

Bombay High Court rules foreign law firm may only be taxed in India on work performed in that country

In Brief

In a recent case involving the issue of taxation by India of fees earned in connection with services provided by a London-based law firm, the Bombay High Court has ruled that taxable income should be measured by the number of billed hours of work actually performed in India.

This ruling is significant for multinational law firms that provide services to Indian clients where all or part of the related legal work may be performed in another country.

Clifford Chance is an international firm of solicitors based out of the United Kingdom, with no office in India. Clifford Chance excluded on its tax return receipts related to work performed outside India on matters contracted in India. In 2001, India's Income Tax Appellate Tribunal held that the determining factors for taxation are (i) the place where the services are utilized by the clients and (ii) where the services are performed or rendered to the clients. The Tribunal held that these services were taxable in full in India.

On appeal ¹ from that decision, Clifford Chance argued to the Bombay High Court that, in the case of a legal professional rendering advisory services, such services are only rendered in the place where the professional is present. Therefore, any services performed by a professional from a foreign jurisdiction outside of India cannot be taxed in a state other than that of the professional's residence. Clifford Chance had documentation to prove that the services rendered by a legal professional to the client were not performed in India.

The Bombay High Court relied on the India-United Kingdom Tax Treaty (which contains a provision addressing Independent Personal Services), and *Ishikawajima Harima Heavy Industries Ltd.* ² to rule that "for a nonresident to be taxed on income for services, such a service needs to be rendered within India, and has to be part of a business or profession carried on by such person in India."

It is uncertain whether this decision will be appealed to the Supreme Court of India.

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¹Clifford Chance v. DCIT [AIT-2008-480-HC] (Bombay High Court) ² *Ishikawajima Harima Heavy Industries Ltd. v. DIT* [2007] 288 ITR 408 (SC).

Law Firm Services

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