

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4068/Del/2018
Assessment Year: 2014-15**

Honda R & D (India) Pvt. Ltd., Technical Centre, Plot No.02, Sector-03, IMT Manesar, Distt. Gurgaon	vs.	DCIT, Circle 11(1), New Delhi.
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PAN : AABCH3071N
(Appellant)

(Respondent)

Appellant by : Sh.Nageshwar Rao, Adv.
Ms. Sherry Goyal, Adv.
Respondent by: Sh. Surender Pal, CIT/ DR

Date of hearing: 08.11.2021
Date of order : 19 .01.2022

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the assessment order dated 26.03.2018 passed by the learned Deputy Commissioner of Income Tax, Circle 11(1), New Delhi in pursuance to the directions of Dispute Resolution Panel-1, New Delhi("DRP") for the assessment year 2014-15, Honda R & D (India) Pvt. Ltd. ("the assessee"), preferred this appeal.

2. Brief facts of the case are that the assessee is a wholly owned subsidiary of Honda R&D Japan and is engaged in conducting basic

market research and testing activities for Honda R&D Japan and is remunerated on cost plus mark-up basis for the same; whereas Honda R&D Japan is a fully integrated independent unit of HM Japan and serves as a central research and development organization for all Honda products. For the assessment year 2014-15, assessee filed return of income on 15.11.2014 declaring income of Rs.2,20,45,360/- declaring international transactions with AEs (Associated Enterprises). Determination of Arm's Length Price (ALP) of international transaction was referred to the Id. TPO and the Id. TPO proposed an adjustment of Rs.9,83,91,432/- as ALP, out of which the revenue from the provision of basic market research and testing was the major international transaction for that TP analysis and the subject matter of this appeal.

3. It could be seen from the record that in respect of provision for basic market research and testing, the assessee adopted TNMM as the most appropriate method by using the operating profit by operating cost as the profit level indicator. Assessee selected following nine comparables :

- (i). Cyber Media Research Ltd
- (ii). Eibit Medical Diagnostics Ltd
- (iii). Hi Tech Laboratories
- (iv). IC R A Management Consulting Services Ltd
- (v). IDMA Laboratories
- (vi). India Tourism Development Corporation Ltd
- (vii). ScitechCenter
- (viii). Spectro Analytical Labs
- (ix). Venus Diagnostics

4. In respect of Sr. No. 1 to 3 and 6 to 9, learned TPO held that they are not suitable comparables and excluded them. In this appeal, the assessee confines the contest about such exclusion only in respect of Hi Tech Laboratories and India Tourism Development Corporation Ltd. segment.

5. At the same time, Id. TPO conducted fresh search and came out with 11 comparables including two comparables, namely, ICRA Management Consulting Services Ltd. and IDMA Laboratories by including 9 others. Against this inclusion of 9 new comparables, assessee confined the challenge to two comparables only, namely, Kestone Integrated Mktg. Services Pvt. Ltd. and HSCC (India) Ltd. and for the reasons to be dealt with below, prayed to exclude them. Apart from this, the challenge in this appeal is also in respect of working capital stating that the Id. DRP gave clear directions on working capital but the Id. TPO/A.O. did not give correct effect while computing the working capital adjustment margins. Briefly, the adjudication in this appeal is confined to the includibility of Hi tech laboratories and India Tourism Development Corporation Ltd. and excludability of Axis Integrated Systems and HSCC (India) Ltd. apart from the working capital adjustment.

6. In so far as ITDC (segment) is concerned, Id. TPO agreed that the Ashok reservation and marketing services (segment) is similar to the assessee, but on the ground that no segmental details are provided and also that it fails the employees cost filter, rejected the same.

7. According to the Id. DRP, inasmuch as ITDC is a government owned company with 92.11% held by the President of India and 7.87% held by Indian Hotel Company, ITDC is not a good comparable.

8. It is submitted before us that segmental details of Ashok Reservation and marketing service Division are available and is a comparable. Apart from this, it is submitted by the Id. AR that this comparable was accepted by the Id. CIT(A) in A.Y. 2005-06 and the same was upheld by Hon'ble High Court. So also, for the assessment year 2007-08 and 2010-11, Id. DRP accepted the same.

9. There is no dispute that Ashok reservation and marketing services handles the conferences, international events, information management etc. and otherwise it is comparable to the assessee and the order of the Id. DRP shows that this company is excluded because it is primarily a Government owned company. Apart from the fact that it is a Government owned company, this Ashok reservation and marketing services was accepted to be functionally similar to the assessee by the Id. CIT(A) for the assessment year 2005-06 and by Id. DRP for the assessment year 2007-08 and 2010-11. There is no dispute on this aspect. It is, therefore, clear that this Ashok reservation and marketing services is functionally similar to the assessee and that is the reason why it was accepted by the Revenue for the assessment year 2005-06, 2007-08 and 2010-11.

10. We have gone through the orders of the Id. DRP in assessee's own case for the assessment year 2007-08 and 2010-11 passed on 20/7/2011 and 25/9/2014 and also the order dated 2/8/2016 of the Hon'ble High

Court in assessee's own case for the assessment year 2005-06 in ITA No. 616/2015. Having gone through such orders, we find it difficult to accept the observation of Id. DRP that because it is a Govt. Company, it is not a good comparable. For such years also the ITDC was a Government owned company and no change of facts and circumstances is brought to our notice. We, accordingly, hold it to be a good comparable and direct the Id. TPO/Assessing Officer to include it in the final list of comparable to bench mark the international transactions.

11. Now coming to Hi Tech Laboratories Ltd., this company is rejected on the ground that it provides analytical testing services, whereas according to the assessee the analytical testing and preparing of physical report are similar to the function of the assessee. Apart from this, Id. AR submits that this comparable was accepted by the Id. CIT(A) for the assessment year 2005-06, Id. DRP for the assessment year 2007-08 and Id. TPO himself for the assessment year 2010-11.

12. There is no dispute on the aspect that this Hi Tech Laboratories providing analytical testing services and that for the assessment years 2005-06, 2007-08 and 2010-11, this Hi Tech Laboratories was accepted by the Revenue itself to be a good comparable. Id. DRP observed that as per the annual accounts of the assessee, the turnover of the company during the year was Rs.30,92,891/- and therefore, the company with the turnover of less than one crore is not a good comparable.

13. When the company is functionally similar and the Revenue found it to be a good comparable for certain earlier years, mere low turnover for this particular year cannot be a ground to exclude the same. We,

therefore, direct the TPO/Assessing Officer to include this comparable in the final list of comparables.

14. Now, coming to the prayer of assessee to exclude Axis Integrated Systems Ltd. and HSCC (India) Ltd., according to the Assessing Officer, Axis Integrated Systems Ltd. is providing liaising services which are in the nature of support services and was accepted by the Id. DRP for the assessment year 2013-14. Id. TPO rejected the same on the ground that the assessee has not provided the liaising services and the services provided by assessee are different from the assessee and broad similarity of functions is required for comparability test.

15. It is submitted by the Id. AR that this company is not functionally similar, engaged in addressing regulatory and licensing requirements and acts as a liaison between all related Government and regulatory agencies and providing specialized consultancy services. Apart from this, it is submitted that in assessee's own case for the assessment year 2013-14, this comparable was dealt with.

16. We have gone through the paper book on this aspect. In ITA No. 7419/Del/2017 for the assessment year 2013-14, in assessee's own case, a coordinate bench of this Tribunal dealt with this issue and after perusing the documents in respect of this company it is directed that Axis Integrated System Ltd. has to be excluded along with M/s Aptico Ltd. and Killik Agencies and Marketing Ltd. No difference in the fact situation is pleaded for this year and by respectfully following the view taken by this Tribunal for the assessment year 2013-14, we direct that the Axis Integrated System Ltd. be excluded from the list of comparables.

17. Now coming to the prayer of the assessee to exclude the HSCC (India) Ltd, it was included by the Ld. TPO and such inclusion was accepted by the Ld. DRP on the ground that this comparable has been performing similar functions, namely, technical consultancy and engineering support services where the core activity is project management, procurement, supply, logistics, installation, commissioning and skill enhancement through training and retraining - and it broadly falls in the category of support services.

18. According to the assessee, the HSCC (India) Ltd is providing professional consultancy services in health care and other social sectors and entire income was shown as consultancy without the segmental details and therefore, it does not bear any comparability with the assessee. Assessee placed reliance on the decisions reported in HaldorTopsoe India vs. DCIT, in ITA No. 985/del/2016 and HaldorTopsoe India vs. ACIT in ITA No. 2089 /Del/ 2019 in support of their contention that this company was rejected to be a comparable to a company having activities similar to the assessee.

19. On the aspect of excludability of HSCC (India) Ltd, on a careful consideration of the orders of the authorities below in the light of the material available on record, we are of the considered opinion that the provision of the professional consultancy services in healthcare and other social sector has to be compared with the functions performed by the assessee, and that aspect needs proper verification as the data before us cannot convey as to how this comparable has to be excluded or included. Therefore, it will be appropriate to remand the issue relating to its comparability to the file of the Ld. TPO/learned Assessing Officer for

thorough verification and if found to have been performing different functions, the same should be excluded from the list of comparables, after hearing the assessee.

20. In respect of the working capital issue, in ITA No. 7419 /Del/ 2017, in assessee's own case under similar facts and circumstances the coordinate Bench of this Tribunal observed that from the perusal of the order of the Ld. TPO/learned Assessing Officer it was found that the computation of the working capital adjustment was not properly done and the same has to be done in accordance with the ALP margins, and accordingly directed the Ld. TPO/learned Assessing Officer to re-compute the working capital adjustment as per the ALP margins, after affording an opportunity to the assessee of being heard. Both the counsel submitted that the same course may be adopted for this year also. Recording the same, we restore this issue to the file of the Ld. TPO/learned Assessing Officer to recompute the working capital adjustment as per the ALP margins, after hearing the assessee.

21. In the result appeal of the assessee is allowed in part and for statistical purpose.

Order is pronounced in open court on this the 19th day of January, 2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/01/2022

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER