



Tax Flash News



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Capital gains exemption under the India-Singapore treaty denied as the Singaporean entity was held to be shell or conduit company

Executive summary



In the case of *Hareon Solar Singapore*,¹ the Delhi Bench of the Income-tax Appellate Tribunal ('the Tribunal') has held that the capital gains arising to a Singapore incorporated entity from the transfer of its investments in an Indian company are not eligible for capital gains exemption under the India–Singapore tax treaty ('the Treaty') as the taxpayer is a shell or conduit company as per the Limitation of Benefit ('LOB') clause of the Treaty. Mere holding of Tax Residency Certificate ('TRC') is not sufficient to claim the Treaty benefits.

Though the annual expenditure of the taxpayer which comprised primarily of legal and professional fees exceeded the threshold prescribed under the LOB clause, however, based on perusal of the underlying facts and the absence of supporting documents, the Tribunal concluded that there is no commercial purpose or economic substance in incorporating the taxpayer company in Singapore to route investment into the Indian company, except to obtain the Treaty benefits.

¹ *Hareon Solar Singapore Pvt. Ltd v. DCIT* (ITA No. 2226/ Del/ 2024)

Facts of the case



The taxpayer, a company incorporated in Singapore, was engaged in making investment in companies involved in production, sales and trading of power.

The taxpayer was a wholly owned subsidiary of a Hongkong-based company ('HCo') and its ultimate parent entity was located in China ('the Chinese company'), which was also a global manufacturer and supplier of solar photovoltaic ('PV') modules.

In July 2015, the taxpayer invested in equity shares and Compulsorily Convertible Debentures ('CCDs') issued by an Indian company ('ICo').

Simultaneously, a Joint Venture Agreement ('JVA') was entered into between the Chinese company, the taxpayer and ICo to supply solar PV modules to ICo.

During the year under consideration (i.e., financial year 2019-20), the taxpayer transferred its investments held in ICo (equity shares and CCDs) and claimed the resulting long-term capital gains as not taxable in India as per the Treaty.²

² Article 13(4A) and 13(5)

The Revenue, however, invoked the LOB clause under the Treaty,³ alleging that the taxpayer was a shell or conduit entity, set up with the sole motive of gaining tax benefit, without adequate economic or commercial substance in Singapore and with the beneficial ownership and control and management lying outside Singapore.

Consequently, the Revenue denied the Treaty benefit to the taxpayer and taxed the capital gains in India under the Income tax Act, 1961 ('the Act').

Relevant provisions



As per Article 13(4A) of the Treaty, capital gains arising from alienation of shares in an Indian company, acquired before 1 April 2017, by a Singapore tax resident are taxable only in Singapore ('the grandfathering provision').

Article 13(5) of the Treaty provides that capital gains arising to a Singapore tax resident from alienation of property not specifically mentioned in the article⁴, are taxable only in Singapore.

³ Article 24A

⁴ Immovable property, business property, ships and aircrafts operated in international traffic and sale of shares of an Indian company as mentioned in Paragraph 1, 2, 3 and 4A/4B of Article 13

The LOB clause of the Treaty provides that a Singapore tax resident is not entitled to benefit of the grandfathering provision if:

- its affairs are arranged with the primary purpose to take advantage of the said benefit – Article 24A(1); or
- it is a shell or conduit company with negligible or nil business operations or with no real and continuous business activities in Singapore – Article 24A(2)

A Singapore tax resident is deemed to be a shell or conduit company if its annual expenditure on operations in Singapore is less than SGD 200,000 in Singapore for each of the 12-month periods in the immediately preceding period of 24 months from the date on which the capital gains arise ('the Expenditure Test').⁵

⁵ Article 24A(3)

Revenue's contentions



TRC not conclusive

The taxpayer was not entitled to Treaty benefit as merely holding a TRC issued by the Inland Revenue Authorities of Singapore ('IRAS') was not conclusive to decide the tax residency under the Treaty, if the substance established otherwise.

Treaty shopping

Since the Chinese company supplied PV modules to ICo, there was no commercial rationale for setting up a company in Singapore – rather the Chinese company could have made direct investment in ICo. The only purpose of interposing the taxpayer in Singapore was to take the tax benefit in India as per the Treaty as well as in Singapore as capital gains were not taxable in Singapore as per the Singapore tax laws.

Shell/ conduit company

The following facts were emphasised to point that the taxpayer was a shell or conduit entity, with actual control and management lying outside Singapore:

- The taxpayer had no employees in Singapore.

- It had no independent office and was using the office space of its consultant, as and when required.
- Taxpayer's business expenses primarily included legal and professional fees, and no utility expenses like internet, electricity, etc., for day-to-day operations were incurred by the taxpayer.
- Three out of five directors, who were taking key decisions, were based outside Singapore (i.e., USA and Taiwan) – no documentary proof (such as passports, visas, travel records) was furnished to substantiate that the directors were physically present in Singapore during the board meetings.
- The authorised signatories/ key controllers for operation of taxpayer's bank account were persons based in the USA and Taiwan.

Taxpayer's contentions



Capital gains not taxable in India

TRC issued by the by the competent authority is sufficient to establish tax residence. Thus, the taxpayer, being a tax resident of Singapore was entitled to the Treaty benefits.

Since the capital gains arose from the sale of shares acquired prior to 1 April 2017, such gains were not taxable in India as per the Treaty.⁶ Further, the capital gains arising from transfer of CCDs were taxable only in Singapore as per the Treaty.⁷

As per the Treaty, the capital gains were to be taxed on the basis of legal ownership and not on the basis of beneficial ownership.

No Treaty shopping

Taxpayer held additional investments other than the investments made in ICo – it also held redeemable preference shares in a Singapore-based company and owned equity shares in another Indian group company.

⁶ Article 13(4A) of the Treaty

⁷ Article 13(5) of the Treaty

Not a shell/ conduit company

Board of Directors meetings were held in Singapore, and the Directors were present in Singapore when the key decisions were taken in such meetings.

The Expenditure Test prescribed under LOB clause was complied with as the taxpayer had spent around SGD 400,000 towards business expenses as reported in the books of account, which was higher than the prescribed threshold.

Legal and professional expenses incurred by the taxpayer are operating expenses, which were more than sufficient to establish that the place of effective management is based in Singapore.

The taxpayer relied on the Delhi High Court ruling in *Blackstone Capital Partners*⁸ and Mumbai Tribunal ruling in the case of *Fullerton Financial Holdings*⁹, wherein Treaty benefits were granted to a Singapore investment holding company.

⁸ *Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd. v. ACIT* [2023] 452 ITR 111 (Delhi)

⁹ *Fullerton Financial Holdings Pte. Ltd. v. ACIT* [2025] 180 taxmann.com 241 (Mumbai Tribunal)

Tribunal's decision



The Tribunal denied the Treaty benefit to the taxpayer by invoking LOB clause under the Treaty and held that the capital gains arising on the sale of equity shares and CCDs were taxable in India under the Act.

Based on the following observations, the Tribunal concluded that the taxpayer was merely a shell/ conduit entity interposed in Singapore to take the tax advantage under the Treaty:

- Majority of current liabilities were payable by the taxpayer to its holding company, i.e. HCo and the investment in plant and machinery/ other assets was minimal.
- The taxpayer neither had employees, nor had any conventional office of its own in Singapore. It used the premises of its consultant as and when needed, to whom legal and professional charges were paid. There were no other operating expenses such as communication, internet, electricity, travels, hotel bills, business promotions, Directors' fee/ salary, Directors'

meeting fee, salaries, staff welfare, repairs, entertainment etc. incurred by the taxpayer.

- The taxpayer had no independent business activities apart from holding few investments and was dependent on its parent company (i.e. HCo) for funding.
- Three of the directors of the taxpayer were based outside Singapore and only one director was based in Singapore. No authenticated records such as copies of passport of Directors, Visa, entry/exit stamp by Immigration authorities at Singapore, etc. were produced to substantiate that the directors were physically present in Singapore for the meetings.
- None of the signatory to the taxpayer's bank account was based in Singapore.

The LOB clause was applicable in the instant case as there was no commercial purpose or economic substance in incorporating a company in Singapore to route investment into India except to take benefit/ advantage under the Treaty.

Upon reviewing the minutes of the taxpayer's Board of Directors meeting held in June 2015, it was observed that HCo was desirous to invest in the taxpayer, who in turn would make investment in ICo.

The minutes also record that the decision to enter into JVA was taken during the same meeting. It is pertinent to note that, had the investments been made directly by the Chinese company and/or by HCo, the resulting capital gains would have been taxable in India.

The taxpayer had not produced any confirmation certificate from the IRAS that the taxpayer satisfied the prescribed Expenditure Test under the Treaty.

Reliance placed by the taxpayer on the *Fullerton Financial Holdings* decision, was rejected by the Tribunal as in that case the Singapore entity had substantial management and operational presence, which was absent in the instant case.

The TRC furnished by the taxpayer was issued in July 2019 by IRAS based on declaration of the taxpayer that its control and management for whole of the year 2019 will be exercised in Singapore. The share transfer transaction took place in June 2019.

Mere holding of TRC was not sufficient – the Revenue had to see the relevant facts and circumstances and to make necessary enquiries to see whether the claim of residency based on TRC was genuine or merely a sham claim tainted by misrepresentation or fraud.

¹⁰ Without discussing its applicability in the instant case

¹¹ *Authority for Advance Rulings (Income-tax) v. Tiger Global International II Holdings* [2026] 182 taxmann.com 375

While the hearings in the instant case concluded on 5 January 2026 and the order was pronounced on 30 January 2026, the Tribunal mentioned¹⁰ the Supreme Court ruling in the case of *Tiger Global*,¹¹ which was pronounced on 15 January 2026.

Our comments



The Tribunal's ruling underscores the increasing scrutiny placed on cross border investment structures, particularly those involving intermediate jurisdictions that offer favourable tax treaty benefits. The ruling reaffirms that possession of a TRC is not a conclusive evidence of tax residency and treaty eligibility, where the underlying facts indicate an absence of commercial substance.



¹⁰ Without discussing its applicability in the instant case

¹¹ *Authority for Advance Rulings (Income-tax) v. Tiger Global International II Holdings* [2026] 182 taxmann.com 375

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