आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली

INCOME TAX APPELLATE TRIBUNAL
DELHI "D" BENCH, NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.3599/DEL/2023 निर्धारण वर्ष/Assessment Year: **2021-22**)		
Branch Metrics Inc **Suite 101, 195 Page mill Road, Palo Alto, California, United States of America, USA-94306** PAN-AAJCB2132J	**Vs.**	**DCIT** **International Taxation** **CIRCLE 1(1)(2)** New Delhi
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**BICPB0669K**

IT(IT)A No.1122/DEL/2025 निर्धारण वर्ष/Assessment Year: **2022-23**)		
Branch Metrics Inc **Suite 101, 195 Page mill Road, Palo Alto, California, United States of America, USA-94306** PAN-AAJCB2132J	**Vs.**	**ACIT** **International Taxation** **CIRCLE 1(1)(2)** New Delhi
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**BICPB0669K**
अपीलार्थी द्वारा/Appellant represented by:		**Sh. Ravi Sharma, Adv.** **Ms. Shruti Khimta, AR &** **Ms. Kashish Gupta, CA**
प्रत्यर्थी द्वारा/Respondent represented by:		**Sh. M.S.Nethrapal, CIT DR**

सुनवाई की तारीख / Date of conclusion of hearing:	**18-May-2026**
घोषणा की तारीख / Date of pronouncement:	**12-Aug-2026**

आदेश / ORDER

PER MANISH AGARWAL, A.M.:

The captioned appeals have been filed by the assessee against the final assessment order dated 25.10.2023 & 14.01.2025 passed by the learned Assessing Officer ('the learned AO') under section 143(3) read with section 144C(13) of the Income tax Act, 1961 ('the Act'), in conformity with the directions dated 11.09.2023 and 04.12.2024 issued by the Dispute Resolution Panel ('the DRP') under section 144C(5) of the Act, for the Assessment Years 2021–22 & 2022-23 respectively.

2. Before us, both the parties have admitted that the facts involved in both the captioned appeals are common, therefore, they are taken together and decided by a common order.

3. First we take up the assessee's appeal for Assessment Year 2021-22 in ITA No. 3599/Del/2023.

ITA No.3599/Del/2023 [Assessment Year 2021-22]

4. Brief facts of the case are that the assessee, Branch Metrics Inc., is a company incorporated in the United States of America and a tax resident thereof holding a valid Tax Residency Certificate. It is a cross linking and attribution platform provider. It provides Software as a Service ('SaaS') based products in the form of a Software Development Kit ('SDK') which help its customers in generating links that enable seamless mobility from one mobile application to another and help in tracking the efficiency of those links. The customers, on purchase of the product, themselves install and integrate the SDK into their own mobile applications or websites, generate links therefrom and view the reports on a dashboard which forms part of the product. The products are sold to the

Indian customers directly, on the basis of the standard Terms and Conditions published by the assessee read with an Order Form executed by the customer.

5. The assessee e-filed its return of income for the Assessment Year 2021-22 on 31.03.2022 declaring total income of ₹ NIL. During the year, it received ₹ 24,16,28,878/- from its Indian customers on account of sale of SaaS based products, out of which ₹7,42,26,819/- was claimed as exempt under section 10(50) of the Act, equalisation levy at 2% having been paid thereon, and ₹16,74,02,059/- was claimed as business profits not taxable under Article 7 of the Double Taxation Avoidance Agreement between India and the United States of America (‘the DTAA’) in the absence of a Permanent Establishment in India. Refund of tax deducted at source of ₹79,04,344/- was claimed. The case was selected for scrutiny and statutory notices were issued and complied with.

6. To ascertain the exact nature of the products/services, the learned AO issued notices under section 133(6) of the Act to various Indian customers, including Bajaj Finserv Direct Limited, Locon Solutions Private Limited, Shemaroo Entertainment Limited and Balance Hero India Private Limited. In the replies, Bajaj Finserv Direct Limited stated that it is a recipient of software services against which it has made payments after deducting tax at source as per the DTAA. Locon Solutions Private Limited stated that it receives sales and marketing services from the assessee. Shemaroo Entertainment Limited stated that the assessee provides marketing support services by helping it to measure and optimize the performance of its marketing/digital advertising campaigns, and described the process of purchase, namely, receipt of a commercial proposal, signing of an Order Form, receipt of the SDK, integration of the SDK by it with its own streaming application ShemarooMe and use of the SDK thereafter, adding that the feature list and benefits of the SDK were shared with it in a face to face meeting before the commercial arrangement was entered into. The Balance Hero India Private Limited stated that it had taken the services of a marketing tool to track marketing channel performance, describing the assessee as a Mobile Measurement Partner, that is, a third party tool. The Order Form

furnished by Balance Hero India Private Limited describes the 'Branch Enterprise Package' as comprising the enterprise platform (core linking platform), universal ads, data feeds, technical account management, described as 'ongoing technical support, and mobile guidance and strategy to facilitate your continued use of Branch products', and premium support (an upgraded support plan).

7. On the basis of the said enquiries, a show cause notice dated 25.12.2022 was issued proposing to treat the amount of ₹24,16,28,878/- as Fees for Technical Services ('FTS'), which the assessee objected to vide its reply dated 27.12.2022. The AO, in the draft assessment order dated 31.12.2022 passed under section 144C(1) of the Act, rejected the objections, by holding that (i) the facility is not standard, as the data inputs received from the customers are customer specific and the output reports are produced in the formats desired by the particular customers, making it a customized and optimised service; (ii) the human element is involved; (iii) the fees charged include technical account management; and (iv) the personnel of the assessee are involved in face to face meetings with the customers. The AO further held that rendering IT based services confers an enduring benefit, since the recipient's personnel enhance their knowledge and skills and would not need recourse to the service provider for the same problem again, and that the services therefore make available knowledge and skills; reliance was placed on the ruling of the Authority for Advance Rulings in **Shell India Markets Pvt. Ltd.** (AAR No. 833 of 2009) and on ***CBDT vs. Oberoi Hotels (India) Pvt. Ltd.*** reported in ***[1998] 97 Taxman 453 (SC)*** rendered u/s 80-O of the Act. It was also held that the place of rendering the services is immaterial in view of the Explanation below section 9(2) of the Act, and that the deduction of tax at source at 10% by the Indian customers substantiates the taxability. The amount of ₹24,16,28,878/- was accordingly proposed to be taxed as Fees for Included Services ('FIS') under Article 12 of the DTAA read with section 9(1)(vii) of the Act at the rate of 10%.

8. The assessee filed objections before the ld. DRP, which were rejected vide directions dated 11.09.2023. The ld. DRP in paragraph 4.1.3 of its

directions held that the assessee provides marketing and sale support services including deep analytic services using advanced automated tools; that based on the specific data of each customer, customized and optimized services are provided, and the SaaS products, therefore, cannot be considered standard services; that the involvement of the human element need not be at the premises of the customers or through face to face interaction; and that as per the marketing and sales support services agreement, the service recipient is required, at the request of the service provider, to send its technically qualified personnel on short term or secondment basis for conducting sales meetings and providing technical support or training, which implies a two way engagement necessarily involving the exchange of know-how and skills. Pursuant thereto, the learned AO passed the final assessment order dated 25.10.2023 assessing the total income at ₹24,16,28,878/- taxing it at 10% as per the DTAA.

9. Aggrieved, by the final order, the assessee is in appeal before us. The assessee has raised seven grounds of appeal. The substantive dispute is covered by **Ground of appeal No. 2**, which reads as under:

> a. *"On the facts and circumstances of the case & in law, the Ld. DRP / AO grossly erred in holding that the receipts of the Appellant from the Indian customers by the Appellant is chargeable to tax in India as 'Fees for Technical Services' under Section 9(1)(vii) of the Income-Tax Act, 1961 ('the Act') read with Article 12(4) of the tax treaty between India and the United States of America ('India-USA DTAA').*
>
> b. *On the facts and circumstances of the case & in law, the Ld. DRP / AO grossly erred in not appreciating that the consideration received by the Appellant pertains to sale of non-customized, standard off the shelf Software Development Kit which provides access to standard facility which is not taxable in India.*
>
> c. *On the facts and circumstances of the case & in law, the Ld. DRP / AO grossly erred in not appreciating that the Appellant does not make available any technology, knowhow to the service recipient."*

10. The ld. AR has not pressed **Ground of appeal No. 1** which is general in nature, and **Ground of appeal No. 3** which challenges the validity of the DRP

directions with reference to the Document Identification Number, thus they are dismissed.

11. The learned AR took us through the standard Terms and Conditions, the Order Forms, the replies received under section 133(6) of the Act and the orders of the lower authorities, and raised the following issues. **Firstly**, the receipts are consideration for the sale of a standard, non-customized, off the shelf product. An identical SDK is provided to every customer, who itself installs and integrates it by following the published integration flow; the data processed is the customer's own data, the reports are generated by the customer from the dashboard in a wholly automated manner, and the questions asked at the time of integration (choice of platform such as IOS or Android, and of advertising networks) involve mere configuration of a standard product. The Terms and Conditions are uniform and published for all customers, and clause 3 thereof itself records that the customer is solely responsible for its integration and launch of the Services, which are provided 'without regard for Customer's particular use of the Services'. The replies under section 133(6), read as a whole, corroborate this position, the stray expressions such as 'marketing support services' being only loose descriptions by the customers of the utility of the tool. Such a standard facility, offered alike to anyone willing to pay for it, is outside the ambit of FTS as held in ***CIT vs. Kotak Securities Ltd. [2016] 67 taxmann.com 356 (SC)*** and ***SFDC Ireland Ltd. vs. CIT [2024] 465 ITR 471 (Delhi)***.

11.1 **Secondly**, ld. AR submits that under Explanation 2 to section 9(1)(vii) of the Act, FTS requires the rendering of managerial, technical or consultancy services, all of which, on the principle of noscitur a sociis, involve human intervention; a fully automated facility provided by machines is not technical services, as held in ***CIT vs. Bharti Cellular Ltd. [2009] 319 ITR 139 (Delhi)***, affirmed in ***CIT vs. Bharti Cellular Ltd. [2011] 330 ITR 239 (SC)***, and in ***GVK Industries Ltd. vs. ITO [2015] 371 ITR 453 (SC)***. The backend human effort in maintaining the platform is not human intervention in the rendition of any service to a customer.

11.2 **Thirdly**, as per ld. AR in any event, by virtue of section 90(2) of the Act the assessee is governed by the more beneficial provisions of the DTAA, and the receipts are not 'fees for included services' under Article 12(4)(b) thereof, since the assessee does not 'make available' any technical knowledge, experience, skill, know-how or process, nor does it develop and transfer any technical plan or design. The Protocol to the DTAA clarifies that technology is made available only when the recipient is enabled to apply it, and that the use of a product which embodies technology shall not *per se* be considered to make the technology available. The technology underlying the SDK remains exclusively with the assessee; the Terms and Conditions prohibit sublicensing, transfer and circumvention of security features; and the customers renew their subscriptions year on year, which itself shows that nothing has been made available to them. Reliance was placed, inter alia, on ***CIT vs. De Beers India Minerals (P.) Ltd. [2012] 346 ITR 467 (Karnataka)***, ***DIT vs. Guy Carpenter & Co. Ltd. [2012] 346 ITR 504 (Delhi)***, ***US Technology Resources (P.) Ltd. vs. CIT [2018] 407 ITR 327 (Kerala)*** rendered under this very DTAA, and ***Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 432 ITR 471 (SC)***, as also on the examples appended to the Protocol, the assessee's case being far removed from Example 5 (development and transfer of a computer programme) and supported by the analysis in Examples 2, 4 and 7.

11.3 **Fourthly**, Ld. AR stated that the technical account management and premium support are ancillary to the sale of the product, being described in the Order Form itself as support 'to facilitate your continued use of Branch products'; and no separate consideration is charged for them and they transmit no technology.

11.4 **Fifthly**, the face to face meetings referred to by the customers were pre-sale demonstrations of the product by the personnel of Branch Metrics APAC India Private Limited ('Branch India'), a subsidiary which renders marketing and sales support services to the assessee under a separate agreement, is separately remunerated and is separately taxed; the DRP erred in relying upon the clauses of that agreement, to which the customers are not parties, for characterising the receipts from the customers. **Lastly**, the deduction of tax at source by some customers cannot determine the character of the receipts.

12. Per contra, the ld. CIT DR vehemently supported the orders of the lower authorities and filed written submissions. He submitted that the replies received under section 133(6) of the Act belie the claim of a mere product sale: the customers themselves described the receipts as software services, sales and marketing services, marketing support services to measure and optimize campaign performance, and services of a marketing tool. According to ld. CIT DR, the assessee provides high end analytics services to streamline the marketing processes of the customers; the data inputs are customer specific and the reports are produced in the desired formats; and the assessee provides bespoke strategic advice and specialized technical integration going beyond a standard dashboard, which is akin to consultancy services.

12.1 As per ld. CIT DR, the human element is established by the show cause notice and the assessment order, which record that the services are tailor made, that human interactions are needed and that personnel are involved in face to face meetings; even training is provided through the Indian associates of the assessee, which satisfies the make available test, the recipient deriving an enduring benefit which obviates future recourse to the assessee. He relied upon the detailed discussion in paragraph 6 of the assessment order and paragraphs 4.1.2 and 4.1.3 of the directions of the DRP, and placed reliance on paragraph 7 of the order of the Ahmedabad Bench of the Tribunal in ***DCIT vs. Kalpataru Power Transmission Ltd. [2023] 149 taxmann.com 484 (Ahmedabad ITAT)***, wherein services of preparation of tower designs and structural drawings rendered as per the specifications of the customer were held to qualify as FTS, to contend that customer specific rendering answers the description of FTS.

13. We have heard the rival contentions and perused the material on record, including the standard Terms and Conditions, the Order Form, the replies under section 133(6) of the Act, the orders of the lower authorities, the DTAA with its

Protocol and the precedents cited by both the parties. The question under Ground No. 2 is whether the receipts of ₹24,16,28,878/- from the Indian customers on sale of SaaS based products constitute ‘fees for included services’ under Article 12(4) of the DTAA read with section 9(1)(vii) of the Act. At the outset, the status of the assessee as a tax resident of the United States of America holding a valid Tax Residency Certificate is not in dispute, and by virtue of section 90(2) of the Act the beneficial provisions of the DTAA apply to it. It is not the case of the Revenue that the assessee has a Permanent Establishment in India, nor has any part of the receipts been characterised as Royalty under Article 12(3), and no case under Article 12(4)(a) has been set up. The case of the Revenue thus rests entirely on Article 12(4)(b) of the DTAA.

13.1. The Terms and Conditions with the customers are standard terms, version controlled and published on the website of the assessee, applying uniformly to every customer. Clause 3 thereof records that the customer ‘is solely responsible for its integration and launch of the Services’ and that the Services are provided ‘without regard for Customer’s particular use of the Services’, i.e. in the same manner as to customers generally. Clause 4.2 obliges the assessee to maintain, support and update the Services ‘to the same extent it does so for its customers generally’, with support routed through an online ticketing function. This is the classic architecture of a standard subscription based product, and is wholly inconsistent with the case of a differentiated, customer specific service. The Order Form of Balance Hero India Private Limited likewise lists only the standard components of the Branch Enterprise Package with standard printed descriptions, and contains no stipulation obliging the assessee to develop, modify or customize anything for the customer. The replies under section 133(6) of the Act, read as a whole, support the claim of the assessee. The Shemaroo Entertainment Limited described a step by step process of procurement of the product which itself integrated with its streaming application, Balance Hero India Private Limited described the assessee as a ‘third party tool’ operated through a dashboard, and Bajaj Finserv Direct Limited described itself as a recipient of software services; the expressions ‘marketing support services’ and the like are loose descriptions of the utility which the product provides to the customers' own marketing function, and no customer has stated that any personnel of the assessee rendered any service to it after the sale.

13.2 The principal allegation of the AO was that the data inputs are customer specific and the reports are produced in the desired formats, proceeds on a misconception of how a SaaS platform operates. In every SaaS product each customer feeds its own data and obtains outputs corresponding to its own data and selections; the variability of the output with the input is inherent in any software and does not convert a uniform automated facility into a customized service. There is no material on record to show that the assessee wrote code, configured algorithms or developed any functionality specially for any Indian customer. The distinction drawn by the Hon'ble Supreme Court in ***CIT vs. Kotak Securities Ltd.*** *(supra)* between a 'service provided' and a 'facility offered' squarely applies. Equally apposite are the observations of the Hon'ble Delhi High Court in ***SFDC Ireland Ltd. vs. CIT*** *(supra)* that even the offering of a comprehensive service experience with the help of technology embedded in the software 'would remain a facet or attribute of the software application available to any customer' and falls within the standard scope of service as opposed to an individualization of the application. We accordingly hold that what the assessee offers is a standard, non-customized, off the shelf SaaS product, and the receipts are consideration for the use of such standard facility. For the same reason, the automated facility, involving no human intervention in its rendition to any customer, would not answer the description of technical, managerial or consultancy services under Explanation 2 to section 9(1)(vii) of the Act in view of order of hon'ble Apex court in ***CIT vs. Bharti Cellular Ltd.*** *(supra)* and ***GVK Industries Ltd. vs. ITO*** *(supra);* however, the issue determinative of this appeal is the make available condition under the DTAA, to which we turn.

13.3 Article 12(4)(b) covers technical or consultancy services only if they 'make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design'. The Protocol paragraph 4(b) which records the common view of the two Governments on the scope of Article 12, states:

> *"Generally speaking, technology will be considered 'made available' when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc., are made available to the person purchasing the service, within the meaning of paragraph 4(b). Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available."*

13.4 The last sentence of the above extract, in our considered view, concludes the controversy. The SDK and the dashboard are products which embody sophisticated deep linking and attribution technology; the customers use those products, but the underlying technology, that is, the algorithms, source code and processes, remains at all times exclusively with the assessee. The Terms and Conditions prohibit the customers from making the functionality of the Services available to any third party, from selling, distributing, renting, leasing or sublicensing the Services and from circumventing their security features. Nothing is imparted to the customers which they can thereafter deploy on their own; on expiry of the subscription, the customer is left with no technology, knowledge, skill or process of the assessee. The recurring, year on year subscriptions, a fact not controverted by the Revenue, themselves demonstrate that nothing has been made available; had the technology been transmitted, recourse to the assessee in subsequent years would have been unnecessary. The law is well settled by the Hon'ble Karnataka High Court in ***CIT vs. De Beers India Minerals (P.) Ltd.*** *(supra)*, wherein it is held as under:

> *"…to fit into the terminology 'making available', the technical knowledge, skills, etc., must remain with the person receiving the services even after the particular contract comes to an end.… The technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider.… In other words, payment of consideration would be regarded as 'fee for technical/included services' only if the twin test of rendering services and making technical knowledge available at the same time is satisfied."*

13.5. To the same effect are ***DIT vs. Guy Carpenter & Co. Ltd. [2012] 346 ITR 504 (Delhi)***, ***US Technology Resources (P.) Ltd. vs. CIT [2018] 407 ITR 327 (Kerala)***, rendered under this very DTAA, and ***International Management Group (UK) Ltd. vs. CIT [2024] 466 ITR 514 (Delhi)***, which holds that the condition postulates a discernible intent of the recipient to absorb and internalise the knowledge and skill of the provider. Tested on these principles, the receipts fail the make available condition: the customers are enabled to use the platform, but are at no point enabled to apply the technology underlying it, and the Revenue has not brought on record a single instance of transmission of any technical knowledge, experience, skill, know-how or process to any Indian customer.

13.6. Example 2 of the Protocol establishes that the character of an arrangement under Article 12(4) is to be determined by its clearly predominant purpose, and incidental elements cannot be severed and independently characterised. The clearly predominant purpose of every Order Form of the assessee is the grant of the right to use the standard SaaS product; the technical account management and premium support, described in the Order Form itself as support 'to facilitate continued use of Branch products' and carrying no separate consideration, are merely incidental to the enjoyment of the product and take their character from the principal transaction. Assistance which merely enables a customer to use a product does not transmit any technology; as has been held by the Hon'ble Jurisdictional High Court in the case of ***SFDC Ireland Ltd. vs. CIT [2024] 465 ITR 471 (Delhi)***, 'imparting training or educating a person with respect to the functionality and attributes of a software or application would clearly not amount to the rendering of technical service under the DTAA'. Specific emphasis was laid on Example 5 of the Protocol, in which the American firm developed a programme to the specific requirement of the Indian firm and transferred it, where after it remained with the Indian firm. The present facts are the exact converse. The assessee has developed nothing for any Indian customer; the SDK is a standard product developed for the world at large; and nothing is transferred, the customer being merely licensed to use the product for the given period subject to stringent restrictions with all intellectual property remaining with the assessee thus neither limb of Article 12(4)(b) of DTAA is attracted. Examples 4 and 7, wherein the use of advanced technology and substantial technical skill by the provider was held not to give rise to included services in the absence of any transfer to the recipient, fortify this position.

13.7. The 'enduring benefit' theory of the AO, that once an IT based service is received the recipient's personnel stand enabled and need no future recourse to the provider, is directly contrary to the Protocol and the precedents noticed above, and is empirically belied by the recurring subscriptions. The reliance of the revenue on the judgement of hon'ble Supreme court in the case of ***CBDT vs. Oberoi Hotels (India) Pvt. Ltd. [1998] 97 Taxman 453 (SC)*** is misplaced, as the said judgement having interpreted as agreed to by the Contracting States. The expression 'made available' in section 80-O of the Act, a deduction provision in a different context; the expression in Article 12(4)(b) must be interpreted as agreed to by the Contracting State. The deduction of tax at source by the customers, often made out of abundant caution, can neither confer a character upon the receipt nor operate as an estoppel; taxability is determined by law and not by the conduct of the payers.

13.8. It is observed that the DRP fell into a fundamental error in building its conclusions upon the clauses of the 'marketing and sales support services agreement', including access to marketing tools, participation in trade shows, personal visits and secondment of technically qualified personnel. As observed above, that agreement is between the assessee and its Indian subsidiary, Branch India, which renders marketing and sales support services to the assessee against consideration separately taxed in its hands and the Indian customers are not parties to it, and their relationship with the assessee is governed only by the standard Terms and Conditions and the Order Forms, which contain no such stipulations. The 'two way engagement' inferred by the DRP thus rests on a document which does not govern the transactions sought to be taxed. The face to face meetings referred to by Shemaroo Entertainment Limited were, on the customer's own showing, pre-sale demonstrations of the feature list and benefits of the SDK; such pre-sale marketing activity of a distinct, separately assessed entity cannot be regarded as rendering of technical services by the assessee to the customers, much less as making available any technology.

13.9. The reliance placed by ld. CIT DR in paragraph 7 in the case of ***DCIT vs. Kalpataru Power Transmission Ltd.*** *(supra)* is misplaced for more than one reason. That case arose under the DTAA between India and the UAE, which contains no article on fees for technical services, and no make available condition fell for consideration; the observations relied upon were rendered while distinguishing FTS from royalty. On facts, the UAE company there prepared fresh tower designs, structural drawings and test data documents to the specifications of the Indian payer and delivered them, facts which would fall within the second limb of Article 12(4)(b), namely, the development and transfer of a technical plan or design; there is no development of anything for, and no transfer of any plan or design to, any Indian customer in the present case. The said order, in which the appeal of the Revenue was in fact dismissed, renders no assistance to the Revenue.

13.10 In view of the foregoing, we hold that the receipts of ₹24,16,28,878/- from the Indian customers on account of sale of SaaS based products are consideration for the use of a standard, non-customized, off the shelf facility; that they neither make available any technical knowledge, experience, skill, know-how or process to the customers nor consist of the development and transfer of any technical plan or design; and that they consequently do not constitute 'fees for included services' under Article 12(4) of the DTAA. The assessee being entitled to the beneficial provisions of the DTAA under section 90(2) of the Act, it is not necessary to record a conclusive finding under section 9(1)(vii) of the Act, though, as noticed above, the character of the receipts as consideration for a standard automated facility would take them outside FTS under the Act as well. Accordingly, the addition of ₹24,16,28,878/- is hereby deleted. Ground of appeal No. 2 of the assessee is thus, allowed.

14. **Ground of appeal No. 4** is with regard to non-grant of credit of tax deducted at source. This issue is restored to the file of AO for necessary

verification and allowance in accordance with law. Thus this ground of appeal is allowed for statistical purposes.

15. **Grounds of appeal Nos. 5 and 6** are challenging the levy of interest u/s 234A and 234B of the Act which are consequential in nature, and the AO is directed to recompute the interest, if any, while giving effect to this order.

16. **Ground of appeal No. 7**, against initiation of penalty under section 274 read with section 270A of the Act, which is premature and thus, is dismissed.

17. In the result, the appeal of the assessee is partly allowed.

18. Now we take appeal of the assessee in ITA No.1122/Del/2025 for Assessment Year 2022-23.

ITA No.1122/Del/2025 [Assessment Year 2022-23]

19. In the above-mentioned paras, we have partly allowed the appeal of the assessee in ITA No.3599/Del/2023 for Assessment Year 2021-22 and deleted the additions made u/s 9(1)(vii) of the Act on account of receipts of the appellant from the Indian customer by the appellant is chargeable to tax in India as "Fees for Technical Service". Facts are identical in this case also and before us, both the parties fairly admitted that facts are similar in nature and by following the aforesaid observations in ITA No. 3599/Del/2023 for AY 2021-22 which are ***Mutatis Mutandis*** applicable to the facts of this appeal filed by the assessee.

20. In the result, appeal of the assessee is partly allowed.

21. In the final result, both captioned appeals of the assessee in **ITA No.3599/Del/2023** for Assessment Year 2021-22 and **IT(IT)A No.1122/Del/2025** for Assessment Year 2022-23, both are partly allowed.

Order pronounced in the open court on 12.08.2026.

Sd/- ***Sd/-***

VIKAS AWASTHY
JUDICIAL MEMBER

MANISH AGARWAL
ACCOUNTANT MEMBER

Dated: 12.08.2026
Amit Kumar, Sr. P.S

Copy to:

1	**Branch Metrics Inc** **Suite 101, 195 Page mill Road, Palo Alto, California,** **United States of America, USA-94306**
2	**DCIT, CIRCLE 1(1)(2)** **New Delhi**
3	THE PCIT / CIT,
4	THE D.R., ITAT, DELHI BENCH
5	GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR /
SR. PRIVATE SECRETARY
I.T.A.T., DELHI