

Landmark Judgment by the Indian Supreme Court on Capital Gains and Application of India-Mauritius Tax Treaty

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The Authority for Advance Rulings (Income Tax) v Tiger Global International Holdings

A recent Supreme Court case in India, known as the Tiger Global case, has caused major debate over treaty interpretation, tax sovereignty, and the application of anti-avoidance rules in cross-border investment transactions.

The case concerns Tiger Global International II Holdings, Tiger Global International III Holdings, and Tiger Global International IV Holdings (collectively, "**Tiger Global**") seeking a capital gains tax exemption from the Authority for Advance Rulings ("**AAR**") under the India-Mauritius Double Taxation Avoidance Agreement ("**India-Mauritius Tax Treaty**") in relation to the sale of shares of Flipkart Private Limited, Singapore ("**Flipkart Singapore**").

Background

Tiger Global was incorporated in Mauritius and held a Global Business Licence ("**GBL**") issued by the Mauritian authorities. Its investments were managed by Tiger Global Management LLC ("**TGM LLC**"), a US-based investment manager.

Between October 2011 and April 2015, Tiger Global invested in shares of Flipkart Singapore, which in turn held interests in Indian operating companies. As Flipkart Singapore derived substantial value from Indian assets, any capital gains arising on the transfer of its shares were taxable in India under Indian domestic tax law.

Tiger Global proposed to sell its shares in Flipkart Singapore as part of Walmart's acquisition of Flipkart. Tiger Global sought to claim capital gains exemption under the India-Mauritius Tax Treaty, by applying for a nil withholding tax certificate from the AAR.

AAR Ruling

The AAR is a specialised quasi-judicial tax body that provides advance opinions on the tax treatment of specific transactions, independent of any assessment. Its purpose is to give clarity and certainty to taxpayers and to reduce disputes. The effect of an AAR ruling is binding only on the applicant and the tax authority for that transaction, does not bind courts or other taxpayers, and carries at most persuasive value, subject to being overridden by statute or higher judicial authority.

Tiger Global approached the AAR for clarification on whether the capital gains arising from the sale were taxable in India under the Indian Income Tax Act (“**IA**”), read with the India–Mauritius Tax Treaty.

The AAR held that:

- a) Control and management of Tiger Global were not exercised in Mauritius, but in the United States
- b) Mr Charles P. Coleman, a US resident, exercised decisive control, being:
 - (i) the sole director of the ultimate US parent entity,
 - (ii) a signatory to Tiger Global’s bank accounts, and
 - (iii) disclosed as the beneficial owner in the GBL application submitted to the Mauritius Financial Services Commission.

It was therefore held that the transaction was prima facie designed for avoidance of tax and qualified as an “arrangement” under the law.

High Court Decision

Aggrieved by the ruling of the AAR, Tiger Global filed writ petitions before the Delhi High Court. The Delhi High Court examined whether the AAR had correctly applied the India–Mauritius Tax Treaty, particularly the provisions on capital gains and treaty entitlement, and found that the AAR had erred in law and interpretation.

The Delhi High Court reversed the AAR’s ruling and allowed treaty benefits, holding inter alia that:

- (i) A valid Tax Residency Certificate (“**TRC**”) is sacrosanct for claiming treaty benefits.
- (ii) The beneficial ownership test is relevant only where income is contractually passed on to another person.
- (iii) Mere authorization or influence of US-based directors does not establish control from outside Mauritius.
- (iv) Investment through a low-tax jurisdiction, by itself, does not imply lack of bona fides.
- (v) GAAR was inapplicable, as the investments were undertaken prior to 1 April 2017.

The Revenue challenged this decision before the Supreme Court (“**SC**”).

Supreme Court Judgment

After detailed consideration, the Supreme Court allowed the Revenue’s appeal, holding that the transaction was prima facie designed for tax avoidance and denying capital gains exemption under the India–Mauritius Tax Treaty.



Key Observations

How the Law Changed and Earlier Court Decisions Were Weakened

The SC recognized that before the Vodafone case, India's tax rules and its treaty with Mauritius allowed investors to use the "Mauritius Route" to reduce taxes. This route was supported by tax department guidelines and helped investors benefit from the treaty's favorable terms.

After the *Vodafone* judgment, the Indian government made important changes to the tax laws to counteract the impact of that decision and to tackle tax avoidance. The SC saw the *Vodafone* case as a turning point that led to major legal changes.

The SC pointed out that these changes were not minor tweaks but a big shift in how India deals with aggressive tax planning. Key changes included a retroactive amendment to Section 9 of the IA, which introduced the "look-through" rule to tax indirect transfers of assets, and the introduction of the General Anti-Avoidance Rule ("**GAAR**"), which allows tax authorities to ignore transactions that don't have real business purpose and are mainly done to avoid tax.

These changes reduced the importance of earlier court decisions that focused mostly on treaty rules and moved India's tax system toward looking at the real substance behind transactions.

As per section 90(4) of the IA, TRC is only an 'eligibility condition'. It does not state that TRC is 'sufficient' evidence of residency, which is a slightly higher threshold. TRC is not binding on any statutory authority or Court unless the authority or Court enquires into it and comes to its own independent conclusion.

The SC ruled that, after the introduction of Sections 90(4) and 90(5) in the IA, a Tax Residency Certificate (TRC) by itself is no longer conclusive proof of a company's residence or beneficial ownership. This means taxpayer cannot rely solely on a TRC to claim benefits under the tax treaty.

The SC explained that earlier court decisions and tax department guidelines that treated TRCs as definitive proof were based on older laws before the GAAR was introduced. Since the law has changed, those earlier rulings and guidelines cannot override the new rules.

Use of GAAR and Local Legislation Over Treaty Provisions

Before the Indian Finance Act 2012, Section 90(2) of the IA stated that if a tax treaty existed, the taxpayer could choose whichever, either the IA or the treaty, gave them a better benefit. But after the amendment, it was clarified that the GAAR would apply even if it meant losing any benefit under the treaty. In other words, GAAR now takes priority over treaty benefits.

The SC ruled that this case was different from earlier cases like *Vodafone* and *Azadi Bachao Andolan* because GAAR applied here. It also rejected the taxpayers' argument that their transaction should be protected from GAAR under grandfathering rules.

Furthermore, the SC considered the grandfathering protection under Rule 10U(1)(d) and GAAR.

The SC held that the grandfathering protection under Rule 10U(1)(d) of the Income Tax Rules, 1962, is limited by Rule 10U(2). This rule states that, regardless of grandfathering, GAAR applies to any arrangement that results in a tax benefit on or after April 1, 2017. The Court explained that the term "without prejudice" means grandfathering does not provide immunity to arrangements if the tax benefit from them arises after 2017, no matter when the arrangement was made. While Rule 10U(1) of the Income-tax Rules protects investments made before April 1, 2017, the SC held that GAAR requires an examination of the entire arrangement holistically.

Since the sale and the capital gains occurred in 2018, the SC ruled that GAAR applies fully, treating the transaction as an “arrangement” under Rule 10U(2).

Based on this analysis, the SC found that the High Court was wrong to grant treaty benefits to the taxpayers. It overturned the High Court’s decision and upheld the AAR’s rejection of the exemption, ruling that the transaction was part of an impermissible avoidance arrangement under GAAR. As a result, the taxpayers were not entitled to benefits under the treaty, and the capital gains from the transaction were taxable in India.

Key Takeaways and Comments



1. AAR did not conduct a full assessment

The dispute originated from the AAR’s refusal to admit Tiger Global’s application under section 245R(2) on the ground that the transaction was prima facie designed to avoid tax.

As stated earlier, the AAR’s mandate is to provide advance opinions on the tax treatment of specific transaction yet to be effected.

The AAR did not conduct, as a Court would have, a full assessment on issues such as control, beneficial ownership, or commercial substance. Accordingly, the SC judgment must be construed in light of the limited review conducted by the AAR.

2. TRCs and Recognition of Treaty Residence

reinforced by CBDT Circular No. 789 of 2000 and the Supreme Court’s decision in *Azadi Bachao Andolan* (2003). Although the TRCs in Tiger Global were validly issued, the Supreme Court held that they are no longer conclusive evidence of residence or beneficial ownership.

The implications that TRCs are not conclusive proof of a taxpayer’s residence are manifold:

(i) Competent Authority Limits

A TRC is an official document issued by the competent tax authority of a country, after a formal inquiry confirming the taxpayer’s residency status based on complex factual and legal criteria. If one country’s tax authority rejects the TRC issued by the other country’s authority, claiming it is not conclusive proof of residence, this undermines the legal and moral authority of both. It reduces TRCs to mere formalities without substantive value

(ii) Treaty Mechanisms Undermined

Countries worldwide have introduced treaty anti-abuse measures—like the Principal Purpose Test, Limitation of Benefits, and beneficial ownership clauses—to combat treaty misuse. By applying domestic anti-avoidance rules to disregard TRCs, tax authorities may be rendering these carefully negotiated treaty safeguards ineffective, undermining the purpose of the treaties themselves.

(iii) Erosion of Tax Certainty

The SC’s earlier Vodafone ruling highlighted the importance of tax certainty for cross-border investments. The Tiger Global ruling, however, introduces uncertainty because tax authorities can extensively question residency claims each year, making it difficult for taxpayers to plan long term. Simple facts, like where board meetings are held, can change residency status, and the validity of treaty benefits may fluctuate, undermining investor confidence.

3. Article 13 and Indirect Transfers

Article 13 of the India-Mauritius Tax Treaty allocates taxing rights between the two Contracting States in respect of different categories of capital gains. The Court held that Article 13(3A) applies to the sale of shares in a company located in a Contracting State (India), provided the shares were acquired on or after 1 April 2017. Under this provision, taxation arises in the source State (India), based on the situs of the company whose shares are directly held and sold by the Mauritian entity.

Article 13(4), being a residuary provision, stipulates that gains derived from the alienation of property “other than those mentioned” in paragraphs (1), (2) and (3) shall be taxable only in the State of residence of the alienator (i.e. Mauritius). Tiger Global contended that their transaction fell within Article 13(4) and was therefore taxable exclusively in Mauritius, being their State of residence.

However, upon a combined reading of Article 13 as a whole, the Court held that paragraphs (3A) and (3B) contemplate only direct transfers of shares and do not extend to indirect transfers. Accordingly, to benefit from Article 13(4), a resident claiming treaty protection must demonstrate two elements: (i) that they qualify as a “resident” of the other Contracting State (here, Mauritius), and (ii) that the movable property or shares forming the subject of the transaction are directly held by the resident entity.

Transactions involving indirect transfers of shares or assets do not satisfy these criteria and, therefore, fall outside the treaty protection under Article 13.

Therefore, the residuary clause under Article 13(4) does not apply where the shares are indirectly held by the treaty resident entity. Its protection is available only in cases of a direct transfer of shares or movable property by the resident entity.

4. Impact of Supreme Court Ruling on Grandfathering Protection in Rule 10U

Under Rule 10U(1)(d) of the Income Tax Rules, income arising from the transfer of investments made prior to 1 April 2017 is generally grandfathered and excluded from the application of GAAR. The SC held that grandfathering is limited by rule 10U(2).

The SC further held that Rule 10U(2) provides that GAAR shall apply to any arrangement, irrespective of the date on which it was entered into, in respect of any tax benefit obtained on or after 1 April 2017.

Accordingly, the takeaway is that the SC has introduced an exception to the grandfathering provision in the India-Mauritius Tax Treaty.

The SC held that this framework strikes a balance by protecting genuine pre-existing investments while ensuring that arrangements continuing to generate tax benefits after the cut-off date do not escape GAAR scrutiny. The use of the expression “any arrangement” was held to be wide enough to cover all arrangements, including those giving rise to tax benefits upon the sale of shares.

Conclusion

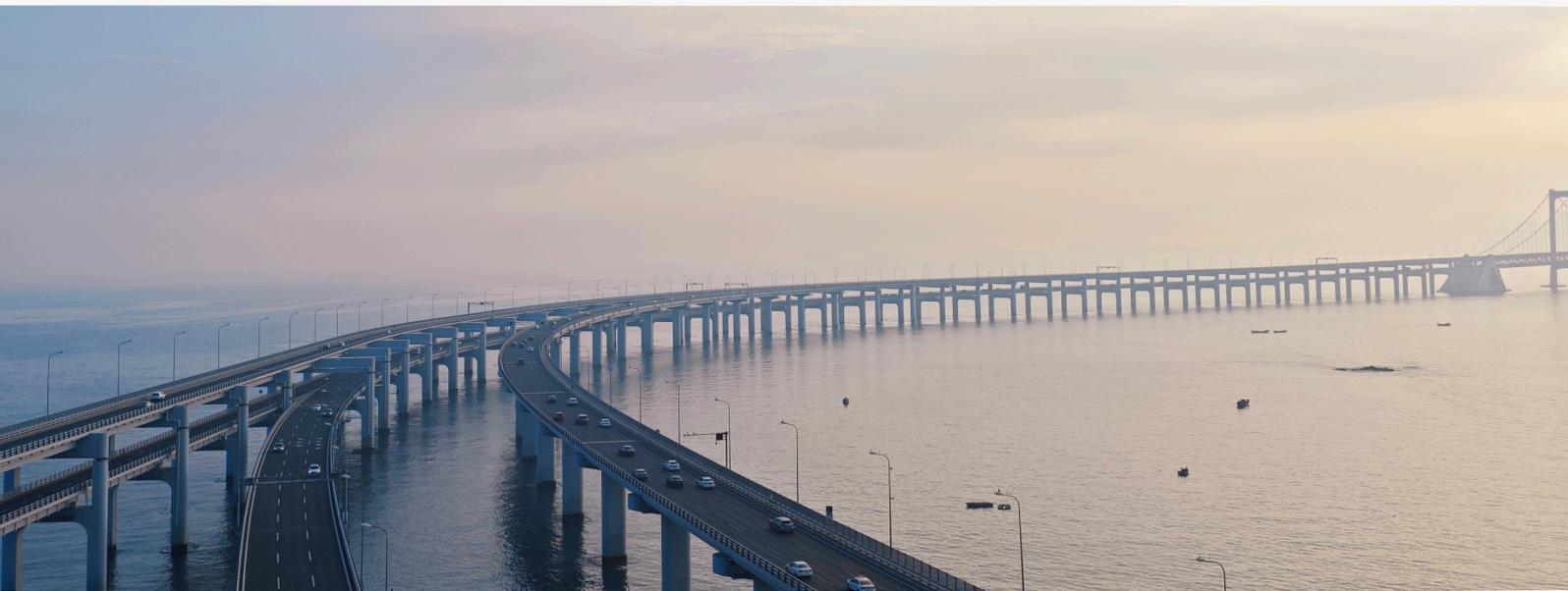
The judgment marks a significant departure from settled jurisprudence on the conclusiveness of TRCs and raises important questions regarding the application of GAAR to tax benefits arising post-1 April 2017 from pre-existing investment structures.

The Court’s position that TRCs are non-decisive and non-binding may require reconsideration, particularly given that TRCs are issued by a sovereign state.

The judgment underscores that treaty eligibility will now be assessed through a substance-over-form lens, with particular scrutiny on:

- (a) control and management,
- (b) decision-making authority,
- (c) beneficial ownership, and
- (d) commercial substance in the claimed residence jurisdiction.

Investors need to prepare for more legal disputes and unpredictability because tax authorities might review and challenge past tax assessments or how investments were structured. Even if an investment was made before April 2017 (which used to offer some protection from new tax rules), that protection is not guaranteed when the investment is sold or exited after April 2017. This is because the GAAR can override the old protections that investors relied on, making it easier for tax authorities to question and deny tax benefits on such transactions.



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