

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI G.M. DOSS, ACCOUNTANT MEMBER**

**ITA No.7766/Mum/2026 & 7767/Mum/2026
(Assessment Year :2013-14 & 2016-17)**

ACIT-Circle Mumbai	6(1)(1),	Vs.	Aditya Birla Real Estate Limited 2 nd Floor, Century Bhavan Dr. Annie Besant Road Worli, Worli Colony Mumbai- 400 030
PAN/GIR No.AAACC2659Q			
(Appellant)		..	(Respondent)

Assessee by	Shri Chaitanya Joshi, CA & Shri Vinayak Bhat, CA
Revenue by	Shri Ajay Chandra, CIT DR
Date of Hearing	30/09/2026
Date of Pronouncement	30/09/2026

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

These two appeals by the Revenue, ITA No. 7767/Mum/2026 for AY 2013-14 and ITA No. 7766/Mum/2026 for AY 2016-17, arise from the respective orders dated 27 April 2026 passed by the learned Commissioner of Income-tax (Appeals)-55, Mumbai, in the

case of Aditya Birla Real Estate Limited, formerly known as Century Textiles and Industries Limited. The issue raised in both appeals is common: the arm's length price of electricity transferred from the assessee's captive power plants to its cement manufacturing units. The facts and grounds are substantially the same, the only material difference being the assessment year and the amount of the transfer-pricing adjustment. The appeals were, therefore, heard together and are being disposed of by this common order.

2. The assessee carries on, among other activities, the manufacture of cement and generation of power. To meet the electricity requirements of its cement manufacturing units, it had established captive power plants at Raipur, Chhattisgarh, and Maihar, Madhya Pradesh, known respectively as Century Cement Thermal Power Plant ("CCTPP") and Maihar Cement Thermal Power Plant ("MCTPP"). CCTPP supplied electricity to the cement unit at Baikunth/Raipur, while MCTPP supplied electricity to the cement unit at Satna/Maihar. The electricity generated by the respective power plants was transferred to those manufacturing units for their captive consumption. The power requirements of the cement units exceeded the electricity generated by the captive plants; consequently, the units also procured electricity from Chhattisgarh State Power Distribution Company Limited ("CSPDCL") and Madhya

Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (“MPPKVVCL”), respectively.

3. In determining the price of the inter-unit transfers, the assessee adopted the monthly rates at which the relevant cement units purchased electricity from CSPDCL and MPPKVVCL. Its transfer-pricing study proceeded on the basis that the consuming units were buying power from the captive plants as well as from independent suppliers and that the price paid to those independent suppliers was an actual market reference for the same product in the relevant locations. For AY 2013–14, the average rate recorded for electricity transferred from CCTPP was ₹5.74 per unit and from MCTPP was ₹6.44 per unit. The assessee’s case was that, since the captive transfers were recorded at the same monthly rates as those paid by the cement units to the State distribution companies, the transfers were at arm’s length. The issue was accordingly examined by the TPO as a specified domestic transaction.

4. For AY 2013–14, the assessee filed its return of income on 26 November 2013, declaring total income at nil and carrying forward losses of ₹1,63,41,17,771. The case was selected for scrutiny, notices under sections 143(2) and 142(1) were issued, and the matter was referred to the TPO for determination of the arm’s length price of the specified

domestic transaction. The TPO passed an order under section 92CA(3) on 3 November 2016, proposing an upward adjustment of ₹63,89,23,479 in respect of the transfer of power from the captive plants to the cement units. A draft assessment order under section 143(3) read with section 144C(1) was passed on 23 December 2016. The assessee informed the AO that it would not file objections before the Dispute Resolution Panel, and the final assessment order under section 143(3) read with section 144C(3) was passed on 24 February 2017, incorporating the transfer-pricing adjustment. The CIT(A)'s order also refers to other additions forming part of the assessment; the issue before us is confined to the transfer-pricing adjustment of ₹63,89,23,479.

5. In the proceedings for AY 2013–14, the TPO did not accept the assessee's use of the rates paid by the cement units to CSPDCL and MPPKVVCL. The TPO reasoned that the transaction to be benchmarked was a transfer by a power-generating undertaking and that the appropriate comparison should, therefore, be with the price charged by power generators to distribution companies. Information was called for under section 133(6). CSPDCL stated that, under the tariff order issued by the Chhattisgarh State Electricity Regulatory Commission, the rate of electricity purchased from CSPGCL stations for the period April 2012 to March 2013 was ₹2.27 per unit. MPPKVVCL reported an average power-purchase

cost of ₹3.05 per unit from various sources for financial year 2012–13. The TPO proposed to apply those respective rates to the electricity transferred from CCTPP and MCTPP. He rejected the assessee's contention that the consuming unit's actual purchase price from a distribution company was the appropriate CUP, observing that a distribution company performed functions and employed assets, and bore risks, which were distinct from those of a power-generating unit. Applying the rates selected by him, the TPO made an adjustment of ₹19,16,82,180 in respect of CCTPP and ₹44,72,41,299 in respect of MCTPP, aggregating to ₹63,89,23,479.

6. For AY 2016–17, the assessee filed its return on 29 November 2016 and revised it on 24 October 2017, declaring an overall loss of ₹4,42,35,98,424. The case was selected for scrutiny and referred to the TPO. By order dated 30 September 2019 under section 92CA(3), the TPO made an upward adjustment of ₹43,10,44,227 in respect of the specified domestic transactions. A draft order was passed on 17 December 2019. The assessee did not file objections before the Dispute Resolution Panel, and the AO passed the final assessment order under section 143(3) read with section 144C(3) on 19 December 2019, incorporating the TPO's adjustment. The assessment order also considered the assessee's section 80-IA position in relation to its power

plants. It refers to a recomputation of eligible profits but records that no separate addition was made because the assessee had not claimed the deduction in its computation of income. The Revenue's appeals before us concern the transfer-pricing adjustments of ₹43,10,44,227 for this year and ₹63,89,23,479 for AY 2013-14.

7. The assessee challenged the adjustments before the learned CIT(A), reiterating that the rates paid by the consuming cement units to CSPDCL and MPPKVVCL were actual prices paid to unrelated parties for electricity in the relevant regions. It maintained that those purchases provided a reliable comparable transaction for benchmarking the electricity supplied by CCTPP and MCTPP. The TPO, in contrast, considered the captive plants to be the relevant tested parties and treated the generation-side rates as the appropriate measure. Thus, while the assessee relied on the rate at which the consuming units could and did purchase electricity from independent suppliers, the TPO relied on information relating to the price at which distribution companies procured electricity from generating sources.

8. The learned CIT(A) examined the competing approaches and deleted the adjustment for each assessment year. The appellate orders record that the TPO had taken the rate at which electricity was purchased by distribution companies

from power-generating companies, while the assessee had adopted the rate at which the cement units purchased electricity from the State distribution companies. The learned CIT(A) held that the TPO was not justified in substituting the actual consumer-side rates with the generation-side rates and accepted the rates paid by the cement units as the appropriate benchmark on the facts of the case. In AY 2016–17, the learned CIT(A) also considered the assessee's without-prejudice grounds concerning section 80-IA, but noted that no separate addition had been made on that account. The deletion of the transfer-pricing adjustments is the subject matter of the present appeals.

9. The Revenue's grounds, common to both appeals, challenge the deletion of the respective adjustments on the basis that the TPO undertook a detailed benchmarking exercise and FAR analysis; that the captive power plant, as the eligible undertaking engaged in power generation, ought to be treated as the tested party; and that the consumer tariff charged by a distribution company is not comparable to the price of electricity generated by the captive plant. The Revenue further contends that the distribution tariff incorporates transmission, wheeling, distribution, network-maintenance, loss and other costs attributable to functions not performed by the captive power plant; that the internal CUP adopted by the assessee was accepted without sufficient

examination of the comparability requirements under Rule 10B; and that decisions rendered for years preceding the introduction of the specified domestic transaction provisions are distinguishable. The Revenue also seeks to distinguish the Delhi High Court decision in PCIT v. DCM Shriram Ltd.

10. The written grounds thus put in issue the choice of tested party, the relevance of the consumer-side purchase rates, the functional and market differences between generating and distribution entities, the comparability requirements under Rule 10B and the effect of the amendments applicable to specified domestic transactions.

11. The Revenue has challenged the deletion of the transfer-pricing adjustment made in respect of electricity generated by the assessee's captive power plants and transferred to its cement manufacturing units. The amount involved is ₹63,89,23,479 for AY 2013-14 and ₹43,10,44,227 for AY 2016-17. The grounds for both years raise substantially the same issue: whether the price paid by the assessee's consuming units to the State electricity distribution companies could be adopted as the arm's-length price of electricity generated by the captive power plants, having regard to the distinct functions performed by a captive generator and a distribution licensee, the applicable provisions governing specified domestic transactions and the

requirements of Rule 10B. The Revenue's case is that the learned CIT(A) accepted the consumer-side tariff without giving due effect to the TPO's objections on comparability and without carrying out the analysis required under Chapter X.

12. The learned CIT-DR's principal submission is that a captive power plant, for purposes of the impugned transaction, is a generator or manufacturer of electricity. The transaction to be benchmarked is the supply of electricity by that generating unit to the assessee's manufacturing unit. It is not, according to the Revenue, a transaction between two distribution companies or a sale of electricity by a distribution company to an unrelated industrial consumer. The rate at which a distribution licensee supplies power to consumers is arrived at in the course of an activity that includes procurement, transmission, wheeling, distribution and retail supply. A distribution licensee employs a substantial network of assets, requires the requisite licence, maintains infrastructure, and performs obligations towards a large consumer base. It also bears the costs and risks inherent in the distribution of electricity. A captive power plant, by contrast, generates power for the assessee's own use and, in the present case, supplies that power to the assessee's own manufacturing units. The Revenue therefore submits that the functions, assets and risks of the two cannot be treated as comparable merely because both transactions concern

electricity. The fact that the product is electricity does not, in its submission, resolve the differences in the commercial character and level of the transactions.

13. On that basis, the learned CIT-DR submits that the consumer tariff paid by a cement unit to a distribution company represents a downstream price, incorporating activities and costs that are not undertaken or incurred by the captive generating unit. The tariff may include charges or components relating to transmission, wheeling, distribution, network operation and maintenance, regulatory levies, cross-subsidies and the distribution company's margin. The captive generator does not perform those distribution functions or employ those distribution assets. Nor does it assume the same distribution risks. The Revenue accordingly contends that the assessee cannot take the price paid by a consumer to a distribution licensee and treat it, without adjustment or further analysis, as the price of electricity generated by the captive power plant. In the Revenue's submission, the comparison must be made at the correct commercial stage: the price at which a generating undertaking supplies power to a distribution company is a more appropriate point of comparison for a generator than the tariff charged by a distribution company to an industrial consumer. To adopt the latter price, without accounting for the distribution function and its associated costs, would attribute to the captive

generating unit value arising from activities it did not perform.

14. The Revenue further submits that, in determining the arm's-length price, the captive generating unit should be taken as the tested party and the comparison should be directed to the price at which electricity is generated or procured for onward distribution. The TPO's approach, as reflected in the assessment proceedings, was to obtain information under section 133(6) from the relevant electricity authorities and consider the rates at which power was procured from generating companies or from other sources. For AY 2013-14, the TPO referred, inter alia, to information concerning CSPDCL's purchases from CSPGCL generating stations at ₹2.27 per unit and MPPKVVCL's average power-purchase cost from various sources at ₹3.05 per unit. He did not accept the assessee's adopted average rates of ₹5.74 per unit for CCTPP, Raipur, and ₹6.44 per unit for MCTPP, Maihar, which were based on the rates paid by the cement units to the respective distribution companies. Proceeding on the basis that a generator's transaction should be benchmarked against a generator-side or procurement-side rate, the TPO computed adjustments of ₹19,16,82,180 for CCTPP and ₹44,72,41,299 for MCTPP, aggregating to ₹63,89,23,479. For AY 2016-17, the TPO made an adjustment of ₹43,10,44,227 on the same essential reasoning. The

Revenue submits that the learned CIT(A), in deleting these adjustments, did not adequately address why a consumer tariff, reflecting distribution activity, should nevertheless be accepted as the comparable price for the captive generator's supply.

15. The learned CIT-DR also contends that the statutory position after the amendment effective from 1 April 2013 is materially different from the position considered in the earlier cases concerning the meaning of "market value" under section 80-IA(8). Under the amended provisions, where the transfer between the eligible and non-eligible units constitutes a specified domestic transaction and crosses the prescribed threshold, the arm's-length-price provisions are attracted. The word "or" in the Explanation to section 80-IA(8), in the Revenue's submission, cannot be read as conferring an option on the assessee to select whichever standard produces the more favourable result. The Revenue argues that clause (i) applies where the transaction does not fall within the specified domestic transaction regime, while clause (ii), referring to arm's-length price under section 92F(ii), governs a transaction that does fall within that regime. Once the threshold is crossed, the price must therefore be determined under the prescribed arm's-length framework, and the assessee cannot rely merely on a consumer tariff as the market-value measure under the earlier clause.

16. In this statutory context, the learned CIT-DR relies upon section 80A(6) and submits that it has an overriding effect in determining the market value of transfers between eligible and non-eligible units. The Revenue's argument, as recorded in the Third Member proceedings, is that the Explanation to section 80A(6) distinguishes the market value of goods or services sold by an eligible business from the price at which those goods or services are purchased by the consuming unit. Clause (i), according to the Revenue, directs attention to the price the eligible business would fetch if it sold the goods or services in the open market, subject to the statutory and regulatory restrictions applicable to the business. Clause (iii), which deals with a specified domestic transaction and refers to arm's-length price under section 92F(ii), must also be read together with clause (i). On this reading, the Revenue submits that the relevant inquiry remains the price obtainable by the captive power plant as the seller or generator, and not the price paid by the consuming unit as a purchaser from a distribution company. It also relies on the explanatory material accompanying the Finance Act, 2012, in support of its submission that the amendments were intended to bring specified domestic transactions within the arm's-length-price framework.

17. The learned CIT-DR further submits that the Supreme Court's decision in CIT v. Jindal Steel & Power Ltd. was rendered in the context of the pre-amendment provision and does not decide the present issue under the post-amendment regime governing specified domestic transactions. According to the Revenue, that decision dealt with the meaning of market value under the earlier clause of the Explanation to section 80-IA(8), whereas the present case requires determination of arm's-length price under sections 92 to 92F, read with sections 80-IA(8), 80A(6) and 92BA. The Revenue also points out that the Electricity Act, 2003 regulates tariffs at different stages of the electricity supply chain, including generation, transmission, wheeling, distribution and retail supply. It relies on the regulatory framework, including sections 61, 62 and 86 of that Act, to submit that prices at both the generator-to-distribution-company level and the distribution-company-to-consumer level are subject to regulation. The Revenue's argument is that regulation cannot, by itself, render a transaction unusable as an uncontrolled comparable; the applicable laws and regulatory conditions must instead be considered as part of the comparability analysis.

18. In support of its objection to the learned CIT(A)'s approach, the learned CIT-DR relies on Rule 10B(2), particularly the requirement to consider the functions

performed, assets employed and risks assumed by the parties, the contractual terms, and the market conditions in which the parties operate, including applicable laws and government orders. The Revenue submits that the differences between a generator and a distribution licensee are precisely the kind of differences that Rule 10B requires the authority to examine. It contends that the fact that the distribution tariff is fixed by a regulatory commission does not remove those differences or establish comparability between the two transactions. It further argues that the Tribunal decisions relied upon by the assessee did not adequately consider section 80A(6), the effect of the 2013 amendment, or the generator-distributor FAR differences, and that those decisions should not be applied without examining these statutory and factual features. In the Third Member proceedings, the Revenue also relied on *Sanghi Industries Ltd. v. DCIT*, where, according to the learned CIT-DR, the Tribunal accepted the generator-side rate as the appropriate arm's-length price for a captive power transaction. The Revenue submits that this approach is consistent with its position that a generator-side comparator is more suitable than a distribution company's consumer tariff.

19. The learned CIT-DR's objections also address the assessee's reliance on decisions applying consumer tariffs as comparables. The Revenue submits that the decisions relied

upon by the assessee, including Jindal Steel, were rendered either under the earlier statutory framework or without examining the combined effect of section 80A(6), the amended section 80-IA(8), section 92BA and Rule 10B. It characterises those decisions as not having considered the specific statutory and FAR objections now raised, and contends that they cannot conclude the issue under the post-amendment regime. It also seeks to distinguish PCIT v. DCM Shriram Ltd. on the ground that the existence of some similarity between a consumer tariff and a captive supply does not eliminate the need to examine the actual functions, assets and risks in the transaction before the Tribunal. The Revenue's case is that each transaction must be tested on its own facts and under the amended statutory provisions, rather than treating the consumer tariff as an invariably applicable benchmark for all captive power supplies.

20. The assessee supports the order of the learned CIT(A). Its response is that the cement units actually purchased electricity from independent distribution companies during the relevant periods and that the rates paid for those purchases supplied a contemporaneous internal CUP for the electricity transferred from the captive plants. It submits that the consuming units' own third-party purchases provide the relevant market reference for valuing electricity used in their manufacturing operations. The assessee relies on the

decisions of the Hon'ble Supreme Court in Jindal Steel & Power Ltd., the Hon'ble Delhi High Court in DCM Shriram Ltd., the Hon'ble Calcutta High Court in Rungta Mines Ltd., and the Tribunal's decision, including the Third Member opinion, in Aditya Birla Nuvo Ltd. Ld. Counsel submitted that the issue is covered by those authorities and that the consumer-side tariff is an appropriate benchmark on the facts of these appeals.

21. We have considered the rival submissions and examined the orders of the lower authorities and the decisions relied upon by the parties. The issue requires the statutory provisions to be read together with the nature of the transaction actually undertaken. Section 80-IA(8) deals with a transfer of goods or services between an eligible business and another business carried on by the same assessee. Where the consideration recorded for such transfer does not correspond to the statutory measure of value, the profits of the eligible business are to be computed by reference to that measure. The Explanation to section 80-IA(8), as applicable after the amendment effective from 1 April 2013, provides that "market value" means the price that the goods or services would ordinarily fetch in the open market or the arm's-length price as defined in section 92F(ii), where the transfer is a specified domestic transaction referred to in section 92BA.

