Globe Capital Market Ltd — ITA No. 364/2024

Complete public court-copy transcription. Clean reference PDF generated by Finin2min; not an original court facsimile.

Public source: https://indiankanoon.org/doc/150799584/

$~1 * 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 DELHI .....Appellant Through: Mr. Vipul Agrawal, SSC, Mr. Lakshi Shriwal, JSC, Ms. Harshita Kotru and Mr. Gaoraang Ranjan, Advs. versus M/S GLOBE CAPITAL MARKET LTD. .....Respondent Through: Mr. Sumit Lalchandani and Ms. Ananya Kapoor, Advs. 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 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961'), the Assessing Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 1 of 13 Signing Date:15.04.2026 09:58:44 Officer (AO) had raised a concern regarding the buyback of shares and applied the provisions of 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 of the Act of 1961.

4. According to the AO, the buyback of share resulted into acquisition of property, attracting 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 / 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/-. In fact, applicability of Rule 11UA is consequential to applicability of the provisions of of the Act. The prerequisite for applicability of Rule 11UA is the applicability of the provisions of of the Act. The provisions of of the Act are as under:- --- --- --- --- Further the definition of the term 'property' as provided in explanation to ' is same as -in clause (d) of explanation to 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; > --- --- --- --- > 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. > --- --- --- --- > In view of the above factual and legal position it is held that the assessing officer was not justified in applying provision of and consequently Rule 11UA of the Act on Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 3 of 13 Signing Date:15.04.2026 09:58:44 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.

17. He also argued that pursuant to buy-back offer which was made in the spirit of provision of of the Companies Act, 2013 (hereinafter referred to as ' ') 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 Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 5 of 13 Signing Date:15.04.2026 09:58:44 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. Particulars No. of Shares Issue Price Amount(Rs.) Equity shares (FV 2,19,724 5,248/- 115,31,11,552/- Rs.10 per share) Compulsorily 16,703 29,150/- 48,68,92,450/- convertible Preference shares (FV Rs. 29,150/- per share) ("CCPS") 164,00,04,002/- (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- > shares @ Rs. 313.40 per share Less: Amount received by the Company Nil (since all shares were for issue of such shares issued as bonus shares Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 7 of 13 Signing Date:15.04.2026 09:58:44 with no consideration) Distributed Income as per provisions of Rs.89,71,07,500 Sec 1- 115QA(1)(ii) Tax paid @ 23.07% in accordance with Rs.20,69,80,642/ Sec 115QA - > (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 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. 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. Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 8 of 13 Signing Date:15.04.2026 09:58:44 > (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-back 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) Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 9 of 13 Signing Date:15.04.2026 09:58:44 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. > (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 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 . 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 Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 11 of 13 Signing Date:15.04.2026 09:58:44 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 of the Companies Act is not taken.

25. One has to bear in mind that sub-section (vii) of 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, 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.

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 Signature Not Verified Signed By:PRAMOD KUMAR VATS ITA 364/2024 Page 13 of 13 Signing Date:15.04.2026 09:58:44