Commissioner of Income Tax, International Taxation-1, New Delhi v. Ernst and Young U.S. LLP

ITA 423/2025, ITA 424/2025, ITA 715/2025, ITA 753/2025 & ITA 760/2025

2026:DHC:5138-DB | 2026-06-18

India–US DTAA: Revenue succeeds on employee secondment; separate professional-service issues remanded to the ITAT.

Income-tax Act, 1961: sections 9(1)(vii) and 260A | India–US DTAA: Articles 12(4)(b), 12(5)(e) and 15

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

Assessment years: 2018-19, 2019-20, 2020-21, 2021-22, 2022-23

Corrected outcome: not dismissal of Revenue's appeals

The earlier note misstated the subject and reversed the result. All impugned ITAT orders were set aside. Revenue won on secondment; separate professional-service issues were remanded in four appeals.

01 FACTS OF THE CASE

EY US received payments for employees deputed to Indian EY entities and for services performed in and from the USA for Indian clients. Revenue challenged ITAT relief in five appeals: ITA 753/2025 (AY 2018–19), 423/2025 (2019–20), 715/2025 (2020–21), 424/2025 (2021–22) and 760/2025 (2022–23). The secondment dispute concerned whether payments described as salary-cost reimbursement were taxable under section 9(1)(vii) and Article 12. Four appeals also concerned the classification of professional-service receipts under Articles 12(4)(b), 12(5)(e) and 15. The agreements, personnel's continuing overseas employment links, training functions and the AO's separation of exempt from taxable services were central.

Source: Paras.3–12,28,45–50; PDF pp.2–9,14–18,26–32

02 DISCUSSION BY THE HON'BLE COURT

On secondment, the Court found that the secondees retained their employment lien and benefits with EY US; the Indian entities could end the assignment but not the underlying overseas employment. It found transfer of skills and knowledge through training and implementation of group policies, satisfying the make-available requirement. Applying Centrica, it rejected reliance on the reimbursement label or absence of mark-up and held that the ITAT had not adequately addressed the evidence and binding precedent. On separate professional-service receipts, the ITAT had relied on personnel qualifications and an inclusive definition without analysing actual services. The AO had already excluded some qualifying professional receipts; the Tribunal needed to examine the remaining categories and explain any disagreement with the AO.

Source: Paras.56–75,81–87; PDF pp.42–70,76–80

03 JUDICIAL DECISION

The Court set aside the impugned ITAT orders in all five appeals. Question A on secondment in every appeal, and the related make-available question B in ITA 423/2025, were answered for Revenue. ITA 423/2025 was allowed. Question B in ITA 753/2025, 715/2025, 424/2025 and 760/2025, and question C in ITA 715/2025, were remanded to the ITAT for fresh examination of the entire record and a reasoned order.

Source: Paras.89–92; PDF p.80

04 OUTCOME / IN WHOSE FAVOUR

Revenue succeeded on secondment across the five years. The separate professional-service issues in four appeals remain subject to the directed reconsideration; the judgment does not finally tax or exempt every disputed professional-service receipt. The High Court proceedings were disposed of on these differentiated terms.

Source: Paras.89–92; PDF p.80

05 EXPERT COMMENTS

Employment substance controls the secondment analysis — The Court distinguished ending an Indian assignment from terminating the overseas employment. Continuing lien, benefits and return arrangements mattered despite clauses assigning day-to-day control to India. An Indian payroll-tax certificate or reimbursement label alone does not answer the foreign entity's taxability.

The make-available finding is evidence-specific — The Court relied on training, implementation of policies and transfer of skills for future use, and rejected the Tribunal's unexplained contrary conclusion. Identify the knowledge transferred and the recipient's resulting capability. Technical expertise alone does not replace that inquiry; the software-access cases were distinguished, not applied to exempt these receipts.

Professional classification requires service-by-service analysis — The remand requires more than listing degrees or invoking an inclusive definition. Reconcile the engagement scopes, deliverables and receipts with the categories the AO already accepted, then explain why each disputed remainder qualifies under Article 15 or falls outside Article 12. The Court did not finally decide that every qualified consultant is exempt, or that every service lacking a professional regulator is taxable.

Keep the two forms of relief separate — Secondment was decided for Revenue; professional-service classification was remanded in four appeals. Do not describe the entire batch as either an assessee victory or a final confirmation of all additions. Identify the appeal, year and issue being cited. Subsequent treatment and the remand outcome remain unverified.

Source: Editorial analysis; paras.56–92, PDF pp.42–80

SOURCE & VERIFICATION

Delhi High Court official digital judgment PDF - AKHB Cloud Repository

Common judgment: 80 pages, own paragraphs 1–92; five appeals with distinct assessment years and issue-specific relief.

All 80 original pages read and visually inspected; source hash verified. AI-assisted substantive correction.

Open cited source rendition

Citation 2026:DHC:5138-DB verified visually. Original bytes unchanged; printed inconsistencies retained in the audit.

STATUTORY SCOPE

Secondment FTS and professional-service classification under the India–US DTAA; no software-royalty holding.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment and post-remand orders 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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