The Tiger Global Ruling – Has the Supreme Court released a caged tiger?

Six months ago in August 2025 the tax community heaved a sigh of relief when the Delhi High court overturned a ruling by the Authority for Advance Ruling ("**AAR**") which had denied the benefit of the India Mauritius tax treaty to Tiger Global on the grounds that that sale of shares in Flipkart Singapore to Walmart in 2018 was prima facia a transaction designed for the avoidance of tax.

Now just six months later in January 2026 the Supreme Court has quashed the Delhi High court judgement and agreed with the AAR that the transaction is an impermissible tax avoidance transaction under India's general anti avoiding rules or GAAR.

GAAR was implemented in 2017, and this is the first significant ruling which has opened the doors for the tax authorities to challenge transactions that were structured even before 2017 despite the grandfathering provisions which state that investments prior to 2017 will not be open to scrutiny under GAAR and despite the follow up clarification that GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction.

Facts of the case and the SC Ruling

In the present case, the fact-finding exercise by the tax authorities revealed that Tiger Global being an entity registered in Mauritius and having a tax residency certificate or TRC (assessee) was controlled by a single individual from the USA. The assessee had made the investment into Flipkart Singapore between 2011 and 2014 simply as a conduit to invest in Flipkart India. The shares of Flipkart Singapore clearly derived their value only from India and therefore taxable under the indirect transfer provisions under the Indian Income Tax Act. The question was whether the assessee could claim the exemption from payment of capital gains tax in sale of shares of Flipkart Singapore to Walmart under the grandfathering provision in the India-Mauritius DTAA.

The Supreme Court held that even though the initial investment transaction was done prior to 2017, it was structured in the way that would ensure that there would be no tax liability in any of the countries involved if the shares were to be sold in future. This was enough for the AAR to come to its prima facie conclusion that the primary reason to structure the investment as it was done was designed to avoid tax and hence an impermissible anti avoidance transaction.

The other issue raised before the Supreme Court was whether treaty benefits can extend to indirect transfers as well or is only limited to direct transfer of shares or capital assets. This question was however not decided.

Key Takeaways:

1. A TRC, while an important criteria to determine eligibility for treaty benefits is not the only criteria and the authorities can examine the facts of a case to determine the true status of residency.

2. Grandfathering of transactions prior to 2017 applies only to passive investments in Indian companies and does not apply to other arrangements entered into prior to 2017 where the main object of the arrangement was to derive a tax benefit albeit in the future. It is not only the sale transaction but also the investment transaction which must be looked into in totality to determine its permissibility or impermissibility.

3. Marked shift to economic substance over form. Treaty benefits can be denied if the transaction is hit by GAAR.

4. In order to reject an application for advance ruling the opinion formed by the AAR needs to be only "*prima facie*" that the transaction is designed to avoid tax and need not be a conclusive finding.

What lies ahead ….

The Tiger Global ruling by the Supreme Court has overturned a hitherto fairly settled law upholding the sanctity of TRC to be eligible for treaty benefits.

This ruling marks a new era in India's tax jurisprudence, where doors are now open for the tax authorities to examine past and future structures with increased weight being given to substance over form.

The summing up by Justice Pardiwala in his concurring opinion on the judgment, shows a shift in judicial thinking when it comes to underscoring the importance of India's tax sovereignty and the need to preserve source-based taxation in international arrangements. Structures which were put in place for tax planning and were often upheld by courts in the past are now at risk of being viewed as possible tax evasion and treaty misuse, and not bona fide tax planning.