आयकर अपीलीय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ब्रजेश कुमार सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER&
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

आअसं.1976/दिल्ली/2025 (नि.व. 2022-23)
ITA No.1976/DEL/2025 (A.Y. 2022-23)

Ernst & Young (EMEIA) Services Ltd.,
C/o. Authorized Representative, ERNST & Young LLP,
5th Floor, Tower-2, Plot No.2B, Sector-126, Noida,
Gautam Budh Nagar, Uttar Pradesh 201304
PAN: AACCE-3942-J ..... **अपीलार्थी/Appellant**

बनाम Vs.

Assistant Commissioner of Income Tax,
International Taxation, Circle 1(2)(2), Civic Centre,
Minto Road, New Delhi 110002 .....**प्रतिवादी/Respondent**

अपीलार्थी द्वारा/ Appellant by:	Shri Ajay Vohra, Sr. Advocate with Ms. Ananya Kapoor, Advocate
प्रतिवादीद्वारा/Respondent by:	Shri M.S Nethrapal, CIT-DR
सुनवाई की तिथि/ Date of hearing	: 23/12/2025
घोषणा की तिथि/ Date of pronouncement	: 20/03/2026

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the Assessment Order dated 09.01.2025 passed u/s.143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), for AY 2022-23.

2. The ld. Counsel for the assessee before us has confined his submissions assailing the assessment order on ground of appeal no.2 only. The same reads as under:-

"Ground 2.1: That on the facts and in the circumstances of the case and in law, the Ld. AO/ DRP has erred in constituting a Service PE of the Appellant as per Article 5 of the India-UK tax treaty without appreciating and completely disregarding the fact that none of the Appellant's employees were present in India.

Ground 2.2: That on the facts and in the circumstances of the case and in law, the Ld. AO/ DRP has erred in holding that the Appellant constituted 'Virtual Service PE', which is against the settled law, that a PE cannot be constituted when there is no physical presence in the source country.

Ground 2.3: Without prejudice to the above, on the facts and in the circumstances of the case and in law, even assuming, without conceding, that the Appellant constitutes a Virtual Service PE in India, the Ld. AO/ DRP failed to appreciate the settled provisions of Article 7 of the India-UK tax treaty, which clearly mandate that only such part of income that is attributable to the operations carried out in India, can be taxed in India.

Ground 2.4: That on the facts and in the circumstances of the case and in law, the Ld. AO/ DRP has erred in not adhering to the principle of judicial discipline and disregarding the fact that the issue in Appellant's case is squarely covered by the ruling of the Hon'ble ITAT in the case of Clifford Chance Pte. Ltd. [TS-186-ITAT-2024(DEL)].

Ground 2.5: Without prejudice to above, that on the facts and in the circumstances of the case and in law, the Ld. AO / DRP has erred in applying an arbitrary profit rate of 30% completely ignoring the fact that the global audited financial statements submitted by the Appellant depicted "NIL" profits.

Ground 2.6: That on the facts and in the circumstances of the case and in law, the Ld. AO/ DRP has erred in arbitrarily computing the profits attributable to the alleged PE of the appellant in India by attributing the 50% of revenue earned from India, without any cogent basis."

3. Shri Ajay Vohra, Sr. Advocate appearing on behalf of the assessee submits that the assessee is tax resident of United Kingdom (UK) and he is engaged in providing various common area services, global services, market development support services, etc. to various members of Ernst & Young (EY) network including members in India. Such membership enables the member firms to co-operate, collaborate and work closely together to achieve the provision of seamless

consistent high quality client services within the area. The assessee incurs cost on behalf of various members and thereafter based on actual usage recovers the same without any markup from the respective member firm. The Member firms of the EY network enter into Area Services and Market Development Agreement (ASMDA) with the assessee. One such agreement is at page 40 to 60 of the paper book. Agreements with all Indian Area Members are identically worded.

4.1. During the period relevant to assessment year under appeal, the assessee has earned gross receipts of Rs.739,74,98,525/- from EY Member firms in India. The entire receipts were claimed as exempt by the assessee on strength of the decision of Authority for Advance Rulings (AAR) in the case of assessee's group concern that is *Ernst and Young P Ltd. reported as 189 taxmann.com 409 (AAR)*. The ld. Counsel asserted that as per the AAR, the services for which the payment were received by Ernst & Young P. Ltd. does not fulfil 'make available' condition as set out in Article 13 of India-UK Double Tax Avoidance Agreement (DTAA). In absence of Permanent Establishment (PE) in India, the receipts were held to be not taxable in India. The ld. Counsel for the assessee submits that the nature of services provided by the assessee to various Indian Member firms under ASMDA are pari-materia to services rendered by Ernst & Young P. Ltd. and examined by the AAR.

4.2. During the year under consideration none of the employees of the assessee visited India for rendering services. The services were rendered through emails, conference calls, Microsoft team session, internal weblinks, etc.

4.3. The ld. Counsel for the assessee assailing the impugned order submits that the Assessing Officer (AO) has erred in taxing the receipts of assessee from Indian Member firms without establishing that the assessee has PE in India. Further, the

AO has erred in holding that the assessee has provided services to Indian Associated Enterprises (AE). The Member firms in India are not AEs of the assessee as defined under section 92A of the Income Tax Act, 1961(referred to as 'the Act'). The ld. Counsel vehemently submits that the assessee may have rendered services to Indian entities, mere presence of customers in India does not mean that the assessee has PE/Service PE in India. The onus is on the AO to establish that the assessee was having PE/Service PE in accordance with the provisions of Article 12 of India-UK DTAA.

4.4. The ld. Counsel further submits that the AO has introduced the concept of Virtual Service Permanent Establishment (VSPE). The said concept is alien to India-UK DTAA. He contended that the AO cannot bring into tax net any receipt by referring to the concept for which there is no provision available under India-UK DTAA. In support of his submissions, he placed reliance on the decision rendered in the case of *CIT vs. Clifford Chance Pte. Ltd., 181 taxmann.com 254 (Del.).*

4.5. The ld. Counsel for the assessee submits that without prejudice to the submissions refuting assessee having any PE in India, the assessee is also assailing attribution of profits to alleged Indian PE of the assessee. The AO has erred in estimating gross profit @30% of the gross receipts in India and thereafter attributing 50% of such estimated gross profits earned in India to the alleged PE in India. He submits that the amounts received by the assessee are reimbursements on cost-to-cost basis without any markup, therefore, there is no question of any attribution.

5. Shri M.S Nethrapal, representing the department submits that the nature of services provided by the assessee are given in schedule to ASMDA. A perusal of

areas of service would show that the assessee is providing strategic services. There exists an extricable link between services rendered by the assessee and revenue earned by group firms in India. The services include business development strategic analysis, market analysis, marketing, etc. The nature of services rendered by the assessee ensure that the assessee maintaining significant control over the business of Indian entities. In other words, the Indian entities are completely managed by the assessee including hiring of the employees. For rendering such services through out the year, the assessee received huge amounts from the Indian entities. The ld. DR submitted that the case of the assessee is squarely covered by the decision rendered in the case of *Hyatt International Southwest Asia Ltd. vs. Addl. DIT, 176 taxmann.com 783 (SC).*

5.1. The ld. DR submits that the condition set out in Article 5(2)(K) for having service PE in India are satisfied. He vehemently reiterated findings of the AO and the Dispute Resolution Panel (DRP) in this regard. He further submits that the conditions for having a DAPE as defined under Article 5(4)(c) of India-UK DTAA are also satisfied in the case of assessee.

5.2 With respect to reliance placed by the assessee on the Ruling of AAR, the ld. DR submits that the binding nature of ARR Ruling is strictly governed by section 245(S) of the Act. He contended that it is a settled law that AAR Rulings do not create a judicial precedent binding on other parties. To support his argument, he placed reliance on the decision in the case of Addl. CIT vs. Raytheon Company in ITA no. 3831/Del/2019 AY 2012-13 decided on 26.08.2022.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee is a tax resident of UK, there is no dispute

on this fact. A perusal of the impugned order reveals that the AO has taxed receipts of the assessee from India, holding that the assessee has Service PE/VSPE in India. Before proceeding further, here it would be imperative to refer to the provisions of Article 5(2)(k) of the India -UK that defines Service PE.

> *"(2) The term "permanent establishment" shall include especially:*
>
> > *xxxx*
> >
> > *xxxx*
> >
> > *(k) the furnishing of services including managerial services, other than those taxable under Article 13 (Royalties and fees for technical services),* ***within a Contracting State*** *by an enterprise through employees or other personnel, but only if:*
> >
> > *(i) activities of that nature continue* ***within that State for a period or periods aggregating more than 90 days*** *within any twelve-month period; or*
> >
> > *(ii) services are performed within that State for an enterprise within the meaning of paragraph (1) of Article 10 (Associated enterprises) and continue for a period or periods aggregating more than 30 days within any twelvemonth period.*
>
> *Provided that for the purposes of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of, mineral oils in that State."*

To put it in simple words, as per India-UK DTAA, a Service Permanent Establishment (PE) is constituted when a UK enterprise provides services within a Contracting State (India), including consultancy or managerial services through its employees or personnel for more than 90 days within any 12-month period.

7. The AO in para 10.4 of the assessment order has held that there is no requirement for physical presence of the employees/personnel under DTAA. The understanding of the AO with regard to the conditions set out under India- UK DTAA to constitute Service PE is thoroughly misconceived and untenable. As is manifestly

evident from plain reading of Article 5(2)(k) of the India-UK DTAA, physical presence of employees/personnel of the UK enterprises in India for an aggregate period of more than 90 days in any 12 months is must. It is not in dispute that during the relevant period the employees of the assessee never visited India. Therefore, the necessary conditions to meet the requirement of having a Service PE are not fulfilled. The Hon'ble Apex Court in the case of *ADIT vs. E-Funds IT Solutions Inc. 86 taxmann.com 240* has held that to constitute 'Service PE' the requirement of Article 5(2)(l) of the India – US DTAA is that an enterprise must furnish services "within India" through employees or other personnel. (The provisions of Article 5(2)(k) of India-UK DTAA are pari materia to Article 5(2)(l) of India-US DTAA).

8. The ld. DR has placed reliance on the decision rendered in the case of *Hyatt International Southwest Asia Ltd. (supra)* to contend that where the role of UK enterprises is not only confined to high level of decision making but extends to substantive control and implementation, therefore, it constitute PE in India. We find that reliance by the ld. DR on the decision rendered in the case of *Hyatt International Southwest Asia Ltd. (supra)* is misplaced. In the said case, the Hon'ble Apex Court after examining Strategic Oversight Service Agreements (SOSA) held that the SOSA executed between the assessee and Indian Comapny demonstrates that the assessee exercised pervasive and enforceable control over the hotel's strategic, operational, and financial dimensions. Thus, the condition sine qua non to constitute fixed place PE i.e., the place through which the business is carried on in India must be 'at the disposal' of the enterprise was satisfied in that case. Hence, in facts of the case it was held that the assessee was having PE in India. Whereas, here the case of AO is that the assessee has Service PE/VSPE. It is an admitted position that the conditions necessary for constituting Service PE are not satisfied

in the present case. It is not the case of AO that the assessee has fixed place PE in India. Hence, the decision rendered in the case of *Hyatt International Southwest Asia Ltd. (supra)* does not support the cause of the Department.

9. Thus, in light of facts of the case, provisions of Article 5(2)(k) of India-UK DTAA and the law explained by the Hon'ble Apex Court with regard to Service PE, we hold that the AO has failed to show existence of Service PE.

10. Further, the AO held that with the advent of technological innovation the requirement of physical presence of the employees for rendering of service is an antiquated concept. Since, the services can now be rendered by via email, conference call, Microsoft teams meetings/Webex, etc. there is no requirement of physical presence of employees. The assessee has rendered services in India through its personnel or employees via online meetings and e-mails, etc. hence, the conditions of Article 5(2)(k) of India -UK DTAA are satisfied. On the basis of services rendered by the assessee from a remote location, the AO held that the assessee has VSPE.

11. We find that one of the question of law for consideration before the Hon'ble Delhi High Court in the case *CIT vs. Clifford Chance Pte. Ltd. (supra)* was:

> *"**B. Whether on the facts and in the circumstances of the case, and in law, the Tribunal erred in holding that the assessee does not have a virtual service permanent establishment in India?**"*

The Hon'ble High Court after examining the provisions of India-Singapore DTAA answered the above question as under:-

> *"41. Another issue that has been raised is that even when the employees were not physically present in India, services continued to be rendered virtually, for more than 90 days. That apart, in AY 2021-22, though the assessee did not have physical presence of*

any employees in India, services were still provided virtually by the assessee to its clients in India, and as such, it constituted a virtual service permanent establishment in India. The view of the assessing officer, as propounded by the Revenue before the Tribunal and before us, is that as a result of rapid digitalisation, services including consultancy services can be provided virtually without the physical presence of employees in the contracting state. According to them, nothing in the DTAA requires the employees to be physically present in India for providing the services.

42. Article 5(6)(a) of the DTAA reads ***"An enterprise shall be deemed to have a permanent establishment in a Contracting State if it furnishes services… within a Contracting State through employees or other personnel…". The words "within a Contracting State" and "through employees or other personnel" contemplates rendition of services in India by the employees of the non-resident enterprise, while mandating a fixed nexus; a physical footprint within India. The term „within" has a certain territorial connotation and in the absence of personnel physically performing services in India, there can be no furnishing of services „within" India. A plain reading of the whole provision would thus reveal that, it such rendition of services by employees present within the country which would constitute a service permanent establishment.***

43. Mr. Rai has vehemently contended that receipts on account of virtual services rendered by the assessee must be held to be amenable to taxation in India, since a „virtual service permanent establishment" has been established. We find that no such eventuality is contemplated by the DTAA. The concept of a virtual service permanent establishment does not find mention anywhere in the DTAA. In the absence of any such provision, the argument of Mr. Rai would be at variance that the express provisions of the DTAA which we have already interpreted above.

44. At this juncture, we find it necessary to acknowledge that the Revenue may potentially be justified in raising concerns regarding taxability of foreign entities in the increasingly open global virtual economy, and the diminishing requirement of physical presence of non-resident employees to furnish services. However, taxability of entities in such instances, as always, remains subject to the applicable provisions of law- both treaty and domestic.

45. The law insofar as the present controversy is concerned, is clear and unambiguous. ***The DTAA, which has been carefully drafted and executed after numerous rounds of bilateral deliberations and negotiations at the highest level, must necessarily be interpreted strictly. If something is conspicuous by its absence, the presumption is that it has deliberately been done so. It is not for courts to read in concepts which are not expressly provided for by the treaty. The guiding principle here is that language which is not explicitly included in treaty provisions cannot be artificially read into such provisions by way of judicial fiction****.*

46. As already stated, ***Article 5(6) of the DTAA only contemplates rendering of services by employees present within the country. If that be so, it is not for this Court to analyse***

the status or merits of a virtual service permanent establishment which does not find mention either in the DTAA or in the domestic Act. As such, the contention of the Revenue that a virtual service permanent establishment of the assessee has been established for AYs 2020-21 and 2021-22 cannot be accepted."

[Emphasized by us]

The provisions of Article 5(2)(k) of India-UK DTAA are pari-materia to Article 5(6)(a) of India- Singapore DTAA w.r.t. physical presence of employee or personnel of foreign enterprise in the Contracting State (India) for rendering service to constitute Service PE. The Hon'ble High Court emphasized for strict Treaty interpretation and held that in the absence of explicit language of the DTAA, courts cannot artificially create or read in concepts not expressly provided in DTAA, including virtual PE.

12. The impugned assessment order is based solely on the concept of VSPE, which is not supported by the treaty language or judicial precedent. Thus, in light of the aforesaid judgment, the theory of VSPE cannot be accepted, unless DTAA provides for the same. The provisions of Article 5 of India-UK DTAA makes no provision for VSPE. Hence, the fiction of VSPE cannot be read into provisions of the DTAA. Thus, ground of appeal No. 2.1 to 2.4 are allowed.

13. Without prejudice to primary submissions assailing existence of Service PE/VSPE, the assessee has also assailed attribution of profits to Indian PE. Since, the assessee succeeds on primary issue, the question of attribution of profit does not arise. Hence, ground of appeal no. 2.5 and 2.6 have become academic.

14. No submissions were made on ground of appeal no.3, hence, the same is left open.

15. In the result, impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 20th day of March, 2026.

Sd/-	Sd/-
(BRAJESH KUMAR SINGH)	(VIKAS AWASTHY)
लेखाकार सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / Delhi, दिनांक/Dated 20/03/2026

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI

1.	Date of dictation of Tribunal order direct on computer	11.03.2026
2.	Date on which typed draft order is placed before the dictating Member	11.03.2026
3	Date on which typed draft order is placed before the other Member (in the case of DB)	
4.	Date on which the approved draft order comes to P.S/Sr.P.S	
5.	Date on which the fair Order is placed before the dictating Member for sign	
6.	Date on which the fair Order is placed before the other Member for sign (in the case of DB)	
7.	Date on which the Order comes back to P.S./Sr.P.S for uploading on ITAT website	
8.	Date of uploading, if not, reason for not uploading	
9.	Date on which the file goes to the Bench Clerk	
10.	Date on which order goes for xerox	
11.	Date on which order goes for endorsement	
12.	Date on which the file goes to the Superintendent/O.S. for checking	
13.	Date on which the file goes to the Assistant Registrar for signature on the order	
14.	Date on which the file goes to dispatch section for dispatch the Tribunal Order	
15.	Date of dispatch of order	
16.	Date on which file goes to Record Room after dispatch the order	