

# FIN-0-SCOPE

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## आयकर अपीलीय अधिकरण INCOMETAX APPELLATE TRIBUNAL MUMBAI

### "No Tax on Capital Gains for Singapore and Dubai Residents Holding Indian Mutual Funds: ITAT Ruling"

#### Background of the Case:

The assessee, Anushka Sanjay Shah, had invested directly in both equity-oriented and debt-oriented mutual funds in India, earning capital gains upon redemption. She sought relief under Article 13(5) of the India-Singapore Double Taxation Avoidance Agreement (DTAA), which stipulates that gains from the alienation of any property not specifically listed (such as shares or immovable property) shall be taxable only in the country of residence—in this case, Singapore.

### Top Trends

- ITAT Mumbai ruled in favor of the NRI assessee.
- Capital gains on Indian mutual funds not taxable in India for Singapore residents.
- Mutual fund units held to be different from "shares" under DTAA.
- Relief granted under Article 13(5) of the India-Singapore DTAA.
- Mutual fund units fall under the residuary clause, not Article 13(4).

# Top Trends

- AO and DRP had earlier taxed ₹1.35 crore of capital gains in India.
- ITAT relied on rulings like Satish Raheja and Sanket Kanoi.
- Indian mutual funds structured as trusts, not companies.
- Gains taxable only in country of residence—Singapore.
- Sets a precedent for similar DTAA's, like India-UAE.
- Short-term and long-term capital gains both covered.
- Beneficial for NRIs and foreign investors.
- May encourage more direct NRI investments in mutual funds.
- Promotes tax certainty for cross-border investors.

However, the assessing officer (AO) rejected this position, invoking Section 9(1)(i) of the Income Tax Act, 1961, which treats gains from assets substantially situated in India as taxable in India. The Dispute Resolution Panel (DRP) concurred with the AO, bringing the entire capital gains of ₹1.35 crore to tax in India.

## **Appeal to the ITAT:**

On appeal, the assessee relied on earlier decisions, including the landmark ruling in ITO vs. Satish Raheja and more recent decisions in K.E. Faizal (Cochin Tribunal) and Sanket Kanoi (Delhi Tribunal), which had held that mutual fund units are not considered "shares" under the relevant provisions of the respective DTAA's. These tribunals ruled that mutual fund units should fall under the residuary clause Article 13(5) of the DTAA and be taxed only in the country of residence.

## **ITAT's Ruling:**

The Mumbai ITAT reviewed the case, considering previous rulings and the specific characteristics of mutual fund units. It agreed with the assessee's position, concluding that mutual fund units are not "shares" as defined under Indian company law or securities regulations. Since Indian mutual funds are structured as trusts and not companies, their units cannot be equated with equity shares in a company.

The ITAT also pointed out that Article 13(4) of the DTAA specifically deals with shares in Indian companies, and mutual fund units do not fall under this category. Therefore, the tribunal held that the gains were not taxable in India and should instead be taxed only in Singapore, the country of the assessee's residence.

## **Implications for NRIs and Foreign Investors:**

This ruling is favorable for NRIs and foreign investors, particularly those from countries with similar DTAA's with India. The decision provides clarity and relief, ensuring that short-term capital gains from Indian mutual funds will not be taxed in India for NRIs residing in Singapore, the UAE, and other countries with similar tax treaties.

However, the ruling is not final, as it is subject to potential appeal by the revenue authorities. Additionally, there is no definitive ruling from the High Courts or Supreme Court on this matter, and future judicial forums or circulars from the Central Board of Direct Taxes (CBDT) could change the interpretation.

## Implications and Points to Consider

### Positive Outcomes for NRIs:

- This ruling may benefit NRIs investing in Indian mutual funds through countries like Singapore or UAE.
- It provides judicial clarity that MF units ≠ shares, and hence are protected under the residuary capital gains clause in DTAA's.

### Points to Exercise Caution:

- **Litigation Risk:** This is an ITAT-level ruling and could be challenged by the Department in the High Court or Supreme Court.
- **No Precedent Value for Others:** While persuasive, ITAT decisions are not binding precedents on other Tribunals or courts.
- **Fact-Specific Relief:** The judgment rests heavily on the factual matrix — i.e., the assessee's direct investment, no portfolio manager involved, etc.
- **Future Clarifications or CBDT Circulars:** The revenue authorities may issue clarifications or challenge this interpretation.

Here is the case law for more info read this give this:

[CASE LAW](#)

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# Top Trends

- Tribunal dismissed the application of Section 9(1)(i).
- Strengthens the distinction between shares and mutual fund units.
- UAE residents may also benefit due to similar treaty language.
- Could influence CBDT to issue clarifications.
- Relief applied to direct investments only—not via portfolio managers.
- Caution: ruling is not yet upheld by High Courts or Supreme Court.
- Department may challenge this ruling in higher courts.
- Fact-specific decision—results may vary case by case.
- Does not apply to countries without favorable DTAA's.
- May lead to increased treaty-based tax planning.
- Not a binding precedent, but persuasive for other tribunals.