

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

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2405/Del/2025
(Assessment Year: 2016-17)**

DCIT, Circle 7 (1),
Delhi.

vs.

FIS Global Business Solutions India
Pvt. Limited,
S – 405 (LGF), Part II,
Greater Kailash Part II,
Delhi – 110 048.
(PAN : AAACH2815H)

**CO No.125/Del/2025
(in ITA No.2405/Del/2025)
(Assessment Year: 2016-17)**

FIS Global Business Solutions India
Pvt. Limited,
S – 405 (LGF), Part II,
Greater Kailash Part II,
Delhi – 110 048.
(PAN : AAACH2815H)

vs.

DCIT, Circle 7 (1),
Delhi.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Reema Grewal, CA
Shri Kashish Gupta, CA

REVENUE BY : Shri Ajay Kumar Arora, Sr.DR

Date of Hearing : 04.11.2025

Date of Order : 21.01.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [“Ld. CIT (A)”, for short] dated 13.02.2025 for the Assessment Year 2016-17. The assessee has also filed cross objections in support of the aforesaid impugned order.
2. Brief facts of the case are, the assessee company E-filed its return of income on 30.11.2016 declaring total Income of Rs.1,49,38,61,840/-. Subsequently, the case was selected for Complete Scrutiny through CASS with the reasons “Large any other amount allowable as deduction” claimed in schedule BP of return; Tax Credit claimed in ITR is less than tax credit available in 26AS; Mismatch in sales turnover reported in Audit Report and ITR; Total Sales/Gross Receipt in Part A-P&L of ITR; Large deduction claimed under Chapter VI-A; Large international transaction(s); Large Aggregate value of total employee cost in comparison to Aggregate value of international transactions as per books of accounts; Large outward remittances to a non-resident not being a company or to a foreign company; Large value of international transactions in services including transactions u/s 92B(2); Large value of international transactions having a bearing on profits, income losses of asset of the assessee with associated enterprise”. Accordingly, Notice u/s 143(2) dated 02.08.2017 was issued and served upon the assessee within

stipulated time. Subsequently, notices u/s 142(1) were issued to the assessee Company from time to time. In response, assessee filed the replies/documents, as sought for on the ITBA portal from time to time.

3. The assessee company is engaged in provision of Software Development and IT Enabled Services. In this case, a reference was made to the DCIT, TPO-1(2)(2), New Delhi for determining arm's length price u/s 92CA(3) in respect of international transaction entered into by the assessee during financial year 2015-16. The issue was examined by the ACIT [TPO-1(2)(2)], New Delhi who vide his order dated 24.10.2019, passed u/s 92CA of the Act has not drawn any adverse inference in respect of Arm's Length Price of the International Transactions entered into by the assessee company during the year under consideration.
4. AO observed that for determination of Arm's Length Price, the Transfer Pricing Officer is the independent legal authority who has determined the same vide order dated 24.10.2019.
5. During the course of assessment proceedings, vide Question No. 12 of Notice dated 22.10.2019 issued u/s 142(1) of the Act, it was asked as to why claim of ESOPs expenses amounting to Rs.5,12,06,383/- may not be disallowed being notional in nature. In response, the assessee vide reply dated 06.12.2019 submitted that the deduction has been claimed on account of stock options granted to remunerate the employees in lieu of

their services. The assessee company had to reimburse its ultimate holding company for ESOPs, RSUs, and shares under the ESPP scheme granted to the employees of the assessee involving actual cash out flow by the assessee company and in this regard, the assessee also relied upon various judgments including the judgment of Hon'ble Jurisdictional Delhi High Court in the case of CIT Vs Lemon Tree Hotels Ltd. However, AO did not accept the contention of the assessee as the expenditure essentially is notional irrespective of the fact that it had to make payment to its own holding company. Moreover, he observed that SLP of the department in the case of Lemon Tree Hotel has been admitted by the Hon'ble Supreme Court and it is pending for adjudication. Therefore, he disallowed the amount of Rs.5,12,06,383/- and added back to the total income of the assessee.

6. Aggrieved by the aforesaid order, the assessee preferred an appeal before the NFAC, Delhi and filed detailed submissions and also relied on various decisions especially the decision of Hon'ble Jurisdictional Delhi High Court in the case of CIT vs. Lemon Tree Hotels Ltd. Ld. CIT (A), after going through the submissions of the assessee and the assessment order and also relying on the decision in the case of Lemon Tree Hotels Ltd. (supra), allowed the appeal of the assessee by observing as under :-

“5.1.2 In the Order, the AO has disallowed the impugned expenses incurred on ESOP on the ground that the said expenditure is essentially

notional in nature and the reliance placed by the appellant on the decision of Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs. Lemon Tree Hotels Ltd. in ITA No. 107/2015 was rejected by him on the ground that SLP of the Department in the said case has been admitted by the Hon'ble Supreme Court, which is pending adjudication.

5.1.3 From the submissions filed by the appellant, it is noted that under the stock options scheme, the employees of the appellant are granted an option to purchase specified number of shares of FNIS Inc., USA (the ultimate holding company of the appellant) at a pre-determined price ('grant price'). Upon exercise of such option, the difference between the grant price ('discount') and the FMV of shares of FNIS Inc. on the exercise day is payable by FNIS Inc. to the employees of the appellant. Accordingly, FNIS Inc. raises an invoice on the appellant for recovering the discount amount paid to the employees. This settlement is done by the appellant in cash. To substantiate its stance, the appellant has furnished sample copy of invoices raised by FNIS Inc. to recover the discount and sample copy of Form 15CA evidencing remittances made for the same to FNIS Inc. by the appellant. Further, under ESPP scheme, certain eligible employees purchase shares of FNIS Inc. through payroll deductions. In order to incentivize such employees and retain and motivate them, the appellant also contributes additionally 25% of the amount contributed by such employees ('matching contribution') in the said scheme. For this matching contribution made to the ESPP scheme made by the appellant, FNIS Inc. again raises invoices on the appellant which are paid by the latter to the former. Both these expenses are debited by the appellant to its Profit and Loss account and claimed as allowable expenses against its Taxable Income u/s. 37(1) of the Act. It is further noticed that the case laws relied upon by the appellant are relevant to the issue under consideration and ruling of the Jurisdictional Hon'ble High Court of Delhi in the case of Lemon Tree (supra) is in favour of the appellant on the impugned issue. The AO has brushed aside this decision of Hon'ble Delhi High Court by stating that Department's SLP against the same has been admitted by the Hon'ble Supreme Court. Obviously this cannot be the reason for denying the claim of expenses of the appellant which, at present, stands covered in its favour by the decision of Hon'ble Jurisdictional High Court. Accordingly, the ground of appeal raised by the appellant is allowed.

7. Aggrieved Revenue is in appeal before us raising following grounds of appeal :-

“Whether on the facts and circumstances of the case and in law, the Ld. NFAC has erred in allowing the appeal of the assessee by deleting the addition made by the AO amounting to Rs.5,12,06,383/- on account of employees stock option plan (ESOP) for the year under consideration.”

8. At the time of hearing, ld. DR of the Revenue relied on the order of the Assessing Officer.
9. On the other hand, ld. AR of the assessee submitted that the ld. CIT (A) has passed a reasoned order after relying on various decisions and also on Hon'ble jurisdictional High Court in the case of Lemon Tree Hotels Ltd. and accordingly pleaded to uphold the order of the ld. CIT (A).
10. Considered the rival submissions and material placed on record. We observed that this issue is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Lemon Tree Hotels Ltd. (supra). We also observed that the case laws relied upon by the assessee are relevant to the issue under consideration and ruling of the Jurisdictional Hon'ble High Court of Delhi in the case of Lemon Tree (supra) is in favour of the assessee on the impugned issue and the AO has not considered this decision of Hon'ble Delhi High Court by stating that Department's SLP against the same has been admitted by the Hon'ble Supreme Court and this cannot be the reason for denying the claim of expenses of the assessee which presently covered by the decision of Hon'ble Jurisdictional High Court in favour of the assessee. Accordingly, respectfully following the same, we are of the considered view that ld. CIT (A) has passed a detailed reasoned order and we are

inclined to uphold the same and accordingly the ground raised by the Revenue is dismissed.

11. In the result, appeal filed by the Revenue is dismissed.
12. The assessee has also filed the cross objections which are in support of the order of the Id. CIT (A), as we have already dismissed the appeal of the Revenue, the cross objections filed by the assessee have become infructuous, hence the same is dismissed as infructuous.
13. To sum up : both the appeal filed by the Revenue and the cross objections filed by the assessee are dismissed.

Order pronounced in the open court on this 21ST day of January, 2026.

**SD/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

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

**Dated: 21.01.2026
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**