

INTERNATIONAL TAX UPDATE

*Analysis of the Supreme
Court Ruling in case of
Tiger Global*



Analysis of the Supreme Court Ruling

Facts and Issue of the Case: -

- The respondents are private companies incorporated in Mauritius (Tiger Global International II, III, and IV Holdings).
- The respondents held substantial shares in Flipkart Private Limited (Singapore), which they sold to Fit Holdings S.A.R.L. (Luxembourg) in 2018 as part of the broader acquisition of Flipkart by Walmart Inc.
- The respondents approached the Indian tax authorities for a "nil withholding" certificate, and subsequently the Authority for Advance Rulings (AAR), claiming that the capital gains from this

indirect transfer were exempt from tax in India under Article 13(4) of the India-Mauritius DTAA.

- The AAR denied treaty benefits contending that the respondents were merely "conduit companies" lacking commercial substance, and that their "head and brain" (effective control and management) resided in the USA with Mr. Charles P. Coleman, rather than in Mauritius.
- Following the AAR's rejection of the applications, the matter was challenged before the Delhi High Court. The High Court ruled in favor of the assessee, quashing the AAR's order and holding that they were entitled to treaty benefits.

Observations of the Hon'ble Supreme Court: -

- By introducing Section 90(2A), the Legislature curtailed the absolute benefit of Treaty override under Section 90(2) by making it subject to General Anti-Avoidance Rule (GAAR) provisions. This ensures that taxpayer-friendly DTAA provisions are not available if GAAR is invoked to prevent treaty abuse through aggressive tax planning.
- Rule 10U(2) establishes that an arrangement is not automatically grandfathered in its entirety. Irrespective of the investment date, GAAR applies if a tax benefit exceeding ₹3 Crores is obtained on or after April 1, 2017.
- A Tax Residency Certificate (TRC) is merely an "eligibility condition" under Section 90(4) and is

not "sufficient" evidence of residency. The mere existence of a TRC does not prevent the Revenue from enquiring into a device established to avoid tax.

- Following the principles in *McDowell* and *Vodafone*, the Court applied the "look at" test to view the transaction holistically. It held that if an interposed entity lacks commercial substance and is used as a device, the Revenue is entitled to discard the corporate structure.
- The residence of a company is determined by its situs of control and management. In this case, the real control over transactions exceeding USD 250,000 was exercised by a non-resident in the USA, rather than the Board in Mauritius, rendering the Mauritius entities "see-through" conduit structures.

- Section 96(2) represents a significant shift in the burden of proof, placing the onus on the taxpayer to disprove the presumption of tax avoidance once the Revenue demonstrates that the arrangement was designed for such a purpose.
- Earlier circulars (such as **Circular 789**) operate only within the legal regime in which they were issued and cannot override subsequent statutory amendments like GAAR and Section 90(2A).
- The SC held that the transactions in the present case constitute impermissible tax-avoidance arrangements and, on a *prima facie* basis, fail to qualify as lawful. Consequently, Chapter X-A applies, and capital gains arising from transfers effected on or after 01.04.2017 are taxable in India under the Income-tax Act, read with the

relevant provisions of the DTAA. Accordingly, the judgment of the Delhi High Court was set aside, and the AAR's rejection of the applications was upheld.

For complete details, please refer to the Supreme Court order dated 15.01.2026 passed in the case of **Tiger Global** International II Holdings (CIVIL APPEAL NO. 262/263/264 OF 2026)

Judgement link :

https://api.sci.gov.in/supremecourt/2025/1251/1251_2025_7_1501_67552_Judgement_15-Jan-2026.pdf

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