

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 982/Kol/2025  
Assessment Year : 2020-21**

**National Engineering Industries Limited,**

9/1, R.N. Mukherjee Road,  
Birla Building - 700001  
[PAN: AAACN9969L]

..... **Appellant**  
**vs.**

**DCIT, Circle 5(1), Kolkata,**

P-7, Chowringhee Square,  
Aayakar Bhawan,  
Kolkata - 700069

..... **Respondent**

**Appearances by:**

Assessee represented by : Akkal Dudhewala, AR  
Department represented by : Praveen Kishore, CIT-DR

Date of concluding the hearing : 27.08.2025  
Date of pronouncing the order : 13.10.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal is filed against the order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), dated 08.04.2025, passed by the Ld. Commissioner of Income Tax (Appeals)-22, Kolkata.

1.1 In this case mainly two issues survive for adjudication:

(i) The upward adjustment of Transfer Pricing (TP) of Corporate Guarantee (CG) at Rs. 45,18,279/- and

(ii) Disallowance u/s 14A, read with Rule 8D, at Rs. 1,74,73,054/-.

2. The Ld. CIT(A) has supported and affirmed the Ld. AO/TPO’s contention that CG should be computed @ 1% following ITAT’s orders in

assessee's own case for AYs 2011-12 to 2013-14. Also, in the matter of disallowance u/s 14A of the Act, the Ld. CIT(A) has affirmed the action of Ld. AO as under:

*"It is noted that, there is no definition or meaning set out for the phrase "value of investment" in the said Rule BD and therefore it is to be understood in the context of the relevant facts and other provisions of law. The appellant had brought to my notice that, the language used in Rule 8D(2) as it earlier stood in 2008 was materially amended by the Income-tax (Fourteenth Amendment) Rules, 2016. It is observed that earlier, the language used in Rule AD required that the value of investments as appearing in the balance sheet was to be considered for the purposes of disallowance. By virtue of the amendment in 2016, the phrase as appearing in the balance sheet was omitted and that only the average value of investment was to be considered for the purposes of Rule BD. Accordingly, from 2016 and onwards, the value of investment as appearing in the balance sheet was no longer of any consequence. Meaning thereby, the investments which were recorded at its fair value in the balance sheet was not of relevance and that, the 'value of investment alone was to be considered. Having taken note of this amendment, the appellant submits that, the "value of investment ought to be understood as the capital outlay, viz. the cost of the investment and that the fair value determined in terms of the Ind AS standards cannot be treated as the value of investments for the purposes of Rule BD.*

*4.16 Pursuant to the introduction of the income Computation and Disclosure Standards (ICDS) by the Legislature with effect from 2016 onwards, companies are required to prepare their financial statements in accordance with the Ind AS framework. A review of the Notes to Accounts reveals that the appellant has recorded its investments in compliance with Ind AS 113, which prescribes that investments must be measured at their respective fair values rather than at historical cost. Any notional gain or loss arising from such fair value remeasurement at the end of the financial year is reflected under 'Other Comprehensive Income. In view of the above, I'm of the view that for the purpose of rule 8D(2) the value of investment has to be worked out at fair values rather than the historical cost. The appellant has cited case laws supporting its view point however, it is seen that all the case laws pertain to assessment years prior to amendment in rule 8D(2) when the language was tinkered with. In view of the above, this ground of appeal is dismissed."*

2.1 Aggrieved with this action, the assessee has filed the present appeal with the following grounds:

*"1. Transfer Pricing Adjustment on account of Corporate Guarantee issued to AEs -Rs.45,18,279/-*

*[Tax Effect: Rs. 15,78,867/-)*

*1.1 For that on the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the activity of issuance of corporate guarantee in favour of the AEs was in the nature of shareholder activity and therefore not amenable to the transfer pricing provisions and in that view of the matter, the*

*transfer pricing adjustment of Rs.45,18,279/ made on account of corporate guarantee was unjustified and deserves to be deleted in full.*

*1.2 For that on the facts and in the circumstances of the case and in law and without prejudice to the above, the Ld. CIT(A) grossly erred on facts and in law in upholding the Ld. TPO's action of benchmarking the corporate guarantee fee at an excessive rate of 1% which was arbitrary & unreasonable.*

*1.3 For that on the facts and in the circumstances of the case and in law and without prejudice to the above, the lower authorities grossly erred in simply following the appellate order passed by the Hon'ble ITAT, Kolkata in assessee's own case for AY 2013-14 without appreciating that the facts involved in the relevant year were distinguishable and that unlike AY 2013-14, in the relevant year, the assessee is able to demonstrate on facts the ALP fees of corporate guarantee(s) following the interest savings approach.*

*2. Disallowance u/s 14A read with Rule BD-Rs.5,00,03,015/-*

*[Tax Effect: Rs. 1,74,73,054/-]*

*2.1 For that on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was unjustified on facts and in law in rejecting the appellant's plea that, the disallowance in terms of Rule 8D(2)(ii) ought to be computed with reference to the original cost of investments as opposed to the fair value of investments reflected in the Balance Sheet prepared in accordance with IndAS standards.*

*2.2 For that on the facts and in the circumstances of the case and in law, the notional gain credited upon revaluation of investments on Marked-to-Market ('MTM') basis at the year-end is required to be ignored/excluded under the provisions of the Act and therefore as a corollary, the AO ought to have computed the disallowance u/s 14A r.w. Rule BD(2) (ii) by adopting the 'cost' instead of 'fair value' of investments.*

*3. General*

*3.1 For that on the facts and in the circumstances of the case the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”*

3. Before us, the Ld. AR put forth his arguments with the help of a paper book and largely relied on the submissions made before the Ld. CIT(A). Regarding the issue of CG it was stated that the issuance of CG did not have any bearing on the profits or losses of the assessee and it also did not result in any cost to the assessee. It was averred that the issue of CG was in the nature of shareholder activity and thus was not an “international transaction” with an associated enterprise (AE) even after the amendment brought in through the Finance Act, 2012. The Ld. AR relied on several decisions of Co-ordinate Benches of ITAT to support these contentions.

Alternatively, the Ld. AR argued that as per the TPO's own calculation it was evident that in the absence of CG the loan from Citi Bank would have been higher by 1.25% and for SCB it would have been higher by 1.5%. Thereafter, if the *interest savings approach* would be adopted then 50% of these two values (being 0.625% and 0.75% respectively) would be assessable and not 1% as has been done. The Ld. AR assailed the action of TPO/AO in mechanically adopting 1%, by following the judgment in assessee's own case for AYs 2011-12 to 2013-14 by the ITAT. The Ld. AR argued that the ITAT, in those years, had simply estimated CG at 1% in the face of a higher estimation (3%) by the TPO. The Ld. AR strongly advocated that in case the CG had to be estimated then the benefit of transactions pertaining Citi Bank (in this case to the extent of 1.25%) and 1.5% for SCB, had to be evenly split between the borrower and the guarantor at 0.625% and 0.75% respectively, with respect to the two banks involved.

3.1 Regarding the issue of disallowance u/s 14A of the Act, the Ld. AR narrated the facts and stated that since the assessee is a publicly listed company, they are legally bound, as per the Companies Act, 2013, to prepare accounts as per the Ind-AS accounting standards. Thus, due to this legal requirement the value of investments had been taken at market price following the specific mandate of Ind-AS-113. It was argued that, on the other hand, as per ICDS-I (specifically mandated under the Income Tax Act, 1961) such notional gains or losses were to be ignored for the purposes of computing total income. The Ld. AR relied on the CBDT Circular No. 10/2017, dated 23.03.2017, and read out question 8 from this Circular in support of his arguments. The Ld. AR stated that the assessee had adopted the value of disallowance as per his Balance Sheet figures worked out on the basis of Ind-AS 113, due to an oversight. However, this oversight was sought to be corrected through substitution of these figures with those denoting the acquisition cost of such investments. The Ld. AR assailed the

action of Ld. CIT(A) is not directing the Ld. AO to compute the disallowance accordingly.

3.2 The Ld. DR, on the other hand, stated that CG was assessed @ 1% on the basis of findings and directions of ITAT in assessee's own case and that is what should be followed here also. Regarding the disallowance u/s 14A of the Act, the Ld. DR relied on the findings of Ld. CIT(A) at pages 52 and 53 of the impugned order (supra).

4. We have carefully considered the rival submissions and have also gone through the records before us. Regarding the issue of CG it deserves to be brought on record the fact that the interpretational issues around such guarantees are now quite clear in as much as such transactions being certainly considered as "international transactions" with AEs and thus within the ambit of TP adjustments. However, the quantum so determinable is still somewhat within the realm of estimation. It is in this light that the previous ITAT orders in the assessee's own case have to be considered. It is seen, in the earlier years that were before the ITAT, that the assessee had offered the CG to be estimated at 0.38%, whereas the TPO had assessed the same at 3%. The ITAT's order speaks of a percentage band of between 0.5% to 1.0% allowable for estimating CG, after an analysis of judicial literature available at that time on the subject. Thereafter, 1% was directed to be considered as against 3% assessed by the TPO. As mentioned earlier, at present there are a considerable number of judicial pronouncements on the subject, which guide reliably in assessing CG percentage.

For this matter certain extracts from a Coordinate Bench order in the case of M/s Graphite India Ltd. (ITA No. 473/Kol/2018, order dated 13.09.2024) would place the issue in perspective:

*"7.3. It is seen that in neither of the years sought to be relied upon, in the appellant's own case, the Hon'ble Benches of ITAT- Kolkata had the benefit of a subsequent*

*judgement of the Hon'ble Madras High Court in the case of PCIT vs. Redington (India) Ltd. reported in [2021] 430 ITR 298 (Madras), order dated 10.12.2020 in which this issue involving an unambiguously worded statute stating clearly that the amendment to section 92B of the Act was retrospectively effective from 01.04.2002, has been settled conclusively as under:*

*The argument of the assessee is that prior to the amendment brought about in section 92B by Finance Act, 2012, the Tribunal had decided that furnishing of a guarantee by an assessee was not an 'international transaction' as it did not fall within any of the limbs of section 92B. It is submitted that to get over the judicial pronouncement, the explanation was inserted. The argument is that clause (c) of the Explanation supports the case of the assessee inasmuch as the Explanation makes it clear that giving of a Corporate Guarantee is not a service. Without prejudice to the said contention, it is submitted that only Corporate Guarantee is given by the assessee, which are in the nature of lending are covered under clause (c) of Explanation 1 to section 92B. Further, it is submitted that the nature of transactions covered by clause (e) specifically include even those transactions which may not have a 'bearing on the profit, income, losses or assets of such enterprises at the time of transaction' are covered if they have such a bearing 'at any future date'. It is argued that the language used in the Explanation makes it clear that in so far as the transactions that fall within the main part of section 92B are concerned, such transactions must have a bearing on profit, income, losses or assets of an assessee in the year in which the transaction is effected. In the assessee's case, the Corporate Guarantees represent a contingent liability and lay dormant and have no bearing on the current year's profits, income or losses of an assessee and Corporate Guarantee are not covered within the definition of international transaction. It is submitted that applying 'doctrine of fairness' as explained by the Supreme Court of India in the case CIT v. Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249/227 Taxman 121/367 ITR 466 the explanation ought to be read as prospective in its application and retrospective in its effect such that it will also cover within its ambit guarantees issued prior to the introduction of the Explanation by Finance Act, 2012. [Para 70]*

*A new Enactment or an Amendment meant to explain the earlier Act has to be considered retrospective. The Explanation inserted in section 92B by Finance Act, 2012 with retrospective effect from 1-4-2002 commences with the sentence 'for the removal of doubts, it is hereby clarified that'. [Para 72]*

*An Amendment made with the object of removal of doubts and to clarify, undoubtedly has to be read to be retrospective and Courts are bound to give effect to such retrospective legislation. [Para 73]*

*In Co-operative Co. Ltd. v. CIT 2008 taxmann.com 1086 (SC), it was held that when an amendment is brought into force from a particular date, no retrospective operation thereof can be contemplated prior thereto. The Explanation in section 92B specifically has been given retrospective effect and it is clarificatory in nature and for the purpose of removal of doubts. This issue was considered by this Court in the case of Sudexo Food Solutions India (P.) Ltd. v. State of Tamil Nadu [Tax Case (Revision) Nos. 14 & 15 of 2013, dated 30-4-2019]. [Para 74]*

*The concept of bank Guarantees and Corporate Guarantees was explained in the decision of the Hyderabad Tribunal in the case of Prolifics Corpn. Ltd v. Dy. CIT [2015] 55 taxmann.com 226/68 SOT 104 (URO). In the said case, the revenue contended that the transaction of providing Corporate Guarantee is covered by the definition of international transaction after retrospective amendment made by Finance Act, 2012. The assessee argued that the Corporate Guarantee is an additional guarantee, provided by the Parent company. It does not involve any cost of risk to the shareholders. Further, the retrospective amendment of section 92B does not enlarge the scope of the term 'international transaction' to include the Corporate Guarantee in the nature provided by the assessee therein. The Tribunal held that in case of default, Guarantor has to fulfil the liability and therefore, there is always an inherent risk in providing guarantees and that may be a reason that Finance provider insist on non-charging any commission from Associated Enterprise as a commercial principle. Further, it has been observed that his position indicates that provision of guarantee always involves risk and there is a service provided to the Associate enterprise in increasing its creditworthiness in obtaining loans in the market, be from financial institutions or from others. There may not be immediate charge on profit & loss account, but inherent risk cannot be ruled out in providing guarantees. U1 and adjustment are to be made on guarantee commissions on such guarantees provided by the Bank directly and also on the guarantee provided to the erstwhile shareholders for assuring the payment of Associate Enterprise.*

*The case of Redington (India) Ltd. (supra) leaves no room for doubt that the amendment in question is retrospective, as clearly mentioned in the statute itself, and would thus apply to the present case. Accordingly, it is required to respectfully differ from the findings of the Coordinate Bench orders in the appellant's own case to hold that CG is an international transaction and would need to be considered for arm's length pricing.*

