



DEL HC: HC: Share Buy-Back Is Capital Reduction, Not Acquisition Of Assets; Not Taxable U/S 56(2)(X)

Facts of the Case

Globe Capital Market Limited ('Assessee'), engaged in share broking and clearing of trades, underwent assessment u/s 153A/143(3) of the Income Tax Act, 1961 (the 'Act') for AY 2018-19. During the relevant year, the company bought back 28,62,500 equity shares at Rs. 313.40 per share, aggregating Rs. 89.71 crores. The Assessing Officer compared this price with the fair market value of Rs. 370.46 per share under Rule 11UA of the Income Tax Rules, 1962 and made an addition of Rs. 16,33,34,250 u/s 56(2)(x) of the Act, treating the buy-back as an acquisition of property at below Fair Market Value ('FMV'). The CIT(A) deleted the addition, holding that a buy-back of its own shares is a capital reduction and not a purchase of property. The Tribunal affirmed the CIT(A)'s view.

Contentions of the Revenue

The Revenue argued that section 56(2)(x) of the Act does not distinguish between shares of the Assessee company and shares of any other company. Since shares are included within the definition of "property," it was contended that the difference between FMV and the buy-back price was rightly taxable as deemed income. The Revenue also submitted that the scope of section 56(2)(x) of the Act is wider than the earlier section 56(2)(viiia) of the Act, and therefore the Tribunal's reliance on an earlier decision was misplaced.

Contentions of the Assessee

The Assessee contended that the transaction was not a purchase of an asset simpliciter, but a lawful buy-back u/s 68 of the Companies Act, 2013. It was argued that buy-back is a recognised mode of capital reduction, carried out from free reserves and securities premium after due corporate approvals. Once the shares are bought back, they are extinguished and physically destroyed, so there is no acquisition of property that can generate deemed profit u/s 56(2)(x) of the Act.

Observations and Ruling of the High Court

The Delhi High Court held that the transaction was a buy-back of the company's own shares pursuant to a lawful buy-back offer, and therefore it amounted to reduction of share capital rather than acquisition of a capital asset. The Court emphasised that u/s 68 of the Companies Act, buy-back necessarily involves extinguishing and physically destroying the shares, and once the shares cease to exist, the theory of "purchase of property at lower than FMV" has no application. The Court further observed that the Revenue's interpretation of section 56(2)(x) of the Act, though attractive at first blush, failed when tested against the Companies Act, common prudence, and the Income Tax Act. Accordingly, the Court held that the AO's view was flawed and untenable, and the appeal of the Revenue was dismissed.

Citation:

Globe Capital Market Ltd. [TS-529-HC-2026(DEL)]



Our Comments

This ruling is important because it draws a clear distinction between a genuine buy-back of own shares and an outright purchase of property. The Court has reaffirmed that tax provisions cannot be read in isolation from company law mechanics, especially where the transaction results in extinguishment of shares rather than acquisition of an asset. The decision should provide strong support in buy-back cases where section 56(2)(x) of the Act is sought to be applied mechanically.