

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.6946/Del./2019
(ASSESSMENT YEAR : 2015-16)**

Steag Energy Services GmbH, vs. DCIT,
A-29, Sector 16, International Taxation Circle,
Noida – 201 301 (UP). Noida.

(PAN : AACCE7642P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajan Vora, CA
REVENUE BY : Shri Sanjay Kumar, Senior DR

Date of Hearing : 25.05.2022
Date of Order : 27.05.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal is by the assessee against the order of the Assessing Officer dated 25.06.2019 passed pursuant to the directions of the Dispute Resolution Panel (DRP) for the assessment year 2015-16.

2. The assessee has raised the following grounds of appeals :-

“On the facts and in the circumstances of the case and in law, the learned Deputy Commissioner of Income Tax, International Tax, Circle – Noida (‘Ld AO’) has erred in passing the order dated 25.06.2019 under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 (‘the Act’) after incorporating the directions disused by the Dispute Resolution Panel, New Delhi (‘DRP’), wherein it has been held that the income earned by the Appellant from sale/supply of software to its wholly owned subsidiary in India, M/s.

Steag Energy Services (India) Pvt. Ltd. ('SESI') is taxable as royalty income, to be taxed at the rate of 10% on gross basis as per Article 12 of the India-Germany DTAA."

3. We have heard both the parties and perused the record. Ld. counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by **Hon'ble Delhi High Court decision in assessee's own case vide order dated 17.07.2018 for AYs 2009-10 to 2014-15** as under :-

"6. So far as the first two issues i.e. the question with respect to TDS and the payment of royalty (on software) goes, this Court notices at the outset that the findings of the Settlement Commission fully accord with the law declared by this Court in ANZ Grindlays Bank vs. DCIT; 382 ITR 156 (Del) and with DIT vs. Infrasoftware Ltd. 220 Taxman 273 as far as the second issue urged with respect to royalty on software is concerned."

4. He further submitted that this aspect has also been accepted by the Assessing Officer in the assessment order wherein para 4.2 the AO has observed as under :-

Para 4.2

"4.2 The assessee claimed that the case was squarely covered by the Delhi High Court judgment in assessee's own case wherein Hon'ble Court has relied upon the case of DIT vs. Infrasoftware Ltd. 220 Taxman 273. It has been gathered that the department has not accepted the order and has challenged it in the Supreme Court. It has to be borne in mind that the panel is an extension of the assessment process and the AO is now bound by the directions of DRP. Accordingly, the matter needs to be kept alive in view of its pendency before the Apex Court. The panel accordingly upholds addition by the AO in this matter."

5. Further, ld. counsel submitted that now this issue has been conclusively settled by Hon'ble Supreme Court in the case of

Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT in Civil Appeal Nos.8733-8734 of 2018.

6. Ld. DR for the Revenue, on the other hand, would not rebut the submission of the ld. counsel of the assessee.

7. Hence, in the background of above decision and precedent, we set aside the order of Revenue authorities and hold that the issue is to be decided in favour of the assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 27th day of May, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 27th day of May, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
