Commissioner of Income Tax (International Taxation)-3 v. Toshiba Corporation

ITA 60/2026

ITA 60/2026 (Delhi HC, decided 2026-01-28) | 2026-01-28

Toshiba: evidence-free recharacterisation of a share purchase as an asset purchase rejected in section 201 proceedings; Revenue appeal failed on concurrent findings.

Income-tax Act, 1961: sections 201(1), 201(1A)

High Court of Delhi | 2-judge bench (Division Bench) | Justice Dinesh Mehta | Justice Vinod Kumar

Assessment years: Not specified in supplied order

Important restraint on TDS officers re-characterizing share acquisitions under Section 201

Holds that in TDS default proceedings under Section 201(1)/(1A), the AO cannot on surmises re-characterize a share purchase into an asset purchase when the payer has deducted and deposited TDS at 10% plus surcharge on the share purchase.

01 FACTS OF THE CASE

Toshiba Corporation purchased shares from non-resident sellers (Sangista Kshetry, Hersh Kshetry, and Nina Kshetry) and deducted and deposited TDS at 10% plus surcharge on the consideration. By order dated 12.11.2021 under Section 201(1)/201(1A), the AO treated Toshiba as an assessee-in-default and raised an interest demand by re-characterizing the purchase of shares as a purchase of underlying assets requiring a higher rate of TDS. Both the CIT(A)-43 and the ITAT (order dated 26.07.2024) deleted the demand.

Source: PDF pp. 1-2, paras 1-3

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench agreed with the concurrent findings of the CIT(A)-43 and the ITAT that the AO had acted purely on surmises and conjectures in re-characterizing a documented sale of shares into a sale of assets. In proceedings relating to deduction of tax at source under Section 201(1)/(1A), where the assessee had deducted and deposited tax at 10% plus surcharge on the share purchase, the AO could not embark upon an exercise of holding that the transaction was in substance a purchase of assets.

Source: PDF pp. 2-3, paras 2-5

03 JUDICIAL DECISION

Holding that no question of law arose out of the concurrent findings recorded by the two appellate authorities, the High Court dismissed the Revenue's appeal.

Source: PDF pp. 2-3, paras 5-6

04 OUTCOME / IN WHOSE FAVOUR

Revenue’s appeal failed; the concurrent findings against the default/interest case based on recharacterisation remained undisturbed. No general withholding rate for other transactions was determined.

Source: PDF p.2

05 EXPERT COMMENTS

The missing evidential basis was central — The AO assumed an asset sale without material supporting that change, while two appellate authorities accepted a share purchase. The outcome should be tied to that record rather than treated as immunity for every transaction labelled a share sale.

The recorded rate is not a universal rate — Ten per cent plus surcharge describes the deduction in this case. The order does not prescribe that rate for all non-resident sellers, assessment years or asset classes.

Preserve the transaction evidence — The agreement, payment trail and deduction records would be important in a comparable dispute. This practical implication follows from the accepted nature of the transaction; it is not a new documentary checklist ordered by the Court.

Distinguish the appeal result from broader tax issues — The High Court found no question of law arising from concurrent findings. It did not decide every anti-avoidance power, seller's final capital-gains liability or a different evidence-based recharacterisation.

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SOURCE & VERIFICATION

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STATUTORY SCOPE

The order addresses sections 201(1) and 201(1A) in the recorded share-purchase dispute. No general withholding-rate determination is made.

LATER TREATMENT

Source checked 2026-10-21. Subsequent judicial treatment has not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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