

**IN THE INCOME TAX APPELLATE TRIBUNAL
“T” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA Nos.6784 & 6785/Del/2018
(Assessment Years:2009-10 & 2010-11)**

Honda Cars India Ltd. (Successor in interest of Honda Motor India Pvt. Ltd.) Plot No. A-1, Sector 40-41, SurajpurKasna Road, Greater Noida Industrial Development Area, GautumBudh Nagar, Uttar Pradesh - 201306	Vs.	Assistant Commissioner of Income Tax, Circle-1 Noida
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACH1765Q		
Appellant	..	Respondent

Appellant by :	Sh. Deepak Chopra, Adv. & Sh. Ankul Goyal, Adv.
Respondent by :	Sh. Nikhil Kumar Govila, CIT, DR

Date of Hearing	11.03.2026
Date of Pronouncement	25.03.2026

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the common order dated 31.07.2018 of the Ld. CIT(A)-44, New Delhi (hereinafter referred to as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal Nos: 72/2017-18/CIT(A)-44 & 79/2017-18/CIT(A)-44 arising out of the order dated 30.03.2017 u/s 143(3)/144C/92CA/254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the ACIT, Circle-1, Noida for AYs: 2009-10 & 2010-11.

2. At the time of hearing ld. Counsel has pointed out that by an application dated 25.11.2025 assessee has raised additional ground questioning the impugned assessment order dated 30.03.2014 being vitiated as not passed in accordance with procedure set out u/s 144C of the Act. As for convenience the additional grounds is reproduced below:

“Ground No. 14: That the final assessment order dated 30.03.2017 is bad in law having been passed in violation of the procedure set out under section 144C of the Income-tax Act, 1961 ("Act") given the absence of a draft assessment order which is mandated by section 144C(1) of the Act.

The said ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant:

The aforesaid additional ground of appeal raises a pure legal issue for which investigation into facts is not required. The omission to raise the aforesaid additional grounds is neither wilful nor unreasonable. The Appellant prays that the additional ground may kindly be admitted and adjudicated on merits having regard to the discretion vested upon Your Honours under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1962. In respect of the above proposition, we rely on the following decisions:

- *National Thermal Power Co. Ltd vs CIT [(1998) 229 ITR 383 (SC)].*
- *Jute Corporation of India Ltd vs. CIT [(1991) 187 ITR 688 (SC)].*
- *Ahmedabad Electricity Co. Ltd vs CIT [(1993) 199 ITR 351 (Bom FB)].*
- *Ramco Cements Ltd vs DCIT [(2015) 373 ITR 146 (Madras)].*
- *CIT vs Pruthvi Brokers & Shareholders [(2012) 349 ITR 336 (Bom)].*

The Appellant trusts that the request shall be acceded to. An opportunity of being heard is prayed for.”

3. We find that the additional ground raised is a pure question of law which can be decided on the basis of facts coming up from the material before us. Ld DR had though sought adjournment to call for a report from the assessing officer but we are of the considered view that in the facts and circumstances as reflecting in the impugned orders no such report is required and the ground is admitted.

4. It comes up that earlier vide order dated 07.01.2016 the Coordinate Bench while dealing with these appeals in hand had set aside, to the files of Assessing Officer, for fresh adjudication in accordance with law, the grounds

by which assessee had challenged the impugned orders on the basis that it is a manufacturer also and not mere distributor and as to which method for ALP determination has to be applied and further internal or external comparables are to be adopted and what adjustment claimed by the assessee can be granted. Assessee was not satisfied with certain observations made in the order dated 07.01.2016 had approached Hon'ble High Court and Hon'ble Allahabad High Court in ITA No. 147 of 2016 vide order dated 20.07.2016 had observed in para 9 as follows:

“9. In that view of matter, we answer the aforesaid questions in favour of assessee and direct that the parties shall be at liberty to raise entire factual issues before Assessing Officer/TPO in respect of grounds on which Tribunal has remanded the matter and any observation otherwise made on these factual aspects either by Tribunal or Dispute Resolution Panel shall not be treated to be binding upon Assessing Officer/TPO.

5. Accordingly, the matter reached the assessing officer and the impugned orders were passed. The material observations of the assessing officer in the impugned orders as relevant in AY: 2009-10 which are similar to AY: 2010-11 are also reproduced below:

Further, as per direction of Hon'ble ITAT in ITA No.1801 dated 07.01.2016, with prior approval of Pr. Commissioner of Income Tax, Noida dated 05.05.2016 reference was made again to the Dy. Commissioner of Income Tax (Transfer Pricing Officer New Delhi on 13.05.2016 requesting to re-determine the adjustment of Arm's Length Price as per the direction of Hon'ble ITAT on 07.01.2016. The Dy. Commissioner Income Tax, (T.PO)-3(2)(1) New Delhi vide his order passed u/s 92CA (3) of the IT Act, 1961 dated 24.01.2017 received in this office on 06.02.2017 has proposed to enhance the income of

the assessee by Rs.13,80,67,817/-. This shall be treated as the cumulative adjustment under Section 92CA and the Assessing Officer may examine issue of initiation of penalty u/s 271(1)(c) of the Act. “

6. The aforesaid observations make it crystal clear that the assessing officer had considered the remand proceedings to be *denova* assessment proceedings and for that reason the reference to the TPO was made with prior approval of the competent authority and the TPO had also passed afresh order u/s 92CA(3) of the Act. However, as required under law to pass draft assessment order u/s 144C(1) of the Act the assessing officer has not done so and has straight way passed a final assessment order thereby curtailing the valuable right of the assessee to approach DRP, thus, vitiating the impugned final order as passed. In this context, the reliance placed by the Ld. Counsel on the decision of Hon’ble Delhi High Court in *Headstrong Services India (P) Ltd. Vs. Pr.CIT (2021) 125 taxmann.com 263 (Delhi)* is applicable as in that case too subsequent to Tribunal direction when assessing officer had decided the matter *denova* but failed to follow the procedure mention u/s 144C of the Act, the Hon’ble High Court has held the proceedings are vitiated and cannot be considered to be irregularity or curable defect.

7. In the light of aforesaid circumstances and discussion we are inclined to sustain the additional ground in both the appeals filed. Consequently, the appeals are allowed and the impugned orders are quashed.

Order pronounced in the open court on 25.03.2026

Sd/-
(Naveen Chandra)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 25.03.2026
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI