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From Vodafone To Tiger Global — A Constitutional Reset

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The recent Supreme Court ruling in the Tiger Global matter marks a decisive shift in Indian international tax jurisprudence, which for over a decade had been shaped by the Court's landmark decision in Vodafone International Holdings BV v. Union of India (2012). The Vodafone era entrenched the primacy of legal form, situs of shares and treaty protection in offshore exit transactions, effectively enabling large-scale exits of India-centric businesses without Indian capital gains taxation, provided the transaction was structured through treaty-protected offshore jurisdictions.

The Tiger Global judgment signals a clear doctrinal departure from this legacy. More than a dispute confined to capital gains, the ruling represents a jurisprudential re-orientation of Indian international tax law — from form-based situs analysis to a value-based, substance-driven and source-centric framework. This article examines the judgment's implications for offshore exits, treaty planning, exit structuring and India's evolving position in the global tax order.

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The Factual And Legal Matrix: Offshore Exit, Indian Value

The litigation arose from the exit of Tiger Global and other foreign investors from Flipkart, an Indian e-commerce enterprise whose operational, commercial, managerial and market base was overwhelmingly located in India. The investors had structured their investments through offshore holding companies incorporated in tax-favourable jurisdictions. Although Flipkart's management, employees, assets, technology platform and consumer markets were entirely situated in India, the shareholding chain was maintained offshore. Upon exit, the investors transferred shares of these offshore holding entities to third parties, with the capital gains booked outside India. Relying on the situs of shares doctrine and treaty protection under the applicable Double Taxation Avoidance Agreements, the assessees claimed that the transactions constituted offshore transfers between non-residents and were therefore not chargeable to tax in India.

The Revenue challenged this formal characterisation and advanced a substance-based case of considerable constitutional significance. It contended that the real assets, business operations and value creation were located wholly in India; that control and management were India-centric; and that the offshore holding companies served no independent commercial purpose. According to the Revenue, the interposed entities functioned merely as conduits designed to avoid Indian capital gains tax and the transaction in substance amounted to an indirect transfer of controlling interests in Indian assets taxable under Indian law.

Assessee's Case: Form, Situs And Treaty Protection

The assessees argued that the impugned transactions involved nothing more than the transfer of shares of a foreign company between two non-resident parties and therefore fell outside the territorial scope of Indian taxation. Placing strong reliance on Vodafone, they contended that taxability must be determined by the situs of the shares transferred and not by the location of the underlying assets or business operations. It was submitted that no direct transfer of Indian assets had taken place and that, in any event, the applicable tax treaties expressly exempted such offshore capital gains from Indian taxation. The assessees further maintained that the corporate holding structure was legally valid, commercially longstanding and could not be disregarded merely because it resulted in a tax advantage. They cautioned against mechanical application of retrospective indirect transfer provisions and urged the Court to respect corporate separateness and legal form.

The Court's Holding

The Supreme Court rejected this formalistic defence and concluded that the offshore share transfer in substance amounted to an indirect transfer of Indian assets and that the capital gains arising therefrom were chargeable to tax in India. The Court held that the interposed offshore structure could be legitimately looked through and disregarded where it lacked commercial substance and served primarily as a vehicle for tax avoidance. It further ruled that treaty protection was unavailable in such circumstances, as the arrangement failed the test of bona fide commercial purpose and attracted anti-abuse principles. Accordingly, the Court upheld the jurisdiction of the Indian tax authorities and affirmed the taxability of the capital gains in India.

The Core Doctrinal Shift: Tax Follows Value, Not Paper Situs

The most important contribution of the Tiger Global ruling lies not merely in its outcome but in its doctrinal realignment. Three interrelated principles emerge with lasting constitutional significance.

Primacy Of Economic Nexus Over Legal Situs

A central doctrinal shift effected by the judgment lies in its rejection of the rigid situs-based approach adopted in Vodafone. While Vodafone had treated the situs of shares and the legal form of the transaction as determinative of taxability, the present ruling accords primacy to economic nexus. The Court held that taxing jurisdiction must be determined with reference to the location of value creation, commercial substance, business nexus and the market in which economic opportunities are exploited. In doing so, the Court embraced a market-centric and value-based conception of source taxation, affirming that offshore paper transfers cannot defeat India's taxing rights where the underlying business reality is India-centric.

Substance Over Form Versus Corporate Separateness

The judgment also marks a decisive departure from the corporate separateness doctrine emphasised in Vodafone. While Vodafone had accorded decisive weight to the sanctity of corporate layering and legal autonomy of entities, the present ruling subordinates form to economic reality. The Court held that corporate form cannot operate as a shield where it conceals the true nature of the transaction, and that interposed entities lacking independent commercial purpose, managerial autonomy or risk assumption may be legitimately disregarded. This shift reflects a movement from formal entity autonomy towards a substance-driven approach grounded in economic reality.

Treaty Entitlement Versus Abuse And Principal Purpose

Equally significant is the Court's recalibration of treaty interpretation. In Vodafone and Azadi Bachao Andolan (2003), treaty entitlement was treated as largely automatic once formal residence and legal conditions were satisfied. In contrast, the present ruling recasts treaty protection as conditional upon commercial legitimacy and absence of abuse. The Court held that tax treaties are instruments intended to facilitate genuine commerce and not vehicles for artificial avoidance, and that treaty benefits may be denied where the principal purpose of the arrangement is to obtain tax advantage without corresponding economic substance. This aligns Indian jurisprudence with post-BEPS international norms on treaty abuse and principal purpose.

Look-Through Doctrine Versus Entity Autonomy

Finally, the Court decisively embraced the look-through doctrine in exit taxation. While Vodafone had rejected judicial look-through in the absence of legislative mandate, the present judgment sanctions disregard of intermediary entities where the transaction, viewed holistically, effects a transfer of controlling interest in Indian assets. Artificial layering, the Court held, cannot be permitted to defeat source-based taxation. This marks the entrenchment of look-through taxation as a legitimate judicial tool in Indian international tax law.

The End Of The "Vodafone Model" Of Exit Structuring

In practical terms, the ruling closes the chapter on a transaction architecture that had become ubiquitous in Indian private equity and venture capital practice. Under this model, investments in India-centric enterprises were routed through holding companies in Mauritius, Cayman Islands, or similar jurisdictions, notwithstanding that founders, management, intellectual property, operations and markets were overwhelmingly located in India. Exits were effected by offshore share transfers, with gains booked abroad and exemption claimed under treaties on the strength of the situs of shares doctrine.

Although the Legislature sought to curb this model through the retrospective insertion of Explanation 5 to Section 9(1)(i) in 2012 and the introduction of GAAR with effect from 1 April 2017, judicial treatment of offshore exits remained largely influenced by Vodafone's formalism. The Tiger Global judgment represents the first authoritative consolidation of these statutory anti-

avoidance regimes into constitutional doctrine. By affirming look-through taxation, source attribution and treaty denial on grounds of abuse and principal purpose, the Court has rendered such form-driven exit structures juridically unsustainable. Offshore exits of India-centric businesses now face the combined operation of indirect transfer provisions, GAAR, principal purpose tests and substance-based scrutiny, firmly anchoring taxing rights to the location of value creation and control.

Conclusion: Not The End Of Structuring, But The End Of Illusion

The Tiger Global ruling does not signal the demise of international tax structuring; it marks the end of a jurisprudential illusion that permitted form to triumph over economic reality. The judgment establishes that structuring divorced from commercial substance, managerial control and genuine value creation can no longer command judicial protection merely by reason of formal compliance or jurisdictional routing. In its place, the Court has articulated a framework in which tax outcomes are aligned with business reality, strategic decision-making and market exploitation.

The future of cross-border tax planning in India will therefore belong not to artificial holding structures or passive booking centres, but to jurisdictions and platforms embodying governance, operational substance and intellectual ownership. Tax havens functioning solely as conduits will recede, while strategic hubs hosting management, investment committees, intellectual property and risk capital will flourish. In laying down this framework, the Supreme Court has articulated a guiding triad for Indian international tax law: tax follows value, not paper; treaties protect commerce, not contrivance; and sovereignty follows the market. India has thus firmly positioned itself not merely as a recipient of capital, but as a sovereign market jurisdiction within the emerging global tax order.

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Reference:

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