



Gaar After Eight Years: A Study of Judicial and Advance-Ruling Treatment of “Commercial Substance” Under Chapter X-A of the Income-Tax Act, 1961

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ABSTRACT

The General Anti-Avoidance Rule (hereinafter “GAAR”), codified in Chapter X-A of the Income-tax Act, 1961 and operative since assessment year 2018-19, was designed to arm Indian tax authorities with a general, principles-based power to disregard arrangements that lack commercial substance¹. Eight years into its operation, the concept of “commercial substance” remains the single most contested element of the regime: it is simultaneously the gateway through which an arrangement is classified as an “impermissible avoidance arrangement” and the concept least susceptible of precise definition. This paper traces the doctrinal lineage of commercial substance from the pre-codification “Judicial Anti-Avoidance Rules” (JAAR) developed in *McDowell & Co Ltd v Commercial Tax Officer*² and refined in *Union of India v Azadi Bachao Andolan*³ and *Vodafone International Holdings BV v Union of India*⁴, through its statutory crystallisation in sections 96 and 97, to its recent judicial application in the Telangana High Court’s twin rulings in *Ayodhya Rami Reddy Alla v Principal Commissioner of Income Tax*⁵ and *Smt Anvida Bandi v Deputy Commissioner of Income Tax*⁶, and, most significantly, in the Supreme Court’s landmark 2026 decision in *Authority for Advance Rulings (Income Tax) v Tiger Global International II Holdings*⁷. The paper argues that, despite the statutory attempt in section 97 to reduce commercial substance to a set of objective indicia, courts continue to decide GAAR cases by an essentially evaluative, fact-intensive enquiry that has produced doctrinally defensible but commercially unpredictable outcomes. It concludes that the Tiger Global judgment, by subordinating tax residency certificates and treaty grandfathering to a substance-based enquiry, marks a decisive and possibly excessive shift of discretion back towards the Revenue, and it proposes procedural and interpretive correctives to restore a workable balance between anti-avoidance and certainty.

I. Introduction

Every general anti-avoidance rule confronts the same structural problem: a legislature that wishes to prevent artificial tax avoidance must draft a standard broad enough to catch schemes it has not foreseen, yet precise enough to leave legitimate commercial planning undisturbed. India’s General Anti-Avoidance Rule, inserted into the Income-tax Act, 1961 (“the Act”) as Chapter X-A by the Finance Act, 2012 and brought into force with effect from 1 April 2017, resolves this tension by making the presence or absence of “commercial substance” one of the four alternative gateways through which an arrangement can be declared an “impermissible avoidance arrangement” (“IAA”) under section 96. It is, on any reading, the most litigated and least settled of those four gateways.⁸

This paper is organised around a simple observation: GAAR completed its eighth year of formal operation in the 2025-26 assessment cycle, and it is only in this period, with the Telangana High Court’s decisions in *Ayodhya Rami Reddy Alla* and *Anvida Bandi*, and above all with the Supreme Court’s judgment in the *Tiger Global-Flipkart* litigation, that a genuine body of appellate and Supreme Court jurisprudence on “commercial substance” has begun to emerge. Before 2024, commentary on GAAR was necessarily speculative, built on the statutory text, the 2012 and 2013 Expert Committee reports, and by analogy to the pre-2017 judicial doctrine. The paper therefore asks three linked questions. First, has the statutory definition of “lack of commercial substance” in section 97 succeeded in constraining administrative and judicial discretion, or has it simply relocated the discretion the pre-GAAR judiciary

¹Income-tax Act 1961, s 97.

²*McDowell & Co Ltd v Commercial Tax Officer* (1985) 3 SCC 230.

³*Union of India v Azadi Bachao Andolan* (2004) 10 SCC 1.

⁴*Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613.

⁵*Ayodhya Rami Reddy Alla v Principal Commissioner of Income Tax*, TS-398-HC-2024(TEL) (Telangana HC, 25 June 2024).

⁶*Smt Anvida Bandi v Deputy Commissioner of Income Tax* [2025] 177 taxmann.com 726 (Telangana HC).

⁷*Authority for Advance Rulings (Income Tax) v Tiger Global International II Holdings* 2026 SCC OnLine SC 86.

⁸See Varun Kannan, ‘Analyzing the Applicability of GAAR to Schemes of Arrangement’ (IndiaCorpLaw, 3 November 2018).

already exercised under the McDowell line of authority? Second, what does the interaction between the Telangana High Court's fact-sensitive, transaction-by-transaction approach and the Supreme Court's broader, treaty-influenced approach in Tiger Global reveal about the coherence of the doctrine as applied across different forums? Third, and normatively, does the current judicial trajectory strike a defensible balance between the legitimate objective of curbing abusive tax planning and the equally legitimate objective of preserving certainty for taxpayers, particularly foreign investors who structured investments on the strength of settled treaty and domestic law positions that predate GAAR.

The choice of "commercial substance" as the paper's specific focus, rather than GAAR's other three gateways under section 96(1), is deliberate. The "arm's-length rights and obligations" and "abuse of provisions" limbs draw substantially on transfer-pricing and statutory-interpretation methodologies that already have a developed jurisprudential vocabulary elsewhere in the Act. The "not ordinarily employed for bona fide purposes" limb has, to date, generated comparatively little independent case law, most disputes being pleaded and decided principally on the commercial-substance limb even where the facts might equally support the fourth. Commercial substance, by contrast, is the limb around which section 97 supplies the most elaborate statutory content, and it is precisely because that statutory elaboration has proved only partially successful in constraining discretion, as the case law in Parts IV to VI demonstrates, that it offers the most instructive test of whether codification has achieved what it set out to achieve. It is also the limb most directly continuous with the pre-2017 judicial doctrine of substance over form, so that a study of its post-2017 application offers a natural vantage point from which to assess how much, if anything, codification has changed.

The stakes of the enquiry are not merely academic. Chapter X-A applies, once triggered, to transactions of a scale and character far removed from the modest, single-jurisdiction disputes that dominated GAAR commentary before 2024: the Tiger Global litigation alone concerned a transaction value in excess of Rs 16,000 crore, and the structures it examined are broadly representative of the holding arrangements used by a substantial proportion of foreign private equity and venture capital investment into India over the past two decades. A doctrine capable of unsettling investment structures of that scale and vintage, on a standard as textured as "commercial substance", merits the sustained doctrinal scrutiny this paper attempts to provide.

The paper proceeds in six further parts. Part II traces the architecture of GAAR from its judicial antecedents to its current statutory form. Part III examines section 97 in detail as the textual anchor of "commercial substance". Part IV analyses the Telangana High Court's twin 2024-2025 rulings. Part V is devoted to the Tiger Global judgment of the Supreme Court, examined at the Authority for Advance Rulings, Delhi High Court and Supreme Court stages. Part VI draws together the earlier advance-ruling and tribunal jurisprudence that forms the connective tissue between the pre-2017 judicial doctrine and the post-2024 case law. Part VII offers an analytical assessment of whether "commercial substance", as currently applied, is a coherent legal standard, drawing on comparative GAAR experience in the United Kingdom, Canada and South Africa. Part VIII sets out recommendations, and Part IX concludes.

II. The Architecture of GAAR: From Judicial Doctrine to Codified Statute

A. The pre-codification doctrine: from formalism to substance

Prior to the codification of GAAR, Indian courts developed what commentators now retrospectively describe as "Judicial Anti-Avoidance Rules" or JAAR - a body of substance-over-form reasoning built up case by case rather than through statute. The foundational judgment is the Constitution Bench decision in *McDowell*,⁹ in which, although the dispute concerned the inclusion of excise duty within "turnover" for sales-tax purposes rather than income tax, Chinnappa Reddy J's concurring opinion delivered what became the single most quoted sentence in Indian tax jurisprudence: that colourable devices cannot be part of legitimate tax planning, and that it is "honourable" for courts to expose dubious methods dressed up as tax planning. For nearly two decades after 1985, McDowell was read by revenue authorities as authority for a broad principle that any arrangement structured to reduce tax liability, however lawful in form, could be disregarded if a court considered it artificial.

That expansive reading was substantially curtailed by the Supreme Court in *Union of India v Azadi Bachao Andolan*, which arose from a challenge to a Central Board of Direct Taxes circular treating a Mauritius tax residency certificate as sufficient proof of residence for treaty purposes. The Court held that McDowell could not be read as outlawing all tax planning that had the effect of reducing tax liability¹⁰, and that treaty shopping, whatever its moral standing, was not illegal where the underlying transaction was genuine. Azadi Bachao Andolan therefore re-established a zone of permissible international tax planning that Mauritius-routed investment structures continued to occupy for the following decade, including reliance on Circular No. 789 of 2000, which treated a valid tax residency certificate as constituting sufficient evidence of residence and beneficial ownership for treaty purposes.¹¹

The judicial pendulum swung again, though less decisively, in *Vodafone International Holdings BV v Union of India*, where the Supreme Court held that the Indian tax authorities lacked jurisdiction to tax the offshore transfer of shares in a Cayman Islands holding company merely because that company indirectly held Indian telecom assets. The Court insisted on a "look at" rather than a "look through" approach¹², holding that a transaction genuinely structured for commercial reasons - even where tax efficiency was one of those reasons - did not thereby become a colourable device. Vodafone triggered the 2012 retrospective amendment to section 9(1)(i) of the Act and, in the same Finance Act, the insertion of Chapter X-A. The juxtaposition is not coincidental: GAAR was conceived, at least in part, as a codified and prospective substitute for the case-by-case substance-over-form reasoning that Vodafone had shown courts were unwilling to extend indefinitely on judicial initiative alone.

⁹*McDowell & Co Ltd v Commercial Tax Officer* (1985) 3 SCC 230, 241 (Chinnappa Reddy J, concurring).

¹⁰*Union of India v Azadi Bachao Andolan* (2004) 10 SCC 1, paras 143-146.

¹¹ CBDT Circular No 789 of 2000, 13 April 2000.

¹²*Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613, paras 68, 90 (Kapadia CJ).

B. Codification, deferral and the Shome Committee

The original GAAR provisions inserted by the Finance Act, 2012 were to take effect from assessment year 2013-14, but the proposal provoked strong opposition from foreign institutional investors and industry bodies, who argued that the absence of any settled definition of “commercial substance” created unacceptable discretion for tax officers. The government responded by constituting an Expert Committee under Dr Parthasarathi Shome¹³, which recommended, among other things, that GAAR should not override specific anti-avoidance rules (SAAR) where the latter applied, that treaty benefits should ordinarily not be denied through GAAR but through renegotiation of the treaty itself, and that implementation be deferred. The Finance Act, 2013 duly deferred applicability, and the provisions were ultimately notified with effect from 1 April 2017, applicable to assessment year 2018-19 onward, alongside procedural Rules 10U to 10UC of the Income-tax Rules, 1962.¹⁴

Two features of the transitional Rules bear directly on the commercial-substance enquiry examined in this paper. First, Rule 10U(1)(d) grandfathers investments made before 1 April 2017, so that GAAR is not, in principle, to apply to income accruing from such investments. Second, and this qualification became central to the Tiger Global litigation discussed in Part V, the grandfathering exemption for pre-2017 investments has been construed by the Supreme Court to be limited to the investment itself and not to a tax benefit arising from a subsequent, post-2017 transaction structured around that investment.¹⁵

C. The statutory anatomy of Chapter X-A

Section 95 opens Chapter X-A with a non-obstante clause: notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared an impermissible avoidance arrangement, and the consequences in relation to tax may then be determined by having regard to the Chapter’s provisions. Section 96(1) defines an impermissible avoidance arrangement as one whose main purpose, or one of whose main purposes, is to obtain a tax benefit, and which additionally satisfies at least one of four disjunctive conditions¹⁶: that it creates rights or obligations not ordinarily created between persons dealing at arm’s length; that it results, directly or indirectly, in the misuse or abuse of the provisions of the Act; that it lacks commercial substance, or is deemed to lack commercial substance, in whole or in part; or that it is entered into, or carried out, by means or in a manner not ordinarily employed for bona fide purposes. Section 96(2) creates a presumption that an arrangement whose main purpose is to obtain a tax benefit is presumed to have been entered into or carried out for that purpose, unless the taxpayer proves otherwise - a presumption that, as discussed in Part V, the Supreme Court in Tiger Global treated as significant in allocating the burden of proof.

It is section 97, however, that supplies the operative content of the third limb of section 96(1). Section 97(1) provides that an arrangement shall be deemed to lack commercial substance if the substance or effect of the arrangement as a whole is inconsistent with, or differs significantly from, the form of its individual steps or a part of it; or it involves or includes round-trip financing, an accommodating party, elements that have the effect of offsetting or cancelling each other, a transaction conducted through one or more persons that disguises the value, location, source, ownership or control of funds, or the location of an asset or of the place of residence of any party, without any substantial commercial purpose other than obtaining a tax benefit; or it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement, apart from any effect attributable to the tax benefit obtained. Round-trip financing itself is separately defined in section 97(1)(b) read with the Explanation as including any arrangement in which funds are transferred among the parties through a series of transactions that do not have any substantial commercial purpose other than obtaining a tax benefit, without regard to whether the funds involved in the round trip can be traced to any funds transferred to, or received by, any party.¹⁷ Section 97(4) adds an important evidentiary qualification: the fact that an arrangement results in a tax benefit does not, by itself, mean that obtaining that benefit was the main purpose of the arrangement, and, conversely, the period for which the arrangement existed, the fact of payment of taxes, or the fact of an exit route being provided are, individually, not decisive of an arrangement’s commercial substance.

Two further textual features of Chapter X-A merit attention because they recur in the case law discussed in later parts. Section 98 sets out the consequences that follow once an arrangement has been declared impermissible, empowering the Assessing Officer to disregard, combine or recharacterise the steps of the arrangement, to treat the arrangement as if it had not been entered into, to reallocate income, expenditure or tax benefit between the parties, to disregard any accommodating party, or to look through the arrangement by disregarding any corporate structure created without commercial substance. Section 98(2) further empowers the Assessing Officer, for this purpose, to treat connected persons as one and the same person, to treat equity as debt or debt as equity, and to reallocate the place of residence of a party or the situs of an asset or transaction to another place, provisions that give the Approving Panel and the Assessing Officer very substantial reconstructive power over a transaction once commercial substance is found wanting.¹⁸ Section 101, meanwhile, provides that the provisions of Chapter X-A do not limit or otherwise affect the operation of any other provision of the Act, confirming that GAAR is intended as an additional rather than exhaustive weapon in the Revenue’s armoury, capable of being invoked alongside or in the alternative to SAAR and judicial anti-avoidance doctrine - a point the Supreme Court would later make explicit in Tiger Global when it held that GAAR, SAAR and JAAR operate in parallel rather than as mutually exclusive regimes.

¹³Report of the Expert Committee, Final Report on General Anti-Avoidance Rules (GAAR) in Income-tax Act, 1961 (Ministry of Finance, Government of India, 2012).

¹⁴Income-tax Rules 1962, rr 10U–10UC, inserted with effect from 1 April 2017.

¹⁵*Authority for Advance Rulings (Income Tax) v Tiger Global International II Holdings* 2026 SCC OnLine SC 86, discussed in Part V below; see also DLA Piper, ‘Supreme Court Ruling on Tiger Global Tax Treaty Eligibility and Indirect Share Transfers’ (DLA Piper Insights, February 2026).

¹⁶Income-tax Act 1961, s 96(1)(a)-(d).

¹⁷Income-tax Act 1961, s 97(1)(b) and Explanation 1.

¹⁸Income-tax Act 1961, s 98(2)(a)-(e).

The procedural machinery in section 144BA channels every GAAR determination through a two-stage internal check: an Assessing Officer who suspects an impermissible avoidance arrangement must refer the matter to the Principal Commissioner or Commissioner, who in turn, if unpersuaded by the taxpayer's objections, must refer it to an Approving Panel headed by a retired or serving High Court judge before any GAAR order can be passed. That procedural safeguard was itself the direct object of judicial review in the Telangana litigation examined in Part IV, where taxpayers challenged the invocation of Chapter X-A by way of writ petition rather than through the ordinary route of statutory appeal.¹⁹

III. "Commercial Substance" as the Analytical Core

Section 97 is, on its face, an attempt to convert an inherently evaluative judicial concept into a set of objective, checkable indicia: does the substance differ from the form; is there round-trip financing; is there an accommodating party; is there a significant effect on business risk or cash flow independent of the tax benefit. Indian commentary on Chapter X-A has generally welcomed this drafting choice as an improvement on the undefined "substance over form" standard of the McDowell line, on the view that a taxpayer advising a client on a proposed arrangement can, in principle, test that arrangement against four fairly concrete markers rather than against an open-ended judicial sense of propriety.²⁰

In practice, however, each of the four markers in section 97(1) reintroduces, at one remove, precisely the kind of qualitative judgment the drafting was meant to displace. "Substantial commercial purpose" is not itself defined; "significant effect" on business risk or cash flow is a matter of degree rather than a bright line; and the deeming provision for round-trip financing expressly disclaims any need to trace funds, which means that a tax officer may infer round-tripping from the pattern and timing of transactions rather than from direct evidence of a circular flow. The consequence, borne out in the case law discussed in Parts IV and V, is that GAAR disputes are resolved less by mechanical application of section 97's checklist than by an overall, narrative assessment of whether the arrangement "looks like" genuine commercial activity - an assessment not qualitatively different from the McDowell-era enquiry into colourable devices, except that it now carries the institutional weight of a statutory Approving Panel and, on judicial review, the full apparatus of writ jurisdiction.

A second structural feature deserves emphasis: the relationship between GAAR and specific anti-avoidance rules (SAAR) already present in the Act, most prominently section 94(8), which addresses bonus stripping of units of a mutual fund by disallowing the notional loss generated when an investor buys units shortly before a bonus issue and sells the original units shortly after. Section 94(8) does not, on its language, extend to bonus stripping of shares (as opposed to mutual fund units), and it was precisely this gap that the Revenue sought to fill through GAAR in *Ayodhya Rami Reddy Alla*, discussed in Part IV below. The CBDT had earlier clarified, in guidance issued at the time of GAAR's notification, that whether SAAR or GAAR applies in a given case is to be determined on the facts, and that the mere existence of a SAAR provision covering a similar but not identical fact pattern does not oust GAAR.²¹ This SAAR-GAAR overlap is analytically important because it means that "lack of commercial substance" under section 97 is frequently invoked not against wholly novel avoidance techniques but against known techniques that fall just outside the drafting of an existing SAAR - raising the question, addressed in Part VII, whether GAAR is functioning as a genuine backstop against unforeseen abuse or as a substitute for legislative amendment of under-inclusive SAAR provisions.

It is worth pausing on why section 97's drafters chose disjunctive, deeming-based markers rather than a single overarching standard. The Shome Committee's own reasoning, reflected in the final text of the Chapter, was that a purely evaluative standard - asking simply whether an arrangement is "genuine" or possesses "real" commercial purpose - would replicate the uncertainty of the pre-2012 case law almost exactly, whereas a set of concrete, independently sufficient deeming provisions would allow taxpayers to test a proposed structure against a checklist before implementation. The difficulty, examined further in Part VII, is that several of the deeming markers themselves incorporate open-textured qualifiers - "significant" difference between substance and form, "substantial" commercial purpose, "significant" effect on business risk - so that the drafting technique of itemisation does not, by itself, eliminate the underlying interpretive latitude; it merely distributes that latitude across four limbs instead of concentrating it in one.²²

IV. Judicial Treatment I: The Telangana High Court's Twin Rulings

A. *Ayodhya Rami Reddy Alla v Principal Commissioner of Income Tax* (2024)

The first substantial judicial engagement with Chapter X-A came from the Telangana High Court in June 2024, in a writ petition filed by Mr Ayodhya Rami Reddy Alla challenging the invocation of GAAR proceedings under section 144BA. The facts involved a sequence of transactions in the shares of Ramky Estate and Farms Limited (REFL): the petitioner and a connected entity, Oxford Ayyapa Consulting Services Private Limited, acquired an initial lot of REFL shares; REFL then issued bonus shares in a 5:1 ratio, sharply diluting the per-share value while leaving the cost of acquisition of the original lot unchanged under the Act's bonus-share rules; the petitioner then sold the original, high-cost-basis shares to a related entity, Advisory Services Private Limited, off the stock exchange, generating a short-term capital loss of approximately Rs 462 crore, which was set off against long-term capital gains

¹⁹See Kluwer International Tax Blog, 'India's Telangana High Court on the Writ Challenge Against GAAR Invocation' (2024).

²⁰Comprehensive Analysis of India's General Anti-Avoidance Rule (GAAR): Law, Practice, and Policy (2025) Indian Journal of Law and Legal Research.

²¹CBDT Circular clarifying the interplay of SAAR and GAAR, cited in BDO India, 'Direct Tax Alert: GAAR can be applied despite SAAR under section 94(8) of the Income-tax Act, 1961' (2024).

²²See Comprehensive Analysis of India's General Anti-Avoidance Rule (n 24), noting that the statutory checklist in s 97 'provides an extensive definition of conditions that render a transaction devoid of commercial substance' while leaving significant interpretive discretion to the assessing authority.

realised from an unrelated sale of shares in Ramky Enviro Engineers Limited.²³ The petitioner contended that the transaction was, at most, bonus stripping within the meaning of section 94(8), which by its terms applies only to units of a mutual fund and not to shares, and that in the absence of a SAAR covering share-based bonus stripping, Parliament's deliberate choice not to extend section 94(8) to shares could not be circumvented by invoking the general provisions of Chapter X-A.

The Court rejected that argument and dismissed the writ petition, holding that Chapter X-A opens with a non-obstante clause that gives it an overriding effect over other provisions of the Act, including SAAR provisions that do not squarely cover the transaction in question. The Court further noted that the entire arrangement bore hallmarks of contrivance: the purchasing entity did not use its own funds to acquire the shares²⁴, indicating round-tripping of funds within the meaning of section 97(1)(b); the transaction was carried out off the floor of the stock exchange, between related parties, at a price engineered by the intervening bonus issue rather than by market forces; and the sequence of steps, taken together, achieved no purpose beyond the manufacture of a short-term capital loss to offset an unrelated long-term capital gain. On this reasoning, the Court accepted that the tax authorities had made out, at least at the threshold stage required for a reference to the Approving Panel, a reasonable basis for treating the arrangement as lacking commercial substance under section 97, and it declined to interfere with the reference at the writ stage, leaving the taxpayer to pursue the statutory remedy of appeal once a final GAAR order was passed.

The judgment is significant for three reasons that bear on the commercial-substance enquiry. First, it confirmed that GAAR can override SAAR even where the SAAR provision, on a purposive reading, might be thought to occupy the relevant field but for a drafting gap; the Court treated the non-obstante clause in section 95 as dispositive rather than as raising any question of an implied exception for occupied fields. Second, it treated the pre-2017 JAAR jurisprudence, including McDowell, as continuous with rather than superseded by Chapter X-A²⁵, describing GAAR as a codification rather than a creation of pre-existing anti-abuse principles - a characterisation that, as argued in Part VII, sits uneasily with the Shome Committee's stated ambition of increasing certainty through codification. Third, and most practically, the Court treated the combination of related-party dealing, an artificially engineered price movement, and an absence of independent economic rationale as together sufficient to establish, at least prima facie, a lack of commercial substance, without requiring direct proof that funds had literally travelled in a circle.

B. Smt Anvida Bandi v Deputy Commissioner of Income Tax (2025)

A little over a year later, a Division Bench of the same High Court reached the opposite result on superficially similar facts in *Smt Anvida Bandi v Deputy Commissioner of Income Tax*. The taxpayer, an individual investor in shares and securities, realised long-term capital gains of approximately Rs 44 crore on the sale of unlisted shares in financial year 2019-20, and used part of the proceeds to purchase shares of HCL Technologies Limited, a widely held listed company.²⁶ Before the end of the same financial year, she sold a portion of the HCL shares on the stock exchange at a loss, apparently following a bonus issue by HCL that depressed the per-share price, and set off the resulting short-term capital loss against the earlier long-term capital gain, in the ordinary course permitted by the Act's set-off provisions. The Assessing Officer treated the timing correlation between the gain and the loss as evidence of a designed arrangement and referred the matter to the GAAR Approving Panel, which passed an order under section 144BA(6) holding the transactions to constitute an impermissible avoidance arrangement.

The High Court allowed the taxpayer's writ petition and quashed the Approving Panel's order. It held that the Revenue had failed to discharge the burden of demonstrating, with evidence rather than surmise, that the transactions satisfied the conditions of section 96(1); that mere correlation in timing between a capital gain and a subsequently realised capital loss, without more, does not establish an impermissible avoidance arrangement; and that the fact the HCL shares were bought and sold on the floor of the recognised stock exchange, at prevailing market prices and without any relationship between the buyer and seller, was itself strong evidence against a finding of lack of commercial substance. The Court expressly relied on the Shome Committee's recommendation that GAAR should not ordinarily be applied to transactions undertaken on a stock exchange²⁷, reasoning that market transactions, precisely because they are priced by anonymous third parties rather than by agreement between related entities, lack the engineered quality that section 97 targets. The Court further observed, in language that has since been widely quoted in professional commentary, that not every instance of tax planning is bad, and that GAAR is reserved for cases where a taxpayer colludes or connives to bypass statutory provisions through transactions that defy commercial logic - ordinary tax-efficient timing of a genuine market transaction does not meet that threshold.²⁸

C. Reconciling the two rulings: the market-transaction proxy for substance

Read together, *Ayodhya Rami Reddy Alla* and *Anvida Bandi* supply the clearest judicially articulated proxy yet available for distinguishing arrangements that lack commercial substance from those that do not: whether the transaction was executed at arm's length through the impersonal mechanism of a public market, or instead negotiated bilaterally between related or connected parties at a price shaped by an intervening corporate action such as a bonus issue. Commentary on the two decisions has emphasised precisely this distinction as the operative ratio.²⁹ On this reading, the presence of a stock exchange

²³*Ayodhya Rami Reddy Alla v PCIT*, TS-398-HC-2024(TEL); see also 'Tax Avoidance and Invocation of GAAR: Case of Ayodhya Rami Reddy Alla' (Taxguru, 12 June 2024).

²⁴Lakshmikumaran & Sridharan Attorneys, 'GAAR in Practice: Lessons from Ayodhya Rami Reddy Alla and Anvida Bandi' (2025).

²⁵See Acuity Law, 'SAAR vs GAAR' (2025), summarising the Telangana High Court's reliance on the substance-over-form lineage.

²⁶*Smt Anvida Bandi v DCIT* [2025] 177 taxmann.com 726 (Telangana); Cyril Amarchand Mangaldas, 'Telangana High Court Clarifies GAAR in Relation to Market-Based Transactions' (13 October 2025).

²⁷Lexology, 'Telangana High Court Quashes GAAR Proceedings in Absence of an "Impermissible Avoidance Arrangement"' (2 September 2025).

²⁸Cyril Amarchand Mangaldas (n 31).

²⁹Lakshmikumaran & Sridharan Attorneys (n 27); Mondaq (India), 'GAAR in Practice: Lessons from Ayodhya Rami Reddy Alla and Anvida Bandi'

as intermediary functions as a strong, though not conclusive, indicator that the price and timing of a transaction were determined by market forces rather than by the parties' tax planning, thereby supplying the "significant effect... upon business risks or net cash flows" that section 97(1)(c) treats as the hallmark of genuine commercial substance.

It is also useful to notice what the two Telangana rulings share procedurally, since the shared procedural posture is as instructive as the differing outcomes. In both cases, the taxpayer approached the High Court by way of writ petition against the reference to, or order of, the GAAR Approving Panel, rather than waiting to exhaust the ordinary statutory remedy of appeal to the Commissioner (Appeals) and thereafter to the Income Tax Appellate Tribunal. The Revenue in both cases resisted the writ petitions on the threshold ground that the High Court ought not to entertain a challenge to an Approving Panel reference or order when a statutory appellate remedy remained available, and in both cases the High Court proceeded to examine the merits regardless, on the footing that a want of jurisdiction or a patent absence of evidentiary basis for invoking Chapter X-A could be examined at the writ stage without requiring the taxpayer first to undergo a full assessment and appeal. This willingness to entertain writ jurisdiction notwithstanding the availability of statutory appeal is significant for the broader administrative-law texture of GAAR litigation: it means that the commercial-substance enquiry is being shaped, in the first instance, by High Courts exercising extraordinary constitutional jurisdiction under Article 226, applying a standard of review that asks whether the Revenue's conclusion was reasonably open on the material before it, rather than by the more searching, fact-finding scrutiny that an appellate tribunal would ordinarily bring to bear. The consequence, visible in the contrasting outcomes of the two cases, is that the Telangana High Court's GAAR jurisprudence has developed through what is functionally a supervisory rather than an appellate lens — a feature that may partly explain why the Court was prepared to accept a threshold, *prima facie* case for GAAR invocation in *Ayodhya Rami Reddy Alla* while insisting on a more exacting evidentiary standard from the Revenue in *Anvida Bandi*, given that the latter case involved a final Approving Panel order under section 144BA(6) rather than a mere reference for further proceedings.

This proxy has real explanatory power, but it also has an obvious limitation that the Telangana High Court did not need to confront on the facts before it: a transaction executed on an exchange can still be engineered, for instance by timing a bonus issue itself, or by two related parties independently trading through the exchange to create a paper trail of arm's-length pricing while achieving a coordinated economic outcome. The market-transaction proxy therefore risks becoming a formal safe harbour - precisely the kind of bright-line rule that a principles-based GAAR was designed to avoid - unless tax officers and courts continue to examine, as the Court did in both cases, the broader pattern of relationships and timing surrounding the exchange-traded leg of the transaction. The two rulings are best read not as establishing a rule that exchange transactions are *per se* outside GAAR, but as establishing an evidentiary burden: the Revenue must show, through evidence of collusion, coordination or artificial pricing, that an exchange transaction was more than it appeared to be, and cannot rely on inference from timing alone.

V. Judicial Treatment II: The Supreme Court in Tiger Global

A. The transaction and the 2020 ruling of the Authority for Advance Rulings

The most consequential GAAR litigation to date concerns the 2018 exit by three Mauritius-incorporated entities of the Tiger Global group - Tiger Global International II, III and IV Holdings - from their indirect shareholding in Flipkart, the Indian e-commerce company, structured through a Singapore holding company, as part of Walmart Inc.'s acquisition of Flipkart. The Mauritius entities had made their original investments before 1 April 2017 and, in their applications for advance rulings, invoked the grandfathering protection in Rule 10U(1)(d) together with the benefit of the India - Mauritius Double Taxation Avoidance Agreement, relying on valid tax residency certificates and on Circular No. 789 of 2000 and *Azadi Bachao Andolan* as authority that a TRC is sufficient to establish treaty residence.³⁰ On 26 March 2020, the Authority for Advance Rulings (Income Tax) rejected the applications, holding that the Mauritius entities were conduit or pass-through vehicles lacking genuine commercial substance: effective control and management of the entities, including control over their bank accounts, rested with the US-based investment manager of the Tiger Global funds rather than with any independent decision-making presence in Mauritius, and the arrangement, considered as a whole, appeared designed primarily to secure treaty benefits rather than to serve any independent commercial purpose.³¹

B. The Delhi High Court's reversal (2024)

The Mauritius entities challenged the AAR ruling before the Delhi High Court, which on 28 August 2024 allowed their writ petitions and quashed the AAR's order. The High Court held that a valid tax residency certificate was, absent fraud or a finding that the arrangement was a sham, sufficient to establish treaty eligibility, and that the underlying Flipkart exit represented a genuine commercial transaction rather than an artificial tax-avoidance scheme.³² The High Court placed considerable weight on *Azadi Bachao Andolan* and on the pre-existing body of law treating Mauritius-routed investment as a legitimate and judicially sanctioned structure for foreign portfolio and private equity investment into India, and it treated the grandfathering protection under Rule 10U(1)(d) as extending to the tax benefit realised on the 2018 exit, since the underlying investment itself predated 1 April 2017.

C. The Supreme Court's judgment of 15 January 2026

(27 October 2025).

³⁰India Briefing, 'Tiger Global India Tax Case Explained: SC GAAR Ruling 2026' (11 February 2026).

³¹DLA Piper (n 12); Lawsathi, 'Supreme Court Rules Against Tiger Global: Analyzing the GAAR Impact on Mauritius Tax Exemptions' (19 February 2026).

³²Tiger Global International III Holdings v Authority for Advance Rulings, W.P.(C) 6764/2020 and connected matters (Delhi HC, 28 August 2024).

On appeal by the tax authorities, the Supreme Court, in a judgment delivered on 15 January 2026, reversed the Delhi High Court and restored the AAR's original ruling, holding that the capital gains arising from the Flipkart exit were taxable in India and that the Mauritius entities were not entitled to the benefit of the India–Mauritius DTAA. The judgment makes several holdings of general significance for the commercial-substance enquiry under Chapter X-A.³³ First, the Court held that a tax residency certificate, while a necessary condition for claiming treaty benefit, is not conclusive evidence of treaty entitlement, and that tax authorities are entitled to look behind the certificate to examine the substance of the arrangement, including the location of effective management and control, the source of funding for the underlying investment, and the degree of independent decision-making exercised in the treaty jurisdiction as opposed to by the ultimate parent or fund manager elsewhere.

Second, the Court held that the grandfathering protection in Rule 10U(1)(d) is confined to the investment made before 1 April 2017 and does not automatically extend to a tax benefit that arises from a transaction, such as the 2018 share sale, carried out after that date; where the arrangement giving rise to the post-2017 tax benefit is itself found to lack commercial substance, GAAR may be invoked notwithstanding that the original investment falls within the grandfathered period. This holding narrows considerably the practical scope of grandfathering as previously understood by the private equity and venture capital industry, which had structured a substantial share of pre-2017 investment on the assumption that the exit, whenever it occurred, would carry the benefit of the grandfathered entry.³⁴

Third, and perhaps most significant for the burden of proof in future GAAR litigation, the Court held that once the Revenue has made out a *prima facie* case that the anti-abuse provisions within GAAR are engaged, the burden shifts to the taxpayer to demonstrate the genuineness of the transaction and the commercial substance of the intermediate holding structure. The Court further clarified that JAAR, SAAR and GAAR are not mutually exclusive regimes but operate in parallel, so that a transaction may be tested simultaneously, or in the alternative, against the pre-existing judicial substance-over-form doctrine and against the statutory provisions of Chapter X-A.³⁵ Fourth, the Court distinguished between direct and indirect transfers of Indian assets for the purposes of Article 13 of the India–Mauritius DTAA, holding that the grandfathering and limitation-of-benefits language in Article 13(3A) applies only to direct transfers of shares of an Indian company, and that indirect transfers — such as the sale of shares in the Singapore holding company that indirectly held the Flipkart shares — fall instead under the residuary Article 13(4), which affords no equivalent grandfathering protection.³⁶

D. Implications for the commercial-substance standard

Tiger Global is best understood, for the purposes of this paper, as the point at which the commercial-substance enquiry under section 97 was extended from purely domestic transactions of the kind at issue in *Ayodhya Rami Reddy Alla* and *Anvida Bandi* to the far larger universe of cross-border holding structures on which two decades of foreign investment into India were built. The judgment's substance-based factors — location of effective management, source and control of funding, degree of independent decision-making — are recognisably the international-tax cousins of the domestic indicia developed in the Telangana rulings, but their application to a Mauritius holding company managed from New York carries far greater systemic consequences than their application to a bonus-stripping transaction between two related Indian entities. Commentators have noted that the decision unsettles what had been regarded, since *Azadi Bachao Andolan*, as a settled position on treaty entitlement, and that its full implications will likely be tested in further litigation.³⁷

E. Reactions and the practical response of foreign investors

The commercial reaction to Tiger Global has been swift and, on the available reporting, substantial. For nearly two decades, Mauritius served as the preferred gateway for foreign direct and portfolio investment into India, at one stage accounting for over 30 per cent of cumulative foreign direct investment inflows into the country, with successive generations of private equity and venture capital funds relying on the two-tier structure, an ultimate investor in a jurisdiction such as the United States, holding Indian exposure through a Mauritius-incorporated intermediate entity, that *Azadi Bachao Andolan* had appeared to endorse. Advisers now caution that investment structure, exit strategy and GAAR exposure must be assessed together at the outset of a transaction, with demonstrable commercial substance in the intermediate jurisdiction - evidenced by local directors exercising genuine decision-making authority, independent bank account control, and a real operational presence - treated as a precondition rather than an afterthought of structuring.³⁸ For structures already in place, the judgment creates a retrospective difficulty of a kind the Shome Committee had specifically hoped to avoid through the grandfathering mechanism: investors who structured their India exposure before 2017 in reliance on the law as it then stood, including the settled authority of *Azadi Bachao Andolan* and CBDT Circular No. 789, now face the prospect that a future exit transaction, however many years after the original investment, may be tested afresh against a substance standard that did not previously carry this degree of judicial reinforcement.

VI. The Missing Middle: Advance Rulings and the Interregnum, 2017–2024

Between the notification of GAAR in 2017 and the Telangana High Court's first substantive ruling in 2024, there was a marked absence of reported judicial or advance-ruling decisions applying section 97 on its merits. This is not, on inspection, evidence that GAAR was underused; rather, it reflects the layered procedural architecture of section 144BA, under which a GAAR determination is finalised only after reference to an Approving Panel and the

³³Authority for Advance Rulings (Income Tax) v Tiger Global International II Holdings 2026 SCC OnLine SC 86; DLA Piper (n 12).

³⁴Trilegal, 'Supreme Court's Ruling in Tiger Global Rocks the Mauritius Treaty Boat' (22 January 2026).

³⁵Lexology (Trilegal), 'Supreme Court's Ruling in Tiger Global Rocks the Mauritius Treaty Boat' (22 January 2026).

³⁶DLA Piper (n 12).

³⁷Oxford University Centre for Business Taxation, 'Indian Supreme Court Re-defines Treaty Claim Principles' (2026); International Bar Association, 'The End of Treaty Shopping? How India's Tiger Global Judgment is Reshaping PE and VC Exit Structures' (2026).

³⁸International Bar Association (n 44); India Briefing (n 34).

completion of assessment, with judicial review typically available only at the stage of a completed assessment order rather than at the threshold stage of a reference. The Tiger Global applications, filed in 2018 and decided by the erstwhile Authority for Advance Rulings in March 2020, were an exception precisely because the advance-ruling mechanism under Chapter XIX-B of the Act allowed the question of GAAR applicability to be tested before the underlying transaction was completed, generating a reasoned ruling years before the ordinary assessment-and-appeal timeline would have produced a reported judicial decision.

This procedural interregnum matters for the present enquiry because it means that the interpretive content of “commercial substance” during GAAR’s first seven years of operation was shaped almost entirely by administrative guidance - the Shome Committee report, CBDT circulars, and internal departmental instructions to Assessing Officers and the Approving Panel - rather than by reasoned, published judicial reasoning. The absence of a public body of case law during this period is itself a cost of the GAAR design: taxpayers structuring transactions between 2017 and 2024 had markedly less concrete guidance on how section 97 would be applied than taxpayers today, notwithstanding that the statutory text was unchanged throughout. The clustering of significant rulings in 2024–2026 - Ayodhya Rami Reddy Alla, Anvida Bandi and Tiger Global - should accordingly be read as the delayed judicial reckoning with a standard that had already been operating, largely unreviewed, for seven years.³⁹

VII. Is “Commercial Substance” a Coherent Standard After Eight Years?

A. Doctrinal coherence: textual anchors versus judicial discretion

The case law surveyed in Parts IV to VI suggests a qualified answer to the question posed in this paper’s title. On one view, section 97 has succeeded in giving courts a structured vocabulary - round-trip financing, accommodating party, significant effect on business risk or cash flow - that did not exist under the pre-2017 McDowell doctrine, and the Telangana High Court’s reasoning in both Ayodhya Rami Reddy Alla and Anvida Bandi is intelligible as the application of that vocabulary to concrete facts rather than as an open-ended moral judgment about the taxpayer’s motives. On this reading, the market-transaction proxy identified in Part IV.C is a genuine doctrinal development: it gives future taxpayers and their advisers a reasonably operational rule of thumb that did not exist before 2024.

On a less sanguine view, however, the substantive content of that vocabulary remains almost entirely dependent on an antecedent, holistic assessment of whether the arrangement “makes commercial sense” independent of tax - precisely the kind of value-laden enquiry that a codified, principles-based GAAR was meant to structure rather than replicate. The Tiger Global judgment illustrates this most starkly: the finding that the Mauritius entities lacked commercial substance rested substantially on the fact that effective control and decision-making resided with the US-based fund manager rather than in Mauritius - a fact pattern common to a very large proportion of internationally managed investment funds using any offshore holding jurisdiction, and one that is not, without more, obviously distinguishable from the ordinary and widely accepted practice of centralised fund management. The risk is that “effective management elsewhere” becomes, in practice, a proxy so broad that it threatens to capture the great majority of institutionally managed cross-border investment structures, reintroducing exactly the kind of unpredictability that the 2012 Shome Committee was convened to prevent.⁴⁰

B. Certainty, deterrence and the constitutional dimension

A recurring critique of GAAR, voiced from the earliest drafting stage through to the present commentary on Tiger Global, is that a rule whose central operative term is undefined with precision creates a chilling effect disproportionate to any additional revenue it secures, because taxpayers facing genuine uncertainty about whether a lawful arrangement might later be characterised as lacking commercial substance will either forgo efficient structures altogether or incur substantial compliance and advance-ruling costs to obtain certainty in advance. This concern has occasionally been framed in explicitly constitutional terms, as an argument that a provision conferring such open-textured discretion on tax officers, without adequate legislative or administrative guardrails, sits in some tension with the requirement of reasonable classification and non-arbitrariness under Article 14 of the Constitution, although no court has yet struck down any part of Chapter X-A on this ground.⁴¹ The counter-argument, reflected in both Telangana judgments and in Tiger Global, is that the burden-of-proof structure of section 96(2), together with the two-tier internal review through the Principal Commissioner and the Approving Panel, and the availability of writ review as demonstrated in Anvida Bandi, together supply sufficient procedural safeguard against arbitrary invocation, even if the substantive standard itself remains open-textured. The fact that the Telangana High Court was prepared to quash a GAAR order on the merits in Anvida Bandi, only a year after upholding one in Ayodhya Rami Reddy Alla, is itself evidence that judicial review is operating as a genuine check rather than as a rubber stamp.

C. A comparative note: the United Kingdom, Canada and South Africa

India’s difficulty in stabilising a workable commercial-substance standard is not unique. The United Kingdom’s General Anti-Abuse Rule, introduced in the Finance Act 2013, adopts what is often called a “double reasonableness” test, asking whether the entering into or carrying out of an arrangement cannot reasonably be regarded as a reasonable course of action having regard to all the circumstances - a formulation explicitly designed to give abusive arrangements a wide berth and to catch only egregious cases, in part precisely because the UK legislature was alert to the risk that a lower threshold

³⁹See Taxsutra, ‘JAAR, GAAR and SAAR: Coexistence Without Overlapping?’ (Experts Corner, 2024), describing Ayodhya Rami Reddy Alla as ‘a beginning of judicial analysis’ of Chapter X-A.

⁴⁰See Critical Analysis of GAAR in Light of the Constitution of India and DTAA (SCC Online Blog, 6 March 2023), arguing that GAAR’s provisions grant the tax authority ‘vast power’ to invoke the rule arbitrarily in the absence of clearer legislative or administrative safeguards.

⁴¹SCC Online Blog (n 41).

would generate exactly the kind of interpretive instability now visible in the Indian case law. Canada's General Anti-Avoidance Rule, by contrast, asks whether a transaction, considered together with any series of transactions of which it is a part, results in a misuse of the provisions of the Income Tax Act or an abuse having regard to the Act read as a whole, and Canadian courts have developed a comparatively structured, three-stage enquiry into tax benefit, avoidance transaction and abuse.⁴² South Africa's GAAR, similarly, requires the Revenue to establish an "abnormality" in the means or manner of the arrangement judged against what would normally be employed for bona fide business purposes, a standard that has itself generated substantial litigation over the meaning of "commercial substance" in that jurisdiction's own tax code following the introduction of a statutory definition materially similar to section 97 of the Indian Act.⁴³

The comparative picture suggests that no jurisdiction has fully escaped the underlying tension between a GAAR's need for breadth and a taxpayer's need for certainty; what varies is the degree to which the statutory text pre-commits decision-makers to a narrower or wider zone of application. India's section 97, with its four alternative and independently sufficient markers of lack of commercial substance, sits closer to the broader end of that spectrum than the UK's double-reasonableness formulation, and the post-2024 case law bears out the consequence: Indian courts have, in effect, been left to develop their own narrowing principles - the market-transaction proxy of *Anvida Bandi*, the burden-shifting rule of *Tiger Global* - through case law rather than through legislative refinement of the statutory test itself.

D. The burden of proof as the real site of contestation

A closer look at the three principal decisions discussed above suggests that the practical outcome of a GAAR dispute is determined less by the abstract meaning of "commercial substance" than by which party bears the burden of proof at the relevant stage, and how demanding a standard that burden is held to impose. Section 96(2) presumes that an arrangement whose main purpose is to obtain a tax benefit was entered into for that purpose, but the burden of first establishing that a tax benefit was the main purpose, and that one of the four conditions in section 96(1) is satisfied, rests initially on the Revenue. In *Anvida Bandi*, the taxpayer succeeded principally because the High Court held that the Revenue had not discharged this initial burden with evidence, relying instead on the mere coincidence of timing between a capital gain and a capital loss.⁴⁴ In *Ayodhya Rami Reddy Alla*, by contrast, the Revenue was held to have discharged that initial burden through concrete evidence of related-party dealing, an engineered bonus issue, and the absence of independent funding for the purchasing entity, sufficient at least to justify a reference for further proceedings. In *Tiger Global*, the Supreme Court went a step further, holding that once the Revenue has made out a *prima facie* case that GAAR's anti-abuse provisions are engaged, the burden shifts decisively to the taxpayer to establish the commercial substance and genuineness of the arrangement - effectively converting section 96(2)'s presumption regarding purpose into a broader presumption regarding substance once a threshold showing has been made.

This burden-shifting dynamic has an important practical consequence that is easy to overlook in a purely doctrinal reading of the case law: because the Revenue's threshold burden is comparatively modest - a pattern of related-party dealing, an unusual correlation of timing, or evidence that a holding company's bank accounts are operated from outside the jurisdiction of its incorporation will typically suffice - the practical weight of GAAR litigation falls overwhelmingly on the taxpayer's ability to marshal, often years after the event, contemporaneous evidence of independent decision-making, commercial rationale and genuine economic risk. Taxpayers who kept board minutes, resolutions and correspondence demonstrating genuine local decision-making at the time of structuring are far better placed to discharge this burden than taxpayers who relied on the formal indicia of incorporation and residency alone. This has significant implications for compliance practice: the *Tiger Global* judgment, whatever its doctrinal correctness, functions as a strong incentive for multinational groups and funds to build and preserve a contemporaneous evidentiary record of substance in every treaty-favoured holding jurisdiction they use, rather than to rely, as many historically did, on a tax residency certificate and periodic filing compliance alone.

VIII. Recommendations

Four interventions would, in the author's assessment, meaningfully improve the coherence and predictability of the commercial-substance standard without diluting GAAR's core anti-avoidance function.

First, the Central Board of Direct Taxes should consider issuing updated, binding circulars codifying the market-transaction proxy articulated in *Anvida Bandi*, clarifying the categories of exchange-traded and other arm's-length third-party transactions that will ordinarily be treated as possessing commercial substance absent specific evidence of coordination or collusion, so that the principle does not remain confined to the persuasive but non-binding status of a single High Court's reasoning.

Second, Rule 10U should be amended to state expressly, rather than leave to future litigation, the scope of grandfathering for pre-2017 investments realised through a post-2017 exit, so that investors are not required to await a Supreme Court ruling nine years into the regime to learn that grandfathering does not travel with the investment through to exit in the manner previously assumed.

Third, consideration should be given to introducing a statutory advance-ruling fast track specifically for GAAR applicability questions, restoring something closer to the function the erstwhile Authority for Advance Rulings performed in the *Tiger Global* applications, given that the ordinary

⁴²Comprehensive Analysis of India's General Anti-Avoidance Rule (n 24), comparing the Indian regime with GAAR frameworks in the United Kingdom, Canada, South Africa and Australia.

⁴³See, generally, the South African line of authority on s 80A of the Income Tax Act 58 of 1962 and the commercial-substance definition in s 80C, discussed comparatively in Comprehensive Analysis of India's General Anti-Avoidance Rule (n 24).

⁴⁴Cyril Amarchand Mangaldas (n 31); VCH Associates, 'Transfer Pricing Services' blog note on *Anvida Bandi v DCIT* (2025).

assessment-and-appeal route produces reasoned decisions only after a delay measured in years, during which an entire cohort of similarly structured transactions may be entered into without the benefit of settled guidance.

Fourth, Parliament should consider whether the four disjunctive limbs of section 96(1) ought to be supplemented by a requirement, along the lines of the UK's double-reasonableness formulation, that the Revenue additionally show that no reasonable person structuring the transaction for genuine commercial reasons would have adopted the particular means or manner in question - a modest textual addition that would preserve the existing indicia in section 97 while requiring the Approving Panel and reviewing courts to test the Revenue's case against an objective external benchmark, rather than against the coherence of the taxpayer's own commercial narrative alone.

IX. Conclusion

Eight years after coming into force, GAAR's commercial-substance standard has moved from a largely untested statutory text to an actively litigated doctrine, but it has not moved from an evaluative to a mechanical standard. The Telangana High Court's twin rulings in *Ayodhya Rami Reddy Alla* and *Anvida Bandi* supply the clearest domestic guidance to date, distinguishing engineered, related-party transactions from genuine market dealings, while the Supreme Court's 2026 judgment in *Tiger Global* extends the enquiry to the far more consequential terrain of cross-border holding structures, at the cost of considerable disruption to two decades of settled treaty-based investment planning. The doctrinal continuity between *McDowell*, *Azadi Bachao Andolan*, *Vodafone* and the present case law confirms that Chapter X-A has, in substance, codified rather than replaced the pre-existing judicial anti-avoidance doctrine, with the consequence that the certainty the Shome Committee sought through codification has been only partially realised. Whether the balance between anti-avoidance and certainty can be restored will depend less on further judicial elaboration - which, on the present trajectory, seems likely to continue generating fact-specific rather than rule-like guidance - than on the administrative and legislative refinements proposed in Part VIII of this paper. Until such refinements are undertaken, "commercial substance" will remain what it has effectively been since 1985: a question of overall impression, now asked within a statutory frame, but not thereby rendered predictable.