

DIT (International Taxation), Mumbai v. Morgan Stanley & Co.

Civil Appeal No. 2914 of 2007 / Civil Appeal No. 2915 of 2007

[2007] 8 SCR 52 | 2007-07-09

Whether the Indian back-office and proposed personnel arrangements created a fixed-place, agency or service PE of Morgan Stanley & Co. under the India-US DTAA, and whether arm's-length remuneration of its Indian associated enterprise exhausted the profits attributable to that PE.

92 | 92A | 92B | 92C | 92F(iii) | 92F(iia)

Two-judge bench | Dr. Arijit Pasayat, J. | S. H. Kapadia, J.

Assessment years: See the source-scope notes; no year inferred.

Treaty-specific PE tests; attribution relief is conditional

This historical India-US treaty decision separates stewardship from the particular deputation arrangement and permits no further PE attribution only when arm's-length remuneration covers all relevant functions and risks. It is not a universal outsourcing exemption, secondment rule, mark-up or rule that transfer-pricing compliance always extinguishes PE profits. Later treatment and current treaty/statutory law remain unverified.

[paragraphs 17 / PDF pages 31, 32, 33 / later judgment](#); [paragraphs 22 / PDF pages 36, 37, 38 / later judgment](#); [paragraphs 29-30 / PDF pages 42 / later judgment](#)

01 FACTS OF THE CASE

Morgan Stanley & Co. (MSCo), an investment bank providing financial advisory, corporate-lending and underwriting services, outsourced support work to its Indian group company, Morgan Stanley Advantages Services Pvt. Ltd. (MSAS). The agreement covered support for fixed-income and equity research, reconciliation of accounts, data processing, technical and other IT-enabled back-office functions. MScCo applied for an advance ruling on 19 May 2005 concerning the agreement dated 14 April 2005 (paragraphs 3-4).

The AAR's ruling of 13 February 2006 rejected fixed-place and agency PE treatment, but treated proposed stewardship and deputation arrangements as creating a service PE. Both MScCo and the Department appealed. The Department challenged the rejection of fixed-place/agency PE and the attribution conclusion; MScCo challenged service-PE treatment of the proposed personnel arrangements (paragraph 5).

MSCo's consultants benchmarked remuneration to MSAS at a 29% mark-up on operating costs using TNMM; the Court recorded subsequent acceptance by the TPO and AO, and absence of dispute by the Department's consultants. This was a particular transaction and record, not an industry-wide margin. The detailed account in paragraph 28 says the AAR had not ruled on TNMM appropriateness because transfer-pricing proceedings had already commenced; the Court relied on the later TPO/AO findings and its own conclusion (paragraphs 19-21, 28 and 33).

Source: [reported judgment / paragraphs 3-5 / PDF pages 7, 8, 9 / judgment](#); [reported judgment / paragraphs 19-21; 28; 33 / PDF pages 18, 19, 30, 34 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Fixed-place and agency PE: The Court required a functional and factual examination of the actual activities. On this agreement, the Indian support work did not satisfy the second limb of Article 5(1), and the specified back-office functions were preparatory or auxiliary under Article 5(3)(e). MSAS also lacked authority to enter into or conclude contracts, which were entered into and concluded in the United States; Indian implementation was confined to back-office work. Accordingly, the Court agreed that these arrangements did not establish a fixed-place or agency PE. These are conclusions about the described functions and contracting arrangements, not a blanket outsourcing exemption (paragraphs 6-12).

Service PE: The Court separated customer-protection stewardship from services furnished by the foreign enterprise. Stewards monitored quality and confidentiality, briefed staff and protected MSCO's interests; they were not involved in day-to-day management or specific MSAS services. Such stewardship did not create a service PE under Article 5(2)(I). The deputation arrangement was different. MSAS requested experienced staff, the deputationists retained their lien on employment with MSCO and returned to their parent jobs, and MSCO retained control over their employment terms. On the described deployment, MSCO furnished services through its employees to MSAS, creating a service PE. The Court's discussion of foreign responsibility, payroll or retained employment lien must be read with those facts and the applicable treaty clause (paragraphs 13-15).

Attribution: Article 7 taxed the foreign enterprise on profits attributable to its Indian PE; that question was distinct from taxation of MSAS's own income. The Court discussed the historical transfer-pricing provisions and prescribed methods, accepted TNMM as appropriate on this record, and accepted the 29% operating-cost mark-up (paragraphs 16-28 and 33).

The Court accepted the no-further-attribution proposition only where arm's-length remuneration took account of all relevant risk-taking functions. If the transfer-pricing analysis did not adequately reflect functions performed and risks assumed, additional profits remained attributable for the uncovered functions or risks. Whether the analysis exhausted attribution required a case-specific examination of the taxpayer's data. The Department also had to examine whether the PE obtained services from the multinational below arm's-length cost and determine the relevant income, expense and cost allocations. Economic nexus informed this exercise (paragraphs 29-34).

Source: [reported judgment / paragraphs 6-13; reproduced Articles 5 and 7 / PDF pages 9, 10, 11, 12, 13, 14, 15, 16 / judgment; reported judgment / paragraphs 14-15 / PDF pages 16, 17 / judgment; reported judgment / paragraphs 16-34; historical statutory/rule extracts and attribution / PDF pages 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 / judgment](#)

03 JUDICIAL DECISION

The AAR ruling was modified. A service PE arose from the deputation arrangements described, but not from the stewardship activities. The Court maintained the rejection of fixed-place and agency PE for the stated back-office arrangements, accepted TNMM and the 29% operating-cost mark-up on the record, and qualified the arm's-length attribution conclusion by the requirement that all relevant functions and risks be covered. Both civil appeals were partly allowed, with no order as to costs (paragraphs 8-15 and 33-35).

Source: [reported judgment / paragraphs 8-15 / PDF pages 14, 15, 16, 17 / judgment; reported judgment / paragraphs 33-35 / PDF pages 33, 34 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed: MSCo succeeded on stewardship; the Department's service-PE and qualified-attribution position was accepted to the extent stated; neither side obtained complete relief

Civil Appeal Nos. 2914 and 2915 of 2007 both partly allowed; AAR ruling modified; no order as to costs

Treaty PE characterisation and attribution principles decided on the advance-ruling facts; TNMM and the specific 29% mark-up accepted

No universal no-PE rule for outsourcing, universal deputation rule, benchmark mark-up, or unconditional extinction of further PE profits. The Court required examination of uncovered functions/risks and below-arm's-length incoming services; it did not quantify a residual tax demand.

Source: [reported judgment / paragraphs Appeal-group jurisdiction block; 35 / PDF pages 7, 34 / judgment](#)

05 AKHB REVIEW POINT

Analyse each asserted PE separately before computing attribution. A domestic subsidiary, quality-control visit or back-office contract is not a substitute for satisfying the relevant treaty test. The stewardship/deputation distinction here rests on what personnel actually did, who remained responsible for their work and employment, and the precise treaty language. Article 5(2)(l) as reproduced contains alternative duration/related-enterprise limbs; a single universal 90-day test should not be inferred.

For attribution, preserve the functional-and-risk limitation beside any statement that arm's-length compensation exhausts PE profit. Identify the functions and risks already priced, any functions or risks left out, and the cost of services provided to the PE. Acceptance of TNMM or the 29% mark-up in this litigation does not validate another taxpayer's analysis. E-Funds later quoted and applied this qualified approach on its own facts; the separately documented comparison is bounded and does not certify current law.

Source: [reported judgment / paragraphs Article 5\(2\)\(l\) in 7; 8-15; 32-35 / PDF pages 10, 14, 15, 16, 17, 33, 34 / judgment; bounded later judicial source / paragraphs 17; 22 / PDF pages 31, 32, 33, 36, 37, 38 / later judgment](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Appeal group

1.

Case numbers: Civil Appeal No. 2914 of 2007; Civil Appeal No. 2915 of 2007

Parties: Department and MSCo cross-appeals from AAR No. 661 of 2005

Disposition: Both partly allowed; impugned ruling modified to the extent indicated; no costs

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 7

Paragraphs: Jurisdiction block: both appeals; AAR proceeding

Source role: judgment

2.

Source url: [Open cited source](#)

Pdf pages: 34

Paragraphs: 35

Source role: judgment

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

92D; 92E; 10A; 10B; 44BB; 44BBA

OTHER PROVISIONS CONSIDERED

India-US DTAA: Articles 5(1), 5(2)(l), 5(3)(e), 5(4) and 7; Article 5(6) reproduced; Income-tax Rules, 1962: Rules 10A-10E discussed; Rules 10B and 10C reproduced; UN Model Convention, Article 7, reproduced as attribution discussion; not substituted for the governing bilateral treaty; CBDT Circular No. 14 of 2001 discussed; Circular No. 23 of 1969 and Circular No. 5 of 2004 identified as relied upon by AAR

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 92; 92A; 92B; 92C

Role: principal transfer-pricing framework

Basis: International transactions, associated enterprises, methods and arm's-length computation discussed in paragraphs 17-28; attribution qualification in paragraphs 32-33.

2.

Act: Income-tax Act, 1961

Section: 92F(iii); 92F(iia)

Role: definition context expressly analysed

Basis: Enterprise and inclusive statutory PE definition distinguished from the treaty in paragraphs 10-11.

3.

Act: Income-tax Act, 1961

Section: 92D; 92E; 10A; 10B; 44BB; 44BBA

Role: context or reproduced cross-reference only

Basis: Documentation/reporting framework, deductions in the reproduced section 92C text and examples of special rules; no independent claim under these provisions adjudicated.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S. H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED RELATED DECISIONS AND THEIR LIMITS

1.

Relationship: later judgment quotes and applies qualified principles

Earlier case id: sc-2007-07-09-morgan-stanley

Later case id: sc-2017-10-24-e-funds-it-solution

Later decision date: 2017-10-24

Source url: [Open cited source](#)

Verified effect: E-Funds paragraph 17 quotes the stewardship/deputation distinction, and paragraph 22 applies Morgan Stanley's arm's-length attribution approach while reproducing its express qualification for functions and risks not adequately reflected. E-Funds found no PE on its own facts and also accepted no additional attribution on that record; it did not remove the qualification.

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 31; 32; 33

Paragraphs: 17

Source role: later judgment

2.

Source url: [Open cited source](#)

Pdf pages: 36; 37; 38

Paragraphs: 22

Source role: later judgment

3.

Source url: [Open cited source](#)

Pdf pages: 42

Paragraphs: 29-30

Source role: later judgment

Scope: Only this identified direct quotation/application relationship was verified from both complete judgments. No general later-treatment, review, stay or statutory audit.

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 34 PDF pages; SHA-256

403c10670c13be76c88e99652fb61f2955e72a66a6d62daaf98efecfc1f391b. Original bytes preserved.

Paragraphs 1-35 on physical PDF pages 7-34, printed SCR pages 58-85. Editorial headnote precedes the judicial opening on physical page 7; no adjacent judgment.

[Open cited source rendition](#)

All 34 physical pages were read, with the editorial headnote separated from judicial paragraphs 1-35 on pages 7-34.

The detailed account in paragraph 28 says AAR did not rule on TNMM appropriateness, although paragraph 5 summarises the AAR position differently. This note follows the Court's detailed explanation and final acceptance based on subsequent TPO/AO orders, without silently reconciling the source.

Paragraph 10 refers to the PE definition under section 92F(iii); paragraph 11 expressly identifies enterprise in clause (iii) and the PE definition inserted in clause (iiia). The statutory index preserves that distinction.

This SCR rendition numbers the stewardship discussion 14, deputation discussion 15 and key attribution qualification 32-33. E-Funds quotes these passages using different report paragraph numbers; its quoted numbering must not be applied to this PDF.

No assessment year is supplied for the appeals; years cannot be inferred from the agreement, AAR or tax-officer order dates.

The 29% operating-cost mark-up and historical rules/circulars are case facts and historical law, not a current safe harbour or compliance certificate.

Reported SCR citation verified from this rendition. Catalogue INSC identifier is not represented as a separately verified neutral citation. All paragraph references are to this SCR rendition unless expressly described as quotations from another report.

Cross-appeals from the advance ruling dated 13 February 2006 in AAR No. 661 of 2005 concerning the service agreement dated 14 April 2005. The judgment does not identify an assessment year for these appeals. Later TPO and AO orders dated 22 September and 29 December 2006 are discussed; their dates do not establish an assessment year.

STATUTORY SCOPE

Historical Income-tax Act, 1961 provisions, rules and India-US DTAA text as discussed in this judgment. No independent audit of subsequent domestic, treaty or multilateral-instrument changes.

No automatic Income-tax Act, 2025 crosswalk or comprehensive later-law/current compliance certification.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. The separately sourced bounded Morgan Stanley/E-Funds relationship is not a citator or current-law certificate.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 34](#)

SHA-256: 403c10670c13be76c88e99652fb61f2955e72a66a6d62daaf98efecfc1f391b

[bounded later judicial source - PDF pages: 42](#)

SHA-256: 212dda4e3430bfd30eb1de41af44e0460158b3232fe0f561cd23b0626be1aee2

[Related note: Assistant Director of Income Tax-I, New Delhi v. E-Funds IT Solution Inc.](#)

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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