



INSIGHTS

Direct Tax

April 2026 Edition



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Key Direct Tax Rulings

Delhi HC | Share buy-back not taxable under Sec 56(2)(x) of the Act ¹

As per Sec 56(2)(x) of the Act, where a person receives property being shares and securities, for inadequate consideration, the differential value between FMV of shares and consideration received is taxable as 'Income from Other Sources'.

Recently, the Delhi High Court examined the applicability of Sec 56(2)(x) of Act to share buy-backs undertaken by a company and held that that a buy-back transaction carried out in accordance with Sec 68 of the Companies Act, 2013 does not constitute an acquisition or receipt of property, and therefore falls outside the scope of Sec 56(2)(x).

The taxpayer undertook buy-back of equity shares which was funded from its free reserves and securities premium. During assessment under Sec 153A, the AO computed a higher fair market value under Rule 11UA on the basis that buy-back being an acquisition of 'property' was executed at a value lower than FMV. Accordingly, the AO made additions, taxing the differential value as Income from Other Sources under Sec 56(2)(x).

The CIT(A) deleted the addition, reasoning that in a buy-back, the company does not acquire any "property" or "capital asset". The revenue appealed before Delhi Tribunal.

Delhi Tribunal's Ruling

In Revenue's appeal before Delhi Tribunal² it was held that Sec 56(2)(x) is attracted only where the recipient acquires 'property', a condition that is fundamentally absent in a

buyback transaction. The Tribunal relied on decisions of Vora Financial Services (P.) Ltd³ and TPS Infrastructure Ltd⁴ to hold that since the shares bought back are extinguished upon reduction of the company's paid-up capital, they never assume the character of "property" in its hands. Consequently, the twin tests essential for invoking these provisions i.e. the shares must become 'property' in the hands of the recipient, and that they must constitute shares of any other company — both fail in the context of a buyback, rendering the provisions of Sec 56(2)(x) wholly inapplicable.

Delhi High Court's Ruling

The High Court, affirming the Tribunal's decision, emphatically referred to Sec 68 of the Companies Act as the sole governing provision for a company to purchase its own shares which essentially results in reduction of share capital, requiring physical destruction of bought-back shares by the company. Accordingly, once the shares are bought back and destroyed, the purported 'property' ceases to exist. Therefore, a company cannot be taxed on deemed profit arising from a so-called 'property' that has been extinguished consequent to a buy-back transaction.

Consequently, the Court distinguished share buy-backs as being fundamentally different from transactions involving receipt of property for consideration below fair market value and, on that basis, held that the valuation mechanism prescribed under Rule 11UA read with section 56(2)(x) does not apply to share buy-backs.

¹ PCIT v. M/s Globe Market Ltd [ITA 364/2024]

² DCIT v. M/s Globe Market Ltd [2023] 203 ITD 758 (Delhi Trib)

³ Vora Financial Services (P.) Ltd. v. ACIT [2018] 171 ITD 646 (Mum Trib)

⁴ DCIT v. TPS Infrastructure Ltd [ITA No. 6433 of 2018, dt 14-12-2022] (Delhi Trib)

Our Comments

The Delhi High Court has decisively put an end to the long-standing controversy on applicability of Sec 56(2)(x) to buy-backs, unless revisited by the Supreme Court. However, the issue regarding applicability of Sec 50CA⁵ may continue, especially in light of the legislative shift under the Finance Act, 2026 taxing buy-back as capital gains in the hands of shareholders.

ITAT Chandigarh | Play school/ kindergarten qualifies as “education” under Sec 2(15) of the Act ⁶

As per Sec 11 of the Act, income of charitable trusts is exempt if it is engaged in charitable activities as defined under Sec 2(15) which *inter alia* includes “education”.

The Chandigarh Tribunal held that “pre-primary education” falls within the scope of “education” under Sec 2(15) of the Act particularly, in the light of the National Education Policy, 2020 (NEP 2020) which formally recognizes Early Childhood Care and Education including pre-schools and Anganwadis as the foundational stage of the education system.

The taxpayer, a Society engaged in running a play-school and kindergarten and imparting pre-primary education, applied for registration under Sec 12A(1)(ac)(ii)/12AB of the Act.

Relying on the Supreme Court’s decision in Sole Trustee, Lok Sikshan Sansthan⁷, the CIT(E) noted that “education” implies systematic instruction or formal schooling and that the applicant’s activities were primarily informal, play-based learning and day care,

⁵ Sec 50CA applies where there is **transfer of unquoted shares**, and consideration is **less than FMV** in which case FMV is deemed as full value of consideration

lacking a structured curriculum, prescribed syllabus, examinations, or affiliation with a statutory educational authority. Accordingly, it rejected the application on the grounds that the taxpayer’s activities did not qualify as “charitable” under Sec 2(15) of the Act, despite being socially beneficial. Further, it alleged diversion of funds to related persons in violation of Sec 13 of the Act.

Tribunal’s ruling

The Tribunal noted that the taxpayer is engaged in imparting pre-primary education with teachers holding Nursery Teacher Training (NTT) qualifications from recognised institutions and that the very presence of such structured training reflects that pre-school education is a formally organised and systematic educational framework.

Accordingly, the Tribunal held in favour of the taxpayer by observing that the narrow interpretation of education as drawn by the Revenue by relying on the judgement of Sole Trustee, Loka Shikshana Trust (SC) is no longer tenable, particularly in view of the National Education Policy, 2020, which recognizes Early Childhood Care and Education (ECCE) as a foundational component of the formal education system.

Further, the Tribunal held that the alleged violations of Sec 13 which leads to withdrawal of tax exemptions available to charitable trusts cannot be examined at the stage of granting registration and should be dealt with during assessment proceedings.

⁶ The Indian Institute of Model Education Society v CIT(E) [ITA Nos. 1855 & 1856 /Chd/ 2025]

⁷ Civil Appeal Nos. 2130 & 2131 of 1970 dt. 28/08/1975.

ITAT Hyderabad | No capital gains on mere execution of JDA without consideration and absolute possession ⁸

As per Sec 2(47) of the Act, 'transfer' of a capital asset includes "allowing possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (TOPA)" and such transfer of capital asset is chargeable to tax as Capital Gains in the year of transfer under Sec 45(1) of the Act.

In a significant ruling, the Hyderabad Tribunal has reiterated a core principle under Sec 45 of the Act that the existence of a "transfer" is a sine qua non for capital gains taxation. In the context of a JDA, the Tribunal held that no taxable capital gains arose, as neither any consideration was received nor possession was transferred in the manner envisaged under Sec 53A of the TOPA.

The taxpayer, an individual, along with other co-owners, entered a JDA in respect of an immovable property for a proposed consideration with 1/8th share in such consideration.

The AO treated the execution of the JDA as a 'transfer' under Sec 2(47)(v) and made additions by assessing the taxpayer's share in the proposed consideration as LTCG, taking the cost of acquisition as NIL.

Taxpayer's contentions

- ∞ No consideration, either in cash or in kind was received from the developer during the year of execution of the JDA. Since the developer had failed to perform his contractual obligations, he had returned the

original title deeds. Further, cheques issued to the other co-owners had bounced, leading to pending litigation.

- ∞ Possession was handed over only for the limited purpose of enabling construction and not as contemplated under Sec 53A of TOPA. Accordingly, no taxable 'transfer' had taken place.
- ∞ Despite the taxpayer's contentions, CIT(A) upheld the AO's additions, resulting in the taxpayer's appeal before the Tribunal.

Tribunal's ruling

The Tribunal held that execution of a JDA did not result in a "transfer" since the possession handed over to the developer was limited to facilitating approvals and construction and did not amount to possession under Sec 53A of TOPA. Further, it was undisputed that no consideration was received by the taxpayer during the year of execution. Relying on the jurisdictional Telangana High Court⁹ decision, the Tribunal concluded that for a transfer to arise under Sec 2(47)(v) read with Sec 45 of the Act, both receipt of consideration and transfer of possession in the manner contemplated under Sec 53A must co-exist, and in the absence of either condition, no transfer can be said to have taken place.

Our Comments

This ruling reinforces the settled proposition that the execution of a JDA, by itself, does not automatically trigger capital gains unless consideration is received or absolute possession is transferred as per Sec 53A of TOPA.

Further, it may be noted that Sec 45(5A), introduced with effect from AY 2018–19, defers capital gains taxation in the case of JDAs

⁸ Shri Vasudeva Rao Dhannavada v. ITO(IT) [ITA No. 2055/Hyd/2025]

⁹ Smt. Shantha Vidyasagar Annam v ITO [2025] 170 taxmann.com 754

entered into by individuals and HUFs to the year in which the completion certificate is issued. While the present decision relates to the pre-amendment regime, it highlights the

importance of a fact-specific analysis, particularly with respect to the actual receipt of consideration and the nature of possession transferred under the agreement under TOPA.

Glossary

Abbreviations	Term
Act	Income-tax Act, 1961
AY	Assessment Year
AO	Assessing Officer
CIT(A)	Commissioner of Income Tax (Appeals)
CIT(E)	Commissioner of Income Tax (Exemption)
FMV	Fair Market Value
HUFs	Hindu Undivided Family
ITAT	Income Tax Appellate Tribunal
JDA	Joint Development Agreement
LTCCG	Long Term Capital Gains
Sec	Section

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