

**IN THE 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)**

STAY APP. No. 68/Del/2021.
[in ITA. No. 477/Del/2021]
(Assessment Year: 2016-17)

Honda Motorcycle and Scooter India Pvt. Ltd., Commercial Complex-II, Golf Course Ext. Road, Sector 49/50, Gurugram – 122 018 PAN: AAACH7467D	Vs.	ACIT, Circle : 4 (1) New Delhi.
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AND

ITA. No. 477/Del/2021
(Assessment Year: 2016-17)

Honda Motorcycle and Scooter India Pvt. Ltd., Commercial Complex-II, Golf Course Ext. Road, Sector 49/50, Gurugram – 122 018 PAN: AAACH7467D	Vs.	ACIT, Circle : 4 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Deepak Chopra, Advocate; Shri Harpreet S. Ajmani; Adv.; Ankul Goyal, Advocate; Ms. Manasvini Bajpai, Adv.; & Ms. Pratishtha Singh, Adv.
Revenue by:	Shri Surender Pal [CIT] – DR; Shri Arun Kumar Yadav, Sr. DR;
Date of Hearing :	10/08/2021
Date of pronouncement :	09/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

- ITA number 477/Del/2021 is filed by Honda motorcycle and Scooter India private limited (assessee/appellant) for assessment year 2016 – 17 against the assessment order passed by NATIONAL E-ASSESSMENT CENTRE, on 30/3/2021 u/s 143 (3) read with Section 144C (13) and 144C (13) read with

Section 143 (3A) and 13 (3B) of the income tax act 1961 as per E assessment scheme, 2019. The assessee filed his return of income on 29/11/2016 declaring total income of Rs 15,491,530,430/- wherein the total income of the assessee was assessed at ₹ 1,769,70,93,900/-. By this assessment order following adjustments/additions were made to the total income of the assessee:-

- a. transfer pricing adjustment of ₹ 586,946,764/-
 - b. disallowance of signage of ₹ 7,545,398/-
 - c. disallowance of sales tool expenditure of Rs 1 9290061/-
 - d. disallowance of royalty expenditure of ₹ 1,591,781,250/-
2. Assessee, aggrieved with that order, In ITA. No. 477/Del/2021, 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

2. That the TPO/DRP grossly erred in law in making/sustaining TP adjustments of INR 49,53,48.444/- being payment of Export Commission and INR 9,15,98,320/- 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.

Re : Payment of Export, Commission - INR 49,53,48.444/-

5. That the TPO/DRP erred in recomputing the arm’s length price of the International transaction relating to payment of export commission whereby making an adjustment of INR 49,53,48,444/-.

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

5.2 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 benchmarked separately.

5.3 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.

5.4 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.

5.5 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 IIMJ 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.

5.6 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 and which approach has already been rejected by the Tribunal in the preceding years.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

5.12 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.

5.13 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 - 1NR 9,15,98,320/-

6. That the TPO/DRP erred on facts and in law making adjustment of INR 9,15,98,320/ being royalty paid by the Appellant to Honda Motors Japan (HMJ) for exports to AEs.

6.1 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,

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

6.3 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.

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

6.5 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.

6.6 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.

6.7 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 Signage's - INR 75,45,398/-

7. That the AO/DRP erred in treating an Amount of INR 75,45,398/- Incurred on Signage's as being capital in nature.

7.1 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.

7.2 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.

7.3 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 to 2015-16.

Re: Sales tools Expenses - /NR 1,92,90,061/-

8. That the AO / DRP grossly erred in disallowing an amount of INR 1,92,90,061/- being sales tools expenses under section 37 of the Act.

8.1 That the AO/DRP grossly erred in introducing a new condition under section 37 of the Act that for allowance of expenditure, the same should have been incurred only under a pre-existing contractual liability.

8.2 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.

8.3 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.

8.4 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 and hence the expenditure was wholly and exclusively for the purposes of the Appellant's business.

8.5 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 159,17,81,250/-

9. That the AO/DRP grossly erred in coming to the conclusion that 25% of the running royalty of INR 848,95,00,000/- was to be treated as capital in nature as it resulted in enduring benefit to the assessee,

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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 to 2015-16.

Re: Claim of Deduction of expenses of INR 250,17,14,636/- in respect of Technical Know how.

10. That the AO/DRP have erred in not allowing deduction of expenses of INR 250,17,14,636/- in respect of Technical know-how duly claimed before the AO and DRP.

10.1 That the AO/DRP have erred in not allowing deduction of expenses of 250,17,14,636/- in respect of Technical know-how in utter disregard to circular no. 14(XL-35) dated 11.04.1955.

Re: Consequential Grounds

11. That the AO has erred in initiating penalty proceedings under Section 271 (1)(c) of the Act.

12. That the AO has erred in levying interest of INR 40,62,02,820/- under section 234B of the Act on the Assessee.

13. That the AO has erred in levying interest of INR 12,23,322/- under section 234C of the Act on the Assessee.

The above 'Grounds of Appeals' are all independent and without prejudice to one and another. The Appellant also craves leave to supplement, to cancel, amend, add and/or otherwise alter or modify, any or all, grounds of the appeal stated hereinabove. "

3. Assessee is a subsidiary of Honda motor Co Ltd Japan, engaged in the business of manufacture and sale of motorcycle and Scooters. Assessee has entered into certain international transactions with its associated enterprise and therefore reference was made to the transfer pricing officer to determine the arm's-length price in respect of international transaction undertaken by the assessee. The learned transfer pricing officer (1) (3), New Delhi passed an order u/s 92CA wherein he has proposed the addition of ₹ 586,946,764/- on account of adjustment u/s 92CA with respect to the payment of export commission and royalty for export to associated enterprise. The assessee made payment of export commission of ₹ 495,348,444/- and payment of royalty for export to associated enterprise of ₹ 91,598,320/- which was determined as arm's-length price at Rs Nil by the learned transfer pricing officer. Further assessee claimed deduction of ₹ 8,876,939 on account of signage as allowable revenue expenditure which was held to be the capital expenditure by the learned AO and allowed depreciation thereon at the rate of 15% amounting to ₹ 1,331,541/- and accordingly a sum of ₹ 7,545,398/- was added back to the returned income

of the assessee. Assessee incurred an expenditure of Rs 1 92,90,061/- on account of sales tool expenditure incurred for providing it to the dealers. The learned assessing officer held that assessee was Under no obligation/legal or contractual to incur these expenses as business expenditure and therefore same was disallowed u/s 37 of the income tax act. Assessee has claimed expenses on royalty during the year to the tune of ₹ 84,895,00,000/- which was paid to a foreign company Honda motors Japan in lieu of technical know-how and technological assistance from them to the assessee. Assessee claimed it as a revenue expenditure. The learned AO held that it gives the benefit of enduring nature to the assessee. Accordingly 25% of the royalty expenditure of ₹ 8,489,500,000 which comes to ₹ 2,122,375,000 is treated as capital expenditure being spent towards acquisition of a capital asset as it gives rise to an enduring benefit which can be enjoyed by the assessee over a number of years. Depreciation on the same at the rate of 20% was allowed to the extent of ₹ 530,593,750. Accordingly a sum of ₹ 1,591,781,250 was added back to the total income of the assessee. Consequently the draft assessment order was framed. Assessee filed an objection before The Dispute Resolution Panel who gave its direction on 17/11/2020 upholding the action of the learned assessing officer. Consequent to that final assessment order was passed on 30/3/2021 , which is Under challenge in this appeal.

4. The learned authorised representative submitted a chart stating that ground number 2-5, 6, 7, 8, 9 and 10 are covered in favour of the assessee by the decision of the coordinate bench dated 21/05/2021 in assessee's own case for assessment year 2015 – 16 bearing ITA number 9073 del 2019. Therefore, these issues are required to be decided in favour of the assessee. He submitted a copy of the decision of the coordinate bench for that assessment year.
5. The learned departmental representative vehemently supported the order of the learned assessing officer, order of learned transfer pricing officer and direction of the learned dispute resolution panel.
6. We have carefully considered the rival contention and perused the orders of the lower authorities we have also considered the decision of the coordinate bench in assessee's own case for assessment year 2015 – 16 dated

21/05/2021. Both the parties have confirmed that there is no change in the facts and circumstances of the case for this year compared to the facts and circumstances in the case of the assessee for assessment year 2015 – 16.

7. Ground number 1 of the appeal of the assessee is general in nature, no specific arguments were advanced, therefore same is dismissed.
8. Ground number 2 is with respect to the transfer pricing adjustment on account of payment of export commission of ₹ 495,348,444/- and ₹ 91,598,320/- on payment of royalty on export to associated enterprises. The learned transfer pricing officer has rejected the transfer pricing methodology adopted by the assessee for benchmarking its international transaction. The learned TPO also rejected principles of commercial expediency argued by the assessee stating that it is not mandated as per the provisions of Section 92CA of the act. The determined ALP of these transactions at Rs Nil. The coordinate bench in assessee's own case for assessment year 2015 – 16 has considered this issue as Under:-

“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 Id. 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 Id. 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 know-how agreement dated 13.07.2000 the assessee was entitled to use technical know-how 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.

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.

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 rightly 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 assessee'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 mention 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 Id. DR could not show as well as the Id. 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."

9. Therefore, respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2015 – 16, we allow ground number 5 of the appeal and thereby direct the learned transfer pricing officer/learned assessing officer to delete the adjustment on account of the arm's-length price of the export commission payment of ₹ 495,348, 444/–.
10. Coming to ground number 6 of the appeal with respect to adjustment of ₹ 91,598,320/– being made on account of royalty payment to Honda motors Japan for export to associated enterprises where the arm's-length price was determined by the learned assessing officer at Rs nil, The coordinate bench in assessee's own case for assessment year 2015 – 16 also dealt with the above issue in paragraphs extracted above. Therefore, ground number 6 of the appeal of the assessee is also allowed.
11. Ground number 2 – 4 of the appeal are supporting the arguments advanced by the assessee for ground number 5 and 6 of the appeal with respect to the transfer pricing adjustments are also allowed accordingly.
12. Coming to ground number 7 of the appeal with respect to the disallowance of expenditure of signage is of ₹ 7,545,398/– we find that this issue is also been dealt with by the coordinate bench in assessee's own case for assessment year 2015 – 16 as Under:-

"13. Ground No. 8 of the appeal is with respect to the expenses of signage, which was considered by the Id. 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 does not 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 ₹ 1,65,62,386/- is revenue in nature."

13. Therefore respectfully following the decision of the coordinate bench in assessee's own case, we also hold that signage expenditure is revenue in nature. Accordingly the disallowance of ₹ 7,545,398/- is deleted and ground number 7 of the appeal of the assessee is allowed.
14. Ground number 8 is with respect to the disallowance of the sales tool expenses incurred by the assessee. The coordinate bench has also decided this issue in favour of the assessee by the order dated 21/05 /2021 in assessee's own case for assessment year 2015 – 16 as Under:-

"6. 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 ₹ 2,72,32,757/-.

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 there was no obligation to incur the said expenses; hence, the same were disallowed in the hands of the assessee.

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 ₹ 64 crores in the preceding year to ₹ 8,539 crores during the year.

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 inter alia 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 ₹ 2,39,27,651/- is a revenue expenditure allowable to the assessee as deduction. Accordingly, ground number 9 of appeal is allowed."

15. Therefore, respectfully following the decision of the coordinate bench in assessee's own case for assessment year 2015 – 16, we also hold that sales tool expenditure are revenue expenditure in nature and therefore the disallowance made by the learned assessing officer of Rs 1 92,90,061/- is directed to be deleted. Accordingly, ground number 8 of the appeal is allowed.
16. Ground number 9 is with respect to the capitalization of the royalty expenses paid to him the amount of Japan wherein the assessee has paid a royalty expenditure of Rs 8,488,135,369/- in lieu of granting license Under the royalty and technical knowhow agreement and INR Rs 2,331,540,470/- in lieu of granting technical guidance Under the technical knowhow agreement. The assessee has claimed that it did not acquire any new asset or any new enduring benefit from the payment made Under the agreement. We find that this issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for assessment year 2015 – 16 in ITA number 9073 del 2019 dated 21/05/2021 as Under:-

"18. Ground No. 10 is with respect capitalization of the royalty being 25% of ₹ 2,05,82,70,086/- i.e. ₹ 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 2014-15. 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 know-how 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 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 Id. 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 India Ltd. 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."

17. With respect to the argument of the learned departmental representative of reliance on the decision of the honourable Supreme Court in case of Honda Seil cars India Limited (82 taxmann.com 212) has also been dealt with by the coordinate bench in case of a sister concern M/S. Honda Cars India Limited . vs DCIT (LTU) , NEW DELHI 2017 (8) TMI 1535 - ITAT DELHI in ITA No. 4491/Del/2014 And ITA No. 5483/Del/2014- August 18, 2017 as Under:-

"33. We have considered the rival submission and perused the relevant material on record. In the present case, payments are made pursuant to the agreement dated 01/04/2005. At the time of the agreement was executed, the assessee was in existence in operation for more than 10 years. Thus, it cannot be said that the technical knowhow given under the agreement was for setting up of the business of the assessee. It was also brought to our attention that a coordinate Bench of this tribunal in assessee's own case for assessment year 2008-09 & 2009-10 has held that the said expenditure of payment of royalty and lump sum model fee to be in the nature of revenue expenditure. The said

order for assessment year 2008-09 has also been confirmed by the Hon'ble Jurisdictional Delhi High Court in ITA No. 34 of 2016 dated 18.01.2016.

34. Hon'ble Supreme Court while deciding the case of royalty/technical knowhow expenditure in the nature of capital held that the expenditure was for the purpose of setting up of manufacturing facility of the assessee and hence the payment was treated as capital in nature. The Hon'ble Supreme Court distinguished the judgment of the Delhi High Court in the case of Hero Honda Motors (supra) and observed as under:

“25) Coming to the judgment of the Delhi High Court in the case of this very assessee, it would be noticed that in that case, technical know-how was obtained for improvising scooter segment, which unit was already in existence. On the contrary, in present case, the TCA was for setting up of new plant for the first time to manufacture cars. The Delhi High Court specifically noted this fact in para 14 of the judgment. While analyzing the agreement in that case which was for providing technical know-how in relation to the product i.e. two wheelers and three wheelers and the purpose was to introduce 'new models' of the said product developed by the Japanese Company, the High Court noted that the agreement specifically recorded that the respondent assessee was already engaged in the business of manufacturing, assembling, selling and otherwise dealing with two/three wheelers and their parts as a joint venture. It. referred to the earlier collaboration agreement dated January 24, 1984 and the subsequent amendment thereto which conferred and had granted to the respondent assessee a right and licence to manufacture, assemble, sell, distribute, repair and service two/three wheelers. The aforesaid distinction between the two Agreements has made all the difference in the results. As a consequence, we find no merit in these appeals which are dismissed with coast.”

35. The Hon'ble 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 begun. We observe from the facts available on record that the assessee had commenced manufacturing activity in the year 1998 itself and by virtue of the new TCA dated 01/04/2005 the technical information provided to the assessee was in respect of addition of the existing product profile already been manufactured by the assessee. The Hon'ble Delhi High Court in the case of CIT Vs. Hero Honda Motors (supra) in para – 16 of the order (reproduced in para -29 of this order) has held the royalty for carrying on the day-to-day business as revenue expenditure.

36. The Hon'ble Supreme Court in the decision in the case of assessee (supra) has further observed as under:

“22) When we apply the aforesaid parameters to the facts of the present case, the conclusion drawn by the High Court that expenditure incurred was of capital nature, appears to be unblemished. Admittedly, there was no existing business and, thus, question of improvising the existing technical know-how by borrowing the technical know-how of the HMCL, Japan did not arise. The assessee was not in existence at all and it was the result of joint venture of HMCL, Japan and M/s. HSCIL, India. The very purpose of Agreement between

the two companies was to set up a joint venture company with aim and objective to establish a unit for manufacture of automobiles and part thereof. As a result of this agreement, assessee company was incorporated which entered into TCA in question for technical collaboration. This technical collaboration included not only transfer of technical information, but, complete assistance, actual, factual and on the spot, for establishment of plant, machinery etc. so as to bring in existence manufacturing unit for the products. Thus, a new business was set up with the technical know-how provided by HMCL, Japan and lump sum royalty, though in five Installments, was paid therefor.

37. In view of above discussion, we are of the view that the judgement of the Hon'ble Supreme Court in assessee's own case for assessment year 1999-2000 to 2005-06 would not be applicable in the assessment year under consideration, since the assessee was already engaged in the manufacturing of cars and spare parts and the payments towards royalty/technical knowhow paid in pursuant to agreement dated 01/04/2005 were not toward setting up of manufacturing facility, hence we hold that royalty/technical knowhow payment made by the assessee during the year under consideration were revenue in nature and the Ld. CIT-A has correctly allowed the said expenditure as revenue. Accordingly, we dismiss the ground of appeal of the Revenue."

18. The fact also shows that assessee was already engaged in the manufacturing of motorcycle and Scooter and payment of royalty expenses was not with respect to setting up of manufacturing facility. Therefore respectfully following the decision of the coordinate bench, we also allow ground number 9 of the appeal of the assessee and direct the learned AO to delete the addition of ₹ 1,591,781,250/- on account of capitalisation of royalty expenses holding it to be revenue in nature.
19. During the course of hearing the assessee has raised an additional ground of appeal by an application for admission of additional evidences dated 23 June 2021 as Under:-

Ground 14

14.1. That the deduction of to Education Cess amounting to INR 15,45,96,296/- paid on Income tax is an allowable expenditure in the year of payment in light of the decision of the Hon'ble Bombay High Court in the case of Sesa Goa Ltd v. JCIT [423 ITR 426].

14.2. That the Education Cess is actually paid on Income Tax, it is not a part of the Income Tax and that the effect of omission of the word 'cess' from section 40(a)(ii) of the Act is that only taxes paid are to be disallowed and not cess.

20. The learned authorised representative submitted that the additional ground of appeal relates to the claim of deduction/expenditure in respect of primary educational cess and higher and secondary education cess paid during the relevant assessment year. It was stated that it is a legal ground which can be taken up at any time before the higher authority is relying upon the judgement of the honourable Supreme Court in case of National thermal Power Co Ltd versus CIT (1998) 229 ITR 383. He therefore submitted that it needs to be admitted.
21. The learned departmental representative vehemently opposed the additional ground.
22. On careful consideration of the issue raised in the additional ground and the decision of the honourable Supreme Court, absence of any fresh investigation of facts, the additional ground filed by the assessee is accepted.
23. The learned authorised representative submitted that this issue is squarely covered in favour of the assessee by the decision of the honourable Rajasthan High Court and honourable Bombay High Court. He specifically referred to the decision of the honourable Bombay High Court in case of sesa Goa Ltd versus joint Commissioner of income tax (2020) 423 ITR 426 and also the honourable Rajasthan High Court's decision in case of Chambal fertilisers and chemicals Ltd versus joint Commissioner of income tax (2019) 107 taxman.com 484. The learned AR referred to the CBDT circular dated 18th/5/1967. He also referred to the recommendation of the select committee and several judicial precedents. Therefore he submitted that the above deduction of education cess is allowable in the hands of the assessee.
24. The learned departmental representative referred to the decision of the honourable Supreme Court in case of CIT versus K Srinivasan (1972) 83 ITR 346 and submitted that education cess is part of 'tax' and therefore same is not allowable either u/s 37 (1) of the act and further as it is not an allowable expenditure the applicability of provisions of Section 40 (a) does not arise at all.

25. We have carefully considered the rival contentions and pursued the various judicial precedents cited before us. We have appreciated the arguments of the ld DR . However the judicial precedents cited before us of Honourable Bombay and Rajasthan High court bind us. We find that this issue is squarely covered in favour of the assessee by the decision of Honourable Bombay high court in case of Sesa Goa Limited [2020] 117 taxmann.com 96 (Bombay)/[2020] 423 ITR 426 (Bombay)and Honourable Rajasthan High court in case of Chambal fertilizers Limited[2019] 107 taxmann.com 484 (Rajasthan). Coordinate bench in Perfetti Van Melle India Pvt. ... vs Acit, Circle-3(1), Gurgaon on 22 September, 2021 I.T.A. No. 463/Del/2021 has already considering all the arguments has allowed the claim of the assessee. Therefore respectfully following the same, we direct the ld AO to allow assessee the deduction of cess u/s 37 (1) of the act. Accordingly, additional ground of appeal is allowed.
26. Other Consequential grounds i.e. Ground No 11,12 and 13 becomes infructuous and hence dismissed.
27. Accordingly, appeal of the assessee is partly allowed.
28. In view of our decision in appeal of the assessee, impugned stay application of the assessee becomes infructuous and hence, dismissed.

Order pronounced in the open court on : 09/11/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 09/11/2021.

MEHTA

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	9.11.2021
Date on which the typed draft is placed before the dictating member	9.11.2021
Date on which the typed draft is placed before the other member	9.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	9.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	9.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	9.11.2021
Date on which the final order is uploaded on the website of ITAT	9.11.2021
date on which the file goes to the Bench Clerk	9.11.2021
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	