

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5767/Del/2012
Assessment Year: 2008-09**

Honda R & D (India) Pvt. Ltd.,
Technical Centre, Plot No. 02,
Sector-03, IMT Manesar, Gurgaon.

PAN: AABCH3071N
(Appellant)

Versus DCIT, Circle 12(1),
New Delhi.

(Respondent)

Assessee by : Sh. Nageshwar Rao, Adv. &
Sh. Parth, Advocate

Revenue by : Sh. Rajesh Kumar, CIT-DR

Date of hearing : 06.09.2023

Date of pronouncement: 17.11.2023

ORDER

This is an appeal by the assessee against final assessment order dated 18.09.2012 passed under section 143(3) read with section 144C of the Income-tax Act, 1961 pertaining to assessment year 2008-09, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. Though, the assessee has raised multiple grounds, however, at the time of hearing, learned counsel appearing for the assessee

submitted that he will be confining his arguments only to the issues relating to selection/rejection of six comparables. Besides main grounds, the assessee vide letter dated 24.02.2023 has also raised an additional ground relating to certain computational error while computing working capital adjusted margins of the comparable companies. Hereinafter, we will address the arguments made before us by learned counsel.

3. In so far as the issue of selection/rejection of comparables is concerned, briefly, the facts are, the assessee is a resident corporate entity and wholly owned subsidiary of Honda R & D Company Ltd., Japan. As stated, the assessee is engaged in providing market research and testing services to its overseas Associate Enterprises (AEs) and is remunerated on a cost plus mark up basis. Basically, the assessee has been classified as an information technology enabled service (ITES) provider. In the year under consideration, the assessee has provided market research and testing services to its overseas AEs and earned revenue of Rs.21,59,58,156/-. To benchmark such international transaction with AEs, the assessee has undertaken economic analysis. In the transfer pricing study report (TPSR), the

assessee has applied transactional net margin method (TNMM) as the most appropriate method to benchmark the international transaction with AEs. Operating profit (OP) to operating cost (OC) ratio was used as profit level indicator (PLI).

4. For comparability analysis, the assessee has selected 11 companies as comparables with average margin of 5.05%. The margin shown by the assessee at 2.73%, being within the tolerance range of plus-minus 5%, the assessee claimed the transactions with AEs to be at arm's length. After verifying the TPSR, the Assessing Officer pointed out various deficiencies in it. He took objection to use of multiple year data by the assessee for comparability analysis. In this context, he observed that only data relating to financial year 2007-08 has to be used. With regard to the comparables selected by the assessee, though the TPO accepted some of the quantitative filters used by the assessee, however, he modified couple of them by rejecting the companies having sales less than Rs. 1.00 crore in financial year 2007-08 and companies whose data for financial year 2007-08 is not available. He also excluded the companies having more than 25% related party transactions (RPT). He also observed that certain

comparables selected are functionally different from the assessee. Thus, applying the quantitative filters and looking at the functional profile of the comparables, the TPO accepted four comparables out of eleven selected by the assessee and rejected the balance seven. Having done so, he proceeded to undertake a search process in database and selected eight new comparables. Thus, ultimately, the TPO selected 12 comparables having average margin of 18.18%. After applying the average margin of the comparables to the cost of provision of services provided by the assessee to the AE, the TPO determined the ALP at Rs.23,79,95,843/-. The resultant shortfall of Rs.3,11,13,165/- was proposed towards upward adjustment to the ALP. In terms with the order passed by the TPO, the Assessing Officer framed the draft assessment order by adding back the TP adjustment proposed by the TPO. Against the draft assessment order, so passed, the assessee raised objections before learned DRP. While disposing of the objections of the assessee, learned DRP retained 10 of the comparables selected by the TPO while excluding two companies, viz., Rites Ltd. and Vapi Waste & Effluent Management Company Ltd.

5. Before us, six comparables are in dispute. The assessee seeks exclusion of following four comparables :

- (i). Aptico Limited;
- (ii). Indus Technical and Financial Consultants Limited;
- (iii). Techni-com Chemie (India) Limited; and
- (iv). WAPCOS Limited.

Whereas, it seeks inclusion of the following two comparables :

- (i) India Tourism Development Corporation Limited
- (ii) Idma Laboratories Limited.

Hereinafter, we will deal with each of the comparables in dispute before us.

(i). **Aptico Limited :**

6. Objecting to the selection of this company, learned counsel submitted, it is functionally dissimilar, as it is engaged in providing high-end technical consultancy relating to asset reconstruction and management services, micro enterprise development, skill development, entrepreneurship development and cluster development. He further submitted, the RPT filter of more than 25% cannot be applied

in absence of relevant data. In support, the assessee relied upon following decisions :

- (i). CIT vs. Phillip Morris Services Ltd. (ITA 1468/2018- Delhi High Court).
- (ii). PCIT vs. International SOS Services India Pvt. Ltd. (ITA 454/2016- Delhi High Court)
- (iii). Motorola Solutions India Pvt. Ltd. vs. DCIT (ITA No. 5797/Del/2012) dated 31.10.2019-Delhi Tribunal
- (iv). Ciena India Pvt. Ltd. vs. DCIT (2015) 40 ITR (Trib) 524 (Delhi).

Thus, he submitted, the company, being functionally dissimilar, should be rejected.

7. We have considered rival submissions and perused materials on record. We have also gone through the decisions relied upon. On a careful reading of TPO's order, it is very much clear that he has accepted the fact that the assessee is engaged in providing market research and testing services to the AEs, which falls in business support service category. Whereas, on going through the annual report of the company as well as the information available on record, it is observed that this company is basically involved in project development, sharing of resources and facilities etc. It is also relevant

to observe, as per the annual report of this company, it has earned revenue from asset reconstruction and management services, project related services, micro enterprise development, infrastructure planning and development, research studies and tourism, skill development, environment management, entrepreneurship development and training, cluster development, energy related services etc. So, from the nature of revenue earned, it can be seen that, if at all, the revenue earned from research studies and tourism can to some extent be comparable to the assessee, as the assessee is also involved in marketing research activity, though in a different field. However, the TPO has considered the entire revenue earned by this company from all activities for comparability analysis. This, in our view, is unacceptable. Furthermore, the segment-wise breakup of expenses of the company is not available in the financial statement. In fact, no expenses were earmarked to the research studies and tourism. Further, there are no details available regarding nature of research studies and tourism. Thus, in our view, since, the company is engaged in diversified activities and proper segmental details have not been maintained, it cannot be treated as

comparable to the assessee. The Assessing Officer is directed to exclude this company.

(ii). Indus Technical and Financial Consultants:

8. Objecting to selection of this comparable, learned counsel submitted that the company is not functionally similar, as it provides wide variety of services, out of which, only administrative and legal services can be considered as comparable. In this context, he drew our attention to the information contained in the website of the company. He further submitted, no segmental information regarding the revenue breakup of various services are available in the annual report. He submitted, RPT details are not available. Therefore, RPT filter of more than 25% cannot be applied. Thus, he submitted that the company should be rejected. In support, he relied upon the decision of coordinate Bench in case of Motorola Solution India Pvt. Ltd. vs. DCIT (ITA No. 5797/Del/2012) dated 31.10.2019.

9. Learned Departmental Representative submitted that the company is functionally similar to the assessee, hence, has been rightly included as comparable. Drawing our attention to the profit and loss

account for the year ended 31st March, 2008, learned Departmental Representative submitted that the company has only one segment and has earned revenue in that segment only. Therefore, assessee's contention that it has various segments is unacceptable. He submitted, the decision of the Tribunal in case of Motorola Solution India Pvt. Ltd. (supra) would not apply to the facts of the present appeal, as Motorola was involved in market support services whereas, the assessee is involved in market research and testing services.

10. In reply, learned counsel for the assessee submitted that the TPO himself has treated the assessee to be in the business of business support services and has accordingly selected comparables in the business support services. Thus, he submitted, at this stage, the Departmental Representative cannot re-characterise the assessee and say that the assessee is not providing business support services.

11. We have considered rival submissions and perused materials on record. On a perusal of the annual report of the company placed in the paper book, it is observed that it has two divisions, viz., consultancy division and agriculture division. The notes to account further say that expenses relating to both the divisions are allocated on the basis of

gross receipts of respective divisions. However, the Profit and Loss account only shows revenue from consultancy fees and there is no bifurcation of expenses between the two divisions. Further, as per the information available in the website of the company, it is engaged in providing high-end technical services in the areas of environment and pollution control, technology management, financial services, administrative and legal services, project selection and project implementation services, energy and power services etc. Thus, it is evident, though the company is engaged in various activities, however, adequate segmental information is not available in the annual report. Considering the aforesaid aspects, the coordinate Bench in case of Motorola Solution India Pvt. Ltd. (supra) has excluded this company from the list of comparables. Though, learned Departmental Representative has attempted to impress upon us that Motorola was engaged in business support services, whereas, the assessee is in market research and testing, we are unable to accept such proposition. On a perusal of the order passed by the TPO, it is very much clear that not only the TPO has treated the assessee to be a business support service provider, but has also selected comparables in that category. In

view of the aforesaid, following the decision of coordinate Bench in case of Motorola Solutions India Pvt. Ltd. (supra) in the very same assessment year, we direct the Assessing Officer to exclude this company.

(iii). Technicom- chemie (India Ltd.):

12. Objecting to selection of this company, learned counsel submitted, it is functionally different, as it is a marketing organisation engaged in the sale of capital goods. He submitted, it dealt in hi-tech machinery and has a set of company trained service engineers along with suitable spare parts inventory for providing technical support during and after the sales. In this context, he drew our attention to the website extract of this company placed in the paper book. He further submitted, RPT details of the company are not available so as to apply RPT filter of more than 25%. Thus, he submitted, the company cannot be treated as comparable. In support, he relied upon the decision of coordinate Bench in case of Motorola Solutions India Pvt. Ltd. (supra).

13. Strongly relying upon the observations of the departmental authorities, learned Departmental Representative submitted that the

company, being functionally similar to the assessee, has rightly been selected. Drawing our attention to the balance sheet of the company, learned Departmental Representative submitted that it does not show any inventory. Thus, he submitted, the company should be rejected.

14. We have considered rival submissions and perused materials on record. On a perusal of the profit and loss account of the company, placed in the paper book, it is observed that it has shown income from commission, consultancy and services. Whereas, the segmental details relating to the aforesaid segments are not available. Considering the aforesaid aspects, the coordinate Bench in case of Motorola Solutions India Pvt. Ltd. (supra), which is for the very same assessment year, has excluded this company. Due to parity of facts, we follow the decision of coordinate Bench in the case of Motorola Solution India Pvt. Ltd. (supra) and direct the Assessing Officer to exclude this company.

(iv). WAPCOS Ltd. :

15. Objecting to the selection of this company, learned counsel submitted, it is functionally different, as it provides engineering consultancy services, including planning/project formulation, field

investigations, geo-technical investigations and testing, engineering design and contract management in the water and power sectors. He submitted, the company also undertakes turnkey contracts on a regular basis. He further submitted that it is a public sector company owned by Government of India, hence, cannot be a comparable. In support of his contention, learned counsel relied upon the decision of the coordinate Bench in case of Motorola Solutions India Pvt. Ltd. (supra). He also relied upon the decision of coordinate Bench in case of Ciena India Pvt. Ltd. vs. DCIT (2015) 40 ITR (Trib) 524 (Delhi).

16. Learned Departmental Representative submitted that the company is functionally similar to the assessee, hence, rightly included. Drawing our attention to the annual report of the company placed in the paper book, he submitted, basically, it is engaged in the activities similar to the assessee. Drawing our attention to the profit and loss account, he submitted that the company has maintained segmental details for all its segments and the Assessing Officer has compared the service segment to the assessee. Further, he reiterated his contention that the decision of Motorola Solutions India Pvt. Ltd. (supra) cannot be

applicable, as the assessee is not engaged in providing market support services.

17. We have considered rival submissions and perused materials on record. On a perusal of the annual report of the company placed in the paper book, it is observed that it is engaged in wide range of activities such as pre-feasibility studies, feasibility studies, simulation studies, diagnostic studies, socio-economic studies, master plans and regional development plans, field investigations, detailed engineering including designs, detailed specifications, tendering process, contract and construction management, commissioning and testing, operation and maintenance, quality assurance & management, software development and human resource development. The annual report further says that it is a techno-commercial organisation under the aegis of Ministry of Water Resources and utilizes the talent and expertise developed in the various organisations of Government of India and State Governments. Under segment reporting, it has reported segment revenue from consultancy and engineering projects and lump sum turnkey projects. Though, the Revenue earned from different segments have been mentioned, however, such details relating to expenses are not there.

Therefore, the annual report lacks proper segmental reporting. Thus, as could be seen, the company is functionally different from the assessee in the sense that the assessee has only one segment, whereas it has a number of segments including implementing turnkey projects. Whereas, sufficient segmental details are not available. Thus, in our view, this company cannot be treated as comparable to the assessee. For the afore-stated reasons, in case of Motorola Solution India Pvt. Ltd. (supra) also, the company was rejected as a comparable. Thus, we direct the Assessing Officer to exclude this company from the list of comparables.

(v). **India Tourism Development Corporation Ltd.:**

18. Seeking inclusion of this company, learned counsel submitted that the only reason for which the TPO excluded this company is, service income is 6.21%, which is less than more than 75% service income filter applied by the TPO. He submitted, the company has a corporate market division known as 'SEL' ARMS, which is comparable to the assessee. He further submitted, as per the segment reporting, in accordance with AS-17, the service division, i.e. ARMS has earned revenue of Rs.2954.50 lacs. Thus, being functionally similar, it has to

be treated as a comparable to the assessee. Proceeding further, he submitted, in assessee's own case in assessment year 2005-06, the Hon'ble jurisdictional High Court in order passed in ITA No. 616/2015 dated 02.08.2016 has held that ITDC is a valid comparable.

19. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned DRP.

20. We have considered rival submissions and perused materials on record. Undisputedly, the TPO has not found anything adverse in so far as the similarity of functional profile of the assessee and ITDC Limited is concerned. The only reason for which he has rejected the company is, because the revenue earned from service segment is less than 75% of the total revenue. Considering the fact that in assessee's own case, the Hon'ble jurisdictional High Court has accepted ITDC as a comparable to the assessee, we hold that it is comparable to the assessee. Accordingly, the Assessing Officer is directed to include this company as a comparable.

(vi). Idma Laboratories Ltd. :

21. Seeking inclusion of this company, learned counsel submitted that the quality control testing segment of the company is comparable to the assessee, as it is engaged in similar activities. In this context, he drew our attention to the relevant pages of the annual report of the company. He further submitted that the company was accepted as a comparable to the assessee by the TPO in assessment year 2005-06 and further upheld by the Hon'ble High Court. He further submitted that the TPO himself has accepted this company as comparable to the assessee in assessment year 2010-11, 2011-12 and 2012-13. He submitted, in assessment year 2013-14, learned DRP has accepted this company as a comparable. Thus, he submitted, it cannot be rejected in the impugned assessment year.

22. Drawing our attention to the annual report of the company, learned Departmental Representative submitted that it is a pharmaceutical product manufacturing company, hence, under no circumstance, can be treated as comparable to the assessee. In this context, he drew our attention to the annual report and particularly profit and loss account.

23. We have considered rival submissions and perused materials on record. Though, learned Departmental Representative has vehemently opposed the inclusion of this comparable by stressing upon the functional dissimilarity, however, on perusal of the annual report of the company, it is observed that under segment reporting, it has shown revenue from formulations of pharmaceutical products as well as quality control testing. Therefore, QCT division, in our view, is comparable to the assessee. It is further to be noted that in assessee's own case in assessment year 2005-06, the company was accepted by the TPO as a comparable to the assessee and upheld by Hon'ble jurisdictional High Court. Pertinently, in assessment years 2010-11, 2011-12 and 2012-13, the TPO has accepted it as comparable to the assessee. In fact, in assessment year 2013-14, learned DRP has held that though, the company is not involved in any kind of market research, but the testing segment profile can be comparable to the assessee, hence, has directed inclusion of this company as a comparable. In view of the aforesaid facts, we are of the opinion that this company has to be included as a comparable. The Assessing Officer is directed accordingly.

24. The only other issue, which remains to be decided is the additional ground raised by the assessee regarding certain computational error while computing the working capital adjustment. It is the contention of learned counsel that SBI PLR rate has been taken wrongly.

25. Having considered the submissions of the parties, we restore the issue to the Assessing Officer with a direction to compute the working capital adjustment correctly after providing due and reasonable opportunity of being heard to the assessee.

26. It is made clear, the grounds not specifically argued before us by learned counsel are deemed to have not pressed, hence, dismissed. Grounds are accordingly disposed of.

27. In the result, appeal is partly allowed.

Order pronounced in the open court on 17/11/2023.

Sd/-

(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 17.11.2023

*aks/-