IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'H' MUMBAI

BEFORE SHRI R.V.EASWAR [PRESIDENT] &
SHRI T.R.SOOD, ACCOUNTANT MEMBER

I.T.A.NO.6430/Mum/2007 - A.Y 2004-05

Asst. Commissioner of I.T., Circle 6(1), Mumbai	Vs.	M/s ABC Bearings Ltd. [formerly known as M/s Antifriction Bearings Corpn. Ltd.] 402-B, Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai 400 018 **PAN NO.AAACT 5018 Q**
(Appellant)		(Respondent)
Revenue by	:	Shri S.K.Pahad [CIT]
Assessee by	:	Smt. Aarti Vissanji.

O R D E R

Per T.R.SOOD, AM:

In this appeal, the revenue has raised the following three grounds:.

1. Whether on the facts and in the circumstances of the case, the Ld. CIT[A] is justified in deleting the disallowance of Rs.3.88 crores even though the assessee failed to produce relevant account books, bills and vouchers before the AO.
2. Whether on the facts and in the circumstances of the case, the Ld. CIT[A] is justified in deleting the disallowance of Rs.87,05,400/- even though the AO had given a finding that the said debt had not become bad during the relevant accounting year. In support of this ground, reliance is placed upon Madras High Court decision in the case of South India Surgical (153 Taxman 491) and Gujarat High Court decision in the case of Dhall Enterprises (207 ITR 729).
3. Whether on the facts and in the circumstances of the case, the Ld. CIT[A] is justified in deleting the disallowance of long term capital loss of Rs.37,04,987/- made by the AO and holding that conversion of UTI-64 units into UTI 6.75% Tax Free Bonds amounts to transfer within the meaning of Section 2[47] of the I.T.Act. In this connection it is submitted that definition of transfer u/s.2[47][iv] covers only conversion of asset into stock in trade of business which is not the case here.

2. Ground No.1: After hearing both the parties, we find that during assessment proceedings AO noticed that assessee had debited

"manufacturing expenses" in profit & loss account amounting to Rs.7763.41 lakhs. Assessee was specifically asked to give details of these expenses and produce books of accounts and bills and vouchers for verification of these expenses. In response to the same, assessee filed only groupings of profit & loss account giving head-wise expenditures. Assessee was again asked to produce books of accounts, bills and vouchers. However, no compliance was made. In this background, AO observed that the burden was on the assessee to prove that expenses have been incurred for the purpose of business and since no documentary evidence was filed, an adhoc disallowance of 5% amounting to Rs.3.88 crores was made to the income of the ass.

3. Before the CIT(A), it was mainly submitted that no such addition has been made in past and the books of accounts were duly audited. It was further submitted that accounting records were being maintained at three locations, viz., Bharoch plant, Lonavala Plant and Mumbai office. The accounting records run into 175 to 200 box files containing details in respect of payments and receipt vouchers [approximately no.3000], cash and bank payment vouchers [approximately no.10,000], general vouchers [approximately no.88], expenses vouchers [approximately no.13000], goods receipt vouchers [approximately no.11000] as well as invoices [approximately no.1500] etc. Therefore, it was not practicable and rather than very difficult to produce such voluminous records which were being maintained at

three different offices. The ld. CIT(A) accepted the submissions and deleted the addition vide para 6.3 of his order, which is as under:

> "6.3 I have considered the submissions of the AR and in my view the AO is not justified in disallowing 5% of the expenditure debited to P&L a/c simply on the ground that they are not for the business. The AR has already made his point that the expenses are only for the business and not personal in nature. All these expenses are duly audited by Commissioner of Income Tax (Appeals) and they have not pointed out any expenditure which is not related to the business. Hence the disallowance is unwarranted and need to be deleted. I agree with the view of the AR that the disallowance of 5% of the total manufacturing and other expenses are not warranted unless it is proved that any of the expenditure are not for the business of the assessee. The AO is directed to delete this addition. This ground of appeal is allowed."

4. Before us, the Ld.DR submitted that the AO had specifically asked to produce bills and vouchers for verification as well as books of accounts which were not submitted before the AO or even before the CIT(A), still, CIT(A) has allowed the relief. He argued that the onus is always on the assessee to prove the expenditure for which assessee was duty bound to produce the books of accounts and other supporting documents, which it failed to do so. Merely because, accounts were audited, assessee cannot shy away from producing records.

5. On the other hand, the Ld.counsel of the assessee reiterated the submissions made before the CIT(A). She argued that in past no such additions have been made. Since the additions have been made on an adhoc basis, the same are not sustainable. She also emphasized that assessee was having voluminous records and, therefore, it was not possible to produce the same. She also pointed out that notice to produce books of accounts and bills and vouchers was given only on

26-10-006 and assessment has been finalized on 18-12-2006 and, thus, very little time was given to produce these voluminous records. While concluding, she submitted that if Bench is of the opinion that such records still need to be produced, then an opportunity may be given for the same.

6. We have considered the rival submissions carefully and agree with the submissions of the Ld.DR that once the AO wanted to verify the expenses, assessee was duty bound to produce the books of accounts and other bills and vouchers for his verification. Merely because, records are voluminous, that cannot be a reason for non production of such records before the Assessing Authority. However, we find merit in the submissions of the Ld.counsel of the assessee that very little time was given to produce these records and, therefore, in the interests of justices, we set aside the order of the ld. CIT(A) and remit the matter back to the file of the AO with a direction to give sufficient opportunity to the assessee to produce books of accounts and bills and vouchers and then decide the issue accordingly. Assessee is also directed to produce all books of accounts and relevant supporting evidence for verification of the AO.

7. Ground No.2: After hearing both the parties, we find that during the assessment proceedings AO noticed that the assessee has made a claim of bad debts amounting to Rs.72,07,735/-. In response to the notice, the assessee submitted as under:

"From Provision

F.Y	Provision amount	Tr. To bad debts in F.Y. 03-04	Description	Balance
1999-00	31,748	31,748		Nil
2000-01	1,922,718	1,922,718	As per list	Nil
2001-02	1,099,020	1,099,020	As per list	Nil
2002-03	7,199,688	5,651,953	As per list	1,467,735
	16,173,174	8,705,440		1,467,735

Balance in books of account as on 31.03.04

2,965,439

Computation of income attached with return of income for F.Y 2003-04

Less: from income for bad debts w/o Rs.

8,705,440

> Add: for provision for Bad debts Rs.
>
> 1,497,704
>
> Net amount reduced from income computation as single item
>
> 7.207,735
>
> Provision made in earlier year was not considered as allowance in respective years.
>
> The amounts claimed as bad debts have been written off in the books of account.
> The amount are in the nature of discounts, claims price difference etc. by customers."

After considering the above, AO observed that instead of showing that how conditions have been fulfilled for claiming of bad debts, assessee has merely given calculation of bad debts. He further observed that the assessee has not been able to prove that debts had really become bad and, therefore, disallowed this claim.

8. Before the CIT(A), it was mainly argued that the assessee had made provision for debts in the earlier year, but the same was not claimed as bad debts. It was further explained that these amounts were now being claimed because some of the debts had become bad and some of the debts were disputed on account of quality issue, price difference etc. It was also explained that there was a fire in the chambers of the assessee company at Poonam Chambers, Worli, Mumbai and everything in the office turned into ashes and most of the records maintained was really destroyed and, therefore, it was difficult to produce further details. It was pointed out that most of the debts were outstanding for long period and details of the same were filed as per annexure 'E'. The ld. CIT(A) after examining the submissions,

agreed with the same and deleted the disallowance vide para 4.3 as under:

> "4.3 I have considered the submissions of the AR and findings of the AO. The AO has disallowed the claim of the appellant on the ground that the assessee has not proved that the debt has become bad. Under the amended provisions of section 36[1][vii] the assessee is not required to furnish demonstrative proof that the debt has become bad. If any debt is not recoverable by the assessee, a mere writing off in the books of accounts is sufficient to claim the debt. I agree with the submission of the AR that the decision of ITAT Mumbai in the case of DCIT vs. Oman International Bank S.A.O.G. [100 ITD 285] would hold good and the assessee is not required to give demonstrative proof that the debt has become bad. The AO is directed to delete this addition. Hence the claim of the appellant is allowed."

9. Before us, the Ld.DR submitted that no doubt, after the change in law w.e.f. 1-4-1989 it is no more the duty of the assessee to prove that the debt had really become bad, however, still, assessee was duty bound to show that such claim of bad debt has been written off on bona fide basis and in this regard he relied on the decision of the Hon'ble Bombay High Court in the case of Oman International [313 ITR **128].**

10. On the other hand, the Ld.counsel of the assessee submitted that during the year, the claim for only Rs.72,07,735/- was made during the year. She explained that the provision for bad debts was made in the earlier year which was not claimed, but now the debts have really become bad and that is why claim was being made and the amount was being written off by debiting the provision for doubtful debts because parties accounts have already been closed when provision for doubtful debts was claimed. She further submitted that all these debts are old and the claims were being written off because few

of the concerns from whom debts were recoverable have been closed in many other cases, the debtors have refused to pay mainly raising disputes regarding quality issues and price. In any case, there is no further condition in law that claiming bad debts except for writing off the bad debt and in this regard she relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. TRF Ltd. [323 ITR 395].

11. We have considered the rival submissions carefully and find force in the submissions of the Ld.counsel of the assessee. We find that assessee had created a provision for bad debts for various years as under:

F.Y	Provision amount	Tr. To bad debts in F.Y. 03-04
1999-00	31,748	31,748
2000-01	1,922,718	1,922,718
2001-02	1,099,020	1,099,020
2002-03	7,199,688	5,651,953
	16,173,174	8,705,440

Out of the above provision, a sum of Rs.14,97,704/- was still kept as a provision and balance of bad debts amounting to Rs.72,07,735/- was claimed. This shows that the claim was for the earlier years and, therefore, assessee has written off the same on bona fide basis. After the amendment in sec.36 w.e.f. 1-4-1989. The main requirement of law is that such debts should have been written off, which in the present case has been complied with. The bonafides of the assessee are further clear from the fact that in the earlier year only provision was created and no claim for bad debt was made. In any case, there was a fire in the assessee's office and no further records were available

to prove this point. In this background, we find nothing wrong in the order of the ld. CIT(A) and confirm the same.

12. Ground No.3: After hearing both the parties, we find that during the assessment proceedings, AO noticed that assessee has claimed a capital loss of Rs.37,04,987/- on account of conversion of units of UTI US-64 into UTI 6.75% Tax Free Bonds. On query regarding under which provision of the Act this loss was allowable, assessee filed only details evidencing conversion of UTI US-64 units into tax free bonds. AO was of the view that conversion of units into bonds did not amount to transfer, hence there was no question of any capital gain or loss arising out of such conversion and, accordingly, this loss was disallowed.

13. Before the CIT(A), it was mainly submitted that the term 'transfer' defined in sec.2[47] of the Act would include sale, exchange or relinquishment of an asset and hence assessee was eligible for the loss. The ld. CIT(A) allowed the loss as per para-9.3 which is as under:

> "9.3 I agree with the findings of the AR that conversion is included in the terms 'Transfer' as envisaged in section 2[47]. Hence any loss on account of sale or exchange or relinquishment of the assets would be allowable. The AO is directed to allow the claim of capital loss. This ground of appeal is allowed."

14. Before us, the Ld.DR submitted that the term 'transfer' has been defined u/s.2[47] and conversion of UTI US-64 units into tax free bonds would not be covered by such definition because it is not a case of sale or exchange or relinquishment or even extinguishment of any rights. He further referring to sec.47[x] which talks of transfer by way

of conversion of bonds or debentures and provides that such conversion of units is not to be treated as transfer.

15. On the other hand, the Ld.counsel of the assessee submitted that there seems to be a conflict in the argument of the Ld.DR when he refers to the provisions of sec.2[47] and section 47[x] because, sec.47 itself starts with the phrase "that nothing contained in sec.45 shall apply to following transfer", which means that first a transaction has to be "transfer" and only then the question of not treating the same as transfer would arise. She then referred to sec.2[47] which defines the term 'transfer', and submitted that assessee's case would be covered under exchange or relinquishment or in any case clause [ii] of sec.2[47] i.e. extinguishment. She explained that UTI was in financial difficulty in the year 2003 and, therefore, proposed a scheme by which unit holders were given two options i.e. [i] to surrender the units and obtain the cash or [ii] to surrender the units and obtain fresh tax free bonds which were to be issued to such unit holders. The unit holders of less than 5000 units were to be allotted tax free bonds @ Rs.12 per unit and the balance of the units were to be issued @ Rs.10/- per unit. She further submitted that since assessee exercised the second option that would practically mean that assessee surrendered the existing holding of the units against which a new instrument was issued by the UTI. According to her, this would mean 'exchange', because one instrument was exchanged for another or sale as UTI had brought the old units and issued the new units. In this

regard, she relied on the decision of the Hon'ble Supreme Court in the case of Anarkali Sarabhai vs. CIT [224 ITR 422] wherein even redemption of shares by the company has been held to be a transfer. She also filed the copy of the scheme announced by Administrator of Specified Undertaking office Unit Trust of India as well as copy of the computation sheet for capital loss.

16. We have considered the rival submissions carefully in the light of the material on record as well as the decisions cited by the parties. We find that Unit Trust of India was earlier issuing US-64 units which were readily tradable in the market and proceedings of such units used to be invested in various securities such as shares of various listed companies, government bonds etc. In the year 2002-03, Unit Trust of India faced severe financial crunch and Net Asset Value [NAV] of the US-64 units perhaps went below the face value i.e. Rs.10/- per unit. To help various unit holders of US-64, Government of India decided to close the various schemes formulated by Unit Trust of India and it was decided to give two options to the various investors i.e. [i] either to surrender the units and take cash or [ii] get the units converted into 6.75% tax free bonds guaranteed by the Government of India. The price fixed for first 5000 units was Rs.12/- per unit to help the small investors and beyond that the price was fixed at Rs.10/- per unit. The exact scheme announced by the Unit Trust of India, copy of which has been filed by the ld. counsel of the assessee, is as under:

Administrator of the Specified Undertaking
of the Unit Trust of India
Mumbai -400 020

THE ANTIFRICTION BEARINGS
Investor ID: 136366645
Units : 5610.000

Dear Unit holder,

Conversion of Unit Scheme 64 units to
6.75% Tax Free US 64 Bonds guaranteed by Government of India

We are pleased to inform you about the exclusive offer to the Investors of Unit Scheme 1964. Recognising the continued and valuable support extended by you in remaining invested in the scheme till now, the Government of India backed 6.75% Tax-free Bond in lieu of US 64 units is being offered to you.

It has been decided to terminate Unit Scheme 64 in its present form, with effect from June 1, 2003. To add value to your redemption, your are being given the option of converting the units into Tax-free tradeable bonds. Those bonds have a 5-year tenure with a coupon rate of 6.75% p.a. payable half-yearly. Interest and the principal at maturity carry sovereign guarantee of the Government of India. Liquidity is of highest order since these bonds are transferable and are tradeable in the market. This offer backed by Government of India provides superior returns as compared to returns currently available in the market. The three requirements of safely, liquidity and superior returns have been incorporated in the bond.

The offer for converting the US 64 units into Bonds is available only to those unit holders whose repurchase value of their units under their investor identification number (id) as on 31st May 2003 is Rs 5,000 or above. The Bond can be held by Banks, PSUs, Corporates etc., in addition to individuals i.e. all categories of investors that may result in higher demand of the instrument in due course.

The salient features of the tax tree bonds are as under:

1. The rate of interest is 6.75% per annum payable half yearly (annualized yield =6.86)
2. Interest income is fully exempt from income-tax.

The pre-tax returns will be much higher depending on the tax slab of the investor

Tax Slab 35%	Tax Slab 30%	Tax Slab 20%	Tax Slab 10%
10.38%	9.64%	8.44%	7.50%

3. Tenure of the bond is 5 years
4. Issue date will be June 1, 2003 and the bonds will mature on June 1, 2008
5. Face value of a bond is Rs 100.
6. The Bond is transferable
7. The Bond is tradeable in the market providing liquidity after 1st June 2003 also
8. Bonds can be held by all categories of investors.
9. The principal and the interest are guaranteed by Government of India (COI).

Example for issue of bonds:
If the investor holds 15,000 units, the first 5,000 units are covered under Category 'A' @ Rs 12 in May 2003 and the balance 10,000 units are under Category 'B' @ Rs 10 as on 31st May 2003, the total purchase value of the units is Rs 1,60,000/- (Rs 60,000/- + Rs 1,00,000/-). Investor will be issued 1600 bonds, of face value Rs 100/- each, effective from 1st June 2003.

Option

If you wish to opt for conversion, no action is required at your end. You will receive the new certificates of Tax-free bonds to your address by May 1, 2003.

Alternatively, if you wish to repurchase the units at the rates applicable in May 2003 (Rs 12 or Rs 10), the enclosed option form duly signed, may be submitted to the nearest UTI branch or the Registrar (address printed on reverse) latest by 4th April 2003.

