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Mumbai Tribunal Grants Treaty Exemption to Singapore Company on Sale of Grandfathered Shares; Dismisses Allegations of Conduit Entity and PPT Applicability

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In *Fullerton Financial Holdings Pte. Ltd. v ACIT* [TS-1458-ITAT-2025], the Mumbai Bench of the Income Tax Appellate Tribunal (Tribunal) allowed capital gains tax exemption benefits to a Singapore entity which is indirectly owned by the Government of Singapore on the sale of grandfathered shares (i.e. shares acquired before 01 April 2017) under the India–Singapore Double Taxation Avoidance Agreement (Tax Treaty). For this purpose, the Tribunal came to a finding that the Taxpayer had adequate commercial substance in Singapore and had incurred requisite expenses for its operations in Singapore. Thus, the Tribunal held that the Taxpayer was not a conduit company or that obtaining treaty benefits was not one of the principal purposes of the transaction.

Relevant Provisions

As per Article 13(4A) of the Tax Treaty, gains from alienation of shares of an Indian company by a Singapore tax resident acquired before 01 April 2017 is taxable only in Singapore.

Notably, the Multilateral Instrument (MLI) introduced by the OECD incorporates the Principal Purpose Test (PPT) into the India–Singapore Tax Treaty, which denies treaty benefits if one of the principal purposes of an arrangement or transaction is to obtain Treaty benefits, unless granting Treaty benefits is consistent with the object and purpose of the Tax Treaty.

Further, Article 24A of the India–Singapore Tax Treaty contains a Limitation of Benefits (LOB) clause which *inter-alia* provides that:

- Purpose Test: Capital gains benefits under Article 13(4A) would not be available if the affairs of the taxpayer are arranged with the primary purpose to claim benefit of Article 13(4A).

- A shell company or conduit company—with negligible or no genuine business operations—cannot claim such benefits. Further, a company is deemed to be a shell company or a conduit company if its annual operational expenditure is below SGD 200,000 during the relevant period (Expenditure Test).

Background

Fullerton Financial Holdings Pte. Ltd. (Taxpayer) is a Singapore-incorporated investment holding company, wholly owned by Temasek Holdings Private Limited which is a body corporate fully owned by the Government of Singapore. Temasek is a global investment company headquartered in Asia, and the Taxpayer's income and expenses are consolidated within Temasek's accounts, forming part of the Singapore Government's annual budget.

Taxpayer and its wholly owned subsidiary, Angelica Investments Pte. Ltd. (AIPL), had invested in Fullerton India Credit Co. Ltd. (FICCL), an Indian NBFC in 2008. Taxpayer availed management and operational services from its affiliate Fullerton Financial Holdings (International) Pte. Ltd. (FFHI).

In FY 2021–22, Taxpayer sold its entire stake in FICCL and earned long-term capital gains of INR 681 crore which was claimed as exempt under Article 13(4A) of the Tax Treaty.

Tax department's key allegations

- Taxpayer was found to lack substantive commercial presence in Singapore, operating merely as an investment holding entity. Taxpayer had no employees, business premises, or operational revenues in Singapore and failed to demonstrate any independent business infrastructure or economic activity beyond holding shares in its subsidiaries.

- All personnel were employed by its affiliate, FFHI. The Taxpayer failed to furnish adequate documentation—including service agreements, time records, or cost allocation details—to establish that services from FFHI were actually rendered and used for Taxpayer's operations.

- Director fees were paid to group entities rather than directly to directors, with no benchmarking or supporting evidence provided. Likewise, directors' insurance and other group-level expenses were considered not attributable to the Taxpayer's operations, as the directors were nominees of group entities.

- Consequently, it was alleged that the Taxpayer was deemed to be a shell company or a conduit entity under Article 24A of the Tax Treaty and therefore not eligible to claim the capital gains exemption under Article 13(4A) of the Tax Treaty.

Taxpayer's arguments

- **Bonafide business purpose**: The Taxpayer submitted that it conducted its affairs in a bona fide manner with genuine commercial objectives, advancing the following arguments:

    - It was established to hold long-term investments, ring-fence business and political risks, facilitate independent financing, ensure regulatory efficiency etc. Such structures are common in the investment management industry.
    - Relying on *Vodafone International Holdings B.V. v Union of India* [2012] 17 taxmann.com 202 (SC), Taxpayer argued that its long-term holding exceeding ten years, there were continuous operations, and there was sound commercial rationale to make the investment in FY 2008-09 and sell the shares in FY 2021-22 which negate any inference of treaty abuse.
    - Taxpayer further contended that no treaty shopping or conduit arrangement exists, as the ultimate ownership rests with the Government of Singapore. The Taxpayer could not be regarded as a conduit for its parent entity, Temasek, which is government-owned and is independently eligible to claim benefits under the Tax Treaty.

- **Article 24A**:

    - Article 24A, meant to curb treaty shopping, is inapplicable in this case, as there is no third-country involvement as the Taxpayer is ultimately owned by the Government of Singapore.
    - The tax authorities misapplied Article 24A by directly invoking the Expenditure Test without first satisfying the pre-conditions of Purpose Test or considering the intended anti-abuse purpose of the LOB clause.
    - The Taxpayer furnished certificates from the Inland Revenue Authority of Singapore (IRAS) and KPMG, confirming that its annual operational expenditure in Singapore exceeded SGD 200,000 during each relevant period to satisfy the Expenditure Test.
    - Taxpayer availed management and operational services from its affiliate FFHI, which employs staff supporting its activities and charges arms' length fees with a mark-up covering salaries and operating costs, as management fees which represent genuine operational expenditure in Singapore.

- **Validity of TRC**: The Taxpayer relied on the landmark ruling of *Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*, wherein the Supreme Court had held that a Tax Residency Certificate (TRC) issued by the competent authority is sufficient to establish treaty eligibility.

Tribunal ruling

The Tribunal held in favour of the Taxpayer based on the following reasoning:

- **Commercial substance in Singapore:** The Taxpayer operated as an active investment and operating platform for Temasek's financial services portfolio in Asia, with investments across several jurisdictions. Its Board of Directors, comprising professionals from banking, finance, and public administration, undertook all strategic and management decisions in Singapore, establishing effective control and substance there.

- **Long Term Investment**: Tribunal observed that the Taxpayer was incorporated for bona fide commercial reasons and had held its investment in FICCL since FY 2008-09 as a long-term strategic investment and not a shell entity incorporated to channel gains through a low tax jurisdiction.

- **Application of the Principal Purpose Test (PPT):** The Tribunal held that the PPT must be assessed holistically, considering the commercial rationale of the investment and its transfer, the governance framework, and the economic substance of the Taxpayer. Compliance with the PPT, it noted, is a factual determination based on the taxpayer's overall conduct and the economic reality of the transaction, rather than its legal form or group structure. The Tribunal found that the Taxpayer maintained genuine substance and control in Singapore, evidenced by board meetings, strategic oversight, and management functions conducted there. It concluded that the Taxpayer's incorporation and operations were commercially driven, with no indication that obtaining treaty benefits was among the principal purposes of the arrangement.

- **Compliance with Article 24A(3):** The Tribunal noted that the IRAS had certified the Taxpayer's compliance with the prescribed expenditure threshold under Article 24A(3), confirming that its annual operational spend exceeded SGD 200,000. FFHI houses the personnel providing management, administrative, and operational support across group entities. The Board of Directors provided strategic oversight and governance, ensuring alignment with long-term investment objectives. The management fees and director remuneration paid to FFHI and group directors were held to be arm's-length and genuine operational expenses, duly verified through audit and Agreed-Upon Procedures (AUP) reports. The Tribunal also noted that expenses such as Directors' and Officers' (D&O) insurance premiums reflected legitimate business costs, further evidencing active operations and governance in Singapore.

- **Finding on conduit allegation**: The Tribunal held that the Taxpayer is not a shell or conduit entity, as it has independent management, economic substance, and operational control, consistent with its role as a policy-driven investment platform of the Singapore sovereign group. The investment structure and share transfer were based on legitimate business considerations and not tax avoidance motives.

Given the Taxpayer's commercial substance, genuine operations in Singapore, and ultimate ownership by the Government of Singapore, the Tribunal concluded that Article 24A was not violated, and the Principal Purpose Test was satisfied. The treaty exemption under Article 13(4A) was therefore rightly available, and the capital gains were not taxable in India.

Comments

This ruling offers substantive guidance on the Principal Purpose Test (PPT) under a tax treaty as well as LOB. See our ERGO update of 15 January 2025 on DELHI HC'S explanation of Principal Purpose Test. The Tribunal's reasoning conflates the LOB provisions in the Tax Treaty with the PPT, which is separately introduced under Article 29 through the MLI. The ruling reinforces the principle that merely because an investment is undertaken from a tax friendly jurisdiction, Indian tax authorities should not mechanically invoke anti-abuse provisions. The Tribunal further recognised a typical fund structure where an investing entity is an SPV or holding entity controlled and management by its directors with minimal or no employees and administrative support is provided by a common group entity which employs personnel and charges management fees to the SPV entities to recover such costs.

Interestingly, the Tribunal did not refer to CBDT Circular No. 1 of 2025, which clarifies that grandfathered shares (acquired before 1 April 2017 by residents of Mauritius, Cyprus, or Singapore) fall outside the scope of the PPT—a clarification that directly supports the Taxpayer's position.

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