IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

IT(IT)A No.571/Bang/2023
Assessment year : 2020-21

Shri Binny Bansal, 11, Nathan Road, # 24-02, Singapore 248732. C/o. Mr. Chavali Narayan, Ernst & Young LLP, 4th Floor, Divyasree Chambers, 'A' Wing, # 11, O'Shaughnessy Road, Langford Gardens, Bengaluru – 560025. **PAN: AKEPB 4202D**	Vs.	The Deputy Commissioner of Income Tax, International Taxation Circe 1(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Percy Pardiwala, Sr. Advocate
Respondent by	:	Shri Arvind Kamath, ASG.

Date of hearing	:	31.10.2025
Date of Pronouncement	:	09-01-2026

O R D E R

Per Prashant Maharishi, Vice President

1. This appeal is filed by Shri Binny Bansal (the assessee/appellant) for the assessment year 2020-21 against the final assessment order passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [the Act] dated 31.07.2023 by the DCIT (IT), Circle 1(1), Bangalore in

pursuance of the directions of the Dispute Resolution Panel-1, Bengaluru [ld. DRP] dated 28.6.2023.

2. The assessee has raised the following grounds of appeal :-

"1. The learned AO, in the impugned order issued pursuant to the Directions of the Hon'ble DRP erred in law and in facts by assessing the total income of the Appellant at INR 10,81,93,95,700 instead of the returned income of INR 8,33,19,930.

2. The learned AO / Hon'ble DRP erred in both law and facts by erroneously concluding that the Appellant is a resident of India under section 6(1)(c) of the Act for the Financial Year ("FY") 2019-20.

3. The learned AO / Hon'ble DRP has failed to appreciate that for the FY 2019-20, the Appellant qualified as a person who "being outside India, comes on a visit to India", and thus, should be classified as a Non-Resident according to Explanation 1(b) to section 6(1)(c) of the Act, as his presence in India during the relevant previous year was for less than 182 days:

4. Without prejudice to the above ground, the learned AO / Hon'ble DRP has erred in law and facts by not appreciating that even if Explanation 1(b) to section 6(1)(c) of the Act were deemed inapplicable to the Appellant for the relevant previous year, the Appellant would still qualify as a non-resident under Explanation 1(a) to section 6(1)(c) of the Act as the Appellant departed from India to take up employment with Three State Capital Advisors Pte Ltd, Singapore during the FY 2019-20.

5. The learned AO / Hon'ble DRP has erred in law and facts, by not appreciating the fact that the Appellant satisfies the criteria to be considered a resident of Singapore as per Article 4 of the India-Singapore Double Taxation Avoidance Agreement. Instead, the Appellant has been erroneously deemed a resident of India under Article 4 of the India-Singapore Double Taxation Avoidance Agreement.

6. That on facts and circumstances of the case, the impugned order passed by the learned AO is without jurisdiction, non-est, illegal and bad in law since the notice under section 143(2) of the Act was issued by National Faceless Assessment Center ('NFAC') which does not have jurisdiction over the Appellant's case which is under the International Tax Charge and hence the impugned order is bad in law.

7. Without prejudice to the above grounds, while the learned AO, consistent with the Appellant's residential status as "non-resident" per the Return of Income, has passed a draft assessment order under section 144C of the Act by treating the Appellant as an "eligible assessee" as defined under the provisions of section 144C(15)(b), the learned AO has erred in holding the Appellant to be a "resident" in the operative part of the draft assessment order which is inconsistent with and in contradiction with the learned AO's determination that the Appellant is a non-resident u/s 144C(15)(b) of the Act and hence the impugned order issued by the learned AO is bad in law and barred by limitation.

8. The Hon'ble DRP erred in passing the Directions under section 144C(13) of the Act in contravention of the CBDT Circular No.19 of 2019 dated 14 August 2019, thereby rendering the Directions invalid and deemed to have been never issued and thereby rendering the assessment proceedings null and void.

'Other grounds:

9. The learned AO erred in computing the assessed income, resulting in an erroneous higher demand. The learned AO assessed total income in the impugned order as INR 10,81,77,23,119 however in the computation sheet attached along with the impugned order the sum of INR 10,81,93,95,700 has been computed as assessed income, resulting in an erroneous higher demand.

10. The learned AO has computed the demand by erroneously considering a sum of INR 5,81,80,852 as refund already issued to the Appellant whilst the same has not been received by the Appellant.

11. The learned AO has erred on facts and in law in charging interest under sections 234A and 234B of the Act.

12. The learned AO has erred, in law and on facts, in initiating penalty proceedings under Section 270A of the Act.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

Facts :-

3. The brief facts of the case show that assessee is an individual who filed his return of income for the assessment year 2020 – 21 claiming his status as a 'non-resident Indian' showing total income of ₹ 83,319,930. The case was selected for scrutiny and consequently the notice under section 143 (2) of the Act was issued on 29 June 2021. In response to that the assessee filed his submission on 20 September 2021. Further, case of the assessee was transferred from the assessing officer of the assessment unit to the Deputy Commissioner of Income Tax, Circle 3 (1) (1), Bangalore as the assessee has declared himself as non-resident in his ITR filed on 17 February 2022.

4. The claim of the assessee is that he is a co-founder of Flipkart, an online e-commerce platform. He was part of the leadership team at the Flipkart group since its establishment. He is serving in various capacity including as chairman, chief operating officer and group chief executive officer at various points in time. It was further stated that in August 2018, the Walmart group acquired a majority stake in the Flipkart group. Post the aforesaid acquisition, the assessee continued to serve as a chairman and chief executive officer of the Flipkart group. However, due to subsequent developments, the

assessee resigned from his role as chairman and group chief executive officer with effect from 13 November 2018. Thus assessee ceased to be in employment with the Flipkart group effective 13 November 2018. Assessee submitted that he left India for the purpose of taking up employment as chief executive officer of X to 10 X technologies PTE Ltd which was previously known as BTB Consulting PTE Ltd and commenced working in Singapore with effect from 22 February 2019.

5. During the financial year 2019 – 20, the assessee sold equity shares of Indian companies listed on stock exchange in India. He also sold shares in Flipkart Private Limited Company Incorporated in Singapore during financial year 2019 – 20. The fact shows that on 28 August 2019 the assessee sold 54,596 shares to Tiger Global Eight Holdings, on 28 August 2019 the assessee sold 47,759 shares to Internet Fund III PTE Ltd and on 27 November 2019 the assessee sold 5,39,912 shares to FIT Holdings SARL. The claim of the assessee that he was a resident of Singapore during financial year 2019 – 20 and therefore, pursuant to the provisions of section 90 (2) of the Act, the assessee is entitled to the benefit of India Singapore Double Taxation Avoidance Agreement [DTAA]. Therefore, the capital gain arising from sale of 5,39,912 shares of Flipkart Private Limited, a Singapore company, to FIT Holdings SARL are not taxable in India as per Article 13 (5) of the India Singapore Tax Treaty. Another fact relevant to the issue is that the purchaser FIT Holdings SARL on sale of the above shares on 21 June 2019 has

deducted tax at source amounting to ₹ 656,963,526/–. The explanation of the assessee is that the assessee had sold shares of Flipkart Private Limited to the above entity on 21st of June 2019. The assessee's claim is that the gain arising from the transfer of such shares is exempt under Article 13 (5) of India Singapore tax treaty. However, tax was deducted by the buyer on the long-term gains prior to considering the benefit under Article 13 (5) of the India Singapore tax treaty. Further the share transfer undertaken on 27 November 2019 the assessee submitted that the gain arising on the transfer of the 5,39,912 shares of FlipKart are not taxable under the Income Tax Act itself in view of Explanation 7 (a) to section 9 (1) (i) of the Act. However, the tax was deducted by the buyer on the long-term gains prior to considering the provisions of the above Explanation of the Act.

Assessment proceedings: -

6. One of the reasons for selection of the return of income for scrutiny was the claim of high tax refund claimed by the assessee. For this assessee explained that he was employed in Singapore and was a resident in Singapore and capital gain arising from sale of the shares on 21 June 2019 are not taxable in India under Article 13 (5) of the India Singapore Double Taxation Avoidance Agreement and the capital gain so arising from the sale of shares undertaken on 28 August 2019 and 27 November 2019 are not taxable in India under Explanation 7 (a) to section 9 (1) (i) of the Act.

Show cause Notice of AO: -

7. The learned assessing officer noted that the assessee stayed in India for more than 365 days during the last preceding four years and for 141 days in the financial year 2019 – 20 and therefore the assessee was asked to prove the residential status of the assessee as a non-resident as per provisions of section 6 (1) (c) of The Income Tax Act, 1961. The Ld AO was of the view that case of the assessee does fall within Explanation 1 of that section. The claim of the assessing officer was that the words of the Explanation "being outside India" are to be read in harmony with the provisions under section 6 (1) (C) of the Act. In the case of the assessee the assessee is resident in each of the previous four financial years and he has only travelled in the February – March 2018 and even for the financial year 2018 – 19, he was a resident of India. Therefore the AO noticed that for the financial year 2019 – 20, the assessee stayed in India for 141 days even after the purported shift of base to Singapore. Therefore the words "being outside India" do not apply to the assessee as the assessee is ordinarily resident of India for the previous four years and is resident for more than 60 days in the relevant financial year. With respect to the Explanation – 1 (b) it was stated that it is applicable only for a non-resident Indian citizen or person of Indian origin or overseas citizen of India who by virtue of his visit becomes a resident. The learned AO further referred to the memorandum to The Finance Act, 1994 wherein it is stated that this Explanation is for the purpose of "extending the period of stay in India in the case of non-residents without losing their non-resident status". Therefore, it is clear that the

purpose of the Explanation is for the benefit of the non-residents and not for those who are already residents in the previous 4 years as per the provisions of section 6 (1) (C) of the Act. The learned assessing officer further noted that even after the purported move for employment purposes outside India, the assessee continued to stay in India for 38.6% of the year under consideration. On the basis of the submission of the assessee of the duration of stay within and outside India, the learned AO noted that for the calendar year 2019 which is considered as the fiscal year for the tax assessment in Singapore, he is resident in India for 138 days. The assessee has not provided the number of days of stay in Singapore and whether the same is more than 183 days or not, which is the necessary condition to be a tax resident of Singapore for the relevant fiscal year. Further the AO noted that according to the India Singapore DTAA, Article 4 (2), the residential status is required to be determined in accordance with "permanent home, Centre of vital interest and habitual abode" in the above two countries. The assessee is undisputedly Indian national. Thus the learned assessing officer questioned the assessee that why his income should not be assessed as a resident for the financial year 2019 – 20 in relation to the assessment year 2020 – 21. The learned AO further questioned that even assuming that assessee is a resident of Singapore for the relevant assessment year and even if it claims exemption from tax on capital gains under Article 13 (4A) and the Article 13 (4A) which is also subject to the LOB [Limitation of benefit] clause under Article 24A (1) of the treaty. Thus, the

assessee was questioned that limitation of benefit clause also prevents the assessee from claiming the benefit of Double Taxation Avoidance Agreement because his affairs are so arranged with the primary purpose to take advantage of the benefits of Article 13 of the agreement. The ld. AO issued show cause notice on 21/09/2022 on these issues.

Reply of Assessee: -

8. The assessee submitted his reply on 26 September 2022. According to that the assessee strongly stated that the assertion made by the learned assessing officer that Explanation 1 (b) to section 6 (1) (c) of the Act is applicable only to individuals who were non-resident of India in the earlier years, is incorrect. It was submitted that there is no requirement for an individual to have been a non-resident in the preceding year in order to be covered by the Explanation 1 (b) to that section. It was further stated that "being outside India" is different from "being non-resident". An individual who goes overseas and takes employment "outside India" since his situs is outside India. Thus "being outside India" as referred to in Explanation 1 (b) should not be interpreted as "being non-resident". The assessee further referred to the legislative history of Explanation 1 (b) to section 6 (1) of the Act starting from Finance Act 1978, 1982, explanatory memorandum, CBDT circulars and the speech of the Finance Minister. The assessee further relied upon the judicial precedents in case of decision of the honourable High Court of Karnataka in case of

Director of Income-tax, International Taxation, Bangalore vs. Manoj Kumar Reddy Nare [2011] 12 taxmann.com 326 (Karnataka)/[2011] 201 Taxman 30 (Karnataka)/[2011] 245 CTR 350 (Karnataka)[20-06-2011] and also submitted a table wherein the similarity between the case of the assessee and the case decided by the honourable Karnataka High Court were mentioned. The assessee also relied upon the decision of the coordinate bench in case of Additional Director of Income-tax vs. Sudhir Choudhrie [2017] 88 taxmann.com 570 (Delhi - Trib.)/[2017] 55 ITR(T) 681 (Delhi - Trib.)[06-03-2017], the decision of the coordinate bench in case of Income-tax Officer VS Dr. M.P. Konanhalli [1995] 55 ITD 266 (Bangalore)/[1996] 54 TTJ 38 (Bangalore) .

9. With respect to the issue raised by the learned assessing officer that the question of the assessee having declared the income from capital gain from the previous financial year it is apparent that the move was entailed on the question of taxability, the assessee submitted that migration to Singapore was for a bona fide personal and professional reasons, so no tax motives can be attributed for the same. Assessee referred to his submission dated 16 March 2022 and 19 September 2022. It was further reiterated that assessee has resigned from the employment in India with the Flipkart group in November 2018 and post his resignation, the assessee left India to take up the employment in Singapore with effect from February 2019. Throughout the financial year 2019 – 20, the assessee has been employed in Singapore and continues to be in employment until date. Assessee

further stated that he has a rented home in Singapore where he has resided throughout the financial year 2019 – 20. The family of the assessee is also residing in Singapore and the children of the assessee are attending schools there. The spouse of the assessee is also in employment in Singapore and the family of assessee and assessee continues to reside in Singapore till date. The assessee as well as his family has appropriate Singapore residence visas. Thus the claim of the assessee that his migration to Singapore was for bona fides personal and professional reasons and was not occasioned by the state of sale of shares of Flipkart Private Limited undertaken during the assessment year 2020 – 21. Assessee further stated that he has been a shareholder in Flipkart Private Limited since 2011 and undertaking sale of some of the shares in that company over the years. Thus the sale of shares by the assessee in financial year 2019 – 20 pertaining to assessment year 2020 – 21 is not a one-off event but the assessee has been undertaking sale of shares in the above company over the years.

10. With respect to the finding of the learned assessing officer that assessee continued to stay in India for 38.6% of the year even after he moved for employment outside India in Singapore, the assessee submitted that he did not "continue to stay in India' but he has been briefly visiting India principally for the purpose of the business meeting with the existing and prospective investee companies with occasional visits for personal purposes. It was further stated that assessee's visits to India have been only for a shorter duration. The assessee explained that total number of days of stay in India during

financial year 2019 – 20 was considered at 141 days but total No. of days of visiting India excluding days where the assessee was stranded in India due to the Covid 19 pandemic is only 103 days . Thus with respect to the 38 day stay it was stated that it is because of the Covid 19 pandemic.

11. With respect to the claim of the assessing officer about applicability of Article 4 (2) of the Double Taxation Avoidance Agreement, which provides for determination of the residency of an individual, assessee submitted that that since the assessee is a resident of Singapore and not a resident of India, the 'tiebreaker test' in Article 4 (2) of the India Singapore tax treaty does not apply. It was further stated that article 4 (2) is only relevant where the assessee is a resident of both India and Singapore.

12. However, without prejudice, the assessee further submitted that assessee has a permanent home in Singapore and assessee does not own any residential house in India and he has also not taken any house on rent in India. Assessee submitted that assessee has commenced construction of a house at 411, Koramangala, Bangalore prior to considering the migration to the Singapore, construction of the house is proceeding slowly and it still remains under construction, therefore, same is not a home available to him in India. Thus it was the claim of the assessee that on the criteria of "permanent home" assessee has a permanent home in Singapore and does not have a permanent home in India.

13. With respect to "centre of vital interest "it was submitted that during the financial year 2019 – 20, the assessee's personal and economic relations are close to Singapore than India. It was stated that assessee's nuclear family consisting of his spouse and his two children are residing in Singapore along with the assessee for the whole of the financial year 2019 – 20. Further the assessee does not have any dependent family members in the India and the parents of the assessee are residing in Punjab, are independent and even prior to his migration to Singapore his parents were not living with him. His children go to school in Singapore; spouse of the assessee is also employed in Singapore. He is principal bank accounts and credit cards are also in Singapore. Therefore, even the presences of his close family in Singapore, his social relations are close in Singapore than to India. Further with respect to the economic relationship of the assessee, it was submitted that assessee is employed in Singapore, does not have any office or other similar premises in India and he administers his investment from Singapore. Accordingly, it was submitted that he has "his centre of vital interest" is not with India since he moved to Singapore in February 2019 but with Singapore.

14. He further submitted that he has a habitual abode also in Singapore and not in India as Singapore is the place where the assessee customarily or usually is present by virtue of his employment in Singapore. He also submitted a chart to show that in financial year 2020 – 21 his No. of days of stay in India is 91 and further for

financial year 21 – 22 only 50 days and for financial year 2022 – 23 till the date of reply only 18 days.

15. Thus, it was claimed that according to the 'Tiebreaker" test of DTAA also assessee is resident of Singapore.

16. With respect to the applicability of provisions of Explanation is 7 (a) to section 9 (1) (i) of the Act, it was submitted that the assessee has acquired the shares of Flipkart Private Limited on 19 October 2011 which are held for more than 24 months prior to the date of transfer and therefore the same are classified as 'long term capital assets' in terms of provisions of section 2 (29AA) of the Act. Assessee submits that on 28 August 2019 assessee has sold 54,596 shares, on 28 August 2019 in second trench assessee has sold 47,759 shares and on 27 November 2019 assessee has sold 5,39,912 shares. The assessee submits that the shares he holds in the above company represented less than 5% of the total share capital and voting power both on the date of the transfer of shares as well as at any time during the 12-month period preceding the share transfer. Further the assessee did not have the right to appoint a majority of the directors of that company on the date of transfer of shares as well as at any time during the 12-month period preceding the share transfers. It was further stated that assessee does not have any right to control the management or policy decisions directly or indirectly by virtue of shareholding or management rights etc on the date of transfer or at any time during the 12-month period preceding the share transfers. The assessee submitted

a copy of the shareholders agreement of Flipkart Private Limited also. Accordingly, it was stated that capital gain arising from the transfer of shares in Flipkart Private Limited does not accrue or arise in India as provided under Explanation 7(a) to section 9 (1) (i) of the Act.

17. With respect to the applicability of limitation of benefit clause as per Article 24A of the Double Taxation Avoidance Agreement assessee contended that that ambit of Article 24A is restricted to paragraph 4A and 4B of Article 13 and same is not applicable to capital gains falling under paragraph 5 of Article 13. As the assessee is capital gain earned by him on sale of shares in Flipkart Private Limited is covered under Article 13 (5) and not under Article 13 (4A) the same is not applicable.

18. It was further stated that the affairs of the assessee were not so arranged with the primary purpose to take advantage of the benefit of Article 13. The assessee once again reiterated the facts about his shifting from India to Singapore. Therefore, the assessee stated that the stand taken by the assessee in the return of income deserves to be accepted.

Reasons of the Assessing Officer: -

19. The learned assessing Officer examined the explanation of the assessee and computed the days of the stay of the assessee from financial year 2015 – 16 to 2019 – 20 at 1237 days against the requirement of 365 days and also stay in the relevant previous year of

141 days. He further considered the provisions of section 6 of the Income Tax Act that provides that assessee was in India for more than 365 days in 4 previous year preceding financial year 2019 – 20 and was in India for more than 60 days during financial year 2019 – 20. Thus, According to Section 6 (1) (c) of the Act, assessee is resident of India.

20. He further referred to circular No. 554 dated 13 February 1990 to state that the above circular was issued with the intent of liberalisation of the criteria for determining the residential status in case of a non-resident Indians. He further examined the words used in the Explanation the term "being outside India" was to refer to a non-resident only. The state of being outside India was to refer to an individual who was, but of course, a " non-resident". He further analysed the stay of the assessee of 141 days in India for financial year 2019 – 20 and held that the assessee has not just come for a visit but has visited and stayed in India for multiple times for the purpose of business and employment. He further stated that the facts of the case of Vijay Mallya vs. Assistant Commissioner of Income-tax [2003] 133 Taxman 552 (Calcutta)/[2003] 263 ITR 41 (Calcutta)/[2003] 183 CTR 201 (Calcutta)[12-05-2003] wherein it is held that the determination of residential status of an assessee requires mandatory consideration of both sections 6 (1) (a) and 6 (1) (c) and stated that on the facts of the case of the assessee, this decision is squarely applicable.

21. He further looked at the residential status of the assessee as per the income tax return filed by him. He noted that for assessment year 2008 – 09 till assessment year 2019 – 20 the assessee has stated himself to be a resident except for the nonfiling of the return for assessment year 2010 – 11, Therefore the assessee is resident and ordinarily resident as per the Income Tax Act 1961. The learned assessing officer further stated that the No. of days of stay in India as per the passport photocopy submitted by the assessee shows that his stay in four years prior to financial year 2019 – 20 is 1237 days against the requirement of 365 days. He further distinguished the facts of the decision of the honourable Karnataka High Court by referring to the tribunal decision in that case reported Manoj Kumar Reddy vs. Income-tax Officer (International Taxation) Ward-1(3), Bangalore [2009] 34 SOT 180 (Bangalore)/ [2010] 132 TTJ 328 (Bangalore) [03-04-2009] it was stated that the issue is in fact in favour of the revenue. The learned assessing officer further rejected the claim of the assessee that interpretation of Explanation 1 (b) to section 6 (1) (c) is restricted to non-resident would lead to an absurd result. It was stated that assessee has considered the hypothetical scenarios where assesses who are individuals ordinarily resident in India. The scenarios where the individuals are non-resident, then the benefit would be available to them in every possible situation under Explanation 1 (b) and that indeed is the intent of the law. Accordingly, the learned assessing officer held that the assessee is ' resident – ordinarily resident' as per the provisions Of the Income Tax

Act, 1961 and the claim of the assessee's status in the income tax return filed as non-resident was rejected.

22. With respect to the residential status as per the double taxation avoidance agreement with a specific reference to ' tiebreaker test' of Article 4 (2), the learned assessing officer held that the assessee has a permanent home in India and he has been living in an apartment at Bangalore as per the income tax record. Further the income tax record also shows that assessee has purchased a large residential house in Koramangala, Bangalore and has also staked the claim of deduction under section 54F in relation to assessment year 2015 – 16 on the purchase of this residential house. Thus according to the learned assessing officer, as extracted from the reply filed by the assessee, assessee has one flat at a Mantri Classic, Bangalore, house in Koramangala Bangalore and land in Gurgaon Haryana. The residential address of the assessee as per the income tax return from assessment year 2008 – 09 to assessment year 2019 – 20 shows that he was residing at C 703, Mantri classic apartments, Koramangala Bengaluru, Karnataka, 560034. Thus the submission made by the assessee that he does not own any residential house in India and he has not taken any house on rent in India was rejected. It was stated that assessee has always had a permanent residence in India. The learned assessing officer further noted that that the claim of the assessee that he has taken a rental accommodation in Singapore remains unverified. He further stated that there is no doubt that the permanent residence of the assessee was in India for the financial year

2019 – 20. He stated that during the Covid pandemic, Which was the most difficult times, the assessee stayed in India for 38 days and therefore the fact proves that where the intention of permanent residence truly resides in the case of this assessee. Accordingly the learned assessing officer held that even by the first tiebreaker clause, the assessee is resident of India as per the double taxation avoidance agreement as he has a permanent Home available to him In India Only.

23. The learned assessing officer further examined the centre of vital interest of the assessee by examining the summary of assets and liabilities for the respective years on looking at his return of income. Based on this, he held that the majority of the economic interest Of The Assessee Lies In India, The Shares Of Flipkart private limited Singapore with respect to which the capital gain is arising during the year, the underlying assets of these shares are also in an Indian entity namely FlipKart India Ltd. He further referred to the screenshot of the website of the company where the assessee is stated to be employed and derived salary income which shows that company is based at Bangalore. He further held that from the above screenshot, it is clear that the company is working on Indian start-up ecosystems, the client and customers are Indians, the organisation mostly comprises of Indians and the office address is in Bangalore, India. He further noted that on the website there is not a single whisper of Singapore clients or operation. The learned assessing officer was also of the view that assessee has singularly been in a Startup in India and to deny that the

centre of vital interest do not lie in India is an argument that is neither born by the facts nor even by imagination. Thus the learned assessing officer held that that the economic interest of the assessee also lie in India.

24. With respect to the question of habitual abode , the learned assessing officer noted that from the complete facts shown the habitual abode and nationality are obviously in this case are in India. The assessee for his entire life has been a resident of India and has been living in India and also an Indian national.

Draft Assessment order: -

25. Accordingly the learned assessing officer held that the assessee is a resident of India for the financial year 2010 – 2011 to assessment year 2020 – 21 and assess the income of the assessee by computing the capital gain chargeable to tax and assessed the total income of the assessee at ₹ 1,978,875,775/–. As the assessee has declared an income of ₹ 83,319,930 in its return of income, an addition of ₹ 1,895,555,845/– is made to the total income of the assessee. The learned assessing officer further held that assessee has declared an income of Rs. 1,21,94,978/– is salary income in Singapore and accordingly filed income tax return and paid the requisite tax in Singapore, the assessee is eligible for the foreign tax credit, but the assessee has not filed form No. 67 as well as not claimed the foreign tax credit in the ROI, same was not given.

26. Accordingly draft assessment order was passed on 30 September 2022 was u/s 143 (3) read with section 144C (1) of the Act.

DRP Proceedings: -

27. The assessee filed an objection before The Dispute Resolution Panel, Bangalore [the ld. DRP] who passed the direction on 28 June 2023. The ground No 2 of the objection was raised with respect to the residential status of the assessee according to the provisions of the Income Tax Act, which was rejected by the learned dispute resolution panel as per paragraph No. 2.2.13 and 2.2.14 based on the intention of the legislation to allow the non-resident to stay longer without losing the non-resident status and it did not apply for the individual who is an ordinarily resident. Thus, it was held that Explanation (b) applies to Nonresidents only and assessee is not entitled for same.

28. With respect to the residential status of the assessee under section 6 (1) (c) of the Act read with Explanation 1 (a) of the Act it was held that that same is not applicable in the case of the assessee and therefore the objection was dismissed.

29. With respect to ground No. 4 of objection with respect to the residential status as per the Double Taxation Avoidance Agreement between India and Singapore of Article 4 (2) was also dismissed.

30. With respect to the computation of the total income, ld DRP directed the learned assessing officer to verify the computation of the long-term capital gain and to be made in accordance with Rule 115 of the

Income Tax Rules and also directed the AO to verify the expenses incurred wholly and exclusively for transfer of a capital asset and to allow the deduction of the same. Thus the panel directed the learned AO to allow the expenses incurred on sale of shares. The assessee also got a benefit of deduction under section 80 G of the Act on the donation made.

Final Assessment Order: -

31. Accordingly the long-term computation of capital gain was made by the learned assessing officer and granted the benefit of the provisions of Rule 115 of The Income Tax Rule as well as granted deduction of the expenses incurred towards the transfer of shares. Accordingly the long-term capital gain on account of sale of shares of Flipkart Private Limited was computed at ₹ 162,54,19,504/-.

32. The assessment order was passed computing the total income of the assessee at ₹ 1,819,395,700/–. By passing an assessment order under section 143 (3) read with section 144C (13) of the Act on 31st of July 2023.

Submissions of ld. Sr. Advocate on behalf the Assessee: -

33. Assessee is aggrieved with the same and is in appeal before us. The learned senior advocate Shri Percy Pardiwala referred to the various grounds of appeal. He filed a paper book containing 1345 pages. He also referred to several judicial precedents and referred to the Hindi version of some of the Circular etc. issued by the CBDT.

34. The Ld Senior Advocate first referred to the written submission filed by the assessee on 12/2/2024:-

SYNOPSIS OF ARGUMENTS ON BEHALF OF THE APPELLANT

I. BRIEF FACTS

1. The Appellant is an Indian citizen. The Appellant was employed in India as a part of the leadership team at Flipkart Internet Private Limited since it was established.

2. In August 2018, the Walmart Group acquired a majority stake in the Flipkart Group (of which Flipkart Internet Private Limited is a part). Post the aforesaid acquisition, the Appellant resigned from his employment with Flipkart Internet Private Limited with effect from 13.11.2018. Thereafter, the Appellant did not hold any employment position whether with the Flipkart Group or any other employer. Post resignation, the Appellant migrated to Singapore in February 2019 on an employment visa for the purpose of taking up employment with Xto10X Technologies Pte Ltd, a Singapore company ("Xto10X Singapore"). Thereafter, the Appellant's family also relocated to Singapore in March 2019. The Appellant along with his family continues to reside in Singapore till date. The Appellant and his spouse have become "Permanent Residents" of Singapore since 10.06.2020.

3. The Appellant filed his return of income in the status of a non-resident of India for the assessment year (AY) 2020-21 declaring a total income of INR 8,33,19,930/- and claimed a refund of INR 136,15,32,200/-.

4. The said return of income was picked up for scrutiny assessment and a notice dated 29.06.2021 under section 143(2) of the Income-tax Act, 1961 ('the Act')

was issued to the Appellant by the National Faceless Assessment Centre ('NFAC'). In response, the Appellant vide a letter dated 20.09.2021 **(pages 69 - 101 of the paper book)** filed his submission objecting to the jurisdiction of the NFAC to initiate the scrutiny proceedings since the case of the Appellant fell under the 'international tax charge' as admittedly the NFAC does not have jurisdiction to make an assessment in the case of persons who are non-residents.

5. Thereafter, various notices under section 142(1) of the Act were issued to the Appellant by the Jurisdictional Assessing Officer (Deputy Commissioner of Income-tax, (International Taxation)) calling for various details. In response, the Appellant filed detailed submissions.

6. The Jurisdictional Assessing Officer ('Ld. AO') passed the draft assessment order on 30.09.2022 and held the Appellant to be a "resident" of India both in terms of section 6(1)(c) of the Act as well as Article 4 of the India-Singapore Double Tax Avoidance Agreement ('DTAA'). As a result, the global income of the Appellant was assessed to tax in India and the Ld. AO proposed an adjustment of INR 1089,55,55,845/- to the total income of the Appellant.

7. Aggrieved by the draft assessment order, the Appellant filed his objections before the Hon'ble Dispute Resolution Panel ('DRP') which, vide its directions dated 28.06.2023, disposed of the objections of the Appellant, upholding the Ld. AO's conclusion that the status of the Appellant was "resident" but granting marginal relief to the Appellant on issues of computation of capital gains and Chapter VI-A deductions.

8. In line with the directions of the Hon'ble DRP, the Ld. AO passed the impugned Final Assessment Order ('FAO') dated 31.07.2023 confirming the status of the Appellant as 'resident' of India for the AY 2020-21 under the Act as well as under the India-Singapore DTAA, thereby bringing to tax an amount of INR 1081,77,23,119/- in India.

9. Aggrieved by the FAO, the Appellant has preferred the above appeal to this Hon'ble Tribunal.

10. The list of important dates is as under:

Date	Particulars	Relevant pages in the Paperbook
Preceding FY i.e., FY 2018-19		
13.11.2018	The Appellant resigned from Flipkart Internet Private Limited, India	196
11.02.2019	In-principle approval to the issuance of an Employment Pass to the Appellant by the Ministry of Manpower, Government of Singapore authorizing the Appellant to reside in Singapore and take up employment with Xto10X Singapore in Singapore	-
17.02.2019	Employment letter issued by Xto10X Singapore (formerly known as BTB Consulting Private Limited) to the Appellant.	197 - 200
21.02.2019	The Appellant travelled from India to Singapore to take up employment with Xto10X Singapore.	149
22.02.2019	The Appellant commenced his employment with Xto10X Singapore in Singapore.	201
01.09.2019	The Appellant landed in India.	148
04.09.2019	Copy of the in-principle approval to the issuance of the Employment Pass to the Appellant by the Ministry of Manpower, Government of Singapore authorising the Appellant to reside in Singapore and take up employment with Three State Advisors Pte Ltd ("Three State Singapore") in Singapore	-

Date	Particulars	Relevant pages in the Paperbook
05.09.2019	Whilst in India, the Appellant resigned from his employment with Xto10X Singapore.	1036
10.09.2019	The Appellant travelled to Singapore for the purpose of taking up employment with Three State Singapore	150
12.09.2019	The Appellant commenced his employment with Three State Singapore as CEO. An Employment pass was issued by the Government of Singapore to the Appellant in respect of this employment.	220 - 221

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II. APPELLANT"S SUBMISSIONS

Re. Ground No. 6: Validity of the assessment proceedings completed without issuance of notice under 143(2) of the Act by the jurisdictional AO.

Relevant pages of the AO order and DRP directions:	
Directions of the Hon'ble DRP	Pages 27 - 30
FAO	Pages 64
Relevant submissions	**DRP objections:** pages 196 – 197 of the appeal set.

11. The initial notice dated 29.06.2021 under section 143(2) of the Act was issued to the Appellant by the NFAC. In response to the notice, the Appellant filed his submissions objecting to the issuance of the notice by NFAC which had no jurisdiction over the Appellant (being a non-resident), since as per the CBDT circular dated 31.03.2021, cases falling under the 'International Tax Charge' are specifically excluded from the jurisdiction of NFAC **(see page 81 of the paper book)**.

12. Although, on filing of the objections by the Appellant, the case was transferred to the Jurisdictional AO, i.e., the DCIT, International Taxation, Circle 1(1), no fresh notice under section 143(2) of the Act was issued to the Appellant by the Jurisdictional AO.

13. The Appellant submits that the notice under section 143(2) must be issued by the officer having jurisdiction to make an assessment of an assessee and, therefore, a notice issued by an authority who has no power to assess a specific assessee, i.e., the NFAC in this case, would be without jurisdiction and void ab initio.

14. It is now well settled that the authority to make an assessment under section 143(3) is predicated on a valid notice under section 143(2) being issued and as explained above the same has not been done and, consequently, the assessment order passed by the Ld. AO under section 143(3) pursuant to the notice issued by the officer under section 143(2) having no jurisdiction over the Appellant is liable to be set aside.

15. Having said so it may be pointed out that recently the Karnataka High Court in ***Adarsh Developers v. DCIT and another*** (Order dated 13.12.2023 passed in W.P. No. 1109/2023) has taken a view that the power to issue a notice under section 143(2) also vests in the NFAC even though it may not have the jurisdiction to make an assessment.

Re. Ground No. 7: Validity of the draft assessment order passed by the Respondent treating the Appellant as an 'eligible assessee' under section 144C(15)(b)(ii) of the Act .

Relevant pages of the AO order and DRP directions :	
Directions of the Hon'ble DRP	Pages 30 - 32
FAO	Pages 64 - 65
Relevant submissions	**DRP objections:** pages 196 – 198 of the appeal set.

15. It is submitted that the operative part of the draft assessment order holding the Appellant to be a "resident" in India is clearly inconsistent with the Ld. AO's determination that the Appellant is a "non-resident" under section 144C(15)(b)(ii) for the purpose of passing a draft assessment order under section 144C(1) of the Act.

16. In terms of section 144C(15)(b) of the Act, an "eligible assessee" means:

(i) any person in whose case a variation arises as a consequence of the Transfer Pricing Officer's order; and

(ii) any non-resident not being a company, or any foreign company.

17. In the present case, no variation prejudicial to the Appellant's interest has arisen as a consequence of an order passed by the Transfer Pricing Officer under section 92CA(2) of the Act. Further, since the Ld. AO in the FAO has determined that the Appellant is 'resident' of India during the AY 2020-21, the Appellant cannot be said to be an 'eligible assessee' as neither of the conditions provided for in section 144C(15)(b) of the Act are fulfilled. Therefore, the Ld. AO should have passed a final assessment order and not the draft assessment order before 30.09.2022. The time limit to pass the final

assessment order in terms of section 153(1), for the assessment year in question, lapsed on 30.09.2022 and therefore, the final assessment order dated 31.07.2023 is barred by limitation.

18. Reliance is placed on:

i. ***Shyam Sunder Bhartia v. DCIT(IT)*** (Reported in [2023] 149 taxmann.com 162 (Lucknow – Trib.)) **– (paras 23 – 27);** and

ii. ***Atos India (P.) Ltd. v. DCIT*** (Reported in [2023] 152 taxmann.com 217 (Mumbai -Trib)) **– *(paras 31 - 35)***

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Re. Ground Nos. 2 & 3: Determination of the residential status of Appellant under section 6(1)(c) read with Explanation 1(b) of the Act

Relevant pages of AO order and directions of the DRP:	
Draft assessment Order ('DAO')	Pages 9 – 35
Directions of the Hon'ble DRP	Pages 2 - 12
FAO	Pages 62
Relevant submissions	**DRP objections:** pages 134 - 167 of the appeal set.

19. Section 6 of the Act provides for certain tests to determine the residential status Section 6(1) envisages two tests to determine the residential status of an individual viz.,:

(i) an individual is said to be resident of India in any previous year if he is in India for a period of 182 days or more **(Section 6(1)(a))**; **OR**

(ii) an individual is said to be a resident of India if he is in India for 365 days or more within 4 years preceding the previous year **AND** if he is in India for 60 days or more in the previous year **(Section 6(1)(c))**.

20. The Appellant does not satisfy the first test in (i) above since he was in India for a period of 141 days only during the FY 2019-20.

21. Insofar as the test in (ii) above is concerned, section 6(1)(c) provides cumulative conditions, both of which ought to be satisfied for an individual to be considered as a resident in India, i.e., that the individual is in India for 365 days or more in the 4 years preceding the previous year AND in the previous year, he is in India for at least 60 days.

22. However, by virtue of Explanation 1 to section 6(1)(c), the period of 60 days mentioned in section 6(1)(c) has to be substituted with 182 days in the case of *inter alia* an Indian citizen who either (a) leaves India in the previous year for the purposes of employment; or (b) who "being outside India" comes on a visit to India in the previous year. Accordingly in respect of cases covered

under Explanation 1, the test in (ii) above [section 6(1)(c)] would read as under:

> *"(ii) an individual is said to be a resident of India if he is in India for 365 days or more within 4 years preceding the previous year **AND** if he is in India for **182 days** or more in the previous year."*

23. In the present case, while the Appellant's total period of stay in the last 4 years exceeded 365 days, the Appellant, an Indian citizen, being outside India and coming on a visit to India, has not stayed in India for 182 days or more during the FY 2019-20. Accordingly, as per section 6(1)(c) read with Explanation 1(b) of the Act, the Appellant filed his return of income as a non-resident of India.

24. However, the Ld. AO denied the benefit of Explanation 1(b) on the basis that the reference to 'being outside India' in the aforesaid Explanation should be read as 'being a non-resident'. In other words, the Ld. AO has held that unless an individual was a 'non-resident' in the preceding year, the benefit of Explanation 1(b) to section 6(1)(c) would not be available in the previous year. The Appellant left India to take up employment in Singapore only in February 2019 and hence was a 'resident' in the preceding year i.e., FY 2018-19. Since the Appellant was a 'resident' in the preceding year (i.e., the FY 2018-19), the Ld. AO held that the benefit of Explanation 1(b) to section 6(1)(c) would not be available to the Appellant for the FY 2019-20. Accordingly, since the Appellant's total period of stay exceeded 60 days in FY 2019-20 and 365 days in the last 4 years, the Ld.AO held the Appellant to be a resident.

25. Explanation 1(b), on its plain language, applies to an Indian citizen or a person of Indian origin who 'being outside India' comes on a visit to India. There is no requirement for an individual to be a 'non-resident' in the preceding year.

It is physical situs of the Appellant which is relevant for satisfaction of the test as to whether the Appellant is 'being outside India'. An individual who goes overseas and takes up employment overseas is 'outside India' since his situs is outside India. If such an individual continues to be employed overseas, such an individual would be said to be one who is 'being outside India'. The use of the present perfect tense is indicative of a state of existence.

26. The Ld. AO has failed to appreciate that residential status is a concept different from situs of the individual. Residential status is determined on the basis of the provisions of section 6 of the Act. In other words, the term 'being outside India' as referred to in Explanation 1(b) should not be interpreted as 'being non-resident' as that would tantamount to reading in words in the section that do not exist.

27. The Ld. AO's interpretation is that Explanation 1(b) requires the assessee to be non-resident, while determination of whether an assessee is a non-resident requires one to evaluate and apply Explanation 1(b) to section 6(1)(c). Therefore, the interpretation that Explanation 1(b) is applicable only to non-residents leads to absurd results and renders the Explanation impossible to apply. In other words, the definition of 'non-resident' in section 2(30) of the Act is defined as meaning a person who is not a resident, and the definition of a 'resident' is provided in section 2(42) of the Act as meaning 'a person who is resident in India within the meaning of section 6 of the Act'. Thus, the Ld. AO's interpretation that the term 'being outside India' referred to in Explanation 1(b) to section 6(1)(c) is the same as 'being non-resident' would only lead to a circular reference and unworkable results.

28. The official Hindi translation of the Act negates the construction of the section adopted by the AO. It refers to 'being outside India' in the provision as 'जो भारत के बाहर रहते हुए'; whereas the term used for 'non-resident' is 'अनिवासी'. This clearly shows that the Legislature did not intend that the extended period provided for in Explanation 1(b) to be available to non-residents only.

29. The Ld. AO's interpretation that the intent of Explanation 1(b) to section 6(1)(c) is to 'conserve the non-resident status' of assesses is wholly misplaced since the residential status is determined afresh each year. The residential status in the preceding year is not carried forward to the next year.

30. An interpretation that Explanation 1(b) is applicable only to individuals who were non-residents in earlier year leads to absurd results as illustrated below–

Case 1:

Consider the case of an individual who leaves India for the first time for taking up employment anytime between 1 April – 30 September of Year 1. Such an individual would be regarded as non-resident in Year 1 as per Explanation 1(a) of the Act since his number of days of stay in India would be less than 182 days.

When he visits India in Year 2, he would be eligible to stay in India upto 182 days without being regarded as a resident as per Explanation 1(b).

Case 2:

Where an individual leaves India anytime between 1 October– 31 March of Year 1 for taking up employment, such individual would be regarded as resident in Year 1 as his stay in India exceeds 182 days.

If the interpretation is that for Explanation 1(b) to be applicable the individual needs to be non-resident in the preceding year, such an individual would be regarded as a resident in Year 2 if he stays in India for 60 days or more, even if his stay in India is less than 182 days. If the individual has stayed for more than 60 days in Year 2, he will once again lose the benefit of Explanation 1(b) in Year 3 if the view taken is that the individual needs to be a non-resident in the preceding year for the benefit of Explanation 1(b) to be extended.

The individual in Case 2 would face a permanent disadvantage as compared to the individual in Case 1 in terms of availability of the extended period of 182 days merely because he took up employment after 1 October of Year 1.

Adopting an interpretation that Explanation 1(b) is applicable only to individuals who were non-residents is not in line with the above intent and gives absurd results. As noted by the Supreme Court in ***ACIT v. Surat Art Silk Cloth Manufacturers Association*** (reported in [1979] 2 Taxman 501) **(para 11 at page 14)** the consequences of a construction certainly help in ascertaining the meaning of the language used when the provisions are ambiguous.

31. When the language of the provision is plain, clear, and unambiguous, there is no room for any other construction and there is no requirement for an external aid to interpret the provision. Reliance in this regard is placed on the decision of ***AMP Spg. & Wvg Mills (P.) Ltd. v. ITO*** (Reported in [2006] 100 ITD 142 (Ahd.) (SB)) **(para 29 at page 20).**

32. Had the intention of the law been to restrict it to non-residents, the same would have been specifically provided so in the Act. When the law does not mandate any such requirement for an Indian citizen to be a non-resident to avail the benefit of Explanation 1(b), there is no room for misconstruction.

33. Without prejudice to the above, even if the legislative history of the said section is referred to, it would be clear that there was no intention of restricting the applicability of Explanation to section 6(1)(c) to the individuals who were non-residents in the preceding year.

The Explanation to section 6(1)(c) was first inserted vide Finance Act 1978 extending the period of 60 days referred to therein to 90 days in case of an Indian citizen, who is 'rendering service outside India' and who is in India for leave or vacation. The Explanatory Memorandum to the Finance Bill 1978 stated that the objective of this relaxation was to enable Indian citizens employed outside India to be able to stay on leave or vacation in India for 89 days in a previous year without becoming resident in India in that year.

Thereafter, the Finance Act 1982 sought to broaden the coverage of the aforesaid Explanation to cover not only individuals employed outside India, but also individuals who were self-employed or engaged in other avocations outside India. In this context, the Explanation was amended to bring in a reference to the "Indian citizens being outside India coming on a visit to India". The memorandum to the Finance Bill 1982 **(refer paras 33 - 36 at page 651 of the paperbook)** and the speech of the Finance Minister for 1982 budget **(paras 74 – 76 at pages 684 – 685 of the paperbook)** clearly articulates the aforesaid intention. There is no reference to a requirement that the individual has to be a 'non-resident' in the preceding year for availing the benefit of the said Explanation.

34. Thereafter, the amendments to Explanation 1(b) have only changed the number of days of stay in India referred to therein, without any other change in the language of Explanation 1(b). In the absence of any change in the language of the aforesaid Explanation, it is clear that the intention behind introduction of the said Explanation as articulated in the memorandum to Finance Bill 1982 continues to hold the field, and therefore, it is not necessary to refer to the CBDT circulars explaining the amendments brought in by Finance Act 1989 and 1994 to understand the legislative intention. The reference to the Circulars explaining the Finance Act, 1989 in the assessment order is therefore, out of context.

35. Notwithstanding the above, it is submitted that it is only that the amendments to Explanation 1(b) in 1989 and 1994 extending the number of days of stay in India was basis of requests by non-resident Indians. It cannot be read to mean that the requirement under Explanation 1(b) was for a person to be non-resident in the preceding year **(refer pages 699 - 700 of the paperbook).**

36. Explanation 1(a) and 1(b) to section 6(1)(c) were introduced together for the first time by the Finance Act 1982. The subsequent amendments vide Finance Act 1989 and 1994 increased the number of days not only for or Explanation 1(b) but also for 1(a). The relevant Explanatory Memorandums did not articulate the legislative intent for Explanation 1(a) and 1(b) separately. Therefore, the legislative intention set out in the relevant Explanatory Memorandums should be equally applicable to both Explanation 1(a) and 1(b).

If as per the Ld. AO's contention that the legislative intention was to restrict the benefit of Explanation 1(b) to individuals who were non-resident in the preceding year, the same should be applicable even to Explanation 1(a).

As per Explanation 1(a), an Indian citizen leaving India for employment outside India, would be a non-resident if his stay in India was less than 182 days in the previous year. To argue that Explanation 1(a) is applicable only to an individual who is a non-resident would lead to an illogical result since an individual already non-resident in the preceding year can never 'leave' India for the purpose of employment as per Explanation 1(a).

37. The decision of this Hon'ble Tribunal in ***Manoj Kumar Reddy Nare v. DCIT*** (Reported in [2009] 34 SOT 180 (Bangalore)) **(paras 3.9 – 3.15 at pages 965 – 968 of the paperbook)** ***as affirmed*** by the High Court of Karnataka in ***DCIT v Manoj Kumar Reddy Nare*** (Reported in [2011] 12 taxmann.com 326 (Kar. HC)) ***(para 6 at pages 977-978 of the paperbook)*** is relevant to the present case.

In the said case, the assessee, an Indian citizen, left India in the preceding year i.e., Feb 2004 to take up employment overseas. During the relevant previous year (FY 2004-05), he was present in India for 78 days (i.e., more than 60 days but less than 182 days). Given these facts, the Bangalore Tribunal held that the assessee was non-resident. It is noted that the facts in the present case are similar to the aforesaid case of Manoj Kumar Reddy Nare and, therefore, the Appellant should also be treated as a non-resident.

LIST OF RELEVANT DOCUMENTS TO BE REFERRED TO IN SUPPORT OF THE ABOVE ARGUMENTS.

Document	Page number in the paperbook
Copy of tax return filed by the Appellant with Inland Revenue Authority of Singapore for the calendar year 2019.	113 -115
Copy of tax return filed by the Appellant with Inland Revenue Authority of Singapore for the calendar year 2020.	116 - 122
Copy of resignation letter dated 13.11.2018 given by the Appellant to Flipkart Internet Private Limited, India	196
Copy of in-principle approval of the employment pass issued to the to work with Xto10X Singapore	

Employment letter dated 17.02.2019 issued by Xto10X Singapore (formerly known as BTB Consulting Private Limited) to the Appellant.	197 - 200
Passport entries evidencing travel of the Appellant from India to Singapore to take up employment with Xto10X Singapore on 21.02.2019	149
Letter evidencing that the Appellant commenced his employment with Xto10X Singapore on 22.02.2019	201
Copy of the employment pass issued to the Appellant by the Ministry of Manpower, Government of Singapore authorizing Appellant to reside in Singapore and take up employment with Xto10X Singapore.	202-203

Re. Ground No. 4: Determination of the residential status of Appellant under section 6(1)(c) read with Explanation 1(a) of the Act

Relevant pages of AO order and the directions of the DRP order:	
Directions of the Hon'ble DRP	Pages 12 - 15
FAO	Pages 62
Relevant submissions	**DRP objections:** pages 168 - 171 of the appeal set.

38. Without prejudice to the above, even as per Explanation 1(a) to section 6(1)(c) of the Act, where an individual being an Indian citizen leaves India for the purpose of employment outside India, such individual would not be regarded as a resident of India where his total number of days of stay in India during such year does not exceed 182 days.

39. As is evident from the list of important dates, on 05.09.2019, whilst being present in India, the Appellant resigned from employment with Xto10X Singapore. On 10.09.2019, the Appellant travelled from India to Singapore for the purpose of taking up employment with Three State Singapore at its offices in Singapore with effect from 12.09.2019.

40. At the time of his resignation from employment with Xto10X Singapore, and prior to taking employment with Three State Singapore , the Appellant was present in India. It also clear that the Appellant left India for the purpose of taking up employment outside India (with Three State Singapore). This is further supported by the fact the Appellant entered Singapore on 10.09.2019 by way of the in-principle employment pass issued with respect to employment with Three State Singapore.

41. Three State Singapore has been licensed as an "Accredited/Institutional Licensed Fund Management Company" by the Monetary Authority of Singapore (the securities market regulator in Singapore). Three State Singapore does not have any offices or subsidiaries in India.

42. Given the above, the Appellant submits that even if it were to be assumed that Explanation 1(b) to section 6(1)(c) was not applicable to the Appellant, the Appellant would be a 'non-resident' under section 6(1)(c) read with Explanation 1(a) on the basis that the Appellant left India for the purpose of employment with Three State Singapore in the FY 2019-20, during which year he has stayed in India for a period of less than 182 days.

LIST OF RELEVANT DOCUMENTS TO BE REFEREED TO IN SUPPORT OF THE ABOVE ARGUMENTS.

Document	Page number in the paperbook
Copy of passport showing travel to India on 01.09.2019.	148
Copy of resignation letter sent to Xto10X Singapore.	1036
Copy of the employment letter issued by the Three State Singapore.	204 - 219
Copy of passport showing travel to Singapore on 10.09.2019	150
Copy of in-principle approval of the employment pass issued to the Appellant by Three State Singapore	-

Copy of the employment pass issued to the Appellant by the Ministry of Manpower, Government of Singapore authorizing Appellant to reside in Singapore and take up employment in Three State Singapore.	220 - 221

Re. Ground No. 5: Tie-breaker clause under Article 4 of the India-Singapore DTAA:

43. Since at the time of hearing, this ground was not gone into, the Appellant is not filing written submissions at this stage and craves leave to file submissions on the above ground, should the Tribunal decide to hear the parties on the ground.

Re. Ground No. 9: Error in the computation sheet

44. Without prejudice to the above, it is submitted that the Ld. AO has computed the assessed income of the Appellant in the final assessment order as INR 1081,77,23,119/- but has erroneously computed the assessed income in the computation sheet as INR 1081,93,95,700/-. The contradiction of the assessed income in the assessment order and computation sheet has resulted in higher demand. It is most humbly prayed that this Hon'ble Tribunal be pleased to direct the Ld. AO to rectify the computation sheet.

Re. Ground No. 10: Erroneous computation of demand

45. Without prejudice to the above, it is submitted that the Ld. AO has computed the demand at INR 254,34,32,627/- by erroneously considering a sum of INR 5,81,80,852/- as refund already issued to the Appellant when the same has not been received by the Appellant. Therefore, it is most humbly prayed that this Hon'ble Tribunal be pleased to direct the AO to rectify the computation of demand.

Re. Ground No. 11: Levy of interest under section 234A and 234B of the Act.

46. It is submitted that the AO has erred in charging interest under section 234A and 234B of the Act. Therefore, the Appellant humbly prays that this Hon'ble Tribunal may be pleased to direct the AO to delete the interest levy.

REBUTTALS TO SUBMISSIONS MADE BY THE DEPARTMENTAL REPRESENTATIVE:

Re. Ground No. 7:

47. The Departmental Representative attempted to distinguish the decisions in ***Atos India (P.) Ltd.*** *(supra)* and ***Shyam Sunder Bhartia*** *(supra)* on the ground that the assessees therein were both resident assessees. The Appellant reiterates that the ratio of the two decisions, viz., that the procedure enacted in section 144C of the Act is not to be followed where an assessee is not an 'eligible assessee' in terms of section 144C(15)(b), applies on all fours to the case of the Appellant, regardless of the facts involved.

48. The Departmental Representative also urged that the Appellant had filed his return of income as a 'non-resident' and that the determination of jurisdiction of DCIT- International Charge is on the basis of the return of income filed. It is submitted that it is not the jurisdiction of DCIT- International tax that is being questioned under this ground, but it is the treatment of the Appellant by the Ld. AO as an 'eligible assessee' which is under challenge.

Since, the Appellant is not an 'eligible assessee' as per the stand of the Department as neither of the conditions prescribed under section 144C(15)(b) of the Act are fulfilled, the Ld. AO, consistent therewith, should have passed a final assessment order on or before 30.09.2022 and his failure to do so renders the assessment failing order barred by limitation.

Re. Ground Nos. 2 to 4:

49. The Departmental Representative argued that in terms of Explanation 1 (b) to section 6(1)(c) of the Act, the person ought to be a non-resident and in that regard, relied on section 115C(e) of the Act. It is submitted that Explanation 1(b) to section 6(1)(c) of the Act reads '***...being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C....***'. Hence, the Explanation is applicable to either Indian citizens or to a person of Indian origin. Explanation to clause (e) of section 115C only defines that a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India. Hence, the term 'non-resident Indian' cannot be imported into section 6(1)(c) of the Act by any stretch of imagination.

Wherefore, it is most humbly prayed that this Hon'ble Tribunal be pleased to allow the appeal, in the interests of justice and equity.

35. With respect to ground No. [1] it was submitted that it merely challenges the assessment order at a particular sum instead of at the returned income and therefore such ground is general in nature.

36. Coming to ground No. [2 – 4] are with respect to the residential status of the assessee under The Income Tax Act. He firstly referred to the provisions of section 6 of The Income Tax Act and submitted that assessee has stated himself to be a 'non-resident' but the learned assessing officer has treated him as a 'resident of India' under the provisions of section 6 (1) (c) of the Act for the impugned financial year. He submits that an individual can be said to be resident in India for any previous year [i] if he is in India in that year for a period or periods amounting in all to 182 days or more, or [ii][a] within the four years preceding that year, he has been in India for 365 days or more and [ii][b] for that year for 60 days or more. He further referred to the Explanation 1 and submits as per clause (b) of Explanation 1, 60 days criteria in [ii] [b] is further extended to 182 days in certain circumstances.

37. After that he referred to the history of the assessee stated that assessee is a founder of Flip Kart who resigned from that company on 13 November 2018. On 11 February 2019, he got an employment pass from Singapore government and he got employment letter on 17 February 2019 from a Singapore company X to 10 X Technologies PTE Limited . He arrived in Singapore to take up that employment on 21 February 2019 and his employment commenced on 22 February

2019. He returns to India on 1 September 2019 and on 4 September 2019, he resigned from X to 10 X Technologies PTE Limited, Singapore, while in India. On 10 September 2019, he left India to take up employment in Singapore and on 12 September 2019 his employment commenced with Three State capital Advisers Pte Limited, Singapore. He continues to be employed in that company and has not come back to India.

38. During this year, he has earned capital gain on sale of shares of a Singapore entity [Flipkart Private Limited] which has derived its valuation from an Indian entity [Flipkart India Private Limited]. Such sale took place somewhere in the month of July 2019. The second and third tranche of sales has happened in August 2019 and November 2019. According to the assessee, he submitted that the capital gain arising on the sale of a Singapore company is not chargeable to tax either as per the Indian Income Tax Act or as per the treaty. He submits that Article 13 (5) of the treaty exempt such capital gain from taxation in India.

39. He submits that that the learned assessing officer is of the view that the phrase mentioned in Explanation 1 (b) "being outside India" is only applicable to the non-resident. He strongly refuted the above finding of the learned AO. He referred to the legislative history of the above provisions. He first took us to the memorandum explaining the provision in The Finance Bill 1982 and referred to clause 43 wherein some relaxation was granted to the test of residency in India. He

submits that clause 33 explains what the provision is. According to clause 34, the Indian citizen who is rendering services outside India and who is only for vacation in India, there is an extended time of 90 days is granted. He further referred to clause 35, wherein it is specifically mentioned that with a view to avoiding hardship in case of Indian citizen's who are employed or engaged in other location outside India wherein the 60 days period considered in clause (c) was further increased to 90 days or more. He further referred to the provisions of the Finance Act 1982 wherein the finance Minister's speech was shown to us. In that speech at paragraph No. 74 and 75 was drawn to our attention wherein it was stated that the test of residency in India laid down for taxation purposes results in hardship to Indian citizens earning income in foreign countries who come to India for short spells. An individual is regarded as a resident in India in the year, if he stays in that year for 30 days only and also maintains a dwelling house for 182 days or more. It stated that as this test causes hardship to persons working outside India who come home even in a relatively short visit, such test was deleted. Further according to the paragraph No. 75, another test that for the persons Indian citizens who are employed out outside India who come to India only for vacation, the period for residential status is 90 days which was also extended to benefit the self-employed. He further referred to the Direct Tax (Second Amendment) Act, 1989 wherein as per paragraph No. 6.1 , on the re-presentation made by the non-resident Indians, that the period of 90 days or 60 days was too short, especially for those who

had to supervise their investment in India. Therefore, in order to enable the non-resident Indians to stay in India for a longer period for looking for after their investments without losing their non-resident status, clause (b) of the Explanation clause (c) of subsection (1) of section 6 has been amended and the period of 90 days provided there under has been increased to 150 days. The above amendment not only applied to a citizen of India but also to a person of Indian origin. He further referred to paragraph No. 19 of The Finance Act, 1994 wherein there is a further amendment to the conditions of the residential status. He further referred to official Hindi translation of section 6 (3) which is placed at the submission before the learned dispute resolution panel wherein the word "being outside India" and "non-resident" were also mentioned. His submission was that if the person ' being outside India ' is to be interpreted as Nonresident only, the statue would have used that simple phrase of " Nonresident' only.

40. Accordingly, the contention of the learned authorised representative was that the assessee's case falls in the Explanation 1 (b) of the Act and therefore for application of clause (c) of subsection 1 of section 6, period of 182 days should be considered, instead of the period of 60 days considered by the learned assessing officer. Therefore his contention was that according to that Explanation, the assessee is not a resident of India.

41. He submits that assessee has stayed for 127 days in this financial year, which is less than 182 days for this year.

42. Even otherwise his contention is that, even if he fails to satisfy that the case of the assessee falls under Explanation 1 (b), his case also falls under clause (a) of the above Explanation. He submits that if a citizen of India who leaves India in any previous year for the purpose of employment outside India, the criteria of 60 days mentioned in sub clause (c) should also be considered as 182 days. He submits that assessee is a citizen of India , who left India in any previous year for the purpose of employment outside India , therefore, the period of 60 days should also be extended to 182 days in his case.

43. Thus his argument is whether one take help of clause (a) or of clause (b) for the purpose of considering the period as per section 6 (1) (c) of the Act, the period of 60 days need to be extended to 182 days in case of this assessee. On that ground the assessee is not a resident of India, He submits that assessee has stayed 127 days in India for this year and therefore it is less than 182 days, and therefore the assessee is not resident in India.

44. He extensively referred to the order of the learned assessing officer and the direction of the learned dispute resolution panel to show that why the assessee has been considered as a 'resident of India' for the purpose of taxability. It was submitted that both the lower authorities have wrongly interpreted the provisions.

45. He relied upon the decision of honourable Karnataka High Court in case of Director of Income-tax, International Taxation, Bangalore vs. Manoj Kumar Reddy Nare [2011] 12 taxmann.com 326

(Karnataka)/[2011] 201 Taxman 30 (Karnataka)/[2011] 245 CTR 350 (Karnataka)[20-06-2011] where in the order of the ITAT in Manoj Kumar Reddy vs. Income-tax Officer (International Taxation) Ward-1(3), Bangalore [2009] 34 SOT 180 (Bangalore)/[2010] 132 TTJ 328 (Bangalore)[03-04-2009] has been affirmed by the honourable Karnataka High Court.

46. In the end he referred to the decision of the special bench in case of AMP spinning and weaving Mills private limited versus income tax officer (2006) 100 ITD 142 (Ahd) (SB)/(2006) 101 TTJ 1113 dated 24 March 2006 and referred to paragraph No. 29 of that decision stating that where from any angle the case of the assessee is covered by the plane, clear and unambiguous statutory language of the provisions of the law, it requires no external aid, like object to construe them differently. He submitted that the language of the law is clear that 'being outside India' does not mean 'non-resident' only.

47. On ground of appeal No. 5 is submitted that assessee is also a resident of Singapore and he is also considered to be a resident of India, the tie breaker test between the residential status between these two countries is required to be applied. He Referred to Article 4 (2) of the DTAA. He submits that assessee is employed by Flipkart India , left India in November 2018, resigning from that particular place. He referred to provisions of Article 4 (2) and stated that the assessee has a permanent home in Singapore, his centre of vital interest are also situated in Singapore, his habitual abode is also in Singapore.

Therefore, he should be considered as a resident of Singapore even applying ' tie breaker test' also. He submits that once the assessee has moved to Singapore he is staying there in a service apartment, therefore staying in a rented flat till 2019, is his permanent home available to him in Singapore. It was further stated that assessee has a home available to him in India, however, it is not in a habitable position and therefore the assessee does not have any home which can be said to be a permanent home available to the assessee. With respect to the centre of vital interest of the assessee, he referred to the submission made before the learned assessing officer stating that assessee centre of vital interest are also in Singapore. He submits that his family is staying with him, his wife is serving at Singapore, his children are studying at Singapore, he is staying there as an employee of a company in Singapore and therefore his centre of vital interest are in Singapore compared to India. It was the submission that merely claiming deduction under section 54F of the Act could not say that the centre of vital interest of the assessee or he has a permanent home available in India , are in India. Thus, according to tie breaker test also assessee is resident of Singapore only.

48. On ground no. [6] wherein it is challenged that on the facts and circumstances of the case, the impugned order passed by the learned assessing officer is without jurisdiction, non-est, illegal and bad in law, since the notice under section 143 (2) of the Act was issued by the National faceless assessment Centre (NFAC) which does not have jurisdiction over the appellant's case which is under the International

tax charge and hence the impugned order is bad in law. He submitted that this issue is already decided by the honourable Karnataka High Court in Adarsh Developers vs. Deputy Commissioner of Income-tax [2024] 158 taxmann.com 81 (Karnataka)[13-12-2023] against the assessee, however, to keep the issue alive the assessee would like to contest the same.

49. On ground No. [7] of the appeal main contest is that, assessee disclosed in his ROI his Residential status as ' Nonresident'. Assessing officer disputed assessee's residential status, held assessee to be ' resident In India'. Despite, this ld AO passes draft assessment order. Thus, ld AO treats the assessee as eligible assessee as defined u/s 144C (15)(b) of that Act which is only for non-Residents. Thus, the learned AO has erred in holding the appellant to be ' resident' in the operative part of the draft assessment order which is inconsistent with and in contradiction with the learned assessing officer's determination that appellant is a non-resident under section 144C (15) (b) of the Act. Hence, impugned order passed by the learned assessing officer is bad in law and barred by limitation.

50. To support his argument, he referred to the page No. 2 of the paper book and submitted that in the 'residential status' column, the assessee has filed its return of income stating him to be 'non-resident". He further stated that assessee has shown his residence jurisdiction of ' Singapore" and also given tax identification No. of that country. He referred to the draft assessment order dated 30 September 2022, in

paragraph No. 21 of that order, where the status of the assessee was considered to be a 'resident'. He further referred to paragraph No. 26 of the draft assessment order where in conclusion the learned assessing officer held that assessee is a 'resident and ordinary resident of India'. He further referred to the provisions of section 144C of the Act, and submitted that in case of an 'eligible assessee', the learned assessing officer should have at the first instance passed the draft assessment order. If the assessee is not an 'eligible assessee', there is no need to pass the draft assessment order. For the definition of the 'eligible assessee', he referred to the provisions of section 144C (15) (iia) of the Act. He submits that when the assessee is a 'resident of India', he is not an 'eligible assessee' and therefore in his case , no draft assessment order should have been passed and only final assessment order should have been passed. He further stated that the final assessment order should have been passed by 30 September 2022 whereas the draft assessment order is passed on 30 September 2022 culminating into a final assessment order on 31st of July 2023. The final assessment order passed by the ld AO is barred by Limitation.

51. He relied upon the decision of Shyam Sunder Bhartia vs. Deputy Commissioner of Income-tax (International Taxation) [2023] 149 taxmann.com 162 (Lucknow - Trib.)/[2023] 200 ITD 117 (Lucknow - Trib.)[23-02-2023]. His argument was that when assessee is held by the learned assessing officer as 'resident' assessee, he is not an 'eligible assessee' and so the draft order is not required to be passed and hence

the order of draft assessment passed by the learned assessing officer in case of this assessee is invalid and therefore the final order is also passed by the learned assessing officer is barred by limitation. He relied upon the decision of the coordinate benches in case of Atos India (P.) Ltd. vs. Deputy Commissioner of Income-tax [2023] 152 taxmann.com 217 (Mumbai - Trib.)/[2023] 103 ITR(T) 296 (Mumbai - Trib.)[23-02-2023], Johnson & Johnson (P.) Ltd. vs. Dy. CIT/ACIT/Jt./ITO/NFAC, Delhi [2024] 158 taxmann.com 1246 (Mumbai - Trib.)/[2024] 112 ITR(T) 259 (Mumbai - Trib.)[13-06-2023] and also the decision of the honourable Bombay High Court in case of Aldrin Alberto Araujo Soares vs. Deputy Commissioner of Income-tax [2024] 162 taxmann.com 186 (Bombay)/[2025] 482 ITR 257 (Bombay)[04-03-2024]. He further held that the honourable Karnataka High Court has admitted identical matter which is pending in case of Mr Riju Ravindran. Thus, he submits that the action of passing the draft assessment order in case of assessee who is not an ' eligible assessee' as per the ld AO himself, is bad in law and hence, final assessment order is barred by limitation, hence, deserves to be quashed.

Submission of Ld. ASG on behalf of AO: -

52. On behalf of the department, ld. Additional Solicitor General Shri Arvind Kamat submitted ground wise submission. He also referred to written submissions made earlier and placed his written note. He first referred to his written note placed on record on 24/09/2025 as under :-

Facts of the case in Brief: -

1. It is respectfully submitted that in the return of income, the assessee declared his residential status as a "non-resident" and claimed refund of ₹136,15,32,200/- against taxes deducted at source on income arising in India. The case was selected for scrutiny under CASS and was initially assigned to the Faceless Assessment Unit. In view of the assessee's claim of non-resident status, the case was transferred to the Assessing Officer having jurisdiction over international taxation. The subsequent assessment proceedings were thereafter carried out by the said jurisdictional Assessing Officer in accordance with law.

2. During the course of assessment proceedings, the assessee contended that he qualified as a non-resident under Explanation 1(b) to section 6(1)(c) of the Income-tax Act, 1961 ("the Act"), on the ground that he is a citizen of India visiting the country. In the alternative, the assessee further sought to claim the benefit of Explanation 1(a) to section 6(1)(c) by asserting that he had left India for the purpose of employment abroad. The assessee also submitted that his stay in India during the relevant previous year was 141 days.

3. The factual position, however, clearly establishes that the assessee stayed in India for more than 365 days in the preceding four previous years and also for 141 days during the relevant previous year.

Accordingly, in terms of the main provision of section 6(1)(c) of the Act, the assessee satisfies both the statutory conditions, namely

(i) Stay of 365 days or more in the four preceding previous years, and

(ii) Stay of 60 days or more during the relevant previous year. Hence, the assessee is squarely a "resident" for the year under consideration.

4. It is further submitted that the benefit of Explanation 1(a) and Explanation 1(b) to section 6(1)(c) is not automatic and is confined only to those individuals who strictly satisfy the specific conditions stipulated therein. The assessee has failed to establish that he falls within the ambit of either of the said Explanations. Therefore, his reliance on the same is misplaced and devoid of merit.

Submissions of the Respondent (Revenue) in Brief are as Under.

1. It is respectfully submitted that the Revenue does not dispute the non-applicability of Section 6(1)(a) of the Income-tax Act, 1961 ("the Act") in the present case, in as much as the assessee admittedly remained in India for only 141 days during the relevant financial year 2019–20, which falls short of the 182-day threshold prescribed under that clause.

2. However, the Revenue emphatically asserts that the provisions of Section 6(1)(c) of the Act are squarely attracted in the present case. The assessee remained in India for 141 days during FY 2019–20, thereby exceeding the threshold of 60 days expressly stipulated under the said clause. Further, his stay in India during the four immediately preceding previous years (FYs 2015–16 to 2018–19) aggregates to more than 365 days, thereby fulfilling the second limb of the statutory test under Section 6(1)(c).

3. In addition, the Revenue submits that the assessee has consistently remained in India for more than 182 days in each of the preceding

nine previous years, thereby evidencing **a pattern of continuous, prolonged, and sustained presence in India**. This factual matrix not only satisfies the basic conditions under Section 6(1)(c) but also squarely attracts the additional conditions under Section 6(6) of the Act, rendering the assessee a Resident and Ordinarily Resident (ROR) in India.

4. It is respectfully contended that a plain and harmonious reading of Section 6(1)(c)—even without recourse to the Explanations appended thereto—unambiguously establishes the residential status of the assessee as "Resident" for the relevant assessment year. The statutory requirements under the main provision stand fulfilled on the admitted facts.

5. Without prejudice, should the assessee seek to rely upon the benefit of Explanation 1 to Section 6(1), the burden of proof squarely lies upon him to establish, with cogent, credible, and verifiable evidence, that the strict conditions contemplated therein are satisfied. It is a settled principle of law that an Explanation to a statutory provision is in the nature of an exception or clarification, and cannot be mechanically invoked to dilute, override, or nullify the express mandate of the main provision, unless the assessee establishes a clear factual foundation.

Determination of the Residential Status of the Appellant under Section 6(1)(c) read with Explanation 1(b) of the Income-tax Act, 1961

6. The assessee has sought to invoke the provisions of **Explanation 1(b) to Section 6(1)(c)** of the Income-tax Act, 1961 ("the Act"). However, the assessee does **not satisfy the conditions** stipulated therein to avail the benefit of the said Explanation. This issue has been exhaustively examined and discussed in the **assessment order**, wherein detailed reasons have been provided regarding why

and how this Explanation was originally introduced in the statute specifically in the context of **Non-Resident Indians (NRIs).**

7. It is pertinent to note that an Explanation to Section 6(1) of the Act was first introduced vide **Finance Act, 1978**, providing relaxation to Indian citizens rendering services outside India to remain in India on leave or vacation for **89 days** in a previous year without becoming a resident under Section 6(1)(c). This provision was subsequently modified, and **Explanation 1(b)** was inserted by the **Finance Act, 1982**, introducing further relaxations to the residence test under Section 6(1)(c).

8. The legislative intent has been reiterated in subsequent clarifications, notably through the **Direct Tax Laws (Second Amendment) Act, 1989**, read with **CBDT Circular No. 554, dated 13-2-1990**, issued under the heading ***"Liberalisation of the criterion for determining the residential status in the case of Non-Resident Indians."*** The heading itself is unambiguous that these relaxations were meant **exclusively for NRIs**, enabling them to spend longer durations in India without losing their non-resident status, and **not for individuals who were residents of India until the immediately preceding year.**

9. The legislative intent underlying Explanation 1(b) was further clarified by the **Finance Act, 1994**, as explained in **CBDT Circular No. 684, dated 10-6-1994**. Para 19.1 of the Circular explicitly records that the period of **60 days under Section 6(1)(c)** was enhanced to **150 days** ***"in the case of a non-resident, i.e., a citizen of India or a person of Indian origin, who, being outside India, comes on a visit to India."*** This clarification makes it abundantly clear that the relaxation under Explanation 1(b) was intended **exclusively for non-residents**—citizens of India or persons of Indian origin settled abroad, who occasionally visit India.

10. Accordingly, the assessee's reliance on Explanation 1(b) is **wholly misplaced**. A combined reading of **Circulars 346 (1982), 554 (1990), and 684 (1994)** leaves no ambiguity. The provision was

designed to protect genuine NRIs from inadvertently becoming residents due to extended visits to India, and not to shield those who were residents of India until the immediately preceding year and merely undertook last-minute foreign visits as a part of regular business trips.

11. The present case does not fall within the purview of this relaxation. The assessee was a resident of India up to FY 2018–19 and cannot be equated with a non-resident Indian "coming on a visit" from abroad. It is respectfully submitted that such a factual scenario does **not meet either the letter or the spirit of the law**. The assessee cannot be permitted to take shelter under a provision intended for genuine non-residents merely on the basis of departure to a foreign country before the commencement of the financial year, particularly in light of his frequent trips abroad.

12. Accordingly, the assessee's contention that Explanation 1(b) applies to his case is **wholly misconceived and untenable**. The provision was enacted with the clear legislative intent of enabling **genuine Non-Resident Indians** to spend longer periods in India for the purpose of managing their investments without jeopardising their non-resident status. It was **never intended** to apply to individuals who were residents of India until the immediately preceding year and who merely undertook frequent overseas business engagements.

13. The assessee emphasizes that he left for Singapore in February 2019 to take up employment with Xto10X Technologies Pte. Ltd, Singapore, departing India on 21.02.2019 and commencing employment on 22.02.2019. However, it is evident from the record that the assessee returned to India on 27.02.2019, and further visited India on the second day of the relevant FY 2019–20 [Please refer to the page no. 410 (stamping of 27.02.2019) and 408 (stamping of 02.04.2019) of the paperbook]. Subsequently, the assessee undertook multiple visits to India for extended periods until his resignation from Xto10X Technologies Pte. Ltd, Singapore on 05.09.2019. It is respectfully submitted that the employment with Xto10X Technologies Pte. Ltd,

Singapore is not a genuine foreign employment, but merely an extension of the assessee's business operations in India. The assessment order has elaborately documented how the Singapore entity is closely linked with Indian operations:

a. The company operates primarily within the Indian start-up ecosystem;
b. The clients and customers are predominantly Indian;
c. The organisation's workforce mostly comprises Indian nationals; and
d. The office address was in Bengaluru, India.

14. Further, the operations of Xto10X Technologies Private Limited, an Indian company registered in Bengaluru, are closely connected with Xto10X Technologies Pte. Ltd, Singapore. Consequently, the assessee's employment cannot be regarded as rendering services outside India in the true sense, and he is therefore not entitled to the relaxations under Explanation 1(b) to Section 6(1)(c). The employment abroad was essentially a continuation of business operations based in India, and the assessee cannot artificially claim non-resident status on this basis.

15. The assessee has contended that the expression "being outside India" has not been explicitly defined and therefore should not be interpreted as equivalent to "being non-resident." This submission is wholly misconceived. The phrase "being outside India" occurring in Explanation 1(b) to section 6(1)(c) cannot be read in isolation. The provision is specifically worded to apply to "a citizen of India, or a person of Indian origin within the meaning of section 115C, who, being outside India, comes on a visit to India." The reference to "person of Indian origin" as defined in section 115C, coupled with the consistent legislative history and CBDT Circulars No. 346 (30-6-1982), 554 (13-2-1990) and 684 (10-6-1994), makes it abundantly clear that the relaxation was intended only for genuine non-resident Indians and persons of Indian origin settled abroad who visit India for limited periods.

16. It is therefore submitted that the phrase "being outside India" cannot be extended to cover a person who was resident in India up to the immediately preceding year, and who merely undertakes a short departure abroad before the commencement of the financial year, only to return frequently and continue to maintain substantial presence in India in the relevant financial year. To interpret otherwise would defeat the legislative intent and permit residents to wrongfully claim the relaxation meant exclusively for non-residents.

17. Further, Assessee's reliance on the case of Manoj Kumar Reddy [2009] 34 SOT 180 (Bangalore) is wholly misplaced. The facts and circumstances of that case are entirely distinguishable and do not support the assessee's claim. In Manoj Kumar Reddy, the core issue was whether Explanation 1(b) could be invoked by a person who had permanently returned to India after ending employment abroad. The Tribunal categorically held that such benefit was not available.

18. Furthermore, even in that case, the Tribunal applied the threshold of 60 days under section 6(1)(c) and did not substitute it with the extended period of 182 days. The Tribunal ultimately held the assessee to be non-resident only because section 6(1)(c) itself was rendered inapplicable on account of the period of stay in India being less than 60 days, and not because of any relaxation under Explanation 1(b). This is explicitly evident from para 3.25 of the decision, which reads as under:

> *"As per the General Clauses Act, the first day in a series of a day is to be excluded if the word 'from' is used. Since for computation of the period, one has to necessarily import the word 'from' and, therefore, accordingly, the first day is to be excluded. In the instant case, if the first day, i.e., 31-1-2005 is excluded then the period of stay will be 59 days. Since the period of stay will be less than 60 days, therefore, section 6(1)(c) will not be applicable and the status of the assessee will be non-resident. We, therefore, accept the second alternate contention of the appellant and hold that the status of the assessee will be non-resident."*

19. It is, therefore, clear that the finding of non-resident status in Manoj Kumar Reddy arose solely due to non-fulfilment of the basic 60-day condition under section 6(1)(c) and not because of the application of the relaxation to 182 days under Explanation 1(b). Accordingly, the assessee's reliance on this decision is wholly misconceived, irrelevant to the present facts, and liable to be rejected.

20. In view of the statutory framework, CBDT Circulars, and judicial interpretation, it is respectfully submitted that Explanation 1(b) to section 6(1)(c) is a narrow relaxation intended solely for genuine non-resident Indians or persons of Indian origin visiting India. The assessee, having been resident in India up to FY 2018–19 and maintaining substantial business, personal and economic nexus within India, does not fall within the ambit of this relaxation. Accordingly, the assessee cannot claim the extended threshold of 182 days and is squarely a resident under section 6(1)(c) of the Act.

Determination of the Residential Status of the Appellant under Section 6(1)(c) read with Explanation 1(a) of the Income-tax Act, 1961

21. The assessee has attempted to claim the benefit under Explanation 1(b) to section 6(1)(c) as discussed above. Failing that, the assessee has sought to invoke Explanation 1(a) as an alternate route. The relevant provision is reproduced below for clarity:

...

Explanation 1.—In the case of an individual:

(a) Being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words

"sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted."

...

22. In simpler terms, to claim the benefit of Explanation 1(a), the following conditions must be cumulatively satisfied:

a. The assessee must be a citizen of India;
b. The assessee must leave India during the relevant previous year; and
c. The assessee must leave either for the purposes of employment outside India or as a member of the crew of an Indian ship.

Only when all three conditions are strictly fulfilled can the assessee invoke the benefit of the extended threshold of 182 days under Explanation 1(a). Any failure to satisfy even one of these conditions renders the claim inapplicable.

23. On the first Condition, there is no dispute that the assessee is a citizen of India, and this condition is satisfied. However, as per second condition, the assessee must leave India during the relevant previous year. The assessee, however, has repeatedly contended that he left India in February 2019, which falls in the previous year immediately preceding the relevant assessment year, and not in the relevant previous year itself (FY 2019-20). The assessee cannot alter his stance selectively to suit his claim under Explanation 1(a). Consequently, the second condition for claiming the benefit of Explanation 1(a) remains unfulfilled.

24. The assessee has submitted that,

"As is evident from the list of important dates, on 05.09.2019, whilst being present in India, the Appellant resigned from employment with Xto10X Singapore. On 10.09.2019, the Appellant travelled from India to Singapore for the purpose of taking up employment with Three State Capital Advisors Pte. Ltd. at its offices in Singapore with effect from 12.09.2019.

At the time of his resignation from employment with Xto10X Singapore, and prior to taking employment with Three State Capital

Advisors Pte. Ltd., the Appellant was present in India. It is also clear that the Appellant left India for the purpose of taking up employment outside India (with Three State Capital Advisors Pte. Ltd.). This is further supported by the fact that the Appellant entered Singapore on 10.09.2019 by way of the in-principle employment pass issued with respect to employment with Three State Capital Advisors Pte. Ltd."

25. However, a critical date in this context is 20th August 2019, on which the EXECUTIVE AGREEMENT was executed between Three State Capital Advisors Pte. Ltd. and the assessee, Shri Binny Bansal. Importantly, this date precedes 5th September 2019, the date on which the assessee claims to have resigned from employment with Xto10X Technologies Pte. Ltd, Singapore while being in India. [This Agreement is on the page no. 440 of the paperbook]

26. It is therefore submitted that the assessee's assertion that he was present in India itself after resigning from Xto10X Technologies Pte. Ltd, Singapore and prior to taking up employment with Three State Capital Advisors Pte. Ltd., is factually incorrect and directly contradicted by documentary evidence. The signing of the Executive Agreement on 20th August 2019 clearly establishes that the assessee was fully aware of his forthcoming role and that the employment would commence upon issuance of the final employment pass by the Ministry of Manpower, Singapore. The application for the employment pass was submitted on 21st August 2019, well before the assessee's resignation from Xto10X Technologies Pte. Ltd, Singapore on 5th September 2019. [Please refer to the page no. 456 of the paperbook]

27. It is thus evident that the assessee remained employed with Xto10X Technologies Pte. Ltd, Singapore and stayed in Singapore during this period. His visit to India from 1st September 2019 to 10th September 2019, including the date of resignation on 5th September 2019, has no bearing on the commencement of employment with Three State Capital Advisors Pte. Ltd., **except to create the appearance of compliance with the conditions of Explanation 1(a)** to Section 6(1)(c). This deliberate attempt to manipulate dates cannot be

allowed to override the clear statutory requirements and factual reality.

28. Without prejudice to the above, even if it is assumed that the Executive Agreement was signed on 20th August 2019, the agreement ought to have been executed with BTB Advisors Pte. Ltd., as the change of name to Three State Capital Advisors Pte. Ltd. became effective only from 02/09/2019. This discrepancy creates factual inconsistencies in the document relied upon by the assessee to demonstrate compliance with the conditions for claiming the benefit under Explanation 1(a) to Section 6(1)(c). [Refer Page No. 439 of the Paperbook.]

29. Further, the assessee has claimed that he resigned from Xto10X Technologies Pte. Ltd, Singapore while being present in India. However, the assessee has failed to substantiate this claim with credible evidence. [The resignation letter submitted by the assessee is on page no. 1036 of the paperbook for reference.]

30. As evident from the document, the resignation letter is signed by both the assessee, Shri Binny Bansal, and the Director, Shri Saikiran Krishnamurthy. It is not clear how this letter could have been signed by both parties if it was purportedly submitted from India on 05.09.2019. The assessee has also not provided any supporting details regarding the mode of communication, such as email exchanges or courier receipts, through which the resignation was sent.

31. If the resignation letter was physically handed over to the company in Singapore, it cannot be considered as having been submitted while the assessee was in India. Therefore, the factual claim made by the assessee in this regard is unsubstantiated and cannot be relied upon.

32. Further, as per the employment contract between the assessee and Xto10X Technologies Pte. Ltd, Singapore, a formal notice period of three months was required to be served by either party for termination of employment. In contrast, the resignation letter submitted by the assessee was accepted on the same day, without

adherence to the contractual notice period. The assessee has also failed to submit the Minutes of the Board of Directors' meeting of Xto10X Technologies Pte. Ltd, Singapore, which could have substantiated the purported waiver or acceptance of immediate resignation. This further underscores that the assessee's claim regarding resignation while being in India is unsupported by credible documentary evidence.

33. The assessee has failed to establish that he left India during the relevant previous year/financial year, a prerequisite to claim the benefit under Explanation 1(a). The inconsistencies in the documentary record, including resignation letters and employment agreements from closely held companies under the assessee's control suggest that these documents were orchestrated to create the appearance of compliance with Explanation 1(a). These documents are not corroborated by independent evidence, such as emails, official correspondence etc.

34. Consequently, the second condition under Explanation 1(a), requiring the assessee to leave India in the relevant previous year, remains unfulfilled. It is also on record that the assessee himself repeatedly claimed to have left India in February 2019, which is outside the relevant previous year.

35. Now coming to third Condition that the assessee must leave India for the purposes of employment outside India. The assessee contends that, he left India to take up employment with Three State Capital Advisors Pte Ltd, Singapore. However, critical examination of the facts and the corporate structure requires to be looked into:

    a. The assessee is the founder, promoter, and substantial primary shareholder of both Xto10X Technologies Pte. Ltd, Singapore and Three State Capital Advisors Pte Ltd, Singapore.

    b. Three State Capital Advisors Pte Ltd, Singapore was incorporated only in April 2019, and both companies are operated from the same office premises in Singapore. This is confirmed from the Form IR8A (Singapore Income Returns filed

on 29th February 2020) filed by the assessee. [Please refer to page no. 434 & 459 of the paperbook]

c. Both companies share the same office address at '80 Raffles Place #32-01 UOB Plaza, Singapore -048824', as well as the same authorized personnel and contact numbers, as per the assessee's own filings.

36. In view of the above facts, the contention that the assessee was "offered employment" in India with Three State Capital Advisors Pte Ltd, Singapore immediately after resigning from Xto10X Technologies Pte. Ltd, Singapore is entirely untenable. Both entities are under the assessee's control, with substantial primary shareholding vested in him. Treating this as a new employment for the purposes of Explanation 1(a) would result in an unwarranted tax benefit, effectively enabling the assessee to evade Indian taxation, despite retaining continued business control and operational influence over both entities.

37. Given that both Xto10X Technologies Pte. Ltd, Singapore and Three State Capital Advisors Pte. Ltd. were founded, promoted, and substantially controlled by the assessee, and that both functioned from the same premises with an overlapping management structure, **the so-called "new employment" is nothing more than an internal shifting of roles. Such intra-group restructuring cannot, by any reasonable interpretation, be treated as fresh employment outside India for the purposes of Explanation 1(a).**

38. Accordingly, the third essential condition under Explanation 1(a) – that the assessee should have left India in the relevant previous year for the purposes of employment outside India – is not satisfied.

39. In light of the foregoing analysis, it is established that the assessee does not qualify for the benefit of Explanation 1(a). Since the assessee was in India for more than 60 days during the relevant previous year and more than 365 days in the preceding four years,

he squarely falls within section 6(1)(c) and is required to be treated as a Resident for tax purposes in India.

Substance over Form

40. It has already been demonstrated in the preceding paragraphs that the assessee cannot claim the benefit of either Explanation 1(a) or Explanation 1(b) to section 6(1)(c) of the Income-tax Act, 1961, whether separately or cumulatively.

41. However, beyond the technical ineligibility, the larger picture reveals that the assessee has devised a **colourable device** to present his stay and movements as either (i) "leaving India for the purpose of employment" or (ii) "visiting India while being outside India," solely with the intention of escaping capital gains taxation that is otherwise rightly chargeable in India. The principle of **substance over form**, repeatedly upheld by the Hon'ble Supreme Court (e.g., *McDowell & Co. Ltd. v. CTO* 154 ITR 148 (SC), Hyatt International Southwest Asia Ltd [2025] 478 ITR 238 (SC)), mandates that such contrived arrangements cannot be given effect where their purpose is tax avoidance.

42. The substance of the arrangement was not genuine employment abroad, but a mere device to circumvent the residency provisions under section 6(1)(c). The form adopted was that of "foreign employment" with entities promoted, controlled, and substantially owned by the assessee himself.

43. **Incorporation of Entities and Offer of Employment**

- **November 13, 2018:** The assessee resigned from Flipkart Internet Pvt. Ltd., India.
- **December 3, 2018:** Assessee incorporated **Xto10X Technologies Pvt. Ltd.**, an Indian company. (CIN: U74999KA2018PTC117196)
- **January 14, 2019:** Assessee incorporated **Xto10X Technologies Pte. Ltd.**, Singapore (Regn. No. 201901758E).

This company, promoted and co-founded by the assessee, was only weeks old at the time of his alleged "employment." This company holds 100% shares of Indian company **Xto10X Technologies Pvt. Ltd.**

- **February 17, 2019:** Assessee executed an employment agreement with **Xto10X Technologies Pte. Ltd,** Singapore.
- **February 21, 2019:** Assessee claims to have travelled to Singapore to take up this "**employment.**"

44. Notably, both the Indian and Singapore entities were promoted and substantially controlled by the assessee, shared overlapping business functions, and were part of his continuing entrepreneurial ventures. This demonstrates that the alleged "foreign employment" was not independent or external, but entirely under the assessee's control. Consequently, the assessee cannot claim that he was genuinely outside India in the context of **Explanation 1(b)**, which requires that a citizen of India who comes on a visit to India should still satisfy the prescribed conditions to avoid being treated as resident. In reality, these movements and self-created employment arrangements were orchestrated to give a misleading appearance of being non-resident, and cannot be recognized for the purposes of Explanation 1(b). Further, as highlighted in the preceding paragraphs, the legislative intent, as clarified through CBDT Circulars No. 346 dated 30-06-1982, No. 554 dated 13-02-1990, and No. 684 dated 10-06-1994, was never to provide any relaxation for self-created arrangements or artificial "foreign employment." These circulars explicitly confirm that the provisions under Explanation 1(b) to Section 6(1)(c) are intended solely for genuine Non-Resident Indians (NRIs) visiting India, and not for taxpayers attempting to extract the benefit on thier residency status to avoid capital gains tax.

45. **The Switch to Three State Capital Advisors Pte. Ltd, Singapore.**

- **April 12, 2019:** Assessee incorporated **BTB ADVISORS PTE. LTD.**, Singapore. Again, he was a co-founder and substantial shareholder.
- Assessee has frequently travelled to India during the period April 2019 to August 2019.
- **August 20, 2019:** Assessee signs Executive Agreement with **Three State Capital Advisors Pte. Ltd,** before resigning from the previous employment with **Xto10X Technologies Pte. Ltd.**, Singapore.
- **September 1, 2019:** Assessee comes to India.
- **September 5, 2019:** Assessee claims to have resigned from Xto10X Technologies Pte. Ltd, Singapore while in India. However, the resignation letter was both signed and accepted on the same day, without supporting communication records such as emails. Moreover, as per his original employment contract, three months' notice was mandatory, but no such process was followed. This further indicates that the resignation was a paper formality, not a genuine corporate act.
- **September 10, 2019:** Assessee returns to Singapore.
- **September 12, 2019:** A new work pass card is received from Singapore Ministry of Manpower and Assessee starts new employment with **Three State Capital Advisors Pte. Ltd, Singapore.**

46. The fact that both Xto10X Technologies Pte. Ltd, Singapore and Three State Capital Advisors Pte. Ltd, Singapore operated from the **same office premises (80 Raffles Place, #32-01, UOB Plaza, Singapore 048624)**, had common founders, overlapping control, and shared ownership by the assessee, demonstrates that the **so-called "switch" in employment was nothing more than an**

internal restructuring within his own group of companies. It cannot be construed as fresh employment abroad for the purposes of Explanation 1(a).

47. **Chronological Inconsistencies**

The assessee has provided inconsistent dates to suit his narrative:

i. Claim of resignation from Xto10X Technologies Pte. Ltd, Singapore on **5 September 2019** is unsubstantiated by independent evidence.

ii. The signing of the Executive Agreement on **20th August 2019** clearly establishes that the assessee was fully aware of his forthcoming role and that the employment would commence upon issuance of the final employment pass by the Ministry of Manpower, Singapore. This date precedes the date of **5th September 2019** demolishes the factual basis that Assessee resigned while being in India and then left India for the 'purpose of employment' as required under Explanation 1(a) to Section 6(1)(c).

iii. It is thus evident that the assessee remained employed with Xto10X Technologies Pte. Ltd, Singapore and stayed in Singapore during this period. His visit to India from 1st September 2019 to 10th September 2019, including the date of resignation on 5th September 2019, has no bearing on the commencement of employment with Three State Capital Advisors Pte. Ltd. Singapore, **except to create the appearance of compliance with the conditions of Explanation 1(a)** to Section 6(1)(c). This deliberate attempt to manipulate dates cannot be allowed to override the clear statutory requirements and factual reality

48. Conclusion – Colourable Device to Evade Tax

The above chronology and facts prove that the assessee orchestrated a scheme to portray his presence abroad as "employment" and his presence in India as "visits," with the sole purpose of avoiding Indian taxation on capital gains.

i. His so-called "employers" were companies founded and substantially owned by him.
ii. His movements between India and Singapore were frequent and inconsistent with a genuine independent employment.
iii. His resignation and re-employment were timed precisely to create the appearance of compliance with the conditions of Explanation 1(a) to Section 6(1)(c).

49. Thus, both Explanation 1(a) and 1(b) are inapplicable. The doctrine of **substance over form** squarely applies, and the assessee's residential status must be determined on the basis of his actual stay in India, not on the artificial constructs of self-employment arrangements. Accordingly, the assessee is to be treated as a **Resident** for FY 2019–20, and liable to capital gains tax in India.

50. In view of the above, it is evident that the assessee has employed a colorable device, purporting either an 'Indian visit while being outside India' or 'leaving India for the purpose of employment', with the sole objective of evading capital gains tax legitimately payable in India. Both Explanation 1(b) and 1(a) are clearly **inapplicable**, as elaborated in preceding paragraphs, and the legislative intent under CBDT Circulars No. 346 (30-06-1982), 554 (13-02-1990), and 684 (10-06-1994) was never to provide relaxation for such artificial arrangements.

51. The Hon'ble Supreme Court of India in McDowell & Co. Ltd. v. Commercial Tax Officer [1985] 22 Taxman 11 (SC) has unequivocally held that the use of colorable devices or schemes to avoid taxation is impermissible. The Court emphasized that such avoidance not only results in loss of public revenue but also undermines the ethical and moral foundation of taxation in a welfare state. It is neither fair nor

desirable to allow artificially structured transactions to escape tax liability, and judicial approval cannot be accorded to such devices. The relevant portion of the judgment is reproduced as under.

> *"16. We think that time has come for us to depart from the Westminster principle as emphatically as the British Courts have done and to dissociate ourselves from the observations of Shah, J. and similar observations made elsewhere. The evil consequences of tax avoidance are manifold. First there is substantial loss of much needed public revenue, particularly in a welfare state like ours. Next there is the serious disturbance caused to the economy of the country by the piling up of mountains of black money, directly causing inflation. Then there is the large hidden loss' to the community (as pointed out by Master Wheatcroft in 18 Modern Law Review 209)by some of the best brains in the country being involved in the perpetual war waged between the tax-avoider and his expert team of advisers, lawyers and accountants on one side and the tax-gatherer and his perhaps not so skillful, advisers on the other side. Then again there is the 'sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it'. Last but not the least is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guideless, good citizens from those of the 'artful dodgers'. It may, indeed, be difficult for lesser mortals to attain the state of mind of Mr. Justice Holmes, who said, 'Taxes are what we pay for civilized society. I like to pay taxes. With them I buy civilization'. But, surely, it is high time for the judiciary in India too to part its ways from the principle of Westminster and the alluring logic of tax avoidance. We now live in a welfare state whose financial needs, if backed by the law, have to be respected and met. We must recognise that there is behind taxation laws as much moral sanction as behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that it stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taxing statute, while considering a device to avoid tax, isnot to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. A hint of this approach is to be found in the judgment of Desai, J. in Wood Polymer Ltd. v. Bengal Hotels Ltd. 40 Comp. Case, 597 where the learned judge refused to accord sanction to the amalgamation of companies as it would lead to avoidance of tax.*

> ***17.*** *It is neither fair nor desirable to expect the Legislature to intervene and take care of every device and scheme to avoid taxation. It is up to the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of 'emerging' techniques of interpretation was done in Ramsay, Burma Oil and Dawson, to expose the devices for what they really are and to refuse to give judicial benediction.*
>
> *We agree with Ranganath Misra, J. that the appeal should be dismissed."*

52. In the present case, the assessee's arrangement clearly falls within the ambit of the principles enunciated in McDowell, and is a deliberate attempt to circumvent taxation. Therefore, the assessee's claim under Explanation 1(a) and 1(b) to Section 6(1)(c) is wholly untenable. In the interest of upholding the legislative intent and safeguarding public revenue, the appeal of the assessee deserves to be dismissed, and the assessee should rightly be treated as a resident of India for the relevant previous year.

53. Further, the Hon'ble Supreme Court in Hyatt International Southwest Asia Ltd. [2025] 478 ITR 238 (SC), has categorically held that legal form cannot override economic substance. The Court emphasised that tax liability must be determined on the basis of the real and substantive nature of the arrangement, and not on the labels or contractual structuring adopted by the taxpayer. This principle, read conjointly with the dictum in McDowell & Co. Ltd. v. CTO (154 ITR 148, SC), makes it clear that colourable devices and artificial arrangements created solely for tax avoidance cannot be given judicial recognition. Applying this principle, it is evident that the assessee's so-called "foreign employment" is merely a façade within his own controlled entities, contrived to mask his residential status. The assessee's reliance on Explanation 1(a) and 1(b) to Section 6(1)(c) is therefore wholly untenable, and his status must be

determined on the basis of substantive facts, which firmly establish him as a resident for the relevant previous year.

Tie-breaker clause under Article 4 of the India-Singapore DTAA:

54. This issue has been elaborately discussed in the Assessment order. Article 4 of the India-Singapore Double Taxation Avoidance Agreement discussed briefly as under.

Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows.

Provisions of the Article 4(2)	Assessee's case
a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;	Assessee has a permanent home in India. He has been living in C-703, Mantri Classic Apartments, ST Bed layout, Koramangala, Bengaluru, Karnataka, India (560034), as per the Income Tax Records. Further, from the Income Tax records assessee has purchased a large residential house in Koramangala Bengaluru, located at 411, 11th Main, 2nd Cross, 3rd Block, Koramangala, In fact, the assessee staked a claim of deduction u/s. 54F in relation to AY 2015-16. Further, it has also been discussed in assessment order as to how majority of the economic interests of assessee lies in India
b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the	The assessee for his entire life has been a resident of India and has been living and India and is an Indian National.

State in which he has an habitual abode	
c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;	Assessee is Indian National.
d. if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.	Not Applicable

Issuance of Notice u/s 143(2) by NFAC

55. This issue has already been addressed by the Honble High court of Karnataka in **Adarsh Developers vs. The DCIT** (Writ Petition No. 1109/2023). In the stated case, the petitioner challenged the validity of a notice issued under Section 143(2) of the Income Tax Act, 1961, by the Additional Commissioner of Income Tax, NaFAC-1(1)(2), Delhi. The petitioner contended that the notice was improperly issued by an authority outside the jurisdiction of the central charge, which, according to them, rendered the notice invalid.

56. The Hon'ble High Court noted that the National Faceless Assessment Scheme, introduced through Section 144B of the Income Tax Act, 1961, allows for the decentralization of assessment functions. The scheme empowers the Additional Commissioner of Income Tax, NaFAC, to issue notices under Section 143(2), irrespective of the traditional jurisdictional boundaries. The Court cited the General Clauses Act, 1897, particularly Section 24, which validates the continuation of such functions by the designated authorities. Therefore, the issuance of the notice by the Additional Commissioner of Income Tax, NaFAC-1(1)(2), Delhi, was deemed valid.

57. In view of the above, the contention of the assessee challenging the jurisdiction of the National Faceless Assessment Centre (NaFAC) in issuing notices under Section 143(2) is without merit and deserves to be dismissed. The Hon'ble High Court of Karnataka has clearly upheld the authority of NaFAC, confirming that such notices are valid and legally enforceable.

On the Issue Eligible Assessee:

58. This issue has already been dealt with in detail in the assessment order. The assessee had claimed the status of 'Non-resident' in the return of income filed. However, during the course of assessment proceedings, when the Assessing Officer proposed to determine the status as 'Resident', the scope of total income under section 5 of the Act automatically expanded to include all income accruing or arising outside India during the relevant year. This necessarily resulted in a clear **variation** between the income returned by the assessee and the proposed assessed income as per draft order.

59. Since such variation is undeniably prejudicial to the interest of the assessee, section 144C(1) of the Act mandates passing of a draft assessment order. Accordingly, the Assessing Officer has rightly invoked the provisions of section 144C and passed a draft order, thereby affording the assessee a statutory opportunity to file objections before the Dispute Resolution Panel.

60. Legislative intent behind the introduction of Dispute Resolution Panel[DRP] is clear through CBDT Circular No. 5/2010 (03-06-2010). It is to provide mechanism for speedy disposal of their cases so as to attain finality and to facilitate expeditious resolution of disputes. (Para 45.1 of CBDT Circular No. 5/2010).

61. Further, Para 45.4 clearly states that, It would be the choice of the assessee whether to file an objection against the draft assessment order before the Dispute Resolution Panel (DRP). The relevant portion of the circular is reproduced here as under.

> *"It would be the choice of the assessee whether to file an objection against the draft assessment order before the Dispute Resolution Panel (DRP) or to pursue the normal channel of filing an appeal against the assessment order before the Commissioner of Income Tax (Appeals). In order to approach the DRP, the assessee must file an objection against the draft assessment order within the prescribed time limit. In case the assessee does not file an objection, the assessing officer shall pass the assessment order. The assessee can file an appeal against such assessment order before the CIT (Appeals). Once the option of filing an objection against the draft assessment order before the DRP has been exercised, the assessee cannot withdraw the objection and opt for the normal channel of filing appeal before CIT (Appeals)."*

62. It is further pertinent to note that the assessee himself approached the Hon'ble DRP against the Draft Assessment Order issued by the AO, thereby invoking the jurisdiction of the DRP by treating himself as an 'eligible assessee'. Having voluntarily participated in the proceedings before the Hon'ble DRP and sought relief therefrom, the assessee is estopped from subsequently turning around to contend that he is not an 'eligible assessee' and that the Hon'ble DRP's order is bad in law. Such a contradictory stand is not tenable either on facts or in law, as one cannot approbate and reprobate in the same proceedings. The assessee's conduct clearly demonstrates that his submissions are self-contradictory and devoid of merit.

63. Further, the assessee's reliance on case of Aldrin Alberto Araujo Soares [2024] 162 Taxmann.com 186 (Bombay), on this issue is entirely misplaced, as the facts of that case are materially different from the present matter. In Soares, the petitioner had initially filed a return claiming status as 'Resident', subsequently filed a revised return as 'Non-resident', and later withdrew or abandoned the revised return, ultimately accepting himself as a 'Resident'. Consequently, there was no subsisting variation between the income returned and the income assessed, which is the pre-condition for invoking section 144C. The Hon'ble High Court, therefore, **merely set aside** the draft order and directed that assessment be made treating the assessee as Resident, as per his own final stand.

64. In contrast, in the present case, the assessee continues to assert that he is a non-resident, while the Assessing Officer has proposed to determine him as a resident, thereby creating a clear variation in income under Section 144C. Unlike Soares, there has been no abandonment of the non-resident claim. Therefore, the procedure under Section 144C is squarely applicable, and the assessee cannot derive any support from the Soares decision.

65. Further, Hon'ble High Court has also observed at para 26 of the judgment of Aldrin Alberto Araujo Soares [2024] 162 Taxmann.com 186 (Bombay), that "***just as the Petitioner cannot have the worst of both worlds, he equally cannot have the best of both worlds***", is squarely applicable to the present facts. The assessee, having approached and participated before the Hon'ble DRP as an 'eligible assessee', cannot now turn around and contend that he is not eligible, thereby attempting to selectively benefit from conflicting positions. Such contradictory conduct is legally untenable and must be rejected.

Concluding Submissions:

66. It is evident from the facts and detailed analysis that the assessee cannot claim the benefit of Explanation 1(b) to section 6(1)(c). In view of the statutory framework, CBDT Circular Nos. 346 (1982), 554 (1990), and 684 (1994), and judicial interpretation, it is respectfully submitted that Explanation 1(b) to section 6(1)(c) is a narrow relaxation intended solely for genuine non-resident Indians or persons of Indian origin visiting India. The assessee, having been resident in India up to FY 2018–19 and maintaining substantial business, personal and economic nexus within India, does not fall within the ambit of this relaxation. Accordingly, the assessee cannot claim the extended threshold of 182 days and is squarely a resident under section 6(1)(c) of the Act.

67. Likewise, under Explanation 1(a), the assessee's claim that his move from Xto10X Technologies Pte. Ltd, Singapore to Three State Capital

Advisors Pte. Ltd, Singapore. constituted new foreign employment is wholly illusory. Given that both Xto10X Technologies Pte. Ltd, Singapore and Three State Capital Advisors Pte. Ltd, Singapore. were founded, promoted, and substantially controlled by the assessee, and that both functioned from the same premises with an overlapping management structure, the so-called "new employment" is nothing more than an internal shifting of roles. Such intra-group restructuring cannot, by any reasonable interpretation, be treated as fresh employment outside India for the purposes of Explanation 1(a).

68. Further, it is also evident that the assessee remained employed with Xto10X Technologies Pte. Ltd, Singapore and stayed in Singapore during this period. His visit to India from 1st September 2019 to 10th September 2019, including the date of resignation on 5th September 2019, has no bearing on the commencement of employment with Three State Capital Advisors Pte. Ltd., **except to create the appearance of compliance with the conditions of Explanation 1(a)** to Section 6(1)(c). This deliberate attempt to manipulate dates cannot be allowed to override the clear statutory requirements and factual reality.

69. Viewed holistically, the assessee's conduct demonstrates a classic case of a colorable device, where form is used to disguise substance. The substance-over-form principle applies squarely, and such artificial arrangements cannot be given judicial approval, as reinforced by the Hon'ble Supreme Court in *McDowell & Co. Ltd. v. CTO* 154 ITR 148 (SC), Hyatt International Southwest Asia Ltd [2025] 478 ITR 238 (SC), which strongly discourages schemes intended to evade tax.

70. In conclusion, the assessee is ineligible to claim the benefits of Explanation 1(b) or Explanation 1(a), separately or collectively. In law and on facts, the assessee must be treated as a resident of India, and all income as per section 5(1) of the Act, must be fully subjected to taxation under the Income-tax Act. Any contrary contention is untenable and legally unsustainable, and it is respectfully requested

to dismiss the assessee's claim and uphold the assessment in its entirety.

71. It is submitted that respondents may be permitted to file additional submissions on the changed circumstances of the case.

Wherefore, the above appeal is liable to be dismissed in the interest of justice.

53. With respect to ground No. 6 he submitted that the issue of notice under section 143 (2) issued by the National Faceless Assessment Centre is in order as held by the honourable single judge of Karnataka High Court in case of Adarsh Private Limited which is also confirmed by the learned authorised representative and therefore no further arguments are required.

54. On Ground No 7, on the issue of the assessee not being an eligible assessee, he referred to the provisions of section 144C of the Act and submitted that the draft assessment order is required to be framed "in the first instance" and therefore as the assessee has claimed himself to be a non-resident Indian, the learned assessing officer is duty-bound to pass a draft assessment order first. He submits that the claim of the assessee is that he is a non-resident assessee and therefore when the learned assessing officer is passing the assessment order, he has to consider this 'at the first instance' and then pass the draft assessment order first. He submits that whatever is the disclosure made by the

learned assessing officer in his return of income is mandatory to be considered by the assessing officer and therefore as the assessee himself has claimed his return of income showing the status as "non-resident,", there is no infirmity in the draft order passed by the learned AO. He further submitted that all the cases shown by the learned authorised representative are pertaining to the transfer pricing assessment and therefore they do not apply to the facts of the case. With respect to the decision of the honourable Bombay High Court decision in case of Aldrin Alberto Araujo Soares vs. Deputy Commissioner of Income-tax [2024] 162 taxmann.com 186 (Bombay)/[2025] 482 ITR 257 (Bombay)[04-03-2024] relied upon by the assessee, it was submitted that the judgement turned into on its particular facts which are mentioned in the order of the honourable Bombay High Court. The facts in case of this assessee are quite distinguishable and therefore all these decisions do not apply.

55. He further submitted that if the learned assessing officer had not passed the draft assessment order in the instant case but if final assessment order would have been passed, and if later on the assessee succeeds before the higher forum that his status is "non-resident", then the assessee would say that the learned assessing officer should have passed the draft assessment order first. Therefore his submission was that 'at the first instance' the provisions itself says that in case of an eligible assessee, draft assessment order should have been passed. He submits that the assessee cannot claim that in his return of income he is a non-resident and for the purpose of procedure of the assessment,

he is claiming that the procedure should have been adopted of a resident not of a non-resident. He otherwise submitted that that decision of the honourable Bombay High Court on its observation clearly shows that assessee cannot have both the worlds. Thus he submits that that ground No. 7 of the appeal of the assessee should fail on this count itself.

56. On the issue of resident versus non-resident ground No. 2 – 4 of the appeal, the learned ASG specifically referred to the observation of the learned assessing officer and specifically stated that for the purpose of considering the residential status of the assessee, provisions of section 6 of the Act are required to be considered. The assessee does not fulfil condition of being in India for more than 182 days for that assessment year. But assessee is also in India for more than 365 days in four preceding years as well as more than 60 days in the impugned year. Therefore, conditions of the residential status to consider him as a 'resident in India' are fulfilled.

57. With respect to the provisions of Explanation 1 (b), he specifically stated that all the circular cited by the assessee clearly shows that they speaks about the non-resident and amendment was to facilitate and relax the conditions of residential status for the non-residents. He submits that when the provisions of the law enunciated by the

circulars clearly shows that the Explanation applies only to the non-resident, there is no reason to accept the fact that phrase 'being outside India" should be also applicable to the person who is not a non-resident. He further referred to the various circular cited by the learned assessing officer such as circular No. 554 dated 13 February 1990, circular No. 684 of 10 June 1994. Thus he submitted that the explanation submitted by the assessee that above clause (b) applies only to a non-resident is devoid of any merit.

58. In a distinct argument, the ld ASG submitted that the ld AO has also stated that shifting of the residence of the assessee from India to Singapore is just to avoid taxes. He specifically referred to the fact of the case, and page No. 104 of the paper book wherein a notice under section 142 (1) of the Income Tax Act was placed. He submits that the assessee was asked by paragraph No. 1 to give a detailed note on purpose of his visit or stay in Singapore and further the learned assessing officer in paragraph No. 2 referred to the Direct Tax Code and stated that the stay of the assessee in Singapore for assessment year 2020 – 21 leading to he being treated as a tax resident of Singapore for the concerned assessment year on sale of shares, the provisions of general anti-avoidance rules are applicable. Therefore, the whole exercise of the assessee of sifting his residence to Singapore consequent to the sale of shares was alleged by the learned assessing officer to be an anti-avoidance of tax Step. He further referred to the reply of the assessee at page No. 7 dated 14 March 2022 wherein the assessee did not give the complete detail but sought an adjournment.

He further referred to page No. 186 of the submission of the assessee dated 16 March 2022 wherein on page No. 187 the assessee replied that "the assessee has left India for the purpose of taking up employment as chief executive officer of X to 10X technologies pte Ltd (previously known as B2B consulting PT Ltd) and commenced work in Singapore with effect from 22 February 2019. A copy of the employment letter as well as letter to the Ministry of Manpower confirming his date of joining the company is enclosed as annexure 4A and 4B respectively. The employment pass that had been issued to the assessee by the Ministry of Manpower, Singapore in this regard is enclosed as annexure 5. As co-founder and principal shareholder of X to 10 X, the assessee has continued to advise and guide X to 10 X till date. The assessee spouse and his two minor children moved to Singapore to take up residence with the assessee in March 2019. On 12 September 2019, the assessee took up the role of chief executive officer of Three State Capital Advisors PTE Ltd Singapore, (previously known as B2B Advisors Pte Ltd.), presently renamed to Three State advisors Pte Ltd. As chief executive officer the assessee is responsible for the management and conduct of the business of the company. A copy of the employment letter is enclosed as annexure 6 and copy of the employment pass that had been issued to the assessee by the Ministry of Manpower, Singapore is enclosed as annexure 7". The learned ASG further took us to page No. 197 of the paper book which is a letter written by B2B Consulting Private Limited on 17 February 2019 to the assessee wherein employment was " at will" and

further the services can be terminated by giving the three months prior notice. He further referred to page No. 20 for of the paper book which is an executive agreement executed on 28 August 2019 between Three State Capital Advisors Private Limited and the assessee. He further referred to page No. 374 being notice under section 142 (1) issued by the learned assessing officer on 15 September 2022 wherein the issue of residential status was once again raised by the assessing officer. He referred to the reply of the assessee dated 19 September 2022 placed at page No. 377 of the paper book and also referred to factual background of the assessee as mentioned at page No. 378 of the paper book. On the basis of the above explanation, he referred to page No. 439 of the paper book which is a certificate confirming incorporation of a company issued by accounting and corporate regulatory authority of Singapore wherein Three State Advisors PTE Ltd was formerly known as BTB Advisors Private Limited with effect from 12 April 2019. He submitted that the executive agreement between Three State Advisors Private Limited was executed with the assessee only on 20 August 2019 and therefore as on that date, the Three State Capital Advisors PTE Ltd was not at all in existence which has come into existence only on 2 September 2019. He further referred to the page No. 456 of the paper book which is a new work pass card issued by controller of work passes, Singapore on 16 September 2019 in the name of employer BTB Advisors PTE Ltd. He submits that when already there is a name change with effect from 2 September 2019, how the work pass was issued in the name of BTB

Advisors Private Limited on 16 September 2019. He further referred to page No. 703 of the paper book which is a notice issued by the learned assessing officer on 21 September 2022 wherein the learned assessing officer as per paragraph No. 8 clearly asked the assessee to show his residential status as per The Double Taxation Avoidance Agreement also holding that the learned assessing officer has already held that the assessee is resident as per provisions of section 6 (1) (C) of the Act. He further referred to reply of the assessee placed at page No. 709 of the paper book and referring to page No. 722 of the paper book submitted that assessee has a permanent home in India as already stated by the learned assessing officer. He further referred to page No. 1036 which is a resignation letter issued by the assessee to the board of directors of X to 10X PTE Ltd on 5 September 2019 which is accepted and confirmed by Mr Sai Kiran Krishnamurthy, director of the above company. It was further stated that the resignation letter is dated 5 September 2090, wherein the resignation was to be effective from 1 September 2019 waiving of the formal notice period as per agreement. He further referred to the screenshot of X to 10 X website and referred to the observation of the AO that this company did not have any substance in Singapore.

59. He submits that the assessee has not produced the executive agreement of X to 10 X pte Ltd. Further at page No. 1036 which is the resignation letter of the assessee and submitted that this resignation letter was submitted to the company in Singapore when the assessee was in India. Now the same is resignation letter has been

accepted by a company in Singapore through its director Mr Sai Kiran Krishnamurthy on the same date. He further stated that the resignation letter does not show any place from where the assessee has signed or the date of acceptance by the employer. The learned ASG further stated that the above documents clearly shows that the executive agreement entered on 20 August 2019 with Three State Capitals PTe Ltd when the above company was came into existence only on 2 September 2090 could have been entered into. It is submitted that assessee has left India in February 2019 which falls in the financial year 2018 – 19 which is not the relevant year to claim the benefit. He submitted that the relevant previous year is 2019 – 20 relevant to assessment year 2020 – 21. He also submitted that the tax to 10X Pte Ltd, has the address of 80, Raffeles Place #32-01, UOB Plaza Singapore 048624, he also referred to the appointment letter to the assessee by BTB Consulting Private Limited placed at page No. 426 of the paper book which also shows the same address. The same address is also shown of Three State Capital Advisors PTE Ltd. He further submitted that assessee is a promoter and employee of all these companies and also a major shareholder.

60. Based on the above documents, he submitted that these documents have been created to show that assessee is a non-resident only. Therefore, it is apparent that all these documents are created by the assessee which is a colourable device to just prove that assessee is a

non-resident for the impugned assessment year. He submitted that all these documents are not bona fide documents, but created to give the assessee an evidence to show that his residential status is "non-resident". He submitted that So far as the contention that it is open to everyone to so arrange his affairs as to reduce the brunt of taxation to the minimum, was concerned, the tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by restoring to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. Courts are now concerning themselves not merely with the genuineness of a transaction, but with the intended effect of it for fiscal purposes. No one can now get away with a tax avoidance project with the mere statement that there is nothing illegal about it, and ld. ASG vehemently relied up on the decision of Honourable supreme court in Mc Dowell & Co. Ltd. vs. Commercial tax Officer [1985] 22 Taxman 11 (SC)/[1985] 154 ITR 148 (SC)/[1985] 47 CTR 126 (SC)[17-04-1985].

61. The learned Additional Solicitor General read his detailed note which is as under:-

REBUTTALS TO SUBMISSION MADE BY THE APPELLANT ON 24.10.2025

1. The Appellant has filed further submissions on 14.10.2025 in response to the Revenue's written submissions dated 24.09.2025. In continuation of, and without prejudice to, the submissions already placed on record on 24.09.2025, the Revenue respectfully submits the following additional counter-rebuttals for the consideration of this Hon'ble Tribunal.

Facts of the case in Brief: -

2. It is respectfully submitted that in the return of income, the assessee declared his residential status as a "non-resident" and claimed refund of ₹136,15,32,200/- against taxes deducted at source on income arising in India. The case was selected for scrutiny under CASS and was initially assigned to the Faceless Assessment Unit. In view of the assessee's claim of non-resident status, the case was transferred to the Assessing Officer having jurisdiction over international taxation. The subsequent assessment proceedings were thereafter carried out by the said jurisdictional Assessing Officer in accordance with law.

3. During the course of assessment proceedings, the assessee contended that he qualified as a non-resident under Explanation 1(b) to section 6(1)(c) of the Income-tax Act, 1961 ("the Act"), on the ground that he is a citizen of India visiting the country. In the

alternative, the assessee further sought to claim the benefit of Explanation 1(a) to section 6(1)(c) by asserting that he had left India for the purpose of employment abroad. The assessee also submitted that his stay in India during the relevant previous year was 141 days.

4. The factual position, however, clearly establishes that the assessee stayed in India for more than 365 days in the preceding four previous years and also for 141 days during the relevant previous year. Accordingly, in terms of the main provision of section 6(1)(c) of the Act, the assessee satisfies both the statutory conditions, namely

(i) Stay of 365 days or more in the four preceding previous years, and

(ii) Stay of 60 days or more during the relevant previous year. Hence, the assessee is squarely a "resident" for the year under consideration.

5. It is further submitted that the benefit of Explanation 1(a) and Explanation 1(b) to section 6(1)(c) is not automatic and is confined only to those individuals who strictly satisfy the specific conditions stipulated therein. The assessee has failed to establish that he falls within the ambit of either of the said Explanations. Therefore, his reliance on the same is misplaced and devoid of merit.

6. **Counter Rebuttal to Para 1.1(a) of Appellant's submissions dated 14.10.2025:**

6.1 At the outset, it is respectfully submitted that the Appellant's reliance on the Explanatory Memorandum to the Finance Bill, 1982 is selective and misconceived. The Finance Minister's Budget Speech of 1982, introducing the amendment, explicitly records that the object was to liberalise the residence test in the case of Non-Resident Indians visiting India. The contemporaneous CBDT Circular No. 346 dated 30.06.1982 reaffirmed this intent by clarifying that the relaxation was provided to enable NRIs settled abroad to spend a longer period in India without jeopardising their non-resident status. The subsequent clarificatory Circulars No. 554 (13.02.1990) and No. 684 (10.06.1994) consistently echoed the same legislative policy.

6.2 Further, the Appellant himself refers to the Explanatory Memorandum to the Finance Bill, 1982 and notes that an explanation to section 6(1) was first introduced vide the Finance Act, 1978 to enable Indian citizens rendering services outside India to stay in India on leave or vacation "without becoming resident." The repeated use of the phrase "without becoming resident" is of determinative relevance and reinforces the Revenue's interpretation. The expression necessarily presupposes that the relaxation was intended

for persons who were already non-resident, and who, but for the relaxation, would have become resident under section 6(1)(c). If an individual is already a resident in India, the question of "not becoming resident" does not arise at all.

6.3 Thus, even applying a purposive interpretation, the legislative intent underlying the 1978 and 1982 amendments was to safeguard non-residents from inadvertently triggering residency due to short-term personal visits to India. This stands in complete harmony with Circulars No. 554 (1990) and No. 684 (1994), both of which explicitly state that the liberalisation of the residence test was meant for Non-Resident Indians visiting India.

6.4 Accordingly, the relaxation under Explanation 1(b) was intended only for genuine non-resident Indians and persons of Indian origin settled abroad who visit India for limited periods, and cannot be invoked by individuals who continued to be residents in India up to the immediately preceding year.

6.5 The legislative intention behind Explanation 1(b) to section 6(1)(c) is clear: it was enacted to grant relief only to non-resident Indians, i.e., individuals who are already outside India and come to India merely on a visit. The benefit was never intended for persons who were residents in the immediately preceding year and who seek to acquire a colorable status of being "outside India" by artificially shifting base shortly before the commencement of the relevant previous year.

6.6 Without prejudice to the above, the Appellant has sought to contend that the expression "being outside India" has not been defined in the Act and therefore should not be interpreted narrowly. The Revenue respectfully submits that, although the term is not expressly defined, judicial interpretation and the legislative context establish that the expression **"being outside India" requires a degree of permanence, stability, and substantive presence abroad.** It does not encompass a temporary or transitional stay outside India.

6.7 In the present case, the Appellant has not demonstrated that he had established a settled, permanent, and independent base outside India **prior to the commencement of the relevant previous year.** The material placed on record does not indicate that, at the start of the previous year, the Appellant had shifted his centre of life, residence, or economic activity outside India in a manner consistent with the legislative intent underlying Explanation 1(b). The alleged foreign employment was in an entity

incorporated and controlled by the Appellant himself and remained closely connected to India in terms of business focus, value, workforce, and operational linkages. Furthermore, the Appellant's initial residence in a serviced apartment before the start of the previous year reinforces that his presence abroad was temporary and exploratory, rather than a settled relocation of the nature envisaged under Explanation 1(b). **This requirement of establishing permanency prior to 01.04.2019 is particularly material in the present case, as the Appellant's first recorded entry into India during the relevant previous year was on 02.04.2019 itself,** as evident from passport stampings. Thus, unless a settled base abroad existed before 01.04.2019, the Appellant's arrival in India on 02.04.2019 cannot be characterised as a "visit from abroad" within the meaning of Explanation 1(b).

6.8 It is further submitted that the Appellant has placed selective reliance only on documents or events relating to Singapore, while remaining selectively silent on material aspects of his Indian presence. No clarity has been provided regarding the nature and extent of his stay in India prior to his alleged departure, during his multiple subsequent visits, and particularly during the COVID-19 period. These facts are crucial to assess whether the Appellant had genuinely shifted his residential and economic base outside India. **Despite the Hon'ble Bench seeking certain clarifications during the course of oral submissions, the Appellant has not furnished the relevant details or complete factual matrix on these aspects.** Such selective presentation of facts further weakens the Appellant's claim of having established "being outside India" at the commencement of the previous year.

6.9 In these circumstances, the deliberate withholding of material facts relevant to determining the true nature of the Appellant's residential position warrants an adverse inference in law, in line with the settled principle that where relevant evidence is withheld, it must be presumed that such evidence would not support the case of the party withholding it.

6.10 The Appellant has submitted that residential status must be determined on a year-to-year basis. While professing this proposition, it must equally be appreciated that residential status is required to be determined with reference to the factual position as it existed at the commencement of the relevant previous year. **Subsequent developments during the year cannot retrospectively convert a temporary or**

exploratory stay abroad into the level of settled permanency necessary to satisfy the "being outside India" requirement as on the first day of the previous year.

6.11 In the present case, the Appellant has not demonstrated that he had, at the commencement of the previous year, altered his primary residence, centre of life, or economic base outside India. On the contrary, the continuing personal, economic, and business nexus of the Appellant with India, including the fact that the Singapore entity was intrinsically linked to, and derived its substantial value and operations from, India, reinforces that the Appellant's permanent home and primary base of operations remained in India at the relevant time.

7. **Counter Rebuttal to Para 1.1(b):**

7.1 The Appellant's interpretation of CBDT Circular No. 684 dated 10.06.1994 is also erroneous. The circular refers to "a non-resident, i.e., a citizen of India or a person of Indian origin," which merely clarifies that a non-resident may be either an Indian citizen or a person of Indian origin. These are the exact words used in Explanation 1(b), and therefore, the Appellant's attempt to assign a different connotation or expanded meaning to them is wholly unfounded.

7.2 Furthermore, the heading of the circular, "Liberalisation of the criterion for determining residential status in the case of Non-Resident Indians," unequivocally demonstrates that the intended beneficiaries are Non-Resident Indians visiting India, and not individuals who continue to retain resident status in India. The context, structure, and terminology of the circular are fully aligned with the legislative intent underlying Explanation 1(b).

7.3 It is therefore submitted that CBDT Circular No. 684 (1994), when read in conjunction with Circulars No. 346 (1982) and No. 554 (1990), supports and reinforces the Revenue's interpretation rather than contradicting it.

8. **Counter Rebuttal to Para 1.1(c)**

8.1 While the Appellant is correct in stating that residential status is determined on a year-to-year basis, the expression "being outside India, comes on a visit to India" under Explanation 1(b) cannot be read in isolation or in a purely literal sense. The provision contemplates that the individual must already be situated outside India in a settled and substantive manner, such that India is no longer his place of residence, but only a place of visit. The term "visit" necessarily implies that the individual's ordinary place of stay lies outside India at the relevant point in time.

8.2 A person who was a resident in India up to the immediately preceding previous year, and who has not demonstrated any **element of permanency or established base abroad at the commencement of the relevant previous year**, cannot be regarded as "coming on a visit" within the meaning of Explanation 1(b). In the absence of such permanency, any travel outside India would amount only to a temporary absence, not a relocation that converts India into a place of visit. Accordingly, the Appellant does not satisfy the foundational condition for invoking Explanation 1(b).

9. **Counter Rebuttal to Para 1.1(d):**

9.1 The assertion that the Revenue's interpretation creates circularity is misplaced. Explanation 1(b) operates as an **exception** to the basic rule in section 6(1)(c). The main provision must first be applied to determine residential status, and **only thereafter** can the Explanation modify the period of stay required to trigger residency. There is, therefore, no inconsistency in applying the Explanation only where the factual situation satisfies its threshold conditions.

9.2 Further, for the exception to apply, the individual must already be **situated outside India in a manner denoting a settled residential base,** such that India becomes a place of visit and not residence. **In the absence of such permanency at the commencement of the relevant previous year**, there is no occasion to invoke the relaxation under Explanation 1(b). This approach is consistent with the settled principles of statutory interpretation governing exceptions to general rules and ensures that the provision operates within the scope for which it was enacted.

10. **Counter Rebuttal to Para 1.1(e):**

10.1 The Appellant's contention that the Revenue is attempting to "rewrite" the statute is devoid of merit. The Revenue's interpretation flows directly from the statutory language **"being outside India, comes on a visit to India"** as enacted by the Legislature. The use of the word **"visit"** is deliberate and denotes that India must not be the place of residence of the individual at the material time; rather, it must be a place visited from an existing residence outside India. Had Parliament intended to extend the relaxation to all Indian citizens travelling abroad for any purpose or for short durations, it would have adopted broader wording such as "being outside India for any reason" or omitted the phrase "comes on a visit to India" altogether.

10.2 The construction advanced by the Revenue is therefore based on the **plain and ordinary meaning** of the statutory text and preserves the integrity of the provision as an exception intended for **Indian citizens or persons of Indian origin who had already established a settled base outside India prior to the commencement of the relevant previous year, and who thereafter visit India**. There is no question of adding to or subtracting from the statute; the Revenue is merely giving effect to the language used by Parliament in its natural sense, consistent with the settled canons of interpretation applicable to fiscal statutes.

11. **Counter Rebuttal to Para 1.1(f):**

11.1 The Appellant's reliance on the Hindi version of the provision is misplaced. For the purpose of ascertaining legislative intent, the **original English text** of the Income-tax Act, 1961 remains authoritative, particularly in respect of provisions introduced through the Finance Act where the English text forms the basis of parliamentary enactment. The Hindi translation cannot be used to expand or alter the scope of the provision beyond what is conveyed in the English text. Reliance is placed on Article 348 of Constitution & case of Shahjahan v/s DM Udham singh Nagar.[Special Appeal No. 593 of 2019 decided on 18.09.2019]

11.2 Further, when read in the proper context, the Hindi wording relied upon by the Appellant does not support a wider interpretation. It conveys the same meaning as the English expression "being outside India" and does not dilute the implicit requirement of an established and settled base abroad. The Appellant's attempt to rely selectively on a translated expression, without considering the statutory context and legislative history, does not assist his case. The Explanatory Memoranda, Finance Minister's Speech, and CBDT Circulars — which constitute reliable aids to construction — clearly confine the relaxation to Indian citizens or persons of Indian origin who are already permanently settled outside India and thereafter visit India.

12. **Counter Rebuttal to Para 1.1(g):**

12.1 The Appellant's argument that the Revenue's interpretation leads to "absurd results" or causes undue hardship is misconceived. The residence rules under section 6 of the Act are objective, day-count–based statutory tests intended to ensure certainty and prevent subjective manipulation in determining residential status. Differences in outcome based on the timing of departure or arrival are inherent in such day-based thresholds and do not constitute absurdity or inequity.

12.2 It is a well-settled principle that **perceived hardship or inconvenience cannot override clear statutory language,** particularly in a taxing statute. The interpretation advanced by the Appellant seeks to remove the express requirement "being outside India, comes on a visit to India" from Explanation 1(b) and replace it with a broader, textually unsupported construction; such an approach is impermissible.

12.3 Further, the argument that the Appellant would suffer a permanent disadvantage if the benefit of Explanation 1(b) is denied for the relevant year is factually and legally unfounded. Even if the Appellant does not qualify for the relaxation under Explanation 1(b) in Year 2, there is no perpetual prejudice, because:

i. the Appellant may still establish residential status for that year [year 2] through the **tie-breaker clause** under Article 4 of the India–Singapore DTAA, which ultimately allocates residency to only one country, and

ii. if in subsequent years [year 3] the Appellant genuinely establishes a settled and permanent base outside India, he may **avail the benefit of Explanation 1(b) from future years,** once the factual conditions for its applicability are satisfied.

12.4 Thus, the statutory framework already provides mechanisms to ensure that an assessee is not subjected to double taxation or permanent detriment. The "permanent disadvantage" argument is therefore misplaced, exaggerated, and cannot constitute a basis to distort the plain meaning of the provision. The Revenue's interpretation ensures that the benefit of Explanation 1(b) remains confined to genuine cases of non-residents visiting India, and not those who were residents up to the immediately preceding year and had not established permanency abroad.

13. **Counter Rebuttal to Para 1.2:**

13.1 The Appellant contends that the Revenue has incorrectly relied on the reference to Explanation to clause (e) of section 115C for interpreting the scope of Explanation 1(b) to section 6(1)(c). The Appellant argues that the reference to section 115C is limited only to defining the term "person of Indian origin" and does not link Explanation 1(b) to non-residents. This submission is untenable for the following reasons:

13.2 The Revenue's reference to section 115C was never for the purpose of importing the definition of "non-resident Indian" into section 6(1)(c), but to point out that the very wording of Explanation 1(b) - "a citizen of India or a person of Indian origin" - demonstrates that the Legislature consciously intended the provision to apply to

individuals settled abroad and not to persons who continue to be residents in India. The Appellant's reading overlooks the contextual relevance of this reference.

13.3 The Appellant's contention that the term "non-resident Indian" cannot be read into section 6(1)(c) is misplaced. The likely reason the Legislature did not use the expression "non-resident Indian" when Explanation 1(b) was introduced by the Finance Act, 1982 is that the statutory definition of an "NRI" under section 115C was enacted only later, through the Finance Act, 1983 with effect from 1 April 1983. At the time of introducing Explanation 1(b), the Legislature therefore described the same class of persons by referring to Indian citizens or persons of Indian origin who are outside India.

13.4 Once the statutory concept of "NRI" was formally incorporated into the Income-tax Act through section 115C, the subsequent CBDT Circulars (No. 554 dated 13.02.1990 and No. 684 dated 10.06.1994) appropriately adopted the term "NRI" to describe this category. This evolution in terminology merely reflects the later arrival of a defined expression and does not alter or dilute the consistent legislative intent, which has always been that the relaxation under Explanation 1(b) is intended for individuals already settled outside India and thereafter visiting India.

13.5 Even otherwise, the Appellant's reliance on section 115C is irrelevant to the core issue. Explanation 1(b) is not concerned with defining "NRI" but with identifying the limited category of persons eligible for relaxation from the **60-day rule**. The Explanation must be interpreted with reference to its context, purpose, and accompanying Circulars. On this basis, the provision unquestionably applies only to individuals who had a **non-resident base abroad prior to the start of the relevant previous year** and thereafter visit India.

13.6 Therefore, the Appellant's attempt to distinguish between "citizen of India", "person of Indian origin", and "non-resident Indian" does not assist his case. The Revenue's reference to section 115C was contextually appropriate and only for the limited purpose of demonstrating that the Legislature consistently intended this relaxation for individuals who were **already outside India in a settled and demonstrable manner**, not for those who continued to remain residents in India until the immediately preceding year.

14. **Counter Rebuttal to Para 1.3:**

14.1 The Appellant has sought to rely on selective extracts of the ruling to suggest that Explanation 1(b) may be applied even where the individual was a resident in the preceding year. This reading is fundamentally incorrect. The Tribunal in Manoj Kumar Reddy did not hold that Explanation 1(b) could apply to a person who remained a resident up to the immediately preceding year. The only reason the assessee in that case was held to be a non-resident for the relevant year was because his stay in India was less than 60 days after excluding deputation-related days. The 182-day relaxation under Explanation 1(b) was neither applied nor required for the decision.

14.2 Importantly, the Tribunal's observations were made in the context of a person whose **centre of employment and residence had already shifted outside India** as part of his employer-mandated deputation. The Appellant's attempt to treat those observations as a blanket extension of Explanation 1(b) to persons who have not first established a non-resident base is **misplaced and contrary to the ratio of the ruling.**

14.3 Further, the facts of *Manoj Kumar Reddy* are materially distinguishable. In that case, there existed a **clear, recognised, and compulsory employer-employee relationship** that necessitated the assessee's stay outside India. His foreign posting was mandated by his employer, and he had **no discretion** to choose India as his place of stay or work during the relevant period. His economic, professional, and residential ties had shifted abroad in substance.

14.4 In stark contrast, in the present case, the Appellant's alleged "employment" in Singapore arose from a **self-created role** in an entity incorporated and controlled by himself, with continuing and predominant business linkages to India. There was **no external commercial or contractual compulsion** requiring the Appellant to remain outside India, nor any evidence of a genuine shift of his economic or personal base abroad at the commencement of the relevant year. This distinction goes to the root of the applicability of Explanation 1(b).

14.5 In light of the above, the ruling in *Manoj Kumar Reddy* does not assist the Appellant. The decision turned on the <60-day rule under section 6(1)(c) and not on the application of Explanation 1(b). The Tribunal's reasoning, if anything, **supports the Revenue's interpretation** that Explanation 1(b) is available only where the individual has already established a **genuine, substantive, and compelled** base outside India prior to the

relevant year and thereafter visits India. The Appellant's reliance on the ruling is therefore misplaced and unsustainable.

15. **Counter Rebuttal to Para 1.4(a):**

15.1 At the outset, the Appellant's objection that the Revenue's submissions constitute a "new ground" being raised for the first time at the appellate stage is wholly untenable. It is well-settled that the **Income-tax Appellate Tribunal is the final fact-finding authority** and is vested with wide jurisdiction to examine all facts, materials, and legal contentions necessary for a correct adjudication of the matter. The Tribunal is not confined merely to the record as it existed before the lower authorities; rather, it is empowered to consider any material or argument that assists in determining the correct tax liability in accordance with law. This principle has been consistently affirmed in the following decisions:

- National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC) – The Tribunal has jurisdiction to examine a question of law arising from facts on record, even if not raised earlier.

- Hukumchand Mills Ltd. v. CIT (1967) 63 ITR 232 (SC) – ITAT's powers are expressed in the widest possible terms and are not confined to issues considered by the AO or CIT(A).

15.2 Given this settled legal position, once the Appellant has, before this Hon'ble Tribunal, introduced fresh factual assertions and a new narrative regarding the nature of his employment, family relocation, residential arrangements, and the functioning of Xto10X Singapore, the Revenue is fully entitled to respond to such new material and rebut the factual claims advanced. The Revenue is not introducing a new "source of income" or new "head of assessment", but is merely placing relevant factual rebuttal to the case newly projected by the Appellant at this stage.

15.3 Accordingly, the Appellant's objection is misconceived and contrary to the settled law governing the Tribunal's jurisdiction.

16. **Counter Rebuttal to Para 1.4(b):**

16.1 The Appellant's reliance on his brief travel to India on 27.02.2019 being only to accompany his spouse and children to Singapore does not advance his case. Such travel arrangements, even if assumed to be bona fide, **do not establish that the Appellant**

had already shifted his residential base outside India at the commencement of the relevant previous year. The determination of residential status must be made with **reference to the factual position as it existed on 01.04.2019**, as repeatedly clarified by jurisprudence. Any subsequent movement of family, execution of tenancy arrangements, school admissions, or administrative steps taken **after** the commencement of the previous year cannot retrospectively confer the status of "being outside India" at the relevant point in time.

16.2 The question under Explanation 1(b) is not whether the Appellant eventually moved his family or took steps towards settling abroad during the year, but whether **a settled and established base outside India already existed as on the first day of the previous year.** Temporary relocation steps, transitional arrangements, or ongoing relocation processes do not satisfy this threshold. Therefore, the assertion that the family's relocation demonstrates a bona fide shift does not meet the statutory test for claiming the benefit of Explanation 1(b).

17. **Counter Rebuttal to Para 1.4(c):**

17.1 The Appellant's reliance on the existence of employees, office premises, invoicing, Singapore tax filings and the earning of revenue by Xto10X Singapore to demonstrate a genuine foreign employment is misplaced. These assertions do not address the core statutory requirement under Explanation 1(b), which is whether **the Appellant's own presence outside India was compelled by a genuine, independent employer–employee relationship**, and whether India had ceased to be his residential and economic base at the commencement of the relevant previous year.

17.2 Firstly, the Appellant claims that Xto10X Singapore earned revenue from "more than 20 customers" during FY 2019–20. However, **no details have been furnished** to establish:

- how many of these customers were Indian entities or India-linked clients,

- how many were connected to or referred through the Indian subsidiary or Indian business network, and

- whether such business was effectively serviced from India.

17.3 In the absence of this breakdown, the assertion of a wholly foreign commercial footprint remains unsubstantiated. The possibility of the Singapore entity being predominantly

engaged in **India-facing business or business sourced through the Appellant's Indian nexus** cannot be ruled out.

17.4 Secondly, the Appellant's reference to Xto10X Singapore's statutory compliance such as GST registration, TRC issuance, and Singapore income-tax filings is **not relevant** to the issue under consideration. Regulatory filings or tax residency of the Singapore entity do not determine the residential status of the Appellant under section 6 of the Act. The test for residential status is based on **where the Appellant's life, residence, and economic base were situated**, not on whether the incorporated entity met local compliance requirements.

17.5 Thirdly, even if the Company had employees in Singapore, that fact alone does not establish that the Appellant's presence there was independent or that he was functioning under a **compelled employer-driven role**. As a founder–promoter with controlling influence, the Appellant retained full discretion over his place of stay and operations. This is materially different from a situation where an employee has no choice on the place of posting due to an arm's-length employer mandate.

17.6 Accordingly, the factors cited by the Appellant do not demonstrate that his presence in Singapore was of the nature contemplated under Explanation 1(b), nor do they show that India had ceased to be his primary base at the commencement of the relevant previous year.

18. **Counter Rebuttal to Para 1.4(d):**

18.1 The Appellant seeks to argue that for Explanation 1(b), what is relevant is only the situs of the Appellant "being outside India" and that the nature or geographic location of the employer's clients is irrelevant. This submission oversimplifies the statutory requirement and omits critical conditions embedded in Explanation 1(b).

18.2 Firstly, **the expression "being outside India" requires more than mere physical presence**. It requires the Appellant to demonstrate that, **as on the first day of the relevant previous year**, he had already established a **settled, permanent, and independent base abroad**, such that India became only a place of visit. The Appellant has not discharged this burden. Reliance on subsequent tenancy arrangements, children's schooling, or issuance of Dependent Passes during FY 2019-20 **does not establish that such permanency existed at the commencement of the year.**

18.3 Secondly, the Appellant's argument that Indian business linkages are irrelevant is misconceived. While the geographical location of customers alone may not be determinative, where the **foreign "employment" is intrinsically linked to, derived from, or controlled through India**, such ongoing and substantial nexus **negates the inference that the Appellant had shifted his residential and economic base outside India**. In the present case, the Appellant's Singapore role was closely tied to Indian operations, value creation and business relationships, and therefore cannot be equated to an independent foreign posting.

18.4 Thirdly, the documents cited by the Appellant — Employment Pass, Dependent Passes, tenancy, and schooling of children — may establish residence **during** FY 2019-20, but they do **not prove "being outside India" at the start of the previous year**, which is the relevant statutory test for invoking Explanation 1(b). Subsequent steps to relocate, even if bona fide, **cannot retrospectively create eligibility of "being outside India"** at the beginning of the year.

18.5 Lastly, the Appellant's argument incorrectly assumes that Explanation 1(b) applies merely upon demonstrating that the individual was located abroad at any time during the year. The provision requires that the individual must be **already settled outside India before the start of the relevant previous year**, and only thereafter *come to India on a visit*. The Appellant clearly does not satisfy this threshold condition.

18.6 Accordingly, the Appellant's submissions under Point 1.4(d) are insufficient to establish the situs "being outside India" as required under Explanation 1(b), and therefore do not assist the Appellant.

19. **Counter Rebuttal to Para 1.4(e):**

19.1 The Appellant seeks to rebut the Revenue's position by contending that his role with Xto10X Singapore cannot be considered "self-created employment" merely because the entity was founded along with two other promoters. This contention is misplaced for the following reasons:

19.2 **Characterisation of Employment depends on the nature of control, not the number of Promoters:** The presence of co-founders does not, by itself, convert an entrepreneurial venture into an employer-employee engagement of the nature contemplated in Explanation 1(b). What is material is whether the Appellant had **any independent employer exercising authority over him**. In this case, the Appellant was

a founder-promoter with significant control over strategic, operational and financial decisions of the Singapore entity. His association was **self-directed, discretionary and in the nature of a promoter-led entrepreneurial pursuit**, not an employment under an external employer.

19.3 **Self-Employment or Entrepreneurial ventures abroad do not automatically qualify under Explanation 1(b):** Explanation 1(b) provides relaxation **only where the individual is already having a non-resident base and thereafter visits India.** Even if self-employment is covered, the threshold condition remains that the individual must have **established a settled and independent base abroad prior to the start of the relevant previous year.** The Appellant has not demonstrated such permanency as at 01.04.2019. Therefore, reliance on the Budget Speech to argue that self-employment is included is irrelevant unless the **primary, foundational requirement of being already outside India in a settled capacity** is met.

19.4 **Promoter-Driven Entrepreneurial activity abroad is not a substitute for "Being outside India":** The Appellant's status as an entrepreneur for many years does not by itself prove that his move to Singapore constituted a **shift of residence.** Entrepreneurial activity can be carried out from any jurisdiction and does not establish that India ceased to be his principal base at the commencement of the year. An entrepreneurial venture where the Appellant retains freedom to choose his place of residence **does not meet the standard of a compelled or externally-structured foreign engagement** underlying Explanation 1(b).

19.5 **Budget Speech extract does not assist the Appellant:** The Budget Speech extract relied upon by the Appellant merely clarifies that the benefit is not confined to formal employment. It does **not remove the condition** that the individual must already be situated outside India before visiting India. The Appellant's reading isolates a single sentence to dilute a threshold that remains firmly embedded in the statutory text and circulars. The Finance Minister's speech, read as a whole, reinforces that the provision was intended to mitigate hardship for **those already non-resident** who come to India temporarily, not to extend a benefit to individuals who were residents up to the immediately preceding year.

19.6 Accordingly, the Appellant's submissions under Point 1.4(e) fail to address the core requirement of Explanation 1(b): that the individual must have been already non-

resident and situated outside India in a settled manner prior to the commencement of the previous year. Entrepreneurship abroad, even if genuine, does not by itself satisfy this statutory threshold.

20. **Counter Rebuttal to Para 1.5:**

20.1 The Appellant's objection that the Revenue's submissions on his continued personal, economic, and business nexus with India constitute a "new ground" at the appellate stage is factually incorrect and therefore denied. The issue of the Appellant's ties to India and the lack of evidence demonstrating a genuine shift of residence was specifically examined and discussed during the assessment proceedings. The Assessing Officer analysed the Appellant's residential pattern, business interests, and India-linked activities, and concluded that the Appellant continued to retain substantial and ongoing nexus with India.

20.2 Accordingly, the Revenue's submissions before this Hon'ble Tribunal are **not new**, but are a continuation of the very grounds forming the foundation of the assessment order. The Appellant's attempt to characterise them as fresh grounds is misplaced.

20.3 **Residential status determination under section 6 cannot ignore personal and economic nexus:** While the statutory tests under section 6 follow objective time-based criteria, **the factual matrix concerning an assessee's personal, economic, business, social and financial linkages** is relevant to determine whether the assessee's **base had genuinely shifted outside India** at the commencement of the previous year - which is the foundational requirement for invoking Explanation 1(b). Therefore, reference to the Appellant's continuing and substantial connections with India is not a new ground, but a necessary factual examination to assess the credibility of the Appellant's claim of "being outside India".

20.4 The Appellant's reliance on *Sudhir Choudhrie v. ACIT* is misplaced. That decision merely reiterates that residential status must be determined strictly on the basis of the statutory day-count tests under section 6(1), and that such statutory criteria cannot be overridden by subjective considerations. The Revenue is not seeking to override section 6(1) by importing any extraneous conditions; rather, the Revenue is demonstrating that the **Appellant does not satisfy the threshold condition for availing the relaxation under Explanation 1(b)**, namely, that he must have **established a settled, permanent base outside India before the commencement of the relevant previous year**

20.5 Further, the factual matrix in *Sudhir Choudhrie* is fundamentally different and, in fact, reinforces the Revenue's position. In that case, the assessee had **relocated long prior to the relevant assessment year,** having moved his entire family outside India in the year 2000, and had since been residing abroad on a residency visa/highly skilled visa in the UAE and the UK. For A.Y. 2005-06, the assessee's **long-term relocation and permanent base outside India** were undisputed and accepted by both parties. The Tribunal, therefore, applied the statutory provisions on the basis that the assessee was already a non-resident, and the only issue was the application of the day-count rule.

20.6 In contrast, **the core issue in the present case is precisely whether the Appellant had established a settled, permanent base outside India before the commencement of the relevant previous year**, which is a factual matter requiring examination. Unlike in *Sudhir Choudhrie*, the Appellant's alleged relocation and establishment of a base abroad are not admitted facts and are seriously disputed. The Appellant cannot rely on a ruling where the foundational facts were clear, accepted, and long-established, to bypass the requirement of proving such facts in the present case.

20.7 Accordingly, the ruling in Sudhir Choudhrie does not assist the Appellant and, if anything, supports the Revenue's interpretation that the statutory provisions must be applied strictly as enacted, without expanding the scope of Explanation 1(b).

21. **Counter Rebuttal to Para 2.1:**

21.1 The Appellant's contention that the Revenue's position is "inconsistent" is factually incorrect and misconceived. It is the **Appellant's own stand that is contradictory,** and the attempt to argue that he succeeds "either under Explanation 1(a) or under Explanation 1(b)" is legally untenable for the following reasons:

21.2 The Appellant's stand is internally inconsistent and self-defeating. On one hand, the Appellant claims eligibility under Explanation 1(b) by asserting that he was already "being outside India" on account of taking up employment in February 2019. On the other hand, he claims eligibility under Explanation 1(a) on the footing that he left India for employment in September 2019. These two positions are mutually exclusive and cannot co-exist on the same set of facts.

21.3 A person cannot simultaneously assert that India was merely a place of visit (as required for Explanation 1(b)) and at the same time contend that he left India for employment thereafter, for the purpose of Explanation 1(a). If one's departure for employment is

claimed to have occurred later in September 2019, it logically follows that he was not "already outside India" prior to that date. The statutory schemes of Explanation 1(a) and Explanation 1(b) operate in distinct and mutually exclusive fields, and the Appellant's attempt to invoke both to suit convenience is inherently contradictory and untenable.

21.4 **The Appellant's own timeline disproves his Explanation 1(a) claim and exposes renewed India nexus:** If the Appellant's contention is that he qualifies under Explanation 1(a) only after resigning from Xto10X Singapore on 05 September 2019, then by his own admission, his stay in India from 05 September to 10 September 2019 would amount to a return to India after cessation of employment abroad. This re-entry and continued stay in India during this period re-establishes his nexus with India. This re-entry undercuts the claim of continuous foreign employment; in any case, the Appellant still fails the statutory conditions of Explanation 1(a) on their own terms.

21.5 The Appellant fails both Explanation 1(a) and Explanation 1(b) on merits.

- Explanation 1(a) applies where the individual leaves India during the relevant previous year for the purpose of employment outside India. The Appellant left only in February 2019, i.e., prior to the start of previous year, and therefore does not satisfy the statutory timing condition.

- Explanation 1(b) requires the assessee to be already outside India in a settled manner and to come to India on a visit. The Appellant was a resident till FY 2018-19, had not established a permanent base abroad as on 01.04.2019, and made multiple business trips to India — not "visits" in the statutory sense. Hence, he also fails Explanation 1(b).

21.6 **The allegation of inconsistency by the Revenue is misplaced:** The Revenue has maintained a consistent position - that the Appellant did not meet the threshold conditions of either Explanation 1(a) or Explanation 1(b). It is the Appellant who is attempting to switch between two contradictory factual narratives to claim benefit under whichever Explanation appears favourable at a given stage. This opportunistic litigative approach cannot be permitted when statutory provisions are clear and mutually exclusive.

21.7 Accordingly, the Appellant's assertions under Point 2.1 are rejected in entirety. The Appellant satisfies neither Explanation 1(a) nor Explanation 1(b), and cannot allege

inconsistency on the part of the Revenue to cover the inherent contradictions in his own stand.

22. **Counter Rebuttal to Para 2.2(a):**

The Appellant's objection that the Revenue's submissions constitute a "new ground" at the appellate stage is incorrect. It is well-settled that the **Income Tax Appellate Tribunal, being the final fact-finding authority**, is empowered to examine all facts, evidence and legal contentions necessary to determine the correct tax liability and apply the law as it stands. This point has already been discussed in para 15 of this document with reference to counter-rebuttal to Para 1.4(a).

23. **Counter Rebuttal to Para 2.2(b):**

23.1 The Appellant's claims under Explanation 1(a) are internally contradictory. The Appellant has asserted that he was "being outside India" and in employment abroad since February 2019, and in the same breath contends that he **left India for employment only in September 2019** to take up a role with Three State Advisors Singapore. These two positions cannot co-exist. A person cannot claim to have already been outside India in employment for the purpose of relaxation, and simultaneously assert that he left India for employment only thereafter. This contradictory stand itself undermines the Appellant's claim under Explanation 1(a).

23.2 Further, if the Appellant's resignation dated 05 September 2019 is to be accepted as the point of cessation of his earlier role, then his presence in India between 05 September and 10 September 2019 cannot be ignored. This period evidences a re-entry and renewed stay in India, thereby re-establishing his personal and residential ties with India, which is inconsistent with the assertion of a continuous foreign employment status. The Appellant cannot selectively disregard this India stay while attempting to align facts to suit Explanation 1(a). The inconsistency in the Appellant's own factual narrative erodes the credibility of the claim.

24. **Counter Rebuttal to Para 2.2(c):**

24.1 The Appellant has still not produced any **independent or contemporaneous documentary evidence** to substantiate the alleged resignation from Xto10X Singapore on 05 September 2019. A self-generated resignation letter, without corroboration from independent records, does not establish the fact of cessation of employment. In the normal course of corporate governance, resignation of a CEO or key managerial person

would be reflected through **board resolutions, minutes of meetings, filings before statutory authorities, or disclosures in annual financial statements**. No such material has been furnished.

24.2 It is relevant to note that the Revenue has **never disputed the physical presence of the Appellant in India** during the stated period, as evidenced from the passport stampings. What is disputed is the **authenticity and substantiation of the alleged resignation itself,** which remains unsupported by reliable evidence.

24.3 Further, the Appellant's own written submission dated **16.03.2022** (refer pages 186–187 of the Paper Book), wherein the Appellant had meticulously set out a detailed chronology of events, **conspicuously omits any reference to the alleged resignation on 05 September 2019**. If such a resignation had indeed occurred and was material to the Appellant's case, it is inexplicable that it was **not mentioned in that detailed chronology.** This omission materially weakens the credibility of the Appellant's assertion and indicates that the alleged resignation is an **unsubstantiated afterthought** brought in only to align the facts with Explanation 1(a).

24.4 Accordingly, the Appellant has failed to discharge the onus of proving the date and fact of resignation from Xto10X Singapore, and the plea based on the alleged resignation lacks evidentiary support.

25. **Counter Rebuttal to Para 2.2(d):**

25.1 The Appellant's reliance on the company profile of Three State Advisors Singapore, its MAS licensing conditions, or investor expectations is of no consequence to the applicability of Explanation 1(a). Such factors may explain a commercial or strategic decision to assume a new role abroad, but they **cannot override or dilute the statutory requirement** that the individual must have **left India during the relevant previous year for the purpose of employment.**

25.2 It is pertinent to note that the **employment agreement with Three State Advisors Singapore was executed on 21 August 2019**, well before the Appellant's visit to India in September 2019. Once the agreement was signed, there was **no requirement whatsoever for the Appellant to be physically present in India** for any step associated with the employment. Significantly, **this alleged resignation finds no reflection in any statutory filings,** including corporate records, regulatory

submissions, or financial statements of that period. This silence in formal records further undermines the credibility of the Appellant's version.

25.3 In these circumstances, the Appellant's visit to India immediately prior to taking up the new role **creates the clear impression that the visit was utilised to create a semblance of compliance** with Explanation 1(a), rather than arising from any genuine employment necessity. Commercial or regulatory considerations may justify a change of employer abroad, but **they do not convert an internal job transition abroad into a "departure from India for employment"** under the Act.

25.4 Accordingly, **to satisfy Explanation 1(a), the Appellant must demonstrate that he left India during the previous year for the purpose of employment.** The facts placed on record do not establish that the Appellant's departure from India was for taking up employment with Three State Advisors Singapore, and thus the statutory condition under Explanation 1(a) remains unfulfilled.

25.5 The Appellant's further reliance on the argument that the change of role was driven by regulatory, professional, or business requirements—such as MAS licensing norms or investor expectations—is misplaced. These considerations may explain why the Appellant accepted a new position abroad; however, they are **irrelevant for the purpose of Explanation 1(a)**. The statutory test is specific and objective: the individual must have **left India during the relevant previous year for the purpose of employment**.

25.6 Commercial convenience, business strategy, regulatory structuring, or investor comfort **cannot alter the statutory trigger**. Even assuming such factors necessitated a change in employment, the fact remains that the Appellant had **already been abroad since February 2019**, and the September 2019 shift was **merely a career progression or internal realignment while already stationed outside India**. Such a transition **does not constitute a departure from India for employment**, as required under Explanation 1(a).

25.7 The Appellant cannot seek to transform a self-directed change of employer abroad into a statutory "leaving India for employment" merely by attaching commercial rationale to the move. **Statutory conditions cannot be substituted or satisfied by business justifications**. The burden is on the Appellant to establish that the legal requirements of Explanation 1(a) are met, which he has failed to do.

26. **Counter Rebuttal to Para 2.2(e):**

26.1 The Appellant's reliance on the AAR ruling in British Gas India (P.) Ltd., In re [(2005) 155 TAXMAN 326 (AAR – New Delhi)] is wholly misplaced. The factual premise of that ruling is fundamentally different. In British Gas, the assessee was employed in India, and thereafter left India to take up a new employment overseas with a foreign employer, with whom he had a clear, independent and arm's-length employer–employee relationship. The AAR only clarified that the employee need not be "unemployed" at the time of departure; however, what remained undisputed was that:

(i) the assessee **physically left India during the relevant previous year**, and

(ii) such departure was **for the purpose of taking up foreign employment**.

26.2 In stark contrast, in the present case:

- the Appellant was **already employed in Singapore** at the relevant time;
- there was **no departure from India for the purpose of taking up employment** with Three State Advisors Singapore, the September 2019 role was merely the Appellant's **next role within Singapore**; and
- the Appellant's engagement was not under an independent third-party employer at arm's length, but arose in the context of a structure which he himself promoted and controlled.

26.3 Therefore, the core statutory trigger present in British Gas, leaving India to take up employment outside India, is completely absent here. The ruling relied upon by the Appellant actually underscores the Revenue's position that the act of leaving India for employment is a necessary statutory condition for Explanation 1(a) to apply.

26.4 The Appellant's assertion that it is "common practice" to sign a new employment contract before resigning from an existing role is irrelevant. Even if such practice exists generally, commercial convenience cannot override statutory language. Explanation 1(a) mandates that the individual must leave India during the previous year for the purpose of employment, and this essential requirement is not satisfied in the present case.

26.5 Accordingly, the reliance placed on British Gas is inapposite and does not advance the Appellant's case in any manner.

27. **Counter-Rebuttal to para 2.3**:

It is submitted that if this Hon'ble Tribunal is inclined to admit the additional documents now sought to be produced by the Appellant, the Revenue must be afforded a full and adequate opportunity to examine, verify, and respond to such material, including the right to file counter-evidence, if necessary. This is essential to ensure that the late production of documents does not cause prejudice to the Revenue or compromise the fairness and integrity of the proceedings.

28. **Counter-Rebuttal to para 28 mentioned in Table 2.3**:

28.1 The Appellant's explanation regarding the change of name from BTB Advisors Pte. Ltd. to Three State Capital Advisors Pte. Ltd. does not resolve the factual inconsistency highlighted by the Revenue. The core issue is not the name change, but the timing and authenticity of the Executive Agreement relied upon by the Appellant to claim eligibility under Explanation 1(a).

28.2 Even if the reservation of name was approved on 19 August 2019, the effective legal change occurred only on 02 September 2019. Therefore, execution of the Executive Agreement as "Three State Capital Advisors Pte. Ltd." prior to the effective change of name raises credibility concerns regarding the document relied upon by the Appellant. The Appellant has not produced any board resolution or statutory filing to substantiate the legality of the agreement being executed under the new name prior to 02 September 2019.

28.3 Furthermore, the inconsistency becomes more pronounced when examined against the Appellant's own Employment Pass documentation, which continues to reflect the name "BTB Advisors Pte. Ltd."(the entity's old name) even after the alleged name change. If the company had in fact started functioning and representing itself under the new name at the time of the Executive Agreement, the same would have necessarily reflected in the visa and employment records issued by the Singapore Ministry of Manpower. The continued use of the earlier name in official work-pass documentation thus undermines the Appellant's version. Without prejudice to the above, it is reiterated that the core issue is not the mere change of name, but the timing and authenticity of the Executive Agreement itself, which forms the very foundation of the Appellant's claim of eligibility under Explanation 1(a).

28.4 The Appellant's reliance on ACRA name reservation does not cure this defect. Name reservation is not equivalent to a change of legal identity of the entity. Hence, the Revenue's objection stands.

29. **Counter-Rebuttal to para 29 mentioned in Table 2.3**:

29.1 The Appellant continues to fail to substantiate the fact, date, and mode of resignation from Xto10X Singapore with credible evidence. Passport stampings may show physical presence in India, but they do not prove the fact of resignation.

29.2 A cessation of employment of a CEO is a formal act that must be supported by independent and contemporaneous records, such as:

- board resolution approving resignation,
- statutory filings,
- corporate records reflecting cessation of employment,
- financial statement disclosures (especially in Singapore),

none of which have been provided.

29.3 The omission of such a key event from the Appellant's own detailed submission dated 16.03.2022 (pages 186–187 of the Paper Book), where the Appellant had meticulously narrated the chronology of events, indicates that the "resignation while in India" narrative is an afterthought introduced only at the appellate stage to suit Explanation 1(a). Accordingly, the Appellant has not discharged his burden of proof.

30. **Counter-Rebuttal to para 30 mentioned in Table 2.3**:

30.1 The Appellant's explanation that the resignation letter was "hand-delivered" to a Director of Xto10X who resides in India is self-serving and unsupported. Even if hand-delivery were assumed, this does not address the lack of mandatory corporate formalities.

30.2 For a resignation of a CEO of a Singapore entity to be valid, it would require:

- formal communication to the Board at the registered office of the company in Singapore,
- acceptance recorded through a Board Resolution,
- relevant filings before Singapore corporate authorities.

No such documentation has been furnished.

30.3 Further, handing over a resignation letter during a brief India visit does not transform the visit into "leaving India for employment", especially when the next role was already secured in Singapore.

31. **Counter-Rebuttal to para 31 mentioned in Table 2.3**:

31.1 The Revenue reiterates that the manner of physical delivery is irrelevant to the core issue. Even assuming the letter was physically handed over in India, the Appellant has not produced the mandatory supporting corporate documents required under Singapore law to demonstrate cessation of employment.

31.2 The Appellant has attempted to focus on the trivial fact of "how the letter was delivered", instead of addressing the **substantive legal gap** that no independent evidence exists to prove that resignation was validly executed and accepted in accordance with corporate law. Thus, the resignation claim remains unsubstantiated.

32. **Counter-Rebuttal to para 32 mentioned in Table 2.3**:

32.1 The Appellant's reliance on a "request for waiver of notice period" is insufficient. A request does not constitute approval. There is **no Board Resolution or written approval** of waiver by the Board of Xto10X Singapore placed on record.

32.2 Waiver of a contractual notice period for a CEO is a **material corporate event**, and would mandatorily be:

- minuted, and
- supported by corporate filings or disclosures.

32.3 The fact that the Appellant has failed to produce the Minutes of the Board Meeting or any contemporaneous corporate record further weakens the credibility of the resignation claim and reinforces the Revenue's position that the alleged resignation is unsupported by reliable evidence.

33. Hence, despite multiple opportunities across the assessment, DRP, and appellate stages, the Appellant has **failed to substantiate the fact, timing, and validity of his alleged resignation** from Xto10X Singapore through any independent or contemporaneous evidence. The absence of Board resolutions, statutory filings, or documentary proof, coupled with the omission of such a material event from the Appellant's own earlier submissions, indicates that the resignation narrative is an **unverified and unsupported assertion**. As the resignation is the very foundation of the Appellant's Explanation 1(a)

claim, the failure to establish this fact renders the claim unsustainable. Consequently, the Appellant has **not discharged the burden of proof**, and the benefit of Explanation 1(a) cannot be granted. **The Appellant cannot seek a statutory relaxation on the basis of an unproven factual event.**

34. **Counter-Rebuttal to Para 2.4(a):**

The Appellant's objection that the Revenue's submissions constitute a "new ground" at the appellate stage is incorrect. It is well-settled that the **Income Tax Appellate Tribunal, being the final fact-finding authority**, is empowered to examine all facts, evidence and legal contentions necessary to determine the correct tax liability and apply the law as it stands. This point has already been discussed in para 15 of this document with reference to counter-rebuttal to Para 1.4(a).

35. **Counter-Rebuttal to Para 2.4(b):**

The Appellant's submission that Explanation 1(a) was taken only as an "alternate plea" does not insulate the claim from scrutiny. Once the Appellant has invoked Explanation 1(a), he must independently satisfy its statutory pre-conditions, irrespective of whether it is raised as a primary or alternate contention. Further, as elaborated in the preceding paragraphs, the Appellant's stance under Explanation 1(a) is inherently contradictory to the stand taken under Explanation 1(b). The two Explanations operate in mutually exclusive spheres—Explanation 1(a) requires that the individual must leave India for the purpose of employment during the year, whereas Explanation 1(b) presupposes that the individual is already settled outside India and thereafter comes to India on a visit. The Appellant cannot simultaneously assert facts that satisfy both provisions, as the acceptance of one necessarily negates the factual foundation of the other. Accordingly, characterising the plea as "alternate" does not cure the contradiction or reduce the burden of establishing its factual correctness.

36. **Counter-Rebuttal to Para 2.4(c):**

36.1 The Appellant's contention that the two entities merely operated out of a co-working space (Regus) but from "separate cabins" does not dilute the Revenue's position. The core issue is not whether the cabins were physically distinct, but that **Xto10X Singapore and Three State Advisors Singapore operated within the same infrastructural ecosystem**, with common facilities, shared business environment, and continuity of the Appellant's professional base in Singapore. Operating from adjacent

cabins in a shared co-working centre **only reinforces** the Revenue's case that there was **no real change in situs, commercial setting, or professional environment**. The Appellant remained within the **same business and operational framework**, and the September 2019 shift did not constitute a fresh act of leaving India for new employment.

36.2 The subsequent leasing of a separate office in January 2020 is **irrelevant for the purpose of Explanation 1(a)**, as it occurred **after the relevant period** and cannot retrospectively establish that the Appellant had taken up "new employment outside India" at the material time. The factual position as it existed at the relevant time clearly demonstrates **continuity, not change**, in the Appellant's professional establishment in Singapore. **A cosmetic separation of workspaces cannot convert an internal role transition into a new employment outside India.**

37. **Counter-Rebuttal to Para 2.4(d):**

The Appellant's submission that the two entities have distinct business activities — one engaged in consultancy and the other in investment management — does not assist his case. The nature or line of business of the foreign entity is **not the test** under Explanation 1(a). The only relevant enquiry is whether the Appellant **left India during the previous year for the purpose of taking up employment outside India.** The admitted facts show that the Appellant had already gone abroad in February 2019 and was already associated with Xto10X Singapore at that time, and further, the Executive Agreement with Three State Advisors Singapore was **signed on 21 August 2019** while the Appellant continued to remain abroad. A subsequent shift to a different role or vertical within Singapore, even if involving a different business activity, **does not constitute a fresh act of leaving India for employment**, as envisaged under Explanation 1(a). A change in employer or role abroad, without a corresponding departure from India, cannot trigger Explanation 1(a).

38. **Counter-Rebuttal to Para 2.4(e):**

38.1 The Appellant's reliance on differences in shareholding structure is misplaced. The fact remains that both companies were founded, promoted, and effectively controlled by the Appellant, and operated within the Appellant's broader entrepreneurial framework. The shift to Three State Advisors Singapore was not a case of joining an unrelated, independent third-party employer at arm's length, but a movement within the

Appellant's own business interests. The mere presence of additional co-founders does not establish independence or negate the continuity of control, decision-making authority, or beneficial interest exercised by the Appellant. Accordingly, the September 2019 transition is correctly characterised as an **internal shift of roles or intra-group restructuring**, and not a fresh employment outside India for the purposes of Explanation 1(a). **It is the substance of the arrangement, and not the corporate form in which it is structured, that must guide the application of Explanation 1(a).**

39. From the foregoing, it is evident that the Appellant has failed to establish that the September 2019 transition constituted a case of "leaving India for the purpose of taking up employment outside India" within the meaning of Explanation 1(a). The material on record demonstrates that the Appellant had already been in Singapore since February 2019, and the subsequent move to Three State Advisors Singapore was merely an **internal shift of roles within his own Singapore-based business interests,** undertaken without any fresh departure from India for employment. Further, the **alleged resignation from Xto10X Singapore, which forms the foundation of the Appellant's claim,** remains wholly **unsubstantiated by any independent or contemporaneous corporate records,** thereby undermining the credibility of the Appellant's version. The attempt to portray this internal transition as a distinct foreign employment capable of triggering Explanation 1(a) is inconsistent with the factual matrix, the statutory requirement, and the settled interpretative principle that **substance must prevail over form**. Accordingly, the Appellant's submissions under Point 2.4 are untenable and do not satisfy the statutory conditions for claiming the benefit of Explanation 1(a).

40. **<u>Counter-Rebuttal to Para 3 – Substance over Form:</u>**

40.1 The Appellant's objection that the Revenue is invoking the principle of "substance over form" for the first time at the ITAT stage is misconceived. When determining residential status and the applicability of a statutory relaxation such as Explanation 1(a), this Hon'ble Tribunal is required to consider the **true legal character and substance of the underlying arrangement,** irrespective of the labels adopted by the Appellant.

40.2 It is well-established that the **ITAT, being the final fact-finding authority,** is empowered to examine the **real nature of the transaction**, the **surrounding circumstances,** and the **substance of the conduct,** to ensure that tax provisions are not

defeated through form or structuring. The Tribunal's jurisdiction is therefore not confined to the literal description placed by the Appellant on the arrangement.

40.3 The Revenue is not introducing a "new plea", but merely inviting this Hon'ble Tribunal to look at the **actual substance of the Appellant's foreign employment claim**, which directly impacts residential status. The Appellant cannot avoid such scrutiny by asserting technical objections, once the matter is before the Tribunal for full adjudication on facts and law.

40.4 The Revenue's case is simple and confined: the Appellant does not satisfy the statutory conditions of Explanation 1(a) & 1(b) based on the facts on record. Pointing out that the arrangement lacks the essential ingredients required for the relaxation under Explanation 1(a) & 1(b) does not amount to circumventing any procedure, but is a legitimate statutory interpretation exercise. The Appellant's claim collapses on a bare application of the statutory test itself.

41. <u>Counter-Rebuttal to Para 4:</u>

41.1 **The Appellant's narrative of bona fide personal and professional reasons is irrelevant to statutory tests**: The Appellant devotes several pages to justify his relocation as "bona fide", "life-changing", and "not tax-motivated". These arguments are irrelevant to the application of Explanation 1(a)/(b), which is purely objective and not motive-based.

41.2 The residential status test under Section 6 is **mechanical, quantitative, and fact-specific**, and does not depend on:

- alleged long-term intentions,
- personal motivations, or
- subsequent developments after the commencement of the relevant year.

41.3 Even if the relocation was bona fide, **the Appellant must still satisfy the statutory pre-conditions on the relevant dates.** Assertions of "no tax motive" cannot substitute for non-compliance with the law.

41.4 **The Appellant's own narrative reinforces the Revenue's case:**

Without prejudice to the above, even assuming the Appellant's narrative of relocation is considered, the following aspects further negate his claim:

(i) **Post-year developments are irrelevant to residential status determination:** The Appellant's reliance on events that occurred after the commencement of the relevant previous year—such as gradual family relocation, school admissions, club memberships, acquisition of Singapore Permanent Residency at a later stage, and subsequent application for citizenship—are wholly irrelevant for the purpose of determining residential status under section 6. Residential status must be determined **with reference to the factual position as it existed at the start of the previous year,** and not based on subsequent developments or progressive settlement abroad. These post-facto circumstances cannot retrospectively establish that the Appellant was "being outside India" at the material time.

(ii) **Continued nexus with India negates claim of settled base abroad** Even during the period relied upon by the Appellant, his **personal, economic, and business nexus with India remained substantial**, and his Singapore arrangement was still intertwined with India-linked interests. The Appellant retained significant control, influence, and value connection with Indian business operations, and the alleged shift to Singapore was neither complete nor independent **at the commencement of the relevant previous year**. These factors demonstrate that the claimed "permanent shift" had not crystallised at the material time and cannot support the Appellant's claim of having been settled abroad for the purposes of Explanation 1(b).

41.5 This directly contradicts the Appellant's attempt to claim the statutory relaxation designed only for persons who were **already 'being outside India' at the commencement of the previous year.**

41.6 In light of the foregoing, it is evident that the Appellant's reliance on personal motivations, alleged bona fides, and subsequent life events is wholly misplaced and legally irrelevant for determining residential status under Section 6. The Appellant has failed to demonstrate that he was **already "being outside India" at the commencement of the relevant previous year,** which is the foundational requirement for seeking any statutory relaxation. On the contrary, the facts placed on record establish that the Appellant's claimed shift to Singapore was **neither complete nor independent at the material time,** and that his settlement abroad evolved only subsequently while substantial India-linked nexus continued. Accordingly, the Appellant's submissions under Para 4 do not satisfy the statutory conditions and the plea for relaxation must be rejected.

42. **Counter-Rebuttal to Para 5:**

42.1 Without disputing the Certificate of Residence issued by the Inland Revenue Authority of Singapore (IRAS), it is submitted that the Appellant's reliance on the tie-breaker mechanism under Article 4 of the India–Singapore DTAA is **misconceived, premature, and legally untenable.** The tie-breaker analysis under Article 4(2) is a **sequential test**, and each limb must be satisfied strictly based on **the factual position as it existed during the relevant previous year.** Subsequent developments, progressive settling-in events, or post-facto circumstances cannot be imported to retrospectively satisfy the treaty tests.

42.2 In the present case, even assuming the Appellant holds a valid Singapore tax residence certificate, the factual matrix demonstrates that, during the relevant previous year, India satisfies the tie-breaker tests under Article 4(2), and the Appellant's centre of gravity remained in India. The tie-breaker cannot be invoked based on events subsequent to the commencement of the previous year.

43. **Article 4(2)(a) – Permanent Home Test**

43.1 The Appellant's claim that he did not have a "Permanent Home" available to him in India during the relevant previous year is factually incorrect and misleading. It is an admitted position on record that the Appellant owned substantial immovable residential properties in India, including:

- A residential property in Koramangala, Bengaluru valued at approximately ₹36.75 crore,
- A land valued at approximately ₹1 crore, and
- An apartment in Mantri Classic, Bengaluru valued at approximately ₹2.75 crore. [Schedule AL- AY 2018-19]

43.2 Under the OECD Commentary and judicially accepted interpretation of the Permanent Home Test, ownership and availability of residential property is sufficient to constitute a permanent home; physical occupation or completion of renovation is not a pre-condition. The mere fact that one of the properties was under construction or undergoing renovation does not negate the fact that the Appellant owned and retained residential accommodation in India throughout the relevant period.

43.3 In contrast, the Appellant's accommodation in Singapore during the relevant period consisted of serviced apartments, which are, by their very nature, temporary, transient, and not indicative of settled, long-term residence. The subsequent leasing of a long-term residence in Singapore occurred only later and is irrelevant to the permanent home assessment as on the relevant date.

43.4 It is also relevant to note that, despite specific queries raised by the Hon'ble Bench during the course of hearing regarding his Indian presence and accommodation, the Appellant has remained **selectively silent** and has not furnished full particulars regarding his stay and use of residences in India, which further weakens his claim.

43.5 Accordingly, under Article 4(2)(a), the Permanent Home Test clearly tilts in favour of India.

44. **Article 4(2)(a) – Centre of Vital Interests**

44.1 If it is assumed that a permanent home was available to the Appellant in both States, the next limb under Article 4(2)(a) requires determination of the State with which the Appellant's **personal and economic relations were closer** — i.e., the "Centre of Vital Interests".

44.2 The Appellant's submissions attempt to portray Singapore as the centre of his vital interests; however, the factual matrix demonstrates that **as on the relevant previous year**, his personal, economic, and business nexus remained **predominantly linked to India**.

44.3 **Economic Nexus Strongly Favouring India** - The Appellant's business and economic interests continued to be significantly India-centric. In particular:

(i) The Appellant promoted Xto10X Singapore, which, during the relevant period, derived substantial value from Indian subsidiary, India-based business operations, commercial activities, and clients, and its enterprise value was intrinsically tied to the Indian market and Indian business ecosystem.

(ii) The Appellant's new venture, Three State Advisors Singapore, was not fully established or operational during the relevant previous year for India. Notably, the Monetary Authority of Singapore (MAS) licence, which was essential for the said entity to lawfully undertake regulated investment advisory/management activities, was issued only on 25 February 2020 — i.e., towards the fag end of

the relevant financial year 2019-20 for India (and FY 2020 for Singapore). This demonstrates that the Singapore business lacked operational substance during the relevant period and had not matured sufficiently to constitute a shift of economic centre of gravity outside India.

(iii) Further, the Appellant continued to hold **substantial unlisted equity shares worth several crores of rupees** in Indian private companies during the relevant year, as evident from his Income Tax Return. The quantum of his Indian shareholdings far exceeded any investments or capital interests held in Singapore, clearly indicating that the core of his personal wealth, economic interests, and value concentration remained in India.

(iv) The Appellant continued to hold, control, or influence India-based assets and business interests of significant magnitude, thereby retaining economic gravity in India.

These factors clearly demonstrate that India constituted the primary economic centre of the Appellant's life during the relevant period.

44.4 **Personal and Residential Nexus with India:** In addition to the economic ties:

(i) The Appellant retained ownership of multiple high-value properties in India during the relevant year, reflecting continued personal and residential roots in India. The Appellant's physical presence in India for 141 days during the relevant previous year further reinforces that his personal, residential and social nexus with India continued to remain significant during the period under consideration.

(ii) His family's progressive relocation to Singapore, schooling, and social integration occurred only subsequently, and not at the commencement of the previous year.

(iii) At the material time, the Appellant's Singapore presence was transitional, exploratory, and developing, and did not amount to a fully established shift of personal life and residence.

44.5 **Timing of Events is Critical**:

The tie-breaker must be applied strictly with reference to the factual position **as it existed during the relevant previous year**, and not on the basis of subsequent

developments. The Appellant's own narrative makes it evident that the so-called "permanent shift" to Singapore was **a gradual, post-facto process,** not crystallised at the start of the year.

44.6 Accordingly, the Centre of Vital Interests test under Article 4(2)(a) points clearly towards India.

45. Article 4(2)(b) – Habitual Abode Test:

45.1 If the Permanent Home and Centre of Vital Interests tests are argued to be inconclusive (which is denied), the next limb is the Habitual Abode Test. This test requires determining where the individual had a regular, customary and habitual place of living during the relevant period.

45.2 In the present case, the Appellant's habitual abode cannot be regarded as Singapore for the following reasons:

- The Appellant's stay in Singapore during the relevant previous year was transitional, exploratory and lacked settled permanency. His living arrangements were temporary (serviced apartments) and did not reflect an established pattern of habitual residence.
- Conversely, the Appellant continued to maintain his residential foothold and personal presence in India, including 141 days of physical presence in India during the relevant previous year, demonstrating that India continued to remain a regular and familiar place of abode.
- The Appellant's family's relocation, children's schooling, club memberships, PR status, and social integration in Singapore occurred only subsequently, and cannot be relied upon to retrospectively create a habitual abode in Singapore for the relevant year.

Accordingly, the Habitual Abode Test under Article 4(2)(b) also weighs in favour of India.

46. Post-Year Developments Are Irrelevant for Tie-Breaker Analysis:

46.1 The Appellant's reliance on subsequent life events, including family shifting, schooling of children in Singapore, social memberships, PR/citizenship applications, and lifestyle changes etc. is **legally irrelevant.** Such post-year developments **cannot**

retrospectively rewrite the factual position as it existed at the commencement and during the relevant previous year.

46.2 The tie-breaker under Article 4(2) must be applied strictly with reference to the factual matrix during the year in question, and cannot be influenced by personal circumstances developing in later years.

47. **Conclusion on Tie-Breaker:**

In view of the above, the Appellant's reliance on Article 4 of the India–Singapore DTAA is misconceived and unsustainable. Even assuming Singapore tax residency is accepted, the Appellant does not meet the factual tests under Article 4(2) that would allocate residence to Singapore. The Permanent Home, Centre of Vital Interests, Habitual Abode, and Nationality tests under Article 4(2) all point towards India. The Appellant's alleged shift to Singapore had not crystallised into a settled and independent base during the relevant previous year, and India continued to remain the dominant nexus of his personal, residential, and economic life. Accordingly, the treaty tie-breaker clause does not assist the Appellant, and his submissions under Point 5 are liable to be rejected.

Issuance of Notice u/s 143(2) by NaFAC

48. This issue has already been addressed by the Hon'ble High court of Karnataka in **Adarsh Developers vs. The DCIT** (Writ Petition No. 1109/2023). In the stated case, the petitioner challenged the validity of a notice issued under Section 143(2) of the Income Tax Act, 1961, by the Additional Commissioner of Income Tax, NaFAC-1(1)(2), Delhi. The petitioner contended that the notice was improperly issued by an authority outside the jurisdiction of the central charge, which, according to them, rendered the notice invalid.

49. The Hon'ble High Court noted that the National Faceless Assessment Scheme, introduced through Section 144B of the Income Tax Act, 1961, allows for the decentralization of assessment functions. The scheme empowers the Additional Commissioner of Income Tax, NaFAC, to issue notices under Section 143(2), irrespective of the traditional jurisdictional boundaries. The Court cited the General Clauses Act, 1897, particularly Section 24, which validates the continuation of such functions by the designated authorities. Therefore, the issuance of the notice by the Additional Commissioner of Income Tax, NaFAC-1(1)(2), Delhi, was deemed valid.

50. In view of the above, the contention of the assessee challenging the jurisdiction of the National Faceless Assessment Centre (NaFAC) in issuing notices under Section 143(2) is without merit and deserves to be dismissed. The Hon'ble High Court of Karnataka has clearly upheld the authority of NaFAC, confirming that such notices are valid and legally enforceable.

51. **Counter-Rebuttal to Para on the Issue of Eligible Assessee:**

51.1 The Appellant's contention that the draft assessment order is invalid on the ground that the Assessing Officer proposed to treat him as a "resident" and, therefore, he ceases to be an "eligible assessee" under section 144C(15)(b), is wholly misconceived and contrary to both the language and purpose of section 144C.

51.2 **Assessee's own claim of Non-Resident status triggered section 144C:** The Appellant himself filed the return of income declaring the status of "Non-Resident" for the relevant assessment year. During the course of assessment, when the Assessing Officer proposed to determine the residential status as "Resident", the scope of total income under section 5 automatically expanded, resulting in a **clear and undeniable variation prejudicial to the interest of the Appellant.**

51.3 Once such prejudicial variation arose in the case of an assessee who had claimed non-resident status, it squarely attracted section 144C, mandating the passing of a draft assessment order. The Assessing Officer has, therefore, correctly invoked section 144C and issued a draft order.

51.4 **Prejudicial variation is the only test – not final outcome:** For the purpose of section 144C(1), what is relevant is the variation proposed in the draft order, and not the final determination made thereafter. The Appellant's argument that the AO, having held him to be a resident in the final order, could not have issued a draft order, is legally untenable and reverses the logic of the provision.

51.5 **Legislative intent behind DRP mechanism supports the Revenue:** CBDT Circular No. 5/2010 dated 03.06.2010 (Para 45.1) makes the legislative intent clear: The DRP mechanism was introduced to provide a speedy, specialized, and final dispute resolution platform in cases involving variations prejudicial to the interest of the assessee. The AO has acted strictly in consonance with the purpose and mandate of the provision.

51.6 **Aldrin Alberto Araujo Soares – clearly distinguishable:** The Appellant's reliance on *Aldrin Alberto Araujo Soares* is misplaced. In that case:

- The petitioner changed his residential status through a revised return,
- Invoking mutually inconsistent positions at different stages,
- And attempted to use the DRP procedure as and when it suited him.

The High Court's observation that the assessee "cannot have the best of both worlds" was made only because the assessee had altered his stand opportunistically.

51.7 In contrast, in the present case:

- The Appellant consistently claimed to be a Non-Resident in the ROI,
- The AO proposed to treat him as Resident, thereby causing prejudice,
- Triggering the mandatory requirement of issuing a draft order.

Thus, the facts are fundamentally different and the ratio of *Aldrin Soares* does not assist the Appellant.

51.8 Conclusion:

In the present case:

- The Appellant claimed Non-Resident status in the ROI;
- AO proposed to treat him as Resident, causing prejudicial variation;
- Section 144C was mandatorily triggered, and draft order was rightly issued.

Accordingly, the challenge to the draft order on the ground of the Appellant not being an "eligible assessee" is devoid of merit and deserves to be rejected.

REJOINDER OF THE LD SR. ADVOCATE ON BEHALF OF ASSESSEE

62. The learned authorised representative vehemently supported the contentions already raised. With respect to ground No. [6] he submitted that assessee has stated that this issue is covered in favour of the revenue by the decision of the honourable Karnataka High Court but is pending before the division bench and therefore the assessee would like to contest the same. With respect to the issue of the eligible assessee he submitted that if the assessing officer is of the

view that assessee is a resident in India, he should not have passed the draft assessment order but should have passed the final assessment order. The movement he has passed the draft assessment order, he has to understand the consequence of the same. He submitted that the issue is squarely covered by the decision of the honourable Bombay High Court in favour of the assessee. With respect to the residential status he submitted that that the meaning to the phrase ' being outside India' given by the revenue is totally absurd. He submitted that if that would have been the intention of the legislature, it would have used a simple phrase "who is a non-resident of India" instead of, 'being outside India'. With reference to various circulars referred to by the learned assessing officer it was submitted that those were based on the three presentation of non-resident Indians but that does not mean that it should not apply to anybody else who fulfils the requirement of the law. With respect to the challenge by the learned additional Solicitor Gen stating that it is a colourable device and general anti-avoidance rule can be made applicable, he submitted that such notice was issued by the learned assessing officer for which the reply was filed by the assessee which is placed at page No. 189 of the paper book and therefore the assessing officer did not invoke the provisions of the general anti-avoidance rule. Now the revenue cannot bypass that provision which is existing in the statute and contend that same is applicable. It was further stated that even the dispute resolution panel also does not indicate this issue so it is not open now for revenue to say that the general anti-avoidance rule 10 B made applicable. It was

further submitted that the argument of the revenue goes beyond the scope of the original proceedings and viability of natural justice and deserves to be rejected in limine. It was further submitted that in this appellate stage, revenue is precluded from travelling beyond the scope of the original assessment order which is the subject matter of appeal. Doing so would mean rewriting revising the assessment order which is permissible in any appellate proceedings. It was further stated that it would amount to the invoking the backdoor entry to revise the assessment order instead of following the statutory provisions of section 263 of the Income Tax Act. The learned authorised representative further relied upon the decision of the honourable Bombay High Court in CIT versus Bombay pipe traders (1994) 75 taxman 533 (Bom) wherein it has been held that revenue cannot be allowed to sustain a ground in appeal which was never the subject matter of the show cause/assessment proceedings. He further relied upon the decision of the honourable Supreme Court in case of Warner Hindustan Ltd versus collector of central excise (1999) 113 ELT 24 (SC) wherein it has been held that the revenue cannot, at the appellate stage, raise a new ground and alter the very basis of classification that was never part of the original proceedings. He urged that the appellate forum must confine itself to the case made and decided by the lower authority, without permitting the respondent to set up an altogether new case.

63. Further the learned authorised representative was aggrieved as the learned ASG filed a written submission on 31st of October 2025 for

the reason that by filing the written submissions, the assessee was denied an opportunity to peruse and respond to the submissions made by the learned ASG, therefore, assessee was given an opportunity of hearing and to make any submission which he would like to place on record. Pursuant to that the assessee submitted a detailed rebuttal to the written submission filed by the respondent on 31st of October 2025 by filing a detailed paper book on 12 November 2025 wherein a written submission of 24 pages was provided along with the reliance was placed on nine different judicial precedents.

64. The written submission placed by the assessee on 12-11- 2025 is as under:-

REBUTTALS TO WRITTEN SUBMISSIONS MADE BY THE RESPONDENT

During the hearing held on 31 October 2025, the Appellant had craved leave to file responses after perusing the written submissions filed by the Revenue ("Revenue's submission dated 31 October 2025") at the hearing on 31 October 2025. Accordingly, the Appellant makes the following additional submissions.

To avoid repetition, the present response is confined to addressing the new arguments and allegations raised by the Revenue. The Appellant respectfully requests that its earlier submissions dated 12 February 2024, and 14 October 2025 be read in conjunction with the present submissions for completeness.

Revenue's latest submission should be disregarded *in limine*

1. The hearing in the present matter was first held on 24 September 2025, on which day first the Appellant and thereafter the Respondent made their oral arguments. At the aforesaid hearing, the Revenue also filed its written submissions. In response to the written submissions, the Appellant filed a written rejoinder on 14 October 2025. As part of the written rejoinder, the Appellant had produced only three documents as additional evidence, which additional evidence was produced only to rebut certain fresh allegations which the Revenue had made in their written and oral arguments.

2. Since the Revenue sought additional time to review the Appellant's written rejoinder, the matter was fixed for further hearing on 31 October 2025. On that day, the Revenue completed their oral arguments. The Appellant thereafter commenced rejoinder *inter-alia* addressing the Respondent's oral arguments. It was only at this hearing that the Revenue filed the captioned voluminous submissions which run into more than 35 pages.

3. At the outset, it is submitted that once the Revenue has made written submissions, it cannot be permitted to once again file a written response to the Appellant's rebuttal. To permit the Revenue to a file a rejoinder to a rejoinder, a "sur-rejoinder", would mean that there is endless back and forth between the Appellant and the Respondent without any conclusion.

4. It is further submitted that that the Revenue's submissions dt 31 October 2025 are not just a "sur rejoinder" but travel far beyond scope and bring up entirely fresh allegations which were neither brought up initially before the Hon'ble Tribunal, nor before the lower authorities viz. the Assessing Officer or the Dispute Resolution Panel.

5. Till now, the entire foundation of the Revenue's case was that in order for benefit under Explanation 1(b) to section 6(1)(c) to be applicable, the Appellant would have needed to be a "non-resident" in the preceding year. The assessment order and the Revenue's oral and written submissions till this point revolved around this foundational argument. However, in a complete turnaround from its earlier position, the Revenue in its submissions dt 31 October 2025 argues that for Explanation 1(b) to section 6(1)(c) to be applicable, the Appellant should have demonstrated a "stable and permanent" residence overseas in the preceding year. Please refer Paragraphs 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 8, 9.2, 10, 13.5, 13.6, 14,16, 17, 18, 19 and 20 of the Revenue's submissions dated 31 October 2025 in this regard.

6. Further, the Revenue's submissions are not only confined to a fresh legal interpretation of the provisions but also make fresh allegations on factual matters, all of which is impermissible in a sur-rejoinder. Please refer Paragraphs 6.8, 6.9, 18.4, 44.3 and 45.2 of the Revenue's submissions dt 31 October 2025 in this regard.

7. The Revenue is attempting to wholly re-write its case before the Tribunal by attempting to ascribe an entirely new meaning to the phrase *"being outside India"* that is diametrically opposed to the position consistently taken by them throughout the assessment and appellate proceedings.

8. At the Appellate stage, the Revenue is precluded from travelling beyond the scope of the original assessment order which is the subject matter of appeal. Doing so would mean re-writing or revising the assessment order which is impermissible in appellate proceedings. Any revision of the assessment order would have required the invocation of the provisions of section 263. The Revenue cannot be permitted to use appellate proceedings before the Hon'ble Tribunal as a back-door to revise the assessment order, instead of following the statutory provisions of section 263.

It is a settled law that the Revenue cannot be allowed to sustain a ground in appeal which was never the subject-matter of the show-cause/assessment proceedings. Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of ***CIT v. Bombay Pipe Traders (reported in [1994] 75 TAXMAN 533 (BOM.)***

9. Further, in ***Warner Hindustan Ltd. v. Collector of Central Excise (1999 (113) ELT 24 SC)***, the Supreme Court held that the Revenue cannot, at the appellate stage, raise a new ground and alter the very basis of classification that was never part of the original proceedings. The appellate forum must confine itself to the case made and decided by the lower authority, without permitting the respondent to set up an altogether new case.

10. By choosing to file the written submissions on 31 October 2025 when the hearing was fixed for concluding arguments to be made, the Revenue has denied any opportunity for the Appellant to peruse and respond to the voluminous submissions in the oral arguments before the Hon'ble Tribunal or adduce additional evidence to rebut fresh factual allegations. The Respondent's attempt to deny the Appellant's rights to effectively make his case in oral hearings is a violation of the principles of natural justice and should not be permitted.

11. For these reasons, the Appellant submits that the Hon'ble Tribunal be pleased to reject and entirely disregard the Revenue's submissions dated 31 October 2025 *in limine*. Further, if the Hon'ble Tribunal deems it fit to consider the Revenue's submissions dated 31 October 2025, the Appellant hereby craves leave to file the following written submissions in response.

A) Interpretation of "being outside India"

1. Hitherto, the entire foundation of the Revenue's case was that Explanation 1(b) to section 6(1)(c) of the Act is applicable only where the taxpayer is a "non-resident" in the preceding year. Deviating from the aforesaid position, in the Revenue's submissions dated 31 October 2025, the Revenue argues that for Explanation 1(b) to section 6(1)(c) to be applicable, the Appellant should have demonstrated a "degree of permanence, stability and substantive presence" overseas at the commencement of the relevant year, and that it does not apply to a case of "temporary" or "transitional stay" outside India.

2. At the outset, the Appellant submits that Explanation 1(b) to section 6(1)(c) nowhere refers to "permanence, stability and substantive presence", concepts that are undefined and not capable of objective proof.

3. The Revenue claims that it is the "legislative context" and "judicial interpretation" that is relied upon to advance this interpretation.

4. In this regard, the Appellant has made detailed submissions explaining the legislative history of Explanation 1(b) ***[page 710 to 716 of the paperbook]***. The Hon'ble ITAT would appreciate that nowhere in the legislative history for Explanation 1(b) is there a reference to the theory of "degree of permanence, stability and substantive presence" overseas at the "commencement of the relevant year" that is sought to be applied by the Revenue. Equally, the Revenue has not supported its arguments with judicial precedents or authority which have laid down such meaning or tests. The Revenue's statement that their interpretation is based on "legislative context" and "judicial interpretation" is therefore a misleading and bald assertion without any backing, and ought to be rejected.

5. It is well-settled that in construing fiscal statutes the principle of literal construction enunciated by Rowlatt J. in ***Cape Brandy Syndicate vs. IRC [1921] 1 KB 64*** is paramount. Nothing can be read into or implied beyond the plain meaning of the words used as held in the following decisions —

- ***CIT v. Vadilal Lallubhai (1972) 86 ITR 2 (SC)***
- ***Orissa State Warehousing Corporation v. CIT (1999) 237 ITR 589 (SC).***

6. The Revenue's attempt to read into the statute tests or conditions which travel well beyond the plain meaning of the words used in the statute directly violates this interpretive rule.

7. The Revenue's asserts in Para 12.1 of its submissions, that the residence rules under section 6 are "*objective, day-count-based statutory tests intended to ensure certainty and prevent subjective manipulation.*" In the same breath, the Revenue argues in Para 6.6 that in order to be entitled to the benefit of Explanation 1(b) to section 6, there is a requirement of "a degree of permanence, stability and substantial presence abroad". The Revenue is clearly adopting a contradictory stand by arguing that the tests under section 6 are objective and day-count based, while also attempting to argue that extremely subjective, vague non-specific factors, viz., "a degree of permanence, stability and substantial presence abroad" are required to be met. That the aforementioned tests alleged by the Revenue are extremely vague is clearly brought out by the fact that the Revenue has nowhere elaborated on the exact meaning of these terms nor has it brought forth any authority on which they rely upon to draw the boundaries of their alleged tests.

8. Such vague, ambiguous tests for application of Explanation 1(b) to section 6(1)(c) could never have been the legislative intention since reading such tests into the provision would render the rules for residence completely subjective, vague and imprecise, and therefore incapable of being implemented.

9. The argument of the Revenue that for Explanation 1(b) to section 6(1)(c) to be applicable, the Appellant should have demonstrated a "degree of permanence, stability and substantive presence" overseas at the "commencement of the relevant year" should therefore be completely rejected as neither having any legislative or judicial basis, nor being of a nature which could ever have been the legislative intent.

10. As elaborated by the Appellant in its submissions before the lower authorities, the term "being outside India" can only refer to an individual whose situs is outside India and continues to be outside India during the relevant previous year. What is relevant is where the individual was situated i.e. whether in India or outside India and no other factor can be read into the test.

11. At best, a distinction may be drawn between a person who is outside India on a short-term trip, and a person who is situated overseas pursuant to an intention to reside outside India. The latter would be clearly covered within the ambit of the Explanation 1(b) to section 6(1)(c).

12. From the facts of the case, it is clear the Appellant's stay in Singapore since February 2019 was pursuant to a relocation to Singapore and not on a short-term trip as such. The facts clearly contradict and demolish the Revenue's assertion in Para 6.7, 44.4 and 45.2 that the Appellant's presence overseas was only "temporary and exploratory". The relevant facts in this regard are re-iterated below for your reference –

(i). The Appellant left India for Singapore on 22 February 2019 for taking up permanent employment with Xto10X Singapore, effective 25 February 2019. Para 1 of the employment letter with BTB Consulting Pte Ltd (the former name of Xto10X Technologies Pte Ltd) ***[page 197 of the paperbook]*** clearly shows the employment position was based at Singapore. The Appellant's employment position was based out of Xto10X Singapore's offices at #02-01, One Fullerton Singapore - 049213, in respect of which the Appellant has provided documentary evidence ***[page 435 of the paperbook]***, which has not been controverted by the Revenue. Para 3 of the employment letter clearly mentions that one-time support

for relocation to Singapore is being provided, which clearly shows that the Appellant shifted base to Singapore for the purpose of employment.

(ii). The employment with Xto10X Singapore was a permanent one, and not of a short-term duration. It was also not a case of a deputation or secondment to Singapore. These factors collectively show that the Appellant's movement to Singapore on 22 February 2019 was to take up a permanent employment position based in Singapore.

(iii). Once it is clearly demonstrated that the employment position was based in Singapore, whether the customer base of the employer, viz., Xto10X Singapore was in Singapore or in India is wholly irrelevant for determining the residential status of the individual. Just as India-based employees of an Indian software exporter do not become "non-residents" merely because they service foreign customers as part of their employment, a Singapore-based employee cannot become a "resident" if Indian customers are serviced as part of employment. In any case the Revenue's allegations regarding Xto10X Singapore's focus being on customers based in India is factually incorrect as set out by the Appellant in its submissions dated 14 October 2025.

(iv). It is also submitted that whether the employer Xto10X Singapore was controlled by or related to the Appellant is wholly irrelevant. It is noted that for the purpose of Explanation 1(b) to section 6(1)(c), there is no requirement for the taxpayer to have been engaged in employment overseas. In fact the legislative history as elaborated by the Appellant clearly shows that stay overseas for any reason including self-employment or any other "avocation" overseas is sufficient to meet the requirement of "being outside India".

(v). The Appellant and his family moved to Singapore under long-term residence visas which permitted them to live in Singapore for the long-term. The long-term employment visa of the Appellant clearly shows that the Appellant's presence in Singapore was not merely a temporary visit but pursuant to his permanent employment with Xto10X Singapore ***[Refer page 432 of the paperbook]***.

(vi). The Appellant's spouse and two children had moved to Singapore in March 2019 on long-term "Dependent Pass" visas to join the Appellant at Singapore. The in-principle approval towards these Dependent Passes were issued on 11 February 2019. No person would have uprooted his family from India if his stay overseas was intended to be "temporary" or on a short-term trip.

(vii). The Revenue's case that the Appellant's stay in Singapore during FY 2018-19 was "transitional" and "lacked permanency" is solely based on fact that the Appellant initially resided at Great World Serviced Apartments.

(viii). Whether a person takes up a serviced apartment, a furnished apartment or an unfurnished one for stay is purely a matter of convenience and has no bearing on residential status. A person can reside in a serviced apartment for a long period of time, and is in fact the preferred arrangement for expatriates around the world due to the convenience and security that the arrangement offers. There is no linkage between a stay in a serviced apartment and the allegation of the presence in Singapore being temporary. Nature of residential accommodation and "residence" of the individual under the Act are wholly unrelated concepts.

(ix). Since the Appellant had moved to Singapore with his family permanently, he was looking for accommodation that would be suitable for long-term stay for himself and his family which included two young children. This process of finding a home is neither casual nor instantaneous, it necessarily takes some time since various factors such as schools, neighborhood, society etc., have to be considered since the property would be a long-term home. Indeed, as soon as the Appellant's spouse and children relocated to Singapore in March 2019, both scouted for apartments together and by April 2019, the Appellant had identified a suitable property and signed up a lease, and moved into the apartment once it was ready in July 2019. ***[Refer page 507 of the paperbook]*** It is submitted that the Appellant continues to reside in the same apartment complex till date, and has purchased a house in the same complex. Contrary to the Revenue's assertions, the Appellant's actions of carefully looking for suitable long-term accommodation

is a clear indicator that when the Appellant and his family moved to Singapore in FY 2018-19 they did so with the intent of living in Singapore for the long-term.

(x). Whether a stay is "temporary" or not can only be determined by reference to subsequent conduct and facts. Since relocating to Singapore in February 2019, the Appellant and his family have resided there continuously, with the Appellant remaining in full-time employment for over six years. On 13 July 2021, the Appellant purchased a home in Singapore, and on 2 October 2024, he applied for Singaporean citizenship. These facts reflect an enduring commitment to Singapore as the family's permanent base, not a transient relocation. More than six years have passed since the family's move. The Appellant continues to live and work in Singapore, and his children remain enrolled in local schools.

(xi). The question of whether the stay was "temporary" or permanent can only be addressed by looking at subsequent facts which the Revenue cannot ignore. These facts, taken cumulatively, establish precisely the permanence and stability that the Revenue argues is the touchstone for determination of whether a person can be regarded as "being outside India".

(xii). Put differently, it is not clear what else a person in the Appellant's shoes could have done differently to demonstrate that the presence in Singapore was pursuant to a long-term relocation. The Appellant's family migrated to Singapore in March 2019; Appellant took up permanent employment in Singapore in February 2019; long-term visas were obtained in FY 2018-19; in fact even school admission applications were finalized and executed in March 2019 and submitted to the school on 02 April 2019. It is submitted that it is therefore very clear that the Appellant qualifies as a person who was "being outside India" as contemplated in Explanation 1(b) to section 6(1)(c).

(xiii). In Para 25.6 of the Revenue's submission dated 31 October 2025, the Revenue has submitted that "***the fact remains that the*** **Appellant** ***had already been abroad since February 2019, and the September 2019 shift was merely a career progression or internal realignment while already stationed outside***

India". Further in Para 37, the Revenue submits that "***The admitted facts show that the Appellant had already gone abroad in February 2019 and was already associated with Xto10X Singapore at that time***". The foregoing clearly shows that the Revenue admits and accepts that the Appellant was based in Singapore since February 2019 and was progressing in his career in Singapore since then. Therefore, the Revenue is clearly contradicting themselves when they claim that the Appellant cannot be regarded as a person "being outside India" at the commencement of FY 2019-20.

B) <u>Appellant would in any case be treated as a "non-resident" under Explanation 1(a) to section 6(1)(c)</u>

1. While the Revenue argues that the fact-pattern in the preceding year FY 2018-19 did not show that the Appellant had "permanently" moved to Singapore, it does not contest that during the previous year in question, viz., the FY 2019-20, the Appellant was indeed permanently based in Singapore. This would mean that per the Revenue, during FY 2019-20, the Appellant's base shifted from India to Singapore. If the Appellant indeed shifted his base from India to Singapore during the previous year, the Appellant would, then, clearly be a person who "leaves India for the purpose of employment" and therefore qualifies as a non-resident under Explanation 1(a) to section 6(1)(c). The same is elaborated in the subsequent paragraphs-

2. It is the Revenue's argument that during FY 2018-19, the Appellant was not a person who had "permanence" in his stay in Singapore and, hence, for the previous year 2019-20 could not be characterization as a person "being outside India". If a person is not outside India, the logical sequence would be that per the Revenue, the Appellant was still based in India at the commencement of the previous year 2019-20.

3. The Revenue argues that during the FY 2019-20 that the Appellant's base was already in Singapore. Since as per the Revenue the Appellant was based in India at the commencement of the FY 2019-20, it can only mean that the Revenue implicitly concedes that at some point of time during FY 2019-20, the Appellant has migrated from

India to Singapore. In other words, the Revenue concedes that the Appellant has left India during FY 2019-20.

4. It is not controverted by the Revenue that the Appellant was indeed engaged in employment in Singapore with Xto10X Singapore and Three State Advisors Singapore. The Appellant has provided ample evidence including Employment Passes issued by the Government of Singapore, the statutory Form IR8A issued by the employer entities in Singapore and other documentation in support of the fact that the Appellant was indeed engaged in employment in Singapore.

5. Therefore, if the Revenue's argument that the Appellant was not a person who can be characterized as "being outside India" at the commencement of the previous year 2019-20 is accepted, it must also follow that the Appellant would be a person who has "left India for the purpose of employment" during the previous year 2019-20 and therefore is to be treated as a non-resident under Explanation 1(a) to section 6(1)(c) of the Act. Any other interpretation would mean that the Revenue is taking a contradictory stand.

In this context, certain specific arguments and allegations made by the Revenue are dealt with in the subsequent paragraphs –

6. In ***CIT v. Abdul Razak [2011] 337 ITR 350 (Ker.],*** the Hon'ble Kerala High Court has held that the term "employment" used in Explanation 1(a) to section 6(1)(c) is of wide ambit and only means that the visit and stay abroad should not be for other purposes such as a tourist, or for medical treatment or for studies or the like. In this regard the Kerala High Court in Para 7 of its ruling has held as under–

"What is clear from the above is that no technical meaning is intended for the word "employment" used in the explanation. In our view, going abroad for the purpose of employment only means that the visit and stay abroad should not be for other purposes such as a tourist, or for medical treatment or for studies or the like. Going abroad for the purpose of employment therefore means going abroad to take up

employment or any avocation as referred to in the Circular, which takes in self employment like business or profession."

7. The Appellant submits that the Kerala High Court has held that Explanation 1(a) to section 6(1)(c) covers going abroad not only as an employee but also for self-employment as well as any other "avocation". As per the Oxford English Dictionary, the term "avocation" means "a hobby or other activity that you do for interest and pleasure". Therefore, in order to be eligible for the benefit of Explanation 1(a) to section 6(1)(c), the nature of activity abroad can be employment, self-employment or even an any other activity that is undertaken for interest or pleasure.

8. Reference is also made to the ruling of the Mumbai Bench of this Hon'ble Tribunal in the case of ***Nishant Kanodia [2024] 158 taxmann.com 262***. In this case, the taxpayer, an Indian citizen, left India for Mauritius to work as a strategist in a company he owned, stayed in India for 176 days in the relevant year, and claimed non-resident status under Explanation 1(a) to section 6(1). The Assessing Officer rejected the claim by inter-alia contending that the taxpayer had taken up employment in a company where he was the 100% shareholder and therefore was not an employee simplicitor. The Mumbai Bench upheld the taxpayer's claim that the term on the basis that "employment outside India" under Explanation 1(a) includes self-employment and is *not* restricted to a conventional salaried employment only, by specifically relying on the decision of the Kerala High Court in ***Abdul Razak (supra)***. This ruling further clarifies that the benefit of Explanation 1(a) to section 6(1)(c) cannot be denied merely because the taxpayer is the sole shareholder of the employer entity.

9. The Revenue has sought to argue that Xto10X Singapore and Three State Advisors Singapore were controlled by the Appellant and on that basis has attempted to argue that Appellant's employment must be disregarded.

10. The Kerala High Court in ***Abdul Razak (supra)*** has held that even self-employment is covered under the term "employment". This being the case, employment in a company which is controlled by the Appellant would certainly be covered under the ambit of both the clauses of Explanation 1 to section 6(1)(c).

11. Further in Para 17.5 of the Revenue's submissions dated 31 October 2025, the Respondent argues that the Appellant's migration to Singapore was not under a "compelled employer driven role" and hence the Appellant was not covered under Explanation 1(a) of section 6(1)(c). As is clear from Abdul Razak's case (supra), even self-employment would get covered under the aforesaid Explanation. A self-employment could never be a "compelled employer driven role". If a self-employment is covered, it is clear that there is absolutely no requirement that the role overseas is a "compelled employer driven role".

12. As held by the Kerala High Court in Abdul Razak, to be covered under Explanation 1(a), the only requirement is that the taxpayer's stay overseas should not be for "*purposes such as a tourist, or for medical treatment or for studies or the like*".

13. The Revenue has nowhere made the case that during the FY 2019-20 the Appellant was in Singapore for a casual visit such as a tourist, student or a medical patient. This being the case, the Appellant would be clearly covered under Explanation 1(a) if the Revenue's argument is that it is only during FY 2019-20 that the Appellant's migration to Singapore was cemented.

14. The Revenue has brought forth irrelevant arguments to dispute whether the Appellant indeed resigned from Xto10X Singapore, despite the Appellant providing ample evidence of the same including the Employment Pass issued by the Government of Singapore.

15. The Appellant in this regard submits that the date of the Appellant's resignation from Xto10X Singapore is wholly irrelevant. For the purpose of Explanation 1(a), the only requirement is that:

(i) the taxpayer should be one who "leaves India" i.e. a person who has migrated out of India during the relevant previous year. In this regard, while the Revenue disputes that the Appellant was based outside India during FY 2018-19, it does not dispute that the Appellant was based in Singapore during FY 2019-20, which can only imply that as per the Revenue during FY 2019-20 the Appellant ceased to be a person based in India and

became a person based in Singapore i.e. the Appellant was a person who "leaves India" during FY 2019-20.

(ii) the taxpayer should leave India "for the purpose of employment". The only requirement in this limb is that the Appellant should have been engaged in "employment" in Singapore. In this regard it is submitted that the identity of the employer entity is not relevant; all that is relevant is whether the Appellant was engaged in employment activity in Singapore. In other words, the requirement of this limb would be met irrespective of whether the Appellant was employed by Xto10X Singapore or Three State Advisors Singapore, or even academically speaking, by an Indian company in its Singapore office.

This being the case, the Revenue's attempts at raising doubts on the veracity of the Appellant's resignation from Xto10X Singapore are wholly irrelevant. Even if the Revenue's stand that the Appellant did not resign from Xto10X Singapore were to be accepted, the fact is that the Appellant was engaged in employment in Singapore which is the sole criteria for this limb. Whether the employment was with Xto10X Singapore or Three State Advisors Singapore is wholly irrelevant.

16. Explanation 1(a) and Explanation 1(b) to section 6(1)(c) in their present form were first introduced by the Finance Act 1982. The Explanatory Memorandum to the Finance Bill 1982 explains that the amendments which introduced Explanation 1(a) and Explanation 1(b) were with a view to avoiding hardship in the case of Indian citizens who are employed or engaged in other avocations outside India. The aforesaid Explanations therefore form part of an integrated scheme to provide relief to such individuals.

17. Where a person was already in employment overseas in the preceding year, Explanation 1(b) to section 6(1)(c) applies. Where a person leaves India for the purpose of employment during the previous year, Explanation 1(a) to section 6(1)(c) applies. In other words, cases of pre-existing employment overseas are covered under Explanation 1(a), while Explanation 1(b) applies to cases where employment overseas is taken up during the year, such that relief in the form of an extended period of stay in India is available for all individuals who are in employment overseas.

18. It is the Revenue's case that the Appellant was not entitled to the benefit of Explanation 1(b) since per the Revenue the Appellant was not a person who can be regarded as "being outside India" whereas in Paras 25.6 and 37 the Revenue argues that the Appellant is not entitled to the benefit of Explanation 1(a) for the FY 2019-20 on the basis that the Appellant was already based in Singapore since February 2019. The Revenue is therefore attempting to argue that though the Appellant is admittedly engaged in employment in Singapore he cannot get the benefit of either Explanation 1(a) and Explanation 1(b) which is wholly contrary to the scheme of the Act. The Appellant would either fall under Explanation 1(a) or under Explanation 1(b). Either the Appellant can be a person who is already based in Singapore at the commencement of the year (in which case he would be a person "being outside India") or has to be a person who "leaves India for the purpose of employment" during the year. It is a binary choice for the Revenue between these alternatives and an interpretation where the Appellant is neither is not possible.

19. This clearly shows that the Revenue's interpretation of Explanation 1(a) and Explanation 1(b) is wholly divorced from the textual reading and the intent of the law and hence should be wholly disregarded.

20. Interpretation cannot be unreasonable and unjust[1], and a construction that accords with reason and justice must be preferred to one that would completely defeat the intention of the legislature without advancing the object of the provision[2]. *[Refer Para 11, Page 23 of Kanga & Palkhivala's The Law and Practice of Income Tax Eleventh Edition, Volume 1]*

21. As regards the employment with Three State Advisors Singapore, the settled facts which are not in dispute are as follows –

(a) The Appellant travelled from India to Singapore on 10th September 2019, which is supported by stamps in the Appellant's passport;

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[1] CIT v Deepak 208 ITR 304

[2] CWT v Rajlaxmi 203 ITR 919

(b) The Appellant was granted an Employment Pass from the Government of Singapore for employment with Three State Advisors Singapore dated 12th September 2019 i.e. soon after the Appellant's arrival in Singapore.

22. If it is clear that the Appellant commenced employment with Three State Advisors Singapore on 12th September 2019, it is but obvious that his cessation of employment with Xto10X Singapore pre-dated the same. Further, the Revenue has no where disputed the statutory Form IR8A issued to the Applicant which clearly records the last working day with Xto10X Singapore as being 5th September 2019. All these facts which are evidenced by statutory and Government documents clearly supports the Appellant's explanation of the change in employment from Xto10X Singapore to Three State Advisors Singapore. This being the case, any attempt by the Revenue to raise doubts on the veracity of the resignation letter submitted to Xto10X Singapore or the Executive Agreement with Three State Advisors Singapore are wholly irrelevant.

23. In Para 36, the Revenue has argued that the Appellant's resignation from Xto10X Singapore and appointment at Three State Advisors Singapore was an "internal role transition" and was not a "new employment" outside India. The Revenue bases its argument on the fact that the two companies operated within the same infrastructural ecosystem, with common facilities and shared business environment viz the same business center.

24. The Revenue's interpretation on this point is wholly unfounded. Sharing of facilities such as a common cafeteria or restrooms does not make two companies one and the same. Such an interpretation would mean that the dozens of companies which operate from each business center would be treated as one and the same which is inconceivable.

25. If the Revenue's case is that operating within the same business center raises doubts on whether Three State Advisors Singapore was separate from Xto10X Singapore, the same would be adequately addressed by the fact that Three State Advisors Singapore in fact moved to a different premises in January 2020.

26. The Revenue has not disputed that the two companies have distinct business activities — one engaged in consultancy and the other in investment management (Refer Para 37). It has also not disputed the fact that the shareholding of the companies in question was different (Refer 38.1) That separate legal entities are involved is also beyond dispute. This being the case, the Revenue has no basis to argue that the Appellant taking up employment with Three State Advisors Singapore was a mere "internal role transition".

C) Jurisdictional ruling of the Karnataka High Court in the case of Manoj Kumar Reddy [2009] 34 SOT 180 (Bangalore)

1. In *Manoj Kumar Reddy*, the assessee was in fact a resident in the prior year, just like the Appellant. Yet the Tribunal allowed the benefit under Explanation 1(b).

2. The Revenue has contested this by making a bald statement that - *"the only reason the assessee in that case was held to be a non-resident was because his stay in India was less than 60 days after excluding deputation-related days. The 182-day relaxation under Explanation 1(b) was neither applied nor required for the decision"*. The Revenue concedes that deputation-related days (i.e., visits to India during the period of deputation overseas) were excluded. However, on one hand, the Revenue misleadingly asserts that Explanation 1(b) was not applied. On the other hand, the Revenue has not offered any reason for such exclusion.

3. From the ruling, it is very clear that that Tribunal excluded the "deputation-related days" by applying Explanation 1(b). This in fact was the core issue at hand. Please refer specific extracts of the Tribunal ruling which confirms this -

> *"3.15 Considering the legislative history of amendments and the purpose for which the amendments have been introduced, one has to consider the entry of the person in India during the previous year. If all the entries are in India for the purpose of a visit then the period of 60 days as mentioned in section 6(1)(c) will be substituted to 182 days...."*
>
> Thereafter, in Para 3.16, the Tribunal rules as follows –

"Looking to the legislative intention, we hold that the status of the Appellant cannot be taken as resident on the ground that he came on a visit to India and, therefore, ***the period of 60 days as mentioned in 6(1)(c) should be extended to 182 days*** *by ignoring his subsequent visit to India after completing the deputation outside India." [Emphasis supplied]*

4. Hence, the Revenue's argument that Explanation 1(b) to section 6(1)(c) was not invoked in Manoj Kumar Reddy's case is patently incorrect and misleading. In fact, the case of ***Manoj Kumar Reddy*** squarely applies to the present fact pattern of the Appellant.

5. In that case, the assessee had left India in February 2004, merely two months before the commencement of the relevant previous year, a fact pattern that mirrors the Appellant's situation However, unlike the Appellant, the assessee in that case returned to India as early as January 2005, making his total stay outside India was limited to just about 11 months.

6. Further, it was not a case where the assessee had permanently relocated abroad or undertaken a long-term overseas assignment; rather, it was a deputation or secondment by his existing employer for a limited duration.

7. Despite this, the High Court provided the benefit of Explanation 1(b) without raising questions on permanence. The Court did not impose any additional requirement of permanence, stability, or establishment of a substantial base abroad, as is sought to be alleged. Thus, if the benefit of Explanation 1(b) was considered available in a case where the individual's stay abroad was for less than a year and purely on a short-term deputation, it is wholly untenable to deny the same benefit to the Appellant, whose continues to reside and work in Singapore till date (i.e., 7 years since Feb 2019).

8. This reinforces that factors relied upon by the Revenue including permanence, stability and substantial presence are not relevant criteria, and do not find support even in the jurisdictional High Court which has dealt with the applicability of Explanation 1(b).

9. The Revenue's contention that case law limits itself compulsory employer-mandated deputation is misconceived. Nothing in the Tribunal's reasoning confines the benefit of Explanation 1(b) to such cases.

10. On the contrary, the legislative text itself expressly covers self-employment and any other avocation, making it clear that Explanation 1(b) extends to all individuals outside India irrespective of whether the move was employer-driven or self-initiated. ***[Refer page 642 to 698 of the paperbook]***

D) Rebuttals of specific arguments

In addition to the above submissions, the Appellant has also set out para-wise rebuttal to specific contentions of the Revenue -

Para in Revenue's submission	Rebuttal by the Appellant
Para 6.1	The Appellant is unable to trace any reference in the Budget Speech of 1982 or the CBDT Circular No. 346 dated 30.06.1982 which states that the object was to liberalize residence test in the case of NRIs visiting India. To support this, the exact text of the Finance Minister's Speech is reproduced below – ***"Under another test, persons who have been in India for 365 days or more in the four years preceding the relevant year, become resident in that year by being in India for 60 days or more in that year. In the case of Indian citizens who are employed abroad and who come to India on leave or vacation, the period is 90 days. I propose to extend this benefit also to the self-employed and those***

in other occupations, irrespective of their avocation abroad or the nature of their visit to India"

Further, the exact text of Circular No 346 is reproduced below –

With a view to avoiding hardship in the case of ***Indian citizens, who are employed or engaged in other avocations outside India****, the Finance Act has made the following modifications in the tests of residence in India:*

1. ....

2. In the case of Indian citizens who come on a visit to India, the period of "60 days or more" referred to in (c) above will be raised to "90 days or more"

Hence, the statement made by the Revenue is devoid of merit.

Para 6.2 No where does the statute, Explanatory Memorandum or the Finance Minister's speech refer to the expression *"without becoming resident"* and therefore any argument made by the Revenue on the basis of the same is wholly devoid of merit and should be disregarded.

Para 11.1, 11.2 The Appellant's reliance on the Hindi version was not to "expand" the scope, but to demonstrate legislative intent. The Legislature has employed two different expressions - "non-resident" and "being outside India" to convey different ideas.

The fact that two different phrases are used not only in the English text, but also in the Hindi text clearly shows that the legislature has deliberately used two different terms since the meaning of each of these terms are different.

Moreover, as per the Official Languages Act, 1963,

(1) A translation in Hindi published under the authority of the President in the Official Gazette on and after the appointed day, —

(a) of any Central Act or of any Ordinance promulgated by the President, or

(b) of any order, rule, regulation or byelaw issued under the Constitution or under any Central Act,

shall be deemed to be the authoritative text thereof in Hindi.

Para 12.1, 12.2, 12.3, 12.4 The Revenue's argument that one suffers no disadvantage because the tie-breaker clause under Tax Treaty can help determine residence is untenable.

First, the existence of a treaty tiebreaker is irrelevant at this stage. The tie-breaker clause operates *only after* residence has been determined under the respective domestic laws of the Contracting States. It cannot be invoked to deny the application of a domestic statutory exemption at the threshold.

Secondly, India does not have comprehensive DTAAs with all jurisdictions (for instance, Zimbabwe, Taiwan, Venezuela). Hence, to suggest that the availability of Treaty relief negates prejudice is patently incorrect.

Thirdly, the Revenue's argument in para 12.3 is self-contradictory. Revenue's primary argument has been that the Appellant's residence in "prior year" is the key factor for applying Explanation 1(b). On the other hand, in Para 12.3, Revenue contradicts by stating relief can be claimed when the permanence of stay abroad is established in "future years". If permanence is to be tested prospectively, then residence in preceding year necessarily becomes irrelevant.

Para 6.8, 6.9 As regards the purported lack of clarity concerning the Appellant's stay in India and visits during the COVID-19 period, detailed records of the Appellant's presence in India for the four years preceding his departure were already provided vide submission dated 14.03.2022. ***[Refer page 126 of the paperbook]***

Further, the circumstances of his visits during the COVID-19 period were comprehensively explained before the Dispute Resolution Panel. ***[Refer page 182-184 of the ITAT appeal]***

Revenue's attempt to ignore these materials appears to be a deliberate attempt to cast baseless aspersions on the Appellant's credibility.

Para 44.3(ii) The Revenue has inferred that Three State Advisors Singapore lacked operational substance merely because the MAS license was issued toward the end of the financial year.

First, this is a new allegation not forming part of the original assessment proceedings and cannot now be introduced for the first time.

In fact, even before the issuance of the MAS license, Three State Advisors Singapore had commenced activities in May 2019 as an investment manager. At that point in time, Three State Advisors Singapore had a specific exemption from obtaining a license under the Securities and Futures Act (Cap289) for carrying out investment management activities. The requirement to obtain a license arose because Three State Advisors Singapore wanted to expand into operations into areas which required a specific license. This does not mean that Three State Advisors Singapore was not operational until then.

Obtaining such a license is an extensive and time-consuming process, often spanning several months of review and scrutiny. The MAS

evaluates each application on a case-by-case basis, looking closely at the credibility, experience and reputation of the representative / CEO. It was in this context that the Appellant's active employment with Three State Advisors Singapore was therefore indispensable.

On the allegation that investments are a factor in determining Centre of Vital Interest, attention is drawn to the ruling of the Mumbai ITAT in the case of ***Ashok Kumar Pandey v. ACIT [2024] 167 taxmann.com 286 (Mumbai - Trib.),*** wherein the ITAT held that -

"Generally, investments in securities, mutual funds, banks move not necessarily with residence of the assessee but on the basis of rate of return in particular state. For determination of economic relationship, place of business, place of Administration of property and place of earning wages (remuneration) (profit) is of importance.".

What is relevant is the place from where the taxpayer is administering the investments. In the present case, the Appellant was administering the business and investments from Singapore and earning active income in the form of salary in Singapore. This demonstrates that the Appellant's economic interests were primarily situated in Singapore and not in India.

While the Appellant respectfully submits that location of investments as not being relevant, as specifically requested by the Hon'ble Panel, tabulation of assets held by the Appellant in India vs outside India is enclosed as **Annexure A.** The Appellant would be pleased to share further details if required by the Hon'ble Panel.

As evident in the said annexure, the asset composition in Singapore is greater than India.

Further, the position of assets has to be seen not while the Appellant was in India, but after the relocation. The investments made by the Appellant after he moved to Singapore have been overwhelmingly outside India reflecting the shift in economic nexus to Singapore.

Para 45.2 As explained above, the Appellant's family relocation, children's schooling, and social integration in Singapore all occurred within the same relevant year of FY 2019-20, not subsequently. In respect of the "Permanent Resident" status, the in-principle approval was received on 26 February 2020 ***[Refer page 585 of the paperbook]***, within the relevant year of FY 2019-20, not subsequently.

E) Conclusion

The Appellant submits that -

a. The Revenue's submissions dt 31 Oct 2025, being beyond the scope of the original proceedings and violative of natural justice, deserve to be rejected in limine. Without prejudice, should the Hon'ble Tribunal admit the same, the Appellant prays for an opportunity to present rebuttal submissions.

b. The argument of the Revenue that for Explanation 1(b) to section 6(1)(c) to be applicable, the Appellant should have demonstrated a "degree of permanence, stability and substantive presence" overseas at the "commencement of the relevant year" does not have any legislative or judicial basis and should be rejected.

c. The argument of the Revenue that for Explanation 1(b) to section 6(1)(c) to be applicable, the Appellant should have been a non-resident in the preceding year does not have any legislative or judicial basis and should be rejected.

65. During the course of hearing the assessee was asked to submit the summary of investment made by the assessee in India and outside

India. Such statement was also given at page No. 25 of the above compilation wherein the assessee was holding the total investment in India of ₹ 7,002,052,377 as on 31st of March 2020 and further assessee is shown to have made an investment outside India as on 31st of March 2020 of US$ 121,008,379 amounting to ₹ 9,156,099,015. This sum included a sum of ₹ 7,461,697,525/– made by the assessee has capital contribution to trust outside India.

Decision and Reasons

66. We have carefully considered the rival contention and perused the orders of the learned lower authorities. We have also carefully considered the several judicial precedents relied upon before us.

67. Ground No. 1 of the appeal is agreed by both the parties is general in nature, no separate arguments were advanced, hence same is dismissed.

68. Ground No. 2-4 of the appeal is with respect to the residential status of the assessee as per provisions of the Income Tax Act. Section 6 of the Income tax Act defines the Residential Status of an assessee. It provides that :-

69. For the purposes of this Act,-

(1) An individual is said to be resident in India in any previous year, if he-

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hun-dred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

[Explanation 1.]-In the case of an individual,-

(a) being a citizen of India, who leaves India in any previous year [as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previ-ous year, the provisions of sub-clause (c) shall apply in rela-tion to that year as if for the words "sixty days", occurring therein, the words "one hundred and [eighty-two] days" had been substituted.

70. The controversy in these grounds is with respect to the issues that whether assessee is non Resident as per the provisions of section 6 of the Act. It is an undisputed fact that in FY 2019-20 , assessee stayed in India for 141 days. Therefore according to section 6(1)(a) assessee does not cross threshold of 182 days.

71. According to provision of section 6 (1) (c) of the Act , if having within the four years preceding that year been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year. Thus , both the cumulative considering of stay in four preceding years and also of stay in the relevant financial year needs to be satisfied to hold the assessee as resident in India.

72. The assessee has stayed in India for preceding four years as under :-

F Y	A Y	Number of days stay
2015-16	2016-17	318
2016-17	2017-18	326
2017-18	2018-19	325
2018-19	2019-20	268
Total		1237 days.

73. Thus assessee has stayed for more than 365 [1237 days] in preceding four years, the first threshold of section 6 (1) (c) is met .

74. The second threshold is of 60 days or more in the impugned financial year, for which assessee has stayed for more than 141 days in India. Therefore it also crosses the second threshold for satisfaction of section 6 (1) (c) of the Act.

75. However the assessee submits that he has gone outside India for employment, he should be treated as person 'being outside India' and therefore the time limit of second limb of section 6 (1) (c) should be considered of 182 days instead of 60 days by invoking Explanation 1 (b) of the Act. The claim of the revenue is that clause applies only in case of the person who are already ' non-resident' and not to the assessee who was a resident in immediately preceding year.

76. Explanation 1(b) to section 6(1)(c) provides for a concession for Indian citizens or persons of Indian origin who, being outside India, come on a visit to India in any previous year. In such cases, the prescribed period of 60 days in India to be considered a resident under clause (1)(c) is relaxed to 182 days. The objective behind this

relaxation is to enable non-resident Indians who have made investments in India and who find it necessary to visit India frequently and stay here for the proper supervision and control of their investments to retain their status as non-resident.

77. CIRCULAR NO. 684, DATED 10-06-1994 provides that:-

FINANCE ACT, 1994

Extending the period of stay in India in the case of non-resident Indians without their losing the non-resident status

19. Under the provisions of clause (1) of section 6 of the Income-tax Act, an individual is said to be resident in India in any previous year, if he has been in India during that year,— (i) for a period or periods amounting to one hundred and eighty-two days or more, or (ii) for a period or periods amounting to sixty days or more and has also been in India within the preceding four years for a period or periods amounting to three hundred and sixty-five days or more. However, the period of sixty days was increased to one hundred and fifty days in the case of a non-resident Indian, i.e., a citizen of India or a person of Indian origin within the meaning of the Explanation to clause (e) of section 115C of the Act, who, being outside India, comes on a visit to India. The said Explanation provides that a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India."

78. Honourable Bombay High court has considered this aspect whether clause (b) to Explanation [1] will apply to whom in Principal Commissioner of Income-tax vs. Binod Kumar Singh [2019] 107 taxmann.com 27 (Bombay)/[2019] 264 Taxman 335 (Bombay)/[2020] 423 ITR 175 (Bombay)[22-04-2019]

5. In plain terms, by virtue of Section 6(1) of the Act, an individual would be said to be a resident in India if he satisfies the requirement contained in clause (*a*) or clause (*c*). Requirement of clause (*a*) is that

the person should have been in India during the relevant previous year for a period not less than 182 days. Clause (*c*) would require that he was within the country for not less than 365 days in four preceding years and has been in India for 60 days or more in the current year. This requirement of 60 days would be substituted by 182 days if he is an Indian citizen or a person of Indian origin and has come on a visit to India.

6. In the background of such provision, the Tribunal on material on record came to factual finding that the assessee was in India during the previous year relevant to the assessment year in question for 173 days. This factual finding is unassailable. In that view of the matter, clause (*a*) of Section 6(1) would not apply. It is true that in absence of clause (*b*) of *Explanation* 1 below Section 6(1) of the Act, the assessee would have fulfilled the requirements of clause (*c*) of Section 6(1). However, as per the explanation, if the assessee comes to a visit in India, the requirement of stay in India in the previous year would be 182 days and not 60 days as contained in clause (*c*). It is, in this respect, the Tribunal had taken a note of relevant facts more minutely. Such facts were that the assessee who was born in India in the year 1960, after completing his higher education went to Soviet Union for further education in engineering. From 1978 to 1984, he persuaded his Masters in Engineering in Radio Technology. He also did post-graduation in Russian language. From 1984 to 1986, he had worked in trading pharma company in USSR. From the year 1986-1987, he did his business management from Sweden. He again worked in a trading pharma company. Between 1989 to 1995, he had worked in Ukraine after which he set up his own business in pharmaceutical sector primarily in Russia, Ukraine and CIS countries for which purpose he had set up a trading house at Ukraine. He had acquired immovable property in Ukraine in 1995 and 1997. The assessee had permanent resident status in Ukraine till 2002. After that along with his family, he shifted to England but continued his business interest in Ukraine, Russia and CIS Countries. The assessee had acquired properties in Ukraine but continued his business interest as earlier.

7. These facts would demonstrate that the assessee had migrated to a foreign country where he had set up his business interest. He pursued his higher education abroad, engaged himself in various business activities and continued to live there with his family. His whatever travels to India, would be in the nature of visits, unless contrary

brought on record. We do not find that the Tribunal, therefore, committed any error."

79. In Additional Director of Income-tax vs. Sudhir Choudhrie [2017] 88 taxmann.com 570 (Delhi - Trib.)/[2017] 55 ITR(T) 681 (Delhi - Trib.)[06-03-2017] it is held that -

4. Refuting the above arguments, the learned authorised representative placed support on the reasoning given by the learned Commissioner of Income-tax (Appeals) in the impugned order. It was further submitted by the learned authorised representative that during the course of assessment, a detailed factual note was submitted by the assessee substantiating his claim of "being outside India". It was submitted by the learned authorised representative that post his medical treatment, the assessee had decided to relocate his entire family outside India in the year 2000 and since then they have been staying in the UAE and the UK on a residency visa/highly skilled visa. The learned authorised representative also filed before us copies of assessment orders passed by the Income-tax Department in case of the assessee for earlier assessment years wherein the tax residency status of the assessee has been assessed as that of a "non-resident". It was further submitted by the learned authorised representative that the omission of clause (b) to section 6(1) by the Finance Act, 1982 with effect from April 1, 1983 and the legislative intention of amendments made to section 6 by the Finance Act, 1990 (reported in CBDT Circular No. 55 dated 13th February 1990) and by the Finance Act, 1994 (reported in CBDT Circular No. 684 dated June 10, 1994 ([1994] 208 ITR (St.) 8)) clearly negates the suppositions of the Assessing Officer taking economic/legal relationship of an assessee with India as a relevant criteria for determination of his tax residency status. The learned authorised representative submitted that Explanation 1 to section 6(1) has two limbs. It was submitted that requirement of "being outside India" as per Explanation (b) has to be seen in light with the intention of leaving India which as per clause (a) of Explanation 1 would be "employment" outside India. It was submitted that the courts have unanimously held that "employment" in clause (a) of Explanation 1 also includes "self-employment". It was submitted that in the year of leaving India for "employment" or "self-employment" clause (a) would be applicable and for subsequent years clause (b) would be applicable.

It was submitted that in the instant case condition of clause (a) got satisfied when the assessee decided to relocate his family outside India and took self-employment there. It was submitted that the Department has been accepting that the assessee was "being outside India" and the residency status of the assessee has been assessed as that of a "non-resident" by the Assessing Officer in the assessment years 2003-04 and 2004-05. The learned authorised representative also relied upon the decision of co-ordinate Bench of the Income-tax Appellate Tribunal in the case of *Suresh Nanda* v. *Asstt. CIT* [2012] 23 taxmann.com 386/53 SOT 322 (Delhi) in support of his submission that the sole relevant test for determination of residency status is the number of days criteria. It was submitted by the learned authorised representative that this decision had been upheld by the jurisdictional High Court in *CIT* v. *Suresh Nanda* [2013] 35 taxmann.com 199/216 Taxman 185/352 ITR 611 (Delhi). The learned authorised representative also relied upon the decision of co-ordinate Bench in the case of *K. Sambasiva Rao* v. *ITO* [2014] 42 taxmann.com 115/62 SOT 167(Hyd. - Trib.). About the decisions relied upon by the learned Commissioner of Income-tax (Departmental representative) it was submitted that these cases were distinguishable on facts and per contrary support the case of the assessee.

5. In rejoinder, the learned Commissioner of Income-tax (Departmental representative) submitted that the decision of Suresh Nanda (supra) is factually distinguishable. As regards the status of the assessee being assessed as a "non-resident" in earlier years by the Tax Department it was submitted by the learned Commissioner of Income-tax (Departmental representative) that the principles of res judicata are not applicable to Income-tax proceedings.

6. We have carefully considered the rival submissions and have also perused the material available on record. Since we are called upon to determine the tax residency status of the above assessees, it would be relevant, first, to note the provisions of section 6, which are as under :

"6. For the purposes of this Act,—

(1) An individual is said to be resident in India in any previous year, if he—

(*a*) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or . . .

(*c*) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation.-In the case of an individual,—

(*a*) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words 'sixty days', occurring therein, the words 'one hundred and eighty-two days' had been substituted ;

(*b*) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words 'sixty days', occurring therein, the words 'one hundred and eighty-two days' had been substituted."

6.1 The learned Commissioner of Income-tax (Departmental representative) has vehemently supported the case of Department in which while determining the residential status, much weightage has been given to economic and legal relationship of an assessee with India. We do not find any merit in this contention. Provisions of section 6 earlier provided that an individual would be a resident of India if he maintained for himself a dwelling place in India. These provisions have undergone several amendments and the legislative intention is in fact encouraging "non-residents" to maintain investments in India and still not losing the status of a "non-resident". In this regard it would first be

relevant to note the provisions under the 1922 Act which were in section 4A and provided for as under :

"4A. Residence in the taxable territories.-For the purpose of this Act—

(*a*) any individual is resident in the taxable territories in any year if he—

(*i*) is in the taxable territories in that year for a period amounting in all to one hundred and eighty-two days or more ; or

(*ii*) maintains or has maintained for him a dwelling place in the taxable territories for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in the taxable territories for any time in that year ; or

(iii) having within the four years preceding that year been in the taxable territories for a period of, or for periods amounting in all to three hundred and sixty-five days or more is in the taxable territories for any time in that year otherwise than on an occasional or casual visit ; or

(*iv*) is in the taxable territories for any time in that year and the Income-tax Officer (now Assessing Officer) is satisfied that such individual having arrived in the taxable territories during that year is likely to remain in the taxable territories for not less than three years from the date of his arrival ;"

6.2 Criteria of judging residential status on basis of a dwelling house in India was also retained in 1961 Act. In this regard clause (b) of section 6(1) provided for as under :

"(*b*) maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to one hundred and eighty-two days or more in that year and has been in India for thirty days or more in that year ; or"

6.3 However, thereafter, the Finance Act, 1982 omitted clause (b) of section 6(1) and the legislative intention is stated by Board Circular No. 346 dated June 30, 1982 reported in [1982] 138 ITR (St.) 10, 15 as under :

"Relaxation of tests of 'residence' in India—Section 6"

7.1 Under the existing provisions, an individual is said to be 'resident' in India in any year, if-

(*a*)	he is in India in that year for a period or periods amounting in all to 182 days or more ; or
(*b*)	he maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to 182 days or more in that year and has been in India for 30 days or more in that year ; or
(*c*)	Having within the four years preceding that year been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year.

7.2 In the case of an Indian citizen who is rendering service outside India, and who is on leave or vacation in India, the period of 30 days and 60 days referred to in (b) and (c) above is taken as 90 days.

7.3 With a view to avoiding hardship in the case of Indian citizens, who are employed or engaged in other avocations outside India, the Finance Act has made the following modifications in the tests of residence in India :—

(*i*) The provision relating to maintenance of a dwelling place coupled with stay in India of 30 days or more referred to in (b) above has been omitted.

(*ii*) In the case of Indian citizens who come on a visit to India, the period of '60 days or more' referred to in (c) above will be raised to '90 days or more'.

(iii) Where an individual who is a citizen of India leaves India in any year for the purposes of employment outside India, he will not be treated as resident in India in that year unless he has been in India in that year for 182 days or more. The effect of this amendment will be that the test of residence in (c) above will stand modified to that extent in such cases."

7.4 Further relaxation in law came by the Finance Act, 1990 and the Finance Act, 1994 where in the period of 90 days was increased to 150 days and then from 150 days to 182 days. The legislative intention behind this is provided for by CBDT Circular No. 684 dated June 10, 1994 reported in [1994] 208 ITR (St.) 8, 21 as under :

"Extending the period of stay in India in the case of non-resident Indians without their losing the non-resident status

19. Under the provisions of clause (1) of section 6 of the Income-tax Act, an individual is said to be resident in India in any previous year, if he has been in India during that year,—

(*i*) For a period or periods amounting to one hundred and eighty-two days or more, or

(*ii*) For a period or periods amounting to sixty days or more and has also been in India within the preceding four years for a period or periods amounting to three hundred and sixty-five days or more.

However, the period of sixty days was increased to one hundred and fifty days in the case of a non-resident Indian, i.e., a citizen of India or a person of Indian origin within the meaning of the Explanation to clause (e) of section 115C of the Act, who, being outside India, comes on a visit to India. The said Explanation provides that a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India.

19.2 Suggestions had been received to the effect that the aforesaid period of one hundred and fifty days should be increased to one hundred and eighty-two days. This is because the non-resident Indians who have made investments in India, find it necessary to visit India frequently and stay here for the proper supervision and control of their investments. The Finance Act therefore, has amended clause (b) of the Explanation to section 6(1)(c) of the Income-tax Act, in order to extend the period of stay in India in the case of the aforesaid individuals from one hundred and fifty days to one hundred and eighty-two days, for being treated as resident in India, in the previous year in which they visit India. Thus, such non-resident Indians would not lose their 'non-resident' status if their stay in India, during their visits, is up to one hundred and eighty-one days in a previous year."

7.5 The above changes in law clearly support the case of assessee. The statute has provided repetitive relaxations to non-residents of the Indian origin by providing them relaxation for stay in India for proper control and supervision of their investments and still not losing the status of "non-resident". Under the circumstances it is difficult to appreciate the arguments of the learned Commissioner of Income-tax (Departmental representative) as noted above.

80. Thus in the above case also the coordinate bench has interpreted the word 'being outside India' for non-residents only as assessee was residing abroad and came to India claiming extension of time line from 60 days to 182 days.

81. Subsequent amendment in clause (b) of Explanation 1 also shows that it is enacted to counter instances where individuals who actually carry out substantial economic activities from India manage their period of stay in India to remain a non-resident in perpetuity and not be required to declare their global income in India. The amendment restricts the relaxation in clause (b) in Explanation 1. This, it is not obviating the difficulty of ' Non-resident' but restrictions to their non-residential status. This also shows that clause (b) of Explanation [1] applies only to non-residents.

82. Thus , we hold that ld AO and Ld DRP has correctly held that period of stay cannot be extended to 182 days instead of 60 days for deciding the residential status of the assessee as per second limb of section 6 (1) (c) of the Act by virtue of Explanation 1 (b) of the Act.

83. Coming to the second argument that clause [a] of Explanation [1] applies, we find that Explanation 1(a) provides for substituting the period of stay in India for 60 days in section 6(1)(c) by 182 days if the assessee, being a citizen of India, leaves India in any previous year as a member of the crew of an Indian ship or for the purposes of employment outside India. The relaxation in Explanation 1(a) applies to the previous year in which the assessee, being a citizen of India,

leaves India. The facts clearly shows that assessee left India in FY 2018-19 , on February 2019 for employment with X to 10 X Pte Limited. Therefore as the assessee has not left India in this financial year i.e. FY 2019-20, this clause as such does not apply for the impugned Assessment year.

84. Argument of the assessee that either the clause (a) or Clause (b) should apply to the assessee is fallacious for the reason that assessee has not left India in FY 2019-20 but in FY 18-19 so clause (a) does not apply for this year and further as already held by us that clause (b) applies only to non-residents and not person like assessee who is a resident.

85. Assessee has also argued that as assessee has resigned from X to 10 X PTE limited and then went to Singapore for employment with Three State capital Advisors PTE Limited in F Y 2019-20; he should get the benefit of the extended periods as per clause (a) of Explanation [1]. Reason being that he is a citizen of India, leaving India for the Purposes of employment with Three State capital Advisory PTE Ltd. We find that this argument is contrary to the other stand of the assessee. Clause (a) applies when a citizen of India leaves the country for the purposes of employment outside India. In fact, the assessee was already employed in Singapore when he visited India. He resigned from India from his employment with X to 10 X PTE Limited and then once again sought an employment with Three State capital Advisory PTE Limited. Thus when he came to India from

Singapore, he was already employed by X to 10 X PTE Limited. We also record the fact that assessee was employed with Flipkart private Limited and he resigned from that service on 13th November, 2018 [page No 196 of the paper book]. On 17/2/2019 , he entered in to employment contract with BTB Consulting Private limited [page no 197 of the paper book] , on 10/4/2019 , Director of X to 10 X Technologies PTE ltd confirms that assessee is working with them as Chief Executive Officer [page no 201 of paper book. Thus assessee left India for the purposes of employment as Chief Executive officer of X to X Technologies PTe Limited on 22/09/2019.[Para no 7.6 of the paper book page no 379] Thus , he left India for employment in F Y 2018-19 and not in FY 2019-20. Thus, his claim would be proper if the AY involved is 2019-20 as he left India for the purposes of employment in that AY. However , the facts further goes in para no 7.8 of his submission [page no 379 of the paper book] , assessee submits that :-

" 7.8 The assessee spouse and children also moved to Singapore in March 2019. The assessee submits that he continues to reside in Singapore with his family till date. The assessee's children attend school in Singapore. The assessee spouse has been in employment in Singapore. The assessee and his spouse of applied for and granted permanent resident status in Singapore.

7.9 The assessee submits that he has been residing in Singapore since February 2019 till date. He only comes on brief visits to India for business and personal purposes."

86. Above submission made by the assessee itself shows that he is not a person who is leaving India for employment but he is residing in

Singapore, *comes on brief visit to India*. If the stand of the assessee is accepted that for this assessment year [AY 2020-21] also the assessee should get a benefit of extended time period of 182 days instead of 60 days as per the second limb of section 6 (1) (c) of the Act than every person who visits India will get such an extension of period every year. The provision applies only to the person who are leaving India and not visiting India. That is neither the intention nor the spirit of the provisions. Therefore he does not qualify even for the relaxation provided under Explanation 1 (a) of section 6 (1) (c) of the Act.

87. It is not in dispute between the parties and both have confirmed that it is well settled that in construing fiscal statutes the principle of literal construction is paramount. Nothing can be read into or implied beyond the plain meaning of the words used. We also agree with the above submission of both the parties and we have construed the provisions of section 6 for the purpose of deciding the residential status of the assessee giving literal construction to the provisions. We accept the attempt of neither the revenue or assessee to read something more what has been legislated.

88. Therefore, on the basis of the above submission and findings of the fact we hold that assessee has been in India for more than 60 days and satisfied the residential test of provisions of section 6 (1) (c) of the Act and is not entitled to the relaxation in the period of stay as envisaged under clause (a) or (b) to Explanation 1.

89. Accordingly we dismiss ground No. 2 – 4 of the appeal of the assessee.

90. Ground No. 5 is with respect to the argument of the assessee that he satisfies the criteria to be considered as a resident of Singapore as per Article 4 of the India Singapore Double Taxation Avoidance Agreement which has not been appreciated by the learned dispute resolution panel and the learned assessing officer who erroneously held that assessee is a resident of India even on application of Article 4 of The Double Taxation Avoidance Agreement.

91. According to the provisions of Article 4 (2) where the individual is a resident of both the States i.e. India and Singapore, then, his title shall be determined as follows:-

(a) he shall be deemed to be a resident of the state and which he has a permanent home available to him, if he has a permanent home available to him in both states, he shall be deemed to be a resident of the state with which his personal and economic relations are closer (centre of vital interest),

(b) if the state in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either state, he shall be deemed to be a resident of the state in which he has an habitual abode

(c) if he has an habitual abode in both states or in neither of them, he shall be deemed to be a resident of the state of which he is a national

(d) if he is a national of both states or of neither of them, the competent authorities of the contracting State shall settle the question by mutual agreement.

92. With respect to the permanent home it is submitted by the assessee that assessee has migrated to Singapore in February 2019,. Upon moving to Singapore, the assessee initially occupied the apartment at No. 2, Kim Sang walk, great word serviced apartments, #32 – 08, Singapore from 26 February 2019 till 26 July 2019. The assessee has the right to occupy the above said premises continuously during this period. Thereafter the assessee to content his residence at #9 Nathan Road,#06-01 Regency Park Singapore for which the assessee has a rental agreement for a period of 2 years starting from 15 July 2019 to 14 July 2021. Thus, though rented, but assessee has a permanent home as he possesses that house is a home. It is rental agreements are also for the period of 2 years and therefore he has also a permanent home in Singapore.

93. With respect to the permanent home available to him in India, the assessee has commenced construction of a house at 411, 11th Main Road, 2nd cross, third block, Koramanagala , Bangalore 34 prior to considering migration to Singapore. The construction of the house has been proceeding slowly due to a No. of reasons. The house remains under the construction even as on the date and it is not in a habitable condition. In this regard, the assessee has submitted the status report also of a project management consultant which shows that the premises were under construction and on inhabitable. The contention of the assessee is that as the house is under construction, it cannot be said to be a permanent home of the assessee since there is no possibility for the assessee to stay there. Thus the claim of the

assessee is that he did not own or have on rent any habitable premises in India during the previous year 2019 – 20.

94. Contrary to that the claim of the revenue is that that assessee has a residential property in Kormangala Bengaluru valued at approximately ₹ 36.75 crores land valued at approximately Rs. 1 crore and an apartment in Mantri classic, Bengaluru valued at approximately Rs. 2.75 crores. It is the claim of the revenue that for the about test, ownership and availability of residential property is sufficient to constitute a permanent home, physical occupation or completion of revenue is not a precondition. It is further stated that mere fact that one of the properties was under construction or undergoing renovation does not negate the fact that the appellant owned and retained residential accommodation in India throughout the relevant period. Compared to this, in Singapore the assessee has only a rented accommodation in a service apartment. It is very temporary, transient and not indicative of settled long term residents. It is also the claim of the revenue that when the assessee is coming to India, despite specific query by the bench, regarding his Indian presents and accommodation, the assessee has remained relatively silent and has not furnished full particulars regarding the stay and use of residence in India which further weakens the claim of the assessee. We also find that even in the rebuttal filed by the assessee by way of written submission on 31 October 2025, the assessee did not rebut the claim of the learned that ASG mentioned in paragraph No. 43.4 of his submission. The revenue is also contesting that the assessee himself as

a claim deduction under section 54F of the Act which is available only in case of a purchase or construction of residential house. Therefore now the stand of the assessee is contradictory that his house is not habitable at all.

95. On careful consideration we find that the assessee has a residential apartment on rent in Singapore and further the assessee has owned property at C- 703, Mantri Classic apartment, Kormanagala Bangalore and further house at Kormangala, Bangalore. At paragraph No. 34 of the assessment order, the assessee was asked by the learned assessing officer that the assessee decided in India for more than 141 days in India, despite the questionnaire, the assessee has not provided the details of his accommodation in India for nearly 39% of the year. Even before us no such details were furnished. The learned assessing officer at paragraph No. 35 of the assessment order has also raised at a categorical very that the permanent residence of the assessee was in India for the financial year 2019 – 20. One more clinching point for the issue of permanent residence is that during the Covid pandemic, which was the most difficult times, any person would prefer to stay in place of permanent residence and at a place where he manages his or her affairs better and with their loved ones. It is seen that for 38 days spent the pandemic raged during the relevant financial year, the assessee was in India. Coupled with the fact that assessee did not give any information about his stay during 141 days which also included Covid period. The assessee's Home at Kormangala is stated to be at the cost of Rs 39 crores. Thus, it is apparent that assessee has

permanent home available in both the states. The distinction cannot be made with respect to more permanence such as own house property in India compared to a rented premises. Thus assessee shall be deemed to be a resident of the state of India and Singapore both in view of permanent home available to him at both the places.

96. With respect to the centre of vital interest, it was the submission of the assessee that his personal and economic relations are closer to Singapore than India. Assessee submits that assessee does not have any independent family members in India, assessee's nuclear family consisting of his powers and his two children are residing in Singapore along with the assessee for the whole of the financial year 2019 – 20. The assessee's family has continued to reside with him in Singapore till date and therefore the assessee's personal relations are closer to Singapore than India. It was also the claim of the assessee that assessee does not have any independent family members in India and the assessee's parents are independent are residing in Punjab. They are not living with him and assessee when he was in India, assessee used to visit them only occasionally. The children of the assessee are also enrolled for schools in Singapore and the spouse of the assessee is also employed in Singapore. Thus the assessee's personal relations are close to Singapore. The assessee has its principal bank accounts and credit cards in Singapore and his visit to India were very short and principally for business purposes. The assessee is employed in Singapore since February 2019 and also

administers his investments from Singapore therefore his economic relations are also based in Singapore.

97. Compared to this the claim of the revenue is that assessee's own residence lies in India, he did not have much immovable assets in Singapore. The learned assessing officer extracted the assets and liability statement of the assessee for financial year 2019 – 20 and stated that assessee has movable properties in the form of vehicles et cetera and bank deposits et cetera of ₹ 2,00,00,003 crores. Shares and securities owned by the assessee is ₹ 290 crores and loans and advances our ₹ 256 crores. It was further stated that on the sale of shares of record private limited, Singapore the assessee has earned huge capital gain which is derived from the underlying assets in an Indian entity such as Phillip Carter India Ltd. Therefore the majority of the economic interest of the assessee lies in India. The assessing officer further referred to the webpage for extra tax website and stated that its location is also in Bangalore at page No. 59 of the assessment order and further on the basis of the screenshot in paragraph No. 37, the learned assessing officer has held that the company is working on Indian start-up ecosystem, its clients and customers are in India, the organisation mostly comprises of Indians and the office addresses also in Bangalore. There is no mention of any Singapore clients are operation. Thus the so-called employment of the assessee from Singapore is also for India-based operation. The learned assessing officer further invoked the concept of "substance over form" and stated that the assessee's family ties, provisions, education,

investments, fixed assets, business ventures are all connected to India. It was further stated that assessee has only derived salary income from his employer. Further at paragraph No. 38 the learned assessing officer tabulated the source of income in India as well as in Singapore and find that except salary in Singapore there is nothing that assessee owns from that country. Therefore the centre of vital interest of the assessee lies in India and not in Singapore. The ld AO further Extracted Para no. 15 OECD Commentary on Article 4 concerning the definition of residence in para no 40 of his order. In written submission, the ld ASG further stated that the assessee's business and economic interest continued to be significantly India Centric. He further submits that test of Vital interest should be as it existed during the relevant previous year and subsequent acts does not have any relevance. He submits that appellant's own narrative makes it evident that so called " Permanent Shift' to Singapore was a gradual post facto process and did not crystallise at the start of the year.

98. While hearing the matter we have asked for the details of investments of the assessee in India as well as Singapore. Same were furnished by the assessee. The assessee submits that the economic interest should be assessed based on substantive commercial engagement rather than passive investments. Most of the assessee's investments in India were made in prior years when the appellant was a resident of India. Investments made in India prior to the appellant's migration to Singapore do not have any bearing on his centre of economic interest as such. Assessee also pressed into service the fact that individuals

who have become non-resident face restrictions under the Foreign Exchange Management Act 1999 in repatriating overseas funds and investments made in India when they were resident. Thus the investments made in India are not by any means an indicator of the centre of economic relations since there was a regulatory restrictions on repatriation of funds outside India for the purposes of overseas investments. The assessee also submitted that majority of the investments made in India by the assessee are passive portfolio investments such as investment in alternative investment funds, mutual funds, portfolio investments in start-ups et cetera. The assessee submitted that total amount of investment made in India as on 31st of March 2020 is ₹ 73,792 lakhs out of which ₹ 60,035 lakhs was invested in earlier years while the assessee was a resident of India. Thus it was the contention that investments made in India prior to the assessee's migration to Singapore do not have any bearing on his centre of economic interest as such. Further out of the additional investments made in India amounting to ₹ 19, 125 lakhs, ₹ 5000 lakhs represents follow-on investments are arising from previously committed capital in earlier years. With respect to the investment made in non-Indian assets it was submitted that as on 31st of March 2020 investment made outside India is ₹ 87,789 lakhs , out of which 86,846 lakhs was invested post-migration by the assessee to Singapore. This clearly indicates that the economic interest of the assessee shifted to Singapore during financial year 2019 – 20.

99. We have carefully considered the rival contentions. In Ashok Kumar Pandey vs. ACIT [2024] 167 taxmann.com 286 (Mumbai - Trib.)/[2024] 209 ITD 274 (Mumbai - Trib.)[03-10-2024] it is held that according to Article 4 (2) (a) of the Double Taxation Avoidance Agreement, an individual is resident of the state in which he has centre of vital interest being where his personal and economic relations are closer. This test is required to be applied for the assessment year for which tax liability of an assessee is to be arrived at. *Determination of centre of vital interest is a highly factual analysis which may not be applicable to any other individual or which has been decided by the courts in case of other individuals.* Thus, this criterion is a vexed issue for everyone. The facts need to be analyzed looking at personal relationship as well as economic relationship and both must be considered together to determine the centre of vital interest of an individual close to a particular state. Only the fact with some impact needs to be considered such as for determination of personal relationship, connect with the nucleus family is more important, then extended family. Similarly, for determination of economic relationship, more credential be given to active involvement in the commercial activities then passive investments. Generally, investments in securities, mutual funds, banks move not necessarily with residence of the assessee but on the basis of rate of return in particular state. For determination of economic relationship, place of business, place of Administration of property and place of earning wages (remuneration) (profit) is of importance. Ambiguous factors,

needs to be avoided. In this background and on the basis of the facts stated above, we proceed to decide the issue involved.

100. We find that so far as personal relations of the assessee are concerned, the assessee's family has travelled with him though gradually to Singapore. His wife has taken employment and children have also started schooling there. So far as the investments are concerned the assessee has immovable properties in India of approximately Rs. 40 crores, bank account holding of ₹ 7.29 crores, shares and securities of Rs. 65, 967 lakhs, and the loans and advances of ₹ 30 crores. The summary of investment outside India shows that the bank balances as on 31st of March 2020 is ₹ 12,084 lakhs, investment in shares and securities of ₹ 74, 100 lakhs and loans and advances of ₹ 16 crores. The total investment outside India is ₹ 87,789 lakhs. Out of the above the investment made during the financial year 2019 – 20 is $ 1,14, 659,000. Prior to this, there was a minuscule investment by the assessee outside India. Thus it is apparent that most of the investments are made by the assessee outside India during financial year 2019 – 20. The claim of the assessee is that the centre of vital interest must be seen after the assessee migrated outside India and the claim of the revenue is that it should not be seen at that point of time but throughout the year. We find that the test is to examine the residential status of the assessee for the assessment year, therefore it is material that such centre of vital interest remains throughout the assessment year and not at the end of the assessment year only. This is also for the reason that all the test envisaged under Article 4 (2) refers to for

the situation of the whole year. Therefore we reject the argument of the learned authorised representative that centre of vital interest must be seen after the assessee shifted to Singapore.

101. Now we proceed to see the fact that all the investments made by the assessee outside India were made during the relevant financial year. Therefore at the beginning of the assessment year, there was hardly any investment made by the assessee outside India. The substantial investments are in case of bank accounts and investment in shares of unlisted companies outside India. It is also true that the assessee holds US$ 15,477[000] two family trust. Out of which the major investment is of ₹ 528 crores in one company Grey Orange Pte Ltd through family trust in Singapore, Where the assessee and his spouse are the beneficiaries.

102. However it is the fact that assessee has provided the data of 'investments in India' and 'investment outside India', where the bench has categorically asked about the data of ' investment in India' and ' Investment in Singapore'. Assessee has constantly provided data of different nature and it seems he avoided providing the specific data of ' investment in Singapore'. For the sake of assumption, we have considered the data of investments outside India as Investment in Singapore.

103. Thus, if the individual has a permanent home in both the contracting States, the issue of examining his centre of vital interest arises meaning thereby that it is to be ascertained with which of the two

states his personal and economic relations are closer. One must have a regard to his family and social relationships, his occupation, his political, cultural or other activities, his place of business and the place from which he administers his property. The circumstances must be examined as a whole. It is further attest that if a person who is a home in one state sets up a second in the other state while retaining the first, the fact that he retains the first in the environment very has always lived, where he has always worked and where he has his family and possessions, can, together with other elements go to demonstrate that he has retained his centre of vital interest in the first state. In the present circumstances, the assessee has made investment only after he has shifted to Singapore. Still his major investment, his house properties are situated in India. His family has also migrated with him over a period of time. The wide variety of investments that he has made while in India such as alternative investment funds, unlisted companies equity shares, listed equity shares and mutual funds do not exist in Singapore. In Singapore the assessee has made investment in shares of unlisted companies and further held substantial assets through family trust where assessee and his wife are the major beneficiaries. Further the assessee's major capital commitments of investments are also in India. Assessee has also provided loans to the tune of Rs. 30 crores to various entities in India. Assessee does not own any immovable property outside India. Therefore it is apparent that assessee has retained his houses in India where he has decided throughout his life, where he is carried out his

business and in assessee's own words he is one of the most successful entrepreneurs through start-ups. It is to be appreciated that assessee moved with his family and his family also shifted to Singapore. But even his family does not have any home in Singapore, therefore, looking at his major economic interest, it is apparent that it is more closer in India than Singapore or anywhere else [as no details provided about Investment in Singapore only]

104. With respect to the habitual abode, it is apparent that he stayed in India for 141 days in India and balance days in other countries. This is the first year that assessee went out of India for employment purposes. But he kept on visiting India for almost 141 days. Thus, for most part of his life, he was in India, he is having house in India. Thus the assessee worked only for the part of the year in Singapore and also lived in India for part of the year. Thus, In that case, the assessee will have an habitual abode in both India and Singapore.

105. Undisputedly, assessee is an Indian national.

106. In view of the above facts we hold that according to the Tiebreaker test also the assessee is a resident of India. Accordingly we uphold the order of the learned assessing officer and dismiss ground No. 5 of the appeal.

107. We would like to clear that while deciding Ground no 2 to 5 of the above appeal we have considered the facts stated by assessee and ld lower authorities. Therefore, the arguments of the parties about the ld

ASG improving the grounds of the revenue is not at all required to be considered. Even otherwise we are of the view that he has merely supported the findings of the ld Lower authorities and referred to the documents submitted by the assessee along with information in public domain. The ld AR has vehemently relied up on the decision of Assistant Commissioner of Income-tax, Circle 16(1), Mumbai vs. Prakash L. Shah [2008] 115 ITD 167 (Mumbai) (SB)/[2008] 118 TTJ 577 (Mumbai) (SB)[22-08-2008] to support the above argument relying on para no 12 of the Judgement. In this para it held that:-

"12. The contention raised by the ld. DR that such foreign exchange difference be treated as 'Income from other sources' and, hence, no deduction be allowed is sans merits for more than one reason. Firstly, the Assessing Officer has not disturbed the nature of foreign exchange gain as part of 'export turnover' as claimed by the assessee. He has nowhere held that it be treated as 'Income from other sources' on that 90 per cent of the same warrants deduction from the profits of the business as per Explanation (baa) below sub-section (4C) to section 80HHC. His area of dispute is that since the amount has been realized in the subsequent year, hence, the deduction cannot be allowed. In our opinion the ld. DR cannot go beyond the assessment order and bring an altogether different case, thereby undoing what has been done by the Assessing Officer. The power to modify the assessment order to the advantage of the Revenue, apart from suo motu action by the Assessing Officer under sections 147 or 154, lies only with CIT under section 263, which cannot be usurped by the ld. DR while arguing the

appeal. The scope of the arguments of the ld. DR is restricted to support the view taken by the Assessing Officer. *He can strengthen the view taken by the Assessing Officer from any angle, he likes,* but cannot bring out an altogether different case de hors the view of the Assessing Officer. His area of arguments is unlimited but within the boundary limit marked by the Assessing Officer. We are equally not persuaded to fall in line with this view on merits also in the light of the discussion made in the foregoing paras."

108. The ld ASG has also submitted several judicial precedents and stated that he is not bringing new grounds but only supporting the findings of the AO and his assessment proceedings. He also referred to the decision of the various courts.

109. It is an established concept that the departmental representatives may support and ' improve' the case of the ld AO by advancing additional arguments or by pointing out alternative angles of support, so long as those arguments [1] do not contradict the stand of AO, [2] do not set up altogether anew case or new sources of income that was not the subject matter of assessment and [3] do not require fresh facts or new inquiry beyond the records of the AO, [4] it should run into sphere of section 263 of the Act.

110. In this case we find that no such arguments are advanced by the ld ASG. The issue of GAAR was raised by the ld AO during the assessment proceedings. A query was also raised. But no reference was made. Section 100 of the Act provides that provisions of this

Chapter [GAAR] shall apply in addition to, or in lieu of, any other basis for determination of tax liability. So, it is not the case that ld AO should have invoked that power and necessarily refer the matter to the panel. Despite this, while reaching at our conclusion, we have not given any weightage to those arguments. Further the findings of the special bench in Prakash L Shah [supra] also supports the revenue so far as its arguments are within the parameters discussed above.

111. Ground No. 6 of the appeal is agreed by both the parties has already been decided against the assessee by the decision of the honourable Karnataka High Court in case of Adarsh Developers vs. Deputy Commissioner of Income-tax [2024] 158 taxmann.com 81 (Karnataka)[13-12-2023] wherein the honourable High Court has held that notices issued under section 143(2) by Addl. Commissioner, NaFAC instead of jurisdictional Assessing Officer to assessee under Central Charge were valid. Further, Where assessee, after being served with notice under section 143(2) had filed response and had also filed response to subsequent notices served under section 142(1) and had participated in proceedings culminating into assessment order, it could not challenge jurisdiction of Assessing Officer to pass impugned assessment order. Accordingly, respectfully following the decision of the honourable Karnataka High Court we dismiss ground No. 6 of the appeal.

112. With respect to ground No. 7 of appeal , assessee claims that learned assessing officer has treated the assessee as a 'resident' as per draft

assessment order dated 30 September 2022, it is the argument of the assessee that when assessee is a 'resident' assessee, there is no requirement of passing of the draft assessment order u/s 144C (1) of the Act in case of a 'resident' assessee. Therefore, the learned assessing officer passing the draft assessment order on 30 September 2022 and thereafter pursuant to the directions of the learned dispute resolution panel passes the final assessment order on 31 July 2023 is not in accordance with the provisions of the Act. Therefore, the assessment order passed on 31 July 2023 is barred by limitation. Several judicial precedents were relied upon by the learned authorised representative and contested by the learned ASG.

113. On careful consideration of arguments of the parties, we find that assessee filed his return of income for assessment year 2020 – 21 claiming his status as a 'non-resident' of India. This residential status was questioned by the assessing officer during the course of assessment proceedings. On the basis of information available and submission of the assessee, the draft assessment order was passed on 30 September 2022 wherein the assessee was held to be 'resident' of India. The question here is that whether the action of passing of the draft assessment order by the learned assessing officer vitiates the whole assessment proceedings and thereby resulting into the final assessment order passed on 31 July 2023 barred by limitation or not.

114. According to the provisions of section 144C, the learned assessing officer shall, *notwithstanding anything to the contrary contained in*

this Act, *in the first instance*, forward draft of the proposed order of assessment to the eligible assessee defined under subsection (15) (b) wherein he proposes to make any variation which is prejudicial to the interest of such assessee. The 'eligible assessee' relevant to our consideration is any 'non-resident not being a company or a foreign company'. Therefore, if the eligible assessee is a non-resident individual, the assessing officer should have governed the assessment proceedings by provisions of this section. Here, in the case of the assessee, the assessee filed its return of income undisputedly as a 'non-resident' individual which was considered by the learned assessing officer as a 'resident'. Undoubtedly, the assessee is also contesting his status and constantly claiming that he is a 'non-resident'. But as the assessing officer has treated his residential status as "resident", the assessee's claim is that he is not an 'eligible assessee' and therefore the draft assessment order passed in this case is not correct. The assessee has relied upon the decision of the coordinate benches.

115. The first decision relied upon by the learned authorised representative is in case of Shyam Sundar Bhartia versus Deputy Commissioner of income tax (2023) 149 taxmann.com 162 wherein it is been held that in case of an assessee where there is variation prejudicial to the interest of such eligible assessee, then the assessing officer should have passed the draft assessment order. However the definition of the 'eligible assessee' as extracted in paragraph No. 22 of that decision is quite different then the definition of the 'eligible assessee' before us.

Further in paragraph No. 26 the coordinate bench held that the assessee being an individual, even in case if he were to be held to be a non-resident, his case would not fall within the definition of eligible assessee as prescribed under section 144C (15) of the Act. In that case, further, the assessee has not challenged the change of his residential status as it is apparent by the decision of the coordinate bench in paragraph No. 34. Therefore, the facts of this case are quite distinguishable for the reason that [1] there is a change in definition of eligible assessee before us and as well as [2] here the assessee is contesting that his residential status should be of a non-resident. [3] We further note that in the decision of the coordinate bench there was no adjudication on the specific wording of the provisions of section 144C (1) where the words are 'notwithstanding anything to the contrary contained in this act', 'in the first instance'. [4] Further the coordinate bench, was also not faced with a situation that if, the coordinate bench decision is challenged before the higher forum and assessee is held to be a non-resident, and the assessing officer passed the final assessment order in case of the assessee instead of draft assessment order, then. What would have been the fate of the argument of the assessee that in his case, now as he has been held to be non-resident, failure of passing of the draft assessment order by the AO and in the first instance would result into naturally a bad assessment.

116. The second decision referred to before us is in case of Atos India private limited versus deputy Commissioner of income tax (2023) 152

taxmann.com 217 (Mumbai) wherein the coordinate bench in paragraph No. 30 has held that when the order of the transfer pricing Officer is held to be barred by limitation, naturally no variation subsists and therefore it was held that in absence of any variation, the assessee cannot be held to be an 'eligible assessee'. Naturally the case before us is not on the same facts. Even otherwise, if the order of the learned transfer pricing officer, would be held to be in time on further judicial contest, the decision did not give any answer that in such a situation whether the assessing officer should have passed the draft assessment order or final assessment order. It is not the case that the order of the ITAT is final. The question that arises is, suppose if before the honourable higher courts, if the order of the learned transfer pricing officer is found to be passed in time, what will happen to the status of the 'eligible assessee' at that time. Naturally he would be an eligible assessee based on decision of higher judicial forum. Further the coordinate bench also did not consider what is the meaning of 'in the first Instance', therefore, for these reasons the facts in this case cited before us are distinguishable. The learned authorised representative has also referred to several other decisions of the coordinate benches which are related to the transfer pricing adjustment where the order of the learned transfer pricing officer is held to be barred by limitation. Therefore for the similar reasons, those decisions also do not apply to the facts of this case.

117. The decision of the honourable Bombay High Court in case of Aldrin Alberto Araujo Soares V DCIT (2024) 162 taxmann.com 186

(Bombay) was also heavily relied upon by the learned authorised representative stating that in that case it has been held that if in case of an assessee held to be a resident of India, passing of the draft assessment order would not be valid. Therefore, according to the assessee this covers the issue in favour of the assessee.

118. To correctly appreciate the contentions of the parties, it is better to look into the facts of that case. The facts clearly show that originally the assessee filed return of income where he claimed himself to be resident in India. Subsequently after three days, he filed a revised return claiming his status to be of non-resident. The learned assessing officer passed a draft assessment order holding him to be resident of India. Assessee challenged the draft assessment order. If the assessee were held to be a non-resident, he was to claim a refund of ₹ 6,269,263/-. The learned assessing officer at the time of passing of the draft assessment order observed that since the petitioner, in his revised return, had claimed that he was a non-resident, the draft order under section 144C was being issued to him. Subsequently, the assessee despite filing the revised return in the status of non-resident, accepted his position that he is a resident in India. Paragraph No. 19 of the above decision squarely says that that the claim of the assessee as a non-resident in a revised return was incorrect, as accepted by the assessee. On reading of paragraph No. 24 of that decision, the honourable court, did not go into the above controversy that whether the assessee is a resident or a non-resident. In paragraph No. 25 in the first line itself it is stated that the honourable High Court cannot go

into the above controversy. Thereafter, the honourable High Court in paragraph No. 25 and 26 has considered the whole issue and directed the learned assessing officer to pass a fresh assessment order in accordance with the law protecting the issue of limitation. This is so because the assessee has abandoned its claim before the honourable High Court about his residential status.

119. Thus the facts of the above case are different then the facts of the case before us. The learned authorised representative has vehemently argued that assessee is a non-resident Indian. The learned AO on the basis of the legal interpretations of the provisions of section 6 has held that assessee is a resident of India. This issue is challenged by the assessee before the learned dispute resolution panel. The learned dispute resolution panel also agreed with the opinion of the learned AO. Based on that the final order of assessment was passed. This final assessment order is also challenged before us so far as the issue of residential status of the assessee is concerned. While disposing the earlier grounds of this appeal, we have already held that action of the learned assessing officer is correct in treating assessee as resident of India. We also note that the provisions of section 144C (1) refers to passing of a draft assessment order 'in the first instance'. Therefore the issue of the eligible assessee u/s 144C (15) (b) (ii) is required to be tested at the time of return filed by the assessee as that is the ' in the first instance' and further the issue of eligible assessee u/s 144C (15) (b) (i) is to be tested at the time of passing of the order of the

transfer pricing officer under section 92CA (3) of the Act, because in that case it would be ' in the first instance'.

120. We also look at the issue that at what time the definition of eligible assessee according to section 144C (15) (b)(ii) is required to be tested. The law says that it should be 'in the first instance'. It is also important to note that why this phrase has been put into the provisions of section 144C (1) of the Act. This is for the reason that if the status of the assessee stated by the assessee is falling into the above clause than the learned assessing officer is duty-bound to pass the draft assessment orders irrespective of any variation. For the sake of consideration, suppose in case of the assessee, the learned dispute resolution panel would have held the assessee to be a non-resident, naturally the draft assessment order passed by the learned assessing officer would have survived. Take another situation, that if the learned dispute resolution panel would have held it to be resident assessee, then, if the view of the learned authorised representative is accepted, then, the learned assessing officer could not have passed the draft assessment order but should have passed the final assessment order and therefore even the proceedings before the learned dispute resolution panel would have been invalid. Naturally, in this case, the assessee has opted to go before the learned dispute resolution panel on challenge to the draft assessment order. We take the another issue, that suppose if before the higher courts, the assessee challenges his residential status, and if it is held in favour of the assessee that assessee is a non-resident, then this argument does not survive.

Therefore, it is correct that 'in the first instance', the learned assessing officer should have passed the draft assessment order only. Such ' first instance' is the claim of the assessee in his ROI of residential status. Draft order passed by the ld AO is based on this 'first Instance'.

121. Accordingly we do not find any merit in the ground No. 7 of the appeal of the assessee and hence same is dismissed.

122. Ground No. 8 was not pressed and therefore same is dismissed.

123. Ground No. 9 was also not argued before us independently and therefore same is dismissed.

124. Ground No. 10 of the appeal is with respect to the fact that a refund of ₹ 58,180,852 is already issued to the appellant as considered by the assessing officer however the same has not been received by the appellant. We find that it is the claim of the learned authorised representative that despite the above refund, the assessee has not received the same, the learned assessing officer is directed to look into this fact and if the assessee has not received the above refund for any reason, necessary actions must be taken within 60 days of the date of this order and the necessary refund should be issued a fresh. Accordingly ground No. 10 of the appeal is allowed.

125. Ground No. 11 is with respect to charging of interest under section 234A and 234B of the Act which are consequential in nature and therefore same are dismissed.

126. Ground No. 12 of the appeal is with respect to the initiation of penalty proceedings under section 270A of the Act, which is premature, and therefore same is dismissed.

127. In the result appeal filed by the assessee is partly allowed.

128. Pronounced in the open court on this 9th day of January, 2026.

Sd/-	Sd/-
(KESHAV DUBEY) JUDICIAL MEMBER	(PRASHANT MAHARISHI) VICE PRESIDENT

Bangalore,
Dated, the 9th January 2026.

/Desai S Murthy /

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.