

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "L", MUMBAI  
BEFORE SHRI R.S. SYAL (AM) & SHRI AMIT SHUKLA (JM)**

**I.T.A. No.8866/Mum/2010  
(A.Y. 2006-07)**

Hinduja Ventures Ltd., 49/50, In Centre, MIDC, 12 <sup>th</sup> Road, Marol, Andheri (E), Mumbai-400 093. PAN: AAACH2058H.	Vs.	Addl. Commr. of Income-tax, Range 8(2), Aaykar Bhavan, M.K. Road, Mumbai-400 020.
Appellant		Respondent

Appellant by	Shri Y.P. Trivedi & Ms.Rupal Vora.
Respondent by	Shri Ajit Kumar Jain.

Date of hearing	29-03-2012
Date of pronouncement	02-04-2012

**O R D E R**

**PER R.S. SYAL, AM :**

This appeal by the assessee arises out of the order passed by the AO on 15-10-2010 u/s. 143(3) read with sec. 144C(13) in relation to assessment year 2006-07.

2. The first ground is against the disallowance of exemption claimed by the assessee u/s.10A of the Act.

3. After considering the rival submissions and perusing the relevant material on record, it is observed that similar disallowance was made by the AO in the immediately preceding assessment year i.e. 2005-06. The Tribunal, vide its order dated 31-01-2012 in ITA No.4089/Mum/2011 for such preceding year has restored the matter to the file of AO for taking a fresh decision in the light of the guidelines laid down in para-13. Both the sides are in agreement that the facts and circumstances of the instant year are *mutatis mutandis* similar to those of the immediately preceding year. Respectfully following the precedent, we set aside the assessment order on this point and direct the AO to re-decide this issue in consonance with the observations made by the Tribunal in the immediately preceding year.

4. Ground no. 2 is against making of disallowance u/s.14A. On this issue also, both the sides are in agreement that Tribunal in the immediately preceding year has restored the matter to the file of AO for deciding this issue afresh in the light of the judgment of the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT (328 ITR 81). Respectfully following the precedent, we direct the AO to decide this issue afresh in conformity with the directions contained in the Tribunal order for the preceding year in para15-16 of the order.

5. Ground no. 3 is against the addition on account of transfer pricing adjustment amounting to Rs.19,14,71,693/-.

6. The ld. counsel for the assessee contended that the DRP in its order dated 21-09-2010 for the year in question has observed that the net margin on the basis of remaining 12 cases out of 13 cases chosen by TPO depicts net

margin at 21.36%. The ld. AR referred to the order of the TPO dated 22-10-2009 in which it has been noted in para-12 that the assessee's operating profit to total cost is at 6.48%. The ld. counsel submitted that the figures so adopted by the TPO for working out the operating profit margin was erroneous inasmuch as it comprised of total Indian operations of all the units and also the branches located outside India. It was fairly conceded that at the time of determination of arm's length price by the Transfer Pricing Officer, the segmental accounts were not available which resulted into adoption of the figures of the assessee as a whole instead of the figures of international transactions with the associated enterprises. The ld. AR stated that the assessee is now having segmental results prepared from the books of account regularly maintained in respect of each segment. Relying on the order passed by the Mumbai Tribunal in Technimount ICB (P) Ltd. vs. ACIT (2011)11 taxman.com 49 (Mum), the ld. AR contended that the tribunal in such circumstances has held that where the assessee did not initially had segment-wise audited accounts but subsequently got such segmental results prepared, the matter required fresh examination by the AO. In this case, the tribunal has restored the matter back to the file of AO/TPO to determine the addition, if any, on account of transfer pricing adjustment by considering such segmental accounts. It was, therefore, prayed that since the assessee has now segmental accounts in respect of international transactions, the matter may be sent back to the AO for determining the assessee's operating profit margin to total cost from the international transactions. The ld. DR did not raise any objection to this contention raised on behalf of the assessee.

7. After considering the rival submissions and perusing the relevant material on record, it is obvious that the said addition of Rs.19.14 crore has been made on the basis of the assessee's operating margin from its total operations within and outside India arising due to both the controlled and uncontrolled transactions with the associated enterprises and non-associated enterprises. The addition on account of transfer pricing adjustment can be made by comparing the assessee's result from the international transactions with the AEs with those from comparable uncontrolled transactions of outside parties. Under the TNMM, the process is simple to initially find out the average of the operating profit margin of the comparable cases. This benchmark margin is then compared with the operating profit margin from the assessee's international transactions with its associated enterprises. It is not possible to compare the assessee's total margin emanating from national and international transactions with AEs and non-AEs with the average operating profit margin of the comparable cases. It is axiomatic that the base has to remain the same. Since the assessee has now got segmental accounts, in our considered opinion, it will be just and fair if the impugned order is set aside and the matter is restored to the file of AO for determining the adjustment on account of transfer pricing, if any, by comparing the assessee's operating profit margin from the international transactions with the associated enterprises with that of arithmetic means of the comparable cases in respective categories. Needless to say the assessee will be allowed a reasonable opportunity of being heard in deciding this issue afresh as per law.

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

Order pronounced on the 02<sup>nd</sup> day of April, 2012.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.S. SYAL)**  
**ACCOUNTANT MEMBER**

Mumbai: 02<sup>nd</sup> April , 2012.

NG:

Copy to :

1. Assessee.
  2. Department.
  - 3 CIT concerned.
  - 4 DIT concerned .
  - 5.DR,"L" Bench,Mumbai.
  - 6.Master file.
- (TRUE COPY)

BY ORDER,

Asst. Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1.	Draft dictated on	29-03-12		Sr.PS/
2.	Draft Placed before author	29-03-12		Sr.PS/
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/
6.	Kept for pronouncement on			Sr.PS/
7.	File sent to the Bench Clerk			Sr.PS/
8.	Date on which the file goes to the Head clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of order			

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