INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 9073/Del/2019
(Assessment Year: 2015-16)

Honda Motorcycle & Scooter India Pvt. Ltd, Commercial Complex-II, Sector-49 to 50, Gold Course Road, Extn Road, Gurgaon PAN: AAACH7467D	Vs.	DCIT, Circle-2(1), Gurgaon
(Appellant)		(Respondent)

Assessee by :	Shri Deepak Chopra, Adv Ms. Mansvini Vajpai, Adv
Revenue by:	Shri Surender Pal, CIT DR
Date of pronouncement	21/05/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Asst Commissioner of Income Tax, Circle 2 (1), Gurgaon (the learned AO) u/s 143(3) read with section 144C of The Income Tax Act (the Act) dated 30.12.2019 for Assessment Year 2015-16 in pursuance of direction issued by The Dispute Resolution Panel – 1, New Delhi (the learned DRP) u/s 144C (5) of the act dated 18 September 2019.

2. The assessee has raised following grounds of appeal:-

> *"1. That on the facts and in the circumstances of the case and in law, the order passed by the Assessing Officer ["AO"] under section 143(3) of the Income-tax Act, 1961 ("Act"), to the extent prejudicial to the Appellant, is bad in law and void ab- initio.*
>
> ***A. Transfer Pricing Adjustment/s***
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> *2. That the TPO/DRP grossly erred in law in making adjustments of 1NR 48,48,62,986/- being payment of Export Commission and 1NR 12,00,22,040/- on payment of royalty on exports to Associate Enterprises.*

3. *That the TPO/DRP have erred in rejecting the transfer pricing methodology adopted by the Appellant for benchmarking its international transactions without revealing any basis thereof.*

4. *That the TPO/DRP erred in making/upholding the adjustments while applying the principles of "commercial expediency", which approach had been rejected judicially and is not mandated under the provisions of section 92CA of the Act.*

5. *That the order of the TPO is void ab initio being undated and passed beyond the period of limitation as mandated under section 92CA(3A) read with section 153 of the Act.*

Re : Payment of Export Commission - INR 48,48,62,986/-

6. *That the TPO/DRP erred in determining the arm's length price of the international transaction relating to payment of export commission and hence making an adjustment of INR 48,48,62,986/-.*

   6.1 *The TPO/DRP erred in rejecting the 'combined transaction approach' adopted by the Assessee for benchmarking its operating profitability using the TNMM method.*

   6.2 *The TPO/DRP completely erred in not appreciating the functional profile of the Assessee and also completely erred in not appreciating that the transaction of payment of export commission was intrinsically linked with the main activity of manufacture and sale of products and as such could not be alienated to be bench marked separately.*

   6.3 *That the entire approach adopted by TPO/DRP lacks any sound principle and is contrary to the provisions of law and judicial precedents.*

   6.4 *That the TPO/DRP also erred in coming to the conclusion that there was a service which was being rendered by the Appellant to the AE in terms of developing the brand of the AE in the territories.*

   6.5 *That the TPO/DRP have completely contradicted themselves vis-a-vis this transaction because at one place they hold that it is the Appellant is providing services for building the brands of the AE in terms of its export activities and on the other hand by holding that the services provided by HMJ in terms of providing the dealer network was only an incidental benefit to the Appellant being a part of the MNE and as such would be covered by Para 7.13 of the OECD Guidelines.*

   6.6 *That the TPO/DRP also grossly erred in characterizing the Assessee as a "contract manufacturer" for its export business while selectively reading provisions of the Export Agreement dated 13.07.2000.*

6.7 That without prejudice, the TPO/DRP also failed to appreciate that under the export agreement the facility of providing access to the export markets was in itself a benefit for which payment of export commission was warranted.

6.8 That the TPO/DRP also grossly erred in law in understanding the supply chain model in relation to the payment of export commission and also completely failed to appreciate that merely because orders were received from the AEs in those territories would not render the assessee as a contract manufacturer.

6.9 That the TPO/DRP also completely failed to appreciate that the profit margins from the export business were significantly higher even after incurring the expenditure on account of export commission.

6.10 That without prejudice, even the application of the CUP method by the lower authorities was fundamentally flawed and was applied in a very convoluted manner to determine the ALP of international transaction relating to export commission at NIL.

6.11 That the TPO/DRP completely failed to apply the correct transfer pricing approach for determining the ALP of this international transaction and further failed to bring any evidence on record that the payment of export commission was in any way excessive as compared to independent transactions of similar nature.

6.12 That the TPO/ DRP erred in rejecting the alternate analysis submitted by the Appellant using CUP as a most appropriate method on the basis of lack of similar comparable/s and stressing on the need of product similarity in applying CUP on one hand and on the other hand applied CUP in a manner which is fundamentally flawed.

6.13 That without prejudice, the TPO/DRP erred in applying the CUP method and the "benefit test" for determining the ALP in respect of Export Commission at NIL.

6.14 That the TPO/DRP completely failed to appreciate that the provisions of section 92CA do not mandate application of the benefit test and as such the application of CUP and the determination of transaction value at NIL was required to be rejected.

Re: Payment of Royalty on sales to its AE - INR 12,00,22,040

7. That the TPO/DRP erred on facts and in law making any adjustment of INR 12,0,22,040/- being royalty paid by the Appellant to Honda Motors Japan (HMJ) for exports to AEs.

7.1 That the TPO/DRP completely failed to appreciate that the payment of Royalty was on account of the utilization of know-how for manufacturing goods and whether the manufactured goods were sold to AE or non-AE's was not relevant and had no bearing on the determination of the ALP of such transaction.

7.2 The TPO/DRP erred in rejecting the combined transaction approach adopted by the Assessee for benchmarking its operating profitability using the TNMM method.

7.3 The TPO/DRP completely erred in not appreciating the functional profile of the assessee and also completely erred in not appreciating that the transaction of payment of royalty on exports to AEs was intrinsically linked with the main activity of manufacture and sale of products and as such could not be alienated to be bench marked separately.

7.4 That the TPO/DRP also failed to appreciate that under the Technical Collaboration Agreement the technical know-how was provided for manufacture of products.

7.5 That without prejudice, even the application of the CUP method by the lower authorities was fundamentally flawed and was applied in a very- convoluted manner to determine the ALP of international transaction relating to Royalty paid in respect of sales to AE's at NIL.

7.6 That without prejudice, the TPO/DRP erred in applying the CUP method and the "benefit test" for determining the ALP in respect of Royalty at NIL.

7.7 That the TPO/DRP completely failed to appreciate that the provisions of section 92CA do not require them to apply the benefit test and as such the application of CUP and the determination of transaction value at NIL was required to be rejected.

B. Corporate tax grounds

Re: Expenditure of Sisnase's - INR 1,65,62,386

8. That the AO/DRP erred in treating an Amount of INR 1,12,79,914/- incurred on Signage's as being capital in nature.

8.1 That AO/DRP erred in not appreciating that expenditure on Signage's displayed at the location of the dealers of the Assessee were for sales promotion and as such was an expenditure in the nature of trading activity and allowable as revenue expenditure.

8.2 That the AO/DRP failed to appreciate that the expenditure on Signage's did not result in any enduring benefit or bring into existence any asset.

8.3 Without prejudice to the grounds above, the AO/DRP has erred in not allowing the depreciation on the carrying value of the Signage expenditure which was capitalised by the AO during the previous assessment proceedings for AY 2012-13, AY 2013-14 and AY 2014-15.

Re: Sales tools Expenses — INR 2,39,27,651/-

9. That the AO/DRP grossly erred in disallowing an amount of INR 2,39,27,651/- being sales tools expenses under section 37 of the Act.

9.1 That the AO/DRP grossly erred in introducing a new condition under section 37 of the Act that for allowance of expenditure under that provision there must exist a contractual liability.

9.2 That without prejudice to the above ground, the AO/DRP grossly erred in not appreciating the fact that the Assessee was entitled to make payments to the dealers in respect of advertising material as per the dealer agreement.

9.3 That the AO/DRP also erred in law in not appreciating that even if the expenditure resulted in benefit to the dealers (third parties), the same was still an allowable expenditure being incurred wholly and exclusively for the purpose of business of the Appellant.

9.4 The AO/DRP also erred in not appreciating that the sales tool expenses were incurred in respect of standardisation of the dealer's showrooms who were selling the product's manufactured by the assessee.

9.5 That the AO/DRP erred in making the above disallowance when there was no dispute regarding the genuineness of such expenditure.

Re: Capitalization of Royalty - INR 154,37,02,565/-

10. That the AO/DRP grossly erred in coming to the conclusion that 25% of the running royalty of INR 2,05,82,70,086/- was to be treated as capital in nature as it resulted in enduring benefit to the assessee.

10.1 That the AO/DRP erred in relying on the judgment of the Supreme Court in the Appellant's sister company's case which was distinguishable on facts and related to the acquisition of know-how for the setting up of the manufacturing facility.

10.2 That the AO/DRP also completely failed to appreciate that the payment of running royalty by the Appellant was in respect of up gradation of technology and was revenue in nature.

10.3 That the AO/DRP completely failed to appreciate that the running royalty is intrinsically linked to the trading activity i.e. manufacture and sales of products.

10.4 That the AO/DRP also failed to appreciate that arbitrary allocation of 25% of the running royalty was contrary to any settled position of law and could not be sustained.

10.5 That the AO/DRP also completely failed to appreciate that the Appellant did not acquire any proprietary rights in the know-how and was merely granted the right to use the technology for the purposes of manufacturing two-wheelers.

10.6 Without prejudice to the grounds above, the AO/DRP has erred in not allowing the depreciation on the carrying value of the royalty which was capitalised by the AO during the assessment proceedings for AY 2012-13, AY 2013-14 and AY 2014-15.

Re: Claim of Deduction of expenses of INR 231,80,00,000/- in respect of Technical Know how

11. That the AO/DRP have erred in not allowing deduction of expenses of INR 231,80,00,000/- in respect of Technical know' how duly claimed before the AO and DRP.

11.1 That the AO/DRP have erred in not allowing deduction of expenses of 231,80,0, 000/- in respect of Technical know' how in utter disregard to circular no. 14(XL-35) dated 11.04.1955.

Re: Consequential Grounds

12. That the AO has erred in initiating penalty proceedings under Section 27 l(l)(c) of the Act.

13. That the AO has erred in levying interest of INR 70,20,586/- under section 234A of the Act on the Assessee.

12.1 Without prejudice to the above, AO has erred in levying excess interest of 70,20,586 under section 234A

14. That the AO has erred in levying interest of INR 31,59,26,370/- under section 234B of the Act on the Assessee.

15. That the AO has erred in levying interest of INR 44,23,468/- under section 234D of the Act on the Assessee.

15.1 Without prejudice to the above, the AO has erred in levying excess interest of 14,07,467 under section 234C."

3. The brief facts of the case show that the assessee is a subsidiary of Honda Motor Co Japan and is engaged in business manufacturing and sale of

motorcycles and scooters. It has a substantial expertise, technologies knowhow, brand equity, a worldwide marketing network in the above filed.

4. Assessee filed its return of income declaring total income of Rs. 1334,94,04,900/- on 28/11/2015. The case of the assessee was selected for scrutiny. It was found that the assessee has entered into international transaction and substantial Specified domestic transactions. The transactions are as enlisted in para No. 3 of the learned Transfer Pricing Officer – 1 (3) New Delhi (the learned TPO) order u/s 92CA (3) of the act. Out of the above transaction, only 2 transactions are disputed between the parties. Those are payment of royalty and technology knowhow fee of Rs. 10,41,44,62,249/- and payment of export commission of Rs. 48,48,62,986/-. The ld AO found that assessee has made a payment of Rs. 12,66,81,468/- export commission to its AE, Honda Motor Co. Ltd, Japan. The above commission was stated to have been paid for access to export market where other Honda group entities operate. The assessee was to use the distribution network of its associated enterprises. On examination of the export agreement the ld TPO noted that the ALP of payment of export commission should be Nil by applying CUP method as actually the assessee failed to specify the need test. The ld AO noted that the assessee by its export activities is developing the brand of the AE by positive action. The assessee is also explaining the reach of it AE by introducing new Products into the market. Therefore, according to him the assessee has actually carried out services for the AE. He further noted that the assessee has not shown where the AE has actually worked for which commission is charged. Hence, there is no need of the same. Similarly he noted that the assessee has made a payment of royalty on sales to its AE of Rs. 12,00,22,040/- and therefore, the ALP of such transaction should be reduced to Nil by applying CUP method. Thus, after considering the explanation of the assessee the ld TPO determined the ALP by payment of export commission of Rs. 48,48,62,986/- and payment of royalty of Rs. 12,00,22,040/- of Rs. Nil. Based on the above TPO order the addition on account of ALP of the international transaction was made of Rs. 60,48,85,026/-. In the corporate allowance, the ld AO noted that the assessee claimed of deduction of Rs. 1,32,70,487/- on account of addition of signage as revenue expenditure.

The ld AO treated it as capital expenditure granted depreciation @15% and disallowed a balance sum of Rs. 1,12,79,914/-. Further, disallowance of Rs. 2,39,27,651/- was made on account of sales tool expenses debited by the assessee. The above disallowance was made based on the orders of the earlier years. The ld AO noted that ITAT in earlier years 2003-04, 2004-05, 2005-06, and 2007-08 as well as Assessment Year 2010-11 has confirmed the disallowances. The assessee has also claimed on deduction of royalty expenditure of Rs. 8,23,30,80,343/-. This royalty was paid to its parent company in lieu of technology know how and technical assistance. The assessee considered it as revenue expenditure whereas the ld AO was of the view that it is capital expenditure. He noted after reading of the agreement that the payment because of royalty expenditure is with respect of having of enduring nature and therefore, is a capital expenditure. He held that it could not be allowed as revenue expenditure to the assessee. Thus, out of total royalty expenditure of Rs. 8,23,30,80,343/- he held that 25% of the royalty expenditure is of nature of capital expenditure. Thus, Rs. 2,05,82,70,086/- was considered as capital expenditure, allowed depreciation thereon @25% made and made net disallowance of Rs. 1,54,37,02,565/- consequently. In the draft assessment order the total assessment was made at Rs. 1553,32,00,056/-.

5. Against this order, the assessee preferred objection before the ld DRP-I, New Delhi who passed a direction on 18/09/12019. According to direction all the objection on the merit were dismissed. Therefore, final assessment order was also passed on 30.10.2019 at an income of Rs. 1553,32,00,056/-. The assessee is in appeal.

6. Ground No. 1 of the appeal is general in nature and therefore, it is dismissed.

7. Ground No. 2 is with respect to adjustment on account of export commission and royalty paid to associated enterprises. This is challenged by the assessee from Ground No. 2 to Ground No. 7 of the above appeal.

8. The ld AR submitted this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case in ITA No. 7463 and 7464/Del/2019 for Assessment Year 2013-14 and 2014-15 dated 30.09.2020. He submitted that there is no change in the facts and

circumstances of the case with respect to TPO adjustment of export of commission. With respect to the transfer, pricing adjustment related to royalty paid on sales he also submitted that the coordinate bench in assessee's own case for Assessment Year 2008-09 to 2014-15 allowed this ground in favour of the assessee holding that the assessee has sold the good on principle-to-principle basis and has received the sale consideration. He further relied upon the decision of the coordinate bench in assessee's own case in ITA No. 7963 and 7964/Del/2019 for Assessment Year 2013-14 and 2014-15. Thus, he submitted that this issue is fully covered in favour of the assessee by the order of the coordinate bench in assessee's own case and therefore this ground should be allowed.

9. The ld DR vehemently supported the orders of the lower authorities. He submitted that the coordinate bench while deciding the case of the assessee has not considered the decision of the Hon'ble Supreme Court in case of Honda Seil Cars Ltd 319 ITR 713 but coordinate bench has mainly relied upon the Article 2, 13 and 11 of the technology know how agreement. He extensively relied on paragraph 23 to 25 of the orders of the Hon'ble Supreme Court. He further relied on Article 15 and Article 17 of the above agreement. Therefore, he submitted that the above argument might be considered where the royalty is considered as capital expenditure.

10. We have carefully considered the rival contentions and perused the orders of the lower authorities. Ground number 2 – 5 and challenging the rejection of the transfer pricing methodology adopted by the assessee for benchmarking international transaction as well as the application of the principles of commercial expediency and need test applied by the learned transfer pricing officer and confirmed by the learned dispute resolution panel. The ground number 6 along with its sub- grounds (14 in number) is in substance challenging the determination of the arm's-length price of international transaction of export commission of ₹ 484,862,986 at Rs. nil. The ground number seven is with respect to the payment of royalty to its associated enterprise of ₹ 120,022,040/– to Honda Motors Japan for export, which is also determined by the learned transfer pricing officer at Rs nil holding that there is a failure of benefit test. The claim of the assessee before us that both these issues are covered in favour of the assessee by the decision of the

coordinate benches in assessee's own case in earlier years. We have also considered the decision of the coordinate bench in assessee's own case for AY 2013-14 and 2014-15 where, it is claimed that the issue is squarely covered in favour of the assessee.

11. With respect to the TP adjustment to the export commission, which is claimed by the assessee that it is intrinsically, looked that the main activity of manufacturing and sale of products and as such could not be identified separately for benchmarking. It is also claimed by the assessee export commission is paid to its parent entity to get access to various global markets where the AE exists as network. The identical issue arose in the case of the for Assessment Year 2013-14 and 2014-15 wherein, coordinate bench deleted adjustment relying on the decision of ITAT in assessee's own case for Assessment Year 2008-09 in ITA No. 132/Del/2013. The ITAT quoted in para no. 12 and 13 of that order has followed the same. With respect to the issue of adjustment on account of payment of export commission, the coordinate bench has dealt with the same at para No. 7. The coordinate bench has given its reasons to delete the above adjustment in para No. 7.6 to 7.17 as under :-

> "7. Now, we will address to the grievance relating to addition on account of payment of export commission - Under technical knowhow agreement dated 13.07.2000 the assessee was entitled to use technical knowhow provided by Honda Motor Company Limited Japan for manufacture and sale of two wheelers and parts in India and was not authorized to sell its products or part in any other territory than in India without prior written consent of HMJ. The assessee entered into a separate export agreement dated 13.07.2000 under which HMJ accorded consent to the assessee to export specific models of two wheelers to certain countries on payment of export commission @ 5% of the FOB value of such exports.
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> 7.1 Under TNMM analysis the operating profit ratio of the assessee @ 4.60% was higher than average of operating margin of -2.24% earned by the comparables companies. Considering that the operating profit margin of the selected comparable companies was lower than the OPM of the assessee, such international transactions were considered as being at arms length TNMM. 7.2 The TPO held that the assessee has not received any services that an independent entrepreneur would be willing to pay for and accordingly considered the arms length price of the said transaction of payment of export commission of nil.
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> 7.3 While treating the ALP as nil the TPO held that the assessee is a contract manufacturer and further held that by its export activities the assessee is developing the brand of the AE and actually has carried out service to the AE.

7.4 It was also pointed out that the assessee has made export to AE's related parties in Chile, Peru and Mexico and such exports are apparently for the benefit of the AE's of parent company.

7.5 The TPO/ DRP/ DR were of the strong belief that the services rendered by the AE for facilitating exports were unclear.

7.6 At the very outset we have to state that the observations of the TPO/DRP that the assessee was only a contract manufacturer has been outrightly rejected by the Tribunal in assessee's own case in earlier assessment years.

7.7 The primary issue which needs to be examined is whether the assessee was benefited by making such export sales. The following chart would throw light on this issue :-

7.8 From the above chart it can be seen that the average price in respect of exports to AE's was higher than the price of the same product sold in the domestic market to non AE.

7.9 Further we find from the comparative profitability statement, the profitability derived by the assessee from export of goods at 8.91 % is significantly higher than the profitability derived by the assessee from sale of goods in the domestic market @ 5.50%. The comparative profitability statement is as under :-

7.10 For the sake of repetition, the entire edifice of the TPO/DRP's finding is based upon the assumption that the assessee is operating as a contract manufacturer with respect to export of good.

7.11 In our understanding of the facts of the case in hand, we are of the considered view that the TPO/ DRP have grossly failed in distinguishing between the function of the license manufacturers and contract manufacturers.

7.12 A perusal of the business profile of the assessee viz-a-viz agreement with the parent, we find that the assessee is a licensed manufacturer such as the assessee, the seller is entitled to compensation which includes returns attributable to exploitation of intangibles such technical know-how etc i.e. market determined prices. On the other hand, in the case of a contact manufacturer, the manufacturer acts in accordance with the instructions of the buyer and is only entitled to routine cost plus returns. It would be pertinent to refer to the decision of the Tribunal in assesee's own case in ITA No.132/Del/2013 held as under :-

7.13 A similar decision was taken by the Tribunal in the case of Hero Motocorp Limited in ITA No. 5130/Del/2010 wherein the Tribunal has held as under :-

7.14. In the light of the above the first limb of finding of the TPO/DRP is removed.

7.15. We find that while making the disallowance the TPO has held that assessee failed to demonstrate the benefits derive by it. This proposition of the TPO / DRP also do not hold any water in the light of the principle laid down by the Hon'ble jurisdiction High Court of Delhi in the case of Cushman and Wakefield (367 ITR

730). It would not be out of place to mbention here that in earlier assessment years, this quarrel was restored to the files of the TPO to decide the issue afresh in the light principle laid down by the Hon'ble High Court in the case of Cushman and Wakefield (supra).

7.16. We have been told that in the set aside assessment proceedings the TPO has once again made the addition following the earlier findings that the assessee had failed to provide evidence.

7.17 Considering the facts of the case as mentioned elsewhere we are of the considered view that the assessee has successfully demonstrated not only the benefits but has also shown that the profitability is higher (as per the charts exhibited elsewhere). Considering the totality of the facts we have no hesitation in directing the AO / TPO to delete the impugned addition on account of export commission.

7.18 This ground is accordingly allowed."

12. Thus, we find that the both the issues of transfer pricing adjustment with respect to determination of ALP of Rs. Nil on export commission and payment of royalty are decided in favour of the assessee. The ld DR could not show as well as the ld AR vehemently submitted that there is no change in the facts and circumstances of the case. In view of this Ground Nos. 2 to seven of the appeal are allowed.

13. Ground No. 8 of the appeal is with respect to the expenses of signage, which was considered by the ld AO as capital expenditure whereas the assessee claimed it to be revenue expenditure. On carefully consideration of rival contentions, we find that this issue is squarely considered the coordinate bench in ITA No. 7463 and 7064/Del/2018 at para No. 3 of the order. In that para the coordinate bench held that the order of ITAT in assessee's own case for Assessment Year 2012-13 in ITA No. 7714/Del/2017 wherein, as per para No. 26 the coordinate bench held that the expenditure on the signage is allowable to the assessee as revenue expenditure signage are fixed at dealers premises and it dies bit satisfy the test of ownership with the assessee. Thus it was held that same is revenue expenditure as under :-

"3. Disallowance of expenditure on signages - A similar issue was considered and decided by the Tribunal in A.Y.2012-13 in ITA No.7714/Del/2017. The relevant findings read as under :-

"26. We have heard the rival contentions and perused the record. The expenditure was incurred on signage for display of the name of the assessee at the dealer's premises. However, once the same is fixed at dealers site then the Courts have held that it does not satisfy the test of ownership with the assessee and the expenditure is to be allowed as revenue expenditure, We find support from the ratio laid down by the Hon'ble Delhi High Court in CIT vs Honda Siel Power Products Ltd.(supra). Thus, we are of the view that the expenditure to the extent claimed by the assessee is to be allowed in the hands of the assessee and not/the entire expenditure.

Ground of appeal No.6 is thus partly allowed." 3.1 Respectfully following the decision of the coordinate bench, we hold accordingly."

14. Therefore, respectfully following the decision of the coordinate bench in assessee's own case ground No. 8 of the appeal of the assessee is allowed holding that signage expenditure of Rs. 1,65,62,386/- is revenue in nature.

15. Ground No. 9 is with respect to sales tools expenses of Rs. 2,39,27,651/- u/s 37 of the Act.

16. An identical issue is decided by the coordinate bench in assessee's own case in ITA No. 7463 and 7464/Del/2018 for Assessment Year 2013-14 and 2014-15 holding that the above sales tools expenses is allowable to the assessee u/s 37(1) of the Act. This decision of the coordinate bench followed the earlier decision of the tribunal in assessee's own case reported in 2021] 124 taxmann.com 81 (Delhi - Trib.)/[2021] 187 ITD 264 Dated 31 August 2024 assessment year 2012 – 13 wherein the issue of disallowance of sales tools expenses is discussed as Under:-

> **"27.** Now coming to the Ground of appeal No. 7 raised by the assessee against the disallowance of sales tools expenses of Rs. 2,72,32,757/-.
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> **28.** Briefly in the facts of the case, the assessee incurred the said expenditure on sales tools expenses. The assessee explained that it required its authorized dealers to use specified quality of sales tools. fixtures at their showrooms which was to ensure that such exclusive authorized dealers maintain uniformity in advertising assessee's brand effectively across India and maintaining the high prescribed standards. The Assessing Officer was of the view that the there was no obligation to incur the said expenses; hence, the same were disallowed in the hands of the assesse.
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> **29.** The Ld.AR for the assessee pointed out that the expenditure were incurred in order to make the showrooms of the dealer look alike and the assessee incurred 50% of the expenses. The assessee during the course of hearing was asked to file copy of Agreement entered into with the dealer/s and also the No. of dealer appointed by it. The Ld.AR for the assessee duly filed the same and pointed out that the turnover of the assessee had increased from Rs. 64 crores in the preceding year to Rs. 8,539 crores during the year.
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> **30.** We have heard the rival contentions and perused the record. The expenditure incurred by the assessee on sales tools/fixtures which are placed at dealer's outlets are specifically manufactured by third party manufacturers in accordance with the specifications provided by the assessee. As per the terms of the agreement between the assessee and the third party manufacturers, 50% of the price of the sales tools is directly paid by the assessee as advance to the third party manufacturer at the time of placement of order and balance 50% is paid by the authorized dealers, post inspection and approval of the ordered items by the Inspecting Officer of the assessee before delivery at dealer's outlet. Such sales tools/fixtures inter-alia includes the following:—

- Reception Counter;
- Customer Lounge Partition with Monitor Stand;
- Shelf Partition for Parts and Accessories;
- Frost Glass Partition;
- Digital Graphic Panel;
- Specifications Panel;
- Two-Wheeler Display Base (Window);
- Two-wheeler Display Base (Corner);
- Sing Ring;
- Catalogue Stand.

31. The question which arises is whether the assessee is incurring expenditure to maintain standard format of displaying its products all over India in order to induce prospective customers to clearly identify the exclusive dealers of assessee's products in India and expenditure incurred was wholly and exclusively for the purpose of his business.

32. The Ld. DR for the Revenue placed reliance on the orders of the authorities below.

33. We have heard the rival contentions and perused the record. We have perused the Agreement between the assessee and its dealer and Article 11.2 of the Dealership Agreement reads as under:—

> 11.2 "The company shall provide the necessary information, materials and such other assistance from time to time at the dealer's cost and expense, wherever applicable, which support the dealer's advertising and sales promotion efforts for the products, in accordance with the provisions of the policy, guidelines, and operations standards with regard to advertising issued by the Company from time to time. The company may at discretion, provide subsidy on the advertising material."

34. Clause 7.2 of the Dealership Agreement states as follows:—

> 7.2 "The Dealer agrees to comply at all times during the validity of this agreement with the minimum requirements concerning the dealership premises including interalia sales office, showroom, workshop, spare parts and accessories shop and other necessary equipment, machinery, tools specified by the company from time to time. The list of equipments, machinery and tools with detailed specifications and quantities based on dealer's sales/service capacity will be issued by the Company to the dealer from time to time alongwith guidelines and procedures for procuring the same. This may include recommended purchase prices for such equipments, machinery and tools based on arrangement for bulk purchases/quantity discounts etc. with the suppliers and on training, after sales service infrastructure/support etc. provided by the Supplier."

35. In view of the aforesaid, we are of the view that the expenditure incurred on Signages expenses was in the nature of advertisement expenditure, which are recurring in nature, incurred for the purpose of business and in the absence of any

capital asset being acquired/owned by the assessee, the same was allowable as business deduction under section 37(1) of the Act.

17. On careful consideration of the above decision, we find that though the tribunal has considered the material facts for allowance of sales tool expenses however in para number 35 inadvertently, as we could understand referred to the signage expenses. However, in respect of the above apparent error, we find that the logic given by the coordinate bench equally applies to the sales tool expenses also. The above decision was also followed by the coordinate bench in subsequent year. The learned departmental representative also could not show that why the above logic does not apply to the sales tool expenses incurred by the assessee. Therefore, respectfully following the order of the coordinate bench in assessee's own case ground No. 9 of the appeal we hold that since tool expenses incurred by the assessee amounting to Rs. 2 39,27,651/- is a revenue expenditure allowable to the assessee as deduction. Accordingly, ground number 9 of appeal is allowed.

18. Ground No. 10 is with respect capitalization of the royalty being 25% of Rs. 2,05,82,70,086/-i.e. Rs 1,543,702,565 being treated as a capital in nature as it resulted in an enduring benefit to the assessee.

19. The learned authorised representative that this issue has been decided by the coordinate bench in assessee's own case for Assessment Year 2012-13 in ITA No. 7714/Del/2017 and subsequently, in ITA No. 7463 and 7464/Del/2018 for Assessment Year 2013-14 and 2014-1515. Therefore, it was claimed that the issue squarely covered in favour of the assessee by the decision of the coordinate benches in case of the assessee itself for the earlier years.

20. The learned CIT DR vehemently opposed the above submission and submitted that on the issue relating to the capitalization of royalty, the coordinate bench has directed to file a copy of the judgment of Honourable Supreme Court in case of Honda Sivakasi India Ltd versus CIT (395 ITR 713 (2017) (SC) and also copy of the technical knowhow agreement dated 13 July 2000 between the assessee and M/s Honda motor Co Ltd Japan. The relevant paragraphs number 23 – 25 of the above judgment of the honourable Supreme Court in article 15 and article 17 of the above agreement as an relied upon by the learned and CIT DR may be considered

properly while deciding the matter. Therefore, the argument of the learned CIT DR was that that in view of the decision of the honourable Supreme Court the decisions relied upon by the learned authorised representative does not apply to the facts of the case. He extensively read article 15 of the agreement, which is terms of agreement stating that the agreement is for a period of 10 years, and would be automatically renewed four successive 10 year period . Therefore, he submitted that assessee has the benefit of enduring nature. He further referred to article 17 of the agreement, which is in effect of expiry on termination of the agreement to support his case. In view of this, he submitted that the issue is not covered in favour of the assessee but is covered in favour of the revenue by the decision of the honourable Supreme Court in case of Honda sale cars India Ltd (supra).

21. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the orders of the coordinate bench in case of the assessee deciding the issue in favour of the assessee. On careful perusal of the order, we find that the coordinate bench on identical facts and circumstances has held that the royalty paid by the assessee to the associated enterprises concern is fully revenue in nature and not the capital expenditure. Thus, the coordinate bench deleted the disallowances erred by the ld AO that 25% of the royalty paid by the assessee is capital in nature. In that case, the coordinate bench in **2021] 124 taxmann.com 81 (Delhi - Trib.)/[2021] 187 ITD 264...** ASSESSMENT YEAR 2012-13 DATED AUGUST 31, 2020 in assessee's own case considered the decision of the honourable Supreme Court in relying on the decision of the honourable Delhi High Court allowed the claim of the assessee as Under:-

> **"7.** Now coming to the next issue raised which is by way of additional ground of appeal. Since it is legal issue, it is admitted for adjudication. The assessee fairly pointed out that the lumpsum Royalty was capitalized in its books of accounts and also not claimed as an expenditure in the return of income. However, because of the settled position by way of the decision of the Jurisdictional High Court in *Hero Honda Motors Ltd*. (*supra*), the same is being claimed as business expenditure. The relevant findings are as under:—
>
> "The Hon'ble ITAT in the appellant's own case for Assessment Year 2011-12 reiterated that the facts in the case of the appellant differ from the facts of *Honda Siel Cars Ltd.* (*supra*) because the amount expended is in relation to the running royalty and not for the purpose of setting up of plant.
>
> Further, reference is also made to the decision of the Delhi Tribunal in the case of *Honda Cards IndiaLtd*. v. *DCIT* : ITA No. 4491/Del/2014 dated 18-8-2017 (pages 414-457 of the CLPB) and also confirmed by Hon'ble Delhi High Court in ITA No.

45/2019 *vide* order dated 13-5-2019 (refer pages 457A-457F of the CLPB), wherein the Tribunal after referring to the decision of the Supreme Court in the case of *Honda Siel Cars* (*supra*) observed that the Supreme Court has carved out the distinction between the payments at the time of setting up of the manufacturing facility and the payments made once the manufacturing process has already began. In the former case, royalty expenditure for setting up the manufacturing facility is capital in nature while in the latter case, the royalty expense is revenue in nature."

48. The SLP filed against the said decision has been dismissed by the Hon'ble Supreme Court. Applying the said ratio, we are of the view that the assessee was entitled to claim the aforesaid expenditure as revenue expenditure in the hands of the assessee.

49. Coming to the stand of the Revenue that where the assessee itself had not claimed as deductible in its hands, then the same cannot be allowed by the additional ground of appeal. We find no merit in the stand of the Ld.DR for the Revenue as there is no estoppel in law; especially where the issue has been decided by the Jurisdictional High Court on similar facts. Accordingly, we allow the additional ground of appeal raised by the assessee.

There is no change in the facts and circumstances of the case therefore, respectfully following the orders of the assessee's own case for Assessment Year 2012-13 s ground No. 10 of the appeal is allowed.

22. Ground No. 11 is with respect to the deduction of Rs. 231,80,00,000/- of technical knowhow claimed by the assessee however, it was not allowed.

23. The ld AR submitted that identical issue arose before the coordinate bench in Assessment Year 2012-13, 2013-14 and 2014-15 in ITA number 7463 – 7464/del/2019 dated 30 September 2020. He further referred to paragraph number six on page number 18 onwards of that decision to show that the issue squarely covered in favour of the assessee.

24. The taught departmental representative women to supported the order of the lower authorities and stated that this issue has not claimed before the learned assessing officer in the return of income and therefore should not be considered.

25. We have carefully considered the rival contention and perused the orders of the lower authorities. The identical claim with respect to the deduction of expenses in respect of technical knowhow arose before the coordinate bench in case of the assessee in ITA number 7463 and 7464/del/2018 for assessment year 2013 – 14 and 2014 – 15 wherein at para number six the coordinate bench dealt with this issue. The coordinate bench considered the decision of the coordinate bench in assessee's own case for assessment year 1213 as under :-

"6. Additional claim of deduction of expenses in respect of technical know-how- A similar issue has been decided in A.Y. 2012-13. The relevant findings read as under :-

> 47. Now coming to the next issue raised which is by way of additional ground of appeal. Since it is legal issue, it is admitted for adjudication. The assessee fairly poin ted out. that the lumpsum Royalty was capitalized in its books of accounts and also not claimed as an expenditure in the return of income. However, because of the settled position by way of the decision of the Jurisdictional High Court in CIT v. Hero Honda Motors Ltd. (supra), the same is being claimed as business expenditure. The relevant findings are as under:-
>
> "The Hon'ble ITAT in the appellant's own case for assessment Year 2011- 12 reiterated that the facts in the case of the appellant differ from, the facts of Honda Siel Cars Ltd. (supra) because the amount expended is in relation to the running royalty and not for the purpose of setting up of plant.
>
> Further, reference is also made to the decision of the Delhi Tribunal in the case of Honda Cards India Ltd vs DCIT : ITA No.4491/Del/2014 dated 18.08.2017 (pages 414- 457 of the CLPB) and also confirmed by Hon'ble Delhi High Court in ITA No.45/2019 vide order dated. 13.05.2019 (refer pages 457A-457F of the CLPB), wherein the Tribunal after referring to the decision of the Supreme Court in the case of Honda Siel Cars (supra) observed that the Supreme Court has carved out the distinction between the payments at the time of setting up of the manufacturing facility and the payments made once the manufacturing process has already began. In the former case, royalty expenditure for setting up the manufacturing facility is capital in nature while in the latter case, the royalty expense is revenue in nature. "
>
> 48. The SLP filed against the said decision has been dismissed by the Hon'ble Supreme Court. Applying the said ratio, we are of the view that the assessee was entitled to claim the aforesaid expenditure as revenue expenditure in the hands of the assessee.
>
> 49. Coming to the stand of the Revenue that where the assessee itself had not claimed as deductible in its hands, then the same cannot be allowed by the additional ground of appeal. We find no merit in the stand of the Ld. DR for the Revenue as there is no estoppel in law; especially where the issue has been decided by the Jurisdictional High Court on similar facts. Accordingly, we allow the additional ground of appeal raised by the assessee.

6.1 Respectfully following the findings of the coordinate bench we decide accordingly.

In view of this issue being squarely covered in favour of the assessee by the order of the coordinate bench in assessee's own case for the earlier years, we respectfully following the same allow ground number 11 of the appeal of the assessee.

26. Ground number 12, 13, 14 and 15 were all with respect to either initiation of penalty proceedings u/s 271 (1) (C) of the act or of charging of interest u/s 234A, B, C and D of the act. We find that all these grounds are consequential in both the parties did not argue anything on this. Therefore, these grounds are dismissed.

27. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 21/05/2021.

Sd/-	Sd/-
(AMIT SHUKLA)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated : 21/05/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	21.05.2021
Date on which the typed draft is placed before the dictating member	21.05.2021
Date on which the typed draft is placed before the other member	21.05.2021
Date on which the approved draft comes to the Sr. PS/ PS	21.05.2021
Date on which the fair order is placed before the dictating member for pronouncement	21.05.2021
Date on which the fair order comes back to the Sr. PS/ PS	21.05.2021
Date on which the final order is uploaded on the website of ITAT	21.05.2021
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	