

### Brief facts of the case



- Globe Capital Market Ltd<sup>1</sup> ('Assessee') is a company engaged in the business of share broking and clearing of trades.
- During FY 2018-19, assessee had made buy back of its equity shares at Rs.313.40 per share. However, the fair market value as per Rule 11UA of Income Tax Rules, 1962 (the 'Rules') was Rs.370.46 per share.
- During the course of assessment proceedings, the Assessing Officer ('AO') has raised the issue of buy back of shares and applicability of section 56(2)(x) of the Income-tax Act, 1961 (the 'Act'). The AO held that buyback of shares resulted into acquisition of property being equity shares which warrants applicability of Section 56(2)(x). Hence, the difference of buyback price and fair market value per shares as per Rule 11UA i.e. Rs.57.06 per share to be income of assessee under section 56(2)(x).
- Aggrieved by the order of AO, the assessee preferred an appeal before the Ld. CIT(A). Ld. CIT(A) passed an order in favour of assessee stating that the prerequisite for applicability of Rule 11UA is the applicability of the provisions of section 56(2)(x) of the Act. Section 56(2)(x) is applicable when an assessee acquires any property which is the capital asset of the company. The transaction of buy back of shares results into reduction of share capital of company and not acquisition of any "capital asset". Aggrieved, the revenue filed an appeal before the Hon'ble Delhi ITAT.

### Key Observations of Hon'ble ITAT



- Hon'ble ITAT observed that the central issue is whether the buy back of shares of a closely held company is hit by the provisions of section 56(2)(x) of the Act. Section 56(2)(x), section 56(2)(vii) and section 56(2)(viia) are pari-material and similarly worded. The primary distinction lies in the fact that while section 56(2)(x) applies to 'any person' who is recipient, section 56(2)(vii) applies to 'an individual or HUF' who is recipient and section 56(2)(via) applies to 'firm or a company not being a company in which public are substantially interested' who is recipient.



- Further, the Hon'ble ITAT referred to benches of Delhi, Mumbai, Hyderabad and Chennai Tribunals where identical issue has been considered, it was held that provisions of section 56(2)(viia) of the Act are applicable only in the cases where the purchased shares became property in the hands of the buyer company and, if the shares are of any other company. In the case under consideration the assessee purchased its own shares under buyback scheme and, as per the submissions made by the Ld. Counsel, the same has been extinguished by reducing the paid up capital of the assessee company.
- Further, the Chennai bench of Income-tax Appellate Tribunal in case of DCIT Vs. Venture Lighting India Ltd (12 TMI 696) specifically held that the buy back of shares results into reduction of capital rather than acquisition of shares of the company. As a result, it becomes clear that the test of 'becoming property' and 'shares of any other company' fails. Consequently, provisions of section 56(2)(viia) of the Act would be inapplicable to the cases of buy back of own shares.
- In line with the decisions of the co-ordinate benches and the absence of contrary views from higher judicial authorities, the Tribunal upheld the order of the Ld. CIT(A) and rejects the appeal of the Revenue. Consequently, the appeal of the Revenue was dismissed.

