

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2103/MUM/2025
Assessment Year: 2022-23**

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| Fort Canning Investments Pte. Ltd. 260 Orchard Road, #14-02 The Heeren, Singapore, Singapore – 238855 (PAN: AACCF9284G) | Vs. | Assistant Commissioner of Income-tax (International taxation) - 2(3)(1) Mumbai |
| (Appellant) | | (Respondent) |

**ITA No. 2104/MUM/2025
Assessment Year: 2022-23**

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| Fort Canning Credit Investments Pte. Ltd. 260 Orchard Road #14-02 The Heeren, Singapore, Singapore – 238855 (PAN: AADCF7866R) | Vs. | Assistant Commissioner of Income-tax (International taxation) - 2(3)(1) Mumbai |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri Dhanesh Bafna,
Ms. Priyanka Agarwala, Ms.Hirali Desai,
Ms. Nidhi Agarwal and Shri Yogesh
Malpani, CAs

Revenue : Shri Satya Pal Kumar, CIT DR and
Shri Krishna Kumar, Sr. DR

Date of Hearing : 29.10.2025

Date of Pronouncement : 27.01.2026

ORDER**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

These appeals filed by the assessee are against the assessment order passed under the directions of Dispute Resolution Panel-1 (DRP), Mumbai, vide order no. ITBA/DRP/F/144C(5)/2024-25/1071292022(1), dated 17.12.2024, u/s. 144C(5) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), for Assessment Year 2022-23.

2. Grounds taken by assessee in ITA No.2103/Mum/2025 are reproduced as under:

"1. On the facts and in the circumstances of the case and in law, the order dated 16 January 2025 passed by the Ld. AO under section 144C(13) read with section 143(3) of the Act is barred by limitation, without jurisdiction, bad in law and is liable to be quashed.

2. On the facts and in the circumstances of the case and in law, the Ld. AO/Hon'ble DRP, erred in treating the 'capital gains' to the extent of Rs. 30,83,52,242 arising on settlement of NonConvertible Debentures and Masala Bonds as 'interest' and not giving the benefit of exemption under Article 13(5) of the India-Singapore Double Taxation Avoidance Agreement ('DTAA').

3. On the facts and in the circumstances of the case and in law, the Ld. AO/Hon'ble DRP, erred in treating the capital gains of Rs. 31,62,26,442 on 'renouncement of right entitlement of shares' as akin to capital gain on 'sale of shares' and taxing the same under Article 13(4B) of the DTAA.

4. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. AO erred in determining the 'Income chargeable to tax under normal rates' as Rs.62,45,78,687 and 'Income chargeable at special rates' as Rs. 10,25,08,95,493 in the computation form attached to the assessment order, instead of Rs. 12,37,18,587 and 10,75,17,55,591 respectively as determined by the Ld. AO himself in the assessment order.

5. On the facts and in the circumstances of the case and in law, the Ld. AO erred in levying interest under section 234B of the Act.

6. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. AO erred in computing the 'total interest and fee payable' at point 42 of the computation sheet attached to the assessment order at Rs. 9,23,22,483 instead of Rs. 9,20,69,620 as mentioned at point 38.

7. On the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 270A of the Act, against the Appellant.”

2.1 Grounds taken by assessee in ITA No.2104/Mum/2025 are reproduced as under:

“1. On the facts and in the circumstances of the case and in law, the order dated 28 January 2025 passed by the Ld. AO under section 144C(13) read with section 143(3) of the Act is barred by limitation, without jurisdiction, bad in law and is liable to be quashed.

2. On the facts and in the circumstances of the case and in law, the Ld. AO/Hon'ble DRP, erred in treating the 'capital gains' to the extent of Rs. 10,88,45,422 arising on settlement of NonConvertible Debentures and Masala Bonds as 'interest' and not giving the benefit of exemption under Article 13(5) of the India-Singapore Double Taxation Avoidance Agreement ('DTAA')

3. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. AO erred in determining the 'Income chargeable to tax under normal rates' as Rs. 10,88,45,427 and 'Income chargeable at special rates' as Rs. 17,48,22,923 in the computation form attached to the assessment order, instead of Rs. 28,36,68,345 as 'Income chargeable to tax at special rates' determined by the Ld. AO himself in the assessment order.

4. On the facts and in the circumstances of the case and in law, the Ld. AO erred in levying interest under section 234B of the Act.

5. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. AO erred in computing the 'total interest and fee payable' at point 42 of the computation sheet attached to the assessment order as Rs. 1,60,12,716 instead of Rs. 1,59,29,748 as mentioned at point 38.

6. On the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 270A of the Act, against the Appellant.

3. These two appeals related to two different assesseees having entered into similar transactions for which grounds have been raised are similar in nature except for variation in the quantum contested by each assessee. Since the factual pattern and issues involved are *pari materia* for both the assesseees, the two appeals are taken up together for adjudication by passing this consolidated order. For the purpose of drawing facts and giving our observations and findings, we take the

appeal of the assessee in ITA No. 2103/Mum/2025. Our observations and findings in this appeal shall apply mutatis mutandis to the appeal of the other assessee.

4. Brief facts of the case are that assessee is a tax resident of Singapore and holds a valid Tax Residency Certificate (TRC) issued by the Tax Authority in Singapore covering the period under consideration. It is registered with Securities and Exchange Board of India (SEBI) as a Category I Foreign Portfolio Investor (FPI) to carry out portfolio investment activities in India as per the SEBI FPI Regulations, 2019, with principal business activity of making investments in Pan Asia financial securities. Assessee had filed Form 10F as required u/s.90(5) r.w.r. 21AB of the Income Tax Rules, 1962 (The Rules). For the year under consideration, assessee filed its return of income on 29.11.2022 reporting total income at Rs.1025,08,95,493/- which included long term capital gain of Rs.1013.69 crores and interest income of Rs.11.39 crores. In the same return, assessee claimed following incomes as not taxable in India in view of provisions of Article 13(5) of the Double Taxation Avoidance Agreement (DTAA) between India and Singapore (India-Singapore DTAA):

- i) Capital gains of Rs.122,60,51,504/- on settlement of Non-convertible debentures (NCDs) and Masala Bonds of Dewan Housing Finance Corporation Ltd. (DHFL) pursuant to the Corporate Insolvency Resolution Process (CIRP) of DHFL under the Insolvency and Bankruptcy Code, 2016 (IBC); and
- ii) Capital gains of Rs.31,62,26,442/- on renouncement of rights entitlement of Bharti Airtel Ltd.

4.1. Pursuant to assessment proceedings, a draft assessment order was passed u/s.144C(1) whereby following proposals were made by the ld. Assessing Officer:

i) Re-characterisation of part of capital gains earned by the assessee on settlement of NCDs and Masala Bonds of DHFL amounting to Rs.30,83,52,242/- as interest to bring it to tax under Article 11 of India-Singapore DTAA.

ii) Re-characterisation of capital gains arising out of renouncement of rights entitlement of Bharti Airtel Ltd. amounting to Rs.31,62,26,442/- by treating it as capital gains arising out of equity shares so as to bring it to tax under Article 13(4B) of India-Singapore DTAA.

4.2. Upon objections filed by the assessee before the ld. DRP, the same were dismissed, endorsing the findings of ld. Assessing Officer, pursuant to which final assessment order was passed u/s. 144C(13) r.w.s. 143(3) making the additions as proposed in the draft assessment order. Aggrieved, assessee is in appeal before the Tribunal.

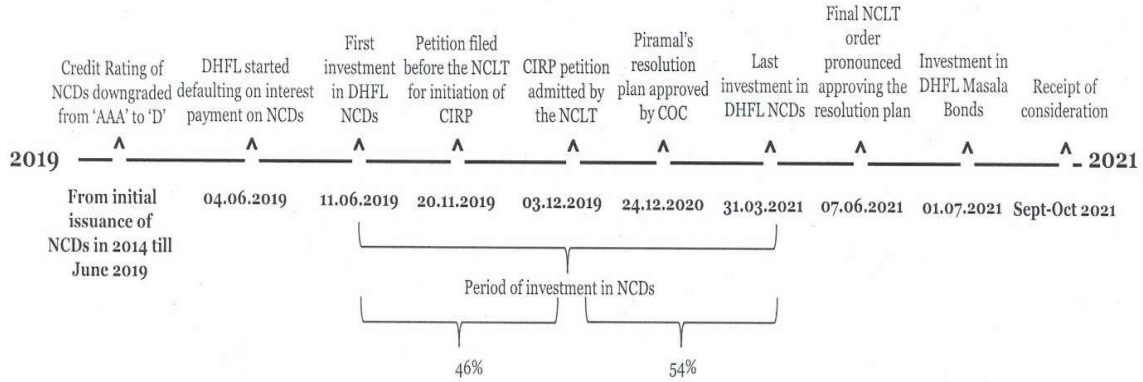
5. We have heard both the parties and perused the material on record. We have also given our thoughtful consideration to the orders of authorities below as well as the paper book and written submission furnished by the assessee, including judicial precedents and other referred material. Having considered all these, we first take up ground no.2 relating to re-categorisation of capital gains on settlement of NCDs and Masala Bonds of DHFL as interest. Assessee held NCDs and Masala Bonds of DHFL. Pursuant to CIRP of DHFL under IBC, assessee received cash and NCDs from the Piramal Housing and Finance Corporation Ltd. (Piramal) as consideration in exchange for its NCDs and Masala Bonds

of DHFL. Calculation of capital gain/loss on settlement of NCDs and Masala Bonds of DHFL is tabulated below:

| Nature of Bonds | Outstanding Principle (A) | Outstanding Interest (B) | Total Claim (C = A + B) | Recovery at 43.29% of admitted claim (D = E + F) | Amount in Rupees | | | |
|-------------------------|------------------------------|-----------------------------|----------------------------|--|-----------------------|------------------------------|-----------------------|-----------------------------|
| | | | | | Cash (19.67%) (E) | Piramal NCDs (23.62%) (F) | Cost (G) | Capital Gain (H = D - G) |
| NCDs (77,73,414 NCDs) | 8,10,24,14,000 | 66,71,10,197 | 8,76,95,24,197 | 3,79,64,75,966 | 1,72,52,86,966 | 2,07,11,89,000 | 2,68,87,57,906 | 1,10,77,18,060 |
| Masala Bonds (85 Bonds) | 85,00,00,000 | 4,51,56,250 | 89,51,56,250 | 38,75,28,344 | 17,61,10,344 | 21,14,18,000 | 26,91,95,000 | 11,83,33,344 |
| Total | 8,95,24,14,000 | 71,22,66,447 | 9,66,46,80,447 | 4,18,40,04,310 | 1,90,13,97,310 | 2,28,26,07,000 | 2,95,79,52,906 | 1,22,60,51,404 |

5.1. On the above details, Id. Assessing Officer observed that assessee had received consideration in respect of NCDs and Masala Bonds of DHFL, as certain percentage of its claim admitted by Id. National Company Law Tribunal (NCLT) and such claim included not only the principal outstanding but also interest outstanding, though assessee has treated whole of the consideration as receipt against principal outstanding to calculate capital gain/loss, claiming it as not taxable in India under Article 13(5) India-Singapore DTAA. According to Id. Assessing Officer, consideration received by the assessee in the form of cash and NCDs of Piramal are against two claims, one being for principal amount outstanding and the second for interest/default interest of DHFL NCDs and Masala Bonds. Thus, Id. Assessing Officer after taking into consideration various submissions made by the assessee, apportioned the total pay-out between principal and interest component, so as to bring to tax the interest component. On the stated factual matrix, the short point involved on this issue for our adjudication is, whether part of the pay-out for settlement of DHFL NCDs and Masala Bonds can be characterised as interest for its taxability in India by apportioning the total pay-out between principal and interest component.

6. Before we delve into the issue, certain factual matrix of the transaction undertaken by the assessee are worth taking note of. Assessee being engaged in portfolio investment activity in India, acquired NCDs and Masala Bonds of DHFL spread over a period from June 2019 to July 2021. It is important to note here that acquisition of NCDs and Masala Bonds by the assessee are from the secondary market and not by way of allotment at the time of issuance by DHFL itself. Since June 2019, DHFL started defaulting on interest payments on NCDs on account of financial distress which resulted into degrading of its rating of "AAA" at the time of issuance of these NCDs to rating of "B" in June, 2019. This resulted into trading of the said NCDs in the market at considerably lower prices, lesser than its face value. At the time of default by DHFL on servicing of interest on its NCDs, the same were trading at approximately 40% of their face value, reflecting concerns over recovery of principal amount of the said debt instruments. These facts are brought out from the status report issued by the debenture trustee, i.e., Catalyst Trusteeship Ltd. (CTL) placed on record along with the written submission filed by the assessee. Assessee, looking at opportunity to earn potential capital gains in such distressed assets, took commercial decision to make investment in the same and thus, acquired the NCDs and Masala Bonds of DHFL staggered over period from June 2019 to July 2021. In the meanwhile, a petition for initiation of CIRP against DHFL under the provisions of IBC was moved by Reserve Bank of India (RBI) before the Id. NCLT on 20.11.2019, which was admitted on 03.12.2019 by the Id. NCLT for resolution. Assessee has furnished a timeline chart for various milestones and the quantum of investment made by it, which highlights the chronology of various events relating to the transaction under consideration. The same is reproduced for ready reference.



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| <p>Total admitted claims against DHFL: Rs. 87,213 crores</p> <ul style="list-style-type: none"> Rs. 87,048.32 crores – Financial Creditors Rs. 2.30 crores – Workmen & Employees Rs. 162.39 crores – Operational Creditors Rs. 5 – Other Creditors | <p>Resolution amount offered by Piramal: Rs. 37,250 crores</p> <ul style="list-style-type: none"> Rs. 14,700 crores – Cash; Rs. 3,000 crores - For CoC; & Rs. 19,550 crores - Debt securities |
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6.1. After the initiation of CIRP, all the creditors of DHFL submitted their claim against DHFL. Under the plan for resolution of DHFL, Piramal was selected as successful resolution applicant by the committee of creditors, who offered the resolution of amount of Rs.37,250 crores comprising of Rs.17,700 crores as cash and Rs.19,550 Crores as debts securities, i.e., NCDs to be issued by Piramal. As part of the resolution plan, NCDs and Masala Bonds of DHFL held by the assessee were to be transferred to Piramal and in turn would be paid the allocated resolution amount. In respect of assessee's claim towards its holding of NCDs and Masala Bonds of DHFL, a ratio of 43.29% was admitted against its claim which was to be paid partly in cash and partly by way of NCDs of Piramal, details of which is tabulated below:

| Admitted claim | 100% |
|-----------------------|-------------|
| Consideration: | |
| -Gross cash | 19.67% |
| -NCDs of Piramal | 23.62% |
| Total consideration | 43.29% |

6.2. Upon this settlement by Piramal, assessee computed capital gains of Rs.110,77,18,060/- on NCDs and Rs.11,83,33,344/- on Masala Bonds. Details of this calculation are already tabulated above. It is important to note here that the admitted claim in relation to NCDs and Masala Bonds was computed by aggregating the total outstanding of principal and interest amount for the purpose of settlement. From the above table, it is noted that total claim on the two instruments was of Rs.966,46,80,447/- which included Rs.895,24,14,000/- towards principal and Rs.71,22,66,447/- towards interest. This total claim, after being admitted in the resolution plan was settled at 43.29%, amounting to Rs.418,40,04,310/-. This settlement amount was discharged in two components, namely, cash (19.67% of Rs.190,13,97,310/-) and NCDs of Piramal (23.63%) amounting to Rs.228,26,07,000/-. Assessee had acquired these instruments from the secondary market spread over a period amounting to Rs.295,79,52,906/-. Thus, the difference between the recovery amount and the cost of acquisition was computed as capital gain which the assessee claimed as not chargeable to tax under Article 13(5) of the India-Singapore DTAA. However, ld. Assessing Officer took a divergent view by apportioning the total recovery of Rs.418,40,04,310/- into principal and interest component. According to him, this total recovery comprises of interest component of Rs.30,83,52,242/- chargeable to tax in India under Article 11 of India-Singapore DTAA.

6.3. The sole contention of the assessee towards its claim is that the entire consideration received on settlement of NCDs and Masala Bonds of DHFL is only towards principal component and no part of it can be considered towards interest. According to the assessee, at the time of making investment, it neither intended nor envisaged earning any interest income since recovery of principal itself was in jeopardy. The sole intention at the time of making investment was to recover principal to the extent possible and earn potential capital gain since it made a conscious commercial decision of investing in distressed asset. Assessee relied on the circular issued by Central Board of Direct Taxes (CBDT) vide circular No.6/2016 and circular No.4/2007 to highlight that CBDT itself had accorded significance to the intention of assessee at the time of making an investment while determining the character of income as capital gain or business income, as the case may be. The whole thrust of argument from the assessee lies upon the settled position under the law that in cases where recovery of principal component of a debt itself is in jeopardy then, any re-payment is to be first apportioned towards recovery of the principal component and only the balance can be treated towards interest recovery. For this, assessee evidently demonstrated fact of which is publically acknowledged that recovery of principal amount of NCDs and Masala Bonds of DHFL were in jeopardy when assessee was making investments therein. Also, it is evident from the factual position verifiable from records that what assessee could ultimately recover from these distressed debt instruments was only 46.88% and 45.59% of the outstanding principal amounts of NCDs and Masala Bonds, respectively.

6.4. Reference was made to the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Akay Organics Ltd. vs. ITO [2013] 38

taxmann.com 202 (Bom), wherein assessee had claimed deduction of interest on proportionate basis, where it had entered into one time settlement (OTS) under which a sum of Rs.91 lakhs was payable by it as full and final settlement of term loan. Assessee claimed that the amount received by creditors first be adjusted towards interest and then towards principal. However, the same was declined by the Hon'ble High Court, more particularly, when the assessee had not produced any evidence to indicate the true nature of the transaction in respect of the said OTS. Thus, the claim of the assessee to treat its pay-out as interest and not the principal was declined, holding it to be payment towards principal.

6.5. In the present case before us, the basis adopted by the Id. Assessing Officer for treating part of the recovery as interest instead of capital gain is based on claim admitted under the resolution plan by the committee of creditors before the Id. NCLT. Before the Id. NCLT, the claim admitted comprised of principal and interest both. Thus, Id. Assessing Officer applied the recovery ratio on the two components so as to bring to tax, part of it as interest. However, there is no cogent material placed on record to evidently demonstrate such proportionate bifurcation of the settlement consideration between principal and interest.

7. The ordinary rule is that payment made towards settlement is to be first applied towards interest and the balance if any, to the principal. However, in the case which is not an ordinary case but where the recovery of the principal amount itself is in jeopardy then, in such special situation, the creditor is entitled to appropriate the settlement amount between principal and interest in the manner, least disadvantageous to itself. The present case before us falls under a

special situation where the recovery of principal itself was in jeopardy right from the point when investment was made by the assessee as the intention was to reap the potential capital gains on sale / settlement of the distressed instruments of NCDs and Masala Bonds of DHFL. What the assessee has received both in cash and NCDs of Piramal towards settlement of DHFL instruments is insufficient to discharge even the principal component as tabulated above and therefore, question of apportioning any amount towards interest does not arise. Hence, assessee by allocating the entire amount of recovery towards the principal, computed capital gains which was not taxable in India under Article 13 under the India-Singapore DTAA.

8. It is important to take note of the position adopted by the committee of creditors, while discharging the settlement through Piramal whereby it observed that if the financial creditor has acquired the debt in secondary market and the consideration of assignment of debt is higher than the cost of acquisition of debt, there shall be capital gain and tax liability. This position taken by the committee of creditors is based on withholding tax note issued by the advisors to the committee of creditors placed in the paper book. In order to avail the benefit of non taxability of this capital gain, the non resident financial creditor was required to furnish certain documents to claim treaty benefits, all of which were furnished for the same. This position adopted by the committee of creditors of DHFL reflects that the settlement consideration was intended to be treated only as recovery of principal amount. This position is also strengthened by the fact that the consideration discharged does not even suffice the principal amount, let alone the outstanding interest.

9. To buttress its contention, assessee put forth the case of treatment given by the Central Board (EPF) of Employees Provident Fund Organisation (EPFO) set up under the Ministry of Labour and Employment, Government of India, who had also invested in the NCDs issued by DHFL and were subjected to identical settlement under the insolvency resolution process of DHFL. Assessee placed on record copy of minutes of 230th meeting of the Central Board (EPF) held on 11.03.2022 and 12.03.2022 to demonstrate that EPFO has treated the settlement amount only towards principal component and not towards interest. Relevant extracts from the said minutes are extracted below for ready reference:

"Item No. 20: Status of Major Defaulted/Downgraded Securities of EPFO

2) Dewan Housing Finance Limited (DHFL)

1. EPFO had invested Rs. 1361.74 Crs. in the year April-2010, May-2015, Dec 2015, Sept-2016, Nov-2017, Jan& Feb-2018 in the secured Non- convertible Debentures (NCDs) of DHFL. The maturity of these bonds were in the year 2020 and 2023

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3. NCLT vide order dated 07th June 2021 has approved the Resolution Plan in respect of Dewan Housing Finance Corporation Limited (DHFL). As per the approved resolution plan the absolute recovery to secured NCD holders was around 44.89%

4. The **Holding of EPFO in DHFL as on 29.09.2021 was Rs. 1161.8 Crs. and the Interest in default as on 29.09.2021 is Rs. 160.39 Crs.**

5. The Custodian SCB has reported receipt of Funds in r/o DHFL. The details of amount received on 29.09.2021 are as follows:

| Category | EPF Scheme | | EPS | | EDLI | |
|---------------------------------|------------|----------|-----------|----------|-----------|----------|
| | Principal | Interest | Principal | Interest | Principal | Interest |
| Amount due (in Cr) | 882.85 | 121.18 | 264.72 | 37.83 | 14.20 | 1.38 |
| Amount received in cash (in Cr) | 189.29 | -- | 56.98 | -- | 2.98 | -- |
| New Securities Received | 227.42 | -- | 68.46 | -- | 3.58 | -- |

| | | | | | | |
|---------------------------|--------|--------|--------|-------|------|------|
| (Amt. in Cr) | | | | | | |
| Balance Remaining (in Cr) | 466.14 | 121.18 | 139.29 | 37.83 | 7.64 | 1.38 |

6. The total amount received in cash as per resolution plan is Rs. 249.25 Crs. And the total face value of securities received from resolution process is Rs. 299.45 Crs. The total amount invested but not received as on 30.9.2021 is Rs. 613.07 Cr and the **amount of Interest due but not received is Rs. 160.39 Crs.**

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b. Suggestions made by ECA:

- i) As EPFO accounts for its interest income as and when the amount is realized and not just accrued. Hence the interest portion of DHFL Bonds (Rs. 160.39 crores) that has not been received is not required to be booked as loss since the same was also not accounted for as income earlier.
- ii) The principal amount of Rs. 613.06 crores which is the loss to EPFO towards its investment in its bonds can be adjusted against the profits that EPFO may earn through the transactions such as redemption/ call or put option or any other transaction."

(emphasis supplied)

Source: https://www.epfindia.gov.in/site.docs/PDFs/CBT_Files/Cbt_meeting_Agenda_23th.pdf

9.1. On the strength of this analogous treatment by EPFO, assessee claimed similar treatment in its case as it reflects the economic reality of the transaction, that the settlement is nothing but repayment of principal component only.

10. The most clinching fact in the present case before us is that assessee has acquired the debt in the form of NCDs and Masala Bonds of DHFL in the secondary market which were distressed financial assets on account of default committed by DHFL on servicing of interest on these financial assets. Once the default was acknowledged for servicing of interest and assessee thereafter taking commercial position to make investments in these distressed financial assets, there would be no occasion for it to earn interest on the same and the only gain it could

achieve would be in the form of potential capital gains on sale/settlement of these distressed financial instruments. It was only for the purpose of arriving at a resolution plan in the IBC that assessee had put forth its claim, which had to be bifurcated into the principal and interest component of the instrument, it had acquired in the secondary market. What was resolved under the CIRP by Id. NCLT was discharge of liability of DHFL against its creditors at certain agreed settlement ratios of the total claim admitted for each of the creditors. Thus, the settlement consideration received in toto by the assessee indicate resolution plan approved by Id. NCLT and had to be looked at holistically against the investment made by the assessee while acquiring these instruments.

10.1. At the inception itself, assessee made a conscious decision whereby it was aware of the fact that the principal component is at jeopardy for its realisation. This fact is borne out from the ultimate outcome when the settlement consideration received by the assessee both, including cash and the NCDs of Piramal, does not even meet the principal component, details of which are already tabulated above. Thus, in this special/peculiar condition, assessee had the option to treat the receipt of settlement consideration towards principal first and balance, if any, towards interest component. Since the settlement consideration received by it could not even meet the principal component, the entire receipt was consumed against the total principal component, leaving nothing to offset the interest component. Accordingly, we agree with the stand taken by the assessee to compute capital gain on the said transaction to arrive at capital gains. Assessee being non-resident and having furnished all the necessary documents to claim treaty benefit, resorted to provisions contained in Article 13(5) of India – Singapore DTAA. Accordingly, apportionment of settlement

consideration towards interest component by the Id. Assessing Officer is not tenable and therefore, addition so made in this regard is deleted.

10.2. While holding so, we find our force from the decision of Hon'ble High Court of Madras in the case of CIT(A) vs. Pondicherry Industrial Promotion Development and Investment Corporation Ltd. [2000] 245 ITR 859 (Madras) which upheld the decision of Coordinate Bench of ITAT, Chennai, wherein the Coordinate Bench had summarised the rule of appropriation, affirming the creditors right to allocate payments in a manner most beneficial to itself when the recovery of the principal is in jeopardy. Relevant extracts from the decision of the Coordinate Bench reported in Pondicherry Industrial Promotion Development and Investment Corporation Ltd. vs. DCIT [1994] 49 ITD 190 (Chennai) is reproduced as under:

*"46. In its application to transactions between a creditor and his debtor involving open payments, the rule of appropriation may be summarised as follows: (a) The ordinary rule is that it is first applied to interest and the balance, if any, to the principal: and **(b) in cases where the recovery of the principal amount itself is in jeopardy, and where it is a question between a taxpayer and the revenue, the special rule is that the taxpayer is entitled to appropriate payments as between capital and interest in the manner least disadvantageous to himself.***

*48. The question that then arises for consideration is whether the normal rule of appropriation is to apply or the special rule. As we see it, **having regard to the fact that the recovery of the principal itself is in jeopardy**, we would be justified in applying the special rule. That is to say, the **guaranteed sums would first be appropriated towards the principal-component of the amount in default and the excess, if any, will thereafter be appropriated towards the interest and other charges-component of the amount in default.** We hold accordingly."*

(emphasis supplied)

11. Considering the overall conspectus of discussion made above, both on fact and law, ground no.2 raised by the assessee is allowed.

12. Ground no.3 relates to re-characterisation of capital gain on renouncement of rights entitlement in respect of equity shares held by the assessee of Bharti Airtel Ltd. (Bharti). In this regard, relevant facts are that assessee acquired equity shares of Bharti between February, 2017 and October 2021. Subsequently, right offerings was announced by Bharti shareholders in the ratio of 1:14. Assessee sold its rights entitlement on these shares held by it, giving rise to short term capital gains of Rs.3,62,26,442/- which was claimed as exempt under Article 13(5) under India-Singapore DTAA. Contrary to the treatment adopted by the assessee, ld. DRP and ld. Assessing Officer equated rights entitlement with shares alleging that the right to subscribe to new shares is embedded with existing equity shares and the value of rights shares is nothing more than the value carved out from the existing equity shares. It was thus, held that short term capital gains on sale of right entitlement would not be covered under Article 13(5), instead would be covered under Article 13(4B) of the India-Singapore DTAA and hence would be taxable in India.

12.1. In this regard, it is worth taking note of contents of Article 13 for our ready reference:

“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.”

12.2. From the above, it is noted that Article 13(4B) deals with gains arising on alienation of shares acquired on or after 01.04.2017. Article 13(5) is a residuary clause and applies to any property other than, inter alia, shares. The issue before us is no longer *res integra* as held by Hon'ble Supreme Court in the case of Navin Jindal vs. ACIT [2010] 320 ITR 708 (SC). Hon'ble Supreme Court held that rights entitlement are totally distinct from shares. In this regard, in para-7 of the said judgement, it noted that right to subscribe for additional offer of shares comes into existence when the company decides to come out with rights offer on rights basis on the strength of existing shareholding in the company. Though the right to subscribe for such additional offer of shares is embedded in the original share holding but remains inchoate and the same crystallises only when the rights offer is made by the Company. Hon'ble Court concluded that the right to subscribe for additional share is a distinct, independent and separate right, capable of being transferred independently of the existing share holding, on the strength of which such rights are offered.

12.3. This issue was dealt by the Coordinate Bench of ITAT, Mumbai in the case of Vanguard Emerging Markets Stock Index Fund vs. ACIT [2025] 172 taxmann.com 515. In this case, relevant provisions from the India-Ireland DTAA was taken into consideration which are in *pari materia* to the provisions contained in India-Singapore DTAA. The Coordinate Bench took note of provisions of section 2(42A) and section 55(2)(aa) of the Act, wherein the right entitlement is considered distinct as compared to the shares in the company. Further, it took note of para-30 of OECD Model Tax Convention on Income and on Capital, 2017, wherein it has been brought that gains from alienation of capital assets not covered elsewhere are taxable in the country of residence. It also took note of para-17 of UN Model Double Tax Convention, 2017, which

reiterates the same OECD commentary. Coordinate Bench also took note of the domestic legislation, more particularly definition of shares given in section 2(84) of the Companies Act, 2013 to differentiate between rights entitlement and shares. Under the domestic law, we also refer to section 2(14) of the Act, whereby the term capital asset means among other things, any security held by FPI in accordance with the FPI Regulations made under the SEBI Act, 1992. Explanation 2 to section 2(14) of the Act mentions that "Security" has the meaning assigned in section 2(h) of the Securities Contracts (Regulation) Act, 1956 (SCRA). In this regard as per section 2(h) of SCRA, the term securities has been defined as follows:

"2. (h) 'securities' include -

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate;

(ii) rights or interest in securities;'

12.4. From the above, it is noted that SCRA makes a distinction between shares and rights or interest in securities and recognises them independently. It was thus, concluded that right entitlement being a distinct asset, would fall in the residuary clause of Article 13 of India-Ireland DTAA, whereby the taxability is with resident state, i.e., Ireland.

12.5. In the present case before us, assessee has earned short term capital gain on transfer of rights entitlement which is claimed as exempt under Article 13(5) of India-Singapore DTAA which is *pari materia* to Article 13(6) of India-Ireland DTAA and hence the taxability remains with resident state, i.e., Singapore.

13. Considering the above factual as well as legal position, backed by judicial precedents including that of Hon'ble Supreme Court in the case

of Navin Jindal (supra), capital gains on alienation of rights entitlement under the residuary clause of Article 13(5) of India-Singapore DTAA as any property other than that referred to in para-1,2,3,4 and 4B of the said Article and therefore, can be brought to tax only in Singapore and not in India. Accordingly, direction of ld. DRP and its effect given by ld. Assessing Officer to bring to tax short term capital gain on transfer of right entitlement by the assessee is deleted. Ground no.3 raised by the assessee is allowed.

14. Ground no.4 to 6 are consequential in nature and hence not adjudicated separately. Ground No.7 is in respect of initiation of penalty proceedings which is pre-mature.

15. In the result, appeal of the assessee is allowed.

16. Identical issue with variant quantum arise in the case of appeal of assessee Fort Canning Credit Investments Pte. Ltd. in ITA No.2104/Mum/2025. The only issue involved in this appeal is relating to issue on re-characterisation of capital gain on settlement of NCDs and Masala Bonds of DHFL. Relevant facts for the same are extracted below for ready reference:

| Instrument | Principle (A) | Interest (B) | Total claim due on the instrument (C = A + B) | Recovery | | | Cost of acquisition in secondary market (G) | Capital Gain (H = D - G) |
|-----------------------------|-----------------------|---------------------|--|--|----------------------|---------------------------------|---|-----------------------------|
| | | | | Total Recovery (43.29%) of admitted claim (D) | Cash (19.67%) (E) | Piramal NCDs (23.62%) (F) | | |
| NCDs (22,76,090 NCDs) | 2,39,69,69,000 | 21,05,17,062 | 2,60,74,86,062 | 1,12,88,25,002 | 51,29,88,002 | 61,58,37,000 | 69,53,77,132 | 43,34,47,870 |
| Masala Bonds (77 Bonds) | 77,00,00,000 | 4,09,06,250 | 81,09,06,250 | 35,10,55,088 | 15,95,35,088 | 19,15,20,000 | 24,38,59,000 | 10,71,96,088 |
| Total | 31,6,69,69,000 | 25,14,23,312 | 3,41,83,92,312 | 1,47,98,80,090 | 67,25,23,090 | 80,73,57,000 | 93,92,36,132 | 54,06,43,958 |

16.1. Since the factual position except for variation in the quantum and the position of law as well as jurisprudence remains the same, which has been elaborately dealt by us in the appeal in ITA, No.2103/Mum/2025 above, the same applies *mutatis mutandis* to this appeal also. Accordingly, appeal of this assessee is also allowed.

17. In the result, appeals of both the assesseees are allowed.

Order is pronounced in the open court on 27 January, 2026

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 January, 2026

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai