

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री विजय पाल राव, उपाध्यक्ष एवं
श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA Nos.923 & 924/Hyd/2024**
(निर्धारण वर्ष/Assessment Years:2020-21)

M/s. Neovantage Innovation Park Private Limited, Hyderabad. PAN: AAKCM4735D	Vs.	Income Tax Officer, Ward-16(3), Hyderabad.
M/s. Neovantage Bio-Technology Private Limited, Hyderabad. PAN: AAKCM4430F	Vs.	Asst. Commissioner of Income Tax, Circle 5(1), Hyderabad.
(Appellants)		(Respondents)
निर्धारिती द्वारा/Assessee by:	Shri Padamchand Khincha, C.A.	
राजस्व द्वारा/Revenue by:	Dr. Narendra Kumar Naik, CIT-DR	
सुनवाई की तारीख/Date of hearing:	18/08/2025	
घोषणा की तारीख/Pronouncement:	10/09/2025	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

These appeals are filed by M/s. Neovantage Innovation Park Private Limited and M/s. Neovantage Bio-Technology Private Limited (“the assessee”), feeling aggrieved by the separate final assessment orders passed by the respective Learned Assessing Officer

("Ld. AO") u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 ("the Act") dated 19.07.2024 & 23.07.2024 for the A.Y. 2020-21 respectively.

ITA No.923/Hyd/2024

2. The assessee has raised the following grounds of appeal :

1. **General ground**

1.1. The orders passed by the learned Assessment Unit, National e-assessment Centre, Delhi (hereinafter referred as 'AU' for brevity), the learned Deputy Commissioner of Income Tax (Transfer Pricing Officer) - 2, Hyderabad (hereinafter referred as 'TPO' for brevity) and the Dispute Resolution Panel - 1, Bangalore (hereinafter referred as 'DRP' for brevity) ['AU', 'TPO' and 'DRP' collectively referred as 'lower authorities' for brevity) are bad in law and liable to be quashed.

2. **Ground relating to assessment order being barred by limitation under section 153**

2.1. The learned AU erred in passing the assessment order under section 143(3) read with section 144C(13) read with section 144B, beyond the limitation period under section 153. The assessment order so passed is bad in law, void ab initio and liable to be quashed.

3. Ground relating to violation of standard operating procedure

3.1. The learned AU erred in issuing the notice under section 142(1) dated 31.08.2023 in violation of the Standard Operating Procedure dated 03.08.2022 issued by the Central Board of Direct Taxes ('CBDT') in not granting seven days to furnish a response to the same. The consequent passing of the assessment order is therefore bad in law and is to be therefore quashed.

4. Ground relating to charge of Income-tax

4.1. The lower authorities have erred in not appreciating that, the addition made to the income returned is bad in law as the charging or computation provision relating to income under the head "Profits & Gains of Business or Profession" do not refer to or include the amounts computed under Chapter X.

5. Ground relating to tax evasion

5.1. The lower authorities have erred in passing the order without demonstrating that the Appellant had any motive of tax evasion.

6. General grounds relating to transfer pricing adjustments

6.1. The Honourable DRP has erred in incorrectly confirming the following adjustments made to the total income by the TPO under section 92CA of the Act:

- (a) Interest on Rupee denominated Non-Convertible Debentures (NCD) of INR 2,32,01,041.
- (b) Premium on redemption of Non-Convertible Debentures (NCD) amounting to INR 10,95,99,615.
- (c) Interest on Compulsorily Convertible Debentures (CCD) of INR 86,88,495.

6.2. The Honourable DRP has erred in:

- (a) upholding the TPO's rejection of the Appellant's Transfer Pricing documentation maintained in accordance with section 92D read with Rule 10D of the Income-tax Rules, 1962 ('the Rules') without providing justifiable reasons for the same;
- (b) rejecting the search for comparables conducted on NSDL website for benchmarking interest on NCD and CCD;
- (c) not appreciating that the TPO has not undertaken an independent benchmarking analysis for identifying comparables for benchmarking the interest on NCD and CCD.
- (d) not providing cogent reasoning to uphold the transfer pricing adjustments made by the TPO and rejecting the detailed submissions made by the Appellant. An unreasoned order so made is bad in law and deserves to be quashed.

Grounds relating to transfer pricing adjustments in particular towards interest on NCDs of INR 2.32.01.041

6.3. The lower authorities have erred in not appreciating that the terms of issuance of NCDs, including the rate of interest payable to DB international (Asia) Limited were negotiated under uncontrolled and independent circumstances and hence to be regarded as at arm's length.

6.4. The lower authorities have erred in not appreciating that the terms and conditions in the year of crystallising the conduct are to be evaluated for the arm's length pricing analysis.

6.5. The Honourable DRP has erred in confirming rejection of the following companies selected by the Appellant based on search in NSDL website which have issued instruments comparable to the NCD issued by the Appellant :

- (i) Gromor Finance Private Limited
- (ii) Ashiana landcraft realty private limited
- (iii) Parinee Realty Private Limited
- (iv) Speedage Trade Limited
- (v) Tridhaatu Renovators Private Limited
- (vi) Shivshakti Realhome Private Limited - series 1
- (vii) Edward Food Research & Analysis Centre Limited
- (viii) Shivshakti Realhome Private Limited - series 1

6.6. The Honourable DRP has erred in confirming adoption of State Bank of India (SBI) MCLR of 7.90% and credit risk premium of 1.75% for FY 2019-20 by the TPO for benchmarking the interest on NCDs on an adhoc basis. The SBI MCLR rate is not a comparable and hence the addition made is bad in law.

6.7. The Honourable DRP has erred in not considering the objection raised by the Appellant regarding action of the learned TPO in computing the arm's length rate of interest of NCDs without appreciating that:

- (a) the information regarding MCLR rate obtained under section 133(6) from the SBI was not provided to the Appellant; and
- (b) no opportunity was given to cross examine or rebut the information provided by SBI under section 133(6).



6.8. On facts and circumstances of the case, the Appellant's benchmarking of interest on NCDs should be accepted.

Without prejudice to the above:

6.9. The lower authorities have erred in not considering the year of issuance of NCDs, tenure of the NCDs, frequency of interest payment and credit rating of NCD issue, in determining the arm's length rate of interest on NCDs.

6.10. The lower authorities have erred in not following the decision of the Jurisdictional tribunal in the Appellant's case for AY 2017-18 holding that the arm's length interest on NCDs is to be computed after taking guidance from the Safe Harbour Rule and section 194LD.

6.11. The learned TPO has erred in

- (i) considering entity level credit rating instead of considering the credit rating of the NCD issue;
- (ii) not appreciating that the SBI MCLR rate of 7.90% and credit risk premium of 1.75% is applicable for an entity having credit rating of BBB- without appreciating that the Appellant's NCD issue has a credit rating of Ind BB-(SO).
- (iii) not adopting the SBI MCLR rate and credit risk premium for FY 2019-20 for NCD issue having credit rating of Ind BB-(SO) or in the alternative, suitably adjusting the SBI MCLR rate to factor the difference in credit rating and other parameters.

6.12. The Honourable DRP has erred in incorrectly concluding that the credit risk premium takes care of other factors such as credit rating, credit history, tenure, etc.

6.13. The Honourable DRP has erred in concurring with the TPO in considering a credit risk premium of 1.75% i.e. 175 basis points to benchmark the interest on rupee denominated NCDs and in disregarding that: -

- (a) Safe Harbour Rules contained in rule 10TD(2A) stipulates that the credit spread shall be not less than 475 basis points;
- (b) Section 194LD(2) read with Notification No SO 2311 (E) dated July 29, 2013 issued by the Central Government stipulates that the credit spread shall not exceed 500 basis points.; and
- (c) Annexure to ECB Framework RBI/2018-19/109 A.P. (DIR Series) Circular No. 17 dated 16.01.2019 stipulates that the credit spread shall be 450 basis points.

6.14. If for any reason SBI MCLR is not considered appropriate, the arm's length rate of interest on NCDs should be benchmarked based on SBI base rate and applicable credit risk premium as applicable in the year of issuance of NCDs.

Grounds relating to transfer pricing adjustments towards premium on redemption of NCDs of INR 10,95,99,615:

6.15. The Honourable DRP has erred in confirming the learned TPO's action of determining the arm's length price of premium on redemption of NCDs as NIL.

6.16. The Honourable DRP and learned TPO have erred in

- (i) not giving any reasons for treating ALP of premium on redemption of NCDs as NIL;
- (ii) treating premium on redemption of NCDs as interest on NCDs;
- (iii) not appreciating that premium on redemption is to be separately benchmarked;

- (iv) not appreciating that the premium on redemption was paid by the Appellant based on the terms in the debenture trust deed determined at the time of issuance of NCDs between the Appellant and the subscriber (DB international), which terms have not been disregarded since inception;
- (v) not appreciating that the terms of issuance of NCDs were decided when DB International had not become an associated enterprise of the Appellant.
- (vi) considering the entire redemption premium for the benchmarking exercise in one year.

6.17. Without prejudice to the above, the Honourable DRP and learned TPO have failed to appreciate that premium on redemption of NCD if treated akin to interest should have been benchmarked at SBI MCLR applicable for NCD having credit rating of - BB (SO) and appropriate credit risk premium after taking guidance from safe harbour rule and section 194LD.

Grounds relating to reduction in disallowance computed under section 94B pursuant to transfer pricing adjustment towards interest and premium on redemption of NCD

The following ground is without prejudice to the grounds on transfer pricing adjustment towards interest on NCD:

6.18. The disallowance made by the Appellant under section 94B be restricted pursuant to any transfer pricing adjustment towards interest and redemption premium on NCD.

Grounds relating to transfer pricing adjustments towards interest on CCDs of INR 86,88,495:

6.19. The lower authorities have erred in making transfer pricing adjustment of INR 86,88,495 towards interest on CCDs issued to LC Core Opportunities Fund Pte. Ltd., Singapore after rejecting the Appellant's benchmarking of interest on CCDs.

6.20. The lower authorities have failed in not appreciating that transfer pricing adjustment is not warranted qua interest on CCD as whole of the interest was added back by the Appellant while computing the taxable business income, and the interest not having qualified for deduction is not required to be benchmarked for transfer pricing adjustments, which if permitted would tantamount to a double disallowance of the impugned sum.

Without prejudice to above,

6.21. The Honourable DRP and the learned TPO have erred in not appreciating that

- (i) the Appellant had benchmarked interest on CCDs by adopting CUP method and comparing the interest payable by the Appellant with the adjusted average coupon rates of comparable companies.
- (ii) the comparable companies were selected after applying appropriate filters to the data of debt instruments downloaded from the NSDL website.

6.22. The Honourable DRP has erred in confirming the rejection of the following comparables by the learned TPO for the reason that the search was made in NSDL's website:

- (i) Aadarshini Real Estate Developers Private Limited
- (ii) Whispering Heights real Estate Private Limited.

6.23. The Honourable DRP and learned TPO have erred in



- (i) rejecting the Appellant's contention that the benchmarking of interest on CCDs is in conformity with the applicable guidelines issued by the RBI;
- (ii) stating that RBI guidelines are not relevant for ALP computation.
- (iii) not appreciating that CCDs issued by the Appellant were denominated in INR and hence should be benchmarked based on INR based lending rates.
- (iv) stating that currency in which loan (CCDs) are taken or re-paid is irrelevant for determining the ALP of interest on CCDs as the issuer does not have any occasion to repay the loan owing to its conversion.
- (v) stating that benchmarking exercise carried out by the Appellant is not in conformity with Rule 10B(2) of the IT Rules, 1962.

6.24. The Honourable DRP has erred in confirming the learned TPO's action of determining arm's length rate of interest on CCDs using London Interbank Offered Rate (LIBOR).

6.25. The learned TPO has erred in adopting LIBOR for benchmarking interest on CCDs:

- (i) on the ground that the subscriber of CCDs is a foreign company;
- (ii) on an adhoc basis and without identifying any comparables;
- (iii) after incorrectly distinguishing the decisions of the Delhi High Court and Bombay High Court in Cotton Natural's case and India Debt Management (P) Ltd's case;
- (iv) relying incorrectly on the decision of the Jurisdictional Tribunal in Watermarke Residency Ltd ITA No 740, 1590, 1591/Hyd/2019 which decision is distinguishable on facts and law;

- (v) not appreciating that the Jurisdictional Tribunal in the above case has itself held that interest in CCDs is to be benchmarked in consonance with the RBI guidelines;
- (vi) not appreciating that the RBI Guidelines on external commercial borrowing mandate benchmarking of rupee denominated loans denominated in INR and not LIBOR.

Alternatively, and without prejudice

6.26. The Honourable DRP has erred in confirming the learned TPO's action of determining arm's length rate of interest on rupee denominated CCDs using LIBOR as the base rate instead of using SBI MCLR.

6.27. The rate of interest of CCDs being determined at the time of its issuance during preceding previous years, the arm's length rate of interest ought to be determined considering the factors, terms and conditions prevalent as on the date of issuance of CCDs.

6.28. The Honourable DRP has erred in concurring with the TPO in considering a credit spread of 200 basis points on LIBOR without appreciating that:

- (a) The Safe Harbour Rules contained in rule 10TD(2A) stipulates that interest on rupee denominated loans shall be not less than the one year SBI MCLR plus 325 basis points.
- (b) Section 194LD(2) read with Notification No SO 2311 (E) dated July 29, 2013 issued by the Central Government stipulates that the credit spread shall not exceed 500 basis points.; and

- (c) RBI Master directions on External Commercial Borrowings stipulates that the all-in-cost interest rate ceiling per annum for rupee denominated loans shall be benchmark rate plus 450 basis points.

Grounds relating to reduction in disallowance computed under section 40(a)(i) pursuant to transfer pricing adjustment towards interest on CCDs

The following ground is without prejudice to the grounds on transfer pricing adjustment towards interest on CCDs:

- 6.29. The disallowance made by the Appellant under section 40(a)(i) of the Act be restricted pursuant to any transfer pricing adjustment towards interest on CCDs.

7. Ground relating to disallowance under section 14A

- 7.1. The Honourable DRP has erred in concurring with the disallowance of INR 37,75,420 made by the AU under section 14A of the Act read with rule 8D of the Income-tax Rules, 1962.
- 7.2. The Honourable DRP and learned AU have erred in not appreciating that disallowance under section 14A is not attracted in the absence of exempt income.
- 7.3. The Honourable DRP has erred in not following the Honourable Income-tax Appellate Tribunal's (ITAT) decision in the Appellant's case for AY 2017-18 wherein it was held that the disallowance under section 14A cannot be made in the absence of any exempt income.
- 7.4. The learned AU has erred in relying on
- (i) CBDT's Circular no. 5/2014 dated 11th February, 2014 without appreciating that a circular cannot override the express provisions of section 14A read with rule 8D.



- (ii) Explanation to section 14A of the Act without appreciating that it was inserted by Finance Act, 2022 with effect from 01.04.2022 and hence not applicable for the assessment year under consideration.
- 7.5. The learned AU has erred in not following the ratio of the Delhi High Court in PCIT v. ERA Infrastructure (India) Ltd. 448 ITR 674 (Del) and other High Courts relied upon by the Appellant wherein it was held that the Explanation to section 14A cannot be presumed to be retrospective. The learned AU has erred in disregarding the decisions for the reason that the same are not of the jurisdictional High Court.
- 7.6. The Honourable DRP and learned AU have erred in relying on various judicial precedents and disallowing proportionate indirect expenses without appreciating that the decisions are distinguishable on facts and law.
- 7.7. The learned AU has erred in not appreciating that
- a. the investments were made from interest-free funds.
 - b. the Appellant has not incurred any expenditure in relation to the investments.
- 7.8. The Honourable DRP has erred in concurring with the AU's presumption that a portion of miscellaneous overheads including 'other expenses', 'interest expense' must be attributable to the earning of exempt income.
- 7.9. The Honourable DRP and learned AU have erred in varying the disallowance under section 14A without recording any satisfaction regarding the incorrectness of the Appellant's claim under section 14A(2).
- 7.10. The Honourable DRP and learned AU have erred in considering the investment in the share capital of subsidiary company for computing disallowance under section 14A without appreciating:

- a. that investments are made by the Appellant for commercial expediency and not for earning exempt income
- b. no exempt income was received during the year from the subsidiary.
- c. the ratio of the judicial precedents relied upon by the Appellant wherein it was held that investments made in subsidiary companies are not to be included in computing the disallowance under section 14A.

7.11. On facts and circumstance of the case and in law, the disallowance under section 14A is bad in law and liable to be deleted in its entirety.

8. Grounds relating to allowance of brought forward unabsorbed depreciation

8.1. The Honourable DRP and learned AU have erred in law and on facts in not allowing a set-off of unabsorbed depreciation amounting to INR 11,66,42,462.

8.2. The learned AU and the Honourable DRP failed to appreciate that the Appellant has unabsorbed depreciation post giving effect to the Honourable ITAT's decision in the Appellant's own case for AY 2017-18.

8.3. The learned AU failed to appreciate that:

- a. the Appellant had made an inadvertent error in not reporting the brought forward unabsorbed depreciation relating to the demerged business of M/s Genome Valley Tech Park & Incubators Private Limited (GVPL) for AY 2010-11 to AY 2017-18 amounting to INR 6,20,32,977 in its revised return of income for AY 2017-18.
- b. the utility for filing return of income did not permit the Appellant to report the brought forward unabsorbed depreciation of the amalgamating entity M/s Takshila Tech Parks & Incubators (India) Private Limited (TTPL) amounting to INR 3,78,88,047 in its revised return of income for AY 2017-18.

- c. the unabsorbed depreciation of GVPL and the balance unabsorbed depreciation of TTPL were reported and carried forward in the income-tax returns of AY 2019-20.
 - d. there is no requirement to disclose the unabsorbed depreciation for AY 2017-18 in the tax audit report for AY 17-18.
 - e. the details were appropriately disclosed by the tax auditor in the tax audit report of AY 2020-21.
- 8.4. The learned AU erred in not rectifying the aforementioned errors and allowing set off of unabsorbed depreciation of GVPL and TTPL pertaining to AY 2017-18 despite the same being disclosed prior to the completion of the assessment proceedings.
- 8.5. On facts and circumstance of the case and in law, the available unabsorbed depreciation allowance must be set off against the total income of the Appellant.

Prayer

- a. The Appellant prays that directions be given to grant all reliefs arising from the grounds of appeal mentioned supra and all consequential relief thereto.
 - b. Each of the grounds of appeal and the sub-grounds raised by the Appellant herein are independent without prejudice to each other. The Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.
 - c. The Appellant prays accordingly.
3. The brief facts of the case as culled out from the record are that, Neovantage Innovation Park Private Limited (“the assessee”) is a company engaged in the business of developing, building and leasing of life sciences and biotechnology parks in India. It filed its return of

income for the assessment year 2020-21 on 13.02.2021 declaring total income of Rs.Nil. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (“the Act”) was issued on 29.06.2021. In view of involvement of international transactions, the matter was referred to the Learned Transfer Pricing Officer (“Ld. TPO”) under section 92CA of the Act for determining the arm’s length price. The Ld. TPO, vide order dated 30.12.2022, proposed an adjustment of Rs.13,28,00,656/- on account of interest paid on Non-Convertible Debentures (“NCDs”) and Rs.86,88,495/- on account of interest paid on Compulsory Convertible Debentures (“CCDs”). Accordingly, the Ld. AO making certain non-TP addition, in addition to the adjustment suggested by Ld. TPO, passed the draft assessment order under section 143(3) r.w.s. 92CA(3) of the Act on 22.09.2023.

4. Aggrieved with the draft assessment order of Ld. AO, the assessee preferred objections before the Ld. DRP, which issued directions under section 144C(5) of the Act on 26.06.2024. In accordance with the directions of Ld. DRP, the Ld. AO passed the final assessment order on 19.07.2024 under section 143(3) r.w.s.

144C(13) r.w.s. 144B of the Act, making TP additions of Rs.13,28,00,656/- on account of interest paid on NCDs and Rs.86,88,495/- on account of interest paid on CCDs and non-TP addition of Rs.37,75,420/- on account of disallowances under section 14A of the Act and Rs.11,66,42,462/- on account of disallowance of set off of unabsorbed depreciation. Accordingly, the Ld. AO computed the total income of the assessee at Rs.12,04,17,883/-.

5. Aggrieved with the final assessment order of Ld. AO, the assessee is in appeal before this Tribunal. At the outset, the Ld. AR submitted that, the ground no.1 of the assessee is general in nature and the assessee is not pressing ground nos.3, 4 & 5. Accordingly, the ground nos.1,3,4 & 5 are dismissed as no separate adjudication is required on the same.

6. Ground No. 2 of the assessee pertain to a legal issue. During the course of hearing, the Learned Authorised Representative (“Ld. AR”) submitted that the legal issue involved in this ground pertains to the question of judicial discipline and is identical to the issue decided by the Hon’ble Madras High Court in the case of CIT Vs. Roca

Bathroom Products Pvt. Ltd. (2022) 140 taxmann.com 304 dated 09.06.2022. He further submitted that, the decision of the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Pvt. Ltd. (supra) is presently under challenge before the Hon'ble Supreme Court and the matter is sub judice. The Ld. AR, therefore, requested that this legal ground be kept open and a suitable direction be issued to the Ld. AO/TPO to follow the outcome of the decision of the Hon'ble Supreme Court, while giving effect to the present order of the Tribunal.

7. Per contra, the Learned Department Representative ("Ld. DR") did not raise any objection to the request of the Ld. AR.

8. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. Considering the pendency of the identical legal issue before the Hon'ble Supreme Court and no-objection from the Ld. DR, we are inclined to accept the request of the assessee. Accordingly, the issue raised in ground no.2 is set aside to the Ld. AO with the direction to follow the outcome of the decision of the Hon'ble Supreme Court in

the case of CIT Vs. Roca Bathroom Products Pvt. Ltd.(supra) while giving effect to the order of the Tribunal in the present appeal. Accordingly, Ground No. 2 is kept open, with the above direction.

9. The Ld. AR fairly submitted that the issue of addition made on account of interest paid on NCDs under ground no. 6 and issue related to ground no.8 of the assessee are covered by the decision of this Tribunal in assessee's own case for AYs 2017-18 and 2018-19 in ITA Nos.340 & 456/Hyd/2022 dated 27.09.2023. He further submitted that the revenue had filed an appeal before the Hon'ble jurisdictional High Court against the Tribunal's consolidated order for AYs 2017-18 and 2018-19. The Hon'ble High Court admitted the appeal only on the issue of disallowance under section 14A of the Act i.e. present ground no.8 of the assessee. Although the Revenue had also raised a ground relating to the benchmarking of interest paid on NCDs, the same was not admitted by the Hon'ble High Court. There was no appeal filed by the assessee on this issue before the Hon'ble High Court. Consequently, the issue of benchmarking of interest paid on NCDs as decided by this Tribunal in assessee's own case for AYs 2017-18 and 2018-19 (supra) has attained finality.

10. The Ld. AR further submitted that, under ground no.6, the assessee has raised two issues i.e. (a) addition made on account of interest paid on NCDs and (b) addition made on account of interest paid on CCDs. As far as the issue of addition made on account of interest paid on NCDs is concerned, the Ld. AR submitted that the assessee had issued NCDs in 2016 to DB International (Asia) Ltd., Singapore (“lender”), and paid an aggregate sum of Rs.24,55,75,315/- comprising interest of Rs.13,59,75,700/- at 11% and redemption premium of Rs.10,95,99,615/- at 1.5%. Since the assessee had borne the tax liability (TDS) on behalf of the lender, after grossing up the interest, the effective rate came to 13.18%. The Ld. TPO benchmarked the interest by adopting SBI MCLR rate of 7.90% and premium of 1.75%, aggregating to 9.65%, resulting in an adjustment of Rs.13,28,00,656/-.

10.1 In their first contention the Ld. AR submitted that the lender is a foreign bank in the business of financing, the negotiations were conducted on principal-to-principal basis, and on the date of agreement dated 16.08.2016, the condition under section 92A(2)(c) of the Act was not satisfied since the loan advanced did not constitute

51% of the book value of total assets on the date of agreement. Accordingly, the lender and the assessee cannot be treated as Associated Enterprises (“AEs”), and no benchmarking is permissible. In their second contention, the Ld. AR submitted that the credit rating of the assessee was BB–, and therefore under Rule 10TD, safe harbour rate of SBI lending rate + 475 basis points should be applied. It was also submitted that grossing up of TDS should not be considered for benchmarking. In their third contention the Ld. AR argued that the redemption premium of Rs.10,95,99,615/- pertains to the entire tenure of NCDs and the same has already been disallowed proportionately in earlier years. Hence, the addition of the entire redemption premium of Rs.10,95,99,615/- in this year will amount to double addition in the hands of the assessee. In their fourth contention, it was submitted that while giving effect to the Tribunal’s order, the Ld. TPO may be directed to considered the effect of benchmarking while making adjustment under section 94B of the Act.

11. Per contra, the Ld. DR relied on the order of the Ld. AO/TPO.

12. We have considered the rival submissions and perused the material on record. On the first contention of the assessee, it has been contended that the lender is a foreign bank in the business of financing, the negotiations were conducted on principal-to-principal basis, and at the time of agreement dated 16.08.2016, the condition under section 92A(2)(c) of the Act was not satisfied since the loan advanced did not constitute 51% of the book value of total assets as on the date of agreement. Accordingly, it is argued that, the lender and the assessee cannot be treated as AEs as per the provisions of section 92A (2) (c) of the Act, and no benchmarking is permissible. In this regard, we find that identical issue has been decided by this Tribunal in assessee's own case for AYs 2017-18 and 2018-19 (supra), wherein at para nos. 15 to 16.1, this Tribunal has dealt with the issue as under :

15. We have heard the rival contentions of the parties and perused the material available on record. The assessee in the present appeal has raised the grounds and objections that M/s. DB International (Asia) Limited cannot be considered as AE for the reason mentioned herein above. As per section 92A(2)(c) of the Act, when one enterprise advances loan to another and such

loan constitutes more than 51% of the total book value of the assets of the other enterprises, then, the enterprises (M/s. DB International (Asia) Limited) shall be deemed to be the associated entity of the assessee. Undoubtedly, M/s. DB International (Asia) Limited had invested the amount as an advance/loan in the form of equity which is more than 51% of the total book value of the assets, hence, we do not find any error in the application of the transfer pricing regulations to the subject transaction. However, the other contention of the assessee that the point of determination for deciding whether the other party (M/s. DB International (Asia) Limited) is the AE of the assessee or not would

be prior to entering into transaction is required to be considered. In this regard, the learned DRP in the order had relied upon the report in Form 3CEB filed by the assessee disclosing the transaction as an international transaction. In this regard, it is appropriate to reproduce the relevant portion of form 3CEB more particularly serial No. 10 at page No. 14 of paper book No. 2A, which is as under:

“10. List of associated enterprises with whom the assessee has entered into international transaction, with the following details:

<i>Name of the associated enterprise</i>	<i>Nature of the relationship with the associated enterprise as referred to in section 92A(2)</i>	<i>Brief description of the business carried on by the associated enterprise</i>
<i>LC Cerestra Core Opportunities Fund Pte. Ltd.</i>	<i>One enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise</i>	<i>Investment company</i>
<i>DB International (Asia) Limited</i>	<i>A loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise.</i>	<i>Provides investment banking services</i>
<i>Deutsche Bank AG</i>	<i>A loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise.</i>	<i>Provides banking services</i>

16. In our opinion, once the assessee itself declared the international transaction of loan/advances received from M/s. DB International (Asia) Limited by it being more than 51% of the book value of the assets, then the DRP had committed no error in deciding the above said issue against the assessee. The argument of the assessee is that the threshold point for determining the AE would be prior to the point of time when the investment was made. In the present case, the negotiations for NCD were concluded between the Deutsche Bank and LC Core on 16th August, 2016 and thereafter, a formal agreement incorporating the terms of NCD were drawn. After conclusion of the above, a Debenture Trust Deed was executed on 27th September, 2016. Thereafter the investment was made by M/s. DB International

(Asia) Limited in the NCDs of the assessee. Though a cursory look of the transaction and the submission of the assessee appears to be correct that the point of determination would be prior to entering into agreement and not thereafter, however, this view is not correct for the following reasons. In this regard, we may reproduce the provisions of section 92A of the Act which read as under:

92A. (1) For the purposes of this section and [sections 92, 92B, 92C, 92D, 92E and 92F](#), "associated enterprise", in relation to another enterprise, means an enterprise—

(a)	<i>which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or</i>
(b)	<i>in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.</i>

(2) ⁹⁰[For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—]

(a)	<i>one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or</i>
(b)	<i>any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or</i>
(c)	<i>a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or</i>
(d)	<i>one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or</i>
(e)	<i>more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or</i>
(f)	<i>more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or</i>
(g)	<i>the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or</i>

	<i>specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or</i>
(h)	<i>ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or</i>
(i)	<i>the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced^{90a} by such other enterprise; or</i>
(j)	<i>where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or</i>
(k)	<i>where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or</i>
(l)	<i>where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or</i>
(m)	<i>there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.</i>

16.1. Section 92A(2) provides that two enterprises shall be deemed to be associated enterprises if **at any time during** the previous year any condition mentioned in sub-clause (2) is fulfilled. The legislature had deliberately used 'at any time' during the previous year for the purpose of determining the status of an enterprise as AE, if at any time either prior to or thereafter of entering into transactions, the condition is fulfilled. Thus, the contention of the assessee that the status of the enterprise should be examined before entering into the transaction is contrary to the literal meaning of section 92A(2) of the Act which has not restricted the application of the provision, based on prior or subsequent transaction. In view of the above, we are of the opinion that it makes no difference whether the condition of 51% of the book value of total assets is not fulfilled prior to advancing the loan or subsequent thereto. In view of the above, this

objection of the assessee is also without any basis and accordingly dismissed.

12.1 On perusal of above, we find that this Tribunal has held that the assessee and the lender are to be treated as AEs and benchmarking of the transaction is justified. Therefore, respectfully following the same reasoning, we reject this first contention of the assessee.

12.2 On the second contention, the Ld. AR has submitted that the credit rating of the assessee was BB-, and therefore under Rule 10TD, safe harbour rate of SBI lending rate + 475 basis points should be applied. It is also prayed before the bench that the grossing up of TDS should not be considered for benchmarking. In this regard, we have gone through para no. 6.4.2 of page no. 13 of the order of the Ld. TPO, which is to the following effect :

“6.4.2 Accordingly, considering the credit rating of the taxpayer being BBB- and the MCLR being 7.90, vide show cause notice it was proposed to apply / benchmark the transaction of interest on NCDs (including premium of redemption) at 9.65% (7.90 + 1.75) under CVUP method as against the 13.18% rate adopted by the taxpayer.”

12.3 On perusal of above, we find that the Ld. TPO has stated the credit rating of the assessee at BBB-. Therefore, the contention of the

Ld. AR that it was BB– is factually incorrect. Further, we found that this Tribunal in assessee’s own case for A.Ys. 2017-18 & 2018-19 (supra) has dealt with the identical issue at para no. 18.3 of the order, which is to the following effect :

18.3 In our opinion, the finding recorded by the DRP that SBI base rate plus a nominal premium of 50 basis points as ALP, is incorrect as no basis of 50 nominal basis was given by the DRP. In fact, the comparable selected by the Assessing Officer namely, Mahua Bharatpur Express Ltd., was paying the interest @ 18% (SBI PLR + 400 basis points). Similarly, Assetz Premium Holdings Pvt. Limited was paying the interest @ 14%. These two comparables selected by the Assessing Officer were excluded by the DRP on the pretext that the NCDs were subscribed by the related parties. As held hereinabove, Gujarat Road Infrastructure Company Limited cannot be compared with the assessee for the reasons mentioned hereinabove and therefore, there is no comparable available with which the rate of the assessee can be compared as DRP has also not relied upon TP Study of TPO as well as assessee for the reasons “in conclusive”. In this scenario, we deem it appropriate to take a guidance from the Safe Harbour Rule and Section 194 LD and hold that 12.275% interest rate (SBI base rate +300 basis points) would be the appropriate ALP for the purposes of benchmarking the interest paid by the assessee on NCD to M/s. DB International as against 13.13%. Thus, the ground nos. 2 to 8 of the assessee are partly allowed.

12.4 On perusal of above, we find that this Tribunal has adopted a consolidated rate of 12.275% for interest and redemption premium of NCDs including grossing up of TDS, considering safe harbour rules and section 194LD of the Act. Therefore, respectfully following the same and applying the principle of consistency, we direct the Ld. TPO to benchmark the impugned transaction at 12.275%.

12.5 On the third contention, the facts have not been disputed that the redemption premium of Rs.10,95,99,615/- relates to the entire tenure of NCDs and has been apportioned in earlier years also, wherein corresponding adjustments have already been made by the Ld. TPO. We, therefore, direct the Ld. AO/TPO to exclude such portion of redemption premium which has already been considered in earlier years to avoid double addition.

12.6 On the fourth contention, we direct the Ld. AO/TPO to give effect to the benchmarking adjustment made in the remand proceedings in accordance with law while computing disallowance, if any, under section 94B of the Act.

12.7 In view of our above directions, the issue of addition made on account of interest paid on NCDs under ground No.6 of the assessee is partly allowed for statistical purposes.

13. As far as the issue of addition made on account of interest paid on CCDs under ground No.6 of the appeal is concerned, it is submitted that, the assessee had issued CCDs in the year 2016 for a tenure of 12 years, which were compulsorily convertible into equity shares, carrying interest at 10% per annum. During the year under consideration, the assessee paid total interest of Rs.1,45,05,000/-. However, the Ld. TPO benchmarked the interest by applying LIBOR + 200 basis points and accordingly made an adjustment of Rs.86,88,495/-. In this regard, the primary contention of the assessee is that the issue is squarely covered by the decision of the Special Bench of the Tribunal in the case of Hyderabad Infratech Pvt. Ltd. Vs. DCIT in ITA-TP no.1856/Hyd/2019 for A.Y. 2015-16 dated 29.01.2015, wherein at para no.23 of the order, it is held that interest on CCDs is to be benchmarked with reference to domestic Prime Lending Rate (PLR) and not LIBOR-based rates. He further relied upon the decision of this Tribunal in Sanchore Renewable Pvt. Ltd. v.

DCIT (ITA No.1189/Hyd/2024 for A.Y. 2021-22 dated 18.03.2025), wherein following the Special Bench, it was again held that CCDs are to be benchmarked by applying SBI PLR. The Ld. AR further invited our attention to page no.665 of the case law paper book wherein SBI PLR rates for different periods are placed, showing that for the relevant year the SBI PLR ranged between 12.90% to 13.45%. Since the assessee paid interest only at 10%, which is significantly lower than the SBI PLR, it was contended that the transaction is at arm's length and therefore, no adjustment is warranted.

13.1 In their alternate contention, the Ld. AR further submitted that the assessee had not deducted tax at source on the payment of interest on CCDs. Consequently, while computing its taxable income, the assessee itself disallowed the said expenditure under section 40(a)(i) of the Act. Reference was drawn to the computation of income placed at page no.38 of the paper book. It was further pointed out that in subsequent years, no deduction was claimed since the lender had waived the interest. Hence, as the assessee has not been allowed any deduction, no transfer pricing adjustment can be made on such disallowed expenditure. In support, reliance was placed on the

decision of the Coordinate Bench of Tribunal in Eaton Technologies Pvt. Ltd. v. DCIT (ITA No.1621/PN/2011, AY 2007–08, order dated 11.01.2013), wherein the Tribunal held that where the assessee had suo motu added back certain expenditure while computing its taxable income and had not derived any benefit either by capitalising it or by claiming depreciation, no adjustment could be made to determine the ALP in respect of such transaction.

14. Per contra, the Ld. DR relied on the order of the Ld. AO/TPO and supported the adjustment made by applying LIBOR + 200 bps.

15. We have heard the rival submissions and perused the material available on record. The primary contention of the Ld. AR is that the issue is squarely covered by the decision of the Special Bench of the Tribunal in the case of Hyderabad Infratech Pvt. Ltd. Vs. DCIT in ITA-TP no.1856/Hyd/2019 for A.Y. 2015-16 dated 29.01.2015, wherein at para no.23 of the order, it is held that interest on CCDs is to be benchmarked with reference to domestic Prime Lending Rate (PLR) and not LIBOR-based rates. He further relied upon the decision of this Tribunal in Sanchore Renewable Pvt. Ltd. v. DCIT (ITA

No.1189/Hyd/2024 for A.Y. 2021-22 dated 18.03.2025), wherein following the Special Bench, it was again held that CCDs are to be benchmarked by applying SBI PLR. In this regard, we have gone through the para no.23 of the order of the Special Bench of the Tribunal in Hyderabad Infratech Pvt. Ltd. Vs. DCIT (supra), which is to the following effect :

“23. In view of this matter and considering the facts of the present cases, and also by considering ratios of various High Courts, we are of the considered view, that once the CCDs issued by the appellant are denominated in Indian currency, the interest payment on the said CCDs is to be benchmarked with reference to the rate of interest applicable to the loans extended in currency concerned. Since the CCDs issued by the appellant are in the nature of rupee denominated loan, in our considered view, FCCD/CCD cannot be construed on par with the foreign currency loan for the purpose of benchmarking. Further, LIBOR plus 200 basis points being the interest rate prevalent in the international market and applicable to foreign currency loans cannot be applied to benchmark interest on the appellants CCDs. Further, the said interest has to be benchmarked against the interest rates prevailing in the domestic market and similar debt instrument, such as the domestic prime lending rate (PLR). Therefore, we are of the considered view that as regards TP adjustment made in respect of interest paid / payable on CCD/NCD/other debentures, which are denominated in Indian currency, the benchmark is to be by applying PLR against LIBOR. Accordingly, we answer the question referred to for the Special Bench as under :

<i>Whether as regards TP adjustment made in respect of interest paid / payable on FCCDs / NCDs / other debentures, which are denominated in Indian currency the benchmarking is to be made by applying PLR as against LIBOR?"</i>	<i>(i) Yes, in favour of the assesseees. (ii) Interest paid / payable on FCCDs / NCDs / other debentures, which are denominated in Indian currency to be bench marked by applying PLR rates.</i>
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15.1 On perusal of above, we find that the Special Bench of Tribunal has categorically held that if the CCDs are denominated in Indian Currency, the arm's length rate of interest has to be determined with reference to the SBI PLR rates and not international LIBOR rates. This view has been consistently followed by this Tribunal in subsequent decisions, including *Sanchore Renewable Pvt. Ltd. Vs. DCIT (supra)*, wherein it was held that interest on CCDs should be benchmarked with SBI PLR. In the present case, there is no dispute about the facts that the CCDs issued by the assessee are not denominated in Indian Currency. Therefore, respectfully following the decision of Special Bench of Tribunal in the case of *Hyderabad Infratech Pvt. Ltd. Vs. DCIT (supra)*, we hold that the interest on CCDs in the case of the assessee should be benchmarked with SBI PLR. Further, we find that, in the present case, the SBI PLR for the relevant year was between 12.90% to 13.45%, whereas the assessee had paid interest only at 10%. Since the rate paid is below the

applicable PLR, the payment of interest is at arm's length. Accordingly, we hold that the adjustment made by the Ld. AO/TPO is liable to be deleted.

15.2 On the alternative contention, we have gone through the computation of income of the assessee placed at page no.38 of the paper book, which is to the following effect :

COMPUTATION OF PROFITS FROM BUSINESS AS PER NORMAL PROVISIONS OF THE IT ACT			
Particulars			Amount (Rs.)
	Profit/(loss) before tax		(34,510,000)
Add	Items specifically disallowed/receipts not included in profit & loss account/Items considered separately		
1	Depreciation as per Companies Act, 2013	105,368,780	
2	Donations	500,000	
3	Premium on NCD incorrectly claimed earlier	51,849,360	
4	Differential interest on ICD vis-à-vis NCD	240,239	
5	Finance lease income	31,075,000	
6	Provision for Gratuity disallowed u/s 40A(7)	353,855	
7	Disallowance u/s 37 of the Act - Interest on TDS	34,989	
8	Disallowance under section 40(a)(ia)	5,537,720	
9	Disallowance under section 40(a)(i)	14,505,000	
10	Disallowance u/s 94B Interest paid to associated enterprise	245,575,314	455,040,257
			420,530,257
Less	Items specifically allowed/payments not included in profit & loss account/Items considered separately		
1	Income assessable under different head - Interest Income	21,363,930	
2	Amortisation of lease expenses pertaining to AY 2014-15	2,092,861	
3	Deduction u/s 43B on actual payment - Work Contract Tax	481,890	
4	Depreciation as per the Income-tax Act, 1961	181,021,118	
5	Amortisation of preliminary expenses u/s 35D (4th Year)	325,378	
6	Demerger Expenses allowable u/s 35DD (4th Year)	90,450	
7	Amount disallowed u/s 40(a)(ia) previously allowed this PY	8,942,896	
8	Elimination of notional IND AS Adjustments	110,933,202	325,251,725
			95,278,532
	Less: Adjustment of B/f Depreciation		95,278,532
	Income chargeable to tax under the head 'PGBP'		-

15.3 On perusal of above, we find that the assessee has suo motu disallowed the interest on CCDs under section 40(a)(i) of the Act, on account of non-deduction of TDS. It is also not in dispute that in subsequent years, no deduction was claimed as the lender waived the interest. Thus, the assessee has not derived any tax benefit from the impugned payment. Further, the principle laid down by the Coordinate Bench of Tribunal in Eaton Technologies Pvt. Ltd. v. DCIT (supra) squarely applies here. In that case, the Tribunal held that once an assessee has voluntarily disallowed an expenditure and has not derived any benefit, either by claiming deduction or by capitalisation, there is no occasion to benchmark such transaction under transfer pricing provisions. Respectfully following the same, we hold that no adjustment is warranted in the present case.

15.4 In view of the above findings, we hold that the adjustment made by the Ld. AO/TPO in respect of interest on CCDs is unsustainable both on primary as well as on the alternative ground. Accordingly, the issue of addition made on account of interest paid on CCDs under ground No.6 of the assessee is allowed.

16. Ground No.7 of the assessee's appeal relates to the disallowance of Rs.37,75,420/- made by the Ld. AO under section 14A of the Act. In this regard, the Ld. AR submitted that the assessee had not earned any exempt income during the year under consideration. Hence, no disallowance can be made under section 14A of the Act. He further submitted that the issue is squarely covered in favour of the assessee by the order of this Tribunal in assessee's own case for assessment years 2017-18 & 2018-19 (supra), wherein this Tribunal has decided the issue in favour of the assessee.

17. Per contra, the Ld. DR relied on the order of the Ld. AO/TPO.

18. We have heard the rival submissions and perused the material available on record. It is not in dispute that the assessee has not earned any exempt income during the year under consideration. Further, we have gone through the para nos.44 to 45 of the order of this Tribunal in assessee's own case for A.Ys. 2017-18 & 2018-19 (supra), which are to the following effect :

44. We have heard the rival submissions and perused the material on record. It is the settled principle of law that the disallowances u/s.14A of the Act read with Rule 8D of the Rules cannot exceed the amount of exempt income. In the case of Pr. CIT Vs State Bank of Patiala, (2018) 99 taxmann.com 285, the Hon'ble Supreme Court, while dismissing SLP filed by the Revenue against order of the Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs State Bank of Patiala, held that disallowance u/s.14A has to be restricted to amount of exempt income only. The Hon'ble High Court of Madras in the case of Marg Ltd Vs. CIT (2020) 120 Taxmann.com 84, has taken a similar view and held that disallowances under section 14A read with Rule 8D can never exceed exempt income earned by the assessee during particular assessment year. Recently, Hon'ble Delhi High Court in the case of PCIT Vs. Delhi International Airport (P.) Ltd, reported in [2022] 144 taxmann.com 80 (Delhi) had held as under :

"8. In the opinion of this Court, the present case is covered by the Division Bench judgment in Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi), wherein this Court has held that the expression 'does not form part of the total income' in section 14A of the Act means that there should be an actual receipt of income which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

9. Furthermore, this Court in Pr. CIT v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289/288 Taxman 384 (Delhi) has dealt with the issue of amendment made by the Finance Act, 2022 to Section 14A of the Act. The relevant portion of the said judgment is reproduced hereinbelow:

"8. Consequently, this Court is of the view that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood."

10. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed."

44.1 In our opinion, the present case is covered by the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi), wherein the Court has held that the expression '*does not form part of the total income*' in section 14A of the Act means that there should be an actual receipt of income which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

44.2 Furthermore, the Hon'ble Delhi High Court in Pr. CIT v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289/288 Taxman 384 (Delhi) has dealt with the issue of amendment made by the Finance Act, 2022 to Section 14A of the Act. The relevant portion of the said judgment is reproduced hereinbelow:

"8. Consequently, this Court is of the view that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood."

44.3 Similarly, the Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investment P. Ltd., (2017) [165 ITD 27] (Delhi) (SB) has held as under :

“11.16 Therefore, in our considered opinion, no contrary view can be taken under these circumstances. We, accordingly, hold that only those investments are to be considered for computing average value of investment which yielded exempt income during the year.”

44.4 In the present case, no exempt income has been earned by the assessee from the investment made by it and therefore, no disallowance can be made by the Assessing Officer. Therefore, respectfully following the judgments of the Hon'ble Delhi High Court, Punjab and Haryana High Court and Hon'ble Madras High Court cited (supra), we are of the considered opinion that the ground raised by the assessee is required to be allowed as there is no exempt income for the year under consideration. Thus, this ground pertaining to section 14A of the Act is allowed in favour of the assessee. The Assessing Officer is rejected to delete the addition of Rs.37,86,302/-.

45. In the result, the appeal of the assessee in ITA No.340/Hyd/2022 for A.Y. 2018-18 is partly allowed.

18.1 On perusal of above, we find that this Tribunal has held that when no exempted income has been earned by the assessee from the investment made by it, no disallowance under section 14A of the Act can be made by Ld. AO. Therefore, respectfully following the aforesaid decision in assessee's own case (supra), and applying the

principle of consistency, we hold that no disallowance can be made in the present year also under section 14A of the Act, as there is no exempt income earned by the assessee. Accordingly, the Ld. AO is directed to delete the disallowance of Rs.37,75,420/-.

19. Ground No.8 of the assessee's appeal relates to non-grant of set-off of unabsorbed depreciation. The assessee contends that the Ld. AO has not granted proper benefit of carry forward and set-off of unabsorbed depreciation in the assessment year under consideration. In this regard, the first contention of Ld. AR is that the assessee had unabsorbed depreciation available at the end of AY 2020-21, but the Ld. AO did not allow its set-off in the present year on the ground that the assessee had claimed such set-off in subsequent years. He further submitted that while working out the balance of unabsorbed depreciation, due effect is required to be given to the orders of this Tribunal for AYs 2017-18, 2018-19 and 2020-21.

19.1 As regards the second contention, the Ld. AR submitted that in AY 2017-18, the assessee had entered into a scheme of demerger wherein Takshila Tech Park & Incubators India Pvt. Ltd. and Genome

Valley Tech Parks & Incubators Pvt. Ltd. were demerged, and the assessee is the resultant company. As per section 72A of the Act, the assessee is entitled to carry forward and set-off of unabsorbed depreciation pertaining to the demerged companies which stands transferred to the assessee. He therefore prayed for necessary direction to the Ld. AO to allow the set-off and carry forward of such depreciation in accordance with section 72A.

20. Per contra, the Ld. DR relied on the order of the Ld. AO/TPO.

21. We have considered the rival submissions and perused the material available on record. As far as the first contention of the assessee is concerned, it is an admitted position that the Ld. AO has not granted set-off of unabsorbed depreciation on the reasoning that the assessee had claimed such set-off in subsequent assessment years. In our considered view, this approach of the Ld. AO is not in accordance with law. As per the settled principle, the set-off of unabsorbed depreciation is to be allowed in chronological order, i.e., from the earliest year of availability, and not postponed at the discretion of the assessee or the Revenue. Further, while determining

the quantum of unabsorbed depreciation available for set-off in the impugned year, the Ld. AO is duty-bound to give due effect to the orders of this Tribunal in the remand proceedings, as they directly impact the computation of available depreciation. We, therefore, direct the Ld. AO to recompute the balance of unabsorbed depreciation after giving effect to the Tribunal's orders, allow its set-off in the year under consideration, and carry forward the remaining balance, if any, for subsequent years as per law.

21.1 On the second contention, the assessee has contended that pursuant to the scheme of demerger in AY 2017–18, the unabsorbed depreciation of the demerged companies, namely Takshila Tech Park & Incubators India Pvt. Ltd. and Genome Valley Tech Parks & Incubators Pvt. Ltd., stood transferred to the assessee as the resultant company, and therefore, the assessee is entitled to its set-off under section 72A of the Act. This claim requires factual verification. We accordingly direct the Ld. AO to verify the demerger scheme and the quantum of unabsorbed depreciation pertaining to the demerged undertakings that are legally transferable, and allow the assessee's claim in accordance with the provisions of section 72A of the Act.

21.2 In view of the above discussion, ground no.8 of the assessee's appeal is allowed for statistical purposes, with the directions to the Ld. AO as set out hereinabove.

22. In the result, the appeal of the assessee in ITA No.923/Hyd/2024 is partly allowed for statistical purposes.

ITA No.924/Hyd/2024

23. The assessee has raised the following grounds of appeal :

1. **General ground**

1.1. The orders passed by the learned Assessment Unit, National e-assessment Centre, Delhi (hereinafter referred as 'AU' for brevity), the learned Deputy Commissioner of Income Tax (Transfer Pricing Officer) - 2, Hyderabad (hereinafter referred as 'TPO' for brevity) and the Dispute Resolution Panel - 1, Bangalore (hereinafter referred as 'DRP' for brevity) ['AU', 'TPO' and 'DRP' collectively referred as 'lower authorities' for brevity) are bad in law and liable to be quashed.

2. **Ground relating to assessment order being barred by limitation under section 153**

2.1. The learned AU erred in passing the assessment order under section 143(3) read with section 144C(13) read with section 144B, beyond the limitation period under section 153. The assessment order so passed is bad in law, void ab initio and liable to be quashed.

3. Grounds relating to violation of standard operating procedure

3.1. The learned AU erred in issuing the notice under section 142(1) dated 11.09.2023 (requiring compliance by 15.09.2023) and the show cause notice dated 21.09.2023 (requiring compliance by 26.09.2023) in violation of the Standard Operating Procedure dated 03.08.2022 issued by the Central Board of Direct Taxes ('CBDT') in not granting seven days to furnish a response to the same. The consequent passing of the assessment order is therefore bad in law and is to be therefore quashed.

4. Ground relating to charge of Income-tax

4.1. The lower authorities have erred in not appreciating that, the addition made to the income returned is bad in law as the charging or computation provision relating to income under the head "Profits & Gains of Business or Profession" do not refer to or include the amounts computed under Chapter X.

5. Ground relating to tax evasion

5.1. The lower authorities have erred in passing the order without demonstrating that the Appellant had any motive of tax evasion.

6. General grounds relating to transfer pricing adjustments

6.1. The DRP has erred in incorrectly confirming the following adjustments made to the total income by the TPO under section 92CA of the Act:

(a) Interest on Rupee denominated Non-Convertible Debentures (NCD) of INR 74,42,323

(b) Premium on redemption of Non-Convertible Debentures (NCD) amounting to INR 3,54,62,179



(c) Interest on Compulsorily Convertible Debentures (CCD) of INR 40,95,363

6.2. The Honourable DRP has erred in:

- (a) upholding the TPO's rejection of the Appellant's Transfer Pricing documentation maintained in accordance with section 92D read with Rule 10D of the Income-tax Rules, 1962 ('the Rules') without providing justifiable reasons for the same;
- (b) rejecting the search for comparables conducted on NSDL website for benchmarking interest on NCD and CCD;
- (c) not appreciating that the TPO has not undertaken an independent benchmarking analysis for identifying comparables for benchmarking the interest on NCD and CCD.
- (d) not providing cogent reasoning to uphold the transfer pricing adjustments made by the TPO and rejecting the detailed submissions made by the Appellant. An unreasoned order so made is bad in law and deserves to be quashed.

Grounds relating to transfer pricing adjustments in particular towards interest on NCDs of INR 74,42,323

6.3. The lower authorities have erred in not appreciating that the terms of issuance of NCDs, including the rate of interest payable to DB international (Asia) Limited were negotiated under uncontrolled and independent circumstances and hence to be regarded as at arm's length.

6.4. The lower authorities have erred in not appreciating that the terms and conditions in the year of crystallising the conduct are to be evaluated for the arm's length pricing analysis.



6.5. The Honourable DRP has erred in confirming rejection of the following companies selected by the Appellant based on search in NSDL website which have issued instruments comparable to the NCD issued by the Appellant :

- (i) Gromor Finance Private Limited
- (ii) Ashiana landcraft realty private limited
- (iii) Parinee Realty Private Limited
- (iv) Speedage Trade Limited
- (v) Tridhaatu Renovators Private Limited
- (vi) Shivshakti Realhome Private Limited - series 1
- (vii) Edward Food Research & Analysis Centre Limited
- (viii) Shivshakti Realhome Private Limited - series 1

6.6. The Honourable DRP has erred in confirming adoption of State Bank of India (SBI) MCLR of 7.90% and credit risk premium of 1.75% for FY 2019-20 by the TPO for benchmarking the interest on NCDs on an adhoc basis. The SBI MCLR rate is not a comparable and hence the addition made is bad in law.

6.7. The Honourable DRP has erred in not considering the objection raised by the Appellant regarding action of the learned TPO in computing the arm's length rate of interest of NCDs without appreciating that:

- (a) the information regarding MCLR rate obtained under section 133(6) from the SBI was not provided to the Appellant; and
- (b) no opportunity was given to cross examine or rebut the information provided by SBI under section 133(6).



6.8. On facts and circumstances of the case, the Appellant's benchmarking of interest on NCDs should be accepted.

Without prejudice to the above:

6.9. The lower authorities have erred in not considering the year of issuance of NCDs, tenure of the NCDs, frequency of interest payment and credit rating of NCD issue, in determining the arm's length rate of interest on NCDs.

6.10. The lower authorities have erred in not following the decision of the Jurisdictional tribunal in the case of Neovantage Innovation Park Private Limited (formerly known as MN Takshila Industries Private Limited) for AY 2017-18 holding that the arm's length interest on NCDs is to be computed after taking guidance from the Safe Harbour Rule and section 194LD.

6.11. The learned TPO has erred in

- (i) considering entity level credit rating instead of considering the credit rating of the NCD issue;
- (ii) not appreciating that the SBI MCLR rate of 7.90% and credit risk premium of 1.75% is applicable for an entity having credit rating of BBB- without appreciating that the Appellant's NCD issue has a credit rating of Ind BB-(SO).
- (iii) not adopting the SBI MCLR rate and credit risk premium for FY 2019-20 for NCD issue having credit rating of Ind BB-(SO) or in the alternative, suitably adjusting the SBI MCLR rate to factor the difference in credit rating and other parameters.

6.12. The Honourable DRP has erred in incorrectly concluding that the credit risk premium takes care of other factors such as credit rating, credit history, tenure, etc.



6.13. The Honourable DRP has erred in concurring with the TPO in considering a credit risk premium of 1.75% i.e. 175 basis points to benchmark the interest on rupee denominated NCDs and in disregarding that: -

- (a) Safe Harbour Rules contained in rule 10TD(2A) stipulates that the credit spread shall be not less than 475 basis points;
- (b) Section 194LD(2) read with Notification No SO 2311 (E) dated July 29, 2013 issued by the Central Government stipulates that the credit spread shall not exceed 500 basis points.; and
- (c) Annexure to ECB Framework RBI/2018-19/109 A.P. (DIR Series) Circular No. 17 dated 16.01.2019 stipulates that the credit spread shall be 450 basis points.

6.14. If for any reason SBI MCLR is not considered appropriate, the arm's length rate of interest on NCDs should be benchmarked based on SBI base rate and applicable credit risk premium as applicable in the year of issuance of NCDs.

Grounds relating to transfer pricing adjustments towards premium on redemption of NCDs of INR 3,54,62,179:

6.15. The Honourable DRP has erred in confirming the learned TPO's action of determining the arm's length price of premium on redemption of NCDs as NIL.

6.16. The Honourable DRP and learned TPO have erred in

- (i) not giving any reasons for treating ALP of premium on redemption of NCDs as NIL;
- (ii) treating premium on redemption of NCDs as interest on NCDs;
- (iii) not appreciating that premium on redemption is to be separately benchmarked;



- (iv) not appreciating that the premium on redemption was paid by the Appellant based on the terms in the debenture trust deed determined at the time of issuance of NCDs between the Appellant and the subscriber (DB international), which terms have not been disregarded since inception;
- (v) not appreciating that the terms of issuance of NCDs were decided when DB International had not become an associated enterprise of the Appellant.
- (vi) considering the entire redemption premium for the benchmarking exercise in one year.

6.17. Without prejudice to the above, the Honourable DRP and learned TPO have failed to appreciate that premium on redemption of NCD if treated akin to interest should have been benchmarked at SBI MCLR applicable for NCD having credit rating of - BB (SO) and appropriate credit risk premium after taking guidance from safe harbour rule and section 194LD.

Grounds relating to reduction in disallowance computed under section 94B pursuant to transfer pricing adjustment towards interest and premium on redemption of NCD

The following ground is without prejudice to the grounds on transfer pricing adjustment towards interest on NCD

6.18. The lower authorities have erred in not appreciating that the Appellant had suo moto disallowed interest on NCD of INR 7,90,79,841 and redemption premium of INR 3,54,62,179 under section 94B.

6.19. The lower authorities have erred in not restricting the disallowance under section 94B pursuant to the transfer pricing adjustment towards interest and redemption premium on NCD.

**Grounds relating to transfer pricing adjustments towards interest on CCDs of
INR 40,95,363:**

6.20. The lower authorities have erred in making transfer pricing adjustment of INR 40,95,363 towards interest on CCDs issued to LC Core Opportunities Fund Pte. Ltd., Singapore after rejecting the Appellant's benchmarking of interest on CCDs.

6.21. The lower authorities have failed in not appreciating that transfer pricing adjustment is not warranted qua interest on CCD as whole of the interest was added back by the Appellant while computing the taxable business income, and the interest not having qualified for deduction is not required to be benchmarked for transfer pricing adjustments, which if permitted would tantamount to a double disallowance of the impugned sum.

Without prejudice to above,

6.22. The Honourable DRP and the learned TPO have erred in not appreciating that

- (i) the Appellant had benchmarked interest on CCDs by adopting CUP method and comparing the interest payable by the Appellant with the adjusted average coupon rates of comparable companies.
- (ii) the comparable companies were selected after applying appropriate filters to the data of debt instruments downloaded from the NSDL website.

6.23. The Honourable DRP has erred in confirming the rejection of the following comparables by the learned TPO for the reason that the search was made in NSDL's website:

- (i) Aadarshini Real Estate Developers Private Limited
- (ii) Whispering Heights real Estate Private Limited.



6.24. The Honourable DRP and learned TPO have erred in

- (i) rejecting the Appellant's contention that the benchmarking of interest on CCDs is in conformity with the applicable guidelines issued by the RBI;
- (ii) stating that RBI guidelines are not relevant for ALP computation.
- (iii) not appreciating that CCDs issued by the Appellant were denominated in INR and hence should be benchmarked based on INR based lending rates.
- (iv) stating that currency in which loan (CCDs) are taken or re-paid is irrelevant for determining the ALP of interest on CCDs as the issuer does not have any occasion to repay the loan owing to its conversion.
- (v) stating that benchmarking exercise carried out by the Appellant is not in conformity with Rule 10B(2) of the IT Rules, 1962.

6.25. The Honourable DRP has erred in confirming the learned TPO's action of determining arm's length rate of interest on CCDs using London Interbank Offered Rate (LIBOR).

6.26. The learned TPO has erred in adopting LIBOR for benchmarking interest on CCDs:

-

- (i) on the ground that the subscriber of CCDs is a foreign company;
- (ii) on an adhoc basis and without identifying any comparables;
- (iii) after incorrectly distinguishing the decisions of the Delhi High Court and Bombay High Court in Cotton Natural's case and India Debt Management (P) Ltd's case;



- (iv) relying incorrectly on the decision of the Jurisdictional Tribunal in Watermarke Residency Ltd ITA No 740, 1590, 1591/Hyd/2019 which decision is distinguishable on facts and law;
- (v) not appreciating that the Jurisdictional Tribunal in the above case has itself held that interest in CCDs is to be benchmarked in consonance with the RBI guidelines;
- (vi) not appreciating that the RBI Guidelines on external commercial borrowing mandate benchmarking of rupee denominated loans denominated in INR and not LIBOR.

Alternatively, and without prejudice

6.27. The Honourable DRP has erred in confirming the learned TPO's action of determining arm's length rate of interest on rupee denominated CCDs using LIBOR as the base rate instead of using SBI MCLR.

6.28. The rate of interest of CCDs being determined at the time of its issuance during preceding previous years, the arm's length rate of interest ought to be determined considering the factors, terms and conditions prevalent as on the date of issuance of CCDs.

6.29. The Honourable DRP has erred in concurring with the TPO in considering a credit spread of 200 basis points on LIBOR without appreciating that:

- (a) The Safe Harbour Rules contained in rule 10TD(2A) stipulates that interest on rupee denominated loans shall be not less than the one year SBI MCLR plus 325 basis points.

- (b) Section 194LD(2) read with Notification No SO 2311 (E) dated July 29, 2013 issued by the Central Government stipulates that the credit spread shall not exceed 500 basis points.; and
- (c) RBI Master directions on External Commercial Borrowings stipulates that the all-in-cost interest rate ceiling per annum for rupee denominated loans shall be benchmark rate plus 450 basis points.

6.30. The lower authorities have erred in not restricting the disallowance under section 40(a)(i) of the Act to INR 27,41,637 pursuant to the transfer pricing adjustment towards interest on CCDs.

7. Grounds relating to addition of notional interest of INR 1,01,52,000

7.1. The learned AU has erred in law and facts by making an addition of INR 1,01,52,000 being notional interest at the rate of 12% on loan amounting to INR 8,46,00,000 advanced by it to its subsidiary. The addition being bad in law deserves to be deleted.

7.2. The learned AU has erred in not appreciating that

- (a) the loans were advanced by the Appellant to its subsidiary on account of commercial expediency.
- (b) the Appellant did not charge any interest on the loans extended to its subsidiary.

7.3. The learned AU has made the impugned addition of INR 1,01,52,000 without identifying any comparables.

7.4. The learned AU has failed to appreciate the fact that the Act provides for taxing only real income under the normal provisions of the Act.



Prayer

- (a) The Appellant prays that directions be given to grant all reliefs arising from the grounds of appeal mentioned supra and all consequential relief thereto.*
- (b) Each of the grounds of appeal and the sub-grounds raised by the Appellant herein are independent without prejudice to each other. The Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.*
- (c) The Appellant prays accordingly.*

24. At the outset, the Ld. AR submitted that, the ground nos. 1 & 8 of the assessee are general in nature and the assessee is not pressing ground nos.3, 4 & 5. Accordingly, the ground nos.1, 3, 4, 5 & 8 are dismissed as no separate adjudication is required on the same.

25. The Ld. AR further submitted that, the ground nos.2 & 6 of the assessee are identical to ground nos.2 & 6 of appeal in ITA No.923/Hyd/2024. He also submitted that, although there is no order of this Tribunal in assessee's own case for earlier years, the assessee rely on the decision of this Tribunal in the case of Neovantage Innovation Park Private Limited in ITA No.340 & 456/Hyd/2022 for A.Ys. 2017-18 & 2018-19 dated 27.09.2023. He also submitted that the findings of the Tribunal for ground nos.2 & 6 in ITA

No.923/Hyd/2024 may mutatis mutandis apply to this appeal also. Therefore, we hold that our findings in ITA No.923/Hyd/2024 for ground nos.2 & 6 shall mutatis mutandis apply to ground nos.2 & 6 of this appeal also. Accordingly, the issue raised in ground no.2 is set aside to the Ld. AO with the direction to follow the outcome of the decision of the Hon'ble Supreme Court in the case of Roca Bathroom Products Pvt. Ltd.(supra) while giving effect to the order of the Tribunal in the present appeal. As such, Ground No. 2 is kept open, with the above direction.

25.1 Further, in view of above discussion, the issue of addition made on account of interest paid on NCDs/CCDs under ground No.6 of the assessee is partly allowed for statistical purposes.

26. Ground No.7 of the assessee relates to the addition of notional interest on interest-free advance to subsidiary company. In this regard, the Ld. AR submitted that, the assessee had advanced a sum of Rs.8.46 crores to MN Science & Technology Park Pvt. Ltd. ("MN Science"), a subsidiary of the assessee, without charging any interest.

The Ld. AO has made an addition of Rs.1,01,52,000/- towards notional interest, treating it as income of the assessee. The Ld. AR further submitted that the advance to MN Science was a strategic investment aimed at securing long-term business advantages, and there was no stipulation for charging of interest. Relying on the decision of the Hon'ble Supreme Court in CIT v. Excel Industries Ltd. (358 ITR 295), it was submitted that income cannot be taxed on a hypothetical basis unless there is a real accrual of income in the hands of the assessee and obligation to pay the same on the part of MN Science. Further reliance was placed on CIT Vs. Dalmia Cement Pvt. Ltd. (254 ITR 377), wherein it was held that commercial expediency lies within the domain of the assessee, and business decisions are not to be substituted by the Revenue. Accordingly, the Ld. AR prayed before the bench to delete the addition made by the Ld. AO.

27. Per contra, the Ld. DR relied on the orders of revenue authorities.

28. We have considered the rival contentions and gone through the material available on record. It is an undisputed fact that the assessee

had advanced funds to its subsidiary for strategic business purposes. There is no agreement or stipulation under which the assessee is entitled to receive interest. As held by the Hon'ble Supreme Court in Excel Industries Ltd. (supra), only real income can be brought to tax and not hypothetical or notional income. In the present case, neither any income has been accrued in the hands of the assessee, nor any obligation has been created on the part of MN Scinece. Therefore, there is absence of real income in the present case. Further, the principle laid down in Dalmia Bharat Pvt. Ltd. (supra) also supports the assessee's case that business prudence cannot be questioned by the Revenue. Therefore, we are of the considered view that no real income has been accrued in the hands of the assessee during the year under consideration. Accordingly, we direct the Ld. AO to delete the addition of Rs.1,01,52,000/- made on account of notional interest.

29. In the result, the appeal of the assessee in ITA No.924/Hyd/2024 is partly allowed for statistical purposes.

30. To sum up, the appeals of the assesseees in ITA Nos.923 & 924/Hyd/2024 are partly allowed for statistical purposes.

Order pronounced in the open Court on 10th Sept., 2025.

Sd/-

**(VIJAY PAL RAO)
VICE PRESIDENT**

Hyderabad.

Dated: 10.09.2025.

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

** Reddy gp*

Copy of the Order forwarded to :

1.	1. M/s. Neovantage Innovation Park Private Limited 2. M/s. Neovantage Bio-Technology Private Limited, Building 450, Genome Valley, Turkapally Village, Shamirpet Mandal, Telangana-500078
2.	The ACIT, Ward 16(3) / ACIT, Circle 5(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,