(1980) 08 GUJ CK 0031

In the Gujarat High Court

Case No : IT Reference No. 183 of 1975

Commissioner of Income Tax APPELLANT

Vs

Babebhai Alias Lavkumar Kantilal RESPONDENT

Date of Decision : 29-08-1980

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 2(47), 2(77), 256(1), 45

Citation : (1981) 5 TAXMAN 121

Hon'ble Judges : B.J. Divan, C.J;S.B. Majmudar, J

Bench : Division Bench

Advocate : N.U. Raval and R.P. Bhatt, for the Appellant; K.C. Patel, for the Respondent

Judgement

S.B. Majumdar, J.—The Appellate Tribunal, Ahmedabad Bench "B", has referred to us a question of law for our opinion u/s 256(1) of the income tax Act, 1961, at the instance of the revenue. The said question reads as under: Whether, the Tribunal was right in law in holding that the assessee was entitled to short-term capital loss of Rs. 11,617 on the ground that the ''extinguishment of rights therein'' as contemplated u/s 45, read with section 2(47), need not be from any extraneous source and that such extinguishment may be brought about by the assessee''s own action?

In order to appreciate the background against which the aforesaid question came to be referred to us, it is necessary to have a look at the relevant facts. The assessee is an individual. The year of assessment was 1970-71 and the accounting period was calendar year 1969. The assessee had advanced a sum of Rs. 25,000 to the New Commercial Mills Co. Ltd. on a promissory note. The said company had suffered from financial difficulties and was taken in liquidation. A scheme of compromise and arrangement was approved by this Court. As per the said scheme, unsecured creditors like the assessee had to get their claims verified by the auditors of the company, viz., C.C. Chokshi & Co. The assessee could realise only Rs. 13,323 from the said company pursuant to the pro visions of the scheme approved by this Court in the winding up proceedings. Balance of Rs. 11,617 was claimed by the assessee as capital loss suffered by him during the relevant assessment year. The ITO negatived the said claim of the assessee on the ground that there was no transfer of capital asset involved in the said transaction. 2. In appeal, the AAC allowed the assessee''s claim with regard to short-term capital loss on the ground that the amount advanced was definitely a capital asset in the hands of the assessee and the definition of the term "transfer" in relation to the capital asset as per section 2(47) includes relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law, and directed the ITO to allow the assessee the short-term capital loss.

3. The revenue thereafter went in appeal to the Tribunal and challenged the decision of the AAC. Reliance was placed by the revenue on the judgment of this Court in Commissioner of Income Tax, Gujarat II Vs. R.M. Amin. (Legal representative of the Late Chunibai Amin), for the proposition that there must be an element of consideration for the extinction of the rights in the capital assets before any gains or losses from such extinguishment can be brought for computation under the head "Capital gains". The Tribunal, however, held that the judgment in R.M. Amin''s case (supra) did not apply to the facts of the present case in that the said case referred to entirely a different situation which pertained to the question of taxability of capital gains that the shareholder received certain amount in liquidation of the company in which he was a shareholder. The Tribunal took the view that in the present case there was extinguishment of the assessee''s right in the capital asset and that had brought him loss of Rs. 11,617. Consequently, the revenue''s contention was rejected by the Tribunal. This order has resulted in the present reference at the instance of the revenue.

4. In order to appreciate the short controversy between parties, which arises for our opinion in the present case, it is necessary to have a look at certain relevant provisions of the Act. Section 45(1) provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53, 54, 54B, 54D and 54E, be chargeable to income tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place. The word "transfer" as defined by section 2(47) of the Act provides that "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the assets or the extinguishment of any rights therein or the compulsory acquisition thereof under any law. Section 48 of the Act provides for mode of computation of and deductions from capital gains and states that the "income chargeable under the head ''Capital gains'' shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts...." From a conjoint reading of sections 45, 48 and 2(47), it appears clear that before any capital gains can be said to have arisen out of a transfer, capital asset is required to be transferred and that too for consideration.

The assessee''s contention is that as per the wide definition of the word "transfer" as provided by section 2(47), extinguishment of his right in the existing capital asset would be covered by the connotation of the word "transfer".

5. Mr. Raval, learned advocate appearing for the revenue, did not contest the proposition that the assessee was holding capital asset in the form of a promissory note of Rs. 25,000 under which he was a unsecured creditor of the company in the winding up proceedings. Under the scheme o f compromise and/ or arrangement proposed in the winding up proceedings of the Company, the assessee''s right to receive full amount of Rs. 25,000 with interest under the promissory note did get extinguished in part. The assessee contends that his right in the capital asset was extinguished at least to the extent of 55 percent as he was, under the scheme, to receive only 45 percent and that too without interest. According to the assessee, this clearly amounted to transfer of the capital asset at the relevant time. The assessee contends that the said transfer instead of bringing capital gain brought him capital loss and the said short-term capital loss was required to be set off as per the provisions of section 71 of the Act. The revenue challenges the said contention on the part of the assessee by contending that even if there was a transfer of a capital asset, when the assessee''s right therein got extinguished, even then said extinguishment was not backed up by any consideration and that before it can be said that there was any transfer of capital asset which may bring capital gain or capital loss, the requirements of section 48 have got to be kept in view. Mr. Raval contends that, as per section 48 of the Act, the assessee concerned must have received consideration for the concerned transfer of the capital asset. The contention of the revenue is that in the present case, the assessee had a pre-existing right to receive Rs. 25,000 under the promissory note with interest and in satisfaction of the said preexisting right of the assessee, as per the provisions of the scheme approved by this Court in the winding up proceedings of the company, the assessee agreed to receive only 45 percent of his total dues and that too without interest. Thus, what he received was towards the full satisfaction of his then existing claim against the company and it cannot be said to form any consideration for the extinguishment of the rest of the claim of the assessee against the company. Mr. Raval, therefore, submits that the main requirement of the provision for accrual of the capital gains, viz., that the concerned transaction of transfer should be backed up by consideration which should be received or at least accrue to the assessee, is absent in the present case and, hence, the assessee''s claim ought not to have been accepted by the Tribunal.

6. The aforesaid statutory provisions to which we have already referred clearly show that before the provisions of section 45 can be brought into force, the purpose of the capital asset must be backed up by consideration. The consideration must be received or must accrue to the assessee on account of the said transfer. Consequently, the short question which survives for our consideration is whether the assessee did receive some consideration or whether any consideration accrued to him when his capital asset of Rs. 25,000 reflected

by the promissory note was subjected to transfer as the assessee''s rights therein got extinguished to the extent of 55 percent and his right to claim interest also got extinguished on account of the scheme of compromise and/or arrangement as approved by this Court in the winding up proceedings against the company. It is, necessary, therefore, to have a look at the relevant clauses of the scheme which was approved by this Court in its original jurisdiction in Company Petition No. 14 of 1969 with Company Application No. 90 of 1963 and others in the matter of New Commercial Mills Co. Ltd. (In Liquidation). This Court had by its order dated 2-5-1969 approved the scheme of compromise and/or arrangement so far as the said company was concerned and as per the said approved scheme under the provisions of the Companies Act, 1956, for the unsecured creditors, like the assessee, it was provided that unsecured creditors, including the creditors whose dues has been converted into promissory notes and/or deposits other than specified creditors shown in paragraph II had to lodge their claims with the auditors C.C. Chokshi & Co. within one month from the date of the sanction of the scheme by the Court. The scheme further provided that the claims as verified by the auditors were to be binding on the company and the creditors and in case any creditor was dissatisfied with the verification by the auditors, he was entitled to get directions of the court in that behalf. It was further provided that in case a creditor had failed to lodge his claim in the aforesaid manner, he was to be paid on the basis of his claim in the books of the company. Thereafter, followed the material part of the clause in the said scheme which pertained to the rights of the unsecured creditors like the assessee. Clause 3 of paragraph VII of the said scheme provided as under:

3. The unsecured creditors to be paid 45 percent of their verified claims without interest in full satisfaction of their claims as under:

(i) 37 1/2 percent of their verified claims without interest to be paid'' within eight months from the date of the final sanction of the scheme by the honourable High Court of Gujarat provided, however, if the payment of 371/2 percent aforesaid is not made within 12 months from the date of final sanction of the scheme, the creditors aforesaid are entitled to claim full amounts of their respective verified claims without interest.

