IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI

BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 4171/DEL/2024
Assessment Year: 2020-21

M/s Tata Steel Limited **[Successor of Angul Energy Limited]** **Bombay House-24,** **Homi Mody Street Fort,** **Mumbai-400001.** **PAN: AACCB 7445 H**	Vs	ACIT, Circle-1(1), New Delhi.
APPELLANT		**RESPONDENT**
Assessee represented by	Ms. Kavita Jha, Sr. Adv. & Sh. Akash Shukla, Adv.	
Department represented by	Sh. S.K. Jadhav, CIT(DR)	
Date of hearing	10.12.2025	
Date of pronouncement	12.12.2025	

O R D E R

PER Ms. MADHUMITA ROY, JM:

The instant appeal, filed by the assessee, is directed against the Assessment Order dated 31.07.2024 (DIN & Order No. ITBA/AST/S/143(3)/2024-25/1067198746(1) passed by the Assistant Commissioner of Income Tax, Circle 1(1), Delhi, under Section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), pursuant to the directions of the Learned

Dispute Resolution Panel ("DRP") under Section 144C(5) of the Act for the Assessment Year 2022-23.

2. Grounds of appeal raised by the assessee are as under:

"1. General Ground

1.1. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in assessing the total income at Rs. 12.19,11,871/- under normal provisions as against income of Rs. NIL declared by the Appellant.

2. Transfer Pricing adjustment of Rs. 12,19,11,871/-

2.1. That on the facts and in the circumstances of the case and in law, the Ld. TPO/Ld. AO erred in making an adjustment of Rs. 12,19,11,871/- to the business income of the Appellant Company on account of Transfer Pricing adjustment u/s 92CA(3) on account of Interest paid by erstwhile the Appellant on the Inter Corporate Deposit (ICD) provided to it by Tata Steel BSL Ltd. in view of the conditions of the Resolution Plan placed before the Committee of Creditors and approved by the National Company Law Tribunal as per the provisions of the Insolvency & Bankruptcy Code, 2016.

2.2. That on the facts and in the circumstances of the case and in law, the Ld. TPO/ Ld. AO was not justified to propose adjustment of Rs. 12,19,11,871/-without appreciating the fact that effective cost of borrowings of Tata Steel BSL Limited from Financial Institutions was 9% and added mark-up/ spread of 1% resulting in an effective rate of interest charged @ 10% after including a mark-up/spread of 1% after considering the Unsecured risk attached to the ICD.

2.3. That on the facts and in the circumstances of the case and in law, the order passed by Ld. TPO Ld. AO is against law and facts on the file in as much as he was not justified to propose adjustment of Rs. 12,19.11.871/- without appreciating the fact that even though the Appellant Company is an eligible unit for claiming deduction u/s 80-IA. it did not claim any deduction due to being in losses.

2.4. That on the facts and in the circumstances of the case and in law, the Ld. TPO/Ld. AO was not justified in erroneously adding Rs. 12.19.11.871/- to the total income of the appellant Company without appreciating the fact

that it is an expense for the appellant and would instead decrease the total income/ increase the total loss for the assessment year under consideration.

2.5. That the Ld. AO has erred by stating in the assessment order that penalty u/s 270A of the Income Tax Act, 1961 for under-reporting of income needs to be imposed."

3. The assessee has also raised additional grounds of appeal in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 in the following manner:

"*3. That on the facts and circumstances of the case and in law, the reference made to Ld. Transfer Pricing Officer (TPO) under section 93CA(3) of the Income Tax Act, 1961 ('the Act') is illegal and bad in law in view of amendment to section 92BA of the Act vide Finance Act 2017.*

3.1 That on the facts and circumstances of the case and in law the, the reference made to Ld. TPO for AY 2020-21, is illegal and bad in law, since the payment of interest per-se do not qualify as specified domestic transaction in terms of omission of clause (1) of section 92BA(1) of the Act, w.e.f. 01.04.2017.

4. That on facts and circumstances of the case and in law, the Final Assessment order passed under section 143(3) read with section 144C(13) of the Act, is barred by limitation in terms of the provision of section 153(3) of the Act."

3.1 As the additional grounds raised by the assessee is purely legal and on jurisdictional aspect goes to the root of the matter. For dispensation of substantial justice the same is, in our view to be admitted, specially considering the judgments passed by the Hon'ble Apex Court in the case of NTPC v. CIT reported in 229 ITR 383 and the judgment in the matter of Jute Corporation of India v. CIT reported in 187 ITR 688. Hence, additional grounds raised by the assessee are admitted.

4. The facts borne out from the records indicate that the assessee, formerly known as Angul Energy Limited was incorporated on 14.09.2005, as a non-government company, involved in production, collection and distribution of electricity. For A.Y. 2020-21 the assessee filed its ITR on 05.02.2021 declaring business loss at Rs. 626,71,77,388/-. Relevant to mention that the assessee is an entity, eligible under section 801A of the Act.

4.1 The assessee is a wholly owned subsidiary of Tata Steel BSL Ltd. ['TSBSL'] and during the relevant previous year, TSBSL provided Inter Corporate Deposits ['ICD'] to the Assessee of Rs. 745 crores at the interest rate of 10% p.a. However, no deduction under Section 80-IA of the Act was claimed by the assessee.

4.2 During the previous year relevant to AY 2020-21, the Assessee had entered into specified domestic transactions ['SDT'], details whereof have been disclosed in Form 3CEB and TP study. Observing that in its TP study the assessee had specifically mentioned that the SBI PLR rate stood at 13.27% and despite that the interest at 10% has been charged from the Assessee, the Learned TPO issued show cause notice dated 19.07.2023 requiring the assessee to benchmark and determine the Arm's length price of the rate of interest being charged from the Assessee by its AE (TSBSL) on ICD of Rs. 745 crores. The assessee vide reply dated 25.07.2023 and 27.07.2023 submitted that TSBSL obtained term loan facility from Axis Bank

wherein effective interest rate charged was at 9% based on Marginal Cost of Funds based Lending Rate [MCLR'] as mandated by RBI. Therefore, the Assessee has not benefited from lower costs, since the interest charged from the Assessee by TSBSL @ 10% was more than the interest paid by TSBSL on the term loan facility @ 9%. Ultimately, vide order dated 28.07.2023 the Learned TPO though accepted the CUP method adopted by the Assessee to benchmark the rate of interest, however, made adjustment of Rs. 12,19,11,871/- on account of lower interest rate charged by the AE (TSBSL) from the Assessee on ICD of Rs. 745 crores holding that in doing so the AE (TSBSL) had shifted the profits to eligible unit, i.e. the Assessee, under Section 801A of the Act. The Learned AO upheld the TP adjustment in the draft assessment order dated 28.09.2023. Against the same the Assessee filed objections before the Learned Dispute Resolution Panel ('DRP'), wherein the assessee reiterated that the rate of interest charged by TSBSL from the Assessee was determined based on MCLR, which is currently mandated by the RBI. However, rejecting the objections the Learned confirmed the adjustment made by Learned TPO. Consequently, assessment order dated 31.07.2024 was framed, upholding the TP adjustment of Rs. 12,19,11,871/-. Aggrieved by the said order, the assessee is in appeal before us.

5. Under these facts and circumstances of the matter the assessee challenged the reference made to the TPO under Section 92CA(3) of the Act as payment of

interest do not qualify as specified domestic transaction in view of omission of clause (i) of Section 92B(A) of the Act w.e.f. 01.04.2017. Thus, before us the point of consideration is this that as to whether the reference made to the TPO for A.Y. 2020-21 is legal and sustainable in law as the payment of interest per se did not qualify as specified domestic transaction in terms of omission of clause (i) of Section 92BA(i) of the Act w.e.f. 01.04.2017 as the case made out by the assessee. The interest payment by the assessee cannot be regarded as specified domestic transaction after the omission/ deletion of clause (i) of Section 92BA(i) of the Act by and under the Finance Act, 2017 w.e.f. 01.04.2017 as the case made out by the assessee has been considered by us and we find the amendment having been made in the following manner:

5.1 The Finance Act 2017 has amended the definition of SDT by omitting clause (1) of Section 92BA of the Act. Prior to its omission, clause (i) of section 92BA read as under: -

> *(1) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A*

5.2 The aforesaid clause dealt with any transaction undertaken by an Assessee with any person referred to in clause (b) of sub-section (2) of section 40A baing in the nature of payment made towards any expenditure.

5.3 As stated earlier, in the case of the assessee, the Learned TPO after considering the TP study filed by the Assessee, sought only to benchmark interest payment by the Assessee to its AE on the ICDs given by the AE. The show-cause notice dated 19.07.2023 specifically sought explanation regarding payment of 10% interest on ICD as against 13.27%.

5.4 Thus, the transaction in question with respect to which TP adjustment was made by Ld. TPO and subsequently affirmed by AO and DRP is in essence an expenditure in respect of which payment has been made by the Assessee to its AE. Interest payments are in form of expenditure which is debited in the Profit & Loss account of the Assessee, prior to its omission, clause (i) of section 92BA of the Act only covered situations where the payment is in respect of an expenditure, reflected in the Profit and loss account.

5.5 As the transaction in respect of which TP adjustment has been made falls under the omitted clause (i) of section 92BA of the Act, after the omission of the said clause, payment of interest which is nature of an expenditure cannot be regarded as an specified domestic transaction as the case made out by the assessee seems to be acceptable. The assessee in this respect relied upon very many judgments including the judgment passed by the Coordinate Bench in the case of Relaxo Footwear Ltd. v. Assessing Officer NeAC [ITA No. 590/Del/2021- order

dated 20.07.2023]. Apart from that it was further submitted by the Learned Counsel representing the assessee that in assessee's own case for A.Y. 2022-23 even the Learned DRP has held that if the impugned transaction fell in clause (i) of Section 92BA of the Act, the TPO was not empowered to make an adjustment as domestic transactions with related party specified in Section 40A(2) of the Act, the contents whereof are as follows:

> *"5.5 Hence, if the impugned transaction fell in clause (i) of section 92BA of the Act, the TPO was not empowered to make an adjustment as domestic transactions with related party specified in section 40A(2), through a specific amendment in provision of the Act, was purposely excluded from statute on ground of easing the compliance burden upon the taxpayers'. Being a factual issue requiring reference to the relevant documents, the TPO is hereby directed to verify whether or not the ICD transaction was made with a Related Party as defined in section 40A(2) of the Act and thereafter, decide the issue in accordance with observations of the Panel, supra. As far as merits of the adjustment proposed by the TPO are concerned, as assessee has not taken specific averments against TP adjustment of Rs. 71,15,534/-, the same is required to be added in the final order by the TPO/AO If the transaction of ICD was not made with a related party covered under section 40A(2) of the Act."*

5.6 We have further considered catena of judgments of different forums including the order of the Coordinate Bench in the case of Relexo Footwear Ltd. [ITA No. 590/Del/2021], supra, wherein on identical issue the Coordinate Bench has held as under:

> *"8. The aforesaid facts are not in dispute. However, it would be pertinent to address the preliminary issue as to whether any transfer pricing adjustment per se can be made in respect of specified domestic transactions u/s 92BA of the Act in view of the fact that section 92BA(1) has been omitted from the*

statute by the Finance Act, 2017 w.e.f. 01.04.2017. This issue is no longer res integra in view of the decision of the Hon'ble Karnataka High Court in the case of PCIT vs. Texport Overseas Pvt. Ltd., reported in 271 Taxmann 170 wherein it was held that clause (i) of section 92BA having been omitted by the Finance Act, 2017 w.e.f. 01.04.2017 from the statute, the resultant effect would be that it had never been passed and, hence, the decision taken by the Id. AO under the effect of section 92BA of the Act and reference made to the TPO u/s 92CA of the Act was invalid and bad in law. The relevant observations of the Hon'ble Karnataka High Court are as under:-

> *5. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (1) of section 92BA of the Act came to be omitted wef. 01.04.2017 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res integra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of Kolhapur Canesugar Works Ltd. v. Union of India AIR 2000 SC 811 whereunder Apex Court has examined the effect of repeal of a statute vis-a-vis deletion/addition of a provision in an enactment and its effect thereof. The import of section 6 of General Clauses Act has also been examined and it came to be held:*
>
> > *"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief hat not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that*

the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision

6. In fact, Co-ordinate Bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 10B of the Act w.e.f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of section 108. In the matter of General Finance Co. v. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of section 92BA(1) of the Act. Thus, when clause (1) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.04.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of section 92B() and reference made to the order of Transfer Pricing Officer-TPO under section 92CA could be invalid and bad in law

7. It is for this precise reason, tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Lid. referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of Ms. GE Thermometrias India Private Ltd., stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res integra

9. Respectfully following the same, we have no hesitation in holding that the transfer pricing adjustment made in the sum of Rs.91,04,673/- and the further addition of Rs.27,31,402/-, which is in consequence of the same, could not be made, in the facts and circumstances of the instant case. Hence, the additions made by the Id. AO are hereby directed to be deleted."

5.7 Thus, having regard to the order passed by the Coordinate Bench which in turn has followed the ratio decidendi of the Hon'ble Karnataka High Court in the

case of PCIT v. Texport Overseas Pvt. Ltd. 271 Taxmann 170 holding clause (i) of Section 92BA of the Act having been omitted by the Finance Act, 2017 w.e.f. 01.04.2017 from the Statute the resultant effect would be that it had never been passed and to be considered as a law never been existed. Therefore, the decision taken by the Learned AO applying the provisions of Section 92BA of the Act and reference made to the TPO under Section 92CA of the Act is found to be invalid and bad in law. Respectfully relying upon the same, we hold that impugned TP adjustment of Rs. 12,19,11,871/- and consequential addition thereof by the Assessing Officer could not be made in the facts and circumstances of the instant case. The addition of Rs. 12,19,11,871/- made by the Assessing Officer is hereby deleted accordingly.

6. In the result, assessee's appeal in ITA No. 4171/Del/2024 is allowed in the above manner.

Order pronounced in open court on 12.12.2025.

Sd/-	**Sd/-**
(SMT. RENU JAUHRI)	**(Ms. MADHUMITA ROY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 12.12.2025.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI