

Judicial Pronouncement and its relevance

The Hon'ble Supreme Court, in the case *Hyatt International Southwest Asia Ltd. vs. Additional Director of Income Tax*, has delivered a seminal judgment elucidating the contours of the term Permanent Establishment (PE) under the Indo-UAE Double Taxation Avoidance Agreement (DTAA), sets benchmark on cross border taxation, especially in the context of Foreign Service providers and multinational management arrangements.

Factual matrix and Contractual Arrangement

Hyatt, is a company incorporated in Dubai and a tax resident of the United Arab Emirates, is engaged in the provision of consultancy and strategic management services in the hospitality sector. Hyatt entered into long-term Strategic Oversight Services Agreements (SOSA) with Asian Hotels Ltd. (AHL) in India, engaging for a period of 20 years to provide strategic oversight, operational advice, and ensure that the hotels under the Hyatt brand operated in compliance with international standards. For several assessment years, Hyatt filed its Income tax returns in India declaring "Nil" income.

Assessee's Contentions on absence of Tax Nexus

The company contended that it did not have a PE in India under Article 5(1) of the Indo-UAE DTAA, arguing that its business income ought not to be taxed in India under Article 7 of the DTAA, since it merely provided consultancy services from abroad, had no fixed place of business or office space in India, and Day-to-day management was handled by an independent separate entity, *Hyatt India Pvt Ltd*. Hyatt further claimed that that its employees' visits to India were infrequent, never breached the nine-month threshold laid down in treaty, and it did not possess any designated office space nor operational assets in India.

Revenue's Submission on Functional and Economic Presence

The revenue authorities refute Hyatt's assertions, emphasizing that SOSA granted Hyatt pervasive control over hotel operations, including authority over bank accounts and appointment of staff and revenue-linked fee structure reflected an active business interest and continuous management, going beyond routine consultancy.

ARTICLE 5 – Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

3. A building site or construction, installation or assembly project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of independent status — shall be deemed to constitute a permanent establishment if such person:

(a) has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless the activities are limited to those mentioned in paragraph 4; or

(b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status.

Ratio Decidendi: Substance-Over-Form and ‘Disposal Test’

In its analysis, the Supreme Court applied a substance-over-form approach. It underscored that the existence of a PE cannot be denied merely because the foreign company lacks legal ownership or exclusive office premises in India. What matters is the actual business conduct and control exercised. Hyatt’s extensive, on-going operational involvement ranging from strategic decisions to personnel appointments met the “disposal test,” meaning it had sufficient control over the business premises to be considered a fixed place of business.

Precedential support and Doctrinal Consistency

In support of its reasoning, the Court placed reliance on its earlier ruling in *Formula One World Championship Limited vs. Commissioner of Income Tax, International Taxation-3, Delhi & Anr (2017)* case, reiterating that shared or temporary use of premises combined with real business activity suffices to establish a PE.

The Court clarified that the essential test is whether the foreign enterprise’s involvement is central to core business functions, rather than merely auxiliary or preparatory. In light of the facts, Hyatt’s oversight and managerial activities were found to be “the very core” of the hotel’s business in India and not merely incidental services. Therefore, Hyatt’s business was carried on, at least partly, in India through a fixed place of business.

Application of Article 7 and Attribution of Profits

Once the existence of PE was established Article 5(1), the Court held that profits attributable to the Indian operations under Article 7 of DTAA are taxable in India, irrespective of whether the foreign entity earns a global profit. This independent taxability confirms that the source of income within India is the primary factor.

Jurisprudential Impact and Interpretative Expansion

The Supreme Court's ruling has profound significance. It broadens the scope of interpretation of PE to include foreign companies that exercise real operational control and management over Indian entities even without permanent office space or long-term staff presence. This aligns Indian tax law more closely with international standards focusing on economic reality rather than contractual formality. Companies engaged in long-term service or management agreements with Indian businesses should reassess their tax risks, particularly those with profit-linked fees or control over business functions.

Conclusion and Legal consequences

In conclusion, by upholding the High Court's ruling, the Supreme Court set a vital precedent confirming that Hyatt International Southwest Asia Ltd. had a fixed place PE in India. This affirms India's authority to tax foreign enterprises deriving income from substantive operational involvement within the country, irrespective of physical office presence. The judgment brings enhanced clarity for international taxation and underscores the importance of business substance in determining tax obligations under double taxation treaties.