

Tax Hotline

November 20, 2002

SUPREME COURT STAYS HIGH COURT ORDER, MAURITIUS TREATY CIRCULAR REVIVED

The Supreme Court of India granted a stay on the Delhi High Court order ("**Order**") dated May 31, 2002. This Order had quashed circular 789 of 2000 issued by the Central Board of Direct Taxes ("**CBDT**"). In the Order the Delhi High Court had *obiter* stated that Mauritius was being abused by third country residents by setting up post-box companies in Mauritius in order to qualify for the beneficial provisions under the India-Mauritius tax treaty.

The Circular had clarified that "*wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly*". This circular merely reiterated the provisions of the Double Tax Avoidance Treaty between India and Mauritius, which states that where a Mauritius 'person' is found liable to tax in India, the determination of residence of such a person shall be made according to the laws of Mauritius. By quashing the Circular, the Order had raised uncertainty amongst foreign investors regarding their tax liability in relation to their investments in India.

Earlier, in the last week of September 2002, the Government of India and the CBDT, being respondents in the proceedings before the Delhi High Court, had jointly filed a Special Leave Petition ("**SLP**") before the apex court, challenging the Order. An independent SLP was also filed by Global Business Institute Ltd. ("**GBI**") a company incorporated under the laws of Mauritius, comprising of international investors, asset managers, management companies, banks, custodians, lawyers, accountants industry/professional associations and practitioners in the financial services sector.

Amongst other grounds, both SLPs challenge the power of the Indian income tax authorities to question residency of a Mauritius entity since determination of such residency is the sovereign right of the Mauritius government.

The SLPs filed by the Government of India and GBI were heard together on November 18, 2002. Although GBI was not a party before the Delhi High Court, the Supreme Court has allowed it to make the petition against the Order. The next hearing would be after a period of eight weeks. The Court has directed the respondents, Azadi Bachao Andolan and Shiva Kant Jha to file their replies within three weeks.

As a consequence of the stay of the Order, the circular shall remain in force till further orders are passed by the Supreme Court.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Little International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

