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International Association of Tax Judges Webinar: Tax Procedures and Landmark International Case Law in India

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This report summarizes the webinar held on 9 April 2021 by the judges of the International Association of Tax Judges on the topic of tax procedures and landmark international case law in India.

1. Introduction

As a result of the COVID-19 pandemic, the International Association of Tax Judges (IATJ) suspended its annual assembly in 2020 and 2021. Instead, the judges are holding a series of webinars. The third webinar, on the topic of "Tax Procedures and Landmark International Case Law in India", took place on 9 April 2021.

Philippe Martin *Conseil d'Etat* (Supreme Administrative Court, CE), France, acted as the moderator of the webinar. The webinar contained presentations by the following panellists: Vineet Kothari, Gujarat High Court (GHC), India; Bhargav D. Karia, GHC, India; and Pramod Kumar, Income Tax Appellate Tribunal (ITAT), India.

Martin introduced the topic by referring to the importance of tax case law in India, the biggest democracy in the world. Given the size of the Indian economy and the amount of foreign investment and its embrace of modern technologies, the volume of tax litigation in India is very large. Such litigation often includes decisions on international tax topics that are of great relevance for other jurisdictions and of interest to all tax judges around the world.

The session took place in the form of an interview in which the panellists responded to questions on three topics. The first topic covered the wide range of dispute resolution procedures, both judicial and non-judicial, set up in India to deal with tax disputes (*see* section 2.). Second, the panellists focused on the large number of cases before the Indian courts, and the ways in which the Indian court system deals with this vast caseload (*see* section 3.). Third, the panellists considered some specific aspects of international tax litigation in India, including an overview of some of the most significant cases (*see* section 4.).

2. Topic 1: India's Wide Range of Dispute Resolution Procedures

2.1. Non-judicial mechanisms

Pramod Kumar started by presenting the tax dispute appellate hierarchy set out under the Indian Income Tax Act (ITA) 1961.[1] The hierarchy explains on which forum the litigation takes place. When a taxpayer has filed an income tax return, unless the taxpayer has a history of litigation, there is an 80% chance that the return will be accepted without a tax audit. If the tax return is picked up for further scrutiny, i.e. an audit, the matter goes to the assessing officer, a first level officer, who can have the assistance of a transfer pricing officer if needed, and who issues a draft assessment order. If the taxpayer does not agree with the draft order, he or she can raise objections before a dispute resolution panel (DRP). The panel consists of three officers of the income tax department. Alternatively, the taxpayer can also opt to go via the Commissioner of Income Tax (Appeals), which is the first appellate authority.

Regardless of the avenue chosen at the first level, the matter then comes before the ITAT, the second appellate authority, which is the final fact-finding authority as far as the ITA 1961 is concerned. The ITAT is an independent body and, although, strictly speaking, it is not a judicial forum, the ITAT is also not part of the tax administration. It is composed of two members. One member is an accountant who comes from the income tax department, while the other member has a judicial background, for example, with the High Court (HC) or a subordinated judicial authority. The ITAT has some 70 members working all over the country, which is divided in several zones.

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1. IN: Income Tax Act (ITA) 1961, Primary Sources IBFD.

Another non-judicial mechanism of relevance is the Authority for Advance Rulings (AAR) (now called the Board for Advance Rulings, BAR). The AAR is a forum that can be approached by a non-resident taxpayer seeking a ruling with respect to a transaction that he or she is about to undertake or has already undertaken but without it already pending before the income tax authorities. The AAR is not open to transfer pricing matters, but it does hear cases in relation to the recently introduced general anti-avoidance rule (GAAR). Transfer pricing matters have their own pre-emptive mechanism in the form of the advance pricing agreement (APA). The APA programme has been in place for the last nine years and is very popular. It allows the taxpayer to enter into an agreement with the tax authorities on the arm's length price of a transaction, which can be rolled back for five years and applied forward for four years.

2.2. Judicial mechanisms

Vineet Kothari presented the judicial system for tax cases in India, which consists of three tiers. The first tier is the ITAT, which is semi-judicial, and acts as the final fact-finding body. The ITAT also has the power to interpret the law, including tax treaty provisions.

The HCs form the second tier. They can decide appeals against ITAT orders on questions of law. The HCs are bound by the facts found by the ITAT, unless such findings are perverse or without evidentiary base. There are 25 HCs in India employing 700 active judges (with 400 vacancies at the moment). The HCs are general courts of law. Tax cases represent a comparatively small portion of the case load of HCs, in addition to other civil and criminal law matters.

Appeals against the judgments of the HCs lie with the Supreme Court of India (SCI). This is the highest court in the land, and decides all questions of facts and law as the final instance. The SCI is located in New Delhi, and comprises around 30 judges.

Only about 5% to 10% of tax litigation ends up at the second tier and beyond. Nevertheless, the HCs and the SCI have been able to give some very relevant landmark judgments that, inter alia, relate to international taxation matters.

Philippe Martin, as moderator, then submitted the following questions to the panellists on the topic.

Question 1: Are the AAR and DRPs seen as effective in preventing litigation before courts? Do courts take into account the doctrine and opinions of the AAR and DRPs?

Bhargav Karia said he believed that this depended on the individual case. In the past, the courts have affirmed several rulings delivered by the AAR. For instance, in *Linde Engineering* (2014),[2] the High Court of Delhi (HCD) affirmed the ruling of the AAR in *M/S Hyundai Rotem* (2012),[3] in holding that, for a group of companies to be treated as an association of persons for taxation purpose, the companies must pursue a common purpose through a common action by a joint management.

Similarly, the courts have also urged the AAR not to deviate from its own rulings, when a query with a similar set of facts arises. In *Columbia Sportswear* (2012),[4] the SCI held that AAR rulings do not apply to future rulings. However, the same rulings can be considered for application in the case of similar facts.

Question 2: Will the shift in the constitution of the AAR, which will now be the BAR, impact the nature of the advance ruling mechanism?

Vineet Kothari stated that data on AAR rulings suggested that they had gained popularity among taxpayers only during the last decade. From the AAR's inception in 1992 until 2009, the number of applications received annually remained below 100. It was only from the tax year 2010-11 onwards that the number of applications surged. In the tax year 2011-12, the highest number was recorded, with approximately 240 applications. In subsequent years, the number went down a little.

However, the rate of effective disposal of the applications before the AAR has been low in recent years. In the past four years, only 10% of the inventory was disposed of annually. Even though the law requires the AAR to deliver rulings within six months, in reality, it was taking between two to three years for applications to be disposed.

These delays drastically affected the efficacy of the AAR. For this reason, the new BAR was introduced in April 2021 by the Finance Act (FA) 2021.[5] The BAR deals with smaller cases of international taxation up to a limit of INR 50 lakh (approximately, USD 60,000) of the returned income. Responsibility for appeals against the orders of the BAR lies with the HCs. All of this is to speed up the process in respect of advance rulings.

Pramod Kumar added that AAR rulings are all published and accessible online. He also stated that the rulings reach a broad audience, not just in India but also internationally. Kumar referred to the paradigm shift in respect of the new BAR, which is no

2. *See* the decision of the High Court (New Delhi) (HC(ND)) in IN: HC(ND), 23 Apr. 2014, *Linde Ag v. Deputy Director of Income Tax*, W.P. (C) NO. 3914/2012 & CM No. 8187/2012, Case Law IBFD.
3. IN: AAR, 20 Mar. 2012, *M/S Hyundai Rotem*, AAR/962/2010.
4. IN: SCI, 30 July 2012, *Columbia Sportswear Company v. DIT*, Special Leave Petition No. 3318 of 2018, Case Law IBFD.
5. IN: Finance Act (FA) 2021.

longer hosted by a member of the judiciary. The BAR only has two members, both from the Indian Revenue Service and its decisions are appealable. Accordingly, the decisions are not “final”, as with those of the AAR, which are binding on both the applicant and the tax authorities.

Question 3: Will the introduction of the Dispute Resolution Committee (DRC) by the FA 2021 impact the resolution of international tax disputes as well?

Pramod Kumar observed that the DRC had been established by the FA (2021) as a dispute resolution venue for very small cases (those involving less than INR 0.5 million in tax, which is about USD 7,000). The low amount implies that the DRC will not be of great significance for international tax dispute resolution. However, Kumar said he believed that the introduction of the DRC was an experimental venture, and that the scope of cases eligible for resolution will be widened in the future, thereby also affecting international cases. One of the most unique features of the DRC is that its decisions give a certain finality. The decisions are non-appealable, as the DRC is by its nature a conciliation forum, not a judicial forum. The DRC represents a new trend in the Indian tax dispute resolution policy whereby conciliation forums are introduced with the purpose of reducing the burden on the judicial system.

Question 4: Advance Pricing Mechanisms and Mutual Agreement Procedures (MAPs): Are they seen as effectively preventing litigation? Do they influence the legal reasoning held by courts on transfer pricing and tax treaty issues?

Pramod Kumar said he believed that APAs, which aimed to avoid disputes on the arm’s length pricing of international transactions, did bring certainty to the process, thereby reducing or preventing litigation. Kumar referred to the FA 2020,[6] which had extended the applicability of the APA regime to also cover the determination of the income attributable to a business connection or a permanent establishment (PE) of a non-resident in India.

With regard to MAPs, Kumar noted that these are procedures between the competent authorities of treaty states. MAPs undoubtedly reduce the burden on the judicial process. But MAP rulings are not in the public domain, and there is no participation by the taxpayer. For the judiciary, it is very useful to consult the APAs and the MAPs to the extent the latter are available, given that these give a good insight into the principles on which the issues are decided and the justification on which the decisions are based. It is also good to remember that APAs and MAPs are decided by the relevant domain’s experts, and that their expert analyses are a reasonable source of influence and respect on the part of the judiciary.

Vineet Kothari added that the SCI has recently directed Parliament to draft a new mediation law for all civil matters, including tax matters. The entirety of civil law disputes will be covered by this mediation law. Mediation essentially is the settlement of a dispute between parties by mutual agreement. So, there is a new method in sight in India, under which conciliation, mutual agreements and advance agreements will become prominent, which should reduce litigation in tax and other civil matters significantly. These developments aim to improve the ease of doing business in India, and even the ease of living, as some have called it.

Question 5: How do you see the faceless assessment and appellate system being extended to the ITAT as well and how could it change the judicial mechanism in the future?

Vineet Kothari observed that faceless tax assessments have been taking place in India for a year or so. The system was introduced to increase efficiency, transparency and accountability in the whole assessment procedure. The purpose was essentially to introduce objectivity into the system in the sense that the taxpayer does not know who is assessing them. Correspondence with the tax authorities occurs without identification of the government official, which means that regional officers are not bound by territorial competence restrictions. Faceless assessments evidently also help in countering corruption, as there is no interaction between taxpayer and an individual assessment officer.

Given that the faceless assessment system worked well for assessments, the FA 2021 has extended the system to the ITAT, for the same reasons that drove the introduction of faceless procedures in the assessment process. At the level of the ITAT, faceless procedures also allow for the more efficient utilization of the tribunal’s resources, given that blind procedures permit specialization and the efficient spreading of the workloads. The introduction of the system at the level of the ITAT is at an experimental phase. Only in a year or two will feedback from international businesses make clear whether the system has worked out well. Kothari said he believed that the system will turn out to be very effective. Pramod Kumar was not so sure. He said he believed faceless assessments were one thing, but judicial adjudication is altogether a different matter. Procedures that work well at the assessment level are not necessarily equally beneficial at the appellate level. Furthermore, at the moment, it is not clear what format, scheme or technologies will be used for faceless ITAT proceedings. But there is time. Until 2023, the system will operate in a trial phase. Kumar also noted that transfer pricing was not covered by the new regime. As such, at the moment, for international taxpayers, this new development was not very relevant, but that too could change in the future.

6. IN: FA 2020.

Kumar did believe that even if the actual implementation of the scheme is far away, developments like these demonstrate India's proactive stance and commitment to constantly improving its business climate.

3. Topic 2: Judicial Dispute Resolution in India

Question 1: How many tax cases are there in India?

Bhargav Karia provided that, according to the most recent data available, there are approximately 65,920 income tax appeals pending before the ITAT, while around 50,845 tax cases are pending before the various HCs in India. Of this case inventory, 11% has been pending for less than a year and 31% has been pending for between one and three years. However, about 40% of the cases have been pending for between 4 to 20 years, which shows that there is a significant backlog.

With regard to cases dealing with international tax matters, estimates are that approximately 4,000 of the cases pending before the ITAT have a cross-border dimension. Before the HCs and the SCI, these numbers are believed to be around 720 and 500, respectively. It is important to note that these numbers do not include transfer pricing cases. Philippe Martin observed that the caseload of international disputes pending before the SCI is of a remarkable dimension that is unseen in the highest court of any other jurisdiction. The high number might be explained by the fact that the SCI decides both on law and on facts, which is quite unusual for a highest court. The number also shows how the SCI has a very important role to play in giving direction to tax jurisprudence in India.

Pramod Kumar said he believed the figure of 500 might very well be a gross underestimation of the real number of international tax cases pending before the SCI. The numbers are not that out of the ordinary if the total number of income tax returns that are filed in India per year are taken into account.

Question 2: Which are the most common kinds of international tax disputes before various forums?

Pramod Kumar responded that, before the ITAT, most international tax disputes concern issues such as the identification of and profit attribution to PEs, income qualification for treaty purposes (especially in the case of royalties), treaty entitlement issues, non-discrimination and entitlement to foreign tax credits. Cases regarding the identification of the so-called "business connection to India" are quite unique in relation to Indian tax disputes. Indian domestic tax laws state that all the income generated or arising in India, regardless of whether it is directly or indirectly earned through or from any business connection in India, should be deemed to accrue or arise in India itself. With regard to the transfer pricing disputes, a large number of cases deal with the selection of appropriate comparables for the determination of the arm's length price of a transaction.

Vineet Kothari added that, before the HCs and the SCI, there are also quite a large number of international cases that deal with issues of treaty override or the interpretation of domestic law. This situation is explained by the fact that section 90 of the ITA 1961 provides that tax treaties override domestic tax law provisions, but that taxpayers are entitled to the benefit of domestic tax law provisions if these are more beneficial than the treaty provisions. Kothari also observed that the question of transfer pricing comparables and method selection are regarded by some HCs as questions of law, whereas other HCs view these as questions of fact. In *Softbrands* (2018),[7] a landmark case decided by the Karnataka High Court (KHC), Kothari himself delivered the decision in which it was held that the exercise of the determination of the arm's length price in respect of an adjustment should be in the hands of the final fact-finding body, i.e. the ITAT, as these were not substantial questions of law within the sense of section 260-A of the ITA 1961. Appeals to the HCs only lie on the substantial questions of law. In Kothari's opinion, which is also reflected in the KHC decision, substantial questions of law are questions that require the interpretation of domestic law or tax treaties, and which have not been decided by the SCI. Only in the case of a perverse result or a lack of factual grounds or evidence should the HC be hearing questions on transfer pricing methods and comparables. Kothari said he believed this decision set a precedent that has prevented a large number of cases from being granted appeal to the HCs.

Question 3: Do you think there is any frivolous litigation before your court, do you make any efforts to disincentivize such litigation and what are the systematic reforms, if any, in this direction?

Bhargav Karia said he believed the *Softbrands (2018)* case referred to previously in Question 2 was a good illustration of how the judiciary can fend off frivolous litigation. This action is carried out simply by only allowing matters pertaining to substantial questions of law to be entertained by the higher judiciary.

Another tool to counter frivolous litigation is the imposition of costs on the taxpayer losing the appeal. In addition, in 2019, the government of India set up new monetary thresholds to bring cases before the judicial fora. For instance, for the HCs, the monetary threshold is set at a tax effect of INR 1 crore (approximately USD 160,000). Cases with less tax at stake are dismissed. Before the SCI, the threshold has been set at INR 2 crores (approximately USD 320,000). At the ITAT, the threshold has been raised from INR 20 lakh to INR 50 lakh (from approximately USD 24,000 to USD 60,000).

7. IN: KHC, 25 June 2018, *PCIT v. Softbrands India P. Ltd. v. Pr. CIT*, I.T.A. No. 536/2015, Case Law IBFD.

Vineet Kothari added that, when these new thresholds were introduced, the Central Board of Direct Taxes proposed in an internal notice to the tax authorities to withdraw all current appeals pending before the tax courts with tax in question below the new thresholds. This action has significantly reduced the inventory of pending cases. The questions of law raised in these withdrawn appeals remain open, and, in the future, will be decided in cases with higher monetary stakes. Another measure to expedite outstanding cases is the compiling of cases on similar matters with similar factual patterns.

Pramod Kumar observed that monetary thresholds were one step against frivolous tax litigation. Another important step is the government's policy guidelines directed at the tax authorities to only litigate when it is absolutely necessary. The government has also devised the so-called "*Vivad se Vishwas*" ("No dispute but confidence") scheme, under which taxpayers who infringed the tax laws but did so by relying in good faith on bad tax advice are given the opportunity to pay the tax without penalty so that prosecution and litigation is stopped.

Karia concluded that these and other measures are taken to reduce frivolous litigation at the ITAT and the other judicial fora. This move should significantly reduce the pending time of the outstanding tax cases, thereby increasing the ease of doing business in India.

Question 4: Given the sheer volume of Indian tax jurisprudence, how is the consistency of tax case law ensured? Are all tax decisions published?

Bhargav Karia said he believed that consistency of tax case law in India is ensured by a number of features inherent to the Indian legal system, such as the strict following of precedents whenever applicable in relation to the given facts. If there is any deviation from the precedents, the same is usually discouraged by the higher court. Furthermore, there is also adherence to the decisions rendered by the coordinated benches of the same court level to limit contradictory decisions on the same point of law by different benches of the same judicial forum. Accordingly, consistency is ensured across courts both in a vertical and in a horizontal manner.

Vineet Kothari added that, where the coordinated benches or different HCs adopt differing decisions on the same point of law, it is important that the deviating forum assigns good and cogent reasons to support the deviation. However, the SCI has consistently said that it is a matter of judicial discipline for lower authorities to follow the jurisdictional HC, and other HCs outside their state. In very rare cases where the binding precedent rule is not followed by a lower court, the higher court might even invoke contempt of court, not to punish the lower magistrate but to give a strong signal that the consistency of the judicial system is of great importance.

Pramod Kumar did not fully concur on the point of horizontal judicial discipline. In his own experience at the ITAT in Mumbai, strong signals were received from the local HC to adhere to the local HC's precedents, and not to attribute too much importance to decisions given on the same legal questions by other HCs. Kumar admitted that this was a controversial issue.

With regard to the publication of decisions, Kumar noted that every decision given by the ITAT is published online[8] on the day of the decision or within two days. Many private publishers make a living out of summarizing and dispersing ITAT decisions. There is no marking by the ITAT of decisions as to which are of higher relevance than others. Kumar said he believed that every decision is potentially relevant. It is the audience that will decide which decisions will be read.

Kothari stated that, before the HCs, decisions were still marked as reportable or not reportable. All decisions are uploaded to digital databases, but those marked as reportable are available to third-party publishers free of cost. The publishers decide the priority of the decisions that are to be published or annotated. Accordingly, the editors of the law journals have an important role in this regard to make the public swiftly aware of relevant new decisions. SCI decisions are obviously rarer, especially those on important questions of law. These decisions are published in the official journal of the SCC as well as by multiple publishers. Sometimes, these decisions are also circulated internally to the lower courts to make these courts aware of a relevant decision of the SCI.

4. Topic 3: Significant International Tax Litigation in India

Philippe Martin introduced the topic by referring to the extraordinary nature of international tax litigation. International tax cases tend to be both very complex, and, therefore, represent a challenge to courts in arriving at a good decision and the subject of much international attention. Accordingly, courts better come prepared, as their international tax decisions are often scrutinized by many people worldwide.

Question 1: Are some judges specialized in international tax?

8. *See* the website of the ITAT at https://itat.gov.in/ (accessed 28 Sept. 2021).

Vineet Kothari indicated that there was no specialization that has been prescribed by the Indian Constitution at the level of the HCs and the SCI. In practice, however, the collegium system, which is used to appoint judges to the nation's constitutional courts, permits taking into consideration a candidate's background when making an appointment to a bench. If many tax disputes arise in a jurisdiction and the court lacks tax expertise, a candidate with a tax background will be selected.

At the ITAT, the members are appointed from the following three sources: (i) the judiciary; (ii) the Income Tax Department; and (iii) tax lawyers and accountants. Consequently, the members of the ITAT already come from a specialized pool of individuals. Following their appointment as a member of the ITAT, specialization is acquired on the job in dealing with similar types of international tax cases.

Pramod Kumar added that, at the ITAT, the individual benches tend to be specialized. In Mumbai, for example, the ITAT has 11 benches. Only one of these benches hears international tax cases. Two benches only hear transfer pricing cases. The individuals that are on these benches have had great exposure to international taxation matters, through which they develop a thorough understanding of this field of law.

Question 2: Is there a standardization of principles of tax treaty interpretation in India?

Bhargav Karia said he believed that there is standardization, created by the rule of binding precedent and the practice of horizontal judicial discipline. In practice, there is divergence, however.

For instance, in *Siemens* (2009),[9] the High Court (Mumbai) (HCM) upheld the ambulatory interpretation approach in the application of the treaty interpretation rule based on article 3(2) of the OECD Model.[10] In other words, undefined terms have the meaning they have under domestic law when the tax treaty is applied and not when the tax treaty was signed.

In *Reliance Jio Infocomm* (2019),[11] the ITAT held that, with regard to treaty interpretation by way of reference to domestic law and not the issue of static or dynamic interpretation that was key, it was held that what is determinative is what the context requires. Context, according to article 31 of the Vienna Convention on the Law of Treaties (1969),[12] is the greater controlling factor. In the case in question, the relevant legal provision had been amended retroactively. Given that tax treaties are to be performed in good faith, the ITAT held that the domestic law meaning in question had to be ignored, and that the static interpretational method had to be applied instead.

Question 3: How often do you think foreign decisions get cited before you and how often are these decisions reflected in your decision making?

Pramod Kumar noted that, in ITAT decisions on international tax matters, reference to foreign jurisprudence is not uncommon. Especially English, Canadian and, to a lesser extent, Australian decisions are often cited. For instance, in a *Bank of India* (2021),[13] an ITAT decision authored by Kumar in March 2021, extensive reference is made to the decision of the UK First-Tier Tribunal (FTT) in *Paul Weiser* (2012).[14] Kumar was happy to note that many decisions outside India were also citing ITAT decisions.

Philippe Martin asked whether the Indian courts would also consider decisions rendered in languages other than English or in civil law countries. Kumar admitted that it is mostly decisions in common law countries that are considered. However, as international tax case digests are reporting more and more non-English cases, the Indian judges also try to pick up, in an indirect way, as much as possible from these decisions, where they are relevant.

Question 4: Which past or current cases do you see as milestones in India's international tax jurisprudence and why?

Bhargav Karia referred to *Engineer Analysis of Excellence* (2021),[15] a recent SCI case on the qualification of software royalties, and more specifically the question of whether the payments to foreign companies by Indian companies for the use and/or purchase of foreign software were subject to tax in India as royalty payments, and whether withholding tax could be applied for the use or purchase of software from foreign software suppliers. The SCI held that payment for using foreign software did not amount to royalties, which are taxable in India. Accordingly, the amounts paid by resident Indian end-users and/or distributors to non-resident computer software manufacturers and/or suppliers, is not payment of a royalty for the use of copyright in the computer software. Consequently, these payments do not give rise to any income liability in India, as a result of which the persons referred to in section 195 of the ITA 1961 are required to deduct and/or withhold tax in India while making such payments. No withholding tax is due on payments for the purchase of software from foreign software suppliers. The SCI

9. IN: HCM, 19 Nov. 2008, *Siemens Aktiongesellschaft v. CIT*, IT Reference No. 251 of 1988, Case Law IBFD.
10. Most recently, *OECD Model Tax Convention on Income and on Capital* (21 Nov. 2017), Treaties & Models IBFD.
11. IN: ITAT, 10 May 2019, *Reliance Jio Infocomm Ltd. v. DCIT*, ITA No. 936/Mum/2017, Case Law IBFD.
12. *UN Vienna Convention on the Law of Treaties* (23 May 1969), Treaties & Models IBFD.
13. IN: ITAT, 4 Mar. 2021, *Bank of India v. Asst.*, CIT, ITA No. 869/Mum/2018, Case Law IBFD.
14. UK: FTT (Tax Chamber), 10 Aug. 2012, *Paul Weiser v. Commissioners for Her Majesty's Revenue and Customs*, TC/2010/3902, Case Law IBFD.
15. IN: SC, 2 Mar. 2021, *Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax*, 2021 SCC 159.

cited the definition of royalties in article 12 of the relevant tax treaty but held that there was no obligation to withhold tax under domestic law, as in the case at hand the relevant distribution agreements and/or end-user licence agreements did not give rise to any interest or right in respect of such distributors and/or end-users, which would amount to the use of or right to use any copyright. Karia said he believed that this decision would greatly benefit software firms because it should reduce the cost of software purchases for Indian firms, as the overseas sellers may choose to lower prices.

A second pivotal case referred to by Bhargav Karia was *Azadi Bachao Andolan* (2003),[16] the world-famous case on treaty shopping decided by the SCI with reference to the India-Mauritius Income Tax Treaty (1982).[17] The specific question considered by the SCI in this case was whether domestic law anti-abuse rules prevail over treaty rules.

Philippe Martin concluded this section by noting that the recent software case of *Engineering Analysis Centre of Excellence* would be relevant not only in India, but also for courts in other countries that are dealing with outbound payments for software.

5. Final Remarks

The webinar was closed by Chief Justice Eugene Rossiter of the Tax Court of Canada and President of the IATJ.

16. IN: SCI, 7 Oct. 2003, *Union of India and another v. Azadi Bachao Andolan*, 2003-(263)-ITR -0706-SC, Case Law IBFD.
17. *Convention between the Government of the Republic of India and the Government of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains* (24 Aug. 1982), Treaties & Models IBFD.