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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 07.04.2026*

+ ITA 364/2024

PR. COMMISSIONER OF INCOME TAX, CENTRAL - II, NEW
DELHIAppellant

Through: Mr. Vipul Agrawal, SSC, Mr. Lakshi
Shriwal, JSC, Ms. Harshita Kotru and
Mr. Gaoraang Ranjan, Advts.

versus

M/S GLOBE CAPITAL MARKET LTD.Respondent

Through: Mr. Sumit Lalchandani and Ms.
Ananya Kapoor, Advts.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

REPORTABLE

Per DINESH MEHTA, J. (Oral)

1. The order under challenge is the one, passed by the Income Tax Appellate Tribunal Delhi Bench "F": New Delhi (*hereinafter referred to as 'the Tribunal'*) whereby the appeal filed by the Income Tax Department against the order dated 30.01.2023 passed by the Commissioner of Income Tax (Appeals) (*hereinafter referred to as 'CIT(A)'*) was rejected.

2. The appeal before the CIT(A) was preferred by an assessee engaged in the business of share broking and clearing of trades, in which case, during the course of assessment proceedings under section 153A of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*), the Assessing



Officer (AO) had raised a concern regarding the buyback of shares and applied the provisions of section 56(2)(x) of the Act of 1961.

3. The AO found that during the AY 2018-19, the assessee company made buyback of 28,62,500 equity shares at Rs.313.40 per share totalling to Rs.89,71,07,500/-, whereas the fair market value of each share as per Rule 11UA of the Income Tax Rules, 1962 (*hereinafter referred to as 'the Rules of 1962'*) was Rs.370.46. Difference of Rs. 57.06 (Rs. 370.46 - Rs.313.40) per share, multiplied by the number of shares brought back (28,62,500) being Rs.16,33,34,250/- was added in the income of the assessee under section 56(2)(x) of the Act of 1961.

4. According to the AO, the buyback of share resulted into acquisition of property, attracting Section 56(2)(x) of the Act of 1961 and Rule 11UA of the Rules of 1962. Resultantly, by way of the assessment order passed on 15.07.2021 under section 153A/143(3) of the Act of 1961, the total income of the assessee was determined at Rs.1,26,96,35,850/ - including the addition of Rs.16,33,34,250/-.

5. The AO had made the addition in the hands of the respondent-assessee by invoking Section 56(2)(x) of the Act of 1961 read with Rule 11UA of the Rules of 1962 *inter alia* holding that the shares which the company had purchased maybe of its own, but constitute a capital asset as defined under Clause (x) of Section 56(2) and since the shares were purchased at a rate lower than the fair market value, the difference amount was liable to be added in respondent-assessee's income.

6. Feeling aggrieved with the said assessment order dated 15.07.2021, the respondent preferred an appeal before the CIT(A), who vide order dated 30.01.2023 allowed the appeal. While allowing the appeal, the CIT(A) dealt



with the nature of transaction and held that the transaction in question was not a purchase of shares simpliciter but was a purchase of its own shares under buy-back offer, which amounts to reduction of share capital rather than purchase of capital asset.

7. The CIT(A) recorded its finding in para No. 7.3 of its order. Relevant extract of said para is given hereunder :-

7.3 I have carefully considered the facts of the case, observations of the assessing officers made in the assessment order and also the written submission of the appellant. The issue for consideration here is whether provisions of section 56(2)(x) of Income Tax Act, 1961 or Rule 11UA of Income Tax Rules 1962 are applicable on the transactions of buyback of its own shares by the appellant company. In fact, applicability of Rule 11UA is consequential to applicability of the provisions of section 56(2)(x) of the Act. The prerequisite for applicability of Rule 11UA is the applicability of the provisions of section 56(2)(x) of the Act. The provisions of section 56(2)(x) of the Act are as under:-

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Further the definition of the term 'property' as provided in explanation to 'section 56(2)(x) is same as -in clause (d) of explanation to section 56(2)(vii) which is as under:

d) "property" means the following capital asset of the assessee,- namely--

- i) immovable property being land or building or both;*
- ii) shares and securities;*

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From the perusal of aforesaid provisions, it is evident that the aforesaid provisions are applicable when an assessee acquires, any property (as defined above) which is the capital of the company.

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In view of the above factual and legal position it is held that the assessing officer was not justified in applying provision of section 56(2)(x) and consequently Rule 11UA of the Act on



the transactions of buyback of its own shares by the appellant company. Therefore, the addition of Rs.16,33,34,250/- made by the assessing officer is deleted and accordingly, these grounds of appeal are allowed.

8. The Department preferred an appeal against the above-referred order of the CIT(A) dated 30.01.2023 and the same came to be rejected by the Tribunal vide its order dated 25.09.2023.

9. While rejecting the appeal, in para No. 11 the Tribunal relied upon judgment of Hyderabad bench of the Tribunal in **VITP Private Limited, Hyderabad v. Deputy Commissioner of Income Tax**, 2022 (8) TMI 220 to hold that since the respondent-assessee had purchased its own share and not shares of any other company, provisions of Section 56(2) (viia) of the Act of 1961 is inapplicable to the facts.

10. Mr. Vipul Agrawal, learned Senior Standing Counsel for the appellant-department submitted that the assessee company had purchased its own shares at the sum of Rs.313.40/- per share whereas the fair market value of the shares of the company was Rs.370.46/- per share.

11. He took the Court through the definition of property given under section 56(2)(x)(c) of the Act of 1961 and argued that the definition clause of property does not create any distinction between the shares of the assessee company itself or of any other company.

12. He argued that if the definition of property as given in clause x(c) of Section 56(2) of the Act of 1961 is taken into account, it is apparent that if shares of a company which are considered property are purchased at a lesser rate than the fair market value, provisions of Section 56(2) of the Act of 1961 would apply. And hence, the AO had committed no error of law in making the addition.



13. He further argued that the Tribunal has relied upon the judgment of Hyderabad Bench in which the recourse to provisions of Section 56(2)(viia) of the Act was taken for the purpose of setting aside the addition, whereas in the case in hands, the AO had resorted to Section 56(2)(x) of the Act of 1961. He added that the scope of Section 56(2)(x) of the Act is much wider than the Section 56(2)(viia) of the Act of 1961.

14. In this regard, he invited Court's attention towards the explanatory note of the Finance Bill, 2017 and submitted that the amendment was introduced in order to widen the scope of income from other sources.

15. He argued that when the provisions contained in Section 56(2)(x) of the Act of 1961, does not create a distinction between the shares of any other company viz-a-viz shares of its own, no distinction could have been drawn by the CIT(A). He added that by virtue of deeming fiction given in Section 56(2)(x) of the Act of 1961, the difference amount was rightly added in the hands of the respondent-assessee.

16. Mr. Sumit Lalchandani, learned counsel for the respondent-assessee on the other hand, argued that the CIT(A) so also the Tribunal has rightly dealt with the facts of the case in the light of the statutory provision applicable and has taken a view that the buy-back of shares of the company does not amount to purchase of any asset or property.

17. He also argued that pursuant to buy-back offer which was made in the spirit of provision of Section 68 of the Companies Act, 2013 (*hereinafter referred to as 'The Companies Act'*) that too after following due process, it cannot be said that some ploy was adopted by the respondent-assessee to generate undisclosed income or income out of books.

18. He nevertheless maintained that as a matter of fact and law, the



purchase of shares does not mean purchase of property.

19. Heard learned counsel for the parties.

20. The case in hand involves an interesting issue of law. The facts are not in dispute that what had been purchased by the respondent-company was its own shares under buy back offer.

21. The following part of the assessment order clearly delineates the nature of the transaction and the manner in which the same was undertaken:

(i) During, the 'FY 2007-08 (AY 2008-09), Globe Capital Market Ltd. (Henceforth referred, to "GCMIZ or "The Company") raised an amount from Citi Group Venture Capital, Mauritius vide a preferential issue of shares. The Company signed an investor agreement with Citi Group Venture Capital on 2nd February 2008 and the shares were to be allotted in the following manner.

<i>Particulars</i>	<i>No. of Shares</i>	<i>Issue Price</i>	<i>Amount(Rs.)</i>
<i>Equity shares (FV Rs.10 per share)</i>	<i>2,19,724</i>	<i>5,248/-</i>	<i>115,31,11,552/-</i>
<i>Compulsorily convertible Preference shares (FV Rs. 29,150/- per share) ("CCPS")</i>	<i>16,703</i>	<i>29,150/-</i>	<i>48,68,92,450/-</i>
			<i>164,00,04,002/-</i>

(ii) In accordance with the terms of allotment and pursuant to characteristics of the CCPS issued by the Company, each CCPS was entitled to be converted into 5.5545 Equity Shares of the Company. Accordingly, Board of Directors of the Company, in their meeting held on July 6, 2009 (F. Y. 2009-10); (AY 2010-11) converted these 16703 CCPS into 92,776 Equity Shares of the Company, which ranked pari passu in all respects with the existing Equity Shares of the Company. Thus, upon the above mentioned conversion the Co. has received Rs. 164 crore on issuance of 3,12,500 equity shares after conversion of preference shares and Initial issued



Equity shares.

(iii) During the Financial Year-2010-11 (AY 2011-12), the Board in its meeting held on 22nd October 2010 issued bonus equity shares in the ratio of 20:1 to the existing shareholders of the Company, and hence the total shares issued became 65,62,500/- Equity shares. After the above bonus issue, effectively, the company has received a price of Rs. 249.91 per share for the total consideration received i.e. Rs.164Cr.

(iv) The Board, in its meeting held on 31 May 2016 approved buy back of its 37,00,000 fully paid-up equity Share at a price of Rs.302/- per share out of free reserves and securities premium. The same was approved by the shareholders in their meeting held on 27 June 2016. The offer of buyback was opened on 28 July 2016 and closed on 16 August 2016. On 18 August 2016, the Company bought back 3700000 equity shares from the above shareholders at an aggregate value of Rs.111.74 crores.

(v) Further, The Board, in its meeting held on 24 August 2017 approved buy hack of its 28,62,500 fully paid up equity shares at a price of Rs.313.40/- per share out of free reserves and securities premium. The same was approved by the shareholders in their meeting held on 12 September, 2017. The offer of buyback was opened on 16 September 2017 and closed on 22 September 2017. On 27th September 2017, the Company bought back 2862500 equity shares from the above from the above shareholders at an aggregate value of Rs.89.71 crores.

(vi). It has been further submitted by the assessee company that due taxes amounting to Rs.20.69 Crores on distributed incomes as per provisions of Sec 115QA of the IT Act and as per Rule 40BB of the I.T. Rules 1962 inserted vide CBDT Notification No.94/2016 Income Tax dt. 17/10/2016 has been paid. The detailed working of the same is given below :

<i>Consideration paid by the Company on buy-back of balance 28,62,500 equity shares @ Rs. 313.40 per share</i>	<i>Rs.89,71,07,500/ -</i>
<i>Less: Amount received by the Company for issue of such shares</i>	<i>Nil (since all shares were issued as bonus shares)</i>



	<i>with no consideration)</i>
<i>Distributed Income as per provisions of Sec 115QA(1)(ii)</i>	<i>Rs.89,71,07,500</i> <i>1-</i>
<i>Tax paid @ 23.07% in accordance with Sec 115QA</i>	<i>Rs.20,69,80,642/</i> <i>-</i>

(vii). The Assessee Company has further submitted that "Since most of the shares tendered for buyback were held by non-residents (65,34,129 shares out of 65,62,500 Shares tendered for buyback), this buyback of shares was regulated by the Foreign Exchange Management Act, 1999 and Reserve Bank of India guidelines.

22. A perusal of the above-quoted para clearly shows that the company had purchased its own shares pursuant to a buy-back offer made in accordance with law at the rate which was fixed by the Board of Directors in its meeting held on 31.05.2016, duly approved by the shareholders in their meeting dated 27.06.2016. It can also be found that the payment was made out of free reserves and security premium.

23. Section 68 of the Companies Act is the fountain head under which a company can purchase its own share and hence, it is being reproduced hereunder :-

"68. Power of company to purchase its own securities.—(1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

(a) its free reserves;

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities: Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.



(2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where—

(i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

(c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company: Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year;

(d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-up is not more than twice the paid-up capital and its free reserves: Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

(e) all the shares or other specified securities for buy-back are fully paid-up;

(f) the buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

(g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any. (3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b)



of sub-section (2) shall be accompanied by an explanatory statement stating—

- (a) a full and complete disclosure of all material facts;*
 - (b) the necessity for the buy-back;*
 - (c) the class of shares or securities intended to be purchased under the buy-back;*
 - (d) the amount to be invested under the buy-back; and*
 - (e) the time-limit for completion of buy-back.*
- (4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-section (2).*
- (5) The buy-back under sub-section (1) may be—*
- (a) from the existing shareholders or security holders on a proportionate basis;*
 - (b) from the open market;*
 - (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.*
- (6) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item (ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board: Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.*
- (7) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or*



securities so bought back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed: Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 2 [three lakh rupees].”

24. But for Section 68 of Companies Act and the procedure provided thereunder, there is no way can a company buy its own shares. Because buying of own shares is otherwise alien to concept of corporate entity and the provisions of the Companies Act. Securities or shares of a Company can, in a given case be a property in the hands of a Corporate entity but for the issuing company, it is a certificate issued to its members in lieu of the



contribution they have made towards the capital or for subscribing to the shares. Buy-back of shares essentially means reduction of capital of the company, which otherwise is impermissible, if recourse to Section 68 of the Companies Act is not taken.

25. One has to bear in mind that sub-section (vii) of section 68 of the Companies Act mandates that after the completion of the buy-back under this Section, the company shall extinguish and physically destroy the shares or security so bought back.

26. In other words, section 68 of the Companies Act in so many words expresses that the buy-back of share is reduction of the share capital. There can be no doubt that as per sub-section (vii), the respondent-company must have mutilated or destroyed the shares or so-called property which the AO has sought to tax.

27. A person cannot be taxed for so-called deemed profit from the property (shares) which accrues to it consequent to destruction of the very same property. Because, once the shares are bought back, the purported property extinguishes or vanishes. Hence, the very hypothesis that the respondent-company had acquired an asset at lesser rate than the fair market value has no legs to stand on. Buy-back of its own shares is antitheses to buying an asset.

28. The interpretation which Mr. Agrawal seeks to give to Section 56(2)(x) of the Act of 1961 at first blush appears to be attractive, but if the same is tested on the anvil of principles of Companies Act, common prudence and provisions of Income Tax Act, the same turns out to be holding no water.

29. We however, accept the contention of Mr. Agrawal that the Tribunal's



reliance upon judgment of its Hyderabad Bench was misplaced, because the applicable provisions therein was Section 56(2)(viia) and not Section 56(2)(x) of the Act of 1961, which the AO has resorted to in the extant case. Be that as it may, the Tribunal's reliance upon its Hyderabad Bench decision is only incidental. Otherwise the Tribunal has deliberated upon the issue and affirmed the well-reasoned order of the CIT(A).

30. For what we have observed hereinabove, we are of the considered opinion that the CIT(A) was perfectly justified in allowing the appeal. The view which the AO had taken in treating the buy-back of shares of the company to be a transaction leading to generation of profit/deemed profit is clearly flawed and untenable in the eye of law.

31. The appeal therefore, fails.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 7, 2026/ss