22. The inclusion of clause (ii) in the Explanation does not, by itself, prescribe a particular comparable or require the arm's-length price to be determined by comparing a captive power plant only with a bulk power generator or with the rate at which a distribution licensee procures electricity. It brings a specified domestic transaction within the arm's-length-price framework. Once that framework applies, section 92C requires the most appropriate method to be selected having regard to the nature of the transaction and the relevant factors, while Rule 10B prescribes how the selected method is to be applied. The statutory threshold may determine whether the transaction is subject to the specified domestic transaction provisions; it does not, without more, determine the appropriate comparable or the result of the comparability analysis. That exercise remains transaction-specific.

23. The Revenue's reliance on section 80A(6) does not lead to a different construction. The relevant provisions must be read harmoniously. The inclusion in the Explanation to section 80-IA(8) of a specific reference to arm's-length price where the transfer is a specified domestic transaction, read with the corresponding treatment of specified domestic transactions in section 80A(6), indicates that the arm's-length standard applies to such transfers. It does not follow that the two provisions create a separate rule under which the price obtainable by a captive generator must invariably be

measured by reference to a generator-to-distribution-company transaction. Nor does the statutory reference to arm's-length price dispense with the need to apply section 92C and Rule 10B to the transaction under examination.

24. The word “or” in the Explanation to section 80-IA(8) must be given effect in its setting. Clause (i) states the ordinary open-market measure; clause (ii) identifies the arm's-length-price measure where the transfer is a specified domestic transaction. The latter clause does not create an option to select whichever figure is more favourable to the assessee. Equally, it does not say that, once the specified domestic transaction threshold is crossed, a particular kind of comparator must be adopted. The applicable measure is to be determined by reference to the statutory category into which the transaction falls, and the price under that measure must then be determined by applying the prescribed method and comparability rules. The Revenue's submission about the threshold therefore addresses the applicability of the arm's-length regime; it does not resolve whether the consumer-side purchase price or the generator-side procurement price is the more reliable CUP.

25. Rule 10B(1)(a), which sets out the comparable uncontrolled price method, requires comparison of the price charged or paid for property or services in a comparable

uncontrolled transaction, having regard to the relevant characteristics of the property or services and the circumstances of the transactions. Rule 10B(2) requires consideration of the characteristics of the property or services, the functions performed, assets employed and risks assumed, the contractual terms, and the conditions prevailing in the relevant markets, including applicable laws and government orders. Rule 10B(3), in turn, recognises that a transaction may be treated as comparable where the differences do not materially affect the price or where reasonably accurate adjustments can be made to eliminate their effect. These provisions call for a real examination of the transactions and their commercial setting; they do not permit a comparator to be selected merely because one party to it belongs to the same broad category as one of the parties to the tested transaction.

26. The Revenue is right to point out that a captive power plant and a distribution licensee do not perform identical functions. A distribution licensee employs a distribution network and performs functions, and assumes obligations and risks, which a captive generating unit does not. Those differences are relevant to the comparability analysis and cannot be disregarded. But their identification is not the end of that analysis. The question is whether those differences materially affect the price being compared, viewed in the

context of the particular transaction and the market in which the recipient obtains electricity. In a CUP analysis of the electricity supplied to a manufacturing unit, the comparison is not necessarily between the overall businesses of a captive generator and a distribution licensee. The rate actually paid by the consuming unit to an independent supplier may provide evidence of the price at which that unit could obtain electricity for consumption. Whether it is sufficiently comparable remains dependent on the facts, the nature of the supply and the applicable tariff conditions.

27. The decision of the Hon'ble Supreme Court in CIT v. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207; [2024] 460 ITR 162 (SC), explains the significance of the recipient's available market when valuing electricity generated by a captive power plant. The Court considered whether the rate at which surplus power was supplied by the captive plant to the State Electricity Board, under a statutory and contractual arrangement, represented the market value of power supplied to the assessee's industrial units. It held that the rate at which power was supplied to the Board was not the rate at which an industrial consumer could obtain electricity in the market. The Court observed that, in the absence of supply from the captive plant, the industrial unit would have had to purchase electricity from the State Electricity Board at the tariff applicable to industrial

consumers. It accordingly accepted the consumer tariff as the relevant market value for the purpose of section 80-IA(8).

28. The Revenue contends that Jindal Steel concerned the earlier version of section 80-IA(8) and cannot govern a specified domestic transaction after the amendment effective from 1 April 2013. The distinction between the two statutory settings must be recognised: Jindal Steel did not decide the application of the amended specified domestic transaction provisions. But that does not render its reasoning irrelevant to the identification of the appropriate market reference. The later decisions in *PCIT v. DCM Shriram Ltd.* [2025] 170 taxmann.com 631; [2025] 478 ITR 385 (Del.) and *PCIT v. Rungta Mines Ltd.* [2025] 176 taxmann.com 410 (Cal.) considered the issue in the context of the amended provisions and the arm's-length framework. They provide direct guidance on the Revenue's contention that the statutory amendment displaces the consumer-side comparison.

29. In *DCM Shriram Ltd.*, the Hon'ble Delhi High Court considered both the consumer tariff and the Revenue's objections to the use of that tariff as a comparable. The Court acknowledged that distribution companies perform functions distinct from those of captive power units and that the tariffs charged by them are regulated. It nevertheless held that there was a sufficient degree of similarity between the supply of

electricity by a distribution company to an industrial consumer and the supply by the assessee's eligible unit to its manufacturing unit to permit the consumer tariff to be used under the CUP method. The Court also considered the decision in Jindal Steel and accepted the consumer-side rate as a relevant measure. Its reasoning is significant here: the existence of differences between a distributor and a captive generator, and the regulated character of the distribution tariff, do not automatically exclude the tariff from consideration. Those matters are to be assessed in the comparability exercise; they do not, without more, establish that the generator-side purchase rate is the correct price for power supplied to a manufacturing consumer.

30. DCM Shriram also considered the use of rates quoted on the Indian Energy Exchange. It held that such rates were not comparable to the regular supply of power by a State electricity board or distribution company, having regard to the nature of the IEX platform, the short-term and volatile character of the transactions, and the fact that those rates did not represent the price for a continuing and dependable supply to an industrial consumer. That part of the decision is relevant to the Revenue's reliance on the volatility of IEX rates: the Delhi High Court did not treat that volatility as a reason to reject the consumer tariff. It treated the features of IEX transactions as a reason why those transactions were not

a suitable substitute for the regular electricity supply available to the consumer.

31. The Hon'ble Calcutta High Court in Rungta Mines Ltd. considered the Revenue's challenge in the context of the amended Explanation to section 80-IA(8), section 80A(6) and the specified domestic transaction provisions. The Revenue there specifically questioned the use of the landed cost at which the assessee's manufacturing units purchased electricity from the State distribution companies, and raised objections concerning the statutory reference to arm's-length price. The High Court examined the statutory scheme and the Electricity Act framework and affirmed the Tribunal's conclusion that the landed cost paid by the consuming units could be adopted for benchmarking power supplied by the captive plants. It applied the reasoning in Jindal Steel and rejected the contention that the post-amendment reference to arm's-length price, by itself, required a generator-side rate to be used. The decision thus addresses the amended statutory framework on which the Revenue relies in the present appeals.

32. The Revenue's reliance on CIT v. ITC Ltd. must also be viewed in light of the subsequent authorities. The TPO referred to that decision in support of using a generator-side rate. However, the Supreme Court's subsequent decision in

Jindal Steel, together with the later decisions of the Delhi and Calcutta High Courts concerning the consumer-side rate and the amended provisions, does not permit the generator-to-distribution-company rate to be treated as the inevitable benchmark in every captive power case. The inquiry remains whether the selected uncontrolled transaction provides a reliable comparison for the tested transfer. In that inquiry, the price at which electricity is available to the receiving manufacturing unit cannot be excluded solely because the supplier at that stage is a distribution licensee.

33. The opinion of the Third Member in *Aditya Birla Nuvo Ltd.*, ITA No. 563/Mum/2018, dated 6 August 2025, is particularly material to the present controversy. The Third Member considered the same central objections advanced by the Revenue: the effect of the post-2013 amendment, the relationship between sections 80-IA(8) and 80A(6), the word “or” in the Explanation, the applicability of *Jindal Steel*, the FAR differences between a generator and a distribution licensee, and the contention that the generator-side rate should be adopted. The Third Member concluded that sections 80-IA(8) and 80A(6) could be read harmoniously; the specified domestic transaction provisions required an arm’s-length determination but did not predetermine the comparable; and the rate paid by the manufacturing unit to

the distribution licensee could be used as a CUP where it represented the unit's actual alternative source of electricity.

34. The Third Member also considered the Revenue's reliance on Sanghi Industries Ltd. and distinguished it on its facts. In that case, as noticed by the Third Member, the captive power plant had supplied surplus electricity to third parties at an average rate materially different from the rate used in the transfer-pricing study. In Aditya Birla Nuvo, by contrast, the captive plant supplied power to the assessee's manufacturing unit, and the manufacturing unit also purchased electricity from GUVNL at ₹6.62 per unit; the captive plant had not supplied power to another party at a different rate. The Third Member therefore held that the rate actually paid by the manufacturing unit to GUVNL could be applied as a valid CUP. The subsequent confirmatory order dated 17 November 2025 gave effect to the majority view on that issue. The decision is a Tribunal determination reached after considering the amended statutory provisions and the principal objections now advanced by the Revenue.

35. Having considered the statutory provisions and the authorities, we are unable to accept the Revenue's submission that the 2013 amendment, by itself, displaces the consumer-side comparison or mandates the use of a generator-to-distribution-company rate. The amendment

brings a transfer falling within section 92BA within the arm's-length-price framework; it does not prescribe that the generator must be compared only with another generator, or that a rate at which a distribution licensee procures power must invariably be adopted. The selection of the CUP remains governed by the transaction-specific requirements of section 92C and Rule 10B.

36. Nor does the difference in functions between a captive generator and a distribution licensee conclude the matter in favour of the Revenue's proposed comparator. Those differences must be considered, but the comparison must remain directed to the price of the electricity supplied to the consuming unit. A generator-to-distribution-company rate reflects a supply at a different commercial stage and, in the circumstances considered in *Jindal Steel*, may be a regulated or contractually constrained supplier-side price that is not available to the manufacturing consumer. Conversely, a tariff charged by a distribution company to an industrial consumer may, despite the distribution function and regulated tariff structure, provide a sufficiently similar price reference for electricity available to that consumer. *DCM Shriram* and *Rungta Mines* make clear that the difference in functions and the regulated nature of the tariff are not, without further analysis, decisive against the consumer-side CUP.

37. We also find that the Revenue's construction of sections 80-IA(8) and 80A(6) does not support the proposition that the price must be measured exclusively from the seller's standpoint. The provisions require the arm's-length price to be determined where the transfer constitutes a specified domestic transaction. They do not displace the ordinary comparability inquiry or transform a generator-side procurement rate into the sole permissible benchmark. The arm's-length inquiry must identify the price that can reliably be applied to the transaction in question, having regard to the goods transferred, the terms and conditions, the relevant market and the circumstances of the parties. In the case of electricity transferred by a captive plant to a manufacturing unit, the unit's actual purchases from an independent distribution company are plainly relevant evidence of the price at which that unit could obtain power for its operations.

38. The issue has also been considered by the Tribunal in Aditya Birla Nuvo Ltd. after the Third Member examined the Revenue's post-amendment, section 80A(6), FAR and generator-side comparator arguments. The Third Member's opinion was given effect by the confirmatory order of the Division Bench. While each appeal must ultimately be decided on its own record, the statutory objections raised here are substantially the same, and the reasoning in that decision is consistent with the subsequent decisions of the Hon'ble Delhi

and Calcutta High Courts. We therefore see no basis to treat the post-amendment provisions as taking the present transaction outside the principle that the actual rate paid by the receiving manufacturing unit for electricity from an independent distribution company may constitute a valid CUP.

39. We now apply the above principles to the transactions in the two assessment years before us. The record establishes that the assessee operated two captive power plants, CCTPP at Raipur and MCTPP at Maihar, and transferred the electricity generated by them to the assessee's cement manufacturing units at Raipur and Satna, respectively. The captive plants were set up to meet the power requirements of those manufacturing units. The cement units' total consumption exceeded the captive generation and, to meet the balance requirement, they also purchased electricity from CSPDCL and MPPKVVCL. The transfer rates applied to the captive power were the same monthly rates at which the respective cement units purchased electricity from those independent distribution companies. The question is whether, on these facts, the actual third-party purchase rates could be accepted as the CUP for the inter-unit transfer.

40. For AY 2013-14, the assessee adopted average rates of ₹5.74 per unit for electricity supplied by CCTPP and ₹6.44 per

unit for electricity supplied by MCTPP. These were the average rates at which the cement units at Raipur and Satna purchased electricity from CSPDCL and MPPKVVCL, respectively. The assessee's case was not founded on an estimated or notional tariff. The consuming units' actual monthly purchase rates were available, and the captive transfers were recorded at those same rates. The TPO, however, compared the captive generation with rates at which CSPDCL and MPPKVVCL procured power from generating sources—₹2.27 and ₹3.05 per unit, respectively. On that basis, he made adjustments of ₹19,16,82,180 for CCTPP and ₹44,72,41,299 for MCTPP, aggregating to ₹63,89,23,479.

41. The difference between the two comparisons is material. The rates of ₹2.27 and ₹3.05 per unit were rates at which power was procured at the generator or procurement stage. They were not rates at which the assessee's cement units could obtain electricity for their manufacturing operations. The actual alternative available to those units, in the absence of captive supply, was to purchase electricity from the State distribution companies at the rates they in fact paid. The TPO's comparison thus substitutes a supplier-side procurement price for the price available to the consuming unit. It does not establish that the cement units could have purchased power at the lower generator-side rates, nor does it identify how the distribution-stage differences should be

adjusted to make those rates comparable to the price of electricity supplied to the manufacturing units.

42. The Revenue's objections concerning the different functions, assets and risks of generators and distribution companies have been considered. Those differences exist, but they do not answer the transaction-specific question before us. The assessee is not treating the distribution company as the tested party or comparing its entire distribution business with the captive power plant. The actual consumer tariff is being used as evidence of the price at which the receiving cement unit could obtain electricity from an independent supplier. In these circumstances, the fact that a distribution company performs additional distribution functions does not, by itself, make the price paid by the cement unit irrelevant. The Hon'ble Delhi High Court in DCM Shriram accepted that, notwithstanding the functional distinction and regulated nature of the tariff, there was sufficient similarity to use the distribution company's consumer tariff under the CUP method. The Hon'ble Calcutta High Court in Rungta Mines likewise sustained the use of the landed cost paid by the manufacturing units under the amended statutory framework.

43. For AY 2016–17, the factual position is materially the same. The consuming cement units required more electricity

than was generated by CCTPP and MCTPP and purchased the balance from CSPDCL and MPPKVVCL. The transfer of captive power was recorded at the same rates as those charged by the respective distribution companies to the cement units. The average consumer-side rates were ₹7.20 per unit for CCTPP and ₹6.62 per unit for MCTPP. The TPO instead referred to the rates at which CSPDCL and MPPKVVCL procured electricity from generating companies—₹3.09 and ₹3.74 per unit, respectively—and made adjustments of ₹26,52,16,536 for CCTPP and ₹16,58,27,691 for MCTPP, aggregating to ₹43,10,44,227.

44. The same difficulty attends the TPO's approach for AY 2016–17. The procurement rates relied upon by the TPO are not the prices at which the assessee's manufacturing units could obtain power from those generating companies. The rates actually paid to the distribution companies were contemporaneous, related to electricity purchased by the very units that received the captive supply, and were applied on a monthly basis to the inter-unit transfers. The Revenue has not shown that the captive units supplied electricity to other parties at a different rate, or that the cement units had access to the lower procurement rates adopted by the TPO. On the record before us, the consumer-side rates provide the more direct measure of the price at which the recipient units could obtain electricity for consumption.

45. The learned CIT(A), for AY 2016–17, considered the competing rates and the decisions relied upon by the parties, including the decision of the Third Member in Aditya Birla Nuvo Ltd. The learned CIT(A) held that the rate at which the manufacturing units purchased electricity from the State distribution companies was the appropriate benchmark and directed deletion of the adjustment of ₹43,10,44,227. That conclusion is consistent with the facts on record and with the principles discussed above. For AY 2013–14 also, the learned CIT(A) accepted the assessee's use of the actual rates paid by the consuming units and deleted the adjustment of ₹63,89,23,479. We find no material difference in the transaction or the relevant comparison between the two assessment years that would warrant a different conclusion.

46. The distinction drawn by the Third Member in Aditya Birla Nuvo Ltd. also supports this conclusion. There, the Tribunal distinguished Sanghi Industries Ltd. because the captive power plant in that case had supplied surplus electricity to third parties at rates materially different from those used in the transfer-pricing study. Here, the record shows that the power generated at CCTPP and MCTPP was transferred to the assessee's cement units, while those units separately purchased additional electricity from CSPDCL and MPPKVCL. The benchmark adopted by the assessee therefore corresponds to actual third-party purchases by the recipients. No contrary sale

by the captive plants at a different rate has been brought to our notice. The factual basis for applying the consumer-side price is thus present in both years.

47. In view of the foregoing discussion, we hold that, on the facts of these appeals, the rates at which the assessee's cement units purchased electricity from CSPDCL and MPPKVCL were valid internal CUPs for benchmarking the transfers from CCTPP and MCTPP. The TPO was not justified in substituting those rates with the rates at which the distribution companies procured electricity from generating companies, since those were prices at a different stage of the supply chain and were not shown to be prices available to the assessee's consuming units. We accordingly uphold the orders of the learned CIT(A) deleting the transfer-pricing adjustments of ₹63,89,23,479 for AY 2013-14 and ₹43,10,44,227 for AY 2016-17. The Revenue's grounds on this issue are dismissed.

48. In the result, both appeals filed by the Revenue are dismissed.

Order pronounced on 30th September, 2026.

Sd/-

(G.M. DOSS)

ACCOUNTANT MEMBER

Mumbai; Dated 30/09/2026
KARUNA, sr.ps

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai