IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.2226/Del/2024
Assessment Year : 2020-21

Hareon Solar Singapore Pvt. Ltd., 38, Beach Road, #29-11 South Beach Tower, Singapore	v.	DCIT, International Taxation Circle-2(1)(1), C R Building, I P Estate, New Delhi-110002

PAN: AACECH4843B

(Appellant) (Respondent)

Assessee by	:	Shri Ritesh Bajaj, Advocate & Ms. Mamta Verma, CA
Revenue by	:	Shri M.S. Nethrapal, CIT, DR
Date of Hearing	:	05.01.2026
Date of Pronouncement	:	30.01.2026

ORDER

PER RAMIT KOCHAR, AM:

This appeal in ITA No.2226/Del/2024 for assessment year 2020-21 has been filed by the assessee challenging the assessment order(DIN & Order No.ITBA/AST/S/143(3)/2023-24/1062232534(1)), dated 08th March, 2024 passed by the learned Assessing Officer(hereinafter called “the AO”) u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) assessing income of the assessee at Rs.18,58,19,482/- as against the returned income of Rs.90,95,180/- , which assessment order was issued by the AO in pursuance of the directions of the Ld. Dispute Resolution Panel u/s 144C(5) of the 1961 Act, dated 26th February, 2024(DIN ITBA/DRP/M/ 144C(5)/2023-24/1061503015(1)). The draft assessment order in the case of the assessee was passed by the AO u/s 144C(1) , dated 17.05.2023(DIN & Order No. ITBA/AST/F/144C/2023-24/1052904151(1)). The assessee filed objections with learned DRP against the draft assessment order dated 17.05.2023 which were disposed off by ld. DRP vide orders dated 26.02.2024.

2. The grounds of appeal raised by the assessee in memo of appeal filed with Income Tax Appellate Tribunal, New Delhi(hereinafter called "the Tribunal") reads as under:-

"The grounds mentioned herein by the Appellant are without prejudice to each other.

1. On facts and circumstances of the case and in law, the final assessment order ('order') passed by the Deputy Commissioner of Income Tax, International Taxation, Circle 2(1)(1), C.R. Building, New Delhi ('the Ld. AO') and directions issued by the Dispute Resolution Panel -1, New Delhi ('the Ld. Panel') are erroneous on facts and are bad in law.

2. That on the facts and circumstances of the case and in law, the Ld. AO and the Ld. Panel has erred on the taxability of capital gains arising in the hands of Appellant on the transfer of securities which is governed by the provisions of the Income-tax Act, 1961 ("the Act") read with provisions of the India-Singapore Double Taxation Avoidance Agreement ("DTAA").

2.1 The Ld. AO and Ld. Panel has grossly erred to indicate that the Appellant is merely a shell company or sham arrangement without adequate substance with the beneficial ownership and control and management effectively lying outside Singapore.

2.2 The Ld. Panel has erred in not considering the TRC certificate which is evidencing that the Appellant is a tax resident of Singapore and eligible to claim tax treaty benefits between India and Singapore.

2.3 The Ld. AO and Ld. Panel has erred in not appreciating the organisational structure of the company.

2.4 The Ld. Panel has grossly erred in rejecting the benefits of DTAA including clause of Limitation of Benefits (LOB clause).

2.5 The Ld. AO and Ld. Panel has erred that control and management is lying in Singapore.

2.6 The Ld. AO and Ld. Panel has erred that there is no substance in Singapore.

2.7 The Ld. Panel has erred in not considering the assessee submission while passing the order.

2.8 The Ld. AO failed to apply the recent judicial pronouncements of Delhi High Court in the case of Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd. [2023] 146 taxmann.com 569 (Delhi) in the case of the Appellant owing to similar facts.

3. The Ld. AO has erred in computing the tax liability.

4. The Ld. AO has erred in law by initiating penalty proceedings under section 270A of the Act.

That the appellant craves leave to add to and to alter, amend, rescind or modify the grounds raised hereinabove before or at the time of hearing of the appeal."

3. The ground of appeal No.1 raised by the assessee is general in nature , and the same is dismissed as such.

4. With Respect to Ground of Appeal No.2,2.1 to 2.8, the brief facts of the case are that the assessee is a Private Limited Company incorporated under the laws of Singapore , in 2015 , and is tax resident in Singapore during the year

under consideration. It is claimed by the assessee that the principal activity of the company is to make investment in companies involved in production, sales and trading of power. The assessee has claimed to have earned long-term capital gain of Rs.17,67,24,300/- on transferring(sale) of the equity shares and Compulsorily Convertible Debentures (CCDs) of M/s Renew Solar Energy (Karnataka) Pvt. Ltd. to M/s Renew Solar Power Pvt. Ltd. , and the said amount was claimed as an exempt income not chargeable to tax in India as per the provisions of Article 13 of India-Singapore DTAA. The case of the assessee was selected by Revenue for complete scrutiny for the reasons that there were capital gains/income on sale of property and a claim of refund. Statutory Notices u/s 143(2) was issued by the AO and duly served on the assessee. During the course of assessment proceedings, the AO asked the assessee to submit the shareholding pattern and the group structure (upstream and downstream) of the Group of entities of which the assessee is a part as well the assessee was asked by AO to submit the organizational structure of the group. The assessee submitted that the assessee is subsidiary of Hareon Solar Co. Ltd., Hong Kong who holds 100% shares of the assessee company , and further that the Hareon Solar Co. Ltd., Hong Kong is subsidiary of Hareon Solar Technology Co. Ltd., China who holds 100% shares of Hareon Solar Co. Ltd., Hong Kong. Thus, it was submitted that the ultimate holding company of the assessee is Hareon Solar Technology Co. Ltd., China which holds 100% shares in Hareon Solar Co. Ltd., Hong Kong, while the immediate holding company of the assessee is Hareon Solar Co. Ltd., Hong Kong who owns and holds 100% shares of the assessee company and is based in Hong Kong. The assessee was also asked by the AO to submit the details of the Directors along with their country of residence , and the assessee submitted the details as under:-

Name	Country of residence
Woo Yao Tung	Taiwan
Rubin Sidhu	USA
Yoo Loo Ping	Singapore
Yeo Hui Yin	Singapore
Cheng Lien-Huang	Taiwan

The AO observed that two of the Directors belong to Singapore , while three Directors are based out of Singapore i.e. Taiwan and USA.

4.2 The AO observed that the assessee is not having any employee working with it and the assessee has not incurred any expenses such as electricity, internet expenses which are necessary for day to day business operations. The AO sought explanation to that effect from the assessee. The assessee, in response, submitted that the assessee is an investment holding company and, as such, its affairs are managed by the Board of Directors and the assessee company does not have full time employees or a conventional office premises. The assessee company leases the office space as needed from one of its consultant TMF and all utility expenses like internet, electricity, etc., are not billed separately. Therefore, the assessee company has not incurred any expenditure towards employees and utilities in the form of electricity and internet expenses during the year under consideration. The AO did not accept the contention of the assessee and as per the AO if the undertaking has substantial business activity including investments in shares, there has to be certain expenses like employees expenses, expenditure on building, machinery, etc. and if such expenses are not incurred by the entity, then, it is set up merely as a shelf/shell entity with the primary purpose of acting as a conduit for investment while maintaining its identity as a low cost, no frills paper entity for claiming undue capital gains exemption in the process. It was observed by the AO that for a company to function, it should be having normal business activities like employed workforce, internet, building, machinery and electricity, but in this case, the assessee has not incurred any such expenses. The AO observed that the assessee has not brought anything on record to exhibit the functioning on normal day to day basis. Thus, onus casted on the assessee to provide the real existence of the company , and it not being a conduit/shell company remained unexplained. The assessee was asked by the AO to submit the KYC documents submitted by it to HSBC Bank, Singapore. The assessee provided copy of form for KYC submitted by it to Hongkong and Shanghai Banking Corporation Ltd. . The AO observed from the KYC documents submitted that the same was signed by Mr. Rubin Sidhu, a resident of USA. It was also observed by the AO that the authorized signatories/key controllers for operation of bank account were Mr. Rubin Sidhu, a resident of USA and Eddie Woo, resident of Taiwan ,who have been authorized for the operations of bank account. The AO observed that it can be seen that the actual control of bank account and decision regarding the utilization of funds lies with Mr. Rubin Sidhu and, thus outside Singapore. The assessee also submitted copy of Minutes of the meeting wherein the decision regarding the appointment of authorized signatory for operation of the bank account was taken . The AO observed that the meeting was chaired by Mr. Rubin Sidhu, USA who nominated himself along with other individuals for the operations of the bank account of the company. The AO observed that all the directions i.e. heading the meetings, operations of bank accounts/funds are being taken by Mr. Rubin Sidhu. The AO observed that none of the authorized signatories are based in Singapore . They are based either in USA or Taiwan or are engaged with Hareon Solar Technology Co. Ltd. at Hong Kong. Thus, it was observed that the actual control and management of the assessee company lies outside Singapore as the individuals who are managing and controlling the funds are not based in Singapore. It was observed by the AO that the immediate holding company of the assessee is in Hong Kong and the ultimate holding company is based in China. The AO observed that if the transactions of sale of equities/CCDs were made through entities based in either China or Hong Kong, the same would have been taxable in India. The assessee on its part, claimed that the assessee is an investment company incorporated under the laws of Singapore in the year 2015 and is a tax resident of Singapore. The assessee furnished copy of Tax Residency Certificate(TRC) of Singapore issued by Singapore Revenue Authorities, before the AO. The assessee submitted that the principal activities of the assessee company are investment in companies involved in production, sales and trading of power. Thus, the assessee submitted that it is holding investments in India and Singapore . The assessee claimed that the expenditure incurred as well as the income received are duly accounted for in the books of account of the assessee company. The copy of balance sheet of the assessee company was duly furnished by the assessee before the AO. It was submitted by the assessee that in July, 2015 , the assessee company invested in 40,92,941 ordinary equity shares and 14,89,180 Compulsory Convertible Debentures (CCDs) in Renew Solar Energy (Karnataka) Private Ltd., a company incorporated under the laws of India. It was further submitted by the assessee that in June, 2019, the assessee company disposed off the above mentioned investment of equity shares and held in Renew Solar Energy (Karnataka) Private Ltd. to Renew Solar Power Private Ltd.. The assessee duly enclosed copy of computation of capital gains on sale of equity shares and CCDs. The assessee submitted that the chargeability to tax of capital gains is covered by the provisions of the Income-tax Act, 1961 read with the provisions of India-Singapore DTAA. The assessee referred to the provisions of Section 9 and Section 45 of the Act. The assessee also submitted that as per provisions of Section 90 of the 1961Act, where the tax payer is a resident of a country with which the Government of India has entered into a Double Taxation Avoidance Agreement(DTAA), tax is required to be computed as per the provisions of the Income-tax Act or as per the DTAA whichever is more beneficial to the tax payer. The assessee relied upon Article 13(4A) to submit that the shares were acquired by the assessee in an Indian Company namely Renew Solar Energy (Karnataka) Private Ltd. prior to 1st April, 2017 and, hence, shall be taxable in Singapore as the assessee is resident of Singapore. Similarly, the assessee relied upon Article 13(5) of the DTAA , and submitted that the gains arising from the transfer of CCDs shall also be taxable only in Singapore as the assessee company is resident of Singapore. The assessee further submitted that in terms of DTAA between India and Singapore, capital gains were to be taxed on the basis of legal ownership and not on the basis of beneficial ownership. The assessee also submitted that it has duly satisfied and complied with the Limitation of Benefit(LOB) clause as referred to in Article 24A of the India-Singapore DTAA which says that a resident in Singapore shall not be construed to be a shell/conduit company if its total expenditure on operations in Singapore is equal to or more than SG $2,00,000 for each of the 12 months' period in the immediately preceding period of twenty-four months from the date the gain arises. It was submitted that the assessee company has incurred the expenditure in Singapore w.r.t. the legal & professional charges and other expenses exceeding SG $2,00,000 which is required under the LOB clause and the same is evidenced as per the extract of the audited financial statement . Thus, it was submitted that the assessee is not a shell or conduit company , and the investment is routed through the assessee company only as it is solely engaged in carrying on investment activities. The AO rejected the contention of the assessee and observed that the assessee's immediate holding company is the resident of Hong Kong wherein capital gains are taxed in source country and not the country of residence. Further, the ultimate Holding company of the assessee company is based in China where again there is source based taxation on alienation of equities. The AO referred to the provisions of the DTAA between India and Hong Kong which stipulates as under:-

> *"Gains derived by resident of a contracting party from alienation of shares of a company deriving more than 50 percent of its asset value directly or indirectly from immovable property situated in the other contracting party may be taxed in that other party."*

4.3 The AO referred to Article 24A of India Singapore DTAA, and observed that the assessee has been spending SG $4,00,000 per year in Singapore, but it made most of the payments to its consultants TMF to provide services in relation to the assessee's investment activities , and if these expenses of professional fees are excluded from the P&L Account of the assessee, the assessee has no expenses thereby confirming the Revenue's contention that it is just a conduit entity set up to take benefit of the treaty. The AO observed that the assessee was an interposed company in Singapore while the holding company of the assessee is in Hongkong , and ultimate holding company is in China. The shares of an Indian unlisted company namely Renew Solar Energy (Karnataka) Private Ltd. as were held by the assessee were transferred merely to get the benefit of India-Singapore Double Taxation Avoidance Agreement(DTAA) as the transfer of shares of Indian company acquired before 01.04.2017 were only taxable in

Singapore as the alienator i.e. the assessee is tax resident of Singapore. It was observed by the AO that the Singapore has no tax on capital gain from alienation of shares. Thus, the AO observed that the company is a mere shell company or sham arrangement without adequate commercial substance with the beneficial ownership and control and management effectively lying outside Singapore , and the only purpose behind establishing this paper or letter box company in Singapore is to take advantage of the treaty between India and Singapore. The AO observed that the purpose of the tax treaties is to prevent double taxation and not to allow tax evasion by means of such shell companies. The AO observed that there is no commercial rationale behind creation of the assessee company in Singapore, and it is merely a conduit company set up with the sole motive of gaining undue tax advantage without adequate economic substance or commercial substance in Singapore. The control and management of the assessee is not in Singapore, which is a prerequisite for considering it as a tax resident of Singapore . Mere obtaining of TRC is not enough. Thus, the only objective of the interposing a holding company in Singapore was to obtain a tax advantage under the India-Singapore DTAA and, thus, it is merely a tax avoidance arrangement which is illegal and impermissible . The AO observed that the actual business operations of the assessee are managed from outside of the Singapore by Mr. Rubin Sidhu, Woo Yao Tung, Zhang Jie and Ruan Jun who are based outside of Singapore. The company has no other business operations except routing of the money through Singapore just to claim tax exemptions of the capital gain arising in India. The AO observed that for a company having its principal activity as investment, the primary operational element of the its business would constitute (a) making investment decisions and (b) transferring and managing its investment funds/returns through banking channels. The AO observed that the assessee has three Non Resident Directors , and hence it is fairly evident that the actual control and management of the assessee company does not lie in Singapore The AO also observed that the assessee has only one investment/subsidiary as submitted by it through its corporate structure. It can also be inferred with certainty that the control and management of the assessee is not in Singapore which is a prerequisite for considering it as a tax resident of Singapore. Mere obtaining of TRC is not sufficient and the company is interposed in Singapore only to obtain a tax advantage under the India-Singapore DTAA. The AO referred to the OECD commentary. The AO also discussed in its assessment order treaty abuses by way of treaty shopping. The AO discussed the look through approach and piercing of the corporate veil and examination of underlying ownership. The AO observed that in order to claim benefit of DTAA between India and Singapore, the company has taken the route of investment through Singapore instead of Hongkong or China. The assessee submitted that all the decisions are taken by the Directors , and Board meetings are held in Singapore and majority of the Directors were present in Singapore at the time of meeting, but, the AO rejected the contention of the assessee by holding that 3 of the Directors of the assessee company are Non Resident based in USA and

Taiwan. The AO observed that Mr. Rubin Sidhu, Woo Yao Tung, Zhang Jie and Ruan Jun are the authorized signatories of the bank account and are responsible for managing the funds and taking all the key decisions of the assessee company being based outside Singapore. The 100% parent holding company of the assessee company is based in Hongkong, and the ultimate 100% holding company of the assessee is based in China , and the Singapore route is only taken to take the benefit of DTAA. The AO also rejected the contention of the assessee that TRC has been issued by Singapore Revenue Authorities , and hence it cannot be denied the benefit of India Singapore DTAA. The AO referred to the decision of the Hon'ble Bombay High Court in the case of Vodafone BV to hold that merely holding of TRC is not conclusive to decide the tax residency wherein the Hon'ble Bombay High Court has held as under:-

> *"99. It is to be noted that LOB and look through provisions cannot be read into a tax treaty but the question may arise as to whether the TRC is so conclusive that the Tax Department cannot pierce the veil and look at the substance of the transaction. DTAA and Circular No. 789 dated 13.4.2000, in our view, would not preclude the Income Tax Department from denying the tax treaty benefits, if it is established, on facts, that the Mauritius company has been interposed as the owner of the shares in India, at the time of disposal of the shares to a third party, solely with a view to avoid tax without any commercial substance. Tax Department, in such a situation, notwithstanding the fact that the Mauritian company is required to be treated as the beneficial owner of the shares under Circular No. 789 and the Treaty is entitled to look at the entire transaction of sale as a whole and if it is established that the Mauritian company has been interposed as a device, it is open to the Tax Department to discard the device and take into consideration the real transaction between the parties , and the transaction may be subjected to tax. In other words, TRC does not prevent enquiry into a tax fraud, for example, where an OCB is used by an Indian resident for round-tripping or any other illegal activities, nothing prevents the Revenue from looking into special agreements, contracts or arrangements made or*

effected by Indian resident or the role of the OCB in the entire transaction."

4.4 The AO also relied upon the ruling of AAR in ***AB Mauritius (2018) 402 ITR 311*** and the decision of the Hon'ble Bombay High Court in ***Indo Star Capital vs. CIT, wherein similar view has been taken based on 'Substance over the form' principle.*** The AO also referred to the tie breaker rule for tax residency of companies and observed that the country where control and management of the company is situated gets right to tax and not where the company is incorporated. The AO also relied upon the doctrine of 'substance over form' . The AO relied on the decision made by the Hon'ble Courts , inter-alia, including the decision of the Hon'ble Supreme Court in the case of ***McDowell,*** and the AAR Ruling's in ***Tiger Global International Holdings as well in the case of Bid Services Division(Mauritius) Limited and AB Mauritius (2018) 402 ITR 311(AAR).The AO also relied upon judgment of Hon'ble Madras High Court dated 10.12.2020 in the case of Redington India Limited.*** Thus, the AO observed that the assessee is not entitled to the benefits of DTAA between India and Singapore for the following reasons:-

> "1. The scheme of arrangement employed by the assessee is one of tax avoidance through treaty shopping mechanism.
> 2. The TRC is not sufficient to establish the tax residency if the substance establishes otherwise.

3. The assessee company is just a conduit and the actual of the income is not the assessee company but the entities based in Hong Kong/China.

4. There is no commercial rationale of establishment of assessee company in Singapore.

5. The control and management of the assessee company is also not present in Singapore.

4.5 The AO applied source rule to tax the assessee by invoking provisions of the 1961 Act, denying treaty benefits to the assessee. The AO referred to the Hon'ble Supreme Court judgment in the case of ***GVK Industries 332 ITR 130***. The AO observed that the capital gains arising from capital asset situated in India would be deemed to accrue or arise in India. The AO referred to Explanation 4 and 5 to Section 9(1)(i). The AO observed that the capital asset derived its value substantially from assets located in India. Thus, the long-term capital gain of the assessee chargeable to tax was computed by the AO vide draft assessment order dated 17.05.2023 passed by the AO u/s 144C(1), as under:-

Income under the head Capital Gain	CCDs of M/s Renew Solar Energy (Karnataka) Pvt. Ltd.	Equity shares of M/s Renew Solar Energy (Karnataka) Pvt. Ltd.
Long Term Capital Gain	Amount (in Rs.)	Amount (in Rs.)
Sale Consideration	20,40,09,503/-	56,07,10,497/-
Less : Cost of acquisition without indexation Capital Gain	17,87,01,600	40,92,94,100/-
Long Term Capital Gain	2,53,07,903/-	15,14,16,397/-

(taxed u/s 112)		

5. The assessee being aggrieved with draft assessment order dated 17.05.2023 filed objections with Ld. DRP . The ld. DRP disposed off the objections filed by the assessee vide order dated 26.02.2024 by issuing directions u/s. 144C(5) of the Act(DIN : ITBA /DRP/M/144C(5)/2023-24/1061503015(1)), wherein the Panel found no infirmity in the draft assessment order passed by the AO , and the draft assessment order passed by the AO was upheld by ld. DRP , and the objections raised by the assessee were rejected by the Ld. DRP.

6. The AO, in pursuance to the directions of the Ld. DRP passed the assessment order dated 8th March, 2024 u/s 143(3) r.w.s. 144C(13) of the Act.

7.Still aggrieved, the assessee has now filed an appeal with the Income-tax Appellate Tribunal, New Delhi Benches, New Delhi , and the assessee has raised grounds of appeal which are reproduced by us in the preceding paragraph of this order.

8. The Ld. counsel for the assessee submitted before the Bench that the assessee is a Private Limited Company incorporated under the laws of Singapore in 2015 , and is tax resident of Singapore holding TRC issued by Singapore Revenue Authorities. It was submitted that the assessee is engaged in making

investments in Renewal Energy Sector. It was submitted that in the year 2015, the assessee has made investments by way of equity shares and CCD's in M/s Renew Solar Energy (Karnataka) Pvt. Ltd. , and in June, 2019 these investments by way of equity shares and CCDs were disposed off by the assessee. It was submitted that Interest on CCDs was offered to tax in India by invoking India Singapore DTAA. It was submitted that the interest on CCDs to the tune of Rs.90,95,182/- was offered to tax in the return of income filed by the assessee which was subjected to withholding income-tax @ 15% as per DTAA. It was submitted that the same was brought to tax by the AO under the provisions of India Singapore DTAA, and treaty benefit was allowed by the AO. It was submitted that in earlier years also , the assessee offered to tax interest on CCD by invoking provisions of India-Singapore DTAA, which claim of treaty benefit was accepted by the Revenue. It was submitted by learned counsel for the assessee that as per provisions of DTAA, exemption was claimed on the capital gain arising from sale of equity shares and the CCDs while filing the return of income in India as the same is taxable in Singapore where the alienator is resident. It was submitted that capital gains arising on sale of equity shares and CCD's are not taxable in Singapore as per the Singapore tax-laws. It was submitted that so far as the capital gain on the transfer of equity shares and CCDs are concerned, the AO has denied the Treaty benefits(India-Singapore DTAA), and has brought to tax the said capital gain under the provisions of the Income-tax Act, 1961 although as per the India-Singapore DTAA the same is to be brought to tax in Singapore. It was submitted that the AO has invoked Limitation of Benefit(LOB) Article under DTAA to deny benefit of exemption of capital gains claimed under DTAA in Indian jurisdiction. The ld. Counsel for the assessee submitted that the AO has observed that the Directors are not based at Singapore. It was observed by the AO that there is no effective management and control of the assessee company in Singapore. It was submitted that the assessee has conducted its Board of Directors meeting in Singapore. The Ld. Counsel for the assessee submitted that the Directors were present in Singapore when the key decisions were taken in the Board of Directors meeting. It was also submitted that the assessee cannot be held as shell company as the assessee has spent around Singapore Dollars(SG $) 4,00,000 towards the expenses which are already incorporated in the books of account which is higher than the minimum stipulated SG $ 2 lakh as per DTAA. Thus, conditions as stipulated under Article 24A LOB clause is satisfied. The assessee relied upon the decision of ITAT , Mumbai in the case of *Fullertone Financial Holdings Pte. Ltd. v. ACIT reported in (2025) 180 taxmann.com 241(Mum-Trib.)*. It was submitted that the said amount was paid to the Counsel of the assessee as professional fees. Our attention was drawn to the Minutes of the Board of Directors meeting held on 15th June, 2015 which are placed at page 1018 of the paper book filed by the assessee , and it was pointed out that the meeting of the Board of Directors dated 15.06.2015 was held in Singapore in which decision to invest in M/s Renew Solar Energy (Karnataka) Pvt. Ltd. was taken by the Board of Directors of the assessee company. Reference was also drawn to page 681 of the paper book filed by the assessee , wherein KYC of HSBC Bank was placed. It was submitted by ld. Counsel for the assessee that Mr. Zhang Jie was not present in the meeting where the decision to invest was taken. It was submitted that the AO has brought to tax interest on CCDs by applying tax rate of 15% , wherein India Singapore DTTA benefit was allowed. It was submitted that on similar basis the Treaty benefit should be extended to the capital gain arising from sale of aforesaid equity shares and CCDs. It was also submitted that TRC was duly submitted which is placed at pages 177 and 178 of the paper book. Our attention was drawn to page 335-428 of the paper book which is the agreement dated 01.07.2015 between M/s Renew Solar Power Pvt. Ltd., Renew Power Ventures Private Limited, Renew Solar Energy (Karnataka) Pvt. Ltd., Hareon Solar Technology Company Limited, China and the assessee company for subscription/purchase of equity shares and CCDs. Our attention was also drawn to page 370 of the paper book, para 9.2 and it was submitted that the assessee company Hareon Solar Technology Company Limited, China and the Hareon Solar India Private Limited shall provide the benefit of their experience and expertise to Renew Solar Energy (Karnataka) Pvt. Ltd. Our attention was also drawn to page 887 of the paper book and it was submitted that the assessee is still holding Class H Redeemable Preference Shares in Nereus Capital Investments (Singapore) Pte Ltd. as an investment. It is also holding equity shares in Hareon Dalmia Solar Private Limited, which is based in India. It was submitted that , thus, it could not be said that the assessee company is merely a shell company as it has made other investments also apart from making investment in Renew Solar Energy(Karnataka) Private Limited which now stood divested. It was submitted that TDS was duly deducted on the sale transaction as well on interest on CCD. It was submitted that ld. DRP erred in observing that the assessee has not made any other investment. A prayer was made by ld. Counsel for the assessee to grant benefit to the assessee under DTAA between India and Singapore by holding that capital gains earned on sale of equity shares and CCDs of Renew Solar Energy(Karnataka) Private Limited are exempt from income-tax in India, and are chargeable to tax in Singapore. It was also submitted that as per Singapore tax laws , the capital gains earned on sale of shares are not chargeable to tax.

8.2. The Ld. CIT-DR, on the other hand, submitted that India has entered into DTAA with Singapore. Our attention was drawn to Article 24A(LOB clause), and our attention was drawn to the decision of the Hon'ble Supreme Court in the case of Nestle India. It was submitted that the assessee is not having any business. It is not having any employees . It did not even incur any establishment expenses such as ,internet , electricity , and it is merely a shell/conduit company which is set up by its parent companies based in China and Hong Kong to take tax benefit under the DTAA. The assessee is 100% subsidiary of Hongkong based company. The Hongkong based parent company is 100% subsidiary of China based company. Thus, the ultimate holding company of the assessee is in

China. The assessee is based in Singapore, and it is claimed that it is tax-resident of Singapore. It was submitted that there was no rationale of setting up of the assessee company in Singapore. It was submitted that the appellant ultimate holding company is in China who has been supplying equipments, etc., to the Indian company namely Renew Solar Energy(Karnataka) Private Limited whose shares were held by the assessee based in Singapore, and there was no rationale of setting up a company in Singapore and rather the ultimate holding company in China could have made investment directly in Renew Solar Energy (Karnataka) Pvt. Ltd. instead of interposing assessee company in Singapore. The only purpose of setting up the assessee company in Singapore was to take benefit of India-Singapore DTAA as there is no tax on capital gains in Singapore. If the ultimate holding company based in Hong Kong or China would have made investment in M/s Renew Solar Energy (Karnataka) Pvt. Ltd, then, based on the source rule the said income would have been charged to tax in India. It was also submitted that the place of effective management is not situated in Singapore and rather it is situated outside Singapore, in Hong Kong and China as well as the Directors are based in USA and Taiwan who are taking the key decisions. The bank accounts were operated by the persons who are not residents of Singapore. It was submitted that the minutes have been submitted by the assessee and claim has been made that the said signatories and Directors were present in Singapore in the Board meeting, but, no proof has been submitted to the effect of their presence in Singapore by way of passport or authentication by the Embassy or

High Commission and, rather, a self serving un-authenticated document has been submitted by the assessee. The ld. CIT-DR relied upon the assessment order. The ld. CIT DR also relied upon judgment of Hon'ble Supreme Court in the case of *Mansarovar Commercial Private Limited v. CIT, reported in (2023) 149 taxmann.com 178(SC)*.

8.3. In rebuttal, the ld. counsel for the assessee submitted that the place of effective management is based in Singapore as Board of Directors meeting has taken place in Singapore , and it was submitted that the Directors were physically present in Singapore where the Board of Directors meeting had taken place . It was submitted that decisions are taken in Singapore and place of effective management is in Singapore. The assessee has incurred legal and professional expenses which are operating expenses which is more than sufficient to establish that the place of effective management is based in Singapore and it could not be said that the assessee is a shell company or conduit company. It was submitted and prayed that the assessee is entitled to the treaty benefits under India-Singapore DTAA, and capital gains derived by the assessee from sale of equity shares and CCD's are exempt from tax in India as per provisions of India Singapore DTAA.

9. We have considered rival contentions and perused the material on record. The question for our determination which has arisen in this appeal is with respect to the taxability of capital gains arising on sale of equity shares/CCDs held by

the assessee company i.e. Hareon Solar Singapore Private Limited, Singapore(Private Limited Company incorporated under the laws of Singapore) in M/s Renew Solar Energy (Karnataka) Pvt. Ltd., India(an Indian Company) . It is observed that the assessee company was incorporated in 2015(date of incorporation:23.04.2015) in Singapore. It is observed that the assessee's Registered Office is situated at 38, Beach Road, 29-11, South Beach Tower, Singapore. The assessee has claimed that it is Tax Resident of Singapore. It is also observed that the assessee has submitted **Tax Residency Certificate(TRC) dated 31.07.2019**(Tax Reference No. 201510860M/ PB-Page 177/178) issued by the Singapore Revenue Authorities, confirming that the assessee will be regarded as resident in Singapore for income-tax purposes for the year of assessment 2020.We are presently concerned with assessment year 2020-21. The said TRC was issued by Inland Revenue Authority of Singapore for the year of assessment 2020. The said **TRC dated 31.07.2019** was issued by Singapore Revenue Authorities based on the **assessee's request dated 15.07.2019** wherein the assessee confirmed that the control and management of its business for the whole of the year **will be** exercised in Singapore. Thus, the assessee has claimed that it is tax resident in Singapore.

9.2 It is further observed that the assessee company is a wholly owned (i.e. 100%) subsidiary of Hareon Solar Co. Ltd., Hong Kong , which aforesaid Hong Kong based company in-turn is wholly owned (i.e. 100%) subsidiary of Hareon Solar Technology Co. Ltd., China. Thus, the ultimate holding/parent company of the assessee is based in China , while immediate holding/parent company of the assessee is based in Hongkong.

9.3 It is observed that there was a meeting of Board of Directors of the assessee company held at its Registered office on 15th June, 2015 wherein decision was taken to enter into Joint Venture agreement in relation to investment and subscription by the assessee company to the tune of 40,92,941 equity shares of Rs. 100 each and 14,89,180 fully, compulsory and mandatorily convertible debenture(CCD) having a face value of Rs. 120 each of Renew Solar Energy (Karnataka) Private Ltd., India(PB/Page 782-881). The JV agreement as is mentioned in the aforesaid Minutes of Board of Directors Meeting is entered into by and between Renew Solar Power Private Limited,India, Renew Power Ventures Private Limited,India, Hareon Solar Technologies Company Limited, China, the assessee company which is based at Singapore and Renew Solar Energy (Karanatka) Private Limited,India. Incidentally, the assessee's immediate parent company based at Hongkong is not part of the JV agreement but its ultimate holding company based at China is signatory to the said JV Agreement. The JV Agreement is signed effective from 01.07.2015. The said JV agreement is placed on record at page 789-881/Paper Book. Apart from mentioning the detailed terms and conditions of making aforesaid investments by the assessee company, the JV agreement at para 13.1 stipulates that the Hareon Solar Technology Company Limited, China will supply Photo-Voltaic Modules(PV Modules) to Renew Solar Energy (Karnataka) Private Ltd., India for its

60MW(AC) solar power project in India , and there is a separate supply contract entered into by the relevant parties with respect thereto. It stated in Recital to JV at clause F that Hareon Solar Technology Co. Ltd. , China is a solar pioneer and stands as leader in the solar power sector , being one of the fastest growing and largest PV manufacturing companies in the world ; and manufactures high quality solar cells and modules , and has invested in PV power-plant projects worldwide. The said JV agreement also records that Renew Solar Power Private Ltd , India is wholly owned subsidiary of Renew Power Ventures Private Limited, India. It is also stated in JV agreement that Renew Solar Power Private Limited is in the business of generating, producing , processing, accumulating and manufacturing power, heat solar energy, wind energy , biomass energy and other sources of power, excluding nuclear power generation(Recital A to JV agreement). It is also stated in JV agreement that Renew Solar Energy(Karnataka) Private Limited, India was incorporated by Renew Solar Power Private Limited, India to undertake the business of generating, producing, processing, accumulating and manufacturing power through solar energy. It is further stated in the aforesaid JV Agreement dated 01.07.2015 that the 'The Southern Power Distribution Company of Andhra Pradesh Limited(APSPDCL)' had invited proposal for supply of solar power vide RFS Bid No. APSPDCL/02/LTSPP/02014 . It is further stated in JV agreement that the Renew Solar Power Private Limited, India was selected as successful bidder for supply of 60MW (AC) solar power to The Southern Power Distribution

Company of Andhra Pradesh Limited(APSPDCL) which has been notified by letter of intent reference no. CGM /(IPC & PMM)/APSPDCL/F/ Bidding-2014/D.No.1088/14 dated 07.11.2024. It is also provided in the aforesaid JV agreement that the Renew Solar Power (Karnataka) Private Limited has entered into Power Purchase Agreement(PPA) with APSPDCL. The assessee company had made aforestated investments in equity shares as well CCD's in the Renew Solar Power (Karnataka) Private Limited,India. Thus, in nut-shell, the Renew Solar Power (Karnataka) Limited, India is implementing a project for setting up 60MW(AC) power generation plant based on solar module for which it has entered into Power Purchase Agreement with APSPDCL. The solar PV modules required for setting up aforesaid solar power project of the capacity of 60MW(AC) were supplied by Hareon Solar Technology Company Limited, China . Hareon Solar Technology Company Limited, China has wholly owned (100%) subsidiary in Hongkong namely Hareon Solar Company Limited, Hongkong. The said Hongkong based company has wholly owned (100%) subsidiary in Singapore i.e. the assessee company namely Hareon Solar Singapore Private Limited. Thus, for supply of PV Modules to Renew Solar Energy(Karnataka) Limited for its 60MW(AC) solar power project , the Chinese ultimate parent company of the assessee who is in the business of manufacturing PV modules has entered into supply contract with Renew Solar Energy(Karnataka) Limited, while for making investment in equity/CCD in the same Renew Solar Energy(Karnataka) Limited (the assessee, a Singapore

Company being wholly owned subsidiary of Hongkong Based company which Hongkong Based company is wholly owned subsidiary of the same Chinese company who is also supplying PV modules to Renew Solar Energy (Karnataka) Limited) , is interposed/incorporated under the laws of Singapore.

9.4 In the same aforesaid Board of Directors Meeting held on 15th June, 2015 of Hareon Solar Singapore Private Limited, Singapore, it was stipulated that Hareon Solar Company Limited, Hongkong is desirous of injecting fund of US$96,00,000 into assessee company by subscribing to additional 96000 ordinary shares of US$100 each . Thus, it is an admitted position that the assessee is based at Singapore and engaged in making investments. The assessee is funded by its aforesaid wholly owned (100%) parent company which is based at Hongkong, while the aforesaid entity at Hongkong is wholly owned (100%) subsidiary of company based at China. Thus, the ultimate holding company of the assessee is based at China. This entity based at China is world leader in manufacturing and supplying of PV modules. Incidentally, the aforesaid company based at China is supplying PV modules to Renew Solar Energy (Karnataka) Private Limited, India , in which the assessee company has made aforesaid investments in equity shares and CCDs. The aforesaid equity shares/CCD's were sold/transferred during the year under consideration on which capital gain has arisen, on which now the dispute has arisen between the rival parties as to the taxability of capital gains on sale/transfer of said equity shares and CCD's , which dispute is before us for adjudication.

9.4 The assessee has invoked Article 13(4A) of India-Singapore DTAA to claim that the aforesaid capital gain on sale/transfer of equity shares is not chargeable to tax in India as the assessee company is resident of Singapore. It is claimed that the shares were acquired in the year 2015 i.e. prior to 01.04.2017 and sold in June 2019, and hence , there will not be any capital gains chargeable to tax on sale/transfer of equity shares of Renew Solar Energy(Karnataka) Private Limited, India, in India in view of Article 13(4A) of India-Singapore DTAA as the assessee is tax resident of Singapore. The assessee has claimed that it is well settled that provision of DTAA or domestic tax laws, which ever is beneficial to the assessee shall be applicable. Thus, it is claimed that assessee is entitled to protection of Article 13(4A) of India-Singapore DTAA, and no income-tax is payable on the capital gains so arisen on sale/transfer of aforesaid equity shares. Similarly, for capital gains on sale/transfer of CCD's , the assessee has claimed that the same shall not be chargeable to tax in India in view of Article 13(5) of the India-Singapore DTAA. The assessee has claimed that its control and management is exercised in Singapore, and hence it is Resident in Singapore. Thus, in nut-shell it is claimed that the claim is setup for non taxability of capital gains on sale/transfer of equity shares /CCD of an unlisted Indian company , in view of Article 13(4A) and 13(5) of India-Singapore DTAA, based on the claim that it holds TRC issued by Singapore Revenue authorities , based on the claim that the control and management is exercised in Singapore.

9.5 It will be profitable at this stage to refer to the audited financial statements of the assessee which are placed in paper book filed by the assessee. Perusal of the Audited Financial Statements of the assessee company i.e. Hareon Solar Singapore Private Limited, Singapore for the financial year ending 31.12.2019 reveals that it has equity share capital of US $ 2,48,50,700 as at 31.12.2019(US $ 2,48,50,700 as at 31.12.2018) . It is also submitted by the assessee that assessee company is 100% subsidiary of Hong Kong based company namely Hareon Solar Company Limited. Thus, the entire equity shares are held by Hongkong based Parent company of the assessee.Perusal of the Balance Sheet of the assessee company further reveals that Non-Current Liabilities outstanding as at 31.12.2019 were Nil(US $ 33,00,000 as at 31.12.2018) . These Non Current Liabilities outstanding as at 31.12.2018 of US $ 33,00,000 are payable to its holding company based at Hongkong . Further , it is observed that there are Current Liabilities outstanding as at 31.03.2019 to the tune of US $ 33,21,843 (US $ 30,322 as at 31.12.2018) . Out of the current liabilities as at 31.03.2019 payable by the assessee to the tune of US $ 33,21,843 , the majority of the amount of US $ 33,00,000 is payable to the holding company at Hongkong. Thus, it could be seen majority of the sources of funds deployed are provided by the holding company based at Hongkong. The liabilities payable to outsiders for business operations are insignificant or minimal. Perusal of the asset side of the Balance Sheet reveals that the assessee has property, plant and equipment(Net Block) of merely US$ 1021 as at 31.12.2019(US $ 1558 as at 31.12.2018). The other investments are to the tune of US $ 1,13,93,821 as at 31.12.2019 (US $ 1,51,03,923 as at 31.03.2018) . The investments in subsidiary company were to the tune of US$ 37,74,507 as at 31.12.2019 (US $ 41,35,085 as at 31.12.2018) . While investment in Associates are to the tune of US$ Nil as at 31.12.2019 (US$ 64,67,625 as at 31.12.2018. Other assets are minimal or are owing by related parties or Loans. Thus, the assessee is predominately an investment company. As could be seen from the financial statements placed on record, the assessee has made three investments , firstly in Renew Solar Energy (Karnataka) Limited in equity shares/CCD's which stood disposed off during the year under consideration, secondly in Hareon Dalmia Solar Private Limited, India and thirdly in Nereus Capital Investments (Singapore) Pte. Limited, Singapore(with understanding to make further investments in India through Nereus). Perusal of the Statement of Comprehensive income for the year ended 31.12.2019 reveals that the income(gross) of the assessee for the year was US$ 27,25,372 (US$ 4,76,768 for the year ended 31.12.2018). This income for the year ended 31.12.2019 constituted gain on disposal of investments of US $ 25,39,872 , interest income US $ 1,29,759 and profit on redemption of preference shares to the tune of US $ 55,741(for the year ended 31.12.2018, the income constituted interest income to the tune of US $ 2,69,309 and profit on redemption of preference shares to the tune of US $ 2,07,459). There is no other income reported for these two years for the year ended 31.12.2019 and 31.12.2018. Perusal of the expenditure side reveals that majority of the expenses/ losses were booked towards fair value loss of investment , and impairment loss on investments/ investments in subsidiary company. There are ‘ other operating expenses’ claimed by the assessee to the tune of US $ 16,01,711 for the year ended 31.12.2019(US $ 8,79,821 for the year ended 31.12.2018). Perusal of the same reveals that there are only two sub-heads of expenses namely ‘Legal and Professional Fees’ to the tune of US $ 7,93,765 , and Loss on Foreign Exchange to the tune of US $ 7,67,830 , for the year ended 31.12.2019 (Legal and Professional Fees to the tune of US $ 8,42,772 and Loss on Foreign Exchange to the tune of US $ 5,696 , for the year ended 31.12.2018) . It is claimed that these legal and professional charges were paid to its consultant TMF. Admittedly , the assessee does not have any employee on its roll. It is also admitted that the assessee does not have any conventional office of its own even in Singapore. The assessee has admitted that it is using the premises of its consultant TMF as and when needed, to whom legal and professional charges were paid. There were no other expenses such as communication, internet , electricity, travels, hotel bills, business promotions, Directors Fee/Salary, Directors Meeting Fee, Salaries, staff welfare , repairs , entertainment etc incurred by the assessee . Its assets in the form of property, plant and equipment (Gross Block) are minimal i.e. US $ 1609 as at 31.12.2019 and 31.12.2018. Thus, the assessee is a company incorporated on 24.04.2015 in Singapore and the entire funding is done by its parent company based at Hongkong. This Hong Kong based parent company is 100% subsidiary of company based at China namely Hareon Solar Technology Company Limited, China, which Chinese ultimate parent company vide supply contract in 2015 is supplying Solar PV Module for 60MW(AC) solar power project being set up by Renew Solar Energy(Karnataka) Limited, India. The assessee company has made investment in Renew Solar Energy (Karnataka) Limited by subscribing to equity shares and CCD's in the year 2015. The entire funding of the assessee company was done by its parent company at Hongkong who is holding 100% shares of assessee company. This Hongkong based company is 100% subsidiary of aforesaid chinese company. Thus, it could be seen that the ultimate holding company in China who is leader in solar PV module is supplying PV modules directly to an Indian company namely Renew Solar Energy (Karnataka) Limited, India for its 60MW solar power project being set up, while investment in the same company in India namely Renew Solar Energy (Karnataka) Limited, is routed through the assessee company which is Singapore based company. The assessee has no independent business activities apart from holding few investments, and is dependent on its 100% parent company at Hongkong for funding. Thus, there are no other activities of the assessee company apart from being an investment company. Thus, in nut-shell the assessee company was interposed (incorporated on 24.04.2015) for routing investment in Renew Solar Energy (Karnataka) Limited, India(June,2015). Since, the Ultimate Parent Company based at China was supplying Solar PV Modules to Renew Solar Energy (Karnataka) Limited, India for its 60MW(AC) solar power plant vide supply contract in 2015, and there is a condition of fulfilling of the commitment towards making investments by the Chinese Parent in Renew Solar Energy(Karnataka) Limited before payments for supplies under supply contract can be effectuated vide para 13.2 of JV Agreement, nothing prevented the ultimate parent company of the assessee based at China to make direct investment in the Renew Solar Energy (Karnataka) Limited, India . Thus, the obvious reasons for routing the said investment made in equity shares/CCD's of Renew Solar Energy(Karnataka) Limited through the assessee company is to take tax-advantage under the India Singapore DTAA. Moreso, the assessee company does not have any of its own sources of funds and/or independent business operations to generate independent revenue/funds , and the assessee is wholly financed by its wholly owned parent at Hongkong, and which Hongkong based entity is wholly owned subsidiary of the same Chinese company who is supplying PV modules to Renew Solar Energy (Karnataka) Limited, India which is also the investee company. There appears to be no other commercial reasons , economic substance or justification for routing the investment through Singapore based wholly owned subsidiary company, except to take tax-advantage of the aforesaid treaty. There is no income-tax payable in Singapore on the capital gains on shares. Had the investments been made directly by Chinese ultimate holding company or by immediate holding company of the assessee based at Hongkong , the income tax on capital gains on sale/transfer of shares would have been payable in India. The equity shares/CCD's by the assessee in Renew Solar Energy(Karnataka) Limited were acquired prior to 01.04.2017 i.e. in the year

2015 and were disposed off after 31.03.2019 i.e. in June, 2019. It will be relevant at this point of time to reproduce relevant provisions of India-Singapore DTAA, which reads as under:-

"ARTICLE 13
CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. [1]***[***]***

[2]***[4A. Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.***

4B. Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.

4C. However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

*5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.**]***

[ARTICLE 24A

*1**. A resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement if its***

affairs were arranged with the primary purpose to take advantage of the benefits in the said paragraph 4A or paragraph 4C of Article 13 of this Agreement, as the case may be.

2. ***A shell or conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement. 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.***

3. ***A resident of a Contracting State is deemed to be a shell or conduit company if its annual expenditure on operations in that Contracting State is less than S$ 200,000 in Singapore or Indian Rs. 5,000,000 in India, as the case may be:***

(a) in the case of paragraph 4A of Article 13 of this Agreement, for each of the 12 month periods in the immediately preceding period of 24 months from the date on which the gains arise;

(b) in the case of paragraph 4C of Article 13 of this Agreement, for the immediately preceding period of 12 months from the date on which the gains arise.

4. A resident of a Contracting State is deemed not to be a shell or conduit company if:

(a) it is listed on a recognised stock exchange of the Contracting State; or

(b) its annual expenditure on operations in that Contracting State is equal to or more than S$ 200,000 in Singapore or Indian Rs. 5,000,000 in India, as the case may be:

(i) in the case of paragraph 4A of Article 13 of this Agreement, for each of the 12-month periods in the immediately preceding period of 24 months from the date on which the gains arise;

(ii) in the case of paragraph 4C of Article 13 of this Agreement, for the immediately preceding period of 12 months from the date on which the gains arise.

5. For the purpose of paragraph 4(a) of this Article, a recognised stock exchange means:

(a) in the case of Singapore, the securities market operated by the Singapore Exchange Limited, Singapore Exchange Securities Trading Limited and The Central Depository (Pte) Limited; and

(b) *in the case of India, a stock exchange recognised by the Securities and Exchange Board of India.*

Explanation: The cases of legal entities not having bona fide business activities shall be covered by paragraph 1 of this Article.]

9.5 Vide Article 13(4A) of India-Singapore DTAA , If the shares are acquired before 01.04.2017 in a company which is Resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident, but, however , the aforesaid Article 13(4A) is subject to Article 24A of the India Singapore DTAA which is a Limitation of Benefit(LOB) Clause which, inter-alia, stipulate vide para 1 that 'A *resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement if its affairs were arranged with the primary purpose to take advantage of the benefits in the said paragraph 4A or paragraph 4C of Article 13 of this Agreement, as the case may be.'* As we have already observed in preceding paragraph that the assessee company(assessee being 100% subsidiary of Hareon Solar Company Limited, Hongkong) is interposed/incorporated in Singapore by its ultimate Chinese Holding Company(Hareon Solar Technology Company Limited, China) through its 100% subsidiary in Hongkong(Hareon Solar Company Limited, Hongkong) , as an investment holding company to route investments through assessee company by way of equity/CCD's in Renew Solar Energy (Karnataka) Limited, India. The funding for the said investments were done by the parent company of the assessee. The ultimate parent company viz. Hareon Solar Technology Co. Limited supplied PV Modules to Renew Solar

Energy (Karnataka) Limited , India , for its 60MW(AC) solar power project. Thus, nothing prevented ultimate Chinese Parent company which is an operational company being global leaders in manufacturing solar PV Modules to make direct investments in the Renew Solar Energy(Karnataka) Limited, India. The route adopted by ultimate parent company in China of creating 100% subsidiary in Hong Kong and step down 100% subsidiary in Singapore i.e. the assessee company is to take benefit of India-Singapore DTAA. There are no capital gains tax in Singapore. There is no commercial purpose or economic substance in incorporating a company in Singapore to route investment except to take benefit /advantage under India-Singapore DTAA. Had the investments been made directly by ultimate Parent company at China and/or by immediate Parent company at Hongkong , the income tax on capital gains would have been payable in India. Thus, we hold that the assessee company was created for the principal purposes of taking a tax advantage under the India-Singapore DTAA , while otherwise there is no economic substance or commercial justification for routing investment through assessee company based at Singapore. Thus , in the instant case, LOB clause 1 of Article 24A of India Singapore DTAA is attracted. Proceeding further, the assessee company does not have any office in Singapore. There are no employees employed by assessee. The assessee has not incurred any operating expenses to run its business such as internet, communication, travels, entertainment, repair and maintenance , salary, Directors Fee/Salary, Directors Meeting Fee, Directors Travel Costs, Visa Cost , Hotel Bills etc.. It is claimed that it has some arrangement with its consultant TMF , and it leases the office space as needed from its consultant . TMF is in the business of rendering accounting and reporting services as well rendering services in connection with filing of tax returns etc. On perusal of the income statement that there are two heads of expenses, firstly , Legal and Professional fee , and secondly loss on foreign exchange. It is explained that the said legal and professional fee are paid to TMF for accounting , reporting, management of accounts, audit assistant, tax filing etc. , and/or to its Auditors. There are no other expenses incurred by the assessee. There are no employees of the assessee. The assessee has claimed that its Board of Directors Meeting's were held in Singapore. No Directors Salary, Director Fees, Directors Travel Cost, Hotel Bills, Entertainment etc are booked in the books of accounts prepared by the assessee. It is observed that there were four Directors (Page 1018/PB) of the assessee company on 15th June, 2015 when Board of Directors Meeting was claimed to be held at Singapore to take decision to invest in Renew Solar Energy(Karnataka) Limited was taken, out of which 3 Directors were stated to have attended the meetings namely Mr. Woo Yao-Tung , Mr. Rubin Sidhu and Ms. Chek Khi Juat , while Mr. Zhang Jie did not attended the meeting. It is claimed that Mr. Woo Yao-Tung is based in Taiwan, Mr. Rubin Sidhu is based in USA and Ms. Chek Khai Juat is based in Singapore. It is strangely submitted by the assessee for the reasons best known to it through out the proceedings from assessment stage itself and even before us, that it is not aware of the address etc of Mr. Zhang Jie. The Directors Mr. Zhang Jie is stated to be on Board of Directors of the company , and the assessee ought to have full knowledge of the credentials of its Directors. Mr. Zhang Jie also did not attended the meetings. However, on perusal of the JV Agreement dated 01.07.2015 reveals that address for communication for sending notices , communications etc. , the name of Dr. Jie Zhang is given in clause 26.1.3, and address for communication is stated to be 121, Metro Drive , San Jose, CA 95150, USA and his mobile number of USA is stated i.e +1-408-46*-***4(Page 576/PB). Incidentally , Dr Jie Zhang is signatory to the said JV agreement dated 01.07.2015, and he has signed as Vice-President of the ultimate Parent Company in China i.e. Hareon Solar Technology Company Limited(Page 405). Thus, three out of the four directors who attended the meeting of Board of Directors on 15th June , 2015 are based out of Singapore. Minutes of the Board of Directors meeting are produced for the meeting held on 15th June, 2015 wherein investment decision was taken to invest by the assessee company in Renew Solar Energy (Karnataka) Limited. It is claimed in the said minutes that meeting was held at Singapore, but no authenticated records such as copies of passport of Directors, Visa, Entry/Exit stamp by Immigration authorities at Singapore, apostile, notary attested documents etc were produced to substantiate through cogent evidence that the meeting was held in Singapore. No invoices/air-tickets, hotel bill expenses of Directors etc were produced. Three of the Directors are based outside Singapore and only one director was based in Singapore. Almost similar situation existed wrt to decision by Board to divest its equity shares/CCD in Renew Solar Energy (Karnataka) Limited, India. The company does not have any office in Singapore as it uses the office of its accountant/consultant as and when needed. There are no employees employed by the assessee. There are no operating expenses incurred for running its business, rather only expenses were incurred only towards Legal and Professional Fee , which is claimed to have been paid for accounting, management of accounts payable, reporting financial, assistance in audit, tax return filing and audit fee.The other expenses are towards loss on foreign exchange. Thus, there are no operations and / or regular/continuous business carried out in Singapore. It is also observed from the HSBC KYC document (Page 972-980/PB) that the assessee is having Bank account with HSBC Bank , Singapore , and the said bank account is operated by Rubin Sidhu(US Citizen/national) and by Mr. Eddie Woo(Taiwan National/Citizen). Thus, none of the signatory to bank account is based at Singapore. Thus, under the circumstances enumerated above , it could be said that the place of control and management of the assessee is not situated in Singapore. The assessee , under these circumstances , could not be said to be resident in Singapore. It is claimed that the assessee holds TRC issued by Singapore Revenue Authorities, and hence the assessee would be entitled or eligible to tax benefit under India Singapore DTAA.It is now well settled that mere holding of TRC is not sufficient . Reference is drawn to Section 90(4) and 90(5). Further, the authorities have to see the surrounding facts and circumstances w.r.t. the claim of the taxpayer for residency based on TRC, and to make enquiries to see whether the claim of residency based on TRC is genuine or merely a sham claim tainted by misrepresentation or fraud. is It can be seen that TRC for the year of **assessment 2020** was issued in **July, 2019** by Singapore Revenue Authorities based on declaration of the assessee that its control and management for whole of the year 2019 **will be** exercised in Singapore. The assessee has not produced any confirmation certificate from the Inland Revenue authorities of Singapore(IRAS) that the assessee satisfies the prescribed expenditure test under the DTAA.The TRC is not conclusive, and the facts and circumstances surrounding TRC is to be seen , which speaks voluminously against the assessee. We have discussed such facts in preceding para's of this order which clearly evidences that control and management of the assessee company is not exercised in Singapore .Further, LOB clause 2 & 3 of Article 24A of India Singapore DTAA are also attracted , and the assessee shall not be entitled to benefits of India Singapore DTAA. The assessee is merely a shell/conduit company interposed in Singapore to take the tax-advantage of India-Singapore DTAA to avoid paying tax in Indian jurisdiction. Thus, the assessee is a see through entity to take tax-advantage of India-Singapore DTAA. Singapore does not have capital gains tax on sale/transfer of shares. Thus, the arrangement of interposing assessee(assessee being wholly owned subsidiary of Hongkong based company which in turn is wholly owned subsidiary of Chinese Company which is global leader in manufacturing solar PV module and is also supplying solar PV modules to Renew Solar Energy (Karnataka) Limited for its

60MW(AC) solar power project) as Singapore Company to invest in India in equity shares/CCDs of Renew Solar Energy(Karnataka) Private Limited , India is an impermissible arrangement to take tax-advantage under India-Singapore DTAA , and treaty benefit shall not be available. Thus, based on our aforesaid discussions, we hold that the capital gains on sale/transfer of equity shares/CCDs shall be chargeable to income-tax in India by invoking source rule under the provisions of Income-tax Act, 1961. The reliance of assessee on decision of Mumbai-ITAT in case of *Fullerton Financial Holding Pte Limited*(supra) is not justified as in that order, the Tribunal observed that the tax-payer in that case was a company incorporated in Singapore and was subsidiary of Temasek Holdings Private Limited, Singapore , the Singapore investment company owned by Government of Singapore. The tax-payer in that case functions as an active investment and operating platform for Temasek's financial services portfolio. The tax-payer Board of Directors comprised experienced professionals from the field of banking, finance and public administration. The tax-payers had investments spanning in multiple jurisdiction, including Singapore , Cambodia, China, India, and Malyasia, with focus on MSME sector and mass-market banking segments. The tax-payer maintained substance and control in Singapore , as all key managerial and administrative functions , including Board and sub-committee meetings , strategic decision-making, and oversight of investee entities, are undertaken in Singapore . Thus, based on the above facts, the Tribunal decided in favour of the tax-payer that it will be entitled to benefits under India-Singapore DTAA, but while in the instant case before us, the facts are completely different which we have elaborately discussed above. Thus, reliance of the assessee on decision of Mumbai ITAT in the case of Fullerton(supra) is not justified and is rejected.The assessee has also claimed that the AO allowed treaty benefit while bringing to tax , interest on CCD's for this year as well for earlier year. If the AO has wrongly granted treaty benefit so far as interest on CCD is concerned, that will not make assessee eligible and entitled for treaty benefit w.r.t. capital gains if the stipulated eligibility criteria's are not met .Two wrongs will not make one right. There is no such estoppels which can bind the Revenue to grant treaty benefit , if otherwise the same is not admissible.

9.6 After going through the entire material on record and based on the detailed discussions so recorded by us in the preceding para's of this order, we are of the view that the capital gain arising on the sale of equity shares and CCDs in the instance case are chargeable to tax in India based on source rule, and the assessee shall not be eligible and entitled to avail treaty benefit under the India-Singapore DTAA. Thus, we do not find any merit in the contentions of the assessee and this ground of appeal No. 2 of the assessee stands dismissed, in terms of our detailed discussions in this order. We affirm the assessment order passed by the AO. We Order accordingly.

9.7 The hearing in the instant appeal was concluded on 05th January, 2026 , and we will be failing in our duty if at this stage we donot put on record , the recent Landmark judgment and order dated 15th January, 2026 of Hon'ble Supreme

Court in the case of ***AAR & Ors. V. Tiger Global International II Holdings in Civil Appeal No. 262 of 2026(Arising out of SLP(C) No. 2640 of 2025***.

10. Ground No. 3 is consequential in nature, while Ground No. 4 is premature at this stage.

11. In the result, the appeal of the assessee in ITA no. 2226/Del/2024 stands dismissed.

Order pronounced in the open court on 30.01.2026.

Sd/-	Sd/-
(RAJ KUMAR CHAUHAN) JUDICIAL MEMBER	(RAMIT KOCHAR) ACCOUNTANT MEMBER

Dated: 30th January, 2026.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DRP
5. DR

Asstt. Registrar, ITAT, New Delhi