

Delhi ITAT Rejects the “Back-Office = PE” Equation

By: Majmudar & Partners, International Lawyers, India

In the case of *Concentrix CVG Customer Management Group, Inc. v. Deputy Commissioner of Income Tax* (ITA No. 7727/Del/2017 & Ors., order dated September 30, 2025), the Income Tax Appellate Tribunal, Delhi (the “**Delhi ITAT**”), ruled that Concentrix CVG Customer Management Group, Inc. (“**CVG**”), a US tax resident, did not have permanent establishment (“**PE**”) in India under Article 5 of the India-US double taxation avoidance agreement. This is a favourable ruling for US companies operating call centres, global capability centres, and back-office operations in India through an Indian subsidiary.

Background

CVG, a US tax resident, provides outsourced customer and marketing support services, and comprehensive customer management services, to its US clients. Its Indian subsidiary, Convergys India Services Private Limited (“**CIS**”), provided IT-enabled call centre and back-office support services to CVG under a subcontracting arrangement on a cost-plus basis (with a service charge of 14% mark-up over the cost). CIS provided services which included client relationship, client account management, sales/marketing technology, and brand development.

As is often the case, at the assessment stage, the lower-level tax assessing officer (“**AO**”) took a rigid stance and alleged that CVG had a: (i) fixed place PE; (ii) services PE; and (iii) dependent agent PE in India. Accordingly, the AO attributed business profits to the alleged PE in India.

Delhi ITAT ruling

On appeal, the Delhi ITAT applied the Supreme Court’s decision in *E-Funds IT Solution Inc. v. CIT* ((2017) 399 ITR 34 (SC)) (the “**E-Funds Ruling**”) and held that CVG did not have a fixed place PE, service PE, or dependent agent PE in India.

- (i) Fixed place PE: The Delhi ITAT listed out several tests and factors that it deemed as not being relevant in the determination of a fixed place PE, namely,
- (a) the transfer pricing FAR (functions-assets-risks) test;
 - (b) the Indian subsidiary providing various services to the foreign parent on an assignment or subcontracting basis and being dependent on the foreign parent for its earnings;
 - (c) the Indian subsidiary being reimbursed on a cost-plus basis;
 - (d) the foreign parent providing software or other intangibles to the Indian subsidiary free of cost; and
 - (e) the manner and mode of payment of royalty on related transactions.

The Delhi ITAT noted that no part of the main business or revenue-earning activity of CVG was carried out through any fixed place of business in India put at its disposal. CIS had only rendered support services, which enabled CVG to render services to its foreign clients abroad. CVG had not rendered any service to any client in India.

The Delhi ITAT emphasized that the Indian subsidiary and the foreign parent are distinct taxpayers, each entitled to provide services to the other. An Indian subsidiary does not become a fixed place PE of the foreign parent merely because of such interactions. Even if the foreign parent saves or reduces its expenses through the back-office operations of the Indian subsidiary, that, by itself, does not create a fixed place PE.

Therefore, the outsourcing or contracting of work to CIS was held not to give rise to a fixed place PE for CVG in India.

- (ii) Service PE: The requirement for a service PE is that the foreign parent must furnish services within India through employees or other personnel. The Delhi ITAT noted that CVG had provided services to customers abroad and not to any customer in India through CIS. Although some CVG employees were present in India, they did not furnish services within India but merely performed stewardship functions.

As none of CVG's customers were located in India or received services in India, and CIS only performed auxiliary operations facilitating such services, relying on the E-Funds Ruling, the Delhi ITAT held that CVG did not have a service PE in India.

- (iii) Dependent agent PE: The Delhi ITAT held that CIS could not be regarded as a dependent agent PE of CVG because: (i) the relationship between CVG and CIS was on a principal-to-principal basis and not on an agency basis; and (ii) CIS did not have, or had otherwise exercised, any authority to conclude contracts on behalf of CVG in India.

Our comments

The Delhi ITAT ruling brings out several important points that foreign companies looking to build or expand their Indian operations, such as call centres, global capability centres, and back-office functions, should adopt.

For a fixed place PE, the “disposal” test remains key. Frequent business interactions, cost-plus pricing, and even overseas staff visits do not create a fixed place PE if the Indian subsidiary's premises are not at the foreign parent's disposal, and the Indian subsidiary independently conducts support functions. Service PE is determinant on whether the foreign parent itself furnishes services in India through its personnel and on the tax treaty thresholds regarding duration of visits of foreign personnel to India. Stewardship, training, or oversight visits do not, by themselves, satisfy this threshold, especially if

services to customers are rendered outside India. Dependent agent PE requires real contracting authority or habitual order-securing in India.

To mitigate PE risks, companies should have intercompany agreements which clearly define the scope of services, a documented transfer pricing mechanism, and ensure that transactions are on an arm's length basis. The Indian subsidiary's premises, assets, and systems should remain under its own control, and conduct/documentation should not suggest otherwise. Contracts with end customers should preferably be negotiated and concluded outside India by the foreign parent. It is also important to define do's and don'ts for visits by overseas personnel, clearly outline their responsibilities, track their days and activities against the tax treaty thresholds, and ensure that no services are provided to Indian customers within India by them.

The takeaway is that with careful structuring, documentation, and appropriate safeguards, the PE risk can be mitigated.