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Tribunal allows treaty benefits on re-domiciliation of offshore entities

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Re-domiciliation of a company from one country to another by itself can not lead to denial of tax treaty benefits. Mumbai bench of the Income tax appellate tribunal rejects Revenue's objection for denial of treaty benefits under India-Mauritius Double tax Avoidance Treaty (tax treaty) due to change of company's place of incorporation from British Virgin Islands (BVI) to Mauritius, holds re-domiciliation to be the way of life for offshore entities.

Background

- Asia Today Ltd (assessee) registered as an 'international business company' in November 1991 in the (BVI).
- The Assessee redomiciled to Mauritius on June 29, 1998 and its registration was cancelled by the Registrar of Companies in BVI from Jun 30, 1998. The Mauritius Revenue Authorities issued a tax residency certificate (TRC) to the Assessee in July 1999.
- The Revenue contended that the Assessee being originally a BVI company was not entitled to treaty benefits under the India-Mauritius tax treaty for AY 2000-01 to 2003-04.
- Further, the Assessee in its response submitted that even though initially it was incorporated in the BVI but at the time of claiming treaty benefits it was registered in Mauritius and its TRC was not in question. Accordingly, the assessee contended that the fact of re domiciliation does not affect its eligibility to treaty benefits.

Tribunal's Judgement

- The Tribunal elaborates that "Corporate re-domiciliation, also referred to as 'continuation', is explained as the process by which a company moves its 'domicile' (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, whilst maintaining the same legal identity".
- Further notes that for re-domiciliation, the existing jurisdiction (where the company is currently registered) and the target jurisdiction (where the company is to be 'continued') need to be on the list of countries where re-domiciliation is possible and not all the countries allow re-domiciliation whereas many popular offshore centres not only permit but also facilitate the re-domiciliation and BVI and Mauritius are such jurisdictions.
- Tribunal takes into account the ease with which the Assessee was re-domiciled in Mauritius and the fact that TRC was effective from a date prior to the completion of the re-domiciliation process and thus, expounds, "The attachment with the jurisdiction of incorporation in these cases appears to be as ephemeral as required by the exigencies of treaty shopping, and this concept of re-domiciliation of the companies also appears to be an antithesis of the very justification of the situs of incorporation of a company being linked with the treaty entitlements".

- Tribunal further notes that almost after the end of two decades from the relevant financial period that the issue regarding treaty benefit entitlement is being raised for the first time and is purely academic for the relevant assessment years as such an inordinate delay does extend finality of factual findings. It further states that the Revenue has granted the treaty benefits all along and it cannot be open for the Revenue to wake up today to revisit this foundational aspect given the ground realities where re-naming, re-structuring and even re-domiciliation of offshore companies are facts of life.
- Therefore, the Tribunal held that “re-domiciliation of the company by itself cannot lead to denial of treaty entitlements of the jurisdiction in which the company is re-domiciled, though, of course, the fact of re-domiciliation of the company could at best trigger detailed examination or the re-domiciled company being actually fiscally domiciled in that jurisdiction”.

Nangia Andersen LLP's take

Re-domiciliation or as is also popularly referred to as migration or change of place of incorporation/ registration of a legal entity from one country to another is quite common with certain countries allowing both in bound and outbound migration. As compared to incorporating a new entity in another country and then transferring assets/business, redomiciliation enjoys multiple advantages and administrative ease of implementation.

The decision of the Tribunal is consistent with global understanding of the concept of redomiciliation. The ruling would be quite relevant and relied upon in the current times as well. Due to recent changes in India's tax treaties, several MNCs and institutional investors have dismantled old structures and undertaken restructuring of their investment into India. Many players are also considering setting up presence in or relocating the entities to the IFSC in GIFT city. Concerns have been raised regarding possibility of the Indian revenue authorities questioning the restructuring under Indian GAAR and denying tax benefits. While the mechanics of redomiciliation/migration of an entity from one country to another may be different from relocating to GIFT, the reasoning of the Tribunal ruling can be relied upon to support the argument that the tax benefit cannot be denied merely due to restructuring or relocation from another country to India.



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