IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

IT(IT)A No.1626/Mum/2025
(**Assessment Year :2022-23**)

Fairbridge capital (Mauritius) Limited Room No.609, 6th Floor Kautilya Bhavan C-41 to C-43, G Block Bandra Kurla Complex Bandra (E) Mumbai-400 051	Vs.	Assistant Commissioner of Income Tax (International Taxation) Circle-2(3)(1), Mumbai
PAN/GIR No.AABCF8345D		
(**Appellant**)	..	(**Respondent**)

Assessee by	Shri Dhanesh Bafna / Ms. Priyanka Agarwala / Ms. Hirali Desai / Ms. Nidhi Agarwal & Ms. Sanyukta Desai & Shri Hardik Nirmal
Revenue by	Shri Satya Pal Kumar, CIT DR
Date of Hearing	**12/11/2025**
Date of Pronouncement	**20/01/2026**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal by the assessee is directed against the final assessment order dated 16 January 2025 passed by the Assessing Officer under section 143(3) read with section 144C(13) of the Income-tax Act, 1961, pursuant to the directions of the learned Dispute Resolution Panel, whereby an addition has been made by invoking section 56(2)(x) of the Act on the premise that, upon conversion of Optionally Convertible Cumulative Redeemable Preference Shares into equity shares of Thomas Cook (India) Limited, the assessee is stated to have received "property" for a consideration allegedly less than its fair market value. The controversy, in substance, therefore pivots on the meaning, scope, and commercial content of the expression "consideration" occurring in section 56(2)(x) of the Act, the point of time at which such consideration is to be evaluated in a conversion and exchange–like transaction, and whether the exercise undertaken by the tax authorities effectively seeks to tax what is, in pith and substance, a natural accretion in the value of a capital asset as "income from other sources", thereby transgressing the structural boundaries of the Act and the settled demarcation between capital and revenue fields.

2. The material facts, necessary for the present adjudication, are not in serious dispute and emerge in a coherent and largely undisputed sequence from the record. The assessee is a private limited company incorporated under the laws of Mauritius and holds a Category I Global Business Licence issued by the Financial Services Commission of Mauritius. It is stated to be an investment holding company, its primary objective being long-term capital appreciation while preserving capital, by investing in securities of companies in India. It is further stated, and not controverted, that the assessee does not conduct any business activities in India or elsewhere. For the impugned assessment year, being

Assessment Year 2022–23, it is the assessee's case that it is a non-resident under the Act and a tax resident of Mauritius in terms of Article 4 of the India–Mauritius Double Taxation Avoidance Agreement, supported by Tax Residency Certificates issued by the Mauritius Tax Authority for the period 01 April 2021 to 31 March 2022 and accompanied by Form 10F for the said period, as placed on record in the paper book. During the year under consideration, the assessee earned long-term capital gains from transfer of shares of a listed company amounting to Rs. 243,04,45,091 and dividend income of Rs. 50,36,38,607, on which taxes are stated to have been duly paid in accordance with law.

3. The transaction which has given rise to the present dispute may now be adverted to in some detail. On 02 April 2021, the assessee was allotted 43,56,57,000 Optionally Convertible Cumulative Redeemable Preference Shares, described as OCCRPS, of Thomas Cook (India) Limited, a listed entity, on a private placement basis at Rs. 10 per share. It is an admitted position on record that, at the time of issuance and allotment of the said OCCRPS, the fair market value of the equity shares of TCIL was Rs. 47.30 per share and, accordingly, the terms of issuance of the OCCRPS expressly provided that they shall be converted into equity shares of TCIL at a predetermined price of Rs. 47.30 per equity share within a period of eighteen months from the date of allotment. It is also an admitted position that the option to convert these OCCRPS vested with TCIL and not with the assessee. Subsequently, the Board of Directors of TCIL, at its

meeting held on 03 February 2022, approved the conversion of 30,27,20,000 OCCRPS of Rs. 10 each at the aforesaid predetermined price of Rs. 47.30 per equity share and, pursuant thereto, the assessee was allotted 6,40,00,000 equity shares of TCIL on 17 March 2022. It is further recorded that upon such conversion, the shareholding of the assessee in TCIL increased from 65.60% to 70.58%.

4. The assessee's return of income for the impugned assessment year was selected for scrutiny and notice under section 143(2) dated 31 May 2023 was issued. In the course of assessment proceedings, various notices under section 142(1) were issued calling upon the assessee to furnish details and explanations. The Assessing Officer computed the fair market value of the equity shares received by the assessee on conversion, in terms of Rule 11UA of the Income-tax Rules, 1962, at Rs. 66.15 per equity share and, on that basis, issued a show cause notice dated 28 February 2024 calling upon the assessee to explain as to why the difference between Rs. 66.15 and Rs. 47.30 per equity share should not be taxed under section 56(2)(x) of the Act. The assessee filed a detailed response dated 06 March 2024 explaining why, according to it, section 56(2)(x) was not applicable to the facts of the case. Thereafter, the Assessing Officer passed the draft assessment order under section 144C(1) read with section 143(3) dated 21 March 2024 proposing to tax, under section 56(2)(x), the difference between Rs. 66.15, being the stated fair market value per equity share, and Rs. 47.30, being the predetermined conversion price, on conversion of

30,27,20,000 OCCRPS into equity shares. The computation forming part of the draft assessment order, as referred to therein, is reproduced hereunder:

Particulars	Amount (in Rs)
Equity shares received	6,40,00,000
Fair Market Value per share	66.15
Consideration per share	47.30
Excess of FMV over consideration-per share	18.85
Total excess of FMV over consideration	**1,20,64,00,000**

5. The learned Dispute Resolution Panel, while issuing its directions, confirmed the action of the Assessing Officer in so far as the proposed addition under section 56(2)(x) was concerned. Pursuant thereto, the Assessing Officer passed the final assessment order dated 16 January 2025 under section 143(3) read with section 144C(13) of the Act making the addition as proposed. Aggrieved by the said final assessment order, the assessee is in appeal before the Tribunal.

6. In the grounds of appeal, the assessee has raised multiple grounds, of which certain grounds are legal in nature, certain grounds are substantive grounds on merits challenging the applicability of section 56(2)(x) to the conversion of OCCRPS into equity shares, and one ground is stated to be premature. At this stage of the order, and for the purposes of the present

part, we confine ourselves to the core substantive issue, namely, whether the conversion of OCCRPS into equity shares of TCIL gives rise to a taxable receipt under section 56(2)(x) of the Act. The remaining grounds shall be dealt with at the appropriate stage in the later part of this order.

7. The learned counsel for the assessee, in a detailed and carefully structured written synopsis filed in accordance with the directions of the Bench, submitted that the entire edifice of the impugned addition rests on a fundamental misconception between the concepts of "consideration" and "cost of acquisition". It was submitted that the Assessing Officer has proceeded on the erroneous premise that the predetermined conversion price of Rs. 47.30 per equity share represents the consideration for the purposes of section 56(2)(x), whereas, in a conversion transaction involving convertible preference shares, the consideration is represented by the value of the instrument surrendered at the time of conversion. It was further submitted that OCCRPS are derivative capital instruments whose value is intrinsically linked to the value of the underlying equity shares and, therefore, when such instruments are converted, the value of what is given up and the value of what is received operate on the same economic plane.

8. It was further submitted that section 56(2)(x), being a deeming provision, cannot be applied in a mechanical or arithmetical manner divorced from commercial substance. According to the learned counsel, once the value of the

OCCRPS surrendered on conversion is properly appreciated, it becomes evident that there is no inadequacy of consideration and, therefore, the very jurisdictional condition for invoking section 56(2)(x) fails. It was also emphasised that the conversion price of Rs. 47.30 was determined strictly in accordance with the SEBI ICDR Regulations based on the quoted market price of the equity shares as on the relevant date and that the said price performs a regulatory function for issuance and conversion; it does not represent the economic consideration at the point of conversion.

9. In support of the above submissions, the learned counsel took us through the relevant provisions of the SEBI ICDR Regulations, including the definitions of "preferential issue", "specified securities" and "convertible securities", and pointed out that the regulatory framework itself recognises convertible preference shares as securities whose value is anchored to the underlying equity shares. The relevant extracts, as relied upon by the assessee, are reproduced hereunder:

Regulation 2(1)(nn)- "preferential issue" means an issue <u>of specified securities by a listed issuer</u> to any select person or group of persons on a <u>private placement basis in accordance with Chapter V of these regulations</u> and does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities.

Regulation 2(1)(eee) "specified securities" means equity shares and <u>convertible securities.</u>

Regulation 2(1)(k) "convertible security means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder fo such security and includes convertible debt instrument and convertible preference shares.

10. It was also submitted that Regulation 164 of the SEBI ICDR Regulations mandates upfront determination of the conversion price at the time of issuance based on the quoted market price as on the relevant date, and that Regulation 288 restricts alteration of terms of such securities. According to the learned counsel, this reinforces the proposition that the conversion price is a regulatory constant and cannot be recharacterised as "consideration" for the purposes of section 56(2)(x). The learned counsel then proceeded to submit that what the Assessing Officer is effectively seeking to tax is the natural appreciation in the value of a capital asset between the date of issuance and the date of conversion, which, under the scheme of the Act, falls within the capital gains field and cannot be taxed as income from other sources.

11. The learned counsel thereafter elaborated the core contention of the assessee by submitting that the entire approach of the Assessing Officer is vitiated by treating the predetermined conversion price as if it were the consideration actually discharged at the time of conversion. It was submitted that the predetermined price of Rs. 47.30 per equity share merely governs the conversion ratio and the cost base for future capital gains computation; it does not represent the economic value of the property given up by the assessee on the date of conversion. In a transaction of

conversion of OCCRPS into equity shares, there is no fresh outflow of funds or payment of money; rather, there is a surrender of an existing capital instrument, and the consideration for receipt of equity shares is the value of such instrument surrendered at the time of conversion. According to the learned counsel, once this fundamental distinction is appreciated, the very edifice of the addition under section 56(2)(x) collapses.

12. It was further submitted that section 56(2)(x) requires a comparison between the aggregate fair market value of the property received and the aggregate consideration paid therefor. The learned counsel emphasised the use of the word “aggregate” in the statutory text and submitted that the comparison envisaged by the provision is not a fragmented or per-share arithmetic exercise divorced from commercial substance, but an aggregate comparison of values at the point of receipt. When the aggregate value of the OCCRPS surrendered is compared with the aggregate value of the equity shares received on conversion, there is no inadequacy of consideration. It was submitted that the Assessing Officer’s approach of isolating the per-share conversion price and comparing it with the fair market value per share determined under Rule 11UA is legally impermissible and contrary to the plain language of the statute.

13. The learned counsel then invited attention to the settled distinction between “consideration” and “cost of acquisition” under the Income-tax Act. It was submitted that while the

predetermined conversion price of Rs. 47.30 per share becomes relevant as cost of acquisition of the equity shares under section 49(2AE) for the purpose of computing capital gains upon a subsequent transfer, it cannot be transposed into section 56(2)(x) as the measure of consideration. The Act consciously uses different expressions in different contexts, and it is not open to the tax authorities to blur these distinctions in order to bring a transaction within the mischief of a deeming provision.

14. Reliance was placed on the decision of the Hon'ble Supreme Court in Reva Investment (P.) Ltd. v. CGT (249 ITR 337), rendered in the context of deemed gift provisions, to emphasise the principle that inadequacy of consideration must be examined in a broad commercial sense and that, where property is exchanged for property, the valuation of what is given and what is received must be undertaken on a similar basis. The relevant extract relied upon by the assessee is reproduced hereunder:

" 11. The question which arises for determination in this case is whether the transaction made by the assessee can be said to be a 'deemed gift' under section 4(1)(a) of the Act. For invoking the deeming provisions of section 4(1)(a) inquiries have to be made regarding - (i) the existence of a 'transfer of property', (ii) the extent of consideration given, i.e., whether the consideration is adequate. It is necessary for the Assessing Officer to show that the property has been transferred otherwise than for adequate consideration. The finding as to inadequacy of the consideration is the essential sine-qua-non for application of the provisions of 'deemed gift'. The provision is to be construed in a broad commercial sense and not in a narrow sense. In order to hold that a particular

transfer is not for adequate consideration the difference between a true value of the property transferred and the consideration that passed for the same must be appreciated in the context of the facts of the particular case. If the transaction involves transfer of certain property in lieu of certain other property received, then the process of evaluation of the two items of property should be similar and on such evaluation if it is found that there is appreciable difference between the value of the two properties, then the transaction will be taken as a 'deemed gift' to the extent as provided in the section. It is to be found that the transaction was on inadequate consideration and the parties deliberately showed the valuation of the two properties as the same to evade tax. Such a conclusion cannot be drawn merely because according to the Assessing Officer, there is some difference between the valuation of the property transferred and the consideration received.

*12**.** In the present case, as noted earlier, the face value of the shares of the 12 fully paid subsidiary companies of the assessee was Rs. 5,69,400 which was taken to be the value of the jewellery that was transferred in exchange by the assessee to the subsidiary companies. The subsidiary companies had no other asset. The value of the jewellery as determined by the Assessing Officer being Rs. 13,91,350, the real value of the shares may be said to be Rs. 13,91,350, but there was, thus, no gift involved in the transaction for whatever is the value of the jewellery is in fact the value of the shares transferred in consideration. In the circumstances the Assessing Officer committed an error in treating the transaction between the parties as a 'deemed gift'."*

It was submitted that the principle enunciated by the Supreme Court, though in the context of the Gift-tax Act, is of general application and squarely applies to section 56(2)(x), which also hinges on the concept of inadequacy of consideration.

15. The learned counsel further submitted that OCCRPS are derivative instruments whose value is intrinsically linked to the value of the underlying equity shares. On the date of conversion, the value of the OCCRPS surrendered cannot, in commercial logic, be anything other than the value of the equity shares receivable upon conversion, subject to minor market variations. Therefore, it is wholly artificial to contend that equity shares worth Rs. 66.15 per share are received for a consideration of Rs. 47.30 per share, when, in substance, the assessee has surrendered an instrument whose value has itself appreciated over time in line with the performance of the issuer.

16. An alternative submission was also advanced to demonstrate the fallacy in the Assessing Officer's approach. It was submitted that even if one were to hypothesise a fresh issuance of OCCRPS by TCIL on the date of conversion, the valuation of such issuance would, under the SEBI ICDR Regulations, be required to be determined with reference to the prevailing market price of the equity shares as on the relevant date. On such a basis, the value of OCCRPS as on the date of conversion would, in fact, exceed the value of the equity shares received. Thus, even on a hypothetical regulatory valuation framework, there is no inadequacy of consideration.

17. To further elucidate the conceptual error underlying the impugned addition, the learned counsel furnished an

illustrative example of conversion of digital gold into physical gold. It was submitted that where digital gold purchased at an earlier point in time for a lower price is later converted into physical gold when the market value has appreciated, it would be wholly erroneous to contend that the physical gold is received for consideration equal to the historical cost of digital gold. The consideration, in such a case, is the digital gold itself, valued at the time of conversion. The example was pressed into service to demonstrate that the Assessing Officer’s approach amounts to taxing appreciation in the value of a capital asset as income from other sources.

18. The learned counsel then submitted that if the interpretation adopted by the Assessing Officer were to be accepted, it would lead to an absurd and internally inconsistent result. Conversion of preference shares into equity shares is expressly rendered a tax-neutral transaction under section 47(xb) of the Act. However, under the Assessing Officer’s approach, the very appreciation which is protected from capital gains tax at the stage of conversion would be brought to tax as income from other sources at a significantly higher rate. Such an interpretation, it was submitted, would defeat the legislative intent and distort the carefully calibrated scheme of taxation of capital assets under the Act.

19. The learned counsel also referred to section 49(2AE), which provides that the cost of acquisition of equity shares received upon conversion shall be deemed to be that part of the cost of the preference shares in relation to which such

equity shares are acquired. It was submitted that this provision reinforces the legislative recognition that the appreciation embedded in the preference shares remains within the capital field and is to be taxed, if at all, only upon a subsequent taxable transfer. The relevant statutory provision relied upon is reproduced hereunder:

"Section 49(2AE)- Where the capital asset, being equity share of a company became the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47 the cost of acquisition of the asset shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee"

20. On the other hand, the learned Departmental Representative supported the orders of the lower authorities. It was submitted that section 56(2)(x) is widely worded and brings to tax any receipt of property where the fair market value exceeds the consideration. According to the learned DR, the predetermined conversion price of Rs. 47.30 represents the consideration agreed between the parties and, therefore, the difference between such price and the fair market value determined under Rule 11UA is rightly taxable. It was submitted that the fact that the assessee had substantial shareholding and effective influence over TCIL further justifies a strict application of the provision.

21. The learned DR further submitted that Rule 11UA provides a statutory mechanism for determining fair market value and that the Assessing Officer has correctly applied the said rule. It was argued that once the fair market value of the

equity shares is determined in accordance with the prescribed rules, any receipt at a value lower than such fair market value necessarily attracts section 56(2)(x), unless specifically excluded by the provisos, which, according to the Revenue, are not applicable in the present case.

22. We have bestowed our most anxious, deliberate and thoughtful consideration upon the rival submissions advanced before us, the material placed on record, the statutory architecture governing the controversy, and the reasoning adopted by the Assessing Officer as well as the directions issued by the learned Dispute Resolution Panel. At the very threshold, it requires to be emphasised that section 56(2)(x) of the Act is not a general charging provision but a deeming provision, introduced with a narrowly tailored anti-abuse object, namely, to bring to tax certain receipts of property where there is a clear element of gratuitous enrichment or colourable value shifting, camouflaged as a transaction. Being a provision which creates a tax incidence by legal fiction, its application must be strictly confined to the conditions expressly stipulated therein and cannot be stretched to embrace situations which, in commercial truth and legal substance, are mere conversions or exchanges where property is surrendered for property received, both being valued on a comparable plane and at the relevant point of time. The statutory text itself indicates with clarity that what is to be compared is the “aggregate fair market value” of the property received with the “consideration” for which it is received, and it is only the excess of the former over the latter

which is rendered taxable. Therefore, the primary and foundational inquiry must necessarily be directed at identifying what, in the context of a conversion of OCCRPS into equity shares, constitutes the “consideration” for the purposes of section 56(2)(x). The answer to this question cannot be discovered by mere arithmetical substitution or by importing historical pricing benchmarks, but must be unearthed by reading the provision in a commercially sensible manner consistent with the architecture of the Act, the intrinsic nature of the transaction, and the settled principle that what is sought to be taxed as “income from other sources” cannot, by a side wind, be the natural appreciation of a capital asset, especially when the Act itself provides a distinct and comprehensive code for taxation of capital gains.

23. In the present case, the Assessing Officer has proceeded on the premise that the predetermined conversion price of Rs. 47.30 per equity share represents the “consideration” for the purposes of section 56(2)(x). In our considered view, this premise suffers from a fundamental legal and conceptual infirmity. The conversion price is not a price paid on the date of conversion, nor does it represent the economic value parted with by the assessee at that stage; it is a regulatory construct embedded at the time of issuance of the Optionally Convertible Cumulative Redeemable Preference Shares, fixed in compliance with the SEBI ICDR Regulations, governing the conversion ratio and forming, by virtue of section 49(2AE), the basis for determining the cost of acquisition of the equity shares for the purposes of computing capital gains upon a

subsequent transfer. It is thus a historical and regulatory benchmark, not the contemporaneous economic consideration for receipt of equity shares. On the date of conversion, the assessee does not discharge any monetary consideration; what it surrenders is a defined number of OCCRPS, which are capital instruments of a derivative character, whose value is intrinsically linked to, and indeed moves in tandem with, the value of the underlying equity shares of the issuer. In such a conversion transaction, therefore, the consideration for receipt of equity shares is represented by the value of the preference shares surrendered at the point of conversion, and not by a conversion price fixed at an anterior point of time for regulatory or compliance purposes. To equate "consideration" with such predetermined conversion price is, in effect, to substitute the concept of cost of acquisition for that of consideration, thereby conflating two expressions which the Act employs in distinct contexts and for distinct purposes, a conflation which is impermissible in law. Where the legislature intended cost of acquisition to be relevant, it has said so in clear and unambiguous terms, as in section 49(2AE); section 56(2)(x), however, speaks not of cost but of consideration, and that expression must be understood in its ordinary commercial sense, particularly in transactions involving exchange or conversion of capital assets.

24. The statutory emphasis on the word "aggregate" in section 56(2)(x) further reinforces this conclusion. The comparison envisaged by the provision is between the aggregate fair market value of the property received and the aggregate

consideration for which it is received, indicating that the legislature contemplated a holistic, contemporaneous and value-consistent comparison at the point of receipt, and not a fragmented, per-unit arithmetic divorced from commercial substance. When, therefore, the aggregate value of the OCCRPS surrendered is compared with the aggregate value of the equity shares received on conversion, on a consistent valuation plane and at the same point of time, the allegation of inadequacy of consideration simply does not survive. The approach adopted by the Assessing Officer and affirmed by the DRP, which effectively freezes the value of the OCCRPS at the point of issuance and ignores the natural and inevitable appreciation in their value over time, in substance seeks to tax what is nothing but capital appreciation between the date of issuance and the date of conversion. Such appreciation, under the scheme of the Act, lies squarely within the capital field and cannot be transmuted into "income from other sources" merely because the legislature has consciously chosen to render the conversion itself a tax-neutral event under section 47(xb).

25. Section 56(2)(x), properly construed, is an anti-abuse provision designed to capture cases of gratuitous receipt or colourable value shifting, and not to operate as a surrogate capital gains tax. The legislature, while enacting this provision, consciously retained the expression "consideration" and did not substitute it with "cost of acquisition" or any other historical metric, reflecting a deliberate legislative intent that what is to be examined is whether, at the point of receipt,

there is an inadequacy in what is parted with by the recipient. To interpret the provision otherwise would be to stretch the deeming fiction beyond its intended contours and to permit it to erode the carefully constructed boundary between capital and revenue receipts. If the interpretation canvassed by the Revenue were to be accepted, it would lead to an anomalous and internally inconsistent result, whereby capital appreciation embedded in a convertible instrument is first taxed as income from other sources at the stage of conversion and thereafter subjected to capital gains tax upon eventual transfer, albeit with the benefit of section 49(2AE), resulting in a layered taxation of the same economic increment, alien to the scheme of the Act and destructive of the legislative choice embodied in section 47(xb), which consciously defers taxation of such appreciation until a subsequent taxable transfer.

26. The reliance placed by the Revenue on Rule 11UA also does not advance its case. Valuation rules are machinery provisions which neither create a charge nor expand the scope of a charging provision; they merely provide a method for determining fair market value once the conditions of section 56(2)(x) are otherwise satisfied. Rule 11UA cannot be invoked to artificially manufacture an inadequacy of consideration by comparing fair market value with a historical conversion benchmark that does not represent consideration in law. The charging condition under section 56(2)(x) must first be satisfied on a proper interpretation of the term “consideration”. Only thereafter does the question of valuation arise. In the present case, once it is held that there is no

inadequacy of consideration in the first place, the mechanical computation under Rule 11UA becomes wholly irrelevant.

27. We also find considerable force in the principle enunciated by the Hon'ble Supreme Court in Reva Investment (P.) Ltd. v. CGT, namely, that in cases involving exchange of property for property, inadequacy of consideration must be examined in a broad commercial sense and that the valuation of what is given and what is received must be undertaken on a similar basis. Though articulated in the context of the Gift Tax Act, this principle is one of general commercial jurisprudence and carries persuasive force in interpreting section 56(2)(x), which similarly hinges upon the concept of inadequacy. Applying that principle here, once the OCCRPS surrendered and the equity shares received are valued on the same footing and at the same point of time, the charge under section 56(2)(x) cannot be sustained.

28. We are also unable to accept the contention of the Revenue that the assessee's substantial shareholding or alleged influence over TCIL alters the legal character of the transaction. Section 56(2)(x) does not draw any distinction based on control or shareholding for the purposes of determining consideration; it operates on objective statutory criteria, not on subjective perceptions of influence. Moreover, the record demonstrates that TCIL is a listed entity governed by an independent Board and that the conversion of OCCRPS has been carried out strictly in accordance with the applicable regulatory framework, supported by merchant banker

valuation and compliance with SEBI ICDR Regulations. There is nothing on record to suggest any artificiality or contrivance in the transaction so as to justify the invocation of an anti-abuse provision.

29. Viewed, therefore, from any angle be it the statutory language of section 56(2)(x), the nature of convertible instruments, the aggregate comparison mandated by the provision, the scheme of capital gains taxation, or the legislative intent underlying sections 47(xb) and 49(2AE), the invocation of section 56(2)(x) in the present case is wholly unsustainable. The consideration for receipt of equity shares on conversion is the value of the OCCRPS surrendered at the time of conversion, which is commensurate with, and indeed intrinsically linked to, the value of the equity shares received. Once this position is accepted, the essential sine qua non for invoking section 56(2)(x), namely, inadequacy of consideration, is conspicuously absent. What the Revenue seeks to tax is not a disguised receipt or a gratuitous benefit but a legitimate and natural accretion in the value of a capital asset over time, which the Act, by design, does not bring to tax at the stage of conversion.

30. We also find that the approach adopted by the Assessing Officer effectively attempts to create a hybrid charge, whereby appreciation in a capital asset between issuance and conversion is first sought to be taxed as “income from other sources” and thereafter subjected to capital gains tax on eventual transfer, albeit with the benefit of section 49(2AE).

Such an approach, apart from being contrary to the statutory scheme, would introduce an element of double taxation in substance and would defeat the purpose of the legislative carve-out contained in section 47(xb). Deeming provisions, though enacted to curb abuse, cannot be applied in a vacuum or on a mere perception of revenue loss; they must be confined to cases where the factual substratum reveals a colourable device or a transaction structured to confer a benefit without commensurate outflow. In the present case, the transaction is a regulated preferential issue and conversion of OCCRPS of a listed company, undertaken strictly within the statutory and regulatory framework, leaving no scope for invocation of section 56(2)(x).

31. Accordingly, we hold that the addition made by invoking section 56(2)(x) of the Act on conversion of OCCRPS into equity shares is unsustainable in law and on facts. The value of the OCCRPS surrendered by the assessee on conversion is equal to or more than the fair market value of the equity shares received and, therefore, the provisions of section 56(2)(x) have no application to the facts of the present case. The addition made by the Assessing Officer and sustained by the learned DRP is directed to be deleted in its entirety.

32. In the result, appeal of the assessee is allowed.

Order pronounced on 20th January, 2026.

Sd/-	Sd/-
(GIRISH AGRAWAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 20 /01/2026
KARUNA, *sr.ps*

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai