6. The assessee preferred an appeal before the Ld. CIT(A) who vide order dated 02.07.2019 deleted the addition made by the Assessing Officer by observing as under:

I have duly considered the submissions of the appellant. The brief facts of the case are that the appellant is engaged in the manufacturing of plastic water tanks and milk canes under the name and style as M/s. Shree Maruti Udyog. The appellant was holding 3,50,000 shares of Lord Ganesha Minerals Pvt. Ltd. The said company was holding rights in mining of iron-ores at Sundur, Hospet, Karnataka. During the financial year 2012-13, the appellant came into contact with two parties namely Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. who showed interest in purchase of shares of Lord Ganesha Minerals Pvt. Ltd. Both the potential buyers were engaged in the manufacturing of M.S. Billets & Steel Bars and therefore required iron-ore as raw material. As a result, the appellant entered into an agreement to sell the shares whereby he agreed to sell 1,35,625 shares of Lord Ganesha Minerals Pvt. Ltd. to Nilesh Steel & Alloys Pvt. Ltd. and 2,14,375 shares M/s. Dhanlaxmi TMT bars Pvt. Ltd. at the rate of Rs.305/- per share for a consideration of Rs.4,13,65,625/- and Rs.6,53,84,375/- respectively. These agreements dated 09.04.2012 and 07.05.2012 with M/s. Dhanlaxmi TMT bars Pvt. Ltd. and Nilesh Steel & Alloys Pvt. Ltd. respectively were duly notarized before the Notary, Government of India. The appellant also received advances of Rs.22,00,000/- from Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. against proposed sale of shares. It was however categorically mentioned in clause-5 of the agreement to sale that the appellant needed to obtain no objection/approval from all other shareholders of said company i.e. Lord Ganesha Minerals Pvt. Ltd. for transfer of his shares and also for getting direct rights in favour of purchasers in iron-ores mined by Lord Ganesha Minerals Pvt. Ltd. Further the appellant also required time of one month for getting said approval and complete all formalities in this regard. It was expressly agreed between parties in clause-5 of agreement to sale that in any case, the appellant shall execute final share transfer deed of freehold shares with all required approvals within three months from date of these agreements. Later on, the appellant could not get consent of other shareholders for granting mining rights of iron-ore at Sundur, Hospet, Karnataka to Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. Meanwhile there was also change in the government policies and there were restraints on transfer of iron-ore mining leases. In view of above facts, the appellant vide letter dated 09.06.2012 expressed his inability to sell the share to Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. Consequently both the purchasers sought damages as per clause-12 of the agreements to sale

pertaining to breach of contract. The clause-12 of the agreements to sale dated 09.04.2012 & 07.05.2012 categorically provided that as the vendor had assured to get all approvals, no objections from other shareholders and physical share certificates within one month from date of this contract and purchasers had also assured for immediate payment on compliance of same, therefore in the event of vendor failing to execute transfer deed and give delivery of shares within stipulated period, the purchasers shall be entitled to damages of Rs.15 lakhs per day for delay on part of vendor. Besides, clauses-13 & 14 of the agreements to sale dated 09.04.2012 & 07.05.2012 also provided that if the appellant failed to obtain said consent or failed to give delivery of share or for any reason he, in future, intended to sell shares at higher rate than agreed between parties, then such excess price shall be shared between Nilesh Steel & Alloys Pvt. Ltd./Dhanlaxmi TMT Bars Pvt. Ltd. and the appellant namely Shri Somnath Sakre in ratio of 70:30 i.e. 70% of excess price realized over and above Rs.305/- per share, if any. The said clauses are reproduced as under:

> "13. The purchaser shall have right to assign all beneficial rights, interests and obligations arising out of this agreement to any third party and inform the seller accordingly in writing. The vendor shall have no objection if the purchaser manages to secure buyers for the said shares at a price/rate which may be higher than the agreed consideration under this agreement. It was mutually agreed and decided that whatever superfluous amount that the purchaser may be able to negotiate over and above the base price under this agreement, the excess consideration shall be shared in ratio of 70:30 between purchaser and the vendor respectively. The vendor should not demand or be entitled to claim any additional or escalated price/rate from the purchaser over and above its share of 30% of escalated price.
>
> 14. It is hereby expressly agreed that if vendor fails to give delivery of shares to the purchaser within three months time or if for any reason, vendor desires to sell shares to any another party at a price/rate which may be higher than the agreed consideration under this agreement then such excess price shall be shared between purchaser and vendor in ratio of 70:30 i.e. 70% of excess sales price should be paid to the present purchaser by the vendor or his nominee. Under no circumstances, the vendor shall demand anything more than 30% of the escalated price over and above price agreed in this agreement. The vendor shall not enter into any agreement for sale of subject

