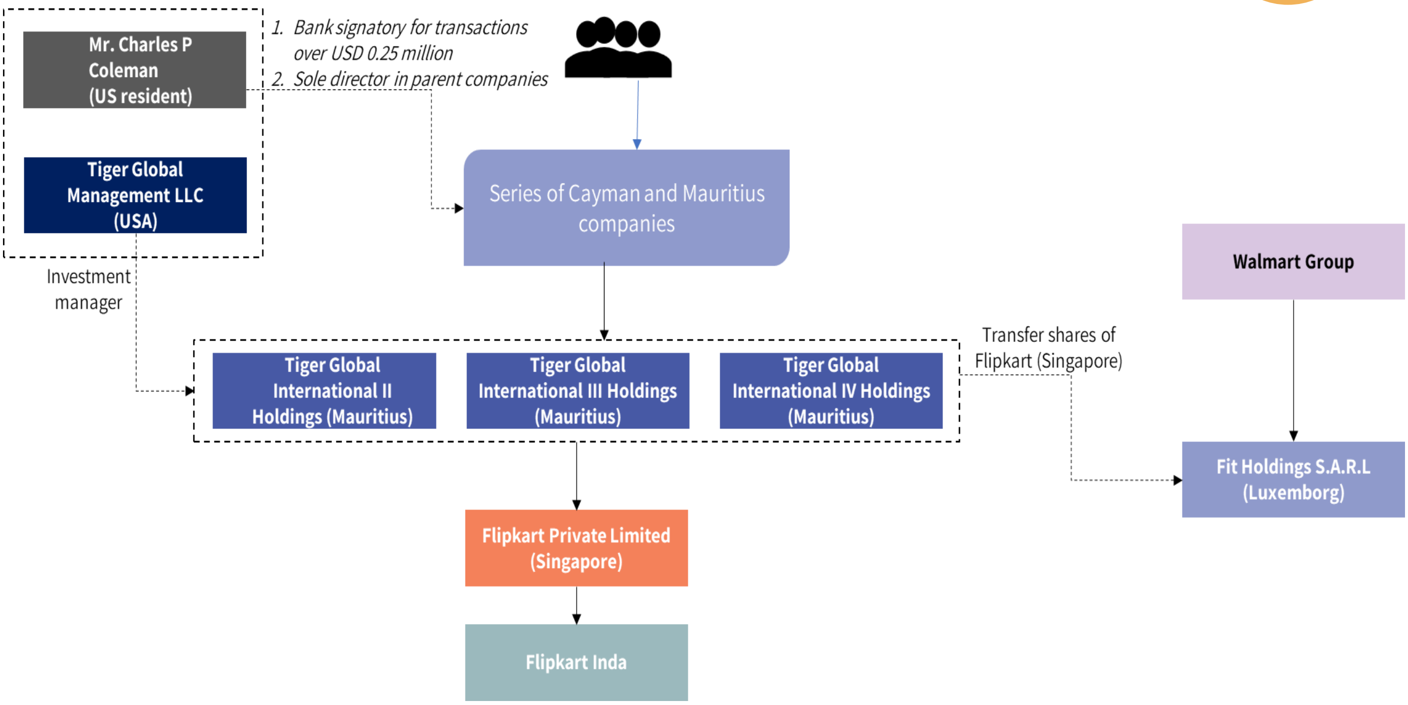
Supreme Court Ruling in case of Tiger Global: Key observations and takeaways

TRANSACTION



BRIEF FACTS

- Tiger Global International II Holdings, Tiger Global International III Holdings, and Tiger Global International IV Holdings, (collectively known as '**Tiger Global or the Taxpayer') were incorporated in Mauritius** with the **primary objective of undertaking investment activities.** These entities were regulated by the Financial Services Commission in Mauritius and held Category I Global Business License.

- **Tiger Global acquired shares of Flipkart Private Limited ('Flipkart Singapore'), a company incorporated in Singapore** , between October 2011 to April 2015 i.e. **before April 1, 2017**, the date relevant for the applicability of grandfathering provision under the India – Mauritius Double Taxation Avoidance Agreement ('DTAA').

- Subsequently, Tiger Global **transferred shares of Flipkart Singapore to Fit Holdings S.A.R.L (Luxembourg)** in 2018, as part of Walmart Inc.'s broader acquisition of Flipkart.

- Tiger Global approached the Indian Tax Authorities seeking **'NIL' withholding certificate** u/s 197 of the Act contending that the capital gains arising from the transfer of the shares of Flipkart Singapore were exempted under the DTAA since the shares were acquired prior to April 1, 2017, and were grandfathered under Article 13(3A) of the DTAA.

[1] Supreme Court of India in case of The Authority for Advance Rulings (Income-tax) and Other *v.* Tiger Global International II Holdings, Tiger Global International III Holdings Tiger Global International IV Holdings [Civil Appeal No. 262, 263 and 264 of 2026]

Supreme Court Ruling in case of Tiger Global: Key observations and takeaways

- **Tax authorities denied DTAA benefits,** stating Tiger Global was not independent in decision-making and control over the decision making relating to purchase and sale of shares did not lie with Tiger Global.

- **Tiger Global filed applications seeking advance ruling** on whether capital gains from sale of Flipkart Singapore shares would be taxable in India. **The AAR rejected the application on the grounds that the transaction was prima facie designed for tax avoidance.**

- Pursuant to the order of AAR, **Tiger Global filed a writ petition before the High Court and the High Court quashed AAR's order** and held that Tiger Global is entitled to benefits under the DTAA and their income is not chargeable to tax in India.

- Aggrieved by the order of High Court, Revenue filed appeal before the Hon'ble Supreme Court of India.

AAR'S CONTENTION

- **Control and Management outside Mauritius**: The real control over transactions exceeding USD 0.25 million was exercised by Mr. Charles P. Coleman (resident of USA), who was also the beneficial owner. Accordingly, the control and management were situated outside Mauritius, in the USA.

- **See-through entities for DTAA benefits**: Tiger Global made no investment other than shares of Flipkart Singapore, and the real intention for obtaining TRC was to avail the benefit of DTAA. Tiger Global was only a "**see-through entity**" to avail the benefits of the DTAA.

- **Article 13(4) of DTAA**: The capital gains arose from sale of shares of Flipkart Singapore, not an Indian company, and therefore **did not qualify for exemption under Article 13(4)** of the India - Mauritius Treaty.

- **No commercial substance**: Tiger Global were mere **conduit companies, lacking commercial substance**, and were disentitled to claim DTAA benefits.

- Accordingly, the AAR concluded that the **transaction was prima facie designed for tax avoidance** and accordingly rejected the application of Tiger Global.

HIGH COURT'S OBSERVATIONS

- **Control and Economic substance**: Tiger Global Management, LLC, USA functioned merely as an investment manager and had no equity participation. Tiger Global could not be dismissed as entities lacking economic substance.

- **Subsidiary not a mere puppet**: A subsidiary cannot be regarded as a puppet unless there is clear evidence of fraud, sham arrangements, or complete lack of independence. The mere presence of directors associated with the Tiger Global Group, such as Mr. Charles P. Coleman and Mr. Steven Boyd, does not by itself justify that the subsidiary lacks independent authority or decision-making power.

- **TRC**: TRC is sacrosanct in claiming tax treaty benefits unless fraud or sham is established. No evidence is demonstrated that Tiger Global was contractually or legally obligated to pass on the gains from the share transfer to TGM LLC, or that they acted on its behalf.

- **Article 13(3A)**: The High Court found the AAR's interpretation of Article 13 legally unsound, holding that it was not limited to shares of Indian companies only.

- Accordingly, High Court concluded that **transaction was not designed for tax avoidance** and stood duly grandfathered by virtue of Article 13(3A) of the DTAA, and **quashed AAR's order**.

REVENUE'S CONTENTION

- **TRC not conclusive—substance over form**: TRC constitutes only prima facie evidence of residence and cannot override the principle of "substance over form". Indian authorities retain power to examine substance of transaction for treaty abuse, including control, management, and commercial substance consistent with OECD guidance.

- **Control and management not in Mauritius**: The Revenue contended that the entities were "see-through entities" with no real substance in Mauritius. The real control rested with a representative of the ultimate shareholder. Tiger Global was not genuine resident of Mauritius.

- **GAAR and JAAR applicable**: General Anti Avoidance Rules ('GAAR') and Judicial Anti-Avoidance Rules ('JAAR') can be invoked to pierce structure and deny treaty benefits where transaction lacks genuine commercial substance. JAAR operates in parallel with GAAR and empowers Indian authorities to deny treaty benefits in cases involving treaty abuse or conduit structures.

- **GAAR overrides DTAA**: GAAR overrides DTAA benefits and distinguishes between "investments" and "arrangements".

- **Indirect Transfer - Article 13(4) Applicable:** Transaction involved indirect transfer (sale of Flipkart Singapore shares deriving value from Indian assets) and is governed by Article 13(4) which contains no LOB clause or grandfathering and Articles 13(3A), 13(3B) and Article 27A apply only to direct transfers.

Supreme Court Ruling in case of Tiger Global: Key observations and takeaways

TIGER GLOBAL'S CONTENTION

- **Bona fide Mauritius resident entitled to treaty benefits**: Tiger Global was bona fide resident of Mauritius, held valid TRC, complied with Mauritian law, and was entitled to treaty benefits under Article 13(3A) of the DTAA. The transaction was a genuine commercial exit.

- **TRC sanctity**: CBDT Circular No. 789 dated April 13, 2000 and Press Release dated March 1, 2013 preclude the Department from going behind the TRC. AAR erred in disregarding the TRCs, which was conclusive evidence of residence.

- **Grandfathering protection for pre-2017 investments**: Investments made before April 1, 2017 were protected under Article 13(3A) of the DTAA and grandfathered under the 2016 Protocol amendments. GAAR applies only prospectively to investments made on or after April 1, 2017. GAAR provisions do not override DTAA protections absent illegality or abuse.

- **Treaty Overrides Domestic Law**: Domestic anti-avoidance doctrines such as "lifting the corporate veil" or "substance over form" cannot be invoked to deny treaty benefits in the absence of any express treaty language.

SUPREME COURT'S OBSERVATION

The issue for consideration before the Supreme Court was whether the AAR was right in rejecting the application of Tiger Global on the grounds of maintainability by observing that the arrangement of sale of shares by Tiger Global entities of Flipkart Singapore which further held shares of India entities is prima facie designed for tax avoidance**.**

The Supreme Court set aside the order of the High Court and restored the AAR's decision, denying the benefits under DTAA and held that once it is established that sale of shares Flipkart Singapore is pursuant to an impermissible avoidance arrangement under the domestic anti-abuse provisions, the taxpayer is not entitled to any benefits under the DTAA. In concluding the above, the Supreme Court observed the following:

- **TRC Not Conclusive**: Mere existence of TRC does not establish residential status and is insufficient to claim treaty benefits. TRCs are merely prima facie evidence and constitute 'non-decisive, ambiguous, ambulatory recording of futuristic assertions without any independent verification'. Indian authorities retain the power to examine the substance of transactions, including actual control, management, and commercial substance.

- **GAAR Overrides Treaty Benefits and Grandfathering**: GAAR applies to any arrangement that results in a tax benefit on or after April 1, 2017, irrespective of whether the underlying investment was made prior to that date. While grandfathering under the DTAA protects bona fide investments, it does not extend to arrangements that are abusive in nature. Accordingly, grandfathering protection under GAAR with respect to 'investments' undertaken prior to April 1, incorporation, cannot be applied to an 'impermissible avoidance arrangement'.

- **Onus on the Taxpayer to rebut the contention of tax avoidance:** The GAAR provisions puts the burden of proof on the taxpayer to disapprove the contention of the Revenue of tax avoidance. In the instant case, the taxpayer failed to provide sufficient evidence to rebut the presumption of the Revenue.

- **Power with AAR to reject application on prima facie tax avoidance ground**: Court clarified that for AAR to reject application under Section 245R(2)(iii), only prima facie finding required.

- **Grandfathering and Limitation of Benefits Limited to Direct Transfers:** The Supreme Court clarified that Article 13(3A) of the DTAA provides that grandfathering and the related LoB clause apply only to direct transfers of Indian shares. Indirect transfers fall under the residuary Article 13(4) of the DTAA and therefore do not enjoy LoB or grandfathering protection.

- **Double Non-Taxation Evidence**: Court noted that Tiger Global sought exemption under both Indian and Mauritian law (contrary to DTAA spirit) and therefore presented strong case for Revenue to enquire into whether claim for exemption was lawful evasion. The object of a tax treaty is to prevent double taxation and not to facilitate tax avoidance.

