

SUPREME COURT DENIES TAX TREATY RELIEF UNDER INDIA-MAURITIUS DTAA FOR TIGER GLOBAL'S FLIPKART- WALMART EXIT

Client Alert
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Supreme Court of India Denies Tax Treaty Relief under India-Mauritius DTAA for Tiger Global's Flipkart-Walmart Exit

Introduction

On January 15, 2026, the Supreme Court of India delivered a landmark judgment in *Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings*¹, denying the benefits of the capital gains tax exemption under India-Mauritius Double Taxation Avoidance Agreement (“**India-Mauritius DTAA**”) in relation to Tiger Global's exit from Flipkart. The Supreme Court held that in the given facts and circumstances, capital gains arising from transfer of shares in a Singapore company (which derived substantial value from Indian assets) were taxable in India notwithstanding the Mauritius residence of the transferor entities.

This update provides a quick snapshot of judgment and the implications of the ruling.

Factual background

Flipkart is a leading e-commerce venture in India. Between 2011 and 2015, 3 (three) entities incorporated in Mauritius, namely Tiger Global International II Holdings, Tiger Global International III Holdings and Tiger Global International IV Holdings, acquired shares of Flipkart's Singapore parent company. In 2018, these Mauritius vehicles of Tiger Global sold their stake to Walmart's Luxembourg entity (Fit Holdings S.A.R.L.) for more than USD 2 billion.

Tiger Global sought certificates from the income tax authorities for nil withholding and claimed exemption from Indian capital gains tax under the India-Mauritius DTAA. The income tax authority, however, refused to grant an exemption. The Authority for Advance Rulings (“**AAR**”) sided with the tax authority. The AAR concluded *prima facie* that the transaction was ‘*designed for the avoidance of income tax*’ and therefore as per the provisions of the Income Tax Act, 1961 (“**Act**”) an advance ruling is precluded. In essence, AAR found that the Mauritian companies were mere conduit entities lacking commercial substance, and set up to avoid Indian tax. It was held that the ‘head and brain’ of the companies, was not in Mauritius and, therefore, their control and management were situated outside Mauritius, in the United States of America. The AAR also observed that the India-Mauritius DTAA was never intended to exempt capital gains from the transfer of shares of a company which was not in India, especially where the intermediary entities appeared to be set up only to circumvent taxation.

Tiger Global challenged AAR's order in the Delhi High Court. In 2024, the Delhi High Court ruled in favour of Tiger Global. The Delhi High Court found no conclusive evidence that the Mauritius companies were shams. The Delhi High Court held that the assesseees were entitled to treaty benefits, observing that the investment was *bona fide*. It observed that mere routing of an investment through Mauritius or the presence of a controlling parent in a third country did not automatically render it tax evasion. The Delhi High Court thus held that Tiger Global was entitled to rely on the India-Mauritius DTAA's capital gains exemption. The tax authorities (Revenue) appealed to the Supreme Court of India.

The India-Mauritius DTAA

Prior to discussing the judgment of the Supreme Court, it would be worthwhile to briefly outline the framework of the India-Mauritius DTAA governing the dispute.

Pre-2017, capital gains from the transfer of shares of an Indian company by a Mauritius resident were effectively exempt from tax: Pursuant to Article 13(4) of the India-Mauritius DTAA, capital gains

¹ *Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings*, Civil Appeal No. 262 of 2026 (Supreme Court).

from the alienation of shares were taxable only in the resident jurisdiction. As Mauritius' domestic tax law exempted capital gains from share transfers, gains from the transfer of shares of an Indian company by a Mauritius resident, were effectively not taxed in either India or Mauritius. In 2000, CBDT (Central Board of Direct Taxes) issued Circular No. 789, *inter alia*, clarifying that investment funds operating from Mauritius were liable to tax in Mauritius. It further clarified that once such entities obtained a tax residency certificate ("TRC") from the Mauritian authorities, this would constitute sufficient proof of residence for capital gains taxation under Article 13(4).

Introduction of GAAR: Subsequently, Finance Act, 2012 introduced statutory General Anti-Avoidance Rule ("GAAR") to address aggressive tax planning strategies. An 'impermissible avoidance arrangement' was defined as an arrangement where the main purpose, or one of the main purposes, was to obtain a tax benefit, and which satisfied at least one of the prescribed conditions. GAAR was implemented from April 1, 2017.

GAAR provisions override Treaty benefits: Prior to the Finance Act, 2012, Section 90(2) of the Act provided that where a DTAA exists between India and another country, the provisions of the Act or the DTAA, whichever is more beneficial to the taxpayer, shall apply. Thus, if the provisions of the Act impose a higher tax burden, the DTAA provisions will prevail, ensuring a treaty override in favour of the taxpayer. However, the Finance Act, 2012, in line with the GAAR provisions, inserted Section 90(2A), which created an exception to the treaty override principle enshrined in Section 90(2). The new provision clarified that GAAR provisions would apply even if they result in tax consequences that take away any benefit despite an existing DTAA.

Amendment to the India-Mauritius DTAA: With effect from April 1, 2017, significant amendments were made to the India-Mauritius DTAA. The amendment effectively vested the right to tax capital gains arising from 'transfer of investments' acquired on or after April 1, 2017, with the source jurisdiction. Thus, India got taxation rights on capital gains arising from alienation of shares in a company resident in India acquired *on or after April 1, 2017*. The Delhi High Court had treated the present transaction as grandfathered under Article 13(3A) of the DTAA

Key Issues before the Supreme Court

- **Firstly**, whether Tiger Global's advance ruling applications were rightly barred as involving a transaction 'designed for the avoidance of income-tax' under the proviso to Section 245R(2) of the Act. If the arrangement was *prima facie* a tax-driven scheme, then the law does not permit an advance ruling on its taxability.
- **Secondly**, assuming the advance ruling could be entertained, the core issue was whether the capital gains from Tiger Global's stake sale of the shares of a Singapore company which derived substantial value from assets in India, were exempt from Indian tax under the India-Mauritius DTAA. The AAR had opined that the India-Mauritius DTAA did not intend to exempt gains from alienating shares of a foreign (non-Indian) company and that the India-Mauritius DTAA's capital gains article was aimed at shares of Indian companies.
- **Thirdly**, the case also tested the interaction between treaty provisions and India's anti-avoidance framework. Although Tiger Global's investment was prior to 2017 (qualifying for grandfathering), the exit occurred in 2018, post-GAAR. The Supreme Court had to consider whether GAAR and the amended treaty's anti-abuse provisions could be invoked to deny treaty relief.

Decision of the Supreme Court

The Supreme Court allowed the tax department's appeals, setting aside the Delhi High Court's judgment. The Supreme Court upheld AAR's stance that it need not delve into the merits of taxability once it appears that a transaction is structured primarily to avoid tax.

On taxability, the Supreme Court held that the sale of unlisted equity shares of a Singapore company deriving substantial value from Indian assets, constituted an indirect transfer taxable in India. Once domestic taxability was established, the availability of treaty relief fell for consideration.

The Supreme Court agreed with the tax authority that, on facts Tiger Global's Mauritius companies were only conduits without real decision-making power, and that control and management were found to lie outside Mauritius, including with its US-based fund manager. The Supreme Court further agreed with the tax authority that the Mauritius companies were effectively '*interposed as a device*' to reap treaty benefits which was evidenced by, *inter alia*, the control of the Mauritius entities by a US-based fund manager and the absence of any substantive business activity other than holding shares of Flipkart.

The Supreme Court in effect held that the 2018 Flipkart share sale was an 'impermissible arrangement' aimed at realizing capital gains, free of tax under the India-Mauritius DTAA, which fell squarely within the target of India's GAAR provisions. Consequently, the Supreme Court held that the assesseees were not entitled to claim exemption under Article 13(4) of the India-Mauritius DTAA, GAAR became applicable and capital gains arising from transfers effected after April 1, 2017 were taxable in India.

In reaching this outcome, the Supreme Court emphatically reasserted the ability of tax authorities to 'look behind' corporate structures when examining treaty claims. The Supreme Court rejected the argument that a TRC is conclusive proof of entitlement to treaty benefits. It noted that while a TRC is necessary for claiming treaty residence, the mere possession of a TRC does not preclude a detailed enquiry where an interposed entity is alleged to be a conduit for tax avoidance. The Supreme Court expressly held that treaty benefits under Article 13 can be denied where the arrangement is found impermissible / lacking commercial substance. In the Supreme Court's view, the inquiry must focus on the real purpose and substance of the transaction rather than the form.

Significantly, the Supreme Court aligned India's treaty interpretation with its domestic anti-abuse law changes. Post-GAAR, a taxpayer cannot simply rely on an older treaty's literal wording without regard to anti-abuse rules.

The Supreme Court further addressed the timing issue regarding grandfathering. The Supreme Court held that transactions yielding tax benefits after GAAR's effective date (April 1, 2017) do not enjoy immunity just because the investment structure was set up earlier. In Tiger Global's case, the share sale occurred within GAAR's effective period. Thus, pursuant to the insertion of Section 90(2A) by the Finance Act 2012, treaty benefits will not be available to the extent they are denied by the application of GAAR.

Justice Pardiwala wrote a separate concurring opinion, and emphasized on the concept of tax sovereignty, asserting that "*Taxing an income arising out of its own country is an inherent sovereign right to that country. Any application of filters or diffusers to this is a direct attack or threat to its sovereignty which can affect a Nation's long-term interest*".

Key Implications

This decision may have immediate and potentially retroactive implications for foreign investors' exit strategies. Transactions structured as offshore share sales (e.g. selling a parent entity in Singapore or Mauritius that owns Indian businesses), a common practice in many deals, may now be revisited by the tax department and may be subject to intense scrutiny. The ruling puts at risk not only future deals but also past transactions that relied on treaty benefits, to the extent they are within open assessment or limitation periods. Pure holding companies in low-tax jurisdictions will need to demonstrate a *bona fide* business purpose. Simply obtaining a TRC from a foreign jurisdiction will no longer guarantee

protection under a tax treaty. The Supreme Court has affirmed that while a TRC will be evidence of residence, it does not bar the tax department from inquiring into the real ownership and control, or from piercing the corporate veil in cases of suspected treaty abuse.

The principles from this case will apply not just to Mauritius structures but to any situation where an entity in a treaty partner country is interposed with the principal purpose of avoiding tax. Transaction documents will have to be revisited with robust tax indemnities and perhaps escrow arrangements.

Further, this judgment makes it clear that grandfathering will not apply even if an investment was made prior to 2017, if the exit occurs after GAAR's introduction and is structured in a tax-avoidant manner.

In conclusion, the Supreme Court has set a precedent that will guide courts and tribunals in the years to come – any future dispute on treaty eligibility or GAAR will lean on this judgment. This landmark judgment materially reshapes the landscape for cross-border investment into India.

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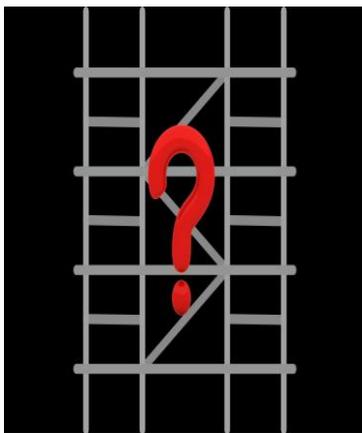
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