shares, shall not transfer, assign and create any encumbrance on subject shares with any other party without obtaining prior written consent of present purchaser. It is agreed that by executing this agreement, purchaser has become legally entitled to claim his share of 70% of escalated price and he can initiate all available civil as well as criminal legal proceedings against vendor in the event of vendor selling shares without purchaser's written consent or vendor refusing to pay 70% of escalated price over and above price fixed in this agreement".

Subsequently the appellant entered into cancellation agreements dated 02.07.2012 with both the purchasers namely Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. as he got another proposal in consultation with the other shareholders of Lord Ganesha Minerals Pvt. Ltd. for sale of shares to KSL Holding Pvt. Ltd. The appellant accordingly sold his 3,50,000 shares to KSL Holding Pvt. Ltd. @ Rs.625/- per share for a sale consideration of Rs.21,87,50,000/- resulting into capital gains liability in his hands. The appellant thereafter paid an amount of Rs.7,84,00,000/- to both the purchasers namely Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. considering the clauses-12, 13 & 14 of agreements to sale and cancellation agreement dated 02.07.2012. The amount of Rs.7,84,00,000/- was accordingly paid to both the purchasers through the banking channels and it was claimed as an expenditure while computing the long term capital gain. However the AO disallowed said expenditure on the ground that cancellation agreement entered into by the appellant and other two parties was in the nature of colourable device to minimize the long term capital gains. The following observations were made by the AO while disallowing said claim:

"4.3 On verification of the case record, it is found that the assessee has sold 3,50,000 equity shares of Lord Ganesha Minerals Pvt. Ltd., Pune (LGMPL) to KSL Holding Pvt. Ltd. & received consideration of Rs.21,87,50,000/- vide share transfer Form no. 075773 dated 03.07.2012. The assessee had claimed the selling expenses at Rs.7,84,00,000/-.

4.4 Further, on going through the case record, it is observed that the assessee had cancelled the agreement dated 02.07.2012 for sale of shares entered into with Nilesh Steel & Alloys Pvt. Ltd. for 2,14,375 shares out of 3,50,000 shares and with M/s. Dhanlaxmi TMT Bars Pvt. Ltd. for 1,35,625 shares out of 3,50,000 shares of LGMPL and agreed to pay consideration of Rs.3,03,80,000/- to Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT

Bars Pvt. Ltd. respectively for breach of contract entered into with both the parties on 07.05.2012 & 09.04.2012 respectively. However, while entering into the agreement for sale of shares to the above mentioned parties, the assessee could not get consent from the shareholder/director of Lord Ganesha Minerals Pvt. Ltd. Therefore, cancellation agreement for sale of shares was executed without paying any stamp duty and the parties instead of going to court for settlement of dispute, if any, objected to the sale of shares to KSL Holding Pvt. Ltd. and finally agreed to execute cancellation deed. However, cancellation agreement executed by both the parties is in the nature of colourable device to minimize the long term capital gains. Hence, categorizing payment of Rs.7,84,00,000/- as selling expenses is not in order. Therefore deduction allowed of Rs.7,84,00,000/- while computing LTCG is not in order. Hence deduction claimed by the assessee while computing long term capital gain amounting to Rs.7,84,00,000/- is disallowed and the same is treated as income from long term capital gain. Penalty proceeding U/s 271(1)(c) of the Act is initiated separately for furnishing inaccurate particulars of income".

During the course of appellant proceedings, the counsel of appellant has argued that the AO had made the addition of Rs.7,84,00,000/- alleging that it was colorable device but it was based on mere suspicion and surmises. There was not even an iota of evidence or justification for the AO to conclude that the cancellation agreement was a colorable device. It was argued that the AO had not brought on record any evidence even remotely justifying his said conclusion. The grievance of the AO that agreements for sale of shares/ cancellation were made on stamp paper of Rs.100 and these were not registered, was totally unfounded. It was argued that these were agreements to sell shares i.e. not final transfer of shares. As per section 17 of Indian Registration Act, 1908, registration was required only for documents having subject matter of immovable property having consideration above Rs.100/-. In the appellant's case, it was agreement to sell shares, being of moveable property. Therefore it did not require any registration under section 17 of Indian Registration Act, 1908. There were written contracts on stamp papers which were also notarized. In fact, no stamp duty was payable on such agreements. Stamp duty was payable only on final transfer of shares and only when transfer deed was executed. In appellant's case, final transfer of shares did not take place as the agreement was cancelled. Article 15 to schedule-1 of Bombay

Stamp Act also provided stamp duty of Rs.100/- for instrument of cancellation. It was argued that claim of the appellant was genuine and therefore it was needed to be allowed fully. On careful consideration of facts and circumstances of the present case, I am inclined to accept the arguments of the appellants. **At the outset, both the recipients are assessed to tax.** They have also filed confirmatory letters before the AO which indicate their PANs. Both the recipients have also been regularly filing their returns of income including that for AY 2013-14. **Both the recipients namely Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxmi TMT bars Pvt. Ltd. have credited the amounts of Rs.4,80,20,000/- and Rs.3,03,80,000/- to their profit and loss accounts for AY 2013-14.** Thus the receipts in question have been offered to tax. The monies in question have been paid through banking channels and there is nothing on record to indicate that such payments were sham or the appellant had received equivalent amount in cash on earlier or later dates. **Further both the recipients were covered under search operations U/s 132 of the Act on 02.05.2013. Such search actions at their business premises/ residential premises of the directors did not yield any incriminating evidence indicating that agreement to sale, cancellation agreement or payments through banking channels were sham.** I fully agree with the counsel of the appellant that the AO has failed to bring any corroborative evidence on record to prove his case that such agreements were in the nature of colourable device so as to reduce/minimize the long term capital gains. Further the AO has not examined both the recipients so as to find out the truth of the matter. All the evidences filed by the appellant have been simply brushed aside by the AO on filmsy or preposterous grounds. The onus fully lay on the AO to prove that such agreements were sham and nothing has been brought on record to fortify his stand. The AO is also silent on the issue that the amount of Rs.7,84,00,000/- had been duly credited to the profit and loss accounts of both the recipients and stood offered to tax. Subsequently the ACIT, Central Circle-1, Aurangabad has finalized the assessments of both the recipients U/s 143(3) r.w.s. 153A for AY 2013-14 on 23.03.2016 in the case of M/s. Dhanlaxmi TMT Bars Pvt. Ltd. and on 28.03.2016 in the case of Nilesh Steel & Alloys Pvt. Ltd. and no adverse inference has been drawn in respect of said transactions entered into by them with the appellant as regards the proposed sale of shares and subsequent cancellation agreement. Thus there is nothing on record to suggest any collusion between the appellant and both the purchasers. The inference of the AO that cancellation agreement entered into by the appellant is a

make-belief transaction has remained unsubstantiated. In view of above facts, there is nothing on record to justify the addition made by the AO. **In the case of CIT Vs. Pivete Finance Ltd. (192 taxman 21)**, the assessee had continuously resorted to sale of shares to another group company to reduce the tax burden and the Revenue disallowed the resultant losses claimed by the assessee by treating the relevant transactions as a colourable device to reduce the tax burden by relying on the decision of Hon'ble Supreme Court in the case of Mc. Dowell & Co. Ltd. (154 ITR 148). On appeal, the Hon'ble Punjab & Haryana High Court did not accept the stand of the revenue and allowed the claim of the assessee for loss by holding that once it was found that the transactions were genuine, then it could not be dubbed with 'colorable device'. **In support of this conclusion, the Hon'ble Punjab & Haryana High Court relied on the decision of Hon'ble Supreme Court in the case of Union of India Vs. Azadi Bachao Andolan (263 ITR 706) wherein it was held that an act of the assessee which is otherwise valid in law cannot be treated as non-est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest, as perceived by the department.** The decision of Hon'ble Punjab & Haryana in the case of Pivete Finance Ltd. (supra) is squarely applicable to the facts of the present case. **The Hon'ble Bombay High Court in the case of CIT Vs. Hede Consultancy Co. (P.) Ltd.** (49 taxmann.com 56) held that when the assessee sold shares of a company at a price quoted at stock exchange whereas shares of sister concern were sold at loss because said company was in red, there being no doubt about genuineness of share transactions, assessee's claim for set off of loss arising from sale of shares of sister concern against income arising from shares of other company was to be allowed. **The Hon'ble Gujarat High Court in CIT Vs. Special Prints Ltd. (33 taxman.com 463) held that once a transaction is genuine and traded at proper valuation, even if entered with a motive to avoid tax, would not become colourable device subject to any disqualification.** The Hon'ble Supreme Court also proceeded to approve the following view of Gujarat High Court in Banyan and Berry Vs. CIT (222 ITR 831) while interpreting McDowell's & Co. Ltd.'s case;

> "The court nowhere said that every action or inaction on the part of the taxpayer which results in reduction of tax liability to which he may be subjected in future, is to be viewed with suspicion and be treated as a device for avoidance of tax irrespective of legitimacy or genuineness of the act; an inference which unfortunately, in our opinion, the Tribunal

apparently appears to have drawn from the enunciation made in McDowell's case [1985] 154 ITR 148 (SC). The ratio of any decision has to be understood in the context it has been made. The facts and circumstances which lead to McDowell's decision leave us in no doubt that the principle enunciated in the above case has not affected the freedom of the citizen to act in a manner according to his requirements, his wishes in the manner of doing any trade, activity or planning his affairs with circumspection, within the framework of law, unless the same fall in the category of colourable device which may properly be called a device or a dubious method or a subterfuge clothed with apparent dignity.

18. The aforesaid discussion would show that once the transaction is genuine merely because it has been entered into with a motive to avoid tax, it would not become a colourable device and consequently, earn any disqualification".

In **Consolidated Finvest & Holdings Limited Vs. ACIT in ITA No.494/Del/2011,** the Hon'ble Delhi Tribunal examined a series of transactions between two related entities which resulted in capital loss in the hands of one entity. The assessee gave several advances to a related entity i.e. Jindal Polyfilms Limited When Jindal Polyfilms Limited was unable to repay these loans, it restructured the transaction by issuing optionally convertible preference shares to the assessee. Because of a change in guidelines issued by the Securities and Exchange Board of India which made promoter equity shareholding above a certain limit impermissible, these securities could not be converted into equity shares. Jindal Polyfilms Limited modified some of these securities into redeemable convertible preference shares. The assessee sold some of the optionally convertible securities and redeemed the remaining. Overall, after the sale and redemption, the assessee claimed long term capital loss on these transactions. As it had no long-term capital gain to set-off the capital loss against, the assessee claimed carry-forward of the loss in its returns of income. The Assessing Officer disallowed the loss on the ground that the series of transactions was a sham designed to transfer funds from the assessee to Jindal Polyfilms Limited and it enabled the assessee to show a capital loss. On appeal, the Hon'ble Delhi Tribunal observed that the AO could not support his conclusion with any reasoning or evidence except to state that the transaction resulted in long term capital loss that itself was a ground for holding it to be a sham. The Tribunal also observed that while the mere fact that a transaction between sister concerns

resulted in a capital loss can be a grounds for deeper investigation, it cannot be a ground for concluding that it is a sham. Given the fact that the earlier steps of the series of transactions was considered as genuine by the tax authorities, it was observed that the mere fact the last step resulted in capital loss for the assessee would not make the series of transactions a sham. Respectfully following the above decisions and facts of the present case, the addition of Rs.7,84,00,000/- made by the AO can't be sustained and same is directed to be deleted. The first ground of appeal is accordingly allowed.

In the second ground of appeal, the appellant has challenged the action of the AO to incorrectly charge interest U/s 234B of the Income Tax Act. However the interest U/s 234B has to be charged mandatorily in view of decision of Hon'ble Supreme Court in the case of CIT Vs. Anjum M. H. Ghaswala (252 ITR 1), Hon'ble Rajasthan High Court in the case of Hari Narain Soni Vs. ITO (322 ITR 444) and Honourable Delhi High Court in the case of CIT Vs. Saw Pipes Ltd (321 ITR 105). Accordingly this ground of appeal is dismissed.

In the result, the appeal of the assessee is treated as partly allowed.

7. Aggrieved with such order of the Ld. CIT(A) the Revenue preferred an appeal before the Tribunal and the Tribunal vide ITA No.1559/PUN/2019 order dated 23.01.2023 restored the matter to the file of the Ld. CIT(A) by observing as under:

> *"6. We have given our thoughtful consideration to the foregoing rival submissions and perused the lower authorities' respective findings. Suffice to say, it emerges from the learned CIT(A)'s detailed discussion that he has given much a weightage to the search action dated 02.05.2013 involving the recipient entities followed by the post-search enquiries and assessment in their respective cases to observe that the same had not yielded any incriminating material so far as the impugned claim of Rs.7,84,00,000/- is concerned. All this constrains us to observe that the CIT(A) ought to have independently examined the genuineness of the assessee's impugned claim in light of the above prima facie suspicious circumstances rather than discussing the search action in case of the twin recipient companies wherein the instant issue neither emanated from the alleged incriminating material nor there was any dispute to the said limited extent. Faced with this situation, we deem it appropriate that the CIT(A) needs to re-examine this sole issue independently vis-à-vis genuineness of the assessee's claim in the given facts and circumstances afresh, preferably within three effective opportunities of hearing, as per law. The Revenue's sole substantive ground succeeds for statistical purposes in very terms. We order accordingly."*

8. Thereafter, the Ld. CIT(A) / NFAC, on the basis of various arguments and submissions made by the assessee, deleted the addition by observing as under:

6.0 To begin with, there is no dispute that the assessee offered the sale consideration of Rs. 21,87,50,000/- received from sale of equity shares of Lord Ganesh Minerals Pvt Ltd, Pune (LGMPL) to KSL Holding Pvt. Ltd. The total number of shares sold were 3,50,000 at the rate of Rs 605 per share. Against the sale consideration received from LGMPL, the assessee claimed Rs 7,84,00,000 as selling expenses to NSAPL and DTL.

7.0 To examine the genuineness of the selling expenses paid to NSAPL and DTL, it is imperative to examine the following aspects of the transaction

1. Whether the parties NSAPL and DTL are genuine and whether the assessee made actual payment to the said parties?
2. Whether the sale agreements and the subsequent cancellation agreements resulting in payment of Rs.4,80,20,000/- and Rs.3,03,80,000/- to NSAPL and DTL respectively were valid contracts or a colourable device to minimise tax liability?
3. Whether the assessee and the companies NSAPL and DTL are related parties and was there hitherto any other transaction of the assessee with the companies.?
4. Whether the expenses were incurred wholly and exclusively for transfer of shares?

8.0 At the outset, both the recipients viz., M/s Nilesh Steel & Alloys Pvt. Ltd. and M/s. Dhanlaxni TMT bars Pvt. Ltd are operating in the field of iron and steel manufacture and are assessed to tax. Both the companies have been regularly filing their returns of income and have credited the amounts of Rs.4,80,20,000/- and Rs.3,03,80,000/- to their profit and loss accounts for AY 2013-14. They have also filed copy of their confirmatory letters before the AO which indicate their PANs.

9.0 The main contention of the AO in the assessment order is that the payment to NSAPL and DTL by the assessee was a colourable device to reduce the tax liability. One of the reasons for such arriving at such a conclusion is that the companies NSAPL and DTL set-off their current year losses against the income of Rs.4,80,20,000/- and Rs.3,03,80,000/- accrued on account of sale of their rights. A colourable device means a sham arrangement or transaction, camouflaged as a real transaction, lacking in commercial substance, and done only to obtain a tax benefit. After examining the assessment order, and the arguments of the assessee, it is pertinent here to note the following points

1. NSAPL and DMT are in the field of iron and steel manufacture and their interest in acquiring the shares of LGMPL, another company engaged in similar manufacturing operations, is not unusual or atypical. The intention of the companies to acquire the shares of LGMPL from the assessee is therefore not in doubt. Similarly, the intention of the assessee to sell the shares to unrelated third parties for a valid price is a regular practice.
2. The assessee's agreement with NSAPL and DTL to sell his shares in LGMPL were legally valid and executed in accordance with the extant laws. The agreements cannot be held to be dubious merely on account of them being unregistered. By the virtue of share purchase agreements both companies acquired right in the assets (shares).
3. The transaction with KSL resulted in higher gains to the assessee as the share price was negotiated at a higher rate of Rs 605 per share. The

price for sale of shares was earlier fixed at a lower sum of @ Rs 305 per share in the share purchase agreements with NSAPL and DTL. It was therefore legally necessary to cancel the agreements with NSAPL and DTL to sell the shares to KSL which offered a substantially higher price per share.

