



## Tax alert: Buyback of own shares by company not taxable as IFOS

05 May 2026

The Delhi High Court (HC) has held that buyback of own shares by taxpayer company is not taxable under section 56(2)(x) of the Income-tax Act, 1961 as such brought back shares are required to be physically cancelled and extinguished, resulting in the property itself ceasing to exist.

### In a nutshell



Except for section 68 of Companies Act, 2013 and the procedure provided thereunder, there was 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, 2013.

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.



Section 68(vii) of the Companies Act 2013 mandates that after the completion of the buyback the company shall extinguish and physically destroy the shares or security so bought back.

Section 68 of the Companies Act 2013 expresses that the buy-back of share is reduction of the share capital.



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 taxpayer had acquired an asset at lesser rate than the FMV has no legs to stand on.

Buyback of its own shares is antitheses to buying an asset.



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## Background:

- The taxpayer<sup>1</sup> was engaged in the business of share broking and clearing of trades. During the course of audit proceedings, the Assessing Officer (AO) raised a concern regarding the buyback of shares made by the taxpayer and held as follows:
  - The difference between the buy-back price and Fair Market value (FMV) of each share was added in the income of the taxpayer as income from other sources under section 56(2)(x) of the Income-tax Act, 1961 (ITA).
  - The buyback of share resulted into acquisition of property, attracting section 56(2)(x) of the ITA and Rule 11UA of the Income-tax Rules, 1962 (Rules).
  - Addition was made in the hands of the taxpayer company by invoking section 56(2)(x) of the ITA read with Rule 11UA of Rules by *inter alia* holding that the shares which the taxpayer had purchased maybe of its own, but constitute a capital asset as defined under section 56(2)(x) and since the shares were purchased at a rate lower than the FMV, the difference amount was liable to be added as taxpayer's income.
- Aggrieved, the taxpayer filed an appeal before the Commissioner of Income-tax (Appeals) [CIT(A)]. The CIT(A) allowed the appeal and held that the transaction 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.
- The Revenue authorities filed an appeal against the CIT(A)'s order before the Delhi Bench of the Income-tax Appellate Tribunal (ITAT), which was rejected by the ITAT.
- Aggrieved, the Revenue filed an appeal before the Delhi High Court (HC).

## Relevant provisions of section 56(2)(x) of the ITA

“Section 56....

*(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head “Income from other sources,” namely:-*

.....

*(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-*

*(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*

*(b) any immovable property,-*

.....

***(c) any property, other than immovable property,-***

*(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*

***(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :***

## Decision of the HC:

- The company had purchased its own shares pursuant to a buyback offer made in accordance with law at the rate which was fixed by the Board of Directors in its meeting, duly approved by the shareholders. Also, the payment was made out of free reserves and security premium.
- Except for section 68 of Companies Act, 2013 (wherein a company can purchase its own share) and the

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<sup>1</sup> Principal Commissioner of Income-tax vs. Globe Capital Market Ltd. [2026] 185 taxmann.com 513 (Delhi HC)

procedure provided thereunder, there was no way a company could buy its own shares. Because buying of own shares was otherwise alien to concept of corporate entity and the provisions of the Companies Act, 2013. 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.

- Buyback 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.
- Section 68(vii) of the Companies Act, 2013 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.
- Section 68 of the Companies Act, 2013 expresses that the buy-back of share is reduction of the share capital. As per section 68(vii), the taxpayer must have mutilated or destroyed the shares or so-called property which the AO sought to tax.
- 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 taxpayer had acquired an asset at lesser rate than the FMV had no legs to stand on. Buyback of its own shares was antitheses to buying an asset.

Hence, the HC held that the AO's view in treating the buyback of shares of the company to be a transaction leading to generation of profit/deemed profit was clearly flawed and untenable in the eye of law.

#### **Comments:**

Section 56(2)(x) of the ITA is an anti-abuse provision which taxes receipt of money or property without consideration, or for inadequate consideration, in the hands of the recipient. The legal framework governing corporate transactions recognizes that certain dealings in shares may not result in the creation or acquisition of a continuing asset but instead lead to the modification or reduction of existing rights and capital structures. In such situations, where the underlying subject-matter of the transaction ceases to exist upon its completion, the characterization of the transaction for tax purposes requires careful consideration.

The HC in this ruling has, *inter-alia*, held the following:

- Except for section 68 of Companies Act, 2013 and the procedure provided thereunder, there was no way a company can buy its own shares. Because buying of own shares is otherwise alien to concept of corporate entity and the provisions of the Companies Act, 2013. 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.
- Section 68(vii) of the Companies Act 2013 mandates that after the completion of the buyback the company shall extinguish and physically destroy the shares or security so bought back. Section 68 of the Companies Act 2013 expresses that the buy-back of share is reduction of the share capital.
- 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 taxpayer had acquired an asset at lesser rate than the FMV, has no legs to stand on.

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Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.



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