

IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SMT. RENU JAUHRI (ACCOUNTANT MEMBER)

I.T.A. No. 1137/Mum/2025
Assessment Year: 2022-23

Fullerton Financial Holdings Pte. Ltd. 18-06 UIC Building, 5 Shenton Way, Singapore-68808 PAN:AADCF7364A	Vs.	The Assistant Commissioner of Income-tax(International Taxation) Circle 2(3)(1)-Mumbai KautilyaBhavan C-41 to C-43, G Block BandraKurla Complex, Bandra (East) Mumbai-400051
(Appellant)		(Respondent)

Appellant by	ShriPorus Kaka, Divesh Chawla, Manish Kanth
Respondent by	Shri Satya Pal Kumar, CIT D.R.

Date of Hearing	31.07.2025
Date of Pronouncement	28.10.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by the assessee arises out of order dated 18/12/2024 passed by CIT(DRP-1), Mumbai-2 for assessment year 2022-23 on following grounds of appeal :

“ *The below-mentioned grounds and sub-grounds of appeal are independent and without prejudice to each other.*

Ground No. 1: The Draft Assessment Order, Directions issued by the Dispute Resolution Panel and the Final Assessment Order, are erroneous, contrary to law, without jurisdiction, and bad in law;

1.1 On the facts and in the circumstances of the case and in law, the draft assessment order dated 31 March 2024 passed by the Learned ACIT (International Taxation) - 2(3)(1), Mumbai ("the jurisdictional assessing officer") under section 143(3) read with section 144C(1) of the Income-tax Act, 1961 ('the Act'), the final assessment order dated 16 January 2025 passed by the Learned ACIT (International Taxation) 2(3)(1), Mumbai ('Ld. AO') under section 143(3) read with section 144C(13) of the Act and the directions issued by the Learned Dispute Resolution Panel ('Ld. DRP') dated 18 December 2024 under section 144C(5) of the Act ('DRP Directions') are erroneous, contrary to law, without jurisdiction, and/or invalid, and/or bad in law and are ought to be quashed and the capital gain be held not taxable under the DTAA.

Ground No. 2: Final Assessment Order barred by limitation:

2.1 The Appellant submits that considering the facts and circumstances of its case and the prevailing law, the impugned order dated 16 January 2025 passed u/s. 143(3) r.w.s. 1440 (13) of the Act is ab initio void as it is barred by limitation u/s. 153 of the Act and, therefore, ought to be struck down/quashed. Your Appellants pray the assessment be quashed.

Ground No 3: Validity of the assessment proceedings:

3.1 On the facts and circumstances of the case and in law, the AO erred in initiating and/or concluding the assessment proceedings under section 144C read with section 143(3) of the Act without issuing a valid notice under section 143(2).

Ground No. 4: The AO/DRP erred in taxing as capital gains the amount received from the sale of shares of Fullerton India Credit

Company Limited (FICCL) to Sumitomo Mitsui Financial Group (SMFG):

- 4.1 On the facts and circumstances of the case and in law, the AO/DRP erred in bringing to tax as capital gains the amount received on the sale of shares of FICCL to SMFG.*
- 4.2 The AO/DRP has erred in holding that the Appellant is not entitled to the benefit under Article 13(4A) of the Double Taxation Avoidance Agreement (DTAA) entered into and subsisting between the Government of the Republic of India and the Government of the Republic of Singapore ("India - Singapore DTAA").*
- 4.3 The AO/DRP erred in applying Article 24A of the India-Singapore DTAA to deny the benefits under Article 13(4A), which is erroneous, and contrary to law.*
- 4.4 The AO/DRP erred in not considering the purpose of Article 24A and the core elements in Articles 24A(1) and 24A(2), and instead directly invoking Article 24A(3) of the India-Singapore DTAA read with Article 24A(2) of the DTAA to deem the Appellant a "shell or conduit company".*
- 4.5 The AO/DRP failed to appreciate that the Appellant did not arrange its affairs to access the DTAA, nor is the Appellant a shell or conduit entity. Therefore, the benefits under Article 13(4A) of the DTAA should be granted.*
- 4.6 The finding by the AO/DRP that the assessee did not have genuine business operations in Singapore and engaged in treaty shopping is perverse and erroneous and ought to be quashed.*
- 4.7 The AO/DRP have failed to appreciate the evidences and documentation filed before them, which substantiate that the Appellant had genuine and continuous business operations/activities in Singapore. Therefore, the benefits under Article 13(4A) of the DTAA should be granted.*
- 4.8 In addition to the above grounds, the AO/DRP erred in denying the Appellant's claim of the benefit under Article 13(4A) of the India-Singapore DTAA by disregarding the Inland Revenue Authority of Singapore (IRAS') Certificate furnished by the Appellant.*
- 4.9 In addition to the above grounds, the AO/DRP erred in disregarding the certificate issued by an independent accounting firm prepared under the Singapore Accounting Standards.*

- 4.10 *In addition to the above grounds, the AO/DRP erred in disregarding the standalone audited financials of the Appellant prepared under the Singapore Accounting Standards.*
- 4.11 *The AO/DRP erred in holding that some of the expenditure incurred by the Appellant for the period 30.11.19 to 29.11.20 and 30.11.20 to 29.11.21 cannot be considered as "expenditure on operations", and consequentially erred in concluding that S\$200,000 threshold prescribed in Article 24A(3) was not satisfied.*
- 4.12 *The finding of the AO/DRP certain expenses should not be considered to test the S\$200,000 threshold under the India-Singapore DTAA is erroneous and contrary to law and ought to be quashed.*
- 4.13 *The AO/DRP failed to appreciate the evidence and documentation submitted, which substantiated that the Appellant had incurred S\$200,000 on its operations in Singapore. Therefore, the benefits under Article 13(4A) should be granted.*

Prayer

The Appellant prays that the benefits under Article 13(4A) of the India-Singapore DTAA be granted and that the capital gains taxed by the AO/DRP be deleted.

Ground 5: Without prejudice to the above, the taxability in the hands of the holding entity.

- 5.1 *Without prejudice to the above grounds, it is submitted that if the Appellant were appropriately deemed a shell or conduit company under Article 24A(3), the capital gains would have been assessable in the hands of its parent, Fullerton Management Pte. Limited ('FMPL') and not taxable under the DTAA.*

Ground No.6: Without prejudice to the above grounds, the AO/DRP failed to consider the revised sales price of the share arising from a contingent deferred consideration that was not received by the assessee.

- 6.1 *The AO/DRP failed to consider the revised sale price arising due to the contingent deferred consideration that was not received by the Appellant during the year under consideration or subsequently cannot be taxed on a hypothetical basis.*

6.2 *The AO/DRP failed to consider that income taxable under Sections 4 and 5 of the Act cannot include hypothetical income that has not been received or will not be received by the Appellant.*

6.3 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the sales consideration to be considered for the purposes of computing capital gains, if any, should be INR 90.84 per share as against INR 94.20 per share as considered by the AO/DRP.*

Prayer

The Appellant prays that the Assessing Officer be directed to consider the revised sales price of INR 90.84 per share and to recompute the capital gains accordingly.

Ground No. 7: Levy of interest u/s. 234D of the Act:

7.1 *The AO has erred in levying interest u/s. 234D of the Act.*

7.2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the stand taken by the AO in this regard is incorrect, erroneous and misconceived.*

Prayer

The Appellant submits that the AO be directed to delete the interest so levied and to re-compute its tax liability accordingly.

Ground No. 8: Initiation of penalty u/s. 270A of the Act:

8.1 *The AO has erred in initiating penalty u/s. 270A of the Act.*

8.2 *The Appellant submits that considering the facts and circumstances and the law prevailing on the subject it has not under reported its income and hence the initiation of penalty proceedings u/s. 270A of the Act by the AO is erroneous”*

Brief facts of the case are as under:

2. The assessee is a non-resident [Fullerton Financial Holdings Pte. Ltd. ("FFH")] private limited company incorporated under the Singapore Companies Act and domiciled in Singapore since 23.01.2003. Return of income for the year under consideration

was filed by the assessee on 26.10.2022, declaring total income at Rs. NIL. The case was selected for scrutiny and notice under section 143(2) of the Act was issued. Subsequently, notices u/s 142(1) of the Act was issued on various dates calling upon assessee to furnish details. The assessee was issued show cause notices on various dates in respect of return filed for the year under consideration. In response to the notices issued, the assessee filed its submission electronically on ITBA/ e-assessment.

2.1 The Ld.AO observed that assessee is an investment holding company incorporated in Singapore in 2003, wholly owned by Temasek Holdings Private Limited ("Temasek"), a body corporate constituted under the Singapore Minister for Finance (Incorporation) Act 1959, which is wholly owned by the Government of Singapore through the Minister for Finance. It was submitted that Temasek is a Fifth Schedule entity under the Singapore Constitution. Scanned and reproduced is the statutory board and Government Companies under fifth schedule :-

FIFTH SCHEDULE

(Articles 19(3), 22A, 22B, 22C, 22D, 37IE, 37IF and 148I)

KEY STATUTORY BOARDS AND GOVERNMENT COMPANIES

PART 1

1. *[Deleted by Act 24 of 2002]*
2. Central Provident Fund Board.
3. Housing and Development Board.
4. Jurong Town Corporation.
5. Monetary Authority of Singapore.

PART 2

1. GIC Private Limited.
2. *[Deleted by Act 28 of 2016]*
3. Temasek Holdings (Private) Limited.

[24/2002; 39/2014; 20/2015; 28/2016]

2.2 It was submitted that Temasek was incorporated under the Singapore Companies Act in 1974 and is a global investment company headquartered in Singapore with strong focus in Asia. It was submitted that Temasek owns all of the invested assets by its subsidiaries. It was submitted that the assessee is an indirect subsidiary of Temasek and all income and expenses of the assessee are consolidated into Temasek, which belong to the Government's annual budget pursuant to an approved budgetary framework. It was also submitted that, the assessee is 100% owned by the Government of the Republic of Singapore, which has entered into the DTAA with the Government of India.

2.3 The Ld.AO noted that the assessee and its 100% subsidiary Angelica Investments Pte. Ltd. ('AIPL') made investments in Fullerton India Credit Co. Ltd.(FICCL), a Non-Banking Financial Company engaged in the SME and Micro Finance. The assessee invested in the FY 2008-09 (i.e., prior to April 1, 2017). It was submitted that such investment was made by the assessee and AIPL, with a primary objective of holding it as a long-term investment, consistent with the Group's objective as an investment holding company. It was submitted that, over the holding period, FICCL witnessed substantial growth: its total loan portfolio grew from INR 138.8 crore to INR 22,695 crore (a growth of approximately 16,246%), and its total assets increased from INR 226.2 crore to INR 27,244 crore (an increase of approximately 11,943%). It was submitted that the assessee held 3.79% stake (i.e., investment of an aggregate 8,52,56,357 equity shares having face value of INR 10 each) "FICCL" in the year under consideration.

2.4 The Ld.AO noted that, the assessee sold its entire stake held in FICCL to Sumitomo Mitsui Financial Group (a company incorporated in Japan), and earned long term capital gains of Rs. 681,32,13,572/- pursuant to the Sale. In the return of income, the assessee claimed that the gains that arose from the sale of shares in FICCL are not taxable in India in view of Article 13(4A) of the India-Singapore Double Taxation Avoidance Agreement ('DTAA'), which governs capital gains arising from the alienation of shares acquired before April 1, 2017.

2.5. During the course of assessment proceedings, the assessee was asked to submit details of its employees and expenses. On analyzing the same, the Ld.AO noted that the assessee did not fulfil the conditions of Article 24A of India-Singapore DTAA. Accordingly, a show cause notice was issued to the assessee on 15.03.2024.

2.6. In response to the said SCN, assessee made its submission on 21.03.2024 stating as under :

- FFH was incorporated on 23/01/2003, your goodself may note that Article 24A of the India Singapore DTAA was only introduced in 2005. In addition, FFH was formed for bonafide business purposes as described above to hold investments for the long term and its affairs were not arranged with the "primary purpose" to take advantage of Article 13 sub-article 4
- FFH is part of a Singapore group with substantive business presence in Singapore and was formed for bona fide business purposes to ring-fence business and political risks, avoid cross-liability risks across different assets, have the

ability to raise financing independently and for ease of management and regulatory compliance as India may have different rules from other jurisdictions. Such structures are common in the investment management industry, thus its affairs were clearly not arranged with the "primary purpose" to take advantage of sub-article 4 of Article 13. Article 24A should not apply as the mischief for which it is intended as articulated in sub-article 1 is not present in our case.

- For FFH to perform its principal activity, i.e., as an investment holding company, it avails operations related services from Fullerton Financial Holdings (International) Pte. Ltd FFHI. FFHI is the management company where all the employees are hired to support the operations of FFH as a strategic investor. FFHI renders management services to FFH and charges a management fee plus mark-up on an arms-length basis. Such management fee expenses are expenses incurred for operations of FFH.
- FFH has submitted documents in past submissions filed with your goodself, which confirms FFH's annual expenditure on operations in Singapore was more than SGD 200,000 for each of the 12-month periods in the immediately preceding period of 24 months from the date of disposal of shares in FICCL (i.e., 30 November 2021), specifically:
 - (a) FFH's financials for Calendar Year 2019, CY 2020 and CY 2021, which encapsulate expenses incurred in the profit and loss account statement. Additionally, FFH also submitted details of invoices and service agreements as

requested by your goodself in relation to certain expenses incurred;

(b) A letter dated 31 August 2023 issued by KPMG LLP Singapore (FFH's statutory auditor), which determines the expenditure incurred to satisfy the aforesaid expenditure test; and

(c) Letter from Inland Revenue Authority of Singapore ("IRAS") dated 22/09/2023, which confirms that FFH's annual significant expenditure on operations in Singapore was more than SGD 200,000 for each of the 12-month periods in the immediately preceding period of 24 months from the date of disposal of shares in FICCL (i.e., 30 November 2021).

- The words "expenditure on operations" in sub-articles 3 and 4 of Article 24A are to be interpreted considering the purpose sought to be achieved by sub-articles 1 and 2 of Article 24A. FFH is clearly not a shell or conduit entity under sub-article 2 of Article 24A as it was incorporated for bona fide business purpose and it has operations in Singapore as explained above.
- The above view is supported by the *Delhi (I)AAR* ruling in the case of *BG Asia Pacific Holding (P.) Ltd.*, reported in [2021] 125 taxmann.com 2. In that case, the AAR accepted that the taxpayer did not have employees on its payroll and the payroll cost of the employees was initially borne by a subsidiary and then recharged to the taxpayer, which was

part of the operations expense for purposes of satisfying the SGD 200,000 expenditure criteria.

- To this end, we wish to refer your goodself to the *Hon'ble Delhi Tribunal* observation in the case of *Reverse Age Health Services [2023] 147 taxmann.com 358* that the veracity of expenditure incurred in Singapore is a subject matter of scrutiny in Singapore. The Hon'ble Tribunal observed as under:

"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 assessment orders mentioned elsewhere."

- It was submitted that the Singapore IRAS letter clearly states that it had made its determination after reviewing the entirety of "the financial statements, tax computation and additional information"; the IRAS letter is submitted as Annexure 2 to submission dated 3 March 2024. It is therefore factually erroneous to assume that the Singapore IRAS had not verified the content, allocation, basis of allocation, questioned the commercial expediency.

2.7. The Ld.AO after considering the submissions rejected the claim of non-taxability of capital gains by invoking Article 24A(3) of the India-Singapore DTAA and observed as under:

The submission made by the assessee has been perused carefully but the same is not tenable for the reasons discussed in detail in following paragraphs.

7.1 The management service fee exp., which is the largest exp. is paid to group entity Fullerton Financial Holdings (International) Pte. Ltd. (FFHI). It has been stated by the Assessee that no employee has been employed by FFH and all the employees were employed by FFHI. Assessee was specifically asked to provide details of number of hours spent by them each month for work related to FFH and detail of the work performed by them for FFH, no such details have been provided by you. Assessee has only stated that FFH is the management company where all the employees are hired to support the operations of FFH as a strategic investor. Assessee further stated that FFHI renders management services to FFH and charges a management fee plus mark-up on an arms-length basis and the costs so charged comprised the full salary costs of FFHI employees. The assessee has claimed that The DTAA does not prescribe nor proscribe the way an entity may decide to run its operations and incur expenditure accordingly. Assessee has further referred few case laws to support its claim that management fee is expense on operations of the Assessee.

2.8. The Ld.AO further observed that:-

7.1.3 While the agreement clearly provides that FFH will be billed only those costs which are incurred solely in connection with the provisions of services to FFH and FFH is authorized to access complete records of FFHI in connection with the services performed, no such supporting documents are provided by the Assessee to prove the services received by it solely for itself.

7.1.4 So, there is nothing on records as to how much services were consumed by the Assessee and its group entities each. The payment of management fee is to group entity only. The assessee has failed to provide details as to number of hours spent by FFHI employees for the Assessee, details of the advices/recommendations and other services, received by FFH from FFHI and how these advices/recommendations and other services received by FFH from FFHI are utilized by FFH, along with supporting documents Assessee is able to produce only Transfer Pricing Study Report, which provide none of the information requested for. While assessee has raised other arguments that Article 24A has no conditions regarding payment, mode of payment or need - benefit - evidence test, it has failed to provide any supporting to justify the huge payment made to the group entity.

7.1.5 The case of the Assessee is different from the case laws referred by the Assessee in respect to management fee as in this case, the Assessee is not even able to provide supporting for basis of payment of

management fee, as discussed above. Assessee has failed to provide supporting for services received, time spent by the FFIH, how services received were used by it, how time spent by FHIH for other group entities is cross charged etc. the onus in on the Assessee to prove that the expenses claimed to be made for the operations are indeed made for operations

.....

7.1.7 There is no legal validity of the letter from IRAS and KPMG. Assessee has simply stated that there is no requirement under Article 24A and no reasonable grounds to question the exercise (a) by KPMG LLP to apply Singapore accounting rules and (b) by the Inland Revenue Authority of Singapore ("IRAS") of its authority to apply Singapore tax law to determine and satisfy itself that FFH has met the SGD 200,000 expenditure criteria in the relevant periods under the DTAA. The Assessee has conveniently stated that there is no requirement under Article 24A to question the exercise (a) by KPMG LLP to apply Singapore accounting rules and (b) by the Inland Revenue Authority of Singapore ("IRAS") of its authority to apply Singapore tax law to determine and satisfy itself that FFH has met the SGD 200,000 expenditure criteria in the relevant periods under the DTAA. This contention of the Assessee is not correct. There is no provision at all in DTAA or the Act enabling/authorizing KPMG or IRAS to issue such letter. Further, the Assessee is not taking benefit in Singapore, but in India

.....

7.3 The Directors' fee is also paid by FFH to group companies. Again, no supporting as the benchmarking of these payment is provided, Further, FFH paid insurance premium fees in relation to Directors and Officers Liability insurance. However, as it may be seen that FFH has no employee and the directors are appointed by group entities only, any expense for these directors can not be attributed to the operational expenses of the assessee. Assessee has stated that benchmarking is not mentioned as a requirement under Article 24A. Assessee has also stated that fees of only three directors are paid to the group companies because such directors are employed by the group companies and remaining three directors received payments directly from FFH. However, no details regarding the same is provided by the Assessee. Assessee has further stated that board of directors and officers exercise control over FFH. Not paying director fee to Directors directly and paying the same to group entities clearly show that the Directors are acting as nominees of group entities. The Assessee has also failed to

provide details to prove that the group entities have provided services to the Assessee.

7.3.1 Further, Assessee has claimed that directors and officers' insurance premium was paid by FFH to protect the directors and officers from liability that may emanate from activities and decisions undertaken by the employees of FFHI as directors and officers in the course of carrying out their duties and rendering services to FFH. As discussed earlier regarding management fee, fee, the Assessee has failed to provide supporting for services received, time spent by the FFHI, how services received were used by it, how time spent by FFHI for other group entities is cross charged etc. the onus is on the Assessee to prove that the expenses claimed to be made for the operations are indeed made for operations. As these Director's exp. are also of similar nature, same arguments are applicable to these expenses also.

2.9. The Ld. AO thus passed draft assessment order disallowing the beneficial treatment under Article 13(4A) of India Singapore DTAA as claimed by the assessee. On receipt of the draft assessment order, the assessee preferred appeal before the DRP.

3. The DRP after considering the submission of the assessee upheld the observation of the Ld. AO.

3.1. On receipt of the DRP direction, the Ld. AO passed the impugned order making addition in the hands of the assessee, the amount received at Rs. 8,03,11,61,532/- on the sale of shares of Fullerton India Credit Company Limited to Sumitomo Mitsui Financial Group.

Aggrieved by the order of Ld. AO, the assessee is in appeal before this *Tribunal*.

4. The Ld. Senior Counsel placed his arguments by raising following propositions: -

Proposition No. 1: Incorrect invocation of Article 24A(1) of the India-Singapore DTAA - Affairs of the Appellant Not Arranged with the Primary Purpose of Availing Treaty Benefits

Proposition No. 2: Incorrect invocation of Article 24A(2) of the India-Singapore DTAA: Appellant is not a Shell or Conduit Entity]

9. *At the outset, it is submitted that the Appellant is an investment holding company indirectly wholly owned by Temasek, which is wholly-owned by the Government of Singapore, which is the other Contracting State that has signed the DTAA with India*

10. *The 2005 amendment to the India-Singapore DTAA was aimed at promoting FDI into India, for which the capital gains exemption had been granted as a protocol to the DTAA. The Appellant's investment in FICCL is precisely the type of foreign direct investment benefiting India*

11. *Article 24A is a Limitation of Benefit Clause (LOB) that is placed in tax treaties to prevent treaty shopping. There is no treaty shopping in the present case, nor any third party or country involved, as the Appellant is wholly owned by the Government of Singapore. Hence, on the first principle, there is no reason to invoke Article 24A to deny Article 13(4A) relief to the Appellant, ultimately owned by the Government of Singapore.*

12. *It is respectfully submitted on a pure reading of Article 24A(1) and (2) that, prior to invoking Article 24(3) of the India-Singapore DTAA, the threshold conditions set out in Article 24A(1) and (2) must first be satisfied*

- *Article 24A(1) of the India-Singapore DTAA states that a resident of Singapore shall not be entitled to the benefits of Clause 4A or Clause 4C of the India-Singapore DTAA, where the affairs of the company are arranged with primary purpose to avail benefits under the India-Singapore DTAA*
- *While Article 24A(2) of the India-Singapore DTAA, a Singapore resident entity would not be eligible for treaty benefits if such entity is a "shell or conduit" company, i.e. it is an entity which has nil or negligible business operations in Singapore or does not*

have real or continuous business activities undertaken in Singapore.

13. The Appellant was incorporated in 2003 (i.e., even prior to the 2005 amendment to the India-Singapore DTAA) as an investment holding company, indirectly wholly owned by Temasek, which is wholly owned by the Government of Singapore. It is not in dispute that the Appellant is part of the Temasek Group based in Singapore. Since the ultimate ownership is of the Government of Singapore itself, the affairs of the Appellant cannot be said to have been arranged primarily to obtain treaty benefits under the India-Singapore DTAA

14 It may also be noted that, as evidenced to the lower authorities (and not disputed), the Appellant is incorporated and resident of Singapore, and all decisions relating to its investments and disinvestments, as well as all related activities, are undertaken and carried out from Singapore.

15. It is also an undisputed fact that the Appellant has consistently filed its returns in Singapore and has been assessed to tax therein. The Appellant has furnished substantial documentation evidencing its genuine business presence and continuous business operations in Singapore, including;

- Tax Residency Certificate (TRC) issued by the Singapore tax authority (refer to Page Nos. 11 and 12 of the Factual PB),*
- Profile and credentials of the Board of Directors (refer to Page Nos. 1357 to 1363 of the Factual PB),*
- Minutes and presentations from board meetings held in Singapore from 2008 to 2021 (refer to Page Nos. 1337 to 1354 of the Factual PB),*
- Audited Financial statements (refer to Page Nos. 279 to 935 of the Factual PB),*

- *Details of bank accounts used to receive proceeds (refer to Page No. 130 of the Factual PB),*
- *Constitution of the Appellant (refer to Page No. 1270 of the Factual PB); and*
- *Business profile of FFH as published by the Accounting and Corporate Regulatory Authority (Secretary Board) (refer to Page Nos. 1314 to 1332 of the Factual PB).*

16. *It is submitted that the Hon'ble Supreme Court of India in the case of AzadiBachaoAndolan [2003] 263 ITR 706 (SC) (refer to Page No. 76 of the Legal PB) upheld the Circular 789 dated April 13, 2000, which stated that a Certificate of Residence issued by competent authorities would suffice to establish tax residence and beneficial ownership status.*

17. *As is evident from the above, the affairs of the Appellant were not arranged with the primary purpose of securing the benefit under Article 13(4A) of the India-Singapore DTAA. This fact is not disputed by the AO or DRP.*

18. *The Appellant, alongwith its subsidiary AIPL., began investing in FICCL, in the 2000s, with the principal objective of long-term investment. This investment was consistent with the Appellant's stated business purpose as an investment holding company. The Appellant is a bona fide long-term investor with a global portfolio, including investments in Singapore, India, Cambodia, the People's Republic of China, Malaysia and other Asian Countries (refer to Page No. 26 of the factual PB) It is not an entity with nil, negligible, or non-continuous business operations, and hence Article 24A(2) has no application*

19. *Further, the profit loss before tax of the Appellant in Singapore, as provided in the audited financials, which shows a consistent income, is as under:*

FFH Standalone P/L (In S\$000)	FY2024	FY2023	FY2022	FY2021	FY2020	FY2019
Total Income	7,61,456	15,932	7,289	18,51,570	8,534	23,48,291
Total Expenses (including impairment)	65,225	17,259	2,37,036	89,918	98,925	67,873
Profit/(Loss) before tax	6,96,231	-1,327	-2,29,747	17,61,652	-90,391	22,80,418

20. Also, the Appellant is an investment holding company incorporated in Singapore in 2003, ie is in existence for more than 20 years now and continues to exist and invest across various countries All activities related to managing the Appellant's affairs are undertaken in Singapore, and to substantiate the same, the Appellant has submitted minutes of the Board of Directors, presentations made to the Board in Singapore, profiles of the Board members, etc.

21. The Hon'ble Supreme Court in the case of Vodafone International Holdings II.V. [2012] 17 Faxmann.com 202 (refer to Page No. 159 to 240 of the legal PIB) held that, to determine whether a structure was preordained solely to avoid tax, one must consider factors such as, "the concept of participation in investment, the duration of time during which the Holding Structure exists, the Period of business operations in India, the generation of taxable revenues in India, the timing of the exit the continuity of business in such exit. In short, the onus will be on the Revenue to identify the scheme and its dominant purpose The corporate business purpose of a transaction is evidence of the fact that the impugned transaction is not undertaken at a colourable or artificial device. The stronger the evidence of a device, the stronger the corporate business purpose must exist to overcome the evidence of a device. "(relevant Page No. 190 of the legal PB).

22. Also, the Hon'ble Court in para 68 held that the Revenue must disregard or object to the holding structure "at the threshold" and not at a subsequent stage. It may be noted that the investment by Appellant/AIPL in FICCL has existed for more than 10 years. No objection at anytime was raised during its existence by the department. In-fact, the approval for investing in FICCL. was also obtained from the Reserve Bank of India

23. When considered in light of the ratio of the Hon'ble Supreme Court, the investments made by Appellant/ AIPL in FICCL, satisfy all the parameters, viz.:

a) Participation in investment

As set out in Para 5 (Supra), FICCL has grown from a company with total assets of INR 226.2 crore to INR 27,244 crore (an increase of approximately 11,943%), and its loan portfolio grew from INR 138.8 crore to INR 22,695 crore (a growth of approximately 16,246%)

b) Duration of time during which the Holding Structure exist

Temasek, the grandparent of the Appellant, has existed since 1974, and the Appellant has existed since 2003. The Holding Structure is fully owned by the Government of Singapore and has remained unchanged.

c) Period of business operations in India:

The investment by the Appellant/ AIPL. in FICCL has existed for more than 10 years

d) Generation of taxable revenues in India:

During the period of holding, FICCL's revenue has grown from INR 5.40 crore to-INR 4,092 crore (refer Page No. 251 of the factual PB).

e) Continuity of business on such exit.

Following the sale of shares of FICCL by the Appellant during the year under consideration, Temasek and its subsidiaries, including the

Appellant/AIPL, have continued to exist both within and outside India, and their investments likewise continue to be held in and outside India.

1) Corporate business purpose of a transaction:

Based on the above and the absence of treaty shopping/ conduit/ interpositioning, the corporate business purpose over 15 years is self-evident and undisputable.

24. The Appellant held its investment in FICCL for over a decade before disinvesting in 2021. This long-term holding clearly negates any suggestion that the investment was made with the intent to merely claim treaty benefits under the India-Singapore DTAA. Further, there was no need to interpose a shell or conduit in Singapore when the ultimate entity, Temasek, is a government-owned entity and is based in Singapore. Moreover, a conduit entity is one that merely serves as an intermediary for another entity that is not entitled to the benefits of the DTAA. In the present case, the Appellant cannot be a conduit for its parent entity, which is government-owned and itself eligible to claim benefits under the India-Singapore DTAA

25. The AO and DRP have misapplied and misinterpreted Article 24A to deny the benefit of Article 13(4A) of the India-Singapore DTAA by directly going to Article 24A(3) and without satisfying the pre-conditions of Article 24A(1) and (2) and the intended objects of the Article 24A/LOB clause and the mischief it intended to address.

26. Article 31 of the Vienna Convention on the Law of Treaties, 1969 (VCLT) (refer to Page No. 71 of the Legal PB) mandates that a treaty shall be interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in the light of its object and purpose.

27. The purpose of Article 24A was to curb treaty shopping by entities of third states lacking economic substance in Singapore and interposing themselves solely to obtain benefits under the DTAA. This anti-abuse

provision, however, can never be applied to the Appellant for the reasons stated above.

28. The purpose of the Limitation of Benefit (LOB) Clause has also been explained by the Hon'ble Supreme Court of India in the case of AzadiBachaoAndolan (Supra) - (refer to relevant Para 102 to 104 on Page No. 101 of the legal PB).

29. Further, the Appellant submits that Article 24A(1) and (2) of the India-Singapore DTAA are not applicable, as the affairs of the company are not arranged or structured with the primary purpose of availing treaty benefits. The Appellant cannot be regarded as a shell or conduit entity, as it does not fall within the definition of an entity having no or negligible business operations or lacking continuous business activities carried out in Singapore.

30. It is submitted that the action of the AO/DRP in invoking Article 24A(3) to treat the Appellant, which is ultimately owned by Temasek, as a deemed shell or conduit entity, is contrary to the terms and intended objects and purpose of Article 24A and contrary to the principles of treaty interpretation.

31. Further, the Appellant would rely on the case of BG Asia Pacific Holding (Pte) Ltd (2021) 125 taxmann.com 2 (AAR-New Delhi) (refer to Page No. 111 of the Legal PB), wherein the AAR was considering Article 24A and has held that it cannot be said that the affairs of BCI Asia were arranged with the primary purpose to take advantage of the benefits of Article 13(4) on the sale of shares of GOCL. (refer Para 30 to 36 on Page Nos. 125 and 126 of the legal P

32. In addition, it is a settled proposition of law that while interpreting a provision introduced to remedy a mischief, the mischief sought to be addressed and the intended purpose of the legislature must be considered. This principle has been consistently applied by various Courts, including

- *Heydon's case, (1584) 3 Co Rep. 7a, p 7h: 76 ER 637 (refer to page 497 of the legal PB)*
- *Commissioner of Income-tax vs. Sodra Devi [1957] 32 ITR 615 (SC) (refer to page 503 of the legal PB)*

33. *In view of the above, the action of the AO/ DRP in directly applying Article 24A(3) to hold the Appellant (which is ultimately owned by the Government of Singapore) to be deemed to be a shell or conduit-without satisfying Article 24A(1) or 24A(2) is not in accordance with the treaty and law*

34. *It is submitted that neither the AO, nor the DRP, nor even the Department in its submissions dated August 4, 2025, filed before the Hon'ble Tribunal, has raised any objection to the preliminary proposition that Article 24A(3) of the DTAA cannot be invoked without first establishing that the preconditions under Article 24A(1) and (2) are satisfied. Instead, Article 24A(3) has been invoked in a mechanical and erroneous manner, without establishing that the preconditions under Article 24A(1) and (2) were met. This is wholly contrary to a plain reading of Article 24A(1) and (2), the object and purpose of Article 24A to prevent treaty shopping and contrary to the good faith and the object and purpose of LOB clauses and defeats the very objective of the tax treaty to promote mutual investments*

Proposition No. 3: Certificates Issued by the Inland Revenue Authority of Singapore and an Independent Auditor Should Be Respected

35. *Without prejudice to the aforesaid contentions, the Appellant submits that the invocation of Article 24A(3) is misconceived. The Appellant placed on record a certificate issued by the IRAS (Tax authorities in Singapore) and a Certificate from an Independent Accounting Firm (KPMG) to demonstrate compliance with Article 24A(3) threshold.*

36. *The expenditure incurred in Singapore, as certified by the competent authority of the Treaty Partner (ie, IRAS), constitutes credible evidence of compliance. The genuineness of such expenditure, supported by official certification, ought not to be doubted or disregarded in the absence of any contrary evidence or cogent reasons. The certificate has been issued after due consideration of the relevant records*

37. *Reliance is placed on the decisions of the Hon'ble Supreme Court of India, Jurisdictional High Court and other High Courts and Income-tax Appellate Tribunal, wherein reliance on the certificates issued by authorities of the Contracting State has been respected:*

- *Union of India v/s. AzadiBachaoAndolan [2003] 263 ITR 706 (SC) (refer to Page Nos. 76 to 110 of the legal PB),*
- *CIT v/s. API. Co. Pte. Ltd. (2023) 156 taxmann.com 530 (Bombay) (refer to Page Nos. 372 to 376 of the legal PB).*
- *CIT v/s. Citicorp Investment Bank (Singapore) Lid. [2023] 151 taxmann com 501 (refer to Page Nos. 377 to 381 of the legal PB),*
- *Maersk Tankers Singapore Pte. Ltd. v/s ACIT(IT) (2022) 145 taxmann.com 260 (Rajkot Trib) (refer to Page Nos. 382 to 405 of the legal PB),*
- *Serco BPO (P.) Ltd v/s AAR, New Delhi (2015) 379 ITR 256 (P&11) (refer to Page Nos. 140 to 158 of the legal PB),*
- *M.T. Maersk Mikage v/s. DIT(IT) [2017] 390 ITR 427(Guj) (refer to Page Nos. 406 to 414 of the legal PB);*
- *CIT v/s. Lakshmi Textile Exporters Ltd. (2000) 245 ITR 521 (Mad) (refer to Page Nos. 415 to 416 of the legal PB),*
- *Arabian Express Line Ltd. of United Kingdom vis. Union of India (1995) 212 ITR 31 (Guj) (refer to Page Nos. 417 to 421 of the legal PB)*

38. *In fact, the Hon'ble Punjab and Haryana High Court in the case of Serco (Supra) held that a refusal to accept the validity of a certificate issued by the Contracting States would be contrary to the convention and constitute an erosion of the faith and trust reposed by the Contracting States in each other. It is for the Government of India to decide whether or not such a certificate ought to be accepted.*

39. *In view of the above, it is submitted that the confirmation/certificate issued by the IRAS confirming that the Appellant's expenditure on operations in Singapore is more than 2,00,000 should be accepted, and the stand taken by the AO/ DRP is erroneous and unsustainable.*

40. *Furthermore, the Appellant has submitted a certificate issued by a reputed independent chartered accountancy firm (KPMG) (refer to Page Nos. 1173 to 1202 & 1551 to 1552 of the FPB), which has verified the nature and quantum of expenditure incurred by the Appellant in Singapore. The verification was carried out after examining the underlying documentation and records, thereby reinforcing the authenticity of the expenditure claimed.*

41. *Reliance is placed on the decisions, wherein certificates issued by chartered accountants have been respected:*

- *Jabil Circuit India (P.) Ltd. vis. ACIT [2018] 100 taxmann.com 165 (Mumbai)*
- *Cairn Energy India Pty. Ltd. vis. ACIT [2009] 126 TTJ 226/[2010] 2 ITR(T) 38 (Chennai)*

Without prejudice to the above:

Proposition No. 4: Compliance with Article 24A(3) of India-Singapore DTAA and substantiated through the documentary evidence:

42. *At the outset, the Appellant has incurred in excess of SGD 80 million of expenses under various heads-management fees, directors' fees,*

insurance charges for directors, SAP-related expenses, audit expenses, etc. Further, the total expenditure on audit fees and directors' fees alone is higher than the threshold of SGD 2,00,000 as required in Article 24A(3) of the DTAA

43. The Appellant respectfully submits that it has satisfied the requirements of Article 24A(3) of the India-Singapore DTAA. Under this provision, an entity is deemed to be a shell or conduit company if its annual expenditure on operations in the Contracting State is less than \$200,000. In the present case, the Appellant has incurred operational expenditure in Singapore exceeding the prescribed threshold, including, inter alia, management fees, directors' fees, insurance charges for directors, SAP-related expenses, and audit expenses. Documentary evidence substantiating these expenditures has been duly furnished before the AO and the DRP.

44. In addition to the expenditures noted above, the Appellant has also incurred other operating expenses in Singapore, including company secretarial expenses, legal and professional fees, Citibank and investment banker fees (specifically in connection with the transaction in question), and miscellaneous administrative expenses.

45. The nature of the substantial expenditure incurred by the Appellant, along with relevant pages of the paper book, is set out below:

<p>Management fees paid to Fullerton Financial Holdings (International) Pte. Ltd. ('FFHI')</p>	<p>FFHI renders management services to the Appellant. FFHI and the Appellant entered into a management services agreement in 2009 under which the former renders management services to the Appellant and charges a management fee of a cost plus 10 percent mark-up.</p> <p>Appellant avails operations-related services from FFHI, as the employees reside in FFHI. Such services include Investment Planning, Investment Research, Investment Execution, Investment Approval, Portfolio Management, Risk Management and</p>
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	<i>Compliance, Finance, Treasury, HR. Corporate Communications, Legal, etc</i>
<i>Director's Fees</i>	<i>The board of directors and officers provide leadership and strategic guidance, direction and thrust to the operations of the Appellant. The board of directors and officers exercise control over the Appellant and at the same time, remain accountable to the shareholders of the Appellant to formulate and review overall strategy and operations policy, to create, protect and enhance the Appellant's wealth and resources and report it to the various stakeholders in a fair and transparent manner.</i>
<i>Director's and Officer's Insurance</i>	<i>The Appellant incurs insurance premium fees in relation to Directors and Officers Liability insurance to protect the directors and officers from liability that may emanate from activities and decisions undertaken by the directors and officers in the course of carrying out their duties and rendering the services for the operations of the Appellant.</i>
<i>SAP related expense</i>	<i>The Appellant avails licensed software and related software support and maintenance services from SAP / software license used. It utilizes the software services from SAP for its operations, viz., to maintain its financials and group accounts consolidation.</i>
<i>Audit Fees</i>	<i>This expenditure has been incurred by the Appellant for conducting statutory audit services in order to report its financials, which is a statutory requirement under the Singapore Companies Act and for statutory audit services rendered to the Appellant.</i>
<i>Investment banker fees</i>	<i>This is the fees itself paid to the investment banker (i.e. Citigroup Global Markets Singapore Pte. Ltd.) on the transaction of sale of shares of FICCL, being the capital gains involved in the appeal.</i>
<i>Company Secretary Fees</i>	<i>The fee has been incurred by the Appellant for carrying out its statutory compliances, maintenance of the corporate records, etc.</i>
<i>Legal Fees</i>	<i>Legal fees are paid in connection with inter-alia drafting of share purchase agreement, etc., on the transaction of</i>

	<i>sale of shares of FICCL, being the capital gains involved in appeal.</i>
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46. *The Appellant has substantiated the incurrance of all such operational expenditure in Singapore through comprehensive documentation, including, inter-alia, the Management Services Agreement, minutes of meeting/presentations spanning from 2008 to 2021 made by the management services company, corresponding invoices, directors' profiles and qualifications along with their respective invoices, SAP-related invoices, directors' insurance policies, relevant bank statements, etc.*

47. *The management services rendered by FFHI to the Appellant have been substantiated through comprehensive documentation, including the Management Services Agreement (executed in 2009), invoices raised by FFHI, and minutes of meetings/presentations spanning the period from 2008 to 2021. Despite the availability of such evidence, the AO/DRP has completely disregarded the actual manner in which the Appellant's business is conducted to achieve operational and administrative efficiencies. The AO/DRP has erroneously read into Article 24A(3) a condition that expenditure on operations cannot include amounts that are cross-charged without appreciating that management fees in respect of services rendered by FFHI are, infact, its direct expenditure and not any cross charge*

48 *Further, Article 24A(3) requires only the incurrance of "annual expenditure on operations in that Contracting State". There is no requirement for a test of allowability under section 37 of the Income-tax Act, 1961, nor does the provision invite a disallowance analysis under domestic law. The term "operational expenditure" as used in Article 24A(3) of the DTAA is broad, and therefore, all expenses for the establishment and running of the company would be included.*

49. *It is respectfully submitted that the AO/DRP cannot superimpose their subjective views or sit in judgement of what expenditure is*

allowable or justifiable, especially when this is a matter governed by Singapore law and Corporate and Accounting Standards, and most importantly, accepted by the Treaty Partner as having satisfied the requirements of Article 24A(3).

50. Further, it is submitted that judicial authorities have consistently held that expenditures incurred to keep a company in existence, such as audit fees, staff costs, maintenance charges, and other office-related expenses, are allowable, even in cases where no active business is being carried out. The mere absence of business activity does not render such expenses non-genuine or disallowable. Importantly, the tax authorities are not empowered to question the commercial viability or necessity of such expenditure, especially where such expenses are incurred in the ordinary course of maintaining the corporate structure and fulfilling statutory obligations. The decisions are as follows

- *BG Asia Pacific Holding (Pte) Ltd (2021) 125 taxmann.com 2 (AAR-New Delhi) (refer to Page No. 111 of the legal PB)*
- *R.B. Bansilal Abirchand Spg & Wvg. Mills vis. CIT (1971) 81 ITR 34 (Bombay) (refer to Page Nos. 658 to 668 of the legal PB);*
- *CIT v/s. Ganga Properties Ltd. [1993] 199 ITR 94 (Cal) (refer to Page Nos. 669 to 671 of the legal PB);*
- *Nakodar Bus Service (P.) Ltd. v/s. CIT (1989) 179 ITR 506 (P&H) (refer to Page Nos. 672 to 673 of the legal PB).*
- *CIT v/s. Rampur Timber & Turnery Co. Ltd. (1981) 129 ITR 58 (All) (refer to Page Nos. 674 to 675 of the legal PB),*
- *Atul Babubhai Shah v/s. JCIT [2020] 116 taxmann.com 966 (Ahmedabad Trib.) (refer to Page Nos. 676 to 686 of the legal PB)*

51. The only test under Article 24A(3) is whether the expenditure has been incurred for operations in Singapore. The Appellant has clearly fulfilled this requirement. Accordingly, the Appellant has satisfied the conditions under Article 24A(3) and cannot be deemed a shell or conduit company.

52. It is important to note that the objective of Article 24A(3) is to test whether an expenditure is genuinely actually incurred on operations in the other state. It is not a test of deductibility, etc., where there is no doubt on the genuineness of expenditure incurred and is also, in addition, accepted by the Treaty Partner as having been incurred and hence genuine. The wholly erroneous process of sitting in judgement on reasoning, such as whether it should have been incurred, justification for incurring, such as timesheets, etc., is wholly contrary to law. Treaty principles of good faith would result in an absurd situation where a company wholly owned by a Treaty Partner itself is denied the benefits of the treaty that its own Government has entered into

53. The AO DRP, without appreciating the commercial and operational realities of the Appellant's business and document/evidences filed by the Appellant, hat proceeded on the basis of conjecture. suspicion, and unfounded assumptions to conclude, that the Appellant has not satisfied the \$5200,000 threshold under Article 240(3), and is therefore to be treated as a deemed shell or conduit company. Such a conclusion is wholly misconceived and lacks legal and factual basis

54. The department, in its written submissions dated 04 August 2025 to the Hon'ble bench, has only reiterated what the AO has said in the impugned Assessment Order and has concluded that "The lack of operational expenditure, absence of employees and infrastructure, and the nature of expenses incurred all point to FFH being a shell or conduit entity.

(i) In this connection, it is submitted that it is common practice in the investment management industry to separate the employees (as housed in FFIII) and the assets (held in investment holding entities such as the Appellant or its subsidiaries), primarily for the purpose of ring-fencing risks and liabilities.

(ii) FFHI's primary objective is to provide services and support to the Appellant. It could be inferred that FFHI is a "captive" service provider to the Appellant. FFIII and the Appellant have entered into a management services agreement under which the former renders management

services to the Appellant and charges a management fee of a cost plus 10 percent mark-up. The costs so charged comprised the full salary costs of FFHI employees.

(iii) In order to perform its principal activity, ie, as an investment holding company, it avails operations-related services from FFHI, as the employees reside in FFHI. Such services include Investment Research, Investment Planning, Investment Approval, Investment Execution, Portfolio Management, Risk Management and Compliance, Finance, Treasury, HR, Corporate Communications, Legal, etc.

(iv) The intercompany arrangement within the FFH group, wherein one entity provides services and recharges the corresponding expenses to the recipient entity, is a long-standing practice. This is evidenced by the Management Services Agreement, invoices, payments, etc., between FFHI and the Appellant, which dates back to 31 March 2009,

(v) It is incorrect to allege that the Appellant failed to provide documentary support for its claims. The AO appears to rely solely on the absence of a timesheet summary to deny the benefit of Article 13(4A), thereby presuming that no evidence has been furnished.

(vi) It is important to note that the Appellant has submitted various documents before the AO/DRP, including extracts of Board of Directors' meeting minutes, presentations made to the Board in Singapore, profiles of the Board members, and invoices, to substantiate the genuineness of the aforementioned operations-related services.

(vii) At the pain of repetition, the Treaty Partner, viz. The Government of Singapore has accepted that the Appellant satisfies the threshold expenditure test also. As stated above, this being an aspect of Singapore Corporate and Accounting law, and on the facts and circumstances of the case, it ought to be respected.

Re: Ground of Appeal No. 5: Without prejudice to the above, the taxability in the hands of the holding entity:

55. It is respectfully submitted that if the Appellant is deemed a shell or conduit company under Article 24A(3), the capital gains would have been assessable in the hands of its parent or the Government of Singapore, in which case the same will also not be taxable in India under the DTAA.

Re: Ground of Appeal No. 6; Without prejudice to the above, Contingent Deferred Consideration

-Not Taxable in the Absence of Accrual or Receipt

56. As per the terms of the Share Purchase Agreement, SMEG had agreed to pay the said contingent deferred consideration upon fulfilment of certain specified conditions. However, since the stipulated conditions were not met, the contingent consideration of INR 3.36 per share was never paid to the Appellant and will never be paid as the period of the contingent deferred consideration has lapsed

57. SMFG confirmed the non-fulfilment of the conditions and the consequent non-payment of the contingent consideration by way of a written communication dated April 25, 2024 (refer to pages Nos. 1788 to 1790 of the Factual PB)

58. In light of the above, the Appellant requested the AO/DRP to adopt the actual sale consideration received, INR 7,74,43,34,335). (computed at INR 90.84 per share) in place of the assessed consideration of INR 8,03,11,61,532/- (computed at INR 94 20 per share). However, this request was not accepted by the AO/DRP

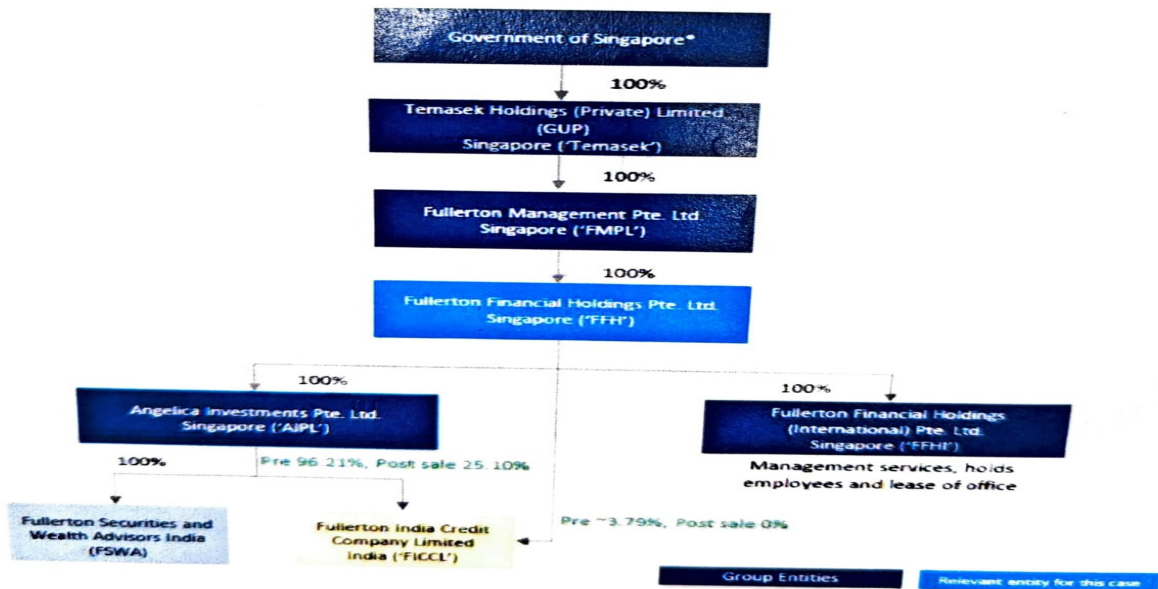
59. It is respectfully submitted that income which has neither accrued nor been received cannot be brought to tax under the provisions of the Income-tax Act, 1961 or under the DTAA. Notional or hypothetical income, including unrealised contingent consideration, is not subject to tax. Reliance is placed on the following judicial precedents wherein it has been held that deferred contingent consideration is not taxable unless it has accrued or has been received, or the contingency has materialised:

- *CIT v/s. Mrs. Hemal Raju Shete (2016) 68 taxmann.com 319 (Bombay) (refer to Page Nos. 602 to 608 of the legal PB),*
- *Dinesh Vazirani v/s. PCIT [2022] 140 taxmann.com 581 (Bombay) (refer to Page Nos. 638 to 644 of the legal PB),*
- *Universal Medicare (P.) Ltd. v/s. DCIT [2020] 119 taxmann.com 377 (Mumbai - Trib.) (refer Page Nos. 609 to 625 of the legal PB), and*

- *Huntsman Investments (Netherlands) BV v/s. DCIT [2024] 166 taxmann.com 63 (Mumbai -Trib.) (refer to Page Nos. 645 to 657 of the legal PB)*

60. In addition, the Hon'ble Supreme Court in *CIT v. Balbir Singh Maini [2017] 86 taxmann.com 94 (SC)* (refer to Page Nos. 626 to 637 of the legal PB) has categorically held that capital gains arising from a transaction that does not ultimately materialise constitutes, at best, hypothetical income, and such notional gains cannot be subjected to tax.

Holding Structure with Pre and Post Transaction Shareholdings



Limited is wholly owned by the Government of Singapore through the Minister for Finance, which is a body corporate constituted under the Companies Act for Finance (Incorporation) Act 1959

4.1. The Ld. DR on the contrary filed his written submissions summarising his arguments as under:-



OFFICE OF THE
COMMISSIONER OF INCOME-TAX (DR)
ITAT-11, 'I' Bench,

Room No. 703, 7th floor, CGO Annexe Building, M. K. Road, Mumbai – 400020
Phone No. 022-22082270
Email id : mumbai.cit.dr.itat11@incometax.gov.in

No. CIT(DR)/ITAT-11/'I' Bench/ 2025-26/1890 Date: 04.08.2025

To
The Hon'ble Members
ITAT-11, 'I' Bench
Mumbai

Sir/Madam,

**Sub: Submission in the case of Fullerton Financial Holdings Pte. Ltd for A.Y: 2022-23
ITA No. 1137/M/2025 reg-

Pursuant to the appeal filed by the assessee, Fullerton financial holdings Pte. Ltd, the revenue hereby submits the following:

The present appeal arises from the assessee's claim for exemption from capital gains tax in India under Article 13(4A) of the India-Singapore Double Taxation Avoidance Agreement (DTAA), in respect of a sum of Rs. 8,03,11,61,532 received from the sale of shares of Fullerton India Credit Company Ltd. (FICCL). The Revenue respectfully submits that the exemption under Article 13(4A) is not available to the assessee, as it fails to satisfy the mandatory conditions under Article 24A of the DTAA, which excludes shell or conduit companies from availing treaty benefits.

The Assessing Officer, upon detailed examination, found that FFH lacks substantive commercial presence in Singapore and operates merely as an investment holding entity. Despite being incorporated in Singapore and holding a Tax Residency Certificate (TRC), the AO concluded that FFH does not carry on any genuine business operations and thus qualifies as a "shell or conduit company" within the meaning of Article 24A(3) of the DTAA. **The assessee failed to produce evidence of any independent business infrastructure, presence of employees, or operational revenues in Singapore. The AO specifically noted that FFH had no employees on its payroll, no business premises, and no independently**

conducted economic activity apart from holding shares in operating subsidiaries, including FICCL.

While the assessee sought to claim compliance with the expenditure threshold of SGD 200,000 under Article 24A(2) by relying on a certificate issued by KPMG and communication from the Inland Revenue Authority of Singapore (IRAS), the AO rightly observed that these documents are inadequate to establish business substance. The KPMG report merely confirms mathematical compliance with the expenditure requirement based on figures provided by management, without examining the nature, purpose, or necessity of such expenses. Moreover, the AO found that a significant portion of the expenditure was in the form of cross-charges from FFH's wholly owned subsidiary, Fullerton Financial Holdings (International) Pte. Ltd. (FFHI), and not direct expenses incurred by FFH for its own operations. As such, these expenses do not reflect genuine operational costs incurred by the assessee and cannot be relied upon to establish active business presence in Singapore.

The nature of expenses cited such as management fees, software licenses, audit charges, and directors' liability insurance premiums was also examined by the AO, who found these to be group-level expenditures not linked to FFH's standalone business activity. The AO observed that the audit fees were incurred for Temasek Group's consolidation purposes, and that insurance premiums were taken out to cover directors across the group, not specifically for FFH's own operations. These expenses do not demonstrate active or independent business functioning and therefore cannot satisfy the conditions under Article 24A.

Additionally, the assessee has not produced any evidence to substantiate active operations in Singapore, such as task-specific service agreements, consultancy records, time sheets, or internal cost breakups reflecting operational relevance to FFH. The AO also noted the absence of board resolutions, strategic business plans, or commercial documents justifying the setup and maintenance of FFH as a business entity with independent purpose. These deficiencies led the AO to conclude that the corporate structure of FFH appears to be designed to avail tax benefits under the India-Singapore DTAA, with no commercial justification beyond routing investments through a favourable jurisdiction a classic case of treaty shopping.

The assessee's argument that FFH was incorporated prior to the introduction of Article 24A is misplaced, as the relevant date for determining eligibility is the date of the capital gains transaction and the corresponding claim for exemption. The introduction of Article 24A reflects the legislative intent to prevent treaty abuse, and its application cannot be bypassed merely on the basis of an earlier incorporation. The Revenue submits that tax authorities in India are not bound by the TRC or IRAS certification in cases where the facts demonstrate the absence of business substance or genuine commercial activity in the treaty partner country.

In light of the above , FFH has failed to meet the conditions laid down in Article 24A of the DTAA. The lack of operational expenditure, absence of employees and infrastructure, and the nature of expenses incurred all point to FFH being a shell or conduit entity. Accordingly, the capital gains arising from the sale of shares of FICCL are liable to tax in India under domestic law, and the benefit of Article 13(4A) of the DTAA is rightly denied.

Yours Faithfully,

(SATYA PAL KUMAR)

Commissioner of Income Tax (DR)
ITAT-11, 'I' Bench, Mumbai.

We have perused the submissions advance by both sides in the light of record placed before us.

5. It is noted that, there is no dispute with the revenue on the fact that the assessee is a private company limited by shares incorporated in Singapore, and is a wholly owned portfolio company of Temasek Holdings (Private) Limited, (Temasek) the Singapore-based investment company owned by the Government of Singapore. Thus the assessee functions as Temasek's dedicated investment and operating platform in the financial services sector across Asia, with a strategic focus on small and medium enterprise (SME) and mass-market banking segments. Further, It is a matter of record that Temasek is a company wholly owned by the Minister for Finance (Incorporated), a statutory body constituted under the Singapore Ministry of Finance (Incorporation) Act, 1959.

5.1 The assessee had made investment in Fullerton India Credit Company Limited (FICCL)during the financial year 2009-10, i.e., prior to 01/04/2017, with the primary objective of holding the same as a long-term strategic investment and to facilitate its

business expansion in Asia, consistent with its stated objective of functioning as an investment holding company. The assessee held an aggregate of 8,52,56,357 equity shares of face value Rs.10/- each in FICCL, which were subsequently transferred to Sumitomo Mitsui Financial Group (SMFG), an unrelated company incorporated in Japan, on 30/11/2021, corresponding to the financial year 2021-22.

5.2 The revenue denied exemption of capital gain under Article 13(4A) of India Singapore Double tax Avoidance Agreement (DTAA) on the ground that the assessee has no employee and the Directors are appointed by the group entities only. The revenue is thus of the opinion that the expenses of the Directors cannot be attributed to the operational expenses of the assessee.

5.3 The issue, therefore, that arises for consideration is whether, on the facts and circumstances of the case, the assessee satisfies the Principal Purpose Test (PPT) prescribed under Article 24A(1) and (2) of the India-Singapore DTAA for availing treaty benefit under Article 13(AA) in respect of the impugned transaction.

5.4 Before addressing the issue under consideration, it is necessary to understand the constitution of the assessee, placed at pages 1270 to 1312 of paperbook :

- The assessee is a company incorporated under the provisions of the Companies Act, Chapter 50 of Singapore, and is registered with the Registrar of Companies and Businesses functioning under the Accounting and Corporate Regulatory Authority (ACRA), Singapore. Assessee

functions as an active investment and operating platform for Temasek's financial services portfolio in Asia.

- The assessee's Board comprises experienced professionals from the fields of banking, finance, and public administration, several of whom have served with the Ministry of Finance, Singapore, or as members of the Temasek Advisory Panel.
- The assessee maintains substance and control in Singapore, as all key managerial and administrative functions, including Board and sub-committee meetings, strategic decision-making, and oversight of its investee entities, are undertaken in Singapore.
- The assessee, has, with investments spanning in multiple jurisdictions, including Singapore, Cambodia, China, India, and Malaysia. All activities relating to the management and administration of the assessee's affairs, including regular meetings of the Board of Directors and its sub-committees, are carried out in Singapore.

6. It is noted that, there is no dispute with the revenue on the fact that the assessee is a private company limited by shares incorporated in Singapore, and is a wholly owned portfolio company of Temasek Holdings (Private) Limited, the Singapore-based investment company owned by the Government of Singapore. Thus the assessee functions as Temasek's dedicated investment and operating platform in the financial services sector across Asia, with a strategic focus on small and medium enterprise (SME) and mass-market banking segments. The assessee, has, with investments spanning in multiple

jurisdictions, including Singapore, Cambodia, China, India, and Malaysia. All activities relating to the management and administration of the assessee's affairs, including regular meetings of the Board of Directors and its sub-committees, are carried out in Singapore.

6.1 In the present facts of the case, the investment in shares was made by the assessee, prior to 01/04/2017, i.e., before the amendment introduced by the 2016 Protocol to the India-Singapore DTAA came into effect. Under the pre-amendment position, capital gains arising to a Singapore resident from the alienation of shares in an Indian company were taxable only in Singapore, subject to the limitation-of-benefits (LOB) conditions. Consequently, the gains arising to the assessee on sale of such pre-April 2017 investments would remain exempt from taxation in India in accordance with Article 13(4) of the DTAA read with paragraph 3 of the 2016 Protocol.

6.2 The Principal Purpose Test (PPT) was introduced under Article 24A of the India-Singapore DTAA by way of the Third Protocol, with effect from 01/04/2017, in line with the OECD's BEPS Action Plan 6 recommendations. The said provision embodies a general anti-abuse rule designed to deny treaty benefits in cases where it is reasonable to conclude that one of the principal purposes of an arrangement or transaction was to obtain a benefit under the DTAA, unless granting such benefit would be in accordance with the object and purpose of the relevant provisions of the Convention.

6.3 Accordingly, for the assessee to be entitled to exemption of capital gains under Article 13(4) or 13(4A) of the DTAA, it must be established, based on the totality of facts, that the investment structure and the subsequent transfer were driven by bona fide commercial considerations, consistent with the assessee's legitimate business objectives, and not undertaken principally to secure a tax advantage under the Treaty.

7. The application of the PPT, therefore, requires a substantive examination of the assessee's commercial rationale, governance framework, economic substance, and functional control in relation to the transaction. Relevant factors would include whether the assessee carried on genuine investment and management activities from Singapore; whether the Board of Directors exercised effective decision-making in Singapore; and whether the investment in FICCL formed part of its long-term strategic portfolio rather than a mere conduit arrangement intended to channel gains through a low-tax jurisdiction.

7.1 Given the profile, the assessee is an independent management, economic substance, and operational control, and therefore does not fit the description of a "conduit company", which typically refers to an entity interposed solely for treaty or tax benefits, lacking substantive functions or control over its income or investments.

7.2 On these admitted facts, primarily, the assessee cannot be regarded as a mere conduit or pass-through entity. It is a wholly owned portfolio company of Temasek Holdings (Private) Limited, incorporated under the Companies Act, Chapter 50 of Singapore,

and functions as an active investment and operating platform for Temasek's financial services portfolio in Asia.

7.3 In international tax jurisprudence, a “conduit company” refers to an intermediary entity interposed between the source and ultimate recipient of income, which merely acts as a pass-through without any real economic or commercial substance of its own. Such entities are generally characterised by the absence of independent decision-making authority or control over income and are used primarily to obtain treaty benefits or tax advantages. The OECD Commentary on Article 1 and judicial precedents, including the decision of the *Hon'ble Supreme Court* in case of *UoI v. Azadi Bachao Andolan(supra)*, recognise that the concept of a “conduit company” must be distinguished from genuine resident entities having substantive commercial operations and management in the contracting State.

7.4 The Principal Purpose Test (PPT) was introduced under Article 24A of the India–Singapore DTAA by way of the Third Protocol, with effect from 1/04/2017, in line with the OECD's BEPS Action Plan 6 recommendations. The said provision embodies a general anti-abuse rule designed to deny treaty benefits in cases where it is reasonable to conclude that one of the principal purposes of an arrangement or transaction was to obtain a benefit under the DTAA, unless granting such benefit would be in accordance with the object and purpose of the relevant provisions of the Convention.

7.5 Accordingly, for the assessee to be entitled to exemption of capital gains under Article 13(4) or 13(4A) of the DTAA, it must be established, based on the totality of facts, that the investment structure and the subsequent transfer were driven by bona fide commercial considerations, consistent with the assessee's legitimate business objectives, and not undertaken principally to secure a tax advantage under the Treaty.

7.6 The application of the PPT, therefore, requires a substantive examination of the assessee's commercial rationale, governance framework, economic substance, and functional control in relation to the transaction. Relevant factors would include whether the assessee carried on genuine investment and management activities from Singapore; whether the Board of Directors exercised effective decision-making in Singapore; and whether the investment in FICCL formed part of its long-term strategic portfolio rather than a mere conduit arrangement intended to channel gains through a low-tax jurisdiction.

7.7 The determination of compliance with the PPT is thus a question of fact and degree, to be tested in light of the overall conduct of the assessee and the economic reality of the transaction, rather than by mere reference to its legal form or group shareholding pattern.

7.8 The incorporation of the assessee was for sound commercial reasons, and the overall conduct of its affairs indicates that the same were not arranged with the primary purpose of taking

advantage of Article 13(4A) of the India–Singapore DTAA, a fact which remains undisputed by the Ld.AO.

7.9 Under Article 24A(2) of the DTAA, treaty benefits may be denied to a “shell” or “conduit” company, defined as an entity having nil or negligible business operations in Singapore or lacking real and continuous business activities undertaken therein.

8. In the present case, the assessee has furnished a confirmation from the Inland Revenue Authority of Singapore (IRAS) dated 22/09/2023, which affirms that the assessee satisfies the prescribed expenditure test under the DTAA. Supporting details, including invoices, contracts, and schedules of significant expenditures incurred during the relevant 12-month periods, have been placed on record, thereby substantiating compliance with the said criteria.

8.1 It is an admitted position that the assessee is a wholly owned subsidiary of Fullerton Financial Holdings International (FFHI). FFHI functions as the management company of the FFH Group, housing the employees who provide management, administrative, and operational support services to the various group entities, including the assessee.

8.2 The Board of Directors and officers of the assessee provide leadership, strategic direction, and oversight in the conduct of its affairs. The Board formulates, implements, and periodically reviews the overall investment strategy and operations with the objective of creating, protecting, and enhancing the assessee’s

wealth and resources, while ensuring transparent reporting to all stakeholders.

8.3 The director remuneration and management fees paid by the assessee represent consideration for the services rendered by the directors and by FFHI through its employees in the course of the assessee's business operations. In addition, the assessee has incurred expenditure towards Directors' and Officers' (D&O) insurance premiums to safeguard its directors and officers against liabilities that may arise from decisions and actions undertaken in the discharge of their official duties.

8.4 The expenses are reimbursed by the assessee to FFHI are also on an arm's length basis, in compliance with the Singapore transfer pricing regulations, and are duly verified and audited in the financial statements of the assessee. The same have also been certified in the Agreed-Upon Procedures (AUP) report as having been appropriately incurred in accordance with applicable Singapore accounting standards.

Tax Reference No:
Our Reference:
Date:

200300717Z
CTBR1-G2/YA2022/HCKA/200300717Z
22/09/2023

278



INLAND REVENUE
AUTHORITY
OF SINGAPORE

FULLERTON FINANCIAL HOLDINGS PTE. LTD.
5 SHENTON WAY
#18-06
SINGAPORE 068808
Attention To: Mr. Wong Kah Peng



**Fullerton Financial Holdings Pte. Ltd. (the "Company")
Letter of Confirmation**

Dear Sir/Madam

We refer to KPMG Services Pte. Ltd.'s letter dated 4 September 2023.

Based on the financial statements, tax computation and additional information provided by the Company, we hereby confirm that the Company's annual expenditure on operations in Singapore was more than S\$200,000 for each of the 12-month periods in the immediately preceding period of 24 months from the date of disposal of the shares held in Fullerton India Credit Company Limited ("FICCL") India. The date of disposal of the shares held in FICCL was on 30 November 2021.

Yours faithfully

CHRISTINA HENG (MS)
SENIOR TAX SPECIALIST
CORPORATE TAX DIVISION
for COMPTROLLER OF INCOME TAX
This is a computer-generated letter and no signature is required.

8.5 Furthermore, the assessee has also produced a letter dated 31/08/2023 issued by KPMG LLP, Singapore (its statutory auditor), certifying that assessee's annual operational expenditure in Singapore exceeded SGD 200,000 for each of the two consecutive 12-month periods immediately preceding the date of disposal of shares in FICCL (i.e., 30/11/2021). The aforesaid evidence clearly demonstrates that the assessee is not a shell or conduit company within the meaning of Article 24A(2) and therefore qualifies for the treaty benefit under Article 13(4) of the India-Singapore DTAA.

9. The foregoing facts, viewed in the light of the assessee's current operational framework, demonstrate that the assessee continues to function as a substantive investment holding entity within the Temasek Group, which is wholly owned by the Government of Singapore through the Minister for Finance (Incorporation) Act, 1959. The ultimate beneficial owner of the assessee's investments is, therefore, the Government of Singapore. The assessee's governance and strategic management are carried out through an experienced Board of Directors and supported by FFHI, the group's management company staffed with qualified personnel rendering services to the FFH Group entities. The incurrence of director remuneration, management fees, and other operational expenditures—duly verified, audited, and in compliance with Singapore's accounting and transfer pricing regulations—evidences genuine and continuous business operations in Singapore. These facts collectively establish that the assessee is not a mere "shell" or "conduit" company, but a substantive, policy-driven investment vehicle of the Singapore sovereign group.

9.1 Having regard to the material placed on record, it is evident that the assessee possesses demonstrable commercial substance and an independent economic presence in Singapore. The assessee is a wholly owned portfolio company of Temasek, incorporated under the Companies Act, Chapter 50 of Singapore, and functions as Temasek's dedicated investment and operating platform for the financial services sector in Asia. The assessee forms part of the consolidated group financial statements of Temasek, whose audited group accounts are prepared in

accordance with Singapore Financial Reporting Standards and reflect the consolidated position of Temasek and its subsidiaries. The assessee maintains its management and control in Singapore, where all key investment and strategic decisions are undertaken through regular meetings of its Board and sub-committees. The investment in Fullerton India Credit Company Limited (FICCL), made in the financial year 2009–10, was a long-term strategic investment aligned with its regional expansion objectives and not a tax-motivated arrangement. The subsequent sale of shares to Sumitomo Mitsui Financial Group (SMFG) in 2021 represented a genuine commercial realisation of investment, undertaken as part of an arm's length transaction with an unrelated foreign entity.

9.2 On these facts, it cannot be said that the obtaining of a treaty benefit was one of the principal purposes of the transaction. Moreover, given that the ultimate beneficial owner of the investment is the Government of Singapore, if at all any entity were to be regarded as earning the income, it would be the Singapore sovereign itself, which is not subject to tax under the domestic law of India by virtue of the principle of sovereign immunity. Accordingly, it is held that the assessee satisfies the Principal Purpose Test (PPT) under Article 24A(1) and (2) of the India–Singapore DTAA, and the claim of treaty benefit cannot be denied on this ground.

Accordingly, the grounds raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 28/10/2025**Sd/-****(RENU JAUHRI)
Accountant Member****Sd/-****(BEENA PILLAI)
Judicial Member**

Mumbai:

Dated: 28/10/2025

Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

**(Asstt.Registrar)
ITAT, Mumbai**