KPMG

TAX FLASH NEWS

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The Singaporean company is eligible for the tax treaty benefit on the basis of a valid TRC

Executive Summary

The claim of tax treaty benefit on capital gains arising in the hands of a non-resident shareholder from the sale of shares of an Indian company has been a controversial issue from a long time. Recently, the Delhi High Court in the case of Blackstone Capital Partners (Singapore) VI FDI Three PTE Ltd[1] held that the AO cannot go behind the Tax Residency Certificate (TRC) issued by the other tax jurisdiction as the same is sufficient evidence to claim treaty eligibility.

Relying on the above decision, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Reverse Age Health Services Pte Ltd.[2] (the taxpayer) held that the taxpayer had furnished a valid TRC issued by Singaporean tax authorities and was thus eligible for the India-Singapore tax treaty (the tax treaty) benefit. The Tribunal observed that General Anti-Avoidance Rule (GAAR) was not attracted to taxpayer's transaction as the tax benefit was below the threshold limit of INR3 crore specified under the GAAR Rules[3]. Further, the shares were acquired by the taxpayer prior to the cut-off date of 1 April 2017[4].

Facts of the case

- The taxpayer, a Singaporean company, sold shares of an Indian company[5]. The taxpayer claimed that the short-term capital gains on the sale of shares of an Indian company were not taxable as per Article 13 of the tax treaty.

[1] Blackstone Capital Partners (Singapore) VI FDI Three PTE Ltd v. ACIT [2023] 146 taxmann.com 569 (Del)
[2] Reverse Age Health Services Pte Ltd. v. DCIT (ITA No.1867Del/2022) – Taxsutra
[3] GAAR related Rule 10U(1)(a)
[4] GAAR related Rule 10U(1)(d)
[5] These shares were acquired by the taxpayer on 22 August 2016 and were sold on 2 January 2018

- The AO denied the tax treaty benefit on the ground that the taxpayer had no economic substance or commercial substance. The AO treated the taxpayer as a 'shell' or a 'conduit' company. The AO invoked Limitation of Benefits (LOB) provisions.

Tribunal's decision

- The taxpayer had furnished a valid TRC issued by the Inland Authority of Singapore, audited financial statements and a return of income filed along with tax assessment orders by the Singapore Tax Authority.

- The short-term capital gain was below the de-minimis threshold limit of INR3 crore under the GAAR Rules[6]. Further, the shares were acquired by the taxpayer on 22 August 2016 which was prior to the cut-off date of 1 April 2017 prescribed under the GAAR Rules[7]. Therefore, GAAR provisions cannot be pressed to deny a tax benefit.

- The doctrine of "substance over form" cannot be applied after the codification of domestic GAAR.

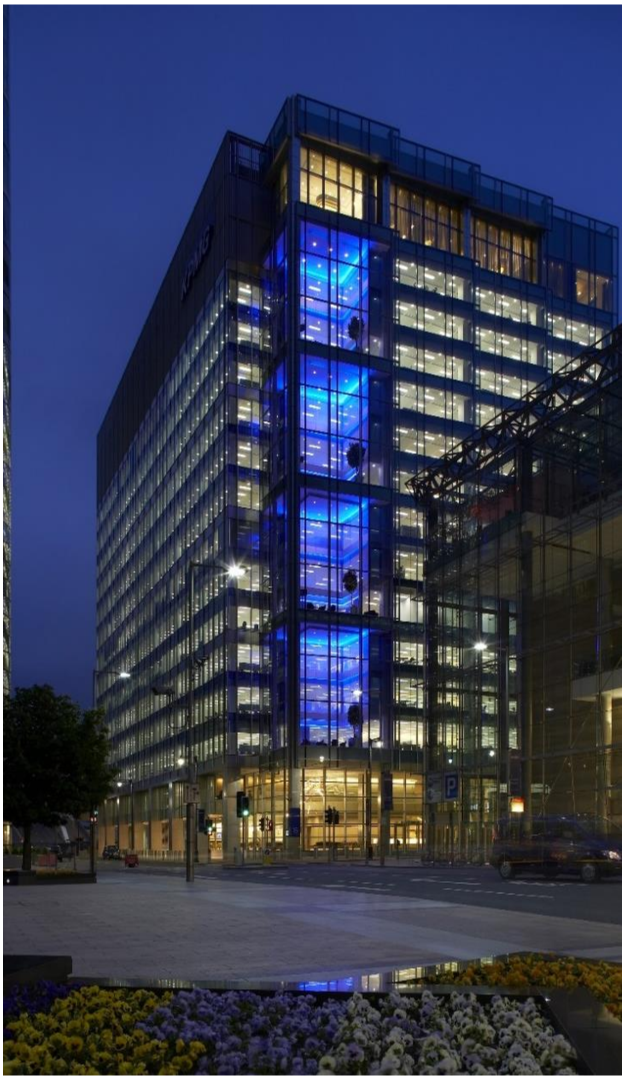
- The treatment of the taxpayer as a 'shell' or 'conduit' was also not acceptable as the veracity of the expenditure incurred by the taxpayer in Singapore was a subject matter of tax scrutiny in Singapore and the same was accepted as genuine by the Singapore tax authorities.

- In view of above and the binding decision of the Jurisdictional High Court in the case of Black Stone Capital Partners, the AO was directed to allow the tax treaty benefit to the taxpayer.

[6] Rule 10U(1)(a)
[7] Rule 10U(1)(d)

Our comments

This decision deals with the eligibility of a tax treaty benefit as well as the applicability of GAAR on the facts of the case. While the GAAR provisions were not applicable in this case due to the de-minimis threshold limit and grandfathering of the investment made prior to 1 April 2017, interestingly, the Tribunal also held that that doctrine of "substance over form" cannot be applied after the codification of domestic GAAR. Further, Tribunal also held that foreign shareholder cannot be treated as shell/conduit as Singapore authorities have verified and accepted the expenses incurred by the shareholder in Singapore.



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