In the case of repurchase option given by 4th April 2003, the repurchase cheques dated 1st May 2003 (for category 'A' units / 31st May 2003 (for category 'B' units) will be sent by the first week of May 2003).

For unit holders where the repurchase value is less than Rs 5000/-, the cheque towards the repurchase proceeds will be issued during May 2003.

In case we do not receive the option form, it would be presumed that you have consented to take the tax-free US64 bonds. The bond certificate would be dispatched by 1st May 2003. Even after receipt of bond certificate, you still have the option of repurchasing US64 units till 31 May 2003 by surre3ndering Bond certificate duly discharged.

I am sure you have reasons enough for continuing your investment in the form of 6.75% Tax-free US 64 Bonds guaranteed by Government of India."

The above scheme clearly shows that every investor who was holding units of Unit Trust of India had two options i.e. [i] either to take the money back from Unit Trust of India by surrendering the units or [ii] receive 6.75% tax free US-64 bonds guaranteed by the Government of India. Thus, this is a clear cut case of conversion in a case where assessee chooses to replace one type of security i.e. US-64 units with another type of security i.e. Tax Free Bonds, as has happened in the case of the assessee before us. We, further find that the assessee had computed the capital gain [loss] during the year as under:

ABC BEARING LTD

ASSESSMENT YEAR : 2004-2005

STATEMENT SHOWING LONG TERM CAPITAL GAINS/(LOSS) ON SALE OF SHARES/UNITS OF MF

Sr. N	Name of the Co	No of shares	Dt of Purchase	Cost Infl. Index	Cost (Rs)	Dt of Sale	Sale Proceeds	Index Cost	Indexed Loss	LTCG Without Index
1	Conversion	25,100	1981-82	100	335,799	2003-04	261,308	1,554,749	1,293,441	-
	of UTI US	8,300	1982-83	109	111,041	2003-04	86,409	471,670	385,261	-
	64 Units to	32,200	1983-84	116	430,786	2003-04	335,224	1,719,430	1,384,206	-
	UTI 6.75%	26,300	1993-94	244	351,853	2003-04	273,801	667,655	393,854	-
	Tax Free Bonds	18,380	1994-95	259	245,895	2003-04	191,348	439,573	248,224	-
	Bonus	11,208	1994-95	-	-	2003-04	114,809	-		114,809
		121,308			1,475,374		1,262,900	4,853,078	3,704,987	114,809

The above chart clearly shows that assessee has treated conversion of US-64 units into tax free bonds as a case of sale.

17. We further find that any capital receipt which can be brought under the provisions of sec.45, there has to be disposal of an asset by way of any of the modes referred to in the definition of 'transfer' u/s.2[47]. Unless and untill there is a transfer of an asset as envisaged by sec.2[47], no capital gain or loss can be computed u/s.45, which means, if there is any gain or loss on account of any receipt but transfer of the asset is not involved, then provisions of sec.45 cannot be applied. This becomes clear from sec.45[1] which reads as under:

> "45(1) – Any profits or gains arising from the transfer of capital asset effected in the previous year shall……."

Thus, it is clear from the provision itself that transfer of an asset is a primary condition which must be satisfied before the receipt can be treated as capital gain and/or capital loss u/s.45. The word 'transfer' has been defined in sec.2[47] and the relevant portion is as under:

Sec.2(47) :

"transfer", in relation to a capital asset, includes,—

(*i*) the sale , exchange or relinquishment of the asset ; or

(*ii*) the extinguishment of any rights therein ; or

(iii) .. .. ..

(iv) .. .. ..

From the above computation of loss filed by the assessee, it is clear that assessee has treated the transfer as that of sale, but the same does not amount to sale. Because what has happened is that, the assessee has surrendered the old units of US-64 in line with the scheme announced by the Unit Trust of India and got the new tax free bonds. The ld. counsel of the assessee had strongly relied on the decision of the Hon'ble Supreme Court in the case of Anarkali Sarabhai vs. CIT [supra]. However, in that case the facts are quite different. In that case the individual assessee was holding 297 redeemable preference shares of Universal Corporation Pvt. Ltd. The company decided to redeem the preference shares and assessee received a sum of Rs.2,97,000/- which was more than the amount assessee had paid for acquiring these shares. It was urged that no capital gain tax is attracted u/s.45 because redemption of shares does not amount to transfer. However, the Hon'ble Supreme Court referred to the definition of 'transfer' and held that in this case redemption would amount to transfer. It is pertinent to note that at page 426 of the report, the Hon'ble Supreme Court has give the reasoning which is as under:

> "Clause (47) of section 2 gives an inclusive definition to "transfer". This is not an exhaustive definition. Clause [i] of sub-section [47] of section

> 2 speaks of "sale, exchange or relinquishment of the asset". This implies parting with any capital asset for gain which will be taxable under section 45. In the instant case, what has happened is that the assessee had purchased the preference shares at less than face value. When the shares were redeemed by the company, she received more than what she had paid for the shares. In order to get this amount the assessee had to give up or abandon or surrender the shares held by her. The meaning of the word "relinquish" as given in *Webster's Comprehensive Dictionary,* International edition, 1984, is "1. To give up; abandon; surrender. 2. To cease to demand' renounce; to relinquish a claim. 3. To let go [a hold or something held]." The assessee in this case has given up the shares and has received in lieu thereof a sum of money. This, in our view, comes clearly within the mischief of section 2[47][i]."
>
> "That apart, in our view, the transaction amounts to "sale"."

The Hon'ble Supreme Court has discussed the issue in further details and referred to various provisions of the Companies Act. The fundamental reason is that in case of redemption the capital of company stands reduced, which means, that the company itself has bought its shares and for that matter in the hands of a person who has surrendered the shares for the purpose of redemption, the transfer would amount to sale. Therefore, in our understanding, this decision cannot assist the case of the assessee.

18. To further understand the meaning of the 'transfer', let us refer to the decision of the Hon'ble Supreme Court in the case of CIT vs. Rasiklal Maneklal [HUF] 177 ITR 198. In that case, the assessee was holding 90 shares in one S. company of face value of Rs.100/- each. Pursuant to the scheme of amalgamation sanctioned by the High Court, the holders of the shares in S. company were to be allotted one share of Rs.125/- each of NS Company for two shares in S. company and S. Company was to be dissolved. The assessee in that case was allotted 45 shares in N.S company. A question arose, whether this

would amount to transfer and the Hon'ble Supreme Court held that there was neither an 'exchange' nor a 'relinquishment' in this transaction. The Hon'ble Supreme Court observed as under:

> *"An "exchange" involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another.*
>
> *A "relinquishment" takes place when the owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the relinquishment. Where, upon amalgamation, the company in which the assessee holds shares stand dissolved, there is no "relinquishment" by the assessee."*

The apex court had also observed that in case of exchange that one person transfers a property to another person in exchange of another property, the property continues to be in existence. In that case, shares of S. company had ceased to be in existence and therefore the transaction did not involve any transfer. Similarly, in the case before us, the units of US-64 of Unit Trust of India ceased to be in existence after the assessee opted for conversion of the units into tax free bonds and therefore no exchange can said to have taken place which can be construed as transfer. Similarly, in the case of relinquishment also, the owner withdraws himself from the property and abandon his rights, but the property continues to be in existence. In the case before us, first of all, the assessee has not abandoned his rights because assessee got new tax free bonds on the strength of its rights in the old US-64 units which it was holding. Further, these units had ceased to be existing after such conversion. The court had further observed that assessee had got new shares in the NS company because of holding of 90

shares in the S. company which was a qualifying condition. In the case before us also, the assessee company got the new tax free bonds on the basis of its holdings of US-64 units.

19. Though the old US-64 units had ceased to exist and in place of them and on the strength of those holdings, the assessee has been allotted new tax free bonds and, therefore, even the extended definition of relinquishment is not applicable. We further find that even the term 'extinguish' is not applicable in this case because, though, old units of US-64 has ceased to be existing, but in place of them a new asset in the form of UTI Tax Free Bonds have come into existence. Thus, it is not a case of extinguishment but a simple case of conversion of one asset into another. In view of the above discussion, we are of the humble opinion, that the transaction regarding surrender of US-64 units for converting the same into Unit Trust of India 6.75% tax free bonds in terms of the scheme of the Unit Trust of India which was guaranteed by the Government of India, would not amount to transfer. Therefore, we set aside the order of the ld. CIT[A] and restore that of the AO.

20. In the result, revenue's appeal is partly allowed for statistical purposes.

Order pronounced on this 16th day of July, 2010.

Sd/-	Sd/-
(R.V.EASWAR)	**(T.R.SOOD)**
PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai: 16th July, 2010.

P/-*