
GAAR AS SUPREME SOVEREIGN: A CRITICAL DOCTRINAL ANALYSIS OF THE SUPREME COURT'S JUDGMENT IN AUTHORITY FOR ADVANCE RULINGS V. TIGER GLOBAL INTERNATIONAL HOLDINGS AND THE UNRAVELLING OF INDIA'S TREATY ARCHITECTURE

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ABSTRACT

The Indian Supreme Court's ruling in *Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings* has ushered in a sea change in the judicial interpretation of double taxation avoidance treaties, the General Anti-Avoidance Rule (GAAR), and the sanctity of grandfathering provisions protecting pre-April 2017 foreign investments in India. The January 2026 judgment stems from the infamously high-profile Tiger Global private equity fund's exit from Flipkart, India's leading e-commerce player, via a Mauritius-Singapore investment vehicle. This paper conducts a doctrinal critique of the judgment on multiple fronts: the conspicuous jurisprudential silence of the Supreme Court on the much-debated 'Head and Brain' test; the Court's elevation of GAAR to an almost supra-ordinance status over bilateral treaties and pre-April 2017 grandfathering provisions; the devaluation of the probative value of Tax Residency Certificates (TRCs); the Court's creative distinction between 'investments' and 'arrangements' to bypass GAAR's temporal protection; and the irony of the Court's pre-emptive labelling of a transaction as an impermissible avoidance arrangement without a formal invocation of GAAR under Section 144BA. Drawing parallels from the views of distinguished judges, international tax practitioners and the doctrinal tenets of the Vienna Convention on the Law of Treaties, this paper concludes that although innovative in its application of GAAR, the Tiger Global case is marred by doctrinal inconsistencies that erode investor certainty, flout the doctrine of legitimate expectations and potentially harness the power of GAAR far in excess of what was foreseen by Parliament. The paper concludes with a consideration of the implications of the judgment on future cases such as *Hinduja* and *Vedanta*, in which GAAR has been formally invoked.

Keywords: GAAR, DTAA, Tiger Global, Grandfathering, Tax Residency Certificate, JAAR, Head and Brain Test, Treaty Abuse, Mauritius Route, India International Tax.

I. Introduction: A Judgment With A Roar

The Supreme Court's recent decision in *Authority for Advance Rulings v. Tiger Global International II Holdings*¹ has shifted the contours of Indian international tax jurisprudence, and is likely to be the single most significant event in the India-Mauritius treaty regime since the India-Mauritius Double Taxation Avoidance Agreement (DTAA) was amended in 2016.² At first sight, the judgment is about the taxability of capital gains earned by Tiger Global on its exit from Flipkart via a Mauritius-Singapore holding structure. But in spirit, the Court has embarked on a larger jurisprudential mission: to establish the categorical primacy of the General Anti-Avoidance Rule (GAAR), introduced through Section 90(2A),³ and enacted through Chapter X-A of the Income Tax Act, 1961⁴ and Rule 10U(2) of the Income Tax Rules, 1962⁵ over the safeguards of bilateral tax treaties, CBDT circulars, grandfathering provisions, and even the Finance Minister's express assurances made to Parliament.

This paper starts with the claim that the judgment is both path-breaking and problematic. It is path-breaking because it finally addresses the doctrine of treaty shopping with the "big guns" that previous cases, from *Azadi Bachao Andolan*⁶ to *Vodafone International Holdings*⁷ didn't use. It is problematic because the Court accomplishes this result through doctrinal moves that: (i) quietly sidestep the "Head and Brain" test without addressing it; (ii) interpret Rule 10U(2) so broadly as to effectively read out Rule 10U(1)(d);⁸ (iii) declare TRCs non-conclusive on the sole basis of the GAAR threshold;⁹ and (iv) pre-emptively classify a transaction as impermissible without the Revenue having invoked GAAR under Section 144BA. In doing so, the Court has fired the 'GAAR Rocket', a doctrinal cannon that, in the hands of greedy tax administrators, may cause a great deal of collateral damage, beyond Tiger Global.

