IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'I': NEW DELHI.

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA No.2064/Del/2018
(Assessment Year: 2013-14)

Addl.CIT, Spl. Range 4, New Delhi.	vs.	Iyogi Technical Services Private Limited, 178, Golf Links, New Delhi – 110 003. **(PAN : AABCI6525L)**

ITA No.323/Del/2022
(Assessment Year: 2012-13)

Iyogi Technical Services Private Limited, 2nd Floor, 16/1, Doctors Lane, Gole Market, Delhi – 110 001. **(PAN : AABCI6525L)**	vs.	DCIT, Delhi.
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Gagan Kumar, Advocate
Shri Gagandeep, Advocate
REVENUE BY : Shri Dharm Veer Singh, CIT DR

Date of Hearing : 07.10.2025
Date of Order : 05.01.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-4, New Delhi ["Ld. CIT(A)", for short] dated 27.08.2018 for the Assessment Year 2012-13 and the

Revenue has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-35, New Delhi ["Ld. CIT(A)", for short] dated 29.12.2017 for the Assessment Year 2013-14.

2. First we take up Revenue's appeal for the Assessment Year 2013-14.

3. Brief facts of the case are, the assessee filed its return of income on 29.11.2013 declaring a loss of Rs.63,72,42,213/-. The case was selected for scrutiny and notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. In response, the ld. AR of the assessee submitted relevant information from time to time as called for.

4. The assessee is providing various types of computer hardware/software support services like spyware removal, set up, installation, help and report and other related support services to the individuals and small businesses. During the year, assessee has undertaken certain international transactions with its Associated Enterprise (AE). Therefore, the matter was referred to Transfer Pricing Officer (TPO) for determining the Arms Length Price (ALP) of these transactions. The TPO has passed his order dated 28.10.2016 and has not made any adverse inference in respect of international transactions. Accordingly, no additions were made.

5. During assessment proceedings, the Assessing Officer observed that assessee has made payments to its AE i.e. Iyogi Inc. USA towards

marketing and other support services. Assessee was asked to submit details of services received along with copy of agreement entered into with its AE. Further it was asked to indicate whether tax at source was deducted on these payments and if not, reasons for the same may be provided. In response, the assessee submitted that the assessee is availing marketing support services from its AE, the details of services comprise of master support services, development of promotional component, partnering with affiliates, retailers and sellers etc. In support of the same, assessee has submitted a copy of agreement between assessee and AE. With regard to TDS, it was submitted that no TDS was deducted towards the payment made to its AE. The fee for the marketing support services paid is not taxable in India in terms of Article 12(4) of the India-US Double Tax Avoidance Agreement (India-US DTAA) and AE has no permanent establishment in India and thus the provisions of deduction of tax at source u/s 195 of the Act are not applicable.

6. After considering the above submissions and on the basis of service agreement submitted by the assessee, the Assessing Officer observed that the services provided by its AE are in the nature of 'Fee for included Services'(FIS) within the meaning of Article 12 of India-US DTAA, since the assessee did not deduct any tax at source on such payment, accordingly a separate show-cause notice was issued to the assessee. The

relevant show-cause notice is reproduced at page 3 of the assessment order. In response, assessee submitted details of bills raised by the AE of the assessee on quarterly basis and the details are reproduced at page 4 of the assessment order. After considering the above, the Assessing Officer observed that the payments made by the assessee falls within the Article 12(4) of India-US DTAA under FIS and the condition of make available is being satisfied. On the basis of above observation and relying on several case laws, the Assessing Officer held that the provisions of section 9(1)(vii) of the Act is also attracted. He also reproduced the master service agreement in his order and based on the scope of work mentioned at Clauses 1.1 to 1.3 and by relying on the above clauses, he came to the conclusion that the services rendered are squarely covered by the definition of fees for technical services as per Explanation 2 to section 9(1)(vii) of the Act. Further he observed that if there is any doubt relating to chargeability of tax in India and whether the TDS is required to be deducted, the proper course for the assessee was to make an application u/s 194(2) of the Act. The assessee failed to exercise this option. Based on the above observation, the Assessing Officer disallowed the payment of Rs.197,71,98,209/- to Iyogi USA for the reason that assessee has not deducted TDS u/s 40(a)(i) of the Act.

7. Further the Assessing Officer observed from the profit and loss account submitted by the assessee that it has deducted Rs.2,49,11,265/- corresponding to provision for refund while computing the taxable income. A separate notice was issued to the assessee to explain the same. In response, the assessee has submitted that the provision of refund paid is refund paid to customers in the next financial year till the date when the financial statement were finalized i.e. actual refund paid to customers from 1st April till accounts were finalized and whose revenue has been recognised in this financial year. The Assessing Officer found that the above reply of the assessee is cryptic and vague. Since assessee failed to submit proper details during assessment proceedings, he proceeded to disallow the amount debited towards provisions for refund paid of Rs.2,49,11,265/-.

8. Further the Assessing Officer also made other disallowances like bonus paid for claim, foreign exchange fluctuation loss, rent expenses and disallowances u/s 36(1)(va) of the Act.

9. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT(A)-35, New Delhi and filed detailed submissions which are reproduced at pages 4 to 27 of the impugned order. After considering the detailed submissions, ld. CIT (A) allowed the grounds raised by the assessee with regard to all the additions made by the Assessing Officer

except ground nos.10 & 11 raised by the assessee relating to set off of brought forward losses and initiation of penalty proceedings u/s 271(1)(c) of the Act.

10. Aggrieved with the above order, Revenue is in appeal before us raising following grounds of appeal :-

> "1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of Rs.197,71,98,209/- made by the Assessing officer on account of disallowance u/s 40(a)(i) of the Income Tax Act, 1961 for non deduction of tax at source under section 195 of the Income Tax Act, 1961 on payment of Rs.197,71,98,209/- made to Iyogi, USA.
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> 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) correct in holding that the income generated by IYogi, USA is Business Income from activities run by it in USA and revenue generated in USA is taxable in USA as Business Income and therefore the income is not taxable in India as there is no Income which has accrued or arisen in India and as such there is no liability on I Yogi India to deduct any TDS on revenue earned by IYogi, USA from its services for its business run in USA and revenue generated by it form customers in USA.
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> 3. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance of Rs.2,49,11,265/- made by the Assessing officer on account of provision for refund paid as the provision for refund paid claimed by the assessee as during the course of assessment proceedings, the assessee company had not furnished any details in this regard in respect of basis of creation of provision for refund. The CIT(A) also did not give any basis, reason for deleting the addition and allowing the appeal of the assessee on this issue except past experience."

11. Before us, the Revenue has raised the grounds of appeal relating to the issue of disallowance made u/s 40(a)(i) of the Act and provisions for

refund paid only. We are restricting ourselves to the above said issues raised by the Revenue.

12. Further ld. DR of the Revenue also raised additional ground as under :-

> "Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance made by the AO u/s 36(1)(va) of the Act of Rs.82,01,034/- on account of late deposit of employee's contribution of PF&ESI in light of the settled legal position emanating from the judgement of Hon'ble Supreme court in the case of Checkmate Services Pvt. Ltd."

13. Considered the rival submissions and material placed on record by both the parties. We observed that the issue raised by the Revenue in additional ground is legal issue. In the light of Hon'ble Supreme Court in the case of NTPC, Limited vs. CIT (1998) 229 ITR 383 (SC), we are inclined to admit the additional ground and take up the same for adjudication herein below.

14. At the time of hearing, ld. DR of the Revenue raised the issue of ESI/PF on which Revenue has raised additional ground of appeal. Since the issue under consideration is squarely covered in favour of the Revenue, we are inclined to allow the additional ground raised by the Revenue. Accordingly, additional ground raised by the Revenue is allowed.

15. With regard to ground nos.1 & 2, ld. DR of the Revenue brought to our notice page 1 of the assessment order and brought to our notice details of business of the assessee and payment made by the assessee to its AE

towards marketing and other support services. He submitted that based on the master agreement, assessee has received FIS from its AE which falls within the provisions of section 9(1)(vii) and Article 12 of India-US DTAA and he submitted that by reading of the master service agreement, it clearly indicates that the condition of make available clause also satisfied. Therefore, he heavily relied on the findings of the Assessing Officer.

16. On the other hand, ld. AR of the assessee brought to our notice page 148 of the paper book which is master agreement entered by the assessee for AY 2012-13 and he brought to our notice clause 1.3 of the agreement wherein it was mentioned that the Services B refers to services rendered by Iyogi US to Iyogi India, assessee. Iyogi US shall perform marketing support services in USA. In this regard, Iyogi USA shall engage in the following activities :-

- Marketing support services to Iyogi India
- Developing promotional component and partnering with affiliates retailers and sellers.
- Making payment to independent marketing companies.
- Such other ancillary services as may be required in the performance of marketing support services.

17. Further he brought to our notice page 10 of the assessment order relating to AY 2012-13 and he submitted that the Assessing Officer interpreted the services mentioned in master service agreement as 'fees for included services' and also observed that if such services make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plant or technical design. Further he submitted that he heavily relied on the confidentiality information mentioned in clause 5 of the agreement wherein it was mentioned that it will necessary for them to disclose or make available to each other information and material that are confidential or proprietary or contain valuable trade secrets relating to their respective business. He submitted that the Assessing Officer has wrongly interpreted the confidentiality clause as make available. He submitted that it is a general clause mentioned in almost all the agreements entered by the respective parties. It does not mean that the services rendered by its AE are the information make available to the assessee. Further he brought to our notice page 27 of the impugned order wherein ld. CIT (A) has appreciated the relevant facts available on record and he rightly observed the details of make available cited by the Assessing Officer at para 22 and 23 of the assessment order and he has rightly appreciated the facts on record and

allowed the grounds raised by the assessee for the simple reason that the services are rendered outside India. Therefore, the income is not taxable in India and there is no income accrued or arisen in India, therefore, there is no requirement for deducting TDS. He heavily relied on the findings of the ld. CIT (A).

18. Further he brought to our notice page 169 of the paper book (AY 2012-13) which is the notes to financial statement submitted by the assessee wherein it is clearly mentioned that the assessee provides online subscription based technical support services directly to customers and small business. It is clear that assessee provides services to its customers in India and gets the support services from its AE outside India. It is also fact on record that there is no PE of US entity in India. The income was already declared by the US entity as its business income. In this regard, he relied on the decision of Rane Engine Valve Ltd. vs. DCIT (2024) 165 taxmann.com 765 (Chennai-Trib.) and brought to our notice the relevant ratio. He also brought to our notice the decision in the case of ITO vs. Asian Hotels North Ltd. (2022) 140 taxmann.com 17 (Delhi-Trib.).

19. The ld. AR also made alternative plea that the marketing services are not make available. In this regard, he relied on the following decisions :-

(i) ACIT vs. NTL Lemnis India Pvt. Ltd. in ITA No.6006/Del/2019 order dated 22.01.2024

(ii) Inspectorate International Ltd. vs. ACIT (2018) 95 taxmann.com 229 (Delhi)

(iii) ADP (P.) Ltd. vs. DCIT (2025) 177 taxmann.com 708 (Hyderabad-Trib.)

20. In rejoinder, ld. DR agreed that there is no PE of the US entity, however the US entity has made available the relevant services in India. In this regard, he brought to our notice page 164 of the paper book i.e. profit & loss account and he brought to our notice revenue from operation and it also includes huge employee benefit expenses and other expenses. Further he brought to our notice page 180 of the paper book wherein other expenses include huge marketing expenses. He submitted that the said marketing expenses claimed by the assessee are very abnormal. He further brought to our notice page 10 of the assessment order wherein Assessing Officer has brought clearly on record confidential information which clearly indicates that there is sufficient proof that services are make available to the assessee. He submitted that the case laws relied by the assessee are distinguishable to the facts on record. He further submitted that assessee and its AE are working together with sharing the information and system. He brought to our notice page 7 of the assessment order and submitted that assessee has shifted the income to

USA and also submitted that most of the customers are of Indian entity and only small marketing services were provided by its AE, making such huge payment clearly indicates that assessee has shifted the income to its AE. He brought to our notice various case laws relied on by the Assessing Officer. Further he brought to our notice pages 27 & 28 of the appellate order and submitted that it is ambiguous order and the ld. CIT (A) has not considered the managerial services also not properly considered the relevant facts on record. Therefore, he heavily relied on the findings of the Assessing Officer.

21. With regard to ground no.3, ld. DR brought to our notice page 20 of the assessment order and submitted that assessee has created provision for refund paid without submitting any details as called for during assessment proceedings. He submitted that this is only a provision and objected to the findings of the ld. CIT (A) that he had allowed the claim of the assessee based on the past history of expenses claimed by the assessee. He submitted that it is not like a warranty which requires provisions based on scientific study. He heavily relied on the findings of the Assessing Officer.

22. On the other hand, ld. AR of the assessee brought to our notice page 70 of the paper book (AY 2012-13) and submitted that during the period of assessment proceedings, the property of the assessee was locked and at

the possession of the land lord due to internal dispute. In this regard, he relied on the decision of DCIT vs. Bayer Bioscience P. Ltd. 2016, Hon'ble Supreme Court Order ITAT 6415, brought to our notice paras 14 to 17 of the above order.

23. Considered the rival submissions and material placed on record. With regard to ground nos.1 & 2 raised by the Revenue, we observed that assessee has received certain marketing support services from its AE from USA. The abovesaid services were provided by the AE based on a master support services agreement entered between them. The Assessing Officer observed that assessee has made huge payment to its AE without deducting any TDS u/s 195 of the Act. During assessment proceedings, the Assessing Officer observed from certain clauses of master service agreement, he came to the understanding that assessee was receiving services in the nature of FIS within the meaning of Article 12 of India-US DTAA and also falls within the provision of section 9(1)(vii) of the Act. The Assessing Officer, after going through the confidentiality clause in the master agreement, came to the conclusion that the AE of the assessee has make available the technical and support services in India. We observed that the AE of the assessee has only provided marketing support services which comprises of development of promotional component partnering with affiliates retailers and sellers maintaining relationships

and entering into contract with customer and various channel partners etc.. Based on the above services provided by them, they have raised the bill to the assessee for the expenses incurred in US for providing above services on cost plus margin basis. It is also fact on record that the AE does not have any PE in India and it merely provided marketing support services to the assessee from USA,it does not fall within the category of fees for marketing, technical or consultancy services, may be it may fall in the form of reimbursement of expenses plus margin. The relevant revenue is subjected to tax in USA and also marketing services are rendered outside India. The relevant marketing services are not taxable in India.

24. After considering the detailed findings of the ld. CIT (A) and also during proceedings before us, we observed from the invoices raised by the Iyogi USA to the assessee on quarterly basis and after going through the invoices, we are not fully convinced of the findings of the ld. CIT (A).ld. CIT (A) has proceeded to allow the claim of the assessee merely on the basis of their submissions and he has not verified the detailed annexure to the invoices submitted by the assessee which is placed at pages 125 to 131 of the paper book. For the sake of clarity, we are reproducing invoice and relevant break-up for the first quarter as under :-

125

iYogi Inc
291 Broadway,
Suite 803
New York NY 10007
URL: http://www.iYogi.net

Kind Attention: Mr. Subhash Chandra Agarwal

Invoice no. : ITSPL/Jun 12/001
Date : 30 June 2012

Billed to:
iYogi Technical Services Pvt. Ltd.
DLF Building No. 6,
1st Floor, Tower-C
Sector – 24 & 25A, DLF Cyber City,
Gurgaon – 122002 (Haryana) – India

INVOICE

Particulars	Amount in USD
Marketing Support Services rendered for the period from April 2012 to June 2012, as per the annexure attached.	11,643,792
Total due	**11,643,792**

Net Amount due: USD Eleven Million six hundred forty three thousand seven hundred ninety two only.

For iYogi Inc

Authorized Signatory

Annexure to invoice:

Category	Description		Amount in USD
	Advertisements - Other	$3,805	
	Amortisation	$15,616	
	Annual Service & Licensing Charges	$15,743	
	Bank charges	$4,637	
	Bonus	$18,750	
	Business promotion	$13,977	
	Certification Charges	$5,656	
	Content Writing	$1,801	
	Depreciation	$82,722	
	Domain registration charges	$879	
	Electronic Media- Production	$270	
	Employer Contribution US	$7,794	
	Foreign exchange gain/ (loss)	$14,751	
	Insurance-Others	$6,987	
	Interest Income/(expense), net	$31,286	
	Internet charges	$755	
	Lease Rent - Others	$15,350	
	Legal expenses	$560	
	Licences Consumed	$60,703	
	Mediclaim Insurance	$21,105	
	Membership/Subs.	$8,709	
	On Ground Tech. Support	$216,575	
	Payment Gateway Charges	$654,045	
	Postage and courier	$692	
	Printing and stationery Exp.	$352	
	Process Outsourcing Cost	$4,195,938	
	Professional fees	$3,750	
	Public Relation - Outside agency	$28,034	
	Referral Customer Comm.	$10,400	
	Retainer fee	$30,384	
	Revenue Share-Channel Partners	$797,517	
	Salary- BASIC	$106,843	
	Salary Processing fees	$1,594	
	Short and excess	-$2	
	Tele. Other Communication	$892,274	
	Telephone and fax-Others	$4,765	
	Travelling Exp-Staff	$14,597	
	Warranties Cost	$167,498	
	Website Maintenance	$20,311	
	Workers Contribution US	$306	
	Total:	$7,477,729	
	5% Markup on above cost	$373,886	$7,851,615
(B)	Cost of Sales (Iyogi Shop)		$1,433,171
	Internet marketing		$2,359,006
	Grand Total (A + B)		$11,643,792

25. From the description of the annexure, we observed that there are certain expenditures claimed by the AE like on-ground tech support, payment gateway charges and process outsourcing cost which is about 68% of the total administration expenditure claimed by the AE. From the record, we observe that the assessee was not able to explain on-ground tech support provided to the assessee of US$ 216,575, payment gateway charges of US$ 654,045 and process outsourcing cost of US$ 4,195,938. Further we observed that the AE has claimed cost of sales and internal marking charges separately. From the above category of description, it is not clear the nature of expenditure as well as services provided by the AE outside India. From the total expenditure claimed by them, it is almost 53% of the total revenue generated by the assessee. For mere providing marketing services outside India, the above services claimed to have rendered outside India in order to support the services provided by the assessee to the customers in India, the reimbursement of expenses seems to be too high. We observed, particularly, the payment towards process outsourcing cost is not explained by the assessee, in our view, it can also be classified as FIS. Since the assessee has not provided the basis of sharing of expenditure by the AE and relevant sharing basis of all the administration cost of the foreign AE to the assessee along with the process outsourcing cost are not supported by proper documents.

Therefore, we are not inclined to accept the submissions of the Ld AR. At the same time, we observed that the TPO has not proposed any ALP adjustment towards the International transactions carried by the assessee, but the AO had proposed the disallowance on the basis of foreign remittance by invoking the provisions of the section 40(a)(i) of the Act, since the assessee failed to justify the remittance with the claim that these are reimbursement towards marketing services, as discussed above, in our considered view the marketing expenditure cannot be more than 20% since the services are intertwined with the business of the assessee or the assessee had to submit the relevant documents in support of the expenses claimed as marketing expenses. In absence of any documents submitted before the lower authorities, in our considered view, the assessee should submit relevant documents like basis of sharing the expenses particularly the administrative expenses which includes expenses which are not linked to the marketing expenses. Hence, we direct AO to allow the relevant marketing expenses claimed separately below the administrative expenses and for the rest of the administrative expenses, in case the assessee fails to substantiate the same, AO may restrict the marketing expenses to the extent of 20% which includes the separate claim of marketing expenses made by the assessee. It is needless to say that the assessee may be given proper opportunity of being heard before finalizing the above

disallowances. In the result, we are inclined to partly allow the grounds raised by the Revenue.

26. With regard to ground no.3, we observed that the assessee provides on-line technical support services for personal computers and laptops which spans over the various periods. In some cases, if the customer is not satisfied with the services, the assessee has to refund the charges as collected by them from the customers. In this regard, assessee makes provision for such type of refund every year. Accordingly, for the year under consideration, assessee has provided provision of Rs.2,49,11,265/-. The abovesaid provision as created by the assessee based on past experience. When the assessee was called for corresponding details for creating provision for refund and the same was reduced from the profit in the Profit and Loss account. The assessee could not submit the relevant information during assessment proceedings. After considering the submissions of both the parties, in our considered view, since the assessee is in the business of providing technical support services for personal computers and laptops, the charges will cover more or less for a year or more years depending upon the agreements with the customers. There are possibilities that unsatisfied customers may request for refund, for such eventuality assessee has created certain amount as provision and reduced the same from its profit. In our considered view, provision can

never be an expenditure for the reason that assessee may be allowed to create provision towards the expenditure which is not ascertainable at the end of the year. Therefore, In our view, for the first year assessee can create provision on matching principle basis and claimed the same as expenditure. However, in the subsequent year, the assessee has to reverse the abovesaid provision created in the previous year and debit the actual refund relating to previous year in the provision account created for the purpose. In the subsequent year, the assessee has to create similar provision and reverse the same in the subsequent year and claim only the actual refunds. In the given case, we observed that the assessee has created provision every year and claimed the same as expenditure which is not a proper accounting principle. The assessee has created the provision for the year under consideration towards the revenue recorded for the year, however there is a contingency liability associated to the abvoesaid income. No doubt, assessee has created certain provision based on previous history. However, there is no record of excess or shortage of provision created for the purpose relating to previous year. Since the accounts are being maintained on the basis of going concern, the assessee has to submit the relevant information of past provisions created over the years versus actual refund made by the assessee. For the sake of overall justice, we are inclined to remit this issue back to the file

of Assessing Officer to verify the abovesaid creation of provision for refund over the years. If there is excess provision created over the year, the same has to be reversed and treated as income of the assessee in the current assessment year. Accordingly, this ground is allowed for statistical purposes.

27. In the result, the Revenue's appeal is partly allowed as indicated above.

28. With regard to assessee's appeal for AY 2012-13, the only issue involved in this appeal vide ground nos.1 to 4 are relating to section 40(a)(i), which is similar to ground nos.1 & 2 raised by the Revenue in AY 2013-14. Since the facts are exactly similar to Revenue's appeal for AY 2013-14, accordingly following the same finding, we are inclined to partly allow the grounds raised by the assessee.

29. With regard to other grounds i.e. 5, 6 & 7, the same are consequential in nature and accordingly the same are dismissed.

30. In the result, the appeals filed by the revenue and assessee are partly allowed as indicated above.

Order pronounced in the open court on this 5TH day of January, 2026.

SD/-	**SD/-**
(SUDHRI PAREEK)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 05.01.2026
TS

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI