

## ITAT: Validity of TRC sacrosanct, basis MLI provisions Luxembourg DTAA benefit allowable; Follows Tiger Global

Jan 08, 2025

SC Lowy P.I. (LUX) S.A.R.L. [TS-972-ITAT-2024(DEL)]

### Conclusion

Delhi ITAT grants the Assessee (SC Lowy, Luxembourg) to claim the benefits as per India-Luxembourg DTAA observing that the Assessee is not formed with the principal purpose to obtain benefit of the said DTAA; ITAT accepts Assessee's reliance on Delhi HC judgment in [Tiger Global](#) to hold that the Revenue is obliged to accept the TRC issued by the competent authority and if the facts satisfies the LOB conditions specified in the Article 29, it cannot stretch beyond the given mandates unless the Revenue bring on record any cogent and convincing evidences to prove the existence of Assessee being acted as conduit; Analyzing the MLI between India and Luxembourg, ITAT observes that benefit under the DTAA shall not be granted in respect of income or capital if it is reasonable to conclude that obtaining the DTAA benefit is one of the principal purposes of any arrangements or transaction that resulted directly or indirectly in that benefit; ITAT observes that the Assessee has submitted a valid TRC and the Revenue has not raised any flag on the validity of the TRC; Perusing the business model and the activities of the Assessee, ITAT notes that the Assessee is operating beyond Indian jurisdiction, has paid taxes in Luxembourg on its worldwide income, including income from investments in India and from other jurisdictions, has incurred substantial operational expenditure relating to investments in Luxembourg; This clearly shows that the Assessee controls the assets and income on its own, is not a conduit and the Revenue has not brought any cogent material on record to indicate that the Assessee in substance a conduit except expressing his views and presumptions; Further, states that as per directions in Tiger Global, Revenue cannot bring on record other conditions to deny the benefit under the treaty when the Assessee submits a relevant TRC and proves its existence from the date of its investment in the source country; Analyzing the Delhi HC judgment ITAT states that sanctity of TRC issued by competent authority is sacrosanct, holds that CBDT Circular No. 789 of 2000 even though issued for Mauritius transactions still holds good for other treaties, and the circumstances under which the *"Revenue could pierce the corporate veil of a TRC holding entity is restricted to extremely narrow circumstances of tax fraud, sham transactions, camouflaging of illegal activities and the complete absence of economic substance and the establishment of those charges would have to meet stringent and onerous standards of proof and required to base such conclusions on cogent and convincing evidence and not merely suspicion alone"*; Thus, allows Assessee's appeal.:ITAT DEL

### Decision Summary

The ruling was delivered by the Division Bench of Delhi ITAT comprising Shri Saktijit Dey, Vice President and Shri S. Rifaur Rahman, Accountant Member.

Senior Advocate Ajay Vohra appeared for the Assessee while the Revenue was represented by Vijay B. Vasanta, CIT DR.

### Case Law Information

#### Taxpayer Name

- SC Lowy P.I. (LUX) S.A.R.L.

#### Judicial Level & Location

- Income tax Appellate Tribunal Delhi

#### Appeal Number

- ITA No.3568/DEL/2023

**Date of Ruling**

- 2024-12-30

**Ruling in favour of**

- Assessee

**Section Reference Number**

- Article 29 of DTAA

**Nature of Issue**

- MLI
- Limitation of Benefits Clause

**Judges**

- Saktijit Dey, Vice President
- S. Rifaur Rahman, Accountant Member

**Counsel for Tax Payer**

- Mr. Ajay Vohra

**Counsel for Department**

- Vijay B Vasanta