INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE
SHRI Kul Bharat, JUDICIAL MEMBER
AND
SHRI M. Balaganesh, Accountant Member

ITA No. 1686/Del/2022
(Assessment Year: 2018-19)

The Golden State Capital Pte Ltd, 31, Tanglin Road, #03,-04, St. Regis Residences, Singapore, Singapore, Singapore, 247912 (Appellant) **PAN: AAGCT8026Q**	Vs.	DCIT, Circle-3(1)(1), International Taxation, Delhi (Respondent)

Assessee by :	Shri Deepak Chopra, Adv Shri Anmol, Adv Shri Priya, Adv
Revenue by:	Shri Vizay B. Vasanta, CIT DR
Date of Hearing	31/05/2023
Date of pronouncement	23/08/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1686/Del/2022 for AY 2018-19, arises out of the AO, Circle 3(1)(1), International Taxation, Delhi [hereinafter referred to as ` AO', in short] in Appeal ITBA/AST/S/143(3)/2022-23/1043640397(1) DATED 28.06.2022 passed u/s 143(3) Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The assessee has raised the following grounds of appeal:-

"1. That the Final Assessment Order dated 28.06.2022 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ("ITA") by the Deputy Commissioner of Income Tax, Circle 3(1)(1), International Taxation ("AO") in the case of the Appellant for AY 2018- 19, is bad in law and liable to be quashed.

2. That the Final Assessment Order passed by the AO is not in conformity with the Directions dated 27.04.2022 issued by the Dispute Resolution Panel ("DRP") and is therefore liable to be quashed being in gross violation of the strict mandate of section 144C(13) of the ITA.

3. That the AO has demonstrated most callous approach while conducting the verification as directed by the DRP on very specific issues, thereby transgressing his authority under the ITA, and rendering the Final Assessment Order bad in law and liable to be quashed.

4. That the verification carried out by the AO in the Final Assessment Order demonstrates complete non- application of mind, since the same is based wholly on assumptions, surmises and conjectures and is explicitly in contradiction to the findings of facts as carried out by the DRP and is thus liable to be struck down.

5. That the Final Assessment Order passed by the AO does Same as not mention his office or designation and is therefore, not a validly authenticated electronic record in terms of section 282A(1) of the ITA read with Rule 127A(1)(b) of the Income-tax Rules, 1962.

Re: Short term capital gains of INR 1,92,63,473/- on account of sale of shares of Dr. Fresh Healthcare Pvt. Ltd. by the Appellant.

6. That the AO grossly erred in denying the Appellant the benefits of India - Singapore Double Taxation Avoidance Agreement ("DTAA") and bringing to tax the short-term capital gains of INR 1,92,63,473/- earned by the Appellant during AY 2018-19 as chargeable to tax in India.

7. That the AO grossly erred in ignoring the findings of the DRP that the Appellant had satisfied the condition as prescribed under Article 24A(4)(b)(i) of the DTAA and consequently, there arose no occasion for the AO to deny the Appellant the benefit of Article 13(4A) of the DTAA.

8. That the conclusions of the AO in the Final Assessment Order to label the Appellant as a conduit are in gross violations of the findings of the DRP and are therefore, not borne out of the record.

9. That the AO also grossly erred in coming to the erroneous conclusions because, once having satisfied the test of Article 24A(4)(b)(i) of the DTAA and the same having been accepted in income tax assessments of the Appellant carried out by the Singapore Tax Authority, it was not open for the AO to deny the benefits available under the DTAA.

10. That the AO has grossly erred in holding the Appellant to Same be a conduit and its parent company to be beneficial owner of capital gains, in complete ignorance of the tax assessments of Appellant as carried out by the Singapore Tax Authority, wherein the genuineness of Appellant's transactions carried has never been doubted.

11. Without prejudice, the findings in the Final Assessment Same Order basing reliance on conclusions arrived at in Draft Assessment Order dated 30.09.2021, makes the Final Assessment Order completely bad in law, since the DRP had disapproved the findings of the AO in the Draft Assessment Order.

12. That the AO grossly erred in observing that production of board resolution, tax assessment order passed by Singapore Tax Authority and certificate of incorporation did not prove beyond doubt that Appellant's affairs were being managed from Singapore, in complete ignorance of the fact that the DRP relied upon the very same documents to conclude otherwise.

13. That the AO while passing Final Assessment Order has grossly failed in establishing that the business of the Appellant was controlled from outside Singapore, despite evidence to the contrary as analysed and recorded by the DRP in its Directions.

14. That the observation of the AO in Final Assessment Same as a Order that the business activities of the Appellant were not conducted from Singapore since no expenses on account of electricity, of electricity, employee salary, travelling. communication etc. were incurred and reported by the Appellant during AY 2018-19 is based on selective reading of financial statements of the Appellant and is therefore perverse.

15. That the over-emphasis by the AO on lack of expenses like electricity, employee salary, travelling, communication etc., is no ground for denying benefit of the DTAA, since that is an approach which may be applicable to brick and mortar companies and not in the case of Appellant.

16. *That the finding of the AO qua verification as directed by the DRP vis-à-vis the issue at hand, is wholly perverse because for the period under consideration, neither any consultancy fee was paid nor received by the Appellant from any entity and hence there was no question of any benefit having been passed on to any person.*

Re: Long term capital loss of INR 3,16,74,056/- on account Pvt. Ltd. by Dr. Fresh Sez Ph 1 Pvt. Ltd. by the Appellant

17. *That the AO has grossly erred in disallowing the premium paid by at the time of acquisition of shares of Dr. Fresh Sez Ph 1 Pvt. Ltd. for calculating their cost of acquisition in the hands of the*

Appellant, thereby converting long term capital loss of INR 3,16,74,056/- into long term capital gains of INR 61,71,789/- and taxing the same in the hands of the Appellant in India.

18. That the AO has grossly erred in disregarding the premium paid for calculating cost of acquisition, in complete contradiction to the DRP Directions, thereby violating the mandate of section 144C(13) of the ITA.

19. That the conclusions of the AO (contrary to the Direction of the DRP) regarding cost of acquisition of shares and premium paid are wholly fallacious, since the transaction of investment in Dr. Fresh Sez Ph 1 Pvt. Ltd. was through private placement offer and was therefore, between unrelated parties.

20. That non-submission of documentary evidence such as valuation report obtained by the Appellant at the time of acquisition of shares of Dr. Fresh Sez Ph 1 Pvt. Ltd., cannot be termed as an "anomaly" especially since the AO never directed the Appellant to furnish so at any point during the assessment proceedings and therefore, the AO grossly erred in denying the premium paid, in contradiction of the DRP Directions.

Re: Consequential Grounds

21. That the AO erred in levying interest under section 234D of the ITA.

22. That the AO erred in initiating penalty under section 270A of the ITA."

2. We have heard the rival submission and perused the material on record. Out of aforesaid grounds, ground Nos. 1, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 16, 19 and 20 are not pressed by the ld AR at the time of hearing. Necessary endorsement has been made by the ld AR in our records. Accordingly, those grounds are hereby dismissed as not pressed.

3. The Assessee has raised additional grounds before us on 02.08.2022 which are as under:-

23. That the AO erred in denying the benefit of Article 13(4A) of the DTAA to the Appellant qua capital gains earned by the Appellant on transfer of shares of DHFPL in complete disregard to the fact that the investments in DFHPL were made by the Appellant in 2016 and income arising on transfer thereof were specifically exempt from the purview of General Anti- Avoidance

Rule as contained in Chapter X-A of the ITA read with Rule 10U(1)(d) of the Income-tax Rules, 1962 ("Rules").

24. That the AO erred in denying the benefit of the DTAA to the Appellant, disregarding that the threshold for prevention of fiscal avoidance as contained under Chapter X-A of the ITA was lower than that contained in the DTAA.

25. That the AO erred in failing to appreciate that in terms of section 90(2) of the ITA, the ITA to the extent it is more beneficial, even issues in relation to fiscal avoidance, will be applicable over the DTAA.

26. That the AO erred in denying the Appellant the benefit of Article 13(4A) of the DTAA in disregard to Rule 10U(1)(a) of the Rules, which exempts arrangements having tax benefit not exceeding INR 3,00,00,000/- from the purview of General Anti-Avoidance Rule contained in Chapter X-A of the ITA.

27. That without prejudice to the fact that the AO has not specifically invoked Article 24A of the DTAA, since income from the transfer of investments made by the Appellant were specifically exempt from the General Anti-Avoidance Rule contained in Chapter X-A of the ITA read with Rule 10U(1)(a) and/ or (d) of the Rules, there was no occasion for the AO to invoke the test of "substance over form" to deny the benefits available to the Appellant under the DTAA.

28. Without prejudice, the AO erred in ignoring that the exemption from the applicability of the General Anti- Avoidance Rule as contained in Chapter X-A of the ITA read with Rule 10U(1)(a) and/ or (d) of the Rules, had an overriding effect over Article 24A of the DTAA by virtue of section 90(2A) of the ITA.

4. These additional grounds go to the root of the matter and they are merely legal issues and not requiring any verification of facts. Hence, the additional grounds are hereby admitted and taken up for adjudication along with original grounds.

5. The Assessee is a subsidiary of Red Cap Trading Ltd, engaged in the investment holding and general wholesale trade. During the year under consideration, the Assessee was the owner of share issued by Dr. Fresh Healthcare Pvt. Ltd (DFHPL) and Dr. Fresh SEZ Ph 1 Pvt. Ltd. (DFSPPL). Both these shares were disposed off in the year under consideration by the Assessee. The Assessee earned short term capital gains of Rs. 1,92,63,473/- on account of sale of shares of Dr. Fresh Healthcare Pvt. Ltd and incurred long term capital loss of Rs. 3,16,74,056/- on account of sale of share of Dr. Fresh SEZ Ph 1 Pvt. Ltd. While filing the return of income for AY 2018-19, the Assessee claimed short term capital gains of Rs. 1,92,63,473/- to be exempt as per Article 13 of India Singapore Double Taxation Avoidance Agreement and long term capital loss of Rs. 3,16,74,056/- was carry forward in subsequent years. The Assessee furnished the Tax Residency Certificate (TRC) issued by Singapore Tax Authorities before the ld AO to prove the point that it is tax resident of Singapore and accordingly entitled for treaty benefits with Singapore. The ld AO held the Assessee ineligible for treaty benefit due to lack of commercial substance in Singapore. The name of Singapore is The Golden State Capital Pte Ltd. The said company is represented by sole Director Mr. Sumeet Nanda. Mr. Sumeet Nanda is a tax resident of Singapore. The TRC of Mr Sumeet Nanda as issued by the Singapore Tax Authorities was placed before the ld AO. The holding company of the Assessee i.e Red Cap Trading Ltd is situated in British Virgin Islands (BVI). The beneficiary of the Assessee company is Red Cap Trading Ltd, holding company of the Assessee. Red Cap Trading Ltd is tax resident of BVI.

6. A basic query was raised by the ld. AO to explain the commercial rationale behind the creaton of the Assessee company and also to prove with evidence as to whether the Assessee was engaged in real economic activity in Singapore. In response to that, the Assessee submitted that it was incorporated for the purpose of investing in various kinds of assets

for generating profits through capital appreciation, dividends etc. The Assessee further stated that it holds valid TRC in Singapore and has carried out sale of securities during the year under consideration. It also submitted that it had employed qualified director to carry out its business activity. Its books are maintained and audited in Singapore and regular corporate tax returns were duly filed in Singapore.

7. The ld AO observed that the Assessee has invested only in two companies throughout its existence viz. DFHPL on 22.08.2016 and DFHPPL on 12.12.2011 and 04.03.2015. The Assessee company then disposed of these investments on 02.01.2018. Further, for the years 2016, 2017 and 2018, revenue and expenses were booked under consultancy head- meaning thereby, that revenue is for consultancy services rendered and expenses towards consultancy services taken. Moreover, both these transactions were executed with Assessee's related entities only. No operating expenses were booked by the Assessee. Based on these observations, the ld AO concluded that the Assessee company has no economic substance and no commercial rationale can be attributed to its creation. Ld AO further observed that mere legal compliances in the form of maintenance of books of accounts, appointing directors, filing tax returns are not sufficient to ascertain economic substance in Singapore. Such claim has to be backed by evidence of consistency, regularity, frequency and volume of economic activities, which is visibly absent in the case of the Assessee. Accordingly, the ld AO concluded that the Assessee does not qualify as a resident of Singapore and consequentially held that it is not eligible for India-Singapore Treaty Benefit.

8. The ultimate contentions of the ld AO to deny the treaty benefits to the Assessee could be summarized as under:-

i. The scheme of arrangement employed by the Assessee is one of tax avoidance through treaty shopping mechanism. This observation is made in the context that the Assessee's holding company is situated in BVI with which DTAA is not entered into by India. Hence, in order to avail the treaty benefits, the entire investment and sale transactions have been routed through Singapore entity with which DTAA is entered into by India.

ii. There is a clear lack of beneficial ownership at the level of the Assessee.

iii. The TRC is not sufficient to establish the tax residency if the substance establishes otherwise.

iv. There is no commercial rationale of establishment of Assessee company in Singapore.

9. The Assessee submitted that it was incorporated in the year 2009 in Singapore with the principal business of investment activity since its inception. As on the date of transfer of shares during the year under consideration, the Assessee company had already been in existence and conducted operations in Singapore for almost 8 years. The investments were held in DFSPPL from 2011 for 274831 shares and from 2015 for 50000 shares and in DHFPL from 2016 for 126317 shares, before they were all transferred on 02.01.2018. It was pleaded vehemently that transactions of making investments and sale thereon were bonafide transactions and Assessee had not employed any scheme for tax avoidance through treaty shopping mechanism as alleged by the ld AO. The ld AO had alleged that there is lack of beneficial ownership at the level of the Assessee just due to the fact that the proceeds from sale of shares of DFHPL and DFSPPL have been used to repay the loans obtained by the Assessee from its holding company. In this regard, the Assessee submitted that the settlement agreement entered by the

Assessee with the buyer of the shares proves beyond doubt that the Assessee is a beneficial owner of the shares. Further, it was pointed that TRC issued by Singapore Tax authorities would indeed serve as valid proof that Assessee is a tax resident of Singapore and accordingly eligible to claim treaty benefit of India-Singapore Treaty. Further, with regard to the financials of the Assessee for the years ending on 31.08.2016 and 31.08.2017, the Assessee submitted that it had indeed incurred operating expenses 221160 SGD for 2016 and 221277 SGD for 2017. Further, it was pointed out that there was no consultancy revenue earned and no consultancy expenditure incurred for the year 2018 by the Assessee. Admittedly, the shares were sold by the Assessee company in the year 2018 relevant to AY 2018-19.Moreover, it was pointed out before the ld DRP that expenses incurred by the Assessee in Singapore in immediately preceding 24 months preceding the date on which capital gains arose exceeds SGD 200000 and accordingly the Assessee had duly satisfied the conditions stipulated under Article 13 read with Article 24A of India-Singapore DTAA. It was submitted that the Assessee company is incorporated in Singapore in the year 2009 and had acquired the shares of DFHPL and DFSPPL prior to 01.04.2017. The allegation of the ld AO that Assessee shares its office space with other companies is without any basis are not supported by evidences. The Assessee submitted copy of Board Resolution before the ld AO during the assessment proceedings. Further, it was pointed out that there is nothing wrong even if the Assessee shares its office space with other companies as that is a common norm worldwide. It was submitted that the ld AO erred in stating that the Assessee has not been paying any taxes in Singapore. The Assessee submitted that the same is not at all relevant for examining the subject transaction. Further, the Assessee enclosed the assessment orders passed by Singapore Revenue Authorities for last three years from which it was evident that in view of losses declared by the Assessee, there was no obligation to pay any

taxes thereon. Accordingly, it was pleaded that the conclusion of the ld AO that Assessee has no economic substance in Singapore and no commercial rationale for its creation is absolutely not backed with any evidence. The Assessee company is incorporated in 2009 in Singapore carrying out investment activities. Further, regularity, consistency and frequency (as desired by the ld AO) are substantiated from the following documents:-

i. Copy of financial statement filed before the ld AO for the years ended 31.08.2017 and 31.08.2018

ii. Copy of Certificate of Incorporation of Assessee company in Singapore

iii. Copy of invoices of sample basis submitted before the ld AO.

iv. Copy of return of income filed by the Assessee in Singapore.

v. Copy of assessment orders passed by Revenue authorities in Singapore for last three years.

10. With regard to the observation made by the ld AO that a complex scheme of arrangement has been crafted and executed to utilize the tax advantages provided in India-Singapore DTAA, the assessee submitted a crucial fact of settlement agreement entered on 02.01.2018 between Mr. Sumeet Nanda, Mr. Puneet Nanda, Ms. Shikha Nanda, Mr. Ritesh Kumar Mittal, Dr. Fresh Assets Ltd, The Golden State Pte Ltd (Assessee herein before us), Reverse Age Health Services Pte Ltd, Mr. V. C. Burman, Mr. Abhay Kumar Aggarwal, Mr. Ajay Kumar Marwah, Mr. Arun Gupta, Mr. Pankaj Bharadwaj, Ms. Vasudha Mehra, Mr. Atul Bansal, VIC Enterprises Ltd, New Age Capital Services Pvt. Ltd, Burman Finvest Pvt. Ltd, Touchstone Fund Advisors Pvt. Ltd, Burman GSC Estate Pvt. Ltd, Dr. Fresh Healthcare Pvt. Ltd, Dr. Fresh SEZ Phase I Pvt. Ltd, Dr. Fresh Buildcon Pvt. Ltd, Burman GSC Pvt Ltd, Burman GSC Fund Management

Pvt. Ltd and Burman GSC Serviced Apartments Operations Pvt. Ltd before the ld AO. On perusal of the said agreement, a plain reading would make it clear that the Assessee had filed a petition before the Hon'ble National Company Law Tribunal (NCLT), New Delhi by placing the settlement agreement before it and that no company would file bogus petition before NCLT just to obtain tax benefit. This goes to prove that the dispute was a genuine dispute and to avoid any further damage to the parties involved, the Assessee entered into a settlement agreement and disposed of the shares without even being aware that the transaction would be eligible for treaty benefit under the India-Singapore DTAA.

11. It is an admitted fact that the sale proceeds of the shares were repatriated from Singapore to BVI in the form of loan repayment payable by the Assessee to its holding company. The ld AO's case is that since the said loan repayment does not suffer withholding tax in Singapore and the sale proceeds of shares would not get taxed even in BVI upon repatriation owing to the characterization as loan repayment, the entire sale proceeds of the shares did not suffer taxation in Singapore and BVI and that hence, it has to be taxed in India. Accordingly, the ld AO had said that this arrangement is undoubtedly one of tax avoidance facilitated by treaty shopping with the clear objective to avoid payment of legitimate taxes in India. To buttress this observation of the ld AO, the Assessee submitted that from the audited financial statements of the Assessee company for the year ended 31.08.2017, it is evident that Assessee had obtained loan from its holding company which had to be repaid at some time. It was prudent on the part of the Assessee to utilize the sale proceeds of the shares for loan repayment to the holding company. Hence, this was a bonafide transaction carried out by the Assessee.

12. It was submitted that as per Article 13(4A) of India-Singapore DTAA, capital gains arising from alienation of shares acquired before

01.04.2017 in a company which is a resident of a contracting state (i.e. shares of an Indian company in the present case) shall be taxable only in the contracting state in which the alienator is a resident (i.e. Singapore in the present case). Accordingly, it was pleaded that the gains, if any, arising on sale of shares of Indian company for the Assessee shall not be taxable in India. Further, Article 24A of India-Singapore DTAA provides that a resident of contracting state (i.e. Assessee in the present case) shall not be eligible for the benefits of pargraph 4A of Article 13 if the following conditions are satisfied:-

i. The affairs of the company are arranged with the primary purpose to take advantage of the benefit available in Article 13(4A)

ii. The resident of contracting state (i.e. Singapore in the present case) is a shell or conduit company. A resident of Singapore is deemed to be a shell or conduit company if the annual expenditure on operations in that contracting state (i.e. Singapore in the present case) is less than SGD 200000 in Singapore or Rs. 50,00,000/- in India, as the case may be, for each of the 12 month periods in the immediately preceding period of 24 months from the date on which the capital gains arose.

13. It was submitted that both the aforesaid conditions are not satisfied in the instant case. The Assessee, as stated earlier, was incorporated in 2009 in Singapore as an investment company engaged in investing in various class of assets for generating profit through capital appreciation, dividends etc. The Assessee during the year had indeed sold the shares held by it in Indian entities for a fair consideration (which is not disputed by the ld AO) and had used the proceeds thereon for repayment of loan to its holding company which was subsisting in the books of the Assessee company. The Assessee company is doing

operations in Singapore for 8 years prior to the date of transfer of shares. The Assessee company have been regularly filing its tax returns in Singapore and assessment orders for three years were indeed passed by the Singapore tax Authorities which are already on record. The Assessee had already held the shares in Indian companies prior to 01.04.2017 itself. Hence, it cannot be said that the affairs of the company were arranged with the primary purpose to take advantage of benefits of Article 13(4A) of India-Singapore DTAA. The Assessee also submitted that 24 months prior to the date of transfer of shares (i.e. prior to 02.01.2018) would be for the period 01.01.2016 to 31.12.2017. The Assessee submitted that for the period 01.01.2016 to 31.12.2016, it had incurred operating expenses in Singapore to the tune of SGD 221869.94 and for the period 01.01.2017 to 31.12.2017, it had incurred operating expenses in Singapore to the tune of SGD 221698.13. No contrary evidence has been brought on record by the ld. AO to dispute this fact. Hence, Assessee had incurred operating expenditure more than SGD 200000 in each of the two 12 month periods immediately preceding the 24 months period from the date on which capital gains arose. Hence, the Assessee company cannot be categorized as a shell or conduit company within the meaning of Article 24A of India-Singapore DTAA. Accordingly, it was pleaded that the short term capital gains in the sum of Rs. 1,92,63,473/- shall not be chargeable to tax in India in terms of Article 13(4A) of India-Singapore DTAA.

14. Further, the ld AO while computing the cost of acquisition of shares of the DFSPPL considered only the face value of Rs. 10 per share as cost and disregarded the premium component of Rs. 95.45 per share paid at the time of acquisition of shares. It is a fact that the Assessee invested Rs. 2,89,80,950/- on 12.12.2011 in DFSPPL for acquisition of 274831 shares of Rs. 10 each at a premium of Rs. 95.45 per share. Further the assessee acquired 50000 shares in DFSPL at face value of Rs 10 per share and premium of Rs 90 per share. The ld AO granted deduction

only for face value of Rs. 10 per share and computed long term capital gains at Rs. 61,71,789/- as against long term capital loss declared by the Assessee in the sum of Rs. 3,16,74,056/- in the return. It is also pertinent to note that the entire investment made in DFHPL and DFSPPL at a premium were duly reflected in the audited balance sheet of the Assessee company and which were also part of tax assessments in Singapore.

15. The ld DRP appreciated the contention of the Assessee and held that the observation made by the ld AO that affairs and governance structure of the company were managed just to take benefit of treaty, **as inconclusive**. The Assessee is regularly engaged in the business for last many years and the ld AO has not brought any incidence showing that the management of affairs of the company were carried out from a place outside Singapore. Further, Article 24A of India-Singapore DTAA is a deeming provision requiring strict construction and unless it is proven otherwise, **the denial of TRC may not be resorted to**. The ld DRP observed that in order to deny the benefits available to the Assessee in the treaty, there has to be some cogent evidence, rather than conjecture, with the revenue and the onus is on the revenue to prove otherwise. The ld DRP relied on the decision of the Hon'ble Supreme Court in the case of Vodafone International Holding Vs. Union of India reported in 17 taxmann.com 202 and by quoting the relevant observations made thereon, held that revenue has power to lift the corporate veil in case of sham transactions, however, the revenue may invoke the "substance over form" principle or "piercing the corporate veil" test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant. **The ld DRP accordingly, observed that in the instant case, the ld AO has not established that the beneficial owner in this case was the BVI company. Accordingly, the ld DRP directed the ld AO to verify :-**

(emphasis supplied by us)

i. Whether the affairs of the Assessee were controlled from outside Singapore ?

ii. Whether the benefits arising out of the transactions are passed on to the parent company (AO has mentioned that the amount received from the transaction was utilized to repay the loan to the parent company. However, repayment of loan is not transfer of benefit per se. Accordingly, AO may verify whether any amount other than the principal amount i.e. in the nature of interest, dividend or otherwise, was paid to the holding company).

16. **The ld DRP observed that if the answer to the above verifications are in affirmative, then the denial of the treaty is upheld. However, in case, these issues are not established, AO is directed to give the benefit or the treaty to the Assessee. (emphasis supplied by us)**

17. With regard to denial of deduction for premium component of cost of acquisition of shares of DFSPPL, the ld DRP observed that from the facts of the case, the amount paid towards premium is Rs. 95.45 and Rs. 90 on the two dates of transfer. **Accordingly, the observation of the AO that there is a huge variation in the share premium is not correct. AO is directed to consider the premium on the shares if no other anomaly is observed. (emphasis supplied by us)**

18. The ld AO in the final assessment order passed u/s 143(3) read with section 144C(13) of the Act dated 28.06.2022 in para 5 observed that he had explained in the draft assessment order as to how the impugned transactions are routed through Assessee which is a conduit entity and not through BVI entity, only to avoid taxes. The ld AO reiterated the findings given by him in the draft assessment order as far

as first direction given by ld DRP (supra). With regard to second direction given by ld DRP, the ld AO observed that the Assessee company did not pay any interest on loan to BVI entity as the loan was interest free, but other benefits were provided to the other entity in the form of consultancy fee through related party entities, which in turn were related to BVI entity. With regard to non-grant of deduction for premium component in the cost of acquisition of shares, the ld AO observed that Assessee has not submitted any documentary evidence like valuation report to justify the share premium on both the transaction of share acquisition. Accordingly, the share premium component in both the transaction was not considered by the AO.

19. The ld. AR filed written submissions on 29.11.2022. The ld. DR also filed his written submissions dated 06.12.2022. Later the ld. AR also filed a rejoinder to the submissions made by the ld. DR. Considering all these submissions that are placed on record, our findings are as under:-

a) At the outset, we hold that the ld. AO while passing the final assessment order had not followed the directions of the ld. DRP. As per the provisions of section 144C(10) of the Act, every direction issued by the ld. DRP shall be binding on the ld. AO and that the ld. AO is not empowered to raise any new issue in the giving effect proceedings and continue the addition based on some other reasoning.

b) With regard to the claim of long term capital loss of Rs 3,16,74,056/-, we find that the ld. AO in the draft assessment order had not doubted the quantum of sale consideration but had only doubted the cost of acquisition of unlisted equity shares. We find that the ld. AO took the view that because there was huge variation in the amount of premium paid by the Assessee while acquiring the shares of DFSPL in two tranches, the entire amount of premium paid at the time of acquisition deserved to be disallowed while computing capital gains/ loss in the

hands of the Assessee. The ld. DRP had directed the ld. AO to allow the claim of the Assessee unless any other anomaly was observed by the ld. AO. We find that the ld. AO in the draft assessment order had never alleged the absence of "valuation report" for denying the deduction for premium component involved in the cost of acquisition of shares of DFSPL. But we find strangely in the final assessment order, the ld. AO states that the Assessee had not submitted any documentary evidence like valuation report to justify the share premium and accordingly that became the basis for his rejection of Assessee's claim. This, in our considered opinion, is in gross violation of ld. DRP's directions as the non-submission of valuation report could not be considered as an anomaly in the instant case , as it was never asked by the ld. AO in the draft assessment proceedings and even in the final assessment proceedings. First of all, there is no need for the Assessee to even furnish a valuation report to justify the share premium component at the time of acquisition of shares. No provisions of the Act mandate such a requirement on the Assessee. In any case, once the directions are issued by the ld. DRP, there cannot be any occasion for the ld. AO to seek and consequently, to assert, non-submission of any documentation. This aspect of non-submission of valuation report was never an issue before the ld. DRP as it was never sought for by the ld. AO in the draft assessment proceedings. Further, as per the provisions of section 144C(13) of the Act, the ld. AO was prohibited from granting any opportunity of being heard to the Assessee, which included any document requisition from Assessee, post directions of ld. DRP. In the instant case, the ld. AO proceeded on such basis himself and never sought any further piece of information subsequent to the directions of the ld. DRP and framed the final assessment order. Hence it could be safely concluded that there was no anomaly in the records before the ld. AO which would enable him to draw adverse conclusion on the issue of allowability of long term capital loss on sale of shares. In this factual

background, we hold that the ld. AO had not adhered to the directions of the binding directions of ld. DRP with regard to denial of deduction for premium component paid on acquisition of shares of DFSPL.

c) We find that the ld. DRP had directed the ld. AO to examine two aspects before framing the final assessment order viz. a) Whether the affairs of the Assessee were controlled from outside Singapore and b) Whether any benefit in the form of interest, dividend or otherwise had been paid by the Assessee to BVI entity. With regard to first direction of ld. DRP to the ld. AO to check whether the affairs of the Assessee were controlled from outside Singapore, the ld. AO simply reiterated what has been stated by him in the draft assessment order. The draft assessment order was the subject matter of adjudication by the ld. DRP and the ld. DRP on perusal of the same had directed the ld. AO to give a clear finding after due verification as to whether the affairs of the Assessee company were controlled from outside Singapore. The ld. AO did not take any efforts to make further verification in this regard and simply reiterated what has been stated earlier by him in the draft assessment order and concluded against the Assessee. On the contrary, we find that the Assessee had given enough evidences to prove that its entire affairs are not controlled from outside Singapore. It's holding company is situated in BVI. The BVI entity had advanced interest free loan to the Assessee company. The Assessee company was incorporated as an investment company and had resorted to make investments in earlier years on its own volition in two Indian companies. These shares were held by the Assessee company from the date of acquisition till the date of its sale. The Assessee company had duly reflected the acquisition of shares of two Indian companies at premium in its Balance Sheet and these audited Balance Sheets were duly subjected to verification by the Singapore Tax Authorities and tax assessment orders were passed on the Assessee company for the last three years. All these documents were duly placed on record by the Assessee before the ld. AO. Since

the loan borrowed from its Holding Company was subsisting in the books of the Assessee company, the assessee chose to use the sale proceeds of the shares to repay the loan dues payable to Holding Company. In case if the allegation of the ld. AO, that Assessee is a shell or conduit company and entire activities were carried out only by the BVI entity, is to be accepted, then there is absolutely no need for the Assessee to even repay the loan back to the Holding Company. In any event, the ld. AO in all fairness ought to have accepted the assessment orders of Singapore Tax Authorities which goes to prove that the Assessee is a tax resident of Singapore and is independently carrying on its business activities in Singapore. All these documents and behavior of the Assessee collectively go to prove that affairs of the Assessee company were not controlled from outside Singapore. Hence the ld. AO erred in not following the directions of the ld. DRP in this regard thereby making the final assessment order as bad in law.

d) For the second question, the ld. AO had confirmed that no interest was paid by the Assessee on the loan to BVI entity as the loan was interest free. The ld. AO had observed that however, consultancy charges were paid to related entities of BVI entity and hence the benefit has been passed on by the Assessee company to BVI entity. We find from the financials of the Assessee company for the year under consideration, absolutely no consultancy charges had been paid to any entity during the year and there is no debit towards consultancy charges paid in the financials. The ld. AO had considered the payment of consultancy charges made by the Assessee in the earlier years and linked the same to the year under consideration. We find that the ld. AO had approached the entire issue with a pre-conceived mind in order to reach the pre-determined destination of denying the treaty benefits somehow to the Assessee.

e) With regard to the short term capital gains in the sum of Rs 1,92,63,473/- earned by the Assessee, we find that the Assessee had claimed that in view of Article 13(4A) of India Singapore DTAA, the same would be liable to be taxed only in Singapore and not taxable in India. The ld. AO had denied the treaty benefits to the Assessee. The ld. DRP had observed that the conclusions of the ld. AO for denying the treaty benefit to be inconclusive. Once the first direction given by the ld. DRP to the ld. AO as stated supra had not been addressed by the ld. AO in the final assessment order because the ld. AO had merely reproduced the draft assessment order. Whatever has been stated by the ld. AO in the draft assessment order with regard to the status of the Assessee and denial of treaty benefits had been observed by the ld. DRP as inconclusive. Hence the reliance placed by the ld. DR on the conclusions of the ld. AO does not serve any purpose in the facts of the instant case. The Assessee had provided enough evidences to prove the case of entitlement of treaty benefits. Hence we hold that the short term capital gains on sale of shares shall not be taxable in India in the hands of the Assessee company.

f) With regard to the long term capital loss of Rs 3,16,74,056/-, we find that the acquisition of shares at premium had been duly reflected by the Assessee company in its audited balance sheets. We also find that the shares were allotted by the Indian Companies to the Assessee company at a premium and return of allotment in the prescribed form had been duly filed by those Indian Companies with the Registrar of Companies in India. The evidences in this regard are enclosed in pages 241 to 255 of the Paper Book. We have already addressed the issue that there is no need for an Assessee to furnish the valuation report for proving the acquisition of shares. We hold that the shares were acquired by the Assessee in the instant case at premium and sources for making payments for the same had been duly drawn from the books of accounts. No portion of it could be construed as unexplained by the

assessee. Hence when those shares which were lying in the audited balance sheets, were sold by the Assessee during the year under consideration, then there is absolutely no case for the revenue to deny the benefit of such cost (including premium component) as deduction. Hence we direct the ld. AO to allow benefit of carry forward of long term capital loss of Rs 3,16,74,056/- to the Assessee.

g) With regard to the additional grounds raised by the Assessee and other arguments advanced by both the sides on the applicability of General Anti Avoidance Rules (GAAR), we find that the same was already adjudicated by this Tribunal in Assessee's sister concern case in Reverse Age Health Services Pte Ltd vs DCIT in ITA No. 1867/Del/2022 dated 17.02.2023 for Asst Year 2018-19. Infact the Assessing Officer in the case of Reverse Age Health Services Pte Ltd for Asst Year 2018-19 in page 5 of his order thereon had observed that in the case of sister concern i.e. The Golden State Capital Pte Ltd (assessee herein before us), tax avoidance has been established for the same transaction conclusively. Hence it could be seen that the facts adjudicated by this Tribunal in the Reverse Age case are identical to the facts of the assessee before us. The operative portion of the decision of this Tribunal in the case of Reverse Age Health Services Pte Ltd are as under:-

> *9. At this stage it would be pertinent to refer to the decision of the Hon'ble High Court of Delhi in the case of Black Stone Capital Partners, Singapore in W.P.(C) 2562/2022 decided on 30.01.2023 and the most relevant observations of the Hon'ble High Court pertinent to the facts of the appeal under consideration read as under :-*
>
> > "73*. In the objections dated 28th December, 2021, the petitioner has furnished the details of compliance with the LOB clause to the India-Singapore DTAA. The Assessing officer has not questioned the satisfaction of the LOB clause or the Independent Chartered Accountant certificate at any stage except in the present proceedings. Consequently, the petitioner is a bonafide entity and not a shell/conduit entity as it complies with the LOB clause to the India-Singapore DTAA as the expenditure has been incurred in Singapore and the same has been certified by an independent chartered accountant and accepted by the authorities in Singapore i.e. Income*

Tax authorities, Monetary Authority of Singapore. Accordingly, the allegation of treaty shopping is irrelevant in the present case as the India-Singapore DTAA has a limitation of benefit clause which the petitioner satisfies RESPONDENT- REVENUE CANNOT GO BEHIND THE TRC

74. *This Court is in agreement with the argument of learned senior counsel for the petitioner that the entire attempt of the respondent in seeking to question the TRC is wholly contrary to the Government of India's repeated assurances to foreign investors by way of CBDT Circulars as well as press releases and legislative amendments and decisions of the Courts in Union of India* v. *Azadi Bachao Andolan* (supra) *Vodafone International Holdings B.V.* (supra), *Commissioner of Income-tax (International Taxation)-3, Mumbai* v. *JSH (Mauritius) Ltd.,* (2017) 297 CTR 275 (Bom) and *Sanofi Pasteur Holding SA* (supra).

75. *In fact with the increased expansion of international trade and * commerce after the Second World War, the taxation of cross border transactions has been a critical challenge for both Parliament and the Courts.*

76. *It is a fundamental rule of international taxation that every nation has a sovereign right to impose tax on the global income of its residents and on income that accrues or arises within its territorial limits. These twin rights are referred to as residence-based or source-based taxation.*

77. A combination of the source and residence rules inevitably led to double taxation and this, in turn, led to singing of numerous Double Taxation Avoidance Agreements (for short 'DTAs) which are bilateral treaties that enable tax being levied in any one of the Contracting States.

78. *The Act recognized and gives effect to the DTAAs. Section 90 (2) of the Act stipulates that in case of a non-resident taxpayer with whose country India has a DTAA, the provisions of the Act would apply only to the extent the same are more beneficial than the provisions of such DTAA. Accordingly, the taxability of income derived by petitioner would governed by the provisions of India-Singapore DTAA to the extent at it is more favorable than the Act.*

79. *Section 90(4) of the Act provides that a non-resident taxpayer to whom a DTAA applies, shall not be entitled to claim any relief under DTAA unless a certificate of it being a resident (i.e. Tax Residency Certificate) of such country is obtained from the Government of that country. Section 90(4) of the Act clarifies that a non-resident taxpayer is eligible to claim DTAA benefits.*

80. *Article 1 of the India-Singapore DTAA states that the tax treaty applies only to one or more person who is a resident of one or more contracting state. Article 3(l)(j) of the said DTAA defines a person to include an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States. The relevant extract of Article 3(1) (j) is provided below:*
"(]) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States"

81. *Further, as per Article 3(l)(d) of the India-Singapore DTAA, a Company has been inter-alia defined as* "any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States".
82. *Article 4 of the India-Singapore DTAA states that the term* "resident of a Contracting State" *means any person who is a resident of a Contracting State in accordance with the taxation laws of that State. As per Singapore tax laws, a company is resident in Singapore if the management and control of its business is exercised in Singapore.*
83. *The petitioner has a valid TRC dated 3rd February, 2015 from the IRAS Singapore evidencing that it is a tax resident of Singapore and thereby is eligible to claim tax treaty benefits between India and Singapore.*
84. As early as March 30, 1994, CBDT issued Circular No. 682 in which it was emphasised that any resident of Mauritius deriving income from alienation of shares of an Indian company would be liable to capital gains tax only in Mauritius as per Mauritius tax law and would not have any capital gains tax liability in India. This circular was a clear enunciation of the provisions contained in the DTAA, which would have overriding effect over the provisions of Sections 4 and 5 of the Act by virtue of Section 90 of the Act.

85. The CBDT vide Circular No.789 dated 13th April 2000 once again clarified that the TRC shall serve as sufficient evidence of the taxprayer's residence and beneficial ownership for applying the DTAA.

86. The Supreme Court, in the case of Union of India v. Azadi Bachao Andolan (supra), upheld the validity and efficacy of the Circular No. 682 dated 30 March 1994 and the Circular No. 789 dated 13th April 2000, issued by the CBDT. The Apex Court further held that the certificate of residence is conclusive evidence for determining the status of residence and beneficial ownership of an asset under the DTAA. The Supreme Court emphasised that the tax authorities were obliged to grant tax treaty relief to Mauritius entities so long as they were tax resident in Mauritius as confirmed by the Mauritius Revenue Authorities and that this was the only condition required to be satisfied to claim treaty relief; that there were no other provisions either in the domestic law or the tax treaty that permitted the tax authorities to exercise any discretion in disregarding the provisions of

the treaty. The relevant portion of the Supreme Court judgment in Union of India v. Azadi Bachao Andolan (supra) is reproduced hereinbelow: —

"9 Sometime in the year 2000, some of the income tax authorities issued show cause notices to some FIIs functioning in India calling upon them to show cause as to why they should not be taxed for profits and for dividends accrued to them in India. The basis on which the show cause notice was issued was that the recipients of the show cause notice were mostly 'shell companies' incorporated in Mauritius, operating through Mauritius, whose main purpose was investment of funds in India It was alleged that these companies were controlled and managed from countries other than India or Mauritius and as such they were not "residents" of Mauritius so as to derive the benefits of the DTAC. These show cause notices resulted in panic and consequent hasty withdrawal of funds by the FIIs. The Indian Finance Minister issued a Press note dated April 4, 2000 clarifying that the views taken by some of the income-tax officers pertained to specific cases of assessment and did not represent or reflect the policy of the Government of India with regard to denial of tax benefits to such FIIs.

Thereafter, to further clarify the situation, the CBDT issued a Circular No. 789 dated 13.4.2000. Since this is the crucial Circular, it would be worthwhile reproducing its full text. The Circular reads as under....

xxx xxx xxx xxx

49. As early as on March 30, 1994, the CBDT had issued circular no. 682 in which it had been emphasised that any resident of Mauritius deriving income from alienation of shares of an Indian company would be liable to capita! gains tax only in Mauritius as per Mauritius tax law and would not have any capital gains tax liability in India. This circular was a dear enunciation of the provisions contained in the DTAC, which would have overriding effect over the provisions of sections 4 and 5 of the Income-tax Act, 1961 by virtue of section 90(1) of the Act. If, in the teeth of this clarification, the assessing officers chose to ignore the guidelines and spent their time, talent and energy on inconsequential matters, we think that the CBDT was justified in issuing 'appropriate' directions vide circular no. 789, under its powers under section 119, to set things on course by eliminating avoidable wastage of time, talent and energy of the assessing officers discharging the onerous public duty of collection of revenue. The circular no. 789 does not in any way crib, cabin or confine the powers of the assessing officer with regard to any particular assessment. It merely formulates broad guidelines to be applied in the matter of assessment of assessees covered by the provisions of the DTAC.....

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122. Many developed countries tolerate or encourage treaty shopping, even if it is unintended, improper or unjustified, for other non-tax reasons, unless it leads to a significant loss of tax revenues. Moreover, several of them allow the use of their treaty network to attract foreign enterprises and offshore activities. Some of them

favour treaty shopping for outbound investment to reduce the foreign taxes of their tax residents but dislike their own loss of tax revenues on inbound investment or trade of non-residents. In developing countries, treaty shopping is often regarded as a tax incentive to attract scarce foreign capital or technology. They are able to grant tax concessions exclusively to foreign investors over and above the domestic tax law provisions. In this respect, it does not differ much from other similar tax incentives given by them, such as tax holidays, grants, etc.

123. Developing countries need foreign investments, and the treaty shopping opportunities can be an additional factor to attract them. The use of Cyprus as a treaty haven has helped capital inflows into eastern Europe. Madeira (Portugal) is attractive for investments into the European Union. Singapore is developing itself as a base for investments in South East Asia and China. Mauritius today provides a suitable treaty conduit for South Asia and South Africa. In recent years, India has been the beneficiary of significant foreign funds through the "Mauritius conduit". Although the Indian economic reforms since 1991 permitted such capital transfers, the amount would have been much lower without the India-Mauritius tax treaty.

124 Overall, countries need to take, and do take, a holistic view. The developing countries allow treaty shopping to encourage capita and technology inflows, which developed countries are keen to provide to them. The loss of tax revenues could be insignificant compared to the other non-tax benefits to their economy. Many of them do not appear to be too concerned unless the revenue losses are significant compared to the other tax and non-tax benefits from the treaty, or the treaty shopping leads to other tax abuses……. xxx

134. We may also refer to the judgment of Gujarat High Court in Banyan & Berry *v.* CIT *(1996) 222 ITR 831/84 Taxman 515 where referring to* McDowell & Co. Ltd.'s case *(supra), the Court observed:*

"... The facts and circumstances which lead to McDowell's decision leave us in no doubt that the principle enunciated in the above case has not affected the freedom of the citizen to act in a manner according to his requirements, his wishes in the manner of doing any trade, activity or planning his affairs with circumspection, within the framework of law, unless the same fall in the category of colourable device which may properly be called a device or a dubious method or a subterfuge clothed with apparent dignity." (p. 850)

This accords with our own view of the matter.

xxx xxx xxx xxx

146. We are unable to agree with the submission that an act which is otherwise valid in law can be treated as non-est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interests, as ,perceived by the respondents."

87. It is a settled position of law that the Circulars issued by CBDT are binding on the tax authorities. The Supreme Court of India in UCO Bank v. CIT, 237 ITR 889 (SC) has categorically held that Circulars issued by the CBDT are binding on the revenue authorities. Moreover, the respondent's reliance on the judgment in Tata

Teleservices Ltd. (supra) is untenable in law as in the present case, the validity of Circular No. 682, dated 30th March 1994 and Circular No. 789, dated 13th April 2000, has already been upheld by the Supreme Court in Union of India v. Azadi Bachao Andolan (supra).

88. Subsequently, the Supreme Court, in Vodafone International Holdings B.V. (supra) reiterated the law in Union of India v. Azadi Bachao Andolan (supra) and held that what is rightly not acceptable is the use of artificial devices to avail treaty benefits, resulting in double non-taxation. The Supreme Court in the said judgment emphasised that in view of Circular No. 789 dated 13th April 2000, the TRC certificate is sufficient evidence to show residence and beneficial interest/ownership and the Revenue cannot at the time of sale/disinvestment/exit from such FDI, deny benefits of the DTAA.

89. *In the Finance Bill, 2013 as introduced in the Lok Sabha on 28th February, 2013, the Union of India sought to insert sub-Section 5 in Section 90 of the Act to stipulate precisely what the learned counsel for the respondent had argued namely that TRC shall be a necessary eligibility condition but shall not constitute sufficient evidence of residency and shall not be binding on the authorities. Sub-Section 5 of Section 90 of the Act sought to be introduced by way of proposed amendment is reproduced hereinbelow: —*

"21. In section 90 of the Income Tax Act,-
*(a) to (b) ***
(c) after sub-section (4) and before Explanation 1, the following subsection shall be inserted, namely: —
"(5) The certificate of being a resident in a country outside India or specified territory outside India, as the case may be, referred to in subsection (4), shall be necessary but not a sufficient condition for claiming any relief under the agreement referred to therein."

90. However, serious concerns were expressed by the Foreign investors with regard to the aforesaid proposed amendment. On the very next day, namely 1st March, 2013 the Finance Minister vide Press release clarified, *"The Tax Residency Certificate produced by a resident of a contracting state will be accepted as evidence that he is a resident of that contracting state and the Income Tax Authorities in India will not go behind the TRC and question his resident status".*

91. *Consequently, the Government of India vide Press Release dated 1st March, 2013 once again reiterated that TRC shall be treated as a sufficient condition for claiming relief under the DTAA. It is pertinent to mention that Press Release dated 1st March, 2013 was not Mauritius- specific and it clarified beyond doubt that the TRC produced by a resident of a contracting state would be accepted as evidence of tax residency, and the Income Tax authorities in India will not go behind the TRC and question the resident status of the assessee. Moreover, the proposed sub-Section 5 of Section 90 was not inserted in the Act."*

13. At this point it has to be understood clearly that the supremacy of law made by the Parliament is beyond any doubt. However, one of the recognised exceptions to the said rule is section 90 (2) of the Act which can be termed as treaty override provision as held by the Hon'ble Supreme Court in the case of Azadi Bachao Andolan (2004) 10 SCC 1 and, therefore, this provision allows the provisions of a DTAA to supersede the provisions of the income tax Act in case their application is more beneficial.

14. There is no dispute that GAAR is applicable to the assessment year under consideration which empowered the revenue to declare the subject transaction to be an impressible arrangement. In our considered opinion this means :-

> *"an arrangement the main purpose of which is to obtain a tax benefit, and which, inter-alia, is entered into, or carried out by means or in a manner which is not ordinarily employed for bona fide purposes."*

15. However, as per section 101 of the ITA, domestic GAAR cannot be pressed into operation for denial of a tax benefit, where the case of an assessee falls within one of the conditions prescribed under Rule 10U of the IT Rules 1962. Chapter X-A not to apply in certain cases, Rule 10U(1)(a) read as under :-

> *"an arrangement where the tax benefit in the relevant assessment year arising in aggregate, to all parties to an arrangement does not exceed the sum of Rs.3 crores".*

16. Further Rule 10 U (1) (d) provides :-

> *"any income accruing or arising to or deemed to accrue arise to or received or deemed to be received by any person from transfer of investments made before the first day of April, 2017 by such person."*

17. In the light of the aforementioned relevant provisions and rules, in the case in hand the short term capital gain is Rs.1,92,63,473/- the tax on which is below the threshold set out in Rule 10 U (1) (a) (supra) further the impugned shares were acquired by the assessee on 22.08.2016 which is prior to the cut off date set out in Rule 10 U (1)(d) (supra).

18. On these undisputed facts it can be safely concluded that assuming domestic GAAR provision are applicable but for the aforestated facts the treaty benefit cannot be denied to the assessee.

19. The AO / DRP have also invoked the doctrine "substance over form" to deny the benefit of Article 13 (4A). In our considered opinion the said doctrine is prior to the codification of domestic GAAR and the legislators were conscious enough when they were providing exemptions under Chapter X-A of the Act.

20. Even the treatment of the assessee company as "Shell" or "conduit" also do not hold any water in as much as the veracity of the expenditure incurred by the assessee in Singapore was a subject matter of tax scrutiny in Singapore and the same has been accepted to be genuine by the Singapore tax authorities as per tax assessment orders mentioned elsewhere.

21. To conclude it is not in dispute that the assessee has furnished a valid tax residency certificate issued by Inland Authority of Singapore, audited financial statements and return of income filed alongwith tax assessment orders by Singapore Tax Authority, therefore, in the light of the binding decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Black Stone Capital Partners (supra) we direct the AO to delete the impugned disallowance and allow the treaty benefit to the assessee as per the relevant provisions of the law/treaty. The grounds addressed before us are allowed.

20. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, the original grounds 2,6,8, 13, 18 and Additional Grounds 23 to 28 raised by the assessee are hereby allowed.

21. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 23/08/2023.

-Sd/-	**-Sd/-**
(Kul Bharat)	**(M Balaganesh)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 23/08/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

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