INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1744/Del/2017
(Assessment Year: 2007-08)

Honda Motor Co. Ltd, SRBC & Associates, 4th & 5th Floor, Plot No. 2B, Tower-2, Sector-126, Noida PAN: AACCH3050J	Vs.	DCIT(International Taxation) Circle-Noida, Noida
(Appellant)		(Respondent)

ITA No. 6015, 6016, 6017/Del/2015 & 376/Del/2016
(Assessment Year: 2004-05, 2005-06, 2006-07 and 2007-08)

Honda Trading Asia Co. Ltd, SRBC & Associates, 4th & 5th Floor, Plot No. 2B, Tower-2, Sector-126, Noida PAN: AACCH3050J	Vs.	DCIT, Circle-Noida, Noida
(Appellant)		(Respondent)

Assessee by :	Shri kishore kunal Adv
Revenue by:	Shri Sandeepkumar Mishra SR DR
Date of Hea ing	13/02/2019
Date of pronouncement	10/05/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. ITA number 1744/del/2017 is filed by Honda motor Co Ltd for assessment year 2007 – 08 against the order of The deputy Commissioner of income tax, international taxation, Noida dated 6/1/2017 passed under section 147 read with section 143 (3)/144C (13) of The Income Tax Act 1961. Raising following grounds of appeal:-

   1. *That or the facts & in the circumstances of the case and in law, the orders massed by the Assessing Officer (AO) /Dispute Resolution Panel (DRP) is n law and void ab-initio.*
   2. *That the AO/DRP erred in upholding the validity of the re-assessment proceedings under Section 147 of the Act when*

initiation of proceedings c d not satisfy necessary requisites contained in Section 147 of the Act and there being no reason to believe that any income chargeable to tax and escaped assessment.

Without prejudice

3. That the AO/DRP erred in concluding that the Appellant had a Permanent Establishment (PE) under Article 5 of the Indo-Japan DTAA given the fact that necessary "requisites of creating a PE under Article 5 of DTAA were lacking in the present case.

3.1 That the AO/DRP erred in coming to the conclusion that their existed a PE of the Appellant in India while relying on the statements of expatriate employees of Honda Cars India Ltd. (HCIL) which were inadmissible evidence in terms of the judgment of the Hon'ble Supreme Court in Khader Khan Son (254 CTR 228)(SC).

3.2 That the AO/DRP erred in coming to the conclusion that expatriate employees working in Honda Cars India Ltd were working on behalf of the Appellant and as such controlled the day-to-day functioning of HCIL in terms of technology, economic and other control.

3.3 That the AO/DRP completely failed to appreciate that in terms of Article 5(9) of the Double Tax Avoidance Agreement between India and Japan (DTAA) control of holding company over subsidiary does not in itself create a Permanent Establishment of the non-resident.

3.4 That the AO/DRP erred in law in selectively relying on the statement of expatriate emp oyees and failed to appreciate the true intention of the statements which evidenced that the expatriates were working only for HCIL in India.

4. That the AO/DRP erred in bringing to tax the off-shore supplies made by the Appellant to HCIL without appreciating that title and risk of these goods was transferred outside India to HCIL and hence no portion of the profit arising therefrom could be brought to tax in India.

4.1 That the AO/DRP completely failed to appreciate that the international transactions relating to purchase of raw-materials of HCIL from the Appellant had been subjected to transfer pricing assessment wherein the value of said international transactions were found to be on arm's length basis.

4.2 That the AO/DRP completely failed to appreciate that in terms of Article 9 of DTAA once the international transactions between the Appellant and HCIL had been found to mean at arm's length basis, the Revenue was prohibited from allocating any further income of the Appellant to be taxed in India.

4.2 Without prejudice to the above grounds, that on the facts and circumstances of the case and in law, the AO/DRP erred in subjectively using a markup of 15.88 % on total costs for the purpose of determining the profits attributable to the activities of the Appellant in India alleging that selling of raw material,

consumable spare parts, etc. has been carried in India when none of the selling operation is carried in India.

5.1. That the AO/DRP grossly erred in arbitrarily modifying the economic analysis conducted by the Appellant in accordance with the provisions of the Act read with the Rules, for the determination of the ALP in connection

5.2 That the AO/DRP has erred in facts by rejecting certain companies considered comparable by the Appellant for the impugned transaction, without establishing their non-comparability, thereby disregarded the fundamentals of the comparability principles such as comparability of the services performed and failed to undertake any functional, asset and risk analysis of comparable vis-a-vis the Appellant and merely relied upon the financial result.

5.3. The order passed by the Hon'ble DRP is invalid in law as it violates the well-established principles of natural justice.

5.4. Without prejudice to the fact that the Appellant believes that it does not constitute a PE in India, the Hon'ble DRP has grossly erred in law and in facts by subjecting to tax the mark-up as well as the "cost base" (comprising of salaries of expatriates) which has been used for the purpose of computing the profit attributable to the alleged PE of the Appellant in India. The tax in such case should have been restricted to the mark-up or profit element only, and the cost of base should not have been included

6. That the AO/DRP has grossly erred in law and facts in levying interest under section 234B of the Act.

7. That the AO/DRP has grossly erred in law and facts in initiating the penalty under section 271(l)(c) of the Act and alleging that the Appellant has concealed the true and correct particulars of its taxable income and furnished inaccurate particulars of its income."

2. Similarly ITA number 6015/Del/2015 for the Assessment Year 2004-05 is filed by HONDA TRADING ASIA COMPANY LIMITED against the order of THE DEPUTY COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION, CIRCLE – Noida dated 31/08/2015 under section 147 read with section 143 (3), 144C (5) of the income tax act, 1961. Assessee has raised following grounds of appeal:-

"1. That on the facts & in the circumstances of the case and in law, the orders passed by the Assessing Officer (AO) /Dispute Resolution Panel (DRP) to the extent prejudicial to the interest of the appellant, are bad in law and void ab-initio.

2. That the AO/DRP has erred in upholding the validity of the re-assessment proceedings under section 147 of the act when initiation of proceedings did not satisfy necessary requisites

contained in section 147 of the act and there being no reason to believe that any income chargeable to tax had escaped assessment.

2.1 That the order of AO/DRP is perverse being contrary to facts and circumstances of the case.

Without prejudice

3. That the AO/DRP grossly erred in law and facts in alleging that the Appellant has a business connection and Permanent Establishment (PE) in India, basis the alleged facts and relationship of Honda Cars India Limited (HCIL) and Honda Motor Co. Ltd., Japan (HMJ).

3.1 That the AO/DRP erred in coming to the conclusion that the expatriate employees of Honda Motors, Japan constituted a Permanent Establishment under Article 5 of the Double Tax Avoidance Agreement between India and Thailand ('DTAA') given the complete absence of any expatriate employee of the Appellant in HCIL

4. That the AO/DRP erred in coming to the conclusion that HCIL is dependent upon the appellant for employees, technology and economically when no employee has been seconded by the appellant to HCIL, no technology has been provided by the appellant to HCIL and HCIL has no economic dependence on appellant.

5. That the AO/DRP erred in coming to the conclusion that their existed a PE of the Appellant in India while relying on the statements of expatriate employees of Honda Cars India Ltd. ("HCIL") which were inadmissible evidence in terms of the judgment of the Hon'ble Supreme Court in S. Qadar Khan & Sons (254 CTR 228)

5.1 That the AO/DRP erred in coming to the conclusion that expatriate employees working in Honda Cars India Ltd were working on behalf of the Appellant and as such controlled the day-to-day functioning of HCIL in terms of technology, economic and other control when no employee was seconded by the appellant to HCIL.

5.2 That the AO/DRP completely failed to appreciate that even assuming control of non-resident company over the resident company does not in itself create a Permanent Establishment of the non-resident in terms of Article 5(6) of the Double Tax Avoidance Agreement between India and Thailand ('DTAA').

5.3 That the AO/DRP erred in law in selectively relying on the statement of expatriate employees and failed to appreciate the true intention of the statements which evidenced that the expatriates were working only for HCIL in India.

6. That the AO/DRP grossly erred in law and facts in taxing offshore supplies when Appellant does not have any business connection or PE in India and the supplies made by the Appellant to HCIL are

concluded outside India (i.e. title and risk is transferred outside India).

7. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the functions performed by the appellant outside India are mainly manufacturing of spare parts and accessories when the appellant is not even involved in manufacturing activity.*

8. *That the AO/DRP completely failed to appreciate that the international transactions relating to purchase of raw-materials of HCIL from the Appellant had been subjected to transfer pricing assessment wherein the value of said international transactions were found to be on arm's length basis.*

8.1 *That the AO/DRP completely failed to appreciate that in terms of Article 9 of DTAA once the international transactions between the Appellant and HCIL had been found to mean at arm's length basis, the Revenue was prohibited from allocating any further income of the Appellant to be taxed in India.*

8.2 *Without prejudice to the above grounds, that on the facts and circumstances of the case and in law, the DRP has erred in attributing 25% of the total income to the activities of the appellant in India alleging that selling of spare parts carried in India when none of the selling operation is carried in India.*

8.3 *Without prejudice to the above grounds, the AO/ DRP has grossly erred in law and facts in rejecting the attribution study filed by the appellant.*

9. *Without prejudice to the above grounds, That AO / DRP has grossly erred in law and facts in holding that the Appellant has incurred research and development (R&D) expense and applying the adjusted global profit ratio of 8.07% when as per global balance sheet operating profit ratio is 2.73% without appreciating that no R&D activity has been undertaken by the Appellant.*

9.1 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the appellant has incurred R&D expense when being a trading entity, no R&D activity has been undertaken by the appellant and no R&D expense has been debited in the P&L A/c.*

10. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in increasing the global operating profit ratio by 5.34% (on the basis of global accounts) when there is no R&D expense incurred by the appellant.*

11. *That the AO/DRP has grossly erred in law and facts in directing the levy of interest under sections 234B and 234C of the Act without appreciating that the Appellant is a non-resident and tax is deductible from the income of the Appellant.*

12. That the AO/DRP has grossly erred in law and facts in levying interest under section 234A of the Act

13. That the AO/DRP has grossly erred in law and facts in directing the levy of interest under section 234D of the Act without appreciating that no refund was granted to the Appellant.

14. That the AO/DRP has grossly erred in law and facts in initiating the penalty under section 271(l)(c) of the Act and alleging that the Appellant has concealed the true and correct particulars of its taxable income and furnished inaccurate particulars of its income."

3. Similarly ITA number 6016/Del/2015 for the Assessment Year 2005-06 is filed by HONDA TRADING ASIA COMPANY LIMITED against the order of DEPUTY COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION, CIRCLE – Noida dated 31/08/2015 under section 147 read with section 143 (3), 144C (5) of The Income Tax Act, 1961. The assessee has raised the following grounds of appeal in ITA No. 6016/Del/2015 for the Assessment Year 2005-06:-

"1. That on the facts & in the circumstances of the case and in law, the orders passed by the Assessing Officer (AO) /Dispute Resolution Panel (DRP) to the extent prejudicial to the interest of the appellant, are bad in law and void ab-initio.

2. That the AO/DRP has erred in upholding the validity of the re-assessment proceedings under section 147 of the act when initiation of proceedings did not satisfy necessary requisites contained in section 147 of the act and there being no reason to believe that any income chargeable to tax had escaped assessment.

2.1 That the order of AO/DRP is perverse being contrary to facts and circumstances of the case.

Without prejudice

3. That the AO/DRP grossly erred in law and facts in alleging that the Appellant has a business connection and Permanent Establishment (PE) in India, basis the alleged facts and relationship of Honda Cars India Limited (HCIL) and Honda Motor Co. Ltd., Japan (HMJ).

3.1 That the AO/DRP erred in coming to the conclusion that the expatriate employees of Honda Motors, Japan constituted a Permanent Establishment under Article 5 of the Double Tax Avoidance Agreement between India and Thailand ('DTAA') given the complete absence of any expatriate employee of the Appellant in HCIL

4. That the AO/DRP erred in coming to the conclusion that HCIL is dependent upon the appellant for employees, technology and economically when no employee has been seconded by the appellant to HCIL, no technology has been provided by the

appellant to HCIL and HCIL has no economic dependence on appellant.

5. *That the AO/DRP erred in coming to the conclusion that their existed a PE of the Appellant in India while relying on the statements of expatriate employees of Honda Cars India Ltd. ("HCIL") which were inadmissible evidence in terms of the judgment of the Hon'ble Supreme Court in S. Qadar Khan & Sons (254 CTR 228)*

5.1. *That the AO/DRP erred in coming to the conclusion that expatriate employees working in Honda Cars India Ltd were working on behalf of the Appellant and as such controlled the day-to-day functioning of HCIL in terms of technology, economic and other control when no employee was seconded by the appellant to HCIL.*

5.2 *That the AO/DRP completely failed to appreciate that even assuming control of non-resident company over the resident company does not in itself create a Permanent Establishment of the non-resident in terms of Article 5(6) of the Double Tax Avoidance Agreement between India and Thailand ('DTAA').*

5.3 *That the AO/DRP erred in law in selectively relying on the statement of expatriate employees and failed to appreciate the true intention of the statements which evidenced that the expatriates were working only for HCIL in India.*

6. *That the AO/DRP grossly erred in law and facts in taxing offshore supplies when Appellant does not have any business connection or PE in India and the supplies made by the Appellant to HCIL are concluded outside India (i.e. title and risk is transferred outside India).*

7. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the functions performed by the appellant outside India are mainly manufacturing of spare parts and accessories when the appellant is not even involved in manufacturing activity.*

8. *That the AO/DRP completely failed to appreciate that the international transactions relating to purchase of raw-materials of HCIL from the Appellant had been subjected to transfer pricing assessment wherein the value of said international transactions were found to be on arm's length basis.*

8.1 *That the AO/DRP completely failed to appreciate that in terms of Article 9 of DTAA once the international transactions between the Appellant and HCIL had been found to mean at arm's length basis, the Revenue was prohibited from allocating any further income of the Appellant to be taxed in India.*

8.2 *Without prejudice to the above grounds, that on the facts and circumstances of the case and in law, the DRP has erred in attributing 25% of the total income to the activities of the appellant*

in India alleging that selling of spare parts carried in India when none of the selling operation is carried in India.

8.3 Without prejudice to the above grounds, the AO/ DRP has grossly erred in law and facts in rejecting the attribution study filed by the appellant.

9. Without prejudice to the above grounds, That AO / DRP has grossly erred in law and facts in holding that the Appellant has incurred research and development (R&D) expense and applying the adjusted global profit ratio of 7.84% when as per global balance sheet operating profit ratio is 2.50% without appreciating that no R&D activity has been undertaken by the Appellant.

9.1 That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the appellant has incurred R&D expense when being a trading entity, no R&D activity has been undertaken by the appellant and no R&D expense has been debited in the P&L A/c.

10. That on the facts and circumstances of the case and in law, the Ld. AO has erred in increasing the global operating profit ratio by 5.34% (on the basis of global accounts) when there is no R&D expense incurred by the appellant.

11. That the AO/DRP has grossly erred in law and facts in directing the levy of interest under sections 234B and 234C of the Act without appreciating that the Appellant is a non-resident and tax is deductible from the income of the Appellant.

12. That the AO/DRP has grossly erred in law and facts in levying interest under section 234A of the Act

13. That the AO/DRP has grossly erred in law and facts in directing the levy of interest under section 234D of the Act without appreciating that no refund was granted to the Appellant.

14. That the AO/DRP has grossly erred in law and facts in initiating the penalty under section 271(l)(c) of the Act and alleging that the Appellant has concealed the true and correct particulars of its taxable income and furnished inaccurate particulars of its income."

4. Similarly ITA number 6017/Del/2015 for the Assessment Year 2006-07 06 is filed by HONDA TRADING ASIA COMPANY LIMITED against the order of DEPUTY COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION, CIRCLE – Noida dated 31/08/2015 under section 147 read with section 143 (3), 144C (5) of The Income Tax Act, 1961. The assessee has raised the following grounds of appeal in ITA No. 6017/Del/2015 for the Assessment Year 2006-07:-

"1. That on the facts & in the circumstances of the case and in law, the orders passed by the Assessing Officer (AO) /Dispute Resolution

Panel (DRP) to the extent prejudicial to the interest of the appellant, are bad in law and void ab-initio.

2. *That the AO/DRP has erred in upholding the validity of the re-assessment proceedings under section 147 of the act when initiation of proceedings did not satisfy necessary requisites contained in section 147 of the act and there being no reason to believe that any income chargeable to tax had escaped assessment.*

2.1 *That the order of AO/DRP is perverse being contrary to facts and circumstances of the case.*

Without prejudice

3. *That the AO/DRP grossly erred in law and facts in alleging that the Appellant has a business connection and Permanent Establishment (PE) in India, basis the alleged facts and relationship of Honda Cars India Limited (HCIL) and Honda Motor Co. Ltd., Japan (HMJ).*

3.1 *That the AO/DRP erred in coming to the conclusion that the expatriate employees of Honda Motors, Japan constituted a Permanent Establishment under Ar icle 5 of the Double Tax Avoidance Agreement between India and Thailand ('DTAA') given the complete absence of any expatriate employee of the Appellant in HCIL*

4. *That the AO/DRP erred in coming to the conclusion that HCIL is dependent upon the appellant for employees, technology and economically when no employee has been seconded by the appellant to HCIL, no technology has been provided by the appellant to HCIL and HCIL has no economic dependence on appellant.*

5. *That the AO/DRP erred in coming to the conclusion that their existed a PE of the Appellant in India while relying on the statements of expatriate employees of Honda Cars India Ltd. ("HCIL") which were inadmissible evidence in terms of the judgment of the Hon'ble Supreme Court in S. Qadar Khan & Sons (254 CTR 228)*

5.1 *That the AO/DRP erred in coming to the conclusion that expatriate employees working in Honda Cars India Ltd were working on behalf of the Appellant and as such controlled the day-to-day functioning of HCIL in terms of technology, economic and other control when no employee was seconded by the appellant to HCIL.*

5.2 *That the AO/DRP completely failed to appreciate that even assuming control of non-resident company over the resident company does not in itself create a Permanent Establishment of the non-resident in terms of Article 5(6) of the Double Tax Avoidance Agreement between India and Thailand ('DTAA').*

5.3 *That the AO/DRP erred in law in selectively relying on the statement of expatriate employees and failed to appreciate the true*

intention of the statements which evidenced that the expatriates were working only for HCIL in India.

6. *That the AO/DRP grossly erred in law and facts in taxing offshore supplies when Appellant does not have any business connection or PE in India and the supplies made by the Appellant to HCIL are concluded outside India (i.e. title and risk is transferred outside India).*

7. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the functions performed by the appellant outside India are mainly manufacturing of spare parts and accessories when the appellant is not even involved in manufacturing activity.*

8. *That the AO/DRP completely failed to appreciate that the international transactions relating to purchase of raw-materials of HCIL from the Appellant had been subjected to transfer pricing assessment wherein the value of said international transactions were found to be on arm's length basis.*

8.1 *That the AO/DRP completely failed to appreciate that in terms of Article 9 of DTAA once the international transactions between the Appellant and HCIL had been found to mean at arm's length basis, the Revenue was prohibited from allocating any further income of the Appellant to be taxed in India*

8.2 *Without prejudice to the above grounds, that on the facts and circumstances of the case and in law, the DRP has erred in attributing 25% of the total income to the activities of the appellant in India alleging that selling of spare parts carried in India when none of the selling operation is carried in India.*

8.3 *Without prejudice to the above grounds, the AO/ DRP has grossly erred in law and facts in rejecting the attribution study filed by the appellant.*

9. *Without prejudice to the above grounds, That AO / DRP has grossly erred in law and facts in holding that the Appellant has incurred research and development (R&D) expense and applying the adjusted global profit ratio of 8.07% when as per global balance sheet operating profit ratio is 2.73% without appreciating that no R&D activity has been undertaken by the Appellant.*

9.1 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the appellant has incurred R&D expense when being a trading entity, no R&D activity has been undertaken by the appellant and no R&D expense has been debited in the P&L A/c.*

10. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in increasing the global operating profit ratio by 5.34% (on the basis of global accounts) when there is no R&D expense incurred by the appellant.*

11. That the AO/DRP has grossly erred in law and facts in directing the levy of interest under sections 234B and 234C of the Act without appreciating that the Appellant is a non-resident and tax is deductible from the income of the Appellant.

12. That the AO/DRP has grossly erred in law and facts in levying interest under section 234A of the Act

13. That the AO/DRP has grossly erred in law and facts in directing the levy of interest under section 234D of the Act without appreciating that no refund was granted to the Appellant.

14. That the AO/DRP has grossly erred in law and facts in initiating the penalty under section 271(l)(c) of the Act and alleging that the Appellant has concealed the true and correct particulars of its taxable income and furnished inaccurate particulars of its income.

5. The assessee has raised the following grounds of appeal in ITA No. 376/Del/2016 for the Assessment Year 007-08:-

"1. That on the facts & in the circumstances of the case and in law, the orders passed by the Assessing Officer (AO) /Dispute Resolution Panel (DRP) to the extent prejudicial to the interest of the appellant, are bad in law and void ab-initio.

2. That the AO/DRP has erred in upholding the validity of the re assessment proceedings under section 147 of the act when initiation of proceedings did not satisfy necessary requisites contained in section 147 of the act and there being no reason to believe that any income chargeable to tax had escaped assessment.

2.1 That the order of AO/DRP is perverse being contrary to facts and circumstances of the case.

Without prejudice

3. That the AO/DRP grossly erred in law and facts in alleging that the Appellant has a business connection and Permanent Establishment (PE) in India, basis the alleged facts and relationship of Honda Cars India Limited (HCIL) and Honda Motor Co. Ltd., Japan (HMJ).

3.1 That the AO/DRP erred in coming to the conclusion that the expatriate employees of Honda Motors, Japan constituted a Permanent Establishment under Article 5 of the Double Tax Avoidance Agreement between India and Thailand ('DTAA') given the complete absence of any expatriate employee of the Appellant in HCIL

4. That the AO/DRP erred in coming to the conclusion that HCIL is dependent upon the appellant for employees, technology and economically when no employee has been seconded by the appellant to HCIL, no technology has been provided by the appellant to HCIL and HCIL has no economic dependence on appellant.

5. *That the AO/DRP erred in coming to the conclusion that their existed a PE of the Appellant in India while relying on the statements of expatriate employees of Honda Cars India Ltd. ("HCIL") which were inadmissible evidence in terms of the judgment of the Hon'ble Supreme Court in S. Qadar Khan & Sons (254 CTR 228)*

5.1 *That the AO/DRP erred in coming to the conclusion that expatriate employees working in Honda Cars India Ltd were working on behalf of the Appellant and as such controlled the day-to-day functioning of HCIL in terms of technology, economic and other control when no employee was seconded by the appellant to HCIL.*

5.2 *That the AO/DRP completely failed to appreciate that even assuming control of non-resident company over the resident company does not in itself create a Permanent Establishment of the non-resident in terms of Article 5(6) of the Double Tax Avoidance Agreement between India and Thailand ('DTAA').*

5.3 *That the AO/DRP erred in law in selectively relying on the statement of expatriate employees and failed to appreciate the true intention of the statements which evidenced that the expatriates were working only for HCIL in India.*

6. *That the AO/DRP grossly erred in law and facts in taxing offshore supplies when Appellant does not have any business connection or PE in India and the supplies made by the Appellant to HCIL are concluded outside India (i.e. title and risk is transferred outside India).*

7. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the functions performed by the appellant outside India are mainly manufacturing of spare parts and accessories when the appellant is not even involved in manufacturing activity.*

8. *Tha the AO/ DRP completely failed to appreciate that the international Transactions relating to purchase of raw-materials of HCIL from the appellant had been subjected to transfer pricing assessment wherein the .a of said international transactions were found to be on arm's length basis.*

8.1 *That the AO/DRP completely failed to appreciate that in terms of Article 9 of ZTAA once the international transactions between the Appellant and HCIL had been found to mean at arm's length basis, the Revenue was prohibited from allocating any further income of the Appellant to be taxed n India.*

8.2 *Without prejudice to the above grounds, that on the facts and circumstances of the case and in law, the DRP has erred in attributing 25% of the total income to the activities of the appellant in India alleging that selling of spare parts carried in India when none of the selling operation is carried in India.*

8.3 Without prejudice to the above grounds, the AO/ DRP has grossly erred in law and facts in rejecting the attribution study filed by the appellant.

9. Without prejudice to the above grounds, That AO / DRP has grossly erred in law and facts in holding that the Appellant has incurred research and development (R&D) expense and applying the adjusted global profit ratio of 8.34% when as per global balance sheet operating profit ratio is 2.99%.

9.1 That on the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the appellant has incurred R&D expense when being a trading entity, no R&D activity has been undertaken by the appellant and no R&D expense has been debited in the P&L A/c.

10. That on the facts and circumstances of the case and in law, the Ld. AO has erred in increasing the global operating profit ratio by 5.35% (on the basis of global accounts), on account of R&D and amortization expenses.

11. That the AO/ DRP has grossly erred in law and facts in directing the levy of interest under sections 234B and 234C of the Act without appreciating that the appellant is a non-resident and tax is deductible from the income of the appellant.

12. That the AO/ DRP has grossly erred in law and facts in levying interest under section 234A of the Act.

13. That the AO/ DRP has grossly erred in law and facts in directing the levy of interest under section 234D of the Act without appreciating that no refund was granted to the appellant.

14. That the AO/DRP has grossly erred in law and facts in initiating the penalty section 271(l)(c) of the Act and alleging that the Appellant has concealed the true and correct particulars of its taxable income and furnished inaccurate particulars of its income".

6. At the time of hearing the assessee submitted through its counsel a letter dated 12/12/2018, wherein, it is submitted that in respect of the reassessment proceedings initiated against the appellant for all these assessment years of these 2 assessee is, the honourable Supreme Court by way of order dated 14/3/2018 has already crash the reassessment notices issued under section 148 of the income tax act. He submitted the copy of the order of the honourable Supreme Court dated 14/3/2018. In view of this, he submitted that as the honourable Supreme Court has already crash the reassessment notices issued under section 148 of the income tax act against the appellant for the subject assessment years. The reassessment order switch of the subject matter of challenge in the

caption appeals do not survive. The assessee also submitted a chart showing the special leave petition number before the honourable Supreme Court and the related appeals pending before us.

7. The learned departmental representative relied upon the orders of the lower authorities. He further stressed that if the transactions are not at arm's length, then these appeals cannot be disposed of only based on the decision of the honourable Supreme Court. His main contention was that the assessee is required to establish that the transactions are at arm's length.

8. We have carefully considered the rival contentions and perused the orders of the lower authorities, wherein, pursuant to the reopening of the assessment, the assessment orders in case of all these two assesses for different assessment years were framed. The reopening proceedings were challenged by the assessee before the honourable Supreme Court of India in civil appeal number 2833 of 2018 along with batch of other appeals which were disposed of vide order dated 14/03/2018. The honourable Supreme Court has held that in view of the judgment of the honourable Supreme Court dated 24/10/2017 in ASSISTANT DIRECTOR OF INCOME TAX, NEW DELHI VS E-FUNDS IT SOLUTIONS INCORPORATION, civil appeal number 6082 of 2015 and connected matters, it has been held that once arm's-length principle has been satisfied, there can be no further profit attributable to a person, even if it has a permanent establishment in India. The honourable Supreme court was further pleased to hold that since the impugned notice is for the reassessment are based only on the allegation that the appellant has permanent establishment in India, notice cannot be sustained Once arm's-length price procedure has been followed. The honourable Supreme court also noted that the counsel for the revenue stated that he does not have complete instructions. Therefore, the honourable court gave the liberty that if the revenue disputes the above factual position, it will be at the liberty to move this court. Even if, as per the revenue, the transaction are not at arm's-length, it is required to approach the honourable Supreme Court only. In view of this, all these appeals against the orders of the

reassessment becomes infructuous as reassessment notices have been quashed by the honourable Supreme Court as per above order.

9. In view of this, all these four appeals of the assessee are allowed.

Order pronounced in the open court on 10/05/2019.

-Sd/-	-Sd/-
(H.S.SIDHU)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 10/05/2019
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi