

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

ITA No. 6558/Del/2016
 (Assessment Year: 2010-11)

M/s. Honeywell International (India) Pvt. Ltd, 1 st Floor, Unitech Trade Centre, Sector-43, Block C, Sushant Lok Phase-I, Gurgaon PAN: AANCA7954K	Vs.	Addl CIT Range-4, New Delhi
(Appellant)		(Respondent)

ITA No. 6552/Del/2016
 (Assessment Year: 2010-11)

Addl CIT, Special Range-4, New Delhi	Vs.	M/s. Honeywell International (India) Pvt. Ltd, 1 st Floor, Unitech Trade Centre, Sector-43, Block C, Sushant Lok Phase-I, Gurgaon PAN: AANCA7954K
(Appellant)		(Respondent)

ITA No. 5801/Del/2017
 (Assessment Year: 2011-12)

DCIT, Circle-11(1), New Delhi	Vs.	M/s. Honeywell International (India) Pvt. Ltd, 1 st Floor, Unitech Trade Centre, Sector-43, Block C, Sushant Lok Phase-I, Gurgaon PAN: AANCA7954K
(Appellant)		(Respondent)

ITA No. 5770/Del/2017
 (Assessment Year: 2011-12)

M/s. Honeywell International (India) Pvt. Ltd, 1 st Floor, Unitech Trade Centre, Sector-43, Block C, Sushant Lok Phase-I, Gurgaon PAN: AANCA7954K	Vs.	DCIT, Circle-11(1), New Delhi
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(Appellant)		(Respondent)
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Revenue by :	Shri Rajan Vora, CA
Assessee by:	Shri Deeraj Kr. Jain, Sr. DR
Date of Hearing	10/02/2021
Date of pronouncement	24/05/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the four cross appeals of the same assessee for Assessment Year 2010-11 and 2011-12, these appeals also involve similar facts raising similar grounds, argued by both the parties together. Therefore, this bunch of appeals is disposed of by this common order.

2. For **A Y 2010-11** ITA No 6562/Del 2016 is filed by Additional CIT, New Delhi (ld AO) against the order of ld CIT(A)-37, New Delhi dated 24.10.2016 in which following grounds of appeal is raised:-

- “1. *On the facts and in the circumstances of the case, the order of the Commissioner of Income Tax (Appeals) is erroneous and bad in law.*
2. *Whether on the facts and circumstances of the case the ld CIT(A) was correct in directing to exclude the comparables namely M/s. Aptico and M/s TSR Darshaw Limited from the set of final comparables used by the TPO.”*

3. For **AY 2010-11** , Assessee in ITA No 6558/Del/2016 has raised following grounds of appeal.

“On the facts and circumstances of the case and in law, the Appellant respectfully craves to prefer an appeal against the order passed under section 250 of the Income-tax Act, 1961 (“the Act”) by Commissioner of Income-tax (Appeal) - 37, New Delhi (“Ld. CIT(A)”) on the following grounds:

Corporate Tax Grounds

1. *The Ld. CIT(A) has erred in, inter-alia, upholding Ld. AO’s conclusions purely on presumptions and irrelevant considerations.*
2. *That on facts and in law, the Ld. AO and Ld. CIT(A) erred in allocating an excess expenditure of INR 31,798,275 over and above expenditure of INR 3,595,995 already allocated by Appellant to the eligible unit under section 10A of the Act, thereby reducing the deduction claimed under section 10A of the Act.*
 - 2.1. *That on the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) while allocating excess expenditure of INR 3,17,98,275*

to section 10A unit has wrongly restricted deduction under section 10A by equivalent amount without considering the impact of export turnover of INR 23,27,23,738 and total turnover of INR 23,78,53,908, thereby resulting in excess section 10A disallowance by INR 685,844.

- 2.2. That on the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) erred in rejecting the basis adopted by the appellant for allocation of common expenses among the eligible section 10A unit and other units.*
 - 2.3. That on the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) has erred in holding that the appellant has artificially created an entity namely corporate division.*
 - 2.4. That on the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) has erred in not considering the fact that the appellant is not required to maintain separate books of accounts for different business divisions as per Companies Act or any other law.*
 - 2.5. That on the facts and circumstances of the case and in law, the Ld. AO and Ld. CIT(A) has erred in not appreciating the fact that the appellant has submitted separate revenue and expenses of the corporate division.*
 - 3. That on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in initiating the penalty proceedings under section 271(1)(c) of the Act consequent to the additions made in the order passed under section 250 of the Act*
 - 4. That on facts and in circumstances of the case and in law, the Ld. AO and Ld. CIT(A) has erred in levying the interest under section 234C/234D of the Act.”*
4. For **AY 2011-12** , the ld AO has raised the following grounds of appeal in ITA No. 5801/Del/2017 for the Assessment Year 2011-12:-

