

Union of India and Another v. Azadi Bachao Andolan and Another

Civil Appeal Nos. 8161–8162 of 2003 / Civil Appeal Nos. 8163–8164 of 2003

[2003] Supp. 4 SCR 222 | 2003-10-07

Whether CBDT Circular 789 validly implemented the India–Mauritius DTAC under sections 90 and 119; whether its residence-certificate guidance, treaty priority and the historical Article 13(4) allocation could survive objections based on exemption from Mauritian capital-gains tax, delegation, third-country ownership, treaty shopping and McDowell.

4 | 5 | 90(1)–(2) | 119(1)–(2)

Two-judge bench | Ruma Pal, J. | B. N. Srikrishna, J.

Assessment years: See the source-scope notes; no year inferred.

Historical treaty/circular ruling; later anti-avoidance and Rule 10U qualifications

Azadi addresses the treaty, statute and Circular 789 in their historical setting. In Tiger Global (15 January 2026), the Supreme Court considered Azadi but held that later statutory, treaty and anti-avoidance changes prevented automatic reliance on earlier circulars and a TRC for the impugned arrangement. It also continued to rely on Azadi's explanation of treaty bargaining. This bounded check found no express overruling of Azadi; it does not certify the decision's complete subsequent treatment. Tiger Global's January 2026 Rule 10U reasoning must itself be read with the later amendment made by Notification 54/2026. Verify the applicable assessment year, treaty and statutory versions before relying on the historical holdings. Azadi is not a general present-day approval of treaty shopping or a certificate-based immunity from inquiry. No automatic carryover to the Income-tax Act, 2025 is asserted. The later Notification 54/2026, dated 31 March 2026, substitutes Rule 10U(1)(d) and (2); the new sub-rule (2) excludes income from transfers of investments made by the person before 1 April 2017. Its commencement is Gazette publication, and its Explanatory Memorandum states that Chapter X-A shall not be invoked on or after publication for that category. This is a legislative change, not a judicial reversal; effects on concluded or pending proceedings and the other grounds remain unverified.

[paragraphs 12.10; 27; 36–39; 43; 48 / PDF pages 59, 113, 114, 115, 122, 123, 124, 126, 127, 130, 131 / R. Mahadevan L. principal judgment; Income-tax \(Tenth Amendment\) Rules, 2026, rules 1\(2\), 2\(a\)–\(b\) and Explanatory Memorandum / PDF pages 1 / subsequent delegated legislation, not part of the judgment; paragraphs 12.10; 39 / PDF pages 59, 123, 124 / R. Mahadevan L. principal judgment; paragraphs 27 / PDF pages 113, 114, 115 / R. Mahadevan L. principal judgment; paragraphs 36–38 / PDF pages 122, 123 / R. Mahadevan L. principal judgment; paragraphs 43–48 / PDF pages 126, 127, 128, 129, 130, 131 / R. Mahadevan L. principal judgment](#)

01 FACTS OF THE CASE

The appeals arose from the Delhi High Court's common judgment of 31 May 2002 in CWP Nos. 2802 and 5646 of 2000. The petitions, brought as public-interest litigation, challenged CBDT Circular No. 789 dated 13 April 2000; one also sought directions to revise, modify or terminate the India–Mauritius arrangement and delimit the Government's and CBDT's powers. This was a validity challenge, not an appeal deciding the tax liability of an identified fund for an identified assessment year (SCR 234–243).

The Court described the convention's objects as avoiding double taxation, preventing fiscal evasion and encouraging mutual trade and investment. It recorded notification under section 90 on 6 December 1983. Article 4 defined treaty residence through liability to taxation under the relevant State's law. The then Article 13(4) allocated the residuary category of capital gains to the State of residence. Circular 682 of 30 March 1994 had explained the resulting treatment of gains on Indian-company shares. In 2000 some officers issued notices alleging that Mauritius-incorporated FIIs were shell companies controlled elsewhere and not entitled to treaty benefits; the judgment reports market withdrawals and a Government clarification, rather than adjudicating those allegations against particular funds (SCR 235–239).

Circular 789 said a certificate of residence issued by the Mauritian authorities was sufficient evidence of residence and beneficial ownership for applying the DTAC. It extended the stated residence test to capital gains and made the clarification applicable to proceedings pending at different levels. The High Court quashed it on grounds including sections 90/119, intrusion into assessment, corporate-veil inquiry and treaty shopping. The Union and other appellants challenged that decision (SCR 239–243).

Source: [reported judgment / paragraphs Unnumbered; SCR 234 G–243 H; introductory paragraphs, Facts A–D and recorded High Court grounds / PDF pages 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

1. Treaty implementation and domestic priority. Sections 4 and 5 were expressly subject to the Act, including section 90. The Court approved the line of High Court authority treating a notified agreement as governing the cases within its scope even where its terms differed from the Act; section 90(2) preserved the more beneficial treatment. Section 90 provided the legislative authority for executive implementation, including relief or exemption. Article 265 did not negate that delegated power. The constitutional validity of section 90 itself had not been challenged and was assumed; the Court decided the exercise of the power, not an unraised constitutional challenge to the section. It also accepted the supporting stare decisis argument concerning the consistent interpretation on which transactions and treaties had proceeded (SCR 244–253).

2. Circular 789 and assessment powers. The Court held the circular compatible with the section 90 framework and within CBDT's section 119 powers. Omission to name the source of power did not invalidate an instrument supported by an existing power. Section 119 allowed administrative directions but preserved the restrictions concerning a particular assessment and the appellate discretion of the Commissioner (Appeals). Circular 789 laid down general guidance for treaty-covered assessees; the Court did not regard it as deciding a particular assessment or removing the officer's jurisdiction to assess. It upheld its sufficient-evidence treatment of the Mauritian residence certificate in the legal setting then before it. Under Article 4(3) as examined, the place-of-effective-management test was a tie-breaker where a non-individual was resident in both India and Mauritius, not a free-standing treaty test for every foreign-managed company (SCR 250, 253–259).

3. Delegation and validity of the DTAC. The Court rejected the claim that delegated power could never grant a fiscal exemption. Validity depended on the scope and purposes of section 90, rather than the court's preferred policy or the alleged ineffectiveness of the treaty. Clause (a)'s relief for income already taxed in both countries was distinguished from the wider avoidance function of clause (b). Susceptibility to use by third-country investors did not establish that the treaty exceeded the delegated power. Working Group and Joint Parliamentary Committee recommendations identified possible reforms; they did not make the existing treaty or circular illegal (SCR 251–252, 259–261, 281–283).

4. Residence and liability to taxation. On the Mauritian legislation examined, exemption of a particular income category did not make the company an entity outside liability to tax. The Court distinguished legal liability from the fiscal fact of payment and rejected the contention that MOBA offshore-company restrictions necessarily defeated residence under Article 4. The words requiring liability to taxation nevertheless limited entitlement; the Court did not eliminate that condition. It declined to follow the contrary AAR view in Cyril Eugene Pereira and noted the limited binding effect specified by section 245S. Treaty allocation could operate against potential double taxation without proof that tax on the particular gain was actually paid in the other State. Comparative cases and treaty commentary were used in explaining this conclusion, not decided as Indian assessments (SCR 262–277).

5. Third-country ownership, treaty shopping and the corporate veil. In the treaty text then considered, the Court found no limitation equivalent to Article 24 of the India–US treaty excluding otherwise qualifying residents because of third-country ownership. It declined to supply a missing limitation through a general allegation that treaty shopping was unethical. It acknowledged the domestic power to lift the corporate veil where necessary, but rejected its proposed use to deny the treaty benefit in the situation presented. Its treaty-interpretation and economic-policy discussion concerned the negotiated bargain and choices left to the executive; it was not an

02 DISCUSSION BY THE HON'BLE COURT

adjudication that every corporate structure was genuine, or an enduring exemption from later anti-abuse law (SCR 278–286).

6. Tax planning, McDowell and sham transactions. The Court read the majority in McDowell as permitting planning within law while rejecting colourable devices and subterfuges; it did not treat Chinnappa Reddy J.'s wider observations as the majority's holding. After reviewing Indian and foreign authorities, it rejected the proposition that any otherwise lawful arrangement reducing tax must therefore be disregarded. It also retained the distinction between genuine legal acts and sham documents or steps that fail to achieve their stated legal result. Mere labels or a hypothetical assessment of motive could not replace objective legal analysis (SCR 287–299).

7. Matters left open. The Court expressly refused to pronounce on the correctness of the Cox and Kings assessment cited by the High Court, since that taxpayer was not before it and the Act supplied the challenge procedure. It also left capital-gain versus trading-income classification to the actual facts of the shareholding. These reservations prevent treating the PIL judgment as an individual fund's assessment, an advance ruling on every share sale, or a finding that every Mauritian entity satisfied all conditions (SCR 262, 277–278).

Source: [reported judgment / paragraphs Unnumbered; SCR 244–253; section 90, constitutional/delegation submissions, treaty priority and stare decisis / PDF pages 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 / judicial text](#); [reported judgment / paragraphs Unnumbered; SCR 253–259; Effect of circular under Section 119 and Is the impugned circular ultra-vires Section 119? / PDF pages 32, 33, 34, 35, 36, 37, 38 / judicial text](#); [reported judgment / paragraphs Unnumbered; SCR 259 F–261 H; 281–283; delegation/DTAC validity and reform reports / PDF pages 38, 39, 40, 60, 61, 62 / judicial text](#); [reported judgment / paragraphs Unnumbered; SCR 262–277; fiscal residence, Mauritian legislation, MOBA, liability/payment and comparative authorities / PDF pages 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 / judicial text](#); [reported judgment / paragraphs Unnumbered; SCR 278–286; Treaty Shopping—Is it illegal?, reports and Interpretation of Treaties / PDF pages 57, 58, 59, 60, 61, 62, 63, 64, 65 / judicial text](#); [reported judgment / paragraphs Unnumbered; SCR 287–299; Rule in McDowell, quoted authorities, sham caveat and the Court's conclusions / PDF pages 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 / judicial text](#); [reported judgment / paragraphs Unnumbered; SCR 262 A–C and 277 G–278 A; questions expressly not decided / PDF pages 41, 56, 57 / judicial text](#)

03 JUDICIAL DECISION

The Supreme Court held that the High Court erred in quashing Circular 789, set aside its judgment and declared Circular No. 789 dated 13 April 2000 valid and efficacious. Civil Appeal Nos. 8161–8162 and 8163–8164 of 2003 were allowed by the common disposition. The Court did not assess an individual taxpayer, quantify a tax demand or determine an assessment year (SCR 299–300).

Source: [reported judgment / paragraphs Unnumbered; SCR 299 F–300 A; operative concluding paragraph / PDF pages 78, 79 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Union of India and other appellants on validity; treaty-covered assessee benefited from the circular being upheld

All four appeals, Civil Appeal Nos. 8161–8162 and 8163–8164 of 2003, allowed; Delhi High Court common judgment set aside; CBDT Circular 789 declared valid and efficacious

Final validity determination concerning the circular and the treaty/statutory objections presented in the two PILs; no individual assessment or quantified demand

Historical sections 90/119 and treaty text; no ruling on an individual fund's evidence, the correctness of the Cox and Kings assessment, or the trading-versus-investment character of particular shares. No separate costs direction is recorded in the operative judicial text.

Source: [reported judgment / paragraphs Unnumbered; all connected appeal numbers at SCR 234 C–E and common disposition at SCR 299 F–300 A / PDF pages 13, 78, 79 / judicial text](#)

05 AKHB REVIEW POINT

Start with the question Azadi actually decided: validity of Circular 789 under the historical Act and India–Mauritius convention. For a transaction-specific claim, separately establish the domestic charge, the relevant treaty version, legal residence and entitlement, income classification, and the actual arrangement. Preserve the contemporaneous certificate and evidence of the company's legal and commercial acts. Do not recast the Court's liability-versus-payment distinction as abolition of the treaty-residence requirement or its rejection of motive-only attacks as proof that every interposed entity is genuine.

Read the subsequent-law warning and the bounded Tiger Global relationship below before using the historic treaty-shopping or certificate passages. Treaty amendments, statutory anti-avoidance and the applicable rule date may change the analysis. The 2026 judgment and the subsequent Rule 10U notification must themselves be read together. There is no automatic mapping of Azadi's section numbers or substantive result to the Income-tax Act, 2025; applicable provisions, commencement, repeal/savings and later treatment require a separate verified review.

Source: [reported judgment / paragraphs Unnumbered; SCR 258–259, 262 A–C, 271 A–272 G, 278 A, 288 C–E, 298–299; historical conditions and limits / PDF pages 37, 38, 41, 50, 51, 57, 67, 77, 78 / judicial text; official signed judgment / paragraphs 12.10; 27; 36–39; 43; 48 / PDF pages 59, 113, 114, 115, 122, 123, 124, 126, 127, 130, 131 / R. Mahadevan I., principal judgment; official subsequent rule notification / Income-tax \(Tenth Amendment\) Rules, 2026, rules 1\(2\), 2\(a\)–\(b\) and Explanatory Memorandum / PDF pages 1 / subsequent delegated legislation, not part of the judgment](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Issue results

1.

Issue: Section 90, Article 265 and treaty priority

Result: Notified treaty treatment within section 90 could prevail for covered assessee; executive relief/exemption power accepted. Constitutional validity of section 90 itself was not challenged.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 29; 30; 31

Paragraphs: Unnumbered; SCR 250 C–G, 251 E–G, 252 B–D

Source role: judicial text

2.

Issue: Section 119 and Circular 789

Result: General guidance and residence-certificate treatment upheld; source-of-power omission did not invalidate it; no prohibited direction to decide a particular assessment.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 35; 36; 37; 38

Paragraphs: Unnumbered; SCR 256 D–G, 257 A–H, 258 A–H, 259 A–E

Source role: judicial text

3.

Issue: Article 4(3) effective-management test

Result: In the treaty then examined, the corporate effective-management test was confined to the India/Mauritius dual-residence tie-breaker.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 37

Paragraphs: Unnumbered; SCR 258 A–E

Source role: judicial text

4.

Issue: Fiscal residence and exempt gains

Result: Legal liability to taxation, rather than actual payment on the exempt gains, controlled; MOBA restrictions did not establish the asserted absence of liability/residence.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 45; 46; 47; 49; 50; 51; 54

Paragraphs: Unnumbered; SCR 266 H–267 E, 268 C, 270 G–271 B, 272 E–G, 275 A–C

Source role: judicial text

5.

Issue: DTAC/delegation and treaty-shopping challenge

Result: Treaty and circular not ultra vires on the grounds advanced; absence of a then-applicable limitation clause could not be supplied by general policy objections.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 39; 40; 58; 59; 60; 61; 62; 65

Paragraphs: Unnumbered; SCR 260 F–G, 261 B–H, 279 B–280 D, 281 A–B, 282 A–B, 283 F–H, 286 E–G

Source role: judicial text

6.

Issue: McDowell, lawful planning and sham

Result: Lawful tax-reducing arrangements not invalid merely because of motive; colourable devices, sham documents and failure of intended legal effect remained distinct questions.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 67; 68; 72; 73; 76; 77; 78

Paragraphs: Unnumbered; SCR 288 B–289 B, 293 E–294 E, 297 E–299 F

Source role: judicial text

7.

Issue: Cyril Eugene Pereira AAR ruling

Result: Not binding beyond the section 245S scope; the Court was not persuaded by the contrary approach.

In whose favour: Union of India and other appellants

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 51

Paragraphs: Unnumbered; SCR 272 A–G

Source role: judicial text

8.

Issue: Individual assessment and income character

Result: Correctness of Cox and Kings assessment and whether particular shares were investment or trading assets expressly not decided.

In whose favour: Not decided

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 41; 56; 57

Paragraphs: Unnumbered; SCR 262 A–C; 277 G–278 A

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

6; 115A; 116(a); 245-O; 245R; 245S

OTHER PROVISIONS CONSIDERED

Constitution of India Articles 73, 265 and 372; Seventh Schedule List I entries 10 and 14; Income-tax Act, 1922, section 49A (legislative history); Mauritius Income Tax Act, 1995, sections 4, 5, 7, 44, 51 and 73(b), and First/Second Schedules as discussed; Mauritius Offshore Business Activities Act, 1992, especially sections 26–27, as discussed

LEGAL-VERSION CONTEXT

1.

Instrument: Sections 90(2A), 90(4)–(5) and Chapter X-A

Caution: Azadi's pre-GAAR holding cannot be restated as a timeless exemption from treaty-entitlement or anti-avoidance scrutiny. Tiger Global describes the post-2012/2013 changes and ultimate GAAR operation from AY 2018–19. Its historical quotations are not a current consolidated statute. The proposed necessary-but-not-sufficient wording discussed in the 2013 Bill is not to be mistaken for the final enacted wording.

Pins

1.

Paragraphs: 12.20–12.27

Pdf pages: 86; 87; 88; 89; 90; 91; 92; 93; 94; 95

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

2.

Paragraphs: 27; 37; 43

Pdf pages: 113; 114; 115; 123; 126; 127

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

2.

Instrument: 2016 Protocol: Articles 13(3A), 13(3B), 13(4), 27A

Caution: Separate the acquisition-based capital-gains amendments and transitional Article 13(3B) benefit from the residuary Article 13(4) and anti-abuse inquiry. Do not turn later treaty provisions into provisions already applicable in Azadi's 2003 controversy. Current status of all subsequent protocols not checked here.

Pins

1.

Paragraphs: 12.31–12.34

Pdf pages: 97; 98; 99; 100; 101

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

2.

Paragraphs: 40–45

Pdf pages: 124; 125; 126; 127; 128

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

3.

Instrument: Rule 10U after Tiger Global

Status: already reviewed specific subsequent amendment; local complete English source text independently re-read and physical PDF page 1 visually verified in this bounded pass

Notification: CBDT Notification No. 54/2026, G.S.R. 240(E), dated 31 March 2026; Income-tax (Tenth Amendment) Rules, 2026

Source url: [Open cited source](#)

Physical pdf page: 1

Printed page: 2

Caution: Rule 10U(1)(d) and (2) were substituted. New sub-rule (2) expressly excepts income from transfers of investments made before 1 April 2017. Rule 1(2) commences the amendment on Gazette publication; the explanatory memorandum says Chapter X-A shall not be invoked on or after publication for that category. The underlying reviewed note did not separately establish publication date from a full Gazette cover. This is delegated legislation, not a judicial reversal, and its effect on concluded/pending proceedings or non-GAAR grounds is not determined here. No automatic reopening of a concluded case is inferred.

4.

Instrument: Income-tax Act 2025

Caution: No statutory mapping or automatic precedent carryover performed.

IDENTIFIED SUBSEQUENT LEGISLATION

Status: specific material amendment verified

Title: Rule 10U amendment after Tiger Global

Text: CBDT Notification No. 54/2026, G.S.R. 240(E), dated 31 March 2026, substituted Rule 10U(1)(d) and (2). The new sub-rule (2) expressly excludes income from transfers of investments made by the person before 1 April 2017. Rule 1(2) makes commencement the date of Gazette publication; the Explanatory Memorandum says Chapter X-A shall not be invoked on or after publication for that category. This material change requires a fresh applicable-law analysis. It is not a judicial reversal of Tiger Global, and the effect on concluded or pending proceedings and the other grounds of the judgment is not determined in this note.

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 1

Printed page: 2

Provision: Income-tax (Tenth Amendment) Rules, 2026, rules 1(2), 2(a)-(b) and Explanatory Memorandum

Source role: subsequent delegated legislation, not part of the judgment

Verification scope: The complete English Department-hosted one-page Gazette extract was independently re-read and visually checked for this bounded pass, physical p. 1 / printed Gazette p. 2. It is dated 31 March 2026; commencement is Gazette publication. No full Gazette cover was used to separately establish the publication date. No comprehensive later-legislation or judicial-treatment audit is represented.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

B. N. Srikrishna, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

TREATY PROVISIONS AND THEIR SCOPE

India–Mauritius DTAC Article 4(1) (residence/liability to taxation); Article 4(3) (dual-resident non-individual tie-breaker); Article 13(4), in its historical form (residuary capital gains); Articles 3, 10 and 25 (context); India–US DTAC Article 24 (contrast only)

VERIFIED RELATIONSHIPS BETWEEN SPECIFIED JUDGMENTS

1.

Earlier case id: sc-2003-10-07-azadi-bachao-andolan

Later case id: sc-2026-01-15-tiger-global

Later decision date: 2026-01-15

Relationship: considered_and_partly_relied_on; automatic application of earlier-regime holdings limited in changed statutory and factual setting

Express overruling found in checked passages: False

Summary: Tiger Global (15 January 2026) considered Azadi but did not expressly overrule it in the passages checked. Mahadevan J.'s principal judgment recounts Azadi's historical holdings and relies on its explanation of treaty bargaining, while holding that later statutory, treaty and anti-avoidance changes prevent automatic reliance on earlier circulars and a TRC in the impugned arrangement. The note should preserve Azadi's historical holding while prominently requiring applicable-year and later-law review. This bounded comparison is not a comprehensive citator check.

Evidence

1.

Paragraphs: 12.10; 39

Pdf pages: 59; 123; 124

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

2.

Paragraphs: 27

Pdf pages: 113; 114; 115

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

3.

Paragraphs: 36–38

Pdf pages: 122; 123

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

4.

Paragraphs: 43–48

Pdf pages: 126; 127; 128; 129; 130; 131

Source url: [Open cited source](#)

Source role: R. Mahadevan J., principal judgment

Attribution limits: Tiger Global para 44 records Revenue's FII/GBL distinction; do not turn that passage alone into a categorical exclusion holding. Para 48 expressly adopts the three-stage domestic-chargeability, treaty-entitlement and GAAR/alternative judicial anti-avoidance approach.; Numbered Vodafone passages embedded in Tiger Global para 12.11 remain quotations from that earlier decision, not independently numbered Tiger Global findings.; Pardiwala J.'s separate concurrence starts at physical p. 134, agrees with the principal judgment, and adds policy observations. It contains no express Azadi citation and is not a separate overruling decision.; Tiger Global's treatment of non-payment of Mauritian tax is arrangement-specific; it is not represented as a universal replacement of Azadi's liability-versus-payment distinction.

Opinion separation

1.

Author: R. Mahadevan, J.

Role: Principal judgment signed by both judges

Physical pages: 1; 133

Paragraphs: 1–52 with decimal-numbered subparagraphs

Direct azadi discussion: Contained in this opinion. Paras 6, 7 and 8 respectively report lower-court reasoning and party submissions; legal history at 12.10–12.11 and current findings at 27 onward require distinct attribution.

2.

Author: J.B. Pardiwala, J.

Role: Separate additional concurrence

Physical pages: 134; 152

Paragraphs: 1–34, followed by 12-item safeguards list

Direct azadi citation found: False

Finding: Fresh numbering begins at p. 134. Para 1 agrees with the principal judgment; the remaining opinion develops tax-sovereignty and treaty-policy observations. Paras 18–19 (p. 142), 25 (p. 145), and 30–34/list (pp. 147–152) are not a separately reasoned holding that overrules Azadi. Suggested treaty safeguards are not enacted law or independent operative disposal.

Pins

1.

Paragraphs: 1

PDF pages: 134

Source url: [Open cited source](#)

Source role: J.B. Pardiwala J., additional concurrence

2.

Paragraphs: 18–19; 25; 30–34 and ensuing list

PDF pages: 142; 145; 147; 148; 149; 150; 151; 152

Source url: [Open cited source](#)

Source role: J.B. Pardiwala J., additional concurrence

Scope limit: Only the named later case and relevant surrounding passages checked; no comprehensive citator check. The later Rule 10U notification requires the separate warning below; later_treatment remains not_verified.

CIRCULARS CONSIDERED AND THEIR HISTORICAL SCOPE

CBDT Circular No. 789 dated 13 April 2000 (challenged and upheld); CBDT Circular No. 682 dated 30 March 1994 (background clarification); CBDT Circular No. 333 dated 2 April 1982; Nos. 108 dated 20 March 1973 and 621 dated 19 December 1991 (interpretive/legislative history)

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 79 PDF pages; SHA-256

58c84f8a855a51a14615c7d6788194669ddbb0f0732d2afbbf55720689f2f594. Original bytes preserved.

Physical pages 13–79, SCR 234 G–300; pages 1–12 and upper portion of page 13 are editorial headnote, title/identity, appearances and citations. One judgment; no adjacent-case spillover.

[Open cited source rendition](#)

Reported title, date and bench verified on physical PDF p. 1 / SCR 222; all four appeal numbers and authorship verified on physical p. 13 / SCR 234. The report prints no numbered judicial paragraphs. The ingested neutral-style citation was not substituted for the verified SCR citation.

No individual assessment year is determined. These are four appeals from a common judgment in two public-interest writ petitions challenging CBDT Circular 789 and the treaty framework. The date 2003 is the judgment year, not an assessment year.

Sections 4, 5, 90 and 119 supply the domestic statutory framework actually decided. Section 6 is described in its historical company-residence form; section 115A occurs in the reproduced circular; sections 245-O, 245R and 245S are discussed when limiting the precedential effect of an AAR ruling. These contextual mentions are not separate assessments or present-law holdings.

Preserved eSCR-style reported rendition obtained from the public S3 mirror; no separately retrieved signed 2003 original or official-original hash is claimed. Source PDF bytes remain unchanged.; The report's judicial paragraphs are unnumbered. Pins use physical PDF pages and printed SCR pages/letters or headings; no paragraph numbers from a secondary rendition are invented.; Headnote propositions on treaty shopping, circulars and the corporate veil are not substitutes for the Court's historically bounded judicial reasoning. Long foreign judgments/commentaries, party submissions and the High Court's grounds are distinguished from this Court's conclusions.; The treaty/circular and Mauritian statutory descriptions are those reviewed in 2003. The report itself notes MOBA's repeal and replacement from 1 December 2001 when discussing the JPC report (SCR 283 C); it is not presented as continuing Mauritian law.; The narrative does not repeat 1 April 1983 as a verified treaty signing date: the 2003 judgment describes the agreement with that date, while only its recorded 6 December 1983 notification is used here. Later treaty versions and operative dates must be checked directly.; The statutory section 6 company-residence language and pre-1997 dividend discussion are historical. No current company-residence test, dividend rate or blanket certificate conclusiveness is certified.; Circular 682's judicial-text date is 30 March 1994 (SCR 238 E and 258 H); an inconsistent editorial-headnote date is not followed.; No individual FII was adjudged genuine or taxable in this PIL disposal. The Cox and Kings assessment and share investment/trading character were expressly left undecided.; The result is not simply labelled a Revenue tax-recovery win: the Union prevailed on validity, restoring a taxpayer-favourable treaty circular. No tax amount, assessment year, costs direction or separate appeal disposition is inferred.; The bounded Tiger Global check is separated from the full original Azadi review. Mahadevan J.'s findings, recorded party submissions, embedded quotations and Pardiwala J.'s fresh-numbered concurrence are not merged.; A proposed Bill's necessary-but-not-sufficient wording quoted in Tiger Global is not described as the final enacted section 90 text. Later treaty and anti-avoidance materials are version-limited, and the January 2026 Rule 10U discussion is qualified by Notification 54/2026.

STATUTORY SCOPE

Historical 1961 Act, 1983-notified convention and Mauritian laws as discussed by the Court; identified later materials separately delimited.

No automatic carryover to the Income-tax Act, 2025. No comprehensive consolidated statute, rules, treaty-protocol or citator audit.

LATER TREATMENT

Source checked 2026-10-04. A bounded check of the specifically identified Tiger Global passages is recorded separately. It is not a complete search for later appeals, reviews, stays, reversals, treaty changes or judicial treatment; no citator status certificate is given.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 79](#)

SHA-256: 58c84f8a855a51a14615c7d6788194669ddb0f0732d2afbbf55720689f2f594

[official signed judgment - PDF pages: 152](#)

Bounded later-treatment check only: specifically identified Azadi-related passages and surrounding reasons, plus separate concurrence context. The existing full Tiger Global note was reused; this Azadi review does not claim to have re-read all 152 pages.

SHA-256: 88ec24328fc951a015995b22a03003d483f740e4df9cb5bdc455475ee61a1c9a

[official subsequent rule notification - PDF pages: 1](#)

Unchanged official Department-hosted Gazette extract; complete English notification

SHA-256: 6967c345efca690eedb0166140239e9d4dfc008a25a9393b5f5135503368a491

[Related note: The Authority for Advance Rulings \(Income Tax\) and Others v. Tiger Global International II Holdings and connected appeals](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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