

आयकर अपीलीय अधिकरण
कटक पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
CUTTACK BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं

श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 506/CTK/2024
Assessment Year: 2021-22**

Indian Metals and Ferro Alloys Ltd.	Vs.	Assessment Unit, Income Tax Department
(Appellant)		(Respondent)
PAN: AAACI4818F		

Appearances:

Assessee represented by : Sachit Jolly, Senior Advocate.

Department represented by : Ashim Kumar Chakraborty, CIT DR.

Date of concluding the hearing : 21-May-2025

Date of pronouncing the order : 19-August-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Assessing Officer (hereinafter referred to as Ld. 'AO') passed u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2021-22 dated 28.10.2024, which has



been passed after considering the directions of the DRP u/s 144C(5) of the Act, dated 30.09.2024.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. That on the facts and circumstances of the case & in law, the final assessment order dated October 28, 2024, passed by the National Faceless Assessment Centre, Assessment Unit, Income Tax Department (the Ld. AO), making an addition of Rs. 62,97,51,510/- to the returned income pursuant to the directions of the Ld. Dispute Resolution Panel-II, Delhi (Ld. DRP) is bad in law and, therefore, liable to be set aside.

2. That on the facts and circumstances of the case & in law, the order passed under section 92CA(3) of the Act by Ld. Deputy Commissioner of Income Tax, Transfer Pricing-1, Kolkata (Ld. TPO) on September 12, 2023, proposing a downward adjustment of Rs. 182,23,39,293, which was subsequently approved by the Ld. DRP vide directions dated September 30, 2024, is bad in law and, therefore, liable to be set aside.

3. That on the facts and circumstances of the case and in law, the Ld. TPO, as well as the Ld. DRP has erred in making a downward adjustment of Rs. 182,23,39,293/- to the arm's length price determined by the Appellant with respect to the Specified Domestic Transaction of transfer of power Eligible unit to the manufacturing unit and, in doing so, has erred in disregarding the arm's length price determined by the assessee in the transfer pricing documentation under section 92D of the Act.

4. That on the facts and circumstances of the case and in law, the Ld. TPO, as well as the Ld. DRP has failed to appreciate that the price at which the GRIDCO Limited/ State Electricity Board provided electricity to the Appellant constituted a valid comparable price for transfer pricing analysis and, in doing so, has ignored the binding decision of the Hon'ble Supreme Court / rendered in the case of CIT v. Jindal Steel & Power Limited [(2024) 460 ITR 162].

5. That on the facts and circumstances of the case and in law, the Ld. TPO, as well as the Ld. DRP has failed to appreciate that the Tariff Order of Odisha Electricity Regulatory Commission determining the price for bulk buying of Electricity by GRIDCO Limited from various Power Generating Companies cannot form the Comparable Price for determining Arm's Length Value.



6. That on the facts and circumstances of the case and in law, the Ld. AO has erred in imposing interest under Section 234B and Section 234C of the Act.

7. That on the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under Section 270A of the Act.”

3. Brief facts of the case are that Indian Metals and Ferro Alloys Ltd. (‘IMFA’), the assessee, is a public limited company incorporated in India and is a leading, fully integrated producer of ferro chrome in India. Located in the state of Odisha, IMFA is India's largest producer of ferro chrome with 187 MVA installed furnace capacity backed up by 258 MW captive power plant and extensive chrome ore mining tracts. The company's ferro chrome output is primarily exported to Korea, China, Japan and Taiwan. It filed its return of income for the AY 2021-22 on 23.03.2022 showing total income of ₹131,72,49,344/- and the same was processed u/s.143(1) of the Act by the CPC on 14.11.2022 determining taxable income at ₹131,72,49,344/-. The case was selected for complete scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS') for the reasons being large specified domestic transaction(s) and large aggregate value of specified domestic transactions in the nature of transfer or acquisition of any goods or services. Accordingly, notice u/s 143(2) of the Act was issued and served on the assessee which was duly responded. As the case was selected for scrutiny on the TP parameters, the required approval was obtained by the Ld. AO from the Pr. Commissioner of Income Tax for referring the case to the Transfer Pricing Officer(‘TPO’). Thereafter, the case was referred to the TPO u/s 92CA(1) of the Act on 15.09.2022. Consequent to the reference, the TPO passed an order u/s 92CA(3) of the Act and made the downward adjustment of ₹182,23,39,293/- with respect to 80-IA units vide DIN & Order No: ITBA/TPO/F/92CA3/2023-



24/1056266035(1) dated 19.09.2023, which was issued and served upon the assessee. Thereafter, a show cause notice was issued to the assessee for making the proposed adjustments. Since no satisfactory reply was received from the assessee, the downward adjustments of ₹182,23,39,293/- made by the Ld. TPO was added to the taxable income of the assessee. However, since the claim of deduction u/s 80-IA of the Act was only at ₹62,97,51,510/-, the adjustment was restricted to the same amount. Accordingly, draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act was passed. Against the draft assessment order, the assessee filed objections before the Dispute Resolution Panel which passed an order u/s 144C(5) of the Act upholding the additions proposed by the Ld. TPO. The directions of the Dispute Resolution Panel in this regard relating to the transfer pricing adjustments as mentioned in the Order Giving Effect to the directions by the TPO which order is incorporated on page 19 of the assessment order are as under:

“Order under Section 92CA (3) r.w.s. 144C(5) of the Income Tax Act 1961

A reference u/s. 92CA(1) of the I.T. Act 1961 in the case of M/s. Indian Metals & Ferro Alloys Ltd. (hereinafter referred to as the "the assessee") for the computation of arm's length price in relation to international transaction detailed in the audit report in Form No. 3CEB was received through online portal on 16.09.2022.

2.0 Subsequently, an order under section 92CA(3) of the Income Tax Act, 1961 was passed on 19.09.2023 making a upward adjustment of Rs. 182,23,39,293/- in respect of specified domestic transactions of the assessee.

3.0 The assessee company had filed an objection before the Dispute Resolution Panel (DRP). New Delhi against the draft order. The Ld. DRP after hearing to the assessee's contentions passed its directions on 30.09.2024, directing the AO/TPO to take recommended action. The said order of the Ld. DRP passed u/s. 144C(5) of the Income tax act, was received by this office on 03.10.2024.

4.0 The Ld. DRP is of the view that the arm's length adjustment determined by the TPO vide order under section 92CA(3) of the Income Tax Act, 1961 dated 19.09.2023 regarding transfer of power should be upheld as directed by the Ld. DRP. Relevant part of the order of the Ld. DRP (page 6) is reproduced verbatim as under:

The case laws prior to AY 2012-13 including the recent decision of Hon'ble Apex Court in the case of CIT vs. Jindal Steel and Power Ltd. in Civil Appeal No. 13771 of 2015 were rendered in the context of the term 'market value' for purposes of section 80IA of the Act & does not apply where the market value has to be in consonance with ALP also, being a SDT. Hence, this Panel finds no force in argument of the assessee that its position is wholly and squarely covered by this judgement.

Thus it is clear that transactions for purpose of deduction under section 80IA that require determination of market value of any good that is also a SDT would be determined as per the applicable domestic transfer pricing methods, in entirety.

Considering the facto-legal positions of the issue at hand, the Panel hereby upholds the methodology proposed by the TPO to benchmark the transfer price of power generated by the CPP is wholly correct and hence, this Panel hereby confirms the adjustment of Rs. 182,23,39,293/-, The Ground No. 3 is accordingly disposed of.

Effect to the directions of the Ld. DRP:

Ld. DRP vide Para no. 5.6-5.14 of its direction has upheld the adjustment proposed by the TPO and accordingly the adjustment made by TPO vide order u/s. 92CA (3) dated 20.10.2023 stands.

This is issued with the approval of the JCIT (TP) Range-3, Kolkata.

4. In view of the above as discussed in the draft assessment order, the Assessing Officer (hereinafter referred to as Ld. 'AO') added a sum of ₹62,97,51,510/- to the total income of the assessee by holding as under:

"7. In view of the above, as discussed in draft assessment order the total taxable income of assessee is computed based on the additions proposed by Ld. TPO. That is, the downward adjustment of Rs. 182,23,39,293/- to the income of the assessee with respect to 80-IA units. However, the claim of deduction u/s.80-IA of the I.T. Act by the assessee is only at Rs.62,97,51,510/- in the ITR filed by the assessee company. Hence, the



adjustment is restricted to an amount of Rs.62,97,51,510/-, being the deduction u/s. 80-IA claimed by the assessee. Thus, in accordance to section 92CA(4) of the Act the downward adjustment of Rs.62,97,51,510/- has been added to the taxable income of the assessee.”

5. Thus the Ld. AO assessed the total income of the assessee at ₹194,70,00,854/- u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act. Aggrieved with the order of the Ld. AO, the assessee has filed the appeal before this Tribunal.

6. Rival contentions were heard and the submissions made and the paper book filed have been examined. The Ld. AR stated that the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207 (SC)/[2024] 297 Taxman 253 (SC)/[2024] 460 ITR 162 (SC)[06-12-2023]** was not considered. The Ld. DR drew our attention to the fact that the Dispute Resolution Panel considered the same and as the decision did not lead to the adjustments on account of Arm's Length Price on the specified domestic transactions, therefore, the same was not considered by the Dispute Resolution Panel. The Ld. AR drew our attention to the fact that in the convenience compilation filed, details have been mentioned and the assessee manufactures and sells its products. The Ld. AR drew our attention to the decision of the Hon'ble Delhi High Court in support of **PCIT vs. DCM Shriram Ltd. ITA No. 566/2023** order dated 21.01.2025 which has considered the case of the Hon'ble Supreme Court post amendment relating to inclusion of adjustment on account of Arm's Length Price for specified domestic transactions and even though the transactions required Arm's Length Price instead of market value, it was submitted that the decision was equally applicable as has been held by the Hon'ble Delhi High Court.



7. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The provisions of section 80-IA(8) of the Act are reproduced as under:

“80-IA(8) Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date :

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation.—For the purposes of this sub-section, "market value", in relation to any goods or services, means—

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) 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.”

8. Thus, the transactions between associated enterprises for specified domestic transactions are subjected to adjustments on account of Arm's Length Price and the term “market value” has varied meaning depending upon if the transactions are specified domestic transactions, then the market value is the arm’s length price and in case of other transactions it is the price that such goods or services would ordinarily fetch in the open market. The Ld. DR stated that the decision of the Hon'ble Supreme Court in the case of **Jindal Steel & Power Ltd. (supra)** was prior to the amendment for computation of



Arm's Length Price for specified domestic transactions and is not applicable to the facts of the case of the assessee as earlier the 'market value' used to be considered for determining the price for transactions between associate enterprises but now the adjustment has to be carried out on account of the arm's length price (ALP) as the definition of 'market value' for specified domestic transaction has been substituted by virtue of clause (ii) of the Explanation inserted below sub-section (8) to section 80-IA. However, the Ld. AR stated that subsequent to the amendment, the same rationale has to be applied as has been done by the Hon'ble Delhi High Court in the case of **Principal Commissioner of Income-tax vs. DCM Shriram Ltd. [2025] 170 taxmann.com 631 (Delhi)[21-01-2025]** in which the decision of the Hon'ble Supreme Court in the case of **Jindal Steel & Power Ltd. (supra)** has also been considered.

9. At this stage we need to examine the facts of the case and the findings in the case of **DCM Shriram Ltd. (supra)**. The facts in the case were that the assessee was engaged in the business of manufacturing and trading of chemicals, PVC resins, PVC compounds, UPVC windows and door systems, cement, sugar, fertilizers, seeds, textile yarn, power generation and operating retail outlets. **It had transferred power from its eligible units to non-eligible units in three regions. The assessee had benchmarked the transactions at the rate on which electricity was transferred by its unit to Uttar Pradesh Power Corporation Limited (UPPCL) in the UP region at the rate of Rs. 4.39 kWh; in the Gujrat region at the rate of Rs. 38.56 kWh being the rate at which power was purchased from Dakshin Gujarat Vij Company Limited (DGVCL); and at the rate of Rs. 8.35 kWh in the Rajasthan region being the rate at which the power was purchased from Jaipur**



Vidyut Vitran Nigam Limited (JVVNL). The TPO found that the rates at which the transactions in Uttar Pradesh, Rajasthan and Gujarat Regions were benchmarked were significantly higher than the average rate of power traded on the International Energy Exchange (IEX). **The TPO thereafter averaged the rates at which the assessee had benchmarked the transactions and the average rates on which power was traded at the IEX and determined the ALP rates at Rs. 3.47 for the UP Region, Rs. 5.45 for Rajasthan Region; and Rs. 20.54 for the Gujarat Region. Based on the aforesaid rates, the TPO directed a transfer pricing adjustment of Rs. 30.83 crores.** The Assessing Officer framed a draft assessment order inter alia, including an adjustment on account of transfer pricing of power and steam (Rs. 30.83 crores on transfer of power from eligible units to ineligible units and Rs. 103.57 crores on account of transfer of steam from power plants to manufacturing plants). The assessee had claimed a deduction of Rs. 220.25 crores under Chapter VIA (section 80-IA), which was reduced by the aforesaid adjustment of Rs. 1.34 crores. Accordingly, the assessee's income under the normal provisions was determined at certain amount. **The DRP held that only the rates at which the assessee had sold power to SEB would be considered as an internal Comparable Uncontrolled Price (CUP) and not the rates at which the assessee had purchased electricity. Since the assessee had not sold electricity to SEBs in Gujarat and Rajasthan region; the rates at which it purchased electricity from DGVCL and JVVNL could not be considered as internal CUPs. In view of the aforesaid directions, the transfer pricing adjustment in respect of power supplied by the assessee's eligible units to ineligible units was determined at Rs. 26.53 crores.**

10. **On appeal, the Tribunal upheld the decision of the DRP in holding that the rates at which the power was sold in the UP region by the assessee's power units could be considered as an internal CUP and the rates at which power was purchased by the assessee from DGVCL and JVVNL in Rajasthan and Gujarat region were required to be treated as external CUPs.** However, the Tribunal accepted the assessee's contention that the rates at which electricity was traded on IEX could not be considered as external CUPs as the products (energy sold on spot rates and energy supplied/purchased by State Electricity Board) were not sufficiently comparable. Accordingly, the Tribunal deleted the additions made on account of transfer pricing for transfer of power from the assessee's eligible units to ineligible units. On appeal to the Hon'ble High Court, it has been held as under:

“35. In the present case, the Assessee had computed the ALP by adopting the CUP method as provided in Rule 10B(1)(a) of the Rules. The TPO had also accepted it as the most appropriate method in the facts of the present case. Thus, there is no dispute that CUP method is required to be used for determining the ALP and the market value for the purposes of Section 80IA of the Act.

*36. As is apparent from Sub-clause (i) of Clause (a) of Rule 10B(1) of the Rules, it is necessary to determine the price charged or paid for the property or goods transferred or services provided in a comparable uncontrolled transaction. In the present case, the transaction relates to the sale of electricity by the Assessee's eligible unit to a non-eligible unit. **Thus, a comparable uncontrolled transaction would necessarily involve determining a transaction of sale of power in a similar uncontrolled transaction.***

37. It is relevant to refer to OECD Guidelines, which explains various methods for determining the ALP.

38. The relevant extract of the said guidelines is set out below:

"2.14. The CUP method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. If there is any difference between the two prices, this may indicate that the conditions of the commercial and

financial relations of the associated enterprises are not arm's length, and that the price in the uncontrolled transaction may need to be substituted for the price in the controlled transaction.

2.15. Following the principles in Chapter I, an uncontrolled transaction is comparable to a controlled transaction (i.e. it is a comparable uncontrolled transaction) for purposes of the CUP method if one of two conditions is met: (a) none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market; or, (b) reasonably accurate adjustments can be made to eliminate the material effects of such differences. Where it is possible to locate comparable uncontrolled transactions, the CUP method is the most direct and reliable way to apply the arm's length principle. Consequently, in such cases the CUP method is preferable over all other methods.

2.16. It may be difficult to find a transaction between independent enterprises that is similar enough to a controlled transaction such that no differences have a material effect on price. For example, a minor difference in the property transferred in the controlled and uncontrolled transactions could materially affect the price even though the nature of the business activities undertaken may be sufficiently similar to generate the same overall profit margin. When this is the case, some adjustments will be appropriate. As discussed below in paragraph 2.17, the extent and reliability of such adjustments will affect the relative reliability of the analysis under the CUP method.

2.17. In considering whether controlled and uncontrolled transactions are comparable, regard should be had to the effect on price of broader business functions other than just product comparability (i.e. factors relevant to determining comparability under Chapter I). Where differences exist between the controlled and uncontrolled transactions or between the enterprises undertaking those transactions, it may be difficult to determine reasonably accurate adjustments to eliminate the effect on price. The difficulties that arise in attempting to make reasonably accurate adjustments should not routinely preclude the possible application of the CUP method. Practical considerations dictate a more flexible approach to enable the CUP method to be used and to be supplemented as necessary by other appropriate methods, all of which should be evaluated according to their relative accuracy. Every effort should be made to adjust the data so that it may be used appropriately in a CUP method. As for any method, the relative reliability of the CUP method is affected by the degree of accuracy with which adjustments can be made to achieve comparability.



2.18. Subject to the guidance in paragraph 2.2 for selecting the most appropriate transfer pricing method in the circumstances of a particular case, the CUP method would generally be an appropriate transfer pricing method for establishing the arm's length price for the transfer of commodities between associated enterprises. The reference to "commodities" shall be understood to encompass physical products for which a quoted price is used as a reference by independent parties in the industry to set prices in uncontrolled transactions. The term "quoted price" refers to the price of the commodity in the relevant period obtained in an international or domestic commodity exchange market. In this context, a quoted price also includes prices obtained from recognised and transparent price reporting or statistical agencies, or from governmental price-setting agencies, where such indexes are used as a reference by unrelated parties to determine prices in transactions between them.

2.19. Under the CUP method, the arm's length price for commodity transactions may be determined by reference to comparable uncontrolled transactions and by reference to comparable uncontrolled arrangements represented by the quoted price. Quoted commodity prices generally reflect the agreement between independent buyers and sellers in the market on the price for a specific type and amount of commodity, traded under specific conditions at a certain point in time. A relevant factor in determining the appropriateness of using the quoted price for a specific commodity is the extent to which the quoted price is widely and routinely used in the ordinary course of business in the industry to negotiate prices for uncontrolled transactions comparable to the controlled transaction. Accordingly, depending on the facts and circumstances of each case, quoted prices can be considered as a reference for pricing commodity transactions between associated enterprises. Taxpayers and tax administrations should be consistent in their application of the appropriately selected quoted price.

2.20. For the CUP method to be reliably applied to commodity transactions, the economically relevant characteristics of the controlled transaction and the uncontrolled transactions or the uncontrolled arrangements represented by the quoted price need to be comparable. For commodities, the economically relevant characteristics include, among others, the physical features and quality of the commodity; the contractual terms of the controlled transaction, such as volumes traded, period of the arrangements, the timing and terms of delivery, transportation, insurance, and foreign currency terms. For some commodities, certain economically relevant characteristics (e.g. prompt delivery) may lead to a premium or a discount. If the quoted price is used as a reference for determining the arm's length price or price range, the

standardised contracts which stipulate specifications on the basis of which commodities are traded on the exchange and which result in a quoted price for the commodity may be relevant. Where there are differences between the conditions of the controlled transaction and the conditions of the uncontrolled transactions or the conditions determining the quoted price for the commodity that materially affect the price of the commodity transactions being examined, reasonably accurate adjustments should be made to ensure that the economically relevant characteristics of the transactions are comparable. Contributions made in the form of functions performed, assets used and risks assumed by other entities in the supply chain should be compensated in accordance with the guidance provided in these Guidelines."

[emphasis added]

39. *It is relevant to refer to Law & Practice of Transfer Pricing in India - A Compendium, the relevant extract is set out below:-*

"While applying CUP method product comparability should be examined rather than business functions. The CUP method is used in cases where an independent enterprise buys or sells products that are identical or very similar to those purchase/sold by one AE to another AE or in situations where services are rendered that are identical or very similar to those rendered in the controlled transaction.

While product comparability is the most important factor under the CUP method, the following other comparability factor also play a vital role:

- (i) Contractual terms; and*
- (ii) Economic circumstance Where there are difference between controlled transaction and transaction with/ between unrelated parties due to other comparability factors, adjustments should be made to enhance reliability."*

40. *In Sumitomo Corporation India (P.) Ltd. v. CIT Neutral Citation No. 2016:DHC:5154-DB/[2016] 71 taxmann.com 290/242 Taxman 260/387 ITR 611 (Delhi) this court made the following observations: -*

"34. However, we find that the Tribunal erred in proceeding to determine the ALP on the basis of the rate of commission reported by the Assessee in respect of indenting transactions with Non-AEs, without further examination as to the similarity between the two transactions. The Tribunal effectively used the CUP Method for imputing the ALP of Assessee's indenting transaction with AEs. This may well be the most appropriate method to be used for determining the ALP.

However, if the Tribunal thought that this was the case, it was necessary for the Tribunal to conduct a further indepth inquiry as to the relevant uncontrolled transactions.

It is well settled that in applying the CUP Method, a very high degree of similarity between the controlled and uncontrolled transactions is required."

[emphasis added]

...

42. It is clear from the above that the CUP method would be an appropriate method only if the transactions are identical inasmuch as there are no differences that would materially affect the price in an open market. And, if there is any difference which affects the price, the same can be reasonably ascertained and its effect can be eliminated by an appropriate adjustment.

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.

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.

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 transaction and the uncontrolled transaction of trade on the 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 Rs. 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 Rs. 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. {emphasis supplied}

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 & Power Ltd.* [2023] 157 taxmann.com 207/297 Taxman 253/460 ITR 162 (SC). 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 Rs. 2.32 per unit. However, the Assessee had computed the revenue from supply of electricity to its own unit at the rate of Rs. 3.72 per unit. It was the Assessee's case that the market value of the electricity was Rs. 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."*

11. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The internal CUP and external CUP decided the market value for specified domestic transactions. **The Hon'ble Delhi High Court has held that the internal CUP for the ALP was the rate at which power was supplied to the U.P. Power Corporation Ltd. and the rate was rightly accepted as ALP as the same was available.** For the regions where the assessee had not supplied any excess power to the Power Corporation Ltd. or the SEB, i.e. where no internal CUP was available, the ALP had to be arrived at by considering the rate at which the distribution companies had supplied power to the consumers, which was considered as the external CUP in the absence of any internal CUP for the regions concerned. Since the decision of the Hon'ble Delhi High Court was not submitted before the Dispute Resolution Panel therefore, in order to be fair to both the assessee as well as the Ld. AO, the Bench was of the view that the Dispute Resolution Panel needed to revisit its decision. Hence, the order of the Ld. AO is hereby set aside with the directions that the Dispute Resolution Panel may be requested by the Ld. AO/TPO, as the case may be, to reconsider the directions issued vide their order dated 30.09.2024 in light of the amendment in the definition of 'market value' read with the decision of the Hon'ble Delhi



High Court in the case of **DCM Shriram Ltd.** (supra), examine the facts of the case and thereafter, the modified directions, if required, may be issued to the Ld. AO for incorporation in the assessment order as per law. In view of the above discussion, for statistical purposes, the appeal of the assessee is partly allowed.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 19th August, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 19.08.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

- 1. Indian Metals and Ferro Alloys Ltd., Bomikhal, Rasulgah,
Bhubaneswar, Odisha, 751010.**
- 2. Assessment Unit, Income Tax Department.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata