



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 294

Tiger Global International

v.

Authority for Advance Rulings (Income-tax)

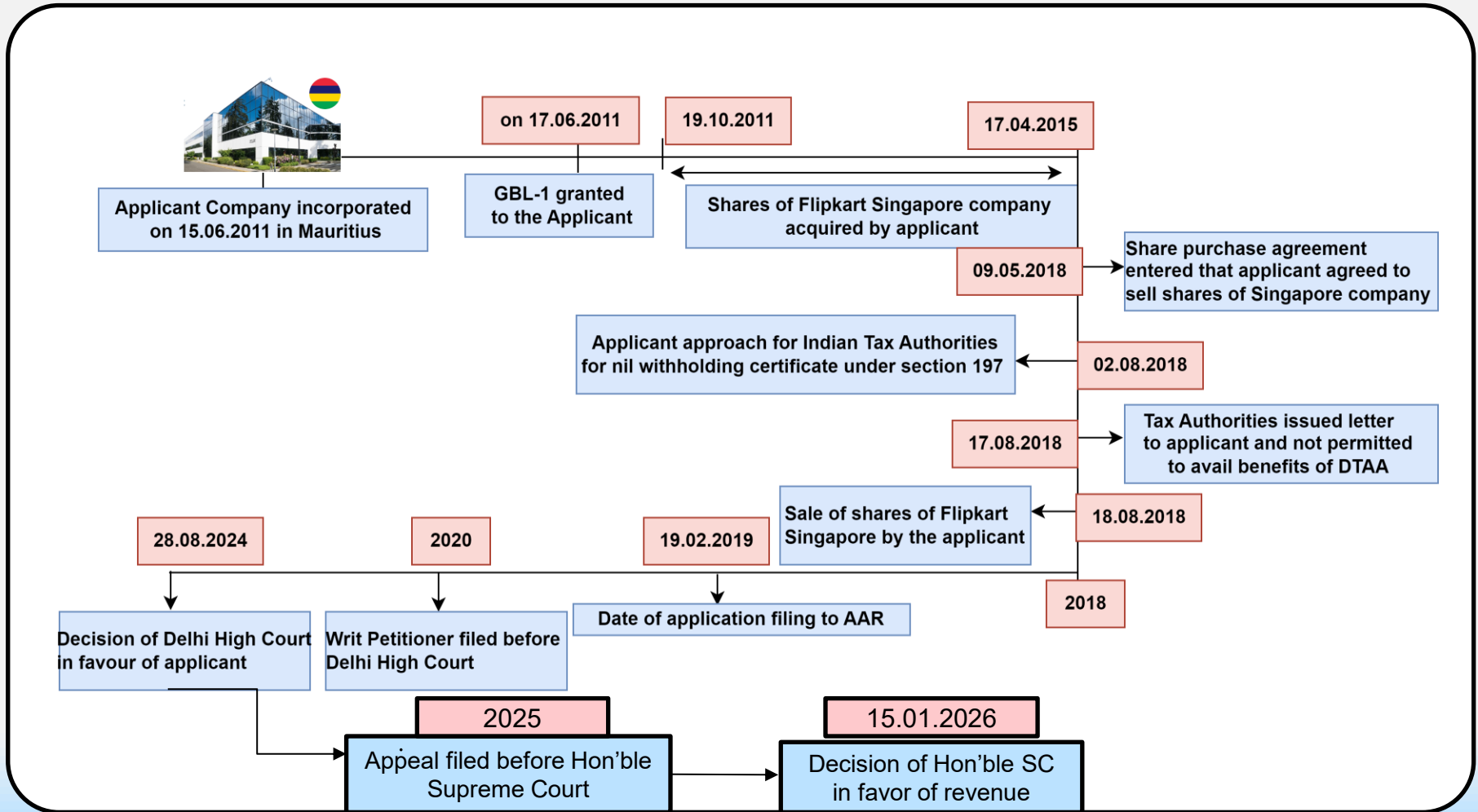
TRC is not a sufficient proof for claiming DTAA benefit and having a substance in the resident country is important

24.01.2026



[2026] 182 taxmann.com 375 (SC)

Basic Structure of the Case



Flow and Facts of the Case

1. In May 2018, Walmart announced its acquisition of Flipkart Singapore for USD 16 billion. As part of this transaction, three Mauritius-based entities, viz., Tiger Global International II Holdings, Tiger Global International III Holdings, and Tiger Global International IV Holdings (**Taxpayers**), sold shares of Flipkart Singapore (**capital asset/shares**) to a Luxembourg entity for an aggregate consideration of approximately INR 131 billion. These entities had acquired their shares between October 2011 to April 2015, which was before April 1, 2017, the date relevant for the grandfathering provision under Article 13(3A) of the IM DTAA.
2. The Taxpayers operated under a Category 1 Global Business License regulated by the Financial Services Commission of Mauritius and held a valid TRC issued by the Mauritius Revenue Authority. The Taxpayers engaged Tiger Global Management LLC (**TGM**) to provide services in connection with their investment activities, subject to oversight and final approval by the Taxpayers' Board of Directors.
3. The Taxpayers approached the Indian Revenue Authority (**IRA**) seeking a nil withholding certificate under section 197 of the Income-tax Act, 1961 (**the Act**), contending that the capital gains arising from the transfer of the shares were exempted under the DTAA. It was argued that the shares were acquired prior to April 1, 2017, and thus were grandfathered under Article 13(3A) of the DTAA.

Flow and Facts of the Case

4. The Income tax department rejected the application and directed the buyer of the shares to withhold tax at 10%, reasoning that the Taxpayers lacked independent control and management, which was allegedly exercised by their ultimate shareholder i.e., TGM, a US-based entity. The Income tax department further contended that the Taxpayers were mere conduits created to exploit DTAA benefits.

5. The Taxpayers filed applications before the Authority of Advance Ruling in February 2019, seeking an advance ruling on the taxability of the transaction. The Taxpayers contended that they were bona fide tax residents of Mauritius, holding valid TRCs, and that the transaction was a genuine commercial exit. They also emphasized that Article 13(3A) of the IM DTAA exempted gains arising on transfer of shares acquired before April 1, 2017, and that the beneficial ownership concepts were irrelevant for the “Capital Gains” Article under the IM DTAA.

6. The Indian Revenue Authority , on the other hand, contended that the Taxpayers were “see-through entities” with no real substance in Mauritius. The Revenue Authority referred to the board minutes and banking arrangements to argue that the ‘head and brain’ of the Taxpayers was outside Mauritius. They also asserted that:

- (i) The real control rested with a Representative of the ultimate shareholder.
- (ii) The funds originated from the US, making the arrangement a preordained tax avoidance device.
- (iii) IM DTAA exemption was intended only for shares of Indian companies, not foreign companies like Flipkart Singapore.

Flow and Facts of the Case

7. The Indian Revenue Authority rejected the applications at the admission stage applying the clause (iii) of proviso to section 245R(2) of the Act on the basis that the transaction was *prima facie* designed for avoidance of tax. The AAR *inter alia* held the following:

- (i) The Taxpayers were conduit entities, their real control and management lay in the US, and the arrangement lacked commercial substance.
- (ii) Grandfathering benefit under Article 13(3A) of the IM DTAA did not extend to shares of a Singapore company, even if those shares derived substantial value from assets located in India.
- (iii) The Taxpayers had no other investments and were set up solely to avail IM DTAA benefits, thereby failing the “look at” test laid down in the SC ruling of Vodafone International Holdings B.V. In the said Ruling, it has been iterated that Indian Revenue Authority is entitled to examine a transaction as a whole and disregard an interposed Mauritian entity if found to be a device, taxing the underlying real transaction instead.

8. The Taxpayers challenged the Indian Revenue Authority decision before the **HC** through writ petitions, taking the following key arguments:

- (i) AAR erred in disregarding the TRCs, which were conclusive evidence of residence under settled law.
- (ii) AAR erred in importing concepts of beneficial ownership into Article 13 of the IM DTAA, which does not contemplate such a requirement.
- (iii) The transaction was a genuine commercial exit and that the IRA could not impose additional conditions beyond those stipulated in the IM DTAA. Therefore, the Indian Revenue Authority cannot reject the application absent clear evidence of premediated tax avoidance.

Flow and Facts of the Case

9. The IRA reiterated their stance that the Taxpayers were shell companies lacking economic substance, that GAAR principles applied, and that the IM DTAA did not cover indirect transfers of shares of foreign companies.

Hon'ble High Court's Order:-

1. The HC set aside the AAR's ruling and rendered its findings on merits of the case, which are summarized below:-
 - (i) TRC issued by a contracting state is sacrosanct unless fraud or sham is established following the SC decision in the case of Azadi Bachao Andolan, which the IRA had failed to prove.
 - (ii) Beneficial ownership concepts cannot be invoked for "Capital Gains" under Article 13 of the IM DTAA.
 - (iii) Grandfathering provision applied to shares acquired before April 1, 2017, irrespective of whether the company was incorporated in India or abroad.
 - (iv) IRA cannot manufacture additional eligibility conditions beyond the Limitation of Benefits ("LoB") clause in the DTAA.
 - (v) GAAR provisions do not override DTAA protections, absent illegality or abuse.

2. The IRA challenged the HC order before the SC, which was heard in March 2025 and disposed of by the SC vide order dated January 15, 2026. **The SC has upheld the AAR's decision and set aside the HC order.** Thereby, reversing the well settled judicial principle in the context of investments made prior to 2017, that TRC issued by the overseas revenue authorities suffices tax residency. The SC has also made observations on the long-standing debate around DTAA eligibility in respect of grandfathered shares and indirect share transfer.

Head and brain & Investment Structure

1. The Mauritius entities had formally constituted Boards of Directors comprising both resident and non-resident directors. However, the authorities observed that while board resolutions were passed in Mauritius, the **actual decision-making power in respect of material and high-value matters was concentrated in a single non-resident individual**, indicating a distinction between formal governance and real control.
2. It was noted that **Mr. Charles P. Coleman**, who was not a resident of Mauritius, exercised decisive influence over key investment and disinvestment decisions. Although the Boards existed on paper, the effective authority to approve critical transactions rested with this individual, who was closely associated with the Tiger Global group based outside Mauritius.
3. The bank mandates and internal authorisation framework provided that **transactions exceeding USD 250,000 could not be executed without the approval of the non-resident director**. This demonstrated that control over substantial financial decisions did not vest with the Mauritius-based directors, thereby limiting their functional autonomy.

Head and brain & Investment Structure

4. On the basis of the above facts, the authorities concluded that the **“head and brain” of the Mauritius entities were situated outside Mauritius**, and that the entities functioned largely as investment conduits. The concentration of control outside Mauritius was relied upon to infer lack of commercial substance and to deny treaty benefits.

Investor Base and Commercial Rationale:-

The Mauritius entities were not single-shareholder shell companies. They functioned as pooled investment vehicles comprising more than 500 investors spread across over 30 jurisdictions. The transaction involved a total consideration of approximately USD 2.08 billion. The diversified investor base and substantial capital deployment indicated a commercially rational structure rather than a sham entity.

Assessee's Contention

- ❖ The assessee contended that they were bona fide tax residents of Mauritius, holding valid TRCs, and were therefore entitled to treaty protection under the India–Mauritius DTAA. According to them, possession of a TRC conclusively established treaty eligibility.
- ❖ It was submitted that the gains arose from the transfer of shares acquired prior to 1 April 2017 and were therefore grandfathered under Article 13(3A) of the DTAA. The assessee argued that the treaty protected both direct and indirect transfers deriving value from Indian assets.
- ❖ The assessee asserted that their Boards of Directors in Mauritius exercised real decision-making authority and that the involvement of group entities or investment managers did not dilute their commercial substance or independence.
- ❖ It was further contended that GAAR under Chapter X-A could not override treaty grandfathering provisions and that domestic anti-avoidance rules could not be used to defeat explicit treaty protection.

Revenue's Contention

- ❖ The Revenue argued that mere possession of a TRC was insufficient to conclusively establish treaty entitlement after the insertion of sections 90(2A), 90(4), 90(5) and the introduction of Chapter X-A. According to the Revenue, treaty abuse could be examined notwithstanding the TRC.
- ❖ It was contended that the transaction involved an indirect transfer of shares of a foreign company deriving substantial value from Indian assets and was taxable in India under section 9(1), read with Explanations 4 and 5.
- ❖ The Revenue submitted that the grandfathering benefit under Article 13(3A) applied only to direct transfers of shares of an Indian company and did not extend to indirect transfers governed by Article 13(4).
- ❖ It was further alleged that the assessee's were conduit entities lacking commercial substance, that real control and management lay outside Mauritius, and that the entire structure constituted an impermissible tax avoidance arrangement attracting GAAR.

Legal provisions

Section 90(2) of the income tax act:-

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee even if such provisions are not beneficial to him.

Section 9(1) of the income tax act:-

(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India:-

Explanation 5.—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India

Legal provisions

Section 97(1) of the income Tax act:-

Defines when an arrangement is deemed to lack commercial substance **under the General Anti-Avoidance Rules (GAAR)**. According to Section 97(1), an arrangement is considered to lack commercial substance if it exhibits one or more of the following characteristics:-

- (1) The substance of the arrangement differs significantly from its legal form.
- (2) It involves round-trip financing, where funds are circulated among parties through a series of transactions.
- (3) An accommodating party with no substantial commercial purpose is used.\
- (4) Transactions disguise the value, location, source, ownership, or control of funds, or involve offsetting elements.
- (5) An asset or transaction is located without a substantial commercial purpose other than gaining a tax benefit.
- (6) The arrangement does not significantly impact the business risks or net cash flows of any party involved.

Section 245R of the Income Tax Act:-

In section 245R of the Income-tax Act, in sub-section (2), for the first proviso:-

Provided that the Authority shall not allow the application where the question raised in the application,---

- (i) is already pending before any income-tax authority or Appellate Tribunal
- (ii) involves determination of fair market value of any property
- (iii) relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax

Legal provisions

India–Mauritius DTAA:-

Article 13(3A):-

“Gains from the alienation of shares of a company which is a resident of a Contracting State, acquired before the 1st day of April, 2017, by a resident of the other Contracting State, shall be taxable only in the State of which the alienator is a resident.”

Article 13(4):-

“Gains from the alienation of shares or comparable interests, deriving their value principally from immovable property or other assets located in a Contracting State, may be taxed in that State.”

Ruling

The Hon'ble Supreme Court has **ruled in favour of the revenue**:-

- ❖ The Hon'ble Supreme Court held that after the statutory changes introduced through section 90(2A), sections 90(4)/(5), Chapter X-A, and the incorporation of Article 27A in the DTAA, a TRC could not be regarded as conclusive proof of treaty entitlement, and the Revenue was entitled to examine treaty abuse.
- ❖ The Hon'ble Supreme Court ruled that the grandfathering provision under **Article 13(3A) of the India–Mauritius DTAA was confined strictly to direct transfers of shares of an Indian company** and did not extend to indirect transfers falling under the residual Article 13(4).
- ❖ It was held that once the transaction was found to be an impermissible avoidance arrangement lacking commercial substance, the assessee were disentitled from claiming treaty exemption, even under Article 13(4).
- ❖ The Hon'ble Court concluded that GAAR under Chapter X-A validly applied to the impugned transactions completed after 1 April 2017, rendering the capital gains taxable in India. Accordingly, the judgment of the High Court was set aside and the ruling was decided in favour of the Revenue.

Our Comments

- ❖ The Hon'ble Supreme Court has clearly held that **GAAR overrides treaty benefits** by virtue of section 90(2A) of the Income-tax Act. Where an arrangement is found to be tax-driven, DTAA protection can be denied.
- ❖ Mere possession of a **Tax Residency Certificate (TRC)** does not conclusively establish treaty entitlement. A TRC cannot shield an assessee where treaty abuse or lack of substance is demonstrated.
- ❖ In the present case, the Court observed that **real control and decision-making were not exercised in Mauritius**, but were effectively **controlled from the USA**. The Mauritius entities largely played a formal role.
- ❖ Due to this, the Mauritius companies were treated as **conduit Company** (entity interposed primarily to obtain treaty benefits), lacking sufficient **commercial substance**, and were primarily interposed to obtain treaty benefits.

Our Comments

- ❖ The Court further held that the transaction involved an **indirect transfer**, which falls under **Article 13(4) of the India–Mauritius DTAA**.
- ❖ **Article 13(4) does not contain any grandfathering provision**, unlike Article 13(3A), and **does not include any Limitation of Benefits (LOB) clause**.
- ❖ Since the shares were sold after 1 April 2017 and the transaction fell under Article 13(4), **the assessee could not claim grandfathering protection**, and the absence of an LOB clause did not prevent the application of GAAR.
- ❖ Accordingly, GAAR was validly invoked, treaty benefits were denied, and the capital gains were held **taxable in India**.

Section/Article	Article 13(3A), Article 14 of the India-Mauritius DTAA, Section 245R, 97(1), 90(2) of the Income Tax Act
DTAA/Country	India - Mauritius DTAA
Court	Supreme Court Of India
Date of decision	15.01.2026

Note: Case law name in **Red**- in favor of the revenue, **Green**-In favor of the Assessee, **Orange** = Partial



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