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

BEFORE SH. G.S. PANNU, VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.784 & 785/Del/2023
Assessment Year: 2020-21

Invesco Holding Company (US) Inc. C/o Invesco (India Private Limited), 15, Floor, Block-6, North Tower, Divyasree Orion SEZ Raidurgam, Serilingampally Hyderabad, Hyderabad Telangana, 500032 PAN No.AAECI9027N	**Vs.**	**ACIT Circle Intl. Tax. 2 (1)(1) New Delhi**
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Deepak Chopra, Advocate Sh. Ankul Goyal, Advocate Sh. Adwitya Grover, Advocate
Respondent by	Sh. Vizay B. Vasanta, CIT DR

Date of hearing:	24/04/2024
Date of Pronouncement:	23/07/2024

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has filed the present appeals against the order dated 30.01.2023 under Section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred as the "Act") passed by

Commissioner of Income Tax, Circle Intl. Tax 2 (1)(1) (here in after referred as 'CIT') arising out of DRP, New Delhi under Section 144C(5) dated 15.12.2022. In these appeals, ITA No.785 relates to India-UK DTAA and ITA No.784/Del/2023 concerns India-USA DTAA. The grounds raised are similar, except the amounts involved. Similar provisions of treaty were relied. Thus two appeals are decided together taking the ITA 784 as lead matter. However, for convenience the grounds of both the appeals are reproduced below;

ITA No.784/Del/2023:-

1. On the facts and circumstances of the case and in law, the Ld. AD and the Hon'ble DRP erred in making an addition of INR 23,35,13,560 towards reimbursement of cost for providing IT/Support services considering the same to be taxable in India without appreciating the facts of the case that the amount received by the Appellant is a cost-to-cost reimbursement and there is no income clement embedded in it.

2. On the facts and circumstances of the case and in law, the Ld. AO and the Hon'ble DRP erred in making an addition of INR 23,35,13,560 to the income of the Company on account of reimbursement of cost for providing IT Support services by treating the same as fees for included services (FIS) under Article 12 of the India-USA Double Taxation Avoidance Agreement ('DTAA)

3. On the facts and circumstances of the case and in law, the Ld. AD and the Hon'ble DRP erred in merely assuming that there is make available of technical knowledge by the Appellant to the service recipient and training being provided by the Appellant to the service recipient without bringing any materials on record to substantiate the same.

4. On the facts and circumstances of the case the Ld. AO and the Hon'ble DRP erred in relying on the decision of the AAR in the case of Aircom International Ltd (AAR No. 1329 of 2012), the decision of the Hon'ble Delhi ITAT in the case of H.J. Heinz Company Vs ADIT ([2019] 108 taxmann.com 473) and on the decision of the AAR in the case of M/s Shell India Markets Pvt Ltd (AAR No. 833 of 2009), which are distinguishable to the facts of the case and in law.

5. On the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings by issuing notice under section 274 read with section 270A of the Act.

ITA No.785/Del/2023

1. On the facts and circumstances of the case and in law, the Ld. AD and the Hon'ble DRP erred in making addition of INR 5,90,52,630 to the income of the Company by holding that income from providing IT support services is taxable as fees for technical services ('FTS') under Article 13 of the India-United Kingdom Double Taxation Avoidance Agreement (DTAA

2. On the facts and circumstances of the case and in law, the Ld. AQ and the Hon'ble DRP erred in merely assuming that there is make available of technical knowledge by the Appellant to the service recipient without bringing any materials on record to substantiate the same.

3. On the facts and circumstances of the case the Ld. AO and the Hon'ble DRP erred in relying on the decision of the AAR in the case of Aircom International Lid (AAR No. 1329 of 2012) and the decision of the Hon'ble Delhi ITAT in the case of H.J. Heinz Company Vs ADIT ([2019] 108 taxmann.com 473) and on the decision of the AAR in the case of M/s Shell India Markets Pvt Lad (AAR No. 833 of 2009), which are distinguishable to the facts of the case and in law.

4. On the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings by issuing notice under section 274 read with section 270A of the Act.

2. The Assessee is a tax resident of the USA and provides Information Technology ("IT") Application services, IT Infrastructure services and IT security ("IT services") to its AEs globally including the ones present in India. The holds Tax Residency Certificate ("TRC") and claims to be eligible to be governed by the provisions of the India-USA DTAA which fact is undisputed. It is pertinent to give a brief description of the IT related services provided by the Assessee to its AE(s), which are as provided below:

a) IT Application services

The Company provides support services to Invesco Group companies in relation to various application platforms and their respective systems. The applications used by Invesco Group are substantially procured from third party. An IT Application cost will largely include the cost of applications, cost of maintaining such applications and the cost of team/personnel providing continuous support service to the Invesco Group in relation to various applications.

b) IT infrastructure services

An IT Infrastructure service cost will include the cost of central servers, data networks, voice networks, central storage, audio visual systems, cost of maintaining such

infrastructure and the cost of team /personnel providing continuous support service to the Invesco Group. The Company provides support services by ensuring availability of right infrastructure to Invesco Group companies.

c) IT Security services

An IT Security team is primarily responsible for cyber security, developing and monitoring security policies, carry out I security audits, take internal and external security initiatives, support and administer IT trainings, developing and testing business recovery plans, etc. An IT Security cost will primarily include cost of team/ personnel providing these IT Security services."

2.1 Assessee has claimed that under each of the above-mentioned services, generally a service request/ incident/ ticket is raised by a user from anywhere across the Invesco Group and the same gets allocated to the relevant support service team which then assists in resolving the service request/ incident. It is claimed that the revenues from India pertain to the allocation of cost incurred by the Company towards provision of the above-mentioned services attributable to AEs in India on a cost-to-cost reimbursement basis without any mark- up.

2.2 As for the year under consideration, the Assessee filed its Income-tax Return ("ITR") for A.Y 2020-21 on 21.10.2020 declaring NIL income and the receipts of INR 23,13,13,260/- was claimed as exempt. In addition, the Assessee also claimed a refund of INR

2,43,29,600/- on account of Tax Deducted at Source ("TDS") withheld on international transactions for IT Expenses incurred by the Indian AE(s) on behalf of the Assessee. The case of the Assessee was selected for scrutiny and during the assessment, the Assessee was required to show cause as to why payment received by the Assessee from its Indian AE(s) for rendering IT Services should not be considered as Fees for Technical Services and why should it not be taxable accordingly both under the Act as well as the DTAA. In response, the Assessee through its submission dated 14.03.2022 clarified that it provided the services described above to not only its Indian AE(s) but also to other Invesco Group Companies located worldwide. Therefore, expenses of the Assessee relating to provision of IT Services is allocated to its AE(s) and the same is recovered from them without charging mark-up. Hence, in the absence of any element of profit in receipts from its Indian AE(s) it is a clear cut case of cost-to-cost reimbursement giving rise to no income on which tax can be charged. In addition, it was also submitted that the IT Services are merely support based services which do not make available technical knowledge, skill, know-how etc. In this regard, it was explained that by virtue of the Master Inter-Company Services Agreement(s) ("MSA") dated 20.05.2019 signed with the Indian AE [Invesco (India) Private Limited], the Assessee was to provide a myriad of IT related Support services to its AE due to a continuing need for assistance in such areas. It shall be pertinent to note that the arrangement as per the MSA was to continue for an indefinite period and for the services provided, the Assessee was compensated

via a Service fee being the cost-to-cost reimbursement. It may be noted that by virtue of the MSA the Assessee has been providing its services since 2018 and continues to provide the same till date.

As for further reference, the preamble and compensation clause and Annex II to the MSA are reproduced below:

"This Agreement is made between

Invesco (India) Private Limited (formerly known as Hyderabad IT Support Services Private Limited), (hereinafter referred to as the "Recipient"), a company organised and existing under the laws of India and having its registered address at 15th Floor, Block 6. North Tower, DivyuSree Orion Raidurgam Village. Serilingampally Mandal, Ranga Reddy District. Hyderabad 500 032. Telangana, India;

AND

Invesco Holding Company (US) Inc. (hereinafter referred to as the "Provider"), a company organized and existing under the laws of United States of America, and having its registered office at Suite 1800, Two Peachtree Pointe, 1555 Peachtree Street, Atlanta, Georgia 30309, United States of America:

Together the "Parties"

WHEREAS

(A) The Provider and us affiliated companies constitute an international group of enterprises (the "Group") and the Recipient forms part of this Group

(B) The Recipient has a continuing need for assistance in the areas as described in Annex I to this Agreement.

(C) *The service departments of the Provider are staffed with highly experienced personnel and have therefore been selected to provide and co-ordinate a variety of useful and beneficial services to other companies of the Group (the "Services"), by drawing on its own resources as well as on those available from other companies in the Group or from third parties.*

(D) The remuneration for the Services has been calculated with the objective of determining an arm's length price for the Services provided and is determined using the methodology set forth herein.

(E) The Provider is willing to render to the Recipient and the Recipient desires to use the Services."

"4. COMPENSATION

4.1 In consideration for the provision of the Services, the Recipient agrees to pay remuneration calculated according to the methodology set forth below the "Service Fee").

4.2 In the event that the Provider elects to further subcontract the supply of certain of the Services to a third party, the

Provider shall recharge the external supplier's fee at cost (without a markup).

4.3 The Parties acknowledge that the methodology described in Annex II to this Agreement shall reflect the expected benefit derived by tack Party considering all circumstances and developments, which are reasonably foreseeable at the time the Parties enter into the service Agreement.

4.4 The Parties shall regularly review if the benefit actually received is consistent with the anticipated benefit. In case of significant deviations, the Parties shall adjust the methodology described herein to ensure that the cost share of each Party properly reflects the benefit attributed to the Services."

“Annex II " Information Technology (IT) support services

For the avoidance of doubt, please note that each Appendix contains a non- exhaustive description of the types of services to be utilised for the benefit of the Recipient

The Service Fee shall be determined and allocated to the Parties based on the allocation keys as detailed in the attached appendices.

The Provider shall charge the recipient in a currency agreed between the parties.

All sums not paid at the due date of payment shall be subject to interest at a rate of the currency LIBOR plus 1%"

2.3 It was specifically pleaded by Assessee, that in the process of provision of IT services, none of its personnel visited India in connection with the rendition of such services. Thus, in the absence of any transfer of technical know-how to its AE(s), the 'make available' clause under Article 12(4)(b) of the India-USA DTAA is not satisfied and hence the case of the Assessee cannot be covered under "Fees for Included Services or FTS as contemplated under the India-USA DTAA.

2.4 However, the AO was not satisfied and framed a Draft Assessment Order u/s 143(3) of the Act vide order dated 21.03.2022. The submission of the Assessee on the amounts reimbursed to it being on a cost-to-cost basis, was rejected by the AO with following observations :

> *"5. The submissions of the assessee have been considered, however, not found to be satisfactory. As mentioned above, the assessee renders Information Technology (IT), Application Services, IT infrastructure services and IT Security to its Associated Enterprises (AEs) services which are clearly covered under the purview of fee for technical services both as per the provisions of the Act and the India US DTAA. The assessee also provides training to*

the personnel of the Invesco Group as mentioned by the assessee in its submissions. The various IT services provided by the assessee would also include technical guidance and support including advice for the maintenance of IT infrastructure, IT security and IT application services and without such technical guidance and support the above mentioned IT services cannot be rendered"

2.5 In regard to the nature of services, the AO observed that same are covered within the ambit of of FTS and reliance was placed on Authority for Advance Ruling ("AAR") ruling of M/s Shell India Markets Pvt. Ltd. (AAR No. 883 of 2009). As a result, the Assessee preferred objections before the Hon'ble Dispute Resolution Panel ("DRP") vide objections dated 18.04.2022. In furtherance of the same, the Assessee made detailed submissions with reliance on case laws to evidence the position that instances of cost-to-cost reimbursement do not give rise to any income in the hands of the Assessee. Furthermore, it was again submitted that the IT Services provided by the Assessee does not satisfy the make available condition under Article 12(4)(b) of the India-USA DTAA. Reliance was also placed on case laws discussing the interpretation of the term 'make available'.

2.6 In this regard, the Assessee explained its modus operandi. It was submitted that for provision of IT Services, a service request/ incident ticket is raised by a user of the Invesco Group pursuant to which the same is allotted to the relevant support service team of the Assessee who in-turn look into the grievance. The role of the employees of the AE(s) in the whole process is only to raise the

service request and the rest of it is taken care of by the Assessee and hence no skill, technology, know-how is made available by the Assessee to its Indian AE(s). In view of the necessary condition of make available not being satisfied, the reimbursements could not partake the character of FTS/FIS. In addition, the Assessee distinguished its case from the case laws relied upon by the AO in its Draft Assessment Order.

2.7 The DRP, however, upon considering the submissions of the Assessee, vide order dated 15.12.2022, rejected the same. In this regard, the DRP was of the opinion that the case of the Assessee clearly falls within the ambit of FTS under the Act and the India-USA DTAA.

2.8 Ld. Counsel Sh. Deepak Chopra, submitted that the DRP erred insofar as it observed that the Assessee provides training to personnel of its global AE(s) and the services provided by it includes technical guidance, support including advice for the maintenance of various services and that without such technical guidance and support, such IT services cannot be rendered. Thus the sole issue that arises for consideration in the present case is whether the IT Management and other support services provided by the Asssessee could partake the character of a technical service in terms of Article 12(4)(b) of India -USA DTAA.

3. In this regard the relevant extract of Article 12(4)(b) is reproduced below for ease of reference –

"ARTICLE 12 ROYALTIES AND FEES FOR INCLUDED SERVICES

1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2 However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State: but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed:

.....

4. For purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

(a)

(b) make available technical knowledge, experience, skill, know- how, or processes, or consist of the development and transfer of a technical plan or technical design"

3.1 In view of the aforesaid clause, an amount is chargeable to tax under Article 12(4)(b) of the India-USA DTAA where same is in lieu of any technical or consultancy services provided such services 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 import of term "make available" has been explained in the "Memorandum of Understanding relating to

Article 12" which forms part of the Protocol to the India- USA DTAA. In terms of the said understanding technical and consultancy services are considered included services under paragraph 4(b) 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. It further provides that technology will be considered "made available" when the person acquiring the service is **enabled to apply the technology**. It further clarifies that 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.

3.2 Ld. Counsel has submitted that the services rendered by Assessee are routine IT management services and do not make available any technical knowledge or skills to its Indian AE(s). In this context we find that the services provided by assessee are routine and most importantly are recurring.

3.3 Now in this regard, admittedly this was a continuing contract and the services were provided year after year since 2018. We thus find substance in the contention of Ld. Counsel that in case technical knowledge was made available to the AEs then such AEs would not have required such services year after year. In our considered opinion, if the assessee had enabled the service recipient to apply the technology on its own, then why would the service

recipient require such service year after year every year. The facts on record show that the recipient of the services is not enabled to provide the same service without recourse to the service provider. i.e, the assessee.

3.4 As for this proposition we place reliance on the decision of co-ordinate bench in the case of **Bio Rad Laboratories Inc. v. ACIT, International Taxation - [2023] 149 taxmann.com 342 (Delhi - Trib.)** where the bench having considered the fact that agreement was continuing over the years observed as under;

> *"22. In our humble opinion, mere incidental advantage to the recipient of services is not enough. The real test is the transfer of technology and on the given facts of the case, there is no transfer of technology and what has been appreciated by the Assessing Officer/ld. CIT(A) is the incidental benefit to the assessee which has been considered to be of enduring advantage.*
>
> *23. In our understanding, in order to invoke make available clauses, technical knowledge and skill must remain with the person receiving the services even after the particular contract comes to an end and 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."*

3.5 The aforesaid observation further stands affirmed by the Hon'ble Jurisdictional High Court in Commissioner of Income-

tax (International Taxation)-1 v. Bio Rad Laboratories (Singapore) Pte. Ltd. - [2023] 155 taxmann.com 646 (Delhi) wherein it has been held as under-

> *"14. According to the Tribunal, the agreement between the respondent/assessee and its Indian affiliate had been effective from 1-1-2010, and if, as contended by the appellant/revenue, technical knowledge, experience, skill, and other processes had been made available to the Indian affiliate, the agreement would not have run its course for such a long period.*
>
> *14.1 Notably, this aspect is adverted to in paragraphs 17 to 23 of the impugned order. For convenience, the relevant paragraphs are extracted hereafter:*
>
> *.....*
>
> *15. We tend to agree with the analysis and conclusion arrived at by the Tribunal."*

3.6 Thus we are of considered view the condition of make available was not satisfied for services when provided by assessee did not enabled the AEs to apply the technology independently, on conclusion of the yearly contract.

4. As with regard to the observations of tax authorities below treating the services rendered by Assessee as FIS on the basis that the Assessee was providing training to the personnel of Invesco Group and thus the 'make available condition stands satisfied in the present case the Ld. Counsel submitted that the Assessee only

supports and administers IT training and same does not lead to transmission of specialized knowledge or skill. In this regard reliance is placed on the decision of the Hon'ble jurisdictional High Court in the case of **SFDC Ireland Limited v. Commissioner of Income Tax & Another [Neutral Citation 2024: DHC: 1910-DB/** wherein it has been held as under-

> *"42. Insofar as the products for SFDC India's internal use were concerned, they stood restricted to those which would enable SFDC India to demonstrate the functionality of SFDC products in trade shows and exhibitions, to train its customers and employees on the use of those products and products to administer and manage customer accounts. None of these aspects would appear to be imbued with a technical hue. 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. More importantly, the technical assistance and training which the petitioner proposed to provide was confined to marketing. distribution, support and sale of SFDC products. The assistance and training which Section 4.3 of the Reseller Agreement speaks of was concerned with fields wholly unrelated to providing technical service.*
>
> *43. Similarly Exhibit B speaks of the products being concerned with assisting the Reseller in the performance of its sales and marketing obligations. All of the above was thus aimed at merely equipping and educating the representatives of SFDC India to be in a position to comprehensively brief potential customers. The training and assistance was thus primarily aimed at the sale of*

SFDC products and customer related issues. This does not appear to comprise a transmission of specialised knowledge or skill. This more so when we bear in mind the indubitable fact that the phrase "technical service" is to be read in conjunction with "managerial" and "consultation" and it being the settled position in law that the principle of noscitur a sociis is to apply.

4.1 Ld. Counsel has submitted that the above observations of the Hon'ble High Court have been rendered in the context of Section 9(1)(vii) of the Act read with Article 12 of the India-Ireland DTAA wherein the condition of make available is not contained therein. Be that as it may, the Hon'ble High Court has categorically held that provision of training does not educate a person with respect to the functionality and attributes of the product or the service and could not be classified as a technical service.

5. Ld. Counsel also distinguished the reliance by AO on the AAR ruling in the case of Shell India Markets Private Limited by submitting that same stands overturned in view of the decision of Hon'ble Bombay High Court in the case of Shell India Markets Private Limited v. The Union of India & Others [Neutral Citation-2024: BHC-AS:10000-DB). In the said case while overturning the ruling of the AAR, the Hon'ble Bombay High Court has held as under-

"18. ....

A perusal of the list of services relate to managerial services not involving anything of a technical nature. The

AAR has discussed the services appearing in the CCA and has concluded that these activities in a retail business are at the core of retail marketing and hence advice tendered in taking a decision of commercial nature is a consultancy service. The AAR has further considered the definition of the word 'Consultancy' as defined in the Oxford English dictionary and has observed that a consultant is a person who gives professional advice or services in a specialized field. However, the AAR failed to appreciate that the word 'Consultancy' appearing in the Article is to be interpreted in the context of consultancy which makes available technical knowledge, etc. and not of managerial nature. The reading of the Article clearly indicates that the consultancy service must be which makes available technical knowledge, etc. Sub-para (c) to Article 13(4) restricts such services to those which make available technical knowledge or consist of development and transfer of a technical plan or technical design. Thus, a harmonious reading of the provision of Article 13 in its entirety, clearly establishes the intent of the DTAA in making income chargeable to tax only if the services availed pertain to technical services or consultancy services. Technical services in this context mean services requiring expertise in a technology. By Consultancy Services, in this context, would mean advisory services. The categories of technical and consultancy services are to some extent, overlapping. Under paragraph 4. technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(3), If they are uncillary and subsidiary to the application or enjoyment of a right, property or information for which a payment described in paragraph (3)(4) of Article 13 received: (2) are ancillary and subsidiary to the enjoyment of the property for Chich a payment described in

paragraph (3)(b) of Article 13 is received on (3) as described in paragraph above they make available technical knowledge, experience, skill know how the preces of consist of the development and transfer of a technical plan of technical design. Thus, nature paragraph 4(c), consultancy services which are not of a technical nature cannot be included services. Thus, the services availed by Petitioner cannot be said to the technical services and Article 13 is wholly inapplicable in the facts and circumstances of the present case.

26. Thus, we have no hesitation in holding that the impugned order dated 17th January 2012 of AAR suffers from legal infirmity and is quashed and set aside.

5.1 Ld. DR has however relied the orders of the authorities below.

6. In this context we find that in regard to IT administration services the assessee was providing services where the IT training and facilities training, were of desktop application tools such as Microsoft Word, excel and power point etc to staff of the group.

7. Apart from that there is nothing to show in the assessment order that the AO had made any enquiry on his own or relied any provisions of the Master Inter-Company Services Agreement (in short "MSA") to show that the training as imparted was of such nature that it "made available", the technology to the associate enterprises so that on conclusion of the training the employees of AE's will be unable to use technology on their own. Rather we

observed that very common softwares used in offices are mentioned for which the training was provided. Then Assessing Officer in para-5 of the assessment order has merely relied the assessee's own submissions to conclude that as the assessee is training personnel of the group. The provisions of make available would become applicable. Thus we are inclined to sustain the contention of the Ld. Counsel.

8. Ld. Counsel has also stressed that otherwise too, the fee received by the Assessee is in the nature of reimbursement as it is simply allocation of costs without any mark-up and thus same not be treated as income of the Assessee. In this regard reliance is placed on the decision of the Hon'ble High Court of Delhi in the case of ***Planetcast International Pte. Ltd. v. ACIT-(2023) 152 taxmann.com 422 (Delhi Trib.)*** wherein it has been held as under:-

> *"59. We have considered rival submissions and perused the materials on record. From the assessment order, it is discernible that the receipts are in the nature of cost-to-cost reimbursement of payments made to Singapore government. Hence, the receipts did not have any profit element embedded therein. In fact, the Assessing Officer has not disputed the aforesaid factual position. In case of DIT (International Taxation) v. A.P. Moller Maersk AS [2017] 78 taxmann.com 287/246 Taxman 309/392 ITR 186/[2017] 5 SCC 651. the Hon'ble Supreme Court has observed that once the character of the payment is found to be in the nature of reimbursement of expenses without*

having any profit element embedded therein, it cannot be held to be chargeable to tax.

9. It comes up that the AO has not made any enquiry to rebut the claim of the assessee that the cost incurred by the assessee company for providing IT support services is allocated to its AE's without any element of profit. In this context as we consider the copy of a MSA dated 20.05.2019 as made available on pages 131 to 149 of the paper book alongwith the copies of debit note made available on pages-150 to 153 of the paper book. We find that it was agreed that remuneration for the services has been calculated with the objective of determining an arms length price for the services provided by using methodology as set forth under 'service fee clause". The annexure-1 provided that service fee shall be determined and allocated to the parties based on allocation keys for which in the appendix, annexure-2 provided as under :-

"Annex II to the Master Intercompany Service Agreement made on 20 MAY, 2019 between Invesco (India) Private Limited ("the Recipient") and Invesco Holding Company (US) Inc. ("the Provider")

Services Provided

Commencing on 01 April 2018, the Provider will provide IT support services to the Recipient in respect of IT Application Service Functions, IT Infrastructure Service Functions and IT Security & Administration Service Functions. Details of the services are

included in the table below. For the avoidance of doubt, the table below provides a non-exhaustive description of the types of services to be provided for the benefit of the Recipient. Not all services may be provided to the recipient and charges are only made for the actual services provided.

Allocation key

As these costs are not directly attributable to a particular beneficiary, they are allocated out according to each cost center's allocation methodology. The methodologies chosen, for example, could be based on full time equivalents by location, number of users, actual costs, number of desktops, historical time, management estimate, user traffic, headcount or a blend of several. Each cost center determines the most applicable and logical allocation methodology based on the functions of the employees in the cost center or the function of the cost center itself.

The rationale for this is that the recipient is only being recharged in proportion to the usage and benefits of the services provided."

10. In the light of aforesaid were inclined to hold that the tax authorities below have fallen in error in not appreciating that the reimbursement was on cost to cost basis. Accordingly we sustain this argument of the Ld. Counsel also.

11. In the light of aforesaid the grounds raised are sustained and the appeals of the assessee are allowed.

Order pronounced in the open court on 23.07.2024.

Sd/-	Sd/-
(G.S. PANNU)	**(ANUBHAV SHARMA)**
VICE PRESIDENT	**JUDICIAL MEMBER**

NEHA
Date:-23.07.2024
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI