

Supreme Court To Decide On Validity Of TRCs As Sufficient Proof To Claim DTAA Benefits

The Income Tax Act requires that benefits under a DTAA only be available to a non-resident that furnishes a valid TRC.

Varun Gakhar

05 Jan 2024, 05:17 PM IST



Foreign investors might be staring at uncertainties with respect to benefits under Double Taxation Avoidance Agreements, as the Supreme Court has issued a stay on the position that a valid Tax Residency Certificate is sufficient proof to claim tax benefits under a DTAA.

A TRC is a document issued by the contracting state that indicates the taxpayer's residency.

ADVERTISEMENT

PROPERTY SHARE

INVEST IN PRE-LEASED COMMERCIAL PROPERTIES

up to **10%** Rental Yield

7 yrs Tenant Lock-in

[View Properties](#)

The Income Tax Act requires that benefits under a DTAA only be available to a non-resident who furnishes a valid TRC, issued by a competent authority of the country of residence.

A year ago, the Delhi High Court reaffirmed the position that the Indian tax authorities can't go behind a valid tax residency certificate to deny capital gains tax exemption, as provided under the India-Singapore DTAA.

Setting aside a reassessment proceeding against Blackstone Capital Partners (Singapore) VI FDI Three Pte, the high court said that revenue authorities cannot question the sanctity of a valid tax residency certificate.



The Daily Newsletter

Once Every Afternoon

Enter Email ID

[Sign Up](#)

NDTV Profit

Now Available on TV

[All Shows](#)

MORE LIKE THIS



Income Tax: Supreme Court Stays Delhi High Court's Stance On DIN-Less Assessments



Here Are Five Key GST Rulings Of 2023



Experts had welcomed this ruling as it provided a lot of clarity regarding a valid TRC as sufficient proof to be eligible for the benefit under a DTAA.

The high court's reading of the India-Singapore DTAA was in line with the good faith principle of treaty interpretation. The underlying thrust of the ruling was on respecting the positions negotiated between the two countries without reading in conditions that aren't expressly provided for in a DTAA, Rahul Charkha, partner at ELP, told NDTV Profit.

At the time, the high court held that the entire attempt by the tax authorities to seek to question the TRC is wholly contrary to the government's repeated assurances to foreign investors that the TRC is sufficient evidence to show residence and beneficial interest/ownership.

ADVERTISEMENT



Access GPT-4, Claude, Bard and all the smartest AI brains in one free tool!

OPEN >

The high court's decision came on the shoulders of various CBDT circulars, press releases, legislative amendments and judicial pronouncements.

Experts believe that the top court's stance in granting a stay is surprising.

The stay will result in a complete halt in the enforcement of the Delhi High Court judgment. Unsettling this settled position would be against the basic principles of judicial consistency, Charkha said.

While legally the stay does not mean that the settled legal jurisprudence for availing tax treaty benefits is being reversed, it will only create uncertainty in the minds of foreign investors with respect to tax litigation in India, said Parul Jain, leader at Nishith Desai Associates.

ADVERTISEMENT