

India-Mauritius DTAA: Supreme Court stays Delhi HC ruling on Tiger Global

Shishir Sinha

New Delhi

The Supreme Court has stayed a decision by the Delhi High Court in the matter of Tiger Global with reference to the India-Mauritius Double Taxation Avoidance Agreement. Experts feel this could create uncertainty for foreign investors.

A division Bench, comprising Justices JB Pardiwala and R Mahadevan, said the matter has “pan-India implications” and requires “thorough consideration”. The bench stayed the High Court ruling on a petition filed by the Authority for Advance Ruling. The matter is expected to be taken up on February 18, the SC’s website said.

THE JUDGMENT

In August last year, the HC delivered a judgment in favour of Tiger Global International III Holdings, a Mauritius-based entity, concerning the applicability of the India-Mauritius DTAA to capital gains arising from the sale of shares. This overturned an earlier decision by the AAR, which denied treaty benefits to Tiger Global.

Tiger Global, holding a Category 1 Global Business Licence and a Tax Residency Certificate (TRC) from Mauritius, acquired shares of a Singapore-based company before April 1, 2017. This Singapore company held substantial investments in Indian entities. In 2018, Tiger Global sold its shares in



the Singapore company, resulting in capital gains. The company sought an advance ruling to determine the tax implications of this sale in India. The AAR rejected the application, asserting that the transaction was primarily designed to avoid tax and that the India-Mauritius DTAA did not intend to exempt capital gains from the transfer of shares in non-Indian firms. Then the matter reached the High Court.

The court emphasised that Article 13(3A) of the India-Mauritius DTAA provides a grandfathering provision, exempting capital gains tax in India for shares acquired before April 1, 2017. Since Tiger Global’s investment occurred prior to this date, the court held that the capital gains from the 2018 sale were exempt from taxation in India.

CBDT CIRCULAR

Rakesh Nangia, Managing Partner at Nangia & Co LLP, felt that DHC verdict endorsed the principle that rigorous thresholds of general anti-abuse provisions, such as Principal Purpose Test (PPT), beneficial ownership, etc. could not be invoked by revenue in the case of tax-treaties where sovereign

commitments had been given to specific treaty-partners (Singapore being one of them) so as to apply negotiated anti-abuse standards under the grandfathering provisions. In this context, it is noteworthy that the CBDT issued a circular barely three days ago categorically placing grandfathering-provisions under tax-treaties with specified treaty-partners beyond the ambit of PPT.

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