

Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax

Civil Appeal Nos. 9766-9773 of 2025 / Lead appeal arising out of SLP (Civil) No. 5710 of 2024
[2025] 7 S.C.R. 1497 : 2025 INSC 891 | 2025-07-24

Whether a UAE-resident hotel-oversight company had a fixed-place permanent establishment in India under Article 5(1) of the India-UAE DTAA through the hotel premises, making income under its Strategic Oversight Services Agreements attributable to that PE and taxable in India.

92F(iii-a)

Two-judge bench | J.B. Pardiwala, J. | R. Mahadevan, J.

Assessment years: 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2016-17, 2017-18

01 FACTS OF THE CASE

Hyatt International Southwest Asia, a Dubai-incorporated UAE tax resident, entered into two Strategic Oversight Services Agreements (SOSAs) with Asian Hotels Limited on 4 September 2008 for hotels in Delhi and Mumbai. The arrangements concerned strategic planning, know-how and hotel operations; the Court examined a 20-year term and performance-linked strategic fees. For AY 2009-10 the company filed a nil-income return, arguing that the treaty had no separate fees-for-technical-services article and that it had no Indian PE. It relied on the absence of an office or designated space and on employees' individual stays below nine months. Assessments and ITAT orders for eight years led to a common Delhi High Court judgment. The High Court answered the royalty question in the assessee's favour, held against it on fixed-place PE and referred the global-loss attribution question to a larger bench. These appeals challenged the adverse PE findings.

Source: [reported alternate rendition / paragraphs 2-3.10 / PDF pages 3, 4, 5, 6, 7 / judgment](#); [official signed judgment / paragraphs 2-3.10 / PDF pages 2, 3, 4, 5, 6, 7 / judgment](#); [official signed judgment / paragraphs 12.1-12.3 / PDF pages 20, 21 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Applying Formula One, the Court treated the disposal test as a fact-specific inquiry into the enterprise's right to use the place, its control and supervision, and whether its own business was carried on there. Ownership, exclusive possession or an express contractual grant of an office was not indispensable, but mere presence or access was not the governing test. The SOSA gave Hyatt enforceable, continuing powers over staffing, the General Manager, procurement, pricing, branding, bank-account policies and assignment of personnel without the owner's consent. With regular staff activity, the long term and revenue/profit-linked fees, those powers established substantive core operations at the hotels rather than auxiliary advice. Hyatt India's separate operating agreement did not displace that factual conclusion. E-Funds was distinguished on its back-office-support facts. The Court also observed under Article 5(2)(i) that continuity of business activity is evaluated in aggregate, rather than by whether one employee stayed for nine months. Finally, it noted the Delhi High Court larger bench's answer that global losses do not bar attribution of profits to an Indian PE. Article 7(1) confines the source State's taxing right to profits attributable to the PE.

Source: [official signed judgment / paragraphs 11-13 / PDF pages 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 / judgment](#); [official signed judgment / paragraphs 15-24 / PDF pages 31, 32, 33, 34, 35, 36 / judgment](#)

03 JUDICIAL DECISION

Hyatt had a fixed-place PE in India under Article 5(1) of the India-UAE DTAA. The Court affirmed that income received under the SOSA was attributable to that PE and taxable in India. All appeals were dismissed, with no order as to costs; connected miscellaneous applications were closed.

Source: [official signed judgment / paragraphs 24-26 / PDF pages 36 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the fixed-place PE and consequent Indian-taxability issues

All eight assessee appeals dismissed; no costs; connected miscellaneous applications closed

Fixed-place PE and taxability determined on the SOSA and the operational facts

The decision does not declare all foreign hotel consultants to have an Indian PE, prescribe a universal attribution percentage, or tax the enterprise's entire worldwide profits. It does not reverse the High Court's separate royalty answer in favour of the assessee. Paragraph 23 notes and supports the High Court larger-bench answer on global losses; this judgment does not supply a case-by-case profit computation.

Source: [official signed judgment / paragraphs 24-26 / PDF pages 36 / judgment](#); [official signed judgment / paragraphs 3.9-3.10, 9-10 / PDF pages 7, 16, 17 / judgment](#)

05 AKHB REVIEW POINT

Review the contract together with what actually happens at the hotel: personnel assignments, decision rights, reporting lines, access and use, bank-account authority, and fee incentives. A Dubai service clause, lack of an exclusive office or a separate Indian operating company will not resolve the fixed-place inquiry if the foreign enterprise itself exercises the pervasive operational control found here. Keep the fixed-place analysis distinct from Article 5(2)(i): that clause's quoted text concerns the same or connected project continuing for more than nine months within any twelve-month period, and the Court rejects an employee-by-employee safe harbour. It does not publish a headcount-day calculation. After PE is established, document the functions and evidence supporting attribution separately; global losses alone are not an answer to Indian PE profits. Apply the relevant treaty and statutory versions, without assuming a 2025 Act crosswalk.

Source: [official signed judgment / paragraphs 11, 12-13, 15-24 / PDF pages 17, 18, 19, 20, 21, 22, 31, 32, 33, 34, 35, 36 / judgment](#)

PROVISION-SPECIFIC SCOPE

1.

Provisions: India-UAE DTAA Article 5(1)

Role: controlling_issue

Description: Fixed-place PE and whether hotel premises were at the foreign enterprise's disposal for its own core business.

Paragraphs: 10-22, 24

2.

Provisions: India-UAE DTAA Article 7(1)

Role: taxability_consequence

Description: Indian taxation of profits attributable to the PE; global enterprise losses do not bar attribution.

Paragraphs: 11.1, 23-24

3.

Provisions: India-UAE DTAA Article 5(2)(i)

Role: supporting_treaty_discussion

Description: Continuity of service activity assessed in aggregate rather than by each employee's stay; the final holding remains a fixed-place PE under Article 5(1).

Paragraphs: 11, 21, 24

4.

Provisions: 92F(iii-a); India-UAE DTAA Article 4

Role: definition_and_residence_context

Description: Domestic PE definition mentioned as consistent with Article 5(1); UAE treaty residence was undisputed.

Paragraphs: 3.1, 8, 11

5.

Provisions: 9(1)(i); 9(1)(vi); 9(1)(vii); India-UAE DTAA Article 12

Role: assessment_background_only

Description: Alternative business-connection, royalty and FTS bases in the assessment. The High Court answered the royalty question in the assessee's favour; the Supreme Court appeal addressed PE.

Paragraphs: 3.4, 3.9-3.10, 9-10

6.

Provisions: 142(1); 143(3); 144C; 260A

Role: procedural_background_only

Description: Assessment, DRP and appellate route.

Paragraphs: 3.3-3.8

SOURCE & VERIFICATION

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

Identified source rendition: 36 PDF pages; SHA-256

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The author is R. Mahadevan, J.; this was checked against the judgment opening and not inferred from a bench metadata asterisk.

AY 2015-16 is omitted intentionally because it is not one of the eight appealed years identified in paragraph 2.

The outcome is grounded in paragraphs 24-26, not the editorial headnote. Article 5(1) is the operative PE holding; paragraph 21's service-PE discussion is identified separately.

The judgment does not quantify an attribution percentage or provide an employee-day calculation. Neither is supplied by this note.

Paragraph 13 says degree of independence, while the embedded Formula One quotation and paragraph 17 use dependence; the note avoids treating either isolated word as a new autonomous test.

No assessment tax-effect totals are inferred from the table, and no merits conclusion about penalties is inferred from the earlier interim stay described in paragraph 7.

No later judicial treatment, treaty amendments or 2025 Act section mapping is certified.

SCR and neutral citations verified on SCR PDF p. 1; appeal numbers and author corroborated on official PDF pp. 1-2. The author is R. Mahadevan, J., as printed at the start of the judgment.

These eight assessment years are expressly identified in paragraph 2 and its appeal table. AY 2015-16 is not among them.

STATUTORY SCOPE

1961 Act provisions and treaty text as considered in the judgment; no 2025 Act crosswalk performed

The governing assessment year, statutory amendments, treaty version, repeal-and-savings provisions and subsequent judicial treatment require independent verification.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 36](#)

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