**BEFORE THE AUTHORITY FOR ADVANCE RULINGS (INCOME TAX)**

**NEW DELHI**

**The 18th Day of July 2012**

**A.A.R. No.1016 of 2010**

**PRESENT**

Justice Mr. P.K.Balasubramanyan (Chairman)

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| Name & address of the applicant | Dynamic India Fund I,<br>IFS Court, TwentyEight,<br>Cybercity, Ebene,<br>Republic of Mauritius |
| Present for the applicant | Mr. P J Pardiwalla, Advocate<br>Ms V B Patel<br>Mr. Kalpesh Maroo<br>Mr. Abhishek Goenka, CA |
| Present for the Department | Mr. Somanath S Ukkali, DDIT C 1(1),<br>Bangalore |

**RULING**

The applicant, Dynamic India Fund I (DIF-I), a company incorporated in Mauritius is a 100 percent subsidiary of Dynamic India Fund II (DIF-II), another company based in Mauritius. According to the applicant, the applicant company was set up to invest in growing sectors in India. The funds required for investments in India are pooled from various individual and institutional investors from different parts of the world by DIF-II and invested as capital into DIF-I, the applicant. The said funds are invested in India by the applicant.

2. The applicant has a Tax Residency Certificate from Mauritius valid upto 14-7-2011. Its validity has since been extended till 14.7.2012. It is registered as a Foreign Venture Capital Investor. It has obtained on 17-9-2004, a license from the Securities Exchange Board of India (SEBI). It does not have a permanent establishment in India.

3. The applicant has made investments in India in units. It has also made investments in shares of Indian companies. The shares have been held with the intention of generating long term capital appreciation. The expenditure is shown as investments in the books of accounts. The shares were acquired in the years 2007 and 2008.

4. The applicant proposes to sell the shares of some of the companies. The sales would generate capital gains. It is seeking an advance ruling on the taxability in India arising out of the sale of the shares it holds in Ranbaxy Fine Chemicals Limited.

5. The applicant submits that being a tax-resident of Mauritius, it is entitled to claim the benefit of the India-Mauritius Double Taxation Avoidance Convention (DTAC) by virtue of section 90(2) of the Income-tax Act. Article 13 of the DTAC would govern such a transaction and under paragraph 4 of that Article, the capital gain that may arise would be taxable only in Mauritius and not in India. On behalf of the applicant the decision in Union of India vs. Azadi Bachao Anodolan (263 ITR 706) is relied on.

6. On behalf of the Revenue, it is contended that the entertaining of the application for a ruling was barred by clause (i) of the proviso to section 245R(2) of the Act. No such objection was raised when this Authority heard the application under section 245R(2) of the Act and allowed the application for a ruling. Moreover, the ruling is sought on a proposed transaction of sale and I do not find any reason to entertain this objection at this stage.

7. It was then contended that only 4 out of 55 investors (individuals plus institutions) were from Mauritius and that this was a case of routing the investments by the investors through Mauritius so as to evade taxation on the capital gains that they would make and such an attempt should not be allowed to succeed. This is really a scheme for avoidance of tax in India. On the materials now available, it is not possible to accept this contention in view of the decision in Union of India vs. Azadi Bachao Andolan.

8. It was then contended that only two of the Directors of the applicant were from Mauritius and the three others were from India and decisions were taken from India by the Board of Directors. There is no adequate material to support this contention, though it is seen that three out of the five directors of the company are from India. The applicant has produced a list along with the written submissions dated 16.7.2012 to show that two of the Directors are residents of Mauritius, one a resident of India and one though an Indian, a resident of the United States of America. The applicant has asserted that the decisions are taken by the Board of Directors from Mauritius and the control of the affairs of the company lies in Mauritius. In this state of facts, it is not possible to accept the contention of the Revenue that the control of the applicant lies in India.

9. The argument that unless the capital gain is actually taxed in Mauritius the DTAC would not apply in the context of section 90(1) and section 90(2) of the Act, though attractive, cannot be entertained in view of the decision in Union of India vs. Azadi Bachao Andolan. Even though capital gain is not actually taxed in Mauritius, the question raised is seen to be concluded by the decision in Union of India vs. Azadi

Bachao Andolan. If it wants to, it is for the revenue to canvass the question before the Supreme Court. This Authority is bound by that decision.

10. Here, the assets proposed to be transferred come under paragraph 4 of Article 13 of the DTAC between India and Mauritius. The applicant being a tax resident of Mauritius in the light of the tax residency certificate produced by it, going by the decision in Union of India vs. Azadi Bachao Andolan, it has to be held that the gain that may arise to the applicant is not chargeable to tax in India.

11. Since chapter X-A introduced into the Act by the Finance Act 2012 is to come into force only on 1.4.2013, section 90 (2A) of the Act has no relevance at this stage. Same is the position regarding section 90 (4) of the Act introduced. As and when they come into force, it will be open to the revenue to consider those aspects; notwithstanding this ruling.

12. I, therefore, rule on question number 1, that the capital gains from the proposed sale of shares is not chargeable to tax in India in view of paragraph 4 of Article 13 of the India-Mauritius DTAC and on question number 2 that the buyer of the shares has no obligation to withhold taxes under section 195 of the Income-tax Act.

Accordingly ruling is pronounced on this 18th day of July, 2012.

**(P.K.Balasubramanyan)**
**Chairman**