- **Applicability of JAAR even where GAAR cannot be applied:** JAAR operated in parallel with GAAR. The 'substance over form' proposition upheld through JAAR could be invoked by the Revenue even in cases where GAAR is not applicable to deny benefits under the DTAA in case of treaty abuse and conduit structures.

- **Effective Management Governs Corporate Residence:** Treaty benefits are unavailable where real control and decision-making lie outside the claimed jurisdiction of residence. The Supreme Court has clarified that mere incorporation, or procedural compliance does not establish genuine tax residence.

- **Sovereign right to levy tax :** Levying tax on income arising out of its own country is an inherent sovereign right of that country and hence, fraudulent or fictitious transactions cannot be granted exemption. To this extent, the Supreme Court has also suggested certain safeguards that should be built in while executing tax treaties.

Supreme Court Ruling in case of Tiger Global: Key observations and takeaways

KEY TAKEAWAYS

- **The Substance Over Form Prevails:** Treaty entitlement depends on commercial substance and real conduct, not merely on legal form or incorporation.
- **TRC Not Conclusive**: Mere existence of TRC does not establish residency status. TRC is not binding under the Revenue or Court enquires into its content and comes to its own independent conclusion.
- **Effective Management Determines Treaty Residence:** Corporate residence for treaty purposes hinges on where real control and decision-making occur - mere incorporation or formal compliance is insufficient.
- **Grandfathering Does Not Protect Abusive Arrangements:** While grandfathering provisions safeguard genuine investments, they do not extend to arrangements lacking commercial substance or created for tax avoidance.
- **Double taxation imperative for tax treaty benefit**: The object of a tax treaty is to prevent double taxation and not to facilitate tax avoidance. Therefore, applicability of tax treaty is subject to the relevant transaction being taxable in the resident state.
- **GAAR v JAAR:** Even where GAAR may not technically apply, any arrangements can still be tested under JAAR.

AURTUS COMMENTS

- The tax benefit under the India – Mauritius DTAA has always been a vexed issue under the India jurisprudence with Revenue persistently challenging the sanctity of such structures from the lens of anti abuse and economic substance requirements. The judgement of the Supreme Court in case of Tiger global has drawn curtains to the sanctity of a TRC, effectively authorising the Indian Tax Office to test the substance and rationale of investment structures under the domestic framework of anti-abuse rules.
- It is also important to note that the Principal Purpose Test (PPT) under the amended DTAA with Mauritius has not yet come into force. Once operative, scrutiny concerning treaty eligibility is expected to intensify. While Circular No. 1/2025 clarifies that grandfathered investments will remain outside the purview of the PPT and that the PPT will apply only prospectively, the efficacy and coverage of these administrative clarifications must now be considered in light of the Supreme Court's observations.

- The Ruling carries potentially far-reaching consequences for legacy structures that were generally presumed to be protected both under the GAAR grandfathering provisions and the DTAA framework. Valuations under cross border deals may be adversely impacted, and multinational enterprises, private equity funds, and venture capital investors may need to undertake detailed factual reviews and substance assessments to ascertain continued treaty eligibility from a seller perspective. Structures with robust commercial substance are more likely to withstand the extensive scrutiny for assessing treaty eligibility. Additionally, the Ruling raises critical questions regarding the possibility of reopening past assessments where the statutory period for reassessment / review remains open. These uncertainties underscore the need for the Government to issue clarifications and operative guidance for potentially ring-fencing of concluded assessments, to align with its broader policy objectives of promoting tax certainty and ease of doing business, especially for foreign investors. All eyes are now on the annual tax budget proposals to be announced by the Indian Government on 1st February 2026.

CONTACT US

MUMBAI

35th Floor, 3502,
Kohinoor Square,
NC Kelkar Marg,
Dadar (West),
Mumbai – 400028

AHMEDABAD

South Tower –
606, 6th Floor,
One42, Bopal-
Ambli Road,
Ahmedabad –
380054, India

DELHI NCR

DLF Centre Court,
1st Floor -
Springhouse, Golf
Course Road, DLF
Phase 5, Sector 42,
Gurugram, Haryana
- 122002

GIFT CITY

4th Floor, Pragya,
Block No.15,
Zone 01,
GIFT City,
Gandhinagar -
382355

www.aurtus.com

AURTUS