- “1. Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in rejecting the comparable namely M/s Eclerx Services Ltd. from the set of final comparables used by the TPO stating that the company is functionally dissimilar without going into the fact that the company offered services “Data analytics and process outsourcing” which are part and process of ITES segment.*
- 2. Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in rejecting the comparable namely M/s Media Research Users Council from the set of final comparables used by the TPO.*
- 3. Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in rejecting the comparable namely M/s Aptico Limited from the set of final comparables used by the TPO stating that segmented data is unavailable when that is not a case as income from various operations of company is available and the same is on record.*
- 4. Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in directing the AO to allocate total corporate expenses of Rs. 2,09,42,886/- instead Of Rs. 49,15,81,559/-“*

5. For **AY 2011-12** ITA NO No. 5770/Del/2017, Assessee has raised following grounds of appeal. :-

“Transfer Pricing Matter - Provision of IT Enabled Services

1. *On facts and in law, the Learned Additional Commissioner of Income Tax, Transfer Pricing Officer-1 (2) (‘Ld. TPO’) and Learned Deputy Commissioner of Income Tax, Circle 11(1), New Delhi (‘Ld. AO’) have erred in violating, and the Learned Commissioner of Income Tax (Appeals)-19, New Delhi (‘Ld. CIT(A)’) has erred in confirming the action of Ld. AO /Ld. TPO in violating the provisions of Rule 10B(2) of the Income Tax Rules, 1962 (‘the Rules’) by rejecting following comparable companies (refer below) as identified by the Appellant, disregarding the fact that the Functions, Assets and Risk (‘FAR’) profile of these companies is same as that of Appellant’s business:*
 - *Caliber Point Business Solutions Ltd.*
 - *Cosmic Global Ltd.*
 - *Datamatics Financial Services Ltd.*
 - *Informed Technologies India Ltd.*
2. *On facts and in law, the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / TPO in violating the provision of Rule 10B(2) of the Rules by adding following new companies as comparables to the Appellant:*
 - *Accentia Technologies Ltd.*
 - *Infosys BPO Ltd.*
 - *TCS E-Serve Ltd.*
3. *On facts and in law the Ld. AO and Ld. TPO have erred in not granting and the Ld. CIT(A) has erred in confirming the action of Ld. AO and Ld. TPO, of not granting the benefit of the 5% variation as per the proviso to section 92C(2) of the Act to the Appellant.*
4. *On facts and in law, the Ld. AO and Ld. TPO have erred in disregarding and the Ld. CIT(A) has erred in confirming the action of Ld. AO and Ld. TPO, of disregarding prior years' data used by the Appellant to benchmark its international transactions, in its TP Documentation for the year and holding that current year (i.e. FY 2010-11) data for comparable companies should -be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP Documentation, and grossly misinterpreting the requirement of contemporaneous' data in the Rules to necessarily imply current year data, thereby breaching the principles of natural justice and 'impossibility of performance'.*

Corporate Tax Grounds

5. *That the Ld. CIT(A) and Ld. AO has erred on facts and in law in treating business expense of corporate division as an overhead and allocating a part of it to the unit eligible for exemption under section 10A*

of the Act ('10A unit') when such expense in any manner (directly or indirectly) does not pertain to the 10A unit.

- 5.1 *That the Ld. CIT(A) and Ld. AO has grossly erred on facts and in law in holding that the functions of the corporate office are restricted to and as defined in Companies Act, even though there is no such requirement under the Companies Act.*
- 5.2 *That the Ld. CIT(A) and Ld. AO has grossly erred on facts and in law holding that corporate / business expenses of the corporate division are incurred in respect of the entire Company including all its divisions (including 10A unit as well)*
6. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in assuming that the cost allocation with respect to the corporate division done by the appellant appears to be in-correct and inflated without analysing the reasons for the same.*
7. *That, on the facts and circumstances of the case, the Ld. CIT(A) has erred on facts in holding that the appellant cannot incur losses while rendering services to the Indian group*
8. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in assuming that the appellant should have earned a profit margin of 16% for the transactions with its Indian group entities, which similar to the profit margin agreed by the appellant in the Advance Pricing Agreement ('APA').*

Common Grounds

9. *On facts and in law, the Ld. AO has erred in initiating penalty proceedings under section 271(l)(c) of the Act.*
 10. *On facts and in law, the Ld. AO has erred in levying the interest under section 234B and of the Act."*
6. Brief facts of the case for Ay 2010-11 shows that the assessee is a company engaged in the business of manufacturing and trading of electronic security systems and life safety equipment like fire and smoke detectors, CCTVs etc. It also provides management and support services to its AEs.
 7. Assessee filed its return of income on 11.10.2010 declaring income of Rs. 26,18,68,287/-. During the year, the assessee has undertaken international transaction of provision of market support services of Rs. 20.54 crores. It has entered into 9 other international transactions. The assessee has adopted transactional net margin method as the most appropriate method and has shown its PLI of NCP @10% using 7 comparables with an average profit margin of 11.37% thus, stated that its international transaction are at arm's length. The TPO examined the accept/ reject metrics, filters and functional profile of the assessee, sets up new filter and based on that he selected 5 comparables whose average profit

level indicator of OP/ OC was determined @ 24.06%. Operation cost of the assessee was Rs. 18,67,41,542/-, average margin applied was 24.06%, determining the ALP of Rs. 23,16,71,557/- against the international transaction value of Rs. 20,54,15,696/-. Ld TPO proposed an adjustment of Rs. 2,62,55,861/- considering 105% of the price received at Rs. 21,56,86,481/- as per order u/s 92CA(3) dated 17.01.2014. Over and above the ld AO found that the assessee is eligible for deduction u/s 10A of the Act. The ld AO found that all common expenses are not allocated to eligible units (units on which deduction is available u/s 10A of the Act) and non eligible units. Therefore, the ld AO argued that why not all common expenses should be allocated on the basis of turnover. The assessee objected to the same stating that there is different revenue stream in eligible and non-eligible units. Corporate division of the assessee also provides business support services to other entity. Ld AO held that corporate division is nothing but a corporate office. He examined the detailed chart of income and various expenses submitted by the assessee. He also looked at the profit and loss account of the corporate division. He noted that net revenue of the corporate division is shown at Rs. 3.90 crores, which is nothing but the services fee received of for business support services. He further noted that expenditure of Rs. 23.74 crores of employee cost Rs. 12.15 crore of administrative and other expenses are included in this, which are liable to be allocated between the eligible and non eligible units. Therefore, he noted that 9.86% of the turnover is of eligible units and 90.14% is non 10A unit. He allocated total corporate expenditure of business support services of Rs. 35,89,68,263/- based on turnover. He reduced allocation already made by the assessee and held that there is a shortage of allocation of corporate expenses to 10A units of Rs. 3,17,8,275/- . He held that by this sum the deduction claimed by the assessee of Rs. 49,15,72,60/- is higher therefore, he reduced the above deduction of Rs. 3,17,98,275/- and restricted it to Rs. 1,73,58,985/-. There are certain other disallowances of depreciation etc of Rs. 2,23,568/-. Based on this the assessment u/s 143(3) of the Act read with section 144C was passed on 22.04.2014 determining total income of the assessee at Rs. 32,01,41,190/- against the return income of Rs. 26,18,68,287/-.

8. The assessee preferred appeal against the above order before the 1st CIT(A). In the corporate tax matter, the assessee challenged that the allocation of expenditure made by the AO between the eligible and non eligible units is not correct. The learned CIT – A upheld the action of the learned assessing officer for the reason that according to her the whole controversy would have been avoidable had the appellant choose to submit details of its books of accounts relating to corporate division which was required to be examined by the learned assessing officer for allocation of expenses and the expenses of the corporate division whether they are required to be allocated or not. The main reason for upholding the action of the learned assessing officer is that the assessee has not maintained or not produced the separate books of accounts of the 10A eligible units. However, during the course of appellate proceedings assessee submitted a detailed chart with respect to the allocation of expenditure but the learned CIT – A disregarded the same in absence of any separate books of accounts. Thus, the action of the learned assessing officer was upheld.
9. Thus, Assessee is aggrieved with the same and is in appeal before us as per ground number 2 of the appeal. According to that ground assessee contests that assessee has already allocated an expenditure of ₹ 3,525,995/- and the learned assessing officer and the learned CIT – A has confirmed the allocation of ₹ 31,798,275/- which is erroneous. The ground of appeal no 3 of initiation of the penalty proceedings and chargeability of interest u/s 234C and 234D were not pressed. Therefore, the solitary issues of the appeal of the assessee are with respect to allocation of expenditure between eligible and non eligible units for working of deduction u/s 10A of the Act.
10. In the appeal of the revenue with respect to TP adjustment of market support services, there was no dispute between the assessee and the revenue with respect to 3 comparables. However, the 1st TPO included 2 fresh comparables being (1) TSR Darshaw Ltd having a margin of 41.57% and (2) M/s. Apitco Ltd shows margin 40.09%. On appeal the 1st CIT(A) accepted the argument of the assessee and rejected the inclusion of both the comparables and therefore, the revenue is in appeal on this aspect. Pursuant to the order of the 1st CIT(A) the 1st TPO deleted the above addition as the margin of the assessee vis-à-vis margin of the comparable was within

the range of +/- 5% thus in the appeal of the revenue only 2 comparables which are directed to be excluded by the Id CIT(A) are challenged.

11. The assessee has also raised an additional ground of appeal as per application dated 9 October 2019 wherein it has claimed the deduction u/s 37 (1) of the act in relation to the liability of education cess on income tax for the year. The assessee filed an application wherein the assessee has raised in this additional ground stating that it is purely legal in nature, does not require any further investigation of facts, and therefore should be admitted. Assessee further submitted that issue is squarely covered in favour of the assessee by the decision of the Honourable Rajasthan High Court in case of CIT versus Chambal fertilizers and chemicals Ltd and Honourable Bombay High Court in Sesa Goa Ltd. It is therefore submitted that the additional ground should be admitted.
12. The learned departmental representative vehemently objected to the additional ground raised by the assessee and stated that it is a fresh claim made by the assessee wherein in the return of income the assessee has already paid the tax and not claimed this expenditure as deductible. Therefore, it was stated that it should not be admitted.
13. We have carefully considered the rival contention and perused relevant arguments on this issue. We find that the issue is legal in nature and no fresh facts are required to be investigated in this case and such ground can be raised at any point of time, therefore, we admit the additional ground raised by the assessee, which would be adjudicated later on.
14. Coming to the appeal of the assessee the fact shows that in assessment year 2005 - 06, the assessee had set up a software Technology Park under the name and style of Global Customer Support Centre or call Centre Division which is engaged in providing information technology enabled services to its AE. There is no dispute that above unit is eligible for deduction u/s 10A of the Act. It is also undisputed that deduction u/s 10A has been consistently allowed to the assessee in past years. During the year the assessee has filed working of eligible profit for deduction u/s 10 A of the income tax act where common expenditure of ₹ 3,595,995/- are allocated and it has been reduced from the allowable deduction. The assessee has also separate division, which is called as corporate division stated to be providing services

of supervision for other business division. That division also provides business support services to various other entities of the group and thus claimed to have a separate stream of income. The ld AO held that there is no separate division in existence and therefore expenditure with respect to the corporate division was allocated in the eligible units in proportion to the turnover. Thus the deduction u/s 10A was reduced by Rs. 3,17,95,275/-. The learned CIT – A also upheld the same.

15. The ld AR submitted that the assessee allocates the common expenses on scientific basis, which is consistently followed by the assessee and accepted by the ld AO in past years. Therefore, it should also be accepted in the present year. He further stated that the separate business activity, which is being conducted by the assessee in altogether different way, expenses related to that unit, cannot be allocated to altogether unrelated units. He further stated that the ld AO is frequently changing the allocation of the expenses. He referred to the order for AY. 2009-10 wherein, allocation of common expenses was made based on turnover. He further stated that there is no requirement under the companies Act for maintaining separate books of account for different business divisions. He submitted that assessee has given complete details of the expenses and revenue of all eligible and non eligible units, which are in dispute, but only the allocation key has been disputed. In fact from the specific accounts, expenditure wise allocation made by the assessee the ld AO was shown however the learned assessing officer is trying to impute the general key of turnover for allocation of expenditure. He in fact submitted that the turnover cannot be the key for allocation of expenditure when identified expenditure can be allocated for the purposes of the earning of the income of eligible as well as non eligible units. He further submitted that the ld AO has not found any infirmity in the expenditure wise allocation made by the assessee. He therefore, submitted that the ld AO merely applies thumb rule of turnover for allocation of expenditure for the purpose of computing eligible deduction. In the end he submitted that for Assessment Year 2011-12 the ld CIT(A) after considering 16% marked up as agreed in the advance pricing agreement has reworked the cost to be allocated between 10A and non 10A units. He therefore, submitted that even if the same methodology applied in the year

considering the revised allocation is only Rs. 23,01,768/- over and above the allocation of Rs. 35,95,995/- already made by the assessee.

16. The Id DR vehemently supported the order of the lower authorities for allocation of the expenses.
17. We have carefully considered the rival contentions. For this year we find that the issue of allocation of expenses the Id CIT(A) while deciding the ground No. 16 to 20, she upheld the action of the Id AO. However, for the identical issue before CIT (A) in Assessment Year 2011-12 which was decided on 04.07.2017 while deciding ground No. 17B where the adjustment was made by the Id AO, the Id CIT(A) agreed that there are certain expenditure which required to be allocated but not all the expenses as claimed by Id AO. The Id CIT(A) held that when the appellant is charging a substantial markup from its international AEs. There is no reason why similar margin would not be charged from its AEs in India. Though he held that the cost allocation of the assessee is incorrect but it was also held that amount of allocation adopted by the Id AO is also incorrect. It was further held that the cost allocated by the assessee contains an element which relates to common services or common corporate functions and hence, is to be allocated to both exempt and non exempt entities. He further held that as of both the units the services are provided to AEs and APA of assessee has accepted margin 16% therefore, similar margin should also be received from the domestic companies. Thus according to this, indirectly referred that 16% of the cost is required to be allocated of the corporate division to the eligible unit for deduction u/s 10 A of the act. From this it is apparent that allocation of expenditure of corporate division which provides services to the internal units of the assessee which are eligible for deduction u/s 10 A and also not eligible for deduction Under that Section as well as to the outside parties, has different cost structure. If the corporate division expenses are analyzed, it has total income of ₹ 39,069,430 whereas its expenditure is Rs 2 69,38,893/-. Out of this expenditure of Rs 269,38,893/- assessee itself has allocated a sum of Rs 257,90,957 to various units. The noneligible unit of the assessee has a net sales of ₹ 2,101,616,685 whereas the eligible unit of the assessee has a turnover of Rs 23,35,75,346/-. Thus roughly it can be seen that the turnover of the

noneligible unit is approximately 10 times higher than the eligible units on turnover basis. The total expenditure of Rs 257,90,957 was allocated to noneligible unit to the extent of ₹ 22,194,962/- and to the eligible unit ₹ 3,595,995/-. The main reason for not believing the allocation of expenditure of the assessee by the learned assessing officer was for the allegation that assessee company has smartly created a corporate division and disclosed the receipt on this account being receipt of corporate division and the expenses related to these services. In fact assessee is rendering services to the other parties also from this division which has been recorded by the learned CIT – A also. Further the learned assessing officer held that there is no separate books of accounts maintained by the assessee with respect to the eligible units and noneligible units as well as with respect to the business support service group, and other units. For this reason only, the learned AO applied the thumb rule of turnover for allocation of expenditure. The learned AO in fact has not found any expenditure which is pertaining to another division of eligible units which has been shown by the assessee as an expenditure of eligible units. The assessee has also stated that it has grouping of such expenditure and income in the books of accounts maintained on SAP which clearly shows demarcation of the expenditure and income pertaining to eligible units and noneligible units. The learned CIT – A also recorded this fact in paragraph number 20.4 of her order. It is also recorded in her order that assessee has also presented a chart showing details of allocation of such expenditure. Even otherwise no where the learned and AO as well as CIT – A held that allocation made by the assessee of Rs 3,595,995/- is not correct with reasons. They have merely assumed that in absence of any separate books of accounts, the expenditure needs to be allocated based on turnover. There is no such mandate provided Under the law wherein assessee has maintained its books of accounts on ERP software which clearly gives an assurance about the allocation of those expenditure. No doubt, if, there is any defect or infirmity found in allocation of such expenditure even in ERP system, the AO can rework the same. But no such efforts have been made either by the learned AO or by CIT – A therefore allocation of expenditure merely on the basis of turnover when there are different kind of services rendered by both these

units i.e. eligible as well as noneligible, such a thumb rule allocation key of turnover cannot be approved in absence of detailed verification by the learned AO showing that allocation made by the assessee on different allocation key is incorrect. It is also important to note that in subsequent assessment year i.e. assessment year 2011-12 the learned CIT – A has dealt with this issue wherein the learned CIT – A had reworked the cost to be located between the 10 A and non-10 A units based on the 16% markup agreed in the advance pricing agreements entered into by the assessee. The assessee submitted that the issue before APA was in respect of Mark up to be charged in respect of provision of management and administrative services rendered by the assessee to its foreign associated enterprises. APA held that the services rendered by assessee to its foreign AE need to be at cost +16% margin / markup. The learned CIT – A based on the same rationale that when similar services are rendered to domestic associated enterprise the assessee would need to earn similar markup i.e. 16% on services rendered to overseas associated enterprise. Therefore as stated in paragraph number 17.6 of the order of the learned CIT – A for assessment year 2011 – 12 he imputed the margin of 16% and thereafter he directed the learned assessing officer to compute the eligible profit for deduction u/s 10 A of the act. The assessee has submitted before us that if such a margin is also imputed for this year the common expenditure allocation would be ₹ 2,301,768 as placed at page book number 2320 of the paper book. This would be over and above the allocation made by the assessee of Rs 3,595,995. As we find that order of the ld CIT (A) for subsequent year has reached at correct methodology of allocation of expenditure same can also be applied for the current year. The dl DR did not raise any serious objection to this proposition. Therefore, we direct the learned assessing officer to recompute the allocation of expenditure to the eligible and noneligible unit for this year also by applying the margin of 16%. The AO may verify the working as placed by the assessee at page number 2320 and then recalculate the addition on that basis. Thus the orders of lower authorities on this issue are set aside. Accordingly, ground number 2 – 2 point 5 of the appeal of the assessee is allowed accordingly.

18. The ground number 3 of the appeal of the assessee is with respect to the initiation of the penalty proceedings u/s 271 (1) (C) of the act, this ground is premature at this stage and therefore same is dismissed.
19. Ground number 4 of the appeal is with respect to the chargeability of interest u/s 234C and 234D of the income tax act both are consequential in nature and therefore ground number 4 is dismissed.
20. The additional ground raised by the assessee is with respect to the deductibility of the education cess Under the provisions of Section 37 (1) of the act. The fact shows that the assessee has paid taxes including the education cess along with taxes and the same is claimed now as deduction u/s 37 (1) of the act. This issue is squarely covered in favour of the assessee by the decision of the honourable Rajasthan High Court in case of CIT versus Chambal fertilizers and chemicals Ltd (ITA number 52 of 2018 dated 31 July 2018 as well as of the decision of the Honourable Bombay High Court in case of Seas Goa Ltd in tax appeal number 17 and 18 of 2013 dated 28th of February 2020. In view of the above judicial precedents of the Honourable High Court's we find that the education cess paid on income tax is allowable to the assessee as a deduction u/s 37 (1) of the act. We direct the learned assessing officer to examine the calculation of the education cess and grant assessee deduction accordingly. In view of this additional ground raised by the assessee is allowed.
21. In the result appeal of the assessee for assessment year 2010 – 11 is partly allowed.
22. Coming to the appeal of the learned assessing officer wherein he has challenged the direction of the ld CIT (A) for exclusion of the comparable (1) TSR Darshaw Limited and (2) Aptico Limited. The learned departmental representative vehemently supported the order of the learned transfer pricing officer. The learned authorised representative submitted that Aptico limited has been excluded in case of the assessee itself for assessment year 2008 – 09 in ITA number 3901/del/2015 dated 20 November 2019. Further the above company was also excluded by the learned CIT – A for assessment year 2011 – 12 however which has been challenged by the learned AO in the appeal before us. With respect to the second comparable TSR Darshaw Limited it is also submitted that in assessee's own case for

assessment year 2007 – 08 in ITA number 2385/del/2014 dated 30 June 2017 the above comparable was excluded. Therefore, the transfer pricing issue in the appeal of the learned assessing officer is squarely covered in favour of assessee.

23. We have carefully considered the rival contention and find that with respect to the exclusion of the above two comparables, in assessee's own case the above two comparables have been excluded by the coordinate bench in different years. No reason has been shown to us to deviate from the same. No change in the functional analysis of the comparable vis-a-vis the assessee was shown with respect to those years. In view of this we respectfully following the decision of the coordinate bench in assessee's own case for exclusion of the about two comparables, we uphold the order of the learned CIT – A and dismiss the solitary ground in the appeal of the learned assessing officer.
24. Accordingly, the appeal of the learned AO for assessment year 2010 – 11 is dismissed.

A Y 2011-12

25. Now we take up the appeals of the parties for assessment year 2011 – 12.
26. Coming to the facts of case for that year the assessee filed its return of income on 30 November 2011 declaring a total income of ₹ 507,826,739/-. The assessment u/s 143 (3) of the act was passed on 30 April 2015 wherein an addition on account of the transfer pricing adjustment was made in ITeS segment of the assessee of ₹ 32,661,938 and in marketing support services of ₹ 36,731,715 and management and other administrative services of Rs 2 73,22,870. With respect to the allocation of common expenses for the purpose of deduction u/s 10 A, the reduction in the deduction claimed by the assessee was made to the extent of Rs 230,89,737/-. Accordingly, total income of the assessee was assessed at Rs 625,933,000 against the returned income of Rs 507,826,739.
27. Aggrieved by the order of the learned AO, The appeal was preferred by the assessee before the learned CIT – A who passed an order on 4 July 2017. Addition on account of the arm's-length price of the market support services of ₹ 36,731,715, the learned CIT – A directed the learned AO to exclude two

comparables (1) Aptico Limited (2) Media Research Users for the reason that those are functionally not comparable. With respect to the determination of arm's-length price of ITeS segment the learned CIT – A directed the learned AO/TPO to exclude E Clrex Services Ltd. With respect to the allocation of the common expenditure being total expenditure of 49,15,81,558 for allocation, he applying a margin of 16% to the cost incurred in the segment, held that there is less allocation of the cost in the service division by Rs 20,942,886/- which should have been allocated between 10 A units and the taxable units, therefore the learned CIT – A directed the learned assessing officer to allocate the total corporate expenditure of ₹ 20,942,886/- instead of ₹ 49,15,81,559/-.

28. Therefore both the parties are aggrieved by the order of the learned CIT – A and are in appeal before us.
29. The learned assessing officer has preferred an appeal against exclusion of the comparable E Clrex services Ltd, Media Research Users Council and Aptico Ltd from the transfer pricing comparability study and with respect to the total allocation of expenses reduced by the learned CIT – A.
30. The assessee has raised in fact 10 grounds of appeal. It is aggrieved by the confirmation of exclusion of four comparables in ITeS services and inclusion of three comparables. The assessee is also aggrieved by the order of the learned CIT – A with respect to the allocation of expenditure to the extent of Rs 20,942,886/-.
31. We first come to the appeal of the learned AO. The ground number [1] is with respect to the exclusion of E Clrex services Ltd from the comparability analysis in the ITeS segment. On this issue we have heard the rival parties where they have confirmed that there is no dispute on the functions performed by the assessed in the ITeS services. Assessee rendered its IT enabled services to its overseas associated enterprise of ₹ 21.02 crores Under the global customer support service centre. The assessee has stated that it is a low risk bearing entity support centre for Honeywell group of entities. It performs the function of ITeS and back-office activities such as order management and data management activities, aftermarket support activities, sales and market support activities and business process improvement, project management and data management activities. The

learned transfer pricing officer included the above comparable as it is functionally according. Before us the assessee has submitted that the turnover of the comparable is Rs 3419 crores whereas the turnover of the assessee is only ₹ 21.02 crores. It was further stated that this is also not functionally similar to the assessee and in assessee's own case for assessment year 2007 - 08 in ITA number 2385/del/2014 dated 20 November 2019, above comparable was excluded. Further for assessment year 2008 - 09 also this company was excluded from the comparability analysis and the same was not challenged by the revenue before the ITAT. In view of manifold difference in the turnover of the company with the assessee (₹ 21.02 crores Vs ₹ 3419 crores) and respectfully following the decision of the coordinate bench in assessee's own case, wherein this comparable company was excluded from the comparability analysis, we do not find any infirmity in the order of the learned CIT - A in direct the ld AO/TPO to exclude E clerex Services Limited for comparability analysis. Accordingly, ground number [1] of the appeal of the learned assessing officer is dismissed.

32. The second ground of appeal is with respect to the exclusion of Media Research Users Council in the market support service segment of the assessee. We have heard the rival contentions on this issue. The assessee has rendered the market support services to its overseas associated enterprise of ₹ 30.86 crores in order to facilitate the sale of their products in India. It also provided sourcing support services to its overseas group entities so as to assist them in procuring raw materials/components from India. Assessee provided market support services to other entities also. The significant functions of the assessee are performing market support and communication and advising and liaisons , sourcing support by the assessee. It is stated that it is a limited risk captive market support service provider for the international transaction of provision of market support services and is remunerated at cost +10% markup. The assessee has benchmarked the above transaction applying the transactional net margin method and profit level indicator of net cost plus markup. The assessee selected six comparable companies having the profit level indicator of 12.76% whereas the assessee's margin was 10% and thus it was stated that

the transaction is at arm's-length. However the learned transfer pricing officer rejected 4 out of 6 comparable companies and further introduced 2 companies. One of them is Media Research Users Council [MRUC] whose margin is 14.53% and Aptico limited who is margin is 25.17%. On appeal before the learned CIT – A the assessee contended for exclusion of both these comparable companies which CIT (A) accede to . Therefore the revenue is challenges this before us as per ground number 2 and 3. The learned CIT – A has excluded the Media Research Users Council for the reason that same is not functionally comparable since it is a non-profit organization which undertakes advertising and publishing of newspaper and periodicals and also acts as an independent advertising agency which is completely different from the functions performed by the assessee. The learned CIT – A further held that the comparable company derives its revenue from business of publishing newspapers and periodicals and the source of its revenue is basically the periodicals and the subscription by the members. The financial results of the comparable company also revealed that there are certain pass-through costs which have not been booked into the profit and loss account of the comparable company. For this reason is the same was excluded. The learned departmental representative could not show us any infirmity in the order of the learned CIT – A. Further the learned authorised representative supported with the decision of honourable Delhi High Court in case of another company in ITA number 966/2018 dated 4 September 2018 wherein this comparable company has been excluded as it is not for profit company. Therefore respectfully following the decision of the honourable Delhi High Court we confirm the order of the learned CIT – A in rejecting the Media Research Users Council from the comparability analysis in provision of market support services segment of the assessee. Thus, ground number 2 of the appeal is dismissed.

33. The ground number [3] is with respect to the direction of the learned CIT – A for exclusion of Aptico Limited which is identical to the issue involved in the appeal of the learned AO for assessment year 2010 – 11. The arguments of both the parties remain the same. We have already held for that year that Aptico Ltd is correctly excluded by the learned CIT – A. Therefore, for those reasons, ground number [3] of the appeal of the learned AO is dismissed.

34. Ground number [4] of appeal of learned AO is with respect to the order of the learned CIT – A directing the learned AO to allocate corporate expenditure of ₹ 20,942,886 instead of Rs 49,15,81,559/-. Both the parties confirmed that the issue is identical to the issue in the appeal of assessee for assessment year 2010 – 11 and there are no change in the facts and circumstances for the current year. Both the parties also stated that their arguments are also similar for this year also. This issue has already been decided by us in the impugned order for assessment year 2010 – 11, for the similar reasons, we hold that the learned CIT – A is correct in holding that the allocation of ₹ 20,942,886/- should be made between the eligible and noneligible units for the purpose of working out deduction u/s 10 A of the income tax act instead of ₹ 49,15,81,559/-. To reach at this conclusion the learned CIT – A has asked the assessee to reconcile corporate results along with the transfer pricing transaction shown in form number 3CEB. He also verified the details of the breakup of the receipts of the corporate division which renders the business support services to international associated enterprise. The learned CIT – A in para Number 17.6 has further noted that when the assessee is charging a substantial markup for its international transactions there is no reason that why similar margin should not have been charged from its associated enterprise in India for the working out of deduction u/s 10 A of the act. Thus it takes care of the real profit of eligible and non eligible units. On careful perusal of order of the learned CIT – A we find that if the allocation of expenditure is made on the basis of the markup charged between the domestic associated enterprises as well as the foreign associated enterprise, in absence of any infirmity in the allocation of the expenditure made by the assessee and application of thumb rule of applying allocation key of turnover by the learned assessing officer, it will meet the end of the justice. In view of this ground number 4 of the appeal of the learned AO is dismissed.
35. In the result ITA number 5801/del/2017 for assessment year 2011 – 12 preferred by the learned assessing officer is dismissed.
36. Now we come to the appeal of the assessee wherein as per ground number 5 – 8 is against the order of the learned CIT – A respect to the allocation of expenditure for working out deduction u/s 10 A of the act. In view of our

decision in ground number [4] of the appeal of the learned assessing officer for the same assessment year all these grounds of the appeal of the assessee do not survive and hence they are dismissed.

37. The ground number 9 is with respect to the initiation of penalty proceedings and ground number 10 is with respect to the levy of the interest, the ground number nine is premature and ground number 10 is consequential in nature and therefore both these grounds are dismissed.
38. The ground number 1 – 4 are with respect to the transfer pricing matter with respect to the determination of the arm's-length price of the ITeS services of the assessee. Mainly assessee is contesting the confirmation of the action of the learned assessing officer/transfer pricing officer by the learned CIT – A in accepting the following comparable companies for the purpose of determination of the arm's-length price of the international transactions. The comparables contested are (1) Accentia technologies Ltd (2) Infosys BPO Ltd, (3) TCS E serve Limited. With respect to Accentia technologies Ltd the facts stated before us shows that in assessee's own case for assessment year 2008 – 09 , learned CIT (A) has excluded the above comparable company and the learned AO has accepted that order and not preferred any appeal before the ITAT. Further the assessee has also contested before us that this comparable company is engaged in providing knowledge process outsourcing services. The learned authorised representative has also relied upon the plethora of the judicial precedent wherein case of some other assessee this comparable is directed to be excluded. However, we do not agree with such an approach while dealing with comparable companies. However as in the assessee's own case in earlier years same is excluded which has not been challenged by the learned AO, thus, it has become final, now there is no merit in challenging the same before us once again. In view of this we hold that above comparable company i.e. Accentia technologies Ltd be excluded from the set of comparables.
39. With respect to the Infosys BPO Ltd which has a turnover of Rs 1129 crores In addition, TCS E serve which is a turnover of Rs. 1442 crores, both these comparable companies have significantly higher turnover compared to the turnover of the assessee which is just Rs 30.81 crores and both are

enjoying the brand value of respective group companies. The decision of the honourable Bombay High Court in case of CIT V Pentair Water Limited in [2016] 69 taxmann.com 180 (Bombay)/[2016] 381 ITR 216 (Bom) as well as the decision of the honourable Delhi High Court in case of CIT v. Agnity India Technologies (P.) Ltd. [2013] 219 Taxman 26/36 taxmann.com 289 (Delhi) also supports the view In view of this we direct the learned AO/TPO to exclude the above two comparable companies. Accordingly, ground number 2 of the appeal of assessee is allowed.

40. Assessee did not press ground number 1, 3 and 4 and therefore those are dismissed.
41. Assessee has also raised an additional ground of appeal on 5 December 2024 claim of deduction of education cess paid on income tax for the year. The claim of the assessee is that this ground is legal in nature and can be raised at any point of time, as no fresh facts are required to be investigated. Identically to this ground we have admitted the additional ground raised by the assessee for assessment year 2010 – 11 and for the same reasons we also allow the application of the assessee for raising of the above additional ground. Hence additional ground is admitted.
42. This additional ground has been adjudicated by us in the case of the assessee for assessment year 2010 – 11 following the decision of the Honourable Rajasthan and Honourable Bombay High Court. For the similar reasons and with similar directions we sent back the issue to the file of the learned assessing officer for verifying the calculation for grant of deduction u/s 37 (1) of the act of education cess. Accordingly, the additional ground raised by the assessee is allowed.
43. In the result, appeal of the assessee for assessment year 2011 – 12 is partly allowed.
44. Accordingly, all the 4 appeals are disposed of as above.

Order pronounced in the open court on 24/05/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 24/05/2021
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi