

Indian Court: Singapore Entity Eligible for Capital Gains Exemption in India, Limitation of Benefits Clause Not Applicable

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Report from our correspondent Urvi Asher, Chartered Accountant, India

The Bombay High Court (HC), in the case of *Commissioner of Income Tax v. M/s. Citicorp Investment Bank (Singapore) Ltd.* (ITA. No. 256/2018), has held that the Singaporean taxpayer was entitled to capital gains exemption under the [India-Singapore Income Tax Treaty \(1994\)](#) (the Treaty). The HC further dismissed the applicability of the limitation of benefits clause under the Treaty.

(a) Facts. The taxpayer, a Singapore tax resident, was registered in India as a foreign institutional investor in debt segment with the Securities and Exchange Board of India. During the tax year 2010-11, the taxpayer earned capital gains from debt securities and claimed tax exemption applicable to capital gains under article 13(4) of the Treaty. The assessing officer (AO) however, sought to deny the exemption by invoking the limitation of benefits clause under article 24 of the Treaty. As per the AO, an exemption under clause 13(4) was available only to the extent of capital gains income repatriated to Singapore and in the absence of any evidence to show repatriation of funds, the taxpayer was not entitled to any exemption. On the taxpayer's appeal, the Income Tax Appellate Tribunal allowed the taxpayer's claim for capital gains exemption. The Revenue appealed to the HC.

(b) Issue. The HC considered the issue whether the taxpayer was entitled to an exemption under clause 13(4) of the Treaty.

(c) Decision. The HC dismissed the Revenue's appeal and observed that:

- the taxpayer was covered under article 13(4) of the Treaty on sale of debt instruments, which says gains from alienation of any property (debt instrument in this case) will be taxable only in Singapore, of which the alienator (the taxpayer) is a resident;
- Singapore authorities had certified that capital gain income from the sale of debt securities in India would be taxed in Singapore, without reference to the amount remitted or received in Singapore. Such certificates issued by the Singapore authorities constitute sufficient evidence for accepting the legal position;
- when, under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case article 24(1) would not apply; and
- thus, the taxpayer was entitled to exemption on the entire capital gains income, whether or not repatriated to Singapore.

Accordingly, the HC held that the Revenue's appeal did not raise any substantial question of law and there was no infirmity in the order passed by the lower court.

This decision was delivered by the Bombay High Court on 21 June 2023.

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