4. The cancellation agreement on 2.7.2012 clearly specifies the terms for relinquishment of rights of NSAPL and DTL and the quantum of compensation. The assessee has accordingly paid the amounts to the two unrelated parties through banking channels which have a direct nexus with the transfer of shares with KSL. The recipients have confirmed the receipt.
5. There is a gap of three months from the date of agreement for sale of shares and subsequent cancellation of agreement with NSAPL and DTL. Considering the reasons of the assessee stated in the submission, market trends, changes affecting the demand/supply of iron ore based on domestic policies, variations in the ore prices etc during this period, there is nothing unusual in the decision of the assessee to cancel the agreements with NSAPL and DTL and instead sell the shares to KSL.

In view of the above, it cannot be said that the transactions of the assessee with NSAPL and DTL were not real and that they lacked commercial substance.

10.0 The assessee no doubt claimed the amount of Rs 7,84,00,000 paid to NSAPL and DTL as expenditure against the sale consideration received from KSL. At the same time, the fact that the assessee offered a much higher sum as full value consideration for computing the capital gains on sale of shares to KSL cannot be overlooked. The payment made to NSAPL and DTL has a proximate nexus with sale of shares to KSL and in avoiding legal complexities for the assessee. Therefore, the assessee was well within his rights to claim the sum of Rs 7,84,00,000 as expenditure incurred wholly and exclusively in connection with transfer u/s 48 of the Act. That the recipient companies NSAPL and DTL set-off their losses against the compensation received from the assessee in the impugned year does not have a direct bearing on the issue at hand. As already stated, NSAPL and DTL are third parties and the assessee has no relation with them. Under normal circumstances, there is no payment to a third party without a valid business transaction. In the instant case, the records show that the initial agreement to sell the shares to NSAPL

and DTL was a regular transaction of the assessee to offload his share in LGMPL for a profit and the subsequent cancellation of the agreement was done with a motive to realise higher profit from sale of shares to KSL at a price higher than the previous agreement. Therefore, it cannot be said that the transaction with NSAPL and DTL was done with a motive to obtain tax benefit. The contention of the AO that the payment of Rs 7,84,00,000 resulted in net outgo of the sale consideration which otherwise would be tax in the hands of the assessee is therefore not acceptable and rejected.

In view of the above discussion, I hereby hold that the claim of the assessee is genuine and no disallowance of selling expenses of Rs 7,84,00,000 is warranted under the given facts and circumstances.

In result, the appeal of the assessee is allowed.

9. Aggrieved with such order of the Ld. CIT(A) / NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and in the circumstances, whether the CIT(A), NFAC, Delhi was correct in deleting the addition in the case of assessee wherein the assessee had cancelled the agreement dated 02/07/2012 for sale of shares entered into with Nilesh Steel and Alloys Pvt Ltd and Dhanlaxmi TMT Bars Pvt. Ltd and agreed pay consideration of Rs.4,80,20,000/- Rs.3,03,80,000/- to above two parties respectively as compensation towards breach of contract entered into with these parties without paying any stamp duty and these parties instead of going to court for settlement of dispute objected the sale of shares to KSL Holding Pvt. Ltd and assessee spontaneously agreed to execute cancellation deed, which is a colorable devise to minimize the tax liability?*

2. *On the facts and in the circumstances, whether the CIT(A), NFAC, was right in allowing the appeal of the assessee without appreciating the fact that as per profit and loss account of Nilesh Steel & Alloys Pvt. Ltd and Dhanlaxmi TMT Bars Pvt. Ltd for A.Y.2013-14, the profit before tax, (including the profit on sale of rights in shares of Rs.4,80,20,000/- and Rs.3,03,80,000/-respectively) is Rs.9,18,636/- and Rs.1,35,26,542/-. Thus, there is loss after excluding these amounts in both the cases. This shows that the assessee through these companies used the execution of agreement to sell and cancellation agreement as a colorable devise to minimize the tax liability and hence, the deduction of Rs.7,84,00,000/- claimed by the assessee as selling expenses while computing the long-term capital gain on transfer/sell of shares is not in order?*