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Tax Flash News



9 October 2026

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Tax Residency Certificate not conclusive for treaty eligibility; Issue remanded back for fresh examination

Executive summary

In the case of *Emerging India Focus Funds*,[1] the Delhi Bench of the Income-tax Appellate Tribunal ('the Tribunal') examined whether capital gains arising to a Mauritius tax resident from redemption of equity-oriented mutual fund units were taxable in India under the India-Mauritius tax treaty ('the Treaty') and whether the taxpayer was entitled to the Treaty benefits in view of the Revenue's allegation of lack of commercial substance.

The Tribunal held that mutual fund units are distinct from shares and, therefore, gains arising from their redemption are not covered by the Treaty provisions granting taxation rights to India on the gains arising from alienation of shares acquired on or after 1 April 2017.

However, relying on the principles laid down by the Supreme Court in *Tiger Global*,[2] the Tribunal observed that a Tax Residency Certificate ('TRC'), though an eligibility condition, is

[1] *Emerging India Focus Funds* v. *ACIT* (IT(IT)A No. 148/Del/2026)
[2] *AAR* v. *Tiger Global International II Holdings* [2026] 485 ITR 214 (SC)

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not conclusive evidence of the Treaty entitlement and the Revenue was entitled to independently examine the relevant facts to identify and establish tax treaty abuse.

Since the factual aspects relating to the taxpayer's commercial substance, control and management, and applicability of the limitation of benefits ('LoB') clause under the Treaty had not been adequately examined, the Tribunal remanded these issues to the tax officer for fresh adjudication.

Facts of the case



The taxpayer, a tax resident of Mauritius, held a valid Global Business Licence ('GBL') issued by the Financial Services Commission ('FSC'), Mauritius and a TRC. It was also registered with SEBI as a Category 1 Foreign Portfolio Investor ('FPI').

The taxpayer's principal business was to operate as a Collective Investment Scheme ('CIS'), under which it invested in various assets, including equity, debt, mutual funds ('MF') and derivatives, in India to earn long-term capital appreciation. Its investment activities were managed by an entity in Singapore ('the Investment Manager').

Another Mauritius company ('FCo') was the sole management shareholder of the taxpayer[3] whose GBL was revoked by the FSC in April 2022.[4]

During FY 2022-23, the taxpayer earned capital gains on redemption of units of equity-oriented MF and claimed the same as not taxable in India under the Treaty.[5] The Revenue, however, rejected the taxpayer's claim and taxed the capital gains.

Relevant provisions



Article 13(3A) of the Treaty, introduced by an amendment in 2017, allocates taxing rights to India in respect of gains from alienation of shares of an Indian company[6] acquired on or after 1 April 2017. Article 13(3B) provides for concessional tax rates on such gains subject to the prescribed conditions under the LoB clause[7] of the Treaty such as *bona fide* business, not a shell/ conduit company, operational expenses more than the prescribed monetary threshold.

[3] The Mauritius company held 100 per cent shareholding in the taxpayer

[4] The GBL was revoked on allegations of non-compliance with regulations relating to money laundering, accounting standards, corporate governance and record-keeping.

[5] Article 13(4)

[6] A company tax resident of India

[7] Article 27A

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Article 13(4) of the Treaty provides that the gains from alienation of property not covered by the preceding paragraphs of the article[8] are taxable only in the resident country of the alienator, i.e. Mauritius, in the instant case ('the residual clause').

Accordingly, gains from alienation of the shares in an Indian company acquired before 1 April 2017 continue to be non-taxable in India ('grandfathering provision').

Revenue's contentions

Gains from MF units acquired on or after 1 April 2017 taxable in India as MF units are akin to shares

Since the taxpayer had made investments in equity-oriented MF, in which minimum equity investment was 65 per cent, it was akin to investment in the shares.

Accordingly, capital gains earned from redemption of MF units acquired on or after 1 April 2017 were taxable under the Treaty[9] as the redemption effectively represented alienation of shares.

Gains from MF units acquired prior to 1 April 2017 taxable in India by applying LoB clause

The benefit of grandfathering provision under the Treaty was denied by invoking the LoB clause under the Treaty (as elaborated below).

Following the revocation of the GBL of its sole management shareholder (i.e. FCo), the taxpayer was required to replace its management shareholder within six months (i.e. by October 2022) as per SEBI regulations. However, the replacement was done in April 2023.

SEBI initiated proceedings against the taxpayer for non-compliance with the 'fit and proper person' criteria, which were settled through compounding of the monetary penalty.

Relying on such proceedings, the Revenue argued that during the above non-compliance period as well as the period prior to that, the taxpayer was not 'fit and proper' to conduct any business. Since FCo was the sole management shareholder of the taxpayer, and was under suspension, there was no authority to manage the affairs of the taxpayer.

[8] Gains from alienation of immovable property, business property, ships and aircraft and shares acquired after 1 April 2017 as referred to in paragraphs 1, 2, 3 and 3A of the Article 13

[9] Article 13(3A)

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Conduit entity lacking commercial substance

The taxpayer lacked meaningful commercial substance in Mauritius. It shared its office address with its Administrator and Company Secretary, had no physical assets, incurred only administrative and professional expenses, and had no expenditure indicative of substantive business operations such as salary, rent.

Relying on the decision in *Hareon Solar Singapore*,[10] the Revenue argued that the taxpayer was a conduit entity whose control and management did not lie in Mauritius.

TRC not conclusive for claiming Treaty benefits

Relied upon the Supreme Court's decision in *Tiger Global* to argue that a Mauritian TRC, by itself, was insufficient for claiming the Treaty benefits. Since Mauritius does not levy capital gains tax under its domestic tax law regime, the substance of the arrangement warranted examination in case of potential double non-taxation and to prevent the Treaty abuse.

[10] *Hareon Solar Singapore (P.) Ltd.* v. *DCIT* [2026] 183 taxmann.com 125 (Delhi Tribunal)

Taxpayer's contentions



MF units are distinct from shares

The 2017 amendment in the Treaty only granted the taxation rights to India in respect of shares of an Indian company acquired on or after 1 April 2017. It did not disturb allocation of taxing rights on other fiscal instruments like debentures, hybrid instruments, etc. (which continue to remain with the alienator's resident country) under the residual clause.

Shares and MF units are distinct types of securities. In this regard, reliance was placed on the provisions of the Companies Act, 2013, the Securities Contracts (Regulations) Act, 1956 and provisions in the Income-tax Act, 1961 ('the 1961 Act')[11] relating to dividend and bonus stripping.

Relied on the Supreme Court's decision in *Apollo Tyres Ltd.*[12] pronounced in the context of section 73 of the 1961 Act which dealt with set off and carry forward of losses in speculation business. The Supreme Court held that in the absence of a specific deeming provision considering UTI units as shares, the provisions of section 73 could not be applied to deem sale/purchase of UTI units to be speculation business.

[11] Section 94

[12] *Apollo Tyres Ltd*. v. *CIT* [2002] 255 ITR 273 (SC). Rendered in the context of section 73 of the 1961 Act which provided that where any part of the business of a company consists of purchase/ sale of 'shares', then it shall be deemed that such company carries on speculation business

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Equity-oriented MF are merely a class of MF. They may be treated at par for the purposes of the erstwhile capital gains exemption or tax rate under the 1961 Act, but not for the Treaty purposes.

SEBI proceedings irrelevant

The SEBI settlement order merely levied a monetary penalty without adjudicating on whether the taxpayer had defaulted and without restricting or prohibiting the taxpayer from carrying out its business activities.

Mere cancellation of FCo's GBL was inconsequential and had no bearing on the taxpayer's eligibility for the Treaty benefits, particularly when the taxpayer continued to have a valid TRC, GBL and SEBI registration during the relevant year, demonstrating that it was a genuine tax resident of Mauritius.[13]

No lack of effective management or commercial substance

The Revenue misconstrued the role of FCo, i.e. the management shareholder (akin to a promoter shareholder) vis-à-vis the Investment Manager who advised/assisted in all investment-related decisions.

The taxpayer continued to carry on its investment activities during the relevant year.

In lieu of the management services, the taxpayer paid considerable amount of management fees to the Investment Manager. All employee costs, office related costs, electricity expenses, etc. were incurred by the Investment Manager and not by the taxpayer.

Reliance placed by the Revenue on *Hareon Solar Singapore* ruling was distinguishable on facts since in that case the entire funding was sourced from the parent entity, whereas in the instant case, the capital investment of the management shareholder (i.e. FCo) was only USD 100. Such shareholder cannot be alleged as the beneficial owner, considering that it did not have the right to receive the dividend which was available only to various investors contributing to the taxpayer's CIS.

LoB clause inapplicable

The LoB clause was not applicable in the instant case because the taxpayer claimed benefit under the residual clause, whereas the LoB clause dealt with the concessional tax rate under Article 13(3B).

[13] *ACIT* v. *Maven India Fund* [2024] 166 taxmann.com 198 (Delhi); *CIT* v. *JSH (Mauritius) Ltd.* [2017] 84 taxmann.com 37 (Bombay)

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Tribunal's decision

Following its decision in the taxpayer's own case for an earlier year,[14] the Tribunal held that equity-oriented MF units were legally distinct from shares and accordingly, their redemption was not akin to alienation of shares for the purposes of the Treaty.

The Tribunal observed that there was insufficient clarity regarding who had the legal authority to make, approve and implement investment/redemption decisions following the revocation of FCo's GBL – whether there were approvals from the Board of Directors for such decisions.

Further, in line with the principles of natural justice, the taxpayer must be given an opportunity to meet and rebut the factual proposition, the documents relied upon, the legal provisions invoked, the applicability of GAAR, the alleged tax-avoidance arrangement and the alleged absence of commercial substance, particularly since some of these arguments/ allegations were raised by the Revenue for the first time before the Tribunal.

Accordingly, the Tribunal remanded the issues relating to the Treaty eligibility and applicability of the LoB clause to the tax officer for fresh adjudication.

Other key observations of the Tribunal included:

TRC is an eligibility condition but not conclusive evidence of residence.

After the *Tiger Global ruling*, the Revenue was entitled to contend that production of a Mauritian TRC was not the end of the inquiry. However, the burden lies on the Revenue to identify and establish abuse before resorting to substance-over-form principles/ piercing the structure.

It was incumbent upon the Revenue to provide evidence to show that there was absence of genuine business substance, that the control or decision-making was elsewhere (i.e. outside Mauritius) and that there was existence of an impermissible arrangement which would deny the Treaty relief.

Factors – such as sharing of registered office with administrator/company secretary; absence of physical assets; incurring management/ legal/ professional/ audit/ brokerage expenses but no employee-related expenses – are relevant evidence as held in *Hareon Solar Singapore* ruling but they do not, on their own, establish a universal proposition that physical office is indispensable to establish tax residency under the Treaty.

[14] *Emerging India Focus Funds, Apex Financial Services (Mauritius) Ltd.* v. *ACIT* [2025] 175 taxmann.com 1013 (Delhi Tribunal)

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Rejected the taxpayer's argument that the Revenue could not raise new arguments at the appellate stage. The Tribunal has substantial power to consider a fresh argument raised by the Revenue, provided the Tribunal does not enhance the assessment and remains within the subject matter of the appeal.[15] The scope of the Tribunal is determined by the subject matter of the appeal, not merely by the particular reasoning adopted by the lower tax authorities.



Our comments

This ruling reaffirms that units of equity-oriented MF are legally distinct from shares for the purposes of the India-Mauritius tax treaty.

Following the principles laid down in *Tiger Global*, it underscores that the Revenue may look beyond a TRC and examine the underlying substance of the arrangement. Though the onus lies on the Revenue to prove tax avoidance, taxpayers claiming tax treaty relief should ensure adequate documentation supporting their commercial substance and governance framework.

[15] *Hukumchand Mills Ltd.* v. *CIT* [1966] 63 ITR 232 (SC)

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