

THE MONTHLY MAGAZINE FROM CASC

GST UPDATES



Direct Tax



RECENT JUDGEMENTS



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CASC BULLETIN

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14.08.2025 (Thursday)	Latest Developments in Tax Audit Regulations	CA. D. Priyanka Mehta
28.08.2025 (Thursday)	Companies Act - Annual Filings for 2025	CS. Smita

Shri G.Narayanaswamy CA Study Circle Meetings will be at 6.30 p.m. and will be preceded by fellowship over High Tea at 6.00 p.m

**CASC Annual Members are requested to renew their
subscription for 2025 - 2026**

EDITORIAL

Dear Professional Colleagues,

“The art of auditing, the science of accounting, the spirit of compliance – all now evolving with intelligence, both artificial and human.”

Income Tax Bill 2025 – Key Recommendations

The report from the committee primarily corrects drafting anomalies, inconsistencies and ambiguities introduced while simplifying the text. It preserves the policy intent of the Income Tax Act, 1961, rather than introducing major shifts. The focus is on alignment with existing norms: capital asset definitions, residency interpretation, dividend deductions, etc. Few structural changes are introduced; most are intended to keep behavioural and financial outcomes consistent with existing law. Removing penalty for delayed filing in refund-only cases and allowing TDS refund claims post-deadline without fine reflects a clear tilt towards relief and fairness for smaller taxpayers.

While not a policy rewrite, the report also introduces several meaningful reliefs – especially for property owners and small taxpayers – and procedural streamlining like time bound dispute resolution.

Taking the New Age - Influencers and F&O Traders

The Income Tax Department has introduced five new professional codes under ITR-3 to include emerging professions. These codes officially recognize social media influencers, F&O traders, speculative traders, and commission agents as professionals. The initiative aims to keep pace with the digital economy and capture untapped professional income. Influencers with over Rs.20 lakh in annual income or even net worth beyond Rs.100 crores have come under the tax radar. Many were previously filing returns under vague or mismatched categories like "Other." Assigning precise codes is expected to improve return accuracy and aid compliance. This move will reduce errors in category selection during filing. Tax experts believe it will streamline data analytics and tax administration. The goal is to bring informal sector income into the formal tax net.

This shift marks a significant step toward modernizing the tax system in line with current business trends.

New UPI Rules from August 1

Starting August 1, 2025, new UPI guidelines will take effect to regulate balance checks, autopay mandates, and third-party API

access. The NPCI has introduced these changes to enhance security and system efficiency in UPI operations. Users of platforms like Paytm, Google Pay, and Phone Pe will now experience controlled limits on balance inquiry requests. Autopay services such as recurring bill payments or subscription fees will undergo revised compliance protocols. Third-party app providers (TPAPs) must now follow structured API usage guidelines issued by NPCI. The move intends to curb misuse of API calls and ensure smoother backend functioning across UPI apps. Apps may prompt users for revised consent or authentication in line with the new norms. Payment apps have started notifying users about reduced backend latency and better transaction success rates. Banks and PSPs will also be held more accountable for UPI infrastructure management. These updates aim to enhance user experience, transparency, and safeguard digital transactions.

A timely step to ensure UPI's scalability and safety as usage surges. The new rules balance innovation with tighter compliance for user protection.

Appeal against Rejection of Amnesty

The GSTN has now enabled filing of appeals against rejection orders issued in Form GST SPL-07 related to the GST Amnesty Scheme.

Earlier, taxpayers had no direct recourse if their amnesty applications (filed via SPL-01 or SPL-02) were rejected. Now, an appeal can be filed online using Form GST APL-01 through the GST portal. The new facility offers taxpayers an opportunity to contest decisions made under the amnesty scheme framework. This update ensures procedural fairness and aligns with the right to appeal under Section 107 of the CGST Act. The timeline to file an appeal is three months from the date of receipt of the SPL-07 order. The appeal functionality is available under Services '! User Services '! My Applications '! "Appeal to Appellate Authority." This move is particularly relevant for those whose amnesty claims were rejected on procedural or documentation grounds. It also reduces the need for offline appeals and promotes transparency in GST dispute resolution.

The change was introduced following persistent concerns by taxpayers and professionals regarding non-appealable amnesty rejections. This is a welcome relief for taxpayers seeking redress against unjust rejections under the amnesty scheme. It enhances legal recourse and reflects a more inclusive and responsive GST framework.

Highlights of 47th AGM of CASC

The 47th AGM of CASC was held on Thursday, 31st July 2025 at 5.30 P.M. Our MC members, CA.G.Akshunn Daga has retired and CA.T.V. Praveen had resigned. We, at CASC, thank them for their invaluable contributions to the functioning of our organization. To their position, CA.K.R.Satyanarayanan and CA.Renuka Murali were elected as new MC members. We wish them all the best in this new endeavour. CA.Bhuvanewari.R.V. who is retiring by rotation and eligible for reappointment, was re-elected. During the AGM, 14 rank holders of CA Final and Intermediate examinations from Chennai region were felicitated for their achievements; scholarships were also awarded to the deserving candidates. We have also felicitated the contributors of our CASC Bulletin for their support and Speakers of our monthly meetings for sharing their valuable inputs. The highlight of the AGM was the special address by the CA.S.Ramakrishnan , Vice Chairman and Partner at PKF Sridhar & Santhanam LLP on the topic “CA Professionals, How to Embrace Digital / AI Technology”

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or to any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

For and on behalf of the Editorial Board

Bhuvaneshwari.R.V.

CA. ~~MANE~~RIR.V

RESPECTFUL HOMAGE



Date of Birth
07-04-1956

Date of Death
30-07-2025

PADMASHRI AWARDEE

CA. T N MANOHARAN

Founder Partner, Manohar Chowdhry & Associates,
Chartered Accountants,
Past President, ICAI
- Deeply Mourned by -

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

“A forged sword that gleams in any armory; A raging river carving through solid stone.”

He is a towering personality whose life was a testament to integrity, service and brilliance.

A son of a freedom fighter and a true champion of our Chartered Accountancy profession, he exemplified what it means to rise from humble beginnings and leave an indelible mark on society.

- **Elite professional**, revered for his technical acumen and ethics
- **Remarkable teacher**, shaping generations with wisdom, values and humility
- **Visionary mentor**, guiding countless young professionals
- **True philanthropist**, whose compassion knew no boundaries
- **Proud Freemason**, dedicated to community and public service
- **Patriotic NCC student**, athlete, mimicry artist, and a brilliant speaker

He was a multifaceted personality who transcended every role he played - with grace, dignity, and purpose. His journey from a **small village** to the **Rashtrapati Bhavan** to receive the *Padma Shri* remains a beacon of inspiration, reminding us that relentless hard work and unwavering values can move mountains.

Through corporate storms and crises, he stood tall – his wisdom lighting the way. His oratory could galvanize hearts, and his humility could bring people together. His contributions to the CA fraternity and society will echo through time.

As we bid adieu, we carry his spirit forward – with gratitude, pride, and unwavering resolve to emulate his legacy.

Let us come together to offer our heartfelt condolences to the bereaved family and pray for strength during this irreparable loss.

May his noble soul rest in eternal peace and serenity.

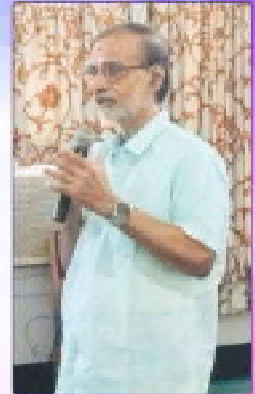
GLIMPSES FROM SHRI G.NARAYANASWAMY CA STUDY CIRCLE MEETING HELD ON 10.07.2025

SPEAKER - CA.M.A.ABHINAYA

TOPIC - PARTNERSHIPS & LLPS - INCOME TAX NUANCES



GLIMPSES FROM THE 47th AGM HELD ON 31.07.2025 @ HOTEL PALM GROVE



MANAGEMENT COMMITTEE FOR THE YEAR 2025 - 2026



A POETIC TRIBUTE BY OUR MEMBER CA. V. THOMAS WRITTEN ON THE OCCASION OF CASC'S 47TH AGM

புலகவி கணக்கரின் புலிபக விமயம்
சூத்த லலாம் கண்டோரார் சூலக்தம்
நன்மலாம் உள்ளோரார் ரிதபர்கின்றது சின்மும்
பெற்றிடுவோம் யாம் ரிதபர்ந்து அறிவுதிரிப்பம்
என்றும் சிறந்திட வாழ்த்திடும் எம்ரிதக்கம்!!!

**SPECIAL ADDRESS BY CA.S.RAMAKARISHNAN, ON THE TOPIC
"CA PROFESSIONALS, HOW TO EMBRACE DIGITAL / AI TECHNOLOGY"**



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FELICITATION OF RANK HOLDERS IN CA EXAMINATIONS



SCHOLARSHIPS AWARDED TO DESERVING CA STUDENTS



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DAMER

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.
The soft copy of this bulletin will be hosted on the website shortly.

READER ATTENTION

You may please send your Feedback / Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to admin@casconline.org

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For updates on monthly meetings and professional news.

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RECENT DECISIONS ON VAT /CS /G

Whether Manufacture or not ? : As per the job work agreement entered by the appellant with DCL, they only manufactured the refractory products by using the material supplied by DCL. The said components are further used in the manufacturing of final product of DCL. Thereafter, DCL would produce the final products by using the said components. Therefore, job work entrusted with the appellant by DCL cannot be treated as manufacturing of capital goods in order to claim themselves as a dealer. They were only doing a job work by using the materials supplied by DCL. In the said circumstances, both the authorities correctly rejected the appellants' claim that they are not entitled to claim the benefit of the input tax credit. **M/s. Sri Natraj Ceramic & Chemical Industries Ltd., Vs. The Joint Commissioner (T) Trichy Division, Trichy TC MD No. 2 of 2024**



CA. V.V. SAMPATHKUMAR

Proceedings in the name of dead person : The impugned order, passed under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017, has been issued in the name of a dead person. On that

sole ground, the same shall stand quashed. The matter is remitted back to the file of the third respondent. The third respondent is at liberty to take steps as against the legal representatives of the deceased assessee. **Prakash Vs. 1 The Commissioner of State Tax Chennai** 52 The Appellate Deputy Commissioner of State Tax, Sur - 603 The Deputy Commissioner of State Tax, Sur (uth) Sur - 60 W.No.9 of 2017

Mode of Service of notice : Assuming the sending notices by uploading in the portal is sufficient service, when the Officer who was sending the repeated reminders, received no response from the petitioner, he ought to have applied his/her mind and explored diligently the possibility of sending notices by other modes prescribed in Section 169 of the GST Act. Mere uploading notice repeatedly without ensuring their receipt by the petitioner cannot be considered as effective service. Such mechanical compliance does not serve any useful purpose and the same will only lead to multiplicity of litigations, wasting not only the time of the Officer concerned, but also the precious time of the Appellate Authority / Tribunal and this Court as well. Thus, when there was no response from the tax payer to the notice uploaded in the portal, the Officer

service as is contemplated under Section 37(1) of the respective GST Acts was a temporary measure to regulate the availing of Input Tax Credit (ITC). Ipso facto, it cannot be held that Rule 36(4) of the respective GST Rules is in violation of Article 14 of the Constitution of India. The Court also added that there is discernible violation of Article 14 of the Constitution of India by virtue of the restrictions under Rule 36(4) of the respective GST Rules. That apart, there is a presumption of constitutionality of GST enactments and Rules framed under the enactments. The restrictions were placed with a view to implement the object of allowing legitimate Input Tax Credit on the goods or service supplied by the supplier of goods or service as the case may be by a recipient who was liable to pay tax on the output supply was engaged in Zero Rated Supply within the meaning of the respective GST enactments including Integrated Goods and Service Tax and the Rules made thereunder. The restrictions are reasonable and since they are intended to implement the laudable object of allowing legitimate / eligible Input Tax Credit (ITC). Therefore, the challenge to the restrictions imposed under Rule 36(4) of the respective GST Rules on the ground of it being arbitrary and violative of Article 14 of the Constitution of India

cannot be countenanced. **M/s. I&T Costructure P, Vs. The
Union of India, The Government of Tamil Nadu, Department
of Commercial Taxes, Chennai - 63** The Commissioner of
Commercial Taxes, Chennai - 54 The Assistant Commissioner
of Nandambakkam State Tax Office W.Nos. 5 and 8
of 20 Reserved on 20 Pronounced on 20

Special facts and circumstances: The impugned proceedings rest on the premise that the petitioner did not file his returns. It has been demonstrated that returns were in fact filed and the payments to the tune of Rs.57,95,074/- has been made. The Hon'ble Court wanted to know as to why the petitioner did not participate in the impugned proceedings and why he did not challenge it in time. It was then submitted that the petitioner concern is a proprietary concern and the son of the Proprietor was seriously ill during the relevant period and that he passed away during November 2024. Considering the special facts and circumstances of this case, the order impugned in the writ petition is set aside. The matter is remitted to the file of the respondent with certain directions. **Depam Enterprises Vs. The Assistant Commissioner of Villivakkam Assessment Circle, Chennai 6** W.No. of 20

Filing of appeal with delay: The petitioner filed the appeal beyond 90 days but within a condonable period of 30 days under Section 107 of the GST Act. It appears that the petitioner erroneously filed the appeal without enclosing the Condonation of Delay application. Therefore, the second respondent rejected the petitioner-s appeal on the ground that the appeal was filed belatedly. This Court in Indian Potash Ltd., Vs. Deputy Commissioner (ST) GST Appeal held that an appeal cannot be rejected on the ground of technical defects. No doubt there is procedural irregularity in filing the appeal but such procedural irregularity should not defeat the petitioner-s right. As it is well settled that procedure is handmaid of justice, this Hon’ble Court was of the view that the petitioner should be given an opportunity to rectify the defect and set aside the impugned order with directions. **Tv1.6i Hri Enterprises Vs 1 The Assistant Commissioner (FAC) (Sur North) Circle, H sur. 2The Deputy Commissioner (CT) (Appeals) H sur. 3EC B ank, Kshnagiri Bypass Road, H sur - 60 W No. of 2**
NOTE

Delay : The Hon’ble Court stated that In the present case there are no justifiable reasons forthcoming from the Revenue for the delay in adjudication of the show cause proceedings. The continuation of

show cause proceedings long after their issuance have to be held to be arbitrary and offending under Article 14 of the Constitution of India. Therefore, these writ petitions are deserve to be allowed in view of the overwhelming body of decisions of various Courts holding that the proceedings initiated long before cannot be continued after efflux of time. The Court was also not willing to take any contrary view although it is a well settled principle of law that equity and tax are strangers and equitable considerations are not to be invoked in tax matters. Though really no prejudice can be said to have been caused to the petitioner on account of the transfer of the case to the Call Book and delay in adjudication of the Show Cause proceedings, nevertheless, these writ petitions are allowed.

M/s. D Technology India Pvt Ltd Vs JC & CE, Chennai - JC Commissionerate, Chennai - 42 AC & CE, Tambaram Dn, Chennai - JC Commr of & CE, Chennai - JC Commissionerate, Chennai - 47 Nos. 22 of 2

Reserved & Pronounced &

Uploading of & Notice and order : The impugned show cause notice was uploaded on the GST Portal Tab. According to the petitioner, the petitioner was not aware of the issuance of the show

cause notice issued through the GST Portal and the original of the said show cause notice was not furnished to him. In such circumstances, this Court is of the view that the impugned assessment order passed without affording any opportunity of personal hearing to the petitioner, confirming the proposals contained in the show cause notices is illegal and unsustainable.

**Alagappan Palaniappan Vs. The Deputy State Tax Officer,
Kpauk Assessment Circle No. 1, Chennai - 6 The Branch
Manager, Central Bank of India, Chennai - 5 WNo. 10**

NOTED

Restoration of Registration : Petitioners relied upon a decision of this Court in the matter of “Suguna Cut piece Centre vs The Appellate Deputy Commissioner (ST) (GST)” rendered under identical facts in W.P.Nos.25048 2587, etc. of 2021. The learned counsel submitted that in the said Writ Petitions, this Court granted relief to taxpayers whose GST registrations were cancelled due to non-filing of returns, especially those affected by illness or COVID-19, by directing the Department to restore the registration, subject to certain conditions. The Ld Government Advocate appearing for the respondents, fairly acceded to the above and submitted that following the above decision, this Court also granted similar relief

in several Writ Petitions including the W.P.No.33227 of 2024. The Court held that as the facts of the case in W.P.No.33227 of 2024 squarely apply to the facts of the present case, following the said order, directions are issued to both the parties herein for the restoration of GST registration **ARKSEngineering Services, Vs The Assistant Commissioner, Gindy Assessment Circle, WNos.**

NOTE

Passing of Exparte order : The petitioner suffered an exparte order under Section 73 of the TNGST Act. This Court satisfied that the petitioner was misled by the contents of the notice and that is why they could not appear for hearing which led to the passing of the exparte order. The petitioner undertakes to pay 25% of the tax amount within a period of four weeks subject to the condition, the order impugned in the writ petition is quashed with conditions. The matter is remitted back to the file of the respondent. **M.S.Peacock Hospitals Private Limited Vs The Assistant Commissioner (B) Central - Chennai Central, JNagar Assessment Circle, Chennai - WNo. of NOTE**

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com)

CASE ABSTRACT

1. CONSTITUTIONAL & CROSS

EXAMINATION OF WITNESSES

PROCEEDINGS -

WRTN & NATURAL JUSTICE -

ORDER NOT TENABLE



CA. VIJAYNAND

In Joint Commr. CT & CE, CGST Kochi v. Nishad K.U. 2025(97) GSTL 223/ (2025) 28Centax 270 (Ker), the adjudicating authority confirmed the demand u/s 74(9) with tax and penalties of more than Rs.9.40 Crores. Despite the availability of an alternate remedy, the assessee approached the writ court alleging a serious infraction of the principles of natural justice insofar as there was a failure to accede to his request for cross-examination of persons, whose statements were obtained during the enquiry and which were relied upon by the authority while passing the order of penalty. On a writ petition before the Single Judge, it was held that there was no mandate for granting permission to cross-examine the witnesses whose statements were obtained by the proper officer in a proceedings for imposition of tax. However, the learned Single Judge, took

the view that the principles of natural justice had been violated since the authorities had denied the right to cross-examine the persons, who had given statements against the writ petitioner, relying on the decision of the Hon'ble Supreme Court in *Andaman Timber Industries v. Commissioner of Central Excise* [2016] 15 SCC 78] = 2014 (314) E.L.T. 641 (Tri.-Del)]

On a further appeal, the Division Bench of the high court observed as under:-

1. Section 74 prescribes the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. Once the proper officer forms an opinion that a notice has to be issued to the assessee, he must serve a notice under sub-Section (3) of Section 74 containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised. Once the said notice is given, then, the proper officer is required under sub-section (9) to consider the representation, if any, made by the person chargeable with tax, determine the

amount of tax, interest and penalty due from such person and issue an order. There is no express provision for permitting a cross-examination of witnesses in the statute. It is therefore that the appellants contend that so long as the Act does not envisage such an opportunity, the proper officer is not required to extend such a benefit to the assessee. In support of the aforesaid contention, the learned Counsel placed extensive reliance on the decision of the Supreme Court in *Kanungo & Co. (supra)*.

