IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH, NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 1370/DEL/2016
[A.Y 2011-12]

M/s B.G. India Energy Solutions P Ltd 7h Floor, Wprld Trade Tower Barakhamba Lane, Cannaught Place New Delhi	Vs.	The Dy. C.I.T Circle – 1(1) Gurgaon

PAN : AABCVB 9739 J

[Appellant] [Respondent]

Date of Hearing	**:**	**08.09.2020**
Date of Pronouncement	**:**	**14.09.2020**

Assessee by	:	Shri Vishal Kalra, Adv
Revenue by	:	Shri Surendra Pal, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged the correctness of the order dated 28.01.2016 framed u/s 143(3) r.w.s 144C of the Income tax Act, 1961 [hereinafter referred to as 'the Act' for short].

2. The sum and substance of the grievance of the assessee is that the AO/TPO/DRP erred in making an upward adjustment of Rs. 1,79,11,717/- on account of payment for support services.

3. Representatives of both the sides were heard at length, case records carefully perused and with the assistance of the ld. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

4. Briefly stated, the facts of the case are that the appellant-company is a wholly owned subsidiary of BG Asia Pacific Holdings Pvt Limited. It commenced midstream gas marketing operations in India after obtaining the approval of the Foreign Investment Promotion Board [FIPB] of the Government of India to undertake marketing and distribution of natural gas as well as LNG.

5. As per Form 3CEB, the appellant has undertaken the following international transactions:

Nature of Transaction	Method	Value [Rs.]
Purchase of LNG	TNMM	3,29,29,42,698/-
Receipt of support services	TNMM	1,79,11,717/-
Reimbursement of expenses	NA	1,32,47,223/-

6. The quarrel before us relates to the receipt of support services valued at Rs. 1,79,11,717/- for which the appellant has taken TNM Method as the Most Appropriate Method. Facts on record show that the appellant, BG India Energy Solutions P. Ltd [BGEPIL], sought assistance of its group entity in India, for managing day-to-day business operations. The contention of the ld. counsel for the assessee is that BGEPIL is a company with expertise related to exploration and production activities in the oil and gas sector. BGEPIL possesses a pool of highly knowledgeable, technically trained and experienced individuals having extensive knowledge of the exploration and production sector. This pool of trained and experienced personnel has been made available by BGEPIL to the Appellant.

7. During the course of TP assessment proceedings, show cause notice was issued to the assessee which reads as under:

1. Please furnish all the agreements entered in to by the taxpayer company, related to the Intra Group Services obtained by the taxpayer company from the AEs during the year.

2. Please identify each of the services actually received by the taxpayer company.

3. Please specify the amount of payment made for each of such services.

4. Please submit the contemporaneous documentary evidence to show that these services have actually been received by the taxpayer company.

5. Please justify the need for the receipt of such services for which payment has been made.

6. Please state with documentary evidence *as to when* and how these services were requisitioned from the AEs.

7. Please state as to how the rate or payment for IGS has been determined at the time of entering in to the agreement? Please also furnish the basis thereof.

8. Please state as to whether any cost benefit analysis was done while entering into the agreement and while requisitioning the services for payment of IGS?

a. If so the details of such cost benefit analysis should be furnished. The cost benefit analysis should include the expected benefit from the IGS vis a vis the payment made for the same.

b. Please specifically state as to whether any benchmarking analysis was done at the time of entering into the agreement so as to compare the payment of IGS to the AE vis a vis an independent party under similar circumstances. If so, the details thereof.

9. Please show with evidence as to what tangible and direct benefit has been derived by the taxpayer company from the use of such IGS.

10. Whether the services availed from AEs, have also been performed by the taxpayer company itself or also availed from independent parties? If yes,

a. The details of such expenditure for each of the services should be furnished.

b. Please state as to why a separate payment has been made for such services to the AE.

11. Please furnish details and documentary evidence of cost incurred by the AE for rendering each type of services purportedly received by the taxpayer company and the mark up applied', if any by the AE. Please also state as to whether the cost incurred by the AE is audited.

12. Whether AE is rendering such services to any other AEs/independent parties also. If yes the details thereof including the rates/amount charged from such AEs along with mark up if any.

13. If the AE has rendered services to more than one entity including the taxpayer company, then the basis of allocation amongst various entities may be furnished. Please also furnish the basis of choosing a particular allocation key.

14. If the above information is not furnished, complete in all respects, along with contemporaneous documentary evidences, the arm's length payment for these intra group services would be treated as Nil by applying CUP method.

8. Vide reply dated 30.10.2014, the assessee explained the background of Intra-group services paid by it. In support, all the agreements entered into by the assessee company related to Intra Group Services obtained by it from the AEs during the year were filed. The assessee also identified services actually received by it.

9. Reliance was placed on several judicial decisions. The reply of the assessee was duly considered by the TPO but it did not find any favour with him who was of the opinion that the TPO is empowered to apply appropriate method for each class of transactions. As these services are a separate class of transaction, the same is to be analysed separately.

10. As far as the issue of services that the appellant has received from respective AEs is concerned, the TPO analysed the nature of services as under:

<table>
<tr><th>Nature of Services</th><th colspan="3">Comments</th></tr>
<tr><td rowspan="3">Financial & other administration support services</td><td colspan="3">The taxpayer has incurred the following expenses:
Legal and professional charges Rs. 19581901 which inter alia includes Auditors remuneration of Rs. 910550

The taxpayer has submitted following documents vide its submission dated 28.07.2014 as proof of receipt of the aforesaid services.</td></tr>
<tr><td>S.N</td><td>Particulars</td><td>Reference</td></tr>
<tr><td>t</td><td>Financial Statements</td><td>Appendix 1</td></tr>
</table>

2	Tax Audit report	Appendix 2
3	Income Tax Return	Appendix 3
4	Agreements entered into during the year-for the aforesaid services	Annexure 1
5	Time Sheets prepared in relation to the execution of the aforesaid services	Appendix 4
6	Confirmation memorandums in relation to purchase of LNG	Appendix 5
7	Minutes of board meetings held during the year	Appendix 6
8	Minutes of general meetings held during the year	Appendix?
9	VAT returns pertaining FY 2010-11	Appendix 8
1	Service tax returns pertaining FY 2010-11	To be provided at a later stage
1	TDS returns pertaining FY 2010-11	
1	Evidence of any other statutory compliances filed pertaining FY 2010-11	

	The taxpayer has not been able to establish as to how the AE's are in a better position to advice it on tax, legal and financial matters in India. The taxpayer is operating in India. It is not at all likely that they have developed some knowledge on these issues which the taxpayer lacks. Hence, there is no plausible reason for the taxpayer to make this payment. The taxpayer has not been able to substantiate as to how this service were useful to it. Moreover These services seem to be of a very generic nature with there being nothing so unique in these services that the taxpayer itself may not be able to achieve. Every organization has its own performance measurement, quality control and troubleshooting mechanisms in place. Hence, it is not understandable as to why the taxpayer relying on its AEs for accomplishment of such routine tasks. Again, no evidence was put forth to show that the AE had indeed helped the taxpayer in implementation of performance appraisals, performance evaluation, HR policies. The taxpayer has not been able to show as to what were that actual services that the corporate management group provided it and how it has helped the in strategic planning and development. The taxpayer has entered into an agreement without carrying out any cost benefit analysis and has simply made a payment because it was asked to do so. This does not constitute arm's length behaviour. This is an international stand as obvious from the landmark judgment of Hon'ble US Supreme Court in the case of Commissioner vs TOWER 327 US 280, 291 (1946], it was observed that the "Simple expedient of drawing up papers" is not controlling for tax purposes when the objective realities are to the contrary and which have no economic significance beyond tax benefits." (also Falsetti Vs. Commissioner 85 T.C. 332,347 [1985]}. Moreover as per the description given of the aforesaid services, these were more in the nature of complying with the overall group method and procedures. These expenses were basically incurred by the taxpayer to comply with the format or rules formulated for the group
IT charge	The taxpayer has not been able to substantiate as to how this service were useful to it. Moreover, the services seem to be of a very generic nature with there being nothing so unique in these services that the taxpayer itself may not have been able to perform. Every organization has its own performance measurement, quality control and troubleshooting mechanisms in place. Moreover as per the description given of the aforesaid services, these were more in the nature of complying with the overall group method and procedures. These

	incurred by the taxpayer to comply with the format or rules formulated for the group members. They were in the nature of share holder services. The taxpayer has entered into an agreement without carrying out any cost benefit analysis and has simply made a payment because it was asked to do so. This does not constitute arm's length behaviour. Moreover the taxpayer has been unable to substantiate actual receipt of these services.
Commercial and operational services	The taxpayer has claimed to have received following services ■ Marketing services * Negotiation of contracts ■ Determination of prices * Coordination of logistics of the products

11. After analysing these services, the TPO further observed that there is no evidence that the services have actually been provided. The assessee failed miserably to demonstrate the need for these services and also receipt of the same. After referring to OECD guidelines and several judicial decisions, the TPO finally concluded that the assessee had made payment of Rs. 179,11,717/- to its AE for intra group services pertaining to management support services which are not found to exist fully and accordingly, made an upward adjustment of Rs. 1,79,11,717/-.

12. Objections were raised before the DRP but were of no avail.

13. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that the assessee availed certain support services from BGEPIL which included assistance in procuring and selling LNG, obtaining information concerning industrial and commercial matters, services related to promotion, marketing and sale of LNG, and incidental support services like financial reporting, assistance on international and local taxation issues, insurance related assistance, budgeting services, legal services, etc where allocation of actual cost incurred by BGEPIL charged with a mark-up of 12 percent.

14. The ld. counsel for the assessee vehemently stated that the assessee has a very small set-up and has no employees on its payroll and was fully dependent on the employees of BGEPIL for support services and because of such support, the assessee could record sales of Rs. 917 crores.

15. Further, the ld. counsel for the assessee pointed out that the recovery of payments from the assessee have been considered by BGEPIL as income in its books of accounts and the same was duly offered to tax in India at the tax rate applicable to foreign companies,

i.e, 40% plus surcharge and the same has been accepted by the TPO in the case of BGEPIL.

16. The ld. counsel for the assessee concluded by saying that the entire upward adjustment deserves to be deleted.

17. Per contra, the ld. DR strongly supported the findings of the TPO and read the relevant portion of the TPO's order.

18. We have given thoughtful consideration to the orders of the authorities below. A perusal of the profit and loss account of the appellant company, which is placed at page 105 of the paper book shows that the assessee has not incurred a single rupee on employee cost. Even in the notes of accounts, at clause 10, it is mentioned that no provision for retirement benefits has been made in these financial statements as there were no employees on the payroll of the company during the year. These facts clearly show that the assessee was totally dependent on the AE for running its business. But for the support and services provided by the AE, the assessee could not have booked turnover of Rs. 917 crores.

19. We have also carefully perused the time sheets of the employees of BGEPIL which are placed at pages 139 to 141 of the paper book and which are also exhibited hereinbelow:

SKf for Prec	j2XBillini2$	,CC	C.G/IO fAHpcll	Sum of Act Gross Hours	Sum of Gross tt
BGTO	BGGraduateTraine e	48	2702282 2702323 2702322		
BREG	BO Regulations	27	21924 21925 5700039 DP-BD01-	80 80	50 50
BHSSE	80 HSSE	25	21924 21925 21628 1505742 2702282 5709041	480 240 1,200	25 13 63 -
BXAG MO	BG Executive-BG India	23	1504SE4 21924 21925 21683 1505742 2702262 2702323 2702322 5700039 1506422	105 24 1,924 12 12	5 1 55 1 - 1
BflNPl	Branch off-finance (National	17A	1504864 21924 21925 21588 2702282 2702323 2702322 5700039 OP-GA01- OP-GA01-	92 52 16	- 58 33 10
BFINP 2	Branch off-Finance (Other	17E	1504864 21924 21925 21658 2702282 2702323 2702322 5700039 OP-GA01- OP-GA01-	92 52 16	5B 33 10
KG DV/N 1	Branch off-JCG-0WN-2009/1	83	1501864 21925 21688 1504852 1505742 2702262 2702323 2702322 p-oiso-rx-op-GAOi-ion	1,920	100
KGDVVN2	Branch off-KG-DWN-2005/1	83	1504E64 21688 1501862 2702282 2702322 5700039 CP-GA01- OP-GA01- IS 05422-	10 77 10 - 85 7	2 16 17 18 47
G0V/N4	Branch off-KG-D-VN-2009/1	83	1504864	10	0

Appendix 4

Document No.	400202118
SKF Posted	Y

BO -Time sheet of January 2011 applicable for February 2011

				Data		
SKF for Precutback Allocation	Department	CC	CC/IO (Alloc1)	Sum of Adj gross Hours	Sum of Gross %	Project Description
BFINPO	Branch off-Finance (Expat)	21917	21924	96	5	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	1,740	91	0070-OTHER ADMIN COSTS - BGE&PIL
			2702282	-	-	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	-	-	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			5700039	72	4	0070 BGIES Cost
BLEGPO	Branch off-Legal	21920	5700036	-	-	0070 RECHARGE IO FOR PROJECT ALPHA
			1504864	-	-	0070 BO NJV General New ventures
			21924	72	3	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	1,560	94	0070-OTHER ADMIN COSTS - BGE&PIL
			1505742	-	-	0070 BO NJV NELP VIII G&A
			2702282	-	-	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	-	-	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			2702322	-	-	0070 BHARATI - MN-DWN- EXPL G&A
			5700039	48	2	0070 BGIES Cost
			P-0337-EX-OP-GA01-0001	-	-	ONGC Farm in opportunity evaluation
BPCAPO	Branch off-PCA & Regulation	21919	1504864	-	-	0070 BO NJV General New ventures
			21924	2	0	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	857	89	0070-OTHER ADMIN COSTS - BGE&PIL
			2702282	18	2	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	14	1	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			2702322	14	1	0070 BHARATI - MN-DWN- EXPL G&A
			5700039	-	-	0070 BGIES Cost
			P-0337-EX-OP-GA01-0001	2	0	ONGC Farm in opportunity evaluation
			P-0490-EX-OP-GA01-0001	11	1	0070-KG-DWN-2009/1 (NJV)
			1506422	18	2	0070 BO NJV NELP IX G&A
			F-0160-BD-OP-PD01-0001	24	3	0070-CGD Bidding Project Deccan
[illegible]BDPO	Branch off-Upstream BD	50583	1504864	-	-	0070 BO NJV General New ventures
			21924	-	-	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	-	-	0070-OTHER ADMIN COSTS - BGE&PIL
			1504862	-	-	0070 BO Regional Studies G&A
			1505742	-	-	0070 BO NJV NELP VIII G&A
			2702282	-	-	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	-	-	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			5700039	-	-	0070 BGIES Cost
			P-0337-EX-OP-GA01-0001	-	-	ONGC Farm in opportunity evaluation
			F-0135-BD-OP-MN01-0001	10	6	0070 - LNG Mundra
			1506422	150	94	0070 BO NJV NELP IX G&A
BUNVPO	Branch off-Upstream New Venture Explo	50584	1504864	75	2	0070 BO NJV General New ventures
			21925	-	-	Branch Office-MGL Asset Management
			21688	-	-	0070-OTHER ADMIN COSTS - BGE&PIL
			1504862	320	6	0070 BO Regional Studies G&A
			1505742	-	-	0070 BO NJV NELP VIII G&A
			2702282	616	12	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	12	0	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			2702322	12	0	0070 BHARATI - MN-DWN- EXPL G&A
			5700039	-	-	0070 BGIES Cost
			P-0337-EX-OP-GA01-0001	-	-	ONGC Farm in opportunity evaluation
			P-0490-EX-OP-GA01-0001	-	-	0070-KG-DWN-2009/1 (NJV)
			1506422	3,925	79	0070 BO NJV NELP IX G&A
[illegible]	BO Comm Projects & Economics Dept	21222	1504864	-	-	0070 BO NJV General New ventures
			21924	-	-	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	734	51	0070-OTHER ADMIN COSTS - BGE&PIL
			2702282	127	9	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	4	0	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			2702322	6	0	0070 BHARATI - MN-DWN- EXPL G&A
			5700039	160	11	0070 BGIES Cost
			P-0490-EX-OP-GA01-0001	-	-	0070-KG-DWN-2009/1 (NJV)
			P-0490-EX-OP-GA01-1001	33	2	0070-KG-DWN-2009/1-JV G&A - Employee costs
			1506422	375	26	0070 BO NJV NELP IX G&A
			F-0160-BD-OP-PD01-0001	-	-	0070-CGD Bidding Project Deccan
[illegible]COO	BO VP Commercials office	21229	1504864	-	-	0070 BO NJV General New ventures
			21924	-	-	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	1,600	77	0070-OTHER ADMIN COSTS - BGE&PIL
			1504862	-	-	0070 BO Regional Studies G&A
			1505742	-	-	0070 BO NJV NELP VIII G&A
			2702282	-	-	0070 BG KG-OSN-2004/1 EXPL G&A
			2702323	-	-	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			2702322	-	-	0070 BHARATI - MN-DWN- EXPL G&A
			5700039	480	23	0070 BGIES Cost
			P-0337-EX-OP-GA01-0001	-	-	ONGC Farm in opportunity evaluation
			F-0135-BD-OP-MN01-0001	-	-	0070 - LNG Mundra
			1506422	-	-	0070 BO NJV NELP IX G&A
BMPFO	BO Mkt Plan & Fundamentals	21226	21924	40	25	Branch Office-GGCL Asset Management
			21925	20	13	Branch Office-MGL Asset Management
			21688	-	-	0070-OTHER ADMIN COSTS - BGE&PIL
			1504862	-	-	0070 BO Regional Studies G&A
			2702323	-	-	0070 BHARATI -KG-DWN-98/4 EXPL G&A
			5700039	20	13	0070 BGIES Cost
			1506422	-	-	0070 BO NJV NELP IX G&A
			F-0160-BD-OP-PD01-0001	80	50	0070-CGD Bidding Project Deccan
BMSCO	BO Midstream Commercial	21946	21924	48	10	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	160	33	0070-OTHER ADMIN COSTS - BGE&PIL
			1504862	-	-	0070 BO Regional Studies G&A
			5700039	96	20	0070 BGIES Cost
			F-0135-BD-OP-MN01-0001	176	37	0070 - LNG Mundra
BGTO	BO GraduateTrainee	21948	8003263	-	-	0070-BO NJV Proj Spider Downst. (NEW IO)
			1504864	-	-	0070 BO NJV General New ventures
			21924	-	-	Branch Office-GGCL Asset Management
			21925	-	-	Branch Office-MGL Asset Management
			21688	1,032	100	0070-OTHER ADMIN COSTS - BGE&PIL
			1504862	-	-	0070 BO Regional Studies G&A
			1505742	-	-	0070 BO NJV NELP VIII G&A

Certified True Copy

Department;	No. of employees
Admin	5
Business Development - Tech	9
KG-DWN-2009-1	4
C&P	22
Commercial - Economics	2
Commercial - Upstream	9
Commercial - Midstream	3
Commercial - Mkt. Planning & Fundamentals	1
Commercial - Regulations	1
Commercial - Business Develooment	1
Commercial - VP	2
Drilling	11
Well Services	7
Executive-BG India	2
Executive-PO	2
Finance-PO	22
Finance-BO	2
Graduate Trainees	7
HR	8
HSSE-PO	8
HSSE -BO	1
IT	6
Legal PO	2
Legal BO	3
Logistics	7
PCA	6
Projects	21
Production	12
Subsurface	26
Production Optimisation	7
Shorebase	11
Production Panna	60
Production Tapti	41
Total !	331

20. On the basis of these time sheets of the employees of BGEPIL, it raised debit notes on the assessee. This further supports the fact that the appellant was fully dependent on the employees of BGEPIL for support services including assistance in procuring and selling LNG, obtaining information concerning industrial and commercial matters, etc. The receipt of services further find support from the evidences in

the form of documents showing compliance to various acts like filing of Income tax return, VAT return, preparation of financial statements, tax audit report, time sheets filled in by BGEPIL employees,

21. The TPO has grossly erred in appreciating the facts in true perspective when he held that the employees of BGEIPL sitting in UK cannot comply with tax provisions in India. The fact of the matter is that BGEPIL was rendering these services from its office situated in India and the employees were very much based in India.

22. The Tribunal in assessee's own case for A.Y 2010-11 in ITA No. 1980/DEL/2015 on identical set of facts has deleted the adjustment made on account of disallowance of payment of management services and unit charges by the assessee to its AE. The relevant findings of the Tribunal read as under:

> "13. We have carefully considered the orders of the authorities below and with the assistance of the ld. AR, we have considered the relevant documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

14. It is true that the international transactions reported by the assessee have been accepted excepted for MSU charges amounting to Rs. 1,45,06,572/-. The same has not been accepted because the TPO/DRP were of the opinion that the payments for these services are duplicative and when the assessee has already paid for support services and the payments for which have been accepted by the TPO.

15. The agreement mentioned elsewhere explains the scope of work and in Article 2, it has been mentioned as under:

"2.1 BGEPIL shall endeavour to provide the following services to BGIES (the "Services"):

(a) assist BGIES to procure LNG and natural gas from International and domestic sellers.

(b) assist BGIES to sell LNG and natural gas to various customers of BGIES.

(c) obtain information concerning industrial and commercial matters, which are of interest to BGIES especially in connection with upcoming projects in the oil, gas and energy sector.

(d) provide services towards the promotion, marketing or sale of LNG and natural gas.

(e) provide incidental support services such as, without limitation, the billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customers or vendors, and public relations services. This Includes services such as that of commission agent, as well as information technology services Including but not limited to any service in relation to designing, development or maintaining of computer software, or computerized data processing or systems networking, or any other service in relation to the operation of computer systems."

16. Article 3 provides for consideration and the same reads as under:

"3.1*In consideration of the Services provided by BGEPIL under Article 2, BGEPIL agrees to pay BGEPIL for ail costs and expenses incurred by BGEPIL related to the provision of the Services plus a mark-up of 12% on all such costs and expenses. Ail payments under this agreement shall be made in Indian Rupees and shall be subject to deduction of tax at source as applicable,*

3.2 BGEPIL shall pay service tax as may be correctly and *reasonably Invoiced and paid to the authorities by BGIES. BGIES shall provide* BGEPIL *with evidence of payment of such service tax upon request by BGEPIL"*

17. It appears that this agreement has not been properly appreciated by the lower authorities. In the light of this agreement, we are of the considered opinion that there is no payment for duplicative services and the payment of Rs. 1,45,06,572/- is distinct as MSU charges and adjustment made by the TPO is uncalled for and deserves to be deleted

18. Before closing, it would be pertinent to mention here that in the financial statement of the assessee, there is no expenditure relating to the employees cost and in the notes annexed and forming part of the financial statement at clause 10A it has been specifically mentioned that no provision for retirement benefits has been made in these accounts as there were no employees about the payroll of the company during the year. The sales of LNG amounting to Rs. 2,27,37,88,338/- could not have been achieved without the aid of support staff and the same was provided by BGEPIL. Considering the facts in totality, Ground Nos. 2 to 4 taken together are allowed."

23. Considering the facts in totality, in light of the aforesaid decision of the coordinate bench, we do not find any merit in the upward

adjustment of Rs. 1,79,11,717/- and the same is directed to be deleted.

24. In the result the appeal filed by the assessee in ITA No. 1370/DEL/2016 is allowed.

The order is pronounced in the open court on 14.09.2020.

Sd/-	**Sd/-**
[SUDHANSHU SRIVASTAVA] **JUDICIAL MEMBER**	**[N.K. BILLAIYA]** **ACCOUNTANT MEMBER**

Dated: 14th September, 2020

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	