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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 78/2025**

THE COMMISSIONER OF INCOME
TAX - INTERNATIONAL TAXATION -3

.....Appellant

Through: Mr Ruchir Bhatia, SSC, Mr Anant Mann, JSC Ms Aditi Sabharwal and Mr Abhishek Anand, Advocates.

versus

TYCO ELECTRONICS SINGAPORE PTE LTD.

.....Respondent

Through: Mr Ajay Vohra, Sr Advocate with Mr Abhisek Singhvi and Ms Somya Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% 26.03.2025

CM APPL. 17558/2025 (condonation of delay) in ITA 78/2025;

1. For the reasons stated in the application, the delay of eighteen days in filing the above captioned appeal stands condoned.

2. The application stands disposed of.

ITA 78/2025

3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning an order dated 05.09.2024 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.1760/DEL/2022 captioned *Tyco Electronics Singapore Pte Ltd. v. DCIT* in respect of Assessment Year [**AY**] 2017-18.

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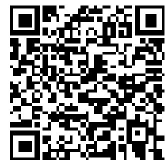

4. The respondent **[assessee]** had preferred the aforesaid appeal impugning a final assessment order dated 23.06.2022 passed under Section 143(3) read with Section 144C (13) of the Act.

5. The assessee is a company which incorporated under laws of Singapore and claims to be a tax resident of the said country within the meaning of Article 13(4) of the India-Singapore Double Taxation Avoidance Agreement [**the DTAA**]. The assessee is engaged in the business of trading of electromechanical relays, wire and wireless equipment, high performance polymeric products, highly specialized energy related products and electrical and electronic components. The assessee is also engaged in the business of holding investments.

6. The assessee has two subsidiaries operating in India namely, TE Connectivity India Private Limited and Connectivity Services India Private Limited. During the financial year relevant to assessment year **[AY]** 2017-18, the assessee had disclosed that it had received ₹2,35,17,594/- from its subsidiary, TE Connectivity India Private Limited on account of interest on external commercial borrowings' and ₹7,54,83,267/- as interest on compulsory convertible debentures [**CCD**].

7. It was found that during the financial year, the assessee had also earned long term capital gains amounting to ₹ 2,11,61,53,235/- which it claimed was exempted by virtue of Article 13 of the DTAA.

8. The assessee's contention that it is entitled to benefit of DTAA was rejected by Assessing Officer [**AO**] on the ground that it had failed to conclusively establish its eligibility to claim long term capital gains not chargeable to tax in India by virtue of the DTAA.

9. Aggrieved by the same, the assessee had preferred the appeal before

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the learned ITAT. The learned ITAT found that the assessee was a tax resident of Singapore and its entity was not one without any substance. On the aforesaid basis, the learned ITAT concluded that assessee was entitled to the benefit of the DTAA.

10. In the aforesaid context, the Revenue has projected the following questions for consideration of this court:

> "1 Whether the Ld. ITAT erred in treating the Tax Residency Certificate as conclusive evidence for claiming treaty benefits without examining substantive business activities?
> 2 Whether the Hon'ble ITAT rightly shifted the burden of proof entirely onto the Revenue despite the assessee's failure to submit adequate supporting documents during opportunities rendered in assessment proceedings?
> 3 Whether the denial of treaty benefits by the AO and DRP was justified under the principles of anti avoidance in the absence of substantive economic activity by the assessee?
> 4 Whether the principle of consistency in granting treaty benefits can be applied without verifying material changes in facts or compliance in subsequent years?
> 5 Whether the Ld. ITAT adequately considered the requirement for demonstrating financial and operational substance under Article 24 of the DTAA?"

11. In our view, the aforesaid questions do not arise for consideration of this court. This is because the assessee's claim for exemption is not based on tax residency certificate alone, but on the assertion that it is not a shell company but one of substance. The factual finding returned by the learned ITAT – which are not challenged as perverse by the Revenue – clearly

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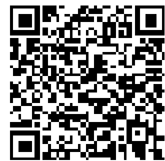

establish that the assessee is not a paper entity but one of substance.

12. We consider it apposite to note the factual findings of the learned ITAT in this regard. The same are reproduced as under:-

> "6. We further find that before the DRP, the assessee had given a detailed submission putting across the claim of the assessee on the basis of various factual aspects and evidences. However, the DRP has not considered the same at all. Copy of the synopsis is available at page 84 of the paper book and as we appreciate the same it comes up that the assessee had pleaded that during the year under consideration, as part of global restructuring, the Company sold 10,37,030 shares held in TE Connectivity Global Shared Services India Private Limited ('TEGSSIPL') to a 3rd party on December 21, 2016. The said transfer of shares resulted in long term capital gains (held for more than 24 months) for the relevant AY. However, the Company was not liable to pay any tax on the capital gains as the same was tax exempted under Article 13(4) of India-Singapore DTAA ('DTAA').
>
> 6.1 It was further pleaded that the Assessee's business is managed and controlled in Singapore. All the board meetings and shareholders meetings are held in Singapore and all the key decisions relating to business are taken in Singapore.
>
> 6.2 It was also pleaded that as per Article 24A ('Limitation of Benefit') of India-Singapore Tax Treaty, *"A shell or conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State." "A resident of a Contracting State is deemed to be a shell or*

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conduit company if its annual expenditure on operations in that Contracting State is less than $$200,000 in Singapore or Indian Rs. 5,000,000 in India". In this context assessee submitted that the Assessee has incurred total expenditure of USD 660,281 and USD 2,266,177 in the financial years 2016 and 2017 respectively which shows it has significant business operations/activities in Singapore.

6.3 We find that AO has not found any fault in this proposition. Once this is admitted, it cannot be alleged that the Company is not a resident in Singapore and that it has no taxable existence in any other country. We find substance in the plea that without finding where the residence of the Assessee, it cannot be denied the treaty benefits. Further we appreciate the stance of the assessee that the company was incorporated in the year 1996 and the relevant investments were made by the Assessee in the year 2012 (which is 16 years after incorporation of Company).

6.4 It was also pleaded that the Assessee is an actual operating entity and is conducting business on a regular basis. The audited financials for the year 2017 reveals, it has generated revenue from sale of goods amounting to USD 2,472,828 (in '000'). Further, The Assessee has employed 164 number of employees during the relevant year. The name of the employees was enclosed as Annexure 4. Assessee also pleaded that Singapore's Economic Development Board has also recognized the Company the Asia Pacific headquarters and the regional trading hub in 2016 for a period of 10 years. These aspects needed indulgence of the DRP, however, without making any enquiry the DRP has sustained the conclusion of the AO.

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> 6.5 It was also pointed out that the Company has been consistently filing its return of income in India and has been availing the treaty benefits with respect to such income for all such years. The AO has not denied the treaty benefits in any of such years. We are of considered view that without assigning any reasons for drifting from the rule of consistency the DRP could not have sustained the draft addition."

13. In view of the above, no substantial question of law arises for consideration of this court. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 26, 2025
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Click here to check corrigendum, if any

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