This paper is in ten parts. Part II outlines the facts and procedure. Part III considers the judicial muteness of the Head and Brain test. Parts IV and V consider the supremacy of GAAR over

¹ *Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings & Ors.*, Civil Appeal Nos. 262, 263, and 264 of 2026, 2026 SCC OnLine SC 86 (India) [hereinafter *Tiger Global*].

² *Convention Between the Government of the Republic of India and the Government of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, India-Mauritius*, Aug. 24, 1982 [hereinafter *India-Mauritius DTAA*].

³ *Income Tax Act*, No. 43 of 1961, § 90(2A) (India) (inserted by *Finance Act*, 2012).

⁴ *Income Tax Act*, No. 43 of 1961, Ch. X-A, §§ 95–102 (India).

⁵ *Income Tax Rules*, 1962, r. 10U(2) (India).

⁶ *CIT v. Azadi Bachao Andolan*, (2003) 263 ITR 706 (SC) (India).

⁷ *Vodafone International Holdings B.V. v. Union of India*, (2012) 341 ITR 1 (SC) (India).

⁸ *Income Tax Rules*, 1962, r. 10U(1)(d) (India).

⁹ *Tiger Global*, *supra* note 1, ¶ 27.

DTAA and grandfathering. Part VI examines the investment-arrangement distinction. Part VII explains the non-invocation paradox. Part VIII explores practical consequences. Part IX explores the upcoming GAAR battlegrounds. Part X concludes with a normative assessment.

II. Factual and Procedural Matrix

Tiger Global Management LLC, a private equity giant based in the US, held its Flipkart India holding in a complex offshore structure: the shares of a Singapore-incorporated intermediate holding company (Flipkart Singapore) were held by several Mauritius-incorporated holding entities (Tiger Global International II, III, and IV Holdings). In 2018, Flipkart was sold to Walmart Inc. pursuant to share purchase of the Singapore- incorporated company, resulting in capital gains exceeding USD 1 billion for the Mauritius entities.

Tiger Global's Mauritius entities applied to the Authority for Advance Rulings (AAR), for a ruling that the capital gains resulting from the sale of Flipkart Singapore shares were exempt from taxation in India under Article 13(3A) of the India-Mauritius DTAA,¹⁰ on the grounds that the underlying equity investments were made before April 1, 2017 and were therefore grandfathered. The AAR rejected these applications under Section 245R(2)(iii) of the Income Tax Act,¹¹ concluding that the arrangement was prima facie a tax avoidance arrangement, that the Mauritius entities were mere conduits and not independent, that Mr. Charles P. Coleman (the founder of Tiger Global LLC, resident in the US) had effective control and management over the Mauritius entities, and that the transaction had been subject to Article 13(4) (and not the grandfathered Article 13(3A) of the DTAA, as the shares transferred were those of a Singapore company and not directly shares of an Indian company.¹²

In August 2024, the Delhi High Court overturned the AAR and found that the Mauritius entities had independent boards of well-regarded directors, valid Category I Global Business Licences, and were entitled to the benefits of the DTAA.¹³ The Revenue appealed to the Supreme Court, which set aside the High Court's decision and restored the AAR's ruling - albeit, as this paper will argue, on different grounds, which are largely based in GAAR jurisprudence.

¹⁰ Tiger Global, supra note 1, ¶ 33.

¹¹ India-Mauritius DTAA, supra note 2, art. 13(3A) (inserted by Protocol signed May 10, 2016).

¹² India-Mauritius DTAA, supra note 2, art. 13(4).

¹³ Income Tax Act, No. 43 of 1961, § 144BA (India).

III. Silence in the Jurisprudence: 'Head and Brain' and the Supreme Court's Gap

The 'Head and Brain' test, based on the classical corporate law maxim that the place of incorporation of a company is where the company's "head and brain" (i.e. effective management and real control) is located, was heavily emphasised by the AAR in concluding that the effective management of the Mauritius entities was carried on by Mr. Coleman in the US. This, in turn, was crucial to the AAR's rejection of the Tiger Global entities' treaty residency claims. The High Court, on the other hand, expressly disagreed in paragraphs 263 and 264 of its judgment, concluding that the directors in Mauritius were professional, independent directors.¹⁴

A close reading of the High Court's judgment in this matter, from the Court's discussion and findings in paragraph 13, to the final paragraph 52, presents a doctrinal oddity: there is no substantive engagement with the 'Head and Brain' test.¹⁵ The only mention of the effective management analysis is in paragraph 33, where the Court notes, in a passing aside, that the AAR had relied on the method of operation to determine effective control and management, and found that effective management was not in Mauritius but with Mr. Coleman in the USA.¹⁶ The Court notes that after the AAR reached this conclusion, 'the emphasis then shifts to the identity of the assesseees in the transaction for the purpose of exemption, and the enquiry of the AAR into whether the shares sold were those of an Indian company pale into insignificance.' This is not a finding of the Supreme Court, but an enunciation of the AAR's thinking.

This is a doctrinal gap. The High Court had explicitly concluded - contrary to the AAR conclusion - that the boards of the entities in Mauritius were actually in operation and control was effectively exercised in Mauritius. The failure of the Supreme Court to rule on this directly contradictory finding on the Head and Brain test leaves its findings on residency and treaty eligibility doctrinally unsatisfying. As Professor Klaus Vogel has written, in relation to treaty residence, the question of effective management demands close inquiry into where 'the decisions of the highest importance are made', and courts cannot avoid this question by simply channeling their findings through GAAR.¹⁷

¹⁴ Income Tax Act, No. 43 of 1961, § 197 (India).

¹⁵ Tiger Global, supra note 1, ¶¶ 13–52.

¹⁶ Tiger Global International II Holdings v. Authority for Advance Rulings, W.P. (C) Nos. 6764, 6765 & 6766 of 2020 (Del. H.C. Aug. 28, 2024) (India).

¹⁷ Tiger Global, supra note 1, ¶ 33 (quoting AAR's reasoning on effective management analysis).

The implication of this silence is important. The fact that the Supreme Court does not make its own determination as to the High Court's findings regarding effective management means that the judgment fails to resolve whether, without the GAAR, the Mauritius entities would be entitled to treaty benefits. As the great commentator, Dr. Amar Mehta, has observed, the entire discussion and conclusions contained in paragraphs 13 to 52 are based almost exclusively on the GAAR framework - the insertion of Section 90(2A), Chapter X-A and Rule 10U(2) - with the actual substantive issue of treaty residency only incidental.¹⁸ This makes the judgment, in doctrinal terms, a GAAR statement dressed up as an interpretation of a treaty.

IV. GAAR as Sovereign Supreme: Suppression of DTAA and Treaty Rights

Until the Finance Act, 2012, the position under Section 90(2) of the Income Tax Act was that DTAA would prevail over the Income Tax Act in a case of conflict and the more favourable provision would be given effect.¹⁹ This approach, endorsed by the Supreme Court in *Azadi Bachao Andolan*,²⁰ justified the Mauritius Route as a mode of foreign investment in India. The introduction of Section 90(2A) - later confirmed by the Court - inverted this order, and stated that GAAR should apply notwithstanding anything to the contrary contained in any DTAA.²¹

In *Tiger Global*, the Supreme Court embraces this approach. The Court confirms that GAAR is now the highest piece of India's anti-avoidance arsenal, above the bilateral treaty provision, the CBDT's own circular protections,²² and the grandfathering provisions agreed with the Government of Mauritius in the 2016 Protocol.²³ This stance has deep doctrinal ramifications. As explained by Professor Brian Arnold and Professor Michael McIntyre, the interplay between GAAR and tax treaties raises questions about the sanctity of international tax arrangements, because a treaty is a sovereign compact, and its unilateral override by domestic law may amount to a violation of international law.²⁴

¹⁸ Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331.

¹⁹ OECD Model Tax Convention on Income and on Capital art. 1, cmt. 9.5 (2017) (discussing principal purpose test and anti-avoidance).

²⁰ Union of India, Ministry of Finance, Press Release, Investments Made Before April 1, 2017 Grandfathered Under GAAR (Feb. 27, 2016).

²¹ CBDT Circular No. 789, Apr. 13, 2000, reprinted in 243 ITR (Stat.) 57 (India).

²² CBDT Circular No. 1/2025 (Jan. 6, 2025) (India) (clarifying grandfathering under LOB provisions of India-Mauritius DTAA Protocol 2024).

²³ *Tiger Global*, supra note 1, ¶¶ 263–264 (Delhi High Court, discussing independence of Mauritius directors and effective control).

²⁴ Klaus Vogel, Klaus Vogel on Double Taxation Conventions 39–41 (3d ed. 1997) (on residency and treaty entitlement).

The Court also claims that even Judicial Anti-Avoidance Rules (JAAR) - the judicially crafted substance over form doctrine - also coexist with GAAR, allowing treaty benefits to be denied even if GAAR doesn't apply.²⁵ This claim effectively accords Indian tax administrators with a two-pronged, potentially unlimited, anti-avoidance regime. If GAAR does not apply (due to the opinion of the GAAR Approving Panel or temporal constraints) then JAAR will be available. This equivalence has implications for the doctrine of GAAR: if the effect of JAAR is the same as the effect of GAAR, but without the procedural protections of GAAR (such as the GAAR Section 144BA process, the mandatory referral to the PCIT and GAAR Approving Panel), then the procedural safeguards provided by the GAAR framework by Parliament as a matter of good faith are, for all intents and purposes, rendered meaningless.

From an international tax academic point of view, this situation is consistent with the OECD's Base Erosion and Profit Shifting (BEPS) Action 6 recommendations and the Principal Purpose Test (PPT) under the Multilateral Instrument (MLI).^{26,27} But, as Professor Reuven Avi-Yonah has explained, legitimate concerns that underpin anti-abuse rules need to be weighed against the sovereign nature of the treaty relationship and unilateral domestic measures cannot be used to disregard what is, after all, an inter-governmental agreement ratified by both states.²⁸

V. A Death Blow to the Tax Residency Certificate: Sovereign Certification in Peril

Perhaps one of the most important, and controversial, statements in the Tiger Global judgment relates to the Tax Residency Certificate (TRC). The Supreme Court concludes in paragraph 27 that post-amendment (that is, post the introduction of GAAR) 'there can be no doubt whatsoever that a TRC alone is not sufficient to avail the benefits under the DTAA, and reliance upon earlier judgements dealing with circulars issued in the pre-amendment regime cannot ipso facto come to the aid of the respondents.'²⁹

The pronouncement is doctrinally important for a number of reasons. First, the TRC is not just a domestic certification, but an instrument of international comity issued by a sovereign state -

²⁵ Brian J. Arnold & Michael J. McIntyre, *International Tax Primer* 112–15 (3d ed. 2014) (discussing anti-treaty shopping).

²⁶ Philip Baker, *Double Taxation Conventions* ¶ 4A.04 (2d ed. 2012) (on tax residency certificates).

²⁷ Reuven S. Avi-Yonah, *International Tax as International Law: An Analysis of the International Tax Regime* 45–50 (2007) (on sovereignty and treaty interpretation).

²⁸ Income Tax Act, No. 43 of 1961, § 90(2) (India) (pre-2012 position: DTAA overrides Act where beneficial).

²⁹ Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting art. 7, Nov. 24, 2016, OECD/G20 Base Erosion and Profit Shifting Project [hereinafter MLI].

in this case the Government of Mauritius - certifying the tax residence of the holder of the TRC under the domestic law of that state. As Professor Philip Baker has noted in his commentary on Double Taxation Conventions, TRCs reflect the official stance of a contracting state on the tax residence of its taxpayers, and the rebuff by the other contracting state unilaterally violates the structure of treaty co-operation.³⁰

Second, and this is not sufficiently reflected in the post-judgment analysis, it is essential to note that the Court's decision on the non-conclusiveness of TRCs is expressly tied to the GAAR test. The Court explicitly states that this is so in the context of GAAR scrutiny; it does not claim that TRCs are necessarily inconclusive in all treaty-related contexts. But the unqualified nature of the Court's holding is susceptible to being treated by assessing officers as an invitation to disregard TRCs in all international tax cases, including those in which GAAR has not been explicitly invoked. This is a risk that is not guarded against in the judgment, unfortunately.

The evolution of CBDT's stance on TRCs is telling in this regard. Circular No. 789 issued by CBDT in 2000 had conclusively declared that the TRCs issued by the government of Mauritius were adequate for claiming treaty benefits, and the Finance Ministry press release of 2013 confirmed that the Circular was still valid.³¹ The Supreme Court today holds - correctly in the GAAR context - that this Circular, being a pre-amendment circular, cannot save arrangements that fall under GAAR. The Court, however, does not confine its finding to the GAAR context, allowing the Revenue to consider the TRC as an instrument gone by in almost all high value cross border transactions.

VI. The Investment-Arrangement Distinction: Legal Innovation or Judicial Hubris?

The most innovative architectural feature of the Tiger Global judgment is the way it handles the grandfathering rule in Rule 10U(1)(d).³² This provision grandfathers from GAAR investments made before April 1, 2017. The assessee put forward - not unreasonably - an argument that given the Tiger Global entities made their investments in Flipkart prior to April 1, 2017, the entire arrangement was grandfathered from the reach of GAAR. This claim was supported by a clear statement of the Finance Ministry in 2016 that "investments made before

³⁰ OECD, Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, BEPS Final Report (2015).

³¹ Preamble to Finance Act, 2012, Statement of Objects and Reasons (India) (noting legislative intent behind GAAR insertion).

³² Income Tax Act, No. 43 of 1961, § 96 (India) (definition of impermissible avoidance arrangement).

1.4.2017 have been grandfathered and will not be subject to capital gains taxation in India".³³

The Supreme Court dismisses this claim by drawing a distinction between an 'investment' (the initial investment before April 1, 2017) and the 'arrangement' (the scheme in place to obtain a tax benefit on or after April 1, 2017, i.e., at the time of exit). The Court's interpretation of Rule 10U(1)(d) read with Rule 10U(2)³⁴ suggests that GAAR is applicable to an arrangement in respect of a tax benefit obtained on or after April 1, 2017, even if the investments were made before April 1, 2017. The capital gains arising on the 2018 Flipkart exit (at a time when GAAR was applicable) were therefore within the ambit of GAAR despite the fact that the investment was made prior to the introduction of GAAR.

Although such interpretation is textually sound, it marks a significant departure from the legitimate expectations of foreign investors at the time of the 2016 treaty change. The Indian government represented the grandfathering protection publicly as a guarantee that pre-April 2017 investments won't be retrospectively affected. As one commentator has eloquently put it, thinking and designing a creative distinction between "investments" and "arrangements" for the benefit of GAAR to sneak its way into simple grandfathering inflows of funds into Indian businesses, which were made on the basis of express governmental assurances, risks turning India "penny wise and pound foolish" by trading away investment confidence for short-term revenue.³⁵

Doctrinally, while the investment-arrangement distinction is creative, it is problematic under the doctrine of legitimate expectations, a doctrine known to Indian administrative law and which limits the ability of the state to unilaterally withdraw particular assurances on which parties have relied. The Court's rejection of Finance Minister's speeches and government assurances as creating treaty rights might be legally correct, but it is a bad precedent for the credibility of the Indian government as a party to investment treaties and assurances.³⁶

The Court also failed to consider CBDT Circular No. 1/2025 clarifying grandfathered investments would not fall within the purview of the LOB clause introduced by the 2024

³³ Income Tax Act, No. 43 of 1961, § 97 (India) (lack of commercial substance).

³⁴ Tiger Global, *supra* note 1, ¶ 27 (on TRC conclusiveness post-GAAR amendment).

³⁵ Mayank Mohanka, Tiger Global SC Judgment: GAAR, Grandfathering, and the Supremacy Question, TaxAaram India (Jan. 2026), <https://taxaaram.com> (discussing GAAR as launchpad and non-invocation paradox).

³⁶ Amar Mehta, Tiger Global: Supreme Court Ruling and DTAA Implications, Dr. Amar Mehta's Tax Portal (Jan. 2026), https://dramarmehta.in/Content_Free/TigerDirectSCAnalysis.aspx (analyzing judicial findings on Head & Brain test and GAAR).

Protocol.³⁷ This also highlights the selective approach of the Court to the regulatory framework of the Mauritius Route.

VII. The Paradox of GAAR as Pre-Judgment

Perhaps the most paradoxical aspect of the Tiger Global case is what has been accurately described as the "GAAR Rocket" phenomenon: the Court pre-judges the whole Tiger Global structure to be an impermissible avoidance arrangement and takes this characterisation as the jurisprudential launching pad to make claims of GAAR supremacy, without the Revenue invoking GAAR under Section 144BA of the Indian Income Tax Act,³⁸ and without the mandatory reference to and approval of the GAAR Approving Panel.

The statutory design of GAAR is careful and deliberate. Section 144BA sets out a clear process: the Assessing Officer (AO) who intends to invoke GAAR must refer the matter to the Principal Commissioner of Income Tax (PCIT); the PCIT must then consider the assessee's objections to the invocation of GAAR; and only then may the matter be referred to the GAAR Approving Panel, which is required to approve the invocation of GAAR. This procedural architecture is Parliament's attempt to ensure that GAAR doesn't become a weapon of the executive, with multiple layers of independent scrutiny placed at each step.³⁹

As Mayank Mohanka, a practising tax advocate and Chartered Accountant with over 18 years of experience before the ITAT and AAR, has cautioned, the verdict ironically controversially affirms that GAAR was not invoked in the Tiger Global case, but at the same time states that Rule 10U(2) tramples the grandfathering protection and that the arrangement is an impermissible avoidance arrangement. This is tantamount to a substantive determination on the applicability of GAAR at the highest court level, without the requisite procedural odyssey required by law. This begs the question: can the Supreme Court, in the context of an AAR application under Section 245R, make a *prima facie* decision on the application of GAAR that pre-empts (or, to put it differently, pre-approves) the statutory process of invoking GAAR at any future assessment?

³⁷ See, e.g., *In re Hinduja Group* (GAAR reference pending before GAAR Approving Panel); see also *In re Vedanta Resources* (GAAR reference proceedings initiated, 2025).

³⁸ Income Tax Rules, 1962, r. 10U(1)(b) (India) (FII exemption from GAAR where DTAA benefit not availed).

³⁹ Income Tax Act, No. 43 of 1961, § 245R(2)(iii) (India) (bar on advance ruling application where arrangement *prima facie* for tax avoidance).

The answer to this question is critical to due process. If the Supreme Court's determination is to be taken as a pre-determination, then the procedural protections of Section 144BA and the GAAR Approving Panel process are reduced to a charade. The assessee's right to challenge the applicability of GAAR to an independent panel would be a false promise. On the other hand, if the Supreme Court's prima facie finding is taken to be non-binding on the GAAR Approving Panel, the Apex Court's elaborate reasoning on the GAAR (in paragraphs 13 to 52) remains legally relevant only for the AAR, but not for the substantive assessment - which would be a rather cumbersome jurisprudential outcome.

As another practitioner has pointed out with clarity, the issue that will now be faced by the Assessing Officer is whether, following the Supreme Court's Order, the AO will make a new reference to the PCIT regarding GAAR, and the PCIT will in turn refer it to the GAAR Approving Panel because, as per the Supreme Court itself, it is only Rule 10U(2) which tramples the grandfathered treaty protection, and only if the entire arrangement is formally approved as an impermissible arrangement by the GAAR Panel can capital gains be brought to tax in India.⁴⁰ Otherwise, the tax demand may not have statutory authority, notwithstanding the high persuasive value of the Supreme Court's obiter dicta.⁴¹

VIII. Practical Considerations: The Withholding Certificate Story and the Demand Mirage

An issue of critical practical importance that has not received the attention of either academics or practitioners in their comments on Tiger Global, relates to the fact that the Assessing Officer had issued a lower withholding certificate under Section 197 of the Income Tax Act, at an effective rate of 6-7%.⁴² Based on this certificate, Walmart would have withheld and paid TDS at the rate specified at the time of the transaction in 2018. The entities of Tiger Global in Mauritius would have then claimed a refund of the TDS deducted in their tax return, on the grounds that capital gains were exempt from tax under the DTAA.

This chronology is very relevant to the much-publicised claim of the huge tax demand that

⁴⁰ Reuven S. Avi-Yonah, *Hanging Together: A Multilateral Approach to Tax*, 5 *Pitt. Tax Rev.* 1, 9–11 (2007) (on the cost of investment uncertainty from aggressive anti-avoidance).

⁴¹ Siddharth Sharma and Meyyappan Nagappan, "GAAR Provisions: The Need for Internationally Accepted Restrictions on Application," 24 *Asia-Pacific tax bulletin* (2018).

⁴² Tarun Jain, "Imploring Urgent Legislative Reinstatement of 'Tax Residency Certificate': Reflections on Supreme Court of India's Decision in Tiger Global" *SSRN Electronic Journal* (2026).

would be due following the Supreme Court's ruling. Given that the TDS has already been paid by Tiger Global to the Revenue at the time of the transaction, the impact of the Supreme Court's judgment will not be a fresh demand, but rather a reduction or waiver of the refund claimed by Tiger Global. The tax is in substance already in the coffers of the Revenue. The "demand" that will be calculated by the Assessing Officer will, in large part, be the difference between the tax that will be assessed under the law after the adjudication and the TDS paid, which may be far less than the headline numbers that will be published in the financial press.

This is practically as well as normatively important. Pragmatically, it means that the immediate financial consequences to Tiger Global may not be as dire as the media would have you believe. Normatively, it demonstrates that the statutory withholding regime - established to achieve the very objective of collection of tax at source in interstate transactions involving non-residents - worked to achieve that end, despite the fact that the underlying question of treaty eligibility was still in dispute in various stages of litigation.

IX. The GAAR Rocket is Launched: Hinduja, Vedanta, and the Future

The real legacy of the Tiger Global judgment may not be its adjudication of the facts of the case, but rather its creation of a doctrinal framework for future GAAR cases. Shrewd observers have characterised the judgment as a "GAAR Rocket" - a weapon that proclaims the supremacy of GAAR over treaty benefits and grandfathering, creates a twin anti-avoidance doctrine in the JAAR, and invalidates claims for treaty benefits based on the TRC, without the Court itself having invoked and applied GAAR to arrive at a final decision in this case.⁴³

The cases of the Hinduja Group and Vedanta Resources, which are about to be litigated, and in which GAAR has been formally invoked by the Revenue under Section 144BA, will be the true test of the "GAAR Rocket".⁴⁴ In these cases, the GAAR Approving Panel and, in turn, the courts will apply the procedural and substantive framework of GAAR on the record in relation to investment structures. The key issues that will be resolved include: whether the Tiger Global distinction between investment and arrangement holds up under full GAAR proceedings; whether the provisions of JAAR can be invoked independently of Section 144BA safeguards; whether the GAAR Approving Panel is bound by the Supreme Court's finding that the Tiger

⁴³ Tarun Jain, "Deciphering the Judicial Approach to Tax Avoidance: The Ultimate Test for GAAR" SSRN Electronic Journal (2021).

⁴⁴ Siddharth Sharma and Meyyappan Nagappan, "GAAR Provisions: The Need for Internationally Accepted Restrictions on Application," 24 Asia-Pacific tax bulletin (2018).

Global structure was an impermissible avoidance arrangement; and whether the absence of genuine commercial substance - the core test under Section 97 of the Income Tax Act - can be demonstrated against investment structures that vary significantly from the shell-like structures of Tiger Global's Mauritius entities.⁴⁵

These cases will also provide clarity as to whether the PPT under the MLI (once the India-Mauritius renegotiation underway is notified) will supplement or replace GAAR as the dominant anti-avoidance rule.⁴⁶ CBDT Circular No. 1/2025 has confirmed that grandfathered investments will not be within the scope of the PPT's prospective operation; but the Tiger Global judgment's investment-arrangement distinction may raise an additional layer of complexity in this regard.⁴⁷

X. Conclusion: Innovative but Jurisprudentially Overreaching

The Tiger Global verdict is the most audacious, and doctrinally weak, judgment in the history of India's international tax jurisprudence. It is bold because it decisively confronts the ten-year edifice of treaty-based tax avoidance through the Mauritius Route, proclaims the supremacy of GAAR with clarity and confidence, and sends an unmistakable message to international investors that substance-over-form scrutiny is no longer an abstract possibility but a practical reality. For a country that wants to be a global investment hub with a predictable rule-of-law tax system, this certainty - albeit turbulent - is arguably crucial.

Yet, there are doctrinal weaknesses in the judgment. Its failure to address questions regarding the Head and Brain test - a central issue decided differently by the AAR and the High Court - creates a gap in treaty residence jurisprudence. Its refusal to consider the procedural aspects of Section 144BA presents a paradox in which the Supreme Court declares an arrangement impermissible before the statutory GAAR process has played out. Its elevation of GAAR to the role of an absolute sovereign that tramples not just statutory provisions, but also India's bilateral treaty obligations and government assurances, calls into question the international rule-of-law legitimacy of India's tax regime. And its imaginative investment-arrangement

⁴⁵ Ashrita Prasad Kotha, "Tiger Global: SC says 'tax sovereignty comes first' but verdict raises questions" eYLS (Yale Law School) (2026).

⁴⁶ Vikram K. Chand, "The Interaction of the Principal Purpose Test (and the Guiding Principle) with Treaty and Domestic Anti-Avoidance Rules," 46 *Intertax* 115 (2018), at p. 116.

⁴⁷ Ashrita Prasad Kotha, "Tiger Global: SC says 'tax sovereignty comes first' but verdict raises questions" eYLS (Yale Law School) (2026).

distinction, though textually sound, has the very real potential to be abused by the tax administration in a manner not intended by Parliament and the government.⁴⁸

The fact that the judgment itself is *prima facie* (being drawn from a Section 245R advance ruling application) means that it does not in itself constitute a final ruling on Tiger Global's tax burden. As commentators have pointed out, the ruling's *prima facie* status does not immediately impact the primary party; instead, it provides the doctrinal basis for a larger GAAR edifice to be built, in subsequent cases. In this context, the Tiger Global judgment is not an end but rather a beginning, the first in a series of GAAR cases that will be challenged, developed and perhaps substantially tempered in the *Hinduja* and *Vedanta* cases that follow.⁴⁹

The Court would have served the cause of anti-avoidance and investor certainty better if it had been more attuned to the contested facts of the Head and Brain test, confined its ruling on TRC to the context of GAAR, more properly framed the grandfathering analysis in the legislative history of Rule 10U, and eschewed the temptation to make sweeping doctrinal statements on the supremacy of GAAR in the absence of the case having been litigated under the statutory invocation of GAAR. In its present form, the judgment (to use the metaphor of a practitioner commentator) is a 'magic wand' capable of undoing treaty protections, grandfathering provisions, CBDT circulars, and Finance Minister's assurances in one jurisprudential sweep, to such an extent that it is, in the judgment of this paper, a blunt and dangerous instrument, the doctrinal protection of which by the Apex Court should be seriously and rigorously re-investigated.⁵⁰

In conclusion, Tiger Global is a case which oversteps. The Court's desire to prevent treaty abuse is well-intentioned and its legislative endorsement of the supremacy of GAAR is unassailable; but the jurisprudential means by which it seeks to achieve these goals raises important questions, legitimate expectations and procedural protections. It is respectfully suggested, then, that the judgment - which is *prima facie* in nature - be taken as the starting point of a constitutional and legislative debate on the scope of GAAR, rather than the end point.

⁴⁸ Josef Ostránský and Facundo Pérez Aznar, "Investment treaties and national governance in India: Rearrangements, empowerment, and discipline," 34 *Leiden Journal of International Law* 373 (2021), at p. 391; Afshin Rashid, *Untitled*, 10 March 2024.

⁴⁹ Tarun Jain, "Deciphering the Judicial Approach to Tax Avoidance: The Ultimate Test for GAAR" *SSRN Electronic Journal* (2021).

⁵⁰ Akshat Meharia, "Preferential Treatment of Hindus under Tax Statutes because of Trating HUF As a Separate Tax Entity." *SSRN Electronic Journal* (2021).