

AAR exempts Mauritius firm from capital gains tax

The Authority for Advance Rulings (AAR), an appellate body for ruling on tax issues, has ordered that a Mauritius-based company be given full benefits of the exemption in the Indo-Mauritius double taxation treaty as the new tax rules announced in the budget have not yet come into effect.

The taxpayer company, Dynamic India Fund I (DIF-I), a company incorporated in Mauritius, is a 100% subsidiary of Dynamic India Fund II (DIF-II), another company based in Mauritius which had invested in India. The company has made investments in India in units and shares of Indian companies.

The investment was for the purpose of generating long-term capital appreciation. The company, which intends to sell the shares acquired in 2007 and 2008, moved the AAR for ascertaining whether capital gains arising from these sales would attract the capital gains tax in India or not.

The Income Tax Department, which argued against giving treaty benefit to the tax payer company, pointed out that only four out of 55 investors — individuals plus institutions — in the company were from Mauritius. Therefore, the case could be treated as one solely designed for routing investments through Mauritius to evade tax on capital gains.

The AAR rejected the contention holding that the SC's decision in the case of Azadi Bachao Andolan should be applied in the case. The department further argued that only two directors of the company were from Mauritius while three others are from India and the major decisions were taken from India by the board of directors.

This contention, too, was rejected by the AAR, which held that on the basis of the papers presented by the company, three out of the five directors are from India.

The AAR took notice of the company's assertion that the decisions are taken by the board of directors from Mauritius and the control of the affairs of the company lies in Mauritius

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