KPMG

Tax Flash News

21 April 2025

KPMG. Make the Difference.

Mutual fund units not equivalent to company shares for capital gains taxation under tax treaty

Executive summary

The India-Singapore tax treaty outlines the taxation rights over capital gains arising from the alienation of specific types of assets by a tax resident of Singapore. For instance, it allows India to tax capital gains arising from the alienation of shares in a company resident of India acquired on or after 1 April 2017. Gains from other property not specifically covered fall under the residual clause, granting exclusive taxing rights to Singapore.

A key area of debate has been whether units of mutual funds—such as equity-oriented schemes—should be considered equivalent to shares in a company, thereby making capital gains from their transfer taxable in India if acquired on or after the said date.

In *Anushka Sanjay Shah*[1], the Mumbai Bench of the Tribunal held that mutual fund units and company shares are distinct classes of securities. Therefore, capital gains arising from the transfer of the mutual fund units are covered under the residual clause, making them taxable only in Singapore.

[1] *Anushka Sanjay Shah v. ITO* (ITA No. 174/Mum/2025)

Case Background

The taxpayer, a Singapore tax resident, earned short-term capital gains from the transfer of units in both equity- and debt-oriented mutual funds in India. Apparently, these units were acquired on or after 1 April 2017. The taxpayer claimed exemption under the India-Singapore tax treaty.

The Revenue authorities denied this exemption, contending that mutual fund units are comparable to equity shares and the gains should be taxable in India. The taxpayer countered that mutual fund units are not equivalent to shares and thus are not taxable in India under the India-Singapore treaty.

Relevant Treaty Provisions

Article 13(4B): Grants India the right to tax gains arising from the alienation of shares in a company resident of India acquired on or after 1 April 2017.

Article 13(5): Capital gains from alienation of any property not covered by earlier clauses[2] shall be taxable only in the country of residence (i.e., Singapore in the instant case).

[2] such as immovable property, ship and aircraft, shares in a company resident of India etc.

Accordingly, in the instant case, if mutual fund units are deemed equivalent to shares, the gains are taxable in India; otherwise, they are taxable solely in Singapore..

Tribunal's Ruling

The Tribunal held that mutual fund units are distinct from company shares. As such, gains from their transfer are not taxable in India under the treaty.

The Tribunal relied on earlier decisions rendered in the context of other treaties, but the provisions in those treaties were similar to those under the India-Singapore treaty.

Judicial Precedents

Satish Beharilal[3]

This ruling was delivered in the context of the India-Switzerland tax treaty.

In this case, the Tribunal referred to the Supreme Court's judgment in *Apollo Tyres*[4], where the Revenue contended that, by virtue of Section 32 of the UTI Act, the Unit Trust of India (UTI) was deemed to be a company, and distributions made to unit holders were

[3] ITO v. *Satish Beharilal Raheja* [2013] 37 taxmann.com 296 (Mumbai – Trib.)

[4] *Apollo Tyres Ltd*. v. *CIT* [2002] 255 ITR 273 (SC)

treated as dividends. Based on this, the Revenue argued that UTI units should be treated as equivalent to company shares.

However, the Supreme Court held that such deeming provisions are confined to their specific legislative purpose and cannot be extended beyond their scope. It noted that the Income-tax Act, 1961 (the Act) does not contain any provision deeming mutual fund units as company shares. Therefore, UTI units could not be equated with shares.

Relying on this principle, the Tribunal in *Satish Beharilal* concluded that capital gains from the transfer of the mutual fund units were not taxable in India under the India-Switzerland tax treaty and were instead taxable only in Switzerland.

K.E. Faizal[5]

This decision was issued under the India-UAE tax treaty.

The Tribunal observed that the term 'share' was not defined in the treaty. Therefore, its meaning would have to be determined in accordance with the domestic law of the taxing jurisdiction.

As the Act does not define the term 'share,' reference was made to other Indian laws. Under section 2(84) of the Companies Act, 2013, a 'share' is defined to mean a share in the share capital of a company and includes stock. The definition of 'company' is restricted to entities incorporated under the Companies Act, 2013 or previous company laws.

Further, under the SEBI (Mutual Funds) Regulations, 1995, mutual funds in India are required to be set up as trusts and not companies. Consequently, units issued by such mutual funds do not qualify as 'shares' under the Companies Act.

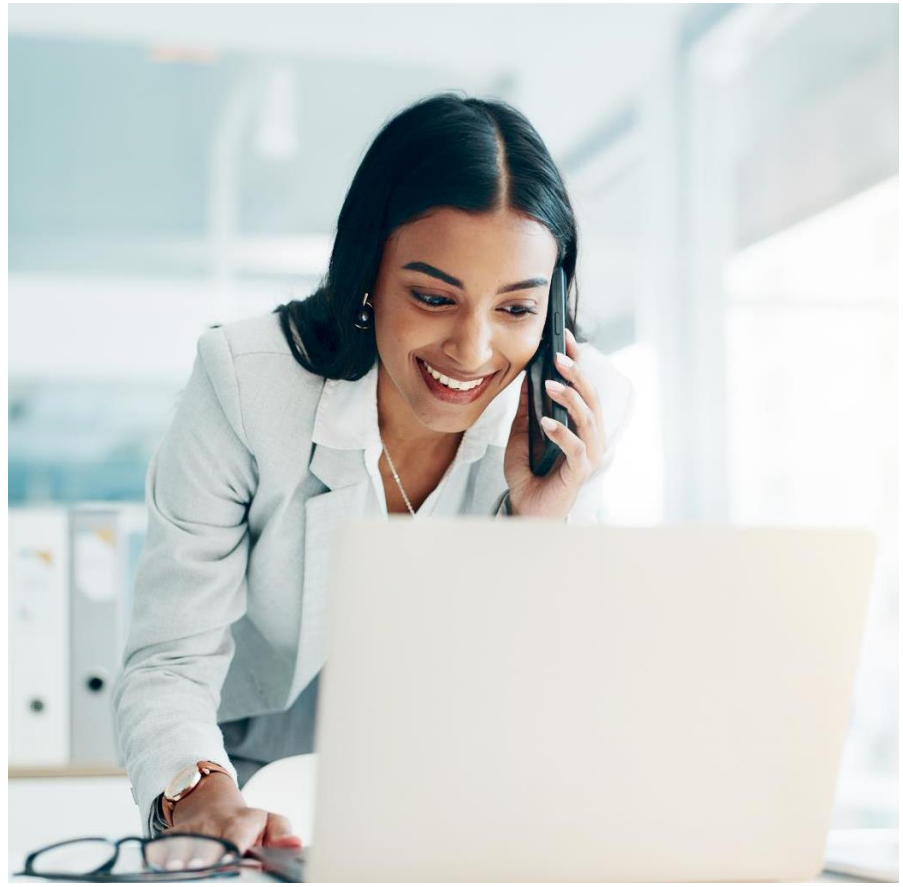
Additionally, the Securities Contracts (Regulation) Act, 1956 classifies various financial instruments as securities, including both shares and mutual fund units—indicating they are distinct forms of securities.

Based on this legal framework, the Tribunal held that shares and mutual fund units are different asset classes. Therefore, capital gains arising from the transfer of mutual fund units fall under the residual clause, making them not taxable in India, but only in the UAE under the India-UAE treaty.

[5] *DCIT* v. *K.E. Faizal* (2019) 178 ITD 383 (Coch – Trib.). *Also, Sanket Kanoi* v. *DCIT* (2024) 168 taxmann.com 418 (Delhi Trib)

Our comments

This decision reinforces the principle that tax treaty provisions must be interpreted based on their precise language, not inferred meanings. Taxpayers must assess the nature of financial instruments carefully before claiming the treaty benefits.



KPMG in India addresses:

Ahmedabad
Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Hyderabad
Salarpuria Knowledge City, 6th Floor, Unit 3,
Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Noida
Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar, Noida – 201 305.
Tel: +91 0120 386 8000

Bengaluru
Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road,
Bengaluru – 560071 Tel: +91 80 6833 5000

Jaipur
Regus Radiant Centre Pvt Ltd., Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Pune
9th floor, Business Plaza,
Westin Hotel Campus,
36/3-B, Koregaon Park Annex, Mundhwa Road,
Ghorpadi, Pune – 411 001.
Tel: +91 20 6747 7000

Chandigarh
SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Kochi
Syama Business Centre,
3rd Floor, NH By Pass Road, Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Chennai
KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Kolkata
Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
2nd Floor, Block T2 (B Wing),
Lodha Excellus, Apollo Mills Compound, N M
Joshi Marg, Mahalaxmi,
Mumbai- 400011 Tel: +91 22 3989 6000

Vadodara
Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club,
Vijayawada, Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

Gurugram
Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

kpmg.com/in

Follow us on:
kpmg.com/in/socialmedia

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000