2. The proper officer recorded the statements of the persons who had deposed against the assessee and their statements were relied on by the proper officer in arriving at a tentative finding against the petitioner. The entire basis for the formation of an opinion of guilt against the petitioner was the statements of third parties recorded by the proper officer.
3. If the writ petitioner was to prefer an effective representation against the proposals in the notice, he had to know the basis of the allegations against him and test the evidence used against him. It was therefore imperative for the proper officer to have granted the opportunity of cross-examination to the petitioner.

-
4. As regards the contention that it is not the requirement of law to provide an opportunity to cross-examine the witnesses since it is not an integral part of the principles of natural justice, in every quasi-judicial proceedings, the rule of natural justice has to be followed. The rule of natural justice is the tenet of every adjudication proceedings, a violation of which renders the proceedings void.
 5. When courts are called upon to decide the validity of quasi-judicial proceedings on the ground of violation of principles of natural justice, it cannot shut its eyes and adopt a pedantic approach and hold that unless the said principle is specifically extended under plenary legislation or the rules framed under it, the insistence of the principles is not mandatory.
 6. In *Krishnadatt Awasthy v. State of M.P.* [2025 SCC Online 179] it was held that a breach of the principles of natural justice strikes at the fundamental core of procedural fairness, rendering the decision invalid unless exceptional circumstances justify such deviation and that the denial of natural justice at the initial stage cannot be cured at the

appellate stage. It was further held that the principles of natural justice are the cornerstone of justice, ensuring that no person is condemned unheard.

7. In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra* [2013] 4 SCC 465] the Supreme Court considered the question as to whether a request for cross-examination of the witnesses would form part of the principles of natural justice in the context of verification of a caste certificate by the scrutiny committee constituted under the State law to go into the caste status of a particular employee. The Court held that non-extension of an opportunity to cross-examine the witnesses would vitiate the decision of the scrutiny committee, since the same was violative of the principles of natural justice.
8. A Division Bench of the Calcutta High Court in *Ajay S araogi v. Union of India* [2024 (136) GSTR 330 (2023) 10 Centax 76 (Cal.) (2023 (38) E.L.T. 333 (Cal.)] while considering the question as to whether the right of cross-examination is imbibed under the provisions of the Customs Act, 1962 held that the Customs Act, 1962 does not prohibit the application of the principles of natural justice.

-
9. In *Union of India v. Tulsiram Patel* [198 (3) SCC 39] a Constitution Bench considered the scope of the principles of natural justice and held that a Rule framed under Article 309 cannot altogether exclude the principles of natural justice and if it does, then it is ultra vires despite the second proviso to Article 311(2) being deleted by the Constitution (Forty Second Amendment) Act, 1976.
 10. Thus, even if the plenary legislation or the subordinate legislation does not provide for the extension of the principles of natural justice, the same has to be read into the provisions.
 11. In *Kothari Filaments v. Commissioner of Customs (Port)* [2009] 2 SCC 192 =2009 (233) E.L.T. 29 (S.C.) =2009 (13) S.T.R. 225 (S.C.)] the Supreme Court held that the provisions of the Customs Act, 1962 do not specifically exclude the principles of natural justice and the denial of opportunity to cross-examine the witnesses whose statements were relied on by the authorities while passing the order of confiscation, renders the proceedings invalid.

-
12. In *Aureliano Fernandes v. State of Goa* [2024) 1 SCC 632] the Supreme Court held that extension of the principles of natural justice is not an empty incantation. It forms the very bedrock of Article 14 and any violation of these principles tantamounts to violation of Article 14 of the Constitution.
 13. When judicial review of the order of a quasi-judicial authority is sought for, the court cannot turn a blind eye toward the civil consequences arising out of those orders impugned. Therefore, the assessee was fully justified in making a request for cross-examination of the witnesses whose statement formed the basis of the impugned order and non extension of such an opportunity erodes the efficacy of the order and thus renders it nugatory.
 14. However, the right to cross-examine does not extend in respect of all witnesses. While issuing notices and passing final orders under Section 74 of the CGST Act, certain persons were arrayed as co-noticees. The plea of the writ petitioner to seek cross-examination of the co-noticees cannot be accepted as such. At best, the writ petitioner can only request the proper officer

to serve copies of the replies submitted by the co-noticees to the notices received by them.

Hence, the stand that the principles of natural justice need not be followed during an adjudication was clearly untenable, in the light of the principles expounded by the Supreme Court in *Union of India v. Tulsiram Patel* [198 (3) SCC 39] and *Krishnadatt Awasthy v. State of M.P.* [2025 SCC Online 179]. It was further held that extending an opportunity of cross-examination in a proceedings u/s 74(9) is an integral part of the principles of natural justice, a violation of which will render the proceedings void.

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at reachanandvis@gmail.com)

1 Introduction



CA. K. PRASANNA

Businesses across nations are transcending. Traditional business models are no longer the norm, and new business models have emerged to transform the way businesses are conducted.

Technological shift paved the way for the evolution of various e-businesses. Physical presence is no longer necessary in most business operations. The tax administration worldwide is grappling with the rapid introduction of advanced business models and finding ways to tax such businesses. There is a significant gap between tax laws and business models, resulting in income that remains untaxed.

Historically, the source state has the right to tax the business profit of a foreign enterprise only if the enterprise creates a permanent establishment (PE) in the source state. A PE is defined in Article 5(1) of the OECD and Article 5(2) provides the types of PE. Article 5(3) deals with specific types of PE that are in the nature of building, construction, assembly, supervisory etc.

The scope of this article is to cover intricacies under Service PE' and not other forms of PE. While the OECD MC does not have a specific clause on Service PE. However, the OECD MC 2008¹ provided a suggested language that could be adopted by states for bilateral negotiations with their tax partners. The UN Model Convention² contains a specific clause that furnishing of services could constitute a Service PE, provided that the services last for 18 days in any 12-month period.

2 Presence of Service PE in Tax Treaty

Most of the Indian DTAA's have a specific clause on Fees for Technical Services (FTS') that provides for a gross basis of taxation. However, there are treaties that have a narrow definition of FTS i.e., the service must satisfy the requirement of making technical knowledge or skill available to the service recipient to constitute FTS³ (make available condition). In most treaties where the FTS article is narrowly defined, a Service PE clause is typically found, with the notable exceptions being

¹ Para 42.23 of OECD MC, 2008

² Refer to Article 5(3)(b) of UN MC, 2021 for complete text

³ E.g., India DTAA's with US, UK, Canada, Australia, Netherlands etc.

Netherlands and Portugal. In these two countries, the FTS clause is narrower and, at the same time, does not contain a service PE Clause.

3 Intricacies in Service PE

While, in hindsight, the provision is simple i.e., Service PE is formed if the furnishing of services in the source state through employees or other personnel exceeds a specific threshold provided under the tax treaty. There have been numerous issues that have arisen in the past, and in this article, we will examine some of these issues (not exhaustive) and how the judiciary has addressed them.

a. Need for test of Permanence and Disposal?

In case of fixed place PE under Article 5(1), it must satisfy the tests of permanence, duration, location, and activity. Whether these tests are required to be satisfied even in case of service PE. As far as examples of PE mentioned in Article 5(2), the commentary is categorical that it must meet the requirements of Para 1⁴. In case of specific PE under Article 5(3), such as service

⁴Para 45 of Commentary to Article 5

PE, there is no requirement that it must satisfy the test of permanence or the disposal test, and these tests are replaced with the duration test. Therefore, once the duration threshold is satisfied, a service PE could be triggered.

b. Whether the service to be rendered in a contracting state?

In case of FTS under 9(1)(vii) r.w.explanation to Section 9(2) of Income Tax Act, 1961 (the Act') is very clear that place of rendering service is irrelevant and place where service is utilized alone is relevant. In case of Service PE⁵, the language employed is as follows:

".....but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than....."

One of the requirements of PE is that the activity be carried out in a source state to trigger taxation of business profit. If there is no activity carried on in other state, then there will not be satisfaction of business being carried on in other state. The phrase 'within a contracting state' categorically requires the furnishing

⁵ Article 5(3)(b) of UN MC, 2021

of service through physical presence through employees or other personnel. Hence, if the services were rendered from outside and consumed in India, then a service PE may not be triggered. This position is also supported by the Commentary to Article 5 of OECD MC⁶.

India, in its non-member capacity, noted its reservation to the commentary and stated that the physical presence of an individual is not required. At this juncture, it is worth noting that the Bangalore ITAT in ABB FZLLC ⁷ has observed that service can be rendered through virtual modes and may constitute a Service PE. The Delhi ITAT in Clifford Chance PTE Ltd⁸ has negated the arguments of virtual PE and held that in the absence of any amendments to the tax treaty, only the physical presence test is required to evaluate a Service PE.

c. **What if the services are ultimately consumed outside the other contracting state**

Assume a scenario where employees of a foreign entity provide services from India to customers of an Indian entity, who are

⁶ Para 42.13 of OECD MC, 2008

⁷ [2017] 8 taxmann.com 8 (Bengaluru - Trib.)

located outside India. In that case, whether it could be argued that services are ultimately consumed outside India, hence no service PE should be triggered. Para 42.31 of Commentary to Article 5 of OECD MC, 2008⁸ clearly states that recipient of service is a resident or non-resident of source state does not matter and what is relevant is the performing of services in the source state through individual⁹. Accordingly, in my view, the place of consumption of the service is ultimately irrelevant, while the place of rendering the service is relevant.

d. Scope of 'Other Personnel'

The Language employed under the UN Convention is 'furnishing of services through employees or other personnel'. The phrase 'other personnel' expands the scope of services in a way that, if the services are rendered through third-party contractors could trigger Service PE, provided that such contractors are under the control and supervision of a foreign entity. This is fortified by the use of the words 'through' and 'engaged', therefore, the independent parties should be under

⁸ [2024]160 taxmann.com 424 (Delhi - Trib.) - Para 12.7

⁹ Also refer to Supreme Court ruling in E-Funds IT Solutions Inc [2017]8 taxmann.com 240 (SC) - Para 20

the control during the period of service to be regarded as other personnel. The OECD MC, 2008¹⁰ has provided that personnel includes employees and other persons receiving instructions from the enterprise (e.g. dependent agents)

In E-funds IT Solutions Inc¹¹, the Delhi Court held that employees of Indian subsidiary could not be regarded as 'other personnel' for foreign enterprise as the *de jure* and *de facto* employer is Indian entity.

e. Computation of days

A. Man vs Solar days

The manner of calculating the number of days for determination of service PE is a matter of dispute in the past. There are instances where the tax authorities adopted the man-days for determination of service PE, i.e., if 20 people had stayed in India for 10 days each during the same period, then the department adopted 200 days (20 x 10) as the period of the presence of employees. However, the predominant judicial precedents¹² have

¹⁰ Para 42.32 of OECD MC, 2008 Commentary to Article 5

¹¹ [2014]42 taxmann.com 50 (Delhi) - Para 26

¹² Worley Parsons Services (P) Ltd [2009]312 ITR 317 (AAR); Valentine Maritime (Supra); J Ray McDermott Eastern Hemisphere Ltd [2010]39 SOT 240; Cliford Chance (supra)

held that for the determination of presence, Solar days need to be considered, i.e., if a day on which more than one person is present in India, then it should be counted as a single day. In the same example mentioned above, the solar days will be counted as 20 days, as against man-days of 200.

B. Work days vs Holidays

In the case of Linklaters LLP¹³, the Mumbai Tribunal has held that the period of holidays must be excluded when computing the threshold limit for constituting a service PE. Following Linklater's judgment, the Delhi ITAT in Clifford Chance (supra) excluded the period spent on vacation from the computation of threshold.

C. Continuous Period of presence?

There is no requirement that individuals must stay in other contracting state for a continuous period to determine the threshold. As the language employed is 'aggregate' various time spent could be aggregated to determine the threshold prescribed under the treaty.

¹³ [2019]106 taxmann.com 195 (Mumbai-Trib)

D. Aggregation for Connected or Same Activities

The UN MC, 2021¹⁴ and many treaties entered into by India provide an aggregation period spent in a contracting state in respect of activities of that nature. Therefore, wherever such language is prescribed, irrespective of the nature of services and the parties to which it was rendered, the same is required to be aggregated to test the threshold.

However, there are treaties¹⁵ provide for aggregation only if the activities continue in respect of the same or connected projects¹⁶. Hence, dissimilar activities or unconnected projects cannot be aggregated in respect of these treaties.

E. Languages used in various treaties

The UN MC provides for 18 days in a twelve-month period commencing or ending in the fiscal year for constituting service PE. However, Indian treaties have different languages with regard to the service PE clause:

¹⁴ The phrase same or connected projects dropped from UN MC, 2017

¹⁵ Korea, China, Sri Lanka, UAE, Indonesia etc

¹⁶ Para 51 of Article 5 commentary to OECD MC, 2017 provides guidance on same or connected projects

#	Treaty Language	Country
1	18 days within any twelve months	Thailand, China, Korea
2	90 days in a fiscal year	Singapore
3	90 days within any twelve months	Australia, Canada, USA, UK
4	9 Months ¹⁷ within any twelve months	UAE
5	91 days within any twelve months	Indonesia

Certain treaties, such as those between Singapore and the UK, provide for a 30-day threshold, while the USA provide a 1-day threshold in cases where services are rendered to their associated enterprises.

F. Time spent over two years

Suppose the period of stay spans two financial years, the period is calculated from the date of commencement to the date of completion (i.e., period spent), and the aggregate days spent over the two fiscal years is considered to determine whether the threshold is breached or not. In the India-USA Treaty, the protocol suggests that if the activities spread across two tax years, then PE is deemed not to be in existence in a year where the aggregating period of time spent is less than 30 days.

¹⁷ How the month is computed - Klaus Vogel Commentary on Double Taxation Convention - 5th Edition- M No - 259 - Suggest Calendar Month comprise of 30 days. Also Refer to BKI/HAM V.O.F. [2001]70 TTJ 48 (DEL.) - Para 10.7

f. Exclusions of activities under Service PE

The language used by UN MC refers to the furnishing of service'; therefore, there must be a flow of service from a foreign enterprise through its employees or other personnel. Hence, activities that do not constitute service cannot fall under the ambit of furnishing of service and cannot trigger a Service PE. The Hon'ble Apex Court in Morgan Stanley¹⁸ has held that stewardship activities cannot constitute a service to trigger service PE. The Delhi ITAT in Cliffor Chance (supra)¹⁹ has held that days spent in business development should be excluded from the threshold, as there is no flow of services to the customers.

g. Interplay with FTS article

The UN MC, 2021 states that furnishing of any services, including consultancy services, through employees or other personnel for a period exceeding the threshold will trigger service PE. In the same breath, such service may also fall under the ambit of FTS²⁰. Hence in such instances, both the articles to

¹⁸ [2007]162 Taxman 165 (SC) - Para 14

¹⁹ Para 12.4 of the ruling

²⁰ Managerial/Technical/Consultancy-depending on the language of the tax treaty

be tested for deciding the distributive rights and specific provisions over general shall prevail. To the extent the service falls under the definition of FTS and duration of services in India has not exceeded the threshold for service PE, the consideration would be taxable as FTS. In case, the duration is exceeded, the income may be taxed as business profits due to the constitution of service PE. Further, Article 12A(4) may also permit taxation of FTS as business profits to the extent it is effectively connected with PE.

Furthermore, some of the tax treaties²¹ India has entered into has provision for the exclusion of income chargeable as FTS under the ambit of Service PE. Hence, to this extent, there is no clash between the two articles. There are DTAAs²², where no exclusion is carved out for consideration taxable as FTS. In that case, a specific over a general provision interpretation must be applied to determine the applicability of relevant article.

4 Conclusion

The judiciary has consistently been approached on above issues, and it has steadfastly upheld its position. Although substantial

²¹ US, UK, Canada, etc.

²² Korea, Sri Lanka, etc.

progress has been made on the certain forms of PE through various action plans under the Base Erosion and Profit Shifting (BEPS) initiative, challenges persist with respect to emerging business models. A uniform approach to taxation in this regard remains elusive. India has maintained its stance on the concept of Virtual PE, and although it has been contested sporadically before the judiciary, there has been no definitive outcome due to the existing language of DTAAAs. The future will reveal how these unresolved matters influence broader policy decisions. Until then, these issues require careful deliberation and planning from an MNC's perspective.

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RECENT DECISIONS ON DIRECT TAXES

1. Delay In Filing Income Tax Appeal Due to Auditor's Death: ITAT Condones 338Days of Educational Institution:



CA.P. ARUMUGARAJ

The Cochin Bench of ITAT (ITAT) condoned a 338day delay in filing an Income tax

appeal citing the death of the assessee's auditor as sufficient cause, and remanded the matter for adjudication on merits. The Cochin Bench of the Income Tax Appellate Tribunal (ITAT) condoned a 338day delay in filing an appeal by The Centre for Management Development, citing the death of the assessee's auditor as sufficient cause, and remanded the matter to the Commissioner of Income Tax (Appeals) [CIT(A)] for a decision on its merits.

2. Income from Live Sports Licensing Not Taxable as Royalty Due to Lack of Copyright Protection: ITAT:

The Delhi bench of the Income Tax Appellate Tribunal (ITAT) held that income earned from licensing live sports broadcasts is not taxable as royalty because live broadcasts do not enjoy copyright protection under Indian law. Trans World

International LLC, a company based in the United States, had licensed broadcasting rights for sports events such as football and badminton.

3. House gifted to daughter not to be considered while evaluating exemption u/s. 54F: ITAT Hyderabad:

ITO Vs Narasimha Reddy Duthala (ITAT Hyderabad) ITAT Hyderabad held that denial of exemption under section 54F on allegation of more than one residential house unwarranted as one residential house is gifted to his daughter. Accordingly, exemption allowed and appeal of revenue dismissed. Facts- AO rejected exemption claimed by the assessee under section 54F of the Act on three grounds including having more than one residential house as on the date of transfer of original asset i.e., shares of companies and further, no investment was made in capital gain account.

4. ITAT Mumbai allows Interest Deduction as Advances were for Business Purpose:

ACIT Vs J M Financial Properties and Holdings Limited (ITAT Mumbai) The Income Tax Appellate Tribunal (ITAT) Mumbai has dismissed appeals filed by the Assistant Commissioner of

Income Tax (ACIT) against JM Financial Properties and Holdings Limited, affirming the deletion of interest expense disallowances for Assessment Years 2013-14 and 2014-15. The ruling, issued on May 28, 2025, upholds the decision of the National Faceless Appeal Centre (NFAC), Delhi, which had sided with the assessee.

5. **Disallowance of Related Party Payments u/s 40A(2)(b): ITAT Deletes Additions for AO's Failure to Prove Excessiveness:**

The Ahmedabad Bench of Income Tax Appellate Tribunal (ITAT) deleted disallowances made under Section 40A(2)(b) for payments to related parties, holding that the Assessing Officer (AO) failed to justify the excessiveness of the amounts. Virbala Kiritkumar Patel, appellant-assessee, was engaged in the business of building and land development.

6. **Non-Commencement of Activities Not a Valid Ground to Deny 12AB Registration:**

Ujwal Foundation Vs CIT (Exemption) (ITAT Hyderabad) Hyderabad, June 6, 2025: The Income Tax Appellate Tribunal (ITAT) Hyderabad bench has set aside orders from the

Commissioner of Income Tax (Exemption) (CIT(E)), Hyderabad, which had rejected the applications of Ujwal Foundation for approval under Section 8G and registration under Section 12AB of the Income Tax Act, 1961. The tribunal has remanded both matters back to the CIT(E) for fresh adjudication, emphasizing the need to consider proposed charitable activities, a principle established by the Supreme Court.

7. ITAT Mumbai dropped non-compliance of penalty of Actress Shilpa Shetty as compliance with notices was done prior to assessment order:

Judiciary has repeatedly held that no penalty under Section 272A(1)(d) can be imposed when the assessment order is not finally passed under section 144 on ex parte basis. With this observation, often the judiciary deleted the penalty of ¹ 10,000 imposed under Section 272A(1)(d) for alleged non-compliance with a notice issued under Section 142(1).

One such judgement is by ITAT Mumbai in the case of a celebrity Shilpa Shetty Kundra Vs. DCIT, Mumbai [T A No. 995/Mum/2024]has dropped the penalty levied under section 272A(1)(d). It observed that the reply is being filed in respect

of all the earlier notices and has thus assisted the AO in completion of the assessment. Moreover the assessment order in the present case was passed u/s 143(3) and not u/s 144 of the Act, which means that AO had expressed his satisfaction with compliances made by the assessee.

8 Co-op Society wins ¹ 10.14L Tax Relief: ITAT rules FDR Interest Eligible for 8P Deduction:

The Pune Bench of the Income Tax Appellate Tribunal (ITAT) has granted substantial tax relief to a cooperative credit society, holding that interest earned on fixed deposits (FDRs) with cooperative banks qualifies for deduction under Section 8P(2)(d) of the Income Tax Act.

9. ITAT gives Taxpayer Second Chance: Ex-Parte CIT(A) Order Set Aside for Natural Justice:

In a significant decision, the Income Tax Appellate Tribunal (ITAT), Nagpur Bench, has set aside an ex-parte order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] and granted the taxpayer a fresh opportunity to present his case. The ruling emphasizes the importance of adhering to the principles of natural justice in tax proceedings.

10. ITAT upholds PCIT Order on Depreciation Disallowance, holds AO Ignored Rental Terms and Asset Usage Facts:

The ITAT upheld that the AO failed to properly examine the extent of the property let out as per the rent agreement, leading to an incorrect depreciation disallowance and an assessment order deemed erroneous and prejudicial to Revenue. The ITAT Ahmedabad bench of the Income Tax Appellate Tribunal (ITAT) has upheld the revisionary order passed by the Principal Commissioner of Income Tax (PCIT) under Section 263 of the Income Tax Act, 1961. The Tribunal held that the Assessing Officer (AO) had disallowed depreciation based on an incomplete understanding of the property usage and rental terms, thereby warranting action.

11. ~~148A~~ Notice Must Be Issued Before S. 147 Order: J harkhand HC Qashes Order, Finds Lapse by Income Tax Dept:

According to the new provision, the income tax officer must investigate the information indicating that the income subject to tax has eluded assessment or give the taxpayer a chance to

be heard. The Jharkhand High Court has quashed an order passed under Section 147 of the Income Tax Act, 1961, after the Income Tax Department Counsel admitted failure to issue the mandatory notice under Section 148A. The petitioner, Anvari Khatun had challenged the reassessment order dated 28.11.2024 passed by respondent no. 4 under Sections 147 read with 144 and 144B of the Act.

12. TAT upholds Revision on AO's Lapses in Verifying TDS on Rent and Unsecured Loans:

In spite of claims from the assessee that TDS was deducted where applicable, the ITAT held that there was no clarity or adequate evidence to support that TDS under Section 194-I had been properly applied across all payments. The Income Tax Appellate Tribunal (ITAT), Ahmedabad Bench, has upheld the Principal Commissioner of Income Tax's (PCIT) revisionary action under Section 263 of the Income Tax Act, 1961, against the assessee, citing critical lapses by the Assessing Officer (AO) in verifying TDS compliance and unsecured loan transactions during assessment.

13. Concluded assessments cannot be reopened merely based on suspicion: Delhi HC:

Sanjay Kaul Vs ITO (Delhi High Court) Delhi High Court held that concluded assessments cannot be reopened merely based on suspicion. Accordingly, reassessment quashed as there is no tangible material to form 'reason to believe' that income has escaped assessment. Facts- The Petitioner has filed the present petition under Article 226 read with Article 227 of the Constitution of India, impugning a notice dated 30.03.2019 issued by the Respondent No.1 under Section 148 of the Income Tax Act, 1961 in respect of Assessment Year 2014-15.

14. Major Win for Assessee: ITAT Confirms Deductibility of CSR Donations u/s 80G of Income Tax Act:

In a Recent ITAT ruling that clarifies the eligibility of companies to claim tax deductions under Section 80G for donations made as part of their Corporate Social Responsibility (CSR) obligations, setting a significant precedent against tax authorities past objections. The Mumbai bench of Income tax Appellate Tribunal (ITAT) has confirmed that donations made

as part of mandatory Corporate Social Responsibility (CSR) expenditure under the Companies Act, 2013 are indeed eligible for deduction under Section 8G of the Income Tax Act, 1961. The decision came in an appeal filed by ACG Pam Pharma Technologies Private Limited.

15. ITAT Delhi Accepts Cash Deposits as Salary Savings, Religious Practice and Lack of Other Income cited

The assessee, a salaried teacher, deposited ¹ 23.22 lakhs incash during the demonetization period, which the Assessing Officer treated as unexplained and added ¹ 21.22 lakhs under Section 69A after allowing 2 lakhs for household expenses. The assessee contended that he routinely withdrew his entire salary in cash due to religious beliefs and had accumulated the deposited amount over several years. Though the CIT(A) granted partial relief by accepting withdrawals from only the last three assessment years, the Tribunal found this restrictive.

The ITAT noted that there was no evidence of any alternate income source and accepted that all cash deposits were out of past salary savings. Consequently, the entire addition was deleted and the appeal was allowed in full.

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16. ITAT Bangalore ruled in favor of Thejaswini Jakkaraju, allowing the Section 8A tax rebate on a revised return filed to rectify an omission in the original filing.

Thejaswini Jakkaraju Vs ITO (ITAT Bangalore) Assessee filed her original income tax return on 22.06.2024 under the old tax regime but inadvertently did not claim the rebate of 21,350 available u/s 8A. To rectify this omission, she submitted a revised return on 11.07.2024, claiming the rebate. However, the CPC, Bangalore processed the return u/s 143(1) & denied the rebate. Aggrieved by this denial, Assessee first sought rectification u/s 154.

17. Loose Papers Found with Third Party Cannot Justify Addition Without Corroborative Evidence: ITAT Nagpur

ACIT Vs Sanjay Gaurishankar Agrawal (ITAT Nagpur) During a search conducted at the premises of Shri Suresh Bajoria certain loose papers were found. These papers contained handwritten financial entries & the name "Chhotubhai". In his statement recorded u/s 132(4), Shri Bajoria initially stated that the papers related to him & his friend "Chhotubhai", whom the AO assumed to be the assessee, Sanjay Agrawal. The total credit on these pages was 5,33,550.

18 ITAT Condones 66-day Delay in Filing Appeal due to CO VID Lockdown and CA's Preoccupation

The ITAT observed that the CIT(A) had incorrectly calculated the delay from the date of the assessment order (05.12.2019) instead of the date of its service (06.02.2020). The Bangalore bench of the Income Tax Appellate Tribunal (ITAT), condoned a 66-day delay in filing an appeal, noting the COVID-19 lockdown and the preoccupation of the assessee's Chartered Accountant (CA) as sufficient cause for the delay. Coming to the facts of the case, the Income Tax Officer (ITO) had assessed the assessee's income at Rs. 874 lakh.

19. ITAT Allows 64.72 Cr Project Loss as Business Deduction

In AY2012-13, the assessee reported a loss of Rs. 64.72 crore as a result of the cancellation of its Amritsar project due to disagreements among its directors. The CIT(A) upheld the Assessing Officer's decision to deny the loss, which was deemed to be capital in nature and prior period. After the Tribunal rejected the assessee's appeal and other applications, the High Court issued a writ ordering the filing of a substantive appeal.

The High Court remanded the case as the Supplementary Paper Book was not considered. The Tribunal held the loss was revenue in nature and crystallized on July 20, 2012, per the compromise deed. The assessee filed the current appeal with the Income Tax Appellate Tribunal after being displeased with the previously upheld disallowance.

20. Registration u/s. 12A cannot be cancelled with retrospective effect: ITAT Delhi

Lala Sher Singh Memorial Jeevan Vigyan Trust Society Vs PCIT (Central)-3 (ITAT Delhi) ITAT Delhi held that registration granted under section 12A of the Income Tax Act cannot be cancelled with retrospective effect as the concept of 'specified violations' u/s. 12AB(4) is effective only from 1st April 2022. Accordingly, order retrospectively cancelling registration quashed. Facts- The assessee is an educational society duly registered under section 12AA of the Act and enjoying exemption under section 8G of the Act.

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FACEBOOK'S R&D CSA - RECAP AND TAKEAWAYS ENGLISH

A. Introduction

The United States tax court (“the court”) had issued a landmark ruling in the case of Facebook Inc., (“FB US” /



Ms. NITHYA SRINIVASAN & A. S. RANJANI

“Petitioner”) which is significant in the transfer pricing arena on CSAs. The epicentre of the ruling deals with the manner of valuation of intangible property rights transferred to FB US’s Irish subsidiaries who are forming part of Cost Sharing Arrangement (“CSA”)

Among various other things, the court opined on the method of valuation by drawing reference to the 2009 US cost sharing regulations, where the court challenged only the manner of application of the income method while prima facie validating the selection of method.

The ruling throws light on certain crucial aspects such as selection / application of method of valuation, IRS’s regulatory power, arm’s length principles, etc., which might have an impact on the approach towards Cost sharing arrangement transactions globally.

B. Background:

a. Overview

In 2010, FB US entered into a CSA and two related license agreements with its Irish subsidiaries i.e., Facebook Ireland Holdings Unlimited (FIH) and Facebook Ireland Limited (FIL), collectively referred to as “FB Ireland.” The arrangement was executed for developing FB’s platform technology i.e. Facebook Online Platform (FOP) Technology, including hardware and software components wherein FB US retained the rights to exploit the cost-shared intangibles in the U.S. and Canada, while FB Ireland obtained the rights for Rest of the world (ROW) territories. In connection with CSA FB US and FB Ireland entered into multiple agreements including the FOP Technology License, the UBMI License, and the Data Hosting Services Agreement (DHSA).

As per the CSA, FB US was to be remunerated by FB Ireland in the form of:

- **Platform Contribution Transactions (PCTs)** : Payments for the pre-existing intangibles contributed by FB US, including the FOP technology, user data, and marketing intangibles.

- **Cost Sharing Transactions (CSTs)** : Ongoing payments for Intangible Development Costs (IDCs), based on FB Ireland’s Reasonably Anticipated Benefit (RAB) share.

b. Pre-CSA Structure and intercompany arrangements

Prior to CSA in 2010, FB US as a part of its expansion of global operations, in 2008 established Facebook Ireland Limited (FIL) as its operating entity in Ireland, followed by the incorporation of Facebook Ireland Holdings Unlimited (FIH) in early 2009. FIH acted as a holding company and did not have employees, while FIL functioned as the entity performing routine sales and marketing support. From 2009 onwards, FB US entered into the following intercompany agreements with FB Ireland entities:

Arrangement	Description & Pricing policy
Sales and Marketing Services Agreements	<ul style="list-style-type: none"> • Promoting FB’s products and services in ROW territory • FB Ireland was compensated on a cost-plus basis
Statement of Rights and Responsibilities	Formalized Facebook Ireland’s operational responsibilities
Technology licenses	Gave Facebook Ireland limited rights to assist in regional marketing and business development

Despite these arrangements, FB Ireland did not own or develop any intellectual property prior to the CSA, and it has not employed any asset other than cash and intercompany receivables

Interestingly FIL became a disregarded entity for U.S. tax purposes effective September 1, 2010, just two weeks prior to the execution of the CSA which facilitated the centralization of rights in FIH and simplified the legal structure. Until the CSA became effective, FB Ireland performed only routine functions and bore limited risks. This historical profile underpinned the IRS's argument that Facebook Ireland did not contribute non-routine value to the CSA and should be treated as a routine participant.

c. Issue under consideration

As per the Transfer pricing documentation of FB Ireland, it has made contingent annual payments to FB US towards the PCT, based on a Net Present Value (NPV) of \$3 billion by adopting an unspecified method.

The IRS ("Respondent") challenged both the valuation method and key assumptions, thereby upholding a much higher PCT value of \$9.945 billion.

The prime contention of FB US was that the IRS improperly applied the income method by selecting the wrong values for three key inputs:

-
- IRS overstated FB Ireland’s future income potential by including speculative “Other Revenue” streams.
 - IRS used an unrealistically low discount rate that failed to reflect market and firm-specific risk faced by FB Ireland
 - IRS erroneously characterized FB Ireland as a contract service provider and claimed its best alternative was a third-party reseller relationship that would justify a much higher residual return.

b. Key disputes

At this outset the key disputes emanated from the ruling are:

1. Whether the IRS’s income method under the 2009 cost sharing regulations was the best method?
2. Whether the three inputs adopted by IRS were reliable and whether the IRS’s adjustments and interpretations were legally permissible
3. Whether the contribution made by FB Ireland is justified and aligned with its characterization i.e., if it is a true contributor for the development of the platform?

4. Whether FB used the correct discount rate for valuing the PCT under the CSA, especially the Beta input in the CAPM model, since Facebook was not publicly traded and its Beta could not be directly determined?

A quick glance of the key disputes and corresponding position / contention of the court is provided on the table below:

Key dispute	Court's position /contention
Income method adopted by IRS under 2009 cost sharing arrangements	<ul style="list-style-type: none"> The Court affirmed that FB US was the only party to make a non-routine contribution to the platform and hence the income method under § 1.482-7T(g)(4) was validly applied with modification to the inputs. Opined that since platform contribution comprised of FOP, user rights, marketing intangibles which are interlinked, a bundled approach under the Income method would be best suited
Reliability of the inputs adopted by IRS and whether the IRS's adjustments and interpretations were legally permissible	<ul style="list-style-type: none"> Method selection was appropriate whereas the manner of application of the same by IRS was flawed. Valuation inputs used by IRS i.e., revenue projections, discount rates, and growth assumptions, were economically unreasonable thereby inflating the value
Justification of payment made by FB Ireland's to FB US in alignment with its value contribution	<ul style="list-style-type: none"> Opined in IRS's favour by stating that FB US is the only contributor to the platform whereas FB Ireland did not perform any development activities in alignment to its characterization. Hence IRS's manner of reallocation of returns among FB US and FB Ireland was justified. Accordingly, the court upheld IRS's contention of increasing FB US's RAB share, subject to corrected inputs

A deep dive into these aspects is discussed in the ensuing paragraphs.

C. Analysis and Courts' standpoint

The Court conducted a rigorous evaluation of the financial, operational, and functional characteristics of FB US and FB Ireland in relation to the CSA.

a. Cost sharing regulations (Regs)

Definition of arm's length result

Arm's length result in connection with a CSA is defined in the 2009¹ Regs states that

"A CSA produces results that are consistent with an arm's length result within the meaning of § 1.482-1(b)(1) if, and only if, each controlled participant's IDC share . . . equals its RAB share, each controlled participant compensates its RAB share of the value of all platform contributions by other controlled participants, and all other requirements of this section are satisfied"

From the above it can be inferred that PCT allocations are intended to ensure that the participant of the CSA compensates RAB share value of platform contributions. Further the 2009 Regs authorizes the commissioner to make necessary allocations to adjust the result of a PCT / CST to ensure consistency with arm's length result.

¹Temp. Treas. Reg. § 1.482-1(a)(4)

Classification of contributions

Court analysed the IRS's Cost Share Transactions (CS T') allocation and the veracity of the method adopted by drawing reference to classification of types of assets that CSA participants contribute to a CSA (i.e., Platform contributions, user rights, FOP technology and RAB share of IDC as per the 2009 Regs.

Platform contributions and operating contributions are external to the CSA while cost contributions and operating cost contributions are made as part of the CSA. They contribute to Development / Exploitation of the intangibles as below:

Development - Platform contributions and Cost contributions

Exploitation - Operating cost contributions and Operating contributions

Aggregation of Contributions:

Considering the interlink between the FOP technology, user rights base, and marketing intangibles, the Court opined that valuation should occur on an integrated basis i.e., bundled approach like Income method and not as separate streams of intangibles

Regulatory Validity

The Court carefully reviewed the framework of the 2009 Regs in alignment with the US Treasury regulations and found them to be

a reasonable interpretation of IRS S 482 and thereby rejected arguments of the Petitioner that the regulations contravene the arm's-length principle.

b. Reliability of inputs adopted by RS

- **Revenue Projections** : The Court found the IRS's inclusion of \$.9 billion in Other Revenue unjustified, as it comprised aspirational figures added by Facebook's CEO and was not linked to any specific resource, capability, or right developed or maintained by FB US. This inclusion unrealistically inflated the anticipated benefits to Facebook Ireland.
- **Discount Rate** : The Court favoured the 17.7% discount rate proposed in Facebook's transfer pricing documentation, as it accurately reflected the systemic and company-specific risks. It rejected IRS's lower market-based rate, balancing the inputs to reflect realistic investment returns.
- **Best Realistic Alternative**: FB Ireland was neither merely a reseller (as FB contended) nor merely a contract service provider (as IRS argued). The Court arrived at a mid-point by selecting advertising agencies as a comparable and established a 13.9% cost-plus markup that better reflected entrepreneurial risk.

c. FB Ireland's remuneration

Substance over form

Despite the terms of the arrangement between FB US and FB Ireland as per the CSA, the Court placed reliance on the FAR analysis of FB Ireland wherein it performed only routine functions and bore limited risks. Basis this strong footing, the Court held that FB Ireland did not make any platform contribution under the CSA as it did not own or develop any intangibles. The Court emphasized that contributions to a CSA must involve valuable, pre-existing intangibles and that mere participation or funding of future development does not qualify as a Platform Contribution. Accordingly, ownership rights and economic returns must be aligned with the actual functions, assets, and risks borne by the parties. *RAB Share Methodology*

The Court endorsed IRS's use of a perpetual NPV approach based on of projected gross profits over the entire period of exploitation to estimate Reasonably Anticipated Benefits but insisted on use of corrected inputs. It found that the IRS's approach yielded a reliable and regulation-consistent output.

d. Court's conclusion

While Facebook had valued the PCT Payment at \$6.3 billion, the Court concluded that the correct amount to be \$7.78 billion (higher than original figure purported by FB US, however much lower than the amount asserted by IRS) by applying the income method with refined inputs.

The CST Payment and RAB share of 53.5% (as against 44% of FB US) were similarly upheld, with adjustments as needed. The Court issued a Rule 155 order directing both parties to recompute tax liability using the Court-approved framework.

e. Our observations and key takeaways

The ruling is a reminder that the tax authorities can recharacterize intercompany payments and revise allocations years after the transaction, based on updated or actual financial outcomes. Multinationals (MNEs) entering into CSAs must be mindful of the fact that irrespective of the method adopted, the MNEs to be able to justify the numbers / inputs used in application of such method.

In this ruling the US tax court has opined the manner of relying on ex-post outcomes wherein it has stated that inference can be

made from post-transaction to validate the reasonableness of an assumption, however using it as an input into the valuation model is objectionable. This calls for meticulously documenting not only the basis for their original assumptions but also anticipate how those assumptions could be challenged in hindsight.

In the light of OECD's 2022 guidelines on Hard to Value Intangibles (HTVI), this ruling underscore the importance of using reliable assumptions about future outcomes when valuing intangibles. The Court's critical opinion on the unrealistic financial and growth assumptions of the Petitioner is in alignment with the OECD's Guidelines on HTVI wherein it states that where reliable ex-ante projections are unavailable or flawed, tax administrations may use ex-post outcomes (actual results) to evaluate the reasonableness of the pricing of intangibles.

Points to ponder

- MNEs must prepare thorough contemporaneous documentation that supports projections, discount rates, and comparables, so as to ensure that their contemporaneous documentation can endure the retrospective analysis.

-
- All inputs used in transfer pricing analysis must be internally consistent and supported by documentary evidence because even if a methodology is accepted, flawed inputs can undermine the reliability of the result.
 - Taxpayers must ensure that intercompany agreements and payments reflect the underlying economic arrangements, rather than relying solely on labels or formal structures.
 - Courts may favor bundled valuation where intangibles are economically interdependent / interrelated.
 - The Court's willingness to select a middle-ground comparable (advertising agencies) signals that hybrid economic realities must be accommodated.

(Inputs contributed by V. Bharathi – Transfer Pricing Associate at VSTN Consultancy Private Limited.

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EXCEL TIPS

In today's data-driven world, analysis, financial reporting, accuracy and traceability are very important. While MS-Excel offers lot of flexibility, that same flexibility can lead to silent errors i.e. formulas overwritten with hardcoded values, breaking the integrity of the workings / analysis.



CA. DUNGAR CHANDU JAIN

This is where the ISFORMULA() function can be of help. Simple, yet powerful, this function helps us identify cells that contain formulas, making it easier to audit, review, and ensure that the excel sheet is behaving as desired.

ISFORMULA

ISFORMULA(reference)

- reference – The cell you want to check.
- Returns:
 - TRUE – if the referenced cell contains a formula
 - FALSE – if the referenced cell contains a constant or is blank

EXAMPLE:

Cell	Data in Cell	Output	ISFORMULA>Returns
A1	=B1	500	TRUE
A2	150	150	FALSE
A3	=IF(B3<0, B3*10, 0)	300	TRUE
A4	(blank)		FALSE

ISFORMULA CAN BE APPLIED HERE

MISTAKE :

1. Audit & Review of Excel Files :

In statutory or internal audits, spreadsheets are often used for complex workings. During review, it's important to know if any formulas were accidentally replaced with text / numbers.

ISFORMULA thus can be to:

- Highlight such cells
- Flag risks of manual overrides
- Ensure compliance with internal controls

2. Validating Excel Templates

For CA firms or corporates, who share Excel templates:

- We can verify that the calculation cells are intact before using the sheet.
- Any FALSE result for a cell expected to contain a formula is a red flag.

3. Building Error-Proof Dashboards

Before finalizing MIS reports or summaries:

- Use ISFORMULA to double-check your dependent calculation fields.
- Prevent human error in last-minute changes or presentations.

ISFORMULA

This will visually highlight cells without formulas

1. Select your range (say, A1:A100)
2. Go to Home > Conditional Formatting > New Rule
3. Choose “Use a formula to determine which cells to format”
4. Enter the formula: =NOT(ISFORMULA(A1))
5. Set formatting (e.g., red fill or bold font)

Now, every cell that doesn't have a formula will be highlighted – helping you quickly spot manual entries.

ISFORMULA

ISFORMULA Formula Check **!Not a Formula**

This becomes particularly useful in:

- Checklists
- Control sheets
- Automated file validations

REVIEW

While reviewing a depreciation schedule.

	A	B	C	D	E	F
1	Asset	Opening Value	Depreciation	Closing Value	Formula Check	Formula in E2
2	Car	5,00,000	50000	4,50,000	TRUE	=ISFORMULA(C2)
3						

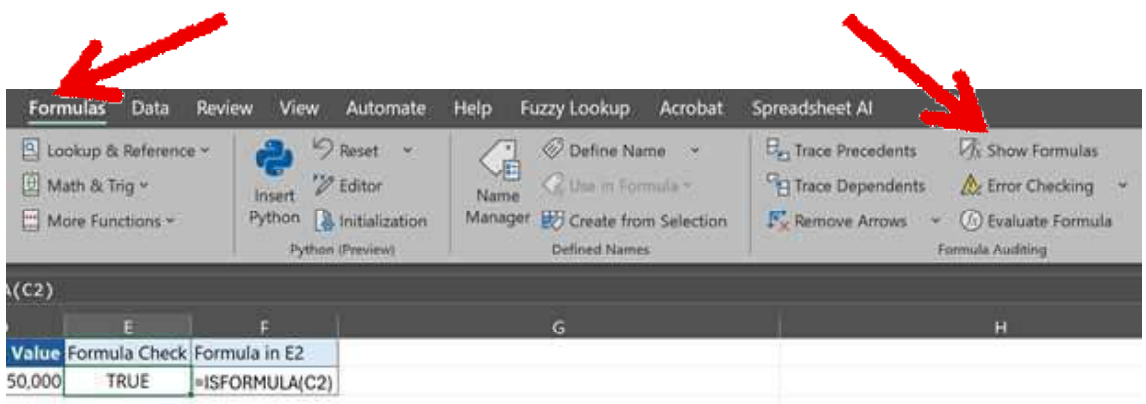
In a time where Excel is the silent backbone of financial modeling, tax computations, MIS reporting, and audit documentation, ISFORMULA() ensures transparency, reliability, and control.

Whether a CA is reviewing client sheets, staffs workings or a financial analyst building complex models, mastering this small function, will help prevent big mistakes.

BA FROM FO REVIEW

We can also control the display of formulas where we want to do a quick review in the following ways:

1. Switch between displaying formulas and their results from the ribbon :



Select Formulas and then select Show Formulas to switch between displaying formulas and results.

E2 fx =ISFORMULA(C2)						
	A	B	C	D	E	F
1	Asset	Opening Value	Depreciation	Closing Value	Formula Check	Formula in E2
2	Car	500000	=B2*10%	=B2-C2	=ISFORMULA(C2)	=FORMULATEXT(E2)

2. Switch between displaying formulas and their results from the keyboard

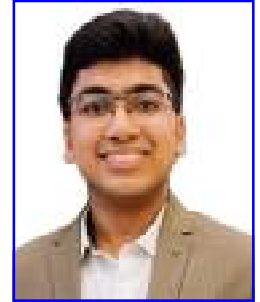
Press CTRL+grave accent)

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PE THROUGH STRATEGIC CONTROL AN AMBITIOUS INTERPRETATION IN THE INTERNATIONAL TAX SCENARIO

Introduction

The evolving jurisprudence on Permanent Establishment (PE) under Indian tax law has witnessed several defining moments. The latest addition to this lineage is the decision of the



Mr. ESHAAN SINGAL

Hon'ble Supreme Court in *Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax* [2025 INSC 91] which has not only reaffirmed but also significantly refined the contours of the “Fixed Place PE” concept under Article 5 of the India-UAE Double Taxation Avoidance Agreement (DTAA).

This decision bears critical significance in interpreting PE status in cross-border service arrangements, especially in sectors like hospitality and consultancy where the presence of foreign entities is often structured through strategic oversight, rather than direct operations. The Supreme Court's approach in applying the disposal test, examining the substance of contractual relationships, and addressing attribution of income, has broad implications for multinational enterprises operating in India.

Factual Matrix

The appellant, Hyatt International Southwest Asia Ltd. (Hyatt), is a company incorporated in Dubai and a tax resident of the United Arab Emirates. Hyatt entered into two Strategic Oversight Services Agreements (SOSA) with Asian Hotels Limited (subsequently Asian Hotels (North) Ltd.) for its hotel properties in Delhi and Mumbai. These agreements, originally executed in 2008 and partially amended in 2010, allowed Hyatt to provide strategic planning, branding, and policy guidance to ensure the hotels adhered to the standards of the Hyatt Group.

In the course of scrutiny assessment proceedings under the Income Tax Act, 1961, the Assessing Officer held that the appellant had a “business connection” in India and a “Permanent Establishment” under Article 5(1) of the India-UAE DTAA. He further concluded that the income received under the SOSA was taxable in India under Article 7. The key findings of the revenue authorities were upheld by the Income Tax Appellate Tribunal (ITAT) and the High Court of Delhi. Aggrieved by this, Hyatt approached the Supreme Court challenging the conclusion that it had a Fixed Place PE in India and that the income from the SOSA was liable to tax in India.

Core Issues Before the Supreme Court

The judgment centered around two critical and interlinked issues: first, whether Hyatt had a Fixed Place PE in India under Article 5(1) of the India-UAE DTAA; and second, whether the income derived by Hyatt under the SOSA was taxable in India under Article 7 of the said DTAA. Several ancillary issues such as the nature of control exercised by Hyatt, the role of its employees, and the relevance of the nine-month threshold under Article 5(2)(i) were also addressed in detail.

The Legal Framework and Tests Applied

The Supreme Court began its analysis by reiterating the well-settled position that Article 5(1) of the India-UAE DTAA defines a PE as a “fixed place of business through which the business of an enterprise is wholly or partly carried on.” This language is consistent with international treaty models such as the OECD and UN Models, and mirrors Section 92F(iii-a) of the Income Tax Act.

Drawing extensively from *Formula One World Championship Ltd. v. CIT* and *Philip Baker's commentary*, the Court underscored that for a Fixed Place PE to exist, two elements must be satisfied: first, there

must be a fixed physical location in the source country; and second, the foreign enterprise must carry on its business, wholly or partly, through that location. The test of “disposal” – that is, whether the place is at the disposal of the foreign enterprise – was described as central to this determination.

The Court also referred to *Klaus Vogel’s commentary*, highlighting the need to balance permanence, control, and commercial functionality. It noted that the existence of a PE is to be determined based on factual and functional analysis and not merely by examining the text of contracts.

The Substance of the Actual and Operational Control

A significant portion of the Court’s reasoning revolved around the nature of Hyatt’s involvement under the SOSA. Though titled as a strategic oversight agreement, the Court noted that the agreement granted Hyatt substantial rights that extended well beyond mere advisory services.

Hyatt had the contractual authority to appoint key personnel, including the General Manager, oversee human resource and procurement policies, control strategic and operational bank

accounts, and define branding, pricing, and marketing strategies. The agreement also permitted Hyatt to station its own employees at the hotel premises, without the need for prior approval from the hotel owner. The fee payable to Hyatt was not a fixed amount but linked to the financial performance of the hotel, reflecting a direct commercial stake in its operations.

These elements, in the Court's view, were not indicative of a distant advisory relationship. Instead, they revealed a sustained, functional, and enforceable presence that allowed Hyatt to exercise continuous operational and strategic control. The Court concluded that Hyatt was not merely offering occasional support from overseas, but was embedded in the core functions of the hotel, effectively enabling it to conduct its business from within the Indian territory.

Rebutting the Defence on Employee Visits and Control

Hyatt had argued that its employees visited India only occasionally and that no single employee stayed for more than nine months, thereby falling outside the scope of Article 5(2)(i). The Court rejected this contention, holding that the nine-month threshold under Article 5(2)(i) applies only to service PE scenarios involving furnishing of

services through personnel. In the present case, the revenue's case was built on the existence of a Fixed Place PE under Article 5(1).

More importantly, the Court emphasized that employee visits, when part of a coordinated and continuous strategy to oversee and direct operations, are relevant to establish PE, especially when the employees are acting within the premises functionally at the disposal of the foreign enterprise. The Court clarified that the test is not limited to the physical duration of stay, but extends to the nature and continuity of the business functions performed through the location.

Hyatt's claim that the hotel premises were not at its exclusive disposal was also dismissed. The Court cited *Formula One*, holding that exclusive use or legal ownership is not necessary. What is required is a factual ability to use the premises to conduct business, which may include shared or intermittent use, so long as the enterprise has meaningful control.

Distinguishing the E-Funds Precedent

The appellant had heavily relied on the Supreme Court's decision in *E-Funds IT Solutions* to argue that a back-office presence or support

function does not create a PE. However, the Court drew a clear factual distinction. In *E-Funds*, the foreign entity had an Indian subsidiary providing support services on an arm's length basis, with no strategic or operational control over core business functions. In contrast, Hyatt's role under the SOSA was central to the day-to-day and long-term operations of the hotel. The Court also found that Hyatt's remuneration was closely tied to the hotel's revenue and profit metrics, signifying direct commercial engagement and exposure.

Profit Attribution Despite Global Losses

An interesting aspect that also arose was whether a foreign enterprise could be taxed in India even when it incurred global losses. This issue had earlier been referred to a Larger Bench of the High Court, which ruled that attribution of profits to a PE in India is independent of the global financial results of the enterprise. The Supreme Court endorsed this view, clarifying that the source country's right to tax income attributable to the PE cannot be negated merely because the foreign enterprise as a whole suffered a loss. The attribution is based on business presence and functional performance of the PE, not on overall entity-level profitability.

Judicial Conclusion

The Court concluded that the appellant had a Fixed Place PE in India under Article 5(1) of the India-UAE DTAA. The services rendered under the SOSA were not merely strategic or auxiliary in nature but formed part of the core business operations of the enterprise. The hotel premises were functionally at the disposal of the appellant, and business was being carried out through that location. Consequently, the income earned from the SOSA was held to be taxable in India under Article 7 of the DTAA.

The appeals were accordingly dismissed, and the findings of the High Court were affirmed in full.

Broader Implications and Closing Remarks

This ruling has significant implications for the taxability of cross-border service arrangements in India. The Court's approach reflects a continued emphasis on substance over form, and a strong preference for examining real-world operational control rather than legal labels in contracts. Enterprises relying on models involving remote management, strategic consulting, or shared service

arrangements must now carefully assess whether their Indian engagements could give rise to a Fixed Place PE.

The judgment also signals that Indian tax authorities will scrutinize long-term service contracts that involve performance-linked remuneration, functional involvement, and on-site presence. It also reiterates that even intermittent presence, when tied to critical operational functions, can lead to PE exposure.

Finally, the Court's clarification on profit attribution is particularly important. The presence of global losses will not offer immunity from taxation in India if the Indian PE is carrying on economically significant activities.

In essence, the Hyatt judgment is a landmark exposition on Permanent Establishment in the context of international tax law and will serve as an authoritative guide for years to come.

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