

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA No.1150/MUM/2025
(Assessment Year: 2012-2013)**

**ITA No.1149/MUM/2025
(Assessment Year: 2013-2014)**

Shapoorji Pallonji and Company Private Limited

1st Floor, 41/44, S. P. Centre, Minoo Desai Marg,
Colaba, Mumbai - 400005. Maharashtra.
[PAN:AAACS6994C]

..... **Appellant**

Vs

**Deputy Commissioner of Income Tax,
Circle 3(3)(1), Mumbai**

(now transferred to Deputy Commissioner of
Income Tax, Central Circle – (3), Mumbai)
Room No.656, 6th Floor, Aayakar Bhavan,
Mumbai – 400020. Maharashtra

..... **Respondent**

**ITA No.1211/MUM/2025
(Assessment Year: 2012-2013)**

**ITA No.1217/MUM/2025
(Assessment Year: 2013-2014)**

**Deputy Commissioner of Income Tax,
Circle 3(3)(1), Mumbai**

(now transferred to Deputy Commissioner of
Income Tax, Central Circle – (3), Mumbai)
Room No.656, 6th Floor, Aayakar Bhavan,
Mumbai – 400020. Maharashtra

..... **Respondent**

Vs

**Shapoorji Pallonji and Company Private
Limited**

1st Floor, 41/44, S. P. Centre, Minoo Desai
Marg, Colaba, Mumbai - 400005.
Maharashtra.
[PAN:AAACS6994C]

Appellant

.....

Appearance

For the Appellant/Assessee

: Shri Rajan Vora, Shri Nikhil Tiwari
Ms. Palak Mehta

For the Respondent/Department

: Shri Ajay Chandra & Shri Pravin
Salunkhe

Date

Conclusion of hearing : 23.12.2025
Pronouncement of order : 23.01.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two set of cross-appeals pertaining to Assessment Years 2012-2013 and 2013-2014. Since the appeals involved common issues arising from identical factual matrix, the same were heard together and are, therefore, being disposed off by way of a common order.

[Assessment Year 2013-2014]

ITA No.1149/Mum/2025 [Assessee's Appeal]

ITA No.1217/Mum/2025 [Revenue's Appeal]

2. As consented by both the sides we would first take up Cross-appeals for the Assessment Year 2013-2014 which are directed against the Order, dated 23/12/2024, passed by the Commissioner of Income Tax (Appeals) – 58, Mumbai [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 07/02/2017, passed under Section 143(3) read with Section 144C(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'].

- 2.1. The Assessee has raised following grounds of appeal in ITA No.1149/Mum/2025 [Assessment Year 2013-2014] :

"Ground 1: Erroneous transfer pricing adjustment sustained by the Commissioner of Income-tax [Appeals]

- 1.1 *The learned Commissioner of Income-tax (Appeals)-58 erred, both in law and on the facts and in the circumstances of the case, in sustaining an upward adjustment to the extent of Rs. 76,21,361/- towards non-recovery of guarantee commission from Associated Enterprises ('AEs) in relation to issuance of performance guarantee and financial guarantee considering the same as International transaction.*

- 1.2 *The learned Commissioner of Income-tax (Appeals)-58 erred, both in law and on the facts and in the circumstances of the case, in not appreciating the fact that the issuance of performance guarantee and financial guarantee is an integral part of the construction/real estate industry in which the appellant operates and that the issuance of performance guarantee and financial guarantee is merely shareholder activity (i.e. stewardship activity) and is outside the scope of section 92 of the Income-tax Act, 1961.*
- 1.3 *The learned Commissioner of Income-tax (Appeals)-58 erred in disregarding the detailed submission of the appellant and judicial precedents to reject the contention that performance and financial guarantee are not covered under the definition of International Transaction as provided under section 92B of the Act.*
- 1.4 *The learned Commissioner of Income-tax (Appeals)-58 erred in not appreciating the fact that issuance of performance guarantee and financial guarantee, does not involve any cost to the appellant, nor does it have any bearing on profits, income, loss or assets of the appellant company, and therefore cannot be considered as an international transaction.*
- 1.5 *The learned Commissioner of Income-tax (Appeals)-58 erred in not appreciating the fact that issuance of financial guarantee provided by the appellant company to its AEs enables them to secure credit in their respective overseas jurisdiction and to comply with the laws, in those jurisdiction and that in absence of such locally sourced funding, the appellant would have to support its AE's business operations by providing funds through equity or otherwise. Accordingly, the learned Commissioner of Income-tax (Appeals) ought to have appreciated that the transaction of issuance of financial guarantee provided by the appellant company to its AEs can be said to be one of quasi-equity or shareholder activity, and it is in best interest of both AEs and the appellant to provide such financial guarantee.*
- 1.6 *The learned Commissioner of Income-tax (appeals)-58 erred in disregarding the Safe Harbour rules issued by CBDT which states that performance guarantee is not equivalent to corporate guarantee.*
- 1.7 *The appellant prays that the adjustment made in respect of non-recovery of commission from AEs on issue of performance guarantee and financial guarantee be deleted."*

Additional Ground of Appeal filed on 05/05/2025

2. *The learned Commissioner of Income-tax (Appeals)-58 erred in not passing the final assessment order dated 07 February 2017 within the time limit prescribed under provision of Section 153 of the Act which provides the outer time limit for passing the final assessment order and hence, the assessment proceeding is time barred and liable to be quashed.*

Additional supplementary ground of appeal filed on 18/09/2025

3. *The learned Commissioner of Income-tax (Appeals)-58 erred in not allowing deduction under Section 35DD of the Act amounting to Rs.12,79,23,980/- during the year under consideration without appreciating the fact that year under consideration was the last year i.e. 5th year of claiming deduction under Section 35DD of the Act.*
4. *without prejudice to the above, the entire amount of stamp duty expenses amounting to Rs. 12,79,23,980/- should be allowed as deduction under Section 43B of the Act in the year under consideration since it is the year of payment of stamp duty.*
5. *without prejudice to the above, the first year for deduction under Section 35DD of the Act should be considered as AY 2011-12 (i.e. year in which scheme was sanctioned by Hon'ble High Court), thus the last year would be AY 2015-16 and therefore, the Assessee may please be allowed 3/5 deduction in the year under consideration (i.e. Rs. 7,67,54,388/-) and 1/5th in subsequent years i.e. AY 2014-15 and AY 2015-16 ie. Rs. 2.55,84,796/- each year) and Lo AO may be directed accordingly;*
6. *without prejudice to the above, the Assessee may please be allowed 1/3rd of the said stamp duty expenses as deduction under Section 35DD of the Act (ie. Rs.4,26,41,327/- in each year) from year under consideration and subsequent years ie. AY 2014-15 and AY 2015-16 and Ld. AO may be directed accordingly;*
7. *without prejudice to the above, the Assessee may please be allowed 1/5th of the said stamp duty expenses as deduction under Section 35DD of the Act (Le. Rs. 2,55,84,796/- in each year) from AY 2011-12 (ie. year in which scheme was sanctioned by Hon'ble High Court) till AY 2015-16 and L.d. AO may be directed to allow the same in the aforesaid years ie. AY 2011-12 to AY 2015-16:*
8. *The learned Commissioner of Income-tax (Appeals)-58 erred in*

not allowing 3/5th of deduction under Section 35DD of the Act amounting to Rs.15,81,015/- during the year under consideration without appreciating the fact that year under consideration was the last year i.e. 5th year of claiming deduction under Section 35DD of the Act

9. *Without prejudice to the above, the Assessee may please be allowed 1/5th of the merger expenses as deduction under Section 35DD of the Act (i.e. Rs. 5,27,005/- in each year) from AY 2011-12 (i.e. year in which scheme was sanctioned by Hon'ble High Court) till AY 2015-16 and Ld. AO may be directed to allow the same in AY 2013-14, AY 2014-15 and AY 2015-16 (since in AY 2011-12 and AY 2012-13, 1/5th expenditure already claimed);*

2.2. The Revenue has raised following grounds of appeal in ITA No.1217/Mum/2025 [Assessment Year 2013-2014] :

- "1. *Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the disallowance of the claim for deduction under Section 35DD of the Income Tax Act, pertaining to expenses incurred for payment of stamp duty on immovable property which are capital in nature?*
2. *Whether on the facts and circumstances of the case the Ld CIT(A) was correct in deleting the adjustment to Rs. 4,47,73,850/-made on account of Letter of Comfort (LoC) issued by assessee to the Banks for the credit facilities being availed by its AEs from those Banks?*
3. *Whether on the facts and circumstances of the case decision of Ld. CIT(A) in holding that Letter of Comfort (LoC) does not constitute an agreement or contract was correct?*
4. *Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in holding that LoC can't be treated as equivalent to guarantees merely because they are not enforceable notwithstanding various consequences attached with it in case of failure to honour it?*
5. *Whether on the facts and circumstances of the case the Ld CIT(A) was correct in not appreciating the fact that the said transaction is covered u/s 92B of the Income Tax Act and thus Arm's Length Price was supposed to be calculated for the said transaction which was not done by the assessee?*
6. *Whether on the facts and circumstances of the case the Id. CIT(A) was correct in not appreciating the fact that by providing*

these letters of comfort to the banks by the assessee, the AEs have been benefitted in terms of obtaining credit facilities from Banks on better terms and thus they ought to have paid commission to the assessee for the same which was not done?

7. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is correct in relying on the decision in the case of Everest Kanto Cylinders Ltd., without appreciating certain important facts having bearing on the benchmarking such as;*
 - (i) *The quotation obtained by the Everest Kanto Cylinders Ltd., India (EKC India) was in respect of transaction of a guarantee obtained by the Indian entity having strong financials and asset base and not in respect of Everest Kanto Dubai- the foreign entity with weaker financial strength and thereby impacting the comparability in view of difference in credit rating of entities which admittedly form basis of guarantee rates/quotations*
 - (ii) *Not appreciating the fact that the EKC ruling is for A.Y. 2007-08, ignored the fact that entity obtaining loan in foreign jurisdiction for which EKC India stood as guarantor had lower credit rating.*
 - (iii) *That the starting point for benchmarking in the case of EKC was obtaining of bank guarantee quote by the EKC India, which was used for benchmarking corporate guarantee and therefore, it was not appropriate to hold that bank guarantee and corporate guarantee are different.*
 - (iv) *The decision in the case of Everest Kanto Cylinders Ltd., cannot be standard for every assessee as benchmarking for different assessee's is a factual exercise dependent upon number of factors including credit rating, financial strength, country of AE, attendant risks, etc.*
8. *Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in restricting commission of Rs. 5,67,32,905/- for corporate guarantee and performance guarantee @0.5% while relying on Everest Kanto decision without discussing & appreciating facts brought on record by TPO.*
9. *The appellant prays that the order of the CIT(A) on the above*

ground be set aside and that of the Assessing Officer be restored.”

3. The facts relevant for adjudication of Cross-Appeals pertaining to Assessment Year 2013-2014 are as follows. The Assessee is a domestic company primarily engaged in the business of civil construction, real estate, trading of construction materials and construction related services. For the Assessment Year 2013-2014, the Assessee filed Return of income on 29/11/2013 declaring 'Nil' income under normal provisions of the Act and Book Profit of INR.37,27,12,684/- under Section 115JB of the Act. The case of the Assessee was selected for scrutiny. During the course of assessment proceeding, the Assessing Officer noted that the Assessee had entered into International Transactions with its Associated Enterprises (AEs) Therefore, reference was made under Section 92CA(1) of the Act to the Transfer Pricing Officer (TPO) for determination of the Arm's Length Price (ALP) in relation to the International Transaction with its AE. Vide Order Sheet noting, dated 03/10/2016, the TPO raised queries regarding Guarantee Commission and the Assessee was asked to show cause as to why Guarantee Commission at the rate of 1.5% should not be charged on the guarantees given by the Assessee to its AEs. In response, the Assessee provided the following details of Letter of Comfort and Financial/Performance Guarantees provided by the Assessee to third parties on behalf of its AE's during the relevant previous year and filed submissions vide letter, dated 13/10/2016.:

A. Letter of Comfort [LOC]

SNo.	Name of AE	Guarantee extended to	Amount (INR)
A1.	Shapoorji Pallonji Mid East LLC	ICICI Bank, Bahrain	3,20,69,45,000
A2.		Emirates NBD Bank PJSC	1,40,40,26,500
A3.	Armada D1	Allahabad Bank - Hong Kong Branch	1,35,88,75,000

B. Financial Guarantee

SNo.	Name of AE	Guarantee extended to	Amount (INR)
B1.	Natural Oil Ventures Co. Ltd.	Exim Bank	51,56,60,000

C. Performance Guarantee

SNo.	Name of AE	Guarantee extended to	Amount (INR)
C1.	Shapoorji Pallonji Mid Qatar WLL	Barwa City Real Estate Company, WLL	1,00,86,12,280

4. The TPO noted that the Assessee had raised following contentions:
- Giving LOC/Guarantee by the Assessee on behalf of its AEs does not constitute an 'International Transaction'
 - The LOC/Guarantees provided were incidental to the business and in the nature of shareholder activity
 - Without prejudice to the above, it was contented that the arm's length commission to be charged by the Assessee from AEs should be determined in the range of 0.25% to 0.50%
5. The TPO, after considered the submissions made by the Assessee, concluded that the LOC/Guarantees given by the Assessee fell within the definition of term 'International Transactions' as contained in Section 92B of the Act read with Explanation thereto (inserted with retrospective effect from 01/04/2002). Thereafter, the TPO proceeded to determine the ALP of LOC/Guarantee Commission in respect of each of the LOC/Guarantees and concluded as under:

"7. *The computation of arm's length margin for Guarantee Commission is done as follows:*

Sr. No.	AE	Amount	Guarantee/ Cost Paid	Remarks
1.	Shapoorji Pallonji Mid East LLC	AED =7,50,00,000 Rs. 320,69,45,000	0.80% p.a. plus a Remarks non-refundable processing fee (Mentioned under points 8	The assessee has not provided the amount of processing fee paid. However, in the case of Exim Bank the assessee has paid a <u>processing fee of 0.50% plus taxes.</u> This is a good internal

			and 9 of the Master Facility Agreement with ICICI Bank)	CUP. Hence the arm's length margin of Guarantee Commission is fixed in this case as 0.80% plus 0.50% plus 0.20% (to cover the various applicable taxes and the risks associated with the transactions, like the credit risk etc).
2.	Shapoorji Pallonji Mid East LLC	AED=97,000,000 Rs 1,404,026,500	Details not available	As the details are not available, the arm's length guarantee commission in this case is held to be the average of the arm's length guarantee commissions charged in other international transactions of the assessee ie average of 1.5%, 0.66% and 0.70%, which comes to 0.95%
3.	Armada D1	USD = 25,000,000 Rs.1,358,875,000	Recovered @ 0.75% for FY 2012-13	Amount recovered based on costs charged by the banks. As direct internal CUP is available, this transaction is considered to be at ALP.
4.	Shapoorji Pallonji Mid Qatar WLL	1,008,612,280	Rs. Nil	The arm's length guarantee commission in this case is held to be the average of the arm's length guarantee commissions charged in other international transactions of the assessee ie average of 1.5%, 0.66% and 0.70%, which comes to 0.95%
5.	Natural Oil Ventures Co Ltd	515,660,000	One time guarantee commission of 0.50% of the Loan Facility plus service tax	The arm's length guarantee commission is held to be 0.50% plus 0.20% (to cover the various applicable taxes and the risks associated with the transactions, like the credit risk of the AE, currency and country risk etc.)
	Total (INR)	7,494,118,780		

8. In view of the above, the total adjustment with regard to Guarantee Commission is as under: `

Sr. No.	AE	Amount	Arm's Length Guarantee Margin	Amount of Adjustment
1.	Shapoorji Pallonji Mid East LLC	AED=59,000,000 Rs. 320,69,45,000	0.75%	24052088
2.	Shapoorji Pallonji Mid East LLC	AED=97,000,000 Rs 1,404,026,500	0.75%	10530199
3.	Armada D1	USD = 25,000,000 Rs.1,358,875,000	0.75%	10191563
4.	Shapoorji Pallonji Mid Qatar WLL	1,008,612,280	0.95%	4898770
5.	Natural Oil Ventures Co Ltd	515,660,000	0.70%	7060286
	Total (INR)	7,494,118,780		5,67,32,905

8.1 In view of above, an adjustment of Rs.5,67,32,905/- is proposed to the international transaction of the assessee."

6. Thus, vide order, dated 20/10/2016, passed under Section 92CA(3) of the Act, the TPO proposed Transfer pricing addition of INR.5,67,32,905/-. The Assessing Officer passed Draft Assessment Order, dated 16/12/2016, under Section 143(3) read with Section 144C(1) proposing the aforesaid Transfer Pricing Addition of INR. INR.5,67,32,905/-. The Assessing Officer also disallowed deduction of INR.12,95,04,995/- claimed by the Assessee under Section 35DD of the Act in the computation of income for the Assessment Year 2013-2014. Since the Assessee preferred not to file any objections before the Dispute Resolution Panel, the Assessing Officer passed the Assessment Order, dated 07/02/2017 under Section 143(3) read with Section 144C(3) of the Act making (a) Transfer Pricing Addition of INR.5,67,32,905/- and (b) Disallowance of INR.12,95,04,995/- as per Section 35DD of the Act.

7. In appeal preferred by the Assessee challenging the above additions/disallowance, the Learned CIT(A) vide Order, dated 23/12/2024, provided partial relief. The Learned CIT(A) deleted the Transfer Pricing Addition made in respect of LOC and the disallowance of INR12,95,04,995/- made by the Assessing Officer under Section 35DD of the Act. The Learned CIT(A) sustained the Transfer Pricing Addition in respect of Financial/Performance Guarantee to the extent of the following:

Particulars	Adjustment Sustained by Learned CIT(A)	Amount Sustained by Learned CIT(A) (in INR.)
LOC issued to bankers	Nil	Nil
Performance guarantee to third party customers	0.5% or actual cost incurred by assessee plus 10% markup	50,43,061
Financial guarantees to bankers	0.5% or actual cost incurred by assessee plus 10% markup	25,78,300
	Total	76,21,361

8. Now, both, the Revenue as well as Assessee are in appeal before this Tribunal being aggrieved by the above Order, dated 23/12/2024, passed by the Learned CIT(A).

Transfer Pricing Addition

Ground No.1.1 to 1.7 [Assessee's Appeal]

Ground No.2 to 8 [Revenue's Appeal]

9. Ground No. 1.1 to 1.7 raised by the Assessee as well as Ground No.2 to 8 raised by the Revenue pertains to Transfer Pricing addition. We have heard both the sides in relation to the transfer pricing additions and have perused the material on record. We have also taken into consideration the judicial precedents cited by both the sides to the extent the same were relevant to adjudication of issue before us.

Transfer Pricing Addition - Letter of Comfort (LOC)

10. It was contended on behalf of the Revenue that the Learned CIT(A) erred in holding that Letter of Comfort (for short '**LOC**') issued by the Assessee to third parties on behalf of its AE's did not fall into the definition of 'International Transactions' contained in Section 92B of the Act whereas it was contended on behalf of the Assessee that the Learned CIT(A) was justified in dealing with the Transfer Pricing Addition of INR.4,47,73,850/- made by the Assessing Officer in respect of LOC issued by the Assessee since the same did not have any bearing on the profit, income or assets of the Assessee. It was submitted that the three LOC under consideration did not create any binding legal commitment or obligation on the Assessee. Reliance in this regard was placed upon the decisions of the Tribunal in the case of the Assessee for the subsequent Assessment Years (i.e. Assessment Year 2014-2015, 2015-2016 and 2016-2017).
11. We have given thoughtful consideration to the rival submissions.
12. We note that the Assessee had provided following LOCs which were in effect during the relevant previous year:
 - (a) LOC to ICICI Bank, Bahrain in Financial Year 2008-09 which was continuing in the relevant previous year. The principle activity of Shapoorji Pallonji MidEast LLC, Dubai (for short '**SP Mid East**') was building construction. ICICI Bank, Bahrain had granted the non-fund based facilities to SP Mid East for completion of the huge construction projects. In relation thereto, the Assessee had issued LOC to ICICI Bank, Bahrain.
 - (b) LOC issued to Emirates NBD Bank PJSC during Financial Year 2011-12 for performance/advance payment/ retention guarantee facilities provided to SP Mid East. SP Mid East did not availed any loan/funds from the said Bank. However, it has availed non-fund based facility during the relevant previous

year.

- (c) LOC issued during the relevant previous year by the Assessee along with its joint venture partner - Armada D1 Pte Ltd. to Allahabad Bank (Hong Kong Branch) through Bank of India Singapore Branch.

13. The Assessing Officer treated the issuance of LOCs by the Assessee to third parties as International Transactions defined in Section 92B of the Act read with Explanation thereto. However, in appeal preferred by the Assessee, the Learned CIT(A) concluded that issuance of LOCs did not constitute international Transaction in the facts and circumstances of the present case. The findings returned by the Learned CIT(A) are as under:

"In the present case

The assessee has also placed reliance on the judgment of Asian Paints (ITA No. 2754/Mum/2014). In this case, the Hon. Tribunal has given finding on the basis of nature of 'letter of comfort'. In this case, as mentioned in Para 5 as per the terms of letter of comfort, the assessee was required to intimate the bank in the case of any disinvestment/divestment of shares.

The assessee has given unconditional undertaking that:

- 1. The assessee will continue to own at least 49% of AE's equity*
- 2. They will not transfer, assign, dispose off, place, charge or create any lien on these shareholdings.*
- 3. They will furnish details in agreed format every year.*
- 4. The bank can inspect the records of the assessee. In view of the above, it can be seen that assessee has merely given undertaking to not divest its shareholdings in the AE.*

In view of the above, it can be seen that assessee has merely given undertaking to not divest its shareholdings in the AE.

In view of the above, it is held that the arrangement between

assessee and its AE does not constitute an international transaction”.

14. On perusal of LOCs issued by the Assessee placed before us, we are of the view that findings returned by the Learned CIT(A) are consistent with the content of the LOCs. We note that while adjudicating cross-appeals in the case of the Assessee for the Assessment Year 2015-2016 and 2016-2017 [ITA No. 2026 & 2027/Mum/2021, Common Order dated 06/03/2025], the Co-ordinate Bench of the Tribunal had concluded that issuance of the LOC by the Assessee to ICICI Bank, Bahrain did not qualify as International Transaction in terms of Section 92B of the Act.

The relevant findings of the Tribunal are as under:

"30. The assessee has issued letter of comfort to ICICI Bank Bahrain in F.Y. 2007-08 which was continuing in the year under consideration for performance guarantee given by ICICI Bank to the construction parties of Shapoorji Pallonji Mid-East. The TPO has applied Comparable Uncontrolled Price (CUP) method using information called from various banks u/s 133(6) of the Act since there was no internal CUP available. Thereafter, considering the decision of Bombay High Court in the case of Everest Kanto and Mumbai ITAT in Glenmark Pharmaceuticals Ltd., the TPO has determined arm's length rate for performance guarantee at 1.16%. The Id. CIT(A) after considering the decision of Asian Paints of ITAT, Mumbai vide ITA No. 2754/Mum/2014 and CIT vs Everest Kento Cylinders Ltd. restricted the arm's length to the amount of Rs. 27,80,525/- after adopting rate of 0.2% of the investment blocked by the assessee. Before us, the assessee has placed reliance on the decision of ITAT, Mumbai in the case of the assessee itself for A.Y. 2014-15 vide ITA No. 2025/Mum/2021 and CO No. 55/Mum/2022 wherein it is held that letter of comfort is not international transaction. It is also held that letter of comfort given by the assessee on behalf of its AE does not come under the purview of an international transaction and the provisions also clearly excludes letter of comfort within the expression of international transaction. The assessee has also submitted that letter of comfort does not have bearing on the profit, income, assets or losses of the assessee and the same was of the nature of shareholder activity. It is also submitted that in the Safe Harbour Rules – Rule 10TA it is referred as under:

"(c) corporates guarantee means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short term or long term borrowing."

31. *The assessee has also referred the decision of ITAT, Mumbai in the case Tata International Ltd. vs ACIT (ITA No. 4376/Mum/2010 & Others) wherein it is held that in letter of comfort, the party issues only a letter that a subsidiary or group company would comply term of financial transaction and have no obligation to indemnify, also in the case of Asian Paints Ltd. vs CIT vide ITA No. 2754/M/2014 held that in the letter of comfort the only promise made by the assessee is, it will not made any disinvestment of the shares during the pending of the loan and there is no financial implication of the assessee. On the similar proposition, the assessee has also referred the decision of ITAT, Mumbai in the case of The Indian Hotels Co. Ltd. vs Addl. CIT vide ITA No. 371/Mum/2010 & Others). Looking to the above facts and findings, we consider that nowhere the TPO and the Id. CIT(A) establish that letter of comfort create any contractual financial obligation on the assessee company for only providing letter of comfort for keeping the investment in its holding company. Therefore, following the findings of the ITAT in the decisions as referred supra, the addition of Rs. 27,80,525/- is deleted. Accordingly, the grounds of appeal of Revenue are dismissed and grounds of appeal of the assessee are allowed."* (Emphasis Supplied)

15. During the course of hearing the Learned Departmental Representative had vehemently contended that above decision of Tribunal was not applicable; the LOCs contained terms having impact on the assets of the Assessee and therefore, the LOCs fell within the definition of 'International Transactions' contained in Section 92B of the Act. We find that the Co-ordinate Bench of the Tribunal had in the case of the Assessee for a subsequent assessment year (i.e. Assessment Year 2014-2015), accepted the contention of the Assessee that the LOC issued by the Assessee to ICICI Bank, Bahrain did not have bearing on the profit, income, assets or losses of the Assessee. It was held that issuance of LOC by the Assessee to ICICI Bank, Bahrain did not constitute an International Transaction. We find that LOCs before us are worded

similarly. There is nothing on record to persuade us to take a different view of the matter. Since the order of the Learned CIT(A) is in line with the decision of the Tribunal in the Assessee's own case for Assessment Year 2015-2016 and 2016-2017 [ITA No. 2026 & 2027/Mum/2021, Common Order dated 06/03/2025], we do not find any infirmity in the order passed by the Learned CIT(A) deleting Transfer Pricing Addition INR.4,47,73,850/- made in respect of LOC.

Transfer Pricing Addition – Financial/Corporate Guarantee

16. The Assessee had provided financial guarantee to Export Import Bank of India ('**EXIM Bank**') in respect of loan availed by AE of the Assessee [i.e. National Oil Ventures Limited ('**NOVL**')] from EXIM Bank. The aforesaid financial guarantee facilitated NOVL to finance its agricultural business carried on by its subsidiary in Ethiopia. The TPO/Assessing Officer treated the aforesaid transaction of granting financial guarantee by the Assessee as an International Transaction and made transfer pricing addition of INR.70,60,286/- holding that the Assessee should have charged commission at the arm's length rate of 0.70%¹. In appeal preferred by the Assessee, the Learned CIT(A) granted partial relief by directing the Assessing Officer to restrict the transfer pricing addition to (a) rate of 0.5% or (b) actual cost incurred by the Assessee plus 10% markup, whichever is more; and directed the Assessing Officer to delete the balance amount of transfer pricing adjustment made in respect of the Financial Guarantee. Both the Assessee and Revenue have challenged the aforesaid order of the Learned CIT(A).
17. We have heard both the sides on the issue under consideration and have perused the material on record.

¹ The arm's length guarantee commission is held to be 0.50% plus 0.20% (to cover the various applicable taxes and the risks associated with the transactions, like the credit risk of the AE, currency and country risk etc.) – [Paragraph 7 of the Transfer Pricing Order passed under Section 92CA(3) of the Act]

18. We note that in the case of the Assessee for the Assessment Years 2014-2015 to 2016-2017 the Tribunal has rejected the contentions of the Assessee that Financial/Corporate Guarantee transaction do not fall within the ambit of definition of term 'International Transactions' contained in Section 92B of the Act. Therefore, respectfully following the decision of the Tribunal in the case of the Assessee for the Assessment Year 2015-2016 and 2016-2017 [ITA No. 2026 & 2027/Mum/2021, Common Order dated 06/03/2025], we reject the identical submission made on behalf of the Assessee in the present appeal and decline to interfere with the order passed by the authorities below holding that the issuance of Financial Guarantee by the Assessee to EXIM Bank in respect of loan availed by its AE (NOVL) constitutes international transaction in terms of Section 92B of the Act read with Explanation thereto.
19. As regards determination of ALP for Financial/Corporate Guarantee transaction, the Tribunal restored the issue back to the file of TPO/Assessing Officer with certain directions. The relevant extract of decision of Tribunal in the Assessee's own case for the Assessment Year 2015-2016 and 2016-2017 [ITA No. 2026 & 2027/Mum/2021, Common Order, dated 06/03/2025] reads as under:

"15. Before us, the assessee submitted that issuance of financial guarantee is a general practice in the construction industry and it is provided by the parent company to reduce the risk of default by the subsidiary company executing the contract. The assessee also submitted that TPO has not considered the guarantee fees charged by the assessee which was kind of internal CUP available for the TPO. The assessee also submitted that TPO has not examined the various factors which were there before the TPO since the assessee was not in the business of banking and some of the factors considered by the banks were not applicable to the assessee. The assessee also submitted that transaction of giving a corporate guarantee was not an international transaction. The assessee also referred the various judicial pronouncements. In its alternative submission, the assessee submitted that guarantee commission to be restricted to 0.5% based on decision of Hon'ble Bombay High

Court in the case of CIT vs Everest Kento Cylinders Ltd. The assessee also referred various decisions of ITAT wherein after following the decisions of Hon'ble High Court/Tribunal, the guarantee commission was restricted to 0.5%. The assessee also submitted in its alternative claim that Mumbai ITAT in assessee's own case for F.Y. 2014-15 has remanded the matter back to the file of the TPO for the purpose of applying any of the prescribed method for determining the ALP.

16. *On the other hand, Id. DR objected the additional evidences filed by the assessee. The Id. DR also submitted that since there was no internal CUP available in the case of the assessee, therefore, the TPO has rightly applied external CUP method to determine the commission for the bank guarantee extended by the assessee for the purpose of associated enterprises.*
17. *Heard both the sides and perused the material on record. We find that Id. CIT(A) has restricted the rate of corporate guarantee to 0.5% or actual cost incurred by the assessee + 10% mark up after following the decision of Hon'ble Bombay High Court in the case of CIT vs Everest Kento Cylinders Ltd. (2015) 378 ITR 57 (Bom). However, the ITAT in assessee's own case for the A.Y. 2014-15 vide ITA No. 2025/Mum/2021 and C.O. No. 55/Mum/2022 has held as under:*

"31. From the above observation, we are of the considered view that the matter should be remanded back to the file of the Id. TPO for the purpose of applying any of the prescribed methods for determining the ALP of the international transactions only to the extent of the finance guarantee given by the assessee on behalf of its AEs. As the performance guarantee has already expired in 2013, there would not be any necessity to determine the ALP and, hence, we confirm the deletion made by the Id. CIT(A) on this ground. Hence, Ground Nos. 5 to 12 of the Revenue's appeal and the ground no.1 of the assessee's appeal are allowed for statistical purpose."

Therefore, following the decision of the ITAT this issue remanded to the file of the TPO for determining the ALP as directed in the said order. Accordingly, both the grounds of appeal of the Revenue and Assessee are allowed for statistical purpose. (Emphasis Supplied)

20. We note that the Learned CIT(A) has adopted identical approach for the Assessment Year 2013-2014 and has restricted the rate of

corporate guarantee commission to 0.5% or actual cost incurred by the assessee plus 10% mark up, whichever is higher, by placing reliance upon the decision of Hon'ble Bombay High Court in the case of CIT vs Everest Kento Cylinders Ltd. (2015) 378 ITR 57 (Bom). We note that in identical facts and circumstances prevailing in 2014-2015, the Tribunal had accepted the alternative contention of the Assessee by remanding the issue of determination of ALP back to the file of the TPO/Assessing Officer with direction to determine ALP by applying any of the prescribed methods. Taking note of the same, the Tribunal gave identical directions in appeal for the Assessment Year 2015-2016 and 2017-2018 [ITA No. 2026 & 2027/Mum/2021, Common Order, dated 06/03/2025]. Taking into consideration the parity in facts and respectfully following the decisions of the Tribunal in Assessee's own case for the Assessment Year 2014-2015, 2015-2016 and 2016-2017, we restore the issue of determination of ALP of Financial Guarantee transaction under consideration back to the file of TPO/Assessing Officer with the directions to determine ALP as per the directions given by the Tribunal in the case of the Assessee for the Assessment Year 2014-2015 (ITA No. 2025/Mum/2021 and C.O. No. 55/Mum/2022) reproduced hereinabove. In terms of aforesaid directions transfer pricing addition made in respect of financial guarantee commission is set aside.

Transfer Pricing Addition – Performance Guarantee

21. The Assessee had provided a Performance Guarantee to Shapoorji Pallonji Qatar WLL (for short '**SP Qatar**') for construction of Barwa City in Qatar. It is admitted position that the Performance Guarantee was issued based on the terms stipulated in the tender documents which stipulated that the contract was required to be backed by a Performance guarantee issued by the parent company. The TPO/Assessing Officer treated the aforesaid transaction of granting performance guarantee by the Assessee as an International

Transaction and made transfer pricing addition of INR.48,98,770/- holding that the Assessee should have charged commission at the arm's length rate of 0.95%². In appeal preferred by the Assessee, the Learned CIT(A) granted partial relief by directing the Assessing Officer to restrict the transfer pricing addition to (a) rate of 0.5% or (b) actual cost incurred by the Assessee plus 10% markup, whichever is more; and directed the Assessing Officer to delete the balance amount of transfer pricing adjustment made in respect of the Financial Guarantee. Both the Assessee and Revenue have challenged the aforesaid order of the Learned CIT(A).

22. During the course of hearing the Learned Authorised Representative for the Assessee had contended that issuance of performance guarantee did not constitute an international transaction under Section 92B of the Act. Reliance in this regard was placed upon the decision of Tribunal in the case of the Assessee for the Assessment Year 2015-2016 and 2017-2018 [ITA No. 2026 & 2027/Mum/2021, Common Order, dated 06/03/2025] and the decision of Co-ordinate Bench of the Tribunal in the case of Afcons Infrastructure Limited vs. Additional CIT [ITA No. 1135 & 1357/Mum/2014]. Per contra, the Learned Departmental Representative relied upon the order passed by the authorities and referred to the performance guarantee issued by the Assessee to contend that the issuance of performance guarantee constituted international transaction in the present case.
23. We have perused the decision cited on behalf of the Assessee and are of the view that the same were rendered in different set of facts and are not applicable to the present case. In all the decisions cited on behalf of the Assessee, it was held that the performance guarantee transaction did not qualify as international transaction

² The average of the arm's length guarantee commissions charged in other international transactions of the Assessee (i.e average of 1.5%, 0.66% and 0.70%) which comes to 0.95% [Paragraph 7 of the Transfer Pricing Order passed under Section 92CA(3) of the Act]

since the assessee issuing the performance guarantee was not subjected to any obligations. In this regard, we deem it appropriate to refer to the decision of the Tribunal in Assessee's own case for the Assessment Year 2015-2016 [ITA No. 2026/Mum/2021, Common Order, dated 06/03/2025] wherein while deleting the transfer pricing addition in relation to performance guarantee given by the Assessee to Qatar Perolem on behalf of is AE (i.e. SP Qatar) the Co-ordinate Bench of the Tribunal had held as under:

"25. The Revenue has not brought any material on record to controvert the fact that in case an associate enterprise failed to execute a contract then by invoking the performance guarantee issued by the assessee, the assessee would be executing the contract on its own by using its own fund without any requirement of paying any fees. Therefore, following the findings of the ITAT as laid down in the decisions cited supra in this order, we inclined with the submission of the assessee that no adjustment is required in respect of performance guarantee as discussed. Therefore, ground of appeal of the assessee is allowed and grounds of appeal of Revenue are dismissed"

24. On perusal of the above, it becomes clear that for the Assessment Year 2015-2016, the conclusion drawn by the Tribunal was pegged upon the fact that the Revenue had failed to bring any material on record to show that on failure of the AE to execute the contract, the Assessee was required to undertake the obligation to execute the contract using its own resourced. Whereas in the present case, bare perusal of the performance guarantee document placed before this Tribunal, it becomes clear that in case of failure of the AE to fulfil contract obligations, the Assessee would step into the shoes of the AE for performance of contract obligation and would be liable to indemnify the guarantee holder for any expenses, cost or losses suffered on account of the aforesaid failure of the Assessee. The relevant extract of the performance guarantee is set out herein under:

"Whereas

The 'Contract' to design, execute and complete certain Works and

remedy any defects therein as therein mentioned in conformity with the provisions of the said Contract for the Barwa City Phase 1, Package 3, The Amenities Zones for Barwa City. Barwa City Real Estate Company WLL (together with successors and assigns).

We have been informed that Shapoorji Pallonji Qatar, WLL whose registered office is at P.O. Box 22587, Doha, Qatar (hereinafter called the Contractor) had submitted an offer for such Contract in response to your invitation, and it has been agreed the Contractor requires his offer to be supported by a parent company guarantee.

In consideration of you, Barwa, having awarded the Contract to the Contractor, we the Guarantor irrevocably and unconditionally guarantee to you, as a primary obligation, the due performance of all the Contractors obligations and liabilities under the Contract, including the Contractors compliance with all its terms and conditions according to their true intent and meaning.

If the Contractor fails to so perform his obligations and liabilities and comply with the Contract, we will indemnify Barwa against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to Barwa under the Contract provided that the Guarantor's total liability shall not exceed 10% of the total lump sum contract full force and effect until 28th January 2013 or until all the Contractor's obligations and liabilities under the Contract have been discharged, whichever is earlier, at which time this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by Barwa and the Contractor from time to time. We hereby authorise them to agree any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by Barwa to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or Barwa, or by any other matters, whether with or without our knowledge or consent."

In view of the above, we reject the contention of the Assessee and confirm of the order passed by the CIT(A) holding that in the facts

and circumstances of the present case the issuance of performance guarantee by the Assessee to third party on behalf of its AE (i.e., SP Qatar) constituted international transaction in terms of Section 92B of the Act read with explanation thereto.

25. As regards determination of ALP for Performance Guarantee transaction is concerned we note that the Learned CIT(A) has merely followed the approach and reasoning adopt for determining ALP of financial guarantee transaction and has restricted the rate of performance guarantee commission to 0.5% or actual cost incurred by the assessee plus 10% mark up, whichever is higher. We have already rejected the aforesaid approach adopted by the Learned CIT(A) while adjudicating the issue of transfer pricing addition in respect of financial guarantee and have restored the issue back to the file of the TPO/Assessing Officer for determination of ALP afresh using one of the prescribed methods. Accordingly, we set aside the transfer pricing addition relating to Performance Guarantee made by the Assessing Officer with the directions to the Assessing Officer to recomputed the transfer pricing addition, if any, after determining arms length rate of performance guarantee commission in respect of the transaction under consideration as per the prescribed method keeping in view the terms of the performance guarantee including the cap on the maximum liability of the Assessee in terms of the same. Since we have restored the issue back to the file of the TPO/Assessing Officer, all the rights and contentions of the Assessee are left open.
26. Accordingly, in view of Paragraph 15, 20 and 25 above, (a) Ground No.1.1 and 1.6 raised by the Assessee is allowed for statistical purposes, (b) Ground No.1.2. to 1.5. raised by the Assessee are dismissed, (c) Ground No.1.7 raised by the Assessee is dismissed as being general in nature, (d) Ground No.2 to 6 raised by the Revenue are dismissed, (e) Ground No.7 raised by the Revenue is dismissed as having been rendered infructuous, and (f) Ground No. 8 raised by

the Revenue is allowed for statistical purpose.

Disallowance of deduction claimed under Section 35DD

Ground No.1 [Revenue's Appeal]

Ground No. 3 to 9 [Assessee's Appeal]

27. The facts relevant for adjudication of the issue under consideration are as follows. Composite scheme of arrangement was entered between the Assessee, Sterling Investment Corporation Pvt. Ltd., Cyrus Investments Ltd. Shapoorji Pallonji & Co (Rajkot) Pvt. Ltd. and their respective shareholders w.e.f. appointed date 01/04/2008 and which was sanctioned by the Hon'ble Bombay High Court on 06/07/2010.
28. In November 2012, the Assessee paid an amount of INR.25,00,00,000 as stamp duty pertaining to the aforesaid scheme of arrangement. Out of the aforesaid amount paid, the Assessee's share of expenses was INR.15,64,81,274/-. The balance amount was reimbursed to the Assessee by other companies which were part of composite scheme of arrangement. Out of the aforesaid stamp duty payment of INR.15,64,81,274/-, an amount of INR.12,79,23,980/- related to stamp duty paid in respect of immovable properties acquired under the aforesaid scheme was capitalized in the books of accounts during the relevant previous year. In the Computation of Income for the Assessment Year 2013-2014, the Assessee claimed deduction of INR.12,79,23,980/- under Section 35DD of the Act.
29. The Assessee had debited expenses pertaining to scheme of arrangement amounting to INR.26,35,025/- to the Profit & Loss Account in during the previous year relevant to Assessment Year 2011-12 and had claimed deduction for 1/5th of such expenses in Assessment Year 2011-12 and AY 2012-2013. The Assessee claimed deduction for the balance amount of INR.15,81,015/- [INR.26,35,025/- less INR.10,54,010/-] during the Assessment Year

2013-2014 under Section 35DD of the Act.

30. Thus, the Assessee claimed deduction of INR.12,95,04,995/- [INR.12,79,23,980/- plus INR.15,81,015/-] under Section 35DD of the Act.
31. The Assessing Officer disallowed the deduction claimed by the Assessee under Section 35DD of the Act observing that:
- (a) The expenditure is for paying stamp duty for registration of immovable properties on the name of the Assessee and not stamp duty for transfer of shares. Therefore, it is clearly capital in nature,
 - (b) Assessee itself admitted the fact that the expenditure is capital in nature and mentioned the same in notes to accounts;
 - (c) Assessee has claimed entire expenditure in current year which is not allowable as per Section 35DD of the Act,
 - (d) Assessee has offered to no explanation despite specifically asked during the course of assessment as to why this amount should not be added to the total income being not allowable as deduction.
32. Being aggrieved, the Assessee carried the issue in appeal before the Learned CIT(A). The Learned CIT(A) granted relief to the Assessee holding that the Assessee was entitled to claim deduction of INR.12,95,04,955/- under Section 35DD of the Act.
33. Being aggrieved, the Revenue has carried the issue in appeal before this Tribunal. The Assessee has also filed supplementary additional grounds vide letter dated 18/09/2025.
34. We have heard both the sides and have perused the material on record.
35. We note that Section 35DD of the Act was introduced by way of Finance Act, 1999 (with effect from 01/04/2020). Vide Circular

No.779, dated 14/09/1999, issued by Central Board of Direct Taxes (CBDT) the rationale behind introduction of amendments made in Provisions of the Act applicable in relation to amalgamation, demerger and slump sale was explained by the CBDT. As per Paragraph 56.4 (Clause xiii) of the said Circular Section 35DD was inserted to provide for amortisation of expenditure in case of amalgamation/demerger. Therefore, we are of the view that the deduction claimed by the Assessee cannot be denied solely on the ground that the expenditure related to amalgamation/merger as has been contended in Ground No.1 raised by the Assessee.

36. We note that Section 35DD provides for deduction of such expenditure in five successive previous years beginning with the previous year in which amalgamation or demerger takes place at one-fifth of the expenditure in each year and reads as under:

"35DD.(1)Where an assessee, being an Indian company, incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place"

37. Bare perusal of Section 35DD(1) of the Act makes it clear that in case an assessee (being an Indian Company) incurs expenditure wholly and exclusively for the purpose of amalgamation/demerger, then such assessee is allowed to claim deduction of an amount equal to $1/5^{\text{th}}$ of such expenditure for a period of 5 years from year in which amalgamation/demerger takes place. However, Section 43B of the Act provides for deduction for expenses (otherwise allowable) as per the provisions of the Act, on payment basis in the year of payment. Any sum payable by way of tax/duty under any law for the time being in force falls within the ambit of Section 43B(a) of the Act. During the course of hearing Learned Authorized Representative

for the Assessee had placed reliance upon the decision of Tribunal in the case of Mahyco Seeds Ltd. (merged with Maharashtra Hybrid Seeds Co. Ltd.), Mumbai vs. DCIT 1 (2), Mumbai [ITA No.2235/Mum/2016, Assessment Year 2005-2006, dated 11/08/2017] wherein the Hon'ble Tribunal has allowed the deduction claimed by Assessee under Section 35DD as allowable expenditure under Section 43B of the Act in the year of payment. Relevant extracts reproduced as under:

"Since the assessee has incurred expenditure which is in the nature of duty, cess or fees and such expenditure has been paid during the financial year relevant to AY 2005-06, the assessee is eligible for deduction towards such expenditure u/s 43B. We further observe that the AO himself has accepted that the said expenditure has been paid during the financial year relevant to AY 2005-06 but relatable to earlier year and disallowed in that year. It is not a case of AO that the expenditure has been allowed in the earlier year and further deduction during the current year would amount to double deduction. Since the expenditure incurred by the assessee is in the nature of expenditure referred to in section 43B which is allowable only on payment basis, the assessee has rightly claimed expenditure towards stamp duty paid on demerger. The CIT(A), without appreciating the facts, simply upheld additions made by the AO. Hence, we reverse the findings of the CIT(A) and direct the AO to allow expenditure claimed towards stamp duty paid on demerger u/s 43B of the Act."
(Emphasis Supplied)

38. In the present case, the Assessee had actually incurred the stamp duty expenses amounting to INR.12,79,23,980/- during the year under consideration for giving effect to the demerger by payment of stamp duty towards transfer of immovable property as per the scheme of amalgamation. There is no dispute that the relevant previous year falls within a period of 5 years specified under Section 35DD of the Act. The Assessee has not claimed deduction for stamp duty expenses of INR.12,79,23,980/- in earlier years. Therefore, respectfully following the above decision of the Tribunal we decline to interfere with the order passed by the Learned CIT(A) accepting Assessee's claim for deduction of INR.12,79,23,980/- under Section

35DD of the Act.

39. As regards deduction of INR.15,81,015/- allowed by the Learned CIT(A) is concerned, we are of the view that the Assessee was allowed to claim deduction only to the extent of 1/5th of the expenses of INR.26,35,025/- debited to the Profit & Loss Account during the year relevant previous year given the mandate of Section 35DD of the Act. The Assessee has not claimed deduction for the aforesaid expenses on actual payment basis. We do not find any merit in the contention advanced on behalf of the Assessee that since the relevant previous year would be the last year (of the 5 years specified in Section 35DD of the Act), the Assessee should be allowed to claim deduction of entire residual amount of INR.15,81,015/- not claimed by the Assessee in earlier years. In our view the aforesaid contention runs contrary to the mandate of Section 35DD of the Act which provides for deduction to the extent of only 1/5th of eligible expenditure over a period of 5 years from year in which demerger takes place. Therefore, we restore the disallowance made by the Assessing Officer under Section 35DD of the Act to the extent of INR.10,54,010/- and allow Assessee's claim for deduction to the extent of INR.5,27,005/-.
40. In view of paragraph 38 and 39 above, disallowance made by the AO under Section 35DD of the Act to the INR.10,54,010/- is restored. As regards the balance amount of INR.12,84,50,985/- allowed as deduction by the Learned CIT(A) we decline to interfere with the order passed by the Learned CIT(A) to the extent of such amount. Thus, Ground No. 1 raised by the Revenue is partly allowed.
41. In view of above, Ground No. 3, 5, 6, 7, 8 and 9 raised by the Assessee (*raised as Supplementary Additional Ground*) Assessee are dismissed and Ground No.4 (*also raised as Supplementary Additional Ground*) raised by the Assessee is Allowed.

Ground No.9 [Department's Appeal]

42. In view of above, above Ground No.9 raised by the Revenue seeking setting aside of the order passed by the Learned CIT(A) is partly allowed in terms of adjudication of Ground No.1 to Ground No. 8 raised by the Revenue herein above.

Ground No.2 [Assessee's Appeal]

43. By way of Letter dated 05/05/2025 the Assessee has also challenged the validity of Assessment Order on the ground the same is barred by limitation. No arguments were advanced by both the sides during the course of hearing. Therefore, the issue raised is the said ground are left open. In terms of aforesaid Ground No.2 raised Assessee is dismissed at this stage.
44. In result appeal preferred by the Assessee and Revenue for the Assessment Year 2013-2014 are partly allowed.

Assessment Year 2012-2013

ITA No.1150/Mum/2025 [Assessee's Appeal]

ITA No.1211/Mum/2025 [Department's Appeal]

45. We would now take up Cross-appeals for the Assessment Year 2012-2013 which are directed against the Order, dated 23/12/2024, passed by the Learned CIT(A) whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 20/04/2016, passed under Section 143(3) read with Section 144C of the Act.
46. The facts relevant for adjudication of Cross-Appeals pertaining to Assessment Year 2012-2013 are as follows. The Assessee is a domestic company primarily engaged in the business of civil construction, real estate, trading of construction materials and construction related services. For the Assessment Year 2012-2013,

the Assessee filed Return of income on 29/11/2012 declaring total loss of INR.1,30,64,21,515/- under normal provisions of the Act and Book Profit of INR.54,30,88,947/- under Section 115JB of the Act. Thereafter, the Assessee filed a revised Return of Income on 11/03/2014 declaring total loss of INR.1,30,64,21,515/- under normal provisions of the Act and Book Profit of INR.54,35,88,947/- under Section 115JB of the Act. The case of the Assessee was selected for scrutiny. During the course of assessment proceeding, the Assessing Officer noted that the Assessee had entered into International Transactions with its Associated Enterprises(AEs), therefore, reference was made under Section 92CA(1) of the Act to the Transfer Pricing Officer (TPO) for determination of the Arm's Length Price (ALP) in relation to the International Transactions with its AE. The TPO vide Order Sheet noting dated 03/12/2014 the TPO ask the Assessee about the details of guarantees provided by the Assessee to its AE's during the relevant previous year. In response the Assessee provided the following details:

D. Letter of Comfort

SNo.	Name of AE	Guarantee extended to	Amount (INR)
A1.	Shapoorji Pallonji Mid East LLC	ICICI Bank, Bahrain	2,12,53,31,620
A2.		Emirates NBD Bank PJSC	7,64,50,00,000

E. Standby Letter of Credit

SNo.	Name of AE	Guarantee extended to	Amount (INR)
B1.	Shapoorji Pallonji Libya JSC	Union Bank of India	69,22,02,600

F. Performance Guarantee

SNo.	Name of AE	Guarantee extended to	Amount (INR)
C1.	Shapoorji Pallonji Mid Qatar WLL	Barwa City Real Estate Company, WLL	94,51,15,600

G. Corporate Guarantee

SNo.	Name of AE	Guarantee extended to	Amount (INR)
D1.	Natural Oil Ventures Co. Ltd.	Exim Bank	50,87,00,000

47. Vide Order Sheet Entry dated 25/03/2015, the Assessee was asked to show cause as to why Guarantee Commission @1.5% should not be charged on the guarantees given by the Assessee to its AEs. In response the Assessee filed submissions vide letter dated 30/03/2015. The TPO noted that the Assessee had raised following contentions:

- (A) The transactions of Guarantee under consideration were not covered by the definition of International Transactions
- (B) The Guarantees provided were incidental to the business and in the nature of shareholder activity
- (C) Without prejudice, to the above, it was contented that the commission should be in the range of 0.25% to 0.50%

48. The TPO considered the submissions made by the Assessee and concluded that the guarantees under consideration fell within the definition of 'International Transactions' as contained in Section 92B of the Act read with Explanation thereto (inserted with retrospective effect from 01/04/2002). Thereafter, the TPO proceeded to determine the ALP of Guarantee Commission in respect of each of the guarantees and concluded as under:

"12. The computation of arm's length margin for Guarantee Commission is done as follows:

Sr. No.	AE	Amount	Guarantee/ Cost Paid	Remarks
1.	Shapoorji Pallonji Mid East LLC	AED 7,50,00,000 =104,25,000 Rs. 212,82,068 =Rs.1,08,28,31,62 0	0.80% p.a. plus a Remarks non-refundable processing fee (Mentioned under points 8 and 9 of the Master Facility Agreement with ICICI Bank)	The assessee has not provided the amount of processing fee paid. However, in the case of Exim Bank the assessee has paid a <u>processing fee of 0.50% plus taxes.</u> This is a good internal CUP. Hence the <u>arm's length margin of Guarantee Commission is fixed in this case as 0.80% plus 0.50% plus 0.20%</u> (to cover the various applicable taxes and the risks associated

				with the transactions, like the credit risk etc).
2.	Shapoorji Pallonji Mid East LLC	AED=550 Million = Rs 7,64,50,00,000	Details not available	As the details are not available, the arm's length guarantee commission in this case is held to be the <u>average of the arm's length guarantee commissions charged in other international transactions of the assessee ie average of 1.5%, 0.66% and 0.70%, which comes to 0.95%</u>
3.	Shapoorji Pallonji Libya JSC	Rs.69,22,02,600	Recovered @ 0.66% for FY 2011-12 (working provided below)	Amount recovered based on costs charged by the banks. As direct internal CUP is available, <u>this transaction is considered to be at ALP.</u>
4.	Shapoorji Pallonji Mid Qatar WLL	94,51,15,600	Rs. Nil	The arm's length guarantee commission in this case is held to be the <u>average of the arm's length guarantee commissions charged in other international transactions of the assessee ie average of 1.5%, 0.66% and 0.70%, which comes to 0.95%</u>
5.	Natural Oil Ventures Co Ltd	50,87,00,000	One time guarantee commission of 0.50% of the Loan Facility plus service tax	The arm's length guarantee commission is held to be 0.50% plus 0.20% (to cover the various applicable taxes and the risks associated with the transactions, like the credit risk of the AE, currency and country risk etc.)
	Total (INR)	11,91,63,49,820		

8. In view of the above, the total adjustment with regard to Guarantee Commission is as under: `

Sr. No.	AE	Amount	Arm's Length Guarantee Margin	Amount of Adjustment
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1.	Shapoorji Pallonji Mid East LLC	AED 7,50,00,000 =104,25,000 Rs. 212,82,068 =Rs.1,08,28,31,620	0.50%	3,18,79,974
2.	Shapoorji Pallonji Mid East LLC	AED=550 Million = Rs 7,64,50,00,000	0.95%	7,26,27,500
3.	Shapoorji Pallonji Libya JSC	Rs.69,22,02,600	0.66%	Nil
4.	Shapoorji Pallonji Mid Qatar WLL	94,51,15,600	0.95%	89,78,598
5.	Natural Oil Ventures Co Ltd	50,87,00,000	0.70%	35,60,900
Total (INR)		11,91,63,49,820		11,70,46,972

14 *In view of above, an adjustment of Rs.511,70,46,972/- is proposed to the international transaction of the assessee."*

49. Thus, vide order, dated 06/11/2015, passed under Section 92CA(3) of the Act, the TPO proposed Transfer pricing addition of INR.11,70,46,972/-. The Assessing Officer passed Draft Assessment Order, dated 22/02/2016, under Section 143(3) read with Section 144C(1) proposing, inter-alia, the above Transfer Pricing Addition. Since the Assessee preferred not to file any objections before the Dispute Resolution Panel, the Assessing Officer passed the Assessment Order, dated 20/04/2016 under Section 143(3) read with Section 144C(3) of the Act. After making the aforesaid Transfer Pricing Addition the Assessing Officer assessed total loss for the Assessment Year 2012-2013 at INR.97,94,04,731/- under normal provisions of the Act and Book Profits at INR.60,20,41,406/- under Section 115JB of the Act.

50. Aggrieved by the Assessment Order, the Assessee preferred appeal before the Learned CIT(A). The Learned CIT(A) vide Order, dated 23/12/2024, provided partial relief in respect of the transfer pricing adjustment. The Learned CIT(A) deleted the Transfer Pricing

Addition of INR.10,45,07,474/- made by the TPO in respect of Letter of Comfort issued by the Assessee to its AEs. The Learned CIT(A) also provided relief to the Assessee by restricting the addition made in respect of Performance Guarantee and Corporate Guarantee given by the Assessee to its AEs to INR.47,25,578/- (as against INR.89,78,598/-) and INR.25,43,500/- (as against INR.35,60,900/-), respectively. Thus, the Learned CIT(A) sustained Transfer Pricing Addition to the extent of INR.72,69,078/- as against INR.11,70,46,972/- made TPO/Assessing Officer.

51. Now, both, the Revenue as well as Assessee are in appeal before this Tribunal being aggrieved by the above Order, dated 23/12/2024, passed by the Learned CIT(A).
52. We note that Grounds raised in the present Cross-Appeals are identical to those raised in Assessment Year 2013-2014
53. During the course of hearing both the sides made submissions identical to those made in relation to grounds raised in Cross-Appeals for the Assessment Year 2013-2014. Both the sides had agreed that our finding/adjudication on the grounds raised in Cross-Appeals for the Assessment Year 2013-2014 shall apply mutatis mutandis to grounds raised in Cross-appeals for the Assessment Year 2012-2013. Accordingly, keeping in view identical facts and circumstances, and adopting the reasoning given while adjudicating ITA No.1149/Mum/2025 [Assessee's Appeal] and ITA No.1217/Mum/2025 [Department's Appeal] for the Assessment Year 2013-2014 hereinabove, we proceed to adjudicate grounds raised by the Assessee/Revenue for the Assessment Year 2012-2013.

Transfer Pricing Addition

Ground No. 1.1 to 1.7 [Assessee's Appeal]
Ground No.1 to 8 [Revenue's Appeal]

54. Ground No.1.1 to 1.7 raised in the appeal preferred by the Assessee are identical to Ground No.1.1 to 1.7 raised in Assessee's Appeal for Assessment Year 2013-2014 (ITA No.1149/Mum/2025). Similarly Ground No. 1 to 8 raised in the appeal preferred by the Revenue are identical to Ground No. 2 to 9 raised in Revenue's Appeal for Assessment Year 2013-2014 (ITA No.1217/Mum/2025).
55. In view of adjudication of identical grounds raised in appeal for the Assessment Year 2013-2014 herein above, we uphold the order passed by the Learned CIT(A) deleting the Transfer Pricing Adjustments of INR.10,45,07,474/- made by the Assessing Officer/TPO in respect of LOC whereas the Transfer Pricing adjustments made in respect of Financial/Corporate Guarantee and Performance Guarantee are set aside with directions identical to those given while disposing identical grounds (Ground No.1.1 to 1.7 raised by the Assessee and Ground No.2 to 8 raised by the Revenue) raised in appeal for the Assessment Year 2013-2014 hereinabove.
56. Accordingly (a) Ground No.1.1 and 1.6 raised by the Assessee are allowed for statistical purposes, (b) Ground No.1.2. to 1.5. raised by the Assessee are dismissed, (c) Ground No.1.7 raised by the Assessee is dismissed as being general in nature, (d) Ground No.1 to 5 raised by the Revenue are dismissed, (e) Ground No.6 raised by the Revenue is dismissed as having been rendered infructuous, and (f) Ground No. 7 raised by the Revenue is allowed for statistical purpose.
57. In view of the above, Ground No. 8 raised by the Revenue is partly allowed.

Disallowance of deduction claimed under Section 35DD
Ground No. 3 & 4 [Assessee's Appeal]

58. Since we have confirmed the order passed by Learned CIT(A)

accepting Assessee's claim for deduction of INR.12,79,23,980/- under Section 35DD of the Act while adjudicating Ground No.1 raised by the Revenue in appeal for the Assessment Year 2013-2014 above, Ground No.3 and 4 raised by the Assessee are dismissed as having been rendered infructuous.

Ground No.2 [Assessee's Appeal]

59. By way of Letter dated 05/05/2025 the Assessee has also challenged the validity of Assessment Order on the ground the same is barred by limitation. No arguments were advanced by both the sides during the course of hearing. Therefore, the issue raised is the said ground are left open. In terms of aforesaid Ground No.2 raised Assessee is dismissed at this stage.
60. In result appeal preferred by the Assessee and Revenue for the Assessment Year 2012-2013 are partly allowed.
61. In conclusion all the 4 appeals are partly allowed.

Order pronounced on 23.01.2026.

Sd/-
(Jagadish)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :23.01.2026
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai