clearly speaks of sharing of the costs of professionals/ advisors borne by LIC Asset Management Company Limited(for short "LIC AMC) in connection with this transaction amongst LIC AMC , LICHFL and the assessee. Similarly, para 10.3 of SPA speaks of sharing of costs of professionals / advisors borne by LIC AMC amongst LICHFL, LIC Care Homes Limited and the assessee. Thus, under SATA and SPA , the assessee was obligated under contract to share these legal and professional costs along with other selling shareholders and the assessee in discharge of its contractual obligation paid its share of said costs to LIC Asset Management Company Limited. Perusal of agreements entered into with these professionals/advisors which are placed in paper book filed with the tribunal clearly reveals that these professionals/advisors provided services by way of advise/assistance in connection with induction of new strategic investor into LICMF-AMC , due diligence, valuation of shares, Regulatory approvals/clearances , compliances of various applicable laws, rules and regulations as applicable to transaction , I.T.A. No.22/Mum/2016 documentation of the transaction , approvals of shareholders for this transaction etc. so that the entire transaction of induction of Nomura as strategic investor into LICMF-AMC is completed and concluded successfully both commercially as well the same is compliant with all applicable laws , rules and regulations including securities law, company law, law governing and regulating foreign exchange , tax laws and other applicable laws which could withstood scrutiny of law. These professionals/advisors were also required to identify and thereafter ensure that several regulatory clearances/approvals as are required for the proposed transaction are duly obtained to avoid any adverse legal consequences at a later stage . The „LIC Mutual Fund Asset Management Company Limitedi front ended and thus entered into agreements with these legal and financial professionals/advisors on behalf of consortium parties and thereafter costs were allocated by „LIC Mutual Fund Asset Management Company Limitedi amongst selling shareholding in proportion to their ratio of sale proceeds received by them from selling shares of LICMF-AMC to Nomura in accordance with the terms of contract entered into with consortium parties. These ratio of distribution of expenses amongst various selling shareholders in the ratio of sale proceeds of shares received by them is not in dispute as learned CIT(A) accepted this ratio of distribution adopted by the assessee and the Revenue has not come in appeal before the tribunal challenging said ratio of distribution as is adopted by the consortium parties nor any Cross Objections are filed by Revenue before the tribunal. Total expenses which were incurred by way of fees/expenses paid to these legal and other professionals/advisors which were claimed to be incurred in connection with

the sale of shares of LICMF-AMC by these selling shareholders to Nomura was Rs. 3,31,79,629/- and the assessee share came to be Rs. 96,73,108/- which was duly reimbursed by assessee vide banking channel through cheque. The details of these expenses are reproduced hereunder:-

I.T.A. No.22/Mum/2016 i. Legal Consultant (Amarchand Mangaldas Rs.1,91,49,387/- Suresh A Shroff & Co.) ii. Consultant and advisor (Price Waterhouse Rs.136,42,460/- Coopers P Ltd.

iii. Scrutinizer to the postal ballot obtained Rs.282,996/- From unitholders (Rathi & Associates) iv. Valuation AMC (Chaturvedi & Co.) Rs.46,878/-

v. Valuation Trustee Co. (Shah Gupta & Co.) Rs 57,908/- \_\_\_\_ Rs.331,79,629/-

The AO disallowed the entire expenses of Rs. 96,73,108/- claimed by the assessee towards its share of expenses claimed to be incurred in connection with transfer of shares of LICMF-AMC to Nomura , while learned CIT(A) based on remand report submitted by the AO during appellate proceedings granted part relief and finally an amount of Rs. 43,47,723/- stood disallowed which was held to be not allowable as expenses incurred wholly and exclusively in connection with transfer of shares by learned CIT(A). The major relief was granted by learned CIT(A) with respect to payments made to „Amarachand and Mangaldas & Suresh A. Shroffi wherein only Rs. 8,42,700/- was held to be not allowable and accordingly share of assessee in Rs. 8,42,700/- stood disallowed by learned CIT(A) so far as payments to „Amarachand and Mangaldas & Suresh A. Shroffi are concerned. With Respect to payments of fees/expenses paid to other financial and legal professionals namely PWC, Chaturvedi & Co. , Rathi and Associates and Shah Gupta & Co. , the entire amount of payments made to them were disallowed both by the AO and learned CIT(A) on the grounds that these expenses were not incurred wholly and exclusively in connection with transfer of shares of LICMF-AMC by the assessee and nexus of the services rendered by these professionals with the transfer/sale of shares of LICMF-AMC to Nomura could not be proved as the invoices raised by these professionals/advisor does not specify I.T.A. No.22/Mum/2016 the purposes for which these services were rendered . Thus, the main bone of contention of the Revenue is that these expenses were not incurred wholly and exclusively in connection with transfer/sale of shares of LICMF-AMC by the assessee to Nomura and also nexus with transfer/sale of shares could not be proved. It is also the allegation of Revenue that these professionals are using codenames for the assignment executed by them wherein it is not clearly emanating as to the purposes for which services were rendered as invoices could not be co-related to this assignment of induction of strategic investment in LICMF-AMC and consequently sale of shares by selling shareholders in favour of Nomura. It is also alleged by Revenue that the invoices raised by these professionals do not bore the details of services rendered by these professionals. Before we proceed further, it is important to understand the background and highlight here that the assessee is a listed company wherein shares of the assessee company are listed on recognised

stock exchanges. Since, the assessee is a listed company wherein several compliances as well approvals/clearances under SEBI Act, 1992, Stock Exchange Rules and Regulations , Securities Laws, The Companies Act , 1956 etc are required to be obtained wrt to these type of transaction envisaging divestment of existing stake . It is also pertinent to mention that Nomura is a non resident entity who acquired minority stake as strategic investor in LICMF-AMC through divestment by assessee , LICHFL and LICHFL Home Care Limited. Since the stake is acquired by non resident entity, various compliances and approvals/clearances as are required under Foreign Exchange Management Act, 1999 as were applicable such as RBI , FIPB approvals, as applicable are required to be obtained as required under law . It is also a matter of fact that Nomura is an international company having large presence in the field of financial services. The other selling shareholder viz. LICHFL is also listed company whose shares are also listed on recognized stock exchanges. It also needs to be stated that much hype is created by Revenue when it highlighted that these professionals I.T.A. No.22/Mum/2016 have codenamed these assignments as „Project Lifei or „Project-Cash-Ii etc and it is said that there is no correlation between these codenamed projects with these assignment of induction of new strategic investor in LICMF-AMC and consequent divestment by selling shareholders including assessee. It is also pertinent to mention here that proceedings have already passed through three stages viz. Firstly assessment proceedings u/s 143(3) r.w.s. 143(2) before AO, Secondly Remand Report proceedings before the AO during the course of appellate proceedings before learned CIT(A) and Thirdly the appellate proceedings before learned CIT(A). It is no more res-integra that the powers of learned CIT(A) are co-terminus with the powers of learned AO. Reference is drawn to provisions of Section 251(1)(a) of the 1961 Act. None of the authorities below viz. AO and learned CIT(A) during the course of these three proceedings had considered it worthwhile and necessary to exercise their powers under the provisions of Section 131 of the 1961 Act or Section 133(6) of the 1961 Act to issue summons/notices to relevant professionals/advisors or to consortium parties to unearth and unravel the truth. As we will see later in this order that the assessee on its part has placed all necessary and relevant documents/evidences viz. agreements, invoices , correspondences etc to substantiate on its part that these expenses/costs by way of fees/expenses paid to these legal and financial professionals/advisors were incurred in relation to the transaction of induction of Nomura as new strategic investor in LICMF-AMC and consequent divestment by selling shareholders including assessee of their shareholding in LICMF-AMC in favour of Nomura . Paper Book containing 254 pages speaks volume about the sincere efforts made by assessee in explaining its contentions before the authorities below but to no avail. Now it is time for us to see what all documents/evidences did the assessee produced before the authorities below to support its contentions and are they sufficient to discharge onus caste on the assessee by an Act of 1961 to take it out I.T.A. No.22/Mum/2016 of liability which was sought to be fastened by Revenue within provisions of the 1961 Act , which are as under:

a) The assessee vide page 42 to 105/paper book has filed Share Acquisition Terms Agreement (SATA) dated 11-07-2009 entered into between LICHFL, the assessee, Nomura and LIC Mutual Fund Asset Management Company Limited. This SATA provides for acquisition of 3850 equity shares of Rs.10,000/- each of LIC Mutual Fund Asset Management Company Limited by Nomura at a price of Rs. 8,00,000/-

per equity share firstly by acquiring 1120 equity shares of LIC Mutual Fund Asset Management Company Limited from the assessee, secondly by acquiring 1730 equity shares of LIC Mutual Fund Asset Management Company Limited from LICHFL and rest by fresh issue of 1000 equity shares of LIC Mutual Fund Asset Management Company Limited. LIC along with its 7 nominee shareholders will continue to hold 4,950 equity shares of LIC Mutual Fund Asset Management Company Limited, while LICHFL will hold 2200 shares post conclusion of this transaction. This SATA sets out complete understanding between the parties with respect to induction of Nomura as strategic investor in LICMF-AMC and consequent divestment by existing stake holders as set out above. The condition precedents and warranties of the parties to the agreement are set out in this agreement. The said condition precedent provided that the parties to this agreement have obtained requisite approvals vide corporate resolutions and also special resolutions from shareholders authorising the execution and implementation of this transaction. The conditions precedent are agreed by selling shareholders that there are no changes in shareholding patterns and no changes in applicable laws have taken place. It is also agreed that LIC Mutual Fund Asset Management Company Limited and LICHFL have agreed to first business plan presented by Nomura. It also specifies that the documents related to this transactions were duly executed and approved delivered to Nomura. It is also specified that appropriate I.T.A. No.22/Mum/2016 amendments to Memorandum and Articles of Association shall be appropriately carried out which also included that LIC Mutual Fund Asset Management Company Limited shall carry out such activities as are permitted under the SEBI(Mutual Funds) Regulations, 1996 and guidelines from time to time shall be applicable. This SATA agreement also referred to various regulatory approvals for the transactions by way of approval from SEBI under Mutual Fund Regulations, Portfolio Managers regulation for a change of status and constitution of LIC Mutual Fund Asset Management Company Limited pursuant to transaction, approval of FIPB, if applicable and approval of RBI which is required to be obtained. It also refers to change of name of LIC Mutual Fund Asset Management Company Limited to LIC Nomura Mutual Fund Asset Management Company Limited. This agreement also speaks of valuation certificate issued by a Chartered Accountant certifying fair valuation of shares in accordance with guidelines issued by RBI for Foreign Direct Investment in equity shares of LIC Mutual Fund Asset Management Company Limited which is delivered by LIC Mutual Fund Asset Management Company Limited to Nomura. It also refers to an opinion issued by legal advisors of LIC Mutual Fund Asset Management Company Limited and selling shareholders being delivered to Nomura. Similarly, it speaks of Nomura having delivered relevant Resolutions authorising this transaction. It also speaks of first business plan being approved by Nomura. It also speaks of due diligence investigations being undertaken by Nomura of LIC Mutual Fund Asset Management Company Limited. It also laid down road map and time plan for executing and concluding the transaction successfully including transfer of shares in dematerialised form in the account of Nomura and transfer of consideration to the bank accounts of selling shareholders. There is a requirement of issuing a certificate from selling shareholders and LIC Mutual Fund Asset

Management Company Limited jointly to Nomura confirming that the representation and warranties provided in SATA are true and correct as on closing date. Similar certificate on the same lines is required to I.T.A. No.22/Mum/2016 be issued by Nomura to LIC Mutual Fund Asset Management Company Limited and selling shareholders. It also provided for execution of FC-TRS form duly stamped by authorised dealer to make compliances under FEMA with RBI and seek RBI approvals/clearances under FEMA. It also speaks of when the announcement of the transaction shall be made which shall be made only in consultation with other parties in writing or required by law or by government authorities. Vide clause 10.3, the agreement SATA speaks of sharing of cost and expenses associated with this transaction borne by LIC Mutual Fund Asset Management Company Limited which shall be borne pro-rata amongst LIC Mutual Fund Asset Management Company Limited, LICHFL and the assessee. Thus, in nutshell it elaborately laid down understanding arrived at amongst consortium parties and the manner of concluding transaction of inducting Nomura as strategic investor in LICMF-AMC and consequent divestment by selling shareholders. Similar is the SPA dated 11-07-2009 which is by and between LICHFL, LICHFL Carehomes Limited, the assessee, Nomura and LIC Mutual Fund Trustee Company Private Limited which deals with acquisition of equity shares of LIC Mutual Fund Trustee Company Private Limited of Rs. 10 each held by LICHFL, the assessee and LICHFL Carehomes Limited being acquired by Nomura. Broadly the terms are similar to SATA and hence the same are not repeated and it broadly represented the complete understanding between and amongst the consortium parties and the manner in which the transaction shall be executed. The SPA is placed in paper book/page 106-169.

b) At page 170/pb is placed a letter written by the assessee to LIC Nomura Mutual Fund which is dated 06-06-2011 wherein assessee enclosed cheque number 900606 dated 07-06-2011 drawn on HDFC Bank for Rs. 96,73,108/- relating to its share of cost payable to these legal and financial professionals/advisors in connection with sale of I.T.A. No.22/Mum/2016 shares of LIC Mutual Fund Assets Management Co. Limited and LIC Mutual Fund Trustee Co. Private Limited to Nomura.

c) At page 171-173/pb is a letter dated 13-04-2011 written by LIC Nomura Mutual Fund Asset Management Co. Limited to the assessee in connection with sharing of costs amongst selling shareholders as per contractual obligation under SATA and SPA. Reference was drawn in this letter itself to clause 10.3 of SATA and SPA with respect to sharing of cost towards fees/expenses of these legal and financial professionals/advisors amongst selling shareholders under consortium arrangement. It determined the total sales consideration with respect to LICMF-AMC accruing to the selling shareholders under consortium agreement to the tune of Rs. 308.02 crores and the total costs incurred towards professional fees/expenses which was paid by LIC Mutual Fund Asset Management Company Private Limited to the tune of Rs. 3.31 crores to these legal and financial professionals and the assessee share in accordance with clause 10.3 of SATA and SPA was worked out at Rs. 96,73,108/- and finally request was made to reimburse the cost to LIC Nomura Mutual Fund Asset Management Company Private Limited as per terms of contract i.e. SATA and SPA.

d) At page 174-175/paper book is letter dated 28.04.2011 written by LIC Nomura Mutual Fund Asset Management Company Private Limited to assessee in reply to letter dated 13.04.2011 written by the assessee. In this letter dated 28.04.2011 written by LIC Nomura Mutual Fund Asset Management



Company Private Limited to the assessee, itemised billing by these professionals are specified and copy of invoices raised by the assessee are enclosed for reference and record of the assessee (page 176-192/pb ). In this letter dated 28.04.2011 written by LIC Nomura Mutual Fund Asset Management Company Private Limited to assessee , again request is made to the assessee to make its share of cost towards fee/expenses payable to these legal and financial professionals/advisors amongst selling shareholders in terms I.T.A. No.22/Mum/2016 of clause 10.3 of SATA and SPA. This letter also specified that these professionals charged service tax on services rendered by them while LIC Nomura Mutual Fund Asset Management Company Private Limited deducted income-tax at source as per provision of the 1961 Act while making payments to these legal and financial professionals/advisors. While detailing itemised billing done by these professionals , broad reference to type of services such as legal services, consultant and advisor services, scrutinizer to the postal ballot obtained from unit holders , valuation(AMC) services , valuation (Trustee Company) services and charges for services by authorised dealer for FC-TRS documentation as per RBI requirement for AMC and Trustee Company are found mentioned in these invoices. Then comes the itemised invoices issued by these professionals and we found mention of the names of the professional who worked for the assignment and the name of the assignment is code named as „Project Lifei or „ Project Cash Ii . Then come invoices raised by these professional for valuation, acting as scrutinizer for postal ballots , services in connection with amendment in trust deed etc which are clearly indicating that these expenses have their roots and nexus to the work concerning induction of Nomura as strategic investor in LICMF-AMC and consequent divestment of stake by existing stakeholders.

e) At page 193-28/pb is placed an offer letter dated 21.01.2009 written by PWC to LIC Asset Management Co. to provide lead advisory services for the divestment of minority stake in LIC Asset Management Company. It speaks of the proposed transaction of inducting strategic investor through a divestment/issuance of shares of a minority stake in LIC Asset Management Company Limited and interest of PWC to act as lead advisors to the aforesaid transaction. It speaks of the PWC being retained for this proposed transaction and summarises their understanding of the engagement , scope of work and professional fee for said services. The scope of work at para 4 refers to engagement as I.T.A. No.22/Mum/2016 lead advisor to completion of the envisaged transaction in the capacity of exclusive lead advisors for inducting strategic investor in LICMF- AMC. The scope of work included arriving at a fair valuation of shares of LICMF-AMC which will entail reviewing management projections , reviewing audited financial statements and then arriving at a fair valuation of the business. The scope of work also included planning and communication with investor which will include assisting LICMF- AMC in preparing Information Memorandum and also assisting in communication and discussions with the investor , assisting LICMF- AMC in due diligence review, recommendation/advise in connection of structuring of the deal in the capacity as financial advisors , assistance in review of transaction documentation etc.. The said offer letter provided for fees payable to PWC and personnel to be deployed etc by PWC for successfully rendering the services. This agreement also provided for confidentiality clauses about PWC maintaining strict confidentiality . At page 209/pb is the letter dated 21.07.2008 written by PWC to LIC Mutual Fund Asset Management Company Limited extending the tenure of their engagement to act as lead advisor to proposed disinvestment process by another six months.

f) At page 210-212/pb is a letter dated 06-06-2008 written by „Amarchand & Mangaldas & Suresh A Shroff & Co.i (signed on 08-08- 2018) to LIC Nomura Mutual Fund Asset Management Company Private Limited in connection with proposed investment by Nomura Holdings, Inc. In LIC-MF. It outlined scope of work of „Amarchand & Mangaldas & Suresh A Shroff & Co.i which included providing advice and legal services towards negotiating , drafting , reviewing and finalising term sheet, share purchase subscription agreements , share purchase agreements and shareholders agreement along with ancillary documents , if any required to complete the transaction. The scope of work also included advising about legal perspective in India regarding the transaction as well also negotiating with investors counsel and analysis of all aspects of all laws necessary to complete I.T.A. No.22/Mum/2016 and conclude the transaction. It also stipulate legal team who will work on this assignment and it outlined the fee chargeable for the assignment. It also provided for advance payment of Rs. 7,50,000/- on acceptance of this offer by „Amarchand & Mangaldas & Suresh A Shroff & Co.i to enable said professionals to start the work in relation to the transaction. The share of the assessee in the costs to be shared between selling shareholders attributable to this advance payment of Rs. 7,50,000/- + service tax ( totalling Rs. 8,42,700/- ) paid to „Amarchand & Mangaldas & Suresh A Shroff & Co.i along with letter dated 14-08-2008 issued by LIC Asset Management Company Limited is under dispute between rival parties which was finally disallowed by learned CIT(A) so far as payments to „Amarchand & Mangaldas & Suresh A Shroff & Coi . are concerned.

g) At page 213-226 is placed letter dated 11.01.2011 written by „Amarchand & Mangaldas & Suresh A Shroff & Co.i which is written to LIC Mutual Fund Trustee Company Limited , LIC, LICHFL, the assessee and LICHFL Care Homes Limited and Nomura, confirming that said „Amarchand & Mangaldas & Suresh A Shroff & Co.i acted as legal advisors to LIC Mutual Fund Trustee Company Private Limited and also legal advisors on behalf of LIC, LICHFL, Carehomes and the assessee, in relation to the investment made by Nomura by way of share purchase in the company pursuant to various agreements and letters as set out in the annexure hereto. It also stipulates that LICHFL, the assessee and Carehomes were selling their shares to Nomura.

h) At page 227-232/pb is placed valuation report dated 24-7-2010 issued by „Chaturvedi and Companyi valuing shares of LIC Mutual Fund Asset Management Company Limited as on 31st March 2010.

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i) At page 233-234/pb are placed two RBI approvals both dated 24-05- 2010 approving the proposed transaction for acquisition by Nomura Asset Management Strategic Investment Pte. Ltd. , a non-resident entity of the fully paid up equity shares of face value of Rs. 10,000 each of LIC Mutual Fund Asset Management Company Limited at a price of Rs. 8,00,000/- per share from (a) 1120 equity shares from GIC Housing Finance Limited(the assessee) (b) 1730 equity shares from LIC Housing Finance Limited.

The second RBI approval dated 24-05-2010 is with respect to approving the proposed transaction for acquisition by Nomura Asset Management Strategic Investment Pte. Ltd. , a non-resident entity

of the fully paid up equity shares of face value of Rs. 10 each of LIC Mutual Fund Trustee Company Private Limited at a price of Rs. 46.04 per share from (a) 300 equity shares from GIC Housing Finance Limited(the assessee) (b) 2000 equity shares from LIC Housing Finance Limited and (c) 1200 equity shares from LICHFL Care Homes Limited.

With this background , we have to proceed to see that whether these costs towards legal and financial professional fees/expenses which were claimed to be incurred in connection with transfer/sale of shares of LICMF-AMC by the assessee to Nomura can be considered to be incurred wholly and exclusively in connection with transfer/sale of shares so as it could be considered to satisfy mandate of Section 48 of the 1961 Act and also it is to be seen whether the assessee by producing these documents/evidences which it produced before the authorities below had discharged its onus as is cast under the provisions of the 1961 Act and whether now the onus has shifted to Revenue to bring on record cogent incriminating material to discredit the version of the assessee to fasten tax liability on the assessee. Thirdly, we have to see whether these costs were incurred in connection with transfer/sale of shares by assessee and whether the I.T.A. No.22/Mum/2016 nexus of these costs with the assignment of induction of strategic investor in LICMF-AMC and consequently with the sale of shareholding in LICMF-AMC by these consortium parties to Nomura stood proved. Before we proceed further, it is pertinent to mention that the assessee is a company whose shares are listed on Bourses. The assessee is holding shares in LICMF-AMC as strategic investor wherein LIC and its affiliates are the main promoting companies of LICMF-AMC.It is also pertinent to mention that LICHFL is also a listed company. Nomura is an international company having large presence in financial services sector. It is to be understood that induction of new strategic investor either through divestment of existing shareholders or through issuance of fresh shares involves several steps , inter-alia, including identifying the value of shares of the investee company. It is to be understood that the price/valuation of block of shares which is to be offered to strategic investor either by way of divestment of existing shares or by way of issue of fresh shares depends upon inter-play of several complex factors and need not necessarily be a prices of shares prevailing on bourses but several other consideration weighs for arriving at price of block of shares such as intrinsic worth, present value of assets, future growth potential, premium which management or incoming strategic investor commands, controlling premium etc.. The process of identifying a strategic investor who has synergies with the investee company and who can add significant value in the growth of investee company in itself is a highly complex task which need professional skills and experience apart from discovering the true value of shares which itself is a complex task. The regulatory authorities such as SEBI has placed several conditions and restrictions on professionals/advisors including mandatory registrations with SEBI through web of regulations to ensure that only well qualified, experienced and registered intermediaries are only allowed to render such services. The LICMF-AMC was an unlisted company and its valuation is to be undertaken by professionals who are independent and are legally I.T.A. No.22/Mum/2016 qualified and experienced to handle valuation . The regulatory requirements also requires valuation as per prescribed methods such as discounted cash flows which are to be certified by qualified independent professionals. The engagement of these independent qualified and experienced professionals to undertake these assignments not only ensures that the well versed experienced personnels are deputed to conclude these complex transaction but also addresses conflict of interest issue so that valuations are arrived at by independent professionals having no beneficial interest either in

investee company or incoming strategic investor or outgoing shareholders. After getting valuation done from independent valuers, the selling shareholders can negotiate price with the incoming investor subject to applicable regulatory pricing guidelines. Similarly, new investor will also have comfort with a price discovered by independent qualified and experienced professionals who are well versed with the task of valuing enterprises and also it addresses conflict of interest issues. The induction of strategic investor also requires due diligence done of the investee company and several warranties are to be given by the selling shareholders to the incoming strategic investor as to the state of affairs of the investee company and vice versa, which also involves execution of several documentations which are required to be handled by these independent experienced, well versed and qualified professionals who can give independent opinion and assessment based on their independent evaluation and assessment of existing state of affairs of the investee company which give assurance to incoming strategic investors and assist them in making decision as to making investment in the investee company as also about the correctness of fair valuation paid for acquiring strategic investments in investee company and also addresses conflict of interest issues. The independent professionals who are experienced, well versed and specialises in these type of strategic disinvestments and capital/money market transactions also gave assistance to management in identifying and thereafter complying with various I.T.A. No.22/Mum/2016 applicable laws, rules and regulations and also help in identifying and seeking several regulatory clearances/approvals from authorities which are required to be obtained from various agencies in order to ensure that transactions are successfully concluded which is compliant of law. The assessee is a listed company whose shares are listed on Bourses and the assessee was strategic investor in LICMF- AMC while Nomura is a non resident entity who came in as strategic investor by acquiring stake from selling shareholders including assessee under consortium agreements viz. SATA and SPA. This transaction of acquisition under factual matrix of the case could possibly required several laws to be complied with such as Securities Laws, SCRA, SEBI Act etc, , Compliances under Companies Act, 1956, compliances of regulations and rules of stock exchanges, compliances and approvals from Reserve Bank of India under FEMA and applicable regulations for selling shares to Non Resident entity, clearances from Foreign Investment Promotion Board, clearances under CCI Act, compliances of various tax laws such as Income-tax Act, 1961, TDS compliances, GST compliances, stamp duty compliances and registration requirements etc., which all aspects are to be properly analysed and documented well in advance by these professionals/advisors on behalf of consortium parties in context of transaction proposed to be undertaken by tax-payer and then advise their clients as to the applicable legal compliances to be undertaken and approvals/clearances required to be obtained from regulatory authorities. These independent qualified and experienced professionals who are well versed in executing these transactions in context of documentations, legal and regulatory compliances play a very crucial role for successfully concluding these transactions which are compliant of law, otherwise later on non compliances of law can prove to be very expensive and costly affair which may be visited with penalties, prosecutions, class action suits etc as litigation is very expensive and time consuming affair. No doubt some of these work can be executed in-house by tax-payer by availing services of its legal I.T.A. No.22/Mum/2016 and professional team employed by tax-payer but once the commercial decision is taken by tax-payer to hire outside and independent professionals to render such services, the Revenue cannot be allowed to sit in the arm chair of business and question the prudence of the tax-payer decision in hiring outside independent professionals instead of utilising the services of in-house legal team. Honi ble Supreme Court

decision in the case of Hero Cycles Private Limited v. CIT reported in (2015) 379 ITR 347(SC) is relevant to that effect. It is also to be understood that assessee being a listed company these divestments decisions are price sensitive information and any breach of confidentiality of this price sensitive information can have huge repercussion, volatility and fluctuations in share prices of the assessee's shares on Bourses and such breach of confidentiality of price sensitive information can be visited with heavy penalties and prosecution under SEBI Act, 1992, securities law and other applicable corporate laws and may even lead to class action suits by investors against assessee and even against these professionals. These professionals can also be visited by suit for damages/compensation by the contracting parties for breach of confidentiality. Thus, mere use of code name by these professionals to the assignment or non mentioning of the exact services in the invoices cannot be cause of blame as these professionals are bound to maintain secrecy and confidentiality of the assignment awarded to them w.r.t. induction of strategic investor and divestment of the stake by existing shareholders and code name can also be given for administrative convenience. On the other hand if the details are openly divulged in correspondences or in invoices concerning induction of strategic investor or divestment by existing stakeholder will bear the risk of leakages of price sensitive information and breach of confidentiality which could have wide ranging serious adverse ramifications for the assessee as well for these professionals. What is relevant to be seen is that whether these expenses towards professional fees / expenses paid to these professionals by consortium I.T.A. No.22/Mum/2016 parties are in connection with the assignment of induction of strategic investor in LICMF-AMC and consequently sale of shares by the selling shareholders including assessee whether or not the project name was coded by these professionals or the exact details of services are not mentioned in the invoices. The Revenue cannot operate in a vacuum dehors the factual realities of present day's complex business and legal environment wherein both domestic and international laws have application to complex financial transaction because of participation of cross border entities. The assessee on its part has brought sufficient material/evidence on record to evidence that the project codenamed as „Project Lifei and „Project Cash i by these professionals are nothing but the assignment awarded by consortium parties to these professionals in connection with induction of strategic investor in LICMF-AMC and consequent exit of assessee from LICMF-AMC, which assignments were coded by these professionals for varied reasons outlined above. Thus, huge hue and cry made by Revenue as to codenaming of project by professionals or non mentioning of detailed services in the invoices has no legs to stand. There are valid reasons and justifications of code naming the project or not mentioning of the details of services in the invoices. If the Revenue was so particular and was not satisfied with the contentions of the assessee backed with evidences placed by the assessee as to the services rendered by these professionals in connection with the transaction relating to induction of strategic investor in LICMF-AMC and consequent exit of assessee from LICMF-AMC by selling its entire shareholding in LICMF-AMC to Nomura, then nothing prevented Revenue from issuing summons u/s 131 or notices u/s 133(6) of the 1961 Act to these professionals or to other consortium parties to produce evidences directly as to what these code name stands for and whether the services rendered by these professionals are directly and inextricably connected with transaction of induction of strategic investor in LICMF-AMC and consequent exit of assessee from LICMF-AMC. These pleas of the Revenue are out rightly rejected. We have I.T.A. No.22/Mum/2016 also observed that revenue has entered into an arena of suspicion while upholding disallowance of these costs and we would like to lay stress that suspicion howsoever strong cannot take place of proof

which is a well settled proposition of law. So far, three stages have passed and none of the authorities have considered proper and appropriate to issue notices u/s 133(6) or summons u/s 131 of the 1961 Act to these professionals or to consortium parties to unearth truth and we are afraid that now at this stage no more opportunity can be provided to the Revenue to re-start the exercise of denovo assessment and to burden the assessee with one more round of litigation which is not warranted at this stage more-so sufficient material/evidences by way of agreements, invoices, correspondences etc are already brought on record by the assessee which is speaking loudly that these payments were towards the fee/expenses paid to these legal professionals and financial advisors for handling the task of induction of strategic investor in LICMF-AMC and consequently exit of assessee as shareholder of LICMF-AMC wherein assessee sold its shares to Nomura while the case of revenue is built on suspicion. The parties to sale of shares to Nomura acted as consortium parties and they have vide SATA and SPA agreements both dated 11-07-2009, clause 10.3 in both these agreements agreed to share the cost of these professionals which falls within arena of their contractual obligation. There is no dispute as to the inter-se agreement between consortium parties to share these costs of professionals as well to distribution ratio of share of assessee to bear these cost. The learned CIT(A) has accepted the share distribution ratio adopted by consortium parties and Revenue is not in appeal before us with accepting of share distribution ratio by learned CIT(A) nor any cross objections are filed by Revenue. Now, after analysing the whole spectrum of services rendered by these independent, qualified and experienced professionals, we are of considered view that these services are inextricably linked to the transaction of sale of shares of LICMF-AMC by assessee to Nomura based on material on record and these services I.T.A. No.22/Mum/2016 were rendered wholly and exclusively in connection with transfer/sale of shares by the assessee within mandate of Section 48 of the 1961 Act as without availing of these legal and financial services from these legal professionals and financial advisors, in our considered view, the transfer/sale of shares of LICMF-AMC held by the assessee in favour of strategic investor Nomura could not have been successfully concluded as the most important and crucial aspect in these type of price sensitive transactions is to conclude them successfully with confidentiality in transparent manner which is in compliance with all relevant and applicable laws, rules and regulations both domestic and cross border laws which can withstand the tests of scrutiny by Courts for which proper documentations, term sheets, agreements, valuation, due diligence, regulatory approvals/clearances etc are must which can only be executed in these type of complex transactions which are governed and regulated by several web of complex laws having inter-play by these well versed, qualified and experienced independent legal and financial professionals/advisors to not only satisfy technical competencies to execute these transactions successfully but also avoid conflict of interest. The assessee's transaction of sale of shares in LICMF-AMC were approved by RBI, shareholder consents were obtained through postal ballots, SATA and SPA were executed, valuation reports from qualified chartered accountants were obtained, due diligence was undertaken etc.. The above relevant documents are placed in paper book filed with tribunal. The payment of its share of such cost to the tune of Rs.96,73,108/- by assessee vide cheque through banking channel and it is not the case of the Revenue that no payments were made by assessee and the bogus claim is set up by the assessee. In our considered view keeping in view factual matrix of the case as is emanating from records before us, the assessee has duly discharged its burden cast under provisions of 1961 Act by producing all relevant evidences to substantiate its claim that the payments were made towards share of cost which the assessee was obligated under an agreement to pay I.T.A. No.22/Mum/2016 towards

fees/expenses of these legal and financial professionals and advisors for rendering services in connection with transaction of induction of Nomura as strategic investor in LICMF and consequently complete exit of assessee by way of sale of its shareholding in LICMF AMC to Nomura and we also hold that these services are inextricably linked to aforesaid sale of shares by assessee to Nomura and these expenses are wholly and exclusively incurred in relation to transfer/sale of shares by assessee to Nomura which satisfied the mandate of Section 48 of the 1961 Act as transfer/sale of shares of LICMF-AMC by assessee to Nomura which is compliant with all applicable laws, rules and regulations could not have been possible without these services rendered by qualified , experienced and independent professionals and hence these costs are allowable as cost within provisions of Section 48 while computing long term capital gains earned by the assessee. The assessee succeeds in this appeal . We order accordingly.

9. With respect to the Second issue related to non allowability of long term capital loss suffered by assessee of Rs. 75,83,082/- in earlier years which was not allowed to be set off by AO against long term capital gains earned by the assessee during the previous year under consideration and wherein Ld. CIT(A) has refused to give administrative directions to the AO to allow the said loss and rather held that if the loss is genuine, the AO is duty bound to allow set off of the said long term capital loss of the earlier years against long term capital gains of this year , we have observed that in one of the correspondence filed by the assessee with revenue vide letter dated 26.12.2013 which is post assessment order , the assessee has claimed that this long term capital loss of Rs. 75,83,082/- was incurred on sale of shares of M/s Ramanasekhar Steels Limited in Ay 2009-10 which was duly declared in the return for AY 2009-10 as also the same was duly claimed in the return of income for impugned AY 2011-12 by way of set off against long term capital gains earned on I.T.A. No.22/Mum/2016 sale of shares of LICMF-AMC. These contention of the assessee need verification from the records available with Revenue and we are of the considered view that the matter need to be set aside and restored to the file of the AO for verification of the claim of the assessee on merits in accordance with law and allow relief if contentions of the assessee are found to be correct and the said loss is otherwise eligible for set off against long term capital gains earned by the assessee within mandate of provisions of the 1961 Act in accordance with law. Needless to say that the AO shall grant proper and adequate opportunity of being heard to the assessee while verifying the claim of the assessee on merits in accordance with law and evidence filed by the assessee in support of its contentions shall be admitted by the AO which shall thereafter be evaluated by the AO on merits in accordance with law while adjudicating claim of the assessee. This ground of the assessee is allowed for statistical purposes. We order accordingly.

10. In the result appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on 21.08.2018.

¢ 21-08-2018 £

Sd/ -

(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/ -

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 21.08.2018

Nishant Verma  
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) - Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

I.T.A. No.22/Mum/2016

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI