

BRIEF FACTS OF THE CASE



- Accion Africa-Asia Investment Company¹ ('Assessee') was an investment holding company incorporated in Mauritius and had been granted a Category I Global Business License.
- It was a tax resident of Mauritius and held a valid Tax Residency Certificate ('TRC') for the assessment year in question.
- The Assessee has derived long term capital gains from sale of shares of Indian companies acquired prior to 1.4.2017 and had claimed benefit under Article 13(4) of the India-Mauritius Treaty ('Treaty') in respect of taxability of such gains in India.
- However, the Assessing Officer ('AO') observed that directors of the Assessee were provided by another entity providing directors to various companies, control and management decisions of the Assessee were vested with non-resident of Mauritius and the Assessee did not have any infrastructure or employees. In view of the above, the AO concluded that Assessee is merely a paper company set up through a scheme of arrangement to avoid taxes adopting colorable device and such scheme has to be regarded as an impermissible tax avoidance arrangement scheme. Accordingly, the AO denied the Treaty benefit to the Assessee.
- The Assessee supported its claim on the contentions that no material was brought on record to establish impermissible tax avoidance arrangement, GAAR provisions could not apply to capital gains from shares acquired prior to 1.4.2017 and even Limitation of Benefit ('LOB') clause under Article 27A was not invoked.
- The Assessee also placed reliance on the decisions in the case of Azadi Bachao Andolan², Leapfrog Financial Inclusion India (II) Ltd.³ and CBDT Circular No. 789 dated 13.4.2000.
- The DRP also upheld the AO's order and rejected the Assessee's claim under Treaty.

¹*Accion Africa-Asia Investment Company v. ACIT [2024] IT Appeal No. 1815 (Delhi) of 2023*

² (2003) 263 ITR 706

³ ITA No. 365 and 366/Del/2023

KEY OBSERVATIONS OF HON'BLE ITAT



- It is fairly settled that TRC issued by the competent authority of a particular country determines the tax residency of a particular person / entity, as also upheld in *Azadi Bachao Andolan (supra)* and *Blackstone Capital Partners (Singapore) VI FDI Three Pte Ltd.*⁴
- With effect from 1.4.2016, the Department has been empowered to deny treaty benefits to the assessee in a case where GAAR is applicable.
- In the instant case, the AO has not invoked GAAR provisions and has also not invoked the LOB clause under the Treaty. Thus, the departmental authorities were accepting the fact that capital gains derived from sale of shares in Indian companies acquired prior to 1.4.2017 would be exempt from tax in India as per Article 13(4) of the Treaty.
- The theory of conduit company and impermissible tax avoidance arrangement were introduced by the AO for the only reason of denying Treaty benefit to the Assessee. However, in absence of AO providing any cogent evidence to substantiate these allegations, the Assessee's claim of exemption under Article 13(4) of the Treaty was accepted.

AURTUS COMMENTS



The decision reaffirms the reliance on TRC for determining eligibility to treaty benefits and is in line with some of the other recent decisions in this regard. Importantly, the decision upholds that where the TRC is available, the treaty benefits cannot be denied on the pretext of impermissible tax avoidance arrangement without invocation of GAAR after following the statutory provisions for the same. Further, it needs to be considered whether the observations in the decision shall continue to be relevant once the Protocol dated 7 March 2024 for introduction of Principal Purpose Test ('PPT') in the India – Mauritius Treaty is notified, especially considering the ambiguity arising from the text of the Protocol regarding applicability of PPT in context of grandfathered investments made prior to 1 April 2017. Further, the outcome in the matter of *Blackstone (supra)*, which is currently pending before the Supreme Court shall also be critical in laying the controversy relating to sufficiency of TRC for eligibility of treaty benefits to rest.

⁴W.P.(C) 2562/2022

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