

Tax Hotline

October 27, 2003

SUPREME COURT UPHOLDS THE INDIA- MAURITIUS TAX TREATY

The wait has ended. The Supreme Court of India announced its order today quashing the Delhi High Court ("**Delhi HC**") order and upholding the validity of the Circular No. 789 dated April 13, 2000 ("**Circular**"). The judgement was pronounced today in the court by Justice Srikrishna. The entire ruling will be out in a couple of days.

The sequence of this litigation is summarised hereunder:

April 13, 2000: Circular issued by the Central Board of Direct Taxes ("**CBDT**") which, inter alia, stated that the 'Certificate of Residence' (commonly referred to as a tax residency certificate) issued by the Mauritius tax authorities would constitute sufficient evidence as to residence and beneficial ownership in Mauritius for entitlement to the benefits of the India-Mauritius Double Taxation Avoidance Agreement ("**Treaty**"). The Circular had merely reiterated the provisions of the Treaty, which states that where a Mauritius 'person' is found liable to tax in India, the determination of the residence of such a person shall be made in accordance with the domestic laws of Mauritius.

May 31, 2002: The Circular was challenged in two separate public interest litigations initiated by a not-for-profit organization, Azadi Bachao Andolan and an ex-Commissioner of Income Tax, Mr. Shiv Kant Jha alleging that India was losing out on millions of Rupees on account of abuse of the Treaty. On May 31, 2002, the Delhi HC ruled in favor of the petitioners by quashing the Circular. The Delhi HC also *obiter* stated that Mauritius was being abused by third country residents by setting up post box companies in Mauritius merely to become eligible for the beneficial provisions under the Treaty. The Delhi HC order had raised uncertainty amongst foreign investors regarding their tax liability in relation to their investments in India.

October 2002: The Government of India ("**GOL**") and CBDT, respondents before the Delhi HC, filed a Special Leave to Petition ("**SLP**") in the Supreme Court of India. An independent SLP was filed by the Global Business Institute ("**GBI**"), a not-for-profit organisation incorporated under the laws of Mauritius, comprising international investors, asset managers, management companies, banks, custodians, lawyers, accountants industry/professional associations and practitioners in the financial services sector. GBI is a platform to exchange views, conduct research, disseminate information and make policy recommendations to the concerned authorities in connection with the Mauritius global business sector.

November 18, 2002: Both the SLPs were put before the Hon'ble Justice Ruma Pal and the Hon'ble Justice Srikrishna of the Supreme Court who granted a stay of the Delhi HC order pending the final hearing of the two SLPs.

January/February 2003: The Judges heard the matter on an expedited basis with hearings being held thrice a week, beginning January 28, 2003. The last and final hearing was on February 25, 2003. Since the matter involved important issues of international law, the Judges had reserved their decision.

October 7, 2003: The Supreme Court pronounced its ruling quashing the Delhi HC order and upholding the Circular to be valid.

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