Recent Important Judgments in the field of International Tax

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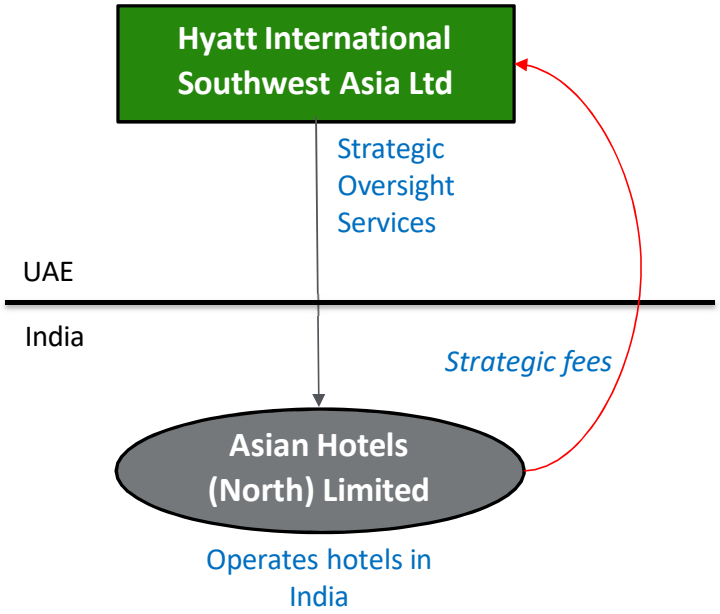
Hyatt International Southwest Asia Ltd. v. ADIT
TS-954-SC-2025 (SC)

Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

Facts of the case

- Hyatt International Southwest Asia Ltd ["Hyatt"] is a Company incorporated in and a tax resident of United Arab Emirates ["UAE"]
- During AY 2009-10, Hyatt entered into two Strategic Oversight Services Agreement ["SOSA"] with an Indian Company (which owns hotels in India) in order to provide strategic planning and know-how for developing and operating its hotels as high-quality international full-service properties
- Hyatt filed a nil return of income for the said AY basis the below contentions:
  - ✓ The income was not taxable as there is no specific Article under the India-UAE tax treaty for taxing fees for technical services ["FTS"]
  - ✓ Hyatt had no fixed place of business in India, and employee presence during the relevant FY was below the 9-month threshold under Article 5(2) of the India-UAE tax treaty. As a result, no Permanent Establishment (PE) was constituted under Article 5, and business income was not taxable under Article 7 of the treaty
- During the course of audit proceedings, the Assessing Officer ["AO"] held that Hyatt constituted PE in terms of Article 5(1) and Article 5(2) of the India-UAE tax treaty basis the following grounds:
  - ✓ Hyatt was 'actually operating the hotels, belonging to the owners, in each and every manner'. There was continuous presence of Hyatt through its employees or other personnel throughout the year
  - ✓ Hyatt had a fixed place of business at its disposal throughout the year in the premises of the hotel



Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

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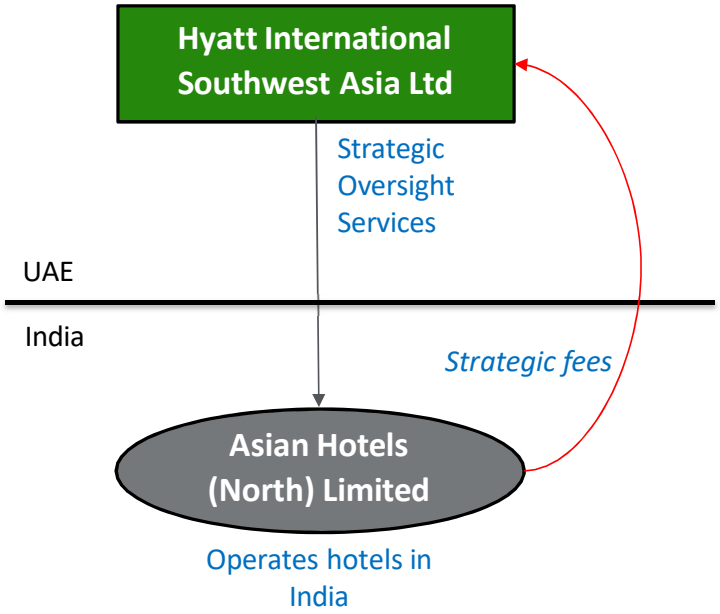


Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

Facts of the case

- ✓ Although Hyatt had restricted the stay of its employees in India below the specified period, but the premises were available to the taxpayer for the entire duration. The taxpayer had carried out its activities for performing its obligations under the SOSA from the said premises

- Aggrieved by the above, Hyatt filed an appeal and in the course of appellate proceedings, the matter reached before the Delhi High Court (HC) which held that the taxpayer had a PE in the form of a fixed place of business under Article 5(1) of the India-UAE tax treaty. It inter-alia relied on the ruling of Formula One World Championship Limited
- Aggrieved, Hyatt filed an appeal before the Hon'ble Supreme Court ["SC"]

Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

Assessee's contention

- The Assessee submitted that it is a Dubai based company engaged in rendering hotel consultancy and advisory services from Dubai to Hotels being operated under its group, including several located in India
- The Assessee argued that its income is not taxable in India basis the following grounds:
  - ✓ There is no specific article in the India-UAE tax treaty enabling taxation of FTS
  - ✓ The Assessee does not maintain a fixed place of business, office or branch in India
  - ✓ Limited and occasional presence of its employees in India, did not exceed the threshold of nine months under Article 5(2)(1) of the tax treaty, thereby excluding the existence of PE
- It was submitted that the Hon'ble HC erroneously disregarded the two essential conditions (as stated below) laid down in the cases of ***Formula One*** and ***E-Funds IT Solutions Inc*** which are essential for the existence of a fixed place PE:
  - i. There must be a specific, fixed and identifiable physical location in India; and
  - ii. Such location must be at the disposal of the foreign enterprise for use in carry out its own business activities
- The Assessee stated that it had ***no designated space or office in India specifically reserved at its disposal***. Additionally, ownership and control of the hotels in India remained with the Indian entity and the Assessee's ***involvement was confined to policy decisions or enforcement of brand standards*** which does not amount to fixed place PE
- The day-to-day operations of the hotel were carried out by the Indian entity under a separate Hotel Operating Services Agreement ["HOSA"] entered into with the hotel owner. Therefore, ***the Hon'ble HC has erred in conflating two separate legal agreements, i.e., SOSA and HOSA***.
- The oversight visits made by the Assessee's employees to various hotels in India were intended to ensure brand uniformity and quality compliance. The ***short duration spread across multiple locations, and lack of exclusive use or control over any space do not satisfy legal requirement of a fixed place PE***.

Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

Revenue's contention

- It was submitted that as per the terms specified in SOSA, the Assessee had more than mere access to the hotel premises and the premises were at the Assessee's full and unconditional disposal. The Assessee's business was carried on through the employees stationed at the hotel
- It was emphasised that as per SOSA:
  - ✓ Assessee's role extended beyond high level policy formulation and into the domain of actual implementation
  - ✓ The Assessee was involved in the appointment and training of staff, monitoring daily operations, exercising financial oversight and influencing procurement and operational decisions
- Basis this, it was submitted that the Assessee had managerial and functional control over the hotels in India
- Revenue placed reliance on other documentary evidences & argued that some employees of the Assessee remained in India upto 9 months and were involved in substantive hotel operations, clearly indicating operational presence in line with the terms of the SOSA. In light of this, it was submitted that the Hyatt had full and effective control over the hotel premises in India
- Revenue also placed reliance on the judgement of Supreme Court in the case of Formula One. In the said case, even though the assessee argued that it had access to race circuits only for 3 days a year, the court noted that in substance the contract term extended to 5 years (which may be renewed to 10) and the Assessee had full access to the race circuits during such period. The Court had emphasized on three key features of a PE, i.e., Stability, Productivity and Dependence
- Applying the above key features to the instant case, it was submitted that the Assessee entered into a 20 year agreement under which it enjoys extensive control over hotel operations which includes its key functions stated above (staffing, financial oversight etc.). This setup exhibits the key traits of a PE:

  1. Stability (20-year term),

  2. Productivity (fee linked to business outcomes), and

  3. Dependence (reliance on hotel infrastructure and staff to carry out its business)

Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

Decision of the Hon'ble Supreme Court

- Supreme Court observed that a PE requires a fixed place **'at the disposal'** of the enterprise wherein exclusive possession is not necessary. A **substantive use and control** would suffice to qualify the 'disposal test'
- Reference was made to OECD Guidance based on which it was observed that PE determination is **fact-specific** including: the enterprise's right of disposal over the premises, the degree of control and supervision exercised, and the presence of ownership, management, or operational authority
- In addition to the above, SC placed reliance in the case of ***Formula One (Supra)*** and made the following observations in the current case:
  - ✓ The Assessee had pervasive control over hotel's strategic, operational, and financial functions. SOSA granted powers to:
    - **Appoint** and **supervise** the General Manager and key staff
    - **Implement** HR and procurement policies
    - **Control** pricing, branding, and marketing
    - **Manage** operational bank accounts
    - **Assign** personnel without owner's consent
  - ✓ The role played by the Assessee was active and administrative. It was not merely advisory or consulting in nature
  - ✓ The 20-year agreement entered into by the Assessee ensured continuity, satisfying PE attributes of **stability**, **productivity**, and **dependence**
  - ✓ Functions performed were **core and essential, not auxiliary, and involved day-to-day operational control**
  - ✓ Activities were **continuous** and **revenue-linked**, reinforcing the existence of a fixed place of business
  - ✓ The Assessee exercised strategic decision-making and operational influence, meeting Article 5(1) PE criteria
  - ✓ With respect to daily operations being handled by a separate legal entity (under HOSA), the same did not decisively support the case. Legal form does not override economic substance in determining PE status

SC held that taxpayer has a fixed place PE in India and income received under the SOSA is attributable to such PE and is therefore taxable in India.

Hyatt International Southwest Asia Ltd. v. ADIT [TS-954-SC-2025] (SC)

Decision of the Hon'ble Supreme Court

Key take-away:

'Disposal test' is pivotal. The enterprise must have a right to use the premises in such a way that enables it to carry on its business activities. This test is to be applied contextually, taking into account the **commercial and operational realities** of the arrangement

Exclusive possession is not essential, temporary or shared use of space is sufficient, provided business is carried on through that space. The test is whether in substance, the premises are at the disposal of the enterprise and are used for conducting its **core business functions**

Determining whether a fixed place PE exists must involve a **fact-specific inquiry**, including: the enterprise's right of disposal over the premises, the degree of control and supervision exercised, and the presence of ownership, management, or operational authority.

ACIT & Ors. Vs. Shelf Drilling Ron Tappmeyer Limited (SC)
TS-456-SC-2025-TP

ACIT & Ors. Vs. Shelf Drilling Ron Tappmeyer Limited [TS-456-SC-2025-TP] (SC)

Facts of the case

- Shelf Drilling Ron Tappmeyer Ltd. and its group entities are non-resident companies engaged in shallow water drilling operations for clients in the oil and gas sector.
- For AY 2014–15, the assessee declared a substantial loss of INR 120.18 crore in its return filed on 29 November 2014.
- The return was selected for scrutiny, and a draft assessment order was issued on 26 December 2016, computing the total income at ₹4.34 crore.
- Being an eligible assessee under Section 144C(15), the company filed objections before the Dispute Resolution Panel (DRP), which issued directions on 28 September 2017. Based on these directions, the Assessing Officer passed a final assessment order on 30 October 2017 under Section 143(3) read with Section 144C(13).
- Aggrieved by the final order, the assessee appealed to the Income Tax Appellate Tribunal (ITAT), which remanded the matter back to the Assessing Officer for fresh adjudication on 4 October 2019. Following the remand, the assessee informed the AO on 5 February 2020 and requested early disposal. However, the AO took no action for over a year. Eventually, on 23 September 2021, the AO issued a show cause notice, and a draft assessment order was passed on 28 September 2021 (clarified as a draft on 29 September 2021).
- The assessee filed objections before the DRP on 27 October 2021 and simultaneously filed writ petitions before the Bombay High Court, arguing that the final assessment order could not be passed as the limitation period under Section 153(3), read with the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA), had expired on 30 September 2021.
- For AY 2018–19, the assessee had filed its return on 30 November 2018, again declaring a loss. Notices under Section 142(1) were issued starting 23 November 2020. A draft assessment order was passed on 28 September 2021. The limitation period for passing the final assessment order, originally due by 30 September 2020, was extended to 30 September 2021 due to TOLA. The High Court held that since the draft order was issued on 28 September 2021, there was insufficient time to complete the DRP process and pass a final order before the extended deadline, rendering the final order time-barred.
- The Revenue challenged the High Court's ruling before the Supreme Court, arguing that the time consumed in the DRP process should be excluded from the limitation period under Section 153(3), and that Section 144C operates independently with its own timelines.

ACIT & Ors. Vs. Shelf Drilling Ron Tappmeyer Limited [TS-456-SC-2025-TP] (SC)

Revenue's contention

- The Revenue, represented by the Additional Solicitor General (ASG), argued that Section 144C of the Income Tax Act constitutes a self-contained code applicable specifically to "eligible assessees" as defined under Section 144C(15). This procedure is distinct from the general assessment process under Sections 143 and 144.
- It was emphasized that the draft assessment order under Section 144C(1) is not an enforceable order but a preliminary step before the final assessment. This draft is mandatory for eligible assessees and is not required for other categories of taxpayers.
- The Revenue highlighted that non-obstante clauses appear in three sub-sections of Section 144C(1), (4), and (13). These clauses, especially in sub-sections (4) and (13), were argued to override the limitation periods prescribed under Section 153. Therefore, the timelines under Section 144C should be treated as additional to those under Section 153, not subsumed within them.
- The ASG contended that if the entire procedure under Section 144C (including time for objections, DRP directions, and final order) had to be completed within the 12-month limitation under Section 153(3), it would render the system unworkable. This would compress the time available to the Assessing Officer to an impractical extent, especially in cases involving transfer pricing.
- The Revenue criticized the Bombay and Madras High Courts' interpretation (notably in Roca Bathroom Products Pvt. Ltd.), which held that the Section 144C procedure must be completed within the limitation period under Section 153(3). The Revenue argued that this view ignored the special nature of Section 144C and failed to appreciate that the legislature had not excluded the time taken under Section 144C from the limitation period because it was already carved out as a separate mechanism.
- The Revenue pointed out that in cases involving a reference to the Transfer Pricing Officer under Section 92CA, Section 153(4) provides for an additional 12 months to complete the assessment. This, they argued, supports the view that additional time is legislatively contemplated in complex cases, and the same logic should apply to Section 144C.
- The Revenue rejected the assessee's argument that the non-obstante clause in Section 144C(1) only applies to the procedure of issuing a draft order and not to the timelines. They argued that such a narrow reading would defeat the purpose of the clause and the functioning of the Act.
- Finally, the Revenue submitted that courts should not import equitable considerations or rewrite the statute to address perceived practical difficulties. The statute, as drafted, is workable and must be interpreted accordingly.

ACIT & Ors. Vs. Shelf Drilling Ron Tappmeyer Limited [TS-456-SC-2025-TP] (SC)

Judgement by Justice Satish Chandra Sharma

- Justice Satish Chandra Sharma, in his judgement, concurred with the submissions made by the ASG and allowed the Revenue's appeals.
- Held that Section 144C of the Income Tax Act constitutes a distinct procedural code applicable to eligible assessees and must be interpreted independently of the general limitation provisions under Section 153.
- Rejected the interpretation adopted by the Madras High Court in Roca Bathroom Products Pvt. Ltd., which had held that the entire process under Section 144C including the issuance of the draft assessment order, objections before the DRP, and final assessment must be completed within the twelve-month limitation period prescribed under Section 153(3).
- Justice Sharma reasoned that such an interpretation would lead to impractical consequences and hinder the effective functioning of the assessment machinery, especially in complex cases involving transfer pricing. Emphasized that the non-obstante clauses in Section 144C(4) and 144C(13) override Section 153 and permit additional time for completing the assessment after the draft order and DRP directions. Concluded that the timelines under Section 144C are not subsumed within Section 153(3) but operate in addition to it, thereby ensuring that the Revenue has sufficient time to complete assessments without violating statutory limits.
- Accordingly, he set aside the impugned orders of the High Courts and upheld the validity of the draft assessment orders issued by the Revenue.

ACIT & Ors. Vs. Shelf Drilling Ron Tappmeyer Limited [TS-456-SC-2025-TP] (SC)

Judgement by Justice B.V. Nagarathna

- Justice B.V. Nagarathna in her judgement delivered opinion in the matter, disagreeing with the view of Justice Satish Chandra Sharma and upheld the decision of the Bombay High Court, which had quashed the draft assessment orders issued by the Revenue on the ground that they were time-barred under Section 153(3) of the Income Tax Act, 1961.
- Justice Nagarathna emphasized that the limitation period prescribed under Section 153(3), particularly the twelve-month period following the receipt of the Tribunal's order under Section 254, must be strictly adhered to. Justice Nagarathna found that the Revenue had failed to complete the assessment within this statutory timeframe, and therefore, no final assessment order could be passed in these cases.
- Consequently, held that the returns of income filed by the respondent-assessees must be accepted. Also clarified that this decision would not preclude the Revenue from taking any other steps permissible under law.
- In view of this, she found no merit in the appeals filed by the Revenue and dismissed them. Additionally, she declined to interfere with the interim order passed by the Bombay High Court in SLP(C) No. 25798/2024, noting that the main writ petition was still pending adjudication.

Order of the Supreme Court

- **Since, SC has given a split verdict with divergent opinions from both the judges. As a result, the SC has referred the matter to Chief Justice of India (CJI) to constitute an appropriate bench for deciding the final verdict.**

CIT Vs. Fujitsu Ltd.
(2025) 176 taxmann.com 516 (Del-HC)

CIT Vs. Fujitsu Ltd. (2025) 176 taxmann.com 516 (Del-HC)

Facts of the case

- The assessee, a Japanese tax resident, provided IT and software services to group entities including Indian affiliates. In the relevant year, it received payments under an arbitral award, which it classified as business income, claiming exemption under Article 7 of the India-Japan DTAA due to no PE in India.
- The Assessing Officer treated the amount as income from other sources, arguing arbitral awards aren't business income. However, the Tribunal ruled that the award related to unpaid dues for offshore supplies, thus qualifying as business income, and held it not taxable in India under the DTAA.

CIT Vs. Fujitsu Ltd. (2025) 176 taxmann.com 516 (Del-HC)

Decision of the High Court

- There is no dispute that the amount awarded to the assessee was against it claims for payment of supplies, which was accepted by the Arbitral Tribunal. Thus, undisputedly, the receipts in the hands of the assessee were inextricably linked to its business and were on account of its business activities. The assessee had, essentially, raised a claim for non-payment of amounts due for supplies. And the said claim was accepted.
- In the aforesaid view, there is no infirmity with the decision of the Tribunal in finding that the receipts in the hands of the assessee were in the nature of income from business in its hands. And the question whether the same were taxable had to be considered bearing in mind article 7 of the India-Japan DTAA.

Ovid Technologies Inc. vs. DCIT
[2025] 176 taxmann.com 557 (Delhi-HC)

Ovid Technologies Inc. vs. DCIT [2025] 176 taxmann.com 557 (Delhi-HC)

Facts of the case

- The assessee was a tax resident of USA and was engaged in maintaining database overseas. Its revenue from customers in India was in the nature of subscription for accessing the database.
- The assessee did not have any permanent establishment in India and, therefore, claimed that its receipts were not taxable as royalty or fees for technical services under the provisions of the Act and, in any event were not taxable under article 12 of the India-US DTAA.
- Assessee's application dated 24.03.2025 under Section 197 whereby the Assessee had sought 'Nil' withholding tax certificate for Assessment Year 2026-2027 was rejected directing that tax be deducted at the rate of 15% on the consideration paid to the Assessee.

Ovid Technologies Inc. vs. DCIT [2025] 176 taxmann.com 557 (Delhi-HC)

Decision of the High Court

- A plain reading of the impugned order dated 24-3-2025 shows that it lacks independent reasoning and merely refers to the assessment proceedings for AY 2022–23. In that order, the AO treated the assessee's receipts as royalty taxable on a gross basis under Article 12 of the India-US DTAA.The assessment order dated 29-4-2024 for AY 2022-23 relied on **CIT v. Synopsis International Old Ltd. [2012] 28 taxmann.com 162/[2013] 212 Taxman 454 (Karnataka)**, which has been overruled by the Supreme Court in **Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/432 ITR 471/281 Taxman 19 (SC)**. Despite this, the AO did not apply the binding precedent, citing a pending review petition.
- Supreme Court rulings are binding under Article 141 of the Constitution, and the review petition referred to by the AO had already been dismissed. The assessee also pointed to a recent Supreme Court order confirming the binding nature of the relevant decision. This made the Revenue's reliance on the pending review petition untenable.
- Therefore, the Hon'ble HC set aside the impugned order u/s. 197 and remanded the matter to the AO to consider assessee's application afresh and pass an order in accordance with law.

PCIT vs. Sony India Software Centre (P) Ltd.
(2025) 177 taxmann.com 206 (Kar-HC)

PCIT vs. Sony India Software Centre (P) Ltd. (2025) 177 taxmann.com 206 (Kar-HC)

Facts of the case

- The assessee, an Indian company, engaged in providing software development services, made payment to JL Services & Consultancy ('JLSC'), a tax resident of Singapore, for conducting workshops for its employees on performance management and career management without deduction of tax at source.
- The Assessing Officer held that the payment made to the foreign resident was chargeable to tax under the Act as 'fees for technical services'. He, thus, disallowed the payment under section 40(a)(i).
- On appeal, the Commissioner (Appeals) held that fees for such training could not be considered as fees for technical services under section 9(1)(vii).
- The Revenue challenged the order passed by the learned CIT(A), inter alia, on the ground that the CIT(A) had erred in deleting the disallowance made under Section 40(a)(i) of the Act in regard to reimbursement made by the Assesse to "seconded employees". The revenue also urged that the CIT(A) had failed to appreciate that the amount reimbursed by the Assessee to overseas companies and employees in terms of settlement agreement amounted to fees for technical services. Thus, the Assessee was required to deduct tax at source under Section 195 of the Act.
- The Tribunal held that the grounds as raised by the revenue did not arise in the assessment order.

PCIT vs. Sony India Software Centre (P) Ltd. (2025) 177 taxmann.com 206 (Kar-HC)

Decision of the High Court

- The addition was not made on account of payments made to seconded employees under secondment agreement. The Assessing Officer had held that the payment made for professional services by JLSC was in the nature of fees for technical services, which was covered under article 12 of India Singapore -DTAA.
- In this view, there is no infirmity with the impugned order as the grounds of appeal set out by the revenue before the Tribunal did not arise from the assessment order. The Assessing Officer had not found that any employees were seconded to the assessee by any overseas entity. There was no issue raised regarding payments made to seconded employees.
- Having stated above, it is also clear that the payments made by the assessee to JLSC for conducting workshops cannot be considered as fee for technical services under article 12 of the India - Singapore DTAA.
- The Supreme Court in **Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471(SC)**, reiterated that the meaning of terms and expressions defined under the double taxation avoidance treaties, were not to be controlled by definitions of those terms under the Act. Thus, the expression 'fee for technical services' would necessarily confine to the meaning ascribed under paragraph 4 of the India - Singapore DTAA.
- Plainly, training workshop for performance management, and career management for employees are general training programs that cannot be considered as technical services. There is no transfer of technical knowledge, technical knowhow, experience, skill or process.

Sivakarthick Raman v. ACIT (IT) [2025]
176 taxmann.com 491 (Chennai - Trib.)

Sivakarthick Raman v. ACIT (IT) [2025] 176 taxmann.com 491 (Chennai - Trib.)

Facts of the case

- The taxpayer, an employee of an Indian company (I Co), was on an assignment/secondment to a Chinese group company (F Co) during the financial year (FY) 2021-22 relevant to the Assessment year (AY) 2022-23. He rendered services/exercised employment with F Co in China during this period. While on an international assignment with F Co, he was based in China and was physically present in China and was rendering services in China during the FY 2021-22.
- The taxpayer was in India for less than 60 days during the FY 2021-22 and qualified as a non-resident in India under section 6(1) of the Income-tax Act, 1961 (ITA) [related to residency status of taxpayer]. He qualified as a non-resident of India and as a tax resident of China for the Calendar Year 2021 and 2022.
- During the period of assignment, taxpayer's payroll remained in India for administrative convenience and taxes were duly withheld at source by the I Co in respect of salary received by him in India for employment exercised/services rendered in China.
- The taxpayer was also duly taxed in China in respect of the salary and benefits paid to him in India and related to employment exercised/services rendered in China to F Co.
- The taxpayer in the return of income, claimed exemption under Article 15(1) of the India-China DTAA [related to dependent personal services] with respect to salary received in India for services rendered in China on the basis that he exercised employment/rendered services with F Co.
- During the course of audit proceedings, the AO in his final assessment order and the DRP in the directions issued, disallowed the exemption claimed, inter alia, on the basis that the salary was credited by I Co into the taxpayer's account in India from the payroll account of India.
- Aggrieved, the taxpayer filed an appeal before the Chennai bench of the Income-tax Appellate Tribunal (ITAT). The taxpayer contented the following before the ITAT:
    - Salary and benefits were received in India as his payroll remained in India for administrative convenience during his assignment in China in addition to certain benefits paid in China.
    - Exemption was claimed under Article 15(1) of the India-China tax treaty read with section 90 of the ITA, being salary received in India for services rendered/employment exercised in China with F Co as he qualified as a resident of China during this period

Sivakarthick Raman v. ACIT (IT) [2025] 176 taxmann.com 491 (Chennai - Trib.)

Decision of the ITAT

- As per section 5(2) of the ITA, the income of an individual who qualifies as a non-resident in India is taxable in India only to the extent it is accrued, deemed to accrue, received or deemed to be received in India. Further, the provisions of section 5(2) of the ITA are subject to other provisions of the ITA and would have an overriding effect. If the charging provisions of the ITA do not consider such receipts as taxable, it shall not be taxable under section 5(2) of the ITA.
- Under section 9(1)(ii) of the ITA, income under the head 'Salaries' shall be deemed to accrue or arise in India if it is earned in India. Further, as per Explanation to Section 9(1)(ii) of the ITA, services rendered in India are regarded as income earned in India.
- Section 15 of the ITA provides for the chargeability of income under the head 'Salaries'. Accordingly, in arriving at the total income of a non-resident, the provisions of section 15 of the ITA need to be considered which contemplates chargeability of salary accrued to an employee, irrespective of whether it is received or not.
- However, where salary is received in advance, the same is taxable on receipt basis. Hence salary is taxable on accrual basis, the only exception being when salary is received in advance. It is only 'advance salary' which is taxable on receipt as an exception to the general rule that salary is taxable on accrual basis.
- In taxpayer's own case for earlier AYs along with another case, the ITAT had held that:
    - The taxpayer being tax resident of China, the salary income was taxable in China only.
    - Salary received for the employment exercised in China was taxable in China under Article 15(1) of the India-China tax treaty.

Sivakarthick Raman v. ACIT (IT) [2025] 176 taxmann.com 491 (Chennai - Trib.)

Decision of the ITAT

- In an identical issue in case of **Shri Paul Xavier Antonysamy V/s ITO (ITA No.2233/Chny/2018**, it was held as follows:
  - As per the provisions of section 9(1)(ii) of the ITA, salary income could be deemed to accrue or arise in India only if it is earned in India in respect of services rendered in India.
  - Tax treaty benefit shall be applicable to persons who are residents of both India as well as Australia. Therefore, the contention that the taxpayer being a non-resident and hence treaty benefit cannot be extended to taxpayer, was incorrect.
  - Accordingly, it was held that the salary so earned for work performed in Australia would be taxable in Australia.
- Further in the case of **Shri Ramesh Kumar AE Vs ITO for AY 2015-16 in IT(TP)A 51/Chny/2018**, it was held that salary income as accrued to the taxpayer for work performed in a foreign jurisdiction would not be taxable in India whereas the salary received for work performed in India would be taxable in India.

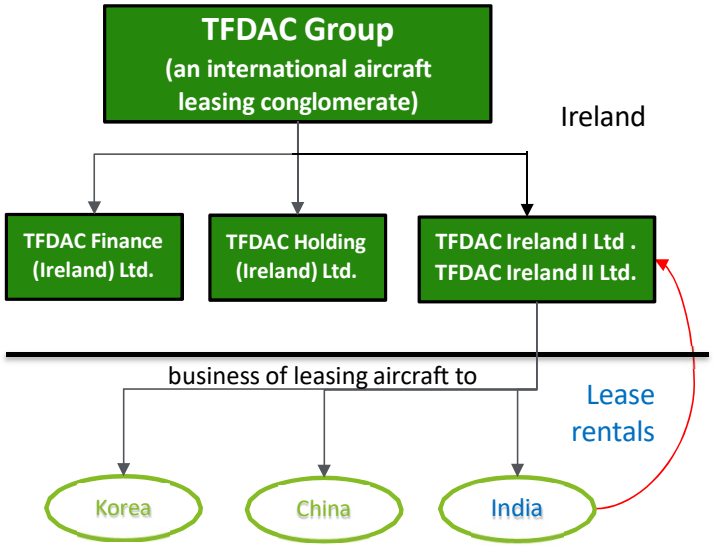
In view of the earlier rulings including in taxpayer's own case, the ITAT held that the salary income for services rendered in China was taxable in China under Article 15(1) of the India-China tax treaty

Sky High Appeal XLIII Leasing Company Ltd. v. ACIT (Int. Tax) [2025] 177 taxmann.com 579 (Mumbai - Trib.)

Sky High Appeal XLIII Leasing Co. Ltd. v. ACIT (IT) [2025] 177 taxmann.com 579 (Mumbai - Trib.)

Facts of the case

- TFDAC Ireland II Ltd., an Irish company holding a valid TRC forms part of a global aircraft leasing group that leased aircraft to airlines in Korea, China, India.
- In February 2019 i.e., prior to the MLI becoming effective with respect to the India-Ireland DTAA on 01 April 2020, it entered into a dry operating lease with an Indian airlines - IndiGo.
- For AY 2022-23, the taxpayer filed a Nil ITR based on the following positions: -
  - ✓ Not taxable as 'royalty' under Article 12(3)(a) of the DTAA, as payments for the use of 'aircraft' are specifically excluded.
  - ✓ Not taxable as business profits under Article 7 in the absence of a PE in India.
  - ✓ Exempt under Article 8(1) as arising from the operation of aircraft in international traffic.
- Upon assessment, the AO and DRP: -
  - ✓ Denied DTAA relief pursuant to Articles 6 and 7 of the MLI on the basis that the PPT was not satisfied.
  - ✓ Held that the lease rentals are taxable as 'royalty' u/s 9(1)(vi) of the Act.
  - ✓ Characterized the lease as finance lease and held that the rentals are alternatively taxable as interest.
  - ✓ Held that the leased aircraft constitutes a Fixed place PE in India (on the basis that the assessee retained ultimate control) and attributed 25% of the gross receipts to the PE.



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DTAA benefit – Whether MLI applicable sans notification?

Assessee's contentions

- The India-Ireland DTAA was notified on January 11, 2002, while the MLI was separately notified on August 9, 2019; however, no specific protocol or notification has been issued to implement the MLI amendments to the DTAA.
- Relying on the SCs decision in **Nestlé SA [2023] 458 ITR 756 (SC)**, it was argued that without a specific notification u/s 90(1) of the Act for giving effect to the MLI changes, Articles 6 and 7 of the MLI cannot be enforced to restrict the benefits granted by the DTAA.

Revenue's contentions

- The India-Ireland DTAA was notified vide Notification No. 45/2002 dated 20 February 2002, and India has also signed and ratified the MLI, notified vide Notification No. 57/2019 dated 9 August 2019; Since both are duly notified u/s 90(1) of the Act, no further notification is required.
- India has listed the Ireland DTAA as a 'Covered Tax Agreement' with the OECD and Ireland has also ratified the MLI; therefore, Articles 6 and 7 automatically modify the DTAA.
- The MLI is not an amending protocol but operates alongside Covered Tax Agreements to modify their application, so no separate notification is needed; the synthesized text under the DTAA is not a legal instrument, the only authentic legal instruments are the DTAA and the MLI, both duly notified.
- The SC's decision in Nestlé SA is not applicable as it concerned Most Favoured Nation clauses extending benefits from later DTAAs, whereas the MLI is a multilateral convention duly notified; therefore, Articles 6 and 7 apply without any further notification.

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DTAA benefit – Whether PPT applicable?

Assessee's contentions

- The leases were executed in February 2019, i.e., before the MLI took effect on April 1, 2020.
- The following facts demonstrated that choosing Ireland was driven by genuine commercial reasons inherent to the global aircraft leasing industry, not by any tax avoidance motive: -
  - ✓ The assessee holds a valid TRC.
  - ✓ The operations were managed from Ireland via a licensed group service provider with Irish directors, bankers, lawyers, company secretary.
  - ✓ It had leasing operations in China and Korea, proving that India was not its sole focus.
  - ✓ Its aircrafts were registered with India's DGCA.
  - ✓ Outsourcing administrative functions to the group company or engaging service provider for remarketing services were well-accepted industry practices in the aircraft leasing sector.
- The **BEPS Action Plan 6 Final Report** and Bombay HC ruling in **Bid Services Division (Mauritius) Ltd. [2023] 453 ITR 461 (Bom)** have affirmed that having a parent in a tax-neutral jurisdiction is not, per se, a proof of DTAA abuse.

Revenue's contentions

- The ultimate parent entity is based in the Cayman Islands, a tax-neutral jurisdiction, and the assessee was incorporated solely to avail treaty benefits.
- The assessee has no infrastructure or employees in Ireland, and its day-to-day management and lease functions are outsourced to a group company and a service provider.
- The directors hold directorships in multiple Irish companies, indicating a lack of genuine and independent decision-making.
- The assessee therefore lacks commercial substance in Ireland, having been incorporated primarily to obtain treaty benefits, and thus fails the PPT test provided under Articles 6 and 7 of the MLI.

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Operating lease v. Finance lease

Assessee's contentions

- The ownership risks lie with the lessor, while operational risks (maintenance, crew, deployment) lie with the Indian airlines.
- There is no option to purchase vested in the lessee at the end of the term or any schedule for acquisition at a residual value in favour of the lessee.
- The ability to sub-lease is not decisive of ownership, especially as sub-letting requires the lessor's prior written consent, indicating that ownership remains with the lessor.
- Revenue's reliance on Irish depreciation rules to label leases over eight years as finance leases is misplaced, as depreciation affects book value but not the economic life of the aircraft.
- The Special Bench's ruling in case of **InterGlobe Aviation Ltd. [2022] 95 ITR(T) 586 (Del Trib – SB)** which found similar agreements to be operating leases, is directly applicable to their case.

Revenue's contentions

- The lease arrangements exhibit finance lease characteristics inter-alia sub-leasing rights and lease duration covering the aircraft's economic life as per the Irish depreciation rules.
- The Special Bench ruling cited by the taxpayer contains only 'casual observations' that are not binding.
- Accordingly, the lease rentals are for the use of equipment (aircraft) in India and hence taxable as royalty u/s 9(1)(vi) of the Act.
- Alternatively, the rentals qualify as 'interest' under Article 11 of the DTAA since the assessee effectively financed the airlines' aircraft purchase, with payments linked to LIBOR and aircraft cost, reflecting financing rather than pure rental.

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Existence of a PE in India, Applicability of Article 8 of the DTAA

Assessee's contentions

- Though the aircrafts are located in India, they were under the exclusive control and operation of the Indian airlines – the assessee only has protective rights of inspection and repossession.
- The business of leasing aircraft was entirely carried out from Ireland with no personnel, premises or infrastructure in India. Accordingly, it was argued that in the absence of any business undertaking in India, it does not constitute a PE in India.
- Its income was not taxable under Article 8(1) of the DTAA since the leased aircraft were part of IndiGo's integrated fleet and were used interchangeably on both domestic and international routes.
- Since the DTAA does not specify predominance or a usage threshold with regard to operation in international traffic, even a single non-incidental use on an international sector is enough to override the 'solely' domestic exclusion.

Revenue's contentions

- The assessee retains the 'ultimate control' over the aircrafts in India via repossession and inspection rights, which constitutes a fixed place of business in India.
- Thus, the leased aircrafts, located and operated in India, constitute a fixed place of business, resulting in the assessee having a fixed place PE in India under Article 5 of the DTAA.
- Article 8 applies only to income from the operation of aircraft in international traffic; since the Indian airlines is a domestic airline and the leasing activity is unrelated to international traffic, the exemption under Article 8(1) of the DTAA does not apply.

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Decision of the ITAT

Applicability of MLI sans notification

- The Revenue has admitted that the MLI is 'not an amending protocol' but operates alongside the DTAA.
- As per OECD commentary, the MLI's effect is subject to domestic law, and the synthesized text is merely an explanatory aid, not a substitute for legal incorporation.
- While the MLI was designed for efficient multilateral implementation of BEPS measures, such efficiency cannot override India's statutory requirements. Under Section 90(1) of the Act, any modification to a DTAA must be expressly notified. Applying the Supreme Court's reasoning in Nestlé SA, any change affecting rights or liabilities under a DTAA requires specific notification. Since no separate notification exists for the impact of the MLI on the India-Ireland DTAA, the PPT provisions under Articles 6 and 7 cannot be enforced for FY 2021–22.

Applicability of PPT

- Even assuming Articles 6 and 7 of the MLI apply, the PPT is not triggered merely due to efficient structuring. The Revenue has not shown that the principal purpose was to obtain treaty benefits. A valid TRC from Irish authorities confirms residency and cannot be disregarded without compelling evidence.
- The taxpayer had genuine commercial presence in Ireland—through directors, bankers, lawyers, and a licensed service provider. Ireland is a global aircraft leasing hub, and outsourcing functions is standard industry practice. Such outsourcing does not negate control from Ireland.
- The Revenue's reliance on the Cayman Islands parent is misplaced; ownership in a tax-neutral jurisdiction alone does not imply treaty abuse. OECD's BEPS commentary clarifies that PPT does not target bona fide commercial structures. The taxpayer's choice of Ireland was commercially justified and aligned with the DTAA's object and purpose, entitling it to treaty protection.

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Operating lease v. Finance lease

- As per the lease agreements, aircraft were to be returned at lease-end, with no transfer of ownership or purchase option—hallmarks of operating leases. All operational responsibilities lay with the Indian airlines. The Delhi Special Bench had categorically concluded that similar aircraft leasing arrangements constituted operating leases, hence, the DRP's dismissal of this as 'casual' is unfounded.
- The Irish depreciation rules apply only for Irish tax purposes and do not affect lease classification under Indian law. The Revenue's attempt to recharacterize standard dry leases as financing arrangements lacks merit.
- Under Article 12(3)(a) of the DTAA, lease payments for aircraft use are excluded from 'royalty'. Since the DTAA prevails over the provisions of the Act, the characterization of lease rentals as royalty u/s 9(1)(vi) of the Act is ruled out. The alternative argument of interest is also misplaced, as the payments were not linked to any debt or lending arrangement under Article 11 of the DTAA.

Existence of a PE in India, Applicability of Article 8 of the DTAA

- Under Article 5 of the DTAA, a PE requires a fixed place of business. Mere asset ownership in India does not suffice. The aircraft were operated solely by IndiGo under dry leases, with no personnel, offices, or facilities of the taxpayer in India. Rights of inspection or repossession were protective, not indicative of a business presence.
- The aircraft were not at the taxpayer's disposal and could not be used at will. In the case of **Sunflower Aircraft Leasing Ltd. [ITA No.1107/Mum/2025]**, it was held that leased aircraft under dry lease do not create a PE of the foreign lessor. Hence, the DRP's reliance on 'ultimate control' was without any merit.
- Article 8(1) of the India-Ireland DTAA includes both 'operation or rental' of aircraft in international traffic, recognizing rental as a standalone source of income. Since the aircraft operated partly on international routes, rental income qualifies as profits from international traffic under Article 3(1)(g).
- Article 8 overrides Article 7, so even if a PE existed, leasing income remains taxable only in Ireland. Thus, lease rentals cannot be taxed in India.

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Key takeaways

MLI including PPT cannot be enforced in India unless a specific notification u/s 90(1) of the Act is issued to incorporate them into the DTAA; Until such notifications are issued, benefits under existing DTAAs remain protected from automatic modification through the MLI

A valid TRC is conclusive evidence of tax residency for DTAA purposes, barring cases of fraud or treaty shopping

Demonstration of strong commercial substance is fundamental for treaty reliant entities

Treaty benefits however cannot be denied merely because the parent is located in a tax-neutral jurisdiction or the foreign taxpayer's business operations are outsourced

The burden of proof lies with the tax authority to establish sham or conduit structures

'Disposal test' is a critical factor and the mere presence of a business asset in India does not create a PE, particularly where there is a distinction between the situs of the asset and the locus of the foreign taxpayer's business

Article 8 of the India-Ireland DTAA:

- Since the DTAA specifically includes "rental" of aircraft in addition to operation, it would be incorrect to superimpose that the taxpayer itself must be the operator in international traffic, or that rental income must be subordinate to such operations.
- There is no quantitative test for international usage - Article 3(1)(g) excludes only operations carried out solely within India. Hence, even a single international usage suffices to fall within the scope of "international traffic"

THANK YOU