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Independent Member

K C Mehta & Co LLP
Chartered Accountants

International Tax

Tiger's Kart flipped, yet again; SC pierces the Corporate Veil and tears apart the Corporate Will!

Executive Summary

Supreme Court - AAR vs Tiger Global International Holdings[1]

The Hon'ble Supreme Court (SC) has delivered a game-changing decision in the Authority for Advance Rulings (AAR) v. Tiger Global International II Holdings case that has shaken up the manner in which international tax rules have been interacting with domestic tax provisions of India. The ruling by the SC has overturned the relief which was provided by the lower court (i.e., Delhi High Court), thereby giving tax authorities the clear power to dig past offshore setups and check if a deal has real business purpose. While Tax Residency Certificates (TRC) remain relevant, they do not provide automatic insulation from detailed tax scrutiny where concerns over treaty abuse arise.

The ruling makes clear that conduit entities in treaty countries without real business purpose will face strict scrutiny for treaty abuse. This decision effectively aims to end treaty shopping through shell companies seeking capital gains exemptions. In essence, the SC has drawn a clear line whereby tax outcomes will now be driven by substance, intent, and timing. The ruling brings out several noteworthy perspectives, including the simultaneous application of General Anti-Avoidance Rules (GAAR) and Judicial Anti-Avoidance Doctrines (JAAR), the view that a TRC is not conclusive proof of residency, the exclusion of indirect transfers from the residual clause of the Capital Gains Article under the Treaty (?), the principle that Treaty benefits in Source country apply only where income is actually taxed / taxable in the Resident Country, etc.

In nutshell, the SC's ruling makes it clear that treaty benefits cannot rest on paperwork alone. Foreign investors must now demonstrate real commercial substance, decision-making authority, and economic presence in their holding structures to withstand GAAR and JAAR scrutiny. From a policy perspective, the decision reinforces India's position that tax treaties cannot legitimize arrangements lacking economic substance, even where procedural requirements have been met.

[1] *Civil Appeal no. 262 to 264 of 2026 January 15, 2026*

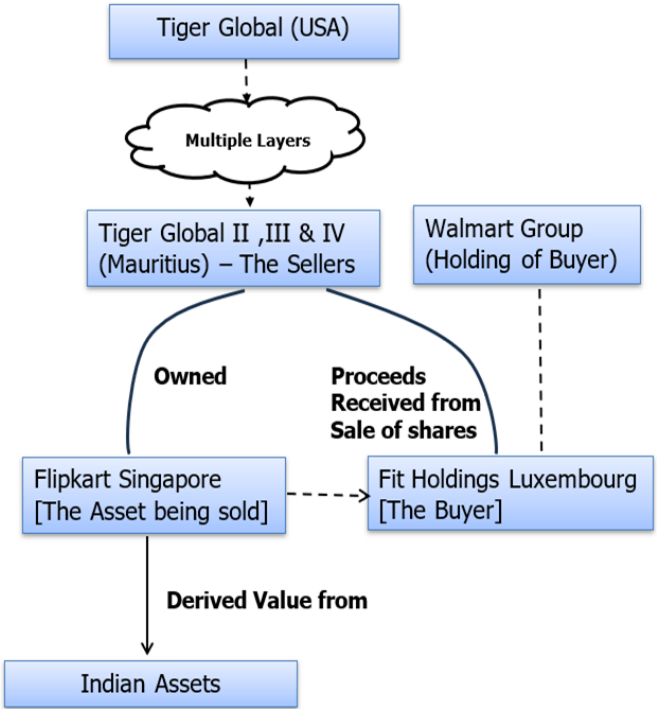
The Journey

2011- 2015 Investments

Three Mauritius entities (collectively Tiger Global entities) invested in Flipkart Singapore – deriving significant value from Indian Operations

2018: Exit Event

Walmart's acquisition of Flipkart SG from Mauritius companies triggered USD 1.6 billion capital gains for Tiger Global entities



Taxpayers' Position

Nil withholding tax claimed under Article 13(4) of India-Mauritius treaty + GAAR not applicable as protected by grandfathering provisions

AAR's Observations

Mauritius entities were letter-box companies lacking any 'head and brain' within Mauritius - It was argued by the AAR that the entire decision-making process, management, and control of the funds were with a person based out of USA and not by directors residing in Mauritius. The Revenue presented that the Mauritius entities had no independent employees, physical infrastructure, or commercial activities in Mauritius other than acting as a pipeline for investments into India. AAR ruled against the Taxpayer considering the arrangement as *'prima facie'* designed for avoidance of tax.

High Court's Observations

The Hon'ble High Court (HC) observed that the US based company was merely an investment manager with no equity participation and that it was not entitled to take any decisions without the approval of directors of the Taxpayers. It was further held by the HC that the Taxpayers could not be dismissed as entities lacking economic substance and any attempt to pierce the corporate veil should strictly be evidenced through a stringent and high standard of proof. The HC was of the view that merely because entities are incorporated in Mauritius, they cannot be viewed negatively or be required to meet standard of legitimacy. Accordingly, the HC ruled in favour of the Taxpayers, considering the transfer of investments as not taxable in India.

Arguments of the Parties

Revenue's Contentions

The Learned Additional Solicitor General ('ASG'), appearing on behalf of Revenue, has put forth before the Hon'ble SC several novel contentions touching upon diverse aspects, which are equally thought provoking for the tax professionals. Relevant contentions of ASG are as under:

- **Issues not to be adjudicated on merits**

  Section 197 of the Act and AAR Ruling was on *'prima facie'* basis, neither section 197 nor AAR act as a final tax determination process or authority. It was argued by ASG that the Hon'ble High Court adjudicated the issues on merits – which was impermissible.

  The Paradox - The SC seems to have adjudicated the case on merits, though delivered the ruling towards the end on 'prima facie' basis. Whether adjudication marries the final ruling of SC?

- **Source Country Rights**

  Though the residency of the Taxpayer is to be determined as per the domestic law of the alleged residence state, the other contracting state has the right to independently examine and challenge it. Furthermore, the granting of treaty benefits does not restrain the Source Country to examine the treaty abuse.

- **TRC vis-à-vis 'substance over form'**

  One of the major contentions of ASG was that section 90 read with GAAR provisions does not render TRC as sufficient evidence of residence and cannot override the principle of 'substance over form'. Further, 'substance' test is not a test for treaty entitlement *per se*, but an independent anti-abuse safeguard. Mere issuance of TRC does not refrain inquiry into actual control and management of application of 'substance over form'. Interestingly, ASG also submitted that Circular No. 789 (being the circular clarifying that TRC is sufficient evidence for proving the residency) was only intended to provide certainty to FIIs and similarly placed investors and not to business investments / indirect transfers.

- **GAAR overrides Tax Treaty**

  It was contented by ASG that the provisions of GAAR would override the Tax Treaty if the arrangement was found to be an impermissible avoidance arrangement. In such a case, even Circular no. 789 would not come to the aid of the Taxpayer. It was argued that SAAR provisions in Treaty (being LOB clause) do not apply to Article 13(4) dealing with indirect transfer of shares and domestic anti-abuse provisions (GAAR) shall be applicable to arrangements that lack commercial substance if structured in a manner that disguises the value, location, source, ownership or control of funds, etc.

- **Reliance on Vodafone Ruling**

  JAAR principles recognized by the SC, subsequently codified under GAAR without blanket grandfathering.

- **Grandfathering of investments made prior to 01st April 2017**

  It was argued that any income-earning transaction forming part of an arrangement has to undergo scrutiny after 01st April 2017 under Chapter X-A regardless of date of the investment. It was argued that Rule 10U(1)(d) concerns only genuine investments, while Rule 10U(2) targets abusive arrangements irrespective of their historical origin.

  The Paradox – Why would 'genuine' investments fall under Chapter X-A in the first place? Irrespective, if Rule 10(U)(1)(d) covers only genuine investments, why would Rule 10U(1)(a), (b) and (c) provides for general exemption to other categories of arrangements such as threshold limit of INR three crores or exemptions to FIIs? The fact that the transactions have been specifically listed in Rule 10(U)(1) including Rule 10(U)(1)(d) itself means that at the first stage it is an impermissible transaction, and the legislator is then providing exclusion from GAAR applicability to these investments/ arrangements.

Taxpayers' Contentions

While the contentions argued by the ASG were extensive and opened up a wide range of arguments for the Revenue for future cases, the Taxpayers appear to have relied largely on well-established historical arguments and did not effectively address these novel contentions. The relevant contentions of the Taxpayers are as under:

- **India cannot challenge residency of Mauritian company**

  The Taxpayers contended that under the Treaty, the Source State can determine residency only in cases of dual residency and where a person is liable to tax in one State, the other State cannot deny such residency. It was argued that in the given case only Mauritian authorities could determine residency in Mauritius. The Taxpayers submitted that the TRC issued by the Mauritian authorities constitutes conclusive evidence of residency and beneficial ownership since such certificates are issued after examining control and management. In this regard, reliance was placed on the language used in section 90(4). The Taxpayers placed strong reliance on

Circular No. 789 of 2000 and the Press Release dated 01 March 2013 to counter the Revenue's contention that paragraph 2 of the Circular applies to all Taxpayers and not merely FIIs. It was further argued that treaty shopping and sham transactions are distinct concepts and have been incorrectly conflated by the Revenue.

- **JAAR / domestic doctrines cannot override Treaties**
  It was argued that domestic law doctrines such as 'lifting of corporate veil' or 'substance over form' cannot be invoked to deny treaty benefits unless specifically provided in the Treaty. Likewise, it was further contended that any changes in domestic law cannot alter Treaty interpretation and accordingly, principles governing residence and allocation of taxing rights must be strictly read within the Treaty framework. It was specifically argued that section 90(2A) which provided for GAAR override, could not be judicially extended to JAAR.

- **Genuine Corporate Structure**
  Relying heavily on the landmark *Azadi Bachao Andolan* and *Vodafone case*, the Taxpayers contended corporate structures may be disregarded only when used as artificial devices whereas no such allegations exist in the Taxpayers' case. It was argued that Vodafone reaffirmed 'look at' approach and thus transactions to be viewed holistically rather than through a dissecting lens.

- **Grandfathering provisions applicable**
  It was argued that Rule 10U(2) does not dilute Rule 10U(1)(d) and that GAAR applies only prospectively to investments made on or after 01 April 2017.

- **AAR failed to establish *'prima facie'* tax avoidance**
  It was contended that for proving that the arrangement was *'prima facie'* for tax avoidance, required clear evidence of premeditated tax avoidance design which was absent in the Taxpayers' case as the transactions were commercially driven and lawful and hence provisions of section 245R(2)(iii) did not apply.

Findings of the Hon'ble Supreme Court

TRC no shield for abusive arrangements

The SC began its analysis by redefining the weight assigned to a TRC. While acknowledging that a TRC is a necessary condition for claiming treaty benefits, the SC held that it is not a conclusive or final certificate that bars the Revenue from conducting an inquiry into the reality of the transaction. The SC observed that the TRC cannot be used as a license for tax evasion and that the tax authorities have a statutory obligation to ensure that the treaty is not being abused through 'treaty shopping'. The judgment clarifies that the *substance over form* doctrine is a foundational principle of Indian tax law that allows the SC to pierce the corporate veil in cases of suspected tax avoidance.

TRC not sufficient evidence for residency

The SC has held that section 90(4) only speaks of TRC as an eligibility condition and does not state that TRC is sufficient evidence of residency. It appears that SC has relied on the amendment brought in by Finance Bill 2013 by introduction of sub-section (5) to section 90 wherein it was proposed that TRC though necessary but shall not be a sufficient condition for claiming relief under the Tax Treaty. Accordingly, the SC held that earlier judgements (Azadi Bachao Andolan or Vodafone) dealing with CBDT circular, granting relief to taxpayers on basis TRC alone, cannot *ipso facto* come to the aid of the Taxpayers. However, it is to be noted that such proposed amendment to section 90(5) never saw the light of the day.

In coming to the conclusion, SC has touched upon various nuances relevant for Treaty interpretation & for International Tax enthusiasts covering following:

- Article 13 of India-Mauritius Tax Treaty
- Amendment to India – Mauritius Tax Treaty - 2016
- CBDT Circulars (No. 682 dated 30 March 1994, No. 789 dated 13 April 2000 and No. 1/2003 dated 10 February 2003)
- Judicial precedents – Azadi Bachao Andolan and Vodafone
- Finance Bill 2012 and 2013 Amendments – Section 9, introduction of GAAR and Section 90
- Shome Committee Report dated 30 September 2012
- Clarification issued by Finance Ministry on TRC dated 01 March 2013
- Clarification dated 27 January 2017 on implementation of GAAR
- CBDT Press Release dated 27 January 2017

Taxability in Mauritius – A pre-condition for Treaty entitlement

Another interesting and altogether a new observation put forth by the SC was that for the treaty to be applicable, the assessee must prove that the **'transaction is taxable'** in its state of residence. The SC again reiterated that only if the taxpayer is **'liable to pay tax'** in Mauritius, it can derive benefit under the provisions of the Tax Treaty, as amended.

GAAR overrides Treaty

Crucially, the SC ruled on the interplay between GAAR and Tax Treaties. It held that Section 90(2A) of the Act explicitly mandates that a Taxpayer cannot claim treaty benefits if the arrangement is hit by GAAR. The SC clarified that the grandfathering provisions introduced in 2017 were designed to protect legitimate investments but did not provide an amnesty for structures that were fundamentally fraudulent or sham from their inception. By doing so, the SC restored the AAR's power to reject applications at the threshold stage if the transaction is *'prima facie'* designed for tax avoidance, thereby affirming the AAR's role as a gatekeeper of tax integrity.

Rule 10U(1)(d) stands diluted by Rule 10U(2)

The SC relying on the words used 'without prejudice to the provisions of clause (d) of sub-rule (1)' in the language of Rule 10U(2), held that the exceptions carved under GAAR in Rule 10U(1)(d) stands diluted by Rule 10U(2).

GAAR and JAAR can co-exist

The SC agreed with ASG's contention that JAAR continues to operate in parallel with GAAR and in case of treaty abuse, the Indian authorities can deny treaty benefits.

KCM Comments

In a never-ending (and rightly so) seesaw battle, Revenue seems to have had the last laugh as SC upholds the action of AAR in rejecting the Taxpayers' application holding the transaction of sale of shares of a Singapore Co by Mauritian shareholders as designed *prima facie*, for tax avoidance. While the AAR had initially flipped the Mauritius Kart in Revenue's favour, High Court un-flipped the same to give Taxpayers a breather. SC has now, once and for all (as it appears), flipped the Kart once again, this time with brutal force, by piercing the corporate veil and tearing through the Corporate Will, thereby, the belief of Tax Residency Certificate being sacrosanct, now drowning in Mauritian waters!

The Supreme Court's reasoning seems to reflect a broader philosophy of a sovereign's right to tax in the interest of public welfare and national development, rather than being limited solely to a technical reading of Treaty provisions on anti-abuse. Whether this interpretive approach aligns fully with established tax jurisprudence is an aspect that invites further discussion.

Notably, foreign investment into India through Mauritius gained significant momentum from 1992, when India was opening up and was in a relatively weaker economic position (we may refer to that state being that of *Member of Minions (MoM)*), leading it to enter into a favourable Tax Treaty with Mauritius and effectively promoting the Mauritius Route as a highly tax-efficient one for investors so as to attract more foreign investments. With the changing times and with the changing economic landscape, it appears that India is now in a *Position of Power (PoP)* and it no longer seeks to extend unintended tax benefits to multinational enterprises that effectively remain untaxed in any jurisdiction.

Investors relying on legacy offshore structures would need to reassess their arrangements, particularly for exit planning, as substance and commercial rationale will now outweigh formal Treaty documentation. The decision is not a blanket rejection of Treaty benefits, nor does it signal a sudden policy shift against cross-border investment. What it does quite clearly is just reinforce a familiar theme: *'substance over form'*, which in our view, cannot be denied and must be accepted wholeheartedly with a lot of respect.

One of the most significant takeaways is the Court's expansive view of GAAR and its power to override the grandfathering expectations of investors. While the Court has not struck down the grandfathering protection under the India–Mauritius Treaty, it has clearly narrowed its practical scope. This verdict represents a watershed moment that effectively signals the end of the "Azadi Bachao Andolan" era, where a TRC was considered the final word on residency.

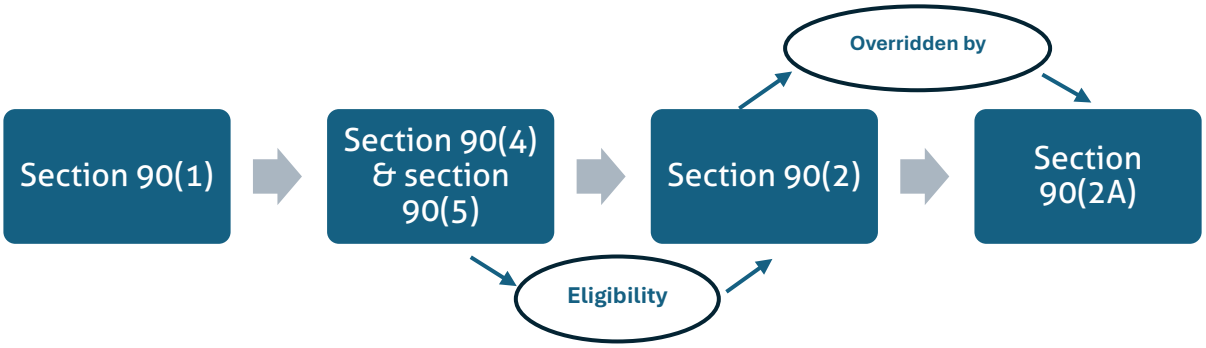
The wordings of the SC's ruling open a Pandora's box with possible multiple technical interpretations by the industry, many of which may not have been explored previously.

Certain observations of the SC seem to be hitting the bull's eye; some observations came as surprises while a few could be termed as possible shocks. Below, we have highlighted some of the key takeaways that emerge from the SC ruling:

Hitting the bull's eye!

- **Tax Residency Certificate – whether a 'necessary' or 'sufficient' condition?**

  If one were to look at it from the perspective of fixing abuse of provisions, mere availability of a TRC should not guarantee Treaty benefits and that is exactly what SC has held. Philosophically, SC has consistently held that in cases of sham or conduit arrangements, authorities should have a right to go behind TRC and this does not come as a surprise. Considering the overall scheme of section 90 of the Act, the ideal way of reading the provisions seems to be as under:



- **Overriding powers of anti-abuse provisions over Treaty provisions**

  SC has upheld the overriding powers of anti-abuse provisions over Treaty provisions thereby subjecting Treaty supremacy to such provisions. Anti-abuse provisions under the domestic law (if applicable to the facts of the case) would stop the Taxpayer from claiming any benefit under a Tax Treaty irrespective of whether the Treaty contains any specific anti-abuse provisions and irrespective of whether the Taxpayer is able to fulfil the requirement of such SAAR.

- **Circulars being overridden by subsequent amendments**

  SC has made a very relevant observation that while Circulars are binding on the authorities (especially when they are categorically not withdrawn or superseded), they operate only within the legal regime in which they were issued and cannot override subsequent statutory amendments. In our opinion, SC has rightly held that Circulars issued prior to amendments to the law, in the context of TRC, may not hold good post amendments, especially in the context of anti-abuse provisions.

The Surprises

- **How to read a Tax Treaty?**

  SC has held that for Treaty interpretation, the first step is to determine taxability under the domestic provisions and once domestic taxability is established, the second step is to check whether such taxability is curtailed or is overridden by the Tax Treaty. In other words, SC observes that first the domestic law is to evaluated and only post that the treaty provisions are to be interpreted. In our view, this may not be in line with the plain reading of section 90(2) of the Act. It may not be out of place to refer to CBDT Circulars viz. Circular No. 333 of 1982 and Circular 621 dated 19 December 1991 (which is also relied upon by the SC in the instant case), a combined reading of which along with the plain language of section 90(2) gives an equally strong alternative proposition of first looking at the Tax Treaty to determine if a State has a taxing right distributed in its favour or not and if so, what and subsequently, moving to the domestic law to check if a beneficial provision exists.

- **Tax Treaties and Indirect Transfers – A classic case of "to be or not to be"**

  One of the biggest surprises in the SC Ruling is that surrounding applicability of Tax Treaty provisions to Indirect Transfers. At one place, SC has relied upon the language of Article 13(2) and 13(3A) to impliedly hold that even for Article 13(4), the share should be that of an Indian company directly, meaning, indirect transfers do not get covered by Article 13(4) and are out of Treaty protection net at the threshold itself. In the very immediate paragraph and towards the conclusion of the Ruling, SC has impliedly, made a reference of the instant case falling under Article 13(4) of the Tax Treaty, making this a classic case of "to be or not to be" for indirect transfers.

  Given that Tax Treaties are the outcome of extensive bilateral deliberations and negotiations, their terms must be construed strictly. Where a specific condition is conspicuous by its absence in Article 13(4), the presumption is that such omission was deliberate, and courts cannot read into the treaty obligations beyond what has been expressly legislated. Accordingly, given that specific amendments were introduced in Article 13(3A) but not in Article 13(4), it may be contended that the legislative intent was confined to cover all other assets held by a Resident of a particular state (irrespective of wherever the assets are held – direct or indirect) shall be taxable only in the Country of Residence.

- **Residency Determination & Treaty application**

  Reliance was placed on Klaus Vogel's Commentary on Double Taxation Conventions (3rd Edition), which clarifies that residence under a DTAA must be determined according to the domestic law of the alleged State of Residence, and such determination may be independently examined by the tax authorities of the other Contracting State. Hence, residential status of the taxpayer under Mauritius law can be determined only by the Mauritius Revenue Authority and the Indian tax authorities are only empowered to examine the same as per the regulations of the foreign law. In the present case, the Taxpayer has specifically submitted that TRC was issued to it after examination of its

control and management in Mauritius by the Mauritius authorities. Even in such circumstances, the court and the authorities questioned the residency of the Mauritian entity, an aspect that the Taxpayer could have addressed more effectively.

- **Co-existence of GAAR and JAAR**

  GAAR is an extended and codified version of JAAR as spelt out by Apex Court in various decisions starting with Mc Dowell to Vodafone. In the present case, the SC agreeing with the Revenue's position held that GAAR and JAAR can operate in parallel and accordingly has applied both the provisions interchangeably. This puts up an interesting question about whether the judicial view still prevails, at least to the extent of cases where GAAR has specifically excluded its application. Under Rule 10U, specific exemption is provided to certain cases where GAAR shall not apply. This includes inter alia any income accruing or arising to any person from transfer of investment made up to 31 March 2017. While GAAR provides for a detailed procedural provision for ensuring its applicability only after a detailed scrutiny, it also excludes certain cases by creating specific carve outs. The Parliament while enacting GAAR has given due consideration to the recommendation given by the Shome Committee ("the Committee"), formed by the Central Government on GAAR, especially for keeping the procedural safeguards and creating the carve outs. Since the legislature consciously decided not to apply such provision in certain cases, one could possibly argue that the legislation also consciously considered to exclude these cases also from JAAR and invocation of JAAR in such cases could be a surprising move.

The Shocks!!

- **Interplay of Rule 10U(1)(d) and 10U(2)**

  Application of "specific" over "general": Rule 10U(1)(d) and Rule 10U(2) operate in distinct but potentially overlapping spheres, giving rise to interpretational issues on the scope of grandfathering. Rule 10U(1)(d) specifically provides that income arising from the transfer of investments made before 1 April 2017 shall not be subject to GAAR. This provision was introduced to uphold investor certainty and protect legacy investments from retrospective anti-avoidance scrutiny, in line with the policy intent underlying the GAAR regime. Rule 10U(2), on the other hand, is framed in broader terms and clarifies that the exclusions under Rule 10U(1) shall not apply to arrangements that are part of, or connected with, an impermissible avoidance arrangement, 'without prejudice' to what is mentioned in Rule 10U(1)(d).

  The Revenue and subsequently the Hon'ble SC have sought to draw a distinction between mere "investments" (which are grandfathered under Rule 10U for pre-2017 investments) and "arrangements" (which are not grandfathered if the transfer occurrs post 01.04.2017). It was contended that even if the investment was made prior to 2017, the subsequent indirect transfer of shares post-2017 brings the transaction within GAAR scrutiny as per Rule 10U(2). While the SC has attempted to distinguish these two terms, it is respectfully submitted that the interpretation adopted seems to be raising eyebrows. The two expressions are not mutually exclusive; rather, an *"investment"* constitutes a subset of the wider expression *"arrangement"*. The term *"arrangement"* is defined and is of a wide connotation and encompasses various forms of transactions (including part thereof). Accordingly, Rule 10U(2) operates to cover tax benefits arising from all *"arrangements"*, irrespective of the date on which such arrangements were entered into. At the same time, Rule 10U(1)(d) continues to coexist and specifically carves out an exemption limited to income arising from the transfer of *"investments"* made prior to 01.04.2017, and not from any other category of "arrangements".

  It appears that the SC has construed the expression *"without prejudice to the provisions of clause (d) of sub-rule (1)"* occurring in Rule 10(U)(2) as having the effect of a *"notwithstanding anything contained ..."* clause, implying that the exemption referred in Rule 10U(1)(d) would not apply. It is to be noted that while the term 'notwithstanding anything contained' certainly creates overriding effect, the term 'without prejudice' refers to the situation wherein the both the provision exists parallelly i.e. both earlier and later provisions remain effective with each other.

  In line with the above view, Rule 10U(1)(d), being a specific grandfathering provision dealing exclusively with pre-1 April 2017 investments, should prevail over the more general anti-abuse safeguard in Rule 10U(2), particularly in cases where the transaction squarely falls within the protective ambit of the former. If Rule 10U(2) is construed as overriding Rule 10U(1)(d), as held by the SC, Rule 10U(1)(d) would be rendered redundant and would lose its legal significance.

- **Taxability of transaction in the Country of Residence - New Test for Treaty Relief?**

  In a significant interpretative shift, the SC observed that for Treaty benefits to apply, the assessee must first demonstrate that the 'transaction' is taxable in the Country of Residence. This requirement has never been articulated by any court before and introduces a new dimension to Treaty application. But can such an interpretation truly be reconciled with the very object of Tax Treaties — which is to prevent double taxation rather than to condition relief on proof of taxation in the Residence State? Klaus Vogel on Double Taxation Convention (Fifth Edition) at para 30 of Article 4 has noted that once a Treaty has allocated the exclusive right to tax specific income or capital to one contracting state, that state keeps that right whether exercised or not.

  The proposition that Treaty benefits can be claimed only where the 'transaction' is taxable in the State of Residence seems to be going against the settled principles of International Tax Treaty interpretation. If such an approach were correct, well-recognised concepts such as tax exemptions and tax sparing under Tax Treaties would be rendered meaningless. Treaty benefits are designed to allocate taxing rights, not to be contingent upon the actual levy of tax on such a transaction in the residence jurisdiction.

  To illustrate, consider a Mauritian resident who is a Mauritian national and otherwise taxable in Mauritius. If such a resident (with no transaction / arrangement related to treaty abuse) earned capital gains from investments in India prior to 01 April 2017, the mere fact that Mauritian domestic law does not tax capital gains would, if the SC's principle were applied in isolation (and without considering the grandfathering provisions), result in the denial of treaty benefits. Such a consequence is legally unsustainable. Accordingly, when read in isolation, this principle does not withstand scrutiny and fails to accord with the structure and object of Tax Treaties.

- **Prima facie vs prima facie**

  The Hon'ble SC while concluding that the assessee is not entitled to claim exemption under Article 13(4) of the Treaty, has relied on the Revenue's contention that transactions in the instant case are impermissible tax-avoidance arrangements and the evidence *prima facie* establishes that they do not qualify as lawful.

  However, on a closer reading of the facts and arguments from both sides, one may possibly feel puzzled as to whether the facts lead to a *prima facie* indication of a genuine transaction (period of holding of investment, availability of TRC after verification of control and management, board meeting minutes, etc.) or a *prima facie* indication of a transaction designed for tax avoidance (decision making power in the US).

  In a situation where the same factual matrix admits of equally plausible interpretations from both the Taxpayers' and the Revenues' perspectives, the conclusion that a transaction is *prima facie* tax-avoidance could have alternative views. The *prima facie* threshold should demand a clear and unambiguous indication of tax avoidance, not a debatable or evenly balanced inference. A transaction must either demonstrably qualify as *prima facie* tax avoidance or fall outside that category; it cannot be characterised as both, simultaneously.

Concluding Remarks

It is quite evident that "substance over form" is the ask of the current times. Taxpayers cannot plainly (and smartly) create structures that could justify legality / rationale on paper but not in substance. The novel arguments and thoughts put forth by the Revenue are commendable as one can now clearly see a sea-change in how cases are approached. Gone are the days where one could rely upon age old arguments (irrespective of how well settled). With changing times, it is important that one is able to demonstrate substance and also put forth legal arguments that marry with the facts of the case, especially on substance. One may still ponder if this ruling, though elaborate, is only a *'prima facie'* ruling in the case of these Taxpayers and whether there would be a further detailed examination to 'finally' conclude if it was a case of tax avoidance. This Ruling has made it clear that with changing times, one may expect more of such rulings where there would be an expectation of "contextually" interpreting the law taking into consideration the facts of each Taxpayer.

For further analysis and discussion, you may please reach out to us.

Locations

KSL NETWORK
Independent Member

Ahmedabad
Arpit Jain
Level 11, Tower B,
Ratnaakar Nine Square,
Vastrapur,
Ahmedabad - 380 015

Phone: + 91 79 4910 2200
arpit.jain@kcmehta.com

Bengaluru
Dhaval Trivedi
4/1, Rudra Chambers, First Floor, 4th Main, B/W 8th & 9th Cross Road, Malleshwaram, Bengaluru - 560 003

Phone: +91 80 2356 1880
dhaval.trivedi@kcmehta.com

Mumbai
Bhadresh Vyas
315, The Summit Business Park, Opp. Max Cinema, Nr. WEH Metro Station, Andheri East, Gundavali,
Mumbai - 400 069
Phone: +91 22 2612 5834
bhadresh.vyas@kcmehta.com

Vadodara
Milin Mehta
Meghdhanush,
Race Course,
Vadodara - 390 007

Phone: +91 265 2440 400
milin.mehta@kcmehta.com