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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

TIGER–FLIPKART: WHEN A PRIMA FACIE VIEW BEGINS TO LOOK FINAL

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Abstract

The Supreme Court’s decision in *Tiger–Flipkart* has renewed debate on treaty entitlement, GAAR, and the evidentiary role of tax residence in Indian international tax law. Although the case arose from a challenge to an order of the Authority for Advance Rulings declining jurisdiction on the basis of *prima facie* tax avoidance, the judgment engages with substantive issues ordinarily examined at the stage of final adjudication, prompting it to be viewed as indicative of a broader shift in treaty interpretation.

This article situates the decision within its procedural context and examines the doctrinal signals it conveys. It analyses the Court’s approach to GAAR grandfathering, particularly the distinction drawn between pre-2017 “investments” and post-2017 “arrangements”, and considers its implications for the temporal limits of GAAR. It further examines the re-characterization of the Tax Residency Certificate as a threshold eligibility condition rather than conclusive proof of residence, thereby reopening treaty residence to enquiry into control, management, and liability to tax.

The article also considers the Court’s observations on the parallel operation of GAAR and judicial anti-avoidance doctrines, and its purposive approach to treaty interpretation, including the concept of being “liable to tax”. Justice Pardiwala’s concurring opinion is discussed insofar as it reflects policy considerations relevant to contemporary treaty interpretation. Rather than treating the judgment as determinative of taxability or treaty benefits, the article suggests that it reflects a heightened judicial willingness to subject treaty claims to closer scrutiny at the threshold stage, with its broader significance turning on how its reasoning is applied in future cases.

(**Keywords:** *Tiger–Flipkart; GAAR; Prima facie review; Treaty residence; Tax Residency Certificate; Grandfathering; Treaty interpretation*)

I. Introduction

Much has already been written on the Supreme Court's decision in *Tiger Global International Holdings v. Union of India*. Read alongside Justice Pardiwala's concurring opinion¹, the judgment comes across as more than a resolution of an interlocutory dispute—it is a statement on tax sovereignty, and India's evolving posture in international taxation.

The Supreme Court's ruling in the case of Tiger vs. Flipkart has sparked a lot of debates among international tax experts. Even though this ruling came from a question raised against an order of the Authority for Advance Rulings (AAR), the Court's reasoning touches on a variety of major issues - like the treaty residence, the role of GAAR in overriding the treaty, the grandfathering of benefits, and how far the judicial anti-avoidance doctrines still have a role. Hence, a great number of people take this judgment as a more general commentary on treaty entitlement. Nonetheless, it is quite helpful to place this ruling within its procedural frame. The issue before the Court was not about how the tax should be charged on the transaction in the end, but whether the AAR was correct in declining to make a ruling on the application on a ground that the transaction, at first sight, seemed to be one carried out for the purpose of tax avoidance. Looking at the verdict from this perspective, it can be said that it entails less of a final decision and more a collection of doctrinal cues that deserve being thoroughly studied.

II. Prima Facie Review and Its Limits

When the matter is before the AAR, the statutory inquiry is by definition very restricted. Section 245R² authorizes the Authority to turn down the request if it relates to a transaction which, on a prima facie basis, is seen as one that has been designed for the purpose of tax avoidance. The standard that is used is not that of the ultimate ruling, but that of the threshold of satisfaction. The High Court, although it annulled the AAR's order, went on to decide the issue of whether the

¹ *Tiger Global International Holdings II v Union of India* (n 1)

² Income-tax Act 1961, s 245R(2)(c)

transaction was taxable substantially. The Supreme Court, by way of appeal, took a different view and by doing so, restored the primacy of the AAR's jurisdictional inquiry. However, in achieving this, the Court's reasoning takes into consideration the questions that habitually come into play only at a later stage - residence, entitlement under the treaty, applicability of GAAR, and even the chargeability of capital gains. This has led to the perception, which is understandable, that the judgment travels beyond the procedural issue that is immediate. At the same time, it is crucial that we understand how the Court has surrounded the matter of whether a prima facie inference of avoidance was sustainable through its discussion. Consequently, the argumentation should be interpreted as being conscious of the limited level of evidence and analysis that is applicable at that stage.

III. GAAR, Grandfathering, and the Investment–Arrangement Distinction

GAAR, Grandfathering, and the Investment Arrangement Distinction One issue that was central to the Court's attention is that of the extent of GAAR when it comes to investments that were made before 2017³. The law lays down a distinction between 'investments' made before 1 April 2017, which are grandfathered, and 'arrangements' that continue to provide tax advantages after that date. The Court hardly overlooks this difference, and the Judges decide that although the investments which were made before exist are entitled to be protected, the arrangements which result in tax benefits after 2017 can be within the ambit of GAAR. In its interpretation, the Court derives its support from section 96(2) and Rule 10U (2), as both of these direct one's attention to an 'arrangement'. The Court doesn't clearly set the demarcation line between⁴.

IV. Treaty Residence and the Role of the TRC

Another important aspect of the judgment is its treatment of treaty residence. Historically, Indian courts have accorded significant weight to the Tax Residency Certificate, particularly following Azadi Bachao Andolan and CBDT Circular No. 789⁵. The Supreme Court does not reject this line of authority, but it reframes the function of the TRC. Relying on sections 90(4) and 90(5), the

³ Income-tax Act 1961, s 90(2A)

⁴ Government of India, *Report of the Expert Committee on General Anti-Avoidance Rules* (Shome Committee, 30 September 2012)

⁵ CBDT Circular No 789, dated 13 April 2000.

Court characterizes the TRC as a necessary condition for claiming treaty benefits, while leaving open the possibility of further enquiry into residence, control, and liability to tax. This reflects a shift from treating the TRC as determinative to viewing it as part of a broader factual assessment. The Court's reasoning suggests that developments such as GAAR, indirect transfer provisions, and treaty amendments warrant a more nuanced examination of residence than may have been required in an earlier legal environment⁶.

V. Control, Management, and Commercial Substance

In applying these principles to the facts, the Court considers indicators of control and management, including delegated authority and decision-making arrangements. The presence of non-resident fund managers exercising certain financial powers is viewed as relevant to assessing where effective control lies. While such features are not uncommon in global fund structures, the judgment indicates that they may assume greater significance where treaty benefits are claimed. The analysis underscores the increasing importance of demonstrable commercial substance and governance practices that align with claimed residence.

VI. GAAR, JAAR, and Treaty Interpretation

Further, the Court finds that GAAR and judicial anti-avoidance rules are two different and distinct tools. However, if GAAR is not applicable in a case, the tax authorities can still use traditional legal concepts like substance over form and piercing the corporate veil⁷. Besides, the judgment also discusses the issue of "being liable to tax" and the purpose of tax treaties. While previously, courts had broadly defined the term of liability⁸, the Court has taken a more purposive approach by focusing on whether the treaty result complies with the allocation of taxing rights under the DTAA.

Justice Pardiwala, in his concurring opinion, places the issue in a larger policy setting and also discusses the matters of treaty design, source-based taxation, and the changing role of India in the international tax negotiations. His observations, though not decisive, help to understand the

⁶ *Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613.

⁷ *McDowell & Co Ltd v CTO* (1985) 3 SCC 230

⁸ *CIT v P.V.A.L. Kulandagan Chettiar* (2004) 6 SCC 505

broader considerations that are influencing the interpretation of treaties these days.

Moreover, it would be incorrect to consider this judgment as a stand-alone. The observations made about GAAR, treaty residence, and commercial substance are from a certain procedural posture and factual background. The use of these matters in future disputes will largely depend on whether formal GAAR proceedings have been initiated, the statutory safeguards have been complied with, and the evidence has been properly weighed. Hence, the court's decision should be seen as an indication of the cases where it might be appropriate to closely look at the treaties, instead of a complete replacement of established treaty principles. The eventual narrow or broad application of these observations will, ultimately, determine if the judgment is regarded as just a doctrinal readjustment or a substantial departure in treaty interpretation.

VII. Implications and Concluding Remarks

Basically, the judgment in the Tiger–Flipkart case can be interpreted as a decision whose nature has been very much conditioned by the procedures of the court, yet, it is very rich in its doctrinal content. It leaves open the questions of who will receive the treaty benefits and who will be liable for the tax. In fact, it shows a judicial stance that very closely examines treaty claims, especially when issues of commercial substance and avoidance arise.

In the eyes of taxpayers and their advisors, this ruling is a wake-up call to them to keep their focus on transaction details, management, and procedural tactics. Moreover, it unveils the legal necessity of differentiating between assessments which are initial and the decisions on merits— such a distinction will always be under challenge as GAAR case law progresses.

In that manner, the judgment aligns itself with the series of debates concerning the connection between domestic anti-avoidance rules and treaty commitments, rather than settling the dispute.