

TOPICS

> Supreme Court may admit Curative Petition on Indo-Mauritius Tax Treaty Ruling

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A curative petition, a plea under Articles 129 and 142 of the Constitution to curate an earlier order, has reportedly been filed in the Supreme Court against its ruling of October 7, 2003 in the matter of Union of India and Another v/s Azadi Bachao Andolan and Another.

In the instant case, it may be recalled that, the court (in a two member bench comprising of Justice Rumja Pal and Justice B. N. Srikrishna) had upheld the validity of the Central Board of Direct Taxes (CBDT) Circular 789, dated 13 April 2000, which stated that the tax residency certificate issued by the Mauritius tax authorities would constitute sufficient evidence as to residence and beneficial ownership in Mauritius for entitlement to benefits of the India-Mauritius Double Taxation Avoidance Agreement.

Mr. Shiv Kant Jha, a petitioner in the original public interest litigation, has reportedly filed the curative petition. The grounds being contented in the curative petition are in essence as follows:

- holding that the treaty, entered into by the Central Government in exercise of delegated powers, prevails over statute, goes against the Constitution;
- neither CBDT nor the Government can instruct the quasi-judicial tax authorities on how to decide a case; and
- the ruling has sanctioned treaty shopping, where an entity of a third country takes advantage of the treaty entered into between two other countries.

Earlier, the Supreme Court had dismissed a review petition filed in the matter. The present petition is before a five-member bench, given the mandate of looking into whether or not to admit the said petition. The bench is expected to give its decision by the end of the month. Mauritius.

>> Editorial Board

Editor in Chief :

Rajesh N. Begur
Managing Partner
A.R.A LAW
Advocates & Solicitors
E-mail : rajesh@aralaw.com

Contributors :

Shawn D'Aguiare

[TOP]

A.R.A. LAW - Advocates & Solicitors

Mumbai Office:

Agra Building, 1st Floor,
121, M. G. Road, Fort,
Mumbai - 400 023.
Tel: (+91 22) 2263 1700
Fax : (+91 22) 2263 1800
E-mail: mum@aralaw.com

Bangalore Office:

237, "Sumitra", 2nd C Cross,
1st Main, II Stage, Domlur,
Bangalore - 560 071.
Tel: (+91 80) 535 1619/535 3599
Telefax: (+91 80) 535 2708
Email: blr@aralaw.com

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