TIGER GLOBAL CASE DENIES TREATY BENEFITS CLAIMED BY MAURITIUS COMPANIES

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BACKGROUND

Indian tax judgments continue to make global headlines. We recently contributed an article in this publication commenting on a ruling in the *Sky High* case.[1] Close on the heels of that ruling, the Supreme Court of India issued a landmark ruling in the case of three investment funds of the Tiger Global group.[2] The case involves a claim for tax exemptions in India under the India-Mauritius Income Tax Treaty.

With this Supreme Court decision, Indian tax jurisprudence once again occupies the global center stage of tax law. The decision is generating intense debate among tax professionals, multinational groups, investment funds, and all taxpayers concerned with claiming tax treaty benefits in India. More than the outcome, it seems that the observations of the judges in the decision have caused a great deal of surprise. It was widely thought that tax residency certificates ("T.R.C.'s") served as conclusive evidence for claiming benefits under the India-Mauritius Income Tax Treaty, as settled by the Supreme Court in *Azadi Bachao Andolan*[3] ("*Azadi Bachao Andolan*") and *Vodafone International Holdings BV v. Union of India*[4] ("*Vodafone*"). Interestingly, the Supreme Court relied on those decisions to arrive at a different outcome in *Tiger Global*. This demonstrates one more time that Indian tax jurisprudence must be carefully analyzed, as issues that seem straightforward at the surface level often turn out to be surprisingly complex.

In order to better appreciate the nuances of the *Tiger Global* decision, it is important to first understand the factual background of the case.

TIGER GLOBAL ENTITIES

The three entities of the Tiger Global Group were private companies incorporated in Mauritius. They were formed to undertake investment activities aimed at long-term capital appreciation and investment income. They were regulated by the Mauritius Financial Services Commission ("F.S.C.") and held Category I Global Business Licenses under the Financial Services Act, 2007. These companies asserted that their business was wholly controlled and managed in Mauritius by a board consisting of three directors, two of whom were resident in Mauritius. The other was resident in the U.S.

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1 Abbas Jaorawala, "What Goes Around Comes Around: The Multilateral Instrument is Signed by India But is not yet Effective," *Insights* Volume 13 Number 1, p.4 (2026).

2 Civil Appeals No. 262, 263 and 264 of 2026.

3 *Union of India v. Azadi Bachao Andolan*, (2004) 10 SCC 1.

4 *Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613.

To emphasize their Mauritius residence and commercial and economic substance, these companies submitted that they

- met F.S.C. “commercial substance” requirements,
- maintained principal bank accounts and accounting records in Mauritius,
- had their financial statements prepared and audited in Mauritius, and
- maintained office premises with two employees in Mauritius.

The companies also held valid T.R.C.’s issued by the Mauritius Revenue Authority, which certified their status as tax residents of Mauritius for income tax purposes.

The Mauritius entities held shares in Flipkart Private Limited, a Singapore-incorporated company (“Singapore Co.”), with a substantial number of shares acquired between 2011 and 2015. In turn, Singapore Co. invested in multiple Indian companies, so that the value of its shares was substantially derived from Indian assets, thereby linking the transaction to India for tax purposes under Indian tax principles. The Mauritius entities sold their Singapore Co. shares to a Luxembourg company, as part of Walmart Inc.’s broader majority acquisition of Singapore Co. from various shareholders.

Based on the T.R.C.’s, the Mauritius entities claimed benefits in India under the India-Mauritius Income Tax Treaty. In particular, they asserted that the capital gain from the transfer of Singapore Co. shares which derived their value substantially from assets in India was exempt from tax in India. The Indian tax authorities did not agree and issued certificates requiring withholding of tax on the capital gains. In response, the Mauritius entities filed applications for a ruling from the Indian Authority for Advance Ruling (the “A.A.R.”). The A.A.R. reviewed the application. Based on certain observations, the A.A.R. declined to provide a ruling. In the view of the A.A.R., the applications related to transactions “*prima facie* designed for the avoidance of income-tax.”

One of the pertinent observations of the A.A.R. was that the companies were controlled from the U.S. by Tiger Global Management L.L.C. (“T.G.M.”), a U.S. company, along with top-level executives of the Tiger Global Group. Consequently, the A.A.R. observed that the companies did not have adequate substance in Mauritius. To elaborate on this, the A.A.R. commented that overall control and management of the Mauritius entities rested with a particular individual in the U.S. based on the following facts:

- He was authorized to have sole signatory authority over Mauritian bank accounts with regard to any transaction in excess of U.S. $250,000.
- He was named as a beneficial owner in applications for Category 1 Global Business Licenses, which is a specific regulatory status previously issued by the Mauritius F.S.C.
- He was a director and signatory of the U.S. parent.

Denied relief by the A.A.R., the three Mauritius entities petitioned the Delhi High Court for review. The companies contended that T.G.M.’s role was advisory and operational only with all decisions subject to review and final approval by their Boards.

T.G.M. had no authority to bind them or contract on their behalf without Board approval, thus preserving control in Mauritius.

The Delhi High Court allowed the appeals filed by the companies and quashed the A.A.R.'s order. The Delhi High Court thought fit to additionally hold that (i) the companies were entitled to claim benefits under the India-Mauritius Income Tax Treaty and (ii) no tax was due in India. The Indian tax authorities filed appeals before the Supreme Court challenging the High Court's decision.

SUPREME COURT FINDINGS

It is difficult to comment on each aspect of the Supreme Court's findings in an article. To put it mildly, the Supreme Court painstakingly reproduced the arguments of both sides in its decision. It has also tracked the legal background applicable to the case, including the following:

- The timeline of signing the India-Mauritius tax treaty in 1982, subsequent developments, and the amendments agreed in 2016.
- The introduction of the General Anti-Avoidance Rule (the "G.A.A.R.") in India having effect from April 1, 2017, which grandfathered investments made prior to that date.
- The rationale of binding Supreme Court decisions in *Azadi Bachao Andolan* and *Vodafone* applicable to the three Mauritius companies, considering another Supreme Court decision in the *McDowells* case.[5]
- The interplay of the T.R.C. with binding circulars of the Indian tax authorities.

What is important to note is that the core issue before the Supreme Court was whether the A.A.R. was correct in declining the advance ruling on the ground that the transactions "*prima facie* [were] designed for the avoidance of income-tax." However, since the Delhi High Court made detailed observations and provided firm conclusions in favor of the taxpayers, it appears the Supreme Court felt it necessary to comment on those aspects before providing its ruling. Accordingly, the Supreme Court identified and addressed the following two issues:

- Should the capital gains of the Mauritius companies derived from sale of Singapore company shares be exempt from tax in India under the India-Mauritius Income Tax Treaty considering (i) their substance in Mauritius and (ii) the fact that the gain arose from the value from assets located in India?
- Given that the investments were made by the Mauritius companies prior to April 1, 2017, would such investments be grandfathered from being treated as impermissible avoidance arrangements under Rule 10U of the G.A.A.R.?

In evaluating the issues, introductory comments of the judges serve as a prelude to the decision in favor of the Indian Tax Authorities.

Justice Mahadevan's expressed the following views:

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[5] (1985) 3 SCC 230.

> [I]t is for the legislatures to employ their discretion to innovate through the empirical process and in line with treaty obligations, evolve new ways of tapping revenue and placing checks on new methods and devices of tax evasion that may have arisen by abuse of beneficial provisions based on treaties. Here, the Court will have to tread carefully and cautiously to ascertain whether the action of the Revenue is within the contours of law – meaning constitutional, statutory and treaty obligations – in order that fiscal difficulties are addressed by the State in line with its own fiscal wisdom and policy. * * *
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> The India – Mauritius [Income Tax Treaty], signed in Port Louis on
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> 24 August 1982 and effective in both jurisdictions from 1983, soon gave rise to what became known as the Mauritius Route. Investors [favored] this structure for the beneficial provisions of the treaty combined with Mauritius' domestic tax regime. While this significantly helped foreign capital inflows, it also attracted mounting scrutiny. Concerns were raised that the treaty, entered into with the intent to prevent double taxation, was being used to achieve non-taxation, particularly in respect of capital gains. Entities were incorporated in Mauritius solely to take advantage of treaty benefits. This created serious issues of treaty shopping, tax avoidance, and the integrity of the international tax system. * * *
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> Over time, judicial and legislative responses were developed to address these challenges. After deliberations, in 2016, India and Mauritius signed a protocol providing that the [income tax treaty] would shift away from a residence-based system for the taxation of capital gains to a source-based system, to restore balance and prevent abuse. However, as global investment structures grow increasingly complex, with multi-country reach, interpretational issues continue to surface. * * *
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> These issues have once again come before this Court in the present matter, arising out of the taxation of capital gains from the sale of shares of a Singapore-based entity deriving substantial value from its Indian operations. The transactional involvement of the relevant investment entities based in Mauritius raises significant questions as to the reach of treaty protections, the relationship between treaty provisions and domestic tax law, and the principles that must guide the grant or denial of treaty benefits. It is in this legal, economic, and policy backdrop that the dispute relating to Tiger Global needs to be considered.

Justice Pardiwala's expressed the following views:

> If one looks at the last 7-8 decades, times and periods have indeed changed. The upmanship of developed Nations over the developing or underdeveloped Nations in entering into strategic dealings and negotiations is slowly changing. Smaller Nations, Nations which are heavily import dependent, needing lot of external resources often compromise or cede many of their Sovereign rights and functions just to acquire a relationship or to connect with international trade

> or to somehow manage to keep their respective Nations as part of the international league and draw benefits in whatever way they flow and remain unmindful even if the benefits are in trickles. The choice is between a total neglect or isolation or being the company however significant or insignificant, based on the powerplay rules exercised by Nations which wield authority, influence and impact in global affairs. * * *
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> In the case of our own Nation, each decade has shown better progressive results from the earlier decade with so much hope and promise to hold geometrical if not astronomical growth in the decades ahead of it. The respect accorded and the importance shown to our Nation is increasing by the day. We are becoming an important element in international power play, more importantly in trade and commerce. The advantage in terms of the size of the Nation, its population, and the dominating presence of youth (India has the world's largest working-age population. India will have a skilled [labor] surplus of 245 million workers by 2030) a conducive atmosphere for investment and growth, peace and stability are all now turning out to be the assets of the Nation allowing companies, entities and even individuals across the globe to come to India as a destination for future growth and progress thus making India the fourth of the fifth progressive economy in the world. * * *
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> It is in this backdrop that one has to now understand and appreciate what is tax sovereignty and how important it is to our Nation in an era which is fraught with trade and tariff wars, building and shielding one's own economy from any international economic disorder or disaster and so on. The stability of a Nation is slowly getting determined and [recognized] based on the strength and independence of a Nation's tax sovereignty. When it comes to a domestic exercise, tax Sovereignty has to only pass through the filters of Constitutional trust, faith, and addressing the well-intended objectives of Part III and Part IV. Sovereign exercise of taxing power within a Nation is amenable to judicial review on the grounds of being unconstitutional, illegal and arbitrary and the likes of it. Whereas, exercising tax Sovereignty in the international domain has to pass through several filters which would include geo-political strengths and equations, diplomacy, making a Nation attractive for investments and at the same time, not compromising either its sovereignty or its interest and core objectives of its people.

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A careful reading of the above comments clearly indicates that the Supreme Court placed considerable emphasis on treaty abuse concerns, tax sovereignty, and the need to look through formal structures to test their real economic and commercial substance. No surprises then that the Supreme Court essentially upheld the order of the A.A.R. and overruled the decision of the Delhi High Court. The exact conclusion of the main decision is as follows:

> In our view, once it is factually found that the unlisted equity shares, on the sale of which the [three Mauritius entities] derived capital gains, were transferred pursuant to an arrangement impermissible under

> law, the [three Mauritius entities] are not entitled to claim exemption under Article 13(4) of the [India-Mauritius Income Tax Treaty]. The Revenue has proved that the transactions in the instant case are impermissible tax-avoidance arrangements, and the evidence *prima facie* establishes that they do not qualify as lawful. Consequently, Chapter X-A becomes applicable. The applications preferred by the [three Mauritius entities] relate to a transaction designed *prima facie* for tax avoidance and were rightly rejected as being hit by the threshold jurisdictional bar to maintainability, as enshrined in proviso (iii) to Section 245R(2). Accordingly, capital gains arising from the transfers effected after the cut-off date, *i.e.*, [April 1,] 2017, are taxable in India under the Income Tax Act read with the applicable provisions of the [India-Mauritius Income Tax Treaty]. The judgment of the High Court therefore deserves to be set aside."

In other words, the structure was held to be an impermissible avoidance agreement under the G.A.A.R., grandfathering was denied, and in essence, the India-Mauritius Income Tax Treaty benefit was denied to the three Mauritius entities.

COMMENTARY

This Supreme Court decision raises the following issues:

- What is the evidentiary value of a T.R.C.?
- What is the meaning of grandfathering from the G.A.A.R. for investments made prior to April 1, 2017, under Rule 10U?
- How is this decision in sync with the earlier Supreme Court decisions?

Value of a T.R.C.

The emerging view from the *Tiger Global* decision is that while a T.R.C. is persuasive proof of tax residency, tax authorities can go beyond the T.R.C. to test the substance of the participants that hold a T.R.C.

Grandfathering

Rule 10U(2) has been in existence since the introduction of the G.A.A.R. Rule 10U(2) clarifies that, while income accruing or arising to a person from a transfer of investments made before April 1, 2017, would generally be grandfathered under Rule 10U(1)(d), the G.A.A.R. would apply, irrespective of the date, to an arrangement entered into in order to achieve an abusive tax benefit or arrangement on or after April 1, 2017. The term "arrangement" is defined under section 102(1) of the Income-Tax Act, 1961, and is wide in nature.

The Supreme Court expressed the view that the G.A.A.R. was introduced to codify the doctrine of substance over form. The goal was to ensure that, for purposes of determining Indian tax consequences, the following factors are to be taken into account: (i) the real intention of the parties, (ii) the actual effect of transactions, and (iii) the purpose of an arrangement. Under the G.A.A.R., a taxpayer cannot justify an abusive transaction simply by demonstrating that its investment was made prior to April 1, 2017.

Earlier Decisions

The Supreme Court decisions in *Vodafone* and *Azadi Bachao Andolan* were issued prior to the introduction of the G.A.A.R. In *Tiger Global*, the Supreme Court referred to its earlier decision in *McDowells*, where it observed that tax planning is legitimate when conducted within the framework of law. On the other hand, colorable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. In view of this, it can be said that the Supreme Court, in the *Tiger Global* decision, did not overrule earlier caselaw. Rather, it provided context on how and why the facts in *Tiger Global* differed from those in *Vodafone* and *Azadi Bachao Andolan*.

PARTING NOTE

The *Tiger Global* decision clearly highlights how Indian jurisprudence is evolving in light of global events and perspectives. Substance-over-form, as a concept, continues to be the only constant in this ever-changing area of knowledge.

Whether the three Mauritius entities in *Tiger Global* will be able to successfully defend the merits of their position during an actual assessment proceeding remains to be resolved, but the odds likely are not favorable in light of observations of the Supreme Court.

On a wider stage, it would be desirable for the Indian tax authorities to consider issuing a clarification on how the decision will be applied by revenue officers during tax assessments. Among others, the validity of T.R.C.'s in general, the circumstances where challenges should be expected, and the extent of grandfathering under the G.A.A.R. would be helpful for companies and company advisers.

For now, any nonresident corporation intending to claim tax treaty benefits in India should carefully consider the impact of this decision on facts surrounding claims of economic substance. The Supreme Court has spoken, leaving it to the tax authorities to determine the dividing line between economic substance and abusive tax planning.