

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'I': NEW DELHI**

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

**ITA No.1005/Del/2022
(Assessment Year: 2018-19)**

Hitachi Astemo Haryana Private Ltd. vs. DCIT, Circle 22 (2),
(formerly Showa India Private Ltd.), Delhi.
Plot No.23-32, Sector 58,
Behind JCB India Ltd.,
Faridabad – 121 002 (Haryana).

(PAN : AABCE5725G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Nageshwar Rao, Advocate
Shri Akshay Uppal, Advocate
REVENUE BY : Shri Rajesh Kumar, CIT DR
Shri Manu Chaurasia, Sr. DR

Date of Hearing : 16.10.2023
Date of Order : 23.11.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Assessing Officer dated 30.03.2022 pursuant to the directions issued by the DRP for the assessment year 2018-19.

2. Grounds of appeal taken by the assessee read as under :-

“Hitachi Astemo Haryana Private Limited (formerly Showa India Private Limited) (hereinafter referred to as 'Hitachi Astemo or 'Appellant') craves leave to prefer an appeal against

the order passed by the National Faceless Assessment Centre, Delhi [hereinafter referred to as "NFAC" or "AO"] pursuant to directions issued by the Hon'ble Dispute Resolution Panel [hereinafter referred to as 'DRP'] under Section 143(3) read with Section 144C(13) and Section 1448 of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') on the following grounds

1. On the facts and circumstances of the case, the final assessment order is bad in law and void as it does not conform to binding directions of Id. DRP.

2. On facts and circumstances of the case and in law, DRP directions cannot be incorporated in the assessment order by passing a rectification order. Further, in the present case this is sought to be rectified after the due date prescribed in law for passing the final order

3. On the facts and circumstances of the case and in law, reference to Ld TPO by the Ld AO was not made within the prescribed timeline and consequently, the assessment order is invalid.

4. Without prejudice to the above, on facts and circumstances of the case and in law, the Ld. AO has erred by not following the directions of the DRP and by not providing a finding on the issue of reference made to Id TPO as time barred.

5. On facts and circumstances of the case, the DRP direction is bad in law for setting aside the matter to the TPO to pass a speaking order in violation of Section 144C(8) of the Act.

6. Without prejudice to the above, on facts and circumstances of the case and in law, the Ld. TPO has erred by not following the directions of the DRP and by not passing a speaking order on selection of comparable agreements.

7. Without prejudice to any of the other contentions, the AO has erred in incorrectly computing tax demand of INR 4,13,89,010 in the final assessment order.

8. Without prejudice to any of the other contentions, the Ld. AO/NFAC//TPO/DRP has erred in law and on facts and

circumstances of the case by rejecting the economic analysis conducted by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962, for determination of the Arm's length price using Comparable Uncontrolled Price ('CUP') method as the most appropriate method.

9. Without prejudice to any of the grounds, the Ld. AO/NFAC//TPO/DRP has erred in law and on facts by selecting comparable agreements based on inconsistent, inappropriate and unreasonable criteria.

GROUND PERTAINING TO PENALTY PROCEEDINGS

10 That on facts and in law, the Ld AO! FAC / TPO / DRP erred in holding that the Appellant has furnished inaccurate particulars of income in respect of each item of disallowance/additions and in initiating penalty proceedings under section 270A of the Act.”

3. At the outset, ld. Counsel of the assessee pressed legal grounds taken.

The legal ground is that the final assessment order is bad in law and void as it does not conform to binding directions of ld. DRP.

4. Briefly stated, in this case, the TPO passed an order under section 92CA(3) of Income-tax Act, 1961 (for short 'the Act') vide order dated 27.07.2021. In this order, the TPO suggested upward adjustment in the Arm's Length Price (ALP) of international transactions. The AO passed draft assessment order under section 144C of the Act on 18.09.2021 incorporating TPO's recommendations. The assessee filed its objections before the ld. DRP and the DRP passed an order under section 144C(5) of the Act on 23.02.2022. In the DRP order, certain directions were issued with regard to the TP adjustments made. In accordance with the provisions

of section 144C(13) of the Act, the final order of the assessment has to be passed by the AO within one month from the end of the month in which DRP's directions are received i.e. by 31.03.2022. The AO passed the order on 30.03.2022. In this order of the assessment, the DRP's directions could not be complied with as the order giving effect of the TPO was not received by the AO at the time of the passing of the order. AO in his final assessment order commented that DRP's directions to the TPO/AO has to be given effect by the TPO and the same was communicated to the TPO requesting to pass order giving effect of DRP's order dated 23.02.2022. Though the order giving effect of DRP's direction passed by the TPO is also dated 30.03.2022, the same was not received by the AO. AO could not incorporate the same in the assessment order. However, he passed the order subject to the modified order of the TPO which is yet to be passed and the necessary modification with regard to TP adjustment which would be made by passing rectification order on receipt of the TPO order in due course. Thus, in the above facts, it is emanating that the final assessment order is without incorporating of DRP's directions. As stated above, the reason is that DRP has given certain directions which were to be given effect by the TPO. The AO till passing the final assessment order has not received the order giving effect by the TPO. In this regard, stating that such an order passed by the AO is not legal in the eyes of law, ld. Counsel of the assessee has placed reliance on the following Tribunal orders and also on the Hon'ble Karnataka High Court in

the case of Pr.CIT vs. M/s. Flextronics Technologies (India) Pvt. Ltd. in ITA No.332 of 2019 order dated 9th January 2023 :-

- (i) Flextronics Technologies (India) Private Ltd. vs. ACIT : IT (TP) A No.832/Bang/2017;
- (ii) Software Paradigms Infotech (P.) Ltd. vs. ACIT (2018) 89 taxmann.com 339 (Bangalore – Trib.);
- (iii) M/s. Global One India Pvt. Ltd. vs. DCIT : ITA No.1980/Del/2014;
- (iv) M/s. Olympus Medical Systems Pvt. Ltd. vs. ACIT : ITA No.873/Del/2021;
- (v) Yokogawa India Ltd. vs. ACIT : ITA (TP) A No.1715 & 692/Bang/2016 & MP.No.136/Bang/2021; and
- (vi) July Systems & Technologies Pvt. Ltd. vs. DCIT : IT (TP) A.No.368/Bang/2016.

5. Per contra, ld. DR for the Revenue relied upon the orders of the Hon'ble jurisdictional High Court of Delhi and decision of Hon'ble Madras High Court as under :-

- (i) Anand NVH Products Pvt. Ltd. vs. National E Assessment Centre ANR dated 06.08.2021 – WP (C) 7936/Del/2021;
- (ii) Fiber Home India vs. National E Assessment Centre ANR 15.12.2021 – WP (C) 11609/2021;
- (iii) SRF Ltd. vs. National E Assessment Centre and ANR WP (C) 6484/2021; and
- (iv) Ford India Pvt. Ltd. vs. National E Assessment Centre - WP (C) 12701/2021.

5.1 Referring to these case laws, ld. DR for the Revenue has submitted that the facts of the present case and the case laws cited are similar. AO in

these cases passed the order without incorporating the DRP's direction. In all the above cases, the Hon'ble High Courts did not quash the entire proceedings and only the final assessment order along with the demand notice were set aside and proceedings restored to the level of DRP/AO. He reiterated that even though the assessment orders have been passed without incorporating the DRP's directions and in complete violation of mandatory procedure u/s 144C of the Act, but still the Hon'ble jurisdictional High Court did not treat it as fatal error which cannot be corrected. Ld. DR for the Revenue further pleaded that from the orders of Hon'ble High Court, it can be inferred that the Hon'ble High Court treated it as technical/procedural default and to cure the same, restored the proceedings at the level of DRP and given Department, the opportunity to pass a fresh assessment order after incorporating the DRP's directions.

6. We have heard both the parties and perused the records. We have given very thoughtful consideration to the above submissions and case laws. We find that the Id. Counsel of the assessee relied upon the Tribunal decisions and one decision from Hon'ble Karnataka High Court (supra). On the other hand, Id. DR for the Revenue has relied upon three case laws from Hon'ble jurisdictional High Court and one decision from Hon'ble Madras High Court. We find that Hon'ble jurisdictional High Court is binding on the Tribunal, hence we adjudicate this issue with reference to the orders of the Hon'ble jurisdictional High Court referred above, as the facts are similar.

7. In the case of Anand NVH Products Pvt. Ltd. (supra), we noted that assessment order has been passed under section 143(3) read with section 144C of the Act without waiting for the decision of the DRP. Hon'ble High Court in that case set aside the final assessment order along with notice of demand and restored the matter to the level of DRP.

7.1 In the case of SRF Ltd. (supra), the final assessment order was passed without incorporating the DRP's directions. Hon'ble High Court, in such a situation, quashed the final assessment order and the demand of notice and remitted the matter to DRP for consideration under section 144C of the Act. Thereafter, it was directed that the assessment order shall be passed in accordance with the procedure stipulated under section 144B(1) as well as section 144(C) of the Act.

7.2 In the case of Fibrehome India Pvt. Ltd. (supra) also, the final assessment order was passed without incorporating the directions of the DRP. In that case also, Hon'ble jurisdictional High Court remitted the matter to DRP keeping in view of the scheme of section 144C of the Act. In this decision, Hon'ble jurisdictional High Court inter alia referred to the decisions of Hon'ble jurisdictional High Court in the cases of Anand NVH Products Pvt. Ltd. and SRF Ltd. (supra).

8. Thus, from the above reading of Hon'ble jurisdictional High Court decisions, it is emanating that in the final assessment order passed without

incorporating the DRP's directions, the matter has been remanded to the DRP by the Hon'ble High Court to give effect to the scheme of section 144C of the Act. The above case laws are binding upon us. Hence, following the same, we remit the issue to the file of AO. AO shall pass an order incorporating DRP's directions which has been given effect by the TPO.

9. Since we have remanded the matter to the AO to give effect to the directions of the DRP/TPO, adjudication of other grounds at this juncture is not required.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of November, 2023.

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

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

**Dated the 23rd day of November, 2023
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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.**