Commissioner of Income Tax (International Tax-1), New Delhi v. EXL Service.com Inc. (presently known as EXL Service.com LLC)

ITA748/2025, ITA749/2025 and ITA752/2025

2025:DHC:11570-DB | 2025-12-17

India-US treaty: no PE on the accepted BPO facts; Revenue appeals dismissed, with arm's-length attribution reasoning subject to functional coverage.

Income-tax Act,1961: sections143(3),195,208,209,234B | India-USA DTAA: Articles5 and7

High Court of Delhi | 2-judge bench (Division Bench) | Justice V. Kameswar Rao | Justice Vinod Kumar

Assessment years: 2003-04, 2004-05, 2006-07

01 FACTS OF THE CASE

Three Revenue appeals challenged the common ITAT order of 20 December 2023. EXL US undertook client contracting, strategy and customer management abroad; EXL India delivered outsourced BPO services and invoiced at predetermined hourly rates. Filing and re-filing delays were condoned.

Source: PDF pp.1–4, paras 1–12

02 DISCUSSION BY THE HON'BLE COURT

The Court accepted the Tribunal's factual analysis following eFunds: Indian premises were not shown to be at EXL US's disposal, the subsidiary lacked authority to conclude its contracts, and Revenue had not proved secondment. It also considered Morgan Stanley's qualified arm's-length attribution principle and consequential orders reducing EXL India's TP adjustments to nil.

Source: PDF pp.28–36, paras 15–21

03 JUDICIAL DECISION

No substantial question of law arose. ITAs 748,749 and 752/2025 were dismissed. The challenge to the rejection of Revenue's ITAT appeal 4989/Del/2014 was consequentially dismissed.

Source: PDF pp.36–37, paras 22–23

04 OUTCOME / IN WHOSE FAVOUR

Assessee successful: the Tribunal's conclusion on PE and attribution remained undisturbed.

Source: PDF pp.36–37

05 EXPERT COMMENTS

AKHB Expert Comments — editorial analysis, distinct from the Court's findings.

Prove the relevant PE link: Outsourcing and group ownership did not establish premises at EXL US's disposal or authority to bind it. Comparable claims require the service agreement, premises rights, contracting authority and actual functions. The AO allegations on page 5 are not findings accepted by this Court. (PDF pp.5,28,33–35)

Arm's length is a qualified attribution answer: Morgan Stanley requires compensation covering all relevant functions and risks; omissions may still require attribution. The Court recorded nil consequential TP adjustments for these years. A clean TP result is not an abstract PE exemption. The quoted 29% markup belongs to Morgan Stanley, not EXL's hourly-rate arrangement. (PDF pp.3,29–30,35–36)

A factual inconsistency remains visible: The tables mark secondment Yes, but the reasoned finding says Revenue produced no evidence of it. This supports that evidentiary conclusion, not a rule that secondment never creates a service PE. Establish the personnel facts independently rather than selecting the table entry alone. (PDF pp.25,33–34)

Keep the appeal scope and years qualified: Paragraph 5 identifies three AYs; paragraph 6 records uncertainty whether the 2004-05 appeal was filed because of low tax effect. The operative order dismisses all three captions. Other proceedings and pre-2012 section 234B reasoning in the ITAT quotation do not expand those captions or establish a current-law interest exemption. (PDF pp.2,31–32,36–37)

Source: PDF pp.5,28,33–35

SOURCE & VERIFICATION

Original High Court judgment PDF — AKHB source repository

Complete 37-page original reviewed; source bytes verified.

Full original and all five panels re-reviewed on 21 October 2026.

Open cited source rendition

Complete original source and all five note panels checked; original docket identities preserved.

STATUTORY SCOPE

Current law and subsequent treatment not independently verified.

LATER TREATMENT

Source checked 2026-10-21. Subsequent proceedings and current judicial treatment have not been 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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