Commissioner of Income Tax (International Taxation)-1, New Delhi v. Clifford Chance Pte. Ltd.

ITA 353/2025 & ITA 354/2025

ITA 353/2025 & ITA 354/2025 (Delhi High Court, decided 4 December 2025) | 2025-12-04

India–Singapore service PE: documented service days below the treaty threshold; offshore virtual services did not create a service PE.

Income-tax Act, 1961: 9(1)(i), 90(2), 143(3), 144C(13), 260A | India–Singapore DTAA: Articles 5(6)(a), 7

High Court of Delhi | Division Bench | V. Kameswar Rao | Vinod Kumar

Assessment years: 2020-21, 2021-22

Treaty and assessment-year scope

ITA353/2025 concerns AY2021–22; ITA354/2025 concerns AY2020–21. The ruling addresses service PE under this treaty, not every possible basis for taxing offshore services.

01 FACTS OF THE CASE

The common judgment concerns ITA354/2025 for AY2020–21 and ITA353/2025 for AY2021–22. Clifford Chance provided legal advisory services to Indian clients; the assessed receipts were Rs.15,55,45,693 and Rs.7,97,64,414 respectively. For the first year, the recorded 120 days reduced to 44 service days after excluding 36 vacation days, 35 business-development days and five overlapping days. No employee visited India in the second year. The Tribunal's common order of 14 March 2024 deleted both additions.

Source: Paras1–4,14–16,34–40, PDF pp.1–4,8–9,17–19

02 DISCUSSION BY THE HON'BLE COURT

The Court accepted time sheets, HR leave records and a declaration that client work was not performed during leave. Vacation exclusion alone reduced 120 days to 84; it also approved exclusion of business-development and duplicate employee-days. Article 5(6)(a) required services through personnel physically within India. Digital-economy policy, domestic significant-economic-presence developments and the OECD interim report could not insert a virtual service PE into the treaty. ABB, Verizon, Hyatt and the foreign decisions were distinguished by their provisions or issues.

Source: Paras34–59, PDF pp.17–30

03 JUDICIAL DECISION

Both Revenue appeals were dismissed. Questions A and B, concerning service PE and virtual service PE, were answered against Revenue and in Clifford Chance's favour. The Tribunal's deletion of the additions was upheld.

Source: Paras60–62, PDF p.30

04 OUTCOME / IN WHOSE FAVOUR

Final assessee-favourable result for both assessment years: the relevant business receipts remained non-taxable on the alleged service-PE bases under Articles 7 and 5(6)(a). This was not a ruling that every remote service escapes Indian taxation, or a determination of fees-for-technical-services liability.

Source: Paras4,40–54,60–62, PDF pp.4,19–26,30

05 EXPERT COMMENTS

Build a service-day reconciliation from records — The decisive arithmetic was supported by time sheets, HR leave records, billing information and the no-client-work declaration. The Court accepted 44 aggregate service days; it did not treat every day in India as a service day or count simultaneous employees twice. The treaty text reproduced on page6 says more than 90 days, so shorthand references to a 90-day threshold should not become an assertion that exactly 90 days suffices.

Keep the treaty category and territorial test precise — The Court read services within India through employees as requiring personnel physically performing them here. Domestic digital-nexus policy and OECD discussions did not amend the bilateral text. A taxpayer applying this reasoning still needs the applicable treaty and income classification: the Court expressly separated this controversy from FTS and fixed-place arguments, rather than granting a general exemption for cross-border advice.

Precedents require matching issues and time tests — Hyatt concerned a different treaty and fixed-place context; the South African authority involved a rolling 12-month test, while Dell involved fixed-place and dependent-agent findings. Those distinctions matter before importing another decision's aggregation rule. Here two distinct appeals survive in the common note with their correct years: 354 for AY2020–21 and 353 for AY2021–22.

Source: Editorial analysis; source references in the structured comments

SOURCE & VERIFICATION

High Court of Delhi official judgment PDF — AKHB Repository (20251204_DLHC011251632024.pdf)

30-page official High Court of Delhi order/judgment PDF (20251204_DLHC011251632024.pdf, 279,526 bytes).

All 30 original pages read and visually inspected; source hash verified. AI-assisted substantive correction.

Open cited source rendition

Source bytes and identity checked; see panel-specific references and disclosed source anomalies.

STATUTORY SCOPE

Source-era provisions and India–Singapore treaty only; no Income-tax Act, 2025 equivalence asserted.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment not independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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