

**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM & SHRI PAWAN SINGH, JM**

**ITA No. 5450/Mum/2018**  
**(Assessment Year: 2014-15)**

Essar Power Limited, Essar House, 11, K.K. Marg, Mahalaxmi, Mumbai-400034.	Vs.	A.C.I.T., Range-6(2)(2), Mumbai.
<b>PAN/GIR No. AAACE 0895 J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Anuj Kisnadwala (AR)
Revenue by	Shri Akhtar Hussain Ansari (DR)
<b>Date of Hearing</b>	<b>02/03/2020</b>
<b>Date of Pronouncement</b>	<b>25/08/2020</b>

**आदेश / ORDER**

**PER: R.C. SHARMA, A.M.**

This is the appeal filed by the assessee against the direction of the Ld. Dispute Resolution Panel-1(WZ), Mumbai (in short, the DRP) dated 24/07/2018 for the A.Y. 2014-15 U/s 144C(5) of the Income Tax Act, 1961 (in short, the Act). The assessee has raised following grounds of appeal:

*"On the facts and circumstances of the case and in law,*

- 1. The learned Assessing Officer ('AO') has erred in completing the assessment of appellant at INR 1,43,93,58,982 /- (as against returned loss of INR (64,80,75,116) vide assessment order under section 143(3) r.w.s 144C of the Income-tax Act, 1961 ('the Act') after considering the adjustments made by learned Transfer Pricing Officer (TPO) in his order passed under section 92CA(3) of the Act and subsequently confirmed by the learned Dispute Resolution Panel ('DRP').*

Essar Power Limited vs ACIT

**GROUNDINGS RELATING TO TRANSFER PRICING MATTERS:**

2. *The TPO/AO/DRP erred in making an adjustment of Rs.5,22,146/- for interest on outstanding receivables from Essar Africa Holding Ltd and considering the same as a separate international transaction and charging notional interest.*
3. *The TPO/AO/DRP erred in making an adjustment of Rs.2,79,88,575/- by charging Interest @ 4.19% on Outstanding Share application money paid by assessee to its AE Essar Power Overseas Ltd.*

**GROUNDINGS RELATING TO CORPORATE TAX MATTERS:**

4. *The Assessing Officer has erred in assessing the interest income of Rs.49,03,51,025/- under the head "income from other sources" instead of business income.*
5. *The Assessing Officer has erred in disallowing Rs.204,32,67,630/- u/s. 14A of the Act read with Rule 8D while computing normal income under the Act and adding the same while determining book profit u/s. 115JB of the Act.*
6. *The Assessing Officer has erred in making addition of Rs. 1,30,81,163/- in respect of provision for income tax recoverable from Gujarat Electricity Board and Essar Steel Ltd. while computing normal income under the Act as well as computing book profit u/s. 115JB of the Act.*
7. *The Assessing Officer has erred in disallowing Rs.25,74,584/-, being depreciation claimed on the major overhauling expenditure capitalized in A.Y. 2003-04.*
8. *The learned Assessing Officer has erred in initiating penalty proceedings under section 271(1)(c) of the Act.*
9. *The appellant craves leave to, add to, alter, amend, modify, substitute and/or delete all or any of the foregoing grounds of appeal.*

*Each of the ground is referred to separately, which may kindly be considered independent of each other.*

Essar Power Limited vs ACIT

*The appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.”*

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a company primarily engaged in generation of power. For AY 2014-2015, the assessee filed an electronic Return of Income ('ROI') on 27 November 2014 declaring a total loss of Rs.(64,80,75,117)/- under the normal provisions of the of the Act and a book loss of Rs. (32,99,00,632)/- under Section 115JB of the Act. Along with the ROI, the assessee also filed an Accountant's Report in Form 3CEB [in accordance with Section 92E of the Act] reporting the particulars of its international transactions with its Associate Enterprises (AEs). During the course of the assessment proceedings, the Assessing Officer ('AO') referred the case to the Dy. Commissioner of Income Tax - 2(1)(1), Mumbai ('TPO') under Section 92CA(3) of the Act in order to determine the arm's length price (ALP) in relation to international transactions entered into by the assessee. The TPO passed an order dated 26 October 2017 proposing an adjustment of Rs.7,29,70,024/-. Subsequently, the AO issued the draft assessment order dated 20 November 2017 (received by the assessee on 20 November 2017) under Section 143(3) read with Section 144C of the Act ('draft order') proposing an addition of Rs.2,13,18,93,401/- to the returned

income of the assessee (including Transfer Pricing adjustments mentioned above and other income tax disallowances/additions).

3. During the course of assessment proceedings, the A.O. made transfer pricing adjustment (TP adjustment) on account of interest on outstanding receivables. The AO/TPO has dealt with the issue at page No. 4 to 7 of his order. However, the Id DRP has confirmed the action of the A.O. after having its observation at page No. 6 to 11 of its direction.

4. At the outset, the Id AR of the assessee has placed on record the order of the Tribunal in assessee's own case for the A.Y. 2013-14 wherein the Tribunal have held that the interest on outstanding receivables has to be computed by applying LIBOR plus 0.5%.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the TP adjustment was made by the AO on account of interest on outstanding receivables. In this regard, we found that exactly similar issue has been dealt with by the Tribunal in assessee's own case for the A.Y. 2013-14 in ITA No. 7329/Mum/2017 order dated 15/04/2019 wherein the Tribunal has held that interest on outstanding receivables has to be computed by applying LIBOR plus 0.5%. The precise observation of the Tribunal was as under:

Essar Power Limited vs ACIT

“9. We have considered rival submissions and perused material on record. Undisputedly, the Transfer Pricing Officer has determined the arm's length price of the interest chargeable on outstanding receivable from the AE by applying the rate of 6.56% as per Bloomberg database. However, it is noticed that before the Transfer Pricing Officer and learned DRP the assessee had submitted that as per LIBOR rate of interest the interest chargeable on such outstanding receivable is LIBOR plus 0.5%. The aforesaid contention of the assessee has not at all been considered by the Transfer Pricing Officer and learned DRP. As held in various judicial precedents, interest on outstanding receivables has to be charged by applying LIBOR rate as applicable in the country of residence of AE. In view of the aforesaid, we direct the Assessing Officer to compute the interest chargeable on outstanding receivables at LIBOR plus 0.5%. This ground is partly allowed.”

6. As the facts and circumstances for the year under consideration are parimateria, respectfully following the order of the Tribunal in assessee's own case for the A.Y. 2013-14, we direct the A.O. to make adjustment by applying LIBOR plus 0.5%. We direct accordingly.

7. The next grievance of the assessee relates to treatment of interest income received on margin money of Rs. 3.67 crores and on bank deposit and ICD of Rs. 45.35 crores as 'income from other sources' in place of 'business income'. The AO/TPO has dealt with the issue at page No. 2 and 3 of his order. However, the ld DRP has confirmed the action of the A.O. after having its observation at page No. 14 and 15 of its direction.

8. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the Tribunal in assessee's own case have held that the interest income on margin money is assessable as business income for

- a) A.Y. 2010-11 and 2011-12 in ITA No. 1388/Mum/2016 and 2233/Mum/2015 dated 03/07/2018 (Pg. Nos. 4-5, Para Nos 15-16)
- b) A.Y. 2013-14 in ITA No. 7329/Mum/2017 dated 15/04/2019 (Pg Nos. 8-9, para Nos. 11-15).

The Tribunal in assessee's own case has held that the interest income from bank deposit and ICD is assessable as income from other sources for A.Y. 2013-14 in ITA No. 7329/Mum/2017 dated 15/04/2019 (Pg. Nos. 8-9, Para Nos 11-15).

9. We had carefully gone through the order of the Tribunal. The precise observation of the Tribunal was under:

- “10. *In ground no.3, the assessee has challenged the decision of the Assessing Officer in assessing the interest income of ₹ 27,47,80,861, under the head income from other sources instead of income from business.*
11. *Brief facts are, during the assessment proceedings the Assessing Officer noticed that interest income received by the assessee from ICDs, margin deposits from bank and other amounted to ₹ 27,47,80,861 have been shown by the assessee as business income. Referring to the treatment given to such income by him in assessment year 2006-07 to 2012-13, the Assessing Officer treated the aforesaid interest income as income from other sources.*
12. *The learned DRP also upheld the decision of the Assessing Officer.*

Essar Power Limited vs ACIT

13. *The learned Authorised Representative submitted, while deciding identical issue in assessee's own case in the preceding assessment year, the Tribunal has held that interest income from margin money deposit is to be assessed as business income, whereas, interest income from bank deposits and ICDs have to be treated as income from other sources. In this context, he drew our attention to the appeal order passed by the Tribunal for assessment years 2009–10 to 2012–13.*
  14. *Learned Departmental Representative submitted, the issue has been decided partly in favour of the assessee by the Tribunal in the preceding assessment years.*
  15. *We have considered rival submissions and perused material on record. Notably, while deciding identical issue in assessee's own case for assessment year 2009–10 in ITA no.1849/Mum./2015, dated 17th October 2017, the Tribunal has held that interest earned on margin deposit has to be treated as business income, whereas, interest on ICDs and fixed deposit with Bank are to be treated as income from other sources. The same view was reiterated by the Tribunal while deciding assessee's appeal for the assessment year 2011–12 and 2010–11 in ITA no.1388/Mum./2016 and ITA no.2233/Mum./2015, dated 3rd July 2018 and assessee's appeal for the assessment year 2012–13, in ITA no.1332/Mum./2017, dated 19th September 2018. Following the consistent view of the Tribunal in assessee's own case, as referred to above, we direct the Assessing Officer to assess the interest earned on margin deposit as business income and interest on ICDs and bank deposits as income from other sources. This ground is partly allowed."*
10. As the facts and circumstances during the year under consideration are parimateria, respectfully following the order of the Tribunal in assessee's own case, we direct the A.O. to treat interest on margin money as income from business whereas interest on bank deposit and ICD as income from other sources. We direct accordingly.

11. The assessee is also aggrieved for disallowance U/s 14A r.w.r. 8D of the Income Tax Rules, 1962 (in short, the Rules) under normal provisions as well as while computing book profit U/s 115JB of the Act. The AO/TPO has dealt with the issue at page No. 3 to 7 of his order and the Id. DRP has considered the same at page No. 20 to 28 of its direction.

12. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the issue is covered by the decision of the Hon'ble Bombay High Court in the case of CIT Vs M/s Rivian International (P) Ltd. in ITA No. 693 of 2015 dated 21/11/2017. The precise observation of the Hon'ble High Court was as under:

*"3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On facts, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the said Act. In other words, Section 14A provides that if there is an income which does not form a part of the total income under the said Act, the expenditure which is incurred for earning the income is not an allowable deduction. Therefore, during the relevant year, if the assessee has not earned any tax-free income, the corresponding expenditure incurred cannot be taken into consideration for disallowance."*

13. In the instant case before us, there is no dispute to the fact that the assessee was not in receipt of any exempt income, therefore, applying the proposition of law laid down by the Hon'ble Jurisdictional High Court, no disallowance is warranted U/s 14A of the Act r.w.r. 8D of the Rules under normal provisions as well as while computing income u/s 115JB of the Act, since assessee was not in receipt of any exempt income during the year under consideration

14. The next grievance of the assessee relates to addition on account of provision of income tax recoverable from GUVNL and Essar Steel Ltd. while computing income under the normal provisions and for the purpose of book profit U/s 115JB of the Act. The AO/TPO has dealt with the issue at page No. 7 to 14 of his order and the Id. DRP has dealt with the issue at page No. 15 to 19 of its direction. Both the authorities have made addition of income tax recoverable under normal provisions as well as while computing book profit.

15. We found that the issue is covered against the assessee vide orders of the Tribunal in assessee's own case for:

- i) A.Y. 2010-11 and 2011-12 in ITA No. 1388/Mum/2016 and 2233/Mum/2015 dated 03/07/2018 (Pg. Nos. 3-4, Para Nos 9-10)
- ii) A.Y. 2013-14 in ITA No. 7329/Mum/2017 dated 15/04/2019 (Pg Nos. 12-14, para Nos. 21-27).

Respectfully following the orders of the Tribunal in assessee's own case, we confirm the addition made by the AO/TPO under normal provisions of the Act.

16. In so far as the addition made while computing book profit U/s 115JB of the Act is concerned, the issue is covered in favour of the assessee vide orders of the Tribunal in assessee's own case for

- i) A.Y. 2010-11 and 2011-12 in ITA No. 1388/Mum/2016 and 2233/Mum/2015 dated 03/07/2018 (Pg. Nos. 3-4, Para Nos 9, 11)
- ii) A.Y. 2013-14 in ITA No. 7329/Mum/2017 dated 15/04/2019 (Pg Nos. 12-14, para Nos. 21-27).

17. As the facts and circumstances during the year under consideration are parimateria, respectfully following the order of the Tribunal in assessee's own case, we confirm the action of the A.O. on account of provisions of income tax recoverable while computing income under normal provisions of the Act and also direct the A.O. to delete the addition made while computing book profit U/s 115JB of the Act.

18. The assessee is also aggrieved for TP adjustment on account of interest on money advanced as share application money. The assessee entered into an agreement dated 14.02.2012 for expert management services with Essar Africa Holdings Ltd (EAHL). EAHL is a company engaged in business of developing infrastructure projects including power projects in Zimbabwe. As

Essar Power Limited vs ACIT

per this agreement, the assessee would provide its expertise in project development and project management to EAHL. In consideration of the said services EAHL would pay USD 14,179 per month to the assessee. As per the terms of the agreement, EAHL shall pay the invoice amount within 30 days of the date of receipt of invoice. During the transfer pricing proceedings, the TPO observed that there was a delay in realization of the export invoices and the assessee had not charged any interest for the delayed realization of export proceeds. In view of the same, the TPO adopted an interest rate of 3.64% (as per Bloomberg database) and proposed transfer pricing adjustment of Rs. 5,22,146/- (Pgnos 4 to 7 of TPO). The Hon'ble DRP upheld the addition proposed by the TPO by relying on their own order for the immediately preceding year i.e. A.Y. 2013-14. It was argued by the Id AR of the assessee that the assessee has made advance to its AE for allotment of shares. Shares were allotted within six months. The TPO has computed interest on the advance given for share application money which was confirmed by the Id. DRP.

19. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the TPO has made adjustment of Rs. 6,74,47,878/- by charging interest @ 4.19% on outstanding share application money paid by the assessee to its AE Essar Power Overseas Limited. We found

Essar Power Limited vs ACIT

that during the previous year relevant to year under consideration, the assessee advanced Rs.399.69 crores towards share application money on 29-01-2014 to Essar Power Overseas Limited (EOPL) for issue of shares. The shares were allotted to the assessee on 25-07-2014. The TPO held that since the shares were allotted after a delay of six months, interest ought to have been charged on the advance given towards share application money. It was submitted before the TPO that the money was advanced towards share application money. The assessee submitted ODI forms filed before RBI wherein the purpose for remittance has been stated to be for enhancement of investment in existing company. From the record, we found that the share application money was paid on 29/01/2014 and shares were allotted on 25/07/2014 i.e. within six months. It was the contention of the assessee before the TPO that the amounts so advanced for shares were in the nature of equity investment in the group concern and no interest could be attributed to the amount. It was also argued that the TPO has no power to recharacterise the transaction in absence of any documentary evidences.

20. Before us, it was argued by the Id AR that merely because there is delay in allotment of shares, interest cannot be charged for the period between advance given for share application money and allotment of shares by re-characterizing

the said transaction as loan without bringing any material on record. In order to support the said contention reliance was placed on the following decisions;

- a) Aegis Ltd v. Addl. CIT. ITA No: 1213/Mum/2014 dated 27.07.2015
- b) Bharti Airtel Limited v Addl. CIT, ITA No: 5816/Del/2012 dated 11.03.2014
- c) DIT v. Besix Kier Dabhol SA [210 taxman 151 (Bom)]
- d) M/s Pan India Network Infravest Pvt. Ltd v. Addl. CIT (ITA No. 7026/Mum/2013 dated 04.12.2015)
- e) Parle Biscuits Pvt. Ltd. v. DCIT for A.Y. 2006-07 in ITA No. 9010/Mum/2010 dated 11.04.2014
- f) Allcargo Global Logistics Ltd. v. ACIT for A.Ys. 2007-08 and 2008-09 in ITA Nos. 4909/Mum/2012 and 4910/Mum/2012 dated 11.06.2014.

21. We found that similar issue has been considered by the Coordinate Bench in the case of Aegis Limited Vs Addl.CIT in ITA No. 1213/Mum/2014 order dated 27/07/2015. The precise observation of the Tribunal was as under:

*“27. We have heard the rival submissions and also perused the relevant findings in this regard in the impugned orders. The assessee has subscribed to redeemable preference shares of its AE, Essar Services, Mauritius and has also redeemed some of these shares at par. The TPO has redeemed some of these shares at par. The TPO has re-characterized the said transaction of subscription of shares into advancing of unsecured loan by terming it as an exceptional circumstance and has charged/imputed interest, on the reasoning that in an uncontrolled third party situation, interest would have been charged. We are unable to appreciate such an approach of TPO and under what circumstances, leave above any exceptional circumstances, a transaction of subscription of shares can be re-characterized as Loan transaction. The TPO /Assessing Officer cannot disregard any apparent transaction and substitute it, without any material of exception circumstance*

Essar Power Limited vs ACIT

*highlighting that assessee has tried to conceal the real transaction or some sham transaction has been unearthed. The TPO cannot question the commercial expediency of the transaction entered into by the assessee unless there are evidence and circumstances to doubt. Here it is a case of investment in shares and it cannot be given different colour so as to expand the scope of transfer pricing adjustments by re-characterizing it as interest free loan. Now, whether in a third party scenario, if an independent enterprise subscribes to a share, can it be characterized as loan. If not, then this transaction also cannot be inferred as loan. The contention of the Ld. Counsel is also supported by the Hon'ble jurisdictional High Court in the case of DexiskierDhboal SA, ITA No. 776 of 2011 order dated 30th August, 2012 and by various other decisions, as cited by him. The Co-ordinate Benches of the Tribunal have been consistently holding that subscription of shares cannot be characterizes as loan and therefore no interest should be imputed by treating it as a loan. Accordingly, on this ground alone, we delete the adjustment of interest made by the Assessing Officer. Thus, ground no. 14 is treated as allowed."*

22. Respectfully following the proposition laid down by the Coordinate Bench in the order, we do not find any merit in the adjustment made by the TPO on account of interest for the money paid for allotment of shares which was allotted within the period of 6 months.

23. Similarly in the case of ITO Vs Sterling Oil Resources (P) Ltd. in ITA No. 1791/Mum/2014 order dated 29<sup>th</sup> February, 2016, the Tribunal has held as under:

*"It is not open to the revenue authorities to recharacterize the transaction unless it is found to be a sham or bogus transaction. While there are no specific powers vested in the TPO to recharacterize the transaction, even under the judge made law, such recharacterization can be done by the revenue authorities when the transactions are found to be substantially at variance with the stated form. In the present case, there*

Essar Power Limited vs ACIT

*cannot even a suggestion to hold that this is a bogus transaction because admittedly the subscribed shares capital has indeed been allotted to the assessee. The transaction is thus accepted to be genuine in effect.*

50. *In view of these discussions, as also bearing in mind entirety of the case, we are of the considered view that the authorities below were in error in treating the payment of share application money, as partly in the nature of interest free loans to the AEs, and, accordingly, ALP adjustment based on that hypothesis was indeed devoid of legally sustainable merits. We delete the impugned adjustment of Rs.19,15,45,943. The assessee gets the relief accordingly. As we have decided this ground of appeal on the fundamental issue that the payment of share application money could not be partly treated as interest free loan to AE, we see no need to deal with other aspects of the matter.*
9. *There is one more aspect of the matter. In the present case, allotment of shares does not make any change to the position of the assessee, as the subsidiary is admittedly a wholly owned subsidiary of the assessee. A delay in allotment of shares by the subsidiary company, as long as the subsidiary is a wholly owned subsidiary, does not prejudice the interests of the assessee. It is, therefore, wrong to even allege that an assessee does not behave in a commercially rationale manner, as expected in an arm's length situation, when the assessee does not ask for payment of interest for the period of delay in allotment of shares. We have noted that the TPO's stand that since the assessee was not issued shares during the period, the assessee did not derive any benefit from this investment and, for this reason, the arm's length price adjustment has been made for notional interest for the money which should be assessee's reward for the investment. What the TPO and DRP have overlooked is that since the assessee was only shareholder of the subsidiary company, the fruits of this investment belong to the assessee only and in entirety. On giving this money to the subsidiary and on use of this money by the subsidiary, the assessee, in its capacity as sole owner of the subsidiary, is beneficiary of all*

Essar Power Limited vs ACIT

*the gains of the subsidiary company. Whether the assessee was allotted these shares or not, the assessee was the only shareholder of the subsidiary company and beneficial owner of all the earnings and all the assets of the company. Non allotment of these shares, during the period of payment of share application money till the actual date of allotment, did not, therefore, prejudice assessee's position anyway. All the earnings of the subsidiary company belonged to the assessee in any situation. For example, if the funds available for dividend distribution for this year were say Rs 1,00,000 and the assessee had 100 shares before new allotment of shares and 1000 shares after the allotment, the assessee would be entitled to Rs 1,00,000 only the either way- whether as Rs 1,000 per share for 100 in pre new allotment situation or whether as Rs 100 per share for 1,000 shares in post new allotment situation. In absolute terms, the dividends remain the same. Whether the assessee is allotted more shares or not is wholly academic as the assessee is a single shareholder of the subsidiary company and the face value of shares does not affect the actual benefits of the assessee, the percentage of ownership is the only material factor- which remains at 100% pre new allotment as also post new allotment. In the case of CIT Vs EKL Appliances Limited [(2012) 345 ITR 241 (Del)], Hon'ble Delhi High Court has, though in a very different context and which is materially different from a situation in which the payment is made for subscription of share capital- as in this case, held that recharacterization of a transaction is possible in only two situations – i.e. (i) where the economic substance of a transaction differs from its form and (ii) where the form and substance of the transaction are the same but arrangements made in relation to the transaction, viewed in their totality, differ from those which would have been adopted by independent enterprises behaving in a commercially rational manner. None of these conditions is satisfied in the present case. The form and substance of the transactions are the same. The assessee has behaved in a commercially rational manner inasmuch as whether the new shares are allotted at x point of time or y point of time, it does not make a difference to the position of the shareholder so far as the subsidiary is wholly owned by a single shareholder- as is the factual position in this case. The nominal value of shares, as long as all the shares are held by the assessee is entirely benefit neutral from a*

Essar Power Limited vs ACIT

*commercial point of view. The very foundation of the adjustment made by the Assessing Officer is, therefore, wholly devoid of legally sustainable merits and factually correct assumptions.*

10. *In view of these discussions, as also bearing in mind entirety of the case, we hold that the adjustment on account of notional interest on the share application money, which has been recharacterized as loan, is not sustainable in law. We, therefore, direct the Assessing Officer to delete the same. As the recharacterization itself is held to be unsustainable in law and on facts of this case, all other issues raised in the assessee's appeal are rendered academic. With these observations, and in these terms, the appeal filed by the assessee is allowed."*

24. Similar view has been taken by the Coordinate Bench in the case of group concern Essar Steel Orissa Ltd. Vs ACIT (2016) 74 taxmann.com 70 (Mum-Trib) wherein it was held that recharacterization of the transaction is not permissible without any material or evidence suggesting that such advance is only a loan

25. Similar view has also been taken by the Coordinate Bench in the case of M/s Allcargo Global Logistics Ltd. Vs ACIT in ITA Nos. 4909 & 4910/Mum/2012 order dated 11/06/2014. The precise observation of the Tribunal was as under:

*"As agreed by the Id. Representatives of both the sides, the common issue involved in ground No. 2 of the assessee's appeals for both the years under consideration is squarely covered in favour of the assessee by the latest decision of Delhi Bench of ITAT in the case of Bharti Airtel Ltd., vs. ACIT rendered vide its order dated 11-3-2014 passed in ITA No. 5816/Del/12 wherein a similar issue was decided by the Tribunal in favour of the assessee holding that the transactions involving payment of share application*

Essar Power Limited vs ACIT

*money could not be treated as international transactions of loan given by the assessee company to its AE merely because there was a delay in allotment of shares.”*

26. Following the proposition laid down in the above judicial pronouncements, we do not find any merit in the adjustment made by the A.O. by charging interest on the advances made for allotment of shares. We direct accordingly.

27. Ground No. 7 of the appeal is with regard to disallowance of depreciation was not pressed by the Id AR of the assessee, the same is, therefore, dismissed as not pressed.

28. Before parting, it is noted that the order is being pronounced after ninety (90) days of the hearing. However, taking note of extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days to be excluded. For coming to such a conclusion, we rely upon the decision of the Coordinate Bench of the Mumbai Tribunal in the case of DCIT vs JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14<sup>th</sup> May, 2020. As a result, the appeal of assessee is allowed in part.

Essar Power Limited vs ACIT

29. In the result, the appeal of the assessee is allowed in part.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962 by placing the details on the notice board.

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 25/08/2020

\*Mishra

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

True Copy

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**