IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.7727/Del/2017, A.Y. 2013-14
ITA No.7924/Del/2018, A.Y. 2014-15
ITA No.1086/Del/2022, A.Y. 2017-18
ITA No.667/Del/2023, A.Y. 2018-19
ITA No.668/Del/2023, A.Y. 2019-20
ITA No.3512/Del/2023, A.Y. 2021-22
ITA No.1892/Del/2025, A.Y. 2022-23

Concentrix CVG Customer Management Group Inc., (Earlier known as 'Convergys Customer Management Group Inc.') C/o PWC Pvt. Ltd., Sucheta Bhawan, Gate No. 2, 1st Floor, 11-A, Vishnu Digambar Marg, New Delhi PAN: AACCC8989M	Vs	Deputy Commissioner of Income Tax, Circle - 1(2)(1), International Taxation, E-2 Tower, Civic Centre Minto Road New Delhi
(Appellant)		**(Respondent)**

ITA No.130/Del/2018, A.Y. 2013-14
ITA No.1281/Del/2022, A.Y. 2017-18
ITA No.723/Del/2023, A.Y. 2018-19
ITA No.724/Del/2023, A.Y. 2019-20

Deputy Commissioner of Income Tax, Circle - 1(2)(1), International Taxation, E-2 Tower, Civic Centre Minto Road New Delhi	Vs.	Concentrix CVG Customer Management Group Inc., (Earlier known as 'Convergys Customer Management Group Inc.') C/o. PWC Pvt. Ltd., Sucheta Bhawan, Gate No. 2, 1st Floor,11-A, Vishnu Digambar Marg, New Delhi

		PAN: AACCC8989M
(Appellant)		**(Respondent)**

Assessee by	Sh. Sachit Jolly, Sr. Advocate Sh. Sohum Dua, Advocate Sh. Abhyudaya Shankar Bajpai, Adv
Revenue by	Shri Nikhil Kumar Govila, CIT-DR

Date of Hearing	01/09/2025
Date of Pronouncement	30/09/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

Common facts and similar grounds arise in all the above captioned appeals of the assessee and Revenue; therefore, these appeals were heard together and are being disposed off by this common order.

2. The cross appeals pertain to Assessment Years ('AYs') 2013-14, 2017-18, 2018-19 and 2019-20 and assessee's appeal pertain to AYs 2014-15, 2021-22 and 2022-23. These are second round of appeals before the Tribunal. Initially, these appeals were decided by the Tribunal. Aggrieved with various orders of the Tribunal, cross appeals were filed by the assessee and Revenue before the Hon'ble Delhi High Court, who vide its order dated 06.03.2015 revived all these appeals before the Tribunal by setting aside the Tribunal's orders as under:

4. As is manifest from the above, the communication records that the competent authorities of both countries had desisted from making any determination on whether Convergence US had established an Indian PE as per Article 5 of the India-US Double Taxation Avoidance Agreements. However, and solely with the objective of settling that dispute which straddled multiple years, the parties appear to have agreed to an exercise of attribution. It is thus apparent that the issue of PE remained untouched.

5. However, and although the MAP determination had concluded in 2017 itself, this fact clearly does not appear to have been brought to the attention of the Tribunal and which has evidently proceeded on the basis that its determination for AYs 2006-07 and 2008-09 had survived. In view of the aforesaid and in our considered opinion, this alone would merit the orders impugned herein being set aside so as to enable the Tribunal to examine the matters afresh.

6. We accordingly allow these appeals and set aside the following orders of the Tribunal as tabulated herein below:

ITA Number	***Date of impugned order***
ITA 131 of 2021	*27th November, 2020*
ITA 246 of 2023	*27th November, 2020*
ITA 290 of 2023	*11th January, 2023*
ITA 390 of 2023	*11th January, 2023*
ITA 436 of 2023	*6th March 2023*
ITA 506 of 2023	*6th March 2023*
ITA 57 of 2024	*23rd August 2023*
ITA 58 of 2024	*23rd August 2023*
ITA 115 of 2024	*23rd August 2023*
ITA 115 of 2024	*23rd August 2023*
ITA 438 of 2024	*14th March 2024*
ITA 539 of 2024	*14th March 2024*

7. All appeals shall stand revived on the board of the concerned Tribunal to be considered and examined afresh. All rights and contentions of respective parties on merit are kept open."

2.1 After revival of the above captioned appeals, we have been tasked to decider the following issues:

S. No.	**ITA No.**	**Issues**
1.	7727/Del./2017	i. Fixed Place PE ii. Attribution of Profits
2.	7924/Del./2018	i. Fixed Place PE ii. Attribution of Profits
3.	1086/Del./2022	i. Fixed Place PE ii. Attribution of Profits
4.	667/Del./2023	i. Fixed Place PE ii. Attribution of Profits
5.	668/Del./2023	i. Fixed Place PE ii. Attribution of Profits
6.	3512/Del./2023	i. Grounds related to DIN issue ii. Fixed Place PE iii. Dependent Agent PE iv. Attribution of profits v. Interest under section 234A and 234B of the Income Tax Act, 1961 ('Act') vi. Penalty under section 270A of the Act
7.	1892/Del/2025	i. Fixed Place PE ii. Dependent Agent PE iii. Attribution of profits iv. Interest under section 234A and 234B of the Income Tax Act, 1961 ('Act') v. Penalty under section 270A of the Act
8.	130/Del./2018	i. Dependent Agent PE ii. Service PE

		iii. Attribution of Profits iv. IPLC/ Link Charges
9.	1281/Del./2022	i. Dependent Agent PE ii. Service PE iii. Attribution of Profits iv. IPLC/ Link Charges
10.	723/Del./2023	i. Dependent Agent PE ii. Service PE iii. Attribution of Profits iv. IPLC/ Link Charges
11.	724/Del./2023	i. Dependent Agent PE ii. Service PE iii. Attribution of Profits iv. IPLC/ Link Charges

3. The ITA No. 7727/Del/2017 of AY 2013-14 is taken as lead case.

ITA No. 7727/Del/2017 and ITA No.130/Del/2018 of AY 2013-14:

4. The relevant facts giving rise to this appeal are that the assessee ('CVG'), a company incorporated in the United States of America ('USA'), is a tax resident of USA under terms of Article-4 of the Double Taxation Avoidance Agreement ('DTAA') between India and USA. The assessee provides outsourced customer and marketing support services as well as comprehensive customer management services. Convergys Indian Services Pvt. Ltd. ('CIS') is a subsidiary of the assessee company in India. The assessee takes services of CIS, its Indian Associate Enterprise ('AE'), for its overseas customers. The CIS provides IT enabled services i.e. call Centre and back-office services in the relevant year. The CIS provides services under the sub-contract arrangement with the assessee on service charge of

14% mark-up over the cost. The CIS has provided following services to the assessee: -

1. Client Relationship
2. Client Account Management
3. Sales/Marketing Technology & Brand Development

5. The main dispute between the assessee and the Revenue is whether the assessee has fixed place PE/services PE/Dependent Agent PE and if so, what is the attribution of the business profit derived therefrom. The reasoning based on which the Ld. Assessing Officer ('AO')/Ld. Transfer Pricing Officer ('TPO') has assessed the business income in the relevant year is that the employees of the assessee have frequently and regularly visited the premises of CIS to provide supervisions, directions and control over the operation of CIS as these employees of the assessee have the premise of CIS at their disposal. Thus, the Ld. AO/TPO has held that the assessee has Permanent Establishment ('PE') having fixed place. Further, it has been held by the Ld. AO/TPO that the CIS has practically a projection of the assessee's business in India who carried out its business by controlling and guiding the CIS without assuming any significant risk in relation to such functions.

6. The Ld. AO/TPO has further held that the assessee was not only having the fixed place PE but also the dependent agent PE and the service PE in India. Consequentially, the Ld. AO/TPO worked out business income

of INR 858,998,303 attributable to the PE in India. The Ld. CIT(A) upheld the finding of the Ld. AO/TPO that the assessee was having fixed place PE in India. However, the Ld. CIT(A) rejected the Ld. AO's finding that the assessee was having the dependent agent PE and the service PE in India. The issue of fixed place PE has been challenged by the assessee whereas the issue of dependent agent PE and the service PE has been challenged by the Revenue. The issue of attribution of business income decided partly in favour of the assessee. The Ld. CIT(A), following the order of the Tribunal in the case of the assessee for AY 2006-07, restricted the attribution of business income @ 8.35% of the profit of CIS assessable in the hands of the assessee based on the profit split method. The issue of attribution of profit has been challenged by both parties in this appeal.

7. The Ld. AO also held Link charges as equipment royalty. However, the Ld. CIT(A) held it otherwise and allowed relief to the assessee.

8. In first round of appeal, the Tribunal upheld the finding of the Ld. CIT(A) that the assessee had a fixed place of PE in India in terms of Article 5(1) of the DTAA. However, the Tribunal attributed the profit on account of assets provided by the assessee to CIS and followed the methodology provided in the order of the Tribunal in AY 2006-07 for arriving at the profit attributable to PE in India. Further, the Tribunal upheld the finding of the Ld. CIT(A) that the assessee had neither service PE nor dependent agent PE in terms of Article 5(2)(1) and Article 5(4) of the DTAA. The Tribunal also

upheld the finding of the Ld. CIT(A) that the payments for link charges did not qualify as equipment royalty and process royalty in terms of the Article 12 of the DTAA; hence, the same was not taxable in India.

Permanent Establishment (PE):

9. At the outset, Shri Sachit Jolly, Sr. Counsel representing the assessee submitted that the issue of PE was squarely covered by the decision of the Hon'ble Supreme Court in the case of E-Funds IT Solution Inc reported in 399 ITR 34, wherein it had been held that the burden of proving the fact that a foreign taxpayer had a PE in India was on the Revenue. Further, the Ld. Sr. Counsel, placing emphasis on the decision of the Hon'ble Supreme Court in the case of Formula One World Championship Ltd. reported in 394 ITR 80, submitted that neither the Ld. CIT(A) nor the Ld. AO/TPO demonstrated that the assessee had any place 'at its disposal' for carrying out its business as there was no specific finding either in the assessment order or the impugned appellate order. In this regard, the Ld. Sr. Counsel drew our attention to para 48, 49, 60, 63 and 70 of the order of the Hon'ble High Court in the case of E-Funds IT Solution Inc reported in [2014] 42 taxmann.com 50 (Del), which read as under:

> *"48. We shall first examine whether the assessees had fixed place PE in India. It was stated by the assessee that they did not have any assets or presence in India with no licenced office or business activity in India, consequently no income was chargeable to tax in India under clause 5(1) i.e. Fixed Place of Business. Neither in the assessment order nor in the appellate order including order of the tribunal, we find any material and relevant discussion to hold that the two assessee had a fixed place of business in India through which business of enterprise was wholly or*

partly carried on. None of the authorities including the tribunal have held that the two assessee had right to use any of the premises belonging to e-Fund India. It has not been adverted to or stated that premises of e-Fund India were at the disposal, legally or otherwise, of the two assessees. The _right to use test' or _disposal test' has not been adverted to or applied nor is there any observation or finding to the said aspect. In the absence of any such finding Article 5(1) cannot be invoked and applied. As elucidated above, Article 5(1) has to be read with paragraph 6 of Article 5 which relates to subsidiary companies.

49. The Assessing Officer, Commissioner (Appeals) and the tribunal have primarily relied upon the close association between e-Fund India and the two assessee and applied functions performed, assets used and risk assumed, criteria to determine whether or not the assessee has fixed place of business. This is not a proper and appropriate test to determine location PE. The fixed place of business PE test is different. Therefore, the fact that e-Fund India provides various services to the assessee and was dependent for its earning upon the two assessees is not the relevant test to determine and decide location PE. The allegation that e-Fund India did not bear sufficient risk is irrelevant when deciding whether location PE exists. The fact that e- Fund India was reimbursed the cost of the call centre operations plus 16% basis or the basis of margin fixation was not known, is not relevant for determining location or fixed place PE. Similarly what were the direct or indirect costs and corporate allocations in software development centre or BPO does not help or determine location PE. Assignment or sub-contract to e-Fund India is not a factor or rule which is to be applied to determine applicability of Article 5(1). Further whether or not any provisions for intangible software was made or had been supplied free of cost is not the relevant criteria/test. e-Fund India was/is a separate entity and was/is entitled to provide services to the assessees who were/are independent separate taxpayer. Indian entity i.e. subsidiary company will not become location PE under Article 5(1) merely because there is interaction or cross transactions between the Indian subsidiary and the foreign Principal under Article 5(1). Even if the foreign entities have saved and reduced their expenditure by transferring business or back office operations to the Indian subsidiary, it would not by itself create a fixed place or location PE. The manner and mode of the payment of royalty or associated transactions is not a test which can be applied to determine, whether fixed place PE exists.

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60. Before the Commissioner (Appeals), the assessee in their submission had stated that the President of e-Fund Indian provided management support services in U.K. and Australia, while certain personnel of South-east Asia region provided marketing support services to e-Fund India as well as e-Fund group entities overseas. The e-Fund India had an international division which consisted of President's office and South-east Asia Region office. Thus services rendered by e-Fund India personnel comprised of marketing support provided by President and Sales Team to U.K. and Australia and e- Fund Group overseas. It was further mentioned by the assessee that the President's office managed operations of e-Fund Group entities in U.K. and Australia and accordingly employees of said entities reported to the President. The President in turn was reporting to e-Fund Corp. Aforesaid factual position prima facie indicates that the said activities may have resulted in a PE under Article 5(2)(a) under the heading _Place of Management' but the said provision has not been invoked. This court while exercising jurisdiction under Section 260A of the Act would not like to invoke the said provision as it requires factual determination as well as computation of the income attributable to the PE. We do not have any finding on the exact nature of the services rendered whether it was only relating to accounts, receivables, human resource management or related to other direct management services. Services of the nature specified in paragraph 3 of Article 5 have to be excluding while in determining and deciding whether or not a PE exists under Article 5(2). There is another difficulty if we apply Article 5(2)(a) - Place of Management principle; - enterprises in UK and Australia were subsidiaries or legal entities and not branches of the assessees. To what extent and when —place of management‖ principle will be applicable in such cases, DTAA which will be applicable as the associated enterprise were located in UK and Australia and computation of income attributable to the PE are highly debatable and contentious questions which require findings of facts at the first instance and cannot be made matters to be decided for the first time in an appeal under section 260A of the Act.

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63. Two employees of e-Fund Corp were deputed to e-Fund India in the assessment years 2005-06. The case of the assessee and e-Fund India is that they were deputed to look towards development of domestic work in

India. Payment of these employees as per the Revenue to the extent of 25% was borne by e-Fund India and balance 75% was borne by e-Fund Corp. The Assessing Officer on this basis has observed that this reduced cost base of e-Fund India as remuneration was paid by e-Fund Corp and the said employees were at liberty to perform functions of e-Fund Corp even while working for e- Fund India. The response of the assessee as quoted in the assessment order was that e-Fund India, apart from export activities had also domestic business in India. This was evident from the return of income filed by e-Fund India where domestic income was computed separately as it was not eligible for deduction under Section 10A of the Act. Copy of the return was furnished. It was further stated that cost of personnel seconded in India was fully borne by e-Fund India i.e. 100% of the salary paid to the said employees seconded to India were debited to profit and loss accounts. 75% of the salary component was paid abroad by e-Fund Corp but the same was reimbursed by e-Fund India. This was in accordance with and permitted under the Indian Exchange Control Regulations. It was further stated that the Assessing Officer was wrong in assuming that the two seconded employees were at liberty to function for e-Fund Corp while they were working for e- Fund India. The seconded employees were working under the control and supervision of e-Fund India. The Assessing Officer thereupon has not commented on the reply of the assessee, though he has recorded comments in respect of replies to other issues raised by him (see paragraph 7 of the assessment order). The aforesaid factual assertion made by the assessee, therefore, was not negated or questioned by the Assessing Officer.

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70. The Assessing Officer has recorded and in our opinion incorrectly that majority of the employees of the two assessees operate from India. The said finding is legally untenable and drawn on a wrong legal principle. Employees of e-Fund India were not employees of e-Fund Corp or e-Fund Inc. Seconded employees were only two in number and only in assessment year 2005-06. It is further observed that the two assessee had significant assets in India on wrong legal assumption that assets of e-Fund India were assets of e-Fund Corp and e-Fund Inc. He has held that the assessee and e-fund India did not operate on arm's length basis as in respect of some contracts, e- Fund India had raised bills directly to the customer but for similar contracts/ arrangement the entire amount was paid to the two foreign assessees and only a miniscule amount or

profit was transferred or paid to e-Fund India. The said finding/conclusion again is not a correct inference. It is not born out from the record and has not been accepted by the tribunal as it has accepted attribution of income made by the assessee."

10. The Ld. Sr. Counsel, placing emphasis on the above mentioned paras of order of the Hon'ble High Court in the case of E-Funds IT Solution Inc (supra) upheld in principle by the Hon'ble Supreme Court, submitted that the Ld. CIT(A) and the Ld. AO/TPO had erred in holding that the assessee had fixed place PE and outsourcing of business to the Indian AE resulted in creation of a PE due to the close association between the assessee and CIS by applying functions performed, assets used and risk assumed (FAR) criteria to determine fixed place of business. It was contended that outsourcing/assignment or sub-contract to CIS would not determine applicability of Article 5(1) of the DTAA. The AE of assessee would not become location PE under Article 5(1) of the DTAA merely because there were regular interactions or cross transactions between the assessee and CIS. It was further submitted that no part of the main business and revenue earning activity of the assessee was carried out through a fixed business place in India which had been put at the assessee's disposal. The CIS had only rendered support services which enabled the assessee in turn to render services to its foreign clients abroad. It was categorically submitted that the assessee had not rendered any service to any client in India. Thus, the outsourcing/contracting of work to CIS would not give rise to a fixed place PE, argued the Ld. Sr. Counsel.

11. The Ld. Sr. Counsel further drew our attention to the Article 5(2)(l) of the DTAA which provided that PE included the furnishing of services within a Contracting State by an enterprise through employees or other personnel. Here, in the present case, the Ld. Sr. Counsel submitted that the assessee had provided services to foreign customers abroad and had not provided any service to any customer in India through its AE. The Ld. Sr. Counsel, drawing our attention to the decision of Hon'ble Supreme Court in the case of E-Funds IT Solution Inc (supra), submitted that the Hon'ble Supreme Court had held that where the services were not given to any customer in India, there was no service PE under Article 5(2)(l) of the DTAA even though Indian company had provided support services to the assessee. The Hon'ble Supreme Court, in the case of E-Funds IT Solution Inc (supra), had observed that requirement of service PE is that an enterprise must furnish services 'within India' through employees or other personnel. It was submitted that none of the customers of the assessee were located in India or had received any service in India and only auxiliary operations that facilitated such services were carried out in India by the assessee's AE; therefore, the assessee did not have Service PE in India. Such finding had already given by the Ld. CIT(A) and the Tribunal in first round of appeal. The employees of CIS were not the employees of assessee. Presence of some employees of the assessee in India was relevant under Article 5(2)(l) but the said employees should furnish services within the contracting State and

such services should not be mere stewardship services. Further, it was submitted by the Ld. Sr. Counsel that the only one seconded employee was working under the control and supervision of CIS in AY 2013-14 and there was no seconded employee after AY 2014-15. The Ld. Sr. Counsel relied on the decision of the Hon'ble Supreme Court in the case of Morgan Stanley 292 ITR 416.

12. With respect to dependent agent PE, the Ld. Sr. Counsel contended that the CIS could not be considered to be a dependent agent PE of the assessee because the assessee had not rendered any service in India through CIS as agent. Further, it was submitted that the CIS was not authorized to or exercised any authority to conclude contracts on behalf of the assessee. There was Principal to Principal business between the assessee and CIS and thus, the tests specified under Article 5(4) and Article 5(5) of the DTAA were not satisfied. The Ld. CIT(A)'s categorical finding that conditions and requirements of agency PE not satisfied was upheld by the Tribunal in first round of appeal.

13. The Ld. CIT-DR argued vehemently and defended the order of Ld. AO/TPO. He prayed for upholding the assessment order by setting aside the order of Ld. CIT(A).

14. We have heard both parties and have perused material available on the record. We find merit in the arguments/contentions/submission of the

Ld. Sr. Counsel. Further, the Ld. CIT-DR failed to bring any material on the record to demonstrate and establish the existence of fixed place PE, service PE and dependent agent PE. We have taken note of finding of the Tribunal, in first round of appeal, with respect to the issues of service PE and dependent agent PE as under:

"7.0 As far as the department's appeal is concerned, it is challenging the act of the Ld. CIT (A) in holding that the assessee did not have a dependent Agent PE or a service PE in India and it also challenges the reduction in profit attribution done by the AO. The Department's appeal also challenges the action of the Ld. CIT (A) in holding that the receipts towards IPLC/link charges were not taxable in India as royalty. The issues raised by the department are squarely covered in favour of the assessee by the order of the Tribunal in assessee's own case for assessment year 2006-07 and 2008-09. The relevant observations of the ITAT with respect to the assessee not having a service PE in India are contained in paragraph 3.10 of the order of the Tribunal and it has been followed by the Ld. CIT (A) in the year under consideration. Observations of the Tribunal are contained in Para 3.10 and the same is being reproduced here in under for ready reference: -

> *"3.10. Aggrieved with the order of the CIT (A), both assessee and revenue have preferred appeals before the ITAT. The revenue has not challenged the order of the CIT (A) holding that assessee has no Service PE. Thus, the revenue has accepted that CMG does not have a Service PE in India."*

7.0.1 We also note that the Ld. CIT (A) has returned a finding based on the order of the ITAT and has also noted that even in assessment year 2006-07, the Ld. CIT (A) had held that there was no service PE in India and that the AO had not challenged this before the ITAT. The findings of the Ld. CIT (A) are reproduced here in under for a ready reference: -

> *"On the issue of service PE, AO has mentioned in the assessment order for AY 2013-14 that the Appellant is providing services to CIS and these services are not in the nature of fee for included services. In this regard, the appellant has submitted that, the personnel of the Company visited*

India for rendering services that qualify as Fee for Included Services under Article 12 of the DTAA and the company has accordingly offered such income to tax in its tax return. Even in the assessment order the Ld. AO has accepted the returned position and taxed the said amount as Fee for Included Services in terms of Article 12 of the DTAA. Even in AY 2006-07, the CIT(A) has held that there is no Service PE in India and the AO had not challenged this before ITAT. Accordingly, I hold that the Appellant does not have a Service PE under Article 5(2X1) of the DTAA. Accordingly, Ground no 5.12 is allowed."

7.0.2 Therefore, in absence of the department pointing out any distinguishing facts in this year, on identical facts, we dismiss the related grounds raised by the department.

7.1 As far as the issue of dependent agent PE is concerned, it is again seen that this issue was decided in favour of the assessee by the Tribunal in assessee's own case in assessment year 2006-07 and the relevant observations are contained in Para 4.26 which are reproduced here in under for a ready reference: -

"4.26. In the light of above, even assuming, CIS is not an agent of CMG, it does not have any authority to conclude contracts or secure orders on behalf of CMG and hence CMG does not have a Dependent Agent PE in India."

7.1.1 We also note that the Ld. CIT (A) has duly taken note of this order of the Tribunal as has made the following observations:

"Regarding the constitution of dependent agent of PE (DAPE) of the Appellant in India, I am in agreement with the submission of the Appellant and the order of the ITAT in Appellant's own case for AY 2006-07 and AY 2008-09. In view of the business model of the Appellant and in absence of any material on record that the conditions mentioned in Article 5(4) of the DTAA is satisfied viz. habitually exercising authority to conclude contracts or maintaining stock of goods or habitually securing orders. I am of the view that CIS did not constitute a dependent agent PE of the Appellant in India. In view of this, Grounds 5.9 to 5.11 are allowed."

7.1.2 In this case also, the department has not been able to bring out any distinguishing facts in this year under consideration and, therefore, following the order of the ITAT in earlier assessment years, we dismiss the related grounds in department's appeal in this year also."

15. In view of the facts of the case in entirety and above discussion, we are of the considered opinion that the issue of PE (fixed place PE, service PE and dependent agent PE) is squarely covered by the decision of the Hon'ble Supreme Court in the case of E-Funds IT Solution Inc (supra) upholding the order of the Hon'ble Supreme Court in the case of E-Funds IT Solution Inc (supra). Accordingly, we order so. We therefore, following the reasoning given by the Hon'ble Supreme Court in its decision in the case of E-Funds IT Solution Inc (supra), hold that there is neither fixed place PE nor any service PE nor dependent agent PE. Therefore, it is held that business income of the assessee is not chargeable to tax in India in absence of the PE. Consequentially, we delete the profit attributable to PE worked out and taxed in consequence to the first round of appellate order of the Tribunal. Thus, all grounds of appeal relating to PE and attribution of profits raised by the assessee and Revenue stand disposed off accordingly. The assessee gets consequential relief.

Taxability of link charges/IPLC charges as royalty:

16. The next issue raised by the Revenue is the taxability of payment of link charges/IPLC charges as royalty. We have taken note of finding of the Tribunal, in first round of appeal, with respect to this issue as under:

"4.3 Arguing against the grounds raised by the department on the issue of payment of link charges/IPLC being taxable under 'equipment royalty' and 'process royalty', the Ld. AR submitted that during the year under consideration, an amount of INR 37,279,929 (USD 684,072) was paid/ payable by CIS to the Assessee pertaining to link charges. The link charges pertain to International Private Leased Circuits ('IPLC') that provide a point-to-point private line used by an organization for communication. An IPLC can be used for Internet access, business data exchange, video conferencing, and any other form of telecommunication. IPLC is one of the basic requirements for Information Technology enabled services like Business Process Outsourcing. In the instant case, IPLCs allow a dedicated capacity for a private, secure communication link from India to the US over the Internet which enables CIS to communicate with the customer. It was submitted that CVG makes payment for such link charges to telecom service providers in the USA and cross charges the portion of the cost incurred by it in connection with the India half link to CIS, which is accordingly reimbursed by CIS to CVG. The Ld. AR submitted that the AO has made an addition on account of such link charges by stating that they are taxable as 'Equipment Royalty' in terms of Article 12(2) read with Article 12(3)(b) of the DTAA and accordingly taxed it @ 10% on gross basis. In addition to the finding of the AO that link charges are taxable as 'Equipment Royalty', the AO also held that the payments pertaining to link charges are taxable as 'Process Royalty' both under the Act as well as DTAA. It was submitted that the link charges do not qualify as Equipment Royalty. The Indian judiciary has made it clear that it is important to see whether there was any intention to transfer the right to use or not. It was submitted that it cannot be controverted that CVG/CIS have any control or possession over the equipment i.e. the network facilities are under the control of and maintained and operated by the service providers. CVG/CIS merely avail a service. With regard to Equipment Royalty, it was submitted that the Tribunal for AY 2006-07 held the issue in favour of CVG and the Ld. CIT (A) has followed the order of the ITAT in the year under consideration and has allowed assessee's ground.

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7.2 Similarly, the issue of payment link charges/IPLC charges being taxable under royalty has been decided in assessee's favour by the Tribunal in assessment year 2006-07 in Para 3.5 of the said order. The same is being reproduced here in under for a ready reference: -

"3.5. In view of the foregoing observations we hold that there is no transfer of the right to use, either to the assessee or to CIS. The assessee has merely procured a service and provided the same to CIS, no part of equipment was leased out to CIS. Even otherwise, the payment is in the nature of reimbursement of expenses and accordingly not taxable in the hands of the assessee. Therefore, it is held, that the said payments do not constitute Royalty under the provisions of Article 12 of the tax treaty and the ground is allowed in favour of assessee."

7.2.1 It is also seen that the Ld. CIT (A) has taken due cognizance of this finding of the Tribunal in the year under consideration and has allowed relief to the assessee. The findings of the Ld. CIT (A) are contained in paragraph 8-9 which is being reproduced here in under: -

"8.9 The Hon'ble Delhi High Court in the case of New Skies Satellite BV (supra) further held that India's change in position to the OECD commentary cannot act as influence in interpreting the word royalty as it stands today. The only way such change can he brought about is through such change being incorporated in the DTAA itself an amendment in the domestic law cannot bring about a unilateral change in the DTAA. Further, Hon'ble court observed that the argument that certain incomes would slip out of the bands of Revenue, where such position is taken, cannot be accepted. The Hon'ble Court concluded that amendment in section 9 will not affect DTAA, and the term Royalty' would have to be understood as defined DTAA only.

8.10 As discussed above, the Hon'ble I TAT, Delhi in its order dated May 10, 2013 in Appellants own case/or Assessment Tear 2006-07 and Assessment Year 2008-09 has held that there is no transfer of the right to use, either to CMG or to CIS. The ITAT observed that the Appellant has merely procured a service and provided the same to CIS. Further, ITAT observed that even otherwise, the payment is in the nature or reimbursement of expenses and accordingly not taxable in the hands of the Appellant. Therefore, it is held that the said payments do not constitute Royalty under the provisions of the DTAA.

8.11 Respectfully following the Hon'ble ITAT decision in the case of the Appellant and jurisdiction High Court's decision of New Skies Satellite

BV (Supra) wherein it is held that the amendment in section 9 will not affect the DTAA, I find that the payment of link charges received by the Appellant from Convergys India Services Rut. Ltd. would not qualify as "process" royalty in terms of Article 12 of lndia-US DTAA. Hence, the ground of appeal, including additional ground of appeal is allowed.
……."

7.2.2 Therefore, in absence of any contrary facts having been pointed out by the department, in view of the order of the coordinate bench in assessee's own case as aforementioned, we dismiss the related grounds raised by the department in this regard."

17. We have heard both parties and have perused material available on the record. We find merit in the arguments/contentions/submission of the Ld. Sr. Counsel. The word 'use' in relation to equipment occurring in clause (iva) of explanation 2 to section 9(1)(vi) is to be some positive act of utilization, application or employment of equipment for the desired purpose having certain degree of possession and control of such equipment. For the applicability of the Article 12 of the DTAA, the following factors have to be tested:

i. In whose physical possession & control the said property/equipment is?
ii. Who has significant economic or possessory interest in the property?
iii. Who bears the risk of substantially diminished receipts or substantially increased expenditure if there is nonperformance under the contract?
iv. Who uses the property/equipment concurrently to provide significant services to entities unrelated to the service recipient?

v. Total payment for the service does not substantially exceed the rental value of the computer equipment for the contact period.

18. In the present case the Revenue has not established that the CIS exercises a certain degree of possession and control over the equipment and the fulfilment of make available clause. Further, the Ld. CIT-DR failed to bring any material on the record to contradict the above finding of the Tribunal on the issue of taxability of payment of link charges/IPLC charges as royalty. Thus, in view of the above and the reasoning mentioned in the appellate order of the Tribunal in first round, we do not find any infirmity in the finding of the Ld. CIT(A) in this regard. We therefore, decline to interfere with the finding of the Ld. CIT(A) on the issue of the taxability of payment of link charges/IPLC charges as royalty. Accordingly, this issue; taxability of payment of link charges/IPLC charges as royalty is decided against the Revenue.

19. In the result, the assessee's appeal; ITA No. 7727/Del/2017 is allowed as above and the Revenue's appeal; ITA No.130/Del/2018 is dismissed as above.

Assessee's appeals: ITA Nos. 7924/Del/2018, 1086/Del/2022, 667/Del/2023 & 668/Del/2023 and Revenue's appeals: ITA Nos. 1281/Del/2022, 723/Del/2023 & 724/Del/2023:

20. The above finding in ITA No. 7727/Del/2017 and ITA No. 130/Del/2018 shall apply mutatis mutandis in these appeals also. Thus,

the assessee's appeals in ITA Nos. 7924/Del/2018, 1086/Del/2022, 667/Del/2023 & 668/Del/2023 are allowed as above and the Revenue's appeals in ITA Nos. 1281/Del/2022, 723/Del/2023 & 724/Del/2023 are dismissed as above.

ITA Nos. 3512/Del/2023 and 1892/Del/2025 of AYs 2021-22 and 2022-23:

21. The facts of these cases are different only that these have been routed through the Dispute Resolution Panel ('DRP') and therefore, these appeals are against the orders passed under section 143(3) rws 144C(13) of the Act. The issue of DIN was not pressed in ITA No. 3512/Del/2023; hence, this ground is dismissed. Further, the issue of chargeability of interest under section 234A and 234B of the Act raised in both appeals, being consequential, stands dismissed. The initiation of penalty under section 270A of the Act raised in both appeals, being premature, stands dismissed.

22. The above finding in ITA No. 7727/Del/2017 and ITA No. 130/Del/2018 shall apply mutatis mutandis in these two appeals also.

23. The Mutual Agreement Procedure ('MAP') had concluded in 2017. Hence, the same is held non-binding in AY 2022-23. Accordingly, the ground of MAP raised by the assessee is allowed in favour of the assessee.

24. In the result, the assessee's both appeals are allowed as above.

25. To sum up, the assessee's seven appeals as mentioned above are allowed as above and the Revenue's four appeals as mentioned above are dismissed as above.

Order pronounced in open Court on 30th September, 2025

Sd/-	Sd/-
(VIKAS AWASTHY)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 30/09/2025
Binita, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. DCIT/CIT
4. CIT(Appeals)/DRP
5. CIT-DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI