DELHI HIGH COURT DECISION ON SECONDMENT TAX DISPUTE
COMMISSIONER OF INCOME TAX v. ERNST & YOUNG US LLP

Background

Employee secondment arrangements have become an integral component of multinational business operations in India. Global Capability Centres (GCCs), technology companies, consulting firms, manufacturing groups, financial institutions and professional services organizations frequently deploy foreign employees to India to facilitate knowledge transfer, provide technical expertise, oversee business operations and support strategic initiatives.

Delhi High Court decision dated June 18, 2026

The Delhi High Court has delivered a judgment largely favouring the Income Tax Department in a batch of five appeals against Ernst & Young U.S. LLP (EY US). The judgment, delivered on June 18, 2026, by a Division Bench comprising Justices V. Kameswar Rao and Vinod Kumar, addresses two recurring and commercially significant questions in cross-border taxation:

- Whether payments made for seconded employees constitute taxable Fees for Technical Services (FTS), and
- Whether cross-border professional services rendered by a foreign firm to Indian clients qualify for treaty exemption.

The ruling overturns key findings of the Income Tax Appellate Tribunal (ITAT) and is expected to influence how secondment arrangements between multinational entities and their Indian affiliates are structured and taxed going forward.

Facts of the Case

The appeals were filed by the Commissioner of Income Tax (International Taxation)-1, New Delhi, under the Income Tax Act, 1961, against orders of the ITAT covering five assessment years: 2018-19, 2019-20, 2020-21, 2021-22, and 2022-23. The Respondent, EY US, is a Limited Liability Partnership incorporated under the laws of the United States and a member of the global Ernst & Young network, engaged in providing assurance, tax, transaction, and business advisory services to clients across the globe, including India.

EY US had entered into deputation agreements with three EY India entities, namely EY GBS (India) Pvt Ltd, EY Global Delivery Services India LLP, and Ernst & Young LLP, under which qualified personnel from EY US were assigned to work with the Indian entities for defined periods, typically two to three years, before being repatriated. Separately, EY US also rendered professional and technical services directly to Indian clients, including EY LLP, SR Batliboi & Company LLP, and Honeywell International Inc., from its base in the USA.

During assessment, the Assessing Officer made additions on two counts across the various years: amounts received by EY US from the Indian entities for the seconded employees, running into millions across the years, and receipts from Indian clients for services rendered in and from the USA. The Dispute Resolution Panel upheld these additions, but the ITAT, in separate orders, ruled in favour of EY US on both counts, holding that the secondment payments were mere cost-to-cost reimbursements and that the professional service receipts qualified for treaty exemption. Aggrieved, the Revenue approached the Delhi High Court.

Issues Involved

The High Court framed three substantive questions of law for consideration across the appeals.

- The first was whether the ITAT had erred in holding that amounts received by EY US as cost-to-cost reimbursement for seconded employees should not be treated as FTS under Section 9(1)(vii) of the Income Tax Act and Article 12 of the India-USA Double Taxation Avoidance Agreement (DTAA).
- The second concerned whether the ITAT had correctly appreciated the "make available" clause under Article 12(4)(b) of the DTAA, which is a necessary condition for treating receipts as FTS.
- The third asked whether the ITAT was justified in holding that EY US's receipts fell within the exemption carved out under Article 12(5)(e) of the treaty, which excludes certain professional services from the scope of taxable fees

Arguments Advanced by the Revenue

Appearing for the Revenue, Senior Standing Counsel Mr. Puneet Rai argued that the ITAT had erroneously treated the seconded personnel as employees of the EY India entities. He submitted that the secondment was for a limited period only, that the employees retained a lien on their employment with EY US, and that they continued to contribute to US social security benefits during their assignment in India, demonstrating that the employer-employee relationship with EY US never ceased. He placed heavy reliance on the Delhi High Court's earlier decision in Centrica India Offshore (P) Limited v. CIT, which had held that reimbursements to an overseas entity under a secondment arrangement amounted to FTS, and noted that the Special Leave Petition against that decision had been dismissed by the Supreme Court. On the second issue, Mr. Rai contended that the professional services exemption under Article 15 of the DTAA applied only to services rendered within India, and that the ITAT had wrongly expanded its scope to services rendered by economists, MBA graduates, and other technical personnel who did not belong to a recognised professional body.

