



**DECODING THE RECENT JUDGMENT PASSED BY HON'BLE SUPREME COURT IN THE CASE OF  
HYATT INTERNATIONAL SOUTHWEST ASIA LTD. VS. ADIT  
(DECIDED ON 24<sup>TH</sup> JULY, 2025)  
[Civil Appeal no.9766-73/2025 decided on 24<sup>th</sup> July, 2025]**

These are appeals arise against common judgment and order passed by Hon'ble High Court of Delhi on 22<sup>nd</sup> December, 2023 for Assessment Years (“AY”) 2009-10 till 2014-15, 2016-2017 and 2017-18.

**Hyatt International Southwest Asia Ltd. (“the Assessee”):**

- It is a company incorporated under the Companies Law, Dubai International Financial Centre Law No,3 of 2006, UAE.
- It is UAE tax resident under Article 4 of Double Taxation Avoidance Agreement between India and UAE (“DTAA”).
- Filed it's income tax return as 'nil' and claimed refund of INR 87,99,091 for AY 2009-10.

**Brief facts:**

- The Assessee had entered into 2 Strategic Oversight Services Agreements (“SOSA”) with Asian Hotels Limited (“AHL”), India – one for AHL, Delhi and the other one for AHL, Mumbai for a period of 20 years from the effective date which can be extended by 10 years mutually. Under SOSA, the Assessee agreed to provide strategic planning services and know-how to ensure that the hotel was developed and operated as an efficient and a high-quality international full-service hotel. AHL owned the said hotel.
- Draft Assessment Order (“DAO”) passed by the Assessing Officer (“AO”) on 28<sup>th</sup> December, 2011 under Section 143(3) read with 144C of the Income-tax Act, 1961 *inter alia* holding that the appellant's activities constituted: (i) a business connection under Section 9(1)(i) of the Act; (ii) a Permanent Establishment (“PE”) under Article 5 of the DTAA; (iii) royalties and Fees for Technical Services (“FTS”) under Section 9(1)(vi)(vii) of the Act; and (iv) royalties under Article 12 of the DTAA. Objections to the said DAO were filed by the Assessee on 22<sup>nd</sup> January, 2012 before the Dispute Resolution Panel, which rejected the said objections and upheld DAO. AO passed the Final Assessment Order (“FAO”) upholding DAO.
- Appeals filed before Income Tax Appellant Tribunal (“ITAT”) by the Assessee against FAOs. ITAT upheld FAO relying on **Formula One World Championship Limited vs. Commissioner of Income Tax (2017) 15 SCC 602**. Appeals against the ITAT orders were filed before Hon'ble High Court of Delhi. The said Hon'ble Court, at the time of final hearing of the appeals, framed 4 substantial questions of law, whereby it answered 3 of them, and referred the 4<sup>th</sup> question to a Larger Bench. Aggrieved by the finding of the said Court that the Assessee has a PE in the form of a place of business in India as contemplated under Article 5(1) of the DTAA, the appeals before the Hon'ble Supreme Court were filed.



**What has been argued before the Hon’ble Supreme Court and what the Hon’ble Court has, *inter alia*, held:**

<b>Issues involved</b>	<b>Arguments raised by the Appellant-Assessee</b>	<b>Arguments raised by Revenue Department</b>	<b>What the Supreme Court has <i>inter alia</i> held</b>
<b>Hotel consultancy And advisory services</b>	<ul style="list-style-type: none"><li>• Assessee is a Dubai based company engaged in rendering hotel consultancy and advisory services from Dubai to hotels in the Hyatt Group of Hotels, including several located in India.</li><li>• These services are rendered under a SOSA entered into with each hotel owner individually.</li><li>• SOSA explicitly stipulates that the Assessee shall render its services from Dubai and is not obligated to send or station any employee in India. However, SOSA permits at the Assessee’s sole discretion, occasional and temporary visits by its employees to India.</li><li>• No income is taxable under the Income Tax Act, 1961 since there was no specific Article under the DTAA for taxing FTS.</li></ul>	<ul style="list-style-type: none"><li>• Under SOSA, it is a long-term agreement under which Assessee enjoys brand and continued control over the hotel’s key functions, including staffing, operations, strategic policy, and financial oversight.</li><li>• This arrangement reflects 3 core characteristics of a PE: (1) stability (20 year term); (2) productivity (fee linked to business outcomes); and (3) dependence (reliance on hotel infrastructure and staff to carry out its business).</li><li>• Assessee’s role extended beyond high-level policy formulation and into the domain of actual implementation.</li><li>• Assessee was involved in appointment and training of staff, monitoring daily operations, exercising financial oversight, and influencing</li></ul>	<ul style="list-style-type: none"><li>• Assessee is entitled to ‘strategic fees’ for the services provided.</li><li>• The consideration is not a fixed fee – it is calculated as a percentage of room revenue and other revenues and income – whether directly or indirectly derived from the hotel’s operations – as a cumulative gross operating profit. This remuneration structure reflects an active commercial involvement, linking the Assessee’s income to the financial and operational performance of the hotel.</li><li>• Assessee’s rights go beyond mere consultancy and indicate that it was an active participant in the core operational activities of the hotel.</li><li>• Assessee’s ability to enforce compliance, oversee operations, and derive profit-linked fees</li></ul>



	<ul style="list-style-type: none"> <li>• Ownership and operational control of the hotel remained with the Indian entity as per SOSA.</li> <li>• Role of Assessee under SOSA was limited to strategic guidance, brand compliance and long-term planning. The day-to-day operations of the hotel were carried out by Hyatt India Private Limited under a separate Hotel Operating Services Agreement (“HOSA”) entered with hotel owner.</li> </ul>	<p>procurement and operational decisions – all of which demonstrate managerial and functional control, particularly through the General Manager, who reported to the Assessee.</p>	<p>from the hotel’s earnings demonstrates a clear and continuous commercial nexus and control with the hotel’s core functions. This nexus satisfies the conditions necessary for the constitution of a Fixed Place PE under Article 5(1) of the DTAA.</p> <ul style="list-style-type: none"> <li>• Affirmed that profit attribution to a PE in India is permissible even if the overall foreign enterprise has incurred losses. Reinforced the principle that taxability is based on business presence and not the global profitability of the enterprise.</li> </ul>
<p><b>Existence of PE of Assessee in India</b></p>	<p><b><u>No Fixed Place PE – ‘disposal test’:</u></b></p> <ul style="list-style-type: none"> <li>• Assessee did not have any Fixed Place of business, office or branch in India and that the presence of its employees in India during the year did not exceed the 9 month threshold under Article 5(2) of the DTAA. Thus, Appellant did not have a PE in India and its business income was not taxable under Article 7 of the DTAA.</li> </ul>	<p><b><u>Fixed Place PE:</u></b></p> <ul style="list-style-type: none"> <li>• Under SOSA, Assessee had more than mere access to the hotel premises – the premises were at full and unconditional disposal of the Assessee.</li> <li>• Assessee’s business was carried on through the employees stationed at the hotel, thus, they had fixed place PE in India.</li> <li>• As documentary evidence – records of</li> </ul>	<p><b><u>There is presence of a ‘Fixed Place PE’ – ‘disposal test’:</u></b></p> <ul style="list-style-type: none"> <li>• The degree of control and supervision exercised by the Assessee clearly transcends a mere advisory capacity and aligns with the criteria for a Fixed Place PE.</li> <li>• Relied on the judgment of <b>Formula One supra</b> with respect to ‘disposal test’ – it was <i>inter alia</i> held that this test is to be applied contextually,</li> </ul>



	<ul style="list-style-type: none"><li>• There was no designated space or office at the hotel premises in Delhi or Mumbai that was either specifically reserved for or placed at the disposal of the Assessee. Assessee had no control or dominion over any part of the premises. Mere involvement in policy decisions or enforcement of brand standards does not amount to a fixed place of business PE.</li><li>• Relied upon <b><i>Formula One supra and Assistant Director of Income Tax vs. E-funds IT Solutions Inc. (2018) 13 SCC 294</i></b> – conditions essential for existence of a fixed place PE: (1) There must be a specific, fixed, and identifiable physical location in India; and (2) Such location must be at the disposal of the foreign enterprise for use in carrying out its own business activities.</li></ul> <p><b><u>Visit of 6 employees of Assessee in India:</u></b></p>	<p>names, roles, and durations of stay of the Assessee's employees posted at the hotel.</p> <ul style="list-style-type: none"><li>• Assessee had full and effective control over the hotel premises and that the premises were intended at its disposal for conducting its business. Thus, the hotel satisfies the definition of a Fixed Place PE under Article 5(1) of DTAA, consequently, the profits attributable to such PE are liable to be taxed in India and the Assessee be taxed in India on income derived from such activities. Relied on Formula One supra.</li><li>• Distinguished <b><i>E-funds supra</i></b> based on facts – thus, not applicable.</li></ul> <p><b><u>Visit of 6 employees of Assessee in India:</u></b></p> <ul style="list-style-type: none"><li>• Some employees remained in India for upto 9 months and were involved in substantive hotel operations, clearly indicating operational presence in line with the terms of SOSA.</li></ul>	<p>taking into account the commercial and operational realities of the arrangement. The test is not whether a formal right of use is granted, but whether, in substance, the premises were at the disposal of the enterprise and were used for conducting its core business functions.</p> <ul style="list-style-type: none"><li>• Relied on <b><i>Union of India &amp; Anr. vs. UAE Exchange Centre (2020) 9 SCC 329</i></b> – it was <i>inter alia</i> held that, in that case, the liaison offices performed only preparatory and auxiliary activities, and there was no right of disposal or control over a fixed place through core business was carried on.</li><li>• The judgment in the case of <b><i>E-funds supra</i></b> – distinguished on facts as in that case, the Indian subsidiary merely provided back-office support and was compensated on an arm's length basis, with no involvement in core business functions. In the present case, the hotel itself was the situs of the Assessee's</li></ul>
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	<ul style="list-style-type: none"><li>• These were brief and routine for oversight visits to ensure brand uniformity and quality compliance.</li><li>• Same executives visited other Hyatt hotels across India.</li><li>• Short duration spread across multiple locations in India and lack of exclusive use or control over any space do not satisfy the legal requirement of fixed place PE.</li><li>• Revenue failed to produce documentary evidence to establish that any such designated space was ever placed at the disposal of the Assessee.</li></ul>		<p>primary business operations, carried out under its direct supervision and aligned with its commercial interests.</p> <ul style="list-style-type: none"><li>• <i>Inter alia</i>, held that determining whether a Fixed Place PE exists must involve a fact-specific inquiry, including the enterprise's right of disposal over the premises, the degree of control and supervision exercised, and the presence of ownership, management, or operational activity.</li><li>• The extent of control, strategic decision making and influence exercised by the Assessee clearly establish that business was carried on through the hotel premises.</li></ul> <p><b><u>Preparatory or auxiliary services:</u></b></p> <ul style="list-style-type: none"><li>• Functions performed by Assessee goes beyond preparatory or auxiliary services.</li></ul> <p><b><u>Visit of 6 employees of Assessee in India:</u></b></p> <ul style="list-style-type: none"><li>• Under Article 5(2)(i) of the DTAA, the relevant</li></ul>
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			consideration is the continuity of business presence in aggregate – not the length of stay of each individual employee. Once it is found that there is continuity in the business operations, the intermittent presence or return of a particular employee becomes immaterial and insignificant in determining the existence of a PE.
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**Impact of the aforesaid Judgment:**

- It is pertinent to note that the Hon’ble Supreme Court has, *inter alia*, held that there is no straight jacket formula applicable to all cases to determine a Fixed Place PE of a foreign enterprise in India.
- Therefore, determining whether a Fixed Place PE exists must involve a *fact-specific inquiry*, including, but not limited to, the enterprise’s right of disposal over the premises, the degree of control and supervision exercised, and the presence of ownership, management, or operational authority.
- Further, the functionality test can also determine the existence of a PE of a foreign enterprise in India, that is, to whether the said enterprise is carrying out its ‘*core business activities*’ in India or only ‘*preparatory and/or auxiliary activities*’ are being carried out in India. This is also fact-specific inquiry and will need to be examined and decided on a case-to-case basis.



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