

**Income Tax Appellate Tribunal  
Delhi Bench "I": New Delhi  
Before Shri M. BALAGANESH, Accountant Member  
and  
Shri Anubhav Sharma, Judicial Member**

ITA No. 835/Del/2016  
(Assessment Year: 2011-12)

M/s. STEAG Energy Services (I) Pvt. Ltd, 903, Bhikaji Cama Bhawan, New Delhi (Appellant)	Vs.	ACIT, Circle-24(2), New Delhi (Respondent)
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**PAN: AAFCS1399L**

Assessee by :	Shri Ved Jain, CA
Revenue by:	Shri Rajesh Kumar, CIT DR

Date of Hearing	05/07/2023
Date of pronouncement	15/09/2023

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.835/Del/2016 for AY 2011-12, arises out of the order of the AO, [hereinafter referred to as 'ld. AO', in short] dated 31.12.2015 passed u/s 143(3) read with section 144C of the Income Tax Act, 1961.
2. At the outset, we find that this Tribunal had already disposed of this appeal vide its order dated 26.04.2019 giving partial relief to the assessee wherein, ground No. 14 was inadvertently omitted to be adjudicated. The assessee filed a miscellaneous application before this Tribunal and the appeal was recalled only for the limited purpose of adjudication of ground No. 14.
3. Ground No. 14 to be adjudicated now is reproduced below:-

*"14. On the facts and circumstances of the case, the Ld. AO has erred on both facts and in law, in not following the direction of the DRP that the benefit of arm's length range of +/- 5% be given in view of the proviso to Section 92C(2) of the Act".*

4. We have heard the rival submissions and perused the materials available on record. We find that the Id TPO had proposed an adjustment of Rs. 2,81,01,754/- as difference in Arm's Length Price in respect of payment for consultancy and professional fees and other services by the assessee company to its AEs. This adjustment figure of Rs. 2,81,01,754/- was adopted by the Id AO in the draft assessment order dated 16.03.2015, against which the assessee preferred objections before the Id DRP. The Id DRP vide its directions dated 29.10.2015 directed the AO to give the benefit of tolerance band +/- 5% to the adjustment made. The Id TPO in pursuance to the direction of the Id DRP submitted a report to the AO proposing the adjustment of Rs. 2,09,91,628/- which was adopted by the Id AO in the final assessment order dated 29.10.2015. Against the final assessment order, the assessee preferred appeal before this Tribunal and this Tribunal vide its order dated 26.04.2019 granted partial relief to the assessee. The Id AO passed an appeal effect order, wherein, the addition made by the Id AO was reduced by the amount of Rs. 1,57,63,955/- as against the addition of Rs. 2,09,91,628/-. Hence, the ultimate addition pursuant to the Tribunal order is only Rs. 52,27,673/- in respect of ALP adjustment. Now, we find that the value of international transaction of Rs. 22,18,04,073/- which is mentioned at para 19.2 of the order of TPO u/s 92CA(3) of the Act dated 16.01.2015. 5% of the price charged in international transaction thereon works out to Rs. 1,10,90,204/-. The ultimate addition towards ALP adjustment that is sustained pursuant to the direction of the Tribunal order is only Rs. 52,27,673/-. Hence, this ALP adjustment falls within the tolerance band of +/- of 5% as per second proviso to

section 92C(2) of the Act. Hence, there is no need of making any TP adjustment at all in the peculiar facts and circumstances of the instant case. Accordingly, ground No. 14 of the assessee is allowed.

5. In the result, appeal of the assessee is allowed in respect to Ground No. 14. This order is to be read together with the order of this Tribunal dated 26.04.2019 and MA order dated 06.09.2022.

Order pronounced in the open court on 15/09/2023.

-Sd/-  
**(Anubhav Sharma)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 15/09/2023  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi