आयकर अपीलीय अधिकरण, **'डी' न्यायपीठ, चेन्नई।**
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1048/Chny/2025**
निर्धारण वर्ष**/Assessment Year: 2017-18**

The ACIT, Circle-1, Tirupur-641 602.	**v.**	Sri Shanmugavel – Mills Pvt. Ltd., 207/86, Mangalam Road, Karuvampalayam, Tirupur-641 604.
		[**PAN: AADCS 8200 N**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Department by	:	Mr.Saddik Ahmed, Sr.AR
Assessee by	:	Mr.Suraj Nahar, CA
सुनवाईकीतारीख/Date of Hearing	:	18.09.2025
घोषणाकीतारीख /Date of Pronouncement	:	24.10.2025

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as "the Ld.CIT(A)"), Chennai-16, dated 10.02.2025 for the Assessment Year (hereinafter referred to as "AY") 2017-18.

2. The main grievance of the Revenue is in respect of determination of quantum deduction u/s.80IA of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts are that the assessee company is engaged in the business of manufacturing and selling of yarn and also engaged in the business of generation & distribution of power through wind electric generators and filed its ITR on 30.10.2017 admitting total income at ₹ NIL. Later, the ITR was selected for scrutiny and matter was referred to the Transfer Pricing Officer (hereinafter referred to as 'TPO') by the AO in terms of Sec.92CA(1) of the Act. The TPO in accordance with Sec.80IA(8) of the Act was required to determine the price at which electricity should be taken as transferred from the Wind Mill Unit to the Textile Unit of the assessee. In this regard, the assessee brought to TPO's notice that it has a Wind Mill Unit as well as a Textile Unit; and the entire electricity generated by the Wind Mill Unit was captively consumed by the Textile Unit. And the assessee submitted that for computing the income arising from the sale of generated electricity from its Wind Mill Unit undertaking for captive consumption, the assessee has considered the price at which the Tamil Nadu Electricity Board (TNEB) supplies electricity to its High Tension Industrial Customers [i.e. its end consumer's]. In other words, assessee adopted the rate of ₹6.35/- per unit which is the price at which TNEB supplies electricity to its end consumers and asserted thus that the transfer of electricity from the captive windmills to the textile division of the assessee company has been at arm's length. However, the TPO carried out FAR analysis of the assessee & the TNEB, and rejected the

method of ALP adopted by the assessee by bench marking done by the assessee company by adopting the tariff rate charged by TNEB and proposed to apply the ALP @ ₹2.75 & ₹3.39 per unit [*i.e. the tariff fixed for Wind Energy Generators by Tamil Nadu Electricity Regulatory Commission (TNERC)*] and accordingly proposed the downward adjustment of ₹10,22,03,420/-. The assessee objecting to such proposal and brought to his notice that in its agreement with TANGEDCO was in the nature of energy wheeling agreement permitting the power generation for captive consumption of power generated by owned windmills and that TANGEDCO purchases electricity @ ₹3.39/- per unit of electricity from electricity generating companies, whereas it sells electricity to its end consumers @ ₹6.35 per unit. Hence, it was asserted that the rate of ₹6.35/- per unit of energy is ALP of inter unit transfer of power. However, the TPO didn't agree and vide order u/s.92CA(3) of the Act proposed downward adjustment of ₹10,22,03,420/- to the transaction of inter unit transfer of power instead of ALP of ₹19,62,69,902/- as computed by the assessee and thereafter, the assessment was completed u/s.143(3) r.w.s.144C(3) dated 30.04.2021 determining the total assessed income at ₹10,02,63,323/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to allow the appeal by citing the decision of the Hon'ble Supreme Court in the case of CIT v. Jindal Steel & Power Ltd., reported in

[2024] 460 ITR 162 (SC) wherein it was held that the market value of the power supplied for captive consumption should be considered at the rate at which the State Electricity Board supplied power to its end consumers and not at the rate at which an assessee sells to the State Electricity Board.

5. Aggrieved by the aforesaid action of the Ld.CIT(A), the Revenue is in appeal before this Tribunal.

6. Assailing the action of the Ld.CIT(A), the Ld.Sr.DR submitted that the Ld.CIT(A) erred in relying on the decision of the Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd., (supra) which was rendered before the amendment of Sec.80IA(8) of the Act wherein the definition on the term market value underwent a change and that the Ld.CIT(A) has not taken into consideration, the said change in Law. He also relied on the decision of the Hyderabad Bench of this Tribunal in the case of Sanghi Industrials Ltd. v. DCIT in IT(TP) A No.14/Hyd./2022 for AY 2017-18 which dealt with the issue of benchmarking of transaction pertaining to sale of power between eligible and non-eligible unit and consequent deduction u/s.80-IA of the Act after considering the decision of the Hon'ble Supreme Court in Jindal Steel and Power Ltd. which pertained to assessment year 2001-02, which was rendered before the amendment to the definition of the term Market Value in explanation to section 80-1A(8)

that came into effect from 01.04.2013, i.e., assessment year 2013-14 onwards. The Ld DR drew our attention to relevant part of the Hyderabad Tribunal in the case of Sanghi Industrials Ltd. (supra) with reference to the above-mentioned issue which is reproduced as under:

> "43..... Interestingly, much water has been flown after A.Y.2017-18 by way of insertion of the Explanation to Section 801A(8) of the Act whereby the decision of the market value has been provided by the assessee. In view of the above, none of the judgments relied upon by the assessee are applicable to the facts of the present case. Recently, the Hon'ble Supreme Court in the case of Jindal Power Steel (supra) has held in Para 32 reproduced hereinabove whereby it has been held that in the absence of definition of market value, the prices determined by the State Utility what represented the market value of the goods and services. However, now the Act is clear which guides how to determine the market value and how the goods and services and for that purposes, either the prices which the goods and services in open market and in the absence of availability of that data, the arms length price as determined u/s 92F is required to be computed by the mechanism provided u/s 92C of the Act on receipt of Rule 10B of the Income Tax Rules 1962. Furthermore, in the present case, assessee itself had benchmarked the transactions by following the CUP method under Section 92C of the Act and therefore, also, this judgment is not applicable to the facts of the case."

7. The Ld.DR based on the above decision submitted that the Hyderabad Bench of the Tribunal has taken into account the change in law and held that the ALP is to be determined u/s.92F by the mechanism prescribed u/s.92C and Rule 10B; and the Ld.DR also drew support from the decision of the Hon'ble Supreme Court in M/s. SAP Labs [TS-225-SC-2023-TP] where it was held that the ALP is to be determined strictly in accordance with Income Tax Rules. The Ld.DR further submitted that the decision in Sanghi Industries Limited referred to supra had also taken into account the divergence in the functions performed, asset employed and the risk assumed by the state utility and the captive power generator in arriving at its conclusion. The Ld.DR stated that TNEB undertakes

transmission and distribution of power and HT cables, towers etc. are erected for this purpose and huge costs incurred. Transmission losses are also borne by TNEB. Absence of such functions in the assessee's case means the sale price fixed by TNEB is not to be adopted as value of inter unit transfer of electricity for the purposes of computing deduction u/s.80-IA of the Act. Therefore, he wants us to reverse the action of the Ld.CIT(A) and uphold the action of the TPO/AO.

8. Per contra, the Ld.AR vehemently opposing the submissions made by the Ld.DR pointed out that the issues as well as contentions raised by the Revenue is no longer *res-integra*. Drawing our attention to Page No.54 of the Paper Book submitted that all the issues raised before us by the Revenue has been verbatim contended before this Tribunal in a similar case of ACIT v. Prabhu Spinning Mills Pvt. Ltd., [in ITA No.433 & 435/Chny/2025 for AYs 2018-19 & 2017-18] and the Tribunal by order dated 13.08.2025 has dealt with every issues, and for buttressing this contention drew us to the Paragraph Nos.8 & 9, wherein, the Revenue tried to assail the action of the Ld.CIT(A) who had relied on the decision of the Hon'ble Apex Court in the case of Jindal Steel & Power Ltd., [as in the present case] and the Tribunal is noted to have dealt with the other contentions and held in favour of assessee as under:

> 5. The TPO thus determined the Arm's Length Price (ALP) of electricity transferred from section 80-IA eligible windmill division of the assessee to the textile division of the assessee at Rs.10,69,94,336/-. The assessee on the other hand had taken the selling price of TANGEDCO to any other high tension

industrial consumers being Rs.6.35 per unit of electricity which effectively translated into Rs.27,68,67,372/- for the whole of the year.

6. It may be noted that the assessee claimed a deduction u/s.80-IA of the Act to the tune of Rs.18,41,58,470/- and the AO vide assessment order passed u/s.143(3)r.w.s.144C(3)r.w.s.144B dated 11.06.2021 in accordance with the value determined by TPO determined the ALP of the inter unit transfer of electricity to be Rs.10,69,94,336/- which in effect lead to the section 80-IA claim of the assessee being reduced by Rs.7,71,64,134/- (Rs.18,41,58,470 less Rs.10,69,94,336).

7. Aggrieved, the said issue was raised in appeal before the first appellate authority, i.e., the Commissioner of Income Tax (Appeals). The ld.CIT(A) following the decision of the Hon'ble Supreme Court in CIT v. Jindal Steel & Power Ltd. [2024] 460 ITR 162 (SC) held that the claim of the assessee that the ALP be determined at Rs.6.35 per unit was in accordance with law and consequently held that the claim u/s.80-IA should not be restricted to Rs.10,69,94,336/- but should be as claimed by the assessee. Aggrieved by the order of the ld.CIT(A), the revenue has filed the instant appeal before us.

8. At the outset, it was the case of the Ld.DR that the decision of the Hon'ble Supreme Court in the case of CIT v. Jindal Steel & Power Ltd. [2024] 460 ITR 162 (SC) relied upon by the CIT(A) was a decision that was rendered before the amendment of section 80-IA(8) wherein the definition of the term market value underwent a change and that the ld.CIT(A) had not taken into consideration the said change in law.

9. The Ld.DR during the course of hearing through his written submissions relied on the decision of the Hyderabad Bench of the Income Tax Appellate Tribunal in the case of Sanghi Industries Limited v.DCIT in IT(TP) No.14/Hyd/2022 for the assessment year 2017-18 which dealt with the issue of benchmarking of transaction pertaining to sale of power between eligible and non-eligible unit and consequent deduction u/s.80-IA of the Act after considering the decision of the Hon'ble Supreme Court in Jindal Steel and Power Ltd. which pertained to assessment year 2001-02, which was rendered before the amendment to the definition of the term Market Value in explanation to section 80-IA(8) that came into effect from 01.04.2013, i.e., assessment year 2013-14 onwards.

10. The relevant portion with reference to the above-mentioned issue is as under:

> *"43…….. Interestingly, much water has been flown after A.Y.2017-18 by way of insertion of the Explanation to Section 80IA(8) of the Act whereby the decision of the market value has been provided by the assessee. In view of the above, none of the judgments relied upon by the assessee are applicable to the facts of the present case. Recently, the hon'ble Supreme Court in the case of Jindal Power Steel (supra) has held in Para 32 reproduced hereinabove whereby it has been held that in the absence of definition of market value, the prices determined by the State Utility what represented the market value of the goods and services. However, now the Act is clear which guides how to determine the market value and how the goods and services and for that purposes, either the prices which the goods and services in open market and in the absence of availability of that data, the arms length price as determined u/s 92F is required to be computed by the mechanism provided u/s 92C of the Act on receipt of Rule 10B of the Income Tax Rules 1962. Furthermore, in the present case, assessee*

itself had benchmarked the transactions by following the CUP method under Section 92C of the Act and therefore, also, this judgment is not applicable to the facts of the case."

11. The Ld.DR based on the above decision submitted that the Hyderabad Bench of the Income Tax Appellate Tribunal has taken into account the change in law and held that the ALP is to be determined u/s.92F by the mechanism prescribed u/s.92C and Rule 10B and in submitting the same also drew support from the decision of the Hon'ble Supreme Court in M/s. SAP Labs [TS-225-SC-2023-TP] where it was held that the ALP is to be determined strictly in accordance with Income Tax Rules.

The Ld.DR further submitted that the decision in Sanghi Industries Limited referred to supra had also taken into account the divergence in the functions performed, asset employed and the risk assumed by the state utility and the captive power generator in arriving at its conclusion. The Ld.DR stated that TNEB undertakes transmission and distribution of power and HT cables, towers etc. are erected for this purpose and huge costs incurred. Transmission losses are also borne by TNEB. Absence of such functions in the assessee's case means the sale price fixed by TNEB is not to be adopted as value of inter unit transfer of electricity for the purposes of computing deduction u/s.80-IA of the Act.

12. Per contra the Ld.AR in response firstly submitted that that the decision of the Hyderabad Bench of the Tribunal in the case of M/s.Sanghi Industries Limited referred to supra is not applicable in the instant case as in that case there was sale of electricity to third parties and not merely a captive consumption as is the case of the assessee, where the assessee has captively consumed the entire electricity generated by the windmill undertaking. The Ld.AR further submitted that the decision in M/s.Sanghi Industries Limited referred to supra is clearly distinguishable since in that case, there was supply of electricity to outside parties by the assessee and that the electricity generated was not merely captively consumed.

13. The Ld.AR further pointed out that the Ld.DR through his written submissions submitted that one cannot take the selling price of TANGEDCO as the market value of electricity since there were expenses to be incurred by TANGEDCO which do not exist in case of captive consumption. In the case of M/s.Sanghi Industries Ltd. referred to supra, the assessee was engaged in the sale of electricity to 14 independent third-party consumers at an average rate of ₹2.97 per unit, while simultaneously captively consuming power at a rate of ₹7.85 per unit. In light of these concurrent transactions, the Tribunal applied the internal CUP method, holding that the rate of third-party sales constituted a more direct and reliable benchmark than any externally regulated tariffs.

14. In stark contrast, it was vehemently argued by the Ld.AR that the assessee herein has not undertaken any third-party sale of power. The entire quantum of electricity generated by the windmill units is captively consumed by the assessee's own manufacturing divisions. Consequently, there exist no internal comparable transaction which can serve as a benchmark under the CUP method. The absence of such comparable data makes the decision of M/s.Sanghi Industries Limited referred to supra inapplicable. Therefore, the case of M/s.Sanghi Industries Limited referred to supra cannot be applied to the assessee's case as the facts are materially different.

15. The Ld.AR further submitted that in the agreement between the assessee and TANGEDCO it may be seen that the agreement is not a Power Purchase Agreement (PPA) but an Energy Wheeling Agreement and that all expenses of transmission and distribution such as wheeling charges have to be

borne by the assessee and that therefore the selling price of TANGEDCO is alone to be taken as the market value. The Ld.AR also submitted that in arriving at the profits of the Section 80-IA undertaking, the assessee has reduced such expenses as belonging to the section 80-IA undertaking and thus reduced its claim to that extent u/s.80-IA(8) of the Act.

16. The Ld.AR apart from submitting that the decision relied upon by the Ld.DR is inapplicable in the facts and circumstances of the case went on to mainly argue that the issue under consideration which is with regard to the determination of the transfer price from the windmill undertaking to the textile undertaking of electricity generated by the windmill undertaking for the purposes of computation of deduction u/s.80-IA was addressed by the Hon'ble Supreme Court in CIT v.Jindal Steel & Power Ltd. [2024] 460 ITR 162 (SC). The Ld.AR drew our attention to para 22 of the said decision wherein it was held as follows:

> *"22. Reverting back to sub-section (8) of Section 80-IA, it is seen that if the assessing officer disputes the consideration for supply of any goods by the assessee as recorded in the accounts of the eligible business on the ground that it does not correspond to the market value of such goods as on the date of the transfer, then for the purpose of deduction under section 80-IA, the profits and gains of such eligible business shall be computed by adopting arm's length pricing. In other words, if the assessing officer rejects the price as not corresponding to the market value of such good, then he has to compute the sale price of the good at the market value as per his determination. The explanation below the proviso defines market value in relation to any goods to mean the price that such goods would ordinarily fetch on sale in the open market. Thus, as per this definition, the market value of any goods would mean the price that such goods would ordinarily fetch on sale in the open market."*

17. After referring to the above, the Ld.AR stated that in the above decision, the Hon'ble Supreme Court has used the term Market Value & Arm's Length Price interchangeably. He further drew our attention to the provisions of section 80-IA(8) which reads as follows:

> *"(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."

18. As regards the above, the Ld.AR submitted that the explanation to section 80-IA(8) provides that for the purposes of section 80-IA(8), the market value of any goods and services would mean either clause (i) which states the price that such goods and services would ordinarily fetch in the open market or clause (ii) which states 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. It may be noticed that section 80-IA(8) in its explanation defines market value to be either as per clause (i) or (ii).

19. At this stage, the Ld.AR pointed out that the term "or" has been used in between clauses (i) & (ii) of explanation to section 80-IA(8) which clearly means that either clause (i) or clause (ii) of explanation to section 80-IA(8) may be used to determine the market value of the electricity transferred by the windmill undertaking to the textile undertaking and in support of the same, relied on the decision of the Mumbai Bench of the Tribunal in M/s.Tata Chemicals Ltd. v DCIT in ITA No.468/Mum/2022 – Mumbai ITAT which has elaborately discussed this aspect, relevant portion of which can be found in paras 14 & 15 of the said order of the Tribunal which is reproduced below:

"14. …….In our opinion it will be too myopic view to give an interpretation that all the transaction covered u/s. 80IA(8) has to be compulsorily determined under transfer pricing provision, cannot be accepted. Because, the statute has clearly provided two options or two manner in which market value of the goods and services can be determined. The phrase "or" does not give mean that the second mechanism provided in clause (ii) of Explanation alone can be applied after introduction of SDT from 01.04.2013. The use of the word "or" can be interpreted as, firstly, both manner are available with the assessee to demonstrate that market value of the goods and services has to be either by showing that the price of such goods and services is in consonance with the price available in the open market; or if assessee is not able to establish the price available in the open market, then the price of goods and services has to be established through arm"s length principle. Secondly, if the price of the transfer of goods and services is in consonance with the price available in the open market then the profits of the eligible business shown as per this price is eligible for deduction and in that case the second option may not be necessary.

15. Both the authorities, i.e., ld. TPO and ld. DRP have held that in case of 80IA (8), the market value has to be compulsory governed by Explanation (ii) to Section 80IA (8), because in 92BA provides that such transfer of goods and services referred in this sub-section falls within SDT and therefore, arm"s length price has to be determined as per Section 92F(ii). Further according to them Explanation (i) & (ii) have separate application because it is separated by word "or", but how they are separately applicable and under which circumstances has not been elaborated. If such an interpretation is to be accepted, then clause-(i) of the Explanation will become otios and redundant, because then the transfer of the goods and services falling u/s.80IA(8) has to be compulsorily be determined under arm"s length principle. Had it

been so, then post introduction of SDT in Section 92BA w.e.f. 01/04/2013, then statute would have provided that for the purpose of Sub-section (8) to Section 80IA, "market value" in relation to goods or services means the arm"s length price as defined in clause (ii) of Section 92F. If both the clauses exist then one has to see if the market value is discernable from the price for such goods would ordinarily fetch in the open market unless such price is not available, then there is an option for determining the market value as per the arm"s length price."

20. Based on the above, the Ld.AR stated that the Mumbai Bench of the Tribunal has in effect held that since clauses (i) or (ii) of explanation to section 80-IA(8) are separated by an "or", an interpretation that only clause (ii) of explanation to section 80-IA(8) has to be used for determination of specified domestic transaction would render clause (i) of explanation to section 80-IA(8) otiose and redundant which is not a permissible rule of interpretation. The Tribunal therefore concluded that so long as both clauses exist, one has to see if market value is discernible from the price for such goods which it would ordinarily fetch in the open market and only in a case where such price is not available, the market value has to be determined as per ALP. In doing so, the Mumbai Bench of the Tribunal followed the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd referred to supra as also the decision of the Hon'ble Gujarat High Court in the case of PCIT v Gujarat Fluorochemicals Ltd. and the Hon'ble Bombay High Court in CIT v Reliance Industries Ltd. to hold that the selling price of the State Electricity Board to high tension industrial consumers can be taken as market value in accordance with section 80-IA(8) of the Act.

21. The Ld.AR also submitted that similar views were taken in the following cases:

- *ITO v SJLT Textiles in ITA Nos.686, 687 & 688 / Chny / 2023 – Chennai ITAT*
- *JCIT (OSD) v M/s.CRI Pumps Private Limited in ITA Nos.265, 266 & 267 / Chny / 2025 – Chennai ITAT*
- *DCIT v Phillips Carbon Black Ltd. [2025] 175 taxmann.com 352 (Kol Trib.)*
- *Even the Dispute Resolution Panel, Bengaluru in the case of Sulochana Cotton Spinning Mills (P.) Ltd. for the assessment year 2020-21 vide its directions dated 28.06.2024 has taken the same view as in the above referred decisions.*

22. The Ld.AR further drew our attention to the decision of the Hon'ble Calcutta High Court in PCIT v Star Paper Mills Ltd. [2025] 172 taxmann.com 391 (Cal) which was also concerned with a similar issue, i.e., determination of the transfer price of electricity generated by the eligible undertaking which is captively consumed by the non-eligible undertaking. The Ld.AR specifically pointed out to the substantial questions of law before the Hon'ble High Court which were as follows:

"(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 section80IA 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?"

23. It was submitted by the Ld.AR that after considering the substantial questions of law and the fact that the explanation to section 80-IA(8) referred to clauses (i) and (ii) for the purpose of determining the market value, the Hon'ble High Court came to the conclusion that the issue is governed by the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd. referred to supra and concluded that the price at which power is supplied by the State Electricity Board to consumers in open market should be taken as market value for the purposes of computing deduction u/s.80-IA(8) of the Act. A similar view following the decision of Star Paper Mills Ltd. referred to supra can also be found in PCIT v Birla Corporation Ltd. [2025] 175 taxmann.com 637 (Cal)

24. The Ld.AR during the course of hearing also relied upon the decision of the Hon'ble Calcutta High Court in PCIT v Rungta Mines Limited [TS-402-HC-2025(CAL)-TP] which has again considered a similar issue. The Hon'ble Calcutta High Court at paras 14 to 18 observed that the assessee is not generating power to sell the same to distribution companies / State Electricity Boards and that the captive power plants were established only for assessee's own need (as in the instant case of the assessee before this Tribunal) and that in such a situation the ALP 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. The Hon'ble Calcutta High Court in this case considered the provisions of the Electricity Act, 2003 and distinguished the decision in ITC Ltd. (236 taxman 612) as the same was rendered prior to the amendment made to the Electricity Act.

25. The Hon'ble Calcutta High Court following its own decision in Star Paper Mills Ltd. referred to supra as also the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd. referred to supra, ultimately came to the conclusion that for the purposes of computing deduction u/s.80-IA of the Act, the market value of power supplied by the State Electricity Board to the consumers in open market should be construed as market value of electricity and 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 the supplier cannot be the market rate of power sold to the consumers in the open market.

26. The Ld.AR finally argued that the issue before the Hyderabad Bench of the Tribunal and the issue addressed by the Hon'ble Calcutta High Court in the case of Star Paper Mills Ltd. referred to supra and other decisions of the High Court following the decision of Star Paper Mills Ltd. are exactly the same. In this regard, it was submitted by the Ld.AR that the decision of the higher appellate Court cannot be disregarded but on the contrary has to normally be followed by the Tribunal and for this purpose placed reliance on the following cases and prayed that the Tribunal may be pleased to follow the decision of the Hon'ble Calcutta High Court in Star Paper Mills Ltd. referred to supra and dismiss the appeal filed by the revenue:

a) *Hon'ble Supreme Court in ACCE v Dunlop India Ltd & Ors [1985] 154 ITR 172 (SC)*

b) *Hon'ble Supreme Court in S.Nagaraj and Others v State of Karnataka & Ors [1993] SCC 595 (SC)*

c) *Hon'ble Supreme Court in Sub Inspector Rooplal &Anr v Lt. Governor Through Chief Secretary, Delhi & Ors 2000 1 SCC 64 (SC)*

d) *Hon'ble Supreme Court in Government of Andhra Pradesh & Ors v A.P.Jaiswal& Ors 1 SCC 748*

e) *Hon'ble Third Member of the Income Tax Appellate Tribunal, Chennai Bench in Sanghvi & Doshi Enterprise v ITO [2011] 131 ITD 151 (Chennai)(TM)*

f) *Hon'ble Third Member of the Income Tax Appellate Tribunal, Ahmedabad Bench in Kanel Oil & Exports Inds. Ltd v JCIT [2009] 121 ITD 596 (Ahd)(TM)*

g) *Mumbai Special Bench of the Hon'ble Income Tax Appellate Tribunal has in DCIT v Oman International Bank SAOG [2006] 100 ITD 285 (Mum)(SB)*

27. The Ld.AR concluded based on the above this Tribunal is bound to follow the decision of the Hon'ble Calcutta High Court in Star Paper Mills Ltd. referred to supra and all other High Court decisions following Star Paper Mills Ltd. which is a higher judicial forum than that of the Tribunal and also that this Tribunal cannot declare the decisions of the Hon'ble Calcutta High Court per incuriam.

28. The Ld.DR in reply firstly stated that the judgment of the Hon'ble Supreme Court in Jindal Steel & Power Ltd. referred to supra relates to AY 2001-02 and thus the term ALP used therein was not used in the context of section 92F of the Act. The Ld.DR further stated that the reliance on the decision of the Mumbai Bench of the Tribunal in M/s.Tata Chemicals Ltd., referred to supra is not in line with the language of the law as ALP is mentioned in the context of SDT in clause (ii) of explanation only and thus wherever the transaction is an SDT, only ALP has to be determined as per clause (ii) of the said explanation.

29. As regards the reliance of the Ld.AR on the decisions of the Hon'ble Calcutta High Court in Star Paper Mills Ltd., referred to supra, the Ld.DR submitted that the impact of clause (ii) of explanation to section 80-IA(8) does not seem to have been argued before the Hon'ble High Court and that the questions of law in the decision of Birla Corporation, referred to supra, following the judgment in Star Paper Mills Ltd. were not properly distinguished before the Hon'ble High Court during the course of argument. As far as the decision of the coordinate bench of this Tribunal, relied upon by the Ld.AR are concerned, the Ld.DR stated that those decisions were cases which were not rendered in the context of SDT.

30. The Ld.DR further submitted that although the decisions of the Higher Courts are to be followed, the same have to be done so in the light of the law and facts relevant to the present appeal and thus placing reliance on the decision of the Hon'ble Supreme Court in SAP Labs India (454 ITR 121) submitted that when market value is being determined vide clause (ii) of section 80-IA(8), it has to be done strictly in line with the above provisions.

31. We have heard the rival contentions perused all the material available on record before us and gone through the orders of the authorities along with the judicial precedents relied on. Before adjudicating on whether the decisions of the Hon'ble Calcutta High Court placed on record by the Ld.AR have taken into consideration the change in law, i.e., the amendment of explanation to section 80-IA(8) of the Act, we would like to emphasize on the ratio laid down by the Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd. referred to supra in respect of the issue of quantum of deduction u/s.80-IA of the Act as regards inter-unit transfer of electricity was concerned:

> *"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.*
>
> *29. Section 43A of the 1948 Act lays down the terms and conditions for determining the tariff for supply of electricity. The said provision makes it clear that tariff is determined on the basis of various parameters. That apart, it is only upon granting of specific consent that a private entity could set up a power generating unit. However, such a unit would have restrictions not only on the use of the power generated but also regarding determination of tariff at which the power generating unit could supply surplus power to the concerned State Electricity Board. Thus, determination of tariff of the surplus electricity between a power generating company and the State Electricity Board cannot be said to be an exercise between a buyer and a seller under a competitive environment or a transaction carried out in the ordinary course of trade and commerce. It is determined in an environment where one of the players has the compulsive legislative mandate not only in the realm of enforcing buying but also to set the buying tariff in terms of the extant statutory guidelines. Therefore, the price determined in such a scenario cannot be equated with a situation where the price is determined in the normal course of trade and competition. Consequently, the price determined as per the power purchase agreement cannot be equated with the market value of power as understood in the common parlance. The price at which the surplus power supplied by the assessee to the State Electricity Board was determined entirely by the State Electricity Board in terms of the statutory regulations and the contract. Such a price cannot be equated with the market value as is understood for the purpose of Section 80IA (8). On the contrary, the rate at which State Electricity Board supplied electricity to the industrial consumers would have 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."

32. From the above decision, it is quite clear that where the price at which surplus power supplied by assessee to State Electricity Board was determined entirely by State Electricity Board in terms of statutory regulations and contract, such a price could not be equated with market value as was understood for purpose of section 80-IA(8) and on the contrary, the rate at which State Electricity Board supplied electricity to industrial consumers would have to be taken as market value for computing deduction u/s.80-IA of the Act.

33. At this stage, it may also be noted that at Para 22 of the said judgment of the Hon'ble Supreme Court, it was held as under:

"22. Reverting back to sub-section (8) of Section 80-IA, it is seen that if the assessing officer disputes the consideration for supply of any goods by the assessee as recorded in the accounts of the eligible business on the ground that it does not correspond to the market value of such goods as on the date of the transfer, then for the purpose of deduction under section 80-IA, the profits and gains of such eligible business shall be computed by adopting arm's length pricing. In other words, if the assessing officer rejects the price as not corresponding to the market value of such good, then he has to compute the sale price of the good at the market value as per his determination. The explanation below the proviso defines market value in relation to any goods to mean the price that such goods would ordinarily fetch on sale in the open market. Thus, as per this definition, the market value of any goods would mean the price that such goods would ordinarily fetch on sale in the open market."

34. On the basis of the above observation of the Hon'ble Supreme Court, one may note that as contended by the Ld.AR, the terms "Market Value" and "Arm's Length Price" have been used interchangeably. As far as the argument of the Ld.DR in this regard to state that since the said judgement relates to A.Y.2001-02, the term ALP used therein was not in the context of section 92F of the Act is concerned, we are not in agreement of the same because the definition of the term "Arm's Length Price" that existed before and post the amendment of explanation to section 80-IA(8) is exactly the same except for the fact the amendment of explanation to section 80-IA(8) now brings within its ambit specified domestic transactions.

35. In other words, but for the mere inclusion of applicability of Arm's Length Price mechanism for determining market value for specified domestic transactions for determining the deduction u/s.80-IA, to say that the usage of the said term in the judgement of the Hon'ble Supreme Court is not in context of section 92F of the Act would be incorrect. Having said so, we are of the view that the usage of the terms Market Value and Arm's Length Price interchangeably in its decision and thereafter arriving at the conclusion that the rate at which State Electricity Board supplied electricity to industrial

consumers would have to be taken as market value for computing deduction u/s.80-IA of the Act would be appropriate for determination of quantum of deduction u/s.80-IA in the instant case.

36. Further, at this stage, we find it necessary to refer to the decision of the Mumbai Bench of the Tribunal in the case of Tata Chemicals Ltd. relied upon by the Ld.AR wherein in effect it was held that since clauses (i) or (ii) of explanation to section 80-IA(8) are separated by an "or", an interpretation that only clause (ii) of explanation to section 80-IA(8) has to be used for determination of specified domestic transaction would render clause (i) of explanation to section 80-IA(8) otiose and redundant which is not a permissible rule of interpretation. It would be relevant to point out that the Tribunal therefore concluded that so long as both clauses exist, one has to see if market value is discernible from the price for such goods which it would ordinarily fetch in the open market and only in a case where such price is not available, the market value has to be determined as per ALP. In doing so, the Mumbai Bench of the Tribunal followed the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd referred to supra as also the decision of the Hon'ble Gujarat High Court in the case of PCIT v Gujarat Fluorochemicals Ltd. and the Hon'ble Bombay High Court in CIT v Reliance Industries Ltd. to hold that the selling price of the State Electricity Board to high tension industrial consumers can be taken as market value in accordance with section 80-IA(8) of the Act. Thus, even on this count, we do not find favour with the argument of the Ld.DR that the market value in respect of specified domestic transactions with respect to computation of deduction u/s.80-IA(8) would have to be compulsorily determined by clause (ii) of explanation to section 80-IA(8), i.e., the Arm's Length Price.

37. We further state that the decision relied upon by the Ld.DR in the case of Sanghi Industries Ltd. decided by the Hyderabad Bench of the Tribunal is not applicable in the facts of the instant case for the reason that the assessee herein in the instant case has not undertaken any third-party sale of power as was the facts of that case and that the entire quantum of electricity generated by the windmill units is captively consumed by the assessee's own manufacturing divisions.

38. We also note that the decisions of the Hon'ble Calcutta High Court relied upon by the Ld.AR in the case of Star Paper Mills Ltd. which has been followed in the case of Birla Corporation Ltd. and also Rungta Mines Ltd. are all binding on us since all of these decisions have been rendered by higher courts and have considered the issue in hand, i.e., the determination of quantum of deduction in respect of inter-unit transfer of electricity, after taking into consideration the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd., the relevant provisions of the Electricity Act and also the amendment in explanation to section 80-IA(8) of the Act.

39. We may particularly draw reference to the decision of the Hon'ble Calcutta High Court in the case of PCIT v Rungta Mines Ltd. [TS-402-HC-202(CAL)-TP] wherein it was held as under:

> *"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."*

40. From the above, it is quite clear that the Hon'ble Calcutta High Court has clearly observed that in case of an assessee who is not in the business of selling power to distribution companies or State Electricity Board, the Arm's Length Price cannot be determined by taking the average market rates of power supply units to distribution companies but by bearing in mind the reason behind establishment of the captive power plants (CPPs) namely to ensure uninterrupted power and to save on cost of electricity which otherwise has to be paid to the State Electricity Board.

41. It is in this background that the Hon'ble Calcutta High Court after analysing the provisions of the Electricity Act, 2003, the decision in Star Paper Mills Ltd. and the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd. concluded as under:

> *"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."*

42. Thus, in our considered view, we hold that the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd. referred to supra would apply even after the amendment made to Explanation to section 80-IA(8) of the Act. Also, the decision of the Hon'ble Calcutta High Court in Rungta Mines Limited and Star Paper Mills Ltd. referred to supra rendered after considering the decision of the Hon'ble Supreme Court in Jindal Steel & Power Ltd. referred to supra and after taking into account the amendment made to Explanation to section 80-IA(8) of the Act would apply to the facts and circumstances of the instant case. The ALP in the instant case would thus have to be the price at which electricity is supplied by the State Electricity Board (TANGEDCO in the instant case) to end consumers in open market. Therefore, we direct the AO to recompute the ALP considering the rate adopted by the assessee as per the market price.

9. From a reading of the aforesaid order of the Tribunal for AY 2017-18, we note that similar action was carried out by the TPO in the case of Prabhu Spinning Mills Pvt. Ltd., and had made similar adjustment which led to the reduction of the claim made u/s.80IA of the Act. On appeal,

the Ld.CIT(A) is noted to have reversed the action of the AO and thus allowed the claim of the assessee determining the ALP at ₹6.35/- per unit and consequently held that the claim u/s.80IA of the Act should be allowed as claimed by the assessee. Before us also the department has raised the very same contention as in the case of Prabhu Spinning Mills Pvt. Ltd. (supra) and the Tribunal has dismissed the Revenue appeal for AY 2017-18 (supra) by rebutting all the contentions by passing reasoned order (supra). Since the Ld.DR couldn't point out any change in fact or law, we follow the decision of the coordinate Bench of this Tribunal in the case of Prabhu Spinning Mills Pvt. Ltd. (supra) and uphold the impugned action of the Ld.CIT(A) on the same reasoning as held by the Tribunal in Prabhu Spinning Mills Pvt. Ltd. (supra) and dismiss the appeal of the Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 24th day of October, 2025, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य/**ACCOUNTANT MEMBER**	न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 24th October, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF