

Tiger Global judgment at India's Supreme Court: treaty comfort gives way to uncertainty

The India–Mauritius tax treaty, supported by CBDT Circulars and judicial endorsements, has long provided clarity and a rare degree of certainty in the context of investments held in India via Mauritius. The Supreme Court's decision in *Authority for Advance Rulings v. Tiger Global International Holdings* marks a decisive turning point in this narrative, signalling not merely a reinterpretation of treaty provisions but a fundamental recalibration of India's approach to treaty entitlement, substance, and tax avoidance.

The Court sided with the Revenue and held that Tiger Global's Mauritian vehicles could not claim treaty protection on their 2018 Flipkart exit, describing the structure as an "impermissible tax-avoidance arrangement". At its core, the judgment is not about Tiger Global alone. It redefines the role of economic substance, revisits the relevance of grandfathering protections, and underscores the application of India's General Anti-Avoidance Rules (GAAR) even in cases involving older investments.

The Transaction and the Treaty Claim

The transaction itself was straightforward by market standards. Mauritius-incorporated Tiger Global entities invested in Flipkart through a Singapore holding chain, and exited in 2018 during Walmart's acquisition. The dispute arose from the exit of Mauritius entities from Flipkart Private Limited, Singapore, as part of Walmart's global acquisition.

The Mauritian sellers claimed exemption from Indian capital gains tax under the India–Mauritius DTAA, relying on three familiar pillars:

- valid Tax Residency Certificates (TRCs) issued by the Mauritius Revenue Authority (MRA);
- CBDT Circular No. 789 recognising Mauritius residence; and
- the grandfathering of investments made before 1 April 2017.

The shares had been acquired well before the 2016 protocol amendments. TRCs were in place. The Mauritius route had been judicially endorsed for decades. Yet the Supreme Court took a materially different view from the Delhi High Court (which had earlier favoured the taxpayer), arguing that the Mauritius entities lacked real autonomy, that effective control rested in the United States, and that the transaction represented an indirect transfer of Indian assets structured primarily to avoid tax.

Why the Supreme Court Disagreed with the High Court

The Delhi High Court had accepted the taxpayer's position, emphasising the sanctity of TRCs, the absence of a limitation-of-benefits clause for pre-2017 investments, and the legitimacy of long-term holding structures. The Supreme Court, however, reversed this reasoning on principles that now reshape the treaty landscape.

First, the Court clarified that a TRC is necessary but not conclusive. While it evidences formal residence, it does not immunise an arrangement from scrutiny where facts suggest that strategic decision-making, financial control, and commercial intent lie elsewhere. The Court examined board composition, banking authority, and investment governance, concluding that the "head and brain" of the Mauritius entities was effectively outside Mauritius.

Second, the Court drew a sharp distinction between direct transfers of Indian shares and indirect transfers through foreign holding companies. The grandfathering protection under the amended DTAA, it held, was never intended to shield gains arising from the sale of shares in non-Indian companies, even if those companies derived substantial value from Indian assets. This interpretation significantly narrows the scope of historical treaty protection.

Third, and most consequentially, the Court elevated intent as a central determinant. It held that the entire arrangement—spanning acquisition, holding, and exit—must be examined holistically to ascertain whether it was designed or preordained with the dominant purpose of obtaining a tax advantage, even where such intent manifests over a long investment horizon rather than at the point of exit. In this framing, tax avoidance need not be episodic; it may be structural.

Finally, the Court affirmed that GAAR can override treaty benefits where an arrangement lacks commercial substance or is designed predominantly for tax advantage. Section 90(2A) of the Income-tax Act was treated not as a residual provision, but as a clear legislative signal that treaty relief is unavailable in abusive cases, regardless of formal compliance.

From Treaty Certainty to Substance Scrutiny

The judgment reflects a philosophical shift. Earlier jurisprudence, most notably *Azadi Bachao Andolan* and *Vodafone*, had prioritised certainty, cautioning against retrospective recharacterisation of investment structures. In *Tiger Global*, the Supreme Court acknowledged those precedents but confined them to their factual and temporal contexts.

What emerges is a framework where substance is no longer a defensive afterthought but a threshold requirement. Board autonomy must be real, not ceremonial. Local presence must extend beyond minimal compliance. Decision-making authority must be demonstrably exercised where residence is claimed. In effect, Mauritius incorporation without genuine economic and managerial depth is insufficient. India is no longer willing to outsource its tax base to formalism. The Supreme Court has signalled, in the plainest terms, that treaty interpretation cannot “facilitate abuse”.

Implications for Investors and Fund Structures based in Mauritius

The implications are far-reaching. Mauritius-based funds, particularly those using intermediate holding jurisdictions such as Singapore or Luxembourg, must reassess both legacy and future exits. The comfort once derived from TRCs and grandfathering provisions has materially diminished. Structures that were historically regarded as low-risk may now face reassessment, prolonged litigation, and potential tax exposure.

Equally important is the message to global investors. India is aligning treaty interpretation with anti-abuse norms, even if that alignment unsettles settled expectations. The judgment reinforces India’s commitment to source-based taxation and signals judicial endorsement of legislative anti-avoidance tools.

At a deeper level, the decision reflects a reassertion of tax sovereignty. The Court begins by reaffirming that the power to levy and collect tax is an inherent attribute of statehood, and that treaties do not entail a surrender of that power but operate within its contours. Read in this light, *Tiger Global* signals a shift in the global tax order—one in which source jurisdictions are increasingly unwilling to allow treaty interpretation to dilute their sovereign right to tax perceived abuse.

Mauritian structures will still have a place in cross-border investment, but now more than ever, Mauritian residence must be lived, not rented. By foregrounding intent, substance, and sovereign taxing power over formal treaty entitlements, the Supreme Court has signalled a clear shift away from predictable, rule-based outcomes towards a more discretionary and fact-intensive regime. Treaty comfort is no longer assured; it has given way to a substance-driven—and inherently more uncertain—tax landscape.

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