*7.5. The records reveal that the Ld. TPO has adopted an ALP of 3% following some rates quoted by the HSBC Bank and is seen to have made an upward adjustment of Rs. 3,35,13,140. On this issue it is felt that a CG offered by a commercial bank would definitely be on the higher side as compared to a CG offered by a company to its subsidiaries or associated enterprises. The Ld. AR has argued, without prejudice to their claim of CG not being an international transaction for the year under consideration, and has stated that in any case there cannot be any upward adjustment of more than 0.25%. For this proposition reliance has been placed on the case of M/s. Everest Kanto reported in 232 Taxman 307 (Bom), a copy of which was supplied to us during the course of hearing. On a perusal of the Everest Kanto case (supra) it is seen that if one were to read paras 4 and 10 of this order conjointly then it is clear that CG charged by a commercial Bank cannot be equated with CG charged by a corporate entity from its AEs. There can obviously be no argument on this proposition, as has already been mentioned earlier. However, the Hon'ble Bombay High Court has confirmed the 0.5% commission charged by the Appellant and merely disagreed with the upward adjustment @ 3%. Thus, the appellant does not have a sound case for considering 0.25% as commission, as*

*asked for based on the Everest Kanto case (supra). On the other hand, a review of cases on this subject, reveals that a CG commission of 0.5% or even above this has been held to be reasonable in the following cases:*

*(i) NCC Ltd 157 taxmann.com 144 (Hyd-Trib)*

*(ii) Aurobindo Pharma Ltd 152 taxmann.com 469 (Hyd-Trib)*

*(iii) Havells India Ltd 140 taxmann.com 576 (Delhi-Trib)*

*(iv) Electro Steel Castings Ltd 125 taxmann.com 308 (Kol-Trib)*

*(v) Mahindra & Mahindra Ltd 117 taxmann.com 518 (Mum-Trib)*

*(vi) Tata Consultancy Services Ltd 121 taxmann.com 190 (Mum-Trib)*

*It is understood that TP adjustments are actually estimations arrived at after analysis of relevant data. Accordingly, here also there would need to be an estimation of CG commission. It is in this light that following the decisions in the above mentioned cases, the CG commission is restricted to 0.5% as against 3% worked out by the ld. AO/TPO. The appellant gets consequential relief.”*

4.1 Considering the totality of facts and circumstances of this case, we are considerably persuaded by the assessee's arguments that the *interest savings method* enables us to arrive at a fair estimation of CG since it is a matter of record that Citi Bank and SCB admittedly charge 1.25% and 1.5% extra interest in the absence of a CG. Thus, this extra interest deserves to be apportioned equally between the assessee and the AE on the transactions with these two banks at 0.625% and 0.75% respectively, as against 1% value adopted in the impugned order.

5. Regarding the issue of disallowance u/s 14A of the Act, it is worth considering that as a corporate entity, the assessee is legally bound as per the Companies Act, 2013 to follow Ind-AS in preparing its accounts. Ind-AS-109, read with Ind-AS-113 clearly direct that investments have to be valued at a fair or market valuation, which was done by the assessee. Incidentally, suo moto disallowance was made on that basis only. However, subsequently the assessee filed a revised computation before the Ld. AO after adopting the cost price of such investments, in line with ICDS-1 principles. In this context, the relevant portion from CBDT's Circular No. 10/2017 (supra) deserves to be extracted as under:

**CBDT Circular number 10/2017 dated 23.3.2017**

*“Question 8 : Para 4(H) of ICDS-I provides that Market to Market ( MTM) loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?”*

*Answer : Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply mutatis mutandis to MTM gains or an expected profit.”*

It is a settled position that ICDS has been notified u/s 145(2) of the Act and would, therefore, take precedence over Ind-AS in case there is a conflict between the two. Since the assessee’s action in assuming the cost price or acquisition cost of investments for the purposes of disallowance u/s 14A of the Act is in consonance with ICDS hence it deserves to be supported in principle. However, since the Ld. AO has adopted the figures in the accounts of the assessee hence, he could not have examined the veracity of figures presented by the assessee as denoting the cost of acquisition. Thus, we deem it fit to remand this matter back to the Ld. AO for examining the correctness of claim about the cost aspect of investments as per ICDS and thereafter recomputing the disallowance u/s 14A read with Rule 8D(2)(ii), on that basis.

6. In result, appeal of the assessee is partly allowed.

Order pronounced on 13.10.2025

Sd/-

**(George Mathan)**  
**Judicial Member**

Dated: 13.10.2025  
AK, Sr. P.S.

Sd/-

**(Sanjay Awasthi)**  
**Accountant Member**

*Copy of the order forwarded to:*

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches