

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'C' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.3074/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2013-14

Garrett Motion Technologies (India) Private Limited (earlier known as Honeywell Turbo Technologies (India) Private Limited), Plot No.4A, Raison Industrial Estate, Village Mann, Mulshi, Near Hinjewadi Phase-II, Pune - 411 057 PAN : AABCH5035J	Vs.	ACIT, Circle-11, Pune
Appellant		Respondent

Assessee by Shri Ajit Kumar Jain  
Revenue by Shri Shekhar L. Gajbhiye

Date of hearing 13-10-2021  
Date of pronouncement 14-10-2021

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 30.10.2017 passed by the Assessing Officer (AO) u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2013-14.

2. The only issue raised through various grounds in the Memorandum of appeal is against the transfer pricing addition of Rs.88,41,429/-.

3. Briefly stated, the facts of the case are that the assessee filed its return declaring total income of Rs.1,20,21,64,290/-. Certain international transactions were reported in Form No. 3CEB. The AO made a reference to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of the international transactions. In the instant appeal, we are concerned only with the international transaction of "*Provision of business support services*" with transacted value of Rs.15,52,55,349/-. The assessee applied the Transactional Net Margin Method (TNMM) to demonstrate that international transaction was at the ALP. The TPO did not dispute the correctness of the method employed nor the Profit level indicator (PLI) of Operating Profit to Operating cost (OP/OC). However, all the seven companies chosen by the assessee as comparable were rejected and the TPO introduced four new companies with their mean OP/OC at 18.20%. Since the assessee had declared its OP/OC at 7.91%, the TPO worked out the transfer pricing adjustment at Rs.1,48,12,508/-. The Dispute Resolution Panel (DRP) re-worked out the average adjusted OP/TC of the four companies chosen by the TPO at 14.05%. The AO, giving effect to the directions of the DRP, finally determined the transfer pricing addition at Rs.88,41,429/-.

Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. The assessee is engaged in the manufacturing of turbochargers. It rendered Business Support Services to its one AE and received a sum of Rs.15,52,55,349/-. The assessee's Transfer pricing study report provides the nature of services rendered by it under this transaction as consisting of Information Technology related services; Finance related services; Health, Safety and Environment Control; Quality analysts; Supply base Analyst; Supply chain planners/Analysts; and Packaging Specialist. On a pertinent query to furnish a copy of the agreement with the AE under which such services were rendered, the Id. AR submitted that no formal Agreement was entered into. In view of the fact that the TPO has not disputed the nature of services as Business support services, which is further corroborated by the Transfer pricing study report, we accept the nature of services as such.

5. The only effective dispute raised by the assessee in this appeal is against the inclusion of Just Dial Ltd. in the list of comparables by the TPO. This company was chosen by the TPO as comparable, to which the assessee objected by submitting that the services rendered

and the functions performed by Just Dial were significantly different *vis-à-vis* the services rendered by assessee. The TPO jettisoned the objections and included it in the list of comparables. The DRP, too, did not provide any succor to the assessee on this count. We have scanned the Annual report of this company, a copy of which is available at page 255 onwards of the paper book. This company provides local search related services to users through multiple platforms - internet, mobile internet, telephone (voice) and text (SMS). It helps the users in finding out the relevant providers of goods and services quickly through its network. The providers of goods and service enlist themselves with Just Dial. As and when a user intends to find out provider(s) of a particular service or good, he visits website of Just Dial and just on a click can find out a list of all the providers of that service or good. The providers of service and goods pay to Just Dial for enrolment on its platform under different subscription models, such as, Paid, Premium, Platinum Diamond, depending upon the manner in which they want themselves to be presented to the users. In a nutshell, Just Dial acts as a bridge between the users and providers of services and goods. Whereas the Providers have to pay to Just Dial for their enrolment, the user who seeks the details of providers of particular good or service need not

pay anything. Page 30 of the Annual report of the company states that: “Operating through multiple communication platforms, the company has emphasized more on ensuring simplicity of search across all platforms. The company has developed a fast, trouble free and easy-to-use approach on its entire search media platform to cater to the evolving requirements of its users”. Page 13 of the Annual report states that: “In order to address the emerging needs of our users and SMEs, we have set up an R&D laboratory to develop innovative products and features on our platform. Our R&D investments will enable us to reach new levels of innovation in line with technology advancements, evolving market trends and meeting the consumer expectations”.

6. On an overview of the Annual report of the company, it is overwhelmingly pellucid that Just Dial provides information to its users about the suppliers of goods and services. The source of revenue of Just Dial is subscription by the providers of goods or services, who enroll themselves on the company’s platform. For enrolling with Just Dial, the providers choose from a variety of subscription models depending upon the type of coverage and the manner of their presentation on the company’s platform. When we advert to the nature of services rendered by the assessee which are -

Information Technology related services; Finance related services; Health, Safety and Environment Control; Quality analysts; Supply base Analyst; Supply chain planners/Analysts; and Packaging Specialist - it becomes graphically clear that not only the nature of services rendered by Just Dial is different but also the business model on which it works is poles apart from that of the assessee. Whereas Just Dial receives subscription from the providers of the goods or services for hosting their products/services on its platform and the user has to pay nothing, the assessee is providing services to its AE and gets remunerated at a cost with mark up from the user of the service itself, namely, the AE. In view of such a divergence in the nature of services and business model between the assessee and Just Dial, we hold that this company is not comparable. Accordingly, Just Dial is directed to be excluded from the list of comparables.

7. To sum up, we set-aside the impugned order and remit the matter to the file of the AO/TPO for re-doing the ALP determination of the international transaction of 'Provision of Business support services' afresh in terms of this order.

8. The assessee has raised an additional ground reading as under :

“That the Education Cess paid during the relevant Assessment Year be allowed as a deduction expense which is not covered under the provisions of section 40(a)(ii) of the Act.”

9. The Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)* has observed that “the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item”. Answering the question posed before it in affirmative, their Lordships held that on the facts found by the authorities below, if a question of law arises (though not raised before the authorities) which has bearing on the tax liability of the assessee, the Tribunal has jurisdiction to examine the same. Having gone through the subject matter of the additional ground espoused by the assessee, it is apparent that the same raises a pure question of law. We, therefore, admit the same.

10. On merits, it is found that the issue raised through the additional ground is no more *res integra* in view of the judgment of Hon'ble jurisdictional High Court in *Sesa Goa Lt. Vs. JCIT (2020)*

423 ITR 426 (Bom.) in which it has been held that Education Cess is not a disallowable expenditure u/s.40(a)(ii) of the Act. Similar view was earlier taken by the Hon'ble Rajasthan High Court in *Chambal Fertilisers and Chemicals Ltd. and Another Vs. JCIT (2018) 102 CCH 0202 (Raj-HC)*. We, therefore, direct the AO to ascertain the correct amount of education cess and then allow a deduction of it, after allowing opportunity of hearing to the assessee.

11. The ground relating to levy of interest u/s.234B and 234C is consequential. Ground relating to penalty proceedings u/s.271(1)(c) is premature. No other ground was pressed.

12. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 14<sup>th</sup> October, 2021.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 14<sup>th</sup> October, 2021  
सतीश

**आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The CIT(A)-13, Pune
3. The PCIT-5, Pune
4. DR, ITAT, 'C' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	13-10-2021	Sr.PS
2.	Draft placed before author	14-10-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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