

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

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 5532/MUM/2017  
(Assessment Year: 2012-13)**

**DCIT-14(2)(1), Mumbai,**  
432, Aaykar Bhavan, 4<sup>th</sup> Floor,  
M.K. Marg, Mumbai – 400020

..... **Appellant**

**India Debt Management Pvt. Ltd.,**  
C-59 Platina, 'G' Block,  
B.K.C. Bandra (E),  
Mumbai - 400051  
[PAN: AABCI4256N]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Purnesh Gururani  
For the Respondent/Assessee : Shri Vijay Mehta

**Date** : 02.03.2023  
Conclusion of hearing : 30.05.2023  
Pronouncement of order

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 25/07/2017, passed by the Ld. Commissioner of Income Tax (Appeals)-56, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Assessment Order, dated 26/04/2016, passed under Section 143(3) read with Section 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised following grounds of appeal:

- (i) *"On the facts and circumstances of the case and in law, the Ld CIT(A) erred in comparing the overall average rate of interest of 11.77% during the year without appreciating that each series of debentures issued in different years was separate international transaction and each transaction was required to be benchmarked separately".*
- (ii) *"On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the transfer pricing adjustment amounting to Rs. 4,09,46,587/- proposed by the TPO on account of the interest paid by the assessee to its AES on issued to the AEs without pointing out any defect in the Arms Length Price Rate of interest determined by the TPO at the rate: 12.78% based on yield on marketable securities: using historical data for FY 2007-08 and making suitable adjustment of 100 basis points arrive at yield corresponding to credit rating B+ of the assessee.*
- (iii) *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering the average rate of interest at the rate of 11 for determining the arm's length price of rate of interest using CUP as most appropriate method even when interest rate paid by the assessee to its Associated Enterprises (AEs) was 7% on fully convertible debentures issued in FY 2006-07 and 14% for from 01.08.2009 on fully convertible debentures issued in FY 2007-08, FY 2008-09, and FY2010-11".*
- (iv) *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the reset of interest from 9.75% to 14% w.e.f. 01.08.2009 for fully convertible debentures issued in FY 2007-08 and FY 2008-09 to its AE without appreciating the fact that in the third party such huge increase in the rate of interest would not be allowed based on the increase in NPA of the assessee in FY 2009-10, which is subsequent to the issue of debentures in FY 2007-08 and FY 2008-09"*
- (v) *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in accepting the contention of the assessee that effective interest rate of 11.77% is at the Arms Length based on the data pertaining to FY 2011-12 of the transactions of the loan from BSE database and average SBI PLR rate, even though the debentures were issued in FY 2006-07, FY 2007-08 FY 2008-09 and FY 2010-11"*

- (vi) *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in taking three transactions for the year 2011-12 in the case of Shriram Transport Financial Company, Manappuram Finance Limited, and Muthoot Finance Limited as comparables for determining the arm's length price of interest rate paid by the assessee to its Associated Enterprises (AEs) ignoring the fact that fully convertible debentures had been issued in FY 2006-07, FY 2007-08 FY 2008-09 and FY 2010-11 not in year FY 2011-12"*
- (vii) *On the facts and circumstances of the case and in law, the Ld CIT(A) was justified in cherry picking three comparables, submitted by the assessee before the Ld CIT(A) and where no scientific search process was followed to find out the comparables from the database like Bloomberg.*
- (viii) *On the facts and circumstances of the case and in law, the Ld CITIA) erred in holding that average interest rate of 11.77% paid by the assessee to its Associated Enterprises (AEs) on fully convertible debentures issued in FY 2006-07, FY 2007-08, FY 2008-09 and FY 2010- 11 was at arm's length price based on additional evidence, submitted first time before the Ld. CIT(A), of three transactions for the year FY in the case of Shriram Transport Financial Company, Manappuram Finance Limited, and Muthoot Finance Limited wherein the coupon rate per annum was between 11% to 12.25%, without giving opportunity to the TPO for examining the comparability of said transactions with the impugned international of the assessee"*
- (ix) *On the facts and circumstances of the case and in Law, the CIT(A)has erred in deleting the disallowance of Rs 2,05,07,169/-u/s. 14A r.w.r 8D in respect of exempt income".*
- (x) *Whether on the facts and circumstances of the case and in Law, the Ed CITIA) was right in stating that the write-off of amount receivable and allowed the same as a deduction u/s. 36(1)(vii)without appreciating the fact that TDS on a receivable does not represent a debt and hence, cannot be a bad debt u/s.36(i)(vii)"*

3. The relevant facts in brief are that the Assessee is a Non-Banking Finance Company (NBFC) engaged in the business of identifying

investments opportunities in financially distressed companies which otherwise have inherently viable business propositions.

4. The Assessee filed its return of income for the Assessment Year 2012-13 on 29/11/2012 declaring total loss of INR 23,75,26,626/-/-. The case of the Assessee was selected for regular scrutiny. During the assessment proceedings, the Assessing Officer noted that the Assessee had entered into international transactions with Associated Enterprises (AEs) and therefore, made a reference to the Transfer Pricing Officer (TPO) for computation of Arm's Length Price (ALP) under Section 92CA(1) of the Act.
5. The TPO noted that the Assessee had paid interest to its AE (Bluebrinado Ltd., Cyprus) on fully/compulsory convertible debentures of INR.70,08,89,164 /- computed at the rate of 14% per annum.
  - 5.1 The Assessee had benchmarked the transaction by using Comparable Uncontrolled Price (CUP) Method taking the credit rating of the Assessee-company as the basis. The Assessee had adopted Standard & Poor's (S&P) Corporate Rating Criteria to determine its own credit rating as CCC+, which was equivalent to 'B' as per CRISIL Rating, to arrive at arm's-length interest rate of 14.26% using external CUP.
  - 5.2 During the assessment proceedings, the Assessee was also asked by the TPO to obtain credit rating from third-party. The Assessee obtained credit rating from Brickworks Credit Rating India Private Limited which assigned a Private Issuer Rating of BWR B+ for the Financial Year 2011-12 to the Assessee. As per the rating assigned, the Assessee was considered to have high risk of default regarding

timely service of financial obligations in respect of long-term debt instruments of maturity of more than one year. Therefore, the Assessee contended that the Assessee would have obtained funds at the rate of 15.02% for the assigned credit rating keeping in view the average rate of interest for the credit rating assigned as per data extracted from the Bombay Stock Exchange (BSE). Thus, the Assessee contended that the interest paid by the Assessee to its AE was at arm's-length.

5.3 The TPO also asked the Assessee to show cause why London Inter-bank Borrowing Rate (LIBOR) should not be used for determining the ALP. In response, the Assessee submitted that the cost of borrowing funds denominated in INR are more reliably assessed using borrowing with INR as currency and corresponding interest rates. Therefore, LIBOR should not be considered for benchmarking the underlying INR denominated transactions and to re-compute the arm's-length interest payments for INR denominated debt.

5.4 Thereafter, the Assessee was asked by the TPO to show cause as to why arm's-length interest rate should not be taken as 9.75% as it was rate on which interest was paid by the Assessee to its AE. In response the Assessee explained that as per Debentures Subscription Agreement, dated 26/06/2007 (as amended by the addendum thereto), the interest payable by the Assessee in respect of debentures was to be determined by the Board of Directors of the Assessee with upper limit of SBI Prime Lending Rate plus 3% computed at the time of issue of each tranche or such other maximum limit stipulated by law. The Board of Directors had initially set interest rate of 9.75% per annum which was revised upward to 14% per annum (with effect from 01/08/2009) on account of the

fact that the Non-Performing Assets (NPAs) of the Assessee increased from INR 1,603.44 Million to INR 5,248.94 Million. The Assessee pointed out to the TPO that the aforesaid increased rate of interest was within the upper limit specified in the aforesaid Debenture Subscription Agreement. In order to justify the increase, it was submitted that the average of SBI Prime Lending Rate during the year under consideration was 14.59% in respect of secured loans whereas the debentures issued by the Assessee were unsecured and therefore, would warrant interest rate higher than 14.59% whereas the Assessee has only paid interest at the rate of 14%.

5.5 However, the TPO was not convinced. According to the TPO, the interest rate was determined by the Assessee on the basis of search conducted in the Bloomberg Database for the yield on marketable securities using the historical data for the Financial Year 2007-08. Therefore, on the basis of the same data, the TPO computed yield of 11.78% corresponding to the credit rating of 'BBB-'. According to the TPO the credit rating obtained by the Assessee from Brickworks Credit Rating India Private Limited (i.e., BWR B+) was 4 notches below 'BBB-' credit rating, and therefore, the TPO increased the rate of interest by 100 basis points to arrive at the arm's-length interest rate of 12.78% corresponding to 'BWR B+' credit rating. On the basis of the aforesaid arm's-length interest rate of 12.78% so determined, the TPO computed the interest that should have been paid on the debentures by the Assessee. Comparing the same with the interest actually paid by the Assessee, the TPO arrived at a conclusion that the Assessee had paid excess interest of INR 4,09,46,587/- and therefore, proposed downwards transfer pricing adjustment in interest expenses claimed by the Assessee vide order,

dated 29/01/2016, passed under Section 92CA(3) of the Act.

- 6 The Assessing Officer incorporated the aforesaid transfer pricing adjustment of INR 4,09,46,589/- in the Assessment Order dated 26/04/2016, passed under Section 143(3) read with Section 144C(3) of the Act. The Assessing Officer also noted disallowance of INR 2,05,07,169/- under Section 14A of the Act and disallowance of INR 12,00,000/- in respect of amount of credit for tax deducted at source written off by invoking provisions of Section 40(a)(ii) of the Act.
  
- 7 Being aggrieved, the Assessee preferred appeal before CIT(A) against the Assessment Order dated 26/04/2016. Before the CIT(A) it was contended on behalf of the Assessee that the TPO had incorrectly rejected benchmarking analysis of the Assessee by stating that the revision in the interest rate was without carrying out any benchmarking analysis. The aforesaid contention, found favour with the CIT(A) was pleased to hold that the TPO should not have disregarded the benchmarking analysis undertaken by the Assessee. The CIT(A), by placing reliance upon the decision of the Tribunal in the case of the Assessee for the Assessment Year 2010-11 proceeded to delete the transfer pricing adjustment by observing that the interest paid by Assessee to its AE at the effective rate of interest 11.77% was reasonable. While concluding as aforesaid, the CIT(A) took into consideration the data relating to the three additional comparable transactions furnished by the Assessee during the appellate proceedings before the CIT(A) which showed that a company having credit rating AA or AA- would have ended up paying interest in the range of 11% to 12.25% for raising debt funds. The CIT(A) also deleted the disallowance of INR 2,05,07,169/- under Section 14A of the Act and allowed the claim of INR 12,00,000/- in respect of amount of credit for tax deducted at

source written off during the relevant previous year vide order, dated 25/05/2017.

- 8 Being aggrieved, the Revenue has challenged the order, dated 25/05/2017, passed by the CIT(A) before the Tribunal on the grounds reproduced in paragraph 2 above which are taken up hereinafter in seriatim.

**Ground No. (i) to (viii)**

- 9 Ground No (i) to (viii) raised by the Revenue are directed against the order of CIT(A) deleting TP Addition of INR 4,09,46,587/- on account of interest paid by the Assessee to its AEs on debentures.
- 10 We have heard both the sides at length, and perused the record. We find that the Assessee had issued 2 types of hybrid instruments to its AE over a period of 6 years. First being Fully & Optionally Convertible Debentures at the option of the investor during the Financial Year 2006-07 carrying interest rate of 7% per annum [hereinafter referred to as '**OCDs**'], and Second being Fully and Compulsorily Convertible Debentures issued between Financial Year 2007-08 and 2010-11 carrying interest rate of 14% [hereinafter referred to as '**CCDs**']. No debentures were issued by the Assessee during the Financial Year 2011-12 relevant to the Assessment Year 2012-13. Thus, interest paid by the Assessee during the relevant previous year pertained to the OCDs and CCDs issued in the preceding years.
- 11 As per the Transfer Pricing Study Report (for short '**TPSR**') [placed at Pg 101 to 135], the Assessee had carried out benchmarking analysis at the time of issuance of FCDs (i.e. Fully Convertible Debentures – whether OCDs or FCDs). Paragraph 4.4. & 4.5 of the

Transfer Pricing Study Report reads as under:

**"4.4 Approach to Benchmarking Analysis**

In order to determine the arm's-length nature of the interest rate (all-in-rate) applied on a credit facility, the benchmarking analysis would ideally need to be carried out at the time the facility was granted (in this case when the issuance of FCDs was made). This is because the interest rate and the other terms are determined based on a company's financial position at the point in time when a facility is granted. Hence it is appropriate that even in later years of the life of the facility, the benchmarking analysis undertaken at the time of issuance would continue to be relevant unless there was a significant change in the terms of the arrangement which would warrant a fresh benchmarking analysis be undertaken.

As discussed, IDM has made issuance during prior years. They have accordingly been benchmarked in those relevant years. A summary of benchmarking results as provided in table 2 below:

Sr. No.	Particulars	Interest rate determined through benchmarking analysis	Interest rate of instrument
1	FCDs issued @ 7% interest	8.80%	7%
2	FCDs on which coupon rate revised @ of 14%	15.65%	<b>14%</b>
3	FCDs issued @ 14% interest	15.43%	<b>14%</b>

**4.5. Corroborative analysis using data for Financial Year 2011-12**

As a matter of abundant caution, IDM has undertaken a benchmarking analysis using data for FY 2011-12 to corroborate the appropriateness of the average interest rate on FCDs payable on all issuances.

4.5.1 The Most Appropriate Method

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#### 4.5.2. Selection of Most Appropriate Method

##### 4.5.2.1. Comparable Uncontrolled Price Method

In order to determine the arm's length nature of the interest rate (all-in-rate) applied on FCDs issued to AE, the Comparable Uncontrolled Price Method (hereafter referred to as the "CUP method") was first considered. The CUP method utilises comparable market prices for the inter-company finance activities performed by IDM, by making reference to unrelated companies entering in similar financing relations under similar circumstances i.e. market factors, liquidity and credit risk perceived, hybrid nature of instruments, etc.

Accordingly, it was analysed whether IDM has borrowed funds from any third party under similar conditions that could be used as an internal CUP. There was no such issue to be compared to. Hence, we analysed external market data in order to find external CUPS based on which we could establish a range of market interest rates. External CUPS can be obtained from a variety of sources, including database searches when they satisfy the comparability requirements and the rules on the aggregation of transactions.

As sources of data on third party financing transactions have been identified (each of which are commonly utilised by banks and sophisticated investors), the external CUP method is considered likely to be one of the most appropriate method to establish an arm's length cost of borrowing in relation to the inter-company credit facility.

The process by which a range of arm's length interest rates was estimated for the inter-company credit facility can be summarised as follows:

- The credit rating of IDM determined during the most recent year of issuance i.e. FY 2010-11 has been taken into consideration (refer Appendices E, F & G);
- Search and identification of third party debt instruments which are comparable to the credit facility in order to estimate an appropriate rate; and
- Establishing an arm's length interest rate (all-in-rate) for the credit facility based on the above searches.

##### 4.5.2.2. Resale price method

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4.5.2.3. *Cost plus method*

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4.5.2.4. *Profit split method*

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4.5.2.5. *Transactional net margin method*

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4.5.2.6. *Other method*

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**4.5.3. Application of the most appropriate method**

*After reviewing all of the transfer pricing methods discussed herein, it was concluded that, given the fact and circumstances, the CUP provides the most reliable measure of an arm's length respect to the intra-group debt issuances.*

*In order to determine the arm's length nature of the interest rate (all-in-rate) applied on the FCD issue, we analysed the following:*

- *the creditworthiness of the borrower (IDM), and*
- ***the characteristics of the credit facility.***

**4.5.4. Credit Ratings**

*In order to estimate the stand alone credit quality of IDM, we used Standard & Poor's (S&P) Corporate Rating Criteria 2006.*

*The information used as input for S&P Corporate Rating Criteria is based on the year ended financial statements as on 31 March 2011. The financial statements are presented in Appendix E*

*We determined that the ratios calculated by S&P indicated an estimate of IDM's corporate credit rating to be consistent with a "CCC+" rated borrower as per S&P's rating scale which is equivalent to a "Caa1" rating from Moody's.*

**4.5.5. Implications of a "CCC+/Caa1" Rating**

*The rating systems used by Moody's and S&P are detailed in Figure below:*

Figure 1 : Moodys and S&P Rating System

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*S&P modifies its ratings through the addition of a plus (+) or a minus (-) sign to show the relative standing of a borrower within a ratings category. Therefore, a "CCC rating is consistent with a higher credit quality than a "CCC" rating or a "CC" rating Similarly, Moody's modifies its ratings by assigning a numerical modifier to a letter rating. Under the Moody's system, a "Caa1" rating is stronger than a "Caa2" rating, which is stronger than a "Ca" rating.*

*Ratings below a Moody's "Ba3" rating (or S&P's "BB-") are considered highly speculative and an S&P "CCC rating/Moody's "Caa1" rating is associated with substantial risks.*

#### **4.6. Global v/s National scale**

*The above credit rating estimations have been derived on the S&P scale is a global scale rating parameter. Global scale ratings (typically for issuances by borrowers raised outside India) are typically different from national scale ratings (includes debt issuances in INR and raised from domestic lenders) because in national scale ratings, local elements such as political risk or fiscal situation are less likely to affect the rating of a company since it is more likely that these factors would affect all domestic companies in a similar way. However for global scale rating purposes, these factors might prove to be significant risk elements.*

*Thus national scale ratings cannot be directly compared with S&P/Moody's global scale ratings. A definition of each credit rating that is assigned by Moody's is provided in Appendix G with corresponding S&P equivalents for debt issuances at a Global level.*

*In order to identify comparable third party debenture issuances similar to the intercompany issuance, the credit scores of the above entities must be transformed to a domestic scale since the comparable data consideration is based on national scale ratings. The transformation from the global to the national scale is based on the following*

- *The two ratings can be loosely mapped using default rates that have been calculated using observations made over a period of time. This comparison will yield approximate parity of ratings on the two scales.*

- *CRISIL has developed a mapping technique to map its ratings with the global scale. This methodology is based on the first principles of comparison of default rates, transition rates and financial medians of CRISIL and S&P in order to ensure appropriate mapping between the two rating scales.*

*Based on the above guidance, the transformation table from the global to national scale has also been provided in Appendix G. This would result in IDM's credit rating as per CRISIL being CRISIL B*

#### **4.7. Selection of Time period**

*As per the Indian Regulations, the data to be used in analysing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into. However, data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts which could have an influence on the determination of the transfer price in relation to the transactions being compared.*

*Under the present case, since the financial markets are ever-changing, an independent third party lender or an investor would look at the interest rate prevailing at the point of entering into a lending arrangement or prevailing market return (ie. yield to maturity) in a bond market, besides evaluating the credit worthiness of the borrower or the issuer as the case may be.*

*Similarly, an independent borrower would evaluate the interest rate quoted by the lender in light of the market condition prevailing at the time of negotiating and entering into the loan agreement or in case of issuance of bonds, it would evaluate the prevailing market conditions (i.e., availability of liquidity, investors' expectations, etc.) to price the coupon rate so that it may provide expected returns (in terms of yield to maturity) to the investors and at the same time receive full subscription.*

*Keeping the above in perspective, it is imperative to consider time period in case of third party scenario as the one which has occurred before the transaction date between IDM and AE and not post the transaction date.*

***This benchmarking analysis has been carried out as a matter of abundant caution using market data for FY 2011-12 to***

**corroborate fact the average interest cost to the company is comparable to market rates.**” (Emphasis Supplied)

- 12 On perusal of the TPSR it is clear that the Assessee had carried out benchmarking analysis using CUP as the most appropriate method on the basis of credit rating of the Assessee and has also carried out corroborative study using data for the Financial Year 2011-12 in addition to the study carried out in the year of issuance of OCDs/CCDs. Therefore, the finding returned by the TPO that the Assessee had only used historical data pertaining to Financial Year 2007-08 for benchmarking is not correct. Accordingly, concur with CIT(A) to the extent the CIT(A) held that the TPO erred in rejecting the transfer pricing analysis conducted by the Assessee based upon incorrect understanding of facts.
- 13 On perusal of the TPSR, we find that the Assessee had identified 9 comparable transactions. However, before CIT(A) while placing reliance upon the decision of the Tribunal in the case of the Assessee for the Assessment Year 2010-11 [ITA No. 7518/Mum/2014, dated 10/03/2016], wherein interest rate of 11.30% was held to be at arm’s-length, the Assessee had identified additional comparable transactions of Shriram Transport Finance Company, Manappuram Finance Ltd and Muthoot Finance Ltd. having credit rating of AA/AA-. In the aforesaid three transactions debentures carrying interest rate ranging from 11% to 12.25% were issued. It was contended by the Assessee before the CIT(A) that the Appellant had paid interest at an average rate of 11.77% and therefore, interest paid by the Assessee should be accepted as being arm’s length. On perusal of order passed by CIT(A), we find that CIT(A) has neither carried out any examination of the comparability of the aforesaid transactions with the transactions

undertaken by the Assessee nor has the CIT(A) given the TPO the opportunity to examine the same. Further, the CIT(A) has taken the average rate of 11.77% for the purpose of aforesaid comparison/analysis while making a reference to the fact that the Assessee has paid interest of at the rate of 14% on certain unsecured debentures. Admittedly, rate of interest applicable was 14% for, both, OCDs/CCDs, and the Assessee has adopted CUP as most appropriate method. The CIT(A) has treated OCDs at par with CCDs without having regard to the comparability and the applicable terms and conditions to arrive at the average rate of interest of 11.77% which has been accepted as being 'reasonable' rate (as opposed to 'arm's length' rate). In our view, the approach adopted by the CIT(A) cannot be countenanced. The Learned Authorised Representative for the Assessee had contended that this issue stand decided in favour of the Assessee by the decision of the Mumbai Bench of the Tribunal in the case of the Assessee for the Assessment Year 2010-11. However, on perusal of the aforesaid decision, we find that the issue of interest charged on OCDs/CCDs and the related terms and conditions was not raised before the Tribunal for examination. The Tribunal had accepted the comparables placed before it and returned a factual finding that rate of 11.30% was arm's length rate. Since the benchmarking analysis is required to be carried out for each assessment year, more so in the case of the Assessee where the Assessee has itself contended that there was change in the attendant facts and circumstances leading to increase in applicable interest rate from 7% to 14% in case OCDs on account of increase in Non-Performing Assets of the Assessee and consequent lowering of the credit rating. For the assessment year before us, the Assessee has itself carried out

benchmarking analysis on the basis of data for the Financial Year 2011-12 on corroborative basis to finalize a list of 9 comparable Non-Convertible Debenture (NCDs) transactions using BSE's corporate debt database to arrive arithmetic mean of 14.26%. Even if the contention of the Assessee is to be accepted that the OCDs and CCDs issued by the Assessee are at par with NCDs (given the adverse conversion terms on account of loss suffered by the Assessee), the benchmarking analysis carried out by the Assessee to arrive at the ALP would have to be examined by the TPO before the interest rate is accepted as being at arm's length. We also find merit in the contention of the Revenue that the CIT(A) could not have taken into consideration the additional comparables without granting without giving any opportunity to the TPO/AO to examine the same. On perusal of decision for the Assessment Year 2011-12 [ITA No. 5533/Mum/2017, dated 29/12/2022] on which reliance was placed during the course of hearing, we find that the Tribunal has returned a factual finding that the CIT(A) had merely recorded the contention of the Assessee and not given a finding with respect to the two additional comparables whereas in the order impugned in the present appeal, the CIT(A) has returned the following finding:

"The Appellant had also submitted 3 additional comparable transaction i.e. Shriram Transport Financial Company, Manappuram Finance Limited and Muthoot Finance Limited which have a credit rating of AA/ AA(-) category had issued secured debentures during the relevant year at interest rate ranging from 11% to 12.25% and pleaded that, if company having credit rating AA/ AA(-) is paying interest in the range of 11% to 12.25%, then the effective interest rate of 11.77% and 14% interest on certain unsecured debentures paid by the Appellant having credit rating of B + is reasonable. There is merit in Appellant's contention and therefore I am inclined to accept the same." (Emphasis Supplied)

Accordingly, we confirmed the order passed by CIT(A) only to the extent the CIT(A) held that the TPO erred in rejecting the transfer pricing analysis conducted by the Assessee. However, in view of the above, we direct the AO/TPO to determine the ALP afresh after taking into consideration the benchmarking analysis conducted by the Assessee. In view of the aforesaid, Ground Nos. (i), (vi), (vii) & (viii) raised by the Revenue are allowed, whereas Ground No. (ii) raised by the Revenue is dismissed. Ground No. (iii), (iv) & (v) are disposed off as being infructuous.

**Ground No. (ix)**

- 14 Ground No. (ix) is directed against the order of CIT(A) deleting the disallowance of INR 2,05,07,169/- made by the Assessing Officer by invoking provisions contained in Rule 8D of the Income Tax Rules, 1962 read with Section 14A of the Act. We note that the CIT(A) has deleted the aforesaid disallowance on the ground that no exempt income was earned by the Assessee during the relevant previous year. We find that the decision of the CIT(A) is in line with the judgment of the Hon'ble Bombay High Court in the case of Nirved Traders Pvt. Ltd. Vs. Deputy Commissioner of Income Tax [IT Appeal No. 149 of 2017, dated 23-4-2019] and Principal Commissioner of Income-tax-3 Vs. Reliance Ports and Terminals Ltd [2020] 114 taxmann.com 529 (Bombay). Accordingly, we do not find infirmity on the order passed by the CIT(A) on this issue. Therefore, Ground No. (ix) raised by the Revenue is dismissed.

**Ground No. (x)**

- 15 Ground No. (x) raised by the Revenue is directed against order of CIT(A) allowing deduction for INR 12,00,000/- being amount of tax

deducted at source by Meta Cooper Ltd. which could not be reconciled and was, therefore, written off during the relevant previous year.

- 16 The relevant facts in brief are that the Assessee debited an amount of INR 12,00,000/- to the Profit & Loss Account. During the assessment proceedings, the Assessee was asked to explain the nature of the above expenditure and its allowability as business expenditure. In response to the same the Assessee, vide letter dated 22.01.2016, submitted as under:

*"During F.Y. 2009-10 (A.Y. 2010-11), the company had received an amount of Rs.1,08,00,000/- from Meta Cooper Ltd. on account of redemption premium after deduction of TDS amounting to Rs. 12 lakhs. During the course of assessment proceedings for the above year, the company was not granted credit for TDS amounting to Rs. 12 lakhs since the same was unreconciled with the OLTAS/26AS. The company has not pursued the above claim before higher appellate authorities. Accordingly, the company has written off the same in the books in the books of accounts. This is nothing but the debt which has become bad and accordingly written off in the books of accounts. The same is allowable as a deduction u/s. 36(1)(vii) of Income Tax Act."*

- 17 However, the Assessing Officer was not convinced. According to the Assessing Officer, the tax deducted at source formed part of income tax payable and therefore, the same could not have been allowed as deduction as per Section 40(a)(ii) of the Act.

- 18 Being aggrieved, the Assessee carried the issue in appeal before CIT(A). The CIT(A) allowed the claim for deduction of INR 12,00,000/- holding as under:

*"The write-off clearly represents a write-off of an amount receivable and accordingly, allowed as a deduction under section 36(1)(vii) of*

*the Act or at best it could even be considered as a business loss. The issue is covered by the decision of the jurisdictional Hon'ble Mumbai ITAT in the case of CIT v Yahoo Web Services Pvt. Ltd. [ITA No. 2042/Mum/2010].*

*Respectfully following the decision of the Hon'ble Mumbai ITAT as well as the facts of the case, the disallowance in respect of TDS on assets written off deleted. Accordingly, this Ground is allowed."*

- 19 Having considered the rival submission and on perusal of the record we concur with the CIT(A). It is admitted position that amount of INR 12,00,000/- under consideration was neither received by the Assessee nor did the Assessee claim credit for the same. Therefore, in our view, amount of INR 12,00,000/- represented the amount of debt to be recovered. The entire income of INR 1,20,00,000/- was offered to tax by the Assessee as income, therefore, when the debt of INR 12,00,000/- was written off during the relevant previous year, the Assessee was entitled to claim deduction for the same under Section 36(1)(vii) of the Act. We note that the CIT(A) had granted relief to the Assessee by relying upon the decision of the Mumbai Bench of the Tribunal in the case of CIT Vs. Yahoo Web Services Pvt. Ltd. : [ITA No. 2042/Mum/2010].wherein it has been held as under:

*"We find that in National Aluminum Co. Ltd's case (supra), Hon'ble Supreme Court was in-seisin of a situation in which assessee had claimed deduction in respect of demand under section 201 r.w.s. 195 that the assessee had to pay because it failed to discharge the tax deduction obligations imposed on the assessee. Their Lordships were of the considered view that the payment made by the assessee on account of his not discharging the tax deduction obligations, and, therefore, the same could not be allowed as deduction on business income. As against the position that Hon'ble Supreme Court were dealing with, we are right now dealing with a situation in which neither the assessee got the money, lawfully due to him, as it was said to have been retained as tax deduction at source, nor did the assessee get any tax credit in computation of it's tax liability. The*

amounts represented by such tax deductions, which were unavailable for tax credits, clearly represented loss incurred by the assessee in the course of bonafide business activities. On these facts, as held by Hon'ble Punjab & Haryana High court in the case of Shreyans Industries (supra), there is no infirmity in assessee being allowed deduction in respect of the loss so incurred to the assessee. We approve the conclusions arrived at by the CIT (A) and decline to interfere in the matter" (Emphasis Supplied)

In view of the above, we do not find infirmity on the order passed by the CIT(A) on this issue. Therefore, Ground No. (x) raised by the Revenue is dismissed.

20 In result, the present appeal preferred by the Revenue is partly allowed.

Order pronounced on 30.05.2023.

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.05.2023  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai