

INTERNATIONAL TAX UPDATE

**Emerging India Focus Funds -
Treaty Benefit & LOB**



BACKGROUND & FACTS

Emerging India Focus Funds (“the Assessee”) is a Mauritius-incorporated company, incorporated on 19 May 2008, holding a valid Global Business Licence and registered with SEBI as a Category I Foreign Portfolio Investor. It operates a collective investment scheme investing in Indian securities, while its investment activities are managed by 360 One Capital Pte. Ltd., Singapore.

For AY 2023-24, the Assessee earned capital gains of approximately ₹289.16 crore on redemption of units of equity-oriented mutual funds and claimed exemption in India under Article 13(4) of the India-Mauritius DTAA.

The AO/DRP did not accept the claim and brought aggregate capital gains of approximately ₹259.10 crore to tax:

- Capital gains of ₹134.13 crore relating to post-1 April 2017 acquisitions were taxed under Article 13(3A) on the view that equity-oriented

mutual-fund units were effectively akin to shares.

- ₹124.97 crore relating to pre-1 April 2017 acquisitions were also brought to tax under Article 13(3A), with Article 27A (Limitation of Benefits) invoked after the Global Business Licence of Emerging India Fund Management Ltd. (“EIFML”), the Assessee’s controlling/management shareholder and beneficial owner, was revoked with effect from 13 April 2022.

The principal issues before the ITAT were whether equity-oriented mutual-fund units could be treated as “shares” for Article 13(3A), and whether treaty relief could be denied on Article 27A / commercial-substance grounds despite the Assessee holding a Mauritius Tax Residency Certificate (“TRC”).

KEY FINDINGS OF THE HON'BLE ITAT

- Mutual-fund units are not “shares”: Following its own decision for AY 2022-23, the ITAT held that units of equity-oriented mutual funds and shares are legally distinct instruments. Redemption of such units is therefore not an “alienation of shares” for Article 13(3A), and that Article cannot be applied merely because the underlying portfolio is substantially invested in equity shares.
- TRC is necessary but not conclusive: Relying on Tiger Global, the ITAT held that production of a Mauritius TRC is not the end of the inquiry. Revenue may examine commercial substance and possible treaty abuse where the statutory anti-abuse framework is attracted.
- Revenue must establish abuse: Tiger Global does not mean that every Mauritius entity without employees or an independent office is automatically a conduit, nor that Article 27A applies whenever physical presence is limited.

Revenue must establish lack of genuine residence/business substance, control or decision-making elsewhere, or an impermissible arrangement.

- Further factual scrutiny was required: The Tribunal considered the shared office, absence of physical assets/employees and related-party management fees as relevant but not conclusive. It also noted the revocation of EIFML's licence and the lack of clarity on who had legal authority to approve and implement investment/redemption decisions during the relevant period.
- Matter remanded to the AO: The Assessee had to be given an effective opportunity to rebut the factual allegations, documents relied upon, Article 27A / GAAR, alleged tax-avoidance arrangement and alleged absence of commercial substance. The treaty-benefit / Article 27A issue was therefore remitted to the AO for fresh adjudication. The appeal was allowed for statistical purposes.

KEY TAKEAWAY

The ruling draws a clear distinction between the nature of the investment instrument and the separate question of treaty entitlement. Equity-oriented mutual-fund units cannot be treated as “shares” merely because their underlying portfolio is equity-oriented; Article 13(3A) cannot be invoked on that basis alone.

At the same time, after Tiger Global, a valid TRC is not an absolute shield against examination of commercial substance or treaty abuse. Revenue must, however, prove abuse or lack of genuine substance on the facts and the taxpayer must be given a proper opportunity to respond.

Accordingly, while the “mutual-fund units versus shares” issue was decided in favour of the Assessee, the ultimate availability of treaty relief for AY 2023-24 remains subject to the AO’s fresh adjudication on Article 27A, substance and anti-abuse considerations.

For complete details, please refer to the ITAT order dated 29 September 2026 passed in case of Emerging India Focus Fund vs ACIT; IT(IT)A 148/DEL/2026.

<https://itat.gov.in/judicial/viewOrder?data=3SHGr6cwUxsulp7ko8YiA9navgZFylCoSeKYh0fQJYsSyOiF3XdYMjiUXb0%3A%3ANIR0U3FBVDAxdnJWaVITakxQcUU1UT09>

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