Arguments Advanced by EY US

Senior Advocate Mr. S. Ganesh, appearing for EY US, contended that under the terms of the deputation agreement, the seconded employees ceased to be employees of EY US during the assignment period and became employees of the EY India entities, which bore sole responsibility for their salaries, statutory compliance, and performance appraisal. He argued that EY US merely made payments on behalf of the Indian entities for administrative convenience, without charging any markup, and that the amounts had already been taxed as salary in the hands of the employees, making further taxation in the hands of EY US a case of double taxation. He distinguished Centrica on facts and relied on other decisions including PCIT v. Boeing Limited and the ITAT ruling in AT&T Communication Services India Pvt Limited. On the professional services issue, he submitted that the "make available" test was not satisfied since the services did not result in the transfer of enduring technical knowledge to the Indian entities.

The Ruling

The Division Bench held that the facts of the present case were materially similar to those in Centrica India Offshore, a binding precedent which the ITAT had failed to consider despite its direct relevance, rendering the impugned orders "per incuriam and perverse." The Court found that the seconded employees retained their lien with EY US throughout the assignment, that EY India entities could not terminate their services outright, and that EY US retained overarching control, all of which indicated that the employees never truly ceased to be EY US's employees. Consequently, the Court held that the "make available" test stood satisfied and that the secondment payments were taxable as FTS, ruling this question in favour of the Revenue.

On the second issue, concerning receipts from professional services rendered from the USA, the Court found that the ITAT had failed to examine the actual nature and scope of the services in question, or to reconcile its findings with the detailed breakup already accepted by the Assessing Officer distinguishing professional services from technical and consultancy services. Given this gap in reasoning, the Court did not finally decide the issue but instead remanded it to the ITAT for fresh consideration.

Inference

The Delhi High Court's ruling delivers a mixed but consequential outcome for EY US and, by extension, for multinational firms with similar secondment structures in India. By holding that the secondment payments amounted to taxable FTS and setting aside the ITAT's contrary findings for ignoring binding precedent, the Court has reinforced a stricter approach to determining the "real employer" in cross-border secondment arrangements, emphasizing substance over the labels used in deputation agreements. At the same time, by declining to finally resolve the professional-services exemption question and remanding it to the ITAT, the Court has left room for a more detailed factual re-examination of which services genuinely qualify for treaty exemption. The judgment is likely to be closely studied by tax practitioners and multinational professional services firms as they structure and defend cross-border secondment and service arrangements involving Indian entities.

Way forward

The question arises, what should a multinational having operations in India should do. The answer is, ensure that the tax position, commercial reality, documentation and HR practices are aligned. Given below is a checklist of actions that should be taken in case of cross-border deputations to India.

- ***Define the expatriate's role and deliverables***
  - ✓ Document whether the individual is managing India operations or transferring specialised group know-how, technology, methodologies, or systems. The distinction can matter significantly for tax analysis.
- ***Conjoint review of Income-tax and GST implications***
  - ✓ Evaluate withholding tax, treaty position, GST reverse charge, payroll withholding, transfer pricing and Permanent Establishment (PE) risk as one integrated exercise and not as separate compliance items
- ***Redraft the secondment agreement***
  - ✓ Clearly set out the Indian entity's day-to-day supervision, reporting line, work allocation, leave approval, performance appraisal and responsibility for the India assignment.
- ***Alignment of documentation with real practice***
  - ✓ A strong agreement will not help if the employee continues to report exclusively to the headquarters / parent company / overseas entity in reality. It must be ensured that HR, payroll, organisation charts, internal communications and cost-recharge documents support the intended structure.
- ***Review lien and repatriation rights***
  - ✓ Social-security and repatriation rights may be commercially necessary. However, they should be assessed carefully, as part of the overall employer–employee analysis.

A well-structured secondment is not just a legal document. It is a key element of good India governance.

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