

News

Virtual services by foreign law firms not taxed under India–Singapore DTAA: Delhi High Court rules in favour of Clifford Chance



The Court rejected the Income Tax Department's move to tax Clifford Chance Private Limited, one of the biggest international law firms, on services performed remotely from Singapore.

The Delhi High Court has held that virtual services rendered by a foreign law firm or other establishment not having any physical presence in India cannot be taxed under the India–Singapore Double Taxation Avoidance Agreement (DTAA) [Commissioner of Income

Tax, International Taxation v Clifford Chance Pte Ltd].

A Division Bench of Justices V Kameswar Rao and Vinod Kumar noted that the idea of a **“virtual service permanent establishment (PE)” does not exist under the DTAA.**

Hence, it rejected the Income Tax Department's move to tax Clifford Chance Private Limited, one of the biggest international law firms, on services performed remotely from Singapore.

The Court said that it cannot read into treaties concepts not clearly included and that the India-Singapore agreement only contemplates taxation on rendering of services by employees present within the country.

“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 business, while mandating a fixed nexus; a physical footprint within India,” the Court said.

It further ruled that the law is clear and unambiguous and the DTAA must be interpreted strictly.

“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 benefits 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 created for AYs 2020-21 and 2021-22 cannot be accepted,” the Bench underscored.

Therefore, the Court dismissed two appeals by the Income Tax department challenging a March 2024 tribunal order that had deleted additions of ₹15.55 crore for the assessment year (AY) 2020-21 and ₹7.97 crore for AY 2021-22 placed on Clifford Chance.

The tax department had argued that rapid digitalisation helps companies to furnish services in India without physical presence. It relied on OECD discussions and foreign decisions to claim that such income can be taxed.

However, the Court rejected the argument.

For AY 2020-21, the tax department had also claimed that Clifford Chance's employees stayed in India for 120 days, surpassing the 90-day threshold for a service permanent establishment.

However, the law company had submitted detailed time sheets showing that only 44 days involved actual client work. The remaining time comprised vacation (36 days), business growth (35 days) and overlapping days (5) where no client services were performed.

On this, the Court decided that only days of actual service delivery can be counted toward the threshold, and records provided by the company substantiated the exclusions.

Ultimately, the Court refused both the appeals.

Advocates Puneet Rai, Ashvini Kr, Rishabh Nangia and Gibran presented for the Income Tax Department.

Senior Advocate Ajay Vohra with advocates Adityya Vohra, Kunal Pandey and Tanmay defended Clifford Chance.