

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"J" BENCH, MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER  
ITA No. 5525/MUM/2024 (AY: 2021-22)**

*(Physical hearing)*

Viraj Solar Maharashtra Private Limited 406, Hubtown Solaris, N.S. Phadke Marg, Andheri East West Flyover, Mumbai, Maharashtra-400069. [PAN:AADVC 4415 A]	Vs	ITO, 8(3)(1), Mumbai Aayakar Bhawan, Mumbai, Maharashtra.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Prateek Jain, CA/AR
Revenue by	Shri Aditya Rai, Sr. DR
Date of Institution	22.10.2024
Date of hearing	22.12.2025
Date of pronouncement	05.01.2026

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the assessment order passed under section 144C(13) dated 27.09.2024, passed in pursuance of directions of Dispute Resolution Penal (DRP)-2 Mumbai, dated 21.08.2024 for assessment year 2021-22. The assessee has raised following grounds of appeal

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

*2. On the facts and circumstances of the Appellant's case and in law, the Ld. DRP/Ld. A.O. erred in confirming the action of Ld. TPO in making adjustment of Rs. 22,82,876/- on account of interest free loan given to M/s. Avaada MHBuldhana Private Limited ('Avaada MHBuldhana) and Rs.3,62,413/- to M/s.*

*Avaada MHKhamgaon Private Limited ('Avaada MHKhamgaon), for the reason mentioned in the impugned direction order or otherwise.*

*3. On the facts and circumstances of the Appellant's case and in law, Ld. DRP/Ld. A.O. erred in making the adjustment of interest on loan given to M/s. Avaada MHBuldhana Private Limited and M/s. Avaada MHKhamgaon Private Limited by considering the rate of 12.12%, for the reason mentioned in the impugned direction order or otherwise.*

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

*5. The appellant craves leave to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing."*

2. The assessee has also raised following additional grounds of appeal:

*"1. On the facts and circumstances of the appellant's case and in law, the Id. TPO and Id. DRP erred in holding that the transactions as made by the appellant with his Associate Enterprises namely M/s. Avaada MHBuldhana Private Limited are in the nature of specified domestic transaction as per the provisions of 92BA of the Income Tax Act, 1961 for the reasons mentioned in the impugned order or otherwise.*

*2. The appellant craves leave to add, to amend, alter, modify and/or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another."*

3. The rival submissions of both the parties have been heard and record perused. The Ld. Authorised Representative (AR) of the assessee submits that grounds of appeal raised by assessee is covered by the decision of the Tribunal in Avaada MH Khamgaon Vs ITO (ITA No. 5183/Delhi/2024) dated 03.09.2025, which is also one of the group companies of assessee. The Ld. AR of the assessee submits that assessee-company has not commenced its business and all the expenditure incurred by assessee is charged to capital work in progress (WIP), thus, assessee has not earned any income hence,

there was no occasion for shifting the profit from holding company to associated company/associated enterprises. Relevant part of financial statement of assessee for AY 2021-22 is placed on record. Similar was the fact in case of Avaada MH Khamgaon Private Ltd Vs ITO (supra), wherein similar adjustment of interest income was suggested by Transfer Pricing Officer (TPO)/ Assessing Officer (AO) with regards to interest free loan received from Avaada Energy Private Limited and Viraj Solar Maharashtra Private Limited. In the present case The TPO while making the adjustment made upward adjustment in respect of loan advanced to transaction with Avaada MH Buldhana well as Avaada MH Khamgaon. To Avaada MH Buldhana, the assessee advanced interest free loan, however, from Avaada MH Khamgaon, the assessee charged interest 8.5%. The TPO/AO applied mark-up of 3.00% by using other method. The TPO suggested upward adjustment of Rs. 28.51.873/- as per working in para-8 of his order. Thus, on similar ratio the adjustment by TPO is liable to be deleted.

4. On the other hand, the Ld. Senior DR for the Revenue after going through the order of Transfer Pricing Officer (TPO) and decision of Delhi Tribunal in Avaada MHKhamgaon Private Ltd Vs ITO (supra) submits that he relied upon the order of AO/TPO.
5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that assessee is holding on subsidiary of AEPL (Avaada Electro Private Limited), as accepted by TPO in para-3 of his order. The assessee is primarily engaged in the business of generation of solar power. The assessee has its group

company/subsidiary/associated enterprises including Avaada MHKhamgaon and Avaada MHBuldhana and others. During the relevant Financial Year for consideration the assessee has given interest free loan to its one of AE that is Avaada MHBuldhana and no bench-marking provided by the assessee. The assessee also given loan to its other AE namely Avaada MH Khamgaon and charged interest @ 8.5%. The Assessing Officer referred the matter to TPO for computation of arms-length transaction with Avaada MH Buldhana and Avaada MH Buldhana. The TPO while passing the order applied 3.00% mark-up by adopting other method and thereby suggested upward adjustment in respect of transaction of interest free loan to Avaada MHKhamgaon. As no interest was charged from Avaada MH Buldhana, the TPO suggested 11.5% interest in the following manner: -

“Total upward adjustment to be worked out as under.

S. No	Name of the AE	Interest rate charged by assessee	Interest charged by assessee	Interest charged by TPO	Adjustment
1.	Avaada MH Khamgaon	8.5%	16,01,027	28,47,944	12,46,917
2.	Avaada MH Buldhana	00	00	16,04,956	16,04,956
<i>Total</i>					<i>28,51,873</i>

6. On objection before the Dispute Resolution Panel (DRP), the adjustment suggested by TPO was upheld. Consequently, on receipt of order of DRP the Assessing Officer passed final assessment order. We find that on similar ground of appeal in assessee's group case Delhi Tribunal in Avaada MH Khamgaon Pvt Ltd Vs ITO (supra) deleted similar TP adjustment. For appreciation of facts, the relevant part of the decisions is extracted below;

"4.Relevant facts of the case are, assessee filed its return of income on 15.03.2022 declaring loss of Rs.10,50,200/-. The case was selected for scrutiny under CASS for the reason "Large specified domestic transactions". The AO referred the matter to the AO, Technical Unit to determine Arm's Length Price (ALP) in respect of international transactions. During assessment proceedings, the Transfer Pricing Officer (TPO) observed that assessee has obtained a loan from Viraj Solar Maharashtra Pvt. Ltd. (VSMPL) and Avaada Energy Pvt. Ltd. (AEPL). He observed that Associate Enterprises (AE) have not charged any interest upon the loan advanced from AEPL. The TPO observed that the holding company has shifted the profits to its subsidiary company where lower tax regime being followed. Upon verification, the assessee submitted that the assessee has not earned any profit during the year, therefore, no question of more than ordinary profit come into the question. Accordingly, the TPO applying the provisions of section 115BAB he came to the conclusion that the AE extending capital without return on it is effectively showing less than ordinary profit. Hence, the AE should have charged interest at the average rate @ 7.061% plus margin of 4.25% equal to 11.311% whereas VSMPL has charged interest @ 8.5% p.a. Therefore, as per the provisions of section 115BAB, over and above the ordinary profit should be taxable. He observed that AE extended the capital without any return on it is effectively showing less than the ordinary profit The TPO rejected the contentions of the assessee and distinguished the various case laws relied by the assessee, he invoked the Safe Harbour Rules. Accordingly, he proceeded to determine the adjustment of non-payment of interest to VSMPL to the extent of Rs.8,75,508/- by inferring that the ALP of interest on the transaction with VSMPL is Rs.23,56,458/- whereas assessee has paid the interest to the extent of Rs.14,80,950/-. Therefore, he made adjustment of Rs.8,75,508/-. Further he observed that the assessee has not paid interest to AEPL, however ALP of interest on loan taken from AEPL of Rs.1,13,620/-. Therefore, he proposed addition of Rs.9,88,123/- as ALP adjustment

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

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

6. *Aggrieved, assessee is in appeal before us.*

7. *At the time of hearing, Id. AR of the assessee submitted that there is no sales recorded by the assessee as the project is under construction stage and all the expenditure till 31.03.2021 are disclosed as capital work-in-progress. As there is no profit during the year, the AO is unjustified in referring the matter to the TPO. The assessee has not taken any advantage of taking finance from its holding companies. He submitted that assessee has taken loan from its holding and sister concerns and it paid interest to VSMPL of Rs.14,80,950/- for 32 days. After the loan was repaid during the year and no interest was paid to AEPL on a loan of Rs.10,04,510/-. He submitted that AO/TPO has determined the variation on interest paid to VSMPL at Rs.8,75,508/- and on account of interest to AEPL of Rs.1,13,620/-. Further he submitted that TPO has also added the marginal cost lending rate plus 425 basis point to arrive at the interest rate of 11.311%, which is unjustified. He submitted that the AO has applied the provisions of section 115BAB and he brought to our notice section 115BAB and submitted that the provision is applied when the assessee earned the profit and submitted that as*

*per the provision of section 115BAB, tax payable in respect of the total income of a person being a domestic company shall, at the option of such person, be computed @ 15%. Further he submitted that as per the First Proviso if there is any other income unconnected with the main activities of the assessee it will be charged @ 22%. Further he submitted that as per the Second Proviso, the income-tax payable in respect of the income of the person deemed so as per sub-section (6) shall be computed @ 30%. Therefore, he submitted that as per the provisions of section 115BAB, income earned under this Chapter will be charged @ 15% and if any additional income as per First Proviso it is chargeable @ 22% and any deemed income based on sub-section (6) of the Act, the same is chargeable @ 30%. He raised the issue that during the year, assessee has not earned any income rather it incurred loss and also the assessee has not commenced the business. That being the case, the provisions of section 115BAB are not applicable and he prayed that the same may be deleted.*

*8. On the other hand, Id. DR of the Revenue supported the findings of the lower authorities.*

*9. Considered the rival submissions and material placed on record. We observe that assessee has not commenced its business and all expenditure incurred by the assessee is charged to capital work-in-progress. Effectively assessee has not earned any income and the AO/TPO has observed that assessee has taken certain loan from its holding and sister concerns and determined the ALP on interest and proposed ALP adjustment on the basis that profit was shifted from its holding and sister concerns. After due consideration, we observe that assessee has not commenced its business and has not earned any income even the provisions of specified domestic transaction will not apply this year and even the provision of section 115BAB is a provision for availing concessional rate on the income earned in new manufacturing in the domestic companies. We observe that when there is no profit earned by the assessee, there is no provision or question to levy concessional tax rate in the case of the assessee. In*

*order to apply the provisions of concessional rate u/s 15BAB, there has to be taxable income. In the given case, there is no taxable income even after adjustments. In our view, even First Proviso and Second Proviso are not applicable in case the assessee has not earned any income during the year. Since assessee has not commenced its business, there is no concept of shifting of profit applies in this case. Accordingly, this ground is allowed.*

*10. In the result, the appeal being ITA No.5183/Del/2024 filed by the assessee is allowed."*

7. Thus, considering the fact that assessee has not commenced its business and expenditure incurred is charged to capital work in progress hence there is no basis that profit was shifted from assessee to its holding company/ associated enterprises. We find that the grounds of appeal raised by the assessee is covered by the decision of Delhi Tribunal as extracted above and respectfully following the same ratio in the finding of coordinate bench, the TP adjustment suggested by TPO, which is based on similar set of facts, is not sustainable. In the result, the grounds of appeal raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Sd/-

**GIRISH AGRAWAL**  
**ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, Dated: 05/01/2026

Ashwani Rao  
Sr. Private Secretary

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai