THE POWER OF BEING UNDERSTOOD

RSM



RSM India Newsflash – Delhi ITAT: Buy-back of Shares Held to Constitute Corporate Reorganisation under Article 13(5) of the India–Netherlands DTAA

Newsflash

Delhi ITAT: Buy-back of Shares Held to Constitute Corporate Reorganisation under Article 13(5) of the India–Netherlands DTAA

For Circulation Only
5 August 2026

1.0 Background



In cross-border group structures, companies often undertake internal restructuring to realign shareholding, capital structure or ownership interests within the group. One such method is **buy-back of shares**, where a company purchases its own shares from an existing shareholder. While such transactions may be undertaken for commercial or group restructuring reasons, they can also give rise to tax implications, especially where the shareholder is a foreign company.

The Delhi Bench of the Income Tax Appellate Tribunal (ITAT) in the case of **Huntsman Investment (Netherlands) BV**[1] examined the taxability of capital gains arising from the buy-back of shares by an Indian subsidiary from its Netherlands parent company.

The dispute primarily centred on the interpretation of **Article 13(5) of the India–Netherlands DTAA**, which deals with taxation of capital gains. While the said Article permits India to tax gains from the transfer of shares in certain cases where the foreign shareholder holds a substantial interest in an Indian company, it also provides a carve-out where the gains arise in the course of a **corporate organisation, reorganisation, amalgamation, division or similar transaction**. The Delhi ITAT was therefore required to examine whether a share buy-back undertaken within the Huntsman group could be regarded as a corporate reorganisation for the purposes of the treaty.

In this Newsflash, we provide a brief overview of the Delhi ITAT ruling on the applicability of Article 13(5) of the India-Netherlands DTAA to a share buy-back transaction undertaken within the same corporate group.

2.0 Facts of the Case

The assessee, **Huntsman Investment (Netherlands) BV**, is a company incorporated in the Netherlands and is the holding company of **Huntsman International (India) Private Limited** (HIIPL). HIIPL carried on two business divisions, namely the Polyurethane Products business and the Textile Effects business. During the relevant assessment year, the assessee held 99.98% of the equity share capital of HIIPL.

During Assessment Year (AY) 2009–10, HIIPL made an offer to buy back its own equity shares. Following the buy-back offer, the assessee tendered 2.14 crore equity shares, representing approximately 24% of its shareholding in HIIPL, at a price of Rs. 23.10 per share, resulting in a total consideration of Rs. 49.43 crore. The assessee offered the capital gains arising from the transaction to tax in its return of income.

[1] Huntsman Investment [Netherlands] BV *v.* A.D.I.T, International Taxation ITA NO. 764/DEL/2014 (A.Y.2009-10)

During the course of the assessment proceedings, the transaction was referred to the Transfer Pricing Officer (TPO) for determination of the arm's length price (ALP). The TPO rejected the valuation adopted by the assessee and determined the arm's length price of each share at Rs. 80.77, as against Rs. 23.10 adopted by the assessee. Consequently, the TPO proposed an upward adjustment of Rs. 123.41 crore.

Based on the transfer pricing adjustment, the Assessing Officer proposed to enhance the capital gains arising from the buy-back transaction.

Before the Dispute Resolution Panel, the assessee raised an additional ground contending that the buy-back transaction was not taxable in India on the basis that the gains were protected under Article 13(5) of the India-Netherlands DTAA.

The assessee advanced two alternative arguments:

- the buy-back qualified as a tax-neutral transaction under section 47(iv) of the Income-tax Act (hereinafter referred to as the '**ITA**'), 1961 [corresponding to section 70(1)(c) of the ITA 2025],

- even assuming capital gains arose, such gains were taxable only in the Netherlands under Article 13(5) of the India–Netherlands DTAA, which provided a more beneficial treatment under section 90(2) of the ITA 1961 [corresponding to section 159(4) of ITA 2025].

The DRP rejected both contentions and directed the AO to complete the assessment accordingly. Aggrieved by the final assessment order, the assessee preferred an appeal before the Delhi Bench of the ITAT.

3.0 Assessee's Contentions

Before the Tribunal, the assessee submitted that the DRP had erred in rejecting the additional ground relating to the taxability of the buy-back transaction.

The assessee first argued that the buy-back qualified as a tax-neutral transaction under section 47(iv) of the ITA 1961, since the transfer was made by the parent company to its Indian subsidiary.

Further, the assessee strongly relied upon Article 13(5) of the India–Netherlands DTAA, which provides as follows:

ARTICLE 13

CAPITAL GAINS

5. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be* ***taxable only in the State of which the alienator is a resident.***

However, gains from the alienation of shares issued by a company resident in the other State which shares form part of ***at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State****. However, such gains shall remain taxable only in the State of which the* ***alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction****, and the buyer or the* ***seller owns at least 10 per cent of the capital*** *of the other.*

The assessee submitted that the buy-back transaction satisfied all the conditions under Article 13(5). The assessee was admittedly a resident of the Netherlands, the seller owned substantially more than ten per cent of the capital of the Indian company, and the gains had arisen in the course of a transaction amounting to corporate organisation, reorganisation, amalgamation, division, or similar transaction.

According to the assessee, the only dispute was whether a buy-back constituted a form of corporate reorganisation. The assessee further argued that the expression "corporate organisation, reorganisation, amalgamation, division or similar transaction" occurring in Article 13(5) should receive a liberal interpretation consistent with the object and purpose of the treaty. The words "or similar transaction" immediately following the expressions "corporate organisation", "reorganisation", "amalgamation" and "division" indicated that the treaty intended to cover all forms of corporate restructuring and not merely statutory mergers or amalgamations.

The assessee further submitted that the DRP had wrongly proceeded on the basis that only those buy-backs approved by the High Court under the Companies Act 2013 could qualify as corporate reorganisations. According to the assessee, the procedure adopted for carrying out the buy-back could not determine the true character of the transaction.

In support of its submissions, the assessee referred to the **Nigeria–Netherlands DTAA**, wherein the Protocol explained that the expressions "corporate organisation", "reorganisation", "amalgamation", "division" or similar transaction referred to transfers of shares within a group of associated enterprises.

The assessee also relied upon the **Vienna Convention on the Law of Treaties, 1969**[2] and the judgment passed by the **United Kingdom Supreme Court**[3] submitting that treaty provisions are required to be interpreted in good faith and in light of their object and purpose.

Reliance was also placed upon the **ICAI Guidance on Accounting for Corporate Restructuring**, which recognises buy-back of shares as a form of capital and financial restructuring.

Further reliance was placed upon judicial precedents recognising buy-back as a form of corporate reorganisation, including the decisions of the **Bombay High Court** in the case of ***S.E.B.I. vs Sterlite Industries 53 CLA 41*** and the **Andhra Pradesh High Court** in the case of ***Shareholders of TCI Industries Limited vs TCI Industries Limited 60 CLA 382***. The assessee also pointed out that the DRP had relied upon the ruling of the **Authority for Advance Rulings in Perfetti Van Melle**[4], which had subsequently been overruled by the **Delhi High Court**[5].

Accordingly, the assessee submitted that the DRP had adopted an unduly narrow and restrictive interpretation of Article 13(5), thereby defeating the very object of the treaty.

[2] Article 30(1) of the Vienna Convention on the law of Treaties, 1969
[3] In case of Anson vs. HMRC (2015) UKSC 44
[4] In case of Perfetti Van Melle Holding BV, 342 ITR 200
[5] In case of Perfetti Van Melle Holding BV vs. Authority for Advance Ruling, (2014) 52 taxmann.com 161 (Delhi)

4.0 Revenue's Contentions

The Revenue supported the assessment order as well as the directions issued by the Dispute Resolution Panel (DRP), contending that the assessee was not entitled to the benefit of either section 47(iv) of the Income-tax Act or Article 13(5) of the India–Netherlands DTAA.

With regard to the assessee's claim under section 47(iv) of the ITA 1961, the Revenue submitted that the transaction was specifically governed by the provisions relating to buy-back of shares. It was argued that section 46A of the ITA 1961 permitting buy-back of shares under the Companies Act, constituted a special provision dealing with taxation of consideration received by a shareholder on purchase of their own shares by a company. Since section 46A specifically provided for taxation of such consideration as capital gains, the exemption under section 47(iv) could not override the special charging provision.

The Revenue also relied upon the Explanatory Memorandum to Finance Act 1999 explaining the introduction of section 46A, wherein it was clarified that the provision had been enacted to remove uncertainty regarding the tax consequences of buy-back transactions and to provide that consideration received by a shareholder on buy-back of shares would be taxable as capital gains.

Further, the Revenue contended that even the conditions prescribed under section 47(iv) were not fulfilled in the present case. The provision required that the parent company or its nominees should hold the entire share capital of the subsidiary company. Since the assessee admittedly held only 99.98% of the equity share capital of HIIPL and not the entire share capital, the statutory requirement stood unfulfilled.

With respect to the treaty claim, the Revenue submitted that the assessee's case was not covered by Article 13(5) of the India–Netherlands DTAA. According to the Revenue, the expression "corporate organisation, reorganisation, amalgamation, division or similar transaction" could not be interpreted to include a buy-back of shares. It was argued that the treaty contemplated only those transactions involving recognised forms of corporate restructuring and that an ordinary buy-back undertaken under the Companies Act did not fall within the scope of the provision.

The Revenue further submitted that the DRP had correctly analysed the relevant treaty provisions and had rightly concluded that the assessee's case was outside the ambit of Article 13(5). Accordingly, no interference with the assessment order was called for.

5.0 ITAT's Analysis and Order

5.1. Order as per the Accountant Member

After considering the rival submissions and examining the relevant provisions of the India–Netherlands DTAA, the Accountant Member identified the central controversy in the appeal as the interpretation of Article 13(5).



The Accountant Member observed that Article 13(5) provides that gains arising from the alienation of shares issued by a company resident in the other Contracting State may generally be taxed in that other State where the prescribed shareholding threshold is satisfied. However, the Article further provides that such gains shall remain taxable only in the State of which the alienator is a resident if the gains are realised in the course of a corporate organisation,

reorganisation, amalgamation, division or similar transaction, and the buyer or seller owns at least 10% of the capital of the other.

Further, there was no dispute that all the ownership conditions stipulated under Article 13(5) stood satisfied in the present case. The assessee was a resident of the Netherlands and held substantially more than the prescribed percentage of shares in HIIPL. Therefore, the only issue requiring determination was whether a buy-back of shares constituted a form of corporate reorganisation within the meaning of Article 13(5).

The Accountant Member noted that the expression "corporate reorganisation" had not been defined in the DTAA. In such circumstances, it considered it appropriate to examine the ordinary legal meaning of the expression as well as the judicial understanding of buy-back transactions.

Reference was first made to a legal dictionary[6], wherein "reorganisation of a company" has been described as an amalgamation or readjustment involving acquisition of another company, division into separate entities or a substantial change in the company's capital structure.

The Accountant Member observed that a buy-back of shares directly results in an alteration of the capital structure of the company and, therefore, falls within the ordinary meaning of corporate reorganisation.

Reliance was also placed on the judgment of the **Hon'ble Bombay High Court** in the case of **Sterlite Industries**[7], wherein it was held that a company could buy back its own shares as part of a scheme of reorganisation under the Companies Act. Similarly, reliance was also placed upon the decision of the **Hon'ble Andhra Pradesh High Court** in case of **Shareholders of TCI Industries Ltd**[8]., which also recognised buy-back as a scheme of reorganisation.

These judicial precedents, according to the Accountant Member, clearly demonstrated that buy-back of shares had already been recognised by the High Courts as a form of corporate reorganisation.

It was further observed that the procedure adopted for implementing a buy-back whether under the supervision of the High Court or directly under the provisions of the Companies Act, did not alter the true character of the transaction. The manner in which a buy-back was carried out could not determine whether it constituted a corporate reorganisation.

The Accountant Member also considered the Protocol to the ***Nigeria–Netherlands DTAA***, which contains language similar to Article 13(5) of the India–Netherlands DTAA. The Protocol explains that the expressions 'corporate organisation', 'reorganisation', 'amalgamation', 'division' or similar transaction refer to transfers of shares within a group of associated enterprises.

According to the Accountant Member, the expression '*It is understood*' appearing in the Protocol indicated that the clarification was explanatory in nature rather than introducing any new concession under the treaty. Consequently, the Protocol provided useful guidance in understanding the scope of the expression occurring in Article 13(5).

---

[6] P. Ramanatha Aiyar's Advanced Major Law Lexicon
[7] SEBI vs. Sterlite Industries (India) Limited [2003] 53 CLA 41 (Bombay)
[8] Shareholders of TCI Industries Limited Vs TCI Industries Limited 60 CLA 382

The Accountant Member further referred to the ***ICAI Guidance Note on Accounting for Corporate Restructuring***, which describes corporate restructuring as a broad concept encompassing significant realignment of the investment or financing structure of a company. The Guidance Note specifically includes capital and financial restructuring, such as buy-back of shares, within the scope of corporate restructuring.

Having considered the dictionary meaning, judicial precedents, treaty guidance and the ICAI publication, the Accountant Member concluded that the expression "corporate organisation, reorganisation, amalgamation, division or similar transaction" occurring in Article 13(5) must receive a purposive interpretation.

The Accountant Member observed that the DRP had adopted an unduly narrow and restrictive interpretation of the treaty provision. Such an interpretation, in the Tribunal's view, would defeat the very purpose of Article 13(5), which seeks to provide treaty relief in genuine cases of corporate restructuring. Accordingly, the Tribunal held that a buy-back of shares falls within the ambit of Article 13(5) of the India–Netherlands DTAA.

Since the gains arose in the course of such a transaction and the ownership conditions prescribed under the Article stood fulfilled, the Accountant Member held that the capital gains were taxable only in the Netherlands.

5.2. Order as per the Judicial Member

The Judicial Member, however, disagreed with the conclusions reached by the Accountant Member and held that the buy-back transaction did not qualify as a corporate reorganisation within the meaning of Article 13(5) of the India–Netherlands DTAA.

The Judicial Member observed that the expressions "corporate organisation", "reorganisation", "amalgamation", "division" and "similar transaction" are not defined under the Treaty. Accordingly, by virtue of Article 3 of the DTAA, such expressions were required to be interpreted in accordance with the domestic law of the Contracting State applying the Treaty, i.e. the laws of India.

The Judicial Member noted that while the Income-tax Act specifically defines "amalgamation" and "demerger", the Companies Act separately deals with concepts such as "arrangement", "buy-back of shares" and "winding up". Since buy-back is recognised as an independent corporate action under the Companies Act and not as a form of amalgamation, demerger or arrangement, it could not be brought within the scope of those expressions appearing in Article 13(5). According to the Judicial Member, treaty expressions cannot be interpreted in isolation but must be harmonised with the relevant provisions of domestic law.

The Judicial Member further held that, since the relevant statutory provisions clearly existed under Indian law, there was no occasion to invoke the doctrine of *ejusdem generis* for interpreting the expression "similar transaction". Consequently, reliance placed by the assessee on the Protocol to the Nigeria–Netherlands DTAA was considered misplaced and unacceptable.

It was further observed that the ICAI Guidance Note and SEBI guidelines possess only persuasive value and cannot override or expand the statutory provisions governing corporate reorganisations. Accordingly, these materials could not be relied upon for characterising a buy-back as a corporate reorganisation.

The Judicial Member also observed that the impugned buy-back itself was allegedly undertaken in contravention of the provisions of the Companies Act, as it had been financed out of the proceeds of an earlier issue of the same class of shares. Such a transaction, according to the Judicial Member, could not be regarded as a valid corporate reorganisation.

Reliance was placed on the decision of the coordinate Bench in ***Accordis Beheer BV***[9], wherein the expression "reorganisation" under the Treaty was interpreted as requiring a substantial change in the financial structure of the company resulting in an alteration of the rights and interests of security holders. Applying this principle, the Judicial Member concluded that the impugned buy-back did not bring about any significant change in either the financial structure of the company or the rights of the shareholders. Consequently, it could not be regarded as a "reorganisation" under Article 13(5).

The Judicial Member also observed that, under the Companies Act, a scheme of arrangement or reorganisation ordinarily requires implementation through a court-approved or statutory mechanism. Since no such approval had been obtained in the present case and there was no reorganisation of the corporate group, the transaction did not qualify as a corporate reorganisation.

5.3. Conclusion

In view of the difference of opinion between the Accountant Member and the Judicial Member, the matter was referred to the Third Member under section 255(4) of the ITA 1961. The Third Member concurred with the view expressed by the Accountant Member and held that the gains arising to the assessee from the buy-back of shares by its subsidiary, HIIPL, were covered by Article 13(5) of the India–Netherlands DTAA. Consequently, the capital gains were held to be taxable exclusively in the Netherlands, being the State of residence of the assessee. Accordingly, the assessee's appeal was allowed.

6.0 Key Takeaways



6.1 The ruling is significant as it adopts a **purposive and broader interpretation** of the expression “corporate reorganisation” under Article 13(5) of the India-Netherlands DTAA. The ITAT recognised that a share buy-back, particularly when undertaken within the same corporate group, may qualify as a form of corporate or capital restructuring and need not be confined only to conventional transactions such as merger, amalgamation or demerger.

6.2 Another important aspect of the ruling is that intra-group share transfers or buy-back transactions may qualify for treaty protection where the relevant DTAA specifically contains a carve-out for corporate organisation, reorganisation, amalgamation, division or similar transactions. Therefore, multinational groups undertaking similar restructuring should carefully examine the exact wording of the applicable treaty.

[9] M/s Accordis Beheer B V Versus Director of Income Tax Officer (International Taxation)-1(1) ITA 4688 and 5025/Mum/2010

6.3 The ruling is particularly significant for multinational groups undertaking capital restructuring through Indian subsidiaries, especially where the applicable tax treaty contains provisions similar to Article 13(5) of the India–Netherlands DTAA. However, the applicability of this principle would depend on the specific treaty language, facts of the case, group structure, purpose of the transaction, documentation, and satisfaction of the conditions prescribed under the relevant treaty provisions

6.4 The Tribunal further clarified that supplementary interpretative aids, including protocols to comparable tax treaties, the OECD Commentary, and professional guidance issued by recognised bodies such as the ICAI, ICSI or SEBI, may legitimately be relied upon to determine the meaning of undefined treaty terms. This layered approach promotes both consistency and flexibility in treaty interpretation, while ensuring that the interpretation of treaty provisions remains aligned with international tax principles and commercial realities.

THE POWER OF BEING UNDERSTOOD

RSM

For further information please contact:

RSM Astute Consulting Pvt. Ltd.

9th Floor, Maker Chambers VI, Nariman Point, Mumbai – 400021

3rd Floor, Technopolis Knowledge Park, A Wing, MIDC, Andheri East, Mumbai - 400093

T: (91-22) 6108 5555/ 6121 4444
F: (91-22) 2287 5771

E: emails@rsmindia.in **W:** www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Navi Mumbai, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham, Jaipur and Vijayanagar.


facebook.com/RSMinIndia


X.com/RSM_India


linkedin.com/company/rsm-india


Youtube.com/c/RSMIndia

RSM Astute Consulting Pvt. Ltd. (Including its affiliates) is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at Upper Ground Floor South, 200 Aldersgate Street, London EC1A 4HD.

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et sec of the Civil Code of Switzerland whose seat is in Zug.

This newsflash provides an overview of the Delhi ITAT ruling on treaty relief for capital gains arising from an intra-group share buy-back under the India-Netherlands DTAA. It may be noted that nothing contained in this Newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain thereof and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this Newsflash.

This Newsflash is protected under Copyright and Intellectual property laws and regulations.

5 August 2026

© RSM India, 2026