(ii) 71/2 percent to be paid after the dues of the labour which may be agreed to be paid by an agreement between the Textile Labour Association, Ahmedabad and the new management is paid. The date of payment to be decided by the committee consisting of (i) Shri Ratilal Nathalal, Sharebroker, (ii) Shri Keshavlal Premchand, (iii) Shri Amritlal Brahmbhatt, and (iv) Shri Kanchanbhai B. Parikh, and the company taking into consideration the financial position of the company then existing. In case of dispute for the said date of payment between the said committee and the company, the matter shall be referred to an arbitrator to be selected by them, whose decision shall be binding to all the creditors and the company.

Issue of new equity share - The unsecured creditors, on the date of the final sanction of court to the scheme, will be allotted one equity share of Rs. 50 each to the extent of 5 percent of their verified claims without interest (excluding fraction of Rs. 50) if he has made an application in this behalf within one month of his claim being verified by the auditors C.C. Chokshi & Co., Ahmedabad.

Clause 12 of the sanctioned scheme provided that the said scheme shall be binding upon the company, its creditors and members and all proceedings against the company in respect of the claims of the creditors and the winding up petition being Company Petition No. 42 of 1968 shall be deemed to have been dismissed provided, however, that Protax Industries shall be entitled to prosecute its Summary Suits Nos. 500 and 501 of 1969 in the City Civil Court against the company in so far as it relates to adjudication of the claim and for recovery against the guarantor after giving credit for the amounts received from the company under this scheme.

7. Mr. Raval''s contention is that as per the aforesaid scheme, the assessee received in full satisfaction of his existing claim only 45 percent and that too without interest. But thereby he had not received any consideration for the said transfer of his original capital asset. What he had received was towards the satisfaction of his pre-existing right. Mr. K.C. Patel, learned advocate appearing for the assessee, on the other hand, contended that when the assessee, on account of the aforesaid novatio brought about by the provisions of the sanctioned scheme, was to be paid 45 percent of the verified claim and that too without interest, the said payment of 45 percent of the verified claim to the assessee and also the allotment to the assessee of one equity share of Rs. 50 each to the extent of 5 percent of his verified claim without interest, would constitute sufficient consideration for his relinquishing 55 percent of his earlier claim against the company and his claim for interest. But for this consideration, there was no occasion for him to give up the rest of his claim and to allow it to get extinguished. Thus, the extinguishment of the rest of the claim for 55 percent of the dues with interest was backed up by sufficient consideration. Mr. Patel, therefore, submitted that this was a case of novatio by which new rights were created, old rights were extinguished and the new rights were based on adequate consideration.

8. In order to resolve the aforesaid controversy, it is necessary to look at certain decisions on which both the sides placed reliance in support of their respective contentions.

9. Mr. Raval for the revenue invited our attention to the decision of this Court in CIT v. R.M. Amin (supra). In the aforesaid case, the facts were that the assessee held, in the share capital of a private company in Uganda, 192 shares of the aggregate face value of shillings 1,92,000 (Rs. 1,28,000). The Uganda company went into voluntary liquidation and, after payments of taxes and liabilities, the assessee became entitled to receive shillings 4,68,489 (Rs. 3,12,326) at the rate of shillings 2,440.0492 per share as and by way of return of capital in respect of 192 shares held by him. The assessee thus obtained an excess of Rs. 1,84,326

over the aggregate face value of the said 192 shares. The view of the ITO was that the amount of Rs. 1,84,326 represented capital gain and was taxable as such u/s 45 read with section 2(47) of the Act on the ground that it was profit or gain arising from relinquishment of capital asset or the extinguishment of any rights in it within the meaning of section 2(47). On appeal, the Appellate Tribunal took the view that the amount of Rs. 1,84,326 did not accrue to the assessee from relinquishment of any capital asset or extinguishment of any rights in it and there was, therefore, no capital gain chargeable to tax u/s 45 and that, in any event, even if any capital gain arose to the assessee which was taxable, it was only in the sum of Rs. 1,23,500, representing the difference between the amount received by the assessee in respect of 192 shares and the value of those shares on 1-1-1954. On a reference to this Court, it was held that there was no transfer of capital asset within the meaning of section 45 read with section 2(47) when the assessee received shillings 4,68,489 (Rs. 3,12,326) on final distribution of the net assets of the Uganda company. This Court took the view that the transfer of the capital asset in that case was not backed up by any consideration. It was observed that section 48 says that the income chargeable to tax as "capital gains" shall be computed by deducting from the "full value of the consideration received or accruing as a result of the transfer of the capital asset" certain amounts specified. The transfer that is contemplated by section 45, read with section 2 (47), is, therefore, a transfer as a result of which consideration is received by the assessee or accrues to the assessee. Substituting the words "extinguishment of any rights in the capital asset" for the words "transfer of the capital asset" the transaction, in order to attract the charge of tax as capital gains, must, therefore, be such that consideration is received by the assessee or accrues to the assessee as a result of the extinguishment of the rights in the capital asset. It was further observed that when a shareholder receives money representing his share on distribution of the net assets of the company in liquidation, he receives such moneys in satisfaction of the right which belongs to him by virtue of his holding the share and not by way of consideration for the extinguishment of his right or rights in the share. It is not the extinguishment of his rights in the share for which consideration is received by him; it is rather because moneys representing his share in the distribution are received by him that his rights in the share are extinguished. Therefore, when a shareholder receives his share on final distribution of the net assets of the company in liquidation, there is no transfer of capital asset by him which would attract the charge of capital gains tax u/s 45. It was further observed that if any other view was taken, it would render the provisions of section 46(2) of the Act, redundant. Mr. Raval placed strong reliance on the above observations and submitted that in the present case also, when the assessee agreed to receive 45 percent of his verified claim from the company in liquidation, what he received was not by way of any consideration for the rest of the claim given up by him but it was towards satisfaction of his claim for the full amount of the promissory note. It is difficult to accept the aforesaid submission of Mr. Raval. The aforesaid observations in R.M. Amin''s case (supra) will have to be read in the light of the facts of the case.

There, the shareholder, who was already having shares in a foreign company, was paid certain amount on liquidation of the said company pursuant to his right in those shares. The foreign company had gone into voluntary liquidation. Thus, no change took place in the nature of the right which the shareholder had in the company and in acceptance of his pre-existing right, he was given shilling 4,68,489. It is in the context of these peculiar facts that this Court made the aforesaid observations. So far as the facts of the present case are concerned, they are entirely different. Here, it is found that the assessee, who was an unsecured creditor of the company in liquidation, was entitled to Rs. 25,000 with interest under the promissory note. In the proceeding for winding up of the said company, a scheme of comprise and/or arrangement was sanctioned by this Court. We have already extracted relevant provisions of the scheme as applicable to the unsecured creditors. Pursuant to the said provisions of the scheme, a complete novatio between the parties took place. The existing right of the assessee in the promissory note amount got extinguished and new rights accrued to him under the novatio reflected in the scheme of compromise and/or arrangement sanctioned by this court. The assessee let off 55 percent of his claim with interest and as the said right of the assessee in the existing capital asset was extinguished, in consideration he received 45 percent of the balance and that too without interest and also subject to the scheme of instalments. He also became entitled to equity share of Rs. 50 to the extent of 5 percent of his verified claim without interest. Thus, the advantage which the assessee received under the scheme clearly formed a valid consideration for the extinguishment of the assessee''s pre-existing rights under the promissory note. There was a causal connection between the extinguishment of the assessee''s right in the capital asset and receipt of the amount of 45 percent without interest and his being entitled to equity shares. Thus, by a subsequent event old contractual rights between the parties got substituted by new rights as a result of the novatio. In fact, capital asset which earlier existed in favour of the assessee no longer remained operative at all. It was made subject to the overriding provisions of the scheme. The creditors, like the assessee who was an unsecured creditor, could not then resort to ordinary remedy of civil law for enforcement of their prior claims. They were all wiped off and were superseded by supervening provisions of the sanctioned scheme of this Court in the winding up proceedings against the company. Consequently, it cannot be said that there was no consideration backing up the transfer of the capital asset in the present case as reflected by extinguishment of the assessee''s rights in the earlier existing capital asset. It is, therefore, not possible to agree with Mr. Raval that the ratio of this Court in R.M. Amin''s case (supra) applies to the facts of the present case. Mr. Raval further submitted that the aforesaid decision of this Court in R.M. Amin''s case (supra) has been confirmed by the Supreme Court in the case of The Commissioner of Income Tax, Gujarat II, Ahmedabad Vs. Shri R.M. Amin, L.R. of The Late Shri. Chunnibhai J. Amin, Baroda, . The decision of the Supreme Court in that case also makes the legal position very clear. It has been in terms laid down by the Supreme Court in this case that when a shareholder received money representing his shares on the distribution of the net assets if the company in liquidation, he received that money in satisfaction of the right which belonged to him by virtue of his holding the shares and not by the operation of any transaction which amounted to sale, exchange, relinquishment, transfer of a capital asset or extinguishment of any rights in capital assets. But for section 46(2) it would not have been possible to charge tax under the head "Capital gains" on the money or other assets of a company received by its shareholder on its liquidation. Section 46(2) was enacted both with a view to making shareholder liable for payment of tax on capital gains as well as for prescribing the mode of calculating the capital gains accruing to the shareholders on the distribution of assets by a company in liquidation. Since the provisions of section 46(2) applied only to the distribution of assets by such companies in liquidation as were covered by the definition of the word "company" in section 2(77), capital gains tax was not leviable when companies, other than those which fell within the definition, distributed assets on liquidation to their shareholders. The Supreme Court for arriving at the aforesaid view placed reliance on its earlier decision in the case of Commissioner of Income Tax, Madras Vs. Madurai Mills Co. Ltd., and observed that the question as to whether the distribution of assets of a company which has gone into voluntary liquidation amongst its shareholders would amount to sale, exchange, relinquishment or transfer within the meaning of section 12B of the Act of 1922 as amended in 1956, was considered by that Court in Madurai Mills'' case (supra). While answering that question in the negative, the Court held that the act of the liquidator in distributing the assets of the company which had gone into voluntary liquidation did not result in the creation of new rights. It merely entailed recognition of the legal rights which were in existence prior to the distribution, and the court further observed in that case that when a shareholder receives money representing his share on distribution of the net assets of the company in liquidation, he receives that money in satisfaction of the right which belonged to him by virtue of his holding the shares and not by operation of any transaction which amounts to sale, exchange, relinquishment or transfer. Thus, the facts of R.M. Amin''s case (supra) were entirely different. There, the shareholder did not receive anything pursuant to the creation of new rights. He had received money in satisfaction of his pre-existing right by virtue of his holding shares and he was entitled to receive that amount in liquidation. No subsequent event had taken place which had resulted in the creation of new rights and/or obligations. In the present case, even though earlier the assessee had become unsecured creditor of the company by advancing to the company Rs. 25,000 on the basis of the promissory note and the said amount was payable to the assessee with interest on account of the supervening subsequent event of the sanctioning of scheme by this Court, old existing rights and obligations of the parties were superseded and by way of novatio, new rights were created and under those rights only, the assessee could claim and get 45 percent of his dues from the company and that too subject to the provisions and procedure of payment as prescribed and sanctioned by this Court''s scheme to which we have made detailed reference. The assessee also became entitled to allotment of equity shares to which he could never have become entitled under the earlier promissory note dues. Consequently, it cannot be said that there was no consideration behind the transfer of capital asset in the present case when the assessee''s interest in the capital asset got extinguished. In that view of the matter, the aforesaid decisions of this Court as well as the Supreme Court cannot be of assistance to Mr. Raval.

10. On the other hand, Mr. Patel for the assessee has invited our attention to another decision of this Court in the case of Commissioner of Income Tax Vs. Vania Silk Mills (P.) Ltd., . A similar question had arisen before this Court in the aforesaid case. The facts in that case were that the assessee had purchased machinery worth Rs. 2,31,741 and gave it on hire to Jasmine Mills at an annual rent of Rs. 33,900. On 11-8-1966, a fire broke out in the premises of the mills and the assessee''s machinery was damaged to such an extent that it could not any longer be put to use as such. The mills had insured the assessee''s machinery along with its own machinery and on a settlement of the insurance claim, it received certain amount out of which it paid a sum of Rs. 6,32,533 to the assessee on account of the destruction of its machinery. The difference between the actual cost of the machinery and its written down value worked out to Rs. 2,62,781 and in the assessment proceedings, for the assessment year 1967-68, the assessee returned the amount of Rs. 2,62,871 as profit chargeable to tax. The ITO subjected to tax the additional amount of Rs. 3,50,792, being the difference between the original cost of Rs. 2,81,741 and the amount of Rs. 6,32,533 received from the mills, as "capital gains" chargeable u/s 45. The assessee had contended before the ITO that no question of capital gains arose since no transfer of capital asset was effected within the meaning of section 45 read with section 2 (47) of the Act. The ITO negatived that contention. Ultimately, in appeal, the Appellate Tribunal set aside the order of the ITO holding, inter alia, that unless the transfer of a capital asset is effected by an assessee, section 45 would not be attracted and since, in the present case, there was no such voluntary act on the part of the assessee effecting transfer, one of the conditions for levying the charge of capital gain was not satisfied. Thereafter, at the instance of the revenue a reference came to be made to this Court. The revenue contended that capital gains did arise to the assessee on the facts of that case. The said contention of the revenue was accepted by this Court and it was held that on the facts of that case, capital gains did arise to the assessee, and then made the following pertinent observations in this connection:

Section 45 provides that any profits or gains arising from the transfer of a capital asset effected...shall be chargeable to income tax under the head ''Capital gains''. Section 2 (47) says that ''transfer'' in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law.

The Legislature, in order to effectuate its intention, has deliberately chosen the language of widest amplitude by using the expression ''the extinguishment of any rights therein'' in section 2 (47). It covers every possible transaction which results in the destruction, annihilation, extinction, termination, cessation or cancellation, by satisfaction or otherwise, of all or any of the bundle of rights-qualitative or quantitative-which the assessee has in a capital asset, whether such asset is corporeal or incorporeal. However, in order to subject any profit or gain received by or accruing to the assessee to the charge of ''capital gains'', the sine qua non in that the receipt or accrual must have originated in a ''transfer'' within the meaning of section 45 read with section 2 (47). This requirement clearly flows from the words ''any profits or gains arising from the transfer of a capital asset'' in section 45. There must, therefore, be a casual nexus between the ''transfer'', that is, the extinguishment of any rights in a capital asset and the profit or gain accruing to or received by the assessee. In other words, it is such extinguishment which must have occasioned the profit or gain and not any other independent transaction as a result of which some different rights are terminated by satisfaction or otherwise. The transaction, in order to attract the charge of tax as capital gains, must be such that consideration is received by the assessee or accrues to the assessee as a result of the extinguishment of the rights in the capital asset." (pp. 300-301)

It was further held by this Court:

...there was an extinguishment of the proprietary interest of the assessee in the capital asset, namely, the machinery, and profit arose to it in consequence of the payment made for such extinguishment. On account of fire, the machinery was so extensively damaged that, for all practical purposes, it ceased to be useful as such. Since the entire machinery in the premises of the insured was covered by insurance, the insurer paid the value of the machinery to the insured and took away the damaged machinery. The insured, in its turn, paid proportionate amount out of the compensation received from the insurer to the assessee and, in the course of this transaction, the bundle of proprietary rights which the assessee had in the machinery, including the rights to claim its possession back from the hirer on the termination of the contract of hire and to hold, enjoy and disposed it of, came to an end. There was thus a clear extinguishment of the rights of the assessee in the capital asset and consideration was received by it as a result of such extinguishment. There is no material to show that the amount received by the assessee was relatable to some other transaction which extinguished an altogether different right and, therefore, no other conclusion than that there was a ''transfer'' of the capital asset within the meaning of section 45 read with section 2(47) and that profit arose out of such ''transfer'' is possible." (p. 314)

11. The ratio of the decision of this Court in Vania Silk Mills'' case (supra) squarely applies to the facts of the present case. In the present case also, there was extinguishment of the assessee''s rights in the earlier existing capital asset represented by the promissory note of Rs. 25,000 with interest. His rights in the said asset were extinguished on account of the novatio which came into force as

per the terms of the sanctioned scheme of compromise and/or arrangement. As per those terms, the assessee was paid consideration represented by 45 percent of the original claim without interest and he was given entitlement to the allotment of equity shares on his having agreed to relinquish and to suffer extinguishment of his rights in the original capital asset. The promissory note dues thereafter became extinguished. No rights could flow in favour of the assessee on the basis of that defunct promissory note which had then got only historical significance. There was a casual connection between payment of 45 percent and allotment of equity shares with extinguishment of the assessee''s rights under the promissory note. It is, therefore, clear that when the assessee''s rights in the capital asset represented by the promissory note were extinguished, the said extinguishment was supported by adequate consideration. In that view of the matter, it has got to be held that the assessee had suffered short-term capital loss when he transferred his capital asset and that the said transfer was backed up by consideration. Thus, all the requirements of section 45, read with sections 2 (47) and 48, were fully complied with in the present case. As a result of the aforesaid discussion, the question referred to us for our opinion has to be answered in the affirmative, that is, in favour of the assessee and against the revenue. The Commissioner to pay costs of this reference to the assessee.

