

Any Investment by Dubai business not Taxable under India-UAE DTAA: Bombay High Court grants Relief to ADIA, quashes AAR Ruling

Fact of the Case

1. The ADIA is a public institution owned by and subject to the supervision of the Emirate of Abu Dhabi
2. Article 4 (2) (d) of the India-United Arab Emirates(UAE) Double Taxation Avoidance Agreement (DTAA) expressly provides that ADIA is a resident of UAE for the purposes of Article 4 thereof and, accordingly, ADIA is entitled to invoke the beneficial provisions of the India-UAE DTAA for the purpose of determining its tax liability in India
3. ADIA files its return of income in India, disclosing therein income that falls within the scope of Section 5 (2) of the Income Tax Act, 1961 but in view of the exemption available in terms of the India-UAE DTAA, reports NIL taxable income in the ROI. ADIA does not have any permanent establishment/fixed place of business or any other form of presence in India and does not have any business connection/operations in India.
4. The ADIA is challenging the order/ruling dated 18th March 2020 passed by AAR in the case of ADIA as well as Equity Trust (Jersey) Ltd. as the trustee, which is the petitioner in Writ Petition denying ADIA the benefit of India-UAE DTAA read with relevant provisions of the Act in respect of the income accruing on the investments made or proposed to be made by Green Maiden A 2013 Trust, which was established by ADIA and ETL as settlor and trustee, respectively.

Decision of the Case

1. The division bench of Justice KR Shriram and Justice Abhay Ahuja observed that “Even if, the trust is based out of Jersey and the trust is settled in Jersey, ADIA, being the settlor and sole beneficiary of the trust and a resident of the UAE as per the India-UAE DTAA, the income which arises to it by virtue of its investment in Indian Portfolio companies, will be governed by the beneficial provisions of the India-UAE DTAA.”
2. In a major relief for Abu Dhabi Investment Authority (ADIA), the Bombay High Court while quashing the Authority of Advance Ruling (AAR)has ruled that any investment made directly or through other trusts by any Dubai or Abu Dhabi business is not taxable under India-UAE Double Tax Avoidance Agreement (DTAA).