

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “C”, BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.526/Bang/2018 : Asst.Year 2012-2013

Dy.Commissioner of Incom-tax Circle 1(1)(2) Bangalore.	v.	M/s.Bosch Automotive Electronics India Pvt. Ltd. Building No.703, Naganathapura, PB No.10029 Electronics City Post Office Bangalore – 560 100. PAN : AADCB4330L.
(Appellant)		(Respondent)

Appellant by : Sri.Pradeep Kumar, CIT_DR
Respondent by :Sri.T.Suryanarayana, Advocate

Date of Hearing : 28.07.2021	Date of Pronouncement : 28.07.2021
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against CIT(A)’s order dated 27.10.2017. The relevant assessment year is 2012-2013.

2. The effective ground raised read as follows:

“The ld.CIT(A) erred in not appreciating the fact that the Income Tax Rule 10B(1)(e) provides for making adjustments only to the operating margin of the comparable companies and not in the accounts of the tested party or the assessee, even though the same has been also upheld by the Hon’ble ITAT in the case of Class India (P) Ltd. reported in [2015] 62 taxmann.com 173 (Delhi-Trib.).

3. The assessee is a wholly owned subsidiary of Robert Bosch Investment Nederland B.V. The assessee is engaged in manufacture of components for the automotive industry. For the relevant assessment, the assessee was having contract

manufacturing of electronic control unit and also the production line was transferred from Robert Bosch (Australia). For the assessment year 2012-2013, the return of income was filed declaring loss of Rs.3,86,45,104. The assessment was selected for scrutiny by issuance of notice u/s 132(2) of the I.T.Act. During the course of assessment proceedings, the matter was referred to the TPO for determining arms length price in respect of certain international transactions entered by the assessee with its associate enterprises. The TPO passed an order dated 25.01.2016 u/s 92CA of the I.T.Act by determining the arms length margin of the comparables at 8.26% and recomputed the operating margin of assessee at (-) 1.83% for the contract manufacturing segments and (-)15.34% for the licensed manufacturing segment. Accordingly, the TPO made an adjustment to the arms length price amounting to Rs.23,75,33,205. The adjustment made by the TPO was incorporated in the draft assessment order and when it was intimated to the Assessing Officer that the assessee proposed to file appeal to the CIT(A), the final assessment order was passed.

4. Aggrieved by the final assessment order, the assessee preferred appeal to the first appellate authority. One of the contentions raised before the first appellate authority was cash profit margin of the assessee and the comparable should be taken prior to the deduction of depreciation allowance. The CIT(A) allowed this contention of the assessee by following the judgment of the Hon'ble Andhra Pradesh & Telangana High

Court in the case of B.A.Continuum India Pvt. Ltd. v. CIT [ITTA No.440 of 2014 – judgment dated 16.07.2014].

5. Revenue being aggrieved by the direction of the A.O. to exclude depreciation allowance while arriving at the cash profit margin of the assessee as well as the comparables, has filed this appeal before the Tribunal. The learned Departmental Representative supported the order of the Assessing Officer.

6. The learned AR, on the other hand, submitted that the ground raised is not correct since the CIT(A) has directed the A.O. to arrive at the cash profit margin of the assessee as well as the comparables prior to the deduction of depreciation allowance.

7. We have heard rival submissions and perused the material on record. The CIT(A) had allowed the contention of the assessee by observing as under:-

“5.0 Having considered the submissions, it is seen that the Grounds No.6 & 8 are regarding the submissions made by the appellant in respect of depreciation adjustment and the applicability of cash profit margin for the comparability. Considering the fact that the appellant, being in the start up phase in respect of license manufacturing activity (due to one of its line transfer) had to incur huge investment in the capex, consequently it resulted in huge depreciation cost on the new Capex incurred by it. In the ground No.3 the appellant has made ground for allowing adjustment towards the excess / un-usual start up cost incurred by it. Considering the special circumstances and also considering the increased depreciation cost it has, it is appropriate to make the comparability on the cash profit at PBDIT stage with the same margins of the comparables. Therefore, I am in agreement with the submissions that the margin in the case of the assessee as well as comparables can be considered before allowing depreciation to arrive at a correct comparability in the circumstances mentioned by the assessee. This view is also

finds support from the decision of the Hon'ble AP & Telangana High Court in the case of B.A.Continuum India Pvt. Ltd. v. CIT (supra) and also by OECD guidelines, accordingly, I direct the assessing officer to consider the margin in the case of the assessee (test party) as well as comparables after excluding depreciation. Accordingly, the grounds No.6 & 8 are allowed."

7.1 From the above order of the CIT(A), it is clear that he has followed the dictum laid down by the judgment of the Hon'ble Andhra Pradesh and Telangana High Court as well as OECD guidelines. The CIT(A) has directed the A.O. to arrive at the cash profit margin after excluding the depreciation allowance both for the assessee as well as the comparables. Therefore, the directions of the CIT(A) cannot be stated to be unjustified. We see no reason to interfere with the order of the CIT(A) and we affirm the same. It is ordered accordingly.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 28th day of July, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 28th July, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-1, Bangalore.
4. The Pr.CIT-1, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore