

Assistant Director of Income Tax-I, New Delhi v. E-Funds IT Solution Inc.

Civil Appeal No. 6082 of 2015 and connected proceedings (full list below)

[2017] 10 SCR 157 | 2017-10-24

Whether the two US companies had a fixed-place, service or agency PE in India through their Indian group company; whether earlier MAP settlements established PE status for other years; and what remained of the attribution dispute on the facts found.

90(1) | 90(2)

Two-judge bench | R. F. Nariman, J. | Sanjay Kishan Kaul, J.

Assessment years: 2000-01, 2001-02, 2002-03, 2004-05, 2005-06, 2006-07, 2007-08

Fact-specific no-PE ruling; important issues left open

E-Funds found no PE on its historical India-US treaty record. It did not decide the “other personnel” issue or endorse the Tribunal’s alternative nil-attribution formula. Its additional arm’s-length reasoning expressly retains Morgan Stanley’s limitation for functions and risks not adequately remunerated. Later treatment and current treaty/statutory law remain unverified.

[paragraphs 17 / PDF pages 31, 32, 33 / judgment](#); [paragraphs 22 / PDF pages 36, 37, 38 / judgment](#); [paragraphs 14-15; 29; 32-33 / PDF pages 16, 17, 30, 33, 34 / prior judgment](#)

01 FACTS OF THE CASE

The two assessees, e-Funds Corporation and e-Funds IT Solutions Group Inc., were US-incorporated residents assessed there on global income. Through the group's US and Netherlands corporate chain, e-Funds International India Pvt. Ltd. was the Indian subsidiary. It was separately taxed on its income, and its transactions with the foreign assesseees were examined under transfer pricing. The appeals concerned the entity-specific assessment years listed above (paragraph 1).

The US companies operated ATM management, electronic-payment management, decision-support/risk-management and global outsourcing/professional-service businesses. The Indian company supplied support, including customer-call handling, data processing, software testing, bug fixing and maintenance. The accepted factual account located the relevant customer-facing networks, systems and other business infrastructure outside India. A directly subcontracted Indian RBI-related assignment of the Indian company was identified as unrelated to the foreign assesseees (paragraphs 15-16).

The AO found a fixed-place PE; the CIT(A) added service- and agency-PE grounds. The Tribunal upheld fixed-place and service PE, did not address an agency case not argued before it, and calculated nil attributable income using a different formula. The Delhi High Court allowed the assesseees' appeals and rejected the Department's cross-appeals. The Department brought this group of Supreme Court appeals, relying on the group's SEC Form 10-K, control and outsourcing arrangements, two seconded employees in AY 2005-06, prior MAP settlements and an adverse-inference contention (paragraphs 2-5).

Source: [reported judgment / paragraphs 1-2 / PDF pages 4, 5, 6, 7 / judgment](#); [reported judgment / paragraphs 3-5: submissions distinguished from findings / PDF pages 7, 8, 9, 10, 11, 12 / judgment](#); [reported judgment / paragraphs 15-16 / PDF pages 25, 26, 27, 28, 29, 30, 31 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Treaty and proof: The Court examined historical section 90 and the India-US DTAA. The relevant PE categories had their own detailed conditions; the initial burden of proving a foreign assessee's Indian PE was on the Revenue. The Court's statement about PE being a treaty concept addressed the business-profits charge under this DTAA; it should not be paraphrased as denying that the Act contains a PE definition for other statutory purposes (paragraphs 6-10; compare Morgan Stanley paragraphs 10-11).

Fixed place: Applying the disposal test discussed in Formula One, there had to be premises at the foreign companies' disposal through which their own business was carried on. No such specific finding appeared in the assessment or appellate orders. Subsidiary ownership, close association, outsourcing, cost savings and functions/assets/risks comparisons did not replace that location/disposal inquiry. The group-wide Form 10-K was not evidence that the two assessees individually carried on their own business through an Indian place at their disposal. On the accepted detailed account, the Indian company supplied support to enable services abroad; the outsourced work did not establish a fixed-place PE (paragraphs 11-16).

Service PE: After quoting Morgan Stanley's stewardship/deputation distinction, the Court held that these foreign assessees furnished no service to any customer in India. Customer residence was not decisive: a customer resident elsewhere could receive a service in India, but all customers here received services abroad and only supporting auxiliary operations occurred in India. The Court also approved the High Court's treatment of the two seconded employees: the taxpayers' explanation that they worked under the Indian company's control on Indian domestic work, with their entire salary cost borne or reimbursed by it, had not been negated by the AO; the required functions/reporting inquiry had not been performed. Because the first element of Article 5(2)(l) failed, the Court expressly found it unnecessary to decide whether Indian-company employees could constitute "other personnel" of the US companies (paragraphs 17-20).

Agency PE: The ground had not been pursued before the Tribunal. For completeness, the Court agreed there was no case that the Indian company held or exercised contracting authority for the US companies, and no factual foundation for any Article 5(4) limb (paragraph 21).

Attribution: As an additional conclusion on this record, the Court accepted the assessees' reliance on the TPO order dated 22 February 2006 and stated that no further profits would be attributable even if a PE existed. It immediately quoted Morgan Stanley, including the express requirement that remuneration cover all relevant risk-taking functions and the reservation for functions or risks omitted from the pricing analysis. This was not an unconditional rule that any accepted transfer-pricing return eliminates further PE profits (paragraph 22).

MAP and late argument: The settlement records included the US competent authority's express disagreement with PE status on technical merits and its statement that the determination was not binding for later years. With the OECD MAP material discussed, the Court rejected use of this taxpayer- and period-specific compromise as a precedent for subsequent years. The proposed adverse inference from non-disclosure was not entertained because it had not been raised before the lower authorities or High Court; the Court did not decide that failure to produce relevant evidence could never matter (paragraphs 23-28).

02 DISCUSSION BY THE HON'BLE COURT

02 DISCUSSION BY THE HON'BLE COURT

Source: [reported judgment / paragraphs 6-10 / PDF pages 12, 13, 14, 15, 16, 17, 18 / judgment](#); [reported judgment / paragraphs 11-16 / PDF pages 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 / judgment](#); [reported judgment / paragraphs 17-21 / PDF pages 31, 32, 33, 34, 35 / judgment](#); [reported judgment / paragraphs 22 / PDF pages 36, 37, 38 / judgment](#); [reported judgment / paragraphs 23-28 / PDF pages 38, 39, 40, 41, 42 / judgment](#)

03 JUDICIAL DECISION

The Court upheld the assessee's no-PE position on these facts and dismissed the appeals without costs. It did not need to examine the separate cross-appeal challenge to the Tribunal's nil-income calculation, since that attribution point no longer arose after the no-PE conclusion. The record-specific arm's-length conclusion in paragraph 22 and the limits on using the earlier MAP settlement remain distinct parts of the reasoning (paragraphs 22 and 27-30).

Source: [reported judgment / paragraphs 22; 27-30 / PDF pages 37, 38, 41, 42 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee; Revenue appeals dismissed

All appeals in the reported group dismissed; no order as to costs

No Indian fixed-place, service or agency PE established on the facts; MAP and late adverse-inference contentions rejected as stated

The Court did not decide the "other personnel" question or review the Tribunal's alternative nil-attribution calculation formula. It did not create a universal outsourcing exemption, settle every secondment arrangement or make transfer-pricing acceptance an unconditional attribution bar.

Source: [reported judgment / paragraphs Jurisdiction block; 29-30 / PDF pages 4, 42 / judgment](#)

05 AKHB REVIEW POINT

Build the PE analysis from the foreign enterprise, the relevant treaty category and evidence of its activities. A group-wide annual report, economic dependence or an outsourcing contract does not by itself prove premises at that enterprise's disposal. Equally, a lack of customer residence in India is not a universal answer to service PE: this judgment focuses on where services were received and on the particular factual record, and leaves the "other personnel" issue undecided.

Keep three conclusions separate: absence of a PE; the Court's additional record-specific arm's-length conclusion; and its decision not to examine the Tribunal's alternative nil-income formula. Morgan Stanley's uncovered-functions/risks qualification remains express in the quotation the Court adopted. A historical TPO acceptance or MAP settlement cannot be transported into another year, treaty or factual arrangement without the necessary evidence. The settlement's own without-prejudice and future-year limitations mattered; the Court did not reopen or cancel the settled years. Current treaty wording, domestic amendments and subsequent treatment require independent verification.

Source: [reported judgment / paragraphs 10; 12-16; 18-22; 25-30 / PDF pages 18, 24, 25, 31, 33, 34, 35, 37, 38, 40, 41, 42 / judgment; bounded prior judicial source / paragraphs 10-11; 32-33 / PDF pages 15, 33, 34 / prior judgment](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 6082 of 2015 / Civil Appeal No. 6087 of 2015 / Civil Appeal No. 6102 of 2015 / Civil Appeal No. 6084 of 2015 / Civil Appeal No. 6100 of 2015 / Civil Appeal No. 6094 of 2015 / Civil Appeal No. 6083 of 2015 / Civil Appeal No. 6096 of 2015 / Civil Appeal No. 6089 of 2015 / Civil Appeal No. 6104 of 2015 / Civil Appeal No. 6088 of 2015 / Civil Appeal No. 6091 of 2015 / Civil Appeal No. 6103 of 2015 / Civil Appeal No. 6093 of 2015 / Civil Appeal No. 6085 of 2015 / Civil Appeal No. 6090 of 2015 / Civil Appeal No. 6095 of 2015 / Civil Appeal No. 6099 of 2015 / Civil Appeal No. 6092 of 2015 / Civil Appeal No. 6101 of 2015 / Civil Appeal No. 6097 of 2015 / Civil Appeal No. 2962 of 2016 / Civil Appeal No. 16958 of 2017

DETAILED DISPOSITION AND CONNECTED GROUPS

Appeal group

1.

Case numbers: Civil Appeal No. 6082 of 2015; Civil Appeal No. 6087 of 2015; Civil Appeal No. 6102 of 2015; Civil Appeal No. 6084 of 2015; Civil Appeal No. 6100 of 2015; Civil Appeal No. 6094 of 2015; Civil Appeal No. 6083 of 2015; Civil Appeal No. 6096 of 2015; Civil Appeal No. 6089 of 2015; Civil Appeal No. 6104 of 2015; Civil Appeal No. 6088 of 2015; Civil Appeal No. 6091 of 2015; Civil Appeal No. 6103 of 2015; Civil Appeal No. 6093 of 2015; Civil Appeal No. 6085 of 2015; Civil Appeal No. 6090 of 2015; Civil Appeal No. 6095 of 2015; Civil Appeal No. 6099 of 2015; Civil Appeal No. 6092 of 2015; Civil Appeal No. 6101 of 2015; Civil Appeal No. 6097 of 2015; Civil Appeal No. 2962 of 2016; Civil Appeal No. 16958 of 2017

Disposition: All dismissed with no costs under paragraph 30

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 4

Paragraphs: Jurisdiction block: complete reported appeal group

Source role: reported metadata

2.

Source url: [Open cited source](#)

Pdf pages: 42

Paragraphs: 29-30

Source role: judgment

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

92CA(3); 10A; 44BB; 44BBA

OTHER PROVISIONS CONSIDERED

India-US DTAA, 1990: Articles 5(1), 5(2)(l), 5(4), 5(6), 7 and 27; Articles 5(2)(a) and 25 discussed; Income-tax Rules, 1962: Rule 44H reproduced for MAP; Rule 10D appears in the quoted TPO order; OECD Commentary paragraph 42.31 and OECD MAP Manual paragraph 3.6/Best Practices 1 and 3 discussed as reproduced in the judgment

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 90(1); 90(2)

Role: principal statutory framework

Basis: Historical treaty-making and more-beneficial-provisions framework; treaty PE and MAP dispute in paragraphs 6-10 and 23-27.

2.

Act: Income-tax Act, 1961

Section: 92CA(3)

Role: quoted TPO order and alternative attribution reasoning

Basis: TPO order dated 22 February 2006 quoted in paragraph 22; no independent section 92CA jurisdictional issue decided.

3.

Act: Income-tax Act, 1961

Section: 10A; 44BB; 44BBA

Role: context only

Basis: Section 10A appears in the factual explanation of Indian domestic work; special computation provisions appear only in the Morgan Stanley quotation. No independent claim under these sections adjudicated.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R. F. Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED RELATED DECISIONS AND THEIR LIMITS

1.

Relationship: express reliance on prior judgment with qualification

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

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

Source url: [Open cited source](#)

Verified effect: E-Funds expressly quotes and applies Morgan Stanley's stewardship/deputation distinction and qualified attribution rule. The prior judgment's SCR paragraphs 14-15, 29 and 32 correspond to passages quoted under different report numbering in E-Funds paragraphs 17 and 22.

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 31; 32; 33

Paragraphs: 17

Source role: judgment

2.

Source url: [Open cited source](#)

Pdf pages: 36; 37; 38

Paragraphs: 22

Source role: judgment

3.

Source url: [Open cited source](#)

Pdf pages: 16; 17; 30; 33; 34

Paragraphs: 14-15; 29; 32-33

Source role: prior judgment

Scope: Both judgments read in full for this bounded relationship only. No wider citator or subsequent-treatment certification.

SOURCE & VERIFICATION

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

Identified source rendition: 42 PDF pages; SHA-256

212dda4e3430bfd30eb1de41af44e0460158b3232fe0f561cd23b0626be1aee2. Original bytes preserved.

Leave-grant and paragraphs 1-30 on physical PDF pages 4-42, printed SCR pages 160-198. Editorial headnote and case-law reference precede the judicial opening on physical page 4; no adjacent judgment.

[Open cited source rendition](#)

All 42 physical pages were read; judicial text begins on page 4 and ends on page 42, paragraphs 1-30. Editorial headnotes are excluded as judicial reasoning.

The cover uses E-Funds IT Solution Inc.; paragraph 1 names the two assessed entities as e-Funds Corporation and e-Funds IT Solutions Group Inc. The title follows the cover; the facts and entity-specific years follow paragraph 1.

The 2015 connected-appeal numbers are an enumerated list, not an unbroken range; 6086 and 6098 are not added. The complete group contains 23 appeals including the two later-year-numbered appeals.

The Morgan Stanley quotations in paragraphs 17 and 22 use another report's paragraph numbers; Morgan Stanley's preserved SCR rendition has different numbering. Rendition-specific pinpoints are supplied.

The quoted MAP resolution includes an inconsistent reference to an assessment year ending 2005 alongside the AY 2004-05 table and surrounding account. No settlement computation or year mapping is extrapolated from that isolated line.

Paragraph 22 quotes one identified TPO order concerning FY 2002-03; the note reports the Supreme Court's broader conclusion on this case record without claiming a separately verified TPO order for every assessment year.

Section 90 is considered in its historical form before the 2009 amendment; this note supplies no current MAP procedure, service-PE day-count, treaty amendment or 2025 Act certification.

The adverse-inference argument was rejected as newly raised. The decision is not an immunity from document-production requirements.

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.

Paragraph 1 states e-Funds Corporation: AYs 2000-01 to 2002-03 and 2004-05 to 2007-08; e-Funds IT Solutions Group Inc.: AYs 2000-01 to 2002-03 and 2005-06 to 2007-08. These are distinct from the MAP settlement years (AY 2003-04 for both entities and AY 2004-05 for IT Solutions) discussed in paragraphs 4 and 24-27. No one-to-one mapping of each connected appeal number to an entity/year is supplied in the reported judgment.

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: 42](#)

SHA-256: 212dda4e3430bfd30eb1de41af44e0460158b3232fe0f561cd23b0626be1aee2

[bounded prior judicial source - PDF pages: 34](#)

SHA-256: 403c10670c13be76c88e99652fb61f2955e72a66a6d62daaf98efecfc1f391b

[Related note: DIT \(International Taxation\), Mumbai v. Morgan Stanley & Co.](#)

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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