IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.4199/Del/2024
(ASSESSMENT YEAR 2020-21)

Noida Towers Private Limited, Flat No.588, Pocket-4, Sector-11, Dwarka, New Delhi-110075. PAN-AADCN8209J	Vs.	Assessment Unit, National Faceless Assessment Centre, Income-tax Department.
(Appellant)		**(Respondent)**

Assessee by	Shri G.C. Srivastava, Adv. Shri Kalrav Mehrotra, Adv., Shri Gaurav Sachdeva, CA & Shri Ankit Suryan, CA
Department by	Shri Santosh Kumar, CIT-DR
Date of Hearing	04/11/2025
Date of Pronouncement	16/01/2026

O R D E R

PER MANISH AGARWAL, AM:

This appeal is filed by the Assessee against the final assessment order dated 15.07.2024 passed u/s 143(3) r.w.s. 144C(13) r.w.s 144B of the Income Tax Act ('the Act' for short) for Assessment Year 2020-21.

2. Brief facts of the case are that the assessee is a private limited company and derived income from rent and other ancillary income through renting and operating premises in industrial parks through leasing agreements entered with third parties. The return of income for the year under appeal was filed on 31.05.2021 declaring total income at Rs.18,72,07,619/-. The case of the assessee was selected under CASS

for various reasons including international transaction of interest paid on borrowing from AE's. The AO made reference to TPO for determination of Arm's Length Price ('ALP') of international transactions in terms of section 92CA of the Act. The TPO vide order dated 28.02.2023 passed u/s 92CA(3) of the Act had proposed ALP adjustment of Rs.1,60,21,483/- on the international transactions reported by the assessee. Thereafter, AO passed the draft assessment order u/s 144C(1) of the Act wherein variation has made by the TPO were not proposed and total income of the assessee was proposed to be assessed at Rs.20,32,29,093/-.

3. Against the said order, assessee preferred objections before the DRP, who vide its order dated 28.06.2024 has rejected the objections raised by the assessee and confirmed the findings given by the TPO/AO. Thereafter, the AO passed the final assessment order wherein addition of Rs.1,60,21,483/- has been made towards ALP adjustment and total income was assessed at Rs.20,32,29,093/-. Further the AO has charged tax at normal rate of tax, however, the claim of the assessee was that it had opted for concessional rate as per section 115BBA of the Act which was not accepted by the lower authorities.

4. Aggrieved by the said order, the assessee is in appeal before the Tribunal by taking following grounds of appeal:

"1 Ground No. 1: Impugned order is non-est and barred by limitation as per section 153 of the Act.

1.1. On the facts and circumstances of the case, the order passed by under section 143(3) read with section 144C(13) and 1448 of the Act is barred by limitation, bad in law and void-ab-Intio.

2. Ground No. 2: That the Ld. AO erred in facts and in law in completing assessment by making impugned additions of INR 1,60,21,483 to the returned income of the Appellant in respect of the international transaction pertaining to payment of interest on Non-Convertible Debentures (NCDs).

3. Ground No. 3: Incorrect acceptance and rejection of comparable by the Ld. AO and Ld. DRP.

3.1. On the facts and circumstances of the case and in law, the Id. AO based on the directions passed by the Ld. DRP, erred in excluding the comparables selected by the Appellant for benchmarking the international transaction of payment of interest on NCDs.

3.2. On the facts and circumstances of the case and in law, the Ld. DRP and Ld. AO also erred in upholding the order of TPO in making a fresh search of comparables and arriving at an arbitrary arm's length interest rate of 9.5% in respect of NCDs issued by the Assessee.

Without prejudice to the above:

4. Ground No. 4. Incorrect rejection of SBI PLR for benchmarking the interest rate payable on NCD

4.1. On the facts and circumstances of the case and in law, the Ld. DRP and Ld. AD erred in rejecting SBI Prime lending rate (SBI PLR') as a base for benchmarking the interest payable by the Appellant on the NCDs issued by it.

4.2. In doing so, the Ld. DRP erred in ignoring the fact that in Appellant's own case for AY 2013-14, the DRP relying on the judgement of Ld. Delhi High Court (being the jurisdictional High Court for the Assessee) in the case of CIT vs. Cotton Naturals Private Limited (TS-117-HC-2015) had passed directions dated 20 October 2017 and directed the Ld. TPO to benchmark the interest rate in respect of interest payments made on rupee-denominated debentures with the during financial year 2012-13.

5. Ground No. 5: Denial of concessional rate of tax u/s 115BAA of the Act.

5.1. On the facts and circumstances of the case and in law, the Ld. AO erred in denying the benefit of the lower tax regime of 22 per cent opted by the Appellant u/s 1158AA(5) of the Act, and computing tax liability on the returned income at a rate of 30 per cent, due to filing of Form 10-IC beyond the date specified u/s 139(1) of the Act.

5.2. That the delay in filing of Form 10-IC beyond the stipulated time is a procedural matter, and the substantive right of the Appellant to avail the lower tax rate ought not to be denied on technical grounds.

Without prejudice to Ground No. 5 above:

6. Ground No. 6: Denial of tax rate of 25 per cent

6.1. On the facts and circumstances of the case, the Ld. AO erred in computing the income-tax liability at the rate of 30 per cent instead of 25 percent applicable on the Assessee under the normal provisions of the Act.

6.2. In doing so, the Ld. AO did not consider the turnover of the Appellant for FY 2017-18 in accordance with Part 1, Paragraph E of the First Schedule of Finance Act 2020 while computing the tax liability.

7. Ground No. 7: That on the facts and in the circumstances of the case and in law, the Ld. AO erred in computing and levying interest under section 2348 and 234C of the Act amounting to INR 1,16,27,044 and INR 8,87,089 respectively.

8. Ground No. 8: That on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 270A of the Act against the Appellant.

Each of the above grounds of appeal is without prejudice to and independent of one another.

The Appellant craves leave to add, alter, amend, or withdraw all or any grounds of appeal herein either at or before the appeal hearing."

5. The assessee, in terms of letter dated 19th May, 2025 filed an application for admission of additional grounds of appeal and submits that the additional grounds raised which reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. AO has grossly erred in making a reference to the Ld. TPO in respect of the interest paid to the Associated Enterprise, despite the fact that the Appellant had, in the return of income suo motu disallowed and added back the entire amount of interest paid to the Associated Enterprise under section 948 of the Act

That on the fact and in law the reference to the Ld. TPO in the present case was unwarranted, unjustified, and contrary to the intent of the Act."

6. Before us, the Ld. AR for the assessee submits that additional grounds of appeal taken are purely legal in nature and do not require any further verification/investigation of fact and thus the same deserves to be admitted. The Ld. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. vs. CIT*** reported in ***[1998] 229 ITR 383 (SC).***

7. On the other hand, Ld. CIT-DR objected to the admission of additional grounds of appeal and submits that the additional grounds of appeal raised requires variation of the facts and therefore, the same should not be admitted for adjudication at this stage.

8. Heard both the parties and perused the materials available on record. From the perusal of the additional grounds of appeal, it is seen that assessee has taken ground with respect to disallowance made regarding interest paid to its AEs, however, the said amount has already been added back to the total income of the assessee. These facts can be verified from the computation of income itself placed before us, and do not require any verification from the Assessing Officer and, therefore, the additional grounds of appeal taken by the assessee are admitted by respectfully following the order of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (supra).

9. We first take the additional grounds of appeal taken by the assessee for adjudication as it goes to the root of the issue challenged by the assessee regarding ALP adjustments of international transactions pertaining to interest on non-convertible debentures ('NDCs') paid @ 12% to its AE namely Osiris Holding Pte Ltd. The assessee has prepared transfer pricing documentation and computed ALP rate of interest of this transactions @ 13.8% as per external comparable uncontrolled price method. The ld. AR submits that the entire amount of interest paid to its AEs of Rs.7,69,03,118/- was disallowed by the assessee in the computation of income being excess paid or payable in excess of 30% of profits in terms of section 94B(2) and the same was added back to the total income of the assessee and due taxes were

paid. Therefore, there is no occasion for the Assessing Officer to again make adjustment payment of such interest as no interest was claimed as expenditure by the assessee. The ld. AR also filed a written submission in this regard which reads as under:

"8. Additional Ground No. 1: Erroneous Transfer Pricing Adjustment of ₹1,60,21,483 on Interest Paid to Associated Enterprise, Overlooking Prior Disallowance of entire interest under Section 94B of the Income-tax Act, 1961

8.1 Section 94B of the Act limits the allowance of interest paid by an India company to its foreign AE on debts issued by the non-resident AE. The excess interest, being an amount of total interest paid or payable in excess of 30% of EBITA of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less is accordingly disallowable as per sub-section (2) to section 94B

8.2. In the Appellant's case significant facts are being highlighted as under-

100% of the interest paid to foreign AE on the NCDs of INR 7,69,03,118 has been disallowed under section 94B of the Act while computing income under the head 'PGBP

8.3. In view of the above fact, making an upward variation of INR 1,60,21,483 to the income of the Appellant on an allegation that such interest paid on NCDs is not at arms' length, has led to a double disallowance of the same amount.

8.4. The facts stated above were also submitted before the Ld. TPO vide response dated September 20, 2023, who passed the impugned order dated February 28, 2023, without giving cognizance to the above fact. [FPB page nos. 438].

8.5. Since the Appellant had not claimed an expense in respect of the interest paid on NCDs while computing its taxable income, the question of disallowance under section 92CA of the Act, on allegation of it not being at arms' length does not arise. In this regard, attention of your good self is drawn towards explanation to section 92 of the Act which reads as below.

"...For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price."

8.6. It is further emphasized that that the provisions of Chapter X SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX' of the Act would come into play only when an allowance has been claimed by an Assessee in respect of an expense arising out of an international transaction. In absence of a claim, the

question of expense being at arm's length rate would not arise. It is a well settled principle that a disallowance cannot be imposed in absence of a claim of expenditure/deduction in the first place

8.7. It is submitted that it is a well settled judicial principle that the amount on which taxes have already been paid cannot be taxed twice. Reliance in this regard is placed on the judgement of Apex court in the case of Mahaveer Kumar Jain V. Commissioner of Income Tax (Supreme Court) [Civil Appeal No. 4166 of 2006] wherein the Apex Court had laid the principle that unless otherwise stated an amount cannot be taxed twice. [LPB page nos. 14 to 19)

8.8. Reliance in this regard is placed in the following judicial precedents:

-ITO (Exemption) vs. Rajasthan Cricket Association [2025] 171 taxmann.com 25 (Jaipur-Trib) wherein the Hon'ble tribunal held that where a charitable trust made a provision for expense but did not claim the amount as applied income during the year, question of disallowance of provision did not arise [LPB page nos. 1 to 8]

-Sunil Dhirubhai Patel V. Income Tax Officer [ITA 1686/Ahd/2019] wherein the Hon'ble tribunal observed that the question of making a disallowance arises only when the Assessee has claimed a deduction. [LPB page nos. 9 to 13]

9. In view of the above facts, law and judicial precedents, the upward variation of INR, 1,60,21,483 was not warranted in the present case."

10. On the other hand, the Ld. DR submits that as per section 94B of the Act, the AO has to compute the amount of disallowance of interest even if it is not claimed by the assessee. He further submits that as per sub-section (4) of section 94B of the Act, interest expenditure which is not wholly deducted against the income declared under the head "Profits and gains of business or profession", the same is entitled to be carried forward to the eight assessment years and allowable in subsequent years subject to the extent maximum allowable interest expenditure in accordance with sub-section (2) of section 94B of the Act. He thus, submits that the AO has rightly computed the amount of disallowance so that the net amount to be carried forward could be worked out. The Ld. DR also filed written submissions which reads as under:

"During the course of hearing in respect of above-mentioned appeal, arguments were made by the undersigned that the orders of lower authorities (TPO, AO and DRP) were justified and should be upheld by the Hon'ble ITAT. Arguments were also made by the undersigned against the additional ground of appeal raised by the assessee that the Ld. AO has grossly erred in making a reference to the Ld. TPO in respect of interest paid to AE despite the fact that the assessee had in the return of income suo motu disallowed and added back the entire amount of interest paid to AE u/s 94B of the Income-tax Act. 1961 ("the Act") and erroneous transfer pricing adjustment on interest paid to AE was made, overlooking prior disallowance of entire interest u's 94B of the Act. As desired by the Hon'ble Bench, the following written submission is made in the matter, which may kindly be taken into consideration for the purpose of deciding the instant appeal. The undersigned strongly rely upon the orders of the TPO, AO and DRP in this regard.

1. Transfer Pricing (TP) provisions (section 92 to 92F) of the Act and disallowance of interest u/s 94B of the Act:

1.1 As argued by the undersigned, following the principle of natural justice, this additional ground of the assessee should not be admitted by the Hon'ble ITAT as the same was never raised by it before the lower authorities (TPO, AO and DRP).

1.2 Without prejudice to the above, as argued by the undersigned, the objective and context of the TP provisions under the Act and those of section 94B of the Act are completely different and they operate in separate realms. The main purpose of the TP provisions, which include sections 92, 92C and 92CA, is to allow the AO to refer international transactions and specified domestic transactions (SDTs) to the TPO to determine the arm's length price (ALP) of such transactions. The TPO assesses whether the prices in such transactions between AES are at arm's length in accordance with the methods, processes and rules laid down in this regard. The AO then uses the TPO's determination to compute the assessee's total income.

1.3 However, the main purpose of section 94B, which is a thin capitalization rule in line with the OECD/G20 BEPS Action 4, is to prevent an entity from shifting profits out of India through excessive interest payment on debt from its non-resident AEs. The provision is triggered only when the total interest expenditure exceeds Rs. 1 crore in a financial year (FY), and companies (including PEs of foreign companies) engaged in the business of banking or insurance are generally excluded from application of this provision. It restricts the deduction of interest paid or payable to non-resident AEs to a maximum of 30% of the borrower's earnings before interest, taxes, depreciation and amortization (EBITDA) of the borrower in relevant FY or actual interest paid or payable to such AEs for that FY, whichever is less.

1.4 Therefore, the TP provisions focus on the pricing of international transactions and SDTs from the perspective of ensuring that they are at arm's length. The main purpose of TP provisions is to compute income arising from international transactions and SDTs having regard to their arm's length price. On the other hand, section 94B focuses on the

quantum of debt and the consequential interest allowability vis-à-vis the company's earning capacity in order to curb thin capitalization. The main purpose of section 94B is to put limitation on interest deduction in certain cases i.e. to cap a specific expense (interest).

1.5 A major distinguishing feature between TP provisions and section 94B is 'carry forward' provisions contained in section 94B(4) of the Act which are reproduced below:

> *"(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):*

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed (Emphasis supplied)

Therefore, any interest disallowed under section 94B can be carried forward for up to 8 subsequent assessment years (AYs) and deducted, subject to 30% EBITDA limitation in such future years. However, such carry forward mechanism does not exist under TP provisions.

1.6 The above makes it abundantly clear that once there is an international transaction or SDT, application of the TP provisions is mandated under the Act for determination of their arm's length price. It may happen that both sets of provisions (TP provisions and section 94B) can apply to the same transaction. Also, compliance with one does not automatically guarantee compliance with the other.

1.7 In specific context of interest (though the scope of TP provisions is much wider than that of section 94B), TP provisions (section 92 to 92F) would ensure that the interest rate charged between AEs is at arm's length whereas section 94B imposes an additional cap on the deductible interest amount based upon a percentage of the borrower's earnings. The interest amount should first satisfy the arm's length principle under TP provisions, and if the interest rate is found to be non-ALP, appropriate adjustment is made to bring it to ALP. Section 94B puts specific limitation regarding the deductible interest amount. In view of the above discussion, the claim of double disallowance is also baseless.

1.8 In the instant case, the assessee has reported the impugned amount of interest in its benchmarking is mandated under the Act with a view to determine its arm's length price (ALP). Form 3CEB as an international transaction. Therefore, its reference to the TPO and its TP In this context, whether the assessee has disallowed the interest u/s 94B

or any other provision of the Act is irrelevant and inconsequential as far as application of the TP provisions is concerned. Without prejudice these arguments on merits, though the assessee has disallowed the interest u/s 94B in the current Fy, its option to claim an allowable amount in this regard in the subsequent years (up to 8 AYs) is open which, of course, is subject to fulfilment of the specified conditions. Therefore, even in the instant case, TP benchmarking/arm's length determination of the interest is legally mandated. It may kindly be noted that ALP determination of the interest might have bearing on the amount of interest which can be carried forward in the subsequent AYs under section 94B(4) of the Act which, of course, is subject to fulfilment of the specified conditions. Also, considering the above discussion and TP framework of the Act including provisions of sections 92, 92C and 92CA, the assessee's assertion that it has not claimed interest in subsequent 3 years is completely irrelevant and inconsequential for arm's length determination of the interest in accordance with TP provisions of the Act. Without prejudice to all the arguments on merits, just as a matter of observation, it appears from the one-page computation given by the assessee during the course of hearing on 04.11.2025 that the assessee has carried forward interest u/s 94B(4) in Form 3CD which means that the assessee has not foregone its right to claim in this regard in these AYs and subsequent AYs. Further, it also appears from the computation that subsequent to AY 2020-21, the assessee has claimed AE interest as deduction in AY 2021-22 and AY 2023-24. It may kindly be noted that in the said computation, the assessee has not included computation of any AY after AY 2023-24.

1.9 It is pertinent to mention that by taking this ground, the assessee is also trying to suggest that application of section 94B would render IP provisions as redundant as far as international transaction of interest is concerned. This is contrary to the letter and spirit/intent of the law which mandates application of TP provisions in respect of international transactions and SDTs for determination of their ALP. Also, the assessee's ground/contention is not a correct interpretation of the law by any stretch of imagination.

1.10 Having regard to the above, the assessee's aforesaid additional ground that the AO has grossly erred in making a reference to the TPO in respect of interest paid to AE despite the fact that the assessee had in the return of income suo motu disallowed and added back the entire amount of interest paid to AE u/s 94B of the Act, is without any substance and merit, and it is requested that the same may be dismissed by the Hon'ble ITAT.

2. Ground No.1: Impugned order is non est and barred by limitation as per section 153 of the Act: As the assessee submitted that it has withdrawn this ground, no comments are made by the undersigned in this regard as the ground stands withdrawn by the assessee.

Ground No. 2 and Ground No. 3 The Id. A red in completing assessment by making addition of Rs.160.21.483 in respect of payment of interest on NCDs and there is Incorrect acceptance and rejection of comparables by Ld DRP

3.1 As argued by the undersigned, it is most humbly submitted that the TPO has analyzed the issue of interest on NCDs in detail in his order dated 280-2003 (page 47 to 55 of the submission of factual and legal paper book) The TPO has discussed at length the reasons for rejection of assessee's comparables-Alok Knits Exports Pvt Ltd and Disha Microfin Lud on page 6-8 of his order (page 47-49 of the mission of factual and legal paper book) The main reasons discussed by the TPO include difference in tenor of the instruments, non-availability of credit rating of Alok Knits, difference in credit rating of Disha Microfin, etc. On the assessee's contention that these comparables were adjudicated upon in AY 2018-19 by DRP, the TPO has held that the issue of non-availability of credit rating of the comparable was not discussed in AY 2018-19. Moreover, the TPO has observed that The Constitution Bench in Bharat Sanchar Nigam Lid. v. Union of India (2006) 3 SCC / has held that res judicata does not apply in matters pertaining to tax for different assessment years.

It is also pertinent to mention here that the Hon'ble ITAT Delhi vide its order dated 18.01.2018 in CEVA Freight India Pvt. Ltd. v. DCIT (2018) 90 texmann.com 120 (Delhi-Trib.) has held the following:

"13……..A company considered as comparable in a preceding year or a succeeding year does not necessarily become comparable for the current year and vice versa Similarly, there can be several other reasons which lead a company comparable in the preceding year becoming non-comparable in succeeding and vice versa. In our considered opinion, there can be no res judicata in the matter of considering a company as comparable or otherwise. One needs to examine the comparability of each company distinctly in each year……. (Emphasis supplied)

32 The Hon'ble Delhi High Court in Krishak Bharti Cooperative Ltd. v. DCTT (2012) 23 taxmann.com 265 (Delhi) held that there is no res judicata, as regards assessment orders, and assessments for one year may not bind the officer for the next year. The Hon'ble Delhi High Court further held that this is consistent with the view of the Hon'ble Supreme Court that "there is no such thing as res judicata in income-tax matters".

3.3 As regards the assessee's contentions regarding inclusion of certain comparables by the TPO, the TPO has discussed at length the reasons for inclusion of these comparables - Dhan Laxmi Bank Ltd. and Nisha Developers Pvt. Ltd. on page 8-11 of his order (page 49-52 of the submission of factual and legal paper book). The main reasons discussed by the TPO include similarity of tenor, similarity of credit rating of these comparables in public domain, issuance of their instruments in the same year as that of the assessee, etc.

3.4 It is pertinent to highlight that considering the assessee's submissions made in pursuance of the show cause notice issued by the TPO, the TPO excluded one of his comparables Mahavir Finance (India) Ltd. which the TPO had proposed to include in his show cause notice issued to the assessee (page 46 and 52-53 of the submission of factual and legal paper book). This also shows that the TPO has given due consideration to the assessee's contentions.

3.5 Coming to the DRP's order dated 28.06.2024, the DRP has also discussed this issue quite elaborately at paras 5.4, 5.5, 6.4, 6.5 and 6.6 of its order (page 61-70 of the paper book submitted along with Form No. 36). On the assessee's contention that these comparables were adjudicated upon in AY 2018-19 by DRP, the DRP at para 5.5 of its order (page 62 of the paper book submitted with Form No. 36) has held the following:

> ***"The reasons stated supra for exclusion of these comparables were not specifically dealt with by the DRP in that year.*** *Hence, no interference with TPO's proposal to reject these comparables this year, in light of earlier year determination, is warranted."*

3.6 It is important to highlight that the TPO has further corroborated his finding on page 13 of this order (page 54 of the submission of factual and legal paper book). The TPO has observed that information gathered from public sources highlights that Osiris Holdings Pte Ltd. (Holding company) which has subscribed to the NCDs from the assessee at 12% has also subscribed to NCDs from Eleanor Realty Holdings India Pvt. Ltd. during FY 2017-18 at the rate of just 8%, Credit rating of Eleanor Realty Holdings India Pvt. Ltd. during that period was B (Care credit ratings) at the time of issue. This clearly affirms that the interest paid by the assessee at the rate of 12% is on higher side and it needs to be much lower.

3.7 In view of the above, it is clear that the TPO and DRP have given due consideration to the assessee's submissions and they have been quite judicious and objective in including and excluding the comparables for determination of the ALP of interest on NCDs. It is, therefore, requested that the assessee's aforesaid grounds may be dismissed by the Hon'ble ITAT.

4. Ground No. 4: Incorrect rejection of SBI PLR for benchmarking the interest rate payable on NCDs

4.1 As argued by the undersigned, it is most humbly submitted that the TPO has analyzed the issue of interest on NCDs in detail in his order dated 28.02.2023 (page 47 to 55 of the submission of factual and legal paper book). The TPO has discussed the issue of SBI PLR at length on page 12 of his order (page 53 of the submission of factual and legal paper book). Citing the DRP's directions in the assessee's own case in AY 2017-18 where it was stated that the NCDs issued by the assessee are unsecured and they cannot be benchmarked for TP comparability purposes by applying SBI PLR which is applicable in case of secured borrowings therefore, functions and risks of the two instruments are different, the TPO has rejected the assessee's contentions in this regard.

42 As regarding the DRP's directions on this issue, the DRP vide its order dated 28.06.2024 has discussed this issue quite elaborately at paras 7.2, 7.4 and 7.5 of its order (page 71. page 73 and page 75 of the paper book submitted along with Form No. 36). The DRP has held that SBI PLR is a standard rate which is used for benchmarking when interest rate cannot be culled out. In the assessee's case, in the TP documentation,

the assessee himself had Mentified the margin on the basis of arithmetic average interest rate of comparables. This method was also applied by the TPO with new set of comparables. Thus, acceptance of the assessee's contention by the DRP would tantamount to cherry-picking what is favorable to the assessee's own cause. The DRP has further held that when a specific rate through external CUP has been determined, there is no point in using a standardized method in Form of SBI PLR.

4.3 It is relevant to mention that by advocating to apply SBI PLR for benchmarking of interest on NCDs, the assessee is questioning its own TP documentation (including TP Study Report) maintained u/s 92D of the Aet. The assessee's contention to apply SBI PLR is essentially a cherry-picking exercise and is without any substance and merit.

4.4 In view of the above, it is clear that the TPO and DRP have given due consideration to the assessee's submissions and they have been quite judicious and objective in their finding on this issue. It is, therefore, requested that the assessee's aforesaid ground may be dismissed by the Hon'ble ITAT.

5. Ground No. 5: Denial of concessional rate of tax u/s 115BAA of the Act

5.1 The assessee contends that the Ld. AO erred in denying the benefit of the lower tax regime opted by it u/s 115BAA(5) of the Act due to filing of Form 10-IC beyond the date specified u/s. 139(1) of the Act. It further contends that the delay in filing of Form 10-IC beyond the stipulated time is a procedural matter, and the substantive right to avail the lower tax rate ought not to be denied on technical grounds.

5.2 As argued by the undersigned, Form 10-IC is an integral part of the scheme of the Act for claiming the benefit of lower tax regime, and therefore, the assessee's contention of holding it as a procedural matter is without merit and substance. In order to claim the substantive right to avail the lower tax rate provided under the Act, it is imperative on the part of the assessee to fulfil its legal duties including all the procedures laid down in this regard. In the instant case, the assessee has clearly failed to fulfil its legal duties for availing the benefit of lower tax regime.

5.3 The assessee stated that the due date of filing ITR and Form 10-IC for AY 2020-21 was extended to 15.02.2021 by CBDT. This extension was given, taking into consideration the circumstances created by COVID pandemic. Even after the said extension of the due date, the assessee filed its ITR and Form 10-IC for AY 2020-21 on 31.05.2021 i.e. after a delay of 3.5 months without any reasons:

5.4 The assessee is a corporate entity, duly equipped and supported by expert advisors, CAs and lawyers. The COVID circumstance is already factored into the aforesaid due date extension given by CBDT. Under these circumstances, a further delay of 3.5 months in filing Form 10-IC by the assessee without any reason remains unexplained.

5.5 The Hon'ble Supreme Court in the case of B.M. Malani v. CTT (2008) 174 Taxman 463306 ITR 196 (SC) has held that in the word the genuine hardship, genuine means

not fake or counterfeit, real not pretending. The Hon'ble Supreme Court further held that another well known principle namely, a person cannot take advantage of his own wrong may also have to be borne in mind.

5.6 In the instant case, the assessee has failed to explain any reason for the said delay. As discussed above, the COVID situation is already factored into the due date extension given by CBDT in this regard. The case laws relied upon by the assessee to support its claim are distinguishable on facts, and are not applicable to the assessee's case. In these cases, it was held that there was bona fide reason for the delay.

5.7 In view of the above, it is requested that the assessee's aforesaid ground may be dismissed by the Hon'ble ITAT.

6. Having regard to the above, it is requested to uphold the order of the AO and the TPO and dismiss the appeal of the assessee."

11. The assessee filed rejoinder to the submissions made by the Ld. DR which is reproduced as under:

"1. The Appellant. Noida Towers Private Limited ['NTPL'], respectfully submits this short Rejoinder in response to the written submissions filed by the Ld. Departmental Representative ['DR'], subsequent to the hearing held on 04.11.2025.

2. While the Appellant has already furnished detailed arguments, synopsis, and paper books, a perusal of the Ld. DR's post-hearing submission reveals that certain assertions made therein are entirely false, factually incorrect, and based on a misreading of the record Consequently, the Appellant is compelled to place the correct factual matrix on record to ensure that this Hon'ble Bench is not misled by the erroneous observations made by the Revenue.

3. The Appellant draws the specific attention of the Hon'ble Bench to Para 1.8 of the Ld. DR's submission, wherein it has been alleged: -

> *"….just as a matter of observation, it appears from one-page computation given by the assessee during the course of hearing on 04.11.2025 that the assessee has carried forward interest u/s 948(4) in Form 3CD which means that the assessee has not forgone its right to claim in this regard in these AYs and subsequent AYs. Further, it also appears from the computation that subsequent to AY 2020-21, the assessee has claimed AE interest as deduction in AY 2021-22 and AY 2023-24….."*

4. The Appellant most respectfully submits that the above observation is devoid of merit and contrary to the documentary evidence on record. The correct facts are elucidated below:-

a. No Carry Forward of Current Year Disallowance (AY 2020-21):-

i. It is vehemently denied that the Appellant carried forward the interest disallowed during the year under consideration. As submitted during the course of oral arguments, the amount of Rs. 7,69,03,118, which was disallowed under Section 948 for A.Y. 2020-21, was not carried forward in the Tax Audit Report [TAR / Form 3CD'] for this year or any subsequent years.

ii. The amounts reflected in the "Carry Forward" columns of the TAR pertain exclusively to prior years, namely, Rs. 4,49,05,457 (pertaining to A.Y. 2018-19) and Rs. 17,89,175 (pertaining to A.Y. 2019-20). This distinction is clearly visible in Clause 30(B) of the TARS. We rely on the highlighted portions of Page 12 of the TAR for AY 2020-21 (enclosed as Annexure 1) and Page 13 of the TAR for AY 2021-22 (enclosed as Annexure 2

b. No Claim of Brought-Forward Interest in Subsequent Years: -

i. The Ld. DR's inference that the Appellant has claimed the benefit of Section 948(4) carry-forward in subsequent years is legally and factually unsustainable. For A.Y. 2021-22 and AY. 2023-24, the Appellant claimed deductions of Rs. 84,02,457 (Rs 5,23,07,123 Rs.4,39,04,666] and Rs. 14,99,458 [Rs 39,22,639 Rs 24,23,181) respectively.

ii. These amounts were claimed and allowed as deduction out of AE-related interest for A.Y. 2021-22 and A.Y 2023-24 respectively, out of total interest costs of Rs. 5,23,07,123 and Rs. 39,22,639 for the relevant years. They do not represent a set-off of any brought-forward disallowed interest under Section 948(4), The computation of income clearly demonstrates that no benefit of the carry-forward amount was utilized (Kindly refer to the computation for A.Y. 2021-22 at Annexure 3 and A.Y. 2023-24 at Annexure 4

5. In light of the documentary evidence annexed herewith, it is evident that the observations made by the Ld. DR in Para 1.8 are factually erroneous and completely misconceived. The Appellant respectfully requests the Hon'ble Bench to disregard these incorrect assertions and adjudicate the matter based on the true and correct facts as substantiated by the TARS and Income Computations placed on record.

12. Heard both the parties and perused the materials available on record. The sole issue before us is with respect to the transfer pricing adjustment of Rs.1,60,21,483/- made by the AO on the payment of interest on non-convertible debentures issued by the assessee. The claim of the assessee is that it had already disallowed and included

the said interest in the total income as per computation of income filed for which our attention is drawn to PB pages 188 to 190 wherein while computing the income under the head "Income from business or profession", amount of interest of Rs. 7,69,03,118/- is suo-moto disallowed u/s 94B of the Act. The relevant copy of the computation as appearing in PB page 190 is reproduced as under:

Noida Towers Private Limited
PAN: AADCN8209J
Assessment Year 2020-21
Revelant to the previous year ended 31st March 2020

Estimated computation of profits under 'Profits & Gains from Business and Profession'	Mar-20	
Particulars	**Amount (Rs.)**	**Amount (Rs.)**
Estimated profit/ (loss) as per profit & loss account (after tax)		**102,485,381**
Add: Estimated inadmissable expense under Income Tax Act, 1961		
Book depreciation		
Disallowance u/s 94B (Interest costs)	56,541,784	
Provision for doubtfull debts	76,903,118	
Interest on delayed payment of statutory dues	-	
	4,109	**133,449,011**
Less: Estimated admissable expenses under Income Tax Act, 1961		
Tax depreciation under Section 32	48,484,147	
Preliminary expenses as per section 35D	-	**48,484,147**
Less: Incomes taxable under the other heads of Income		
Interest Income	3,680,142	
Profit on sale of assets	242,640	
Short Term capital gain on sale of MF units	152,101	**4,074,883**
Estimated income assessable under Profits & Gains of Business and Profession		**183,375,362**

Estimated computation of profits under 'Capital Gains'		
Particulars	**Amount (Rs.)**	**Amount (Rs.)**
Short term capital gain on sale of MF Units	152,101	152,101
Estimated income assessable under Capital Gains		**152,101**

Estimated computation of profits under 'Income from Other Sources'		
Particulars	**Amount (Rs.)**	**Amount (Rs.)**
Interest Income	3,680,142	3,680,142
Estimated income assessable under Income from Other Sources		**3,680,142**

13. Once the assessee has already added back the amount of interest paid of NCD's to the total income and paid the taxes thereon, any further disallowance out of such interest tantamount to double taxation of an income which is not permissible as per law and, therefore, in our considered opinion, addition made by AO towards transfer pricing adjustment is liable to be deleted.

14. Regarding the contention of Ld. CIT-DR that the assessee has might have carried forward this interest amount to subsequent assessment years and claimed deduction thereon, it is seen that assessee had not claimed any deduction nor carried forward the said amount to any subsequent year which is evident from the copy of the audit report and the return of income filed before us. Further the assessee also filed copy of return of income of subsequent assessment years wherein no claim was made for brought forward interest disallowed u/s 94B of the Act and therefore, the argument taken by the Ld. CIT-DR that assessee might have taken benefit of such interest in subsequent years as brought forward disallowed interest u/s 94B(4) of the Act is not correct on the facts as stated before us. Accordingly, we hereby direct the AO to delete the addition made towards the transfer pricing adjustment of Rs.1,60,21,483/- out of interest paid of NCDs. The additional grounds of appeal taken by the assessee are thus allowed.

15. Since we have already allowed the assessee's additional grounds of appeal, the other grounds of appeal No.2 to 4 taken on the merits on the issue of transfer pricing adjustments on interest paid on NCD's become academic.

16. Ground of Appeal No.1 taken by the assessee is not pressed, thus, dismissed.

17. Grounds of appeal No. 5 to 5.2 are with respect to levy of tax by denying the benefit of lower rate of tax of 22% applicable u/s 115BAA(5) of the Act for the reason that Form No. 10-IC was filed beyond the due date of filing of return.

18. Heard both the parties and perused the materials available on record. In the instant case, originally return of income was processed u/s 143(1) of the Act, wherein tax was charged @ 30% which was rectification vide order dated 16.12.2024 and the tax was charged @ 25% by observing that assessee is a domestic company and its gross receipts during the previous does not exceed Rs. 400 Crs. However, the benefit of concessional rate of tax as provided u/s 115BAA(5) was allowed. During the course of hearing our attention is invited to the order of Ld. CIT(A) in the case of assessee itself for AY 2023-24 wherein the Ld. CIT(A) has allowed the concessional rate of tax @ 20% by following the judgement of Co-ordinate Bench of ITAT, Ahmedabad in the case of ***Aparmeya Engineering Limited vs. ITO*** in ***ITA No.456/Ahd/2024*** wherein it is held that delay in filing Form 10-IC is a procedure lapse and does not vitiate the assessee's substantive right to claim benefit u/s 115BB of the Act.

19. In the instant case, due date for filing of return as well as Form 10-IC was extended upto 28.02.2021, however, it was filed by the assessee on 31st May, 2021, therefore, the Revenue has denied the claim of concessional rate of tax to the assessee. Similar issue came up before us in the case of ***Kworks Technologies Private Limited Vs. DCIT [ITA No.5773/Del/2024]*** reported in ***[2025] 178 taxmann.com 61 (Delhi-Trib.).*** wherein the Co-ordinate Bench has held that assessee is entitled for concessional rate of tax in terms of section 115BAA of the Act even if Form 10-IC was filed delayed by placing reliance on the judgment of

various Benches of Tribunal. It is also a matter of fact that the return of income as well as Form 10-IC was filed by the assessee and were available when the assessment was completed. It is also a fact that due to Covid -19, the Hon'ble Supreme Court in terms of its order in Suo Motu Writ Petition (Civil) No.3 of 2020 extended all the limits up to 28th February, 2022 and in the instant case the Form 10-IC was filed by the assessee on 31.5.2021 which is much prior to the extended time limit by the hon'ble Apex court of 28.02.2022 thus, it could not be said that the said form 10-IC was filed belatedly.

20. In view of above facts and by respectfully following the judgements of hon'ble Supreme court extending the due dates during Covid-19 period and of the coordinate benches of Tribunal holding that delay in filing Form 10-IC is a procedure lapse, we hereby hold that assessee is entitled for the benefit of concessional rate of tax as provided u/s 115BAA of the Act. The grounds of appeal No.5 to 5.1 are thus allowed.

21. Ground of appeal No.6 is with respect to charging of tax @ 25 which is not pressed, thus dismissed.

22. Ground of appeal No.7 is with respect to levy of interest u/s 234B and 234C. The AO is directed to charge interest u/s 234B on the income finally computed after giving effect to the order of Tribunal and interest u/s 234C be charged on the income declared by the assessee in the return of income filed. Thus, this ground of appeal is partly allowed.

23. Ground No.8 with respect to penalty proceedings u/s 270A of the Act which is premature of the assesse and thus dismissed.

24. In the result, the appeal of the Assessee is partly allowed.

Order is pronounced in the Open Court 16.01.2026.

Sd/-	Sd/-
(MADHUMITA ROY)	**(MANISH AGARWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16.01.2026
PK/Ps

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

ASSISTANT REGISTRAR
ITAT NEW DELHI