

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H': NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.5183/DEL/2024  
(Assessment Year: 2021-22)**

Avaada Mhkhamgaon Private Ltd., C – 11, Sector 65, Gautam Budh Nagar, Noida – 201 301 (Uttar Pradesh). <b>(PAN : AATCA0395A)</b>	vs.	ITO 5(1)(1), Gautam Budh Nagar. Noida (UP).
---	-----	---

**ITA No.4884/DEL/2024  
(Assessment Year: 2021-22)**

Avaada Sustainable RJProject Private Ltd., C – 11, Sector 65, Gautam Budh Nagar, Noida – 201 301 (Uttar Pradesh). <b>(PAN : AASCA9593R)</b>	vs.	ITO 5(1)(1), Gautam Budh Nagar. Noida (UP).
--	-----	---

**ITA No.4916/DEL/2024  
(Assessment Year: 2021-22)**

Avaada Sataramh Private Ltd., C – 11, Sector 65, Gautam Budh Nagar, Noida – 201 301 (Uttar Pradesh). <b>(PAN : AATCA0002G)</b>	vs.	ITO 5(1)(1), Gautam Budh Nagar. Noida (UP).
---	-----	---

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate  
REVENUE BY : Shri S.K. Jadhav, CIT DR

Date of Hearing : 06.08.2025  
Date of Order : 03.09.2025

**ORDER**

**PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. These appeals preferred by the assesseees are directed against the assessment order dated 20.10.2024, 25.09.2024 & 25.09.2024 passed by the Income Tax Department, Assessment Unit u/s 143(3) read with section 144C(13)/144B of the Income-tax Act, 1961 (for short 'the Act') for Assessment Year 2021-22 pursuant to the directions of the Dispute Resolution Panel u/s 144C(5) of the Act.
2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take up the assessee's appeal being ITA No.5183/Del/2024 for AY 2021-22 as lead case to adjudicate the issues under consideration wherein the assessee has raised the following grounds of appeal :-

“1. On the facts and circumstances of the appellant's case and in law, the Ld. DRP/Ld. A.O. has erred in referring the appellant's case to the Ld. TPO in contravention to the jurisdictional requirement, as laid by the CBDT Instruction 3 of 2016, for the reason mentioned in the impugned direction order or otherwise.

2. On the facts and circumstances of the appellant's case and in law, the Ld. DRP/Ld. A.O. has erred in confirming the action of Ld. TPO in making adjustment of Rs.1,13,620/- on account, of interest free loan received from M/s Avaada Energy Private Limited (AEPL) and Rs. 8,75,508/- on account of interest free loan received from M/s Viraj Solar Maharashtra Private Limited (VSMPL), for the reason mentioned in the impugned direction order or otherwise.

3. On the facts and circumstances of the appellant's case and in law, Ld. DRP/Ld. A.O. erred in confirming the action of Ld. TPO in

making the adjustment of interest on loan received from M/s Avaada Energy Private Limited (AEPL) and M/s Viraj Solar .Maharashtra Private Limited (VSMPL) by considering the interest rate of 11.311 %, for the reason mentioned in the impugned direction order or otherwise.

4. On the facts and circumstances of the appellant's case and in law, the assessment proceedings are barred by limitation in view of Section 153 read with Section 144C of the Act.

5. On the facts and circumstances of the appellant's case and in law, Ld. DRP/Ld. A.O. erred in initiating Penalty Proceeding us 270A of the Act, for the reason mentioned in the impugned direction order or otherwise.

6. The Appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.”

3. At the time of hearing, ld. AR of the assessee raised the preliminary issue of disallowance made by the AO under section 115BAB of the Income-tax Act, 1961 (for short ‘the Act’) and ground no.4 is on jurisdictional issue which was not pressed at the time of hearing. Ground No.5 is premature and ground no.6 is general in nature.
4. Relevant facts of the case are, assessee filed its return of income on 15.03.2022 declaring loss of Rs.10,50,200/-. The case was selected for scrutiny under CASS for the reason “Large specified domestic transactions”. The AO referred the matter to the AO, Technical Unit to determine Arm’s Length Price (ALP) in respect of international transactions. During assessment proceedings, the Transfer Pricing Officer (TPO) observed that

assessee has obtained a loan from Viraj Solar Maharashtra Pvt. Ltd. (VSMPL) and Avaada Energy Pvt. Ltd. (AEPL). He observed that Associate Enterprises (AE) have not charged any interest upon the loan advanced from AEPL. The TPO observed that the holding company has shifted the profits to its subsidiary company where lower tax regime being followed. Upon verification, the assessee submitted that the assessee has not earned any profit during the year, therefore, no question of more than ordinary profit come into the question. Accordingly, the TPO applying the provisions of section 115BAB he came to the conclusion that the AE extending capital without return on it is effectively showing less than ordinary profit. Hence, the AE should have charged interest at the average rate @ 7.061% plus margin of 4.25% equal to 11.311% whereas VSMPL has charged interest @ 8.5% p.a. Therefore, as per the provisions of section 115BAB, over and above the ordinary profit should be taxable. He observed that AE extended the capital without any return on it is effectively showing less than the ordinary profit. The TPO rejected the contentions of the assessee and distinguished the various case laws relied by the assessee, he invoked the Safe Harbour Rules. Accordingly, he proceeded to determine the adjustment of non-payment of interest to VSMPL to the extent of Rs.8,75,508/- by inferring that the ALP of interest on the transaction with VSMPL is Rs.23,56,458/- whereas assessee

has paid the interest to the extent of Rs.14,80,950/-. Therefore, he made adjustment of Rs.8,75,508/-. Further he observed that the assessee has not paid interest to AEPL, however ALP of interest on loan taken from AEPL of Rs.1,13,620/-. Therefore, he proposed addition of Rs.9,88,123/- as ALP adjustment

5. Aggrieved, assessee preferred an appeal before the Id. DRP and raised an additional ground wherein it was contested that assessee has not commenced manufacturing during the year and the beneficial tax rate provided under section 115BBA has not been availed by the assessee, therefore, adjustment under section 115BBA is not warranted. Id. DRP dismissed the same by observing as under :-

“2. Panel observes that beneficial rate was not availed by the assessee since its income was negative for the year. Section 115BAB applies within the overall scheme of Income Tax Act. If assessee did not take benefit of this section, it does not mean other provision of Income Tax Act will not apply to it. Adjustment made for decreasing the loss is as per other provisions of the Act, that allow decreasing the claim and carry forward of loss, if it has been found that excess loss has been claimed by the assessee. In view of the same, no infirmity is found with order of the AO.”

6. Aggrieved, assessee is in appeal before us.
7. At the time of hearing, Id. AR of the assessee submitted that there is no sales recorded by the assessee as the project is under construction stage and all the expenditure till 31.03.2021 are disclosed as capital work-in-progress. As

there is no profit during the year, the AO is unjustified in referring the matter to the TPO. The assessee has not taken any advantage of taking finance from its holding companies. He submitted that assessee has taken loan from its holding and sister concerns and it paid interest to VSMPL of Rs.14,80,950/- for 32 days. After the loan was repaid during the year and no interest was paid to AEPL on a loan of Rs.10,04,510/-. He submitted that AO/TPO has determined the variation on interest paid to VSMPL at Rs.8,75,508/- and on account of interest to AEPL of Rs.1,13,620/-. Further he submitted that TPO has also added the marginal cost lending rate plus 425 basis point to arrive at the interest rate of 11.311%, which is unjustified. He submitted that the AO has applied the provisions of section 115BAB and he brought to our notice section 115BAB and submitted that the provision is applied when the assessee earned the profit and submitted that as per the provision of section 115BAB, tax payable in respect of the total income of a person being a domestic company shall, at the option of such person, be computed @ 15%. Further he submitted that as per the First Proviso if there is any other income unconnected with the main activities of the assessee it will be charged @ 22%. Further he submitted that as per the Second Proviso, the income-tax payable in respect of the income of the person deemed so as per sub-section (6) shall be computed @ 30%. Therefore, he submitted that as per the

provisions of section 115BAB, income earned under this Chapter will be charged @ 15% and if any additional income as per First Proviso it is chargeable @ 22% and any deemed income based on sub-section (6) of the Act, the same is chargeable @ 30%. He raised the issue that during the year, assessee has not earned any income rather it incurred loss and also the assessee has not commenced the business. That being the case, the provisions of section 115BAB are not applicable and he prayed that the same may be deleted.

8. On the other hand, Id. DR of the Revenue supported the findings of the lower authorities.
9. Considered the rival submissions and material placed on record. We observe that assessee has not commenced its business and all expenditure incurred by the assessee is charged to capital work-in-progress. Effectively assessee has not earned any income and the AO/TPO has observed that assessee has taken certain loan from its holding and sister concerns and determined the ALP on interest and proposed ALP adjustment on the basis that profit was shifted from its holding and sister concerns. After due consideration, we observe that assessee has not commenced its business and has not earned any income even the provisions of specified domestic transaction will not apply this year and even the provision of section 115BAB is a provision for availing

concessional rate on the income earned in new manufacturing in the domestic companies. We observe that when there is no profit earned by the assessee, there is no provision or question to levy concessional tax rate in the case of the assessee. In order to apply the provisions of concessional rate u/s 15BAB, there has to be taxable income. In the given case, there is no taxable income even after adjustments. In our view, even First Proviso and Second Proviso are not applicable in case the assessee has not earned any income during the year. Since assessee has not commenced its business, there is no concept of shifting of profit applies in this case. Accordingly, this ground is allowed.

10. In the result, the appeal being ITA No.5183/Del/2024 filed by the assessee is allowed.
11. With regard to appeal being ITA Nos.4884/Del/2024, since the facts are exactly similar to ITA No.5183/Del/2024 our above findings in ITA No.5183/Del/2024 are applicable *mutatis mutandis* in ITA No. 4884/Del/2024. Accordingly, the appeal being ITA No.4884/Del/2024 filed by the assessee is allowed.
12. With regard to ITA No.4916/Del/2024, we observe that assessee has raised similar grounds i.e. Ground Nos.1 to 4 raised in ITA No.5183/Del/2024,

therefore, to this extent, the findings in ITA No.5183/Del/2024 are applicable *mutatis mutandis*. Accordingly, Ground Nos.1 to 4 are allowed.

13. With regard to Ground No.5 which is the TP adjustment proposed by the TPO on account of material and services purchased under EPC contract from Avaada Ventures Pvt. Ltd. (AVPL), we observe that the TPO has proposed the adjustment rejecting the submissions of the assessee that it is not a case of more than ordinary profit and the transactions were already benchmarked during the course of scrutiny proceedings in the case of AVPL and further assessee contended that since the margin earned by the tested party i.e. AVPL is greater than the industry comparable transaction can be held to be at arm's length. However, TPO rejected the same and held that the tax arbitrage is in the nature of inflated losses of the assessee. The inflated profit due to ALP is more than the industry profit and this will lead to additional losses claimed by the assessee in the subsequent years. He gave the similar views to reject the contentions of the assessee similar to the issue of interest disallowed by him in Ground Nos.1 to 4. We have adjudicated the issue of applicability of section 115BAB. In the case of the present assessee, based on the book results, the provisions of section 115BAB have no application. Since the issues are exactly similar, the findings given in ITA No.5183/Del/2024 is

equally applicable to the ground raised by the assessee in the appeal.

Therefore, we are inclined to allow this ground raised by the assessee.

14. With regard to ground no.6, no argument was put-forth before us and ground no.7 is premature. Ground No.8 is general in nature. These grounds are dismissed as such.
15. In the result, the appeal being ITA No.4916/Del/2024 is partly allowed.
16. To sum up : appeals filed by the assessee being ITA Nos.5183/Del/2024 and 4884/Del/2024 are allowed and the ITA No.4916/Del/2024 filed by the assessee is partly allowed.

**Order pronounced in the open court on this 3<sup>rd</sup> day of September, 2025.**

**Sd/-  
(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

**sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 03.09.2025  
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**