

THE INCOME TAX APPELLATE TRIBUNAL  
"K" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 6634/Mum/2013 (A.Y. 2008-09)

M/s. Hydac (India) Pvt. Ltd. 2 <sup>nd</sup> Floor, Ladhakhai Mansion, 1-A, Mama Parmanand Marg, Opera House, Mumbai-400 004.  PAN : AAACH2910B (Appellant)	Vs.	JCIT(OSD, 8(2) 209, Aayakar Bhavan, M.K. Road, Mumbai 400 020.  (Respondent)
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Assessee by	Shri Yogesh Thar
Department by	Shri Sambit Mishra
Date of Hearing	17.05.2022
Date of Pronouncement	22.06.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 20.3.2013 passed by learned CIT(A)-15, Mumbai and it relates to A.Y. 2008-09. The assessee is aggrieved by the decision of learned CIT(A) in confirming the transfer pricing adjustment of Rs.2,15,41,666/- made by the Assessing Officer.

2. The facts relating to the issue are stated in brief. The assessee herein is a subsidiary company of M/s. Hydac group, Germany. Hydac group is world leader in hydraulic accessories and components. The assessee herein is having a manufacturing facility in Mumbai and it is mainly engaged in the business of assembly of hydraulic accessories and components that fit into hydraulic systems. It is also engaged in the business of manufacturing certain electrical items. According to the learned AR manufacturing activity contributes 2.27% of the turnover. The assessee did not select any comparable companies in its transfer pricing study on the reasoning that it is engaged in the business of manufacturing/assembling of more than 20,000 items and there is no other

enterprise which can be functionally comparable with the assessee. However during the course of proceedings before learned TPO, the assessee furnished seven comparable companies, vide its letter dated 7.4.2011. The Assessing Officer noticed that the reporting period of three companies were different from that of the assessee company. Accordingly he rejected three companies and accepted following four companies :

Sr.No.	Name of Companies
1	M/s. Bemco Hydraulics
2	M/s. Dynamatic Technologies
3	M/s. Yuken India Ltd.
4	M/s. Asco Numatics

The learned TPO adopted TNMM method as most appropriate method and OP/OR as Profit level indicator. The mean margin of these four companies worked out to 17.82%, while margin of the assessee company was 13.56%. Accordingly he proposed transfer pricing adjustment of Rs. 2,15,41,666/-. The Assessing Officer passed the assessment order making addition of amount stated above. The Learned CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

3. At the time of hearing, learned AR submitted that he is pressing for exclusion of one comparable company named Asco (India) Ltd (also known as Asco Numatics) and accordingly did not press any other ground.

4. With regard to Asco (India) Ltd, the learned AR submitted that the said company is not comparable with the assessee company at all, in view of major difference in the FAR analysis. The Learned AR tabulated difference between the assessee company and Asco (India) Ltd. as under:

Sr.No.	Hydac	ASCO
1.	Assembler - (TPO's order- Page 1, para 4)  Plant & Machinery Gross	Full-fledged manufacturer -  Plant & Machinery Gross Block of Rs 963 Lacs

	Block of Rs 282 Lacs only (Page 6 of SPB)  FAR differs substantially	Page 20 of SPB
2.	Importer of assemblies and components - approximately 20,000 items. Solenoid Valves (Magnets) only 1 of the many items	Manufacturer of High Technology Solenoid Valves only and small quantity of other components
3.	Solenoid Valves (Low Value Magnets) only 2 % of sales TO (98/4869) Lacs (Page 13 & 4 of SPB)	High Value Solenoid Valves constitutes 74 % of TO (4459/6051) Lacs (Page 17 of SPB)
4.	Sale price PU of Magnets = Rs. 288 (9855148 / 34241) (Page 13 of SPB)  Sales Price of Other Valves = Rs. 1802 (54922462/30483) (Page 13 of SPB)	Sales price PU of Solenoid valves Rs.4,492 (445904637/99272) (Page 17 of SPB)
5.	No Technical collaboration, hence, no IPR	Has a technical collaboration for manufacture of Valves (Annexure to director's Report) Hence, owns IPR (See Directors' Report of FY 2007-08 and annexure thereto) (Pg 33 of SPB)
6.	No product development	New Products development for export markets.  Substantial investments in new Plant & Machinery Rs. 220 Lacs every year  (See Directors' Report of FY 2005-06 and 2007-08 annexure thereto) (Pg 32 SPB)
7.	Deals in Hydraulics products which use fluids (oil) for movement of parts of a system. (TPO's order- Page 1, Para 4)	Manufactures Nuematic products which use Air as a medium for movement of parts of a system.
8.	PLI is evaluated by Fixed Assets (OP/FAPM) 2.4 times (6.85/2.82) (Page 6 of SPB) P&M only 31% of FA Block (282/904)	PLI is evaluated by Fixed Assets (OP/FAPM) 2.31 times (22.23/9.63) (Page 20 & 15 of SPB).  P&M 77% of FA Block (963/1243) (Page 20 & 15 of SPB)

Elaborating further on various points stated in the table above, the learned AR vehemently contended that Asco (India) Ltd. should be excluded from the list of comparable companies.

5. On the contrary, the learned Departmental Representative submitted that in the transfer pricing study, only broad comparability has to be considered and so long as functions of the comparable companies and that of the assessee-company are broadly comparable, there is no reason to exclude any company. Accordingly he submitted that Asco (India) Ltd need not be excluded.

6. We have heard rival contentions and perused the record. We noticed from the order passed by learned TPO, that learned TPO has specifically observed that the assessee is mainly *engaged in the assembling of Hydraulic accessories*. In the statement of facts furnished before the Tribunal, it is stated that the assessee's manufacturing activity contributes 2.27% in the turnover, meaning thereby, majority of turnover has been achieved by the assessee from assembling activity only. It is the submission of learned AR that the assessee is engaged in the business of assembling of more than 20,000 items.

7. From the table furnished above, we noticed that Asco (India) Ltd. is full-fledged manufacturer and it manufactures Solenoid Valves involving high technology and it constitute 74% of the turnover. This is evident from the fact that the average selling price of Solenoid Valves manufactured by Asco (India) Ltd. is Rs. 4,492/- per piece, while selling price of product assembled by the assessee ranges from Rs. 288/- to Rs. 1802/- per piece. Further it is stated that Asco (India) Ltd. has got a technical collaboration for manufacture of valves and accordingly owned intellectual property right therein. Hence there is wide difference in the functions of a manufacturer and assembler. It is further stated that the assessee's hydraulic products used fluids for movement of

parts of a system. However, M/s Asco (India) Ltd. manufacturers Nuematic products which use Air as a medium for movement of parts of a system.

8. The Learned AR also submitted that the plant and machinery constitute 31% fixed assets in the case of the assessee, while it constitutes 77% of fixed asset in the case of Asco (India) Ltd. It is further submitted that Asco (India) Ltd. involves in development of new products and it has made substantial investment of Rs. 2.20 crore in purchase of new plant and machinery, while the assessee has not carried out any new product development. Thus there is difference in assets employed and corresponding risk assumed.

9. In view of various points highlighted by the assessee in the table above, we are of the view that Asco (India) Ltd. could not be functionally comparable with the assessee and hence it cannot be considered as comparable company in the hands of the assessee. Accordingly, we direct the Assessing Officer/TPO to exclude Asco (India) Ltd. from the list of comparable companies and rework arm's length price accordingly.

10. In the result, appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 22.06.2022.

Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/06/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai