

Green Infra Case: Premium Received on Share Issue not Taxable, says Tax Tribunal

The Mumbai-bench of the Income Tax Appellate Tribunal (ITAT), in a recent ruling, has held that the premium received on issue of shares is not taxable under the Income Tax Act.

Hearing a case in connection with renewable energy firm Green Infra Ltd, the tax tribunal said, “The share premium realised from the issue of shares is capital in nature and forms part of the share capital and, therefore, cannot be taxed as revenue receipt.”

COMPANY’S PREROGATIVE

The ITAT also said it is the prerogative of the company’s board of directors to decide the premium amount and it solely depends on the shareholders whether they want to subscribe to those shares at a premium price.

It also said the tax department cannot question the charging of a huge premium without any bar from any legislated law.

The ruling assumes importance as it might be used as an example in the next hearing of Shell India at the Bombay High Court.

The revenue department, based on the orders of the transfer pricing officer, charged a share premium and alleged that the premium received is chargeable to tax.

To this, the company has contented that the money received on account of issuance of share capital is not chargeable as income under the Income Tax Act.

COMMERCIAL DECISION

IDFC Private Equity-backed Green Infra had issued equity shares of Rs 10 a share at a premium of Rs 490 a share and credited the premium to the share premium account. The company adopted the discounted cash flow (DCF) method in its valuation report and justified the premium charged saying it was a commercial decision and does not require any justification under law.

However, the Assessing Officer observed that the premium collected was not utilised for the purpose and objectives. Further, it was collected without following the conditions specified under the Companies Act. It also questioned the validity of this share premium and claimed it to be a sham transaction.

To this, Green Infra argued that as the Government of India holds a significant 18 per cent in the IDFC PE fund, the transaction cannot be bogus or sham.

The ITAT ruled that Green Infra's shareholders and their holding company are all either public sector undertakings or Government companies. Therefore, a transaction which has an element of Government involvement cannot be termed sham.

(Business Line)