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

BEFORE SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.5741/Del/2024
[Assessment Year : 2021-22]

M/s. K.R. Pulp & Papers Ltd., 304, Roots Tower District Centre, Laxmi Nagar, S.O. East Delhi, Delhi-110092. ***PAN-AAACK5816C***	vs	ACIT Central Circle-19, Delhi
APPELLANT		**RESPONDENT**

Appellant by	Shri Lalit Mohan, Adv. & Shri Ankit Kumar, Adv.
Respondent by	Shri Dharam Veer Singh, CIT DR
Date of Hearing	07.04.2026
Date of Pronouncement	03.07.2026

ORDER

PER MANISH AGARWAL, AM :

The captioned appeal is filed by the assessee against the assessment order dated 25.10.2024 passed by DCIT, Central Circle-19, Delhi u/s 143(3) r.w.s. 144C of the Act after the directions of Ld. Dispute Resolution Panel-2, New Delhi ("DRP") dated 25.09.2024 pertaining to assessment year 2021-22.

2. Brief facts of the case are that the appellant is a public limited company and engaged in the business of manufacturing of Kraft paper as well as writing and printing papers. The return of income was filed on 01.03.2022, declaring total income of INR

20,34,68,350/-. The case of the assessee was selected for scrutiny by issue of notice u/s 143(2) dated 27.06.2022 thereafter, a reference was made to TPO on 23.08.2022. The TPO vide its order dated 31.10.2023 has proposed the adjustment of INR 26,83,98,808/- by reducing the sale price of power transferred from eligible units to non-eligible units and further proposed the adjustment of INR 44,87,06,477/- being reduction in sale price of steam transferred to eligible unit to non-eligible unit. Thereafter, the draft assessment order was passed on 28.12.023 wherein the total income was proposed to be assessed at INR 49,75,97,516/- as the assessee has claimed u/s 80-IA of INR 29,39,99,356/- on the profits from sale of power and steam from the eligible unit to non-eligible unit which was determined at NIL by the TPO.

3. Against the said order, the assessee filed objections before Ld. DRP who vide its order dated 25.09.2024 has directed to add mark up of 30% to the average rate of electricity of INR 2.84 per unit at IEX. After incorporating the directions of Ld. DRP, the AO passed the final assessment order u/s 143(3) r.w.s. 144C of the Act on 25.10.2024 wherein the adjournment on account of sale price of power was reduced to INR 21,38,02,792/- and adjustment on account of reduction in sale of price of INR 44,87,06,74/- however, since the assessee has claimed deduction u/s 80-IA of the Act on such transfer, therefore, by taking the said profit at NIL, the AO has disallowed the deduction u/s 80IA and assessed the total income at INR 49,75,97,516/-.

4. Against the said order, the assessee is in appeal before the Tribunal by taking various Grounds of appeal mentioned in the appeal memo.

5. In the **Ground of appeal No. 5**, assessee has challenged the final assessment order passed u/s 143(3) r.w.s. 144C(13) of the Act as barred by limitation by placing reliance on the judgement of Madras High Court in the case of ***CIT vs Roca Bathroom Products Pvt. Ltd.*** reported in ***[2022] 445 ITR 537 [Mad.]***. Thereafter, vide letter dated 03.03.2026, the assessee has withdrawn **Ground of appeal No.5** taken on the limitation issue, therefore, the ground of appeal No. 5 of the assessee is dismissed.

6. **Ground of appeal No.1** is general in nature, hence not adjudicated.

7. **Ground of appeal No.2** is with respect to not allowing the deduction u/s 80IA (4) of INR 29,39,99,356/- on the profits from transfer of power and steam from eligible unit to non-eligible unit. **Ground of appeal No.3** is with respect to the adjustment of INR 21,38,02,792/- of sale of power by eligible unit to non-eligible unit where the appellant has computed the sale value on the basis of price charged by Madhyanchal Vidyut Vitran Nigam Limited ("MVVNL") and **Ground of appeal No.4** is with respect to adjustment of INR 44,87,06,747/- to the sale price of steam transfer from eligible unit to non-eligible unit.

8. At the outset, Ld.AR submits that all these three issues have already been considered and decided by the Co-ordinate Bench of Tribunal in assessee's own case for AY 2017-18 & 2020-21 in ITA No. 755/Del/2022 and ITA No.4456/Del/2024 respectively, vide order dated 04.07.2025. Ld. AR drew our attention to the judgment of Co-ordinate Bench wherein the Co-ordinate Bench has followed the judgment in the case of assessee for previous year and further by following the judgment of Hon'ble Supreme Court in the case of ***CIT vs Jindal Steel & Power Ltd.*** reported in ***[2023] 157 taxmann.com 207 (SC)*** and also the judgment of Hon'ble Jurisdictional High Court in the case of ***Pr.CIT vs DCM Shriram Ltd. in ITA No.566/2023*** vide order dated ***02.05.2024*** has held that the assessee has rightly computed the sale price of power from eligible unit to non-eligible unit on the basis of price charged by MVVNL to industrial consumer as the sale value for transfer of electricity from eligible unit to non-eligible unit and entitled for deduction u/s 80IA(4) of the Act. The ld. AR thus prayed that all the issues being identical and are squarely covered by the judgments of Hon'ble Supreme Court; Hon'ble High Courts and Co-ordinate Bench, therefore, the adjustment made by the AO/TPO be deleted and deduction u/s 80IA of the Act be allowed to the assessee.

9. Per contra, Ld. Sr. DR for the Revenue vehemently supported the orders of the lower authorities and submits that the facts and circumstances are different from the previous year and further field a detailed written submission in this regard wherein the main

contention of the Revenue is based on the judgment of Co-ordinate Bench of Hyderabad Tribunal in the case of ***Sanghi Industries Ltd. vs DCIT*** reported in ***[2025] 170 taxmann.com 716 (Hyd.Trib.)*** wherein the Tribunal has rejected the said electricity utility as a suitable comparable on account of different FAR. The Revenue also challenged the application on the judgment of Hon'ble Supreme Court in the case of ***CIT vs Jindal Steel & Power Ltd.*** reported in ***[2023] 460 ITR 162 (SC)*** by taking plea that there is an amendment in section 80A where sub-section (vi) is inserted with respect to the definition of "market value". The ld. CIT DR further requested to file the written submission on these issues which is reproduced as under for ready reference:-

The above appeal was heard by Hon'ble Bench on 07.04.2026. During the course of hearing, detailed oral arguments were made by the undersigned in respect of the issue of determination of Arm's Length Price for Specified Domestic Transactions (SDTs) of the nature of Transfer of Electric Power and Steam Generated in Power Generating Unit (eligible unit) to Paper Manufacturing Unit (Non-eligible Unit). The Hon'ble Bench had given liberty to file a submission incorporating points of the arguments made during the course of hearing.

Accordingly, following written submission is being made, which may kindly be taken into consideration while adjudicating the above appeal.

2. The Ld. Transfer Pricing Officer has made following Transfer pricing adjustment (TP adjustment) in respect of the above mentioned Specified Domestic Transaction (SDT).

Nature of SDT	ALP determined by the Assessee (INR)	ALP determined by the TPO (INR)	T.P. Adjustment made (INR)
Transfer of Electric Power Generated in Power Generating Unit (eligible unit) to Paper	45,03,85,526	18,19,86,718	26,83,98,808

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Manufacturing Unit (Non-eligible Unit)			
Transfer of Steam Generated in Power Generating Unit (Eligible unit) to Paper Manufacturing Unit (Non-eligible Unit)	44,87,06,747	NIL	44,87,06,747

3. **Defects in Economic Analysis/benchmarking done the Assessee in its Transfer Pricing Study Report (TPSR) :**

The TPSR filed by the Assessee is at page no 168 to 200 of the Paper Book-1. 3.1. As per TPSR, the assessee has chosen Comparable Uncontrolled Price (CUP) method as Most Appropriate Method (MAM) for determination of ALP of both Specified Domestic Transactions (SDTs). For SDT of Transfer of Electric Power, the Assessee has chosen the electric rate charged by Madhyanchal Vidyut Vitran Nigam Limited (MVVNL) to its consumers. With regard to transfer of Steam, the assessee has taken cost of steam as ALP.

After perusal of the TPSR, following defects are noted in the economic analysis, which is forming part of the TPSR at Paper Book-1 Page No. 187-192 (TPSR Page No. 20 to 25) with regard to determination of Arm's Length Price (ALP) for above mentioned SDTs.

3.1 Firstly, it is evident from perusal of TPSR that the Assessee has not chosen any Tested Party, while determining ALP for any of the above mentioned Specified Domestic Transaction. This deficiency was highlighted during the course of hearing and on specific query from the Hon'ble Bench, the Ld. AR was not able to explain the same.

3.2. Since no tested party has been chosen, it is not known with whom the price for electricity charged by comparable chosen by the assessee i.e. MVVNL is being compared by using CUP. Under T.P. Laws, the economic analysis (manner of determination of ALP i.e. choice of comparables, adjustments needed for comparables etc.) changes based on the choice of tasted party.

3.3 The assessee has not carried out any comparison of FAR (functions performed, assets employed and risk assumed) with regard to tested party and comparables at all in its TPSR showing contravention to provisions of I.T. Rule 10B, 10C etc. and raising serious questions about suitability of comparables (MVVNL) selected by the assessee.

3.4 In respect of SDT of transfer of electric power, most appropriate method used by the assessee is CUP, which requires strict comparability. FAR of the Assessee and MVVNL, a State electricity corporation selected as a comparable are very different to each other in term of nature and scope of functions performed, assets employed and risk assumed. In respect of functions performed, MVVNL carries out functions relating to electricity distribution, maintenance of power infrastructure, customer services, billing, and the implementation of energy audit regulations among other functions, whereas the power generating unit of assessee has main function of generation of power and distribution of power would not form its significant function. There is also major difference between the two in respect of scale of operations and the distribution network, assets put to use, cost incurred towards such assets to carry out transactions. From the point of view of risk assumed too, power generating unit of the assessee is a captive supplier having to bear minimal risk while MVVNL has to bear all business related risks. This vast difference in FAR profile is also reflected from the electricity charges charged by a MVVNL, which has built in components of fixed charges, regulatory charges, electricity duty, surcharge, cross subsidy etc., which are not similar to what a captive power supplier would ask for from its customer. In this regard, reliance is placed upon decision of **Hon'ble ITAT, Hyderabad in the case of Sanghi Industries Limited (2025) 170 Taxmann.com 716 (Hyd-Trib.),** where Hon'ble Tribunal had rejected the State Electricity utility as suitable comparable on account of different FAR, observing as under:

> "34. From the reading of the provisions of the Electricity Act, National Electricity Policy and National Tariff Policy, it is clear that the tariff determined by the State Regulatory Commission is dependent upon various factors like purpose of electricity, usages of electricity, time of electricity (time of day tariff), type of industry, supply of voltage, power factor, cross subsidy for domestic as well as agriculture user, welfare of the employees of the utility by making provision for health, education and post retirement benefits, further to abide by the direction of the State Government etc. For the above said reasons, the electricity

tariff charged by the State distribution utility cannot be compared with the tariff charged by the assessee for supplying the electricity to itself.

35. In view of the above, we are of the opinion that due to the functions performed, asset employed and the risk assumed by the State Utility were materially different than that of the assessee power generator, we do not find that the State Utility is comparable with the power generator of the assessee. Needless to say for the purpose of comparing the transaction of a third party with the assessee under the comparable uncontrolled price (CUP) method, it is necessary though the transaction should be parametria similar to each other with no difference in FAR and analysis…."

In view of the above, either MVVNL can not be considered as suitable comparable under CUP or adjustment would be required to be made to the electricity price charged by it to factor in the difference in FAR as per mandate of Rule 10B of I.T. Rules. Without such adjustment, MVVNL electricity rates can not act as comparables for CUP method in this case. Further, for making any such adjustment, complete details of such charges charged by MVVNL and legible copies of bills will be required, which have not been supplied by the assessee. If adjustment is not possible, then some new comparables would be required to be chosen or most appropriate method would be required to be changed. These all aspects make benchmarking of SDT of electric power supply defective.

3.5 Further, as highlighted during the course of hearing, the page no 379 to 391 of Paper Book, which are electricity bills of MVVNL, which has been chosen as a comparable by the Assessee, are not found to be legible at all. As result of the same, amount charged by the MVNNL under different heads can not be ascertained from said bills.

3.6 It is to be noted that for benchmarking of transfer of steam, no comparable has been chosen by the Assessee despite the claim that CUP has been chosen as MAM. Once no comparable has been chosen, CUP fails. It is further noted that on Page 24 of the TPSR, it is clearly mentioned by the Assessee that 'other method' has not been used since CUP has been found to be MAM. It has been held in catena of decision that for use of CUP as MAM, comparable is must. Hence, entire benchmarking exercise of the assessee with regard to transfer of steam fails on this count itself and will require reworking.

Further, in TPSR there is no mention of the manner and computation by which cost of steam transferred to the non-eligible unit has been worked out. Such working would require quantum and heat value of steam consumed in paper unit (non-eligible unit) **on actual basis** and per unit cost of generation. During the course of hearing, the Ld. A.R. did not furnish or point out any such working despite absence of detailed working from records having been highlighted before Hon'ble Bench by the undersigned during the course of hearing.

On the issue of determination of ALP for transfer of steam, it is pertinent to note that cost of steam transferred to non-eligible unit can not be worked out by multiplying entire cost of production of steam with cost factor (ration of cost of steam allocable to non-eligible unit) since working of cost factor (73.28% in the present case) is made based on the presumption that entire steam coming out of the power generation unit (and corresponding heat value of such steam) gets fully utilized in the paper manufacturing unit/processing unit. This is highly improbable scenario as steam entering the paper manufacturing unit will be regulated by the engineers/technical teams of the unit based on actual requirement of the such unit. In a co-generation plant, it is not the case that entire heat associated with steam coming out of power plant gets utilized in the processing plant. Co-generation plants are designed by providing multiple options/exit options to regulate the consumption of the steam (flowing from power plant to processing plant) in such a manner that only that much heat associated with steam is put to use in the processing plant, which is the actual requirement at that point in time. Hence, any heat associated with steam remaining unutilized in the processing plant or not needed to be routed to processing plant after coming out of power plant is not wasted, and instead routed in a manner that it goes to reduce re-heating requirement of steam needed for the power plant. As such, there is always some residuary heat value left in steam coming out of processing unit, which remains to be considered while working out cost factor. Further, some loss in heat value of steam during the transfer of steam from power generation plant to processing plant can not be ruled out. Such loss would also affect the working of cost factor.

Hence, total consumption of heat value of steam in paper manufacturing unit and power generating unit have to be worked out based on actual consumption of heat value of steam in these units and after that total cost of generation of steam need to be divided among power generating unit and paper manufacturing unit based on ration of such actual consumption. Working out ration just based on value of enthalpy of steam entering and exiting power plant and paper plant will

provide incorrect outcome ballooning the cost of steam transferred to paper manufacturing unit unjustly.

It is pertinent to note that the assessee has not submitted any report from chartered engineer or its technical team which could have shown the actual quantum of steam and heat consumed by the paper manufacturing unit on **actual basis and its ration vis-à-vis total quantum of steam generated and heat value associated with it**. In absence of such actual consumption reports for the relevant previous year, it is not feasible to work out the cost of the steam which can be attributed to paper manufacturing unit and for which assessee would be eligible for deduction. There is no such detailed working on actual consumption basis given either in TPSR or submitted by the Ld. AR during the course of hearing.

Hence, even if cost of steam transferred to non-eligible paper manufacturing unit may not be NIL, there is need to work out cost of steam transferred to non-eligible paper manufacturing unit on the basis of actual consumption of heat value associated with steam in paper manufacturing unit and power generating unit on the lines mentioned above instead of merely using enthalpy values since enthalpy based methos does not reflect correct picture of consumption.

4. **Reliance placed by the Assessee on the judgement of Hon'ble Supreme Court in the case of Jindal Steel and Power Ltd., 460 ITR 162 (SC) is misplaced in light of amendment made to section 80A of the Act by way of insertion of sub-section (6) with respect to definition of expression 'Market Value' w.e.f. 01-04-2009**. The said judgment in the case of Jindal Steel and Power Ltd dealt with assessment year 2001-02 and as noted by Hon'ble S.C. in para 33 of its judgement, amended definition of 'market value' was not applicable in that case.

As per amended provision of the section 80A(6), 'market value' in respect of a Specified Domestic Transaction would mean Arm's Length Price as defined in clause (ii) of section 92F of the Act. Further, as per section 92C of the Act, arm's length price needs to be determined as per most appropriate methods out of the six methods prescribed in the said section. As a result, in the present case, market value of goods supplied (i.e. electricity supplied by eligible unit to non-eligible unit) is required to be computed as per 'most appropriate method' out of the six methods prescribed in section 92C of the Act and in turn, such 'most appropriate method' is required to be applied in the manner prescribed in Rule 10B(1) , 10B(2) and 10B(3) of the I.T. Rules. Selection of 'most

appropriate method' is to be done as per Rule 10C. These rules lay down detailed manner and prescribe need for FAR analysis i.e. comparison of functions performed, assets employed and risk assumed between the parties involved in concerned SDT and uncontrolled transaction. Further, there are adjustments also required to be made to account for material differences between the two. Thus, post 01-04-2009, there are specific machinery provisions prescribed for determining market value in respect of a SDT. This was not the situation with the case of Jindal Steel and Power Ltd (Supra). Therefore, ratio of judgment of Hon'ble Supreme Court in the case of Jindal Steel and Power Ltd., 460 ITR 162 (SC) would not be applicable to the present case.

Now coming to point as to whether the assessee has determined 'market value' of electricity supplied by way of using the provisions dealing with computation of ALP (i.e. Rule 10B, 10C etc.) or not, it needs to be noted that even though Assessee has chosen CUP as most appropriate method,

(i) there is no tested party chosen.

(ii) there is no comparison of FAR between tested party and comparable i.e. MVVNL carried out.

(iii) there is no adjustment made to price charged by MVVNL to account for difference with regard to functions performed, assets employed and risk assumed by the parties to the transaction.

Thus, Benchmarking exercise carried out by the assessee in its Transfer Pricing study clearly reflects violation of provisions of Rule 10B of the I.T. Rules.

5. The case laws relied upon by the assessee, including order of Hon'ble Tribunal in the case of the assessee for A.Y. 2017-18 and 2020-21 do not support the case of the assessee for the instant year on account of distinguishable facts, particularly defects in benchmarking of SDTs carried out by the Assessee in its TPSR for instant year as highlighted above. Such defect don't find mention in case laws and earlier year's order relied upon by the Assessee. Hence, present appeal involves distinguishable facts, which need to be addressed while adjudicating it in accordance with Special bench decision in the case of Aztec Software & Technology Services Ltd. [2007] 162 Taxman 119 (Bangalore - Trib.) (SB), which is discussed in subsequent paras.

6. **To summarize, entire benchmarking exercise of the Assessee as given in the TPSR filed by the Assessee is defective and can not relied upon to arrive at any just and reasonable conclusion** with regard to determination of Arm's length Price of transfer of steam to non-eligible unit. With regard to transfer of steam, if Hon'ble Bench is of the considered view that transferred steam can not valued at NIL, the entire benchmarking exercise for transfer of steam will require reworking based on actual consumption basis as discussed above. Hence, in that case, the issue may be set aide to the TPO/AO for fresh determination of ALP for transfer of steam based on actual consumption basis. Similarly, the benchmarking of transaction of transfer of electric power done by the Assessee suffers many deficiencies as discussed above right from absence of tested party to choice of comparable to lack of FAR analysis and lack of required adjustments. Hence, in case, Hon'ble Bench find benchmarking approach of TPO unjustified, matter will be required to be set aside to the AO/TPO for fresh benchmarking of SDT of transfer of electric power in view of severe deficiencies in Assessee's benchmarking too.

7. Before concluding, it would be pertinent to highlight that as per the Transfer Pricing jurisprudence as explained in decision of **5 Members special bench in the case of Aztec Software & Technology Services Ltd. [2007] 162 Taxman 119 (Bangalore - Trib.) (SB),** if determination of ALP by the Ld. TPO for both above transactions is not found to acceptable to Hon'ble Bench, it would require either a categorical reasoned finding from the Hon'ble Bench to the effect that the ALP determined by the Assessee is justified or it would require fresh determination of such ALP by Hon'ble Bench setting aside the issue of benchmarking to the file of the Ld.AO/TPO. As per the said decision of Hon'ble Special Bench, the issue of determination of ALP can not be left undecided in case ALP determined by the Ld. TPO does not find favour with the Hon'ble Bench. Relevant part of the decision explaining above preposition is reproduced below:

> **"Having regard to the purpose of the legislation and application of similar enactment world over, it must further be held that adjustments made on account of ALP by tax authorities can be deleted in appeal only if the appellate authorities are satisfied and records a finding that ALP submitted by the assessee is fair and reasonable. Merely by finding faults with the transfer price determined by the revenue authorities (AO/TPO), addition on account of "adjustments" cannot be deleted. This is because the mandate of section 92(1) is that in every case of international transaction, income**

has to be determined having regard to ALP. Therefore, unless ALP furnished by the taxpayer is specifically accepted, the appellate authorities on the basis of material available on record has to determine ALP itself. Subject to statutory provisions, Appellate authorities can direct lower revenue authorities to carry this exercise in accordance with law. The matter cannot be left hanging in between. ALP of international transaction has to be determined in every case." (Para 133 of order) (Emphasis supplied)

Since Economic Analysis (i.e. determination of ALP /Benchmarking of SDTs) carried out by the Assessee has multiple defects, inaccuracies as explained above, the ALP as determined by the Assessee can not accepted by Hon'ble Bench as a substitute to ALP determined by the Ld. TPO. In other words, if ALP determined by the TPO is not found to be justified, ALP determined by the Assessee can also not be adopted by the Hon'ble Bench. In such a situation, there does not remain any option other than to set aside entire Transfer Pricing order to the file of Ld. TPO for fresh benchmarking of both above SDTs with opportunity given to the Assessee to furnish details and make its points before the Ld. TPO afresh.

8. In view of the above, contention of the Assessee to uphold the ALP as determined in TPSR deserve to be rejected.

10. Heard the contentions of both parties at length and perused the material available on record. With respect to the revenue' argument regarding the amendment in Section 80-IA of the Act and further incorrectly following the judgement of Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd. (supra), it is observed that in assessee's own case for preceding assessment years, while deciding the appeal, the Co-ordinate Bench has already considered both these aspects and had reached to the conclusion that rate charged by State Electricity Board to unrelated industrial consumer should be taken

as the basis for valuation of electricity from eligible unit to non-eligible unit. The relevant observations as contained in para 18 to 25 of the order of coordinate bench are reproduced as under:-

> 18. *"We have heard the rival contentions and perused the material available on record. In the instant case, the TPO made the adjustments towards the sale price taken for transfer of electricity as per the average rate at IEX in Uttar Pradesh. Further the cost of production of Steam from eligible unit to non-eligible unit is taken at NIL by holding the same as By-Product. The appellant had generated electricity from two power plants and the electricity produced is only meant for captive consumption and not otherwise. The appellant did not sell any electricity to the outsiders. The generation of electricity and its supply are controlled by the Electricity Act, 2003 and the Electricity (Supply) Act, 1948. As per the Act, no person without a license can trade in the electricity. The generation companies are different from the distribution companies. The generation companies, as per the statutory mandate, are bound to sell electricity to the distribution companies and the price thereof is determined as per the formula given in the Electricity Act and the contracts as executed between the generation companies and distribution companies. In the open market, none of the generation companies can supply electricity. So, the end consumers always remain served by the electricity supplied by the distribution companies. The eligible units of the appellant are also involved in supply of electricity to the non-eligible units for consumption. The non-eligible units are the end user of the supplies made by the eligible units.*
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> 19. *Now the question comes at what rate it should be charged/ priced when transferred to another unit. On perusal of the provisions of sub-section (6) of Section 80A of the Act, it is clear that in case where the goods of the eligible business are transferred to the non-eligible units of the assessee itself meant for consumption in non-eligible units, then the profits of the eligible units have to be worked out, thereby taking into account the market value of the goods so transferred irrespective of the value assigned in the books of account. The expression 'market value' in Section 80A(6) of the Act has been defined in the Explanation attached thereto. Under the Explanation, the market value has been explained in two types of cases. Clause (i) and clause (ii) of the Explanation deal with the cases where the profit must be determined with an application of the transfer*

pricing provisions. Clause (iii) of the Explanation deals with the cases where the inter-se transactions are considered as specified domestic transactions in terms of Section 92BA of the Act. Clause (iii) of the Explanation states that if the transactions are specified domestic transactions as referred to in Section 92BA, then the market value of the goods remains the ALP as defined in clause (ii) of Section 92F of the Act.

20. *We observed that similar provisions are contained in Section 80IA(8) of the Act where the clause (ii) of Explanation to Section 80IA(8) also states that the market value in relation to any goods transferred means an arm's length price as defined in clause (ii) of Section 92F of the Act where the transfer of such goods is a specified domestic transaction in Section 92BA of the Act. Both clause (iii) of the Explanation to Section 80A(6) as well as clause (i) of the Explanation to Section 801A(8) have been brought to the statute book by the Finance Act, 2012 with effect from 1st April 2013.*

21. *Now coming to the facts of the present case where the TPO had evaluated and compared the transactions with reference to the average price of IEX. The power generating companies, who did not sell the electricity in the open market on account of the restrictions made in the Electricity Act, and are bound to sell the electricity only to the State Electricity Board as per the contractual terms who in turn supplied the electricity in the open market to end consumers. The Co-ordinate bench of ITAT, Jaipur in the case of Wonder Cement Ltd. (supra) after considering these facts did not accept the TPO's order. The coordinate bench in paragraph 14 of its order has made following observations:*

"14. Evaluating this in light of the meaning of arm's length price i.e. a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises in uncontrolled conditions, it is evident that the transaction of purchase of electricity by State Electricity Boards from independent power producers is a regulated activity, being subject to approval of SERC, and therefore is not a transaction undertaken in uncontrolled conditions. Thus, the transaction between power producers and state electricity board is not fit to be considered comparable to the tested transaction of sale of electricity by eligible unit to non-eligible unit. Thus, the average rate of Rs 4.57 per unit, being the price for transfer of electricity by power producers to third party customers cannot be treated

as arm's length price as it is a price under controlled conditions."

22. *In the appellant's own case for Assessment Year 2008-09, the coordinate bench of Tribunal vide ITA No. 1344/Del/2013 accepted the appellant's contention and directed the Assessing Officer to re-compute eligible profits in reference to Section 80IA(8) of the Act with reference to rates at which the respective State Electricity Boards/distribution companies, wherever eligible units were located, supplied electricity to the end consumers in open market.*

23. *This proposition is further supported by the Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd.(supra). The Hon'ble Jurisdictional High Court in the case of CIT Vs. DCM Shriram Ltd. in ITA No.566/2023 vide order dated 02.05.2024, held that Revenue has failed to controvert the assertions that rates in IEX are for power purchase and not for power consumption whereas electricity supply by power distribution company is charged on the basis of power consumed. The Hon'ble High Court further followed the Judgement of Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd. (supra) and held the order of the Tribunal as reasonable order and confirmed the same. The observations of the Hon'ble High Court as contained in para 43 to 60 of the order are reproduced as under-*

> 43. *In the present case, the question is to determine the market value or the ALP of power supplied by power plants established by the Assessee to its other units. Supplying of electricity is governed by the Electricity (Supply) Act, 1948 and Electricity Act, 2003. The transmission of electricity is also governed by the Electricity Rules, 2005.*
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> 44. *Thus, the market for supply of electricity is regulated. Thus, to apply the CUP method, it would be necessary to ascertain the comparable transactions that are similar in material aspects and there is no difference between the transactions which has a bearing on the price of the power supplied.*
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> 45. *The question whether the average IEX rate at which power is traded on IEX, is a comparable uncontrolled transaction, is required to be evaluated by determining whether there are any differences between the specified domestic transaction6 and the uncontrolled transaction of trade on the IEX.*

46. The Assessee states - and the same is not controverted - that the availability of power on IEX is unpredictable and the supply of power is unreliable.

47. It is stated that in order for a party to purchase power from IEX, the said party has to participate in the bidding process. The same entails furnishing a bid in advance for supply of fifteen minutes slots. Illustratively, it is stated that if a party requires power supply for a period of four hours, it would be required to submit sixteen bids for fifteen minutes slots. Further, the bidder cannot resile from the bids furnished by it in advance.

48. In view of the above, it is contended that power traded on IEX cannot be compared with the power supplied by a SEB.

49. It is not disputed that IEX is a platform, which is used by power producing units to sell surplus power for short term requirements. IEX is not a platform for sourcing continuous power for power consuming units. It is also pointed out that there is a high level of volatility in the IEX rates as it depends on immediate availability of surplus electricity.

50. It is also contended by the Assessee that the rates quoted on IEX are in respect of power supplied and not the power that is consumed and therefore, there is a material difference between the power that is purchased from IEX and the power which is supplied by the SEBs or power distribution companies. The said submission is also not controverted. The Assessee claims that it had on occasions purchased power from IEX.

51. We find considerable merit in the Assessee's contention that the transactions of sale and purchase of power on the IEX is not comparable to the regular supply of power by the SEB or the power distribution companies. Undisputedly, IEX is not a source for uninterrupted power on the basis of which any power consumer can set up its unit. It is also not disputed that there is a wide fluctuation in the IEX rates. The Revenue has also not controverted the assertion that rates for power quoted on IEX are for power purchased and not for power consumed. Thus, if an entity bids for certain quantity of power on IEX and is successful, it is required to pay for the same. However, the electricity supplied by power distribution companies is charged on the basis of the power consumed, which is recorded in the metering devices.

52. *It is also clear that the said material differences between the electricity supplied by SEBs or power distribution companies and those secured by bidding on IEX would have a significant bearing on the price of power.*

53. *As noted above, the CUP method is an appropriate method only in cases where there is sufficient degree of identity between the tested transactions and comparable uncontrolled transactions. The CUP method cannot be applied where there is significant dissimilarity between the comparable transactions and it is not feasible to determine an adjustment to eliminate the impact of the said differences on the prices of comparable transactions.*

54. *In the present case, the Assessee had supplied excess power to UPPCL in UP region at the rate of ₹4.39 per kWh. Thus, the said transaction was accepted by the learned DRP as well as the learned ITAT as an internal uncontrolled transaction. The rate at which such electricity was supplied by the Assessee being ₹4.39 per kWh, was rightly accepted as an ALP.*

55. *As noted above, the learned ITAT also accepted the rates at which electricity was supplied by the SEBs/power distribution companies to the Assessee in Gujarat and Rajasthan regions as the said rates was considered as an external CUP.*

56. *Undoubtedly, there is a degree of similarity between the transaction of supply of electricity by SEBs to the Assessee and the supply of electricity by the Assessee's eligible units. However, there is a difference between the transactions being benchmarked, which is supply of electricity by captive units, and the transaction of supply of electricity by distribution companies/corporations. The power distribution companies enjoy a near monopoly status. The tariff charged by such companies are regulated tariffs. However, we accept that there is a sufficient degree of similarity between the said transaction for reasonably determining the ALP by using the CUP method.*

57. *We also consider it apposite to refer to the recent decision of the Supreme Court in Commissioner of Income Tax v. Jindal Steel and Power Limited. The principal issue involved in the said decision was the determination of market value of goods and services. In terms of Clause (i) of Explanation to Sub-section (8) of Section 80IA of the Act, the market value in relation to goods and services would mean the price that such goods or services would*

ordinarily fetch in the open market. In the aforesaid context, the Supreme Court had considered the question of what would constitute an open market in the context of determining the market value of electricity supplied by captive power units of the assessee in that case. In that case, the assessee had entered into an agreement with the SEB of State of Madhya Pradesh to supply surplus electricity at the rate of ₹2.32 per unit. However, the Assessee had (2024) 460 ITR 162 computed the revenue from supply of electricity to its own unit at the rate of ₹3.72 per unit. It was the Assessee's case that the market value of the electricity was ₹3.72 per unit as that was the rate charged by the SEB for supply of electricity to industrial consumers including the Assessee. The learned ITAT had accepted the assessee's stand and had set aside the order passed by the CIT(A) rejecting the assessee's appeal in that regard. The High Court had also rejected the Revenue's appeal by referring to its earlier decision where the question of law had been answered against the Revenue and in favour of the Assessee.

58. *The Revenue had approached the Supreme Court assailing the orders passed by the learned ITAT and the High Court. In the aforesaid context, the Supreme Court had held as under:*

"23. This brings to the fore as to what do we mean by the expression "open market" which is not a defined expression.

24. Black's Law Dictionary, 10th Edition, defines the expression "open market" to mean a market in which any buyer or seller may trade and in which prices and product availability are determined by free competition. P. Ramanatha Aiyer's Advanced Law Lexicon has also defined the expression "open market" to mean a market in which goods are available to be bought and sold by anyone who cares to. Prices in an open market are determined by the laws of supply and demand.

25. Therefore, the expression "market value" in relation to any goods as defined by the Explanation below the proviso to sub-section (8) of section 80 IA would mean the price of such goods determined in an environment of free trade or competition. "Market value" is an expression which denotes the price of a good arrived at between a buyer and a seller in the open market i.e., where the transaction takes place in the normal course of trading. Such pricing is unfettered by any control or regulation;

rather, it is determined by the economics of demand and supply.

26. Under the electricity regime in force, an industrial consumer could purchase electricity from the State Electricity Board or avail electricity produced by its own captive power generating unit. No other entity could supply electricity to any consumer. A private person could set up a power generating unit having restrictions on the use of power generated and at the same time, the tariff at which the said power plant could supply surplus power to the State Electricity Board was also liable to be determined in accordance with the statutory requirements. In the present case, as the electricity from the State Electricity Board was inadequate to meet power requirements of the industrial units of the assessee, it set up captive power plants to supply electricity to its industrial units. However, the captive power plants of the assessee could sell or supply the surplus electricity (after supplying electricity to its industrial units) to the State Electricity Board only and not to any other authority or person. Therefore, the surplus electricity had to be compulsorily supplied by the assessee to the State Electricity Board and in terms of Sections 43 and 43A of the 1948 Act, a contract was entered into between the assessee and the State Electricity Board for supply of the surplus electricity by the former to the latter. The price for supply of such electricity by the assessee to the State Electricity Board was fixed at Rs. 2.32 per unit as per the contract. This price is, therefore, a contracted price. Further, there was no room or any elbow space for negotiation on the part of the assessee. Under the statutory regime in place, the assessee had no other alternative but to sell or supply the surplus electricity to the State Electricity Board. Being in a dominant position, the State Electricity Board could fix the price to which the assessee really had little or no scope to either oppose or negotiate. Therefore, it is evident that determination of tariff between the assessee and the State Electricity Board cannot be said to be an exercise between a buyer and a seller in a competitive environment or in the ordinary course of trade and business i.e., in the open market. Such a price cannot be said to be the price which is determined in the normal course of trade and competition.

27. Another way of looking at the issue is, if the industrial units of the assessee did not have the option

of obtaining power from the captive power plants of the assessee, then in that case it would have had to purchase electricity from the State Electricity Board. In such a scenario, the industrial units of the assessee would have had to purchase power from the State Electricity Board at the same rate at which the State Electricity Board supplied to the industrial consumers i.e., Rs. 3.72 per unit.

28. Thus, market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier i.e., sold by the assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market. It is clear that the rate at which power was supplied to a supplier could not be the market rate of electricity purchased by a consumer in the open market. On the contrary, the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under Section 80 IA of the Act."

[emphasis added]

59. As is apparent from the above, the Supreme Court had accepted the rates at which electricity was supplied by the SEBs to industrial consumers as being the market value of the said supplies for the purposes of Sub-section (8) of Section 80IA of the Act.

60. In view of the above, the questions of law are answered in favour of the Assessee and against the Revenue."

24. The Co-ordinate Bench of ITAT, Kolkata in the case of DCIT Vs. Philips Cabon Black Ltd. under identical circumstances has dismissed the appeal of the revenue by making following observations:

"9. In this regard we have gone through a later judgment of the Hon'ble Calcutta High Court in the case of CIT v. Star Paper Mills Ltd. [2025] 172 taxmann.com 391 filed by the assessee [Page 1-19 of the Judicial PB]. In the decided case the assessee who was engaged in manufacture of paper had set up a captive power plant to supply power to its paper manufacturing units. The assessee had benchmarked the transfer of power from its power unit to its manufacturing unit at the price at

which the paper manufacturing unit was procuring power from the State Electricity Board. In this decided case also, the TPO had benchmarked the transfer of power at which the power generating stations was supplying power to the State Electricity Board by following the earlier decision of Hon'ble Calcutta High Court in the case of ITC Ltd (supra). On appeal, the Hon'ble ITAT, Kolkata following their earlier decision rendered for AY 2016-17 in Star Paper Mills Ltd. v. Dy. CIT [2022] 134 taxmann.com 177 upheld the benchmarking methodology adopted by the assessee to value the transfer of power at the rate at which the manufacturing unit was procuring power from the Grid. On further appeal by the Revenue, the Hon'ble Calcutta High Court after taking note of the decision of Jindal Steel & Power Ltd (supra) wherein their earlier decision in the case of ITC Ltd (supra) was reversed, since upheld the decision of the Hon'ble ITAT vide its recent order dated 05.02.2025 passed in ITAT/214/2024. It is also material to mention that the Hon'ble ITAT, Kolkata in ITC Ltd's own case for subsequent AY 2009-10 in ITA Nos. 685/Kol/2014 & 1267/Kol/2014 read with MA Nos. 17-18/Kol/2019 have also expressed a divergent view as expressed in their own case by Hon'ble Calcutta High Court in FY 2001-02 by holding that the said judgment has since been reversed by Hon'ble Supreme Court and following the ratio decidendi laid down therein, the assessee's benchmarking methodology viz., the price at which the manufacturing units procures power from SEB, was held to be appropriate ALP."

25. *In view of the above facts, and by respectfully following the judgements of the Hon'ble Supreme Court and of the jurisdictional High Court as relied upon herein above, in our considered opinion, for the purposes of determination of the market value of the transfer of electricity from eligible unit to non-eligible unit is to be taken at the market value at which the electricity company charges from consumers as has been requested by Ld.AR. Since in the present case, the assessee has taken the price at the rates at which the electricity is supplied by MVVNL to the industrial consumers i.e. Rs. 6.36 per unit thus, the sale value computed by the assessee for transfer of electricity from eligible unit to non-eligible unit is at Arm length price and accordingly the adjustment made by the AO / TPO at Rs. 32,68,31,286/- is hereby deleted. The grounds of appeal No. 3 to 3.1 are allowed."*

11. Similarly, with respect to adjustment on account of transfer of steam from eligible unit to non-eligible unit, in the aforesaid judgment dated 04.07.2025 in ITA No.755/Del/2022 and INT 4556/Del/2024 for AYs 2017-18 and 2020-21 respectively, the Co-ordinate bench has followed the judgment of hon'ble jurisdictional high court in the case of ***DCM Sriram Ltd.*** in ***ITA No. 7362/Del/2018*** and held that transfer at steam of eligible unit to non-eligible unit should be valued at cost of production for the purpose of claiming deduction u/s 80-IA of the Act and adjustment made on account of cost of production taken at NIL by AO/TPO was deleted. The relevant observations as contained in para 26 to 28 are reproduced as under:-

> *26. "Regarding the adjustment made by the AO/TPO on the transfer of steam from eligible unit to non-eligible unit by taking the cost of production of steam at NIL, in our considered view steam is commercial and viable product and its value cannot be taken at NIL. Since the steam is one of the forms of power and thus can be considered as joint product and not as by-product. Similar issue was came for consideration before the Co-ordinate Bench of the ITAT Delhi bench in the case of* ***DCM Sriram Ltd.*** *in* ***ITA No. 7362/Del/2018*** *in AY 2014-15 wherein a detailed discussion is made on this issue and thereafter, the Hon'ble Co-ordinate Bench of the Tribunal was of the view that the steam is a valuable source of power and has cost of production. The relevant observations as contained in para 37 to 47 of the order of the Tribunal are under-*
>
> > *37. We have carefully considered the rival contention and perused the orders of the lower authority as well as perused the judicial precedents relied upon by both the sides. The facts shows that assessee has transferred low-pressure steam from eligible business to other business amounting to ₹ 1,028,618,630/–. The rate at which the low-pressure steam is supplied from eligible unit to non eligible unit is at cost. The assessee adopted "other method" as the most appropriate method. The*

learned transfer pricing officer objected to the same and initially stated that assessee should have adopted the cost plus method for the benchmarking of transfer of steam. However letter on when the assessee contended that if the assessee would have used the cost plus method, the relevant deduction u/s 80 IA would have been much higher. Thereafter, the learned transfer pricing officer changed its stand and directed the assessee to submit a statement of cost of production of steam manufactured during the period 1/4/2013 231/3/2014. Assessee stated that it is submitted original set of corsets of the cost of production of steam transferred certified by the cost accountant. However letter on the learned transfer pricing officer on examining the process of power generation stated that the power plants are not installed for steam production but for power generation and as steam being byproduct do not have any cost. Therefore he rejected the most appropriate method applied by the assessee he further held that activity regarding production of steam shows that steam is produced as a result of burning of fuel in boiler. This steam is used for generation of electricity. Thus the entire cost of electricity absorbs entire cost of production of steam. Thus the resultant cost of excess team is nil. Therefore he made an adjustment of ₹ 1,035,745,275 on this account. The learned dispute resolution panel also agreed with the view of the learned transfer pricing officer.

38. *We are not in agreement with the findings of the lower authorities for the simple reason that the Institute of cost and works accountants and issued a guidance note "Guidance Note on Cost Accounting Standard on Cost of Utilities (CAS-8))" which provides guidance as to how the cost of utilities such as production of steam can be determined. According to that guidance note in paragraph number 5.1 it is stated that each type of utility shall be treated as a distinct cost object as Under:-*

> *"5.1 Each type of utility shall be treated as a distinct cost object. As each utility is a distinct cost object, cost of each utility is to be collected and measured separately. For*

example power, steam, water, compressed air, oxygen, nitrogen, coke oven gas and the like are distinct utilities, and the cost is collected and measured for each utility separately. The costs are booked to each utility Page 34 of 55 through initial documents such as supplier 's bill, if directly identifiable with utility, payroll analysis sheet, stores requisition, etc. A separate cost statement is to be prepared for each utility."

In paragraph number 5.3.2 it has provided as Under:-

"5.3.2 In case of Utilities generated for the purpose of inter unit transfers, the distribution cost incurred for such transfers shall be added to the cost of utilities determined as per paragraph 5.3.1.
If utilities generated are transferred to inter units of an entity, the cost of distribution of such utilities will be included in the cost of utility as determined under para 5.3.1. It will comprise cost of generating utility and cost of distribution facility. Distribution may be through a pipe line/transmission line. The cost of maintenance of pipe line/ Transmission line for transfer of utility will be added to the cost of utility.

In paragraph number 5.3.1 it is provided however cost of utilities are to be determined.

5.3.1 Cost of self generated utilities for own consumption shall comprise direct material cost, direct employee cost, direct expenses and factory overheads.
The cost of generating a utility may comprise water, fuel, power, direct expenses (such as boiler inspection fee) consumable stores, direct employee cost, repair and maintenance, depreciation, inter– utility transfer and factory overhead. For example: Cost of power generation will include cost of fuel such as furnace oil, coal, salaries and wages, consumable stores, repair and

maintenance, deprecation and factory overhead. Unit cost is arrived at on the basis of the net aggregate consumption in different departments after adjusting transmission losses. In case of cogeneration (power and steam) where waste heat from TG (Turbine Generation) is recovered in waste heat recovery unit and used for production of steam, due credit should be given to the Power plant and corresponding charge to SGP(Steam Generation Plant). Charging of power to the consuming cost object is generally done at the weighted average of the cost of power purchased , generated and distribution cost at the consuming point. Steam: A separate statement of cost of steam is prepared indicating the quantity of steam generated, cost of fuel, soft water, power, employee cost for operating staff, sundry supplies, chemical additives, deprecation and other works overhead. Unit cost of steam is arrived at on the basis of units consumed in different departments after adjusting distribution loss. Steam may be of high pressure, low pressure and medium pressure with multiple paths by which the steam pressure is reduced according to the purpose of use. Steam costs are highly dependent on the path that steam follows in the generation and distribution system. Raw water: Raw water is either purchased or obtained from ground wells/canal. The cost of water mainly consists of share of cost of power allocated through inter-utility transfer. The total cost of water should include employee cost, fuel, power, repair and maintenance of tube wells, depreciation, overhead. The total monthly cost of operating this department is divided by the quantity of K Ltr of water pumped during the month to determine the unit cost of water pumped. Cost of Soft Water: Water, if hard, requires treatment. The cost of soft water will include the cost of raw water, chemicals, cost of maintenance of settling tanks, employees cost,

depreciation and the like. The cost of demineralised water is also arrived at on the above basis.

There is inter–utility transfer cost for a utility. For example water utility may be used in generation of steam and power. Power may be required for pumping water from tubewell. Inter-utility cost is to be determined by the following method: a) repeated distribution method; b) matrix algebra through computer application (a) When Repeated Distribution Method is adopted, the utility costs are repeatedly allocated in the specified percentage until the figures become too small to be significant. Steps to be followed under this method are: I. The proportion at which the cost of a utility is to be distributed to production cost centres and other utilities centre is determined based on usage. II. Cost of first utility is to be apportioned to production cost centres and other utilities in the proportion as determined in step (a) above. III. Similarly cost of other utilities is to be apportioned. IV. This process as stated above is to be continued till the figures remaining undistributed in the utility are too small to be significant. The small amount left with utilities may be distributed to the production cost centres. b) Matrix algebra through computer application: Spread sheet software such as Excel provides facility for inter-division cost ascertainment and reapportionment of inter utility. This application may be used for determining inter-utility transfer cost. Quantitative records of production and distribution should be recorded for each utility to measure the unit cost of a utility. An illustration of steam cost is at Annexure 2.

39. In the annexure – 2 it is given and examples of the total steam cost to be determined in the manner when it is transferred to other units as Under:-
"Examples of Steam cost – Transfer to Other units Steam cost per tonne works out to Rs 471.09 as

illustrated under Annexure 2. If steam is transferred to other unit, distribution cost will be in addition to the above cost as illustrated below 1 Steam generation cost as 5.3.1 above Rs 471.09 Per MT 2 Distribution cost : Operation & Maintenance cost of distribution line Depreciation Other Total Distribution cost Per MT Rs 1.00 Rs 0.75 Rs 0.75 Rs 2.50 3. Inter Unit transfer cost Rs. 473.59 Cost of a utility determined as per para 5.3.2 plus share of administrative overhead to be charged."

40. *Therefore, from the above analysis it is apparent that the learned revenue authorities have incorrectly held that there is no cost of production of steam.*

41. *Even otherwise steam is a commercially viable product and it is a form of power and therefore it cannot be said to be produced at nil cost. The assessee has submitted a detailed cost sheet duly certified by the cost accountant following the standards issued by the Institute of cost and works accountant for determining the exact cost of steam, it has also been certified by the chartered accountant and further a chartered engineer certificates is also provided. All these cost statement duly certified by the professionals were rejected by the learned revenue authorities without any basis.*

42. *Further in the case of the assessee sister concern in case of SRF Ltd the learned dispute resolution panel on the identical facts and circumstances has held that steam has a cost and therefore the arm'slength price of steam cannot be determined at nil. It further held that the value of steam can be expressed in terms of equivalent units of electricity that would have been generated and such value is usually higher than the cost of steam.*

43. *Further in case of the assessee for assessment year 2015 – 16 the learned CIT – capital has rejected the action of the learned transfer pricing officer of determining the arm's-length price of steam at nil and upheld the assessee's approach*

of benchmarking the transfer price of steam at cost. This order has been accepted by the revenue and no further appeal has been filed. Therefore this issue becomes final with respect to the determination of ALP of transfer of steam at cost by the eligible unit to non eligible unit.

44. Further Honourable Gujarat High court in Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd 2020] 120 taxmann.com 315 (Gujarat)/[2020] 275 Taxman 78 (Gujarat)/[2020] 422 ITR 449 (Gujarat) has held that:-

"13. It appears that during the year under consideration, the assessee had claimed deduction of Rs. 32,51,080/- under section 80IA(4) of the Act. This claim was on account of the operation of the Captive Power Plant. The assessee showed income from sale of Power to the tune of Rs. 1,23,10,500/- and the sale of vapour of Rs. 6,59,77,170/-. The Assessing Officer took the view that "Vapour" would not fall within the meaning of "Power". The case of the assessee is that "steam" is also a form of "power".

14. The case of the Revenue is that "steam" is only an intermediate raw material for the manufacturing process. In other words, the production of "steam" is only a byproduct, which is used by the assessee for its manufacturing activity.

15. In this regard, the CIT (A) recorded the following findings:

"2. The appellant has also claimed deduction under section 80 IA on account of sale of steam to the chemical plant. "The steam was generated by the power plant in the boiler and part of it was also utilised for the chemical process of the non-eligible unit. The AO has held that the appellant was not entitled to the deduction on account of sale of steam to the power plant. It has been held by her that steam does not fall within the meaning of "power". In this reference she has made reliance on the judgment of honourable ITAT Ahmadabad in the case of N R Agrawal Industries Ltd v. DCIT dated 26/07/2013. The appellant on the other hand has submitted that the value of steam should be considered for arriving the profit as

the scheme is being gererated for generation of electricity and after utilising the same for electricity generation the balance steam is used for the chemical process. Therefore, it is a byproduct and therefore, the deduction was admissible.

On a careful consideration of the facts related to the issue, it is noted that that appellant is generating steam at high-pressure and temperature and the steam is being fed into turbine and the steam which is coming out from turbine is utilised for the chemical process. The details on record to show that the turbine utilised by the appellant for generation of the power is a back pressure turbine. In back pressure turbine the intake is of highpressure steam which is used for generation of power and the exhaust steam is also at certain pressure so that it can utilised for some other purpose. The design of the turbine is done in such a manner so that all energy of the steam is not utilised by the turbine for generation of power but certain part of it is released in the exhaust steam also. Therefore, the design of the turbine used by the appellant is in such a manner that the exhaust steam is at a certain pressure so that it can be utilised for some other work. Accordingly, this steam cannot be consider as a by product but it is intentionally being produced or generated for a specific purpose. Further the intention of the legislature was to provide deduction for generation of electricity and not for generation of steam. The intention is clearly evident from the perusal of the speech of the honourable Finance Minister while introducing the provisions for deduction in the budget. The use of word 'power' is intended for 'electricity' as the other relevant sections clearly mentioned the word 'electricity'. The honourable Bench of ITAT Ahmadabad while deciding the issue in N.R. Agrawal Industries Private Limited has discussed these aspects in detail and accordingly relying on the judgment it is held that the appellant is not entitled for deduction under section 80 I-A on sale of such steam to its chemical plant. Accordingly, the decision of the AO in this regard is upheld.

3. *For the purpose of calculation the quantum of deduction and allocation of expenditure incurred for production of steam the appellant had given certain information-related to the heat value of steam (Enthalpy). The details given by the appellant were also forwarded to the AO and she has also given her comments on the same. In*

order to arrive at a logical conclusion it would be useful to understand the process involved. The appellant has installed a boiler which generates high-pressure steam at a very high temperature. The steam is first fed in the turbine where part of the heat energy of the steam is utilized in generating the electricity and the balance energy available in the steam coming out from the turbine is utilised in the chemical process. The appellant is incurring expenses such as coal consumption, boiler running, depreciation of boiler and other machinery and the building in which the whole generation plant is housed. The expenditure for the steam, which is utilised in generation of power, and the balance steam which is utilised by the chemical plant can be determined by distributing the same in proportion to the heat value (Enthalpy) of the inlet steam and the outlet steam of the turbine. As per the details available on record the heat value of the inlet steam at 65.5 KG/cm2 is 793 kcal per KG whereas the heat value of the output steam at 3.5 KG/cm2 is 653.7 kcal per KG. The quantity of input and output steam remains the same and only the calorific value of the heat value goes down as part of the energy is utilised for generation of power. Accordingly, the expenses can be apportioned in the ratio of enthalpy of the inlet and output steam. The same is worked out as under:—

Total enthalpy of the steam coming out of the boiler	*793 kcal per KG*	
The enthalpy of the steam coming out of the turbine	*653 kcal per KG*	
The enthalpy utilised by the turbine for generation of electricity	*139 kcal per KG*	
Percentage of energy utilised in the generation of electricity	*17.66%*	
Total expenses for	*Boiler*	*1800000*
Generation of steam to be allocated on a percentage basis	*expenses*	
	Boiler maint	*1 728903*
	Coal expenses	*38733894*
	Depreciation other than turbine	*10522945*
	Total expenses	*52785832*

Expenses for steam utilised for	*17.66% of 52785832*	
Generation of electricity	*9321977*	

In addition to above expenses for generation of steam, the expenses of head office of the appellant company which looks after the management or the affairs of-the Company and also the power plant are also to be disallowed on proportionate basis. It is also noted that the appellant has taken loan from financial institutions for installing the power plant. The appellant is also paying huge amount of interest on the loan. Proportionate allocation of the interest expenditure should also be done and added to the cost of generation of steam. Since the details related to the expenses of head office as well as interest expenditures are not available before me, the AO is directed to work out the proportionate allocation of the interest expenditure should also be done and added to the cost of generation of steam. Since the details related to the expenses of head office as well as interest expenditure are not available before me, the AO is directed to work out the proportionate allocation of these expenses by obtaining suitable details from the AO. The details of following expenses are readily available from record:—

Expenses for generation of steam	*9321977*
Depreciation on turbine	*1289189*
Electricity duty	*787872*

The AO is also directed to verity the above figures. Accordingly the AO is directed to rework the deduction under section 80I-A claimed by the appellant as indicated in the preceding discussion."

16. *The Tribunal, concurred with the aforesaid findings recorded by the CIT (A), by taking support of the decision of a Co-ordinate Bench of the ITAT, Mumbai, in the case of West Cost Paper Mills (P.) Ltd. v. CIT, [2014] 52 taxmann.com 268. As regards section 80IA of the Act, strong reliance has been placed on behalf of the Revenue on the decision of this Court in the case of CIT v. Atul Ltd. [2016] 74 taxmann.com 255. In Atul Ltd. (supra), the assessee had established a new power plant by expending a sum of Rs. 14.62 Crore and claimed deduction under section 80IA. The Assessing Officer upon examination of such claim, arrived at the conclusion*

that the production of power would require boiler and also a turbine since the boiler would manufacture steam which would be a raw material for the production of power with the aid of turbine and such a plant would be a new industrial undertaking capable of generating electricity. The case of the assessee was that in the existing power plant the assessee had excess steam production capacity which was to be utilised by the turbine installed in the new plant. The Assessing Officer ultimately rejected the case of the assessee on the ground that the turbine should be treated as an independent power generating unit and thereby disallowed the claim of deduction under section 80IA of the Act.

17. *The assessee carried the matter in appeal. The CIT (A) held that no industrial undertaking would come into existence within the meaning of the provisions contained in section 80IA of the Act by transferring the boiler or by installing new machinery for the purpose of generation of the power. The appeal came to be dismissed and the assessee carried the matter before the Tribunal. The Tribunal dismissed the appeal.*

18. *It appears that the assessee preferred an application for rectification before the Tribunal contending that after the judgment was delivered by the Tribunal, the High Court, in the case of Gujarat Alkalines and Chemicals Ltd. v. CIT [2013] 350 ITR 94/[2012] 208 Taxman 31/20 taxmann.com 764 (Guj.) has delivered a judgment which would have a bearing on the issue decided by the Tribunal. The said application was opposed by the Revenue. However, the Tribunal allowed the application for rectification and recalled its earlier judgment. The Revenue came before this Court in appeal. This Court took the view while allowing the appeal of the Revenue that the claim of the assessee for deduction under section 80IA of the Act was not tenable in law.*

19. *This Court took notice of the fact that the assessee had installed turbine for power generation which relied on the excess steam production capacity of the plant. This Court ultimately took the view that the installation of turbine for power generation could be said to setting up of a new industrial unit and therefore, the assessee would not be*

entitled for deduction of sum under section 80IA of the Act.

20. *In our view, the facts in the case of Atul Ltd. (supra) are quite different and the ratio, as propounded in the same, will have no applicability to the case on hand, more particularly, the question No. 3 with which we are dealing with.*

21. *It is difficult for us to take the view as suggested by the learned standing counsel appearing for the Revenue that "steam" would not amount to power. The word "Power" used in Section 80IA(4) has not been defined under the Income-tax Act.*

22. *The word "Power" should be understood in common parlance as "Energy". "Energy" can be in any form being mechanical, electricity, wind or thermal. In such circumstances, the "steam" produced by the assessee can be termed as power and would qualify for the benefits available under section 80IA(4) of the Act."*

45. *Further Hon'ble Supreme Court in CIT v. Tanfac Industries Ltd., SLP (C) No. 18537 of 2009 [319 ITR 8 (st)] wherein while applying section 80-IA of the IT Act, the Hon'ble Supreme Court took a view that the value of steam used for captive consumption by the assessee was entitled to be deducted under section 80-IA of the Act.*

46. *Therefore it is apparent that*
i. steam is a valuable sources of power
ii. it has cost of production,
iii. There are methods and Costing Standards for determining the cost of production of steam.
iv. Assessee has transferred the steam from eligible units to non-eligible units at cost only.
v. Such cost is certified by the Cost Accountant, Chartered Accountant, and Chartered Engineers.
vi. It cannot have Nil cost

47. *In view of above facts, we are of the view that ld Revenue authorities erred in holding that the steam does not have any cost and therefore steam transferred by assessee's eligible units to non eligible units at cost, which is determined by Cost accountants and Other professional, has the Arms length price of Rs Nil instead of cost of Rs*

103745275/- . Therefore we allow ground number 3 of the appeal and direct the learned transfer-pricing officer to delete the addition of ₹ 1,035,745,275 which was made determining the arm's-length price of transfer of steam from eligible unit to non-eligible unit by considering the cost of production of the steam at Rs. Nil."

27. *This order of the Tribunal was challenged by the Revenue before the Hon'ble High court in ITA No.566/2023 wherein no substantial question of law was admitted on this issue by the Hon'ble High Court. The relevant observations as contained in ITA No.566/2023 and CN Application No. 51969/2023 while admitting the substantial question of law in para 5 of the Hon'ble High Court is as follows:*

> 5. *Question C pertains to the transfer of steam from the eligible unit to the non-eligible unit of the assessee. The appellant seeks to contend that since steam was a by-product of the business and would have been included in the cost of power generation, it should not have been taken into account.* ***We, however, find that the aforesaid issue and aspect was concerned with the transfer of steam to the non-eligible unit and for the purposes of which the assessee would have been justified in relying on the cost of production. We therefore, are of the opinion that Question C raises no substantial issue.***

28. *In view of the above facts and by respectfully following the decision of Co-ordinate Bench and of the Hon'ble jurisdictional high court in the case of DCM Shriram Ltd. (supra) and further relying upon the judgement of Hon'ble High court in the case of* ***CIT vs Cushman & Wakefield 367 ITR 730 (Del.)****, transfer of steam from eligible unit valued at cost of production for the purpose of claiming deduction u/s 80IA is hereby held as reasonable and the adjustment of Rs.51,63,85,174/- made by AO/TPO by taking the cost of production of steam at NIL is deleted. Accordingly, Ground No. 4 to 4.1 taken by the assessee are allowed."*

12. During the course of hearing, a query was raised to the Ld. CIT DR whether the aforesaid order of Co-ordinate Bench dated 04.07.2025 was challenged before Hon'ble High Court or not

however, the Ld. CIT(A) has stated that he is not aware whether the revenue has preferred an appeal or not against the aforesaid orders of Tribunal. Since all these issue has already been decided in favour of the assessee by the Co-ordinate Bench of Tribunal in preceding assessment years thus, as a principle of consistency, as has been held by Hon'ble Supreme Court in the case of ***CIT vs Excel Industries Ltd.*** reported in ***358 ITR 295 (SC),*** we followed the observations made in para 18 to 25 of the order which are reproduced in above-mentioned paragraphs and delete the adjustment made on account of supply of power from eligible unit to non-eligible unit.

13. It is also a matter of fact that the Hon'ble Third Member in the case of **Jt.Cit (Osd)-Cc- 1(4), Mumbai vs Aditya Birla Nuvo Ltd in ITA No. 563/Mum/2018 & ITA No.1885/Mum/2018 (Assessment Year :2013-14)** vide order dated **17th November, 2025** has an occasion to consider the amendment made in section 80A of the Act with respect to the market value as required for the purpose of transfer of electricity from eligible unit to non-eligible unit for the purpose of claiming deduction u/s 80IA of the Act. Hon'ble Third Member after considering the amendments, has made following observations in the said order:-

> *36. "Before us, the learned DR has put much stress on section 80A(6) of the Act to emphasise that due to its overriding effect, it will override even the Explanation u/s. 80IA(8) of the Act. In this context, he has submitted that as per Explanation u/s.80A(6) of the Act, there is no „or. Between various clauses, hence, the conditions would apply cumulatively. He has submitted that as per clause (i) to Explanation u/s. 80A(6), the*

market value of goods or services in open market conditions subject to statutory or regulatory consideration, if any, has to be considered. Referring to clause (iii) of Explanation u/s. 80A(6) of the Act, he has further submitted that in respect of SDT, the ALP in terms with section 92F(ii) will apply. Thus, according to him, clause (i) and (iii) to Explanation u/s. 80A(6) of the Act, being provisions having overriding effect, would get precedence over any other provisions under the Act, including Explanation u/s. 80IA(8) of the Act.

37. *On carefully going through the provisions contained u/s. 80IA(8) and 80A(6) of the Act, in my understanding, there is no conflict between them. As discussed earlier, w.e.f. 01.04.2013 the earlier Explanation u/s. 80IA(8) of the Act was substituted by a new Explanation, whereunder, the only new addition is clause (ii), which substitutes the market value under clause (i) with ALP as per section 92F(ii) qua SDT. Simultaneously, w.e.f. 01.04.2013, clause (iii) to Explanation u/s.80A(6) of the Act was introduced which is more or less pari-materia to clause (ii) to Explanation u/s.80A(8) of the Act. Clause (iii) to Explanation u/s.80A(6) and clause (ii) to Explanation u/s.80IA(8) of the Act were introduced simultaneously only for the purpose of substituting the market value with ALP in respect of SDT. That being the intention of the legislature, the contention of learned DR that clause (i) to Explanation u/s.80A(6) of the Act would also apply to determine the market value in the open market condition subject to statutory regulatory restriction, in my view, is unacceptable. Had it been the intention of the legislature to apply clause (i) to Explanation u/s.80A(6) of the Act to SDT, there was no requirement in introducing clause (iii) to Explanation u/s.80A(6) of the Act, which is specifically applicable to SDT. Thus, in my humble opinion, clause (iii) to Explanation u/s.80A(6) of the Act and clause (ii) to Explanation u/s.80IA(8) of the Act were brought into the statute specifically for the purpose of substituting the market value by ALP in respect of SDT.*

38. *It is noteworthy, both clause (iii) to Explanation u/s.80A(6) of the Act and clause (ii) to Explanation u/s.80IA(8) of the Act refers to ALP as defined u/s. 92F(ii) of the Act. As discussed elsewhere in the order, the ALP as defined u/s. 92F(ii) of the Act means the price at which a transaction between the two unrelated parties is undertaken in uncontrolled conditions.*

39. *In the facts of the present appeal, admittedly, the Rayon Plant had purchased electricity from the State owned distribution licensee at Rs.6.62 per unit. Had the Rayon Plant not*

purchased power from CPP to meet its requirement, it would have purchased power from the distribution licencee at the very same rate of Rs.6.62 per unit. Therefore, there cannot be any doubt that the rate at which the Rayon Plant purchased power from the distribution licensee can be applied as a valid CUP to determine the ALP of the power supplied/ sold by CPP to Rayon Plant. In this context, the ld. DR has advanced an argument that even the cost of supply of power by the distribution licensee to the assessee is not a uncontrolled transaction in strict sense of the term, as, it is regulated by tariff determined by the regulatory commission under the Electricity Act. Therefore, it cannot be taken as ALP in terms with section 92F(ii) of the Act. To answer the aforesaid argument of ld. DR, it would be apposite to quote the following observations of the Hon'ble Delhi High Court in the case of Pr. CIT vs. DCM Shriram Ltd. [2025] 170 taxmann.com 631 (Delhi) :

> *56. Undoubtedly, there is a degree of similarity between the transaction of supply of electricity by SEBs to the assessee and the supply of electricity by the Assessee's eligible units.*

However, there is a difference between the transactions being benchmarked, which is supply of electricity by captive units, and the transaction of supply of electricity by distribution companies/corporations. The power distribution companies enjoy a near monopoly status. The tariff charged by such companies are regulated tariffs. However, we accept that there is a sufficient degree of similarity between the transaction for reasonably determining the ALP by using the CUP method.

40. *Though, Hon'ble Delhi High Court acknowledged the fact that the tariff charged by distribution companies are regulated, however, the Hon'ble High Court has held that there being sufficient degree of similarity between the two transactions it can be taken as CUP for determining ALP. More so, when the rate at which the distribution licensee supplies power is not exclusively fixed for a particular consumer but is applicable to a large segment of consumers. It will be relevant to observe, the aforesaid judgment of the Hon'ble Delhi High Court is after considering the amendment to Explanation u/s. 80IA(8) of the Act effective from 01.04.2013 and Rule 10B as well. In fact, in the aforesaid*

judgment, the Hon'ble High Court, while coming to its conclusion, has applied the ratio laid down by the Hon'ble Supreme Court in case of CIT vs. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207 (SC).

41. At this stage, it would be necessary to observe that in case of DCIT vs. Rungta Mines Ltd. [2024] 158 taxmann.com 573 (Kolkata), the co-ordinate bench has held that the price at which electricity is sold and supplied by the distribution company to an industrial consumer can be treated as ALP for determining the cost of power supplied by CPP for captive use.

42. While deciding the appeal preferred by the Revenue against the aforesaid order of the co-ordinate bench, the Hon'ble Calcutta High Court in PCIT vs Rungta Mines Ltd. [2025] 176 taxmann.com 410 (Calcutta) had an occasion to deal with the identical issue. Pertinently, in the said appeal, the Revenue had specifically raised the following question amongst others :

(b) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in not considering the provisions of Income Tax Act, 1961 where it has been mandated in cases of transaction between eligible units and non-eligible units of an undertaking, in explanation (iii) of sub section (6) of Section 80A, that the expression "market value" in relation to any goods or services sold, supplied or acquired means the "arm's length price" as defined in clause (ii) of section 92F of such goods or services, if it is a specified domestic transactions referred to in section 92BA?

43. After examining various provisions under the Electricity Act, 2003 as well as provisions contained under the Income Tax Act, the Hon'ble High Court upheld the decision of co-ordinate bench with the following observations:

14. It is not in dispute that the main business of the assessee is not generating power to sell the same to distribution companies/SEBs. It is also not in dispute that the Captive Power Plants (CPPs) were established by the assessee for its own need, i.e. for supply of uninterrupted power to its manufacturing units as well as to save the cost of power purchased from SEBs. If such be the factual position the Arm's Length Price cannot be determined by taking the average market rates of power supply units to distribution companies as the assessee is not in the business of selling power to distribution companies. Therefore, the Arm's Length Price has to be determined bearing in mind the reason behind establishment of the CPPs namely to ensure uninterrupted power and to save

on cost of electricity which otherwise has to be paid to the State Electricity Board.

15. *At this juncture, it would be relevant to take note of the Electricity Act, 2003. Section 2(8) of the Act defines "Captive Generating Plant" to mean a power plant set up by any person to generate electricity primarily for its own use and includes its power plant set up by any cooperative society or association of persons for generating electricity primarily for use of members of such cooperative society or association. Section 9 of the Act deals with Captive Generation. Subsection 1 of Section 9 commences with a nonobstante clause and states that notwithstanding anything contained in the Electricity Act, 2003, a person may construct, maintain or operate a Captive Generating Plant and dedicated transmission lines.*

16. *The first proviso states that the supply of electricity from Captive Generating Plant through grid can be regulated in the same manner as the generating station of a generating company.*

17. *The second proviso states that no license shall be required under the Electricity Act for supply of electricity generated from Captive generating plant to any licensee in accordance with the provisions of the Act and the Rules and Regulations made thereunder and to any consumer subject to Regulations made under Sub Section 2 of Section 42. Sub Section 2 of Section 9 states that every person, who has constructed a Captive Generating Plant and maintains and operates such plant shall have the right to open access for the purpose of carrying electricity from his Captive Generating Plant to the destination of his use. Section 42 of the Act deals with duties of the distribution licensees and open access. Thus, the scheme of the Act is that a person may construct, maintain or operate a Captive Generating Plant and dedicated transmission lines and captive plants will have the right to open access for the purpose of carrying electricity from captive plants to the destination of its use and no surcharge is leviable incase open access is provided to captive units by the central or state transmission utility or the transmission*

licensee involved in the distribution/transmission of power. Further the provision make it clear that there is no embargo to other power generating companies to directly sell the power to such consumer at mutually agreed rate. This being not the legal position when the decision in ITC Limited was rendered, the said decision could not have been relied upon by the TPO/assessing officer.

18. *We concur with the views expressed by the learned tribunal that the consumer/contracting parties will certainly desire to purchase electricity at lesser rate than the rates offered by State Electricity Board whereas the Captive Power Plants/generating companies would desire to get maximum rate on the sale of power in unregulated and uncontrolled transaction and both the parties would settle at mutually agreed rates irrespective of the rates at which the State Electricity purchases power from other generating units.*

19. *The learned tribunal in the case of Star Paper Mills Limited Versus DCIT Circle 4 Kolkata 5 held that where the assessee company, engaged in business of manufacturing and sale of paper, had set up Captive Power Plant (CPP) to meet its*

requirements of its paper manufacturing units which also availed power from State Electricity Board, the said transaction being in nature of specified domestic transaction, transfer price of power supplied by CPP was to be bench marked at annual average of landed cost at which power was being purchased by manufacturing units from State Electricity Board. The revenue carried the matter on appeal before this court and the appeal filed by the revenue was dismissed and the said decision is reported in (2025) 172 taxman.com 391 (Kolkata). In the said appeal, the following two substantial questions of law were taken up for consideration:-

"(a) WHETHER in facts of the case and in law, the Hon'ble ITAT is justified upholding the internal CUP applied by the assessee to benchmark the transaction (sale of power) to its AE, as well as computation of deduction under section 80-IA of the Act, whereas as per explanation to section 80-

IA(8) of the Act, "market value" in relation to any goods or services, means (a) the price that such goods or services would ordinarily fetch in the open market; or (b) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA?

b) WHETHER in facts of the case and in law, the Hon'ble ITAT is justified in not appreciating the finding of the TPO that the assessee's generating unit cannot as such claim any benefit under section 80IA of the Income Tax Act computed on the basis of rates charged by the distribution licensee from the consumer. The benefit can only be claimed on the basis of the rates fixed by the tariff regulation commission for sale of electricity by the generating companies to the distribution company?

20. The Court took note of the decision of the Hon'ble Supreme Courtin CIT Versus Jindal Steel and Power Limited 6. In the said case, the assessee having found that the electricity supplied by the State Electricity Board was inadequate and to meet the requirements of its industrial units, set up captive power generating units to supply electricity to its industrial units which was done at a particular rate. The surplus power if any, generated was to be wheeled out to the electricity board grid pursuant to an agreement between the State Electricity Board and the assessee at a rate fixed by the State Electricity Board. The question which arose of consideration is as to the quantum of deduction which the assessee would be entitled to claim under Section 80IA of the Act. The assessing officer held value of the electricity should be computed based on the rate fixed by the State Electricity Board for the electricity which is purchased by the assessee. The Dispute Resolution Panel (DRP affirmed the view taken by the assessing officer and the matter was challenged before the tribunal. The tribunal followed the decision in the assessee's own case for an earlier assessment year which order had become final as the department did not prefer any appeal under Section 260A of the Act. In the batch of cases, in Jindal Steel and Power one of the appeals was an appeal filed by the assessee namely ITC Limited against the judgment of the Division Bench of this court in Commissioner of Income Tax Versus ITC Limited (supra) in CA No. 9920 of 2016 and this appeal was allowed by

the Hon'ble Supreme Court by order dated 07.12.2023 and the Hon'ble Supreme Court held as follows:-

> *"28. Thus, the market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier, i.e., sold by the assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market. It is clear that the rate at which power was supplied to a supplier could not be the market rate of electricity purchased by a consumer in the open market. On the contrary, the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under section 80- IA of the Act.*
>
> *30. Thus on a careful consideration, we are of the view that the market value of the power supplied by the State Electricity Board to the industrial consumers should be construed to be the market value of electricity. It should not be compared with the rate of power sold to or supplied to the State Electricity Board since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. The State Electricity Board's rate when it supplies power to the consumers have to be taken as the market value for computing the deduction under section 80-IA of the Act.*
>
> *31. That being the position, we hold that the Tribunal had rightly computed the market value of electricity supplied by the captive power plants of the assessee to its industrial units after comparing it with the rate of power available in the open market, i.e., the price charged by the State Electricity Board while supplying electricity to the industrial consumers. Therefore, the High Court was fully justified in deciding the appeal against the Revenue."*

21. The Hon'ble Supreme Court after taking note of the relevant provisions of the Income Tax Act, and in particular Section 80IA held that the market value of the

power supplied by State Electricity Board to the Industrial consumers should be construed to be the market value of electricity and it should not be compared with the rate of power sold to or supply to the State Electricity Board since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. It was further held that the State Electricity Boards rate when it supplies power to the consumer have to be taken as market value for computing the deduction under Section 80IA of the Act. Thus, applying the decision of the Hon'ble Supreme Court in Jindal Steel and Power and in the light of the reasoning given in the preceding paragraphs, we hold that the learned tribunal rightly dismissed the appeals filed by the revenue.

44. *It is noteworthy, in case of Star Paper Mills Limited vs.DCIT (supra)identical view expressed by the Bench has been upheld by the Hon.ble Calcutta High Court. At this stage, we must observe, in case of Jindal Steel & Power Ltd. (supra), the Hon'ble Supreme Court while was on the issue of what should be the market value u/s. 80IA(8) of the Act prior to its amendment in 2013, had observed that in case the assessee had not obtained power from the captive power plant, it would have purchased power from the State Electricity Board and in such a scenario, it would have purchased power at the same rate at which the State Electricity Board supplies power to other consumers, hence such rate can be considered as the market value. The learned DR has forcefully submitted that the decision of Hon'ble Supreme Court having been rendered prior to the amendment to section 80IA(8) of the Act and having not been rendered in the context of Explanation u/s.80A(6) of the Act, will not apply. The learned DR has further submitted that the decision of Hon'ble Delhi High Court in case of DCM Shriram Ltd. (supra) and other decisions having not taken note of the overriding effect of section 80A(6) of the Act, are per incuriam and are sub-silentio on the issue of applicability of section 80IA(6) of the Act and hence, will not constitute binding precedents. In my considered opinion, such contention of learned DR is unacceptable for the simple reason that ITAT being at a lower level in the judicial hierarchy than High Courts, does not have the power or competence to question the correctness of a judgment rendered by Hon'ble High Court or declare it as per incuriam. The correctness or otherwise of a judgment of Hon'ble High Court can be tested by an aggrieved party before the highest court and not before the Tribunal.*

45. *At this stage, I must observe, learned DR has heavily relied upon a decision of ITAT, Hyderabad Bench in case of Sanghi Industries Ltd. Vs DCIT (supra) to contend that the rate at which the generating company supplies power to the distribution licensee will be the ALP. Upon carefully going through the aforesaid decision of the coordinate Bench I found it to be factually distinguishable. The Bench has recorded a finding of fact that the CPP had sold surplus electricity to 14 individuals at an average rate of Rs. 2.97/- per unit. Whereas, in the TP study it has adopted the rate of Rs. 7.85/- per unit. In contrast, in the present case, CPP has sold power only to Rayon Plant for captive consumption at Rs. 6.62/- per unit and to no other party at any other rate. As against the aforesaid decision cited by learned DR, there are decisions of Hon'ble Delhi High Court in case of PCIT Vs DCM Shriram Ltd.(supra) and that of Hon'ble Calcutta High Court in case of PCIT Vs*

Rungta Mines Ltd. as well as plethora of other decisions of ITAT favourable to assessee, which are directly on the issue and have been rendered after considering all the relevant provisions of the Act, including, sections 80A(6), 80IA(8) with amended explanation, 92F(ii), Rule 10B etc. Therefore, these decisions carrying precedent value cannot be lightly brushed aside by branding them as per incuriam or having been rendered sub silentio of certain relevant provisions, merely because they are against the revenue.

46. *Thus, upon considering the overall facts and circumstances of the case in the light of the judicial precedents cited before me, I am of the considered opinion that the price at which the assessee purchased power from the distribution licensee, GUVNL can be applied as a valid CUP for determining the ALP of sale/supply of power by the CPP to the Rayon Plant. In other words, the price of Rs.6.62 per unit charged by CPP to the Rayon Plant can be considered as ALP of the power supplied by the CPP to Rayon Plant. Thus, I agree with the view expressed by learned Judicial Member that the deduction claimed by the assessee u/s. 80IA of the Act should be allowed without making any downward adjustment.*

47. *Having held so, I do not intend to dwell upon the question nos. 3 & 4 as they are of mere academic importance and not necessary for deciding the issue arising in ground no. 7. Records may be returned back to the registry for placing before the concerned Division Bench to pass the concerned order as per majority view."*

14. Regarding the issue of adjustments made in the value of transfer of steam from eligible unit to non-eligible unit, as stated above, under identical facts in preceding AYs, it was held that the valuation of transfer of steam from eligible unit to non-eligible units should be based on the cost of production. Such observations as contained in para 26 to 28 are reproduced in above-mentioned paragraphs.

15. Admittedly there is no change in the facts and circumstances of the case, and when the sale price on the transfer of Power and steam from the eligible unit to non-eligible unit taken by the assessee has been held as correct by respectfully following the judgment of Co-ordinate Bench of the Tribunal in assessee's own case, the deduction u/s 80IA of the Act is also restored. Accordingly, the Grounds of appeal Nos. 2 to 4 raised by the assessee are allowed.

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

Order pronounced in the open Court on 03.07.2026.

Sd/-	***Sd/-***
(RAJ KUMAR CHAUHAN) **JUDICIAL MEMBER**	**(MANISH AGARWAL)** **ACCOUNTANT MEMBER**

Date:-03.07.2026
Amit Kumar, Sr.P.S

